

Report of: Chief Project, Programmes and Procurement Officer

Report to: City Solicitor

Date: 20th July 2016

Subject: Proposed Amendments to Article 14 of the Constitution to allow for electronic signature of Council contracts over £100K

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. Article 14.5 of the Council's Constitution states "Any contract with a value exceeding £100,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the Council attested by at least one officer."
2. An issue has arisen whereby the Skills Funding Agency ("SFA") now require that all contracts are signed electronically using their system which allows for one officer login only to verify the execution of the contract. As the current Leeds contract value is £2.1m per annum, Article 14.5 applies, therefore the Council is not able to comply with the SFA's requirements, which are inflexible.
3. The requirements of Article 14.5 reflect legislative requirements for Council constitutions which are now apparently obsolete under the Localism Act 2011, and there are no identified prescribed forms for Councils to adhere to.
4. Given that the requirements of Article 14.5 are now in the remit of the Council to determine, and in order to facilitate both the valid execution of SFA contracts and provide for the future potential changes that electronic contracting is anticipated to bring, the Chief Officer Projects, Programmes and Procurement proposes that Article 14 be amended as set out in this report.

5. In accordance with the authority set out in Article 15.2 of the Constitution the Monitoring Officer is authorised to effect changes to the Constitution which stem from legislative change and for the purposes of clarification.

Recommendations

6. The City Solicitor in her role as Monitoring Officer is recommended to amend Article 14 of the Council's Constitution to allow for contracts over £100K to be signed electronically by one officer of the Council, provided that appropriate internal governance arrangements have been adhered to and to recommend to Council the adoption of this amendment.

1 Purpose of this report

- 1.1 The purpose of this report is to seek to amend Article 14 of the Council's Constitution to allow an option for contracts over £100K to be signed electronically by one officer of the Council, provided that appropriate internal governance arrangements have been adhered to. The proposed amendments are set out at Appendix 1 to this report.

2 Background information

- 2.1 The Council receives annual funding from the Government's Skills Funding Agency (SFA) to provide Adult Education, which is provided under a contract setting out the funding allocation and funding rules. The Council has no control over the SFA processes for allocating this funding, and must adhere to its requirements in order to secure the funds, which are in the region of two million pound per annum (£2,000,000.00).
- 2.2 Proposed funding allocations are made by SFA in April each year, to be provided to the Council to enable commencement of provision of education in September for that year. This year, SFA provided at the same time details of changes to its process which mean that SFA now require that all contracts are signed electronically using their system which allows for one officer login only to verify the execution of the contract.
- 2.3 The new process will provide a designated signatory login account for the Council, which will be used to implement the Council's decision to enter the contract. The designated Council officer will login to the SFA contract website, select the appropriate contract or amendment from the list of all contracts with the Council and click on the "Accept" button. An email will be sent from the SFA website to the email account of the registered signatory login account. It has been made clear by the SFA that no other method will be accepted.
- 2.4 The contract is due to be signed, as it is each year, sometime in July or August. This year, and in future years, an eContract will be published on the SFA contracts website with a four week deadline for execution. If the deadline is exceeded it will automatically trigger withholding of payments until the contract is signed, thereby delaying the Council's ability to implement the contracts under which it delivers education.
- 2.5 The current drafting of Article 14.5 in the Council's Constitution, which governs the execution of contracts, states "Any contract with a value exceeding £100,000 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the Council attested by at least one officer." This means that the Council is currently unable to comply with the SFA's requirements for one electronic signature.

2.6 This requirement in Article 14.5 was drafted into the Constitution in compliance with a statutory instrument (SI 2001/1517)¹ published in 2001 which applied s.135 of the Local Government Act 1972 which relates to contracts. Article 8 of SI 2001/1517 stipulated the following:

“Standing orders with respect to local authority contracts

- (1) Before a local authority operate executive arrangements under Part II of the 2000 Act they shall make standing orders under section 135 of the 1972 Act (contracts of local authorities) with respect to the making of contracts on their behalf in the course of the discharge of functions which are the responsibility of the executive of that authority.
- (2) The standing orders shall include provision for securing that any contract which—
 - (a) is of or above a value specified in the standing orders by the authority; or
 - (b) is of a description specified in the standing orders by the authority,must be in writing.
- (3) The function of specifying a value or a description of contracts for the purposes of the provisions required by paragraph (2) shall be discharged by the authority themselves and section 101 of the 1972 Act (arrangements for the discharge of functions by local authorities) shall not apply to that function.
- (4) The standing orders shall include provision for securing that any contract to which the provisions required by paragraph (2) apply must—
 - (a) be made under the authority’s seal and be attested by at least one officer of the authority who, in the case of an authority having a mayor and council manager executive, is not the council manager, whether or not the seal is also attested—
 - (i) by any member of the authority; or
 - (ii) in the case of an authority having a mayor and council manager executive, by the council manager; or
 - (b) be signed by at least two officers of the authority, whether or not the contract is also signed by any member of the authority.”

2.7 SI 2001/1517 lapsed upon enactment of the Localism Act 2011 on 15 January 2012² which amended/removed the power granted to the Secretary of State under s.47 of the Local Government Act 2000 to make further provision, under which power SI 2001/1517 was made. No further legislation or power to make further

¹ Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001/1517

² Localism Act 2011 c.20 Schedule 3 paragraph 67

4.3 Council policies and Best Council Plan

4.3.1 There are no implications for Council policies or Best Council Plan

4.4 Resources and value for money

4.4.1 There are no resource, or value for money implications.

4.5 Legal Implications, Access to Information and Call In

4.5.1 This decision is a Significant Operational Decision and so will be published on the Council's website. The decision is not eligible for Call In.

4.5.2 Although SI 2001/1517 has lapsed and no legislation has as yet replaced it, it is possible that future legislation will be proposed that will affect the ability of the Council to determine the contents of Article 14.5 in which case the matter will need to be revisited.

4.6 Risk Management

4.6.1 The receipt of funding from SFA is dependent upon the execution of the contract with them. Given the inflexibility of their requirement, there is a risk that this funding will not be received if the amendment to Article 14 is not adopted thereby authorising the execution.

5 Conclusions

5.1 In light of the contents of this report, and the new process required by SFA , the Chief Project, Programmes and Procurement Officer considers that it may be an appropriate opportunity to change Article 14 of the Council's Constitution to allow for contracts over £100K to be signed electronically by one officer of the Council, provided that appropriate internal governance arrangements have been adhered to, as set out in Appendix 1 to this report.

5.2 The proposed amendment would be in line with current legislation

5.3 It is considered that the amendment is necessary to clarify the position in relation to electronic contracts of this nature going forward and ensure that the Council is not hindered in conducting its business in a commercially viable manner.

6 Recommendations

7 The City Solicitor in her role as Monitoring officer is recommended to amend to Article 14 of the Council's Constitution to allow for contracts over £100K to be signed electronically by one officer of the Council, provided that appropriate internal governance arrangements have been adhered to and to recommend to Council the adoption of this amendment.

provision has been identified from the Localism Act 2011. It is therefore believed that the position is for the Council to determine.

2.8 Article 15.2 of the Constitution provides that “The Monitoring Officer is authorised to make any changes to any Part of the Constitution which are required:

- As a result of legislative change or decisions of the Council or Executive to enable him/her to maintain it up to date;
- Or for the purposes of clarification only.”

3 Main issues

3.1 There is no issue legally with regard to signing contracts electronically, and the position is covered under the Electronic Communications Act 2000, which covers the admissibility in evidence of electronic contracts for the purpose of establishing the authenticity, the integrity, or both, of the electronic communication or data.

3.2 It is therefore proposed that the Council consider amending Article 14 to permit the execution of contracts in the way that SFA requires, and to reflect more current commercial practice.

3.3 Contracts are currently only signed when the officers with delegated authority under Article 14.5 have received satisfactory evidence of approval to enter into the contract from an appropriate decision maker. That approval would be a decision taken in accordance with the Council's Executive and Decision Making Procedure Rules and would usually be the result of a procurement exercise. The decision maker will confirm that all procedures have been followed and all due considerations given to the entering of the contract. This process would remain unchanged.

3.4 It is proposed that the electronic contract be reviewed by two officers with the authority to sign, both of whom would sign an internal document confirming their approval of the execution of the contract, to be held with the contract file, prior to one of those officers accepting the contract electronically. The amendments proposed to Article 14 are set out in Appendix 1 to this report, together with a template for an approval sign-off sheet at Appendix 2. This would mean that the same safeguards and processes as currently are still carried out and documented, with the exception that the electronic document carries only one ‘signature’.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Chief Project, Programmes and Procurement Officer has consulted with the Leader of the Council and members of the Council's General Purposes Committee, who have been briefed on the amendments set out in this report and are content with them and for the City Solicitor to take this decision.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are no equality and diversity considerations.

8 Background documents³

8.1 None.

³ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

ARTICLE 14 – FINANCE, CONTRACT AND LEGAL MATTERS**14.1 FINANCIAL MANAGEMENT**

The management of the Council's financial affairs will be conducted in accordance with the Financial Procedure Rules set out in Part 4 of this Constitution.

14.2 CONTRACTS

Every contract made by the Council will comply with the Contracts Procedure Rules set out in Part 4 of this Constitution.

14.3 LEGAL PROCEEDINGS

The City Solicitor is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or any part of it or in any case where the City Solicitor considers that such action is necessary to protect the Council's interests.

14.4 COMMON SEAL OF THE COUNCIL**• Custody**

The Common Seal of the Council will be kept in a safe place in the custody of the City Solicitor.

• Authority to Use Seal

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 City Solicitor should be sealed. The affixing of the Common Seal will be attested by the City Solicitor or some other person authorised by him/her.

• Attestation

The Common Seal shall be attested by the signature of the City Solicitor, or the person authorised by him/her, and entry shall be made by the City Solicitor or some other person authorised by him/her in a book to be provided for that purpose of every deed and other document to which the Common Seal has been affixed.

14.5 SIGNATURE OF DOCUMENTS

- **Execution of Contracts for £100,000 or above**

Any contract with a value equal to or exceeding £100,000 entered into on behalf of the local authority in the course of the discharge of its functions shall be made in writing. Such contracts must either be:

1. made under the common seal of the Council attested by at least one officer;
or
2. signed by at least two officers of the authority; or
3. in the case of electronic contracts, accepted by one officer, provided that at least two officers of the authority have approved in writing the execution of the contract.

- **Persons Authorised to Approve or Sign Contracts**

The Chief Executive and the City Solicitor (and any other person or persons authorised by either of them) shall each be authorised as Agent for the Council to sign, or approve the execution of, all contracts agreed to be entered into by the Council, the Executive, or any part of it.

- **Execution of Contracts for less than £100,000**

Any contract with a value below £100,000 entered into on behalf of the local authority in the course of the discharge of its functions shall be made in writing. All Directors¹ (or other person authorised by a Director) shall be authorised in relation to matters within their remit, to sign, or in the case of electronic contracts, to accept, as Agent for the Council all contracts of a value below £100,000 agreed to be entered into by the Council, the Executive, or any part of it.

- **Authentication of Documents for Legal Proceedings**

Where any document will be a necessary step in legal proceedings on behalf of the Council, it shall be signed by the Chief Executive or the City Solicitor or other person authorised by him/her unless any enactment otherwise requires or authorises, or the Council give the necessary authority to some other person for the purpose of such proceedings

¹ In this instance the term 'Directors' is not to be understood to include the Chief Planning Officer

Approval of the Execution of an Electronic Contract

To be signed by at least two officers of the authority

Contract Reference:	
Contractor:	
DDN published date:	

Reviewed and approved by:	
Name:	
Role:	
Signature:	
Date:	

Reviewed and approved by:	
Name:	
Role:	
Signature:	
Date:	

Electronic acceptance by:	
Name:	
Role:	
Signature:	
Date:	

