

Section 20 Advice

Note: SEC has taken legal advice and the below advice has been endorsed by Devonshires LLP. However, each organisation should take its own legal advice relating to the specific circumstances of their case to ensure they follow the correct processes.

Website advice on leaseholder consultation and South East Consortium (SEC) frameworks:

There is a statutory obligation for landlords to consult with their residents before entering into qualifying long term agreements for works or services (often referred to as 'QLTAs') or undertaking qualifying works, where those works or services will give rise to service charges over a certain value. In the social housing sector this normally means consultation with leaseholders for works and services,

- Where the service charge cost to a leaseholder will be over £100 per annum for works or services lasting over 12 months (a QLTA), or
- £250 for works of less than 12 months (qualifying works)

Tenants who pay variable service charges must also be consulted, but this is usually limited to consultation over estate services or replacement of capital equipment (eg lifts) as most building works are paid for out of a tenant's rent, rather than service charge.

This consultation is usually referred to as "Section 20 consultation", taken from the original legislation that governs the consultation requirements, namely Section 20 of the Landlord and Tenant Act 1985.

The original legislation was amended by Section 151 of the Commonhold and Leasehold Reform Act 2002 and consultation must now conform to the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Consultation Requirements').

The basic information leaseholders need to know under the Consultation Requirements is:

- A description of the work in general terms, or where the specification can be viewed
- The reasons for the agreement
- The reasons for the work
- The likely cost to them (their proportion of the cost, where it is feasible to give that figure)

So that leaseholders can understand what is proposed and influence the decision of the landlord, the landlord is also obliged to:

- Invite observations from leaseholders
- State where observations are to be sent and when the periods end for



observations

- Invite leaseholders to nominate a contractor from whom the landlord should obtain an estimate
- Provide a selection of estimates from contractors who have bid for the work/services

The requirements vary according to whether the consultation is in respect of a QLTA or qualifying works and whether the particular contract must also be procured in accordance with the Public Contract Regulations 2015 (sometimes referred to as the 'OJEU' requirements).

Framework agreements

Frameworks are agreements whereby landlords can access a number of contractors who have already been selected as being suitable to provide works and services. An individual landlord or a group of landlords may set up a framework for their own benefit; and they may allow other landlords to join later. Independent organisations also establish frameworks for landlords to join.

The advantage of frameworks is that where works and services are over the public procurement financial thresholds, the framework avoids the need for multiple public procurement exercises when contracts are entered into ('called off') under the framework.

Frameworks do present challenges in relation to compliance with section 20 consultation and different rules apply depending on how the framework has been established.

Original landlord members of an SEC framework can rely on the fact that it has been established following section 20 consultation and compliance with the Public Contract Regulations 2015. This means that they can call off contracts with the framework contractors using the shorter form consultation requirements under Schedule 3 of the Consultation Requirements. This principle derives from the case of *RB of Kensington & Chelsea v Lessees of 1-124 Pond House* (2015).

However, landlords who join SEC frameworks after they have been established will have to carry out section 20 consultation when they call off contracts under the framework. It is also advisable that they carry out consultation with residents before joining the framework. This is not section 20 consultation and does not have to follow the Consultation Requirements. When calling off contracts, these landlords will have to comply with full section 20 consultation which may involve setting up mini competitions between contractors on the framework to satisfy the Consultation Requirements.

