

# LEASEHOLDER'S GUIDE TO SECTION 20 CONSULTATION



## Introduction

This guide gives a summary of the regulations that L&Q, must follow when we consult you about work or services which you have to pay for either as part of your service charge or as a one-off invoice. These regulations came into effect in October 2003 as part of the Commonhold and Leasehold Reform Act 2002.

The regulations are complicated and legal issues are involved. The information given in this guide is not a full explanation of the Law. You should always think about getting your own legal advice if you are unsure about your rights and obligations.

## Why must we consult with 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 to L&Q; via a one off invoice for major works; or through monies held in a sinking fund (if you have one). However, 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?

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 or lift servicing.
- 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 with you?

The S20 process is set out in law and is made up of four schedules, each dealing with a different situation. The schedules are explained on pages 2 & 3 of this guide.

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' on page 2 of this guide).

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 we advise you are what we are intending to do
- Tender stage: after we have received the tenders (estimates)
- Award of contract stage: when we award the contract to the successful tender

## How can you take part in the consultation?

You have the right to give us your views and comments on the plans during a consultation period. Each 'observation period' lasts for a minimum of 30 days. L&Q must take note of any comments it receives and carefully consider the comments and suggestions about the work or the long-term agreement.

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 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 certain monetary thresholds. These values vary depending on the value of the pound (£) against the Euro (€). We must publish the public notice in the Official Journal of the European Union (OJEU).

Where we have to give a public notice, you will 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 with 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 and that the situation was an emergency. Examples of emergency works might be repairing a lift in a tower block, or repairing a roof where there is a major leak.

## Explaining the different Schedules

There are 4 different schedules under which we have to consult with you. The schedules are shown in the table below.

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

### Schedules 1 & 2

These schedules cover long-term contracts (over 12 months) that are entered into by L&Q in order to provide a service, such as grounds maintenance, lift servicing, door entry servicing and communal cleaning etc.

If it is likely that the service will cost you over £100.00 per year for your share of a service, we must comply with the consultation regulations.

During the first stage L&Q must write to you to advise you of the service to be provided. You are then given a minimum of 30 days to raise observations about the service to be provided.

If you have been served a Schedule 1 Notice, you will be able to suggest (nominate) a contractor.

If you have been served a Schedule 2 Notice, you will not be permitted to nominate a contractor as the works will be advertised in the Official Journal of the European Union.

Once estimates are received then L&Q must send you a second notice called the 'Notice of Proposal'. This Notice provides details of the contractor(s) and estimated costs (if we know them). You are given a minimum of 30 days to raise any observations.

Under Schedule 1, L&Q must write to you to advise you who we intend to appoint as the contractor and why. This is not necessary in cases where the contract has been awarded to a nominated contractor or the contractor who supplied the lowest estimate.

Under Schedule 2, the Notice of Proposal will advise who we intend to appoint as the contractor. We do not have to serve a third Notice under Schedule 2 as the contractor tendered through Public Notice.

### **Schedule 3**

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

We may need to carry out work that is covered under a long-term agreement with a contractor, for example day-to-day repairs, or cyclical decorations.

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 under a long-term agreement and the charge is likely to cost you more than £250.00.

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.

We must advise you of the works we are planning to carry out, describe why the works are needed; and give you the estimated costs. You will be given a minimum of 30 days in which to make any comments, and as with the other Notices, we must consider any comments we receive and respond to them within 21 days.

### **Schedule 4 (Part 1) and 4 (Part 2)**

Schedule 4 (1) covers works where Public Notice IS required

Schedule 4 (2) covers works where Public Notice is NOT required

L&Q must write to you to advise you of the works to be undertaken and advise why they are required. You are then given a minimum of 30 days to raise observations about the works to be carried out.

If you have been served a Schedule 4 (Part 1) Notice you will not be permitted to nominate a contractor as the works will be advertised in the Official Journal of the European Union.

If you have been served a Schedule 4 (Part 2) Notice, you will be able to suggest (nominate) a contractor.

Once estimates are received then L&Q must send you a second Notice called the 'Statement of Estimates'. This Notice provides details of the contractor and their estimated costs. You are given a minimum of 30 days to raise any observations.

Under Schedule 4 (Part 1) the Notice of Proposal will advise who we intend to appoint as the contractor. We do not have to serve a third Notice as the contractor tendered through Public Notice.

Under Schedule 4 (Part 2), L&Q must write to you to advise you who we intend to appoint as contractor and why. This is not necessary in cases where the contract has been awarded to a nominated contractor or the contractor who supplied the lowest estimate.

## **Nominating a Contractor**

### **If you are invited 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 consultation period.

There are certain conditions that contractors will have to meet in order to tender for the works. These conditions are given in the S20 Notice but in general terms, the nominated contractor must hold public liability insurance, be a member of Constructionline and be able to provide references showing they have carried out similar works before. The Contractor must also agree to abide by L&Q's 'Code of Conduct for Maintenance Contractors'.

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

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.

## **Further Information**

If you require any further information regarding the Section 20 procedures you can contact the Homeownership Team at L&Q by calling 0300 456 9998, writing to us at Cray House, 3 Maidstone Road, Sidcup, Kent, DA14 5HU or emailing us at [section20@lqgroup.org.uk](mailto:section20@lqgroup.org.uk)

For free and impartial Legal advice information regarding your rights and obligations as a Leaseholder you can contact the Leasehold Advisory Service by visiting their website at [www.lease-advice.org](http://www.lease-advice.org)