

Section 20 consultation explained

Introduction

This guide provides a summary of the regulations that Hackney Council must follow when consulting you about works or services that you have to pay for.

The guide is not intended to be a full explanation of the law, which is complex. You should always think about getting independent advice if you are unsure about your rights and obligations.

Why must we consult you?

Under the terms of your lease, you must pay towards the cost of any services or work to the block or estate in which you live. Under section 20 of the Landlord and Tenant Act 1985 (as 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?

We must consult with you before:

- We carry out any works that may cost a leaseholder more than £250. This includes repairs, maintenance and improvements to your block and estate.
- We enter into a long-term agreement (for more than 12 months) with any external contractor or service supplier that may cost a leaseholder more than £100 a year.
- We intend to carry out any works under a long-term agreement that may cost the leaseholder more than £250.

What is a Section 20 Notice

A section 20 notice (S20) is a notice that we must issue to leaseholders to tell you about any intended works or services that they are expected to pay towards.

There are four different Section 20 schedules depending on what we are consulting you about. These are set out below:-

Schedule	Consultation procedure for:	Public Notice needed?
1	Long term agreements - works or services	No
2	Long term agreements - works or services	Yes
3	Works under a long term agreement	No
4 (part 1)	Works	Yes
4 (part 2)	Works	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).

How can you take part in the consultation?

You have the right to give us your views and comments on the plans at each stage of the consultation period. Each stage allows for 30 days in which you can write and give us your views. The Council has 21 days to respond to any observations submitted by leaseholders.

Where we are planning to carry out significant major work, we will hold a meeting for residents before the formal consultation starts. This will give you an opportunity to hear about the work we are planning and for you to comment on that work.

Where we do ***not*** have to give public notice, 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.

What is a public notice?

The legislation refers to contracts 'for which public notice is required'. These are contracts where certain procurement rules apply - in these cases, landlords must publish contract opportunities on the UK e-notification service called Find a Tender Service (FTS).

A public notice is needed for work contracts as well as contracts for supplying goods or services with a value above certain limits. The procurement thresholds post-1st January 2022, were set by the UK government at £5,336,937 for works.

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 procedure exactly as set out in legislation. 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 & 2

Schedules 1 and 2 relate to qualifying long-term agreements (QLTAs). 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 £250 for repair work and £100 for services. This notice must go to all leaseholders who will have to pay towards the cost, and any Recognised Tenants' Association (RTA) that represent 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**.

At this stage, we cannot give you any idea of what you will have to pay towards the services or work. However, we will provide a general overview of what the agreement will cover. We must carefully consider any comments and suggestions you make within the consultation period. Once this stage of consultation is complete, we will then invite contractors to tender for the service/works.

2. Tender stage

After we have received the tenders, we must prepare two proposals based on the estimates received. At least one of these must be from a contractor who is not connected with the council. We must also include an appropriate tender from a contractor nominated by a leaseholder or the RTA, if applicable.

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

This notice will provide you with the details of the contractor we propose to put in place and more information about the contract, such as its length and value.

You will again be invited to make observations regarding the QLTA based on this additional information.

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 valid bid submitted by 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 a **Notice of Award of Contract**.

Consulting you about work under an existing qualifying long-term agreement - Schedule 3

We may need to carry out work that is covered under a QLTA with a contractor, for example day-to-day repairs, and work done under Planned Preventative Maintenance.

Although, we will have consulted you about the original long term agreement previously, we must consult you again if we are going to do work using a long-term agreement.

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.

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 - Schedule 4

From time to time, we will carry out work that is not covered by a long-term agreement. Schedule 4 consists of two parts. If the works are above the specified threshold mentioned in 'What is a public notice?', then we would utilise Part 2, which requires us to give 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.

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**.

At this stage, we cannot give you an estimate of how much the work will cost, only an outline of what kind of works we intend to carry out. We can only do this at the next stage when we have the tenders back.

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 of the tender from any contractor nominated by a leaseholder or the RTA, if applicable.

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

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 Section 20 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 our response to the comments.

If we need to give a public notice

Nominating a contractor

If you want to suggest (nominate) a contractor

If the works do not require a public notice and 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.

Please note that there are various conditions that contractors will have to meet to be eligible to bid for a Hackney contract. These include being able to meet a certain level of insurance when carrying out the works and having the capacity to fulfil the terms of the contract in line with the Council's requirements.

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 attempt to obtain a quote from the contractor who had the most nominations. If two or more contractors receive the same number of nominations, we must attempt to obtain a quote from 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).

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.

Further Information

If you would like more information on the relevant legislation relating to Section 20 consultation you may wish to visit the website of the Leasehold Advisory Service (LEASE) - www.leaseadvice.org. The Leasehold Advisory Service is an independent organisation who offers free and impartial advice on leaseholders matters.