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Ysgrifennydd y Cabinet dros Lywodraeth Leol a Thai
Cabinet Secretary for Housing and Local Government



Llywodraeth Cymru
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Dear Mike

Renters' Rights Bill – Legislative Consent Memorandum

Thank you for your letter of 27 November.

You asked some further questions following my appearance at a scrutiny session on 18 November. I have responded to the questions in the attached annex.

I hope that you find the information I've provided helpful.

Yours sincerely

A handwritten signature in black ink that reads "Jayne Bryant". The signature is written in a cursive, flowing style.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex – response to questions

Question 1: Why were resources an issue for the Welsh Government in preventing you from introducing your own Bill into the Senedd to legislate, if you had Bill provisions already drafted, and bilingually?

The issue was not resource, but the potential of impacting the existing legislative priorities.

Question 2: In evidence to us on the Welsh Government’s Legislative Consent Memorandum on the Renters (Reform) Bill, the then Cabinet Secretary told us that: “According to the Welsh Government legislation handbook outline of what factors are considered for an expedited or fast-tracked Bill, we don’t think this would meet the criteria. But, I mean, I’m quite happy to explore that”. Please can you confirm if you explored introducing a Bill to the Senedd and seeking an expedited process rather than pursuing provisions in the Renters’ Rights Bill. If so, please would you provide details of the exploratory work, including any correspondence with the Business Committee and why you chose not to pursue this outcome?

There was consideration of introducing a discrete Bill for the introduction of these provisions, but it was clear that the introduction of any non-scheduled Bill would have meant making sacrifices in other areas and would therefore impact delivery elsewhere. While there was no correspondence issued, it was clear that supporting a UK Bill would enable these important reforms to go ahead, and benefit the people of Wales, while maintaining other key legislative work.

Question 3: The Welsh Government’s legislation handbook suggests that a Bill usually takes between six and eight months to pass through the Senedd - do you believe that this is an accurate reflection?

This is an accurate reflection.

Question 4: You mentioned in your oral evidence to the Committee that stakeholders had been “briefed”. Can you please explain why you chose to brief stakeholders about the Bill rather than consult stakeholders? What form did the briefing take, and will you undertake to publish any briefing material or correspondence arising from the briefing?

Stakeholders were verbally briefed in a variety of meetings when the amendments were made to extend these provisions to Wales. These were not one-way briefings, but rather informal engagement, with feedback requested. Tenant organisations were fully supportive of the provisions. Landlord and agent representatives were also supportive, but raised a concern that they would need to have sufficient time to prepare for introduction. On this point, we sought separate commencement powers for the blanket ban for the Welsh Ministers, in order to address the concerns raised and to ensure implementation and timings could be planned.

Given the tight timescales, these meetings were informal, and as such there were no written briefing materials or correspondence issued.

Question 5: You also stated in your evidence to the Committee that “there’s nothing dissimilar between Wales, Scotland and England in terms of the issues” other than

the existing difference in enforcement regimes. Given that no Welsh Members of Parliament sit on the House of Commons Public Bill Committee, and that there appears to have been little evidence received from bodies based in Wales, what impact will this have on Parliamentary scrutiny of the Bill's provisions as they apply to devolved matters in Wales?

As I outlined in my oral evidence to the Committee, many stakeholders who also represent the interests of tenants, landlords and agents in Wales, as well as England, have given evidence to the House of Commons Public Bill Committee. The NRLA and Generation Rent, for example, may not have a main office based in Wales, but certainly represent the interests of Welsh landlords and tenants.

Question 6: Clause 46 of the Bill gives powers to Welsh Ministers to bring forward further regulations to introduce further provisions to add to the groups of people protected from rental discrimination. In the evidence you said you "can't speculate how and when that would be used" but you did provide some limited information. Please can you provide further information and clarity about how you will use the power and therefore why you are taking it?

It is a power that could be used should discriminatory practices continue to exist in the rental sector. This power will allow the Welsh Ministers to make regulations extending rental discrimination provisions to additional groups in Wales in future, if necessary.

Clause 46 requires that regulations be made under the affirmative procedure and places a requirement on the Welsh Ministers to consult before making regulations. So, making regulations is contingent upon prior consultation with relevant stakeholders, and the agreement of the Senedd.

Question 7: Given the discussions with the UK Government, which you outlined in your oral evidence, can you explain: ▪ why clause 47 has been included, ▪ who requested its inclusion in the Bill, ▪ in what circumstances could it be used, and ▪ the likely timing of its use?

Clause 47 allows the Secretary of State to make regulations that the Welsh Ministers could make under clause 46, but for the limitation in clause 48. That limitation is that regulations under section 46 may only make provision which would be within the legislative competence of Senedd Cymru contained in an Act of the Senedd.

So, this power is the same power as for the Welsh Ministers in Clause 46 - although only in cases where provision would relate to reserved matters and fall outside of the legislative competence of the Senedd Cymru. An example of this might be if any provision were to relate to, for example, the financial services reservation.

This power allows the Secretary of State to make regulations extending rental discrimination provisions to additional groups in Wales, where provision would fall outside the legislative competence of Senedd Cymru, should that be necessary in future.

Again, I will not speculate on what circumstances this power would be used for, and therefore I cannot speculate on any timing of something which may or may not be identified, but the power is there if it is needed.

Question 8: Clause 47 is not listed in the LCM as requiring consent, presumably because it asserts that the power only applies where provision would relate to reserved matters and fall outside of the legislative competence of the Senedd. However, if regulations were made under clause 47 (including in the passing reference to the example of financial services given to the Committee), those would make relevant provision for a purpose in housing law by extending rental discrimination provisions to additional groups in Wales, which is within the legislative competence of the Senedd. Therefore, can you give us a further example of where regulations would be required in relation to housing provisions that would be non-devolved.

As noted above, the Welsh Ministers have power in Clause 46 to extend, by way of regulations, the protections from discrimination given to renters with children or in receipt of benefits to additional cohorts. This power is subject to the affirmative procedure. The Secretary of State also has a power to make such regulations, however, it is only exercisable where the provision would relate to reserved matters and fall outside of the legislative competence of the Senedd. An example, as noted to the Committee, would be when the provision made would relate to the financial services reservation and the same would apply in respect of another reservation. However, in all cases, for provision to be made in regulations by the Secretary of State, it would need to be outside the scope of the Senedd's legislative competence.

Question 9: Please could you, with regards to the Welsh provisions in the Bill, detail how they have changed from the Renters (Reform) Bill and explain how those changes were identified?

I have provided a list of differences at the end of this document.

Question 10: The Bill is at an early stage of the legislative process in the UK Parliament. Do you foresee any further changes being made to the Bill that would require consent, and have you asked or approached the UK Government about any other matters that you wish to include in the Bill that would affect Wales?

At this stage, I have not been approached by UK Government about further amendments to the Bill that may require legislative consent.

I will keep the Senedd informed of any amendments to the Bill which require the legislative consent of the Senedd in accordance with the requirements of Standing Order 29.

Question 11: The Explanatory Memorandum says that “no financial implications have been identified to date should these provisions apply in Wales”. But landlords may need to instruct legal advisers to ensure that all documentation including written statements are updated alongside the occupation contracts. Have you assessed this potential cost on landlords or have you put measures in place which means that they will not be obliged to change anything to coincide with these legal changes? Will you publish the relevant assessment?

The requirement for a landlord to let contract-holders know about changes to contracts is not a new requirement because of the ban, it is a requirement of the Renting Homes (Wales) Act 2016.

We have already included an assessment within the published LCM that no financial implications have been identified.

Question 12: The changes brought forward by these amendments to Welsh housing law will change the fundamental terms contained in all occupation contracts retrospectively. Why has it been deemed necessary to change occupation contracts retrospectively and what impact assessments have you undertaken?

If these changes did not apply retrospectively then some tenants with existing periodic contracts could be subject to these discriminatory terms for many years to come.

I am satisfied that any potential detriment to mortgagees and landlords of making provision with retrospective effect is far outweighed by the benefit to tenants who are or may be on benefits or who have or may have children, and the societal benefits of such persons being able to more readily find appropriate accommodation and not having to rely on homelessness assistance from local authorities.

There are some safeguards built into the provisions e.g. in relation to existing terms in occupation contracts - prospective landlords and/or related parties are exempt from the prohibitions if they are pursuing a legitimate aim or if a restrictive clause in an existing insurance contract is in place that prohibits occupation by children or persons in receipt of benefits. Whilst terms in occupation contracts, leases and mortgages that contravene the blanket ban will be of no effect, the occupation contract, lease or mortgage will continue as far as practicable to have effect in every other respect.

Differences between the provisions in the Renters (Reform) Bill and the Renters' Rights Bill (Question 9)

To note, for ease of reference, I will refer to the Renters (Reform) Bill as the "Reform Bill", and the Renters' Rights Bill as the "Rights Bill".

- In the Reform Bill, the blanket ban was a Committee stage amendment. The blanket ban provisions were also inserted for England at the same time. Further amendments were proposed at Report Stage.
- The provisions contained in the Rights Bill at Introduction consolidated the previous Committee and Report Stage amendments.

This analysis is a comparison of differences between the blanket ban as amended in Committee in the Reform Bill and the discrimination provisions in the Rights Bill upon introduction:

- In the Reform Bill, new sections 8A-8K were inserted into the Renting Homes (Fees etc.) Wales Act 2019 in both English and Welsh languages by clauses 37 and 38. The Rights Bill contains new sections 8A-8J inserted by clauses 42 and 43. The WMs power to protect others (8J) has been moved out of the amendments to the 2019 Act, given it needs to also apply to the 2016 Act, so is now in the main part of the Bill.
- Clause 46 of the Rights Bill has changed (Power of Welsh Ministers to protect others) from the former section 8J of the Reform Bill (power of the Welsh Ministers to amend Part 2A). Section 8J in the Reform Bill provided power to make, in relation to persons of another description, provision corresponding, with or without modifications to the provision made by this Part in relation to persons who would have a child live with or visit them or persons who are benefits claimants. In the Rights Bill, this provision has been greatly expanded. The concept of a 'discriminatory rental practice' (as defined) in relation to dwellings that may be the subject of occupation contracts and because of that discriminatory rental practice, the victims (as defined) of the practice are significantly less likely to obtain the grant, renewal or continuance of occupation contracts than other people, the WMs may make regulations prohibiting that discriminatory rental practice. This is subject to a consultation requirement before any regulations are made with those persons in subsection (6)(a) to (f) as the Welsh Ministers see fit.
- The power of the Secretary of State to protect others (clause 47 of the Rights Bill) has also been included.
- The power in clause 48 of the Rights Bill regarding Regulations has also been added.
- There has been some movement re the back of the Bill provisions too, such as re-ordering provisions. The commencement provision has been streamlined but the power still exists for the WMs to commence Chapter 4 of Part 1.
- Another major difference between the Bills (though no impact on Wales) is that Scottish discrimination provisions are also included in the Rights Bill.