

FAQs – Dispensation application for Procurement of Gas and Electricity Energy Supply

Why have you written to me?

As a customer who pays a service charge we are required under Section 20 of the Landlord and Tenant Act 1985 to consult with you should we wish to undertake works or enter into qualifying long term agreements the length and value of which are over a long period of time.

The Section 20 consultation process was put in place to protect service charge payers and to make sure that landlords only carry out work or enter into agreements that are necessary and at a reasonable cost.

The process also allows service charge payers the chance to comment on the landlord's intention to undertake works and/or enter into a long-term agreement.

In certain circumstances it is possible for a landlord to apply to the First Tier Tribunal for dispensation from the formal requirements of the Section 20 consultation, as is our intention.

What gas and electricity supply has been renewed?

We have renewed our communal supply, often referred to as "Landlord Gas and Electricity" on your service charge statement. This includes lighting in communal hallways and receptions. **We have and are not switching your personal supplier.**

We charge a small number of customers for electricity and/or gas to their homes, where you are charged on usage through a meter that covers more than one property but no communal area. If you are one of these customers, this new contract will also apply to these personal charges.

Why have you changed it?

Given rising costs and having sought the opinion of an independent advisor it was recommended we sought a three-year fixed contract to mitigate the expected rise in prices for energy costs in our communal areas. 11 energy suppliers were invited to tender for the new contract. Our only criteria for the procurement exercise was best price.

Who will now be supplying the energy?

We have entered into a three-year deal with EDF to supply electricity and Gazprom to supply gas. The exception to this is York Place in Marlborough which has a meter that EDF do not quote on. For this site Total Gas and Power will be our supplier. **This deal is for our communal areas only, and your personal energy suppliers will not be affected.**

What do I need to do now I have received this letter?

There is a Response Form for download via our website <https://www.aster.co.uk/existing-customers/get-involved/have-your-say> and this enables you to say if you formerly consent to the application or to indicate if you oppose it. If you consent then it is not necessary for you to take any further action. The Tribunal has directed that anyone who wishes

to oppose the application should by **31 March 2020** send a copy of the completed Response Form to the Tribunal and to Aster Group.

What was the issue and why are you applying for dispensation?

Unfortunately, the way in which energy is procured has meant that we have been unable to follow the formal Section 20 consultation procedure.

EU Procurement Regulations require a "standstill" period of at least ten calendar days between the decision to award the contract and the signing of the contract.

The energy market does not operate in this way as bids are requested and contracts have to be signed within a 24 hour period.

It is impossible for the time period for consultation (30 days) laid down in the Consultation Regulations to be followed, since the price offered by the energy supplier will not be held open for the period necessary to carry out a full consultation. It is for this reason that contracts with the new energy suppliers started on the 1 April 2019 despite the consultation period not ending until the 4 May 2019.

We do not believe this caused any prejudice to our customers as we undertook exercise to ensure we achieved value for money in line with our procurement process and the contracts signed complied with our tendering policy. However, the purpose of this legal application is to ensure complete transparency by having an independent and expert panel examine what we are doing and the charges we are proposing.

The outcome of the First Tier Tribunal will determine if our customers have been prejudiced by our not giving the required period to register any observations regarding the signing of contracts during stage 2 of the Section 20 process.

The application to the Tribunal provides a single forum for homeowners to challenge and raise any issues and is the most efficient and transparent way for us to proceed.

First Tier Tribunal Frequently Asked Questions:

1. What is the First Tier Tribunal (Property Chamber)?

The First Tier Tribunal (Property Chamber) is the part of the UK legal system that handles all applications, appeals and references relating to disputes over property and land in the UK.

You can apply to the First-Tier Tribunal (Property Chamber - Residential Property) if you're a landlord, tenant, freeholder, leaseholder, park home occupier or site owner.

Each Tribunal usually consists of three members: a lawyer, who is often the chairman, a valuer and a lay person. The Tribunal is entirely independent and impartial in its approach.

2. Will I be charged for these legal costs?

No. There will be no cost to you. We will cover the legal fees associated with our application to the First Tier Tribunal.

3. Will there be a hearing and will I be able to attend?

Not in all cases. This will be decided by the First Tier Tribunal once they have reviewed the responses received. Only those who complete and return the Response Form will be allowed to go through the next stage of the proceedings. Those who do not complete a Response Form or those that complete the form to confirm they agree with the application will be removed as a respondent in these proceedings.

5. When will the hearing take place?

This is not known at this time and will only be necessary if the FTT consider it so based on the responses received. As the case progresses, further documents or orders from the Tribunal will be uploaded to our website.

6. When will we know the First Tier Tribunal decision?

Generally the First Tier Tribunal give their decision or determination about 6-8 weeks following the hearing.

Section 20 Frequently Asked Questions:

1. What is a section 20 consultation and why does it affect me?

Anyone who pays a service charge whether they are a leaseholder, shared owner or tenant maybe be affected by a section 20 consultation.

Through your service charge you pay a proportional share for various services provided to your property or the estate in which you live, for example grounds maintenance.

The Section 20 consultation process (or S20) was put in place to protect service charge payers and to make sure that landlords only carry out work or enter into service contracts that are necessary and a reasonable cost.

The process allows service charge payers the chance to comment on the works and where permitted to suggest contractors for the works.

2. When is the S20 consultation process used?

For any one-off work that will cost an individual service charge payer over £250 or any new service (for example ground maintenance) that lasts longer than 12 months and will cost any service charge payer over £100, we need to let you know and give you the chance to comment on what we are planning.

Your comments form part of a formal consultation between us and you and it's our legal requirement under section 20 of the Landlord and Tenant Act 1985 to involve you.

3 . How does the Section 20 consultation process work?

This may vary according to the type of work or service and the cost but usually:

1. We send you a legal Notice telling you what work or type of contract we are planning. This will include letting you know where you can find out more details and how you can provide your comments.
2. We get some quotes from contractors/service providers, taking into account any comments we've received.
3. We send you a 'notice of estimates' which gives you the details of the estimated costs. You are able to provide feedback on these costs.
4. Taking into account any feedback we received we award the contract to a preferred supplier to carry out the work/perform the service.
5. If the contractor is not the cheapest we will write to explain why they have been awarded the contract.

4. What is an observation?

You have a right to reply with your comments to a Section 20 notice up to 30 calendar days from the date of the notice. Your reply is known as an 'observation'.

All the comments and feedback we receive are taken into account when planning the work and awarding the contract.

You can make an observation about a notice in writing either by letter or e-mail. You can't make observations verbally either over the telephone or in person.

5. Where can I go for advice?

You can contact your local Citizens Advice Bureau for independent advice. The following websites also have useful information about the S20 process:

<http://www.lease-advice.org>

<http://www.leaseholderadvicecentre.co.uk>