

Discrimination in the rental market (Scotland)

APPLIES TO: SCOTLAND
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Context

The UK Government's Renters' Rights legislation takes direct action to address rental discrimination practices in the private rented sector. The legislation introduces protections in England, but the UK Government has worked closely with the Scottish Government to extend the rental discrimination provisions to Scotland.

The Changes

The legislation makes it unlawful for letting agents and landlords to engage in discriminatory conduct against tenants with children or who receive benefits.

NB: This includes both explicit discriminatory practices, such as 'No DSS' adverts, and situations where landlords or letting agents use other indirect practices to prevent someone from entering a tenancy, such as requiring higher rents in advance that are not otherwise applied to tenants without children or in receipt of benefits.

The measures amend the Private Housing (Tenancies) (Scotland) Act 2016 and apply to a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016, an assured tenancy under the Housing (Scotland) Act 1988 and a protected or statutory tenancy under the Rent (Scotland) Act 1984.

NB: Tenant includes sub-tenant, and it will have a retrospective effect, in that it will apply to all relevant tenancies whether entered before or after the commencement date.

Eligibility

A ban on rental discrimination will apply in Scotland, England and Wales. However, the enforcement mechanism varies across the devolved administrations. The Scottish Government have their own commencement powers.

NB: Letting agents and landlords will continue to have the final say on who they let their property to and can carry out referencing checks to make sure tenancies are sustainable for all parties. They will be able to do this based on affordability, but not on the basis that the prospective contract holder has children or is in receipt of benefits.

What does this mean?

Discrimination relating to children

The legislation prevents discriminatory bans and restrictions on the letting of private rented properties on the basis that a child would or may live with or visit a person at the property regularly.

This includes:

- Preventing someone from enquiring whether the property is available to rent.
- Accessing information about the property.
- Viewing the property to consider whether to rent it.
- Signing a tenancy agreement.
- Any measures that would make it less likely for someone with a child living or visiting the property regularly to sign a tenancy agreement or rent the property.

NB: "Child" means a person under the age of 18.

Discrimination relating to benefits status

The legislation prevents discriminatory bans and restrictions on the letting of private rented properties on the basis that someone is or may be claiming benefits.

This includes:

- Preventing someone from enquiring whether the property is available for let.
- Accessing information about the property.
- Viewing the property to consider whether to rent it.
- Signing a tenancy agreement.
- Any measures that would make it less likely for someone claiming benefits to sign a tenancy agreement or rent the property than for someone who is not claiming benefits.

What does benefits claimant mean?

A person who is entitled to payments (including payments made directly to a landlord) under or by benefits and welfare legislation or is entitled, by the Local Government Finance Act 1992, to a reduction in the amount of Council Tax payable in respect of the property based on income or an entitlement to a payment.

NB: Benefits and welfare legislation covers the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995, the State Pension Credit Act 2002, the Tax Credits Act 2002, the Welfare Reform Act 2007, the Welfare Reform Act 2012 (Universal Credit), the Pensions Act 2014 and the Social Security (Scotland) Act 2018.

NB: These provisions do not apply where there is a proportionate means of achieving a legitimate aim, such as refusing children because it would lead to the property being statutorily overcrowded.

Where an existing insurance policy has a clause requiring that the property not be let to tenants on benefits or with children, that began before the Renters' Rights legislation came into force, that property will be exempt from the provisions until the insurance contract comes to an end or is renewed.

NB: Any restrictive terms in a new insurance contract following the legislation coming into force will be of no effect, preventing any breach of contract.

A superior landlord may only include restrictive terms on letting to those with children if it is a proportionate means of achieving a legitimate aim.

NB: Any terms in mortgages and superior landlord agreements which restrict the letting of a property to private renters without children or who receive benefits are of no effect, preventing any breach of contract where a landlord fails to fulfil them. Therefore, a landlord cannot be compelled to discriminate by their mortgage or superior landlord agreement.

Enforcement

In Scotland, enforcement will be carried out by local authorities, and non-compliance is a criminal matter with Police Scotland and the Procurator Fiscal to investigate and prosecute.

This means that landlords and anyone acting directly or indirectly on their behalf may be liable upon conviction to a fine not exceeding level 3 (currently £1,000) on the standard scale.

NB: Under the legislation, Scottish Ministers have powers, through additional regulations, can decide to extend the protection from rental discrimination given to renters with children or in receipt of benefits to additional groups of people, but must consult on the matter.

Further information

Renters' Rights legislation: <https://bills.parliament.uk/bills/3764>

UK Government guidance: <https://www.gov.uk/government/publications/guide-to-the-renters-rights-bill/guide-to-the-renters-rights-bill>

Private Housing (Tenancies) (Scotland) Act 2016:
<https://www.legislation.gov.uk/asp/2016/19/contents>