



Market rents under Assured and Assured Shorthold Tenancies under the Housing Act 1988

This guidance document is also available in Welsh. Please contact the tribunal for a Welsh version of this document

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Part 1 - Introduction

What is the purpose of this Guidance?

This guidance explains the procedures that will be followed by a Rent Assessment Committee (RAC) once an application has been made under the Housing Act 1988 ("the 1988 Act") or the Local Government and Housing Act 1989 ("The 1989 Act") by an assured or assured shorthold tenant.

When can an application be made and what are the consequences?

An application to the Committee can come about in one of four ways:

1. Where the landlord under an assured, or assured shorthold periodic tenancy has served a notice on the tenant under section 13 of the 1988 Act proposing a rent increase to take effect at the beginning of a new period of the tenancy specified in the notice. The tenant may refer that notice to the Committee at any time before the proposed date of increase. If a notice is so referred the proposed increase will not take effect on that date, pending a determination by the Committee.
2. Where a tenant under an assured shorthold tenancy is dissatisfied with the rent payable under the tenancy. He or she is permitted to make an application to the Committee under section 22 of the 1988 Act for a determination of the rent, which, in the Committee's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy. There is a time limit within which such an application can be made.
 - If the tenancy is a fixed term tenancy that began before 28 February 1997 the application must be made during that fixed term.

- If the tenancy – whether fixed term or periodic – began on or after that date the application must be made within the first six months of the tenancy. Virtually all assured shorthold tenancies will now fall into this second category.
3. Where a fixed term assured, or assured shorthold, tenancy has ended and the landlord or tenant has by notice under section 6 of the 1988 Act proposed new terms for the statutory periodic tenancy that has automatically arisen. The recipient can refer the notice to the Committee for a determination as to the new terms and any consequential rent adjustment.
 4. Where there has been an application to the Committee under the Local Government and Housing Act 1989. (See Annex A to these Notes).

Language Preference

The LVT welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents and make written representations to the LVT in Welsh or English.

What is a Rent Assessment Committee?

The Rent Assessment Committee is a tribunal which is completely independent of the Rent Officer and any other Government Agency. Rent Assessment Committees are part of the Residential Property Tribunal.

Who will deal with the matter once an application has been made to a tribunal?

From the time that the application is received a number of different people will deal with the paperwork involved and the parties. These include the following:

Clerks to the Tribunal

Clerks to the Tribunal are the administrative staff who will deal with the correspondence and other paperwork in the case from start to finish. The clerks are able to speak to parties about the processes and procedures relating to the application. They cannot give general legal advice or advise about the law relating to the matter in question.

The Tribunal Members

The Chair of the Tribunal, who will usually be a lawyer, is responsible for the smooth running of the proceedings and will write up the reasons for the tribunal's decision.

Other members of a tribunal may be lawyers, surveyors, other professional persons or lay persons. Lawyers are appointed by the Lord Chancellor whilst other members are appointed by the Welsh Ministers.

When a tribunal is set up to consider the matter of the fair market rent, there will usually be three, but occasionally two, members including the Chairperson.

The Residential Property Tribunal President

The Residential Property Tribunal President, assisted by a Vice President, is responsible for the members and, in particular, decides which member(s) should be appointed to hear and decide a particular case. They will not be involved in the decision in a case unless they are a member of the RAC dealing with the case.

Part Two – inspection and hearings

What will happen once a Committee is appointed to the case?

Once a RAC is appointed, the Clerk will write to the parties asking them if they would like an oral hearing to be arranged at which parties will have the opportunity to attend and/or be represented to present their case.

The parties will also be asked if they would like to make what are called “written representations”.

Unless a party asks for a hearing the matter will be dealt with on the basis of the written representations and all other relevant available evidence (see below).

In some cases there may be uncertainty about whether an application is valid or whether, in the circumstances, the Committee has jurisdiction in respect of an application.

In such a case the parties will be notified and a hearing or meeting of the Committee may be arranged to consider this preliminary issue.

If the Committee decides that it does have jurisdiction it will go on to consider the main issue on the same date or at some future date to be arranged.

What are written representations?

These are any comments made in writing to the Committee about what a party thinks the rent and/or the terms of the tenancy should be and why. Parties can also send any other documents in support of their case. Any representations that are made by a party or anybody on their behalf will be copied to the other party. Each party will be given an opportunity to comment on any representations that are made by the other. Parties will also be asked to provide a copy of any written tenancy agreement under which the property is let if this has not already been supplied.

What is a hearing?

A hearing is the term used to describe the occasions when a committee convenes at a particular place and time for the purpose of enabling both you and the other party, or parties, to put your case to the Committee.

Hearings are usually held at local venues or at the Residential Property Tribunal Office. The hearing will usually convene shortly after the property inspection.

At the hearing you can speak yourself, or somebody else, whether professionally qualified or not, can speak for you.

You will also be able to put questions to the other party or his/her representative if they are present.

The Committee may also ask you some questions in order to make sure that it has all the relevant information to enable it to come to a decision as to the fair market rent for the property.

Parties are advised not to produce documentation for the first time at a hearing; otherwise the hearing will often need to be adjourned to enable the other party to consider the new evidence.

Will the Committee visit and inspect the premises?

Yes, if requested by either party or if the Committee considers it necessary. A visit is considered necessary in most cases.

A visit will only take place on a date and at an approximate time notified to the parties. With the permission of the tenant the Committee will normally want to inspect the inside of the property as well as the outside and any common parts.

The landlord is entitled to be present with the tenant's permission. An inspection will usually be on the day of the hearing or (if there is no hearing) the day on which the Committee make their decision.

If the Committee are unable to gain access at the appointed time they may decide to make another appointment and adjourn the matter until then.

Alternatively they may decide that they have sufficient information, including that obtained from an external inspection, to be able to go ahead and make a decision.

Can the parties say anything at the inspection?

Both parties can draw attention to any physical aspect of the property that they wish the RAC to see but may only make oral representations at the hearing, or have already made them in writing (written representations).

It is acceptable for a tenant to point out something to which he has already included in his/her written representations.

However, it would, for example, not be permissible for the Committee, at the inspection to listen to representations about rents of allegedly comparable properties.

If a hearing is held will ordinary court procedures be followed?

No. RAC's are decision making bodies set up by Parliament to enable certain types of disagreements to be dealt with speedily in a way that avoids the formality and cost that surrounds ordinary court proceedings.

Hearings are usually held in a convenient local building or at the Tribunal Office where appropriate. Hearings are open to the public, although usually only the parties, their representatives and their witnesses, the tribunal and, perhaps, a clerk will be present. The proceedings are orderly but informal.

They are designed to enable both parties to put their cases to the Committee in their own words or through somebody else acting on their behalf.

The person who has referred the matter in dispute to the Committee is asked to put their case. They can be questioned by the other party who can then put their case and be questioned in turn.

The Chairman will seek to ensure that nobody is at a disadvantage by not being represented. He or she will make sure that both landlord and tenant understand what the other party is saying. The Committee may ask questions of a party or representative to make sure that they have all the necessary facts.

A party or representative can also put questions to the Committee.

What happens if one or both parties do not attend the hearing?

Any party present can put his or her case in the normal way. The Committee will then proceed to make its decision, as indeed they could where neither party attends.

Can a hearing be postponed or adjourned by the Committee?

Yes. A party has the right to ask the Committee to postpone or adjourn a hearing and indeed the Committee might decide to do this of its own accord. However, it will be done only if there is a compelling reason and the Committee considers that no party is unfairly affected.

If you wish to apply for a postponement you should write to the tribunal giving full reasons. You should copy your letter to the other party/parties and they will be invited to comment.

Can an applicant withdraw his or her application?

The Act does not provide for this as such. However, the Committee is not required to continue with a determination if both parties give notice in writing that they no longer require a determination or if the tenancy has come to an end.

What happens if both parties indicate that they do not wish to attend a hearing?

As stated above, the proposed hearing will not be arranged. The Committee will normally inspect the property, on a day that has been notified to the parties, and then meet to consider their decision, usually on the same day. They will look at any written representations made by the parties and also have regard to their own relevant knowledge and experience.

Part Three – the decision process

How will the Committee make a market rent determination?

Following a section 13 application the Committee will first decide whether they have jurisdiction (see Part 2 above).

This may take the form of a preliminary hearing. If they decide that they do have jurisdiction the Committee will then proceed, under section 14, to decide what rent the landlord could reasonably expect to obtain in the open market, if he were letting it on a new tenancy on the same terms as the present tenancy.

The Committee will have regard to rental values in the area for similar properties let on similar terms to those in the tenancy of the subject property.

It is important to note that the rent determined by the Committee could be higher or lower than, or the same as that proposed in the landlord's section 13 notice.

The effect of the Committee's determination is dealt with in Part 4 below.

In the case of a section 22 application the Committee may only determine a rent if they consider:

- a) that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not) and
- b) that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably expect to achieve having regard to the level of rents payable under those other tenancies.

If both of these conditions are satisfied, the Committee will proceed to determine what rent they consider the landlord might reasonably be expected to obtain under the tenancy.

The rent will not necessarily be lower than that currently payable under the tenancy.

The effect of the Committee's determination is dealt with in Part 4.

What if the tenant has made improvements to the property?

The Committee must ignore any effect that certain qualifying tenant's improvements would otherwise have on the rental value of the property. This is to prevent the landlord from benefiting from the improvements by way of a higher rent.

By contrast, any disrepair or defect that is attributable to a failure by the tenant (or a predecessor under the tenancy) to comply with the terms of the tenancy is to be disregarded. The property will be valued as if such disrepair or defect did not exist, so that the landlord will not be penalised by any decrease in rental value brought about by the disrepair or defect.

It is important to note that, an assured statutory periodic tenancy will sometimes have arisen automatically by law, following the death of a Rent Act 1977 regulated tenant.

In such a case tenant improvements carried out whilst the property was regulated by the Rent Act, will not fall to be disregarded when the Committee determine a rent under section 14, the rent will reflect the benefit of any such improvements.

What if the tenancy includes a charge for services?

If under the terms of the tenancy, or some other agreement, there is provision made for the supply of services to the property and/or any common parts the market rent will reflect the value to the tenant of these services.

If, for example, the subject property is a flat in a development, the landlord might provide items such as a lift, cleaning services to the entrance hall, stairs and landing, window cleaning, heating to the subject flat and/or the common parts and gardening in respect of common garden areas. The common parts are those parts of the development, the use and enjoyment of which is shared with other tenants.

A tenancy agreement sometimes separately identifies the amount payable in respect of services and refers to it as the service charge.

What if the tenancy says that the landlord can vary the amount payable in respect of services?

Some tenancy agreements will permit the landlord to alter the service charge from time to time (usually once a year) by notice. This will usually be related to changes in the cost to the landlord of providing the services. Such a provision is usually referred to as a “variable service charge”.

For the purposes of sections 14 and 22 of the Act “rent” does not include any charge for services, repairs, maintenance, or insurance or the landlord’s costs of management, the whole or part of which varies or may vary according to the relevant costs. (i.e. a “variable service charge”).

This means that, the liability for such charges will remain governed by the terms of the agreement between the landlord and tenant and they will be recoverable from the tenant, in addition to the rent determined by the Committee.

Applications relating to the payability and reasonableness of variable service charges can be made to a Leasehold Valuation Tribunal. This may involve payment of fees by the applicant unless, he or she is exempt by being in receipt of certain benefits.

What if the tenancy includes ‘Supporting People’ charges?

Some tenancies provide for payment of ‘supporting people’ charges in respect of certain personal services provided to the tenant. Such support charges are normally payable in addition to the rent and any service charge determined by the Committee.

However, when a Committee determines a market rent, it may decide that some or all of the support charge provided for by the tenancy agreement is, in law, a payment for that service.

If that is the case, the amount payable for that service, or services, after the effective date of the Committee’s decision, will be included in the service charge as

determined by the Committee.

This will not apply where the tenancy provides for a variable service charge. In such a case the Committee's decision is confined to the net occupational rent and any service charge or support charge is recoverable by the landlord in addition to the rent determined by the Committee.

Will the rent include council tax?

Council tax is normally payable by the tenant to the local authority and therefore is not included in the rent.

However, if the tenancy is of part of a house which, for council tax purposes, is a "house in multiple occupation", the landlord will be responsible for payment of the tax but the tenant can be required to reimburse the landlord.

In these circumstances the rent determined by the Committee will include an amount in respect of council tax in so far as it is attributable to the specific part of the property that is let to the tenant.

What points should a party make in their written representations or at a hearing?

Parties should point out anything that they consider would have a bearing on the rent that can be determined by the Committee, according to the law outlined above. They can of course comment on anything that the other party has written, or has said, at any hearing.

If a tenant has made improvements to the property, that they were not obliged to make by the terms of the tenancy, it will help if that person can produce receipts demonstrating the cost, although this is not essential.

It would be very helpful if parties are able to produce evidence of recent assured or assured shorthold tenancies of similar properties in the area. As much relevant detail as possible should be provided, if available.

For example, the rent payable, the nature of the accommodation, its state of repair or improvement, whether it is furnished in whole or in part.

If parties are relying in particular on a specific property or properties the Committee might make an external inspection of the property.

Parties might also wish to draw attention to any recently registered Committee decisions for comparable assured or assured shorthold tenancies of properties in the area. (Registers of section 14 and section 22 rents determined by Committees are available for inspection in the Panel Office).

An applicant should also consider the possibility that, in the case of a section 13 application, the Committee will decide to endorse a rent increase.

As will be seen below, that increase will take effect from the date of increase specified in the landlord's notice.

A tenant who considers that this would cause them undue hardship can seek to persuade the Committee that this is indeed the case and that the Committee should fix a later date for the increase to take effect. This date cannot be later than the date of the Committee's decision.

Parties should also note that nothing in the Act prevents the landlord and tenant from agreeing a rent at any time.

What if the application is made under section 6?

As noted above this applies where, within one year of a fixed term assured tenancy coming to an end, the landlord or tenant has served notice on the other proposing new terms in respect of the statutory periodic tenancy that has automatically arisen.

The notice can also propose an appropriate adjustment in the rent. If such a notice is served it is open to the recipient within 3 months to refer the notice to a Committee.

If not, the proposed terms and any proposed rent increase will become operative from the date specified in the notice.

If the notice is referred, the Committee will then determine whether the proposed terms, or some other terms, are such as might reasonably be expected to be found in an assured periodic tenancy of the dwelling-house.

The Committee can also specify an adjustment in the rent whether or not this was proposed in the notice.

Parties can make representations to the Committee on the issues of both the proposed terms and rent for the property.

Part Four – The decision and after

When will the Committee make their decision?

Once the Committee is satisfied that they have all the necessary information it will make a decision.

How will the parties find out the Committee's decision?

The Clerk will write to the parties and enclose the decision notice that tells them the rent determined by the Committee. Parties will also be sent a copy of the written reasons for the Committee's decision. The Committee should issue these within 28 days.

From what date will the amount fixed by the Committee be payable?

In the case of a section 13 reference to the Committee, unless the landlord and tenant agree to the contrary, the rent determined by the Committee will be the rent payable under the tenancy from the beginning of the new period specified in the landlord's notice.

If the Committee consider that this would cause undue hardship to the tenant the Committee can substitute another date, which must not be later than that

of the decision. The date from which the rent determined by the Committee will be effective will be stated in the decision document.

In the case of a section 22 application the rent determined by the Committee will have effect from a date determined by the Committee which must not be earlier than the date of the application.

What if it is a section 6 application?

In the case of a section 6 application the substituted terms, and any rent alteration, determined by the Committee will, unless the landlord and tenant agree otherwise, become operative from the date specified by the Committee which must not be earlier than the date specified in the section 6 notice.

Is there any appeal against the Committee's decision?

A party can appeal to the Upper Tribunal (Lands Chamber) under section 65A of the Rent Act 1977 but only if that party considers that the Committee has made a mistake of law. Notice of appeal must be received by the Upper Tribunal (Lands Chamber) within 1 month after the date on which the notice of the decision being appealed was sent to that party. Parties should take legal advice if they consider that there might be grounds for Upper Tribunal (Lands Chamber) proceedings.

Are tribunal decisions publicly available?

All decisions made by Residential Property Tribunals are open to the public. Any request to withhold a decision or personal details contained within that decision must be made in writing to the Residential Property Tribunal. The request should set out the reasons for wanting the decision withheld. All requests will be considered on a case by case basis.

Does the Human Rights Act apply to the RAC's proceedings?

Yes. Parties to an application are entitled to the benefit of the provisions of the Human Rights Act 1998. In effect, this entitles them to have their case determined in accordance with the European Convention on Human Rights.

Of particular relevance is Article 6 of the Convention, which provides that parties have the right to a fair hearing within a reasonable time and before an impartial tribunal.

This includes their right to put their case, to question the case brought by the other party and to be given reasons for the decision of the Committee.

Also relevant is Article 8, which provides that everyone has the right to respect for his private life, his home and his correspondence. Any internal inspection of the property will only be undertaken with the consent of the occupier.

In making their decisions, Committees are obliged to have regard to the rights embodied in the Convention and where possible to interpret legislation consistently with those rights.

Assistance to Parties

In this instance the term "participant" means an applicant or a party or witness or other person taking part in proceedings relating to an application or to whom an order of the tribunal is addressed.

To enable participants to effectively participate in the proceedings assistance will be provided (free of charge) if, for example, they are:

- unable to read or speak or understand the English language or the Welsh language;
- unable to read English or Welsh as a consequence of being temporarily or permanently blind or partially sighted;
- able to speak in English or Welsh, but is unable to read or write in English or Welsh;

- without hearing or speech.

The requirement for a tribunal to provide a participant with the services of a person to read, write, or explain the nature and content of documents does not include a requirement for a tribunal to give any legal advice, but includes a requirement to explain the procedural steps in the proceedings.

A participant is entitled to assistance whether or not the participant is represented by someone else.

A participant requiring assistance but not receiving it must at the earliest opportunity notify the requirement for assistance to the tribunal.

Residential Property Tribunal

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Disclaimer

The content of this guidance was correct when published.

Annex A

Local Government and Housing Act 1989

This annex deals with the role of the Rent Assessment Committee where a long lease at a low rent, governed by the above Act, has expired.

How does the Committee become involved?

The Act gives the landlord the option to serve a notice on the tenant terminating the long lease and proposing that the tenant who has remained in possession should have a monthly assured periodic tenancy at a proposed new rent. The proposed new tenancy will be on the same terms as the expired long term tenancy unless the landlord's notice proposes different terms. The tenancy proposed by the landlord will take effect unless the tenant within two months serves a counter notice on the landlord proposing a different rent and/or terms. If the tenant does serve such a counter notice the tenancy will take effect instead on the rent and terms (if any) proposed by the tenant unless within two months the landlord refers the tenant's notice to the Committee.

What is the function of the Committee on referral by the landlord of a tenant's counter notice?

The Committee will first determine whether there is a dispute as to the terms and whether there is a dispute as to the rent.

Terms

If the parties are in dispute as to the terms of the proposed tenancy the Committee must resolve that dispute first. In so doing the Committee must determine whether the terms proposed in the landlord's notice, the terms proposed in the tenant's notice or some other terms are such as might reasonably be expected to be found in an assured monthly periodic tenancy of the dwelling-house.

Rent

The Committee must determine a monthly rent, which it considers might reasonably be obtained for the property in the open market under an assured tenancy on the terms which have been determined or agreed.

When will the Committee's determination take effect?

The Committee's decision takes effect three months after the date on which the reference is finally determined.

What rent is payable in the meantime following the termination of the long tenancy by the landlord's notice?

On the date of service of the landlord's notice, or at any time between that date and the date of termination of the tenancy, the landlord may serve a notice on the tenant in the prescribed form proposing an interim monthly rent. This will be the rent payable until the initial rent for the new tenancy has finally been agreed or determined as outlined above. However, within two months of service of the landlord's interim rent notice the tenant may refer it to the Committee. The Committee must then determine the rent at which

the premises may reasonably be let in the open market by a willing landlord under a monthly periodic tenancy which;

- (a) begins on the day following the date of termination of the long tenancy and
- (b) under which the other terms are the same as those of that tenancy and
- (c) which affords the tenant security of tenure equivalent to that afforded to an assured tenant by the Housing Act 1988.

What procedure will the Committee follow following a reference under the 1989 Act?

The procedure will be as outlined in this booklet with regard to section 13 applications (as to rent) and section 6 applications (as to terms) to which reference should be made.