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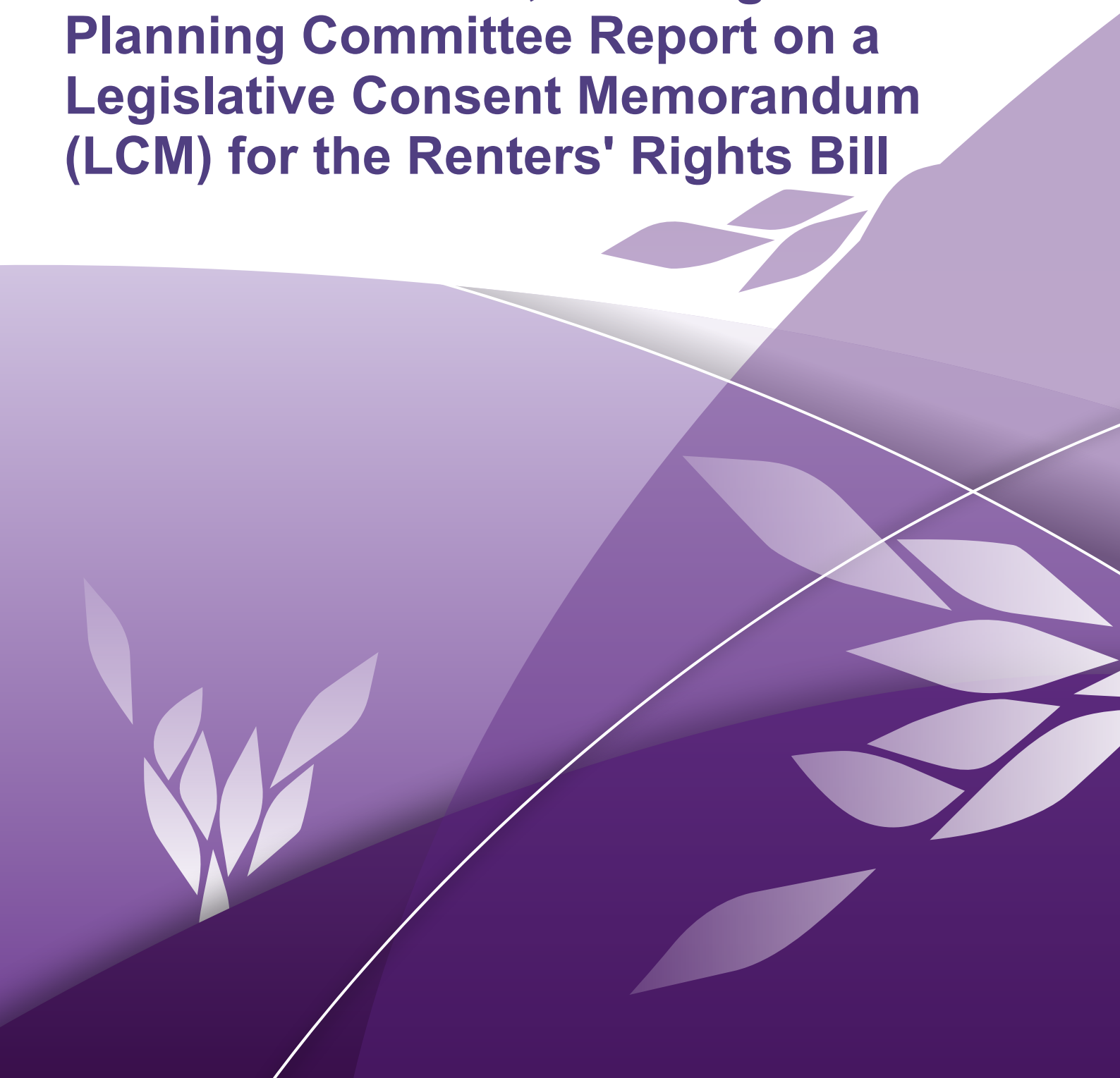
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9th Report (Session 6)

Local Government, Housing and Planning Committee

Local Government, Housing and Planning Committee Report on a Legislative Consent Memorandum (LCM) for the Renters' Rights Bill



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Local Government, Housing and Planning Committee

To consider and report on matters relating to local government and planning falling within the responsibility of the Cabinet Secretary for Finance and Local Government, matters relating to housing and tenants' rights within the responsibility of the Cabinet Secretary for Social Justice, and matters relating to local government boundaries, local governance review and democratic renewal.



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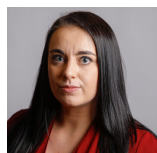
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Introduction

1. The [Renters' Rights Bill](#) (the Bill) was introduced in the House of Commons on 11 September 2024. The Explanatory Notes set out that 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.
2. On 24 September the Cabinet Secretary for Social Justice lodged a [legislative consent memorandum](#) (LCM) explaining why the Scottish Government considers that the Scottish Parliament should consent to the UK Parliament legislating for the relevant provisions in the Bill.
3. The draft legislative consent memorandum seeks the Scottish Parliament's consent to the UK Parliament legislating for provisions within the devolved competence of the Scottish Parliament which would prohibit discrimination and restrictions against people with children or in receipt of benefits seeking to let private rented sector properties.
4. The LCM was referred to the Local Government, Housing and Planning Committee and it is incumbent on the Committee to report to Parliament on it to inform Parliament's decision on whether or not to consent to the relevant provisions in this Bill being considered by the UK Parliament.

The LCM

5. The previous UK Government started a programme of reform to the legislation on private rented tenancies. One reform proposed was a ban on “No DSS” advertising practices.” As the 2022 White Paper, “A fairer private rented sector” noted:
 - ” While most landlords provide a professional service to their tenants, there is evidence that some landlords and agents are actively discouraging, or even preventing people in receipt of benefits or with children from renting their properties. The English Private Landlord Survey 2021 found that 44% of landlords were unwilling to let to tenants on either housing support or Universal Credit. This can severely restrict the ability of a person on a low income to live in a decent home. Some landlords will refuse to allow benefit claimants to view an affordable property or to consider them as a potential tenant, or they will advertise properties with restrictions like ‘No DSS’, ‘No Benefits’, or ‘Working Professionals Only.’ A quarter (26%) of PRS households and families receive some form of Housing Benefit and are at risk from these kinds of restrictive practices.”
6. The White Paper also stated that it was unacceptable to have blanket bans on renting to families with children. The then Government committed to make it illegal for landlords or agents to have blanket bans on renting to families with children or those in receipt of benefits.
7. Amendments were made to the Renters (Reform) Bill at committee stage of that Bill in November 2023. The amendments introduced new provisions to that Bill to prohibit landlords and letting agents from discriminating against families with children or people who receive benefits.
8. Following engagement with the previous UK Government on its Bill, the Scottish Government sought the Scottish Parliament’s consent to apply the blanket ban provisions from that Bill to Scotland. A legislative consent motion was lodged in the Scottish Parliament in May 2024.
9. However, the Bill was not passed before the recent UK elections, so that Bill fell and the consent process in the Scottish Parliament could not be completed.
10. Following the General Election and the introduction of the Renters' Rights Bill, discussion between the UK Government and the Scottish Government took place about the proposals. Given the previous work on this matter, the Scottish Government decided to seek the Scottish Parliament’s consent to apply the blanket ban provisions to Scotland.
11. The relevant provisions relating to Scotland are largely contained in Part 1 Chapter 5 of the Renters’ Rights Bill.
12. The following summarises the provisions in the Bill which will need legislative consent:
 - The provisions will prohibit 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 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. If convicted, landlords and anyone acting directly or indirectly on their behalf, may be liable to a fine not exceeding level 3 on the standard scale. This is currently £1,000. Enforcement practices will vary across Great Britain. In England, local housing authorities will have the power to impose a financial penalty of up to £7,000 for a breach of the rental discrimination provisions.
- Nothing in the provisions 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.
- 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 individuals who may publish an advert or provide a method for tenants and landlords to communicate with one another such as newspapers and online platforms. This exemption can be extended by regulations (subject to the negative procedure) made by the Scottish Ministers.
- Any term in a relevant tenancy which would prohibit or restrict occupation by or visits to a property by a child or which prohibits the tenant from being a benefits claimant has no effect.
- Scottish Ministers will have powers to make regulations to commence the relevant provisions and to make transitional or savings provisions.
- Scottish Ministers will have powers to make regulations to extend these protections to other people. This power only extends to the provisions relating to tenancies as provisions regarding insurance contracts and standard securities are in reserved areas.

Overview of the Committee's scrutiny

13. When the Committee considered that previous LCM it noted the limited extent of concerns about that Bill and accordingly agreed not to take oral evidence in the first instance. However, the Committee agreed to seek written views on the LCM to ensure that there were no concerns about it. Specifically, the Committee agreed to seek written views from:
 - Scottish Association of Landlords
 - Propertymark
 - Scottish Property Federation
 - Shelter
 - Crisis
 - Living Rent
14. Responses were received from [Crisis](#) and [Living Rent](#).
15. On 1 October 2024 the Committee considered its approach to the new LCM lodged in relation to the Renters' Rights Bill. In so doing, the Committee agreed to give those who did not respond to the Committee's letter on the previous LCM a further chance to respond. The Committee also agreed to take oral evidence from the Minister for Housing.
16. In response to the call for views a submission from the [Scottish Association of Landlords](#) was received.
17. In general, the three responses across the two calls for views expressed support for the measures in the Bill, but some concern was raised about their enforceability and the extent of potential penalties for non-observance. (The fine for non-compliance by a landlord will be set at level 3, which is currently around £1,000. In contrast, the current fine for unregistered landlords is in the region of £50,000.)
18. In its oral evidence session on 10 December the Committee explored these issues with the Minister for Housing, who explained that non-compliance will be a criminal offence, unlike in England where it will be a civil offence. This difference is due to ensuring the penalty is in line with other existing legislation in Scotland.
19. Landlords who are therefore found to have broken the law will have a criminal conviction which will impact on whether they meet the 'fit and proper' test required for landlord registration. However, the Minister is hopeful that the legislation will drive behavioural change, underpinned by raising awareness by both landlords and tenants. The Scottish Government will monitor the effectiveness of the penalty.
20. The Minister also highlighted the importance of raising awareness of the provisions amongst both landlords and tenants in order to drive behaviour change and awareness of their rights and responsibilities.
21. The Committee also asked the Minister whether the complexity of the benefit

system may be the cause of landlords' discrimination against prospective tenants in receipt of benefits, and that they therefore may need support to navigate the system. The Minister agreed that the system is unduly complex and that discussions are required with the UK Government.

Delegated Powers and Law Reform

Committee scrutiny

22. The Delegated Powers Committee of the Scottish Parliament has also considered the LCM and reported on [21 November 2024](#).

Conclusions and recommendations

23. The Committee recommends that the Scottish Parliament consents to the UK Parliament legislating for the relevant provisions in this Bill. These provisions have the potential to reduce discrimination against vulnerable groups in the rental sector by improving their access to rental properties.
24. The Committee, notes, however, stakeholders' concerns that the penalty which would apply to landlords convicted of discrimination may be insufficient in providing a suitable deterrent. The Committee would therefore recommend that the Scottish Government keeps this under review.

