

Discrimination in the rental market (Wales)

APPLIES TO: WALES
 PUBLISHED: 22 OCTOBER 2025

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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 Welsh Government to extend the rental discrimination provisions to Wales.

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 an Occupation Contract, such as requiring higher rents in advance that are not otherwise applied to contract holders without children or in receipt of benefits.

The measures amend the Renting Homes (Fees etc.) (Wales) Act 2019 and Renting Homes (Wales) Act 2016 to align with the existing Welsh housing legislative framework. This includes new requirements on landlords to include additional fundamental terms in Occupation Contracts.

Eligibility

A ban on rental discrimination will apply in Wales, England and Scotland. However, the enforcement mechanism varies across the devolved administrations. The Welsh Government has 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 an Occupation Contract.
- Any measures that would make it less likely for someone with a child living or visiting the property regularly to sign an Occupation Contract 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 an Occupation Contract.
- Any measures that would make it less likely for someone claiming benefits to sign an Occupation Contract or rent the property than for someone who is not claiming benefits.

Benefits claimant

A benefits claimant means a person who meets one of the following criteria:

- Entitled to payments (including payments made directly to a landlord) under the Social Security Contributions and Benefits Act 1992 or the Welfare Reform Act 2012 (Universal Credit).
- Entitled to payments (including payments made directly to a landlord) under the Jobseekers Act 1995, the State Pension Credit Act 2002, the Tax Credits Act 2002, the Welfare Reform Act 2007 or the Pensions Act 2014.
- In receipt of a reduction in the amount of Council Tax payable in respect of the person’s current home under a scheme made by a billing authority under the Local Government Finance Act 1992.
- Entitled to a reduction in the amount of Council Tax payable in respect of the property under a scheme made by the billing authority in the area where the property is located under the Local Government Finance Act 1992.

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 contract holders 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 Wales, enforcement sits with local authorities, and prosecution will be carried out by the courts. Non-compliance is a criminal matter in line with the wider framework for housing enforcement (fines capped at £1,000).

The provisions in Wales will be included in the Renting Homes (Wales) (Fees Etc.) Act 2019, which will also be renamed to include "Discrimination" after "Fees". The enforcement provisions will follow those in the Act.

NB: The changes will also be reflected in the licensing/re-licensing training that landlords will undertake through Rent Smart Wales, as well as in the Code of Practice.

Multiple people may be found jointly and severally liable for the same offence. Furthermore, more than one fixed penalty may be imposed on letting agents and landlords if:

- the conduct continues 28 days after the previous penalty, unless the person appeals against the decision to impose the penalty within that period.
- the person appeals against the decision to impose the penalty within that period, the conduct continues after the end of 28 days starting on the day after that on which the appeal is finally determined, withdrawn or abandoned.

Local authorities may impose an additional penalty if a fine was previously issued for breach within the preceding five years.

NB: Under the legislation, Welsh 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>

Renting Homes (Fees etc.) (Wales) Act 2019: <https://www.legislation.gov.uk/anaw/2019/2/enacted>

Renting Homes (Wales) Act 2016: <https://www.legislation.gov.uk/anaw/2016/1/contents>