

Consultation for qualifying works to a building for service charges.

With acknowledgment to The Leasehold Advisory Service

<https://www.lease-advice.org/advice-guide/section-20-consultation-private-landlords-resident-management-companies-agents/>

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1. Purpose of this document

This document explains the procedures for landlords, resident management companies and their managing agents in the private sector in England and Wales to consult their lessees and tenants before entering certain kinds of expenditure paid for from service charges. In this document we use the term 'leaseholder' to refer to both leaseholders and tenants.

This document supersedes the leaflet titled S20 Consultation jointly published by LEASE, ARMA and the ARHM in 2003.

This document does not explain the procedures for landlords in the social housing sector where public notice may be required before entering contracts. The relevant procedures in this case are contained in the document entitled Consultation for Council and other Public Sector Landlords available from the Leasehold Advisory Service.

This document is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties, then seek specific advice. There is now a substantial body of court and tribunal decisions.

2. Definitions and abbreviations used

Landlord: A landlord for the purpose of consultation includes 'any person who has a right to enforce payment of a service charge' (Section 30, Landlord and Tenant Act 1985).

Consequently, depending on the structure of the leases and titles at any given property, a landlord could be any of the following:

- Freeholder
- Head lessee
- Resident Management Company
- Right to Manage Company

The definition also includes 'superior landlords', so planned expenditure by the overall freeholder of a mixed residential and commercial development to which residential

leaseholders are bound by their leases to contribute (directly or indirectly) will be subject to consultation if the qualifying criteria are met.

The Regulations: The Service Charges (Consultation Requirements) (England) Regulations 2003.

Leaseholder: long leaseholder and tenant of private sector properties.

Tribunal: The First-tier Tribunal (Property Chamber) in England or the Leasehold Valuation tribunal in Wales.

The Act: the Landlord and Tenant Act 1985 which contains the primary legislation about consultation in section 20 of the Act.

RTA: recognised tenants association. An RTA is an association recognised by the landlord, or by a Rent Assessment Committee, under section 29 of the Landlord and Tenant Act 1985.

3. Introduction to the procedures

The law requires that leaseholders paying variable service charges must be consulted before a landlord carries out qualifying works or enters into a long-term agreement for the provision of services.

Detailed regulations have been produced under section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold and Leasehold Reform Act 2002) which set out the precise procedures landlords must follow; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations'). Similar regulations have been enacted in Wales.

The Regulations separate the consultation procedures into four schedules, each covering different contracts. This document explains only schedules 1, 3 and 4 (part 2). As set out above it does not explain the schedules relevant to councils and other social housing landlords.

The format of the notices required by the Regulations has not been prescribed in legislation, but suggested examples of what these may look like are contained in the Appendices to this document.

The requirements in the Regulations are defined under three headings:

- Qualifying works
- Qualifying long-term agreements
- Qualifying works under long-term agreements

4. Qualifying works

These are ‘works on a building or any other premises’ – that is, works of repair, maintenance or improvement. The inclusion of improvement in the definition of qualifying works does NOT allow a landlord to recover costs for improvements unless a liability for costs of improvements is included in the lease. When calculating the estimated cost, VAT on works must be included.

Landlords must consult if these works will cost over £250 for any one contributing leaseholder. Thus, in a property with unequal service charge contributions, the landlord must consult all leaseholders if any one of them would have to pay more than £250. If consultation is not undertaken, the landlord may not be able to recover costs over £250 per leaseholder.

A case in the High Court in 2012 (Phillips and others v Francis) cast doubt on whether there is a cost threshold below which landlords do not need to consult on qualifying works.

However, in October 2014 the Court of Appeal overturned this decision, so reinstating the “sets approach” i.e. section 20 consultation should be applied to individual sets of qualifying works without reference to time periods or service charge years.

The Court of Appeal also gave guidance on what factors are to be taken into consideration in identifying a single set of qualifying works. This is a question of fact and degree, and all relevant circumstances should be considered. The list is not exhaustive but relevant factors are likely to include:

1. Where the items of work are to be carried out;
2. Whether they are the subject of the same contract;
3. Whether they are to be done at more or less the same time or at different times;
4. Whether the items of work are different in character from, or have no connection with, each other
5. Whether all the works are the subject of one contract and;
6. The way in which works are planned and the lessor’s reasons for the way they are implemented are also of relevance.

5. Qualifying long-term agreements

A qualifying long-term agreement is an agreement entered into by the landlord with a wholly independent organisation or contractor for a period of more than 12 months. (Agreements before 31st October 2003 are exempt.) The deciding factor is the minimum length of the commitment. In other words, it is an agreement for a term which must exceed 12 months.

Landlords must consult where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100. Thus, in a property with unequal service charges, the landlord must consult all leaseholders if any one of them would have to pay more than £100 in any one year. The figure is to be calculated based on the leaseholder’s total contribution resulting from the agreement, including VAT.

If consultation is not undertaken, the landlord may not be able to recover more than £100 per leaseholder in any accounting period towards the costs under the agreement.

Examples of potentially qualifying long-term agreements include:

- agreements affecting the building generally (e.g. lifts, entry-phone systems, waste management or maintenance contracts);
- cleaning and gardening;
- insurance;
- utilities; and
- management agency agreements.

Some of these services may only have one realistically possible supplier. Nonetheless, consultation must be carried out, unless dispensation from compliance has been granted by the Tribunal. Contracts that are not qualifying long-term agreements include:

- contracts of employment;
- an agreement between a holding company and its subsidiary, or between subsidiaries of the same holding company (the definitions following those in the Companies Act 2006);
- an agreement for less than five years which was entered into at a point when there were no leaseholders or leaseholders at the property (for example on a new development);
- an agreement for more than twelve months which was entered into before 31 October 2003.

6. Qualifying works under a long-term agreement

Where the long-term agreement includes provision for the carrying out of works to the property (for example, a schedule of rates agreement for general maintenance), and these works will result in a charge to any one leaseholder of more than £250, then a separate consultation must be carried out under the provisions of Schedule 3. The original consultation under Schedule 1 in respect of the agreement itself does not provide any exemption from consultation for the works.

This requirement for consultation for works equally applies in cases of long-term agreements entered into prior to 31st October 2003 where at the time no consultation on the agreement was required.

7. Some general rules about the procedures

7.1 Who must be consulted?

Consultation notices must be sent both to individual leaseholders and to any RTA. Nomination of contractors from Leaseholders and RTAs

Landlords must invite leaseholders to nominate possible contractors in respect of consultations that are carried out under Schedule 1 and Schedule 4 (Part 2) of the Regulations.

The Act does not require that contractors nominated by leaseholders or RTAs should be wholly unconnected with the leaseholder or RTA concerned, or that the landlord must be made aware of any relationship that exists. However, where such a relationship is or becomes known to the landlord, that may be a factor considered when determining which contractor to use.

7.2 Nominated Contractors

- if a single nomination is made by an RTA (whether a nomination is also made by any leaseholder), the landlord must try to obtain an estimate from the nominated contractor;
- if a single nomination is made by only one leaseholder (whether a nomination is also made by an RTA), the landlord must try to obtain an estimate from the nominated contractor;
- if single nominations are made by more than one leaseholder (whether a nomination is made by an RTA), the landlord must try to obtain an estimate:
 1. from the contractor who received the most nominations; or
 2. if there is no such person but two (or more) receive the same number of nominations from one of those; or
 3. if there are a few nominations from more than one leaseholder, but no contractor has more than one nomination, from any nominated contractor;
 4. if multiple nominations are made by one leaseholder and by an RTA, the landlord must try to obtain an estimate from at least one person nominated by the tenant and from at least one (different) person nominated by the RTA.

7.3 Nomination of contractors and acceptable criteria for their appointment

The Act does not lay down the terms within which the landlord approaches leaseholders' nominees when seeking to obtain estimates for works or services. Most landlords will require certain fundamental criteria from their contractors (for example, public liability insurance, valid tax exemption certificate, confirmation of VAT status, copies of health and safety policy and confirmation of company status).

Landlords will have to justify their selection procedures to the Tribunal, if challenged. If they fail to convince the Tribunal in a particular case – for example, if the Tribunal considers the selection criteria to be too restrictive or anti-competitive – there is a risk that the consultation procedure could be adjudicated as invalid.

It is suggested that landlords make their criteria part of their requests for tenders from nominated contractors, to make clear that meeting the criteria is a necessary condition of any contract which may be awarded. Alternatively, there may be some merit in including a brief statement on the selection criteria with the Notice of Intention to the leaseholders when inviting nominees; this can make clear to the tenants that any nominated contractor will need to satisfy the requirements to be seriously considered for the contract.

The widening of the ability to nominate contractors is intended to provide a greater openness and encourage competition to deliver what can be seen as fair and reasonable charges to the leaseholders. Therefore, a degree of caution may be appropriate in the initial packaging of contracts, say for several estates, which might preclude nomination of smaller contractors.

7.4 How many notices must be served?

Landlords may have to serve consultation notices on leaseholders at the following three stages in the process of awarding a contract:

- the pre-tender stage – notice of intention; and
- the tender stage – notification of landlord's proposals (estimates); and
- in some cases, notice of reasons for awarding the contract.

7.5 Inspection of Documents

Where the landlord specifies the place and hours at which documents can be inspected the place and hours specified must be reasonable. The documents must be made available for inspection free of charge at that place and during the hours specified. Facilities for copying of the documents by leaseholders should be made available if possible. If copies cannot be taken at that time copies shall be provided on request and free of charge by the landlord. While certain facilities must be provided free of charge, it may be the case that the costs of the administration and management incurred in providing these facilities can be recovered through the service charges.

7.6 The duty to have regard

In any case where a landlord receives written observations during the consultation process, they have a duty to have regard to them. There is no statutory definition of 'have regard to', although in some instances the landlord must provide a response to the observations within a period of 21 days.

Where the landlord places a contract with a contractor that neither submitted the lowest estimate nor was nominated by a leaseholder or RTA then he is under a duty to state in writing the reasons for awarding the contract or specify the place and hours where the reasons may be inspected. Failure to follow the correct procedures may be a consideration of a Tribunal in any application before it in connection with the consultation procedures.

7.7 Connections between landlords and contractors

Schedule 1 and part 2 of Schedule 4 of the Regulations require that at least one of the estimates provided must be from a contractor 'wholly unconnected' with the landlord.

The 'connection' for these purposes is as follows:

- where the landlord is a company, if the person/party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

- where the landlord is a company, and the person/party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
- where both the landlord and the person/party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
- where the person/party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
- where the person/party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager

A 'close relative' for this purpose means a spouse or cohabitee, a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, stepparent, stepson or stepdaughter of that person.

7.8 The Timing of Notices

It is important that leaseholders are given a clear period to respond to notices. So, if notices require 30 days within which a leaseholder can comment it is recommended that the notice gives 30 days but add on an extra 2-3 days to allow for the time taken in posting notices.

7.9 How long will the consultation take?

The whole process may take a few months for the following reasons:

- leaseholders have 30 days to respond to a notice of intention served at the pre-tender stage;
- if a contractor is nominated by a leaseholder(s) or RTA, the contractor may need to be invited to tender;
- if contractors nominated by leaseholders or an RTA submit a tender, landlords will need to check whether the contractor meets the necessary criteria;
- time spent having regard to observations from leaseholders;
- landlords must make a summary of the observations and responses to the notice of intention (first notice), which must be sent to leaseholders with the notice of landlord's proposals or statement of estimates (second notice) ;
- leaseholders have a further 30 days to respond to the notice of landlord's proposals served at the tender stage.

8. The role of the Tribunal and dispensation

The Tribunal has powers to determine Section 20 matters. This includes the power under S20ZA (I) to dispense with the consultation requirements in a particular case 'if satisfied that it is reasonable to dispense with the requirements'.

The Supreme Court in a case in 2013 set out its views on how Tribunals should deal with applications for dispensation from landlords (Daejan v Benson).

The purpose of the Regulations is to ensure that lessees are protected from (a) paying for inappropriate works, or (b) paying more than would be appropriate. In considering dispensation requests, the Tribunal should focus on whether the lessees were prejudiced in either respect by the failure of the landlord to comply with the Regulations (relevant prejudice).

Where a landlord has failed to comply with the Regulations, there may often be a dispute as to whether the lessees would suffer relevant prejudice if an unconditional dispensation was granted. While the legal burden is on the landlord throughout, the factual burden of identifying some relevant prejudice is on the lessees. They have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Once the lessees have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it and should be sympathetic to the lessees' case.

Insofar as the lessees will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require the landlord to reduce the amount claimed to compensate the lessees fully for that prejudice.

The power to grant dispensation is not 'all or nothing'. The Tribunal has power to grant dispensation on appropriate terms and can impose conditions on the grant of dispensation including a condition as to costs that the landlord pays the lessees' reasonable costs incurred in connection with the dispensation application.

Application Form – Application for the Dispensation of All or Any of the Consultation Requirements Provided for by Section 20 of the Landlord and Tenant Act 1985

<https://www.lease-advice.org/files/2020/07/Application-for-the-dispensation-of-all-or-any-of-the-consultation-requirements-provided-for-by-Section-20-of-the-Landlord-and-Tenant-Act-1985.doc>

9. What is the penalty for non-compliance?

While the principal purpose of the consultation process is to seek the leaseholders' views on the landlord's proposals, the effect of the provisions is to limit the landlord's ability to recover if he does not comply.

If the landlord fails to carry out the full consultation procedures in the correct manner, he may not be able to collect or recover service charges above the level of the statutory minimum amounts – £100 per leaseholder per year in respect of a long-term contract, or £250 per leaseholder for works to the building. The landlord will have to cover the loss himself; in the case of an RMC or RTM company, the consequences could be disastrous, potentially rendering the company insolvent and unable to continue to fulfil its obligations to leaseholders.

10. Schedule 1 to the Regulations Consultation for qualifying long-term agreements

If landlords do not comply with these procedures, each leaseholder's contribution towards the cost of the goods or service supplied or works carried out under the contract may be limited to £100 a year. Leaseholders and RTA (if there is one) must be consulted about the choice of contractor.

There are three stages of consultation:

1. Pre-tender stage Notice of intention (Section 20 notice Appendix. 1)

– 30-day consultation period. This notice must be sent to each leaseholder that will be asked to contribute towards the costs through their service charges, and the RTA if there is one. This notice must:

- describe in general terms the works or services to be provided, or specify a reasonable place and hours at which a description can be inspected free of charge;
- state the landlord's reasons for considering such an agreement to be necessary;
- if the contract includes qualifying works, state the landlord's reasons for considering it necessary to carry out those works;
- inform each leaseholder and the RTA that they have 30 days from the date of the notice in which to make written observations, specifying where they should be sent, and by what date;
- inform leaseholders that they have the right to nominate a contractor that they feel should be invited to tender for the work and that they have 30 days in which to make their nomination.

If facilities to provide copies of the description of the contract are not made available at the times at which the description may be inspected, then copies must be provided free to any tenant on request.

Duty to have regard to observations

The landlord must have regard to any observations made.

Estimates

The landlord will then seek estimates from its chosen contractors but must also 'try to obtain' estimates from contractors nominated by leaseholders and/or an RTA. Criteria on which contractors nominated by tenant and/or an RTA should be invited to tender are set out in the previous section relating to Nomination of Contractors from leaseholders and RTAs.

2. Tender stage – Preparation of landlord's proposals

- the landlord shall prepare at least two proposals (estimates) as to the services, goods, works etc;
- at least one of the proposals must be from a contractor wholly unconnected with the landlord;
- furthermore, if nominations are received, the proposals must also include:
 - an estimate from a contractor nominated by a leaseholder (if obtained);
 - an estimate from a contractor nominated by an RTA (if obtained).

**Notification of landlord's proposals (Section 20 notice Appendix 2)
– 30-day consultation period.**

1. The landlord must give notice of the proposals to each leaseholder and to the RTA (if there is one).
2. Each proposal must contain:
 - a statement of the relevant matters;
 - a statement of name and address of each party to the proposed agreement apart from the landlord;
 - any connection (apart from the proposed agreement) between the party and the landlord;
 - the leaseholder's estimated contribution where reasonably practicable;
 - otherwise, the cost for the building or the premises where reasonably practicable;
 - otherwise, the current unit cost, hourly or daily rate, where reasonably practicable.
 - where the landlord's proposal is to appoint an agent to be responsible for the management of the property, each proposal must contain a statement indicating:
 - whether the proposed agent is or is not a member of a professional body or trade association and, if so, which one; and
 - whether the proposed agent does or does not subscribe to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents.
 - the provisions for the variation of any amount under the proposed agreement;
 - the intended duration of the agreement;
 - a summary of any observations received by the due date and the landlord's response to those observations.
3. The notice must include a copy of each proposal or specify a reasonable place and hours where they can be inspected.
4. If facilities to provide copies of the proposals are not made available at the times at which the proposals may be inspected, then copies must be provided free to any leaseholder on request.
5. The notice must:
 - invite the making in writing of observations on the proposals;
 - specify the address to which the observations must be sent;
 - state when the 30-day period for consultation ends;
 - inform that all observations must be received by that date.

The Schedule provides no obligation to make all the estimates received available for inspection, only those relating to the proposals made to the leaseholders. However, it would be good practice to make all estimates available for inspection if they were not one of the proposals put to lessees.

Duty to have regard to observations

The landlord must have regard to any observations made by the due date.

3. Award of contract Notification of the award of contract (Section 20 notice Appendix 3)–
21-day response period.

Within 21 days of entering into the agreement the landlord must send a notice to each leaseholder and the RTA which:

- states the reasons for awarding the contract, or giving the place and hours where those reasons may be inspected; and
- gives a summary of the observations received on the proposals and respond to them or specify a place and hours at which that summary and response may be inspected.

If facilities to provide copies of the statement, observations and landlord's response to the observations are not made available at the times at which they may be inspected, then copies must be provided free to any leaseholder on request. This notice is not required where the contract has been awarded to:

- a nominated contractor; or
- the lowest tender.

Appendix 1: Example notice of intention to enter into a long-term agreement

To all leaseholders of (insert name of the premises) and the (insert name of recognised tenants' association*).

* Delete if not applicable

1. It is the intention of (insert name of landlord or manager) to enter into a long-term agreement in respect of which we are required to consult leaseholders (see Note 1 below).
2. The (goods)(services)(works) to be provided under the agreement are as follows: (insert a general description of the subject-matter of the agreement);
or
3. A description of the (goods) (services) (works) to be provided under the agreement may be inspected at (insert place and hours for inspection) (see Note 2 below).
4. We consider it necessary to enter into the agreement because (insert statement of reasons; where the matters to be provided consist of or include qualifying works, state the reasons why you consider the works necessary).
5. We invite you to make written observations in relation to the proposed agreement by sending them to (address of landlord or manager). Observations must be made within the consultation period of 30 days from the date of receipt of this notice, and the consultation period will end on (insert date of not less than 30 days from the date that the notice is given to the recipient) (see Note 3 below).
6. We also invite you to propose, within 30 days from the date of receipt of this notice, the name of a person from whom we should try to obtain an estimate in respect of the matters described in paragraph 2 above (see Note 4 below).

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager)').

Address: (Give the address to which future communications relating to the subject matter of the notice should be sent.)

Date:

Notes

1. Section 20 of the Landlord and Tenant Act 1985 (as amended) ('the 1985 Act') provides that a landlord (as defined by Section 30 of the 1985 Act) must consult leaseholders who are required under the terms of their leases to contribute (by payment of service charges) to costs incurred under a qualifying long-term agreement, where the contribution of any one leaseholder exceeds £100 in any accounting period. 'Qualifying long-term agreement' is defined by Section 20ZA of the 1985 Act.
2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and
 2. a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any leaseholder, on request and free of charge, a copy of the description.

3. The landlord has a duty to have regard to written observations made within the consultation period by any leaseholder or recognised tenants' association. 'Recognised tenants' association' is defined by Section 29 of the 1985 Act.
 1. Where a single nomination is made by a recognised tenants' association (whether a nomination is made by any leaseholder), the landlord shall try to obtain an estimate from the nominated person.
 2. Where a single nomination is made by only one leaseholder (whether a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.
 3. Where a single nomination is made by more than one leaseholder (whether a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate
 1. from the person who received the most nominations; or
 2. if there is no such person, but two (or more) persons received the same number of nominations, being a number more than the nominations received by any other person, from one of those two (or more) persons; or
 3. in any other case, from any nominated person.
4. Where more than one nomination is made by any leaseholder and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate
 1. from at least one person nominated by a leaseholder; and
 2. from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

Appendix 2: Example notice of proposals to enter into a long-term agreement

To all leaseholders of (insert name of the premises) and the (insert name of recognised tenants' association*).

* Delete if not applicable

1. This notice is given following the notice of intention to enter into a long-term agreement issued on (insert date of notice of intention). The consultation period in respect of the notice of intention ended on (insert relevant date).
2. We have now prepared (insert number, at least two) proposals in respect of the (goods) (services) (works) to be provided under the agreement based on the estimates received, and (a copy of each proposal accompanies this notice) or (copies of the proposals may be inspected at (insert place and hours for inspection) (see Notes 1 and 2 below).
3. We invite you to make written observations in relation to the proposals by sending them to (address of landlord or manager). Observations must be made within the consultation period of 30 days from the date of receipt of this notice, and the consultation period will end on (insert date of not less than 30 days from the date that the notice is given to the recipient) (see Note 3 below).
4. We did not receive within the consultation period any written observations in relation to the notice of intention given on: (insert date of notice of proposals) (see Note 4 below) or
5. The written observations in relation to the notice of intention received during the consultation period may be summarised as follows: (insert summary of observations). Our response to the observations is: (state response) (see Note 4 below)

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager)').

Address: (Give the address to which future communications relating to the subject matter of the notice should be sent.)

Date:

Notes

1. The landlord is required to prepare at least two proposals in respect of the matters described in a notice of intention. These need not relate to the two lowest estimates. At least one of the proposals must propose that goods or services are provided, or works are carried out, by a person wholly unconnected with the landlord. Where an estimate has been obtained from a person nominated by leaseholders, the landlord must prepare a proposal based on that estimate. Each proposal must contain a statement of the intended duration of the agreement and the party's name, and address must be included on the proposal, as well as any connection between the party and the landlord (apart from the proposed agreement). Each proposal should state the estimated contribution relevant to the tenant's unit of occupation. If it is not reasonably practical to provide that information, the landlord may provide the overall cost estimated under the agreement or a unit cost or a daily or hourly rate. Where the agreement comprises of or includes the proposed appointment of an agent to carry out the landlord's

management obligations to the tenants each

proposal shall contain a statement saying whether or not the person is a member of a professional body or trade association (including the name of the body or association), and whether they do/do not subscribe to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents. Each proposal shall also contain details of the provisions (if any) to vary the amount specified in, or to be determined under the proposed agreement as well as the duration of the agreement.

2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and
 2. copies of the proposals must be available for inspection, free of charge, at that place and during those hours. If facilities to enable copies to be taken are not made available at the times at which the proposals may be inspected, the landlord shall provide to any leaseholder, on request and free of charge, a copy of the proposals.
3. The landlord has a duty to have regard to written observations made within the consultation period by any leaseholder or recognised tenants' association. 'Recognised tenants' association' is defined by Section 29 of the 1985 Act.
4. Where a landlord has received written observations within a consultation period in relation to a notice of intention to enter into a long-term agreement, he is required to summarise the observations and respond to them.

Appendix 3: Example notice of reasons for making a long-term agreement

See Note 1 below before sending this notice.

To all leaseholders of (insert name of the premises) and the (insert name of recognised tenants' association*).

* Delete if not applicable

1. This notice is given following the consultation with leaseholders on a notice of proposals to enter into a long-term agreement issued on (insert date of notice of proposals). The consultation period in respect of the notice of proposals ended on (insert relevant date).
2. We have now entered into an agreement for provision of the (goods) (services) (works) first described in the notice of intention dated (insert date of notice of intention) with (name of chosen contractor).
3. Our reasons for doing so are: (state reasons) (see Note 1 below)
or
4. A statement of our reasons for doing so may be inspected at (specify place and hours for inspection) (see Notes 1 and 2 below).
5. We did not receive within the consultation period any written observations in relation to the notice of proposals given on (insert date of notice of proposals) (see Note 3 below)
or
6. The written observations in relation to the proposals received during the consultation period may be summarised as follows: (insert summary of observations). Our response to the observations is (state response) (see Note 3 below)
or
7. A summary of the written observations received during the consultation period, together with our response to them, may be inspected at (specify place and hours for inspection) (see Notes 2 and 3 below).

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager)').

Address:

(Give the address to which future communications relating to the subject matter of the notice should be sent.)

Date:

Notes

1. Landlords do not need to send out this notice of reasons and summary/ responses if:
 1. the chosen contractor was nominated by a leaseholder, or
 2. the chosen contractor was the person who submitted the lowest estimate.
2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and
 2. copies of the documents must be available for inspection, free of charge, at that place and during those hours. If facilities to enable copies to be taken are not made available at the times at which the documents may be inspected, the

landlord shall provide to any leaseholder, on request and free of charge, a copy of the documents.

3. Where a landlord has received written observations within a consultation period in relation to a notice of proposals to enter into a long-term agreement, he is required to summarise the observations and respond to them within a notice of his reasons for making the agreement or specify the place and hours at which that summary and response may be inspected.

13.1 Schedule 4 (part 2): Consultation for qualifying works

Leaseholders and the RTA (if one exists) must be invited to nominate a contractor.

There are three stages of consultation.

1. Pre-tender stage – Notice of intention (Section 20 notice Appendix 4)
 - 30-day consultation period

A notice that the landlord intends to carry out works must be sent to each leaseholder and the RTA (if there is one).

This notice must:

- describe, in general terms, the works proposed to be carried out, or specify a (reasonable) place and hours at which a description of the works may be inspected;
- give the landlord's reasons why it is necessary to carry out the proposed works;
- invite observations in writing;
- give the address to which such observations must be sent;
- state that they must be delivered by the due date;
- give the date on which the consultation period ends (30 days);
- inform leaseholders and RTA (if there is one) that they have the right to nominate a contractor from whom the landlord should try to obtain an estimate.

If facilities to provide copies of the documents referred to in the notice are not available at the place specified, then copies must be provided to any leaseholder free on request.

Duty to have regard to observations

The landlord must have regard to any observations received by the due date.

Estimates

The landlord will then seek estimates from its chosen contractors but must also try to obtain estimates from contractors nominated by leaseholders and RTAs.

(Criteria on which contractors nominated by tenant and/or an RTA should be invited to tender are set out in the previous section relating to Nomination of Contractors from leaseholders and RTAs.)

2. Tender-stage consultation – Preparation of landlord's estimates
 - the landlord shall obtain at least two estimates for the carrying out of the proposed works;
 - at least one of the estimates must be from a contractor wholly unconnected with the landlord;

- the landlord must make all the estimates available for inspection.

Notification of the estimates (Section 20 notice Appendix 5)– 30-day consultation period

1. The notice must be sent free of charge to each leaseholder and the RTA (if there is one).
2. It must include a statement (the ‘paragraph b statement’) containing:
 1. for at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works (note, this does not need to be a copy of the estimate, simply a statement of the amount); and
 - at least one of these estimates must be from a contractor wholly unconnected to the landlord;
 - and where an estimate(s) has been obtained from a nominated contractor, then one of these estimates must be from a nominated contractor;
 2. where leaseholders have made observations by the due date, the landlord must provide a summary of them and his responses to them.
3. The notice must:
 1. specify a (reasonable) place and hours at which all the estimates may be inspected (note, this is an obligation to make all the estimates received available for inspection, not just the estimates on which the landlord’s statement is based);
 2. invite observations in writing regarding the estimates;
 3. give the address and the date by which observations must be sent;
 4. state that they must be delivered by the due date;
 5. if facilities to provide copies of the estimates are not available at the place specified there, then copies must be provided to any tenant free on request.

Duty to have regard to observations

The landlord must have regard to any observations received by the due date.

3. Award of contract .**Notification of the award of contract (Section 20 Notice no. 3)– 21-day response period.** Within 21 days the landlord must send a notice to each tenant and the RTA, which:
 - states the reasons for awarding the contract, or giving the place and hours where those reasons may be inspected; and
 - gives a summary of tenants’ observations on the estimates and the responses to them.

This notice is not required where the contract has been awarded to:

- a nominated contractor; or
- the lowest tender.

Appendix 4: Example notice of intention to carry out work

To all leaseholders of (insert name of the premises) and the (insert name of recognised tenants’ association*).

* Delete if not applicable

1. It is the intention of (insert name of landlord or manager) to enter into an agreement to carry out works in respect of which we are required to consult leaseholders (see Note 1 below).
2. The works to be carried out under the agreement are as follows: (insert a description of the subject-matter of the agreement)
3. or
4. A description of the works to be carried out under the agreement may be inspected at (insert place and hours for inspection) (See Note 2 below).
5. We consider it necessary to carry out the works because (insert statement of reasons).
6. We invite you to make written observations in relation to the proposed works by sending them to (address of landlord or manager).
7. Observations must be made within the consultation period of 30 days from the date of receipt of this notice. The consultation period will end on (insert date of not less than 30 days from the date that the notice is given to the recipient) (see Note 3 below).
8. We also invite you to propose, within 30 days from the date of receipt of this notice, the name of a person from whom we should try to obtain an estimate for the carrying out of the proposed works described in paragraph 2 above (see Note 4 below).

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager).')

Address: (Give the address to which future communications relating to the subject matter of the notice should be sent.)

Date:

Notes

1. Section 20 of the Landlord and Tenant Act 1985 (as amended) ('the 1985 Act') provides that a landlord (as defined by Section 30 of the 1985 Act) must consult leaseholders who are required under the terms of their leases to contribute (by payment of service charges) to costs incurred under qualifying works, where the contribution of any one leaseholder will exceed £250. 'Qualifying works' are defined by Section 20ZA of the 1985 Act.
2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and
 2. a description of the proposed works must be available for inspection, free of charge, at that place and during those hours. If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any leaseholder, on request and free of charge, a copy of the description.
3. The landlord has a duty to have regard to written observations made within the consultation period by any leaseholder or recognised tenants' association. 'Recognised tenants' association' is defined by Section 29 of the 1985 Act.
 1. Where a single nomination is made by a recognised tenants association (whether a nomination is made by any leaseholder, the landlord shall try to obtain an estimate from the nominated person.
 2. Where a single nomination is made by only one leaseholder (whether a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person. (3) Where a single nomination

is made by more than one leaseholder
(whether a nomination is made by a recognised tenants' association), the
landlord shall try to obtain an estimate:

1. from the person who received the most nominations; or
 2. if there is no such person, but two (or more) persons received the same number of nominations, being a number more than the nominations received by any other person, from one of those two (or more) persons; or
 3. in any other case, from any nominated person.
3. Where more than one nomination is made by any leaseholder and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate
1. from at least one person nominated by a leaseholder; and
 2. from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

Appendix 5: Example statement of estimates in relation to proposed works

To all leaseholders of (insert name of the premises) and the (insert name of recognised tenants' association*).

* Delete if not applicable

1. This notice is given pursuant to the notice of intention to carry out works issued on (insert date of notice of intention). The consultation period in respect of the notice of intention ended on (insert relevant date).
2. We have now obtained estimates in respect of the works to be carried out. We have selected (insert number, at least two) estimates from which to make the final choice of contractor (see Note 1 below).
3. The amount specified in the selected estimates as the estimated cost of the proposed works is as follows: (insert amount of each selected estimate against the name of each contractor concerned).
4. All the estimates obtained may be inspected at (insert place and hours for inspection) (see Note 2 below).
5. We invite you to make written observations in relation to any of the estimates by sending them to: (address of landlord or manager). Observations must be received within the consultation period of 30 days from the date of receipt of this notice. The consultation period will end on (insert date of 30 days from the date that the notice is given to the recipient) (see Note 3 below).
6. We did not receive within the consultation period any written observations.
or
7. We did not receive within the consultation period any written observations in relation to the notice of intention given on (insert date of notice of intention) (see Note 3 below)
or
8. The written observations in relation to the notice of intention received during the consultation period may be summarised as follows: (insert summary of observations). Our response to the observations is: (state response) (see Note 4 below)

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager)').

Address: (Give the address to which future communications relating to the subject matter of the notice should be sent.)

Date:

Notes

1. The landlord is required to select at least two estimates in respect of the matters described in a notice of intention. At least one of the estimates must be from a person wholly unconnected with the landlord. Where an estimate has been obtained from a person nominated by leaseholders, that estimate must be among those set out in the statement of estimates.
2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and

2. copies of the estimates must be available for inspection, free of charge, at that place and during those hours. If facilities to enable copies to be taken are not made available at the times at which the estimates may be inspected, the landlord shall provide to any leaseholder, on request and free of charge, a copy of the estimates.
3. The landlord has a duty to have regard to written observations made within the consultation period by any leaseholder or recognised tenants' association. 'Recognised tenants' association' is defined by Section 29 of the 1985 Act.
4. Where a landlord has received written observations within a consultation period in relation to a notice of intention to carry out works, he is required to summarise the observations and respond to them in this statement of estimates.

Appendix 6: Example notice of reasons for awarding a contract to carry out works

See Note 1 below before sending this notice.

To all leaseholders of (insert name of the premises) and the (insert name of recognised tenants' association*).

*Delete if not applicable

1. This notice is given pursuant to the statement of estimates issued on (insert date of notice of proposals). The consultation period in respect of the notice of proposals ended on (insert relevant date).
2. We have now entered a contract for the carrying out of the works first described in the notice of intention dated (insert date of notice of intention) with (name of chosen contractor).
3. Our reasons for doing so are: (state reasons) (see Note 1 below)
or
4. A statement of our reasons for doing so may be inspected at (specify place and hours for inspection) (see Notes 1 and 2 below)
5. We did not receive within the consultation period any written observations in relation to the statement of estimates given on (insert date of statement of estimates) (see Note 3 below)
or
6. The written observations in relation to the estimates received during the consultation period may be summarised as follows: (insert summary of observations). Our response to the observations is (state response) (see Note 3 below)

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager)').

Address: (Give the address to which future communications relating to the subject matter of the notice should be sent.)

Date:

Notes

1. The landlord does not have to send out this notice if
 1. the chosen contractor was nominated by a leaseholder, or
 2. the chosen contractor was the person who submitted the lowest estimate.
2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and
 2. copies of the documents must be available for inspection, free of charge, at that place and during those hours. If facilities to enable copies to be taken are not made available at the times at which the documents may be inspected, the landlord shall provide to any leaseholder, on request and free of charge, a copy of the documents.
3. Where a landlord has received written observations within a consultation period in relation to a statement of estimates in relation to proposed works, he is required to

summarise the observations and respond to them within a notice of his reasons for awarding a contract.

16.1 Schedule 3 to the Regulations: Consultation for qualifying works under a qualifying long-term agreement

Leaseholders are not invited to nominate a contractor and there is only one stage of consultation. If qualifying works are undertaken under a qualifying long-term agreement, then competitive tendering is not required in that the contractor is already in place. An example of this consultation requirement may be a major works to a lift within a long-term agreement.

1. Pre-tender consultation stage – **Notice of intention – 30-day consultation period**

A notice that the landlord intends to carry out works must be sent to each leaseholder and the RTA (if there is one).

This notice must:

- describe, in general terms, the works proposed to be carried out, or specify a (reasonable) place and hours at which a description of the works may be inspected;
- give the reasons why it is considered necessary to carry out the proposed works;
- contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on the proposed works;
- invite observations in writing on the proposed works or the estimated expenditure;
- give the address to which such observations must be sent;
- state that they must be delivered by the due date;
- give the date on which the consultation period ends (30 days);
- if facilities to provide copies of the documents referred to in the notice are not available at the place specified there, then copies must be provided to the leaseholder free on request.

Duty to have regard to observations

The landlord must have regard to any observations made by the due date.

Landlord's response to observations

Where observations are made, the landlord must respond directly in writing to the leaseholder within 21 days of receipt stating his response to the observations (NB – this must take the form of individual replies, not a general notice to all recipients of the previous notice).

Appendix 7: Example notice of intention to carry out works under a long-term agreement

NB – A notice of the intention must be sent to each leaseholder and RTA (if there is one).

To: (name and correspondence address of tenant) and/or: (name of RTA)

1. It is the intention of (insert name of landlord or manager) to carry out works under an existing long-term agreement previously consulted upon (or an agreement entered before 31st October 2003) with (insert name of contractor) in respect of which we are required to consult leaseholders (see Note 1 below).
2. The works to be carried out under the agreement are as follows (insert a description of the proposed works)
or
3. A description of the works to be carried out under the agreement may be inspected at (insert place and hours for inspection) (see Note 2 below).
4. We consider it necessary to carry out the works because (insert statement of reasons).
5. We estimate the total amount of the expenditure likely to be incurred on and in connection with the proposed works as: (insert estimated figure).
6. We invite you to make written observations in relation to the proposed works or estimated expenditure by sending them to: (address of landlord or manager).

Observations must be received within the consultation period of 30 days from the date of receipt of this notice. The consultation period will end on: (insert date of not less than 30 days from the date that the notice is given to the recipient) (see Note 3 below).

Signed:

(Signature of person giving the notice. Where an agent signs, insert also 'duly authorised agent of (name of landlord or manager)').

Address: (Give the address to which future communications relating to the subject matter of the notice should be sent.)

Notes

1. Section 20 of the Landlord and Tenant Act 1985 (as amended) provides that a landlord (as defined by section 30 of the 1985 Act) must consult leaseholders who are required under the terms of their leases to contribute (by payment of service charges) to costs incurred under qualifying works, where the contribution of any one tenant will exceed £250. 'Qualifying works' are defined by section 20ZA of the 1985 Act.
2. Where a notice specifies a place and hours for inspection:
 1. the place and hours so specified must be reasonable; and
 2. a description of the proposed works must be available for inspection, free of charge, at that place and during those hours. If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any leaseholder, on request and free of charge, a copy of the description.

3. The landlord has a duty to have regard to written observations made within the consultation period by any leaseholder or RTA (as defined by section 29 of the 1985 Act). The landlord is also required to state his response in writing to the person making written observations within the consultation period, within 21 days of receiving them.

References

- S20 Consultation for Council and other public sector landlords
- The Service Charges (Consultation Requirements) (England) Regulations 2003 – statutory instrument 1987.
- The Service Charges (Consultation Requirements) (Wales) Regulations 2004 -Welsh statutory instrument 684(W.72).
- ARMA members should also refer to Guidance Note A07 titled S20 Consultation