

## LEGISLATIVE CONSENT MEMORANDUM

### RENTERS' RIGHTS 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<sup>1</sup> 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’ Rights Bill (“the Bill”) was introduced in the House of Commons on 11 September 2024. The Bill can be found at: [Renters' Rights Bill \(parliament.uk\)](https://www.parliament.uk/bills/2024/renters-rights-bill)

#### Policy Objectives

- 3) The UK Government’s stated policy objectives are to deliver the Government’s manifesto commitment to transform the experience of private renting, including by abolishing section 21 evictions and introducing a robust Decent Homes Standard in the sector for the first time. The objective of the Bill is to ensure private renters not only have access to a secure and decent home but that they can exercise their rights to challenge poor treatment and bad practice. Landlords should retain the confidence to repossess their properties where they have good reason to but with suitable safeguards for tenants who may lose their home.

#### Summary of the Bill

- 4) The Bill is sponsored by the Ministry of Housing, Local Government and Communities (MHCLG).
- 5) The key provisions of the Bill cover
  - a) Abolish Section 21 ‘no fault evictions’, removing the threat of arbitrary evictions and increasing tenant security.
  - b) Strengthen tenants’ rights and protections to challenge punitive practices such as unreasonable rent rises and rental bidding.
  - c) Give tenants the right to request a pet, which landlords must consider and cannot unreasonably refuse.
  - d) Apply a Decent Homes Standard to the private rented sector to give renters safer, better value homes and remove the blight of poor-quality homes in local communities.
  - e) Create a digital private rented sector database to bring together key information for landlords, tenants, and councils.

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<sup>1</sup> Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

- f) Provide for the introduction of a new ombudsman service that will provide quick, fair, impartial and binding resolutions for tenants.
  - g) Make it illegal for landlords to discriminate against tenants in receipt of benefits or with children when choosing to let their property
  - h) Strengthen local authorities' enforcement powers, expand financial penalties from which councils can keep the proceeds and use for future enforcement.
  - i) Significantly expand rent repayment orders, including extending them to new offences, making superior landlords and company directors liable.
- 6) Welsh Government were invited to extend the provisions which apply to discrimination against tenants in receipt of benefits, or with children, in the Renters (Reform) Bill during the last Parliament, referred to below as "the blanket ban". My officials worked with UK Government officials to tailor the provisions to Wales, and a Legislative Consent Memorandum was laid before the Senedd on 30 January 2024.
- 7) My officials had also worked with UK Government to amend the Housing Act 2004 through the Renters (Reform) Bill so that the offences can be committed by both immediate and superior landlords and licensors. Currently, only persons managing or having control of a House in Multiple Occupation (HMO) are within the scope of these offences and because of the way these are defined, superior landlords and licensors are very unlikely to fall into either category. This amendment therefore ensures, where such persons are responsible for the failure to licence, they can be held accountable. These amendments were agreed in Parliament at Report Stage, and a further Supplementary Legislative Consent Motion had been prepared to be laid before the Senedd.
- 8) The Renters (Reform) Bill failed to complete its passage through UK Parliament before the prorogue of Parliament on 24 May 2024 and its dissolution on 30 May 2024.
- 9) Shortly after the general election, UK Government officials again approached my officials to ask if they were happy to largely duplicate the provisions relating to discrimination within the Renters (Reform) Bill, into a new Renters' Rights Bill.
- 10) To this end, the Bill proposes amendments to the Renting Homes (Fees etc.) (Wales) Act 2019 and the Renting Homes (Wales) Act 2016.
- 11) There are also some other clauses identified which will require legislative consent in relation to:
- a) A power which allows the Secretary of State to alter legislation or the effect of private legal instruments to take account of the Bill's changes to the assured tenancy regime, even though this is no longer applicable in Wales.

- b) Powers which extend local housing authority enforcement powers in relation to Houses in Multiple Occupation to superior landlords and licensors.
- c) Officials have also identified a clause which makes changes to the Housing Act 1996 in relation to a Housing Ombudsman, which will require consent in Wales.

### **Provisions in the Bill for which consent is required**

- 12) **Part 1 Chapter 1 Clause 29(2) and (4) to (10): ‘Part 1 powers’** allow the Secretary of State to alter legislation or the effect of private legal instruments to take account of the Bill’s changes to the assured tenancy regime, where those changes may pose problems for legislation/instruments relating to the England-only assured tenancy regime previously (but no longer) applicable in Wales.
- 13) **Part 1 Chapter 4 Clause 42 ‘Discrimination relating to children or benefits status: Welsh language’** amends the Welsh language text of the Renting Homes (Fees etc.) (Wales) Act 2019 and is the Welsh language version of Clause 43.
- 14) **Part 1 Chapter 4 Clause 43 ‘Discrimination relating to children or benefits status: English language’** prohibits discriminatory bans and restrictions in relation to a dwelling that is to be the subject of an occupation contract on the basis that a child would or may live with or visit a person at the dwelling, or on the basis that a person is or may be a benefits claimant. Clause 43 amends the English language text of the Renting Homes (Fees, Discrimination etc.) (Wales) Act 2019 (“The 2019 Act”) and inserts new Part 2A into the 2019 Act which includes sections 8A to 8J. This is achieved via the Clause’s creation of new criminal offences and a person found guilty of an offence under section 8A(1) and 8B(1) is liable on summary conviction to a fine.
- 15) **Part 1 Chapter 4 Clause 44 ‘Amendment of short title of 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 reflect the increased scope of the Act
- 16) **Part 1 Chapter 4 Clause 45 ‘Amendments of the Renting Homes (Wales) Act 2016 regarding discrimination’** amends the Renting Homes (Wales) Act 2016 regarding new requirements on landlords to include additional fundamental terms in occupation contracts. Subsections (1)–(4) amend the Welsh language text of the 2016 Act and subsections (5)–(8) amend the English language text of the 2016 Act.
- 17) **Part 1 Chapter 4 Clause 46 ‘Power of Welsh Ministers to protect others’** enables the Welsh Ministers, by way of regulations subject to the

affirmative procedure, to extend the protections from discrimination given to renters with children or in receipt of benefits in this chapter to additional cohorts.

- 18) Clause 48 'Supplementary' – regulations under section 8C of the 2018 Act or section 46 of this Act may only make provision within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.
- 19) **Part 2 Chapter 2 Clause 70(3)(b) and (5) 'Housing activities under social rented sector scheme'** amends Schedule 2 to the Housing Act 1996. Subsection (5) substitutes new paragraph 10 into Schedule 2 to the Housing Act 1996 (Social rented sector: Housing complaints) regarding an approved scheme and the appointment and status of the housing ombudsman. Subsection (3)(b) inserts new paragraph 7A into Schedule 2 to the 1996 Act which provides for directions under paragraph 10(3)(b).
- 20) **Part 4 Chapter 1 Clause 102 'Unlicensed HMOs and houses: offences'** amends sections 72 (offences in relation to licensing of HMOs) and 95 (offences in relation to licensing of houses under Part 3) of the Housing Act 2004 which, respectively, concern offences in relation to the licensing of Houses in Multiple Occupation (HMOs) and properties subject to selective licensing.
- 21) **Part 4 Chapter 1 Clause 103 'Service of improvement notices on landlords and licensors'** amends paragraph 2 of Schedule 1 to the Housing Act 2004. The Clause will, for certain property types, give local housing authorities the ability to serve improvement notices for hazards on a landlord, licensor, superior landlord or superior licensor if they consider that such a person ought to take the action specified in the notice.
- 22) **Part 5 Clause 137(1), (3) and (7) 'Regulations'** clarifies that regulations made under the Bill can include consequential, supplementary, incidental, transitional or saving provision. The power to make transitional provision includes the power to make provision that applies in relation to tenancies, licences or occupation contracts entered into, or advertising begun, before the date on which the regulations come into force.
- 23) **Part 5 Clause 138 'Power of Welsh Ministers to make consequential provision'** allows the Welsh Ministers to make provision that is consequential on Part 1 of the Renters' Rights Bill.
- 24) **Part 5 Clause 142(3) 'Commencement'** provides that Chapter 4 of Part 1 (Discrimination in the rental market: Wales) comes into force on such day as the Welsh Ministers by order made by statutory instrument appoint.

- 25) **Part 5 Clause 145(1) and (4) ‘Transitional provision’** gives the Welsh Ministers the power to make transitional or saving provision by secondary legislation in connection with the commencement of the discrimination in the rental market provisions in Part 1 Chapter 4. The power to make regulations under subsection (1) includes power to provide for a provision of Chapter 4 of Part 1 to apply (with or without modifications) in relation to occupation contracts granted, renewed or continued, or advertising begun, before the date on which the provision comes into force (subsection (4)).
- 26) Schedule 2, paragraphs 13 and 50 make amendments relating to Chapter 1 of Part 1. Paragraph 13 amends section 1A of the Housing Act 1988 to ensure that it applies without the amendments made by the Renters’ Rights Act 2024. Paragraph 50 makes amendments to Schedule 12 to the Renting Homes (Wales) Act 2016 by inserting new paragraph 29A to ensure that for the purposes of paragraphs 28 and 29 of that Schedule, the Housing Act 1988 applies without the amendments made by the Renters’ Rights Act 2024.
- 27) Consent is required for these provisions because they contain provisions for a purpose that is within the legislative competence of the Senedd. The provisions amend Acts passed by the Senedd. In relation to the blanket ban provisions generally, there is a strong argument that the provisions relate to housing and that the Senedd has full legislative competence in these matters.
- 28) The provisions will apply to existing occupation contracts as well as those that are granted in the future and have retrospective effect.
- 29) The clauses highlighted in this Memorandum 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.
- 30) This memorandum deals with the provisions we know require the consent of the Senedd. On full consideration of the remainder of the Bill, if it is found that there are other clauses which may require consent, a supplementary memorandum will also be produced and laid before the Senedd.

### **UK Government view on the need for consent**

- 31) The UK Government agree, for the most part, that consent is required. The UK Government Minister for Housing, Matthew Pennycook MP, wrote to the Cabinet Secretary for Local Government and Housing to ask her to seek the consent of the Senedd on 11 September.

- 32) The UK Government are seeking consent in relation to most of **Chapter 4, Part 1 Clauses 42 and 43**, but do not believe that consent is required for new sections 8G and 8H in both parts, as financial matters are a reserved function. It is the Welsh Government's opinion that consent could be required as there is an argument that an LCM could be laid under the wider test in section 107(6) of GoWA with regard to devolved matters, ie housing.
- 33) The UK Government are not seeking consent for **Clause 70** in relation to the changes being made to paragraph 10 and new paragraph 7A of Schedule 2 to the Housing Act 1996 concerning the Housing Ombudsman, but it is the Welsh Government's opinion that consent is required for these changes.

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

- 34) In my opinion, seeking the application of the discrimination 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.
- 35) The blanket ban provisions broadly follow the UK Government's provisions for England and Scotland, however, there are some important differences in how the changes are achieved in England and Wales, for example, enforcement will be via the criminal law rather than via a civil penalty for breaches of the blanket ban. This is to ensure consistency with existing Welsh legislation, i.e. the Renting Homes (Wales) (Fees etc.) (Wales) Act 2019 where there are offences for charging tenants fees unless they are permitted.
- 36) The ban will apply to all occupation contracts in Wales, in line with the principle underpinning the Renting Homes (Wales) Act 2016. The 2016 Act is being amended to make new fundamental terms to reflect the blanket ban.
- 37) 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.
- 38) 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.

39) The provisions in relation to the Housing Act 2004 require local housing authorities, for properties that are neither flats nor subject to HMO or selective licensing, to enforce against, or serve improvement notices for hazards on the 'person having control' of or the 'person managing' the property. Currently it may not always be possible to serve such notices on certain people with an interest in the property – for example, superior landlords in rent-to-rent arrangements. The intention is to allow local housing authorities to serve improvement notices on the person best placed to ensure remedial action is taken in respect of the hazard. In some cases, this could be the superior landlord. This ensures that a local authority can take action against a superior landlord if it is clear that they are the person in control.

40) Despite the fact that it applies to a dwelling in England, it is the view of the Welsh Government that the amendment to paragraph 10 of Schedule 2 to the Housing Act 1996 is not consequential on the new PRS landlord ombudsman service but is substantial because it applies in relation to a number of homes in Wales.

### **Financial implications**

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

### **Conclusion**

42) 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.

**Jayne Bryant MS**  
**Cabinet Secretary for Housing and Local Government**  
**26 September 2024**