

# Legislative Consent Memorandum

## Renters (Reform) Bill

### Background

1. This memorandum has been lodged by Shirley-Anne Somerville, Cabinet Secretary for Social Justice, under Rule 9B.3.1(c) of the Parliament's standing orders, and is supported by Paul McLennan, Minister for Housing. The Renters (Reform) Bill ("the Bill") was introduced in the House of Commons on 17 May 2023. At that point the Bill was not a relevant Bill. However, since then amendments that the Scottish Government requested on the matter of blanket bans were tabled on 17 April 2024 and agreed in the Commons on 24 April 2024. These amendments contain relevant provisions (further details are provided below) and therefore the Scottish Parliament's consent is being sought. The Bill can be found at [Renters \(Reform\) Bill publications - Parliamentary Bills - UK Parliament](#). The amendments paper, Notice of Amendment as at 17 April 2024, can be found at [renters\\_rm\\_rep\\_0418.pdf \(parliament.uk\)](#).

### Content of the Renters (Reform) Bill

2. The objective of the UK Government through the Bill is to ensure private renters in England and Wales have access to a secure and decent home and that landlords retain the confidence to repossess their properties where they have good reason to. The Bill makes provision to change the law about rented homes, including provision abolishing fixed term assured tenancies and assured shorthold tenancies and imposing obligations on landlords and others in relation to rented homes and temporary and supported accommodation.

3. The Bill was introduced in May 2023 and completed Committee Stage in the Commons in December, where amendments were tabled and passed prohibiting the letting of a property in such a way as to ban those on benefits or those with children from taking on the tenancy (known in short as "blanket bans"). These amendments applied to England and Wales. Following discussions at Ministerial and official levels, Scottish Ministers indicated their support for similar protections to apply in Scotland via inclusion in the Bill.

4. The policy intention for blanket bans provisions is to prohibit discrimination and restrictions against people with children or people in receipt of benefits in the letting of private rented sector properties. This policy intent aligns with the Scottish Government's work on rented sector reform and will provide an important element of protection to these vulnerable groups in the private rented sector.

5. The Bill completed Commons Report Stage on 24 April 2024, where amendments for Scotland on blanket bans were tabled at the Scottish Government's request. Further amendments to the blanket ban provisions for England and Wales were tabled at the same time to bring parity (as far as is appropriate) across the

provisions for all three nations. The UK Government is seeking to complete the Bill's passage through the UK Parliament by autumn. The intention is for the provisions to come into effect on the day on which the Bill is passed for the purposes of making regulations. The Scottish Ministers will have the power to bring Chapter 5 (which deals with the Scottish provisions) into force for all other purposes by commencement regulations.

## Provisions which require the consent of the Scottish Parliament

6. There are a number of provisions to bring effect to the policy intention in Scotland. The amendments which introduce a prohibition on the discriminatory marketing of property, and which provide for certain discriminatory terms of tenancies to have no effect all relate to the area of housing which is within the legislative competence of the Scottish Parliament. The amendments which confer power on the Scottish Ministers to extend those protections to persons of other descriptions, to make consequential provision, and to bring the relevant provisions into force, all alter the executive competence of the Scottish Ministers. It is for these reasons that an LCM is required for these specific provisions. Please note that the clauses are referred to using the numbering given in the Amendment Paper.

### Clause Gov NC18: Prohibition of discrimination relating to children or benefits status: Scotland

7. This clause will prohibit outright blanket bans on renting to people in receipt of benefits or who have children or are likely to have children staying with them. The prohibition will cover certain discriminatory practices, such as advertising a property for rent with the conditions 'No DSS' or 'Child-free couples only' or instructing letting agents not to consider applications from those with children or in receipt of benefits, which make it harder for people who have children (or have children visit them) or who are benefits claimants to enter a tenancy for a property. This will involve the creation of a criminal offence, for which landlords and anyone acting directly or indirectly on their behalf may be liable upon summary conviction to a fine not exceeding level 3 on the standard scale. It will also render of no effect any terms of any new or ongoing private residential tenancy (under the Private Housing (Tenancies) (Scotland) Act 2016), assured tenancy (under the Housing (Scotland) Act 1988), or protected or statutory tenancy (under the Rent (Scotland) Act 1984) which might prevent tenants from having children present/claiming benefits. Nothing in the provision prohibits a landlord from taking a prospective tenant's income into account when considering whether that person would be able to afford to pay the rent.

8. In the case of prospective tenants with children, it will be a defence for a prospective landlord or party acting or purporting to act on their behalf to show that the conduct is a proportionate means of achieving a legitimate aim. In the case of both prospective tenants with children and prospective tenants who are benefits claimants, it will also be a defence to show that the property is insured under a contract of insurance granted before the new rules come into force and which prohibits the use of the property by that category of person, and that the conduct is a means of preventing the insured person from breaching that term. There is also an exemption for things like newspapers and online platforms where the individuals involved may publish an advert but are not

truly part of the prohibited conduct. This exemption can be extended by regulations made by the Scottish Ministers. This power, like the other powers referred to below, has been included at the Scottish Government's request and aligns with the comparable provision being made in England and Wales. These regulations would be subject to the negative procedure, as the scope of liability for the criminal offence is not being extended, the regulations could only exclude further categories of persons from the offence.

## **Clause Gov NC21: Power of the Scottish Ministers to extend protection to persons of other descriptions**

9. This clause will grant the Scottish Ministers the power to make new provisions in the future, via regulations subject to the affirmative procedure, to extend these protections to persons of another description. This power will only extend to the provisions relating directly to tenancies and tenancy agreements as the provisions relating to insurance contracts and standard securities are in reserved areas. Powers to extend the restrictions on insurance contracts and standard securities via subordinate legislation are being taken by the UK Government in Clause Gov NC24.

## **Clause Gov NC22: Interpretation of Chapter 4A**

10. This clause contains the definitions of the terminology used in the clauses relating to mortgages, insurance contracts and the power to extend the protection under Scots law to other categories of person.

## **Clause Gov NC23: Power of Scottish Ministers to make consequential provision**

11. This clause will allow Scottish Ministers to, by regulations, make consequential provision in connection with the introduction of these new provisions. This provision is in a standardised form. Regulations that amend or repeal primary legislation will be subject to the affirmative procedure. Any other regulations will be subject to the negative procedure.

## **Clause Gov NC146: Regulations**

12. This clause requires regulations made by the Scottish Ministers under the Bill, to extend the protections against discriminatory marketing of property and discriminatory tenancy terms to persons of other descriptions (i.e. the power in Clause Gov NC21), to be subject to affirmative procedure.

## **Clause Gov NC150: Extent**

13. This specifies the extent to which parts of the Bill apply to the component parts of the UK.

## **Clause Gov NC153: Transitional Provision**

14. This will allow the Scottish Ministers to make, by way of regulations, transitional or saving provisions with regards to the introduction of Chapter 4A.

## Provisions which do not require the consent of the Scottish Parliament

15. The amendments which provide for certain discriminatory terms of mortgages and insurance contracts to have no effect and the powers to extend those protections to persons of other descriptions all relate to the reserved area of financial services. While these provisions are entirely within the gift of the UK Parliament and do not require the consent of the Scottish Parliament, it is worth noting that the power to extend the protections on mortgages and insurance will likely only be used if the Scottish Ministers seek to use their own powers to extend the protections on the marketing of property and tenancy terms.

### Clause Gov NC19: Terms in standard securities relating to children or benefits status: Scotland

16. This clause will render of no effect any term in a mortgage deed (known as a standard security in Scotland) which prohibits or restricts occupation by or visit to a property by a child or which prohibits the tenant from being a benefits claimant. As above, it applies to private residential tenancies, assured tenancies and protected and statutory tenancies.

17. It will have retrospective effect, in that it will apply to all relevant mortgages whether entered into before or after the commencement date.

### Clause Gov NC20: Terms in insurance contracts relating to children or benefits status: Scotland

18. This clause will render of no effect any term in an insurance contract which prohibits or restricts occupation by or visit to a property by a child or which prohibits a tenant from being a benefits claimant. As above, it applies to private residential tenancies, assured tenancies and protected and statutory tenancies.

19. It will not have retrospective effect and will apply only to insurance contracts entered into or renewed on or after the date of commencement.

### Clause Gov NC24: Power of the Secretary of State to extend protections to persons of other descriptions: Scotland

20. This clause, included at the request of the Scottish Government, will enable the Secretary of State to extend to persons of other descriptions elements of the protections that are not able to be extended by the Scottish Ministers because they are not within the legislative competence of the Scottish Parliament (that is to say, this is a power which applies to reserved matters only). This will be subject to the affirmative procedure.

## Reasons for recommending legislative consent

21. Following exchanges between Ministers in Scotland and the UK, the Scottish Government recommends that the Scottish Parliament consents to the application to Scotland of the specific provisions on prohibiting landlords and letting agents from conducting their business in a way which discourages/bans those on benefits or who have children (either living with them or visiting them) from applying for or securing a tenancy. Addressing this kind of discrimination in the private rented sector aligns with the Scottish Government's own aims for rented sector reform.

22. Proceeding in this way rather than seeking to address the issue via an Act of the Scottish Parliament means the power of Scottish Ministers to introduce a ban would be in place as soon as possible (and concurrently with the powers of Ministers in England and Wales), giving vulnerable groups greater protection from discrimination than is in place currently.

23. In addition, the Bill contains provisions rendering void a term in an insurance contract or mortgage which requires a landlord to prohibit those with children or on benefits from becoming or continuing as a tenant. These provisions fall into reserved areas and are therefore out with the scope of the LCM. However, the voiding of these terms is important in order to prevent landlords from being contractually required to do something prohibited by the Bill. Introducing a ban on these practices only within areas of devolved competence through an Act of the Scottish Parliament would mean that these restrictions on financial services could not be implemented. That would in turn limit the protections for these groups and increase potential liability for landlords in Scotland compared to those in England and Wales as restrictions relating to financial services could not be included.

## Alignment with EU Law

24. This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU because there are no relevant or corresponding EU laws relating to housing.

## Consultation

25. There has been an ongoing anti "No DSS" campaign throughout the UK for a number of years aimed at discouraging the ways in which properties are marketed to exclude these groups.

26. Results from a variety of commissioned research in Scotland and across the UK demonstrate that 'No DSS' policies are a significant issue for private renters. In England, there is evidence that more than two fifths of landlords were unwilling to let to tenants in receipt of housing benefit<sup>1</sup> and one in ten private renters in receipt of housing benefit reported being told they could not rent a property because they received benefits.<sup>2</sup>

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<sup>1</sup> [English Private Landlord Survey 2021: main report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/531211/english_private_landlord_survey_2021_main_report.pdf)

<sup>2</sup> [EHS 19-20 PRS report FINAL.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/531211/ehs_19-20_prs_report_final.pdf)

27. In Scotland, it has been reported that around one in five private renter households claimed Housing Benefit and that two thirds of landlords would prefer not to let to tenants who claim housing benefit.<sup>3</sup> It has also been noted that difficulty securing a private rental was disproportionately experienced in urban and pressured markets, by single people, single parents, those on lower incomes, disabled people, those claiming some form of housing allowance, black and minority ethnic tenants and more recent renters.<sup>4</sup>

28. In June 2022, UK Government published the White Paper “A Fairer Private Rented Sector<sup>5</sup>”, drawing on a number of consultation exercises to set out its ambitions for a fairer, more secure and higher quality private rented sector. Noting the evidence of the “No DSS” practice, it committed to making it illegal for landlords or agents to have blanket bans on renting to families with children or those in receipt of benefits.

29. The Scottish Government consultation “A New Deal for Tenants”, carried out in April 2022, did not ask a specific question regarding those on benefits or with children being excluded from some PRS properties. However, the consultation analysis highlighted issues with the effect of such discrimination, particularly on women:

“with regards to women, there was reference to the gender pay gap and to a higher proportion of women in receipt of Housing Benefit. Connected to this was the suggestion that one of the main barriers people face is discrimination on the basis that they are receiving housing-related benefits. This included reports, including from people who commented based on their own experience, that some private landlords will not rent properties to people who are in receipt of welfare benefits”<sup>6</sup>.

30. It is well-documented that single parent families often consist of women and their children therefore measures designed to prevent this kind of discrimination in certain parts of the rental process would go some way to address an issue identified from the consultation.

## Financial implications

31. Financial considerations have been taken into account in terms of the cost of introducing penalties for breaching the legislation. As behaviour of the type prohibited by this amendment will attract a criminal sanction, there may be resource implications for Police Scotland. The expectation, however, is that likely offence volumes will be small although it is difficult to quantify at this stage for a new area of intervention. The Scottish Government will continue to engage with Police Scotland on this matter to quantify the financial implications of this legislation.

## Conclusion

32. These provisions will introduce a new level of protection for vulnerable groups seeking a home in Scotland’s private rented sector by preventing discrimination on the

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<sup>3</sup> [No DSS Report - Shelter Scotland](#)

<sup>4</sup> [Rent-Better-Wave-1-Summary\\_print.pdf \(indigohousegroup.com\)](#)

<sup>5</sup> [A Fairer Private Rented Sector \(publishing.service.gov.uk\)](#)

<sup>6</sup> [A New Deal for Tenants: consultation analysis - gov.scot \(www.gov.scot\)](#)

grounds of benefit status or having children. Delivering such new protections by way of an Act of the UK Parliament allows such groups in Scotland to be afforded the same scope of protections (including provisions on insurance and mortgage conditions) as in England and Wales.

## Draft Legislative Consent Motion

33. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice, is:

“That the Parliament agrees that the relevant provisions of the Renters (Reform) Bill, comprising amendments tabled on 17 April 2024 for the House of Commons Report Stage, which restrict the behaviour of private landlords in relation to those with children and those who are benefit claimants, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government  
May 2024

This Legislative Consent Memorandum relates to the Renters (Reform) Bill (UK legislation) and was lodged with the Scottish Parliament on 1 May 2024

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