

DMPC Decision – PCD 778

Title: Amendment to MOPAC Financial Regulations, Contract Regulations and the Scheme of Consent and Delegation in relation to the execution of simple contracts and deeds

Executive Summary:

This decision proposes both temporary and long-term changes to the way that MOPAC considers whether to execute contracts, agreements and transactions (including its grants) by way of deed.

In the long-term, MOPAC proposes using a series of questions to determine whether to execute a document by way of deed (NB, MOPAC executes its deeds by way of seal). Accordingly, changes are proposed to the Financial Regulations, Contract Regulations and Scheme of Consent and Delegation that simplify the list of documents that MOPAC is required to be executed by way of deed. The changes proposed do not affect the application of the seal to documents involving the granting or conveying of an interest in land, as these documents will always need to be executed by way of deed.

Temporary measures are also proposed during MOPAC's current Covid-19 working from home arrangements so as to reduce the number of deeds requiring execution. Other contractual protections will be inserted into contracts signed during this time to mitigate risks arising from executing such contracts under hand.

If approved by the Deputy Mayor, the Scheme of Consent and Delegation, Finance Regulations and Contract Regulations will be revised accordingly and published in due course.

Recommendation:

The Deputy Mayor for Policing and Crime is recommended to approve:

- 1 The temporary and long term procedures for executing documents described in this report;
- 2 Amendments to the Financial Regulations, Contract Regulations and the Scheme of Consent and Delegation as outlined at Appendix A, revising when a deed should be used and so the seal applied;
- 3 Amendments to the Financial Regulations, Contract Regulations and the Scheme of Consent and Delegation, to enable the Chief Finance Officer, in addition to the Chief Executive Officer, to apply MOPAC's seal; and
- 4 That all changes be reflected in the published Finance Regulations, Contract Regulations and the Scheme of Consent and Delegation as soon as practicable.

Deputy Mayor for Policing and Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below. The above request has my approval.

Signature

Paul Under

Date

15/06/2020

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

1. Introduction and background

- 1.1 Under the Police Reform and Social Responsibility Act (PRsRA) 2011, MOPAC is required to have Financial Regulations, Contract Regulations and a Scheme of Consent and Delegation (“**Governance Documents**”), which govern how MOPAC makes decisions and discharges responsibilities on behalf of MOPAC and the MPS.
- 1.2 The sealing or signature of a contract takes place **after** approval has been received to award the contract in line with organisational governance.
- 1.3 Contracts can be structured in two ways:
 - a. As a simple contract – an agreement under hand, executed by way of signature; or
 - b. As a deed – as a corporation sole, MOPAC executes deeds by application of its seal.
- 1.4 The key differences are as follows:

Signed (simple contract)	Sealed (deed)
Subject to the inclusion of any clause to the contrary, the statutory limitation period under a signed agreement is 6 years.	The limitation period for a deed is usually 12 years, subject to certain exceptions.
Signed agreements require consideration (exchange of something of value from each party) to create a legally binding and enforceable arrangement.	Deeds create a ‘ solemn promise ’ with no requirement for consideration.

- 1.5 The existing MOPAC Governance Documents require that documents involving transactions of a certain nature or above a certain value be executed by way of deed. In the case of documents conveying or granting an interest in land, there is a clear legal requirement for execution by way of deed.
- 1.6 The requirement to execute deeds by application of MOPAC’s seal and to execute simple contracts by way of a ‘wet’ signatures has presented practical difficulties during the ongoing Covid-19 working from home arrangements currently in force at MOPAC. This has led to consideration of the circumstances under which MOPAC is required to execute documents by way of deed. It is therefore proposed that changes are made to MOPAC’s Governance Documents.
- 1.7 A decision is sought to make amendments to MOPAC’s Governance Documents facilitating remote execution of documents during the Covid-19 pandemic. A decision is also sought regarding proposals to enable MOPAC to operate effectively and efficiently in the longer term.

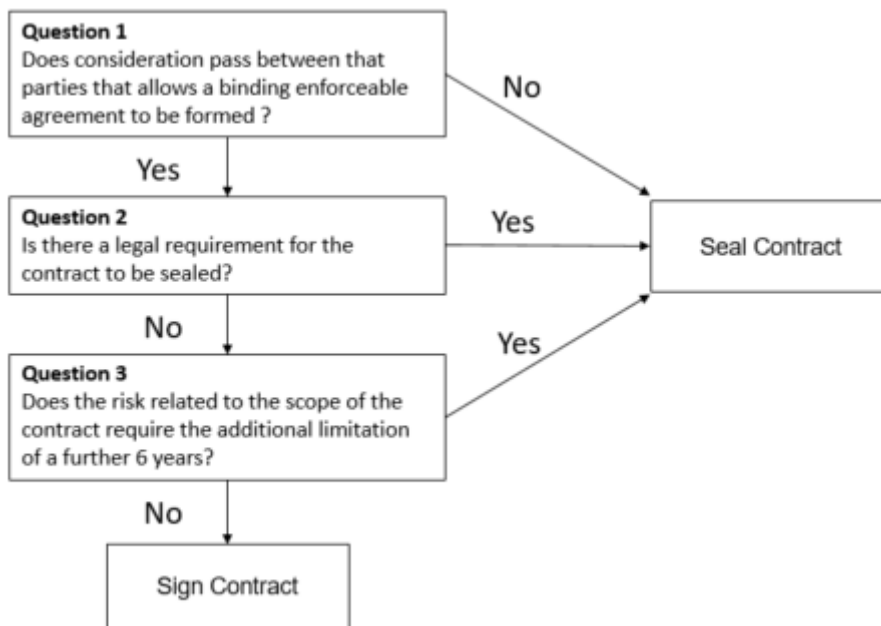
1.8 Appendix A states the current and proposed wording for inclusion in the Governance Documents regarding execution of documents by way of deed.

2. Issues for consideration

Proposed long term approach for execution of documents as deeds

2.1 Following the lifting of the working from home arrangements currently in place at MOPAC, it is proposed to move to a risk-based approach that takes into consideration three key questions that will be built into the MOPAC and MPS commercial processes for all decisions that require a contract, grant or other third-party commitment:

Diagram 1: Questions to consider when determining whether to execute documents by way of deed (application of the seal)



2.2 Responses to the above three questions will be documented within the commercial section of a contract recommendation to ensure the relevant oversight and approval. The impact of this proposed procedural change is that a decision will be made at the approval award stage as to whether a document requires sealing.

2.3 The proposed changes will ensure that consideration of whether to execute a document by way of deed will be actively done on a case by case basis rather than on the basis of value only. This should reduce the number of documents which MOPAC will need to execute by way of sealing.

2.4 It is further proposed that responsibility for applying the seal is extended to the Chief Finance Officer, in addition to the Chief Executive Officer. This will provide resilience when executing deeds by increasing the number of people who are able to apply MOPAC's seal.

Proposed additional temporary approach to execution of documents in light of remote working during Covid 19 pandemic

2.5 Two further changes are proposed to facilitate the execution of documents during the current Covid-19 working from home arrangements:

2.5.1 it is proposed that the Diagram 1 questions are asked, but:

2.5.1.1 if the answer to question 1 is no, an additional clause (as set out in Appendix B) will be added into the contract, confirming that the parties have exchanged and received consideration from one another and have acknowledged the sufficiency of the same; and

2.5.1.2 if the answer to question 3 is yes, an additional clause (as set out in Appendix B) will be added into the contract to increase the limitation period without resorting to executing as a deed.

2.5.2 it is also proposed that electronic signatures be used wherever possible where it is determined that a document does not require sealing in accordance with paragraph 2.5.1. Such electronic signatures shall be applied in accordance with any practical guidance issued to officers. There are no changes required to MOPAC's Governance Documents to enable use of electronic signatures.

2.6 The changes shall be made to the Governance Documents and published alongside the formal review as soon as reasonably practicable.

3. Financial and Commercial Comments

3.1 There are no direct financial or commercial implications, other than streamlining the signature and sealing process to expedite the time taken to execute contracts, transactions and agreements whilst working remotely.

4. Legal Implications

4.1 TfL Legal have advised on the proposed changes to the Governance Documents and have reviewed and revised the contents of this report accordingly.

4.2 Under the Scheme of Consent and Delegation, the Deputy Mayor for Policing and Crime has the authority to approve all of the Scheme of Consent and Delegation, any further delegations and the withdrawal of any delegations (other than those reserved to the Mayor).

4.3 By executing more documents under hand, there is an increased risk of the validity of certain documents being challenged. This can be mitigated by including clauses confirming consideration passing between the parties. Executing contracts under hand also reduces the limitation period of a contract from twelve to six years. This can also be mitigated by including a clause extending the limitation period. During the longer term, MOPAC will consider whether it is beneficial for a contract to be executed as a deed on a case by case basis, in line with the process described above.

4.4 This report notes that the Governance Documents shall be updated at a future date to reflect the changes described above. Officers should be made aware of these changes as soon as reasonably practicable. To ensure transparency, officers will revise the Governance Documents in accordance with Appendix A to this report as soon as practicable.

5. Public Health Approach

5.1. There are no Public Health related issues related to this decision.

6. GDPR and Data Privacy

- 6.1. MOPAC will adhere to the Data Protection Act (DPA) 2018 and ensure that any organisations who are commissioned to do work with or on behalf of MOPAC are fully compliant with the policy and understand their GDPR responsibilities.

7. Equality Comments

- 7.1. MOPAC is required to comply with the public sector equality duty set out in section 149(1) of the Equality Act 2010. This requires MOPAC to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations by reference to people with protected characteristics. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.2. There are no specific equality implications arising from this decision.

8. Background/supporting papers

Appendix A – Current and proposed revisions to the Governance Documents.

Appendix B – Draft clauses for use in documents determined not to require sealing during the current Covid-19 working from home arrangements.

Appendix A – Current and proposed revisions to the Governance Documents

Financial Regulations:

Existing	New
<p>9.12 The common seal of MOPAC can only be affixed by the Chief Executive Officer or with his/her approval delegated to another MOPAC officer. The seal must not be affixed without the transaction having been approved by the DMPC or another individual in accordance with the Scheme of Consent and Delegation.</p> <p>11.14 All property contracts, agreements or transactions:</p> <ul style="list-style-type: none"> • in respect of which there is no consideration; or • that exceed £5,000,000 in value over the life of the contract/lease/agreement (in money or money’s worth); or • which grant or convey an interest in land; or • when it is determined by MOPAC there is a particular need for the seal to be attached <p>must be in writing and executed as a deed under seal.</p>	<p>9.12 The common seal of MOPAC can only be affixed by the Chief Executive Officer, the Chief Finance Officer or, with the Chief Executive Officer’s approval, delegated to another MOPAC officer. The seal must not be affixed without the transaction having been approved by the DMPC or another individual in accordance with the Scheme of Consent and Delegation.</p> <p>11.14 All contracts, agreements or transactions:</p> <ul style="list-style-type: none"> • in respect of which there is no consideration; or • which grant or convey an interest in land; or • where it is determined by MOPAC there is a particular need for the seal to be attached <p>must be in writing and executed as a deed under seal.</p>

Contract Regulations:

Existing	New
<p>16.3 Sealing</p> <p>16.3.1 The Seal of the MOPAC must not be affixed without the authority of the MOPAC and can only be affixed by the Chief Executive Officer.</p> <p>16.3.2 All Contracts, agreements or transactions:</p> <ul style="list-style-type: none"> • in respect of which there is no consideration; or • that relate to the provision of goods and services by the MOPAC to another body and which exceed £1,000,000 in value over the life of the Contract; or • that exceed £5,000,000 in value over the life of the Contract (in money or money’s 	<p>16.3 Sealing</p> <p>16.3.1 The common seal of MOPAC can only be affixed by the Chief Executive Officer, the Chief Finance Officer or, with the Chief Executive Officer’s approval, delegated to another MOPAC officer. The seal must not be affixed without the transaction having been approved by the DMPC or another individual in accordance with the Scheme of Consent and Delegation.</p> <p>16.3.2 All contracts, agreements or transactions:</p> <ul style="list-style-type: none"> • in respect of which there is no consideration; or • which grant or convey an interest in land;

<p>worth); or</p> <ul style="list-style-type: none"> • which grant or convey an interest in land; or • which are grants that exceed the sum of £150,000 <p>must be in writing and executed as a deed under seal in accordance with these Contract Regulations.</p> <p>16.3.3 Other Contracts, agreements or transactions shall be executed under seal if the Chief Executive Officer considers that to do so would be in the MOPAC's best interest in view of the importance of the subject matter or the level of the risk.</p>	<ul style="list-style-type: none"> • or where it is determined by MOPAC there is a particular need for the seal to be attached <p>must be in writing and executed as a deed under seal.</p>
--	--

Scheme of Consent and Delegation:

Existing	New
<p>5.3 The following functions and decisions are those which the Chief Executive has reserved to herself.</p> <p>5.22 To sign and to affix the common seal of MOPAC once they have been properly approved, for all contracts, agreements or transactions:-</p> <ul style="list-style-type: none"> • in respect of which there is no consideration; or • That relate to the provision of goods and services by MOPAC or MPS to another body and which are £1,000,000 or above in value over the life of the Contract; or • That are £5,000,000 or above in value over the life of the Contract (in money or money's worth); or • Which grant or convey an interest in land; or • Which are grants that are £150,000 or above; or • When it is determined by the DMPC there is a particular need for the seal to be attached. 	<p>5.3 The following functions and decisions are those which the Chief Executive has reserved to herself (save as indicated in respect of paragraph 5.22).</p> <p>5.22 To sign and to affix the common seal of MOPAC once they have been properly approved, to those contracts, agreements or transactions which need or are considered by MOPAC to need to be executed by way of deed, including all documents which grant or convey an interest in land or under which no consideration passes.</p>

Appendix B – Draft clauses for use in documents determined not to require sealing during the current Covid-19 working from home arrangements

Limitation period extension clause:

The time limits for actions brought in respect of this [Contract/Agreement] shall be in accordance with the time limits set out in section 8 of the Limitation Act 1980.

Consideration clause:

The parties agree to comply with the terms of this [Contract/Agreement] in consideration of the payment by each party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each party.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the MOPAC website following approval.

If immediate publication risks compromising the implementation of the decision it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? No

Part 2 Confidentiality: Only the facts or advice considered as likely to be exempt from disclosure under the FOIA should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a **Part 2** form – No

ORIGINATING OFFICER DECLARATION	<i>Tick to confirm statement (✓)</i>
Financial Advice: There are no Financial implication arising from the proposed changes to the Scheme of Consent and Delegation.	✓
Legal Advice: The TfL legal team has been consulted on the proposal.	✓
Equalities Advice: There are no equality implications arising from the proposed changes to the Scheme of Consent and Delegation.	✓
Public Health Approach There are no public health implications arising from the proposed changes to the Scheme of Consent and Delegation.	✓
Commercial Issues Commercial team have commented.	✓
GDPR/Data Privacy There are no GDPR/Data Privacy implications arising from the proposed changes to the Scheme of Consent and Delegation.	✓
Director/Head of Service: The Chief Finance Officer has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓

Chief Executive Officer

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

Signature



Date 10/6/20