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JOINT NATURE CONSERVATION COMMITTEE

FMPR PROGRESS REPORT

Paper by Keith Little - FMPR Project Co-ordinator

1. Introduction

- 1.1 A range of matters have been successfully progressed since the last Joint Committee meeting in June, and this report aims to summarise the position.

2. Progress made

Steering Group meeting

- 2.1 A meeting of the JNCC Review Steering Group took place at the end of July. At the meeting, it was reported that the Minister had approved proposals for ring-fencing JNCC funding within the country agencies' grant-in-aid in future, linking that funding with an agreed 3-year corporate plan. The DEFRA letter outlining the new arrangements, which were subsequently approved by the Minister, also acknowledges the creation of an additional funding stream for UK government work, using CITES as a pilot area. A Service Level Agreement for CITES advice is currently being drafted by DEFRA and JNCC. These are significant steps forward. A copy of the DEFRA letter to English Nature setting out the changes is attached as Annex 1.
- 2.2 A further significant step forward is the preparation, by DEFRA, of a progress report and action plan which when approved, will be forwarded to Ministers. A draft of these documents is presented as Part 2 of this paper, for Committee consideration. All members of the FMPR Steering Group have had an input and it is intended that as soon as Committee's comments have been received the submission will be passed to Ministers for approval.

Workshops with country agency Resource Directors

- 2.3 Two very useful workshops have been held with country agency Resource Directors, aimed at involving them in key elements of the project, and seeking their views on matters of most interest and concern to them. The Resource Directors agreed some guiding principles, developed from key objectives agreed by the JNCC Chairman's sub-group last January. A copy of a summary of Chairman's sub-group recommendations, guiding principles, and issues not being pursued is attached at Annex 2.

- 2.4 It would be helpful if all the main stakeholders involved in the FMPR were able to sign up to a common set of principles.

Liaison with DEFRA

- 2.5 The Support Unit continues to have close liaison with colleagues in the sponsor branch of DEFRA. Martin Capstick (Head of European Wildlife) has produced a very helpful paper on legal issues and is currently seeking key pieces of legal advice from DEFRA lawyers.

The FMPR Project Team

- 2.6 The Project Team continues to carry out work in planning and implementing FMPR changes. Some very useful work was undertaken in preparing discussion papers for the Resource Directors' workshops. Most importantly, the Team have undertaken a programme of visits to four Companies Limited by Guarantee (CLGs) who were selected from a wider list as being relevant to our circumstances. *A summary of these visits is available for those interested.* Amongst the most important lessons were, firstly, how flexible the CLG framework can be in accommodating corporate governance options. Secondly, it was reassuring to note that three of the CLGs visited continue to feel part of the public sector, and indeed two are NDPBs. (The other, interestingly, had consciously used CLG status to distance itself from the public sector.) However, it was clear that none of these bodies had the same type of stakeholder relationships as JNCC.

Revision of JNCC's Statement of Strategic Direction

- 2.7 This area of work is progressing and is the subject of a separate paper to be discussed at this Committee meeting.

3. Outstanding issues of importance

Legal issues

- 3.1 The lack of definitive advice on some of the key legal issues is seen as a significant bar to progress. The Support Unit has attempted to spell out the legal questions which need answers for Martin Capstick to pursue with DEFRA legal advisers. These were mainly developed during the Resource Directors' workshops.
- 3.2 A copy of the paper which was prepared to enable Deryck Steer to brief Martin Capstick is attached as Annex 3, for information.
- 3.3 As well as the questions to be addressed, the briefing paper includes a representation of three possible organisational models which could be applied in future, together with a decision tree which was prepared to help highlight the fundamental questions. Clearly, any conflict that may arise between existing statute (the Environmental Protection Act 1990) and the use of other

mechanisms (e.g. the CLG model) need to be ironed out now so that JNCC can operate with confidence for the next ten years.

Change drivers

3.4 Resource Directors identified five major drivers for change. They undertook to do this in order to examine which of those drivers might need to wait for legislative change before any meaningful action could be taken. The five change drivers are:

- i. reduce risk of associated employer status;
- ii. reduce administrative burden;
- iii. increase clarity/transparency of accountability;
- iv. increase clarity of governance framework; and
- v. harmonise terms and conditions.

The conclusion reached was that work to address points 2, 3 and 4 could be progressed now without the need for legislative change, and therefore, even if some parts of the FMPR implementation must necessarily wait for legislation, there was still much that can be pursued without delay.

Human Resource (HR) issues

3.5 Preparatory work is progressing to enable staff to be employed on a single set of terms and conditions. The three major elements of work are:

- i. managing the transfer of staff between existing and new employers;
- ii. establishing the necessary capability within the Support Unit to enable JNCC to discharge its responsibilities as an employer effectively; and
- iii. addressing the differences in existing terms and conditions.

Progress is being made to clarify factors which will impact on the range of options available and the rate at which this work can be progressed, including stakeholder requirements, legal and policy requirements and practical considerations. Country agency HR managers have recently begun work to determine appropriate consultation and negotiation arrangements.

DEFRA

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6 August 2002

Dear Andy

FUTURE FUNDING ARRANGEMENTS FOR JNCC

1. Following the Financial, Management and Policy Review, the Steering Group has been considering ways of improving funding arrangements for the JNCC. At our meeting on 3 October 2001, we considered a "simple shares" model in which the costs of the JNCC programme would be agreed by the three administrations concerned as part of the spending review cycle and explicitly ring-fenced in each Country Agency's Grant-in-Aid letter. We subsequently agreed that we would submit this proposal to Ministers in advance of the main action plan so that we could have the arrangements in place in time to apply them to the outcome of Spending Review 2002.

2. Ministers have now agreed these arrangements. In more detail, these mean that:

- i. the administrations agree on what proportion of the costs should be borne by each of the three countries. We propose to retain the existing 4:2:1 formula;
- ii. the total budget for JNCC will be set each year by DEFRA Ministers, but after consultation and in agreement with their Scottish and Welsh colleagues. The budget will be based on JNCC's corporate plan, which will be developed in consultation with all three administrations;
- iii. each of the administrations make arrangements with their respective country agency underpinning their "share" of the formula - i.e. in future, in paying grant-in-aid to the country agencies, they will make clear the amount that they expect the agency to pass on to JNCC.



INVESTOR IN PEOPLE

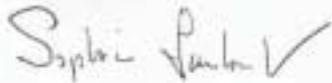
- iv. in future spending reviews the administrations will consult together on the bids that they would put in to cover JNCC costs. We would aim to provide additional funds for JNCC as appropriate out of our final budget following the settlement.

3. I am therefore proposing to include a paragraph in English Nature's Financial Memorandum along the following lines. In place of the text stating that the Committee's expenses are funded by the three country councils "on a proportional basis agreed annually by the Chief Executives", the new text will state, "The total budget for the JNCC will be set by DEFRA Ministers in consultation with their Scottish and Welsh colleagues as part of the Spending Review cycle. The agreed share of the budget to be contributed by DEFRA, via English Nature, will be explicitly ring-fenced in English Nature's grant-in-aid letter".

4. We also propose to build this formula into the relevant Annexes to the Concordats between DEFRA and the devolved administrations.

5. We propose to handle the JNCC funding in this way starting from the outcome of this year's Spending Review. I should be grateful if you would confirm that you are content with these arrangements.

Yours ever



SOPHIA LAMBERT

**SUMMARY OF OBJECTIVES ALREADY AGREED BY JNCC
CHAIRMAN'S SUB-GROUP**

ACCEPTED BY RESOURCE DIRECTORS

- revise and publish statement of strategic direction
- add additional independent member to Committee
- JNCC chair to have regular access to ministers
- common standards to be extended from GB to UK
- NI to be treated equally as other devolved administrations
- 3-year funding and planning mechanisms to be put in place linked to both spending review and country agency plans
- main funding via ring-fenced GIA with a new funding stream from Government
- retain flexibility to receive and deploy additional external funding
- JNCC to have incorporated status
- JNCC staff to be employed on a single set of terms and conditions
- clearer, simpler accountability lines to be drawn

FMPR – OVERALL GUIDING PRINCIPLES AGREED BY RESOURCE DIRECTORS

- clearer identity and role for JNCC
- JNCC's role and work to be determined by the statement of strategic direction
- strategy will be used to drive the direction of JNCC
- clear planning process with appropriate resourcing over medium term
- create separate funding streams for Government work
- less bureaucracy, administrative simplicity - more streamlined procedures and processes
- ensure running costs remain in proportion to overall budget
- continued effective collaborative working
- incorporated status for JNCC
- act as good employers in treating staff with an overall sense of fairness
- single set of terms and conditions for JNCC staff
- clear accountability and empowerment of JNCC Managing Director
- equal footing for NI

WHAT IS NOT ON THE AGENDA

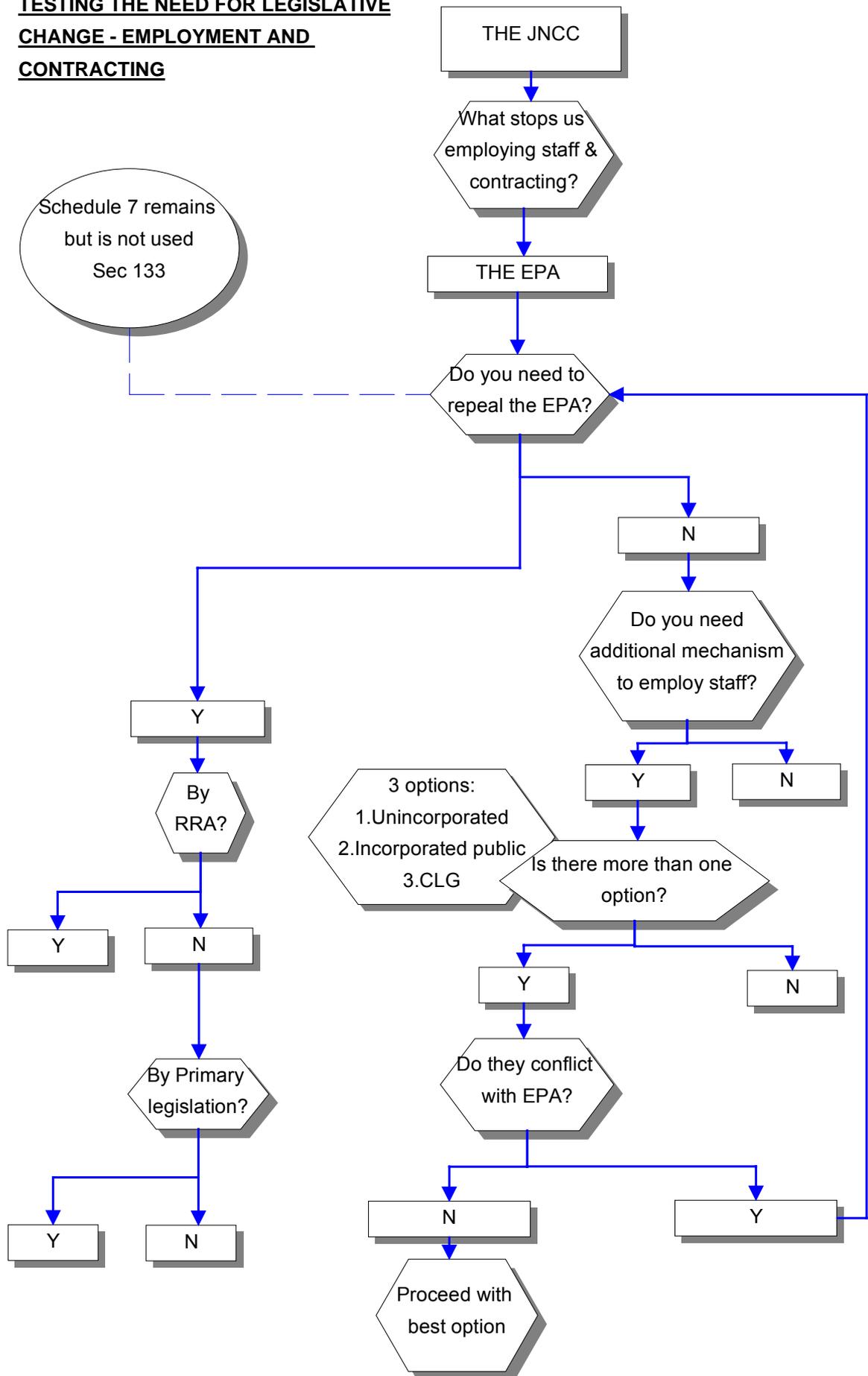
AGREED BY RESOURCE DIRECTORS AND JNCC SUPPORT UNIT

- separate NDPB status for JNCC
- any change affecting the status of JNCC as a committee of the country agencies
- a major change of role or function
- a move away from the public sector
- departure from public sector processes for negotiating pay and conditions
- solutions which increase bureaucracy

**BRIEFING NOTE FOR DERYCK STEER FOR HIS MEETING
WITH MARTIN CAPSTICK ON 5TH SEPTEMBER 2002**

Prepared by:
Keith Little
5th Sept 2002.

TESTING THE NEED FOR LEGISLATIVE CHANGE - EMPLOYMENT AND CONTRACTING



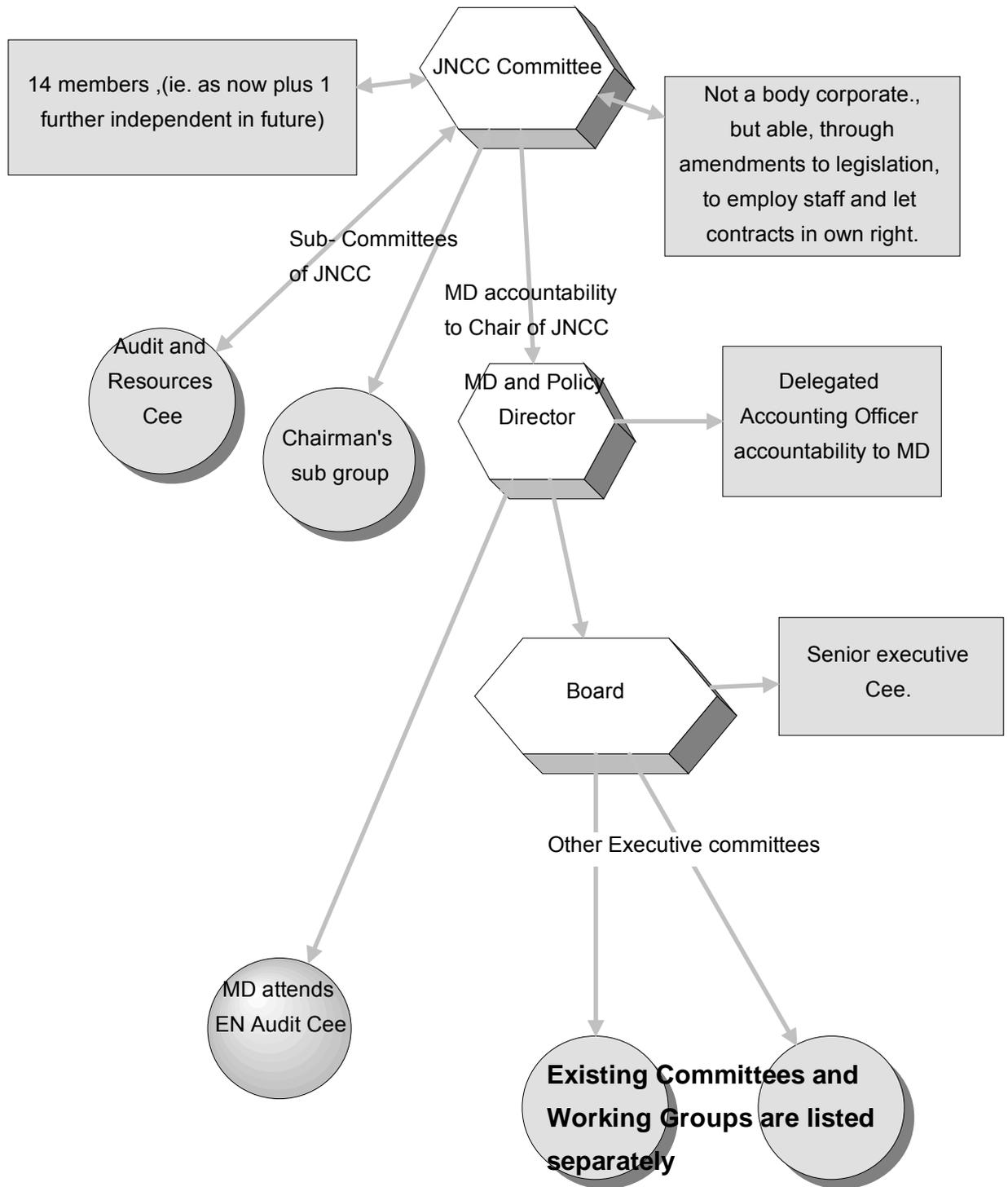
**ANALYSIS OF THREE POSSIBLE MODELS
INDICATING RELATED LEGAL ISSUES AND PRO'S
AND CON'S OF EACH :**

1. UNINCORPORATED BODY (MODEL A)

**2. WHOLLY OWNED PUBLIC CORPORATE BODY
(MODEL B)**

3. COMPANY LIMITED BY GUARANTEE (CLG) (MODEL C)

JNCC - UNINCORPORATED BODY (Model A)



UNINCORPORATED ORGANISATION – MODEL A

LEGAL ISSUES ARISING FROM DISCUSSIONS AT RESOURCE DIRECTORS WORKSHOP ON 2ND SEPT

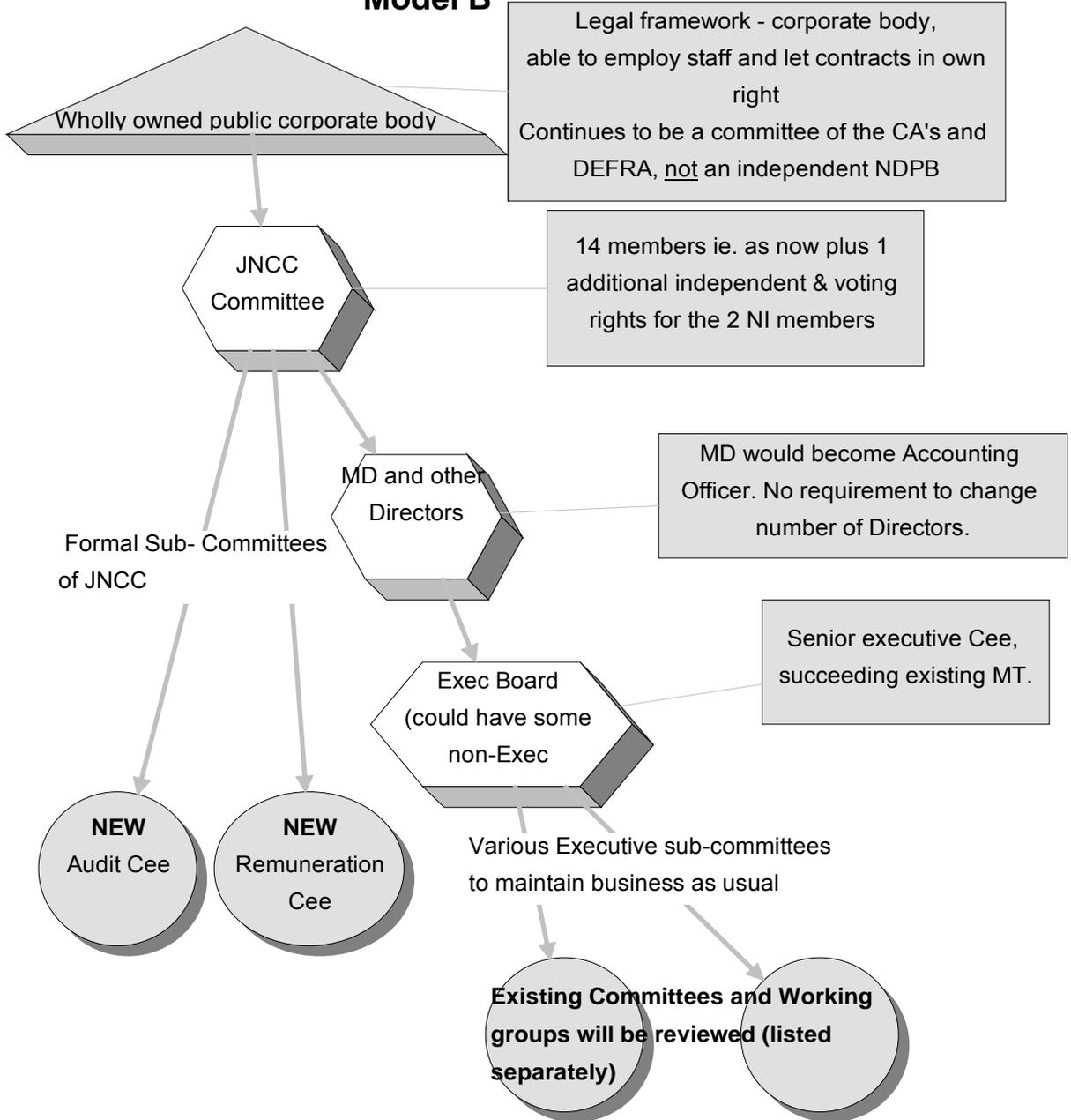
Issue	What?	Who?	When?
Unincorporated Employer	What legislation needs changing to achieve and by what method?	Deryck Steer & Martin Capstick	Before Sept JNCC mtg
Can RRA be used to enable JNCC to let contracts and employ staff? If not why? Needs explanation	Need definitive legal advice – from RRA Unit	Ditto	Ditto

PROS AND CONS

UNINCORPORATED ORGANISATION
<p>PRO'S</p> <ul style="list-style-type: none"> • Ability to let contracts is achieved (In conjunction with RRA) • No need to comply with Cpy's Act requirements (although would need to comply with partnership law & Treasury requirements)
<p>CON'S</p> <ul style="list-style-type: none"> • Will only work in conjunction with RRA • Additional admin burden re contracts (ie. Change of "partners") • Possibly unattractive to Cee members – need to indemnify • Unattractive to CA's – ie indemnifying those that they have not appointed • Likely to be unattractive to JNCC staff because of difficulty in demonstrating long term security

JNCC - WHOLLY OWNED PUBLIC CORPORATE BODY

Model B



WHOLLY OWNED PUBLIC SECTOR BODY - MODEL B

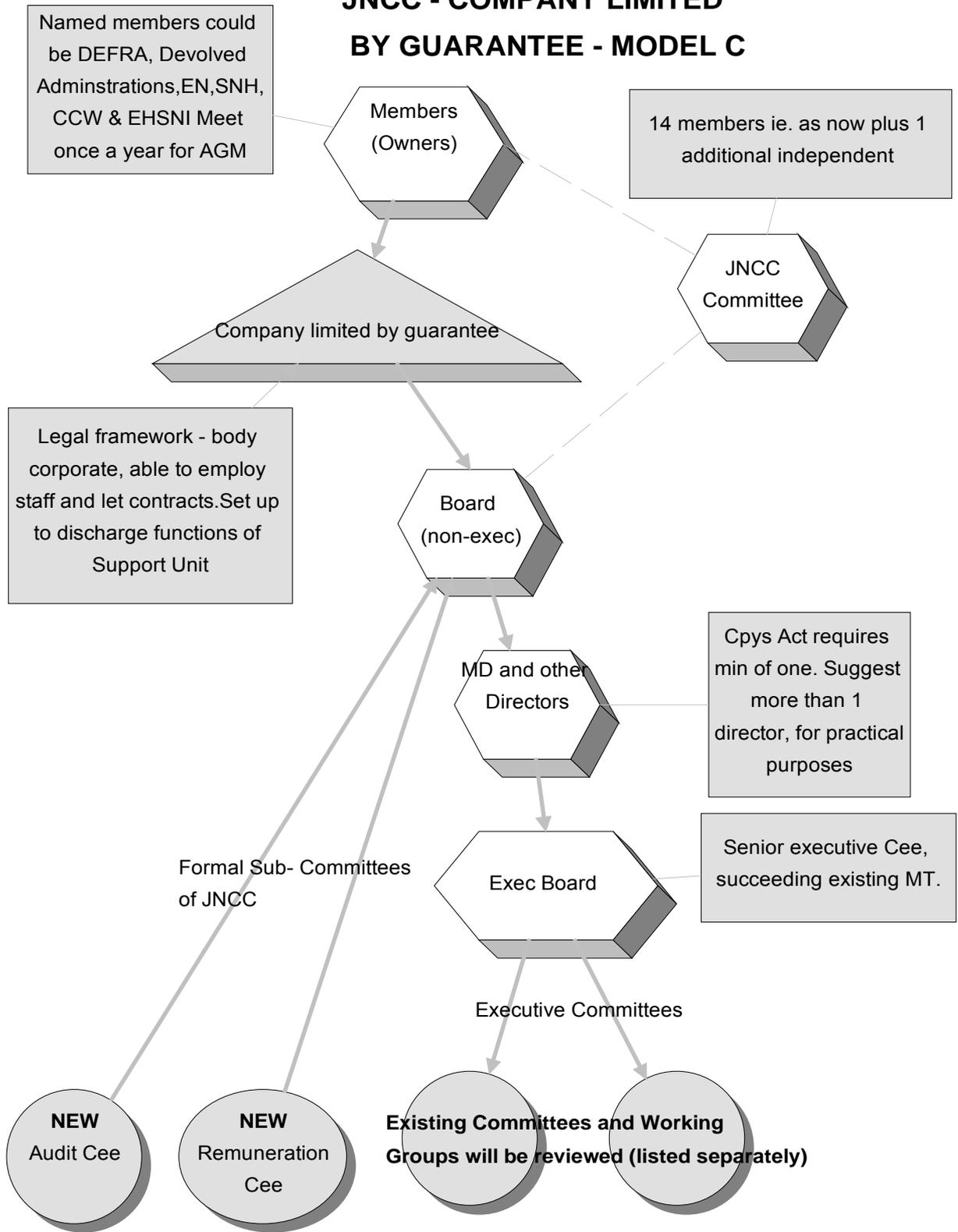
LEGAL ISSUES ARISING FROM DISCUSSIONS AT RESOURCE DIRECTORS WORKSHOP ON 2ND SEPT

Issue	What?	Who?	When?
{Can RRA be used to {enable JNCC to let {contracts and employ {staff?	Need definitive legal advice – from RRA Unit	Deryck Steer and Martin Capstick	Before the Sept JNCC meeting
{Can RRA be used to {give Corp Body {status?	Ditto	Ditto	Ditto
If answer to above 2 points is “ <u>no</u> ”, then why is this – needs explanation	Ditto	Ditto	Ditto

PROS AND CONS

WHOLLY OWNED CORPORATE BODY
<p>PRO'S</p> <ul style="list-style-type: none"> • Least change • Staff regard as more secure • Only one (public sector) governance framework • Security/stability of statute • Clearer accountabilities via FM mechanism • Remaining, together with CA's, within cultural family
<p>CON'S</p> <ul style="list-style-type: none"> • Least change could equal no change • May require primary legislation. Query whether achievable in short term. • Absence of drivers for change, and yet requires significant administrative change

JNCC - COMPANY LIMITED BY GUARANTEE - MODEL C



COMPANY LIMITED BY GUARANTEE – MODEL C

LEGAL ISSUES ARISING FROM DISCUSSIONS AT RESOURCE DIRECTORS WORKSHOP ON 2ND SEPT

Issue	What?	Who?	When?
{Can RRA be used to {enable JNCC to let {contracts and employ {staff?	Need definitive legal advice – from RRA Unit	Deryck Steer and Martin Capstick	Before Sept JNCC meeting
{Can RRA be used to {give Corp Body {status?	Ditto	Ditto	Ditto
If answer to above 2 points is “no”, then why is this – needs explanation	Ditto	Ditto	Ditto
If Members of the Cpy and JNCC members are one and the same, we believe this may require legislative change	Can that change be achieved via the RRA?	Ditto	Ditto
Can the Cee also be the Cpy Board under current legislation?		Ditto	Ditto
If the members of the Cpy are the CA’s, DEFRA and devolved administrations, can we properly meet para 133 & Sch 7 para 7 of the Act ?	Routing of resources and relationship between joint committee & CLG	Ditto	Ditto

PRO'S AND CON'S

COMPANY LIMITED BY GUARANTEE
PRO'S <ul style="list-style-type: none">• Powers exist to set up CLG by Agencies (via Agencies)• More explicit co-ownership and corporate plan link (with Model 3)• Encourages new mindset• Allows for Harmonised T&C's• Forces clearer accountability
CON'S <ul style="list-style-type: none">• A need to comply with Cpy Law, as well as public sector requirements• Associated employer risk may increase• Staff may have concerns about Cpy model• Relatively complex

The additional pro's that I could think of in addition to those identified at Resource Directors are :

- Go live date can be fairly flexible and self-determined
- We have identified existing precedents for non-trading, not for profit, public sector CLG's

Keith Little