

Electronic Signatures and Document Sealing

Final Decision-Maker	Full Council
Lead Head of Service	Patricia Narebor, Head of Legal Partnership and Monitoring Officer
Lead Officer and Report Author	Gina Clarke, Team Leader (Corporate Governance)
Classification	Public
Wards affected	All

Executive Summary

This report sets out proposed changes to the Council's Constitution to enable the use of mobile seals and electronic signatures.

Purpose of Report

For decision.

This report makes the following recommendations to this Committee:

1. To consider and recommend to Council for approval minor amendments to the Constitution relating to the use of mobile seals and electronic signatures as set out in paragraph 2.5 of the report.

Timetable

Meeting	Date
Democracy and General Purposes	27 January 2021
Council	24 February 2021

Electronic Signatures and Document Sealing

2 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The recommendation will have an effect on the governance arrangements of the Council which has an impact on all corporate priorities.	Gina Clarke, Team Leader (Corporate Governance), MKLS
Risk Management	The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. 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), MKLS
Financial	None identified at this time. The recommendations in this report can be met within existing budgets.	MLKS Business Manager
Staffing	We will deliver the recommendations with our current staffing.	Patricia Narebor Head of Kent Legal Partnership
Legal	The legal implications are set out in the 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	Gina Clarke, Team Leader (Corporate Governance), MKLS

	<p>Constitution.</p> <p>It is a function of the Democracy and General Purposes Committee to regularly review the Constitution in conjunction with the Monitoring Officer and recommend proposed changes, where significant, to the Council.</p>	
Privacy and Data Protection	There are no specific privacy or data protection issues to address.	Gina Clarke, Team Leader (Corporate Governance), MKLS
Equalities	It is recognised that the recommendations may have varying impacts on different communities within Maidstone. An equalities impact assessment has been completed.	Equalities and Corporate Policy Officer
Public Health	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.	Gina Clarke, Team Leader (Corporate Governance), MKLS
Crime and Disorder	None identified in this report.	Gina Clarke, Team Leader (Corporate Governance), MKLS
Procurement	Following approval of the recommendation, the Council will then follow procurement exercises for any software which may be required. We will complete those exercises in line with financial procedure rules.	Head of Service & Section 151 Officer
Cross Cutting Objectives	The recommendation will have an impact on the governance arrangements of the Council which has an impact on the cross-cutting objectives.	Gina Clarke, Team Leader (Corporate Governance), MKLS

2. INTRODUCTION AND 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, deeds, minutes and resolutions when used by both the Council and those with whom it enters into contract, or other legally binding deeds and documents. HM Land Registry will, for the time being, accept, for the purposes of registration that 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 documents. The Common Seal is currently located at the Legal strong room in Maidstone 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 Maidstone 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.
- 2.5 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 Contract Procedure Rules:

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 Director of Finance and Business Improvement.

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.

b) That the additional words in italics be added at:

Part 2 : Responsibility for Functions : 2.3.15 Head of Legal Partnership –

10. Contracts exceeding the value specified within the Financial Procedure Rules must be made under the common seal of the Council *or the mobile seal for remote use* attested by the Head of Legal Partnership or other authorised signatory, unless the Head of Legal Partnership considers that certain contracts may be signed rather than sealed.

11. The Common Seal of the Council *and the mobile seal for remote use* will be kept in a safe place in the custody of the Head of Legal Partnership. A decision of the Council or a Committee or Sub-Committee or Officer 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 any other solicitor authorised by her.

3. AVAILABLE OPTIONS

- 3.1 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.
- 3.2 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. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 3.2 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. RISK

- 5.1 The approval of the sufficiency of the security arrangements for the use of electronic signatures by a Senior Council Officer will mitigate any risks associated with the use of electronic signatures.

5.2 The safe keeping and use of the mobile seal for remote use will be subject to the same safeguards which apply against the possible risks associated with the use of the Common Seal of the Council.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 Discussions have taken place with the Council's Corporate Leadership Team regarding the proposed amendments for the use of electronic signatures and mobile seal.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 If agreed, the amendments to the Constitution will be presented to full Council on 24 February 2021 with the recommendation that it adopts the revisions to take immediate effect.

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

None.