

MAIDSTONE BOROUGH COUNCIL

FULL COUNCIL

24 FEBRUARY 2021

REPORT OF THE DEMOCRACY AND GENERAL PURPOSES COMMITTEE
HELD ON 27 JANUARY 2021

ELECTRONIC SIGNATURES AND DOCUMENT SEALING

Issue for Decision

That the Constitution be amended to recognise the validity of electronic signatures and to allow documents to be sealed remotely without the need for attendance at the Council offices, and the use of mobile seals for remote use at the other Mid Kent Legal Services offices.

Recommendation Made

That minor amendments to the Constitution relating to the use of mobile seals and electronic signatures, as set out below, be approved.

1. The addition of the following 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.

2. The additional words in italics be inserted 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 him/her.

Reasons for Recommendation

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.

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, 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.

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.

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.

Alternatives Considered and Why Not Recommended

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 above. The preferred option will enable the Council to follow evolving

working practices, reduce travelling by authorised signatories and aid remote working.

Background Documents

None

Appendices

None