

Electronic Signatures and Document Sealing

Audit and Governance Committee 24 August 2021

Lead Member: Councillor Alan McDermott, Leader of the Council

Lead Director: Lee Colyer, Director of Finance, Policy and Development

Head of Service: Patricia Narebor, Head of Legal Partnership and Monitoring Officer

Report Author: Gina Clarke, Team Leader (Corporate Governance)

Classification: Public document (non-exempt)

Wards Affected: All

Approval Timetable	Date
Management Board	21 October 2020
Constitution Review Working Party	TBA
Portfolio Holder	TBA
Full Council	TBC

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

1. That the Audit and Governance Committee recommends to Full Council to approve the minor amendments to the Constitution as set out in paragraph 1.5 of the report.

1. Introduction and Background

1.1 In recent times there has been a mounting trend towards developing a paperless working environment by making more use of electronic means of communication and document retention. As a result the use of electronic signatures became more common. The Electronic Communication Act 2000 and the Electronic Signature Regulations 2002 deal with the admissibility and authenticity of electronic signatures.

1.2 The current pandemic has led further changes in working practices with a significant increase in remote working with an even greater reliance on electronic practices. In consequence it's necessary to accept and formally recognise the validity of

electronic signatures on documents such as contracts, agreements, leases deeds, minutes and resolutions when used by both the Council and those with whom it enters into a contract or other legally binding deeds and documents. HM Land Registry will, for the time being, accept for the purposes of registration the certain deeds that have been electronically signed in accordance with the Land Registry requirements.

1.3 In addition remote working has caused significant difficulties in affixing the Council's common seal to contracts and other documents. The Common Seal is currently located the Legal office in the Town Hall in the custody of the Head of Legal Partnership in accordance with the Constitution. In the present circumstances it is necessary for two officers to physically attend the Legal office to affix and witness the affixing of the common seal. It is proposed to purchase mobile sealing devices which would be held remotely and securely in order to obviate the need for officers to attend the Town Hall.

1.4 It will not be the new practice to merely apply a JPG or PDF file of a signature to the document as this offers insufficient security. The requirements for the new software are that it is secure, reputable and effective in allowing both the council and other parties to easily sign documents with a strong audit trail to confirm who has performed the signature. Marketplace research has been conducted and there is at least one supplier who meets this requirement.

1.5 Some minor amendments to the Constitution will be required in order to facilitate these changes, namely –

- a) The addition of the following additional paragraphs to the Standing Orders on Procurement and Contracts:

Electronic signatures may be used by both the Council and the Supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Head of Legal Partnership. The Council shall use suitable, free software, such as Adobe, to create electronic signatures.

Electronic signatures will, in line with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter into a contract by and with the Council, insofar as the e-signature is a true representation of the authorised person's written signature and (a) and (b) below apply (to the supplier) in which case an e-signature and a signature will be referred to as the same.

(a) the Contract will be entered into in relation to being either under seal or under hand; and

(b) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.

Part 2 – Articles of the Constitution

- b) That the additional words in italics be added at;

Article 8.5.1 - The Common Seal of the Council *and the mobile sealing devices for remote use* shall be kept in a safe place in the custody of the Monitoring Officer.

Article 8.5.2 - The common seal of the Council *or the mobile seal for remote use* shall be affixed to a document only on the authority of:-:

The affixing of the common seal *or the mobile seal for remote use* shall be attested by the Monitoring Officer, Deputy Monitoring Officer or another person authorised by the Monitoring Officer.

- b) Article 8.5.3 - any entry of the sealing of every deed or document to which the Common Seal *or the mobile seal for remote use* has been affixed shall be made by the Chief Executive or Monitoring Officer and consecutively numbered in a book to be provided for that purpose.

- c) PART 3 – RESPONSIBILITY FOR FUNCTIONS AND SCHEME OF DELEGATIONS

DELEGATIONS TO THE HEAD OF LEGAL PARTNERSHIP AND MONITORING OFFICER

57. To sign the documents referred to in sub-paragraph 55 above and all other formal documents intended to give effect to decisions of a council body. .
Electronic signatures may be used where permitted by law and any other requirements. Electronic signatures may only be affixed using the Council's chosen electronic system or an approved alternative as agreed by the Head of Legal Partnership.

58. To sign any notice, demand or other document on behalf of the Council in connection with any actual or contemplated legal enforcement proceedings. .
Electronic signatures may be used where permitted by law and any other requirements. Electronic signatures may be used as referred to in sub-paragraph 57 above.

2. Options Considered

- 2.1 Leaving the Constitution unchanged which would result in the Council falling behind in the use of electronic practices and result in the continuation of the difficulties outlined in paragraph 1.3.
- 2.2 Amending the Constitution to recognise the validity of electronic signatures and to allow documents to be sealed remotely without the need for attendance at the Council offices.

3. Preferred Option and reason

- 3.1 Option 2.2 is the preferred option as it will enable the Council to follow evolving working practices and aid remote working.

4. Consultation on Options

- 4.1 The Management board has been consulted on the proposal.

4 Implementation

- 5.1 Subject to approval by the Audit and Governance Committee, the proposed changes will be submitted to Full Council
- 5.2 If Full Council is minded to approve the changes, the Constitution will be deemed to have been amended with immediate effect. The relevant documents will be updated and published on the website in due course.

5 Appendices and Background Documents

Appendices: None

Exempt appendices (if any) None

Background Papers: None

6 Cross Cutting Issues

A. Legal (including the Human Rights Act)

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The legal implications are set out in the main body of the report

A clear and effective Constitution supports the corporate priorities and reviewing the Constitution regularly ensures that it most effectively meets the needs of the Council and the public. The Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution.

It is a function of the Audit and Governance Committee to regularly review the Constitution in conjunction with the Monitoring Officer and recommend proposed changes, where significant, to the Council. There are no Human Rights Act implications.

Gina Clarke, Team Leader, Corporate Governance

B. Finance and Other Resources

Following approval of the recommendation, the Council will then follow procurement exercise in line with financial procedure rules for e-signature software.

[Name, title and date of finance officer who signed off the report]

C. Staffing

There are no implications on staffing levels or structures.

[Name, title and date of HR officer who signed off the report]

D. Risk Management

The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered. The changes proposed are to ensure the effective running of the council, when deciding whether to

recommend approval of the changes the committee will need to consider the risk of not recommending approval of the proposed amendments to the Constitution.

Gina Clarke, Team Leader, Corporate Governance

E. Environment and Sustainability

No significant direct implications

F. Community Safety

No significant direct implications.

G. Equalities

The use of electronic signatures will fulfil the same functions as hand written signatures and the appropriate level of authentication. There is no evidence to suggest that there could be a negative impact, as the current arrangements set out in the Constitution as to sealing and signing documents by hand written signatures remains alongside the introductions for the use of mobile sealing of documents, virtual execution and the use of electronic signatures.

However, the use of hand written signatures remains and can be used in circumstances where electronic signatures are not able to be used.

Those who are Disabled or elderly may not have access to or use ICT. However, most property transactions are undertaken by solicitors who are acting on behalf of their clients. The proposal will have a positive impact. It will increase the Council's ability to complete transactions such as contracts, deeds and certain property related transactions by providing their electronic signature, particularly advantageous at a time when COVID restrictions are in place and home working is necessary.

H. Data Protection

There are no specific privacy or data protection issues to address.

[Name, title and date of Data Protection Officer who signed off the report.]

I. Health and Safety

The proposals support the Council's legal obligations to reduce workplace risks to the lowest practicable level, as it removes the need for staff to attend Council offices for the purpose of signing and sealing contracts, agreements deeds and documents. The Health and Safety Officer must be consulted on the report.

[Name, title and date of Health and Safety Officer who signed off the report.]

J. Health and Wellbeing

The use of the mobile seal and electronic signature will remove the need for staff to attend Council offices Health and Wellbeing team should be consulted on the report.]

[Name, title and date of officer who signed off the report.]