

## **Section 20 consultation explained**

### **Introduction**

This booklet give a short summary of the regulations that we, LBHF, must follow when we consult you about work or services which you have to pay. These regulations came into effect in October 2003 as part of the Commonhold and Leasehold Reform Act 2002.

This booklet is only a guide. For a fuller explanation of the relevant legislation you may wish to visit the website of the Leasehold Advisory Service (<http://www.lease-advice.org/>) an independent organisation set up by government to provide advice on all leasehold matters.

### **Why must we consult you?**

Under the terms of your lease, you must pay towards the cost of any services or work to the building your home is in or the estate it is on. You do this by paying a service charge. Under section 20 of the Landlord and Tenant Act 1985 (amended by section 151 of the Commonhold and Leasehold Reform Act 2002), we must consult you about some of the work and services that you must pay for.

### **What must we consult you about?**

On behalf of your landlord (London Borough of Hammersmith & Fulham), we must consult you before we do any of the following.

- Carry out work which will cost any one leaseholder more than £250. This includes repairs, maintenance and improvements to your building and estate.
- Enter into a long-term agreement (for more than 12 months) with outside contractors for work, supplies or services which will cost any one leaseholder more than £100 a year. Examples include cleaning, grounds maintenance and surveying.
- Carry out work under a long-term agreement where the work will cost any one leaseholder more than £250.

### **What is a section 20 notice?**

A section 20 notice (S20) is a notice to tell you that we intend to carry out work or provide a service that leaseholders will have to pay towards. We must serve a S20 on any leaseholder who will be affected by the work or receive the service. We must also send a copy of the S20 notice to any registered tenants' association (RTA) that is associated with the building your home is in or the estate it is on. The S20 will include information about what we plan to do and how much it is estimated to cost. It will give you the opportunity to take part in the consultation process and comment on what is being planned.

### **How will we consult you?**

The section 20 consultation is only one part of the process that we use to discuss our plans with residents. The S20 process is set out in law and is made up of four schedules, each dealing with a different situation. The schedules are shown below.

## Section 20 consultation explained

Schedule	Consultation procedure for:	Do we need to give a public notice?
1	Long term agreements	No
2	Long term agreements	Yes
3	Work under a long term agreement	No
4 (part 1)	Work	Yes
4 (part 2)	Work	No

The content of the S20 notice and the procedure we must follow will vary depending on the type of contract and what it is we are planning to do. It also depends on whether we need to give a public notice (See 'What is a public notice' below). Generally, you will get three separate notices under the S20 process, one at each of the following three stages.

- Pre-tender stage: before we invite contractors to tender for the work (that is, to give an estimated cost).
- Tender stage: after we have received the tenders (estimates).
- Award of contract stage: when we award the contract to the successful tender.

There are separate sections in this booklet that explain the different schedules.

### How can you take part in the consultation?

You have the right to give us your views and comments on the plans during the consultation period. Each stage lasts for 30 days. The council must take note of any comments it receives and carefully consider the comments and suggestions about the work or the long-term agreement.

Where we are planning to do major work, we will hold a meeting for residents before you receive the S20 notice. This will give you an opportunity to hear about the work we are planning and for you to comment on that work.

In some circumstances, you will have the right to suggest a person, firm or contractor who you would like to tender for the work or long-term agreement. This does not apply in those schedules where we have to give a public notice.

### What is a public notice?

A public notice allows firms and contractors from other EU (European Union) countries to tender for work or long-term agreements. This is set out in the EU procurement rules ('procurement' means arranging and paying for work or services). These rules cover all large contracts offered by public and government organisations.

As a member of the EU, we have to give a public notice for any work that is worth over £4,322,012 (€5,186,012), Supplies £172,514 (€207,000) and Services £172,514 (€207,000).

These thresholds are effective from 1 January 2014 and apply to the total contract value (net of VAT) and not the annual amounts. These values vary depending on the value of the pound Sterling (£) against the euro (€). We must publish the public notice in the Official Journal of the European Union (OJEU).

## **Section 20 consultation explained**

Where we do not have to give a public notice, you do not have the right to suggest a contractor to tender for the work or long-term agreement. We must however still carefully consider any comment you make about the work or services we are planning.

### **What happens if we don't consult you?**

If we do not follow the regulations, we are limited to how much we can charge you for the work or service. Currently, the limits are £250 per item of repair work and £100 for services that we provide under a long-term agreement.

In certain circumstances, we can apply to the first tier tribunal (FTT) for 'dispensation'. If the FTT gave us dispensation, we would not have to follow the rules fully. However, we would have to satisfy the FTT that we had taken all reasonable steps to make leaseholders aware of our plans or that the situation was an emergency. An example of an emergency might be repairing a lift in a tower block.

## **Explaining the schedules**

### **Consulting you about long-term agreements**

Schedules 1 and 2 of the regulations contain the rules under which we must consult you before we enter into any long-term agreements. We must consult you if any work or service that will come out of the long-term agreement will cost you, or any leaseholder, more than the limit set down under the regulation. Currently, the limits are £250 per item of repair work and £100 for services. This notice must go to all leaseholders who will have to pay towards the cost, and any RTA that represents them.

## **The general procedures we must follow**

### **1. Pre-tender stage**

We must send you a section 20 notice before we invite contractors to tender. This first notice is known as a notice of intention. This notice must:

- describe the agreement, or tell you where and when you can see the information and get copies;
- explain the reasons for entering into the long-term agreement;
- say why work under the agreement is needed;
- invite you to make comments on the proposal in writing, and give the address where you should send them;
- invite you to suggest (nominate) a contractor who we should try and get an estimate from; and
- give the date on which the consultation period ends and make it clear that we must receive your comments and any nominations before the end of the consultation period. The consultation period will always begin at least 30 days from the date of the notice. We will allow a few extra days between us posting the notice and you receiving it.

At this stage, we cannot give you any idea of what you will have to pay towards the work. We can only do this when we get the estimates from the contractors. We must carefully consider any comments and suggestions you make within the consultation period. We will then invite contractors to tender for the work.

## Section 20 consultation explained

### 2. Tender stage

After we have received the tenders, we must prepare two proposals based on the estimates received. One of these must be from a contractor who is not connected with the council. We must also include the tender from any contractor nominated by a leaseholder or the RTA. Each proposal must:

- describe the work or services that are to be carried out under the agreement;
- give the name and address of the contractor;
- explain any connection between the contractor and the council;
- where possible, give your estimated cost or any other relevant costs;
- provide details of any arrangements for making changes to the terms of the agreement;
- say how long the agreement will last; and
- provide a summary of any comments we received about the first notice (notice of intent) and our response to the comments.

We must then send you a second S20 notice. This is known as the **notice of proposal**. This notice must:

- include copies of at least two proposals, or say where and when you can see them and get copies;
- invite you to make comments in writing on the proposals and give you an address to send your comments to; and
- give the date when the consultation period ends and make it clear that we must receive your comments by the end of the 30-day consultation period.

As with the first notice, we must consider any comments you make within the consultation period.

### 3. Award of contract stage

We only need to go through this stage if we awarded the contract to a contractor who did not offer the lowest price or if we did not award the contract to a contractor nominated by a leaseholder or RTA.

Generally, we will choose the lowest tender, but if we do not, you will get a third S20 notice, known as an **award of contract notice**. This notice must:

- give our reason for awarding the contract to that contractor; and
- provide a summary of any comments we received about the second S20 notice and our response to the comments.

Or, it will tell you where and when you can see the information and get copies.

If we plan to do work to your building or estate under this long-term agreement, we will consult you again under schedule 3 of these regulations. There is more information in the “Consulting you about work we will do under a long-term agreement” section of this booklet.

## **Section 20 consultation explained**

### **If we need to give a public notice**

If we need to give a public notice because the total value of the contract is over the limits (see schedule 2), the consultation process is slightly different from the one set out earlier. The main differences are as follows.

- You do not have the right to nominate a contractor. The first S20 notice will explain that you do not have the right because of the need to issue a public notice.
- In the second S20 notice, we only need to give you one proposal or tell you where you can see the information. We will tell you the name of the contractor we have chosen and, if possible, give you an estimate of how much you will have to pay. If we cannot do this we must tell you when we will be able to do so.
- We do not have to send you a third S20 notice.

### **Consulting you about work we will do under a long-term agreement**

We will carry out work or provide a service that is covered under a long-term agreement with a contractor, for example day-to-day repairs, buildings insurance and work done under Planned Preventative Maintenance. We will have consulted you about the original agreement, perhaps some years before, but we must consult you again if we are going to do work using a long-term agreement.

Schedule 3 contains the rule that apply to the consultation process. You will be able to comment on the planned work but you will not be able to nominate a contractor because we will have already chosen one. The general procedure we must follow is described below.

#### **1. Notice of intention**

Before we carry out any work, we must send a S20 notice of intent to all leaseholders who will have to pay towards the work, and any RTA that represents them. This is the first S20 notice and it must:

- describe the planned work, or tell you where and when you can see the plans and get copies;
- explain why we need to do the work;
- give the total estimated cost;
- invite you to make comments in writing on the proposal and give you the address where you should send your comments; and
- give the date the consultation period ends and make it clear that we must receive your comments before the end of the 30-day consultation period.

Again we must consider any comments we receive and respond to them within 21 days. This is often the first time that we will have your individual estimated costs for the work and we will include that information on this notice, together with the total costs of the work.

### **Consulting you about work not covered by a long-term agreement**

From time to time, we will carry out work that is not covered by a long-term agreement, Schedule 4 of the regulations sets out the process we must follow to consult with you this type of work. Schedule 4 has two parts. Part 2 includes the rules that say when we must give a public notice.

We must consult you if the cost to any leaseholder is more than £250. We must serve all leaseholders, and any RTA representing them, with a S20 notice if they will have to pay towards the cost of the work. The general procedure we must follow is described below.

## Section 20 consultation explained

### 1. Pre-tender stage

Before we invite contractors to give estimates for the work, we must send you the first S20 notice. This is called a notice of intention. It must:

- describe the planned work, or say where and when you can see the plans and get copies;
- explain why are carrying out the work;
- invite you to make comments in writing on the proposals, and give the address where you should send your comments to;
- invite you to suggest (nominate) a contractor who you would like us to try to get an estimate from; and
- give the date on which the consultation period ends and make it clear that we must receive your comments and any nomination before the end of the 30-day consultation period.

At this stage, we cannot give you an estimate of how much the work will cost. We can only do this when we have the tenders back and have put together a proposal.

We must carefully consider any comments and suggestions we receive during the consultation period. We will then invite contractors to tender for the work.

### 2. Tender stage

We must prepare at least two proposals from the estimates we receive. At least one of them must be from a contractor who is not connected with the council. We must also include an estimate the tender from any contractor nominated by a leaseholder or the RTA. Each estimate must:

- describe the planned work;
- give the name and address of the contractor;
- explain any connection between the contractor and the council;
- where possible, give your estimated cost or any other relevant estimated costs; and
- provide a summary of any comments we received about the first notice (notice of intent) and our response to the comments.

We must then send you a second S20 notice. This is known as the **notice of estimates**. It must:

- include copies of two estimates, or say where and when you can see the estimates and get copies;
- invite you to comment in writing on the estimates and give the address where you should send your comments to; and
- give the date on which the consultation period ends and make it clear that we must receive your comments before the end of the 30-day consultation period.

We must carefully consider any comments we receive.

## **Section 20 consultation explained**

### **3. Awarding the contract stage**

We only need to go through this stage if we award the contract to a contractor who did not offer the lowest price or we did not award the contract to a contractor nominated by a leaseholder or RTA.

Generally, we will choose the lowest tender, but if we do not, you will get a third S20 notice, known as an award of contract notice. This notice must:

- give our reasons for awarding the contract to that contractor; and
- provide a summary of any comments we received about the second S20 notice and or response to the comments.

Or, it will say where and when you can see the information and get copies.

#### **If we need to give a public notice**

If we need to give a public notice because the total value of the contract is over the limits (see schedule 4, part 2) the consultation process is slightly different from the one set out earlier. The main differences are as follows:

- You do not have the right to nominate a contractor. The first S20 notice will explain that you do not have this right because we need to give a public notice.
- In the second S20 notice, we only need to give you one proposal or tell you where you can see the information. We will tell you the name of the contractor we have chosen and, if possible, give you an estimate of how much you will have to pay towards the work. If we cannot do this, we must tell you when we will be able to do so.
- We do not have to send you a third S20 notice.

#### **If you want to suggest (nominate) a contractor**

If there is a contractor you would like us to invite to tender for work, you should give us their details in writing and send the details to the address given on the first S20 notice within the 30-day consultation period. There are certain conditions that contractors will have to meet to win a contract. These are summarised in an appendix included with the first S20 notice.

#### **What happens if you nominate a contractor?**

We will write to you to confirm we have received your nomination. We will consider your nomination together with any others we receive. We will tell you the result of the tender process in the second S20 notice.

#### **What happens if more than one contractor is nominated?**

If we receive more than one nomination, we must choose the contractor who had the most nominations. If two or more contractors receive the same number of nominations, we must choose one of those contractors.

#### **Can a leaseholders' association nominate a contractor?**

A leaseholders' association can only nominate a contractor if it has a constitution (a set of rules) that has been approved or recognised under Section 29 of the Landlord and Tenant Act 1985. Once the association has met this condition, it is referred to as a registered tenants' association (RTA).

## **Section 20 consultation explained**

### **What if an RTA nominates a contractor?**

If an RTA nominates a contractor, we must try to get an estimate from that contractor.

### **What if the RTA and leaseholders nominate different contractors?**

If this happens, we must try to get an estimate from both contractors.