



Committee and Date

Council

7th July 2022

Item

Public

CONSTITUTION CHANGES

**Responsible
Officer**

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1. Synopsis

This report proposes to amend the Council's Constitution in order to update an aspect of the Contract Procedure Rules and in respect of the use of the Council's seal

2. Executive Summary

- 2.1. The Contract Procedure Rules ("CPR") form Part 4 of the Council's Constitution and set out the procedures to be followed to ensure the probity of the Council's processes in awarding contracts for goods, works and services and to assist the Council in achieving best value for money and meeting its obligations under the Public Procurement Regulations 2015 by ensuring appropriate procurement processes are followed to let contracts via a competitive process. This includes obligations upon officers to ensure that contracts for goods, works and services with a value in excess of £140,000, which are categorized as 'Major' contracts, are let via a full procurement process as set out in the CPR.
- 2.2. Where documents are required to be sealed by the application of the Council's seal, under Article 14.6 of the Articles of the Constitution this is required to be done with the physical sealing machine, held by the Assistant Director - Legal and Governance.
- 2.3. The updates proposed, for the reasons set out below in Sections 4 and 7, are to:
 - A. increase the threshold value for a 'Major' contract from £140,000 to £170,000;
 - B. allow the Council's seal to be applied to documents electronically, in addition to the current use of the physical seal.

- 2.4. Updates to the Constitution are being recommended to ensure approved practices remain up to date with the Council's use of technology, to accommodate remote working where officers are no longer regularly attending a physical office to be able to deal with hard copy documents and to reflect the changing financial value of the contracts being let. The proposed changes will continue to maintain appropriate safeguards, including those related to compliance with the Council's statutory procurement obligations.

3. Recommendations

Council is recommended to:

- 3.1. Agree to increase the value of the threshold for a 'Major' contract in the Contract Procedure Rules under Part 4 of the Constitution from £140,000 to £170,000;
- 3.2. Delegate authority to the Assistant Director – Legal and Governance in consultation with the Portfolio Holder for Finance and Corporate Resources to devise and implement a process to allow for the use of an electronic version of the Council's seal to be used to execute documents and to make any necessary changes to Part 2 of the Articles of the Constitution to allow for the use of both electronic and physical application of the Council's seal.

REPORT

4. Risk Assessment and Opportunities Appraisal

- 4.1. The increase to the 'Major' contract threshold provides additional scope to enable senior officers to sign contracts for their service areas and put appropriate levels of signatory delegations in place to suit the values of contracts in their service area and also recognise the increase in costs since the current threshold was established.
- 4.2. Raising the 'Major' contract threshold to £170,000 is considered an appropriate level to minimise any additional risk to the Council of the increase, as this revised level remains just underneath the threshold in the Public Contracts Regulations 2015 at which a contract opportunity is required to be subject to a formal competitive process as set out on the Regulations. The CPR state that the Council's Procurement and Legal officers should be consulted in respect of the procurement of a 'Major' contract, therefore keeping these two threshold values aligned will ensure that procuring officers seek appropriate advice on compliance with the Regulations. Further work will be required with the Finance

Team to ensure that Purchase Order issue authorisation levels and processes within the Council's ERP system are consistent with CPR signature levels.

- 4.3. Electronic sealing of documents which require a formal seal to be executed is being adopted more widely by organisations and is now accepted by Government organisations such as the Land Registry in the submission of formal documentation relating to land transactions. The Council's approved electronic signature platform, AdobeSign, can be adapted for use in the application of an electronic version of the Council's formal seal and AdobeSign is a recognised secure platform accepted by the Land Registry.
- 4.4. A procedure for electronic sealing of documents will need to be developed which mirrors the procedure and authorisations currently in place whereby the Council's physical seal is applied to a document and witnessed by the Assistant Director – Legal and Governance or an officer with their delegated authority. This will ensure that there is a sufficient audit trail in place for electronic sealing as is currently in place for physical sealing.

5. Financial Implications

- 5.1. There are no obvious financial implications arising from the changes proposed to the Constitution.

6. Climate Change Appraisal

- 6.1. There are no anticipated effects on climate change matters from the changes proposed to the Constitution although the increased flexibility to use digital options should reduce the requirement for some paper documentation as well as the need to travel to the Shirehall to physically complete such transactions.

7. Background

- 7.1. The CPR place a responsibility for a periodic review of the financial thresholds in the Rules upon Internal Audit in conjunction with the s151 Officer, who may then report any suggested amendments to Council for approval. The current 'Major' contract threshold of £140,000 has been in place for a number of years.
- 7.2. In January 2022 the threshold for the award contracts for goods and services being subject to the specified procurement processes in the Public Contracts Act 2015 was increased to £170,781.60 (exc. VAT)

- 7.3. The Executive Director of Resources (s151 Officer) and Head of Audit have been consulted in respect of the recommendations contained within this report and support the proposals.
- 7.4. The Council has already adopted the use of the AdobeSign secure electronic signature platform to sign contracts and such platforms can also be used to apply the equivalent of a formal seal to an electronic document. AdobeSign produces a full audit trail of the transaction to provide assurance of the process.
- 7.5. Currently Article 14.6 of the Articles of the Constitution states that:
- “The Common Seal of the Council will be kept in a safe place in the custody of the Assistant Director of Legal and Democratic Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Assistant Director of Legal and Democratic Services should be sealed. The affixing of the Common Seal will be attested by the Assistant Director of Legal and Democratic Services or some other person authorised by him/her”*
- 7.6. The use of a physical seal, which is held securely at Shirehall, is used to execute formal Council documents and agreements on an almost daily basis and as such requires the attendance of the Assistant Director – Legal and Governance, or one of his authorised officers at Shirehall on a very regular basis. With Legal Officers working remotely this creates an additional responsibility to travel to attend the Council offices to witness the seal. With increased acceptance of electronically sealed documents by official organisations, there is an opportunity to change current practice to be more aligned with the Council’s remote working arrangements and save officer time in travelling to Shirehall primarily to undertake sealing responsibilities.

8. Conclusions

- 8.1. The above amendments and updates to the Council’s Constitution will create efficiencies in the Council’s processes and ensure they remain in line with the Council’s changing work practices.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Cabinet Member (Portfolio Holder)

Cllr Gwilym Butler - Portfolio Holder for Finance and Corporate Resources

Local Member

N/A

Appendices