



Department for
Communities and
Local Government

Residential Leasehold and Recognised Tenants' Associations

Non-statutory guidelines

Discussion Paper



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Recognised Tenants' Associations (s.29 Landlord and Tenant Act 1985)

Introduction

With an estimated four million residential properties in England subject to a long lease, the Secretary of State for Communities and Local Government (DCLG), the Rt Hon Eric Pickles MP, has asked officials to examine what further support can be offered to leaseholders.

In his announcement of 12 August 2014 the Secretary of State identified a number of areas that DCLG will look at, including ways to make it easier to get recognition for a Tenants' Association. See <https://www.gov.uk/government/news/flos-law-new-cap-for-council-house-repairs-comes-into-force>.

The current guidelines produced to support the recognition of a Tenants' Association under Section 29 of the Landlord and Tenant Act 1985, as amended by paragraph 10 of Schedule 2 of the Landlord and Tenant Act 1987, are reproduced at Annex A.

There are two ways of seeking formal recognition of a tenants' association. Recognition can be given by a landlord or, if a landlord refuses or withdraws recognition, applications can be made to and determined by the First-tier Tribunal (Property Chamber). There is currently no charge for this, but each party must meet their own costs.

Primary legislation states that a Recognised Tenants' Association is an association of qualifying tenants. It is an association recognised in relation to service charge matters set out in the Landlord and Tenant Act 1985 by written notice given by the landlord or by a certificate of the First-tier Tribunal.

Non-qualifying tenants can be members of the association although only in relation to non-service charge matters. A number of tenants are qualifying tenants if each of them can be required under their lease to contribute to the same costs through service charges (section 29(4) Landlord and Tenant Act 1985).

The main objective of this discussion paper is to consider what more can be done through the guidelines to assist the Tribunal when considering recognition of a tenants' association. However, there is also a desire to avoid creating any additional hurdles. This paper also looks briefly at issues that would require secondary legislation.

The document does not recommend any policy or legal changes, and the inclusion of particular issues or questions in the document should not be taken to imply that Government has decided to introduce any new requirements or legislation.

Views and comments

We would therefore welcome views and comments specific to the discussion questions identified in the paper. This will help determine the way forward and development of any new guidelines.

When providing feedback it would be helpful if you could confirm the capacity in which you are replying (e.g. leaseholder, landlord, freehold owner, managing agent, trade or representative body, or other organisation).

The Government may publish a summary of responses to the discussion paper, and you should therefore assume that individual responses will be made publicly available unless specifically marked confidential when submitted.

The closing date for responses is 22 May 2015. All responses will be carefully considered.

Responses should be sent to: leasehold.reform@communities.gsi.gov.uk

Or by post to:

Mr I Fuell
Private Sector Property
Residential Leasehold and Rentcharges Team
Department for Communities and Local Government
3rd Floor, South West Quarter
Fry Building
2 Marsham Street
London
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Rights acquired by a Recognised Tenants' Association

A certificate of recognition provides the association with representative rights on behalf of the members allowing it to:

- Ask for a summary of costs incurred by the landlord (s.21 Landlord and Tenant Act 1985).
- Inspect the relevant accounts and receipts (s.22 Landlord and Tenant Act 1985).
- Be sent a copy of the estimates required under Section 20 of the Landlord and Tenant Act 1985.
- Propose names of contractors for inclusion in any tender list for estimates required under Section 20 of the Landlord and Tenant Act 1985.
- Ask for a written summary of the insurance cover and inspect the policy (schedule to the Landlord and Tenant Act 1985).
- Ask to be consulted about the appointment or re-appointment of a managing agent (s.30B Landlord and Tenant Act 1985).

Rules and Constitution

- An Association seeking recognition may draft its own fair and democratic rules and constitution, with the benefit of legal advice where appropriate. To supplement the guidelines however, a set of rules and a model constitution was developed. This sets out such things as the: Objects, Membership, Organisation, Committee, Meetings, Voting, Finance (e.g. the holding of any property and subscriptions), Appointment of auditors, and alteration to the Rules and Constitution. This is reproduced at Annex B for information.
- The Federation of Private Residents Associations also publishes an information pack which includes a specimen constitution.
- The guidelines have been in place since October 1980, and this is a good opportunity to review and refresh them to ensure that they reflect the current landscape, and do not create unnecessary barriers in the process of recognising tenants associations.

Guidelines rather than legislation?

- There are two main routes that can be used when considering what changes may be appropriate and how to take them forward. These are by amending the existing guidelines referred to by tribunals, and by legislating (i.e. perhaps by making use of the Secretary of State's power to make regulations (secondary legislation) or through primary legislation).

Considerations

- Certain changes can only be made through legislation. Which route is most appropriate will therefore depend on what changes are deemed to be necessary.
- Bringing forward secondary legislation for example, will result in a lengthy and time consuming process before any changes can take effect. This is because a number of requirements will need to be satisfied and considered, including any impacts that may result from any changes on business or civil society. The Parliamentary process will also need to be negotiated.
- Legislating also carries its own risks. For example, it is not always possible to frame legislation to take account of every possible circumstance or scenario, which could result in some tenants' associations not being able to be recognised; legislation is also more difficult to amend.
- The guidelines supporting the legislation on the other hand, are designed to give flexibility to the tribunals, and avoid setting rigid criteria that would not be able to take account of change, and which may have the effect of preventing some tenants' associations from achieving recognition.

- Revised guidelines should be able to be developed and brought into effect more quickly than legislation. Guidelines would also be easier to amend and keep pace, should the need arise.

This discussion paper considers both non-legislative (guidelines) and legislative possibilities.

Issues with current guidelines

- We understand that on the whole the guidelines work well, particularly in respect of individual blocks. However, we are aware that some difficulties can occur in larger blocks/developments and some mixed use blocks.
- It would appear that the most difficult issue to address surrounds the guideline that the membership of a Recognised Tenants' Association must represent at least 60% of the flats in a block for which variable service charges are payable (i.e. flats with qualifying tenants). This is one of the main criteria considered by the Tribunal when determining cases the Tribunal will have regard to the guidelines..
- Other concerns include:
 - a) Getting information about service charge payers.
 - b) Voting rights, particularly where an individual owns more than one unit in the block.
 - c) Non-resident leaseholders/qualifying tenants.

Relevant cases

There are a couple of Tribunal cases concerning the recognition of tenants' associations that are worth mentioning when considering whether any changes are needed to the guidelines, and if so how they are taken forward. These are:

Upper Tribunal: Lands Chamber (appeal case)

- *Rosslyn Mansions Tenants' Association v Winstonworth Ltd.* [2015] UKUT 0011 (LC). LT Case Number: LRX/4/2014. Decision - 13 January 2015

Briefly, this concerned an application for a certificate of recognition where membership of the association fell short of the 60% referred to in the guidelines, at 57%. However, the 57% of qualifying tenants paid about 70% of the total amount of service charge paid by all of the tenants in the building. Other factors were noted, and arguments put forward at the hearing.

The Upper Tribunal concluded that while the proportion of potential membership which the Recognised Tenants Association represents is a relevant consideration (i.e. 60%), it is only one relevant consideration, and determined that it is also relevant to consider the proportion of the overall variable service charges payable by the supporters of the application.

The Upper Tribunal quashed the First-tier Tribunal decision and sent it back to the First-tier Tribunal to be considered again, such reconsideration to be pursuant to a hearing at which each party will be entitled to produce evidence and make representations.

There is no doubt that this decision is very significant, and that the key criteria previously adopted by the First-tier Tribunal of 60%, is no longer sacrosanct – other factors need to be considered.

First-tier Tribunal Property Chamber

- *One West India Quay Residents Association v One West India Quay Development Company (Eastern) Limited and No.1 West India Quay (Residential) Limited.* LON/ooBG/LRA/2013/0008

This concerned a 33 storey mixed use building where the lower 12 floors comprise a Marriott Hotel and 47 "Marriott Apartments". The rest of the building consists of 158 residential apartments comprising approximately 53% of the building floor area. The basement extends into a car park area some of which is for use by the residential apartments.

A number of matters were to be determined including: how the "Marriott Apartments" should be treated; consideration of the level of service charges paid by members of the association; whether an association can exclude commercial premises; and voting rights.

In this case the First-tier Tribunal found in favour of the residents' association being satisfied that membership met the minimum recommendation of 60%, and issued a certificate of recognition. Among other things, it determined that that floor space

apportionment was not a relevant consideration and that the Marriott Hotel/Apartments were part of the Landlord's retained areas and were therefore excluded from the First-tier Tribunal's consideration.

Discussion Questions

Residential Only Developments

The guidelines

Question 1

Should the guidelines continue to state that membership of a Recognised Tenants' Association, must as a general rule represent at least 60% of the flats in the block for which variable service charges are payable?

If yes please explain why.

Question 2

If no to Question 1, should the membership be:

- a) higher (if so what)?
- b) lower (if so what)?
- c) 50% + 1 other qualifying tenant, or
- d) something else (if so what)?

Please explain the reasons for your choice.

Question 3

How should the principle in the Rosslyn Mansions case be reflected in the guidelines?

(I.e. that it should be possible for an association with membership representing below the current minimum percentage as set out in the guideline to receive recognition where members contribute the majority of the total amount of the variable service charges payable, subject to any other relevant considerations).

Voting arrangements in guidelines

It is often the case that a leaseholder, whether an individual/s or a company, may own a number of units in a block.

The existing guidelines indicate there should be only one vote per flat for purposes connected with sections 18 to 30 of the Landlord and Tenant Act 1985 (service charges), but recognise that there may be circumstances where the rules of the association may permit more than one vote per flat although not in connection with service charge matters.

The suggested Rules and Constitution also identify that voting arrangements at meetings shall be by a simple majority and by a show of hands, with the Chairman having the casting vote where necessary.

This arrangement is simple, and does provide a degree of flexibility for associations to determine the most appropriate arrangements in their own individual circumstances. It also allows the tribunals some discretion when considering an application for recognition.

Question 4

Should voting arrangements continue to be suggested in guidelines?

Question 5

If so, should the guidelines on voting arrangements for a Recognised Tenants' Association remain the same as now?

(I.e. that there should be only one vote per flat for purposes connected with sections 18 to 30 of the Landlord and Tenant Act 1985 (service charges), but recognise that there may be circumstances where the rules of the association may permit more than one vote per flat, for example a resident sub-tenant and an absentee/non resident long leaseholder on non-service charge matters.)

Question 6

If no to Question 5, what voting arrangements would be preferable and how would they work?

(E.g. If an individual or a company is a leasehold owner of more than one flat - should they have only one vote, a vote for each flat, or should there be a maximum applied in these cases?)

Question 7

Should the guidelines contain anything else that should be considered by the tribunal in determining whether to grant a certificate for a Recognised Tenants' Association, or when considering cancelling an existing certificate of recognition?

- If yes, what should these considerations be?

Legislation

Section 29 of the Landlord and Tenant Act 1985 allows the Secretary of State to make regulations specifying the matters to which the First-tier Tribunal should have consideration when determining whether or not to recognise an association.

Regulations would need to be made by an 'affirmative procedure' in Parliament. This is likely to be a lengthy process, where any proposed regulations must be debated in both the House of Commons and the House of Lords, and agreement reached.

Considerations

No regulations have to date been produced, instead a form of guidelines has been favoured. This is because while regulations can create some certainty, there is a risk that they would be unlikely to provide for all of the individual situations and circumstances that may arise both now and in the future in a growing property market. It is possible therefore that some tenants' associations might be unable to be recognised for example, because the tribunals do not have the discretion to do so under the regulations.

Regulations would also remove the flexibility that is afforded to tribunals through guidelines. This flexible approach has been given some support by the Upper Tribunal in *Rosslyn Mansions Tenants' Association v Winstonworth Ltd* (see above).

Some initial thinking has nevertheless been given to a number of issues that, if taken forward, would require either regulations, or changes to primary legislation, as follows:

Composition of membership

Question 8

Should the membership be a percentage of flats with qualifying tenants living in the block and paying variable service charges (i.e. the introduction of a residence test)?

- What difficulties would this create, if any?
- How would this work in practice?
- How would the association prove that they have invited all qualifying tenants to join?

Question 9

Should the minimum percentage be determined from those that have responded to the invitation to join the association?

E.g. There are 100 qualifying tenants all contributing towards the same variable service charge. All are invited to be members of the Recognised Tenants' Association but only 50 respond. 40 respondents agree to be members, while 10 decline. Under existing guidelines they would find it difficult to seek recognition because only 40% of the total qualifying tenants agreed to be a member.

If the minimum percentage was based on those responding to the invitation, although only 50% of the total 100 qualifying tenants had responded, 80% of those who did respond agreed to be a member.

- If your answer is yes, how do you see this working?
- What difficulties could there be with this approach (e.g. how would the association prove that they have invited all qualifying tenants to join) and how might these be addressed?

Question 10

Should the burden be on landlords to prove that the association should not be recognised rather than leaseholders having to apply to the tribunal where a landlord won't recognise the association?

- How would this work?

Question 11

How should multiple flats in single ownership be dealt with when determining the percentage required for membership (currently 60%)?

- a) Should all flats owned by a single owner be included?
- b) Should all flats owned by a single owner be excluded?
- c) Should a limit be applied above which a single owner's flats are excluded (similar to section 5(5) of the Leasehold Reform Housing and Urban Development Act 1993)?

Please explain why.

Question 12

How should flats owned (and occupied) by the freeholder be dealt with when determining the percentage required for membership (currently 60%)?

Getting information from landlords about service charge payers

Some concern has been raised that obtaining information from landlord's or property managers about service charge payers to be able to meet the guidelines for the recognition of an association is sometimes difficult.

Information is already obtainable by exercising other rights such as section 11 of the Leasehold Reform Housing and Urban Development Act 1993 but:

Question 13

In addition to the existing rights to obtain information, what more could be done, if anything, to make it easier for an association to be able to identify qualifying tenants, and invite them to be a member of a Recognised Tenants' Association?

Mixed use Developments

We are aware of some concerns about mixed use properties.

Tenants of shops, offices, restaurants or other business premises (unless their tenancies incorporate residential accommodation and they contribute towards the same service charges) would not usually qualify for membership of a Recognised Tenants' Association.

Where membership is extended to non-qualifying tenants, even though they may have a common interest in the running of the block they may not have voting rights unless the rules permit as much, and may not be party to the proceedings of the Association in its role as a Recognised Tenants' Association.

Question 14

How should non-residential parts of a block be dealt with in relation to the qualification/membership of a Recognised Tenants' Association?

(NB: The determination in the First-tier Tribunal case of One West India Quay Residents Association v One West India Quay Development Company (Eastern) Limited and No.1 West India Quay (Residential) Limited.) is relevant here – see above.

This concerned a 33 storey mixed use building where the lower 12 floors comprise a Marriott Hotel and 47 "Marriott Apartments". In this case the First-tier Tribunal found in favour of the residents' association, being satisfied that membership met the minimum recommendation of 60%, and issued a certificate of recognition. Among other things, it determined that that floor space apportionment was not a relevant consideration and that the Marriott Hotel/Apartments were part of the Landlord's retained areas and were therefore excluded from the First-tier Tribunal's consideration).

Question 15

How should live/work units in a block be dealt with (this could be in either a residential or mixed use block)?

NB: The meaning of a qualifying tenant for this purpose is identified in primary legislation (s.29 of the Landlord and Tenant Act 1985). Any changes to this meaning would require primary legislation.

Local Authority properties

Some concern has been raised that leaseholders in local authority properties are being excluded from being part of any resident or tenant-run organisation (e.g. Tenant Management Organisation) that may exist, even where they are able to be members.

Question 16

Should it be possible to have more than one Recognised Tenants' Association on any one development or estate?

- If yes, what would the requirements be if any (e.g. separate service charge funds) and how would this work?

Question 17

If more than one Recognised Tenants' Association is allowed how would you ensure that issues affecting the wider estate are dealt with appropriately? (E.g. to avoid duplication and conflicts arising which could cause delays).

Question 18

What other issues are there, if any, that need to be considered in respect of local authority properties?

Objects of the Recognised Tenants' Association

A tenants' association is a group of tenants (lessees) who come together to represent and take up issues of concern to its members, with the landlord. The strength of a tenants' association lies in its capacity for collective action and representation. It can make liaising with the landlord more efficient and effective, keep residents informed, and can greatly assist in community building.

The existing suggested Rules and Constitution for a Recognised Tenants' Association provides for the '*Objects*' of the association to be identified.

Question 19

Should the existing, suggested '*Objects*' of the association be reviewed to include a more explicit purpose of a Recognised Tenants' Association?

- If yes, what should that purpose be?

Equality issues

Question 20

Would there be any equality issues that need to be considered arising from any suggestions for change?

- If yes, what are they?

Annex A

GUIDELINES

1. The Secretaries of State have powers under the [*Landlord and Tenant Act 1985*] to make statutory regulations specifying the matters to which a member of a Rent Assessment Panel should have regard in giving or cancelling a certificate of recognition of a tenants' association for the purpose of [*sections 18-30*]. However, they do not intend to make such regulations at present because they feel there is insufficient information available about the circumstances of tenants' associations who may apply for recognition. They also consider that it is desirable to see how the procedure for recognition operates in practice. Nevertheless, in order to try to secure a degree of consistency while preserving flexibility, they believe that it would be helpful to issue the following guidelines for consideration by Panel members.
 2. The Secretaries of State consider that, as a general rule, the membership of a recognised tenants' association should represent at least 60% of the flats in the block in respect of which variable service charges are payable. The tenants of such flats might be, for example, long leaseholders, Rent Act tenants whose rents are not registered or tenants with variable registered rents. Tenants with fixed registered rents would not come within this definition: there is, however, no reason why an association should not also be open to such tenants for purposes not connected with [*sections 18-30*]. (c.f. paragraph 4 below)
 3. In some circumstances, however, an association with less than 60% membership might deserve recognition, for example where there was another association in the block which was recognised by the landlord but considered unsatisfactory by those wishing to form a new association.
 4. The rules of the association should be fair and democratic and cover the following matters, among others:

| | |
|------------------------|------------------------------------|
| openness of membership | payment and amount of subscription |
| notices of meetings | voting arrangements and quorum |
| election of officers | independence of the landlord |
- For purposes connected with [*sections 18-30*] there should be only one vote per flat. If the rules permit more than one vote per flat (e.g. by a resident sub-tenant and an absentee long leaseholder) for purposes not connected with [*sections 18-30*] then this need not affect the question of recognition for [*sections 18-30*] purposes.
5. It is suggested that the rules should be such that where the association is being consulted by the landlord on proposed works and estimates, e.g. as provided for under [*section 20*], any view put forward as that of the association would be that of the majority of those members, falling within the category of "tenants concerned" given in [*section 20(8)*]*, who express a view subject to any rules about quorum.
 6. It is suggested that a certificate should normally be granted to be valid for four years.

- * i.e. **"All the landlord's tenants who may be required under the terms of their leases to contribute to the costs of the works in question by the payment of service charges"**; these tenants will usually include all the long leaseholders but also any other of the landlord's tenants contractually liable to contribute to the cost of the works.

Annex B

FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) RESIDENTIAL PROPERTY LONDON REGION

LANDLORD AND TENANT ACT 1985 - SECTION 29,
AS AMENDED BY PARAGRAPH 10 OF SCHEDULE 2 TO THE LANDLORD AND
TENANT ACT 1987

SUGGESTED RULES AND CONSTITUTION FOR A RECOGNISED TENANTS' ASSOCIATION

1. NAME

The name of the Association shall be the
Association, herein after called the Association.

2. OBJECTS

The Association shall have as its objects the furtherance of the community interest of
its members and the maintenance and improvement of the amenities affecting those
members.

3. MEMBERSHIP

Membership shall be open to all **tenants** of
other than the landlord, his agent and any of his employees but voting shall be
restricted to one vote for each flat.

The annual subscription in respect of each flat shall be due on _____ of
each year. The amount shall be fixed by resolution in an Annual General Meeting.

Membership of the Association shall be an acknowledgement of the acceptance of the
Rules and Constitution.

Membership of the Association shall terminate:

(a) upon a member giving written notice to that effect to the Hon. Secretary

(b) upon a member ceasing to be a **tenant** of _____

4. ORGANISATION

The Committee shall consist of up to five members of the Association, the officers
thereof being a Chairman, Hon. Secretary and Hon. Treasurer.

The election of the Committee and its officers shall take place at the Annual General
Meeting.

Committee members so elected shall hold office until the following Annual General
Meeting, when they shall be eligible for re-election without re-nomination.

Nomination for membership of the Committee shall be proposed and seconded by two members of the Association and notified to the Hon. Secretary seven days in advance of the Annual General Meeting and shall include the written consent of the nominee.

5. THE COMMITTEE

The Committee shall be empowered to fill any vacancy occurring on the Committee or among the officers for the remainder of its term of office; it shall also be empowered to co-opt up to three extra members if necessary. The Committee shall also be empowered to appoint sub-committees from the membership, whose decisions will be subject to confirmation by the Committee. The Committee shall meet as and when required, its quorum consisting of a simple majority of its members, at least two of whom must be officers.

6. MEETINGS

The Annual General Meeting of the Association shall be held not later than June 1 in each year. A Report will be given at the Annual General Meeting of the years work of the Association.

An Extraordinary General Meeting of the Association may be convened at any time by the Hon. Secretary, either upon written instructions of the Committee, or at the written request signed by no fewer than _____ members of the Association.

At the Annual General Meeting of the Association, or at any Extraordinary General Meeting, 25% of the membership shall constitute a quorum, and if not present, the meeting shall be adjourned to another day when members present shall form a quorum.

An Ordinary General Meeting of the Association may be convened at any time by the Hon. Secretary.

Any General Meeting of the Association may be convened on fourteen days written notice to the members, which notice shall contain the Agenda.

Seven days' notice in writing must be given to the Hon. Secretary of any resolution to be moved at any General Meeting unless such resolution is admitted by the Chairman at the Meeting.

A notice containing all resolutions and nominations to be moved, with the names of those proposing and seconding each resolution or nomination, shall be kept by the Hon. Secretary and be available for inspection by any member for seven days before the General Meeting.

7. VOTING

Voting at a meeting of the Association shall be by a simple majority and be by the show of hands unless a ballot is demanded by a majority. In the case of equality, the Chairman shall have the casting vote.

For purposes connected with *Sections 18-30 of the Landlord and Tenant Act 1985* voting shall be restricted to variable service charge payers *[and voting on expenditure wholly attributable to a specific block will be restricted to those members liable for such charges].

8. FINANCE

The property and funds of the Association shall be held and administered by the Committee, a resolution of the Committee shall be sufficient authority for any payment therefrom. The financial year shall end on March 31 up to which date an Annual Statement of Accounts and Balance Sheet shall be submitted for approval at the subsequent Annual General Meeting.

A banking account should be opened in the name of the Association. All cheques shall be signed by two Committee members, of which one must be an officer.

9. AUDITORS

Auditors may be appointed by a resolution at the Annual General Meeting. Committee members shall not be eligible for appointment as auditors.

10. ALTERATION TO THE RULES AND CONSTITUTION

No alteration to the Rules and Constitution of the Association shall be made except at the Annual General Meeting or at an Extraordinary General Meeting.

All complaints or suggestions on matters regarding the Association shall be made to the Committee, preferably in writing.

In the event of the Association being wound up, any surplus funds shall be disbursed to a suitable registered charity to be decided by a simple majority of the membership.

* delete if not appropriate