

General Purposes Committee	
Meeting Date	16 December 2020
Report Title	Electronic Signatures and Document Sealing
Cabinet Member	Cllr Roger Truelove, Leader and Cabinet Member for Finance
SMT Lead	David Clifford, Head of Policy, Communications and Customer Services and Monitoring Officer
Head of Service	Patricia Narebor, Head of Legal Partnership
Lead Officer	Gina Clarke, Team Leader (Corporate Governance), Mid Kent Legal Services
Key Decision	No
Classification	Open
Recommendations	1. General purposes committee to recommend the minor amendments to the Constitution as set out in paragraph 3.1 of the report.

1 Purpose of Report and Executive Summary

- 1.1 To consider changes to the Council's Constitution to enable the use of mobile seals and electronic signatures.

2 Background

- 2.1 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.
- 2.2 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'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.

- 2.3 In addition remote working has caused significant difficulties in affixing the Council's common seal to contracts and other deeds and documents. The Common Seal is currently located at the Legal office in Swale House 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 Swale House.
- 2.4 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 these requirements.

3 Proposals

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

Part 4.11 Contract Standing Orders

- a) The addition of the words in italics to paragraph 8.4 of the Contract Standing Orders:

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 Policy, Communications and Customer Services and Monitoring Officer

- b) The addition of the following additional paragraph 8.5 to the Contract Standing Orders:

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

- c) That the additional words in italics be added at:

Article 13.5 - The Common Seal of the Council *and the mobile seals for remote use* will be kept in a safe place in the custody of the Head of Legal. A decision of the Authority, or any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal *or the mobile seal for remote use* will be affixed to those documents which in the opinion of the Head of Legal Partnership should be sealed. The affixing of the Common Seal *or the mobile seal for remote use* will be attested by the Head of Legal Partnership or some other person authorised by him/her.

PART 3.4 – SCHEME OF OFFICER DELEGATIONS

DELEGATIONS TO THE HEAD OF LEGAL PARTNERSHIP

These delegations are subject to the Law Society practice procedures and requirements of the Solicitors Regulation Authority.

General

1. Authority to sign, or, where necessary, seal, any document needed to implement a decision taken by, or in the name of, the Council, and to authorise other officers to do so and to keep a record. *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.*

4 Alternative Options

- 4.1 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 2.3.
- 4.2 Amending the Constitution to recognise 1) the validity of electronic signatures and to allow documents to be sealed remotely without the need for attendance at the Council offices and 2) the use of mobile seals for remote use at the other MKLS offices.
- 4.3 The option at 4.2 is the preferred option as it will enable the Council to follow evolving working practices, reduce travelling by authorised signatories and aid remote working.

5 Consultation Undertaken or Proposed

5.1 The Senior Management Team has been consulted and support the proposals set out in this report.

6 Implications

Issue	Implications
Corporate Plan	None identified at this stage.
Financial, Resource and Property	None identified at this stage.
Legal, Statutory and Procurement	The Council is required by law have a Constitution and keep it up to date. 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.
Crime and Disorder	There are no crime and disorder implications.
Environment and Climate/Ecological Emergency	There are no environmental, climate or ecological implications.
Health and Wellbeing	There are no health and wellbeing implications.
Risk Management and Health and Safety	There are no risk management or health and safety implications.
Equality and Diversity	There are no equality or diversity implications.
Privacy and Data Protection	There are no privacy or data protection implications.