

# Amendments to the Constitution: Electronic Signatures and Document Sealing

For Full Council on 06 October 2021

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**Lead Member:** Councillor Tom Dawlings, Leader of the Council

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**Classification:** Public document (non-exempt)

**Wards Affected:** All

Approval Timetable	Date
Management Board	21 October 2020
Audit and Governance Committee	24 August 2021
Full Council	6 October 2021

## Recommendations

Committee recommendations as supported by the Portfolio Holder:

1. That the amendments to the Constitution as set out in paragraph 1.5 of this report be approved.

# 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 to further changes in working practices with a significant increase in remote working with an even greater reliance on electronic practices. In consequence it is 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 certain deeds that have been electronically signed in accordance with 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 in 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 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 accordance 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.*

- b) That the additional words in italics be added to Part 2 – Articles of the Constitution 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.

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) That the additional words in italics be added to 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 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 have been consulted on the proposal.
- 4.2 The Audit and Governance Committee approved the recommendation at their meeting on 24 August 2021.

## **4 Implementation**

- 5.1 If Full Council 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)**

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.

Changes to the Constitution are to be approved by Full Council save for minor variations.

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 follow procurement exercise in line with financial procedure rules for e-signature software.

Gina Clarke, Team Leader, Corporate Governance

### **C. Staffing**

There are no implications on staffing levels or structures.

Gina Clarke, Team Leader, Corporate Governance

### **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 Full Council 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 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 home working is becoming a working norm.

Gina Clarke, Team Leader, Corporate Governance

## **H. Data Protection**

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

Gina Clarke, Team Leader, Corporate Governance

## **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.

Gina Clarke, Team Leader, Corporate Governance

## **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.

Gina Clarke, Team Leader, Corporate Governance