**ANNEX H: Background to the Major Works regime**

1. Section 20 of the 1985 Act, and accompanying regulations[[1]](#footnote-1) requires that landlords are required to complete a consultation process with leaseholders paying variable service charges if:
2. they undertake “qualifying works” usually referred to as major works (works will cost any one leaseholder more than £250); or
3. they enter into a “qualifying long-term agreement” (QTLA), which is an agreement for a term which will exceed 12 months and will cost any one leaseholder more than £100 per annum.
4. The purpose of this consultation is to provide answers to four main questions:
5. What work is to be undertaken?
6. Why is the work necessary?
7. When will the work be undertaken?
8. How much will it cost?
9. A Section 20 consultation usually takes place in 2 stages:
10. Stage 1: once the qualifying works have been identified, a Notice of Intention is served by the landlord on each leaseholder and any recognised tenants association if there is one, describing the required works and rationale. Leaseholders have a 30-day period in which they can inspect the landlord’s scheme of works, make observations and nominate a preferred contractor. The landlord has a duty to have regard for the leaseholders’ observations. If a preferred contractor is nominated, the landlord has a duty to invite them to tender but it is not uncommon that the landlord’s tender requirements, e.g. level of indemnity insurance, will preclude a nominated contractor from being invited to tender. The landlord will then carry out a tender process. Where public notice has been published, there is no right for leaseholders or a recognised tenants association to nominate a contractor;
11. Stage 2: following the tender process, a Notice of Proposals is served by the landlord on each leaseholder and any recognised tenants association, describing at least two of the proposals received. Leaseholders have a 30-day period to inspect the landlord’s proposals and make observations on them. The landlord has a duty to have regard for the leaseholders’ observations. The landlord will then let the contract.
12. If the landlord lets the contract to the cheapest contractor or to a contractor nominated by a leaseholder, the landlord need take no further action. Otherwise, a Notice of Award of Contract is served by the landlord on each leaseholder and any recognised tenants association if there is one, within 21 days of entering into a contract.
13. Under Section 20ZA(1) of the 1985 Act, landlords may apply to the First-tier Tribunal (or the Leasehold Valuation Tribunal in Wales) for dispensation from the landlord’s requirement to consult, and the appropriate Tribunal may grant dispensation if it rules it “reasonable” to do so. This includes for work deemed to be “urgent”. If the landlord fails to consult, and in the absence of dispensation from the consultation requirements under s.20ZA, the landlord is limited to only recovering £250 per leaseholder towards the costs of the qualifying works (or £100 in the case of a QLTA).
14. A similar process to that described above applies to qualifying long-term agreements where any one leaseholder will be required to pay more than £100 per year. If the landlord fails to consult, in the absence of dispensation from the consultation requirements, the landlord is limited to only recovering £100 per leaseholder per year towards the costs of the agreement. Where the landlord first enters into a framework agreement (often lasting 5 years or more) and then draws down qualifying works under the framework agreement, the landlord only has to go through one further stage of consultation; the qualifying works’ consultation becomes an effective 1-stage process.

*Social landlords*

1. Social landlords (housing associations and local authority landlords) have a slightly different but broadly similar process for consultation detailed in the 2003 and 2004 Regulations. They will often procure services on an estate-wide (or even borough-wide) basis, and as such the value of such contracts may exceed the threshold which will require them to comply with public procurement legislation. Where they procure under such circumstances, this requires a public sector landlord to give “public notice” before considering any offers to tender, and awards in line with the terms of public procurement legislation.
2. Instead of tendering for individual programmes of qualifying works, social landlords may choose to employ framework agreements (likely to last several years) and draw down programmes of works under this particular type of QTLA. As a result, there is only one stage of consultation involved – over the proposed nature of the works – and the leaseholder has no right to nominate a contractor since this decision has already been determined through the wider procurement process and named in the framework agreement.
3. Social landlords are more likely to offer some form of payment plan, for example instalment payments, often interest free, over a number of years. Furthermore, subject to meeting certain criteria, the Housing (Service Charge Loans) Regulations 1992 gives homeowners who purchased their Right to Buy property within a specific time period the right to a loan from Homes England to pay for major works.
4. Where any major works in England are funded, in whole or in part, by the UK Government, then under the “Social Landlords Mandatory Reduction of Service Charges (England) Direction 2014 (known as “Florries Law”) there is a cap on service charges payable by the leaseholders of local authorities and housing associations. The cap is set at £15,000 for inside Greater London and £10,000 for outside Greater London over any five-year period for works where the application for Government funding was made on or after 12 August 2014.
5. Irrespective of any cap, any major works payable by leaseholders will form part of the service charge and the timing of any charge will need to align with the timing for demands as set out in the lease. Leaseholders will also be able to challenge the reasonableness of such charges at the appropriate tribunal.

1. The Service Charges (Consultation requirements) (England) Regulations 2003 (SI2003/1987) (“the 2003 regulations”) and the Service Charges (Consultation requirements) (Wales) Regulations 2004 (SI2004/684) (“the 2004 Regulations”). [↑](#footnote-ref-1)