

GROWTH, ENVIRONMENT AND RESOURCES SCRUTINY COMMITTEE	AGENDA ITEM No. 9
28 SEPTEMBER 2020	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Farooq, Cabinet Member for Digital Services and Transformation	
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SUSPENSION OF AFFIXING COUNCIL SEAL TO LEGAL DOCUMENTATION

R E C O M M E N D A T I O N S	
FROM: Fiona McMillan, Director of Law and Governance and Monitoring Officer	Deadline date: N/A
It is recommended that the Growth, Environment and Resources Scrutiny Committee note the decision taken by the Chief Executive under Part 4, Section 4.6.1 of the constitution as set out in this report.	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Growth, Environment and Resources Scrutiny Committee following referral from the Monitoring Officer.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is for the Growth, Environment and Resources Scrutiny Committee note the decision taken by the Chief Executive under Part 4, Section 4.6.1 of the constitution, which permits the Chief Executive to undertake emergency action as follows;

6.1 When the Chief Executive feels that circumstances make it necessary for the Council to take urgent action which would not otherwise be in accordance with the Constitution the Chief Executive is deemed to have delegated authority for this purpose, in consultation with the Leader and the Chairman of the relevant Scrutiny Committee.

6.2 A report on this action, and why it was necessary will be made to the next meeting of the Cabinet and the relevant Scrutiny Committee

The Council' s constitution contains the following provisions in relation to the Council's seal:

Article 12.5 – Finance, Contracts and Legal Matters

The Monitoring Officer will keep the Council's Common Seal (our official seal) in a safe place. A decision made by the Council, or any part of it, gives authority for any document to be marked with the Common Seal and so take effect. The Common Seal will be placed on documents which, in the opinion of the Monitoring Officer, should be sealed. When the Common Seal is placed on

a document it will be witnessed and signed by the Monitoring Officer or some other person authorised by him or her.

Part 4 – Standing Orders – Section 4.3 – Sealing Documents

3.1 The Council will not attach its common seal to any document unless the sealing has been authorised in accordance with this Constitution

3.2 The following person or people will attach the seal:

(a) the Chief Executive, the Corporate Director Resources, the Director of Law and Governance or any lawyer authorised by him or her;

(b) the Mayor, the Deputy Mayor or another Member, together with the Chief Executive or the Director of Law and Governance or any lawyer authorised by him or her

Part 4 – Standing Orders – Section 4.4 – Authority to Sign Documents

4.1 The Chief Executive, the Corporate Director Resources, the Director of Law and Governance or any lawyer authorised by him/her can sign on behalf of the Council:

(a) any contract (without the seal); and

(b) any document which that officer considers is proper and necessary to give effect to a resolution;

as long as nothing in this paragraph prevents any other person from being authorised to sign the document, where this Constitution allows.

Part 4 – Standing Orders – Section 10.2.D.47 – Contract Rules

...Contracts between £50,000 and £100,000 need to be signed by an Authorised Signatory or sealed in the presence of an Authorised Signatory. All contracts over £100,000 must be sealed in the presence of an Authorised Signatory.

Part 4 – Standing Orders – Section 10.2.E.14 – Contract Rules – Contracts above EU values

All contracts above £100,000 must be sealed in the presence of an Authorised Signatory and, once sealed, will be retained by Legal Services within the Deeds Room.

Under the Contract Rules, there is a requirement for all contracts over £100k to be sealed. Once a contract is ready to be signed, the seal is physically placed on the document by an officer. In light of COVID-19 and the practical impact of the difficulties in arranging for an authorised signatory to physically sign documents under seal, it makes sense that for an interim period and where legally possible, there is an attempt to limit the requirement for documents to be affixed with the Council's seal.

The legal team is required to complete legal documentation on a regular basis. The decision seeks to suspend this requirement until further notice.

Local Authorities usually execute contract documentation by a deed, however there is no legal requirement to do so. Documents will be executed as simple contracts where possible and enable an electronic signature of the authorised signatory to be inserted.

However, there are some documents that will still be required to be executed as a deed by affixing the Council's seal where;

1. There is no consideration; or

2. The original document was executed as a deed and a variation is required to that document;
or

3. In the professional judgement of the legal officer the document is required to be executed as a deed; or

4. Where statute requires the following transactions to be made by deed:

1. Various arrangements relating to property, including conveyances of land or interests in land and mortgages, and instruments under the Land Registration Act 2002;
2. Powers of attorney;
3. Powers of appointment;
4. Certain actions under the Trustee Act 1925;
5. Certain ecclesiastical matters (church);
6. Other transactions such as leases under the Settled Land Act 1925;
7. A conveyance of an “incorporeal hereditament” such as a rent issuing out of land;
8. A grant of a right to enter land and remain there; and
9. An express release of certain rights.

2.2 This report is for Growth, Environment and Resources Scrutiny Committee to consider as set out in Part 4, Section 4.6.1 of the Council’s constitution.

3. **TIMESCALES** *[If this is not a Major Policy item, answer **NO** and delete the second line of boxes.]*

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. BACKGROUND AND KEY ISSUES

4.1 As set out in section 2.1 of this report.

5. CONSULTATION

5.1 The Leader and Chair of the Growth and Resources Scrutiny Committee have been consulted on the proposed action and are agreeable to this.

6. ANTICIPATED OUTCOMES OR IMPACT

6.1 The suspension of the requirement for contracts over £100,000 to be affixed with the Council’s seal until further notice.

7. REASON FOR THE RECOMMENDATION

7.1 To ensure that the Council’s resources are used in an effective and efficient manner, together with maintaining the health and safety of employees in relation to the current circumstances relating to COVID-19.

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 Not to make the amendment – This was discounted on the basis of the practical difficulties that may occur following government requirement for officers to work from home.

9. IMPLICATIONS

Financial Implications

9.1 There are none.

Legal Implications

9.2 There are none.

Equalities Implications

9.3 There are none.

Rural Implications

9.4 There are none.

Carbon Impact Assessment

9.5 There are none.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 Council Standing Orders, Part 4.

11. APPENDICES

11.1 None.