

By: Paul Carter, Leader of the County Council  
Peter Gilroy, Chief Executive

To: a) Cabinet – 12 May 2008  
b) County Council –19 June 2008

Subject: **ESTABLISHING JOINT WORKING ARRANGEMENTS WITH  
CANTERBURY CITY COUNCIL, DOVER DISTRICT COUNCIL,  
SHEPWAY DISTRICT COUNCIL AND THANET DISTRICT  
COUNCIL**

Classification: Unrestricted

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Summary: Report recommending that KCC enters into joint working arrangements with Canterbury City Council, Dover District Council, Shepway District Council and Thanet District Council

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## **Introduction**

1. (1) Canterbury City Council, Dover District Council, Shepway District Council and Thanet District Council have all signed a Joint Working protocol committing them to work together and to identify opportunities for the joint provision of services. In addition, both the district councils and the County Council have signed The Kent Commitment which recognises the East Kent Cluster and gives a general commitment to building on the existing two tier arrangements. In order to be able to put into effect the Joint Working agenda, it is necessary to put in place a governance framework, not only to make decisions, but to carry out scrutiny functions in relation to those decisions.

## **Background**

2. (1) The signing of The Kent Commitment recognised the opportunities that exist for the County Council and the District Councils to work closer together in order to integrate functions which improve the effectiveness and efficiency of services and how they are delivered. In particular the Commitment recognised the work of East Kent in developing a cluster model and it was agreed that Canterbury City Council, Dover District Council, Shepway District Council and the County Council would continue to work together in order to consider and identify opportunities for greater integration and the potential to share a range of public facing services.

(2) In order to carry forward these objectives it will first be necessary to establish a framework which gives legal authority for the four District Councils and the County Council to work jointly together. **This report therefore recommends the establishment of two joint committees:** the East Kent (Joint Arrangements) Committee (“EKJAC”) and the East Kent (Joint Scrutiny) Committee (“EKJSC”).

## **3. Legal Framework**

3.1 Because the EKJAC is intended to discharge both executive and non-executive arrangements, it must be established by both the full Council and the Executive of each authority.

- 3.2 The appointment of the members to EKJAC must be made by the Council, with the agreement of the Executive
- 3.3 The EKJSC must be established by resolution of the full Council.
- 3.4 By virtue of Section 15 and Schedule 1 of the Local Government and Housing Act 1989, the political balance requirements do not apply to either the EKJAC or the EKJSC because:
- (a) in the case of EKJAC, each authority makes fewer than three appointments to them and
  - (b) in the case of EKJAC and EKJSC, it is a joint Committee between a County Council and District Councils
- 3.5 The law does not contemplate joint scrutiny committees between authorities except in specific circumstances (such as health or local area agreements). In the circumstances here, it is proposed that a joint committee be created whose terms of reference have scrutiny type functions. It is a committee, however, which could in due course, be used as the basis for a formal joint scrutiny committee, scrutinising the Local Area Agreement and Local Improvement Targets.

#### **4. How the East Kent (Joint Arrangements) Committee will operate**

- 4.1 **It will be the decision of each individual authority to decide whether to put a service or function into EKJAC.** Any such decision would have to be based on the consideration of a full business case. The business case will be developed between the councils minded to participate in a particular shared service overseen by the joint committee. It would only be at the stage when a business case is established that the individual councils would be recommended to delegate the function to the joint committee as a shared service. At this point, the extent of the delegation and appropriate budgets would be established. All such delegations would need to be in common form as between the councils.
- 4.2 As from this point, once the function is delegated, the management of the joint service will be within the remit of the joint committee rather than with the individual councils. **It is fundamental to this arrangement that once a service becomes a 'shared service', control and management of that service will be passed from the council to EKJAC and, within the prescribed delegation limits, EKJAC (on which councillors who are not members of this Council will sit), will fulfil the functions delegated. This "loss of sovereignty" is a concept that should be fully appreciated.**
- 4.3 However, once a particular contract comes to an end, or some other opportunity arises, an authority can withdraw from a shared service and resume its own operation. Whilst it can also withdraw from the joint committee, in practice this is likely to be a process over time as individual shared services end.
- 4.4 EKJAC will only act in respect of those services/functions delegated to it. It may make recommendations on future joint service provision, but the decision

whether or not to enter into the joint arrangement will rest with the individual councils. Only those authorities that have decided to enter into a joint service will have a vote in relation to matters concerning the management of that service.

## **5. How the East Kent (Joint Scrutiny) Committee will operate**

- 5.1 The East Kent (Joint Scrutiny) Committee is established to act as a separate joint committee for the monitoring, review and scrutiny of EKJAC. It will make reports and recommendations to EKJAC. The guiding principle for the work of EKJSC is that it should be consensual and positive.
- 5.2 Membership will comprise three non-executive councillors from each council. Meetings will be held quarterly to coincide with the meetings of EKJAC.
- 5.3 The three members from each Council shall be appointed to EKJSC in accordance with the political proportionality of the appointing Council.
- 5.4 The Chairman and Vice Chairman of EKJSC shall be drawn from a political group not forming part of the administration of the appointing Council.

## **6. Other Models**

- 6.1 The EKJAC provides one model for delivering shared services. It is not the only one and neither the formation of EKJAC nor its operating arrangements preclude other models. In other words, it does not represent the only way that the constituent authorities could share services. For example, authorities could enter into a contract for another Council to provide a service or they could delegate their functions to them.

## **7. Expansion**

- 7.1 Paragraph 16.1 of both operating arrangements envisages that **other Councils may join the arrangements. The arrangements do not, despite the name, limit the Councils participating to those in East Kent.** Other district councils could join and no doubt if they did, the name of the Committees would be reconsidered.
- 7.2 The Committees could, in addition to the shared service, be a mechanism to facilitate future Kent Commitment work streams.
- 7.3 The intention at present is that **the Host and Scrutiny Host authorities should change annually with the Chairmanships of the respective committees. Each host authority, including KCC, would therefore bear the cost of the work involved for their Host year.** It is intended, however, that this arrangement should be reviewed half-way through the first year of operation. If it is considered that it is more appropriate to have one Council permanently hosting EKJAC and one Council permanently hosting EKJSC, then the resource implications for the host authorities and the appropriate contributions from the others would have to be determined.

## 8 Call in

- 8.1 EKJSC will have the power to call-in the decisions of EKJAC. However, decisions of EKJAC, insofar as they relate to executive functions, are still the responsibility of the Executive of the relevant delegating Council and can thus be called in by the scrutiny committees of the individual councils. This power cannot be removed. The expectation would be nevertheless that call-in would be primarily exercised by EKJSC.
- 8.2 If, however, there are call-ins by individual councils' scrutiny committees, it is proposed that any multiple call-ins are held at the same time and place.

## 9. Operating Arrangement of EKJAC and EKJSC

- 9.1 Appendices 1 and 2 set out the operating arrangement of the two committees.
- 9.2 So far as possible, the structure of the two arrangements has been kept consistent, each setting out key principles, objectives, terms of reference, etc.
- 9.3 Both committees will have a host authority for the purposes of servicing them. The host authorities for each committee will not be the same.

## 10. Next Steps

- 10.1 The two committees provide the governance framework and to work up business cases for each service. The next step is to identify the programme for joint service provision. When that is done each project within the programme should have an officer team and lead officer assigned to it. It is envisaged that decision making follows a pyramidal structure with officer project groups forming the base of the pyramid feeding up to a board composed of the Chief Executives of each subscribing authority (or their nominees). Above them the leaders and chief executives meeting as a working party will review the work done and either pass back down the pyramid for further work or approve for formal submission to the joint committee which sits at the top of the pyramid.
- 10.2 As previously indicated council and/or cabinet approvals to delegate will be required before services become shared.



## **11. Conclusions**

11.1 All the councils are committed to joint working. If this is to be made a reality there needs to be a governance mechanism in place and what is proposed provides this mechanism. The creation of the joint committees enables the parties to make joint working a reality.

11.2 The proposals in this report are about having in place the governance arrangements and a legal framework to allow joint working between the four districts and the County Council. However Members should be aware that considerable challenges lie ahead in bringing forward shared services. Issues which will have to be addressed include:

- Levels of service required by a particular council in respect of a particular service
- Current differentials in service specification between different councils
- Differential levels of spend of individual councils in relation to particular services
- Fair apportionment of costs and savings
- Loss of 'sovereignty' once a service is shared.

These will be matters which will need to be the subject of a separate report as appropriate.

### **Recommendations in respect of the East Kent (Joint Working) Committee**

#### **Cabinet and Council**

1. That the Cabinet and Council (in relation to the Joint Arrangements Committee):

- (a) approve the establishment of a joint committee comprising Canterbury City Council, Dover District Council, Kent County Council, Shepway District Council and Thanet District Council, to be known as the East Kent (Joint Arrangements) Committee, with effect from 1 June 2008
- (b) approve the terms of the Operating Arrangements for the East Kent (Joint Arrangements) Committee as set out in Appendix 1
- (c) approve the delegation of functions to the East Kent (Joint Arrangements) Committee as set out in paragraph 3 of this report and Schedule 1 of the East Kent (Joint Arrangements) Committee Operating Arrangements

2. That the Council with the Agreement of the Cabinet:
  - (a) appoints the Leader and Deputy Leader from time to time as the two nominated members of the Council in accordance with the East Kent (Joint Arrangement) Committee Operating Arrangements, with the Chief Executive authorised to effect such substitutions in consultation with the Leader as are referred to in 2(b) below
  - (b) authorises all other members of the Cabinet to act as substitutes for the Leader and the Deputy Leader as mentioned in the East Kent (Joint Arrangements) Committee Operating Arrangements
3. **That Council (in relation to the East Kent (Joint Scrutiny) Committee):**
  - (a) approves the establishment of a joint scrutiny committee comprising Canterbury City Council, Dover District Council, Kent County Council, Shepway District Council and Thanet District Council, to be known as the East Kent (Joint Scrutiny) Committee, with effect from 1 June 2008
  - (b) approves the East Kent (Joint Scrutiny) Committee Operating Arrangements set out in Appendix 2
  - (c) approves the terms of reference for the East Kent (Joint Scrutiny) Committee as set out in the East Kent (Joint Scrutiny) Committee Operating Arrangements :
  - (d) appoints Councillors *[insert names of the three Members]* to serve on the East Kent Joint Scrutiny Committee in accordance with the East Kent (Joint Scrutiny) Committee Operating Arrangements
4. That Cabinet agrees to the County Council being recommended to pass the resolutions set out at 1 and 2 above.
5. Cabinet and Council note that the implementation of these recommendations will result in the likely need to make consequential changes to the County Council's Constitution. Such changes that are required will be published and implemented in accordance with Article 15 (Review and Revision of the Constitution) sub-paragraph 15.2.

Geoff Wild, Director of Law and Governance

Tel No: (01622) 694302

e-mail: [geoff.wild@kent.gov.uk](mailto:geoff.wild@kent.gov.uk)

Background Information: *Include ALL background information taken into account in preparing the report. (This does not include previous Committee Reports)*

**East Kent (Joint Arrangements) Committee  
Operating Arrangements**

**Canterbury City Council**

**Dover District Council**

**Kent County Council**

**Shepway District Council**

**Thanet District Council**

together referred to as 'the Parties'

**1. Key Principles**

- 1.1 The Executive and full Council of each of the Parties has determined by resolution to establish this joint committee to become effective from 1 June 2008 for the purposes of exercising agreed functions over their 'combined administrative area'.
- 1.2 The joint committee will be established as the East Kent (Joint Arrangements) Committee (EKJAC).
- 1.3 The Parties are committed to a joint committee which provides streamlined decision making; and co-ordination of services across the combined administrative area through mutual co-operation.
- 1.4 The Parties are committed to open and transparent working and proper scrutiny and challenge of the work of the EKJAC.
- 1.5 Any new Parties to these arrangements after they become effective will have all the same rights and responsibilities under these arrangements.

**2. Definitions**

- 2.1 'Decisions' means those decisions of the Parties delegated from time to time to the EKJAC to discharge.
- 2.2 'A shared service' means a service delivering functions as agreed by two or more of the Parties.
- 2.3 'The combined administrative area' means the local government areas of the city and district authority Parties combined.
- 2.4 'The Parties' means the authorities listed above.

2.5 'Voting Member' means the appointed elected members of each of the Parties.

2.6 'Host Authority' means the local authority appointed by the Parties under these arrangements to lead on a specified matter or function as set out in paragraphs 14 and 19.

### **3. Objectives**

3.1 The objectives of the East Kent (Joint Arrangements) Committee are to:

- (a) improve services, and secure economy, efficiency and effectiveness in their delivery across both tiers of government in the combined administrative area
- (b) Streamline decision making where joint arrangements already exist
- (c) Develop and agree new areas of joint working
- (d) Enhance mutual co-operation and strategic partnering

### **4. Powers and Functions**

4.1 The EKJAC is established under section 20 of the Local Government Act 2000 and Regulations 4, 11 and 12 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 and sections 101(5) and section 102(1) of the Local Government Act 1972 enabling the Parties to perform the functions referred to in the Schedule in the manner set out in these arrangements.

4.2 The functions of the EKJAC shall be those functions or services that are delegated to it by the parties from time to time as approved by resolution of the executive and/or full Council (as appropriate) of such of the parties as are minded to participate in those joint functions and services.

4.3 Any delegations to the EKJAC shall be made in a common form and shall not take effect until agreed by the executive and/or full Council (as appropriate) of all those Parties participating in the services.

### **5. Terms of Reference**

5.1 The terms of reference for the EKJAC are as set out in Schedule A.

### **6. Membership and Voting Rights**

6.1 The EKJAC shall comprise the Leaders and Deputy Leaders of the Council of each of the Parties. The Leader of each Party may nominate two members of



their Executive (who have been authorised by the respective Parties to act as substitutes) to substitute for either the Leader or Deputy Leader, as necessary.

- 6.2 Non-voting members may be co-opted onto the EKJAC from any or all of the Parties or from other public sector partner organisations as the EKJAC may unanimously decide. Co-optees may participate in the debate but may not vote.

## **7. Frequency of Meetings**

- 7.1 The EKJAC will meet quarterly, but may change the frequency of meetings and call additional meetings as required.

## **8. Agenda Setting and Access to Meetings and Information**

- 8.1 The agenda for the EKJAC shall be agreed by the chairman of the EKJAC following a briefing by relevant officers. Any member of the EKJAC may require that an item be placed on the agenda of the next available meeting for consideration.
- 8.2 There will be a standing item on the agenda of each meeting of the EKJAC for matters referred by the East Kent Joint Scrutiny Committee.
- 8.3 Notice of meetings and access to agendas and reports will be in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Amendment Regulations 2000 and 2002 or sections 100A-K and Schedule 12A of the Local Government Act 1972, as appropriate.

## **9. Sub-Committees**

- 9.1 The EKJAC may establish sub-committees as it may determine by unanimous agreement of the EKJAC.
- 9.2 When establishing a sub-committee the EKJAC will agree the:
- (a) terms of reference for the sub-committee
  - (b) size and membership of the sub-committee including co-optees
  - (c) period for which the sub-committee will remain constituted
  - (d) chairman of the sub-committee or will delegate this decision to the sub-committee
  - (e) mechanism for hosting the sub-committee and sharing the cost amongst the relevant Parties, as appropriate

## **10. Delegation to Sub-Committees and Officers**

- 10.1 The EKJAC may arrange for the discharge of any of its functions by a sub-committee of the EKJAC or an officer of one of the Parties. Any such sub-committee may, subject to the terms of these arrangements and unless the EKJAC or any Voting Member directs otherwise, arrange for the discharge of any of its functions by such an officer.

## **11. Meetings and Procedure**

- 11.1 The Chairman and Vice Chairman of the EKJAC will be appointed by the EKJAC on the basis of the position being rotated annually, as follows, and repeated each five years:

	<b>Chairman and Host Authority</b>	<b>Vice Chairman</b>
Year 1	Canterbury City Council	Shepway District Council
Year 2	Thanet District Council	Dover District Council
Year 3	Shepway District Council	Kent County Council
Year 4	Dover District Council	Canterbury City Council
Year 5	Kent County Council	Thanet District Council

- 11.2 In the absence of the chairman and the vice chairman at a meeting, the meeting will elect a chairman for that meeting.
- 11.3 The quorum of the EKJAC will be five with at least one member present from four of the five Parties. If the meeting is inquorate then it shall stand deferred for seven days to meet at the same time and in the same place when the quorum shall be five drawn from any of the Parties.
- 11.4 The EKJAC may approve rules for meetings and procedure from time to time.

## **12. Decision Making**

- 12.1 Decisions of the EKJAC will normally be made by consensus. Alternatively, a vote shall be taken where the chairman or any Voting Member requests that a vote be taken. The vote will be by way of a show of hands. A simple majority shall be required.
- 12.2 The EKJAC may recommend to the parties services and/functions which may be considered for joint working.
- 12.3 A service will only become a shared service after at least two of the parties have resolved to delegate the relevant functions to the EKJAC.
- 12.4 Where two or more parties have resolved to delegate as mentioned in 12.4, then:

- (a) The service will thereafter be a shared service only in relation to those Parties and
- (b) Those Parties alone will have voting rights at the EKJAC in relation to further decisions as to how that shared service is jointly managed, provided or procured
- (c) The Parties that did not delegate that shared service will not have voting rights in relation to that shared service until or unless they do delegate such service at some future date

### **13. Forward Plan**

- 13.1 Decisions of the EKJAC which will amount to a Key Decision of any Party shall be included within the Leader of that authority's Forward Plan.

### **14. Host Authorities and Allocation of Roles**

- 14.1 In order to achieve the objectives of the EKJAC, the Parties will appoint a Host Authority which is for the time being the Authority shown as the Chairman and Host Authority in the table at clause 11.1.
- 14.2 Staff from the Host Authority who are commissioned to provide services, advice and support to the EKJAC will continue to be employees of the relevant Host Authority.
- 14.3 Responsibility for the following support services to the EKJAC will be allocated to the Host Authority:
  - (a) the provision of legal advice and services
  - (b) the provision of financial advice and services
  - (c) secretariat support and services
  - (d) communications support and services
- 14.4 The cost of the services and advice set out in this section will be paid for by the Host Authority.

### **15. Amendments to these Arrangements**

- 15.1 These arrangements may be amended by the unanimous agreement of the EKJAC following a recommendation approved by the Executive and full Council of each of the Parties.

## **16. New Membership and Cessation of Membership**

- 16.1 New Parties may join the joint committee provided that the Executive and full Council of the joining Party (ies) and of all the Parties to these arrangements for the time being so resolve.
- 16.2 Any of the Parties may cease to be a party to these arrangements following notice of cessation subsequent to a decision by the relevant Executive and full Council. A minimum of six months notice is required for any Party to leave the EKJAC and in any event, any notice of cessation can only be effective at the end of a municipal year. For the avoidance of doubt, where a Party wishes to withdraw from these arrangements but makes that decision and gives notice within six months of the end of the current municipal year, they may not withdraw from these arrangements until the conclusion of the subsequent municipal year.
- 16.3 On any of the Parties ceasing to be a party to these arrangements, these arrangements shall continue unless the remaining parties determine that those arrangements shall terminate. The benefits and burdens of such termination shall be agreed between the Parties and in default of such agreement shall be determined in accordance with 17.1.
- 16.4 Termination of these arrangements may occur by agreement of all the Parties.

## **17. Dispute Resolution**

- 17.1 Any dispute between the Parties arising out of these arrangements shall be referred to a single arbitrator to be agreed between the Parties, or, where no agreement can be reached, and having regard to the nature of the dispute, by an arbitrator nominated by the chairman of the Local Government Association and will be carried out in accordance with the provisions of the Arbitration Act 1996 as amended or modified and in force for the time being.

## **18. Claims and Liabilities**

- 18.1 The purpose of these arrangements and any actions taken under them is to assist all of the Parties (or those of the Parties as are engaged in any particular shared service). The Parties therefore have agreed that:
  - (a) all of the costs attributable to the provision of any shared service shall be shared between those of the Parties that are engaged in the shared service and in such proportions as they shall agree (and if not otherwise agreed then in equal shares)
  - (b) where one of the Parties nominated by the EKJAC to act in respect of a shared service undertakes actions or incurs liabilities in respect of that shared service on behalf of the EKJAC then it shall be entitled to be indemnified by the other Parties engaged in that shared service for the

appropriate proportion of all its costs and liabilities incurred in good faith

- (c) where one of the Parties nominated by the EKJAC to act as Host Authority undertakes actions or incurs liabilities in that respect then it shall be entitled to be indemnified by the other Parties for the appropriate proportion of all its costs and liabilities incurred in good faith
- (d) a Party carrying out actions in good faith on behalf of the EKJAC shall not (other than in the case of fraud and/or clear bad faith) be liable to claims from the other Parties (and there shall be no right of set-off against any claim for indemnity under (b) and/or (c) above) on the grounds that the actions that were taken were not the proper actions carried out properly or that the costs and liabilities incurred were not reasonably and properly incurred (as long as they were in fact incurred)

18.2 Each of the Parties shall at all times take all reasonable steps within its power to minimise and mitigate any loss for which it is seeking reimbursement from any of the other Parties.

## **19. Data Protection, Freedom of Information, Information Sharing & Confidentiality**

19.1 Subject to the specific requirements of this clause, each of the Parties shall comply with its legal requirements under data protection legislation, freedom of information and associated legislation, and the law relating to confidentiality.

19.2 An authority will be appointed as a Host Authority for the purposes of ensuring compliance with any legislative or legal requirements relating to these issues should they arise directly in relation to the joint committee (as compared to information held by the Parties to these arrangements).

19.3 Each of the Parties shall:

- (a) treat as confidential all information relating to:
  - (i) the business and operations of the other Parties and/or
  - (ii) the business or affairs of any legal or natural person in relation to which or to whom confidential information is held by that Party("Confidential Information") and
- (b) not disclose the Confidential Information of any other of the Parties without the owner's prior written consent

19.4 Clause 19.3 shall not apply to the extent that:

- (a) such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure or

- (b) such information was obtained from a third party without obligation of confidentiality or
- (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of these arrangements or
- (d) disclosure is required by law (including under Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or disclosure is permitted by the Human Rights Act 1998

19.5 The Parties may only disclose Confidential Information of another of the Parties to staff who need to know by reason of their work. Each of the Parties shall ensure that such staff are aware of, and comply with, these confidentiality obligations and that such information is not used other than for the purposes of the EKJAC.

19.6 If any of the Parties receives a request for information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 then the other Parties shall (at their own expense) assist and co-operate to enable the request to be dealt with.

19.7 If a request for information is received then the Party receiving it shall copy it to the other Parties and consider when making its decisions any views of the other Parties.

19.8 Notwithstanding the provisions of 19.6 and 19.7 it shall be the Party receiving the request that is responsible for determining at its absolute discretion how to reply to the request.

## **20. Exercise of Statutory Authority**

20.1 Without prejudice to these arrangements, nothing in these arrangements shall be construed as a fetter or restriction on the exercise by any of the parties of their statutory functions. The parties may continue to provide the whole or any part of a service at their own cost notwithstanding that the service is also a shared service being provided jointly.

## **Schedule A**

### **TERMS OF REFERENCE of the EAST KENT (JOINT ARRANGEMENTS) COMMITTEE**

1. To exercise the executive and non-executive functions of the parties in order to commission, co-ordinate, provide, procure and/or manage any shared services as are agreed from time to time by two or more of the Parties
2. To provide strategic direction to the officers advising the EKJAC
3. To exercise any of the functions or services that are determined to be a shared service in accordance with these arrangements
4. To develop work programmes and projects in relation to the functions which the parties are minded to be delegated to the EKJAC by the Parties
5. To regularly report to each of the Parties on its activities
6. To respond to reports and recommendations made by the East Kent Joint Scrutiny Committee
7. To monitor the operation of the EKJAC and of any shared service
8. To propose a budget for a shared service to the Parties and to monitor and manage any such budget once approved by them
9. To review these arrangements from time to time and make recommendations to the Parties for improvement and change and to propose (as appropriate) the creation of special purpose vehicles for the achievement of the Objectives, including companies, formal partnerships or consortia, the expansion of these arrangements to include other local authorities, the conclusion of contracts with other persons and the provision of services, supplies and works to other persons

**East Kent (Joint Scrutiny) Committee  
Operating Arrangements**

**Canterbury City Council**

**Dover District Council**

**Kent County Council**

**Shepway District Council**

**Thanet District Council**

together referred to as 'the Parties'

**1. Key Principles for the Operation of the East Kent (Joint Scrutiny) Committee (EKJSC)**

- 1.1 The members of the EKJSC will work together to maximise the exchange of information and views, to minimize bureaucracy and make best use of the time of members and officers of local and other authorities.
- 1.2 The guiding principle for the work of EKJSC is that it should be consensual and positive. The emphasis of the work should be on making proactive contribution to the development of policy and the discharge of EKJAC's functions. This is best achieved by an inclusive process covering members, the parties' partners, service users and officers.
- 1.3 The process of joint scrutiny will be open and transparent, designed to engage the parties, their residents and other stakeholders.

**2. Objectives**

- 2.1 The EKJSC is established under section 101 and 102 Local Government Act 1972 and Section 2 Local Government Act 2000 with the objective of acting as the single Scrutiny Committee for the monitoring, review and scrutiny of the East Kent (Joint Arrangements) Committee (EKJAC).

**3. Terms of Reference**

- 3.1 The terms of reference of the East Kent (Joint Scrutiny) Committee are as set out in Schedule B.



- 3.2 These arrangements will be reviewed regularly. No proposed amendments to these arrangements will take effect until they have been agreed and endorsed by each of the parties.

#### **4. Call-In**

- 4.1 The arrangements for the operation of call-in by the EKJSC shall be as set out in Schedule C. The EKJSC shall have power to call-in any decision made by EKJAC, a sub-committee of EKJAC, or any member or officer with delegated authority from EKJAC. The EKJSC will not have the power to call-in any decision of the Executive of any of the Parties.
- 4.2 Where there is a call-in by a statutory scrutiny committee of any of the Parties of any decision of the EKJAC, each of the other Parties will be notified forthwith. The call-in shall be heard by the call-in Party's statutory scrutiny committee in accordance with the call-in Party's own arrangements. Where there is more than one call-in on the same subject the parties shall endeavour to ensure that they are heard together at the same time and place.
- 4.3 The call-in procedure set out in clauses 4.1 and 4.2 above shall not apply where the decision being taken by or on behalf EKJAC is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the interests of any of the Parties or the public interest. The record of the decision and notice by which it is made public shall state whether, in the opinion of the decision maker, the decision is an urgent one and therefore not subject to call-in. The Chairman and the members of each of the Parties affected by the decision must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman, the consent of the Vice-Chairman shall be required. In the absence of both the Chairman and Vice-Chairman, the consent of the Head of Paid Service of that Party (or his/her nominee) shall be required. Decisions taken as a matter of urgency must be reported to the next available full Council meetings of each of the Parties, together with the reasons for urgency.

#### **5. Membership and Terms of Office**

- 5.1 The EKJSC will comprise three non-executive councillors from each of the Parties.
- 5.2 Each appointing Party shall appoint its three members on the basis of its overall political proportionality.
- 5.3 Members of the EKJSC shall be appointed by the Parties at their annual meetings of their respective Council and shall hold office until:
- (a) the next annual meeting of the Party that appointed them, save that the Party that appointed them may remove them from office, either

individually or collectively, at an earlier date in the event of a change in political control of that Party; or

- (b) they resign from office; or
- (c) they are suspended from being councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension)

5.4 Each Party may appoint substitutes to represent their authority in the absence of the appointed councillors. Nominated substitutes will be non-executive councillors and will be able to attend any meeting of EKJSC in order to familiarise themselves with the issues involved, but will not be able to participate in debate or vote unless they are formally acting as a substitute member.

5.5 Non-voting members may be co-opted onto the EKJSC from any or all of the Parties or from other public sector partner organisations as the EKJSC may unanimously decide. Co-optees may participate in the debate but may not vote.

## **6. Frequency of Meetings**

6.1 The EKJSC will meet quarterly, but may change the frequency of meetings and call additional meetings as required.

## **7. Agenda Setting and Access to Meetings and Information**

7.1 The agenda for the EKJSC shall be agreed by the chairman following a briefing by relevant officers. Any member of the EKJSC may require that an item be placed for consideration on the agenda of the next available meeting.

7.2 There will be a standing item on the agenda of each meeting of the EKJSC for matters referred by the EKJAC.

7.3 Notice of meetings and access to agendas and reports will be in accordance with sections 100A-K and Schedule 12A of the Local Government Act 1972.

## **8. Sub-Committees**

8.1 The EKJSC may establish sub-committees as it may determine by unanimous agreement of the EKJSC.

8.2 When establishing a sub-committee the EKJSC will agree the:

- (a) terms of reference for the sub-committee
- (b) size and membership of the sub-committee including co-optees

- (c) period for which the sub-committee will remain constituted
- (d) chairman of the sub-committee or will delegate this decision to the sub-committee
- (e) mechanism for hosting the sub-committee and sharing the cost amongst the relevant Parties, as appropriate

## **9. Delegation to Sub-Committees**

- 9.1 The EKJSC may arrange for the discharge of any of its functions by a sub-committee of the EKJSC.

## **10. Meetings and Procedure**

- 10.1 The Chairman and Vice Chairman will be appointed by the EKJSC on the basis of the position being rotated annually, as follows, and repeated each five years:

	<b>Chairman and Scrutiny Host Authority</b>	<b>Vice-Chairman</b>
2008-9	Shepway	Dover
2009-10	Dover	Kent
2010-11	Kent	Canterbury
2011-12	Canterbury	Thanet
2012-13	Thanet	Shepway

- 10.2 The Chairman and Vice Chairman of EKJSC shall be drawn from a political group not forming part of the administration of the appointing Council.
- 10.3 In the absence of the chairman and the vice chairman at a meeting, the meeting will elect a chairman for that meeting.
- 10.4 The quorum of the EKJSC will be five with at least one member present from four of the five Parties.
- 10.5 The EKJSC may approve rules for meetings and procedure from time to time.
- 10.6 The EKJSC may ask organisations, individuals or groups to assist it from time to time and may ask independent professionals to advise it during the course of reviews. Such individuals or groups will not be able to vote.
- 10.7 The EKJSC may request the attendance of officers employed by the participating authorities to answer questions and give evidence to the committee. Such requests must be made via the Chief Executive of the relevant participating authority.

10.8 The EKJSC may invite any other person to attend its meetings to answer questions or give evidence; however, attendance by such persons cannot be mandatory.

## **11. Decision Making**

11.1 Decisions of the EKJSC will normally be made by consensus. A vote shall be taken where the chairman or any Voting Member requests that a vote be taken. The vote will be by way of a show of hands. A simple majority shall be required.

11.2 Where a minimum number of two members express an alternative to the majority view, they will be permitted to produce a minority report.

## **12. Scrutiny Host Authorities and Allocation of Roles**

12.1 In order to achieve the objectives of the EKJSC, the Parties will appoint a Scrutiny Host Authority which is for the time being the Authority shown as the Chairman and Scrutiny Host Authority in the table at clause 10.1.

12.2 Staff from the Scrutiny Host Authority who are commissioned to provide services, advice and support to the EKJSC will continue to be employees of the relevant Scrutiny Host Authority.

12.3 Responsibility for the following support services to the EKJSC will be allocated to the Scrutiny Host Authority:

- (e) the provision of legal advice and services
- (f) the provision of financial advice and services
- (g) secretariat support and services
- (h) communications support and services
- (i) data protection, freedom of information, information sharing and confidentiality issues in accordance with clause 17
- (j) research

12.4 The cost of the services and advice set out in this section will be paid for by the Scrutiny Host Authority.

## **13. Amendments to these Arrangements**

13.1 These arrangements may be amended by the unanimous agreement of the EKJSC following a recommendation approved by the full Council of each of the Parties.

#### **14. New Membership and Cessation of Membership**

- 14.1 New Parties may join the EKJSC provided that they are also a party to EKJAC and the full council of the joining Party(ies) and of all the Parties to these arrangements for the time being so resolve.
- 14.2 A Party ceases to be a member of these arrangements when it ceases to be a party to EKJAC.
- 14.3 Termination of these arrangements may occur by agreement of all the Parties.

#### **15. Claims and Liabilities**

- 15.1 The purpose of these arrangements and any actions taken under them is to assist all of the Parties. The Parties therefore have agreed that:
  - (a) where one of the Parties nominated by the EKJSC to act as Scrutiny Host Authority undertakes actions or incurs liabilities in that respect then it shall be entitled to be indemnified by the other Parties for the appropriate proportion of all its costs and liabilities incurred in good faith
  - (b) a Party carrying out actions in good faith on behalf of the EKJSC shall not (other than in the case of fraud and/or clear bad faith) be liable to claims from the other Parties (and there shall be no right of set-off against any claim for indemnity under (b) and/or (c) above) on the grounds that the actions that were taken were not the proper actions carried out properly or that the costs and liabilities incurred were not reasonably and properly incurred (as long as they were in fact incurred)
- 15.2 Each of the Parties shall at all times take all reasonable steps within its power to minimise and mitigate any loss for which it is seeking reimbursement from any of the other Parties.

#### **16. Administration**

- 16.1 The decisions and recommendations of the EKJSC will be communicated to EKJAC and the participating councils as soon as possible after the resolution of the committee.
- 16.2 Where working on forthcoming decisions of the EKJAC, the EKJSC will endeavour to carry out its functions as part of the EKJAC's process in order to ensure that its findings and recommendations can influence the final decision.
- 16.3 When considering items before it, the EKJSC will take account of whether an issue could more appropriately be dealt with by one of the Parties or elsewhere.

**17. Data Protection, Freedom of Information, Information Sharing & Confidentiality**

- 17.1 Subject to the specific requirements of this clause, each of the Parties shall comply with its legal requirements under data protection legislation, freedom of information and associated legislation, and the law relating to confidentiality.
- 17.2 A Party will be appointed as a Host Authority for the purposes of ensuring compliance with any legislative or legal requirements relating to these issues should they arise directly in relation to the EKJAC (as compared to information held by the Parties to these arrangements).
- 17.3 Each of the each Parties shall:
- (a) treat as confidential all information relating to:
    - (i) the business and operations of the other Parties and/or
    - (ii) the business or affairs of any legal or natural person in relation to which or to whom confidential information is held by that Party("Confidential Information") and
  - (b) not disclose the Confidential Information of any other of the Parties without the owner's prior written consent
- 17.4 Clause 17.3 shall not apply to the extent that:
- (a) such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure or
  - (b) such information was obtained from a third party without obligation of confidentiality or
  - (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of these arrangements or
  - (d) disclosure is required by law (including under Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or disclosure is permitted by the Human Rights Act 1998
- 17.5 The Parties may only disclose Confidential Information of another of the Parties to staff who need to know by reason of their work. Each of the Parties shall ensure that such staff are aware of, and comply with, these confidentiality obligations and that such information is not used other than for the purposes of the EKJSC.
- 17.6 If any of the Parties receives a request for information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 then the other Parties shall (at their own expense) assist and co-operate to enable the request to be dealt with.

- 17.7 If a request for information is received then the Party receiving it shall copy it to the other Parties and consider when making its decisions any views of the other Parties.
- 17.8 Notwithstanding the provisions of 17.6 and 17.7 it shall be the Party receiving the request that is responsible for determining at its absolute discretion how to reply to the request.

**18. Exercise of Statutory Authority**

- 18.1 Without prejudice to these arrangements, nothing in these arrangements shall be construed as a fetter or restriction on the exercise by any of the parties of their statutory functions.

## **Schedule B**

### **TERMS OF REFERENCE of the EAST KENT (JOINT SCRUTINY) COMMITTEE**

1. Monitor review and scrutinise the actions and decision of the East Kent (Joint Arrangements) Committee.
2. Make recommendations for reconsideration of any decisions made or actions taken and to make recommendations for improvement and/or changes in responsibilities and functions of the EKJAC.
3. Prepare reports and recommendations to the parties on the performance and delivery of the shared services provided by the EKJAC.
4. Propose an annual budget for the EKJSC in accordance with the requirements of the parties.
5. Prepare an annual report to the parties on the performance of these arrangements.
6. Facilitate the exchange of information about the work of the EKJSC and to share information and outcomes from reviews.



## **Schedule C**

### **ARRANGEMENTS FOR THE OPERATION OF CALL-IN by the EKJSC**

1. When a decision is made by EKJAC, a sub-committee of EKJAC or an individual member with delegated authority from EKJAC, or a key decision is made by an officer with delegated authority from EKJAC, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of each of the Parties normally within two days of being made. The Chairman of the EKJSC (and all other members of each of the Parties) will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.
2. That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented at 12.00 noon, on the fourth working day after the publication of the decision, unless it is called-in.
3. By 10.00 am on the fourth working day after publication of the decision, the proper officer of the Scrutiny Host Authority shall call-in a decision for scrutiny by the EKJSC if so requested by any member of the EKJSC, and shall then notify the decision maker of the call-in. A meeting of the EKJSC shall then be held within 15 working days of the decision to call-in. Reasons for calling-in a decision should be given and recorded in the agenda.
4. If, having considered the decision, the EKJSC is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to the full Council of all or any of the Parties. If referred to the decision maker they shall then reconsider within a further 10 working days, amending the decision or not, before adopting a final decision.
5. If, following an objection to the decision, the EKJSC does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the EKJSC meeting, or the expiry of that further 10 working day period, whichever is the earlier.
6. If the matter was referred to full Council of any of the Parties and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision maker, together with Council's views on the decision. That decision maker shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by EKJAC as a whole or a committee of it, a meeting will be convened to reconsider within 10 working days of the Council request. Where the decision

was made by an individual, the individual will reconsider within 10 working days of the Council request.

7. If the Council of any of the Parties to whom the matter has been referred does not meet, or if it does but does not refer the decision back to the decision maker, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.