This paper was provided to the Joint Committee for decision/discussion or information. Please refer to the minutes of the meeting for Committee's position on the paper.

**JNCC 03 P11**
**September 2003**
**Annex 1**

# ACCOUNTABILITY ARRANGEMENTS FOR THE JNCC

**Paper by Marcus Yeo and Francis Mitchell**

## 1. Background

1.1 Implementation of the recommendations arising from the JNCC's FMPR will involve establishing a company limited by guarantee (CLG) and making the necessary legislative changes to enable the JNCC to employ its own staff, let contracts in its own name, etc. In line with these changes it will be essential to develop appropriate accountability arrangements for the JNCC.

1.2 Currently, the Chief Executives of the three country agencies jointly have Accounting Officer responsibilities for the funds allocated to the JNCC from the agencies' grant in aid; for practical purposes, English Nature's Chief Executive takes the lead role on behalf of all three agencies. The JNCC's Managing Director is responsible to the Chief Executives for the economic, efficient and effective use of the JNCC's funds. Some Accounting Officer responsibilities are explicitly delegated to the Managing Director in his appointment letter, but others (e.g. authority to sign the JNCC's accounts) are not.

1.3 The JNCC's current Financial Memorandum was agreed in 1992 and is now seriously out of date. Under existing arrangements, the JNCC complies with the recently revised English Nature Financial Memorandum, but also has to take into account the Financial Memoranda of CCW and SNH. This situation causes various difficulties, e.g. arrangements for reporting and for seeking approval to exceed delegations are complicated by the involvement of three agencies, each with different requirements.

## 2. Proposals for new accountability arrangements

2.1 A modest extension of the existing accountability arrangements is recommended. The key features of the proposed approach are as follows:

i. The JNCC's Managing Director would not formally be appointed as an Accounting Officer, but would have responsibilities analogous in many respects to those of a NDPB Accounting Officer. These responsibilities would be cascaded down from Accounting Officers in Defra and devolved administrations through the country agency Chief Executives.

ii. To avoid the complications associated with the involvement of the three country agencies (see 1.3 above), it is proposed that English Nature's Chief Executive should formally take a lead Accounting Officer role on behalf of the agencies. One implication of doing this may be that Defra in effect takes a lead role in certain respects among the administrations. This would require a framework-setting agreement, describing the relationship between the Accounting Officers in Defra/devolved administrations and the country agencies. The Chief Executives of SNH and CCW could then delegate responsibilities in respect of the JNCC to English Nature's Chief Executive, who would in turn delegate responsibilities to the JNCC's Managing Director. Alternatively, it may be possible for the Accounting Officers in Defra and devolved administrations to directly delegate responsibilities to English Nature's Chief Executive.

iii. The financial framework within which the JNCC should operate would be set out in a separate Financial Memorandum that would be agreed with all the country agencies and administrations. Levels of delegation for the JNCC should be appropriate to its size and budget and take into account the degree of risk involved in its activities (rather than simply adopting the 'lowest common denominator' from among the three agencies).

iv. These arrangements would require some changes to the JNCC Managing Director's appointment letter, and possibly also to the Accounting Officer letters received by the country agency Chief Executives from their respective departments/administrations.

v. Accountability arrangements must also comply with the Companies Act. A Memorandum and Articles of Association for the CLG would be needed, and these documents would need to dovetail with the Financial Memorandum. The additional requirements imposed by the Companies Act would not be especially onerous.

## 3. Next steps

3.1 Support Unit staff have prepared an outline Financial Memorandum (FM) for the JNCC. This is based on Treasury's model FM for executive NDPBs, and also takes into account English Nature's revised FM. Significant differences from these two documents have been highlighted. In line with Treasury guidance, it is proposed that the FM forms part of a Management Statement for the JNCC.

3.2 Work has also been undertaken to define the responsibilities of the JNCC's Managing Director, country agency Chief Executives, and Government Accounting Officers under the proposed new arrangements.

3.3 This material will be used as a basis for further discussion with Defra, devolved administrations and country agencies. To maintain satisfactory progress in implementing the FMPR recommendations, it is hoped that broad agreement can be reached by December 2003.

**JNCC 03 P11**
**September 2003**
**Annex 2**

## COMPANY FORMATION ISSUES

**Paper by Keith Little**

### 1. Introduction

1.1 This paper updates and reaffirms discussions so far in relation to preparations for establishing a company limited by guarantee. Briefly the steps we have already taken can be summarised as:

i. The Chair and Managing Director of JNCC were nominated and approved as the proposers of the CLG by the FMPR sub-group at their meeting of 3 June 2003.

ii. The Managing Director has nominated the Finance and Office Services Manager to become the company secretary. The current postholder is Francis Mitchell, who is a suitably qualified and experienced for this role.

iii. A general consensus of opinion is beginning to conclude that the members of the company should be one and the same as members of the Joint Committee, as named individuals. This is subject to a formal decision on this matter.

1.2 Other issues about which there needs to be some further consideration include the identification of company directors, and the involvement of Members as non-executives in running the company.

### 2. Members of the company

2.1 Although there has been previous discussion, a decision on membership of the company has yet to be confirmed. It would be helpful if the decision could be made at September Committee, as a decision at this fairly early stage will help to shape thinking, for example, regarding accountabilities and indemnities for members and directors.

2.2 Members are broadly comparable to the owners of the company. In a public company comparison, we would be referring to them as shareholders, but a company limited by guarantee has no shares. Instead, members agree to pay a nominal amount, say £1, should the company be wound up, which is the maximum sum for which they would be personally liable (except in extreme cases such as gross negligence or fraud), in accordance with the concept of limited liability. Members of a company can either be individuals or organisations.

2.3 The possible options for consideration are as follows:

i. All Committee members become members of the company as named individuals.

ii. In the case of the country agencies, we make the organisation the member, and Council members become the organisation's representatives. The position of independents would need careful consideration.

iii. A selected few of the Committee become members of the company (Companies Act requires only one member).

iv. Members of the company comprise the Committee members, plus others (e.g. a representative of another stakeholder such as Defra).

2.4 Defra lawyers have recommended that CLG members and Committee members are one and the same. The Support Unit has also sought its own independent legal advice which concurs with this recommendation.

2.5 Although there are several possible options, the main advantage to the recommended option seems to be one of clarity:

i. Having named individual members is likely to be clearer, particularly in connection with the start and finish of an individual's tenure as a company member. There will be an onus on the appointing organisation to formally notify the company secretary of changes, in order that, for legal purposes, changes are promptly and accurately recorded.

ii. CLG members and Committee members being one and the same would help to underline the fact that Committee and the CLG are not two different organisations, which is surely desirable.

2.6 Existing Committee members need to be consulted, to check whether any of them would see any problem with the proposal. Hopefully all would be agreeable, but we would need to consider JNCC's position if one or more individual(s) was unwilling or unable to become a company member.

2.7 Members of a company tend to have little involvement in the day to day running of the company. They are obliged by law as it presently stands to have at least one AGM per annum, at which they receive an annual report and accounts, and perform other official duties and tasks.

## 3. Indemnities

3.1 Appropriate indemnification is an issue that we need to pursue further, after seeking appropriate advice from Defra and legal advisers. If members of the company act in a way similar to shareholders in a public company, their limited liability status offers a significant degree of protection against claim upon them personally, and there may be no need for further indemnification. The situation may be different, however, if individual members take on roles within the company whereby they are seen to be acting as Directors (non-executive). A company director's role is more strictly defined in company law, with specific tasks and duties, for which there may be a need for indemnifications. For example, a company director has a general duty of care, as recognised in law.

## 4. Company directors

4.1 Company law stipulates a minimum of one director, plus the company secretary. The role of a company director is to run the company in accordance with the wishes of members and in line with the Company Memorandum and Articles of Association, as well as ensuring statutory returns are filed on time with Companies House. There is no maximum number of directors, but on the other hand the directors named at Companies House do not need to include everyone in any organisation who happens to have the word 'director' in his or her job title. There is a good practical reason for having more than the minimum one director, as this will provide some cover for absences, in the event of any document, contract etc., requiring a director's signature. These matters require further thought.

4.2 Our legal advisers remind us that there is no legal distinction between executive and non-executive directors. The Project Team recommend that at the very least JNCC's Managing Director is named as a director of the company. This will enable him to sign the accounts, both for Companies House purposes, and for government accounting purposes. Beyond this, the Project Team advocate keeping things simple.

## 5. The CLG Management Board

5.1 There is no legal requirement in company law to have a Management Board, and indeed in many smaller companies the equivalent responsibilities would often be undertaken by a sole director. Nevertheless in medium to larger organisations, it would be the norm to have a Management Board of some description, and this may be the appropriate approach for JNCC.

5.2 The issue is whether there is benefit in the involvement of non-executive directors in the day to day management of the company, and in what capacity. There are some important issues to consider, and a need to be mindful of wider developments in corporate governance best practice which, amongst other things, are promoting the role of non-executives in companies. Such developments might influence decisions about JNCC's structure. Decisions about accountability arrangements could also influence our thinking.

5.3 Members will need to consider to what extent they expect to be involved in management of the company. The Project Team is not anticipating or advocating major change. There is no reason why Committee should not continue to meet on four occasions per year. A part of one of these meetings could be set aside as the obligatory company AGM. Ultimately though, these are matters for Committee to decide, and there is further time for consideration. The Project Team will seek further advice, and prepare a paper outlining options open to Committee before the decision is required.

5.4 It might be helpful to suggest a few examples of where members might be drawn into management activities. Further thought will need to be given to the role and remit of a new Audit and Risk Management Committee. Good corporate governance practice would suggest that Audit Committees should be made up of non-executives. There is also perhaps a role for members in determining remuneration for senior posts within the new organisation, whether this be in a formal committee, or otherwise.

5.5 In larger organisations, the Audit and Risk Management Committee would normally report to the Management Board (or equivalent). However, if the senior tier of management for day to day matters contained no non-executives, it may be possible for an Audit and Risk Management Committee comprising selected members to be directly responsible to full Committee, although we need to seek further advice on this.

## 6. Summary

6.1 In conclusion, issues/decisions relating to the formation of the CLG can be summarised as follows:

*Decisions which have already been taken:*

i. The JNCC Chair and Managing Director will be the proposers of the new company, i.e. sign the necessary forms sent to Companies House.

ii. The Finance and Offices Services Manager will become the company secretary.

iii. Solicitors have been chosen to advise JNCC Support Unit on company formation issues.

*Decision that we are requesting Committee to decide at the September meeting:*

iv. Decide on the members of the company.

*Key matters for Members to consider further and agree at a future Committee meeting:*

v. Members' involvement as non-executives in the management of the company.

vi. The company name.

vii. The directors of the company, as named in the Companies House documentation.

viii. Approval of The Memorandum and Articles of Association (in conjunction with Defra).