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## **JOINT NATURE CONSERVATION COMMITTEE**

### **FMPR UPDATE**

#### **Paper by Sue McQueen**

#### **1. Regulatory Reform Order**

- 1.1 The consultation by the Department for Environment, Food and Rural Affairs (Defra) on changes to the Environmental Protection Act 1990 concluded in March 2004. A Joint Committee response, endorsed by the FMPR sub-group on 25 February, was submitted to Defra expressing support for the proposals. Similarly supportive responses were submitted by the country agencies and by a number of other bodies and individuals. Defra has concluded that no changes are required to the proposals as a result of the consultation exercise.
- 1.2 The Support Unit has been extensively engaged in ensuring that the content of the Regulatory Reform Order (RRO) will enable the changes required to the JNCC's operations to be implemented effectively. Country agency resource directors have provided valuable assistance to the Support Unit in this matter.
- 1.3 There have been some delays in finalising the draft RRO. It was finally approved for submission into the legal process by the FMPR Steering Group at a meeting on 21 May 2004. The country agencies have also been invited to seek formal approval from their councils/boards for the changes that the RRO will seek. The draft Order is attached at Annex 1.

#### **2. Corporate governance arrangements**

- 2.1 A proposed model for the company limited by guarantee has been developed. Similarly, a Framework Document, Management Statement and Financial Memorandum have been drawn up to describe the proposed public sector corporate governance arrangements. These proposals have been developed in consultation with the country agencies and are the subject of a separate paper (JNCC 04 P11)

#### **3. Staffing arrangements**

- 3.1 Following informal discussions with the trade union side and the country agencies, a pay remit has been developed and endorsed by country agency resource directors and the Committee's FMPR sub-group. The remit has been formally submitted to Defra for approval.
- 3.2 Discussions have also taken place with the trade unions and country agencies on the position of Lead Co-ordination Network (LCN) and Lead Agency staff

after April 2005. It has been agreed that staff will be employed by the body within which they are physically located and which usually provides line management through the LCN/Lead Agency chair. In most cases, this means that LCN and Lead Agency staff will remain with their current employer. The Support Unit has written to all staff affected to confirm this position.

#### **4. Overall timetable for FMPR implementation**

- 4.1 Whilst most of the tasks and milestones in the JNCC project plan are on track these will need to be revised as a result of the slippage in the RRO timetable. A new RRO timetable will be developed by Defra prior to the June Committee meeting. Once this has been produced it is intended to work closely with the country agencies and Defra to ensure that the new timetable takes account of the tasks requiring their input.

## Annex 1. Draft Regulatory Reform Order

draft 20/5

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### STATUTORY INSTRUMENTS

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**2004 No. xxx**

## **REGULATORY REFORM**

### **ENVIRONMENTAL PROTECTION**

## The Regulatory Reform (Joint Nature Conservation Committee) Order 2004

<i>Made</i>	- - - -	xxxxxx
<i>Coming into force</i>	- -	xxxxxx

Whereas—

- (a) the Secretary of State has consulted such organisations as appear to her to be representative of interest substantially affected by the proposals,[ the Law Commission] the National Assembly for Wales and such other persons as she considered appropriate;
- (b) following that consultation, the Secretary of State considered it appropriate to proceed with the making of this Order;
- (c) a document containing the Secretary of State’s proposal was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001(1) and the period for Parliamentary consideration under section 8 of that Act has expired;
- (d) the Secretary of State has had regard to the representations made during this period,[in particular/and] to the xxxx Report of the Delegated Powers and Regulatory Reform Committee(2) and the xxxx Report of the Deregulation and Regulatory Reform Committee(3);
- (e) a draft of this Order was laid before Parliament with a statement [giving details of such representations and Reports] [and of the changes to the Secretary of State’s proposals in the light of them];
- (f) the draft was approved by a resolution of each House of Parliament;
- (g) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

Now, therefore, the Secretary of State for Environment, Food and Rural Affairs, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001, hereby makes the following Order:

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(1) 2001 c.6.  
(2)  
(3)

### **Citation and commencement**

1. This Order may be cited as the Regulatory Reform (Joint Nature Conservation Committee) Order 2004 and comes into force on xxx.

### **Amendments to the Environmental Protection Act 1990**

2. This Order amends the Environmental Protection Act 1990(4).

### **Grants by the Secretary of State**

3. In section 129(1) (grants by Secretary of State), after “the Councils”, insert “and to the joint committee”.

### **Power to form a company**

4. In section 133 (special functions of Councils)(5), after subsection (2) insert—

“(2A) (a) With the consent of the Secretary of State, not given without the approval of the Treasury, and subject to any conditions he may impose, the Councils may jointly, through the joint committee, form a company limited by guarantee which has as its main objects one or more of those mentioned in paragraph (b).

(b) The objects are—

(i) to provide administrative and corporate support services to the joint committee including the employment of staff, the making of charges and holding of land or of any interest in or right over land for the purposes of the special functions; and

(ii) such other things as are incidental or conducive to the exercise of those functions.

(c) The Councils, acting jointly through the joint committee, will ensure that, at all times, the members of any company formed under paragraph (a) are current members of the joint committee.

(d) The members of any company formed under paragraph (a) will ensure that anyone appointed or continuing to serve as a director of the company is a current member of the joint committee, or an employee of the joint committee or of the company.

(e) This subsection is without prejudice to any power of the Councils jointly through the joint committee to undertake anything mentioned in paragraph (b) by virtue of section 132(2) and subsection (2).”

### **Amendments to Schedule 7**

5.—(1) Schedule 7 (the Joint Nature Conservation Committee) is amended as follows.

(2) In paragraphs 5 and 6 (remuneration and allowances for members) for all references to “the councils” substitute “the committee”.

(3) In paragraph 7 (staff etc. and expenses)—

(a) in sub-paragraph (1) the words “such staff” to “facilities, and” are omitted;

(b) after sub-paragraph (1), insert—

“(1A) The committee may appoint, directly, or by means of a company formed under section 133(2A)(a), such number of employees as they may, with the approval of the Secretary of State given with the consent of the Treasury, determine.

(1B) The committee shall pay to the employees appointed under sub-paragraph (1A) above, directly, or by means of a company formed under section 133(2A)(a), such remuneration and

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(4) 1990 c.43.

(5) Section 133 continues to extend to Scotland, and “Councils” includes Scottish Natural Heritage, *see* sections 4(4) and 4(4)(a) of the Natural Heritage (Scotland) Act 1991 (c.28).

allowances as the committee may, with the approval of the Secretary of State given with the consent of the Treasury, determine.

(1C) The committee shall, in the case of their employees or former employees, or employees or former employees of a company formed under section 133(2A)(a), as they may, with the approval of the Secretary of State given with the consent of the Treasury, determine—

- (a) pay such pensions, allowances or gratuities to or in respect of those employees,
- (b) make such payments towards provision of such pensions, allowances or gratuities, or
- (c) provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,

as they may, with the approval of the Secretary of State given with the consent of the Treasury, determine.”

(4) In Paragraph 9 (delegation of functions), in sub-paragraph (1), between “a council” and “who is authorised”, insert “, the committee or of a company formed under section 133(2A)(a)”.

### **Continuity of employment**

6.—(1) This article applies to any person who is an employee of one of the Councils for the purposes of section 128(4)(6) of the 1990 Act.

(2) Where in consequence of this Order a person to whom this article applies ceases to be employed by such a Council and becomes an employee of the Joint Nature Conservation Committee or of a company formed under section 133(2A)(a) of the 1990 Act, then, for the purposes of the Employment Rights Act 1996(7), his period of employment with that Council shall count as a period of employment by the Joint Nature Conservation Committee or, as the case may be, by the company.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Environmental Protection Act 1990 (“the Act”) in so far as it relates to the Joint Nature Conservation Committee (“the JNCC”).

It removes certain burdens upon the Countryside Council for Wales, English Nature and Scottish Natural Heritage (“the Councils”), and on the JNCC, by relieving the Councils of various support roles and enabling the JNCC to do things for itself.

Section 129(1) of the Act allows the Secretary of State, with Treasury approval, to make grants to the Councils. Article 3 amends this, so that such grants may be made directly to the JNCC.

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(6) The words “the Nature Conservancy Council for Scotland” in section 128(1) of the 1990 Act were repealed by Schedule 11 to the Natural Heritage (Scotland) Act 1991 (c.28). Section 4(2) of that Act provides that “the Councils” in section 128(4) shall include Scottish Natural Heritage (established by section 1 of that Act).

(7) 1996 c.18.

Section 133 of the Act is concerned with the “special functions” of the Councils, which must be discharged through the JNCC. Article 4 adds a power to form a company limited by guarantee to provide support services to the JNCC.

Schedule 7 to the Act is concerned with the constitution and proceedings of the JNCC, and is amended by article 5. Paragraph 5 and 6 are amended so that obligations on the Councils to make certain payments (approved by the Secretary of State and Treasury) to the chairman and certain members of the JNCC are transferred to the JNCC. Paragraph 7 is amended so that the Councils are no longer required to provide the JNCC with staff, accommodation and other facilities. New provision is made to enable the JNCC to employ, pay and provide pensions for staff itself, directly, or through a company formed under the new power. Paragraph 9 allows for delegation by the JNCC, and the scope for this is extended to include an employee of the JNCC or of a company formed under the new power.

Article 6 provides for continuity of employment for employees of the Councils who become employees of the JNCC, or of a company formed under the new power, as a result of the changes introduced by this Order.