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## **JOINT NATURE CONSERVATION COMMITTEE**

### **FMPR – PROGRESS, IMPLEMENTATION OPTIONS AND THE WAY FORWARD**

#### **Paper by Deryck Steer**

#### **1. Introduction**

- 1.1 This paper sets out to explain in simple terms the position reached with the FMPR to date, the implications of important legal advice recently received from Defra lawyers and the options available to achieve a desirable outcome for the majority of stakeholders.
- 1.2 The progress report prepared by the FMPR project Team at **Annex 1** of this paper provides the necessary detailed supporting information.

#### **2. Current position**

##### *2.1 Recommendations achieved or powers in place*

- i. A clear and agreed JNCC strategy
- ii. JNCC chairman to have access to Ministers
- iii. A three year planning and funding mechanism
- iv. Ring fenced funding
- v. Ability to use external funding
- vi. Creation of direct funding stream for Govt services

##### *2.2 Recommendations where Primary legislation is the only option*

- i. Additional independent member for JNCC
- ii. Common standards to extend from GB to UK
- iii. Northern Ireland to be treated as other devolved administrations

##### *2.3 Recommendations where options still exist*

- i. Incorporated status for JNCC with ability to contract and hold assets
- ii. Employment of staff on single set of terms and conditions
- iii. Clear and simple lines of accountability and delegation

### 3. The options

3.1 The table at Appendix 4 shows four options. This can be summarised as:

- A Do nothing
- B Changes by Regulatory Reform Act 2001 (RRA) without setting up a company limited by guarantee (CLG)
- C Changes by RRA and setting up a CLG
- D Changes by primary legislation to achieve statutory body status

3.2 Of these, option A is not acceptable to any stakeholders and has been discounted. Option B requires the Committee itself to be the unincorporated direct employers of all JNCC staff and is considered to be administratively burdensome and will inevitably draw Committee into operational issues. This has also been discounted leaving options C and D for Committee consideration.

<p><i>Option C</i></p> <p>Change the Environmental Protection Act 1990 (EPA) via the Regulatory Reform Act 2001 and set up a CLG owned by JNCC.</p> <p>Timescale = 12-18 months</p>
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<p><i>Option D</i></p> <p>Change the Environmental Protection Act 1990 via primary legislation and create a wholly owned statutory body.</p> <p>Timescale = 2-4 years</p>
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### 4. The risks

4.1 *The risks under each option are as follows:*

*Option C*

- i. Additional complexity caused by the mix of public and private sector regulation
- ii. Reduced security or opportunity for staff to move between agencies
- iii. Unlikely to be reversible economically once decision made

*Option D*

- i. Delay and further uncertainty increases the likelihood of a challenge on grounds of inequality
- ii. Likely reduction of organisational motivation and momentum
- iii. Timetable unclear and there is no guarantee that final desired outcome will be achieved
- iv. Strategy implementation will be adversely affected

## 5. Conclusion

- 5.1 With the commitment of JNCC's main stakeholders it should be possible to manage the risks at option C to a workable level.
- 5.2
  - i. The risks at option D are more problematic and less in the control of the stakeholders.
  - ii. Not only will the timing be dependant on others but so will the final solution and this may not be in tune with the stakeholders wishes.

## 6. Other immediate considerations

### 6.1 *Need for a Committee Sub Group*

If Committee regard option C as the best way forward there is an urgent need to set up a Committee sub group to lead the change programme. It is unlikely that the current Government led steering group will wish to do any more than ensure action is progressing.

### 6.2 *Funding the project*

Funding is critical if changes are to be implemented effectively and any adverse impact on the business is to be kept to a minimum. At present Defra are not hopeful about finding the extra amounts needed and this will force us to redeploy programme costs or delay this project.

### 6.3 *Timetable for option C*

- i. Government lawyers advise us that to progress changes through the RRA will take 9-12 months from when an agreed package of changes is available. Sponsorship officials in Defra believe it will take more than 12 months because of other parliamentary priorities. The obvious time to start up a CLG would be 1 April to fit with accounting requirements of Government and the agencies. Initial plans were working towards the date of 1 April 2004.
- ii. Although this now looks very tight it may not be beyond our reach and it is suggested that we prepare plans for both an April 2004 and April 2005 start.

## **JOINT NATURE CONSERVATION COMMITTEE**

### **FMPR - UPDATE ON PROGRESS**

#### **Paper by Keith Little and Sue McQueen - FMPR Project Team**

#### **1. Introduction**

- 1.1 This report provides an update on the progress being made towards identifying and proposing an organisational framework for the JNCC that enables the agreed objectives arising from the FMPR review to be implemented effectively. It also considers the administrative and management arrangements for developing and implementing agreed action and reports progress made with other aspects of the review.
- 1.2 The Appendices contain important current thinking or analysis on the following areas:
  1. Powers sought for the new body
  2. The current management and advisory framework
  3. Delegation of future decisions
  4. Comparison of organisational structures

#### **2. Background**

- 2.1 At the September meeting Committee considered a draft Government response to the FMPR stage 2 report. Defra incorporated the majority of Committee's comments into its final draft which was sent to Elliot Morley in mid October for agreement with relevant ministers in the devolved administrations. A copy of the Minister's response, which indicates consent by him and devolved administrations, has been published on both JNCC's and Defra's web sites.
- 2.2 Since the last meeting progress has been made in clarifying what legal changes would be necessary to enable the objectives arising from the FMPR to be achieved. In particular Defra has provided legal advice about how the Regulatory Reform Act 2001 (RRA) might be used to facilitate some of the changes necessary.
- 2.3 The conclusion from the investigatory work undertaken since the stage 2 report was produced is that a combination of actions designed to provide the powers necessary to create the new organisation could be one way of achieving the FMPR objectives. Existing powers with further delegated authority, together with Regulatory Reform Act amendments to achieve some of the early aims, and primary legislation for some of the final aims, provides a viable alternative to the other possibility of a primary legislation package to implement all the changes together.

### **3. Powers needed to achieve specific objectives**

- 3.1 A meeting with Defra's lawyers and representatives from the sponsor division took place on 12 November 2002. The lawyers advised that the Regulatory Reform Act could be used to remove the present burden created by existing legislation and provide JNCC with new administrative powers. These include employing staff, letting contracts and owning assets. (A fuller list of the powers we are seeking to obtain via the RRA is attached as Appendix 1). Changes to JNCC's powers, using the Regulatory Reform Act might, according to Cabinet Office guidance, be achievable within nine to twelve months of the agreement of draft amendments. Defra sponsorship officials are less confident with this target. This being the case, the outline launch date of April 2004 stills looks just possible, but at this stage, there is not much of a margin for delay.
- 3.2 An analysis of the means by which JNCC could be given the powers needed to achieve each of the agreed objectives resulting from the FMPR and any associated advantages or disadvantages is set out in Appendix 4. This reflects that, despite the constraints imposed by the need to clarify and achieve legal changes, some important objectives have already been, or could be, progressed using JNCC's existing powers. These relate to changes in strategic direction, planning and funding arrangements and direct access to ministers.

### **4. Regulatory Reform Act 2001 (RRA)**

- 4.1 Additional changes could be brought about relatively quickly through the RRA to allow JNCC to receive direct funding from Government and additional funds outside the corporate plan, to employ staff and to let contracts. However, lines of accountability will not be clarified under this option and the blurred distinction between country agencies and Committee and its staff may prove to be problematic in relation to differences in terms and conditions between the bodies.
- 4.2 *RRA/Company Limited by Guarantee (CLG)*

The establishment by Committee of a CLG in conjunction with the additional powers brought about by the RRA would enable lines of accountability to be clear. The Managing Director could act as Accounting Officer in this arrangement and the associated framework documents such as the Memorandum and Articles of Association and Management Statement will clarify the relationship with Committee. A sensitivity associated with this model is that it may be perceived by staff as less secure than the alternative public service models. Defra also advised that the Joint Committee's existing powers enable it, even at this time, to set up a Company Limited by Guarantee. However, without the changes to the EPA made through the Regulatory Reform Act, such a company could not employ staff or make other contractual commitments.

## **5. Primary Legislation**

5.1 Whilst the creation of an agency owned statutory corporate body offers most advantages, there is no certainty or control of the timing of legislation to allow this or indeed any guarantee of the final outcome. The objectives that could be achieved over and above those possible through the RRA and RRA/CLG models are the extension of voting rights for Northern Ireland members and of common standards to a UK level, the ability for Northern Ireland members to provide funding in the same way as other devolved administrations and the appointment of additional independent members. However, at this stage Defra sponsorship officials foresee no early legislative opportunity.

## **6. Other considerations**

6.1 In addition to the legal issues discussed above, the project team has been progressing work on clarifying issues and identifying operational requirements for each of the models. The major elements of this work, which relate to corporate governance, financial and staffing arrangements are described below.

### *Corporate Governance*

6.2 The burden of liability varies between the different models. Whilst the RRA act could be used alone to allow the JNCC to employ staff the JNCC would remain as an unincorporated body. The 'Guidance on Codes of Practice for Board Members of Public Bodies' recognises that, as individual members of such a body would be held personally liable, in this situation board members should receive suitable indemnities from their NDPB. In the case of the JNCC country agencies would be required to indemnify their representatives on Committee and independent members and the Chairman would be indemnified by Defra. In addition, any contracts that are entered into by Committee, including employment contracts, would require amendment each time membership changed.

6.3 The creation of a statutory corporate body would present a similar situation to the above. However, it is likely that indemnities for the statutory corporate body would be written into statute which would not be the case for the unincorporated model.

6.4 Under a CLG model the members of the company would be liable, for example in the event of a claim, but liability is limited to the nominal stake that they contribute to form the company, usually between £1 and £10.

6.5 With reference to other matters of corporate governance, work to implement any changes will be more or less the same, regardless of which model is adopted. The procedures for carrying out work on corporate planning, internal audit, risk management and modernising government initiatives would not change considerably although some of the detail may need to be amended to suit the appropriate framework. Different framework documents (Memorandum and Articles of Association, Management Statement and Financial Memorandum) would need to be put in place depending on the type

of model adopted and work has already started on scoping and developing these. Work has also progressed on other areas such as identification of internal audit options.

### *Staffing*

- 6.6 The majority of work associated with developing and implementing staffing changes is expected to be the same for each model. It is also anticipated that there would be no real difference between the models in terms of what they mean for key issues of concern to staff (staying in the public sector, pensions, job security and equality in terms and conditions). However, it is recognised that staff perceptions are very important and there will need to be effective information provision and consultation with staff throughout the process as well as formal negotiation with recognised trade unions. The Staff Association has continued to provide an effective forum for communication between staff and the project team. Additionally both the trade unions and management sides have made progress in determining the necessary structures that will need to be put in place to facilitate these arrangements.
- 6.7 For each model there will be a significant amount of work relating to appointing existing 'JNCC' staff to the new body, establishing the necessary infrastructure for JNCC to effectively fulfil its responsibilities as an employer and establishing a single set of terms and conditions for staff. This will place a large additional burden on personnel teams and one factor affecting the rate at which all tasks can be achieved is the staff and financial resources that are available. There is some flexibility over the timing of changes in that various aspects of work in all three main areas could be undertaken before or after the new body is created as necessary. Support Unit and country agency personnel staff have begun to plan the work involved. Other factors affecting timing of changes include Defra and Treasury timetables for approval of business cases and remits relating to pay and the availability of the associated funding.
- 6.8 The work that takes place and the resulting outcomes will be subject to compliance with employment legislation and arrangements are being put into place to enable the Support Unit and country agencies to obtain advice collectively.

### *Finance and Accounting*

- 6.9 Currently country agencies, with English Nature in the lead role, hold JNCC's assets, prepare and consolidate its accounts within their own, undertake internal audit of the JNCC and use finance and payroll systems to process transactions and provide information.
- 6.10 The project team has clarified what changes would be necessary to these arrangements under each model and identified a range of options as appropriate. The major differences are between JNCC as an unincorporated body, established through the RRA only, and the corporate models established through statutory or company law. JNCC's Managing Director could be the Accounting Officer, separate accounts could be produced and assets could be held by the JNCC if the CLG or statutory model is selected. Other differences

between the models are relatively minor and relate to issues such as the format of accounts and provision of external audit.

## **7. Next Steps**

### *Management and Administrative Framework*

- 7.1 A significant amount of work relating to the FMPR has already taken place and decisions taken to progress this. A number of groups, reflecting a range of interests, have provided input to the review and the work arising from it, as illustrated in Appendix 2.
- 7.2 As we move closer to, and into, implementation action a greater number and variety of decisions will need to be made. It is important that a common understanding is reached about which groups are best placed to make the different types of decisions to ensure that authorities and accountabilities are clear and appropriate decisions can be made efficiently. The definition of such a framework does not mean that other groups will not be involved in the decision-making process. It will be vital for a range of individuals and groups to contribute views and comments to inform the decisions that are finally taken. Appendix 3 highlights the types of senior management decisions to be made to implement recommendations and the possible decision-makers for each, and is presented as a basis for Committee to consider the appropriate groups for taking final decisions.
- 7.3 Decisions relating to existing and ongoing arrangements such as selection of new Committee members, approval of the Corporate Plan and so on are not included. It is anticipated that the management structure required for these decisions after the new body is established will be considered as part of the implementation process.

## **8. FMPR Costs**

- 8.1 Currently it is not possible to estimate some costs of implementing the FMPR recommendations with any degree of accuracy. However, for 2003/04 and 2004/05 they are likely to be at least £100K and £250K respectively excluding salaries of current project staff and including pay harmonisation against current country agency pay structures.
- 8.2 At this stage, though, it is important to note that Defra's position is that it is unable to contribute any additional resources, in this or future years. The implication of this is therefore that these costs are being, and will continue to be met, from programme funds.

## Appendix 1

### **Powers JNCC would be seeking from RRA changes to enable it to fulfil its statutory and other legitimate business obligations**

The powers and authorities sought are restricted to those necessary to manage the business affairs of the organisation efficiently and effectively, in fulfilling the Joint Committee's statutory functions.

1. To pay directly the expenses of running the Committee meetings (explicitly states in existing legislation that committee expenses should be defrayed by councils).
2. To establish, operate and to control specialist committees and working groups to advise and assist with the Committee's work, and to conduct research and studies, and to publish the results.
3. To pay out of the funds of the Committee the cost, charges and expenses of and incidental to the formation and registration of a Company Limited by Guarantee whose function shall be to deliver some or all of the objectives of the Committee.
4. Powers to directly employ staff (with continuity of employment and common citizenship rights, as currently enjoyed by staff) and to pay remuneration and allowances to those staff. (The objective being to directly employ staff so that they should be in no less a favourable position than their country agency colleagues, as far as this is practically possible).
5. The power to pay remuneration, allowances and pension contributions to the Chair and independent members of the Joint Committee, as appropriate.
6. Retention of Civil Service pension scheme membership and benefits for members and staff which includes the authority to make financial provision for reasonable employer contributions from grant in aid and other income to assist in providing pensions for members, employees and their dependants (membership of PCPS is essential assurance to staff).
7. Authority to place contracts with suppliers of goods and services in the name of the Joint Committee. To employ and pay any person or persons to carry on, supervise, organise and advise upon the work of the Committee.
8. To undertake and execute any trust, or attach the organisations seal to any deed or other legal document, as may be required. (Extension of right to place contracts)
9. To purchase, take on a lease or in exchange, hire or otherwise acquire and hold any real or personal estate (whether or not subject to any trust), and to construct, maintain and alter any of the same as are necessary or expedient for any purpose of Committee and sell, lease or otherwise dispose of any such real or personal estate. ( Lease of buildings, e.g. Monkstone House)
10. To draw, make, accept, endorse, negotiate, discount, execute and issue promissory notes, bill, cheques and other instruments and to open and operate bank accounts in the name of the Joint Committee, necessary for the operation of the business. To invest any short term surpluses in an interest bearing bank account/s. ( Last sentence

refers to any advance payments we might get from oil companies etc. – would want to earn interest on such monies, although not to invest in stocks/shares etc.).

11. The power to make and receive grants, to make a loan, receive a bequest or contribution made for the purpose of carrying out proper business functions from Government departments and all other bodies and persons. To accept any gift of money or property whether subject to any trust or not for any one or more of the object of the organisation. (Possible, but not likely that we could receive a loan or bequest).
12. To make any charitable donation either in cash or assets for the furtherance of the objects of the company. (We tend to donate redundant IT equipment to charities).
13. To borrow, lend or raise money to meet the objectives of the organisation on such terms (and with such consents as are required by law) and on such security as may be thought fit. (Staff loans for house purchase, for example).
14. The right to receive funds directly from government and other sources, including the private sector, for work not funded by the country councils.
15. Transfer of assets and liabilities, currently held jointly by the country agencies, to the Joint Committee at an agreed future date, and powers to acquire and dispose of such assets necessary to carry on the business. (Expect to transfer assets such as IT equipment, furniture etc. on the appointed day, and to buy and dispose of assets thereafter).
16. The ability to insure for any risks or indemnifications not normally covered by the overall principle of government “self insurance”, but necessary to carry on business. (This could be lifts, boilers etc. or anything that we are contractually obliged to insure).
17. To work in cooperation or partnership, as appropriate, with any authorities, national, local, international or otherwise and to be bound by partnership agreements where appropriate. (Partnership agreements with other public sector bodies which we may not necessarily desire to be legally enforceable).
18. To print and publish and to arrange to have printed and published either gratuitously or by way of sale, any reports, periodicals, books or leaflets which are desirable for the promotion of the objects of the organisation or the furtherance of its business objectives.
19. To do all such things as are necessary to the attainment of the objectives of the Committee.

*Powers not sought:*

1. Investment powers - other than in an interest bearing bank account for short term surpluses.
2. To operate a wholly owned trading subsidiary.

## Appendix 2

### Current Management and Administrative framework

1. The Steering Group has been the top executive decision making body. This has been chaired by Sophia Lambert from Defra, and included representatives from most of the key stakeholder groups, including country agencies, devolved administrations, and the Support Unit.
2. A Support Unit Project Team has been progressing the FMPR recommendations, developing proposed approaches and plans and has been charged with implementation whilst at the same time minimising impact on business as usual. The group has also maintained a helpful and productive relationship with staff association representatives throughout the implementation so far.
3. The Support Unit Management Team has taken on the role of project board of this project and has played a very useful part in helping to guide the work of the project team, and reality checking some of the work being carried out. It has also been disseminating information to staff and feeding back views from staff about some of the possible changes.
4. Two workshops have also been held with country agency Resource Directors (RDs) who have been particularly helpful in seeking and understanding the country agencies views about change. RDs have agreed some high level principles for FMPR implementation and have agreed a way forward, including commissioning work concerned with defining the agencies' contribution to the change process.

## Appendix 3

### Delegation of Future Decisions

#### Defra Minister

- Acceptance of the Government's proposed approach to the Review recommendations

#### Minister for the Civil Service

- Acceptance of JNCC staff into the Civil Service Pension Scheme

#### Defra

- Type of organisational model to be developed for JNCC
- Number of additional independent members and timing of appointment(s)
- Approval of JNCC's framework documents including Management Statement, Memorandum and Articles of Association and Financial Memorandum as appropriate in conjunction with JNCC.
- Format of JNCC's accounts
- External audit arrangements in conjunction with the members of a CLG or the Committee as appropriate
- Proposals for establishing a single set of terms and conditions, e.g. re-structuring case and remit, and annual business cases and remits in conjunction with Committee (**HM Treasury approval of remits etc.**)

#### Members of a CLG (if appropriate)

- Approval of proposed Memorandum and Articles of Association in conjunction with Defra.
- External audit arrangements in conjunction with Defra

#### Committee

- Establishment of a CLG, if appropriate
- Approval of content of proposed framework documents including Management Statement and Financial Memorandum, as appropriate in conjunction with Defra.
- External audit arrangements in conjunction with Defra
- JNCC's Standing Orders
- Any revisions to top management structure, e.g. Sub-Committees and executive

management groups.

- FMPR implementation scope and plan
- Proposals for establishing a single set of terms and conditions e.g. re-structuring case and remit and annual business cases and remits in conjunction with Defra **(HM Treasury approval of remits etc.)**
- Other major human resource (HR) commitments, e.g. top-level policies, participation in the Common Trawling Agreement etc.
- External communications strategy for new arrangements, e.g. objectives, audiences, 'corporate' identity etc.

#### **Audit and Resources Sub-Group/JNCC Audit Committee**

- Internal audit arrangements
- Risk management arrangements

#### **Country Agencies**

- Arrangements for assets transfer in conjunction with Support Unit Executive Management
- Policy and arrangements relating to transfer of staff
- Participation of JNCC in Common (citizenship) Trawling agreement in conjunction with Committee

#### **Support Unit Executive Management Team**

- Approval of new financial controls and systems, including accounting and banking arrangements
- Signing off accounts (Managing Director)
- Arrangements for assets transfer in conjunction with country agency Management Teams
- Approval of new HR policies, procedures and systems, including HR information and arrangements such as payroll
- Employee relations arrangements such as negotiation teams, collective bargaining agreements etc.
- Implementation of an external communications strategy
- Implementation of an internal communications strategy

**Appendix 4**

**JNCC FMPR: comparison of possible organisational structures**

<b>Recommendation (from JNCC FMPR sub-group)</b>		<b>Organisational structure</b>			
		<b>A Current situation</b>	<b>B Minor adjustments through Regulatory Reform Act</b>	<b>C Company limited by guarantee</b>	<b>D Wholly-owned public corporate body</b>
<b>JNCC future role</b>	JNCC to have a clearly defined role, based on the revised Statement of Strategic Direction	Progressed		Company articles may enhance clarity	Management statement may enhance clarity
<b>Constitution of the Committee</b>	Additional independent member				Yes
	Full voting rights for NI members (& common standards role for UK)				Yes
	JNCC chairman to have same status as country agency chairs	Possible		Company articles may enhance clarity	Management statement may enhance clarity
<b>Corporate planning</b>	Corporate plan to cover a 3-year period and be aligned with Government timetables	Progressed			
	Cross-departmental group to be established to co-ordinate Government input to plan	Possible now			
<b>Funding</b>	UK Government component to JNCC's budget to be established	Possible through country agencies	Direct funding possible	Direct funding possible	Direct funding possible
	JNCC to have corporate body status with power to let contracts		Partial-Committee could let contracts	Yes	Yes
	JNCC funding to be provided against an agreed three-year work programme	See above for corporate planning	See above for corporate planning	See above for corporate planning	See above for corporate planning

<b>Recommendation (from JNCC FMPR sub-group)</b>		<b>Organisational structure</b>			
		<b>A Current situation</b>	<b>B Minor adjustments through Regulatory Reform Act</b>	<b>C Company limited by guarantee</b>	<b>D Wholly-owned public corporate body</b>
	DoE(NI) to contribute in the same way as other devolved administrations	Possible for specific services, but not on a full share funding basis			Yes
	JNCC to have flexibility to receive additional funds outside the agreed plan	Yes – but only through country agencies	Direct funding possible	Direct funding possible	Direct funding possible
<b>Staffing</b>	JNCC staff to be employed on unified terms and conditions	Possible - but employment law risks	Possible but employment law risks may still be high	Yes	Yes
	Security of employment to be maintained	-	Yes	Yes - but may be perception among staff that security is reduced	Yes
<b>Accountability</b>	Clear, easily understood accountability lines	-		Yes	Yes
	JNCC Managing Director to have Accounting Officer role	No	No.	Possible	Possible