



Department for
Communities and
Local Government

Consultation on recognising residents' associations, and their power to request information about tenants



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Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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Scope of the consultation

Topic of this consultation:	This consultation seeks views on proposed secondary legislation under section 29A Landlord and Tenant Act 1985 - Tenants' Associations: power to request information about tenants.
Scope of this consultation:	We are keen to hear the views of all parties with an interest in residential housing.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	An impact assessment will be undertaken in respect of the above proposal.

Basic Information

To:	This is a public consultation.
Body/bodies responsible for the consultation:	This consultation is being run by the Housing Standards and Supply Directorate of the Department for Communities and Local Government.
Duration:	This consultation will last for 8 weeks from 25 July 2017 until 19 September 2017.
How to respond:	<p>We encourage you to respond by completing an online survey at: https://www.surveymonkey.co.uk/r/s130RTA</p> <p>You can email your response to the questions in this consultation to: Leasehold.Reform@communities.gsi.gov.uk</p> <p>If you are responding in writing, please make it clear which specific questions you are responding to.</p>

Written responses should be sent to:

Leasehold, Rentcharge and Commonhold Team, 3rd Floor
North West, Fry Block, 2 Marsham Street, London SW1P 4DF

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

The deadline for all responses, however submitted is 19 September 2017.

Contents

<i>Scope of the consultation</i>	3
<i>Introduction</i>	6
<i>Glossary of terms used in this document</i>	7
<i>Overview</i>	9
<i>Existing Framework</i>	10
<i>Proposed process and timing for a landlord to provide qualifying tenant contact information</i>	12
<i>Consent and data protection</i>	14
<i>Ancillary costs</i>	15
<i>Non-compliance, disputes and appeals</i>	15
<i>Section 29A Landlord and Tenant Act 1985</i>	17
<i>Annex A: Proposed Form</i>	19
<i>Annex B: About this consultation</i>	24

Introduction

1. This consultation document seeks views on Government's proposals for secondary legislation in relation to section 29A Landlord and Tenant Act 1985 which was inserted by section 130 of the Housing and Planning Act 2016. Section 29A provides a new power for the Secretary of State by regulations to impose duties on a landlord to provide the secretary of a residents' association with information about tenants.
2. The policy intention is to make it easier for a secretary of a tenants' association to obtain contact information of qualifying tenants (leaseholders) from a landlord and so improve the prospects of the association being formally recognised under section 29(1) of the Landlord and Tenant Act 1985.

Glossary of terms used in this document

Landlord

The landlord is the person or organisation who owns the freehold or superior leasehold interest in the residential leasehold property and who has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The landlord may also be called the 'lessor' or 'freeholder'. The landlord may also be a Residents' Management Company named in a lease or a Right to Manage Company that has acquired the statutory right to take over the landlord's management functions.

Lease

A legally binding document that transfers from the landlord to the leaseholder the exclusive possession of certain property for a fixed period of time. The terms of the lease determine the rights and responsibilities of the landlord and leaseholder in respect of the property and cannot usually be changed without the agreement of all parties or an application to a tribunal or court for a variation.

Leaseholder

The person who has a legal right to exclusive possession of a property under the terms of a lease. A leaseholder may also be called a 'lessee', 'owner', 'tenant', or 'service charge payer'.

Qualifying Tenant

For the purposes of this consultation document a qualifying tenant is a resident who may be required under the terms of the lease to contribute to the same costs as another tenant by the payment of a service charge as defined by section 29(4) of the Landlord and Tenant Act 1985. For the purposes of this document a qualifying tenant will normally be a leaseholder, but may also be an assured shorthold tenant.

Managing Agent

A person or an organisation that is employed by a landlord, Residents' Management Company or Right to Manage Company to provide some or all of the management services required in a residential leasehold property. The managing agent's responsibility is to the landlord, Residents' Management Company or Right to Manage Company.

Tenants' Association

A tenants' association, which may also be referred to as a residents' association, is a group of qualifying tenants, normally leaseholders, who occupy properties under separate leases from the same landlord on similar terms.

Tenants' Association Secretary

The secretary is the main point of contact of the tenants' association.

Recognised Tenants' Association

A recognised tenants' association is one which has been formally recognised pursuant to section 29 of the Landlord and Tenant Act 1985 and where the association represents the common interests of its membership and acts collectively on their behalf.

Service Charge

A service charge is the amount payable by a leaseholder as part of or in addition to rent for services, repairs, maintenance, improvements, insurance and/or the costs of property management. The amount may be paid directly or indirectly, may vary according to the costs incurred or to be incurred, and is normally a proportion expressed in the lease of the total costs to the landlord of providing services to all leaseholders.

First-tier Tribunal (Property Chamber)

The First Tier Tribunal - Property Chamber (Residential Property) is an independent tribunal administered by Her Majesty's Courts and Tribunals Service that provides impartial adjudication in England for settling disputes involving leasehold and private rented property.

Overview

3. Qualifying tenants of a residential leasehold property have a legal right to form a recognised tenants' association.
4. Under section 29(1) of the Landlord and Tenant Act 1985, a residents' association is recognised either by notice in writing from the landlord to the secretary of the association, or by application to the First-tier Tribunal (Property Chamber).
5. A recognised tenants' association has an additional right above that of an individual leaseholder to appoint a surveyor to advise on any matter relating to service charges payable to the landlord by one or more members of the association (as outlined in section 84 and Schedule 4 of the Housing Act 1996). The appointed surveyor also has the right to appoint assistants, inspect and copy relevant documents held by the landlord and inspect any common parts of the residential leasehold property.
6. A recognised tenants' association can also exercise a number of other legal rights, in common with individual leaseholders. In particular, the secretary of a recognised tenants' association can:
 - ask for a summary of service charge costs;
 - inspect accounts and receipts in relation to service charges;

- ask to be consulted about the appointment or reappointment of a managing agent; and
 - ask for a summary of insurance cover for the residential leasehold property.
7. To improve the prospects for recognition, the secretary of a tenants' association will need to contact qualifying tenants of the residential leasehold property. It can often be problematic for the secretary to contact qualifying tenants. Approaches such as a mail shot and door-to-door enquiries may not be effective because some qualifying tenants will be absent.
 8. The Housing and Planning Act 2016 inserts into the Landlord and Tenant Act 1985 a power for the Secretary of State to impose duties on a landlord to provide the secretary of a residents' association with information about qualifying tenants.

Existing Framework

9. There are three separate elements currently in play that First-tier Tribunals can give due regard to, on a discretionary basis, when ruling on whether to establish a recognised tenants' association.
10. First, section 29 of the Landlord and Tenant Act 1985 Act defines a recognised tenants' association, however it does not impose a specific threshold of qualifying tenants required for the establishment of a recognised tenants' association.
11. Second, non-statutory guidance on recognising tenants' associations was produced in 1980 by the Joint Secretaries of State of England and Wales and their respective housing departments. The guidelines suggested that a 60% threshold of qualifying tenants may be required to form a recognised tenants' association. When making determinations on whether to formally recognise a residents' association, the First-tier Tribunal (Property Chamber) can follow

this guidance should they so choose depending on the particular circumstances. In 2015, the Department for Communities and Local Government published a Discussion Paper on the non-statutory guidelines. The majority of responses to a question about the percentage threshold indicated that it should be reduced below 60%.

12. Third and more recently, there has been a body of case law in which the Courts have formally recognised a tenants' association with less than a 60% membership of qualifying tenants. For example, in *Rosslyn Mansions v Winstonworth Ltd* [2015] UKUT 0011(LC), the Upper Tribunal ruled that it was inappropriate for the First-tier Tribunal (Property Chamber) to refuse an application for formal recognition on the presumption that the number of recognised tenants comprised less than 60% of the total potential membership.
13. In that particular case 57% of qualifying tenants wanted to form a recognised tenants' association, and they were responsible for 70% of the total amount of the service charges payable. The Courts determined that having a substantial majority of residents in favour of a recognised tenants' association was helpful, however any application must be looked at in the light of all the relevant circumstances.

Proposed process and timing for a landlord to provide qualifying tenant contact information

14. It is proposed that the regulations will set out the following processes and timings:
15. When requested to do so by a secretary of a tenants' association, a landlord must seek consent from all qualifying tenants to provide the secretary with the following information:-
 - a. The name of the qualifying tenant(s) who are sent service charge requests;
 - b. The correspondence address where service charge requests are sent; and
 - c. The email address of the qualifying tenant(s).
16. To seek consent, the landlord must send a form (to be prescribed as per the example at Annex A) to the tenant within five working days of receiving the request from the secretary.
17. The landlord must then provide the secretary with the contact information of all qualifying tenants who have consented by the 30th working day after the secretary's original request to the landlord. The landlord must, at the same time, provide the secretary with details of the number of tenants who have not consented.
18. Two examples of (a) the process and (b) the timings follow. We welcome your views on their practicality.

Diagram A: Suggested process for a Landlord responding to the secretary of a residents' association's request for contact information of qualifying tenants

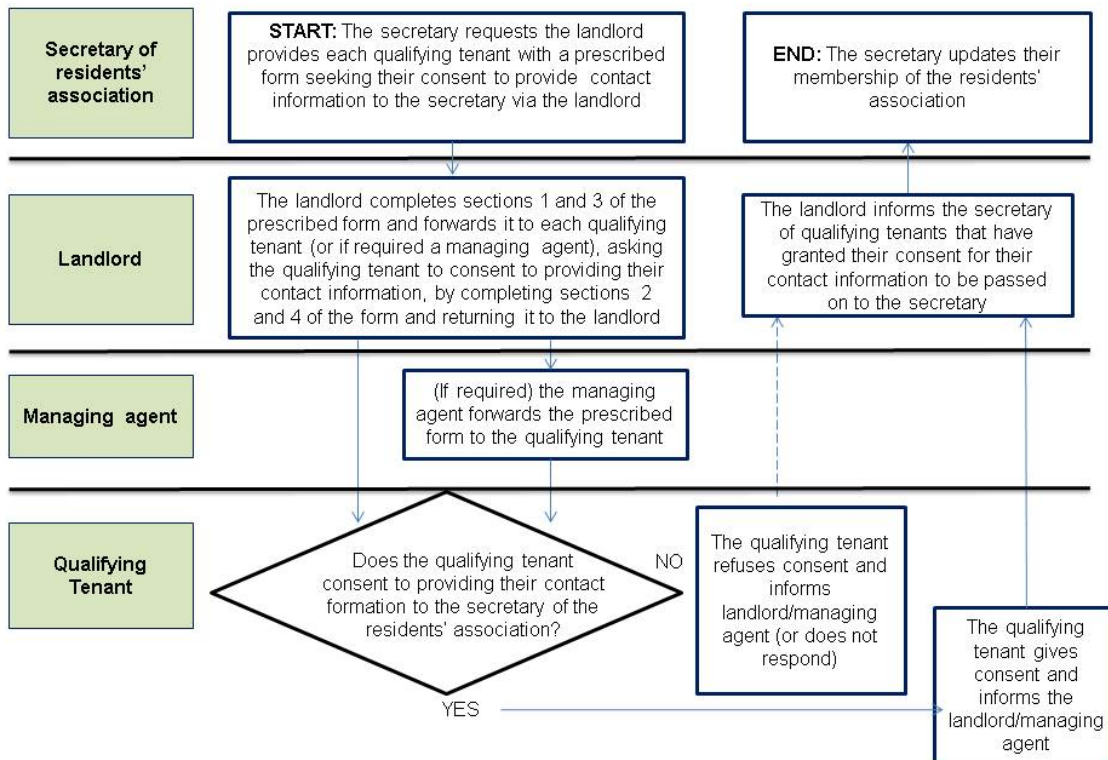
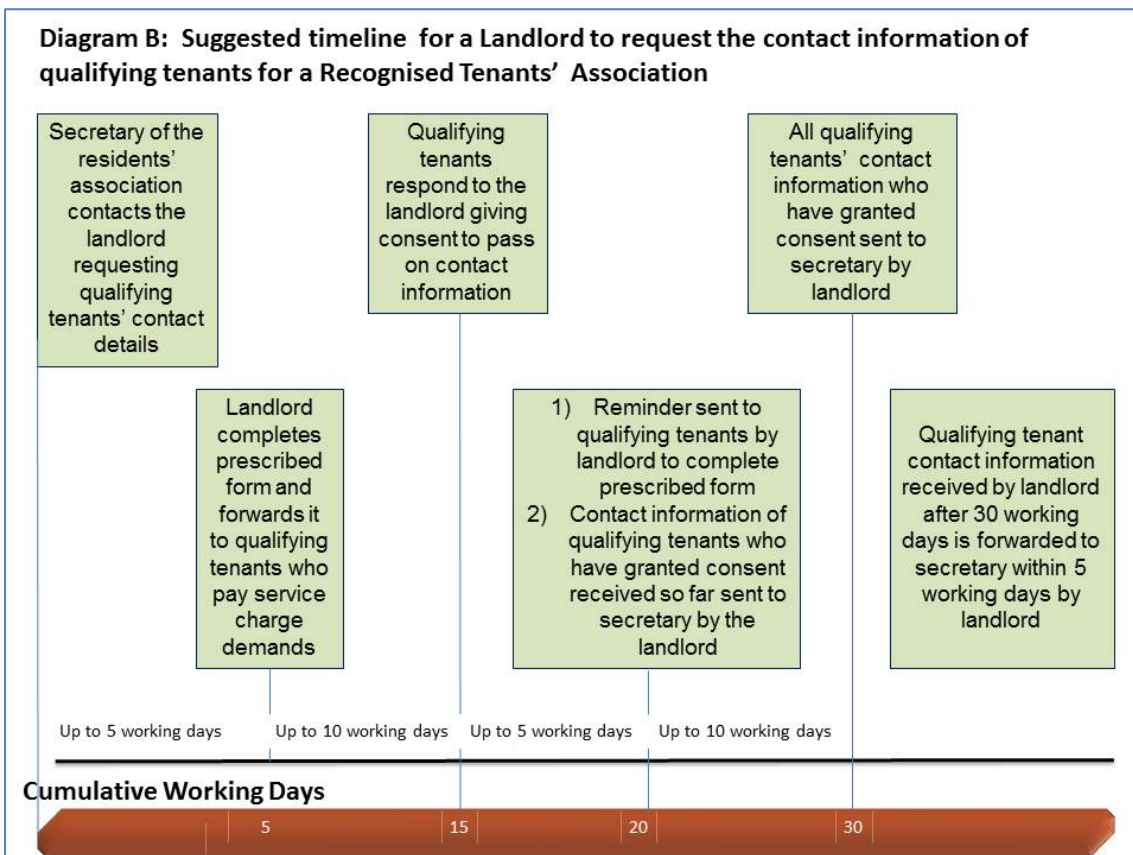


Diagram B: Suggested timeline for a Landlord to request the contact information of qualifying tenants for a Recognised Tenants' Association



Q1: Do you agree that the contact information suggested at paragraph 16 should be supplied? If not, what other details should be supplied and why?

Q2: How frequently should a secretary of a residents' association be able to repeat the request for contact information?

Q3 Are you content with the process outlined in Diagram A?

Q4: Do you agree with the timescales for responses outlined in Diagram B? If not, what other timescales would you suggest and why?

Q5: Do you agree that the proposed form at Annex A should be used? If not, what changes should be made to the form or what other method or format would you suggest and why?

Consent and data protection

19. It is proposed that the landlord must seek the consent of the qualifying tenants to provide their contact information to the secretary.

20. The first principle of the Data Protection Act 1998, states that data must be processed fairly and lawfully. Obtaining the consent of the individual whose data is being processed provides clear evidence of this.

21. The Data Protection Act 1998 does not specifically define consent. However, UK courts interpret consent by reference to the European Data Protection Directive. This requires consent to be unambiguous and defines it as a 'freely given, specific and informed indication of the wishes of the individual by which agreement to processing is signified (although not necessarily in writing)'.

22. In this instance, when obtaining consent from a qualifying tenant, the landlord will need to make it absolutely clear that contact information is required for the specific and express purpose of the secretary of the residents' association or recognised tenants' association carrying out their role and will not be used for any other purpose.

Q6: Do you agree that consent should be sought from the qualifying tenant before the landlord passes on contact information to the secretary? If you do not agree, what reasoning can you present to say why?

Q7. What justification might be provided for an opt-out, rather than an opt-in, system and what precedents exist to justify this?

Ancillary costs

23. The proposed process, as outlined at Diagram A, may incur a cost to the landlord and it will be possible for any new regulations to permit the landlord to charge other parties to recover those costs. This could be a flat fee, or a charge based on a sliding scale dependent upon the number of qualifying tenants contacted.

Q8: How should the cost charged by landlords be calculated?

Q9: Who should pay the costs?

Q10: What safeguards should be in place so that charges are reasonable?

Non-compliance, disputes and appeals

24. Section 29A(4) of the Landlord and Tenant Act 1985 allows for regulations to be made to specifically address the issue of non-compliance. In the event that

a Landlord fails to comply with their obligations, it is proposed that the First-tier Tribunal (Property Chamber) has power to make an order remedying the failure. Non-compliance with such an order would be contempt of court, and result in the award of a fine or custodial sentence.

Section 29A Landlord and Tenant Act 1985

(1)The Secretary of State may by regulations impose duties on a landlord to provide the secretary of a relevant tenants' association with information about relevant Qualifying Tenants. .

(2)The regulations may— .

(a)make provision about the tenants about whom information must be provided and what information must be provided;

(b)require a landlord to seek the consent of a tenant to the provision of information about that tenant;

(c)require a landlord to identify how many tenants have not consented.

(3)The regulations may— .

(a)authorise a landlord to charge costs specified in or determined in accordance with the regulations;

(b)impose time limits on a landlord for the taking of any steps under the regulations;

(c)make provision about the form or content of any notices under the regulations (including provision permitting or requiring a person to design the form of a notice);

(d)make other provision as to the procedure in connection with anything authorised or required by the regulations.

(4)The regulations may confer power on a court or tribunal to make an order remedying a failure by a landlord to comply with the regulations. .

(5)The regulations may include supplementary, incidental, transitional or saving provision.

(6)Regulations under this section are to be made by statutory instrument. .

(7)A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. .

(8)In this section—

“relevant tenants’ association”, in relation to a landlord, means an association of tenants of the landlord at least one of whom is a Qualifying Tenant of a dwelling in England;

“relevant Qualifying Tenant” means—

(a)a person who is a Qualifying Tenant of a dwelling in England and a member of the relevant tenants’ association, or

(b)

a person who is a Qualifying Tenant of a dwelling in England by virtue of being required to contribute to the same costs as a Qualifying Tenant who is a member of the relevant tenants’ association;

“Qualifying Tenant” means a tenant who, under the terms of the lease, is required to contribute to the same

Annex A: Proposed Form

FORM No. XX - Housing and Planning Act 2016, section 130, SI # XXXXX
Notice from a landlord on behalf of a residents' association: power to request information about tenants

Please complete this form electronically or write clearly in black ink. Please return the completed form to the [landlord(s)/managing agent] shown in section 3.

1. I, [] as the landlord(s), of [] ("the Property") request that, pursuant to my obligations under section 29A of the Landlord and Tenant Act 1985, you as [leaseholder/tenant paying a service charge to the landlord(s)] confirm whether you consent to [me/a managing agent acting on my behalf] sending your contact information to the Secretary of the Residents' Association. The Secretary is seeking formal recognition of the Residents' Association and further information on Residents' Associations and the benefits of seeking recognition are shown overleaf.

Name of Secretary of Residents' Association:

Correspondence address:

Email address:

2. If you do consent to the [landlord(s) / managing agent] providing your contact information to the Secretary of the Residents' Association shown in section 1 above, please complete sections 2 a b c below in full:

(a) Full name of the [leaseholder(s)/tenant(s) that pays the service charge demand] for the Property:

(b) Correspondence address where service charge requests are currently sent:

(c) Email address of [leaseholder(s)/tenant(s)]:

3. Please send this completed form, within 10 working days of receipt, to the [landlord(s) / managing agent] either via post or email at the following:

Correspondence address:

Email address:

4. Signature of leaseholder(s)/tenant(s):

I confirm that the contact information I have provided in Section 2 is correct, and I consent to the [landlord (s) / managing agent] passing it on to the Secretary of the Residents' Association.

Signature:

Date:

The leaseholder(s)/tenant(s) agree to provide their contact information in section 2 and does so on the understanding that such information will only be used by the Secretary in their residents' association or recognised tenants' association role.

What is a Residents' Association and Recognised Tenants' Association?

A residents' association is a group of tenants (normally leaseholders) who hold houses or flats on leases/tenancies from the same landlord on similar terms. To be most effective, a residents' association needs to be formally recognised by their landlord. By law, landlords must 'recognise' and consult with residents' associations. If a landlord refuses the request, leaseholders have the legal right to ask a Tribunal to grant them the status of a 'recognised tenants' association'. This is the term used in section 29 of the Landlord and Tenant Act 1985, as amended by paragraph 10 of Schedule 2 of the Landlord and Tenant Act 1987.

A Tribunal will assess whether to grant recognition to a residents' association based on the following criteria:

- The rules of the association should be fair and democratic
- The level of membership of those eligible to join
- Members must be paying a variable service charge to their landlord
- Tenants paying fixed rents/service charges will not qualify for membership (but they can be involved in the process informally)
- Only one vote per home will be permitted in the decision making processes
- No more than one residents' association per block will be recognised

The Tribunal will also ask to see copies of the following documents before granting recognition:

- The association's rules or constitution and elected officers
- The names and addresses of subscribing members

Tribunals will normally grant a certificate of recognition for four years, and the association can apply again at the end of that period. The Tribunal also has the right to cancel recognition if it's no longer appropriate.

What can a recognised tenants' association do?

If recognition is granted, residents' associations can exercise a number of legal rights under the Landlord and Tenant Acts. The Secretary of an association can:

- ask for a summary of service charge costs,
- Inspect accounts and receipts in relation to service charges,
- ask to be consulted about the appointment or reappointment of a managing agent,
- ask for a summary of insurance cover for the block, and
- appoint a surveyor to advise on any matter relating to service charges. The surveyor will have the right to see and copy relevant documents held by the landlord. They will also be able to inspect the communal areas and appoint assistants.

Landlords or managing agents should also serve copies of any notices required under consultations for major works upon the Secretary of a recognised association. Residents' associations also have the right to nominate contractors and inspect any estimates and specifications.

Glossary of terms (these may differ from strict legal definitions)

Landlord

The landlord is the person or organisation who owns the freehold or superior leasehold interest in the residential leasehold property and who has a defined legal relationship with the leaseholder governed by the lease and relevant legislation. The landlord may also be called the 'lessor' or 'freeholder' but throughout this form the term 'landlord' is used. The landlord may also be a Residents' Management Company named in a lease or a Right to Manage Company that has acquired the statutory right to take over the landlord's management functions.

Lease

A legally binding document that transfers from the landlord to the leaseholder the exclusive possession (i.e. the leasehold) of certain property for a fixed period of time. The terms of the lease determine the rights and responsibilities of the landlord and leaseholder in respect of the property and cannot usually be changed without the agreement of all parties or an application to a tribunal or court for a variation. If charges are to be paid, they must be provided for by the lease.

Leaseholder

The person who has a legal right to exclusive possession of a property under the terms of a lease. A leaseholder may also be called a 'lessee', 'owner', 'tenant', or 'service charge payer'.

Qualifying Tenant

For the purposes of this document a qualifying tenant is a resident who may be required under the terms of the lease to contribute the same costs by the payment of a service charge as defined by section 29(4) of the Landlord and Tenant Act 1985. A qualifying tenant will normally be a leaseholder, but may also be an assured shorthold tenant.

Managing Agent

A person or an organisation that is employed by a landlord, Residents' Management Company or Right to Manage Company to provide some or all of the management services required in a residential leasehold property. The managing agent's responsibility is to the landlord, Residents' Management Company or Right to Manage Company.

Tenants' Association / Residents' Association

A tenants' association / residents' association (referred to in this form as a residents' association) is a group of qualifying tenants, normally leaseholders, who occupy properties under separate leases from the same landlord on similar terms. To be most effective, a residents' association needs to be formally recognised by their landlord pursuant to section 29 of the Landlord and Tenant Act 1985. If a landlord refuses such a request, leaseholders have the legal right to ask the First-tier Tribunal (Property Chamber) to determine whether or not to formally recognise the residents'

association. Non-qualifying tenants can be members of the association although only in relation to non-service charge matters.

Recognised Tenants' Association

A recognised tenants' association is one which has been formally recognised pursuant to section 29 of the Landlord and Tenant Act 1985 and where the association represents the common interests of its membership and acts collectively on their behalf.

Service Charge

A service charge is the amount payable by a leaseholder as part of or in addition to rent for services, repairs, maintenance, improvements, insurance and/or the costs of property management. The amount may be paid directly or indirectly, may vary according to the costs incurred or to be incurred, and is normally a proportion expressed in the lease of the total costs to the landlord of providing services to all leaseholders.

First-tier Tribunal (Property Chamber)

The First Tier Tribunal - Property Chamber (Residential Property) is an independent tribunal administered by of Her Majesty's Courts and Tribunals Service that provides impartial adjudication in England for settling disputes involving leasehold and private rented property.

Annex B: About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).