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JOINT NATURE CONSERVATION COMMITTEE

FMPR - UPDATE ON PROGRESS

Paper by Keith Little FMPR Project Co-ordinator

1. Introduction

- 1.1 Since the decision was made by Committee at the December 2002 meeting to opt for the Regulatory Reform Act legislative amendments and the Company Limited by Guarantee (CLG) framework, the FMPR Project team have been undertaking further detailed planning around this option. They have borne in mind the Committee's desire for an April 2004 commencement date for any new arrangements.
- 1.2 The first meeting of the reformed FMPR sub-group took place on 24 February. This meeting was preceded by a further meeting in our series with the country agency Resource Directors, which took place on 7 February.
- 1.3 The remainder of this paper summarise the results of the planning work which has been undertaken, and the discussions which took place on this and other FMPR matters at both the Resource Directors and the FMPR sub-group meetings.

2. Terms of reference for the FMPR sub-group

- 2.1 The sub-group considered a suggested Terms of Reference paper, and following amendments proposed at the meeting, the revised Terms are included as Annex 1. The sub-group seeks the Committee's approval of those Terms of Reference

3. Powers needed to achieve specific objectives

- 3.1 In December 2002, Committee were presented with a draft list of powers annexed to the FMPR update paper. Since December, the list has been developed following consultation within the Support Unit and with country agencies Resource Directors. As well as refining the powers, we have also attempted to indicate the document/s in which those powers might appear, in the form of a matrix style of presentation.(Annex 2)
- 3.2 The significance of this list of powers is that it represents an important starting point for the legislative amendments required under the Regulatory Reform Order. For this reason, we ask the Committee to approve the overall list of powers, the precise wording of which will be subject to the scrutiny of lawyers, as far as the legislative changes are concerned. The focus should be

on the sections which are specifically related to Regulatory Reform changes. The full list of powers is shown for the sake of completeness and context – there will be future opportunities to look at details not specifically affecting legislative change.

4. Timetable for FMPR Implementation

- 4.1 Over the past three months it has become clear that a start date for the new organisation of April 2004 may not be achievable. The two critical areas of work are the Regulatory Reform Order and the implementation of staffing changes. We believe that the other tasks, many and varied as they are, could be readily accommodated within the timescales allowed for these two critical pieces of work.
- 4.2 We have received advice from Defra and Cabinet Office regarding the time necessary to process the legislative (RRA) changes, ranging from 12 to 24 months. Even working on the most optimistic advice, April 2004 starts to look very tight. The need to consult with devolved administrations may add a further complication in our specific situation.
- 4.3 Again, when we looked at the staffing/HR section of the plan, it is now clear that the transfer of staff from the country agencies to JNCC, and the establishment of a single set of terms and conditions, could not be completed in full by April 2004. Even with additional financial resources, probably the best that could be hoped for would be to second staff initially to the new organisation, and then to harmonise their terms and conditions part way through the year 2004/05. Consequently, the Project Team has considered various options for extending the timetable by up to a year. The benefits and risks associated with different options are shown in Annex 3.

5. Start date

- 5.1 Senior officers within the Support Unit consider that April 2004 is too optimistic a date to aim for. We have taken account of the fact that we are heavily reliant on other stakeholders, particularly Defra and the country agencies, to deliver key parts of the implementation plan. We therefore believe that the potential risks and losses that may be incurred in continuing to pursue the 2004 deadline are too high. We have considered a compromise option involving a mid-year commencement, but this will create more work, and we do not consider it is worth paying this price for a gain of around six months.
- 5.2 This matter was one of the central issues discussed with Resource Directors at the meeting which took place on 7 February. Following discussion, they took the view that their preferred option was April 2005.
- 5.3 With regret, therefore, the Support Unit recommended to the FMPR sub-group that we plan for an April 2005 commencement, recognising the possible detrimental impact on staff morale and the need to manage this situation with care. After careful consideration the Chairman's sub-group decided to accept the recommendation, which we are now asking full Committee to approve.

6. Next Steps

- 6.1 Following decisions made at the March meeting, the Project Team's wish is to go full steam ahead with the implementation plan. Even if Committee decide that we should plan for April 2005, our aim will be to have everything within the Support Unit's jurisdiction ready to go by October 2004. We believe this can be achieved within existing planned resource levels, and will help maintain a much-needed momentum, as well as keeping up pressure on other parties to deliver their obligations.
- 6.2 The immediate next steps will include :
 - i. Produce detailed plans and products list, as part of the preparation for next Chairman's sub-group;
 - ii. Forward confirmed list of powers to Defra to encourage the drafting of RRA amendments;
 - iii. Complete RRO pro-forma and meet with the Cabinet Office's Regulatory Reform Unit to establish our place in their programme;
 - iv. Seek written sign up from Defra for achieving RRA;
 - v. Continue to seek legal advice on staffing related matters.

ANNEX 1 TO JNCC 03 P03

CHAIRMAN'S FMPR SUB GROUP

PROPOSED TERMS OF REFERENCE

1. Act in the capacity of Project Board in managing the FMPR implementation project and be accountable to the full Committee for delivery of the project objectives, (ie.those specified in the recent government response to the FMPR report and the Project Initiation Document).
2. Take key decisions on behalf of the full Committee, particularly those that in order to meet strict timetables, have to be made in between scheduled quarterly meetings of the Joint Committee. Given the practical difficulties of convening meetings, it is envisaged that some consultation and certain decisions which follow, will be made by correspondence.
3. Receive updates of the project timetable and plans and approve/agree variations to those plans as necessary to ensure achievement of project objectives.
4. Authorise variations to the budget for the project, which will include staff as well as financial resources.
5. To develop a schedule of delegations of FMPR related tasks from full Committee to the sub-group, and to officers, for the Committee to agree. This will include, for example, delegation of powers to officers to negotiate new terms and conditions on behalf of the Committee
6. Sign off or endorse*, as appropriate, key products from the project on behalf of full Committee. These might include governance documents like the Financial Memorandum, Standing Orders and policy documents relating to employment of staff, common trawling arrangements etc. Also included might be the schedule of assets taken over by the Committee
7. Establishing proposals to forward to Committee for a single set of terms and conditions for JNCC staff.
8. Agree proposals to full Committee for the internal and external Communications strategy relating to FMPR changes

* A full list of key products, identifying which should be approved by full Committee, and which will be approved by the sub-group is in the process of preparation

EXAMPLES OF DECISIONS THAT SHOULD BE MADE BY FULL COMMITTEE :

1. The list of proposed future powers given to the Committee, and the proposed legislative amendments which widen the powers of Committee.
2. To approve:
 - i. A schedule of delegations to sub-group and Support Unit officers
 - ii. The Communications Strategy
 - iii. Certain key products (to be specified)
 - iv. Terms and conditions of employment
3. Approval of the Memorandum and Articles of Association of the Company.
4. The schedule of members of the Company.
5. The Company Directors.
6. The name of the company.
7. Agree the Terms of Reference for the FMPR sub-group, and the overall project budget.
8. To agree JNCC's corporate strategy.

POWERS JNCC WOULD BE SEEKING 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 and other obligations.

INDIVIDUAL POWER SOUGHT	DOCUMENT IN WHICH POWERS SHOULD BE SPECIFIED				
	Legislation (RRA unless specified)	Company Memorandum & Articles	Financial Memorandum	Management Statement	Standing Orders
<p>1. To determine preferred mechanisms for delivering JNCC’s special functions through the Joint Committee and appropriate sub-committees.</p> <p>This will include:</p> <p>a) working in cooperation or partnership, as appropriate, with any authorities, national, local, international or otherwise and to be bound by partnership agreements where appropriate. (We may not necessarily desire partnership agreements with other public sector bodies to be legally enforceable).</p> <p>b)undertaking research directly related to JNCC’s functions</p> <p>c) ability for Joint Committee to delegate functions to its staff (as well as to its</p>				✓	✓
	✓				
	May need RRA?				

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<p>members, country councils or any council employee).</p> <p>Those activities which it is appropriate for the company to undertake will be those agreed through the ongoing process of strategic development and within the established corporate planning process</p>					
<p>2. Amending the existing EPA legislation, which currently states that Committee expenses should be defrayed by country councils, to allow JNCC to pay these directly (The definition of what constitutes “expenses” is unclear, and perhaps needs clearer definition)</p>	✓		✓		
<p>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 the Committee’s objectives.</p>		✓			

INDIVIDUAL POWER SOUGHT	DOCUMENT IN WHICH POWERS SHOULD BE SPECIFIED				
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4. Powers to directly employ 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. This will include continuity of employment and common citizenship rights, as currently enjoyed by JNCC staff)	✓ Overall power, not detail	✓	✓	✓	
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). – There will be a responsibility for JNCC to	Statutory Instrument (given precedent set by another public body) Could this be achieved via RRA?		✓		

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continue to meet the accruing Superannuation Liability Charges (ASLC) as required and to appoint an Authorised Pensions Administration Centre (APAC).					
7. Authority to place contracts with suppliers of goods and services in the name of the Joint Committee. To engage, as a contractor, any person or persons to carry on, supervise, organise and advise upon the work of the Committee. To undertake and execute any trust, deed or other legal document, as may be required. (special types of contract)	✓ At high level ✓	✓ ✓	✓ ✓		
8. 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		✓	✓		

INDIVIDUAL POWER SOUGHT	DOCUMENT IN WHICH POWERS SHOULD BE SPECIFIED				
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estate. (Lease of buildings, e.g. Monkstone House)					
9. To draw, make, accept, endorse, negotiate, discount, execute and issue promissory notes, bills, 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.		✓	✓		
10. To invest any short term surpluses in an interest bearing bank account/s. (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. Subject to govt guidelines, the power to make (<i>needs checking with lawyers</i>) and receive grants, bequests or contributions made for the purpose of carrying out proper business functions from/to Government departments and all other bodies and persons, whether from public or private sector. To accept	✓ (power to receive direct Government grants)	✓	✓		

INDIVIDUAL POWER SOUGHT	DOCUMENT IN WHICH POWERS SHOULD BE SPECIFIED				
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any gift of money or property whether subject to any trust or not for any one or more of the organisation's objectives. (Possible, but not likely that we could receive a bequest). To include the powers to enable direct government grants for CITES etc.					
12. To make any charitable donation either in cash or assets (We tend to donate redundant IT equipment to charities). Unclear whether RRA can be used to allow JNCC to make grants – check with lawyers	✓	✓	✓		
13. To lend money to JNCC employees 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, under certain specific circumstances).		✓	✓		

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<p>14. Powers to acquire assets necessary to carry on the business.</p> <p>(Expect to transfer assets such as IT equipment, furniture etc. on the appointed day, and to buy and dispose of assets thereafter).</p>	<p>✓</p> <p>May need RRA ?</p>	<p>✓</p>	<p>✓</p>		
<p>15. To dispose of assets (such as surplus office equipment) and to retain receipts</p>			<p>✓</p>		
<p>16. Powers to protect and secure ownership and title to assets, especially intellectual property assets, through the use of copyright, patent or other means</p>			<p>✓</p>	<p>✓</p>	
<p>17. To write off losses (up to agreed delegated limits)</p>			<p>✓</p>		
<p>18. Powers which permit an international perspective to be accommodated within our business dealings. This might, for example, require the organisation to enter into a contractual commitment beyond the jurisdiction of English law.</p>			<p>✓</p>		
<p>19. The ability to insure for any risks or indemnifications not normally covered</p>		<p>✓</p>	<p>✓</p>		

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by the overall principle of government “self insurance”, but necessary to carry on business. (This could be motor insurance, lifts, boilers etc. or anything that we are contractually obliged to insure).					
20. To charge for services, facilities and publications in accordance with Treasury guidance.		✓	✓		
21. To give the equivalent of Accounting Officer status to the Managing Director of JNCC			✓	✓	
22. The power to transfer funds between, expenditure and income categories provided this is consistent with agreed corporate plan objectives (Needs to refer to discussions relating to Accounting Officer responsibilities)			✓	✓	
23. To enjoy end of year flexibility similar to the country agencies in carrying forward underspends from one financial year to another			✓		
24. To put in place appropriate internal audit arrangements (in line with			✓	✓	

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GIAM), and for the appointment of external auditors					
25. Powers to carry out other such functions as are incidental and conducive to carrying out the statutory and other obligations of the Committee under Section 133 of the EPA, and strictly limited to those statutory and other responsibilities of the JNCC.	✓	✓	✓		

Powers not sought:

1. Investment powers - other than in an interest bearing bank account for short term surpluses.
2. Powers to borrow.

NB : To operate a wholly owned trading subsidiary Although this was originally not a power that was sought, the FMPR Project Team feels that this should be re-considered, as it is felt that there could be a situation whereby the currently contracted out trading agreement with NHBS to distribute publications on our behalf, might need review within say a 10-year timeframe, leaving open an option for this service to be brought in house, if it was deemed the best way to achieve value for money.

ANNEX 3 TO JNCC 02 P03

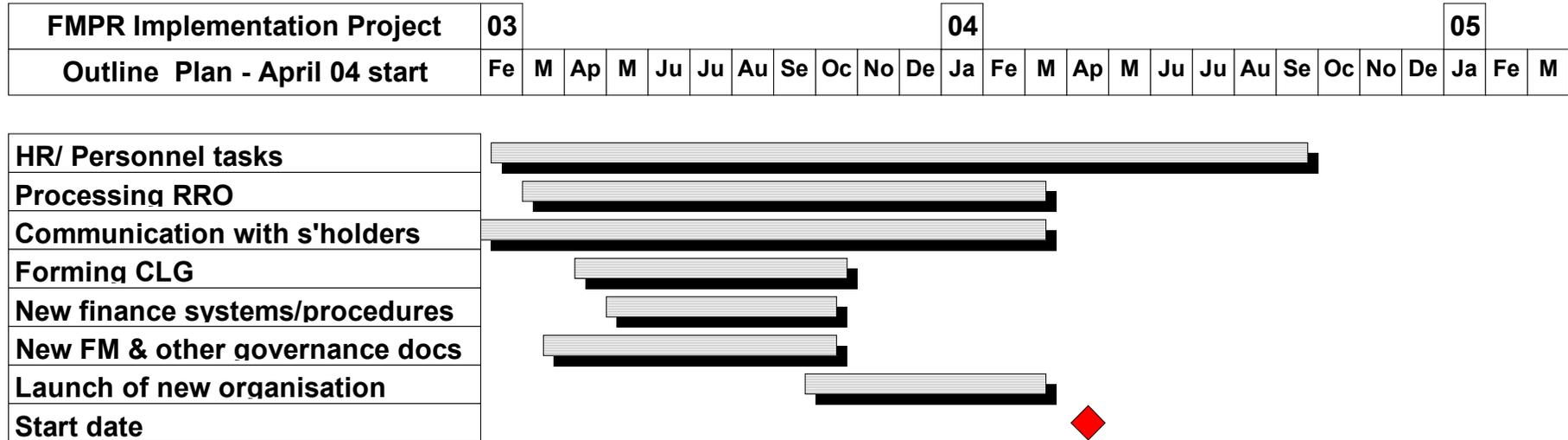
OPTIONS FOR TIMETABLE FOR IMPLEMENTATION OF THE FMPR RECOMMENDATIONS

Start date for new organisation	Advantages	Risks
April 2004	<ul style="list-style-type: none"> • Enables full benefits of the FMPR recommendations to be realised sooner rather than later • Rapid implementation would benefit staff morale 	<ul style="list-style-type: none"> • 12-month deadline for obtaining a Regulatory Reform Order is very tight and may be unachievable – would need firm commitment from Government that this was feasible • Increased pressure on JNCC and country agencies to complete the necessary preparatory work by April 2004 – completing the HR work within 12 months would be particularly difficult • Implementation costs concentrated in 2004/05 when funds are likely to be very tight
Mid-year 2004/05	<ul style="list-style-type: none"> • Likely to be a more realistic timetable for obtaining a Regulatory Reform Order • Timetable for implementation is extended, allowing more time for JNCC and country agencies to complete the necessary work and therefore come up with more robust solutions • Implementation costs spread over a longer time period - would ease financial pressure in 2004/05 	<ul style="list-style-type: none"> • Delays in realising full benefits of the FMPR recommendations • Deleterious impact on staff morale if implementation is seen to be 18 months away, given that review started in 2000 • Difficulties and additional workload associated with making change to new organisation mid-year, e.g. need to prepare two sets of accounts
April 2005	<ul style="list-style-type: none"> • Likely to be a more realistic timetable for obtaining a Regulatory Reform Order • Timetable for implementation is extended, allowing more time for JNCC and country agencies to complete the necessary work and therefore come up with more robust solutions • Implementation costs spread over a longer time period - would ease financial pressure in 2004/05 	<ul style="list-style-type: none"> • Delays in realising full benefits of the FMPR recommendations • Deleterious impact on staff morale if implementation is seen to be 2 years away, given that review started in 2000

Key points

1. The most critical factor in determining the timetable for FMPR implementation is the work required to obtain a Regulatory Reform Order. Cabinet Office have indicated that a 12-month timetable is possible, but Defra have suggested that 18-24 months is more realistic. Whatever date is fixed for implementation it will be essential to obtain a firm commitment from senior Defra officials that the timetable is feasible and that they will provide all the necessary support to meet the deadline.
2. JNCC and the country agencies will undertake most of the work associated with FMPR implementation, and the implications of the project timetable need to be considered in this context. Our best judgement is that the much of the essential work (e.g. establishing a company limited by guarantee) can be concluded by April 2004, but it will not be possible to complete all the HR work (e.g. finalising new terms and conditions and completing the transfer of staff to the new organisation) without a substantial increase in resources.
3. If the decision is made to delay implementation there are likely to be impacts on staff morale. Arrangements to manage and mitigate these impacts as far as possible will need to be considered.

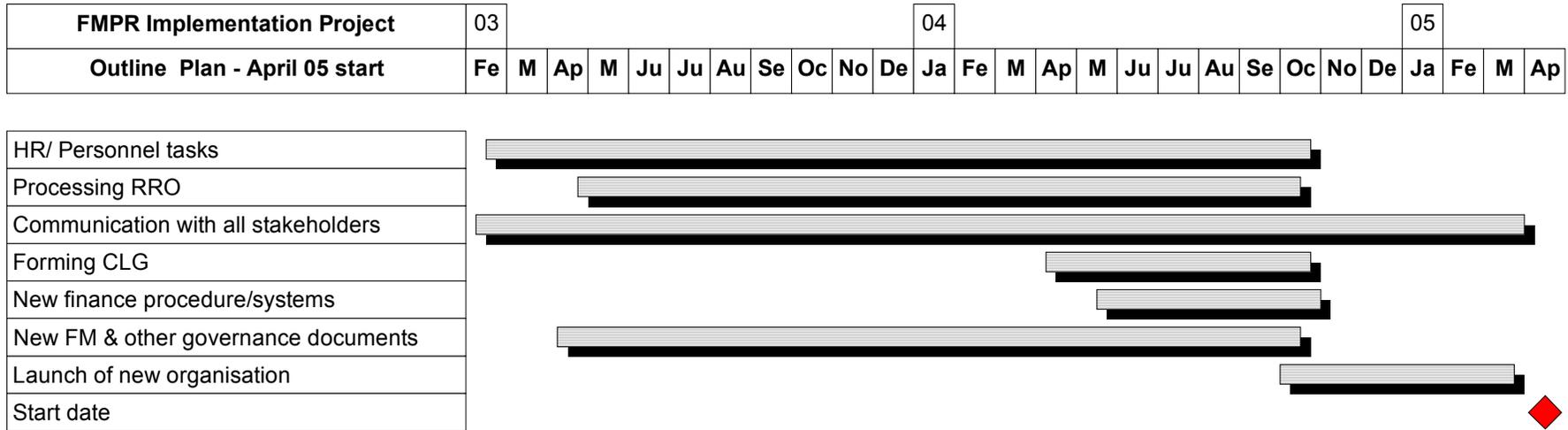
SUMMARY FMPR PROJECT PLAN BASED ON APRIL 2004 START DATE



Footnotes:

1. Based on assumption that RRO will take 12 months (per Cabinet Office guidance)
2. HR/Personnel tasks could not be completed before October 2004 without a substantial increase in resources, but we believe staff could be seconded to new organisation from April 2004, allowing terms and conditions to be harmonised at a later date.
3. Allows no contingency for unforeseen delays
4. Fairly high risk of failure arising from insufficient time allowed

SUMMARY FMPR PROJECT PLAN BASED ON APRIL 2005 START DATE



Footnotes:

- 5. Based on assumption that RRO will take 18 months (DEFRA sponsors say 18-24 months)
- 6. All HR/Personnel tasks could be completed by October 2004, giving staff adequate time to consider transfer options
- 7. Allows some contingency for unforeseen delays
- 8. Can be achieved within planned level of resources
- 9. Low risk of failure arising from insufficient time