



Leaseholder (Section 20) Consultation

1. Introduction

- 1.1. Section 20 of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 states that landlords have a duty to consult leaseholders and Recognised Tenants Associations (RTAs) before carrying out qualifying works or before entering into any Qualifying Long-term Agreement for the provision of services. This process is referred to as Section 20 Consultation.
- 1.2. This legal procedure ensures that leaseholders are aware of the works the Council propose to carry out and the estimated costs. It allows leaseholders to raise any concerns about the works or the cost of works before they are started. In some cases leaseholders will be given the opportunity to nominate a contractor that they would like Medway Council Landlord Services to tender for the works.

2. Purpose

- 2.1. The purpose of this policy is to make sure that:
 - all parties comply with the terms of each individual lease;
 - all parties comply with legal and regulatory requirements with regard to consultation;
 - all appropriate costs for the provision of maintenance and services are recovered.

3. Scope

- 3.1. This policy applies to all Medway Council Leaseholders, Recognised Tenants Associations (RTAs) and Landlord Services employees.

4. Legislation and Guidance

4.1. External

- 4.1.1. Landlord and Tenant Act 1985 (section 29)
- 4.1.2. Common hold and Leasehold Reform Act 2002
- 4.1.3. The Service Charges (Consultation Requirements) (England) Regulations 2003

4.2. Internal

4.2.1. Leaseholder Handbook

5. The policy

5.1. Medway Council Landlord Services will consult with leaseholders and any Recognised Tenants Association (RTA) on qualifying works and qualifying long term agreements when the set legislative criteria are met.

5.2. Qualifying Works

5.3. Qualifying works are works to the building for repair or maintenance issues.

5.4. Improvement work is not a qualifying work unless provision for the recovery of costs for these has been made in the lease.

5.5. As an example, the provision of a new pitched-roof to a building that previously had a worn-out flat roof would count as a repair as the work would be replacing an existing item with a new one using the latest materials and building techniques.

5.6. However, if a door entry system were to be fitted to a building that did not previously have one, this would be counted as an improvement and therefore would not fall into the qualifying works category unless provision for the recovery of costs has been made in the lease.

5.7. Leaseholders/RTAs will be fully consulted on any proposed qualifying works to be undertaken to their homes, block or estate, for which the work will cost any one leaseholder over £250.

5.8. Qualifying Long-term Agreements

5.9. Qualifying Long-term Agreements are contracts entered into with a service provider for the provision of goods and services that will affect the leaseholder's property for a period of more than 12 months.

5.10. The value of the contract dictates whether or not it is subject to a public notice. The values of contracts that require public notice is laid out in the EU Public Procurement Rules and can be found in Medway Council's Procurement Policy and toolkit.

5.11. 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.

5.12. The directives set out detailed procedures for the award of contracts whose value equals or exceeds specific thresholds. Details of the thresholds, applying from 1st January 2018 are given below. Thresholds are net of VAT. Annual change.

5.13. As a member of the European Union, we have to give a public notice for any work that is worth over £4,551,413, Supplies over £118,133 and Services over £615,278.

5.14. Leaseholders/ RTAs will be fully consulted on any proposed Qualifying Long-term Agreement where the contract for services will cost any one leaseholder more than £100 per annum.

5.15. In the rare instance that the original contractor is unable to fulfil the contract, the council will issue notice to explain why an alternative contractor is being considered and provide the leaseholder with estimated costs.

5.16. Contracts exempt from consultation

5.17. The following contracts are exempt from consultation even though costs against them may be recovered through service charges.

- A contract between a local authority and an Arms Length Management Organisation
- A contract between a local authority and a tenant management organisation
- A contract between a local authority and a holding company and or its' subsidiaries
- A contract of employment
- A contract of 5 years or less in length entered into during a period when a property was not tenanted by a leaseholder.

5.18. Some of the above do not currently affect leaseholders of Landlord Services, however, mention of them has been made in case there is a change in the future.

5.19. Stages of consultation

5.20. There are three main stages Medway Council Landlord Services must adhere to when completing Section 20 consultation. Although in some instances a

shorter consultation period maybe held, for example in instances where a contractor is considered who has previously been through a Section 20 consultation.

5.21. Stage 1 – Notice of Intention

5.21.1. The Council will send a Notice of Intention to Carry out Works to affected leaseholders/ RTAs. This notice will detail the following:

- the general terms the works or services to be provided;
- the reasons for considering such an agreement to be necessary;
- if the contract includes qualifying works, the reasons for considering it necessary to carry out those works;
- Medway Councils selection criteria.

5.21.2. Leaseholders/ RTAs will be given 30 days to make written observations about the works. The notice will specify the address to which those observations should be sent.

5.21.3. The Home Ownership Officer can be contacted by telephone or email to advise about the Section 20 procedure (Leaseholders will still be required to make any observations in writing, as per the prescribed timescales).

5.21.4. Where applicable leaseholders/ RTAs will be given opportunity to nominate a contractor of their own choosing. Any contractor nominated by a resident must meet all the conditions Medway Council have set for our contractors. The nomination must be made in writing and within 30 days of the notice of intention being served.

5.21.5. Where a public notice is required leaseholders/RTAs will not be able to nominate a contractor.

5.21.6. Landlord Services will consider observations received and will inform leaseholders or RTA's of the decision in writing within 21 days.

5.22. Stage 2 – Statement of Estimates

5.22.1. At the expiration of the Stage 1 30 day consultation period, the Council will seek to obtain at least two estimates. If nominations were made by a leaseholder/RTA within the consultation period, then at least one estimate will be obtained from a nominated contractor in accordance with government regulations.

5.22.2. The Council will send a Statement of Estimates to affected leaseholders. This notice will detail the estimates obtained, the leaseholders' estimated

contribution towards cost and summarises the written observations received during Stage 1.

5.22.3. A Notice to accompany the Statement of Estimates will also be served which sets out the hours and place where details of the estimates may be inspected, inviting lessees to make written observations on the estimates within 30 days and specifying the address to which those observations should be sent.

5.22.4. Landlord Services will consider observations received and will inform leaseholders or RTA's of the decision in writing within 21 days of receipt.

5.23. Stage 3 – Notice of Reasons

5.23.1. If at the expiration of the consultation period, the chosen contractor did not provide the lowest estimate, then within 21 days of entering the contract a “Notice of Reasons” will be served upon all lessees explaining the reasons for this decision.

5.23.2. Landlord Services does not have to give a “Notice of Reasons” or respond to observations if the contract is awarded to a contractor suggested by a leaseholder/RTA or the contract went to the lowest priced tender.

5.24. **Award of contract**

5.25. Landlord Services will inform leaseholders/ RTAs of the name of the contractor, estimated contract start date and contract length.

5.26. Landlord Services will aim to ensure that major works are completed within the published timescales and will advise leaseholders/RTAs of the reasons for any delay in completing the work.

5.27. **Failure to consult**

5.28. Failure to follow the correct consultation procedure on Qualifying Work will mean that Landlord Services are only able to recover £250 of the value of the work.

5.29. Failure to follow the correct consultation procedure on Qualifying Long-term Agreements will mean that Landlord Services are only able to recover £100 of the value of the contract from any one leaseholder in any one financial year.

5.30. **Exemptions from consultation requirements**

5.31. In some circumstances, it will not be possible to meet all the necessary consultation requirements. For example:

- very urgent works (on the grounds of safety etc.)
- works for which it is difficult to obtain more than one estimate (should the works required be a specialist function)

5.32. Landlord Services will seek advice from the First-tier Tribunal (Property Chamber) (FFT) on how to proceed with consultation if it is felt that any of the requirements of Section 20 Consultation cannot be met. Applications for exemption to the FFT will be made both in advance and retrospectively where necessary.

6. Role, Responsibilities and Authority

- 6.1. The Assistant Director Physical and Cultural Regeneration retains the overall responsibility for the implementation of this policy.
- 6.2. The Head of Housing Management is responsible for the operational delivery of this policy, the associated procedures and has the responsibility for ensuring that this policy complies with Regulatory and Legislative requirements.

7. Monitoring, Review and Evaluation

- 7.1. Senior management will monitor the Section 20 consultation process
- 7.2. This policy will be reviewed every two years or in line with legislative or regulatory changes.

Policy Version Control Sheet

Policy Title: Leaseholder (Section 20) Policy V2

Policy Author(s): Home Ownership Officer, HRA Income Manager, Policy and Partnership officer

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Cross References: Right to Buy policy

Amendments Made: No Major amendments have been made to this version of the policy. This policy has been streamlined to avoid duplication. This policy has been written in line with current legislation.