

LEGISLATIVE CONSENT MEMORANDUM

Renters (Reform) Bill

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Renters (Reform) Bill (“the Bill”) was introduced in the House of Commons on 17 May 2023.
3. The UK Government tabled 186 amendments on 14 November ([renters_rm_pbc_1115.pdf \(parliament.uk\)](#)) for consideration at House of Commons Committee Stage, which commenced on 14 November. 14 of the amendments make provision which fall within the legislative competence of the Senedd, as detailed in paragraphs 13 to 26 below.
4. It was not possible to lay this memorandum within two-weeks of the amendments being laid under Standing Order 29.2. Although the amendments which specifically deal with the blanket ban (“no benefit claimants” and “no children”) had been shared with the Welsh Government ahead of laying on 14 November 2023 and the competence analysis completed at that point, when the amendments were laid there were 186 amendments in total, a further 172 which required analysis to decide whether or not a legislative consent motion was required for those amendments too.
5. I wrote to Llywydd on 29 November 2023 to inform her that this Memorandum would be submitted beyond the deadline. The letter was copied to the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Local Government and Housing Committee.
6. The Bill can be found at: [Renters \(Reform\) Bill \(parliament.uk\)](#)

Policy Objective(s)

7. The UK Government’s stated policy objectives are to ensure private renters have access to a secure and decent home and that landlords retain the confidence to repossess their properties where they have good reason to. Amendments have been laid at House of Commons Committee stage to outlaw the use of blanket ‘no benefit claimants’ (commonly known as ‘no DSS’) and ‘no children’ policies in residential lettings.

Summary of the Bill

8. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
9. The UK Government states that the provisions of the Bill will:
 - a) Reform tenancy law so that all assured tenancies are periodic.
 - b) Reform possession grounds, including where landlords wish to sell their property or move in close family, and to make it easier for landlords to repossess their properties where tenants are at fault, in cases of anti-social behaviour and repeat rent arrears.
 - c) Introduce a new landlord redress scheme that private landlords must join.
 - d) Introduce a new Property Portal including a database of residential landlords and privately rented properties in England.
 - e) Allow tenants to appeal above-market rents, including those which are purely designed to force them out.
 - f) Give tenants the right to request a pet in their property, which the landlord must consider and cannot unreasonably refuse.
10. Amendments were laid at House of Commons Committee stage (14 November) which will introduce a new Chapter 3 (in England) and Chapter 4 (for Wales) into Part 1 of the Bill. For Wales, the English and Welsh language texts of the Renting Homes (Fees etc.) (Wales) Act 2019 are being amended. New Part 2A is inserted into the 2019 Act creating an offence for a landlord or person acting or purporting to act on a landlord's behalf from discriminating in relation to occupation contracts against persons who would have children live with or visit them or who are benefits claimants and makes other provision about discrimination of that kind ('blanket ban').
11. Most of the amendments being made to the Bill are intended to apply only to England. Following an approach by the UK Government, I was invited to make provision concerning prohibiting discrimination in relation to children or benefits status as outlined above in Wales.
12. To this end, the Bill proposes amendments to the Renting Homes (Fees etc) (Wales) Act 2019 and the Renting Homes (Wales) Act 2016.

Amendments to the Bill for which consent is required (the references below are to provisions in the Bill as amended at Committee, followed by the amendment number in brackets)

13. **Part 1 Chapter 4 Clause 37 (amendment Gov NC48) 'Prohibition of discrimination relating to children or benefits status: Welsh language text'** amends the Welsh language text of the Renting Homes

(Fees etc.) (Wales) Act 2019 concerning the blanket ban. Clause 37 of the Renters (Reform) Bill inserts new Part 2A into the Welsh language text of the Renting Homes (Fees etc.) (Wales) Act 2019. Clause 37 bans landlords or person acting or purporting to act on a landlord's behalf from adopting certain discriminatory practices which make it harder for people who have children (or have children visit them) or who are benefits claimants, to enter into an occupation contract.

New Part 2A contains new sections 8A to 8K to prohibit discrimination relating to children and benefits status:

- **8A (Prohibition of discrimination relating to children)** – new section 8A(1) creates an offence for a 'relevant person' in relation to a dwelling that is to be the subject of an occupation contract (a) on the basis that a child would live with or visit a person at the dwelling if the dwelling were the person's home to prevent the person from enquiring whether the dwelling is available for rent, accessing information about the dwelling, viewing the dwelling to consider whether to seek to rent it or obtaining the grant, renewal or continuance of an occupation contract in respect of the dwelling; or (b) to apply a provision, criterion, or practice in order to make people who would have a child live with or visit them at the dwelling less likely to obtain the grant, renewal or continuance of an occupation contract in respect of the dwelling than people who would not. It is a defence for the relevant person to prove the conduct is a proportionate means of achieving a legitimate aim (subsection (2)). It is a defence for the relevant person to prove the prospective landlord (subsection (3)) or a superior landlord is insured under a contract of insurance to which section 8H does not apply and which contains a term which requires the insured to prohibit a contract-holder from have a child live with/visit them at the dwelling or requires the landlord to restrict the circumstances in which a contract-holder may do so and the conduct is a means of preventing the prospective landlord from breaching that term. A person guilty of an offence under subsection (1) is liable on summary conviction to a fine.
- **8B (Prohibition of discrimination relating to benefits status)** – new section 8B(1) creates a similar offence for a relevant person as for section 8A(1), but on the basis a person is a benefits claimant. In this new section, there is a defence for the relevant person to prove the prospective landlord or a superior landlord is insured under a contract of insurance to which section 8H does not apply and which contains a term which requires the insured to prohibit a contract-holder of the dwelling from being a benefits claimant, and the conduct is a means of preventing the prospective landlord from breaching that term (subsection (2)). A person guilty of an offence under subsection (1) is liable on summary conviction to a fine.
- **8C (Exception for publication of advertisements etc)** - new section 8C creates an exception for publication of advertisements so conduct does not constitute an offence under section 8A(1) or

section 8B(1) if it consists only of publishing adverts or disseminating information, providing a means by which a prospective landlord can communicate directly with a prospective contract-holder, providing a means by which a prospective contract-holder can communicate directly with a prospective landlord, or things of a description, etc specified for the purposes of this section in regulations.

- **8D (Continuing breach of prohibition after fixed penalty)**- new section 8D deals with a continuing breach of prohibition after fixed penalty and a person commits an offence if a fixed penalty notice has been given to the person under section 13 of the Renting Homes (Fees etc.) (Wales) Act 2019 for an offence under Part 2A and conduct continues after 28 days from when notice was given under section 13.
- **8E (Repeated breach of prohibition after fixed penalty)** - new section 8E deals with the repeated breach of prohibition after fixed penalty and a person commits an offence if a FPN has been given under section 13 for an offence under Part 2A and the person commits another offence within 5 years from when the notice under section 13 was given.
- **8F (Terms in superior leases relating to children or benefits status)** - new section 8F deals with terms in superior leases which are not binding if they require a tenant under that inferior lease to prohibit a contract-holder from having a child live with or visit them at the dwelling or restrict circumstances in which a contract-holder may have a child live with/visit them at the dwelling. The lease continues, so far as practicable, to have effect in every other respect. This does not apply if the requirement is a proportionate means of achieving a legitimate aim or the landlord under the lease or superior landlord is insured under an insurance contract to which section 8H does not apply and where there is a term requiring the insured to prohibit a contract-holder from having a child live with/visit them at the dwelling or restrict circumstances in which a contract-holder may have a child live with or visit them at the dwelling and the requirement is a means of preventing the insured from breaching that term.
- **8G (Terms in mortgages relating to children or benefits status)** - new section 8G deals with terms in mortgages which are not binding if it would require the mortgagor to prohibit a contract-holder from having a child live with/visit them at the dwelling or restrict the circumstances in which a contract-holder may have a child live with/visit them at the dwelling. The mortgage continues, so far as practicable, to have effect in every other respect.
- **8H (Terms in insurance contracts relating to children or benefits status)** - new section 8H deals with terms in insurance contracts, again not binding if it would require the insured to prohibit a contract-holder from having a child live with/visit them at the dwelling or restrict the circumstances a contract-holder may have a child live with/visit them at the dwelling subject to an occupation contract. The insurance contract continues so far as practicable, ti

have effect in every other respect. This section applies to insurance contracts entered into or whose duration was extended on/after the day on which this section comes into force

- **8I (No prohibition on taking income into account)** - new section 8I ensures that nothing in new Part 2A prohibits taking a person's income into account in considering whether that person would be able to afford to pay rent under an occupation contract.
- **8J (Power of the Welsh Ministers to amend Part 2A)** - new section 8J provides that the Welsh Ministers may by regulations amend Part 2A to make in relation to persons of another description, provision corresponding, with or without modifications, to the provision made by Part 2A in relation to persons who would have a child live with/visit them or who are benefits claimants. A Statutory Instrument containing regulations under new section 8J will be made under the affirmative procedure (see the amendment being made to section 27(3) of the 2019 Act).
- **8K (Interpretation of Part 2A)**

14. **Part 1 Chapter 4 Clause 38 (amendment Gov NC49) 'Prohibition of discrimination relating to children or benefits status: English language text'** amends the English language text of the Renting Homes (Fees etc.) (Wales) Act 2019 concerning the blanket ban as set out in amendment Gov NC48 (above);

15. **Part 1 Chapter 4 Clause 39 (amendment Gov NC50) 'Amendment of short title of the Renting Homes (Fees etc.) (Wales) Act 2019'** amends the short title of the Renting Homes (Fees etc.) (Wales) Act 2019 in both the Welsh and English language texts to include "discrimination" to reflect the changes made by new clauses 37 and 38. The amended title will read the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019;

16. **Part 1 Chapter 4 Clause 40 (amendment Gov NC51) 'Regulations under sections 8C and 8J of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019'** provides that regulations under section 8C (Exception for publication of advertisements etc) or 8J (Power of the Welsh Ministers to amend Part 2A of the 2019 Act) (as inserted by this Act) may only make provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd. These regulations must be made under the affirmative procedure;

17. **Part 1 Chapter 4, Clause 41 new Chapter 6A (amendment Gov NC52) 'Amendments of the Renting Homes (Wales) Act 2016 regarding discrimination'** amends the Welsh and English language texts of the Renting Homes (Wales) Act 2016 to prohibit landlords in Wales from stopping a contract-holder from having children live with or visit them or claiming benefits. It also amends section 30, 54 and Schedule 1 to the 2016 Act. New Chapter 6A inserts section 54A and 54B into both the Welsh and English language texts of the 2016 Act. It

makes the prohibition on children/benefits claimants a fundamental term of the 2016 Act for occupation contracts;

18. **Part 5, Clause 113 (amendment Gov NC47) 'Power of Welsh Ministers to make consequential provision'** confers a power on the Welsh Ministers to make provision by regulations consequential on Part 1 to an Act or Measure of Senedd Cymru passed before the Renters (Reform) Act or an Act passed before this Act or later in the same session of Parliament of this Act. The power to make regulations includes a power to make supplementary, incidental, transitional or saving provision, including for the regulations to apply in relation to occupation contracts granted, renewed or continued, or advertising begun, before the date on which the regulations come into force and so has retrospective effect. Regulations may only make provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd. A statutory instrument containing (whether alone or with other provision) regulations under this section that amend or repeal provision made by an Act or Measure of Senedd Cymru, or by an Act, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru (affirmative procedure). Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of Senedd Cymru (negative procedure);
19. **Part 5, Clause 110 (amendment Gov 97) (Clause 54 as Introduced) 'Crown application'** provides that the Crown will be bound by the new clauses which make freestanding provision in the Bill intended to mean that the Crown will be bound by the new clauses containing prohibitions on discriminatory practices;
20. **Part 5, Clause 112(1) (amendment Gov 102) (Clause 56 as Introduced) 'Regulations'** This amendment substitutes the word 'Part' to 'Act' in clause 112(1). The effect provides that provisions about regulations in clause 112(1) apply in relation to regulations under the new clauses added to the Bill. Regulations under new sections 8C and 8J will follow the affirmative procedure (see amendments being made to section 27(3) of the 2019 Act);
21. **Part 5, Clause 112(3) (amendment Gov 103) (Clause 56 as Introduced) 'Regulations'** This amendment provides for the provision for regulations to be made by statutory instrument to cover all the regulations under the Bill. Welsh Ministers regulations will be made under the negative procedure (see subsection (5));
22. **Part 5, Clause 116 (amendment Gov 125) (Clause 67 as Introduced) 'Commencement and application'** this amendment confers a power on the Welsh Ministers to commence Chapter 4 to the Renters Reform Act 2024 by order;

23. **Part 5, Clause 117(1) (amendment Gov 126) (Clause 68 as Introduced) ‘Transitional provision’** inserts new subsection (1) which confers a power on the Welsh Ministers to make transitional or saving provision in connection with the coming into force of any provision of Chapter 4 in Part 1 by order;
24. **Part 5, Clause 117(2) (amendment Gov 127) (Clause 68 as Introduced) ‘Transitional provision’** is consequential on amendment Gov 126 and removes the provision that the Welsh Ministers can make under clause 117 (transitional provision) from the ambit of the Secretary of State’s power to make transitional or saving provision in connection with the rest of the Bill, to avoid overlap between the powers of the Welsh Ministers and those of the Secretary of State;
25. **Part 5, Clause 117(3) (amendment Gov 128) (Clause 68 as Introduced) ‘Transitional provision’** inserts new subsection (1) and the power to make an order under subsection (1) includes power to provide for a provision of Chapter 4 to apply in relation to occupation contracts granted, renewed or continued, or advertising begun, before the date on which the provision comes into force and may apply to occupation contracts before the date on which the provisions comes into force; and
26. **Part 5, Clause 117(5) (amendment Gov 129) (Clause 69 as Introduced)** is consequential on amendment 126 and ensures clause 117(3) of the Bill applies in relation to the Welsh Ministers’ power to make transitional or saving provision as a result of that amendment.
27. Consent is required for these provisions because they contain provision for a purpose within the legislative competence of the Senedd, as they amend Acts passed by the Senedd. In relation to the blanket ban provisions generally, it is certain that the Senedd has full legislative competence in these matters as housing is not a reserved matter (see paragraph 28 below). The provisions being made in the Bill will apply to existing occupation contracts as well as those that are granted in the future.
28. The blanket ban will apply to existing occupation contracts as well as those that are granted in the future.
29. The blanket ban amendments are relevant provisions insofar as they relate to the devolved matter of housing, and do not relate to any of the reserved matters in Schedule 7A of GoWA 2006 or the restrictions in Schedule 7B of that Act.

UK Government view on the need for consent

30. The UK Government agree that consent is required. The UK Government Minister for Levelling Up, Jacob Young MP, wrote to the Minister for Climate Change to ask her to seek the consent of the Senedd on 14 November.

Reasons for making these provisions for Wales in the Renters (Reform) Bill

31. In my opinion, seeking the application of the blanket ban provisions to Wales in a UK Bill would allow me to deliver a discrete policy aim promptly, within an extremely shorter timeframe than would otherwise be possible if we were to seek to achieve the same aim via legislation in the Senedd. The Bill is expected to receive Royal Assent in Spring. Making provision in this manner therefore enables the policy benefits to be delivered in Wales in an expedited manner and without impact on our wider legislative programme.
32. The blanket ban provisions broadly follow the UK Government's provisions for England, however, there are differences, for example enforcement will be via the criminal law rather than via a civil penalty for breach of the blanket ban (Amendments Gov NC48 and NC49). This is to ensure consistency with existing Welsh legislation, i.e. the Renting Homes (Wales) (Fees etc.) (Wales) Act 2019.
33. The blanket ban will apply to all occupation contracts in Wales, in line with the principle underpinning the Renting Homes (Wales) Act 2016 and the 2016 Act is being amended to make new fundamental terms.
34. There is a pressing need for the provisions in the Bill to have retrospective effect in that there is an urgent social need for the provisions to apply to existing occupation contracts, leases and mortgage terms in order for contract-holders and prospective contract-holders to benefit from the blanket ban. Without such provision, the main policy objective could be undermined and/or its benefits postponed for many years in respect of dwellings subject to such terms.
35. The benefit to contact-holders who are or may be on benefits or who have or may have children as well as the societal benefits of such persons being able to find appropriate housing more easily and not have to rely on homelessness assistance from local councils far outweigh the disadvantage to mortgagees and landlords of making provision with retrospective effect. In addition, it will avoid the injustice of a two-tiered system that would operate for many years to come with only new occupation contract-holders having the benefit of the blanket ban protection.

Financial implications

36. No financial implications have been identified to date should these provisions apply in Wales.

Conclusion

37. In my view it is appropriate to approve the provisions in this UK Bill as it allows us to ban this arbitrary discrimination in the rental sectors in Wales sooner rather than later. Therefore, I recommend that the Senedd supports the proposals and gives its consent.

Julie James MS
Minister for Climate Change
30 January 2023