

**REVIEW OF THE JOINT NATURE CONSERVATION
COMMITTEE: GOVERNMENT RESPONSE**

NOVEMBER 2002

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REVIEW OF THE JOINT NATURE CONSERVATION COMMITTEE: GOVERNMENT RESPONSE

INTRODUCTION

The Joint Nature Conservation Committee is established under Section 128 of the Environmental Protection Act 1990 as the forum through which the three country nature conservation bodies – English Nature (EN), Scottish Natural Heritage (SNH) and the Countryside Council for Wales (CCW) discharge their special statutory responsibilities for nature conservation across Great Britain as a whole and internationally. These responsibilities, known as the “special functions” of the bodies are, broadly: to advise ministers on the development of such wider nature conservation policies; to provide advice and knowledge to anyone on nature conservation issues affecting Great Britain and internationally; to establish common standards throughout Great Britain for the monitoring of nature conservation and for research into nature conservation and the analysis of results, and to commission or support related research.

The special functions, set out in Section 133 of the Act, are broadly drawn and, following devolution, it became difficult to disentangle which of these represented reserved, and which devolved matters. In the ten years since the establishment of JNCC, the focus of its work had shifted from the GB science base to representation of the UK position in European and wider international fora. There was also a need to consider whether Northern Ireland should be brought more fully into the picture. In July 2000 the Department embarked on a review of the JNCC under the supervision of a Steering Group including representatives of the country bodies, and devolved administrations including Northern Ireland, chaired by the Director of Wildlife and Countryside in the then Department for the Environment, Transport and the Regions (since mid-2001 Director of Wildlife, Countryside and Flood Management in Defra).

The Stage 1 report, published in March 2001, recommended that JNCC be abolished and replaced by an independent NDPB, the UK Nature Advisory Council, financed by DETR as was. However, following consultation, there was no clear consensus in favour of setting up a new, UK-wide, NDPB. Indeed, there was considerable opposition to it. The responses highlighted the need to adapt and build on existing arrangements to improve service delivery of advice to Government. The main areas were to improve the interpretation of the special functions in the light of devolution, staffing arrangements, funding arrangements, corporate planning and constitution of the joint committee.

The Stage 2 report was published in January 2002 on Defra and JNCC Web-sites. The document below sets out the recommendations of the report and the response of Government – including the devolved administrations - to them. As the recommendations in the report were scattered throughout, these have been grouped by theme. An action plan has also been produced which is intended to remain a living document, setting out what we are doing about those recommendations that we are taking forward.

1. JNCC FUTURE ROLE

1.1 STATEMENT OF STRATEGIC DIRECTION

REVIEW RECOMMENDATIONS

Chapter 1: (from paragraphs 1.22 and 1.23)

- It is recommended that the JNCC should draw up a revised version of its Statement of Strategic Direction to address points raised in Annex A of the report. It should then seek endorsement from Government customers (including the devolved administrations). It should also consider drawing up an overall mission statement and agreeing this with Government.

GOVERNMENT RESPONSE

Government agrees that JNCC needs to have a clearly defined role, based on the revised Statement of Strategic Direction, which is supported by Government including devolved administrations, and the country bodies. This role should encompass the delivery of advice and information, including sustainability and the development of common standards.

1. *Government therefore agrees that JNCC should refine the Statement of Strategic Direction by reference to Annex A of the Report prior to seeking final endorsement by Government during 2002. This statement should include a statement on JNCC's overall purpose.*
2. *In order for JNCC to achieve this, Defra will advise JNCC on the nature of the Government view, co-ordinating the views of UK departments and devolved administrations where necessary to achieve this.*
3. *Defra, in consultation with other components of Government, will determine what is the "Government" component of JNCC's role and work programme and seek necessary resources via the spending review process.*

1.2 EXTENSION OF COMMON STANDARDS FUNCTION FROM GB TO UK

REVIEW RECOMMENDATIONS

Chapter 4, para 4.18-4.20

- The establishment of common standards for monitoring, research and information analysis is a joint function of the GB agencies that only applies throughout Great Britain. It has been suggested that this constrains a fully UK approach being taken on these matters, and that legislative change would be necessary to ensure this. If there are difficulties here, I would suggest that this matter be reconsidered if and when any legislation extending the JNCC arrangements to NI is being considered.

GOVERNMENT RESPONSE

Generally, Government believes that it would be desirable to extend JNCC's common standards functions from a GB to a UK basis, and will encourage the achievement of this by means of an informal arrangement for the time being. Government will consult the Northern Ireland administration before introducing new legislation to give effect to these changes.

2. CONSTITUTION OF THE JOINT COMMITTEE

2.1 CHAIRMAN

REVIEW RECOMMENDATIONS

Chapter 9: JNCC Constitution (Para 9.30):

- The Chairman of the JNCC should have the same status as the individual country agency chairmen. In particular, he should have the same degree of access to UK Government Ministers and senior officials.

GOVERNMENT RESPONSE

The JNCC Chairman already has access to Ministers and senior Government officials, including those of devolved administrations equal to that of the country bodies, although the frequency with which he or she uses this access may differ from Chairmen of country bodies. Government will ensure that this access continues to be available.

2.2 COMPOSITION OF THE COMMITTEE AND INDEPENDENT MEMBERS

REVIEW RECOMMENDATIONS

Chapter 9: JNCC Constitution

Para 9.19:

- Although members are usually appointed for their scientific expertise, there needs to be an understanding of the practical politics of nature conservation too. An understanding of land-use policy issues by independent members would help provide this balance, which is why the participation of the Chairman of the Countryside Agency would continue to seem important. Consideration should be given to buttressing this element when future appointments are made.

Para 9.30:

- If the opportunity for legislation arises the balance of the Committee should be altered to give the independent members an overall majority.

GOVERNMENT RESPONSE

Primary legislation would be needed to increase the number of independent members.

1. *Government accepts that the role of the Chairman of the Countryside Agency on the Joint Committee continues to be important, given that*

English Nature's responsibilities, unlike those of Scottish Natural Heritage and the Countryside Council for Wales, do not encompass wider rural issues.

2. *Government will also bear in mind the desirability of buttressing the land-use understanding on the Committee when future appointments are made. This need may also be met through the country body appointments to the JNCC as well as by independent members.*
3. *Government agrees in principle that it would be desirable to increase the number of independent members in order to achieve a better balance of Committee membership. When a legislative opportunity arise, it will consider in greater detail what balance is appropriate.*

2.3 ROLE OF THE INDEPENDENT MEMBERS

REVIEW RECOMMENDATIONS

Chapter 9: JNCC Constitution

Para 9.30:

- The JNCC Committee should urgently address the potential role of its independent members and how they might be brought more firmly within the JNCC's decision-making process.
- Government should discuss with the Chairman the potential for independent members to meet key Government officials (especially scientific advisors) and to participate in high-level meetings and working groups both to enable Government to tap their expertise and to help them develop their own knowledge and networks of contacts.
- The Committee should encourage independent members to gather intelligence from other sources such as the Research Councils, academic bodies, NGOs and through the development of contacts within Europe.
- Government should ensure that the country agencies make full use of the independent JNCC members to provide a wider perspective and discourage the agencies from duplicating this resource within their own individual agencies.

GOVERNMENT RESPONSE

1. *The Joint Committee has already given careful consideration to the role of its independent members as part of the follow-up to the Review report. This is welcomed by Government.*
2. *Government agrees that it would be desirable to make more active use of the expertise of the independent members and enable them to contribute*

more fully to the process, in so far as their time-allocation to JNCC permits. Defra and the devolved administrations will discuss with the new Chairman how best to arrange meetings between independent members and key Government officials, and how best to enable the independent members to gather intelligence and contribute to the work of the agencies.

2.4 COMMITTEE MEETINGS

REVIEW RECOMMENDATIONS

Chapter 9: JNCC Constitution (Para 9.30):

- Committee meetings should be held at least quarterly in order properly to consider progress on the work programme and to ensure that sufficient time is given to the discussion of issues before they are finalised.
- Systems of delegation should be put in place to ensure that the Committee sees and approves outputs submitted to Government in its name.

GOVERNMENT RESPONSE

Government agrees that Committee meetings should be held at least quarterly, although we understand that this is the case already. We agree that a schedule of delegations should be developed to ensure that the Committee has agreed procedures whereby outputs are to be submitted to Government in its name.

2.5 NORTHERN IRELAND

REVIEW RECOMMENDATIONS

Ch 10 para 31:

- Government stands to gain a lot from any strengthening of the position of Northern Ireland members within the JNCC. However, this would also require primary legislation, and not worthwhile unless it were part of a [larger] package of reforms.. One possibility here might be to appoint an additional member from EHS(NI)'s own advisory council, the Council for Nature Conservation and the Countryside (CNCC), which has provided non-voting appointees in the past. The CNCC might either be asked to provide two voting members on the JNCC, or just one, with EHS(NI) still participating on a non-voting basis. I recommend that the views of NI Ministers are sought on this if and when a suitable legislative opportunity arose.

GOVERNMENT RESPONSE

Government favours strengthening the position of the Northern Ireland members of JNCC, but primary legislation would be needed to change their status. Government will consult the administration of Northern Ireland before introducing new legislation to give effect to these changes.

3. STAFFING

REVIEW RECOMMENDATIONS

Chapter 2: Staffing Arrangements (Paragraphs 2.66 and 2.68)

- Option 6 is the one most likely to resolve the staffing problems in the longer term without changing the status of the JNCC as a Committee of the country agencies. It should certainly be considered further by the country agencies and the JNCC in consultation with JNCC staff. Of the remaining options, I believe Option 4 has the most merit, although Option 5 might also be a possibility if it can be achieved within existing powers. I recommend that these too be explored further.
- In view of the JNCC staff's concerns about the urgency of change, and the potential disruption for management of adopting either of Options 4 or 5 on an interim basis, I recommend that the Government makes clear its intentions in relation to the possibility of legislation to create a corporate body if and when a suitable legislation were to arise.

The three options referred to are:

Option 4: all staff are transferred to one of the three country agencies (if not already employed by it) and employed by that agency on terms and conditions negotiated separately by the JNCC for Support Unit staff.

Option 5: all staff are transferred to a new company limited by guarantee and employed by that company on terms and conditions which it negotiates separately for its staff.

Option 6: all staff are transferred to a new corporate body, established by statute to employ staff on its own terms and conditions which support the JNCC.

Ch 10 para 29:

- The Committee should consider how it can improve the sense of corporate identity of the Support Unit Staff, encouraging a position where the Committee is seen as the employing body with overall responsibility for their terms and conditions, even though formal responsibility for these under the current arrangements rests with the three country agencies jointly.

GOVERNMENT RESPONSE

Government accepts the principle that all JNCC staff should be employed on a single set of terms and conditions that support the efficient delivery of JNCC's business. Those terms and conditions should allow existing expertise to be retained and staff turnover to be reduced. Existing staff should not be materially disadvantaged. In developing these proposals, the following will need to be taken into account:

- a. the need for administrative simplicity*
 - b. the need to take account of any possible consequential issues for the country bodies*
 - c. the need to identify the necessary levels of controls and delegations*
- 1. Government will investigate the most appropriate mechanism to allow JNCC to employ staff under a single set of terms and conditions.*
 - 2. As a public body with staffing responsibilities, the JNCC would also need to be subject to some scrutiny from the Secretary of State and Treasury and this should be consistent with the scrutiny arrangements which apply to the country bodies. Developing a pay and grading system specifically designed for all JNCC staff, with a single set of terms and conditions would then need to be taken forward administratively by JNCC subject to the necessary approvals.*
 - 3. We also propose to investigate the establishment, by the Joint Committee, of a Company Limited by Guarantee. This would be established to carry out functions pursuant to the Committee's existing powers and functions.*
 - 4. We propose to keep under review the possibility of establishing JNCC as a statutory body corporate when legislative opportunity arises. There are some concerns that changes to the corporate status of the JNCC may have unintended consequences and might affect the relationship between the JNCC and the country bodies; we would need to consider these carefully and ensure that any new corporate body remained a creature of the three country bodies. For this reason, any such proposal would be subject to consultation with the country bodies and the agreement of the devolved administrations.*
 - 5. Government also wishes to ensure that JNCC has clear, easily understood, lines of accountability, compliant with statutory requirements, Government accounting rules, and best practice guidelines. Changes may need to be introduced if JNCC acquires corporate body status. Further work needs to be done to clarify lines of accountability for the options*

under consideration and to assess the relative merits of each of the options on this basis.

6. *Option 4 is not being pursued at this stage.*

4. CORPORATE PLANNING

REVIEW RECOMMENDATIONS

Chapter 8: Corporate Planning (Para 8.11)

- Adoption of either of the main ring-fenced options in Chapter 6 would enable the JNCC to be treated in the same way as the individual country agencies and to have its own three year rolling corporate planning cycle. I believe this would strengthen the link between Government and the JNCC, and so improve service delivery for Government customers. This process would be further enhanced by adoption of the Stage 1 recommendation for a cross-cutting Government committee to scrutinise and prioritise expenditure. I re-iterate my recommendation for these changes.

Ch10 para 16:

- All demands for JNCC services should be considered alongside each other as part of the JNCC's corporate planning cycle.

GOVERNMENT RESPONSE

Government agrees that JNCC needs to be able to develop and agree a plan with the involvement of its key stakeholders: the country bodies, Defra, the devolved administrations and other key government customers. There is also a need to align Corporate Planning with the Spending Review cycle. The current long-standing timetable for NDPBs to deliver a final Corporate Plan by the end of July each year is no longer practical, as the conclusions of Spending Review in relation to JNCC and the country bodies are unlikely to be available before the autumn following the Spending Review, and sponsored bodies need the detail from the Spending Review to produce a sensible plan. This is linked to funding arrangements (including ring-fencing) discussed in Section 5 below.

1. *In order to align Corporate Planning with the Spending Review cycle, we propose that JNCC should produce every year a business plan for the year ahead once they know what their resources are; and a report on how they did in the previous year. After each Spending Review (ie every two years), they would produce a corporate plan setting out their three year spending plans in the light of the results of the Spending Review; this would subsume the business plan for the year ahead.*
2. *Convening a formal Cross-Departmental Group would mean delays to the Corporate Planning process. But Government agrees that more informal arrangements should be set in place to ensure full consultation on the JNCC's corporate planning.*

5. FUNDING ARRANGEMENTS

5.1 MAIN PROGRAMME; FUNCTIONS PERFORMED ON BEHALF OF THE COUNTRY AGENCIES (DEVOLVED FUNCTIONS)

REVIEW RECOMMENDATIONS

Chapter 3: Para 3.23 (part)

- All JNCC services should be funded by the UK Government on behalf of all three GB administrations jointly. This would remove the need to draw distinctions between reserved and devolved functions.
- If costs in relation to reserved functions are to be funded by the UK Government alone, but other costs are to be shared, the former should be paid via English Nature's grant in aid. In these latter circumstances, any formula for sharing costs between the three GB administrations should be applied after taking account of the separate contribution

Chapter 6: (para 6.80):

- Core funding for the main programme of JNCC functions should continue to be provided through grant-in-aid rather than direct charging.
- The UK Government should take full responsibility for funding all the JNCC's core functions.
- In order to allow this, Scotland and Wales should make an appropriate transfer to Defra

Para 6.81 (part)

- If a formulaic approach is favoured instead, it is recommended that the current funding ratio of 4:2:1 is retained for the GB agencies, with NI continuing to pay the marginal costs of any services that it benefits from through a separate service level agreement.

Chapter 10 para 23

- Under any of the shared options, I recommend that all sums payable in respect of shared JNCC core services should be ring-fenced within the grant-in-aid settlements of the individual country agencies.

GOVERNMENT RESPONSE

Government agrees that JNCC should be resourced at agreed and predictable levels of funding. The funding mechanism should be as straightforward as possible consistent with retaining the support and

commitment of its key stakeholders. Contributors should be clear that the funds they are providing are supporting services they require. However, it is not always easy to disentangle work carried out strictly for Government and that carried out for the country bodies, or that which relates to reserved matters from that where matters are devolved but where coordination at UK level is seen by all as desirable.

The three administrations have agreed that in future they will first decide each year on an appropriate budget for JNCC and then ring-fence the relevant element of grant-in-aid to their country individual bodies. In detail this means that:

- i. the administrations will agree on what proportion of the costs should be borne by each of the three countries. They currently 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 body underpinning their "share" of the formula - i.e. in future, in paying grant-in-aid to the country bodies, they would make clear the amount that they expected the agency to pass on to JNCC;*
- iv. in future spending reviews the administrations will consult together on the bids that they would put in to cover JNCC costs. They would then aim to provide additional funds for JNCC as appropriate out of their final budgets following the settlement.*

We propose to build these arrangements into bodies' Financial Memoranda and into the relevant annexes to concordats being negotiated between Defra and the devolved administrations.

5.2 FUNCTIONS PERFORMED ON BEHALF OF CENTRAL GOVERNMENT OR OTHER AGENCIES

REVIEW RECOMMENDATIONS

Chapter 3: Para 3.23 (part)

- If [funding of all JNCC services by the UK government] is not acceptable, and funding must be shared, it should be for UK Ministers to decide in the first instance whether they are content for services which relate to their reserved functions to be shared too.

- If such costs in relation to reserved functions are to be shared, all payments to the JNCC should be made through ring-fenced grant-in-aid paid via the individual country agencies.
- If costs in relation to reserved functions are to be funded by the UK Government alone, but other costs are to be shared, the former should be paid via English Nature's grant-in-aid.
- If any costs which are currently shared are now to be funded by the UK Government alone, an appropriate transfer of resources should be made by the devolved administrations to the UK Government.

Para 5.21:

- Any need for funding in respect of the mainstream JNCC services required by the UK Government should be met by Defra through grant-in-aid.
- All demands for JNCC services should be considered alongside each other as part of the JNCC's corporate planning cycle.
- Any significant demands by other Government departments or other customers for ad hoc work which arise outside the main programme should be carefully co-ordinated by the JNCC so as not to affect the achievement of core objectives.
- Defra should be consulted and take the lead in agreeing with the customer departments and the JNCC how the costs of such ad hoc services should be met.

Chapter 10 para 16:

- Funding for JNCC services relating to the UK Government's reserved functions should be on the same basis as that relating to devolved matters, to avoid the need for the JNCC to assign costs each year to particular functions and the possible problems of definition which might arise.
- Direct charging should continue to be considered for work on behalf of Government departments or the individual country agencies, including EHS(NI), that cannot be accommodated within the main programme.
- Direct charging should also continue to be considered for any costly work provided for NGOs or other outside customers which falls outside the JNCC's core programme, or for clearly defined outputs such as publications which are costly to produce, albeit possibly on a subsidised basis.

Chapter 10 paras 26-27

- Although Defra might wish to consider the scope for internally re-charging other Government departments for the costs of services it funds through grant-in-aid, there would seem no good reason in principle to do so. This would simply add to the administrative complexity of the arrangements for Defra for no clear reason.
- The possibility of direct charging of Government departments by JNCC for unplanned services outside the agreed core programme should not be ruled out. However, I see no necessary presumption in favour of this option, especially if the service is likely to become an ongoing core function.

Chapter 7: Direct charging of non-Government Customers

Para 7.11 recommends that direct charging should only be considered:

- In the case of the country agencies, for funding outside the core JNCC programme.
- For the NGOs and the public, in cases where the individual demand for services is significant, especially where it is not meeting any clear policy need of the JNCC's main customers.

GOVERNMENT RESPONSE

1. *JNCC undertakes some work directly for Government on UK-wide matters, for instance advice on CITES licensing and work for Foreign and Commonwealth Office, where there is no specific country body responsibility. Funding for this work can only be made currently through country bodies. Government accepts that there would be advantage in enabling direct payments from Government, since this would reduce the risk that country councils would need to re-order their funding priorities to reflect work for the JNCC driven at a UK level. This power would not be used with the intention of diluting country bodies' influence over the JNCC but would help to provide for a useful funding mechanism.*
2. *This could be achieved by amending section 129 of the Environmental Protection Act 1990 through an order made under the Regulatory Reform Act 2001. The amendment would allow the Secretary of State to make grants to the Joint Committee (See Annex A). Defra will consider the mechanics of direct charging further, in consultation with other interested Government Departments and the devolved administrations before taking a final decision on the way forward.*
3. *Government agrees that direct charging may be appropriate for work done by JNCC for NGOs and other outside bodies.*

5.3 NORTHERN IRELAND: FUNDING ARRANGEMENTS

REVIEW RECOMMENDATIONS

Chapter 4: (Part para 4.23):

- It would seem to me counter-productive to impose a significant additional cost on Northern Ireland in order to secure its greater participation in the work of the JNCC. For this and other reasons concerning the practicalities of formulaic sharing options, I am unable to recommend that NI is brought into any formula for sharing the costs of JNCC functions.
- (Part para 4.24).....I recommend that NI should continue to pay voluntary contributions towards JNCC core programme expenditure on the same basis as it does now.

GOVERNMENT RESPONSE

Primary legislation would be needed to place the Northern Ireland share of funding on a formal basis. This aspect will therefore be reviewed if a suitable legislative opportunity arises.

Although Northern Ireland is not formally built into the funding formula, in recent years, DOE(NI), through the Environment and Heritage Service, has made a contribution of 3-4%. Northern Ireland would prefer to retain these informal arrangements for the time being, although they are considering whether they could contribute a definite sum of money for a two-year period to place their funding on a firmer footing.

JNCC REVIEW: PROVISIONAL SCHEDULE OF IMPROVEMENTS THAT COULD BE MADE THROUGH REGULATORY REFORM ACT 2001 AND THROUGH PRIMARY LEGISLATION (subject to the views of Defra Legal, the devolved administrations and those of the Regulatory Impact Unit)

Regulatory Reform Act 2001

Amend para 7(1) of Schedule 7 to the EPA90 to remove provision whereby country councils are to provide JNCC with staff.

Provide JNCC with express power to employ staff, including scrutiny for SOS and HMT equivalent to paras 9 to 11 of Schedule 6 to EPA90

Enabling direct grant payments from Defra to JNCC by amending Section 129 of EPA90

Requiring the country councils to establish jointly a unified set of terms and conditions

Primary Legislation

Voting rights for Northern Ireland Members (para 2 of Schedule 7 to EPA 90)

Common standards across UK, not just GB (Section 133(2) (d) to EPA90)

Placing NI share of funding on a formal basis

Establishing JNCC as a statutory body corporate (subject to consultation with key stakeholders)

Additional independent member(s)