

DRS3

## RICS Dispute Resolution Service (DRS)

Request for the appointment of an Arbitrator/Independent Expert under the Agricultural Holdings Act 1986 & Agricultural Tenancies Act 1995 England and Wales for rural rent review cases.

To help you complete this application, please refer to the notes within this application for guidance. They are designed to help you, but they are not intended as a full statement of the law and cannot override any statutory requirements.

### Arbitration Service

Applications under the statutory regime of the Agricultural Holdings Act 1986 (AHA) and Agricultural Tenancies Act 1995 (ATA) give the provision that, where a landlord and tenant cannot agree on the appointment of an arbitrator, either party can apply to the President of the Royal Institution of Chartered Surveyors (RICS) to make an appointment. The appointed arbitrator will conduct proceedings under the Arbitration Act 1996. Unless both parties agree otherwise, procedural and evidential matters will be at the discretion of the arbitrator. The arbitrator will be entitled to charge a reasonable fee and the parties are jointly and severally liable for such fee under the Arbitration Act.

### Simplified Arbitration Service

RICS has developed a simple, cost effective and quick form of arbitration procedure to resolve rent review and other disputes in the rural sector.

This service draws on the procedures applied by the courts for dealing with small claims actions. It is informal and involves a speedy timetable and agreed structure for dealing with evidential and procedural matters. The fees of the arbitrator are fixed and parties will know from the outset what they will pay.

Applications to use the Simplified Arbitration Service require **both** parties to jointly agree to use this procedure. Each party has the right to elect not to use the Simplified scheme but the arbitrator has discretion on costs it may be open to either party to seek an adverse award of costs if it is felt that the Simplified scheme was not reasonably considered.

Key components of the service include:

- The arbitrator will publish a decision within 20 working days following completion of the hearing/meeting, or such longer
- period agreed by the parties
- The arbitrator will only charge for three days work at £1000 per day (+ VAT) as long as the parties accept the procedural rules and any directions made by the arbitrator and subsequently comply with such procedural rules and directions. Should

- there be a hearing/meeting the arbitrator can charge an additional fee of £1000 + VAT
- It is not anticipated that expert witnesses will normally be permitted in a simplified arbitration unless directed by the arbitrator
- The costs of the arbitration will be shared equally by the parties (i.e. £1500 + VAT per party) or £2000 + VAT per party if there is a meeting/hearing.

### Expert Determination

Since May 2015, Section 13 of the Deregulation Act 2015 amends the AHA 1986 to provide for certain matters arising under the AHA 1986 Act to be capable of determination by a third party acting as an independent expert, rather than an arbitrator.

Unlike arbitrators, whose decisions are evaluative opinions based solely on the persuasiveness of evidence and argument put forward by the parties, independent experts may undertake their own investigations and apply their own expert knowledge in arriving at decisions.

### Notes to be considered before completing the application:

- To make an application, this form must be accompanied by the appropriate fee, currently **£195 .00**. There is no VAT payable on rural applications. If more than one holding is to be referred to arbitration, a fee is payable (and a separate form must be submitted) in respect of each holding.
- RICS reserves the right to copy this application to the non-applicant party. RICS is not required by law to provide a copy of the application form and/or related correspondence to the non- applicant party and does not do so automatically. However, as a matter of good practice, RICS will provide a copy of the form and/or correspondence to the non-applicant party on request.
- This application form is the contract between the applicant and the President and will rely entirely upon the information contained herein. The information submitted on this application is accepted as being accurate and complete. RICS or the appointed party cannot accept liability in relation to the appointment if the information provided is inaccurate or incomplete.
- Your application is processed on the basis that appointments are often made on behalf of the President of RICS by one of the duly appointed agents.
- Both the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995 provide for various conditions (including strict time limits) to be satisfied before the President can appoint a dispute resolver. The President will not be responsible for checking that these conditions have been satisfied, it is the responsibility of the parties to do so.
- **Please note:** Following the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, all rural disputes are now regulated by the Arbitration Act 1996.
- If the dispute is resolved before the President makes an appointment, you must notify RICS DRS as soon as possible.

**Type of alternative dispute resolution** (please tick the service required)

Arbitration       Arbitration under the simplified service       Expert Determination

**Information about the Holding**

Address (please provide the full address including the postcode): \_\_\_\_\_

\_\_\_\_\_

Town/City: \_\_\_\_\_ Postcode: \_\_\_\_\_

Brief description of the holding (Give description of the holding for example, arable, dairy, market garden):

Approximate Area (please give an

approximate indication of the size of the holding): \_\_\_\_\_  Hectares  Acres (please tick as appropriate)

Is this application being submitted by or on behalf of the Landlord or the Tenant?:  Landlord  Tenant

**Special Requirements**

Please indicate any special requirements you may have relating to the proposed appointee:

**Review details**

Which Act are you applying under?:  Agricultural Holdings Act 1986  
 Agricultural Tenancies Act 1995 (please tick as appropriate)

Please complete the appropriate details below according to the Act you are applying under:

**Agricultural Holdings Act 1986** (please use all date in dd/mm/yyyy format)

Date of Demand:

State the termination date for this review:

**Agricultural Tenancies Act 1995**

Date of review:

Date of trigger notice (if applicable\*):

\*The importance of a trigger notice under the Act will depend on the tenancy agreement. Some fixed term tenancies may not require a trigger notice. The default provisions for a review of annual Farm Business Tenancies do require such notice.

## Information about the parties and their representatives

The parties' professional representatives must be stated. Where a party is unrepresented, please ensure contact numbers and email addresses are included. Unless you notify us otherwise, we will forward all relevant correspondence to them. Normally communications from RICS are sent by email. It is therefore essential that you provide valid email addresses to which any communications can be sent. Giving these addresses will be taken as authority for RICS to use them.

### Current Landlord

Name:

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Address:

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Town/City:

Postcode:

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Email:

Telephone:

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Original Landlord (if applicable):

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Parent associated companies:

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### Current Tenant

Name:

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Address:

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Town/City:

Postcode:

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Email:

Telephone:

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Original tenant (if applicable):

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Parent associated companies:

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## Information about the parties and their representatives (continued)

### Landlord Representative (if any)

Title:	First Name:	Last Name:
Designation:		RICS Membership Number (if applicable):
Firm name:		
Address:		
Town/City:		Postcode:
Telephone:		Mobile:
Direct line:		Email:

### Tenant representative (if any)

Title:	First Name:	Last Name:
Designation:		RICS Membership Number (if applicable):
Firm name:		
Address:		
Town/City:		Postcode:
Telephone:		Mobile:
Direct line:		Email:

### Conflicts of interest

RICS will take reasonable steps to ensure that the appointed arbitrator or independent expert is free from conflict of interest. It is therefore essential that you provide details of the landlord and tenant (including any parent and/or subsidiary companies or related entities that a prospective appointee would need to consider in their conflict checks).

If, in your view, there are any persons who would have a conflict of interest in this case, you should list them in the box below. Please also provide for each such person brief but clear reasons for this statement. Your attention will be drawn to the decision in Eurocom Limited-v- Siemens PLC [2014] EWHC 3710 (TCC) to the effect that misrepresentation in this statement could vitiate the appointments process in its entirety, rendering any award made unenforceable.

Name	Firm	Reason

**Please note:** While the President will give careful consideration to any representations, he/she will reach his/her own decision as to whom is appointed.

### How to pay

RICS charges an administration fee of **£195.00** to make an appointment. There is no VAT payable. This payment is non-refundable whether or not the President makes the appointment (e.g. if the matter is settled by agreement and the application is withdrawn).

#### You can choose to pay by the following:

- A card payment. One of our advisors will contact you to arrange payment. If you are submitting an application around a major term date please submit your application and then telephone 020 7334 3806 where one of our advisors will assist you with payment.
- By using your bank or building society to pay the application fee.

**RICS Bank account details:**

Account number: 30786339

Sort code: 56-00-45

Swift Code: NWBK GB2L

You must provide the name and the postcode of the holding. This will ensure that your payment is correctly allocated and your application is processed. Please email a copy of your bank's confirmation to [drs@rics.org](mailto:drs@rics.org)

- Debit my RICS trade account number:

Account holders will be invoiced by our Finance Department. To apply for an account please email [drs@rics.org](mailto:drs@rics.org) Confirmation of the payment must be included with the application.

RICS is unable to accept credit or debit card details by email due to PCI compliance regulations.

Please be aware the applicant party has responsibility to ensure that payment is complete.

## Application submitted by:

Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Submitting this application to RICS Dispute Resolution Service confirms that you have read and understand the explanatory notes contained in this application form. Your application is accepted on this basis. If you are applying under the **Simplified Arbitration Service**, signatures from both parties is required as the application is submitted at joint agreement with both parties.

### Landlord or landlord's representative

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_

### Tenant or tenant's representative

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_

## Your privacy:

RICS takes the privacy and security of the personal information you provide very seriously. Your details are held in a secure database with authorised access only. We apply data processing policies in compliance with the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations (EC Directive 2003). RICS will not use the information you provide in this application to contact you with offers of products and services. Nor will RICS share your information with third parties for the purpose of sending you details of offers of products and services.

## Explanatory notes:

- RICS has a duty to act independently and transparently when appointing a dispute resolver. On receipt of a request, DRS will select a suitably qualified dispute resolver who is free from conflicts of interest, normally from the President's panel of dispute resolvers. Details of your application will be sent to prospective third parties to help them decide whether they are able to take on the appointment.
- After checking that the dispute resolver meets the criteria an appointment is confirmed on or on behalf of the President and the parties and the dispute resolver are notified.
- The application form contains sections to obtain information about the holding, the Act and the parties. To help DRS select someone who will have the confidence of the parties we rely on the information given in your application. An incomplete or incorrect application can result in an

inappropriate appointment. It is vital that you complete all sections of the application form; incomplete sections may result in delays.

- RICS DRS reserves the right to copy the application and/or any accompanying documentation to the responding party and/or representatives. This is the basis on which your application is accepted.
- If the dispute is resolved before the President makes an appointment, you must notify RICS DRS as soon as possible.
- If the matter is close to settlement a case can be withdrawn or placed on hold. The case can only be withdrawn or placed on hold with the agreement of both parties before the appointment is made. The applicant must submit a DRS5 form request for the appointment of an arbitrator/independent expert to be withdrawn or placed on hold. This can be located at [www.rics.org/drs](http://www.rics.org/drs)
- The parties are reminded that they may be jointly and severally liable, under contract of statute, for payment of the dispute resolvers' reasonable fees (including abortive fees for any work undertaken if the matter is settled before a decision is given).
- If opting for arbitration the Arbitrator's decision on a dispute is based entirely on his/her evaluation of evidence submitted by the parties.
- If opting for an expert determination the Independent Expert's decision will usually be based on a mix of his/her own investigations, the application of his/her subject matter expertise and an evaluation of evidence submitted by the parties.
- The parties are reminded that an Independent Expert has no automatic authority to decide matters on costs. Both parties must expressly provide the Independent Expert with such authority