

# Welsh Statutory Instrument 2004 No. 684 (W.72)

## **The Service Charges (Consultation Requirements) (Wales) Regulations 2004**

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STATUTORY INSTRUMENTS

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**2004 No. 684 (W.72)**

**LANDLORD AND TENANT, WALES**

**The Service Charges (Consultation Requirements) (Wales)  
Regulations 2004**

*Made* *9th March 2004*

*Coming into force* *31st March 2004*

The National Assembly for Wales makes the following Regulations, in exercise of the powers conferred by sections 20(4) and (5) and 20ZA (3) to (6) of the Landlord and Tenant Act 1985[[1](#)], which are now vested in the National Assembly for Wales so far as exercisable in relation to Wales[[2](#)].

**Name, commencement and application**

**1.** - (1) These Regulations are called the Service Charges (Consultation Requirements) (Wales) Regulations 2004 and shall come into force on 31st March 2004.

(2) These Regulations apply in relation to Wales only.

(3) These Regulations apply where a landlord -

(a) intends to enter into a qualifying long term agreement to which section 20 of the Landlord and Tenant Act 1985 applies [[3](#)] on or after the date on which these Regulations come into force; or

(b) intends to carry out qualifying works to which that section [[4](#)] applies on or after that date.

**Interpretation**

**2.** - (1) In these Regulations -

"the 1985 Act" ("*Deddf 1985*") means the Landlord and Tenant Act 1985[5];

"close relative" ("*perthynas agos*"), in relation to a person, 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, step-parent, step-son or step-daughter of that person;

"cohabitee" ("*un sy'n cyd-fyw*"), in relation to a person, means -

(a) a person of the opposite sex who is living with that person as husband or wife; or

(b) a person of the same sex living with that person in a relationship which has the characteristics of the relationship between husband and wife;

"nominated person" ("*person a enwebwyd*") means a person whose name is proposed in response to an invitation made as mentioned in paragraph 1(3) of Schedule 1 or paragraph 1(3) of Part 2 of Schedule 4; and "nomination" ("*enwebiad*") means any such proposal;

"public notice" ("*hysbysiad cyhoeddus*") means notice published in the Official Journal of the European Union pursuant to the Public Works Contracts Regulations 1991[6], the Public Services Contracts Regulations 1993[7] or the Public Supply Contracts Regulations 1995[8];

"relevant matters" ("*materion perthnasol*"), in relation to a proposed agreement, means the goods or services to be provided or the works to be carried out (as the case may be) under the agreement;

"relevant period" ("*cyfnod perthnasol*"), in relation to a notice, means the period of 30 days beginning with the date of the notice;

"RTB tenancy" ("*tenantiaeth RTB*") means the tenancy of an RTB tenant;

"RTB tenant" ("*tenant RTB*"), in relation to a landlord, means a person who has become a tenant of the landlord by virtue of section 138 of the Housing Act 1985<sup>[9]</sup> (duty of landlord to convey freehold or grant lease), section 171A of that Act (cases in which right to buy is preserved), or section 16 of the Housing Act 1996<sup>[10]</sup> (right of tenant to acquire dwelling)<sup>[11]</sup> under a lease whose terms include a requirement that the tenant shall bear a reasonable part of such costs incurred by the landlord as are mentioned in paragraphs 16A to 16D of Schedule 6 to that Act (service charges and other contributions payable by the tenant)<sup>[12]</sup>;

"section 20" ("*adran 20*") means section 20 (limitation of service charges: consultation requirements) of the 1985 Act;

"section 20ZA" ("*adran 20ZA*") means section 20ZA (consultation requirements: supplementary) of that Act.

(2) For the purposes of any estimate required by any provision of these Regulations to be made by the landlord -

(a) value added tax shall be included where applicable; and

(b) where the estimate relates to a proposed agreement, it shall be assumed that the agreement will terminate only by effluxion of time.

### **Agreements that are not qualifying long term agreements**

3. - (1) An agreement is not a qualifying long term agreement<sup>[13]</sup> -

(a) if it is a contract of employment; or

(b) if it is a management agreement made by a local housing authority<sup>[14]</sup> and -

(i) a tenant management organisation; or

(ii) a body established under section 2 of the Local Government Act 2000<sup>[15]</sup>;

(c) if the parties to the agreement are -

(i) a holding company and one or more of its subsidiaries; or

(ii) two or more subsidiaries of the same holding company;

(d) if -

(i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and

(ii) the agreement is for a term not exceeding five years.

(2) An agreement entered into, by or on behalf of the landlord or a superior landlord -

(a) before the coming into force of these Regulations; and

(b) for a term of more than twelve months,

is not a qualifying long term agreement, notwithstanding that more than twelve months of the term remain unexpired on the coming into force of these Regulations.

(3) An agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, which provides for the carrying out of qualifying works for which public notice has been given before the date on which these Regulations come into force, is not a qualifying long term agreement.

(4) In paragraph (1) -

"holding company" and "subsidiaries" have the same meaning as in the Companies Act 1985[[16](#)];

"management agreement" has the meaning given by section 27(2) of the Housing Act 1985[[17](#)]; and

"tenant management organisation" has the meaning given by section 27AB(8) of the Housing Act 1985[[18](#)].

### **Application of section 20 to qualifying long term agreements**

**4.** - (1) Section 20 shall apply to a qualifying long term agreement if relevant costs<sup>[19]</sup> incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.

(2) In paragraph (1), "accounting period" means the period -

(a) beginning with the relevant date, and

(b) ending with the date that falls twelve months after the relevant date.

(3) In the case of the first accounting period, the relevant date is -

(a) if the relevant accounts are made up for periods of twelve months, the date on which the period that includes the date on which these Regulations come into force ends, or

(b) if the accounts are not so made up, the date on which these Regulations come into force.

(4) In the case of subsequent accounting periods, the relevant date is the date immediately following the end of the previous accounting period.

### **The consultation requirements: qualifying long term agreements**

**5.** - (1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.

(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.

(3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

### **Application of section 20 to qualifying works**

6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

**The consultation requirements: qualifying works**

7. - (1) Subject to paragraph (5), where qualifying works are the subject (whether alone or with other matters) of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works, are the requirements specified in Schedule 3.

(2) Subject to paragraph (5), in a case to which paragraph (3) applies the consultation requirements for the purposes of sections 20 and 20ZA, as regards qualifying works referred to in that paragraph, are those specified in Schedule 3.

(3) This paragraph applies where -

(a) under an agreement entered into, by or on behalf of the landlord or a superior landlord, before the coming into force of these Regulations, qualifying works are carried out at any time on or after the date that falls two months after the date on which these Regulations come into force; or

(b) under an agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, qualifying works for which public notice has been given before the date on which these Regulations come into force are carried out at any time on or after that date.

(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works -

(a) in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;

(b) in any other case, are those specified in Part 2 of that Schedule.

(5) In relation to a RTB tenant and particular qualifying works,

nothing in paragraph (1), (2) or (4) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

Signed on behalf of the National Assembly for Wales under section 66 (1) of the Government of Wales Act 1998[[20](#)]

*John Marek*

The Deputy Presiding Officer of the National Assembly

9th March 2004

## SCHEDULE 1

### Regulation 5(1)

#### CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS OTHER THAN THOSE FOR WHICH PUBLIC NOTICE IS REQUIRED

##### *Notice of intention*

**1.** - (1) The landlord shall give notice in writing of intention to enter into the agreement -

(a) to each tenant; and

(b) where a recognised tenants' association[[21](#)] represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b) state the landlord's reasons for considering it necessary to enter into the agreement;

(c) where the relevant matters consist of or include qualifying

works, state the landlord's reasons for considering it necessary to carry out those works;

(d) invite the making, in writing, of observations in relation to the proposed agreement; and

(e) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate in respect of the relevant matters.

#### *Inspection of description of relevant matters*

**2.** - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) 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 tenant, on request and free of charge, a copy of the description.

#### *Duty to have regard to observations in relation to proposed agreement*

**3.** Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### *Estimates*

4. - (1) Where, within the relevant period, a single nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a single nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate -

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate -

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

#### *Preparation of landlord's proposals*

5. - (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.

(4) Each proposal shall contain a statement of the relevant matters.

(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord -

(a) of the party's name and address; and

(b) of any connection (apart from the proposed agreement) between the party and the landlord.

(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord -

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

(b) where the landlord is a company, and the 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;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the 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

(e) where the 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.

(7) Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a

statement of that estimated contribution.

(8) Where -

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of the landlord's expenditure under the proposed agreement,

each proposal shall contain a statement of that estimated expenditure.

(9) Where -

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,

each proposal shall contain a statement of that cost or rate.

(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by the landlord of premises to which the agreement relates, each proposal shall contain a statement -

(a) that the person whose appointment is proposed -

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body or trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(13) Where observations are made to which (in accordance with paragraph 3) the landlord is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

*Notification of landlord's proposals*

**6.** - (1) The landlord shall give notice in writing of proposals prepared under paragraph 5 -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b) invite the making, in writing, of observations in relation to the proposals; and

(c) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

*Duty to have regard to observations in relation to proposals*

7. Where, within the relevant period, observations are made in relation to the landlord's proposals by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Duty on entering into agreement*

8. - (1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, the landlord shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any) -

(a) state the reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where observations are made to which (in accordance with paragraph 7) the landlord is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

SCHEDULE 2

Regulation 5(2)

CONSULTATION REQUIREMENTS FOR QUALIFYING LONG  
TERM AGREEMENTS FOR WHICH PUBLIC NOTICE IS  
REQUIRED

*Notice of intention*

1. - (1) The landlord shall give notice in writing of intention to enter into the agreement -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b) state the landlord's reasons for considering it necessary to enter into the agreement;

(c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom the landlord should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;

(e) invite the making, in writing, of observations in relation to the relevant matters; and

(f) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

*Inspection of description of relevant matters*

**2.** - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for

inspection, free of charge, at that place and during those hours.

(2) 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 tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to relevant matters*

3. Where, within the relevant period, observations are made in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Preparation of landlord's proposal*

4. - (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.

(2) The proposal shall contain a statement -

(a) of the name and address of every party to the proposed agreement (other than the landlord); and

(b) of any connection (apart from the proposed agreement) between the landlord and any other party.

(3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party -

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

(b) where the landlord is a company, and the 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;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the 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

(e) where the 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.

(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.

(5) Where -

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of the landlord's expenditure under the proposed agreement,

the proposal shall contain a statement of the amount of that estimated expenditure.

(6) Where -

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates,

the proposal shall contain a statement of that cost or rate.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why the landlord cannot comply and the date by which the landlord expects to be able to provide an estimate, cost or rate.

(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by the landlord of premises to which the agreement relates, each proposal shall contain a statement -

(a) that the person whose appointment is proposed -

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body or trade association, of the name of the body or association.

(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(10) Where observations are made to which (in accordance with paragraph 3) the landlord is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

#### *Notification of landlord's proposal*

**5.** - (1) The landlord shall give notice in writing of the proposal prepared under paragraph 4 -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;

(b) invite the making, in writing, of observations in relation to

the proposal; and

(c) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Paragraph 2 shall apply to a proposal made available for inspection under this paragraph as it applies to a description made available for inspection under that paragraph.

*Duty to have regard to observations in relation to proposal*

**6.** Where, within the relevant period, observations are made in relation to the landlord's proposal by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Landlord's response to observations*

**7.** Where observations are made to which (in accordance with paragraph 6) the landlord is required to have regard, the landlord shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state the landlord's response to the observations.

*Supplementary information*

**8.** Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable the landlord to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be) -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

### SCHEDULE 3

#### Regulation 7(1) and (2)

#### CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

##### *Notice of intention*

1. - (1) The landlord shall give notice in writing of intention to carry out qualifying works -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) contain a statement of the total amount of the estimated expenditure likely to be incurred by the landlord on and in connection with the proposed works;

(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

##### *Inspection of description of proposed works*

2. - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) 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 tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to proposed works and estimated expenditure*

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

*Landlord's response to observations*

4. Where observations are made to which (in accordance with paragraph 3) the landlord is required to have regard, the landlord shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state the landlord's response to the observations.

#### SCHEDULE 4

Regulation 7(4)

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS  
OTHER THAN WORKS UNDER QUALIFYING LONG TERM  
AGREEMENT OR AGREEMENTS TO WHICH REGULATION 7  
(3) APPLIES

PART 1

## CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS REQUIRED

### *Notice of intention*

1. - (1) The landlord shall give notice in writing of intention to carry out qualifying works -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom the landlord should try to obtain an estimate for carrying out the works is that public notice of the works is to be given;

(d) invite the making, in writing, of observations in relation to the proposed works; and

(e) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

### *Inspection of description of proposed works*

2. - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

- (a) the place and hours so specified must be reasonable; and
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) 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 tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to proposed works*

**3.** Where, within the relevant period, observations are made in relation to the proposed works by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

*Preparation of landlord's contract statement*

**4.** - (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a statement in respect of the proposed contract under which the proposed works are to be carried out.

(2) The statement shall set out -

- (a) the name and address of the person with whom the landlord proposes to contract; and
- (b) particulars of any connection between them (apart from the proposed contract).

(3) For the purpose of sub-paragraph (2)(b) it shall be assumed that there is a connection between a person and the landlord -

- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
- (b) where the landlord is a company, and the person 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;
- (c) where both the landlord and the person are companies, if

any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person 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

(e) where the person 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.

(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the amount of the relevant contribution to be incurred by the tenant attributable to the works to which the proposed contract relates, that estimated amount shall be specified in the statement.

(5) Where -

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed contract relates, the total amount of the landlord's expenditure under the proposed contract,

that estimated amount shall be specified in the statement.

(6) Where -

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the works to which the proposed contract relates,

that cost or rate shall be specified in the statement.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the reasons for being unable to comply and the date by which the landlord expects to be able

to provide an estimated amount, cost or rate shall be specified in the statement.

(8) Where observations are made to which (in accordance with paragraph 3) the landlord is required to have regard, the statement shall summarise the observations and set out the landlord's response to them.

#### *Notification of proposed contract*

5. - (1) The landlord shall give notice in writing of intention to enter into the proposed contract -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) comprise, or be accompanied by, the statement prepared in accordance with paragraph 4 ("the paragraph 4 statement") or specify the place and hours at which that statement may be inspected;

(b) invite the making, in writing, of observations in relation to any matter mentioned in the paragraph 4 statement;

(c) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Where the paragraph 4 statement is made available for inspection, paragraph 2 shall apply in relation to that statement as it applies in relation to a description of proposed works made available for inspection under that paragraph.

#### *Landlord's response to observations*

6. Where observations are made in response to the invitation in the notice under paragraph 5, the landlord shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state the landlord's response to the observations.

*Supplementary information*

7. Where a statement prepared under paragraph 4(7) specifies the landlord's reasons for being unable to comply with sub-paragraph (6) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable the landlord to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be) -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

PART 2

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS  
FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

*Notice of intention*

1. - (1) The landlord shall give notice in writing of intention to carry out qualifying works -

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall -

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify -

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

#### *Inspection of description of proposed works*

2. - (1) Where a notice under paragraph 1 specifies a place and hours for inspection -

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) 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 tenant, on request and free of charge, a copy of the description.

#### *Duty to have regard to observations in relation to proposed works*

3. Where, within the relevant period, observations are made in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

#### *Estimates and response to observations*

4. - (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the

nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate -

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate -

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9) -

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out -

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) a summary of any observations made in accordance with paragraph 3 and the landlord's response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord -

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

(b) where the landlord is a company, and the person 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;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person 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

(e) where the person 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.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by -

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any) -

- (a) specify the place and hours at which the estimates may be inspected;
- (b) invite the making, in writing, of observations in relation to those estimates;
- (c) specify -
  - (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period; and
  - (iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

**5.** Where, within the relevant period, observations are made in relation to the estimates by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Duty on entering into contract*

**6.** - (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, the landlord shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any) -

- (a) state reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
- (b) where observations are made to which (in accordance with paragraph 5) the landlord was required to have regard, summarise the observations and set out the landlord's response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, which apply only in relation to Wales, relate to the amount that tenants can be required to contribute, by the payment of service charges, to relevant costs incurred by landlords in carrying out works or under certain agreements. Unless a landlord complies with prescribed consultation requirements or obtains a dispensation from a leasehold valuation tribunal under section 20(9) of the Landlord and Tenant Act 1985 in respect of all or any of those requirements, tenants' contributions by way of service charges are limited.

Regulation 3(1) exempts from the consultation requirements applicable to agreements for a term of more than 12 months ("qualifying long term agreements"):

- (a) contracts of employment;
- (b) agreements between a tenant management organisation or an arms length management organisation (a body established under section 2 of the Local Government Act 2000) and a local housing authority under section 27 of the Housing Act 1985 (management agreements);
- (c) agreements between a holding company and any of its subsidiaries or between two or more subsidiaries of the same holding company; and
- (d) agreements for a term of not more than five years relating to buildings or other premises which are untenanted when the

agreement is entered into.

Regulation 3(2) provides that an agreement entered into before the coming into force of these Regulations is not a qualifying long term agreement even if more than 12 months of the term of the agreement remain when these Regulations come into force.

Regulation 3(3) provides that an agreement for a term of more than 12 months is not a qualifying long term agreement if it provides for the carrying out of works on a building or any other premises ("qualifying works") for which notice has been published in the Official Journal of the European Union ("the Official Journal") (to comply with EU procurement rules) before these Regulations come into force.

Regulation 4 imposes a limit of £100 in any accounting period (defined in regulation 4(2)) in respect of service charges attributable to the provision of goods or services, or the carrying out of works, under a qualifying long term agreement. That limit will apply unless the landlord complies with the consultation requirements prescribed by regulation 5 or obtains a dispensation from a leasehold valuation tribunal in respect of all or any of those requirements.

Regulation 5 deals with the consultation requirements applicable to qualifying long term agreements. Except in the cases mentioned below, the consultation requirements are those specified in Schedule 1. Where, on or after the coming into force of these Regulations, notice is required to be published in the Official Journal (to comply with EU procurement rules) of goods or services to be provided or works to be carried out under the agreement, the consultation requirements are those set out in Schedule 2. Where a person becomes a tenant as the result of exercising the right to be granted a long lease under section 138 of the Housing Act 1985 (right to buy) (including that section as applied in relation to the preserved right to buy under section 171A of that Act or the right to acquire under section 16 of the Housing Act 1996) the landlord is only required to comply with such of the consultation requirements applicable to the agreement as remain to be complied with after the thirtieth day of that person's tenancy.

Regulation 6 imposes a limit of £250 as regards a tenant's contribution in respect of service charges attributable to qualifying works. That limit will apply unless the landlord complies with the consultation requirements prescribed by regulation 7 or obtains a dispensation from a leasehold valuation tribunal in respect of all or any of those requirements.

Regulation 7 deals with the consultation requirements relevant to qualifying works of the descriptions specified in that regulation. In relation to other qualifying works, the consultation requirements under section 20 of the Landlord and Tenant Act 1985, as it stood immediately before the substitution effected by section 151 of the Commonhold and Leasehold Reform Act 2002, continue to apply by virtue of article 3 of the Commonhold and Leasehold Reform Act 2002 (Commencement No.2 and Savings) (Wales) Order 2004 (S.I. 2004/669 (W.62) (C.25)).

Paragraph (1) of regulation 7 relates to qualifying works that are the subject of a qualifying long term agreement. Subject to the exception for which paragraph (5) provides ("the paragraph (5) exception"), the consultation requirements are those set out in Schedule 3 to the Regulations.

Paragraphs (2) to (4) relate to qualifying works that are not the subject of a qualifying long term agreement.

Paragraph (2) deals with the consultation requirements in a case to which paragraph (3) applies. Subject to the paragraph (5) exception, the consultation requirements in such a case are those set out in Schedule 3 (the same requirements as apply to qualifying works under qualifying long term agreements).

Paragraph (3) applies where qualifying works are carried out:

(a) on or after the date that falls two months after the date on which these Regulations come into force under an agreement entered into before these Regulations come into force; or

(b) under an agreement for more than 12 months where notice of those works was published in the Official Journal before these Regulations come into force.

Paragraph (4) applies to cases to which paragraph (3) does not apply. Where notice of the qualifying works is required to be published in the Official Journal (to comply with EU procurement rules), and subject to the paragraph (5) exception, the consultation requirements are those set out in Part 1 of Schedule 4. Where notice is not required to be published in the Official Journal, and subject to the paragraph (5) exception, the consultation requirements are those set out in Part 2 of Schedule 4.

The paragraph (5) exception applies where a person becomes a tenant as the result of exercising the right to be granted a long lease under section 138 of the Housing Act 1985 (including that section as applied in relation to the preserved right to buy under section 171A of that Act or the right to acquire under section 16 of the Housing Act 1996). In that case, and in relation to that person and particular qualifying works, the landlord is only required to comply with such of the consultation requirements applicable to those works as remain to be complied with after the thirtieth day of that person's tenancy.

A Regulatory Appraisal has been prepared in connection with these Regulations. A copy may be obtained from the Housing Directorate, The National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ (Tel 029 20 823025).

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*Notes:*

[1] 1985 c.70. Section 20 was substituted, and section 20ZA inserted, by section 151 of the Commonhold and Leasehold Reform Act 2002 (c. 15). *See also* paragraph 4 of Schedule 7 to that Act for modifications relevant to sections 20 and 20ZA associated with the right to manage under Chapter 1 of Part 2 of that Act. The functions of the Secretary of State under sections 20 and 20ZA are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; *see* the entry in Schedule 1 for the Landlord and Tenant Act 1985. *See also* section 177 of the Commonhold and Leasehold Reform Act 2002.[back](#)

[2] *See* the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).[back](#)

[3] *See* section 20ZA(2) and regulations 3 and 4 of these Regulations.  
[back](#)

[4] *See* section 20(3) and regulation 6 of these Regulations. For the application of section 20, as originally enacted, in transitional cases, see article 3 of the Commonhold and Leasehold Reform Act 2002 (Commencement No. 2 and Savings) (Wales) Order 2004 (S.I. 2004/669 (W.62) (C.25)).[back](#)

[5] 1985 c. 70.[back](#)

[6] S.I. 1991/2680, to which there are amendments not relevant to these Regulations.[back](#)

[7] S.I. 1993/3228, to which there are amendments not relevant to these Regulations.[back](#)

[8] S.I. 1995/201, to which there are amendments not relevant to these Regulations.[back](#)

[9] 1985 c.68.[back](#)

[10] 1996 c.52.[back](#)

[11] Section 138 of the Housing Act 1985 (c. 68) is applied in relation to section 171A by section 171C. Sections 171A and 171C were inserted by the Housing and Planning Act 1986 (c. 63), section 8. *See also* the Housing (Extension of Right to Buy) Order 1993 (S.I. 1993/2240) and the Housing (Preservation of Right to Buy) Regulations 1993 (S.I. 1993/2241). Section 138 is applied in relation to section 16 of the Housing Act 1996 (c. 52) by section 17 of that Act. *See also* the Housing (Right to Acquire) Regulations 1997 (S.I. 1997/619).[back](#)

[12] *See also* section 139 and Parts 1 and 3 of Schedule 6 to the Housing Act 1985. Paragraphs 16A to 16D in Part 3 of Schedule 6 were inserted by the Housing and Planning Act 1986 (c.63), section 4 (4).[back](#)

[13] *See* the definition in section 20ZA(2) of the Landlord and Tenant Act 1985, inserted by section 151 of the Commonhold and Leasehold Reform Act 2002.[back](#)

[14] *See* section 38 of the Landlord and Tenant Act 1985 and section 1 of the Housing Act 1985.[back](#)

[15] 2000 c.22.[back](#)

[16] 1985 c.6. Definitions of "holding company" and "subsidiary" are

in section 736. That section and section 736A were substituted for the original section 736 by the Companies Act 1989 (c. 40), section 144 (1).[back](#)

[17] 1985 c.68. Section 27(2) was substituted by S.I. 2003/940.[back](#)

[18] Section 27AB was inserted by the Leasehold Reform, Housing and Urban Development Act 1993 (c.28), section 132. *See also* regulation 1(4) of the Housing (Right to Manage) Regulations 1994 (S. I. 1994/627).[back](#)

[19] *See* section 18(2) of the Landlord and Tenant Act 1985.[back](#)

[20] 1998 c.38.[back](#)

[21] *See* section 29(1) of the Landlord and Tenant Act 1985, which was amended by the Landlord and Tenant Act 1987 (c.31), Schedule 2, paragraph 10.[back](#)

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