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JOINT NATURE CONSERVATION COMMITTEE

ESTABLISHMENT AND OPERATION OF THE COMPANY LIMITED BY GUARANTEE

Paper by Sue McQueen

1. Introduction

- 1.1 It is intended that the country agencies, through the Joint Committee, will establish a company limited by guarantee (CLG) in April 2005. This will enable a number of recommendations made in the Government's final report on the Financial, Management and Policy Review (FMPR) review to be implemented, thereby enabling the JNCC to deliver the special functions more efficiently and effectively. Committee endorsed a model for the CLG at its June 2004 meeting and considered a draft Memorandum and Articles of Association at its September 2004 meeting.

2. Authority to establish the company

- 2.1 The country agencies will be given the power to set up the company through the Joint Committee by the Environmental Protection Act 1990 as amended by the proposed Regulatory Reform Order (JNCC) 2005. This power will be subject to the consent of the Secretary of State not without the approval of Treasury and subject to any conditions he or she may impose.
- 2.2 Whilst the Joint Committee, and the country agencies, have been fully supportive of the concept of establishing the company and the detailed proposals for how it will be set up and run, the Committee will need to take a number of decisions formally to enable the company to be set up. Approval will also need to be sought from the Secretary of State and Treasury.

3. Process for establishing the company

- 3.1 The earliest the Regulatory Reform Order (RRO) can be expected to be made is the end of February 2005, allowing very little time to establish the company by 1st April 2005. Accordingly, the Joint Committee is asked to make the decisions necessary at its December meeting to allow the JNCC's staff and legal advisors to establish the company on Committee's behalf in the limited time available between the RRO being made and 1st April 2005. This will involve preparing papers for Committee members to sign as members of the company, seeking approval from the Secretary of State after the RRO has been made and subsequently submitting papers to Companies House.
- 3.2 The decisions that the Committee is required to take to enable the company to be set up are attached at annex 1.

- 3.3 The decision to set up the company is significant. However, because the Committee, country agencies and Government have been extensively engaged in the development of proposals it is proposed that no alteration to the Committee's standard decision-making approach is required for this particular decision. The Committee's normal approach is to make decisions by consensus, or failing that by a simple majority vote.

4. Control of the company

4.1 *Relative functions of the Committee and the company*

- i. The Joint Committee will continue to be responsible for discharging its statutory responsibilities as set out in the Environmental Protection Act 1990 as amended.
- ii. As a Committee of non-departmental public bodies, the JNCC has to comply with public sector accountability and governance procedures. These are set out in the Accountability Framework Document, Management Statement and Financial Memorandum which reflect the operating framework for the JNCC based on Treasury requirements and set out by Defra, the devolved administrations and the country agencies.
- iii. The company limited by guarantee will provide services to the Joint Committee in support of these functions, including providing the vehicle for employing staff and administering funding.
- iv. The Joint Committee will delegate much of the work required to fulfil its responsibilities to the company, for instance employing staff, but will reserve certain matters to itself to ensure that it maintains appropriate control over the company and its statutory advice. For example, it is envisaged that the Committee will reserve to itself matters that affect the framework within which the company will formulate advice on its behalf. It will also determine the organisation's corporate and business plans and associated resources for the company. Reserved matters for the Committee are set out in the draft accountability statements attached at annex 2.

4.2 *Control within the company*

- i. In addition to the Committee exercising control over the discharge of its responsibilities through the series of reserved matters, arrangements have also been put in place to enable the Committee to exercise control within the company whilst ensuring that the controls also allow the members and officers of the company to fulfil their obligations under the Companies Acts (1985 and 1989). These arrangements are reflected in the company Memorandum and Articles of Association attached at annexes 3 and 4. Additions have also been made to JNCC's draft Accountability Framework Document and draft Management Statement, considered by the Committee at its September meeting, to fully reflect

these controls rather than developing a separate 'bridging' document as was envisaged at that meeting.

- ii. The Management Statement has been drafted to require the Committee to exercise its responsibility for ensuring the company's arrangements comply with statutory and administrative requirements through control of the membership of the company. As members of the company, the Committee members will then have control over the scope and powers of the company through the Memorandum of Association under which the company is formed, and over the company's rules for running the company's affairs through the company's Articles of Association. The Management Statement requires the Committee to ensure that membership of the company reflects the Secretary of State's conditions for ensuring that the membership of the company broadly reflects the membership of the Joint Committee.
- iii. The Articles of Association have been drafted so that every member of the company is also deemed to be a director (except Northern Ireland members who will be entitled to attend and speak, but not vote, at meetings). This will ensure that the composition of the company Board broadly represents the composition of the Joint Committee, the one exception being that up to three executive directors can be appointed to ensure that the board has sufficient time and expertise to fulfil its obligations. The Articles concerning the quorum of the board have been drafted to prevent the possibility that the executive directors could have greater control over matters than the non-executive directors.
- iv. The Committee has previously expressed its wish that all members of the Committee become members and directors of the company.
- v. The Memorandum and Articles of Association have also been drafted to ensure compliance with administrative requirements. For example, the Memorandum of Association limits the company's powers to exclude those that if exercised would be a breach of the Financial Memorandum.
- vi. The draft accountability statements attached at annex 2 set out a) the relative responsibilities of the Joint Committee established under the Environmental Protection Act 1990 and the company limited by guarantee established by the Joint Committee under the Regulatory Reform (JNCC) Order 2005, and b) the various collective and individual roles within the Committee and the company.
- vii. It is intended that Defra will lay a minute before the House stating that Government will indemnify JNCC Committee Members liabilities incurred where they act honestly and in good faith both as Committee Members and through any role in a Company Limited by Guarantee. These indemnities will be analogous to those provided for other NDPB members and in line with paragraph 8.3.18 of Government Accounting.

5. Practical arrangements for setting up the company

- 5.1 Subject to the RRO being made by the end of February 2005 and Secretary of State approval being granted immediately, the company can be established and the first Board meeting can be arranged to follow on from the March 2005 Committee meeting.
- 5.2 At the March 2005 meeting the Committee would, in addition to its usual business, delegate certain matters to the company. The Committee meeting would be followed immediately by the first Board meeting at which the Board would make the decisions necessary for the company to be operational from April 2005. These are shown at annex 5.

6. Practical arrangements for running the company

- 6.1 The officers of the company (directors and company secretary) are responsible for sound governance of the company and have legal responsibilities for ensuring that statutory documents are delivered to the Registrar. These are set out fully in the Accountability Statements at annex 2. In practice much of the work required to fulfil these responsibilities will be delegated to others.
- 6.2 In particular, the Executive Management Board will be established as a sub-committee of the company Board and will be responsible for the day to day running of the company under delegation from the company Board. As such it will formally report to the Board twice a year on the company's and JNCC's performance and financial position in the same way that the Support Unit Management Board presently reports to the Joint Committee. The company Board will report annually to the Joint Committee on the company's performance and accounts.
- 6.3 The Board will also be responsible for appointing a company secretary who, amongst other duties, will undertake work to ensure that the company fulfils its responsibilities, including the filing of statutory returns. The responsibilities of the company secretary are set out in the draft accountability statements attached at annex 2.
- 6.4 For the Joint Committee, the series of quarterly meetings will continue but business will be split between Committee meetings and Board meetings which will be held back to back but will have separate agendas and minutes. Once a year, one of the meetings will be deemed to be an annual general meeting to meet Companies Act requirements.

7. Authority to wind up or otherwise dissolve the company and associated issues

- 7.1 Under the Companies Act any decision to wind up the company would rest with its members, unless it was compulsorily liquidated under a court order. Additionally, one of the conditions that is expected to be set by the Secretary of State is that his or her approval will be required prior to the company being wound up. This condition provides an additional safeguard for staff employed by the company. The Committee will therefore not have the authority to decide to

wind up or otherwise dissolve the company directly but will have this authority indirectly through their control of the membership of the company. The details of this condition of the Secretary of State are still being discussed.

- 7.2 Potentially, the company could be wound up without the work transferring elsewhere and/or any special provision for the treatment of assets and liabilities being made, e.g. in legislation. In this situation staff would be likely to be made redundant and assets called in and distributed amongst creditors. If there were any outstanding company debts or liabilities members would be responsible for contributing up to £1 towards their payment. If there were any surplus assets after all liabilities had been met these would be transferred to any similar bodies in accordance with the Memorandum of Association.
- 7.3 However, the likelihood of this happening either through insolvency or a lack of continuing need for the work is extremely low. The relationship of the company with the Joint Committee, the country agencies and Government, and the associated controls that will be in place are considered to make negligible the risk of insolvency. The statutory basis of JNCC's work and the staff support needed for them to be fulfilled also make negligible the risk that the work would simply cease to be needed. If, because of some future change, the work undertaken by the company were to be delivered through an alternative mechanism the assets and liabilities of the company could simply be transferred with the work. e.g. under TUPE or some special provision e.g. in legislation.

Decisions required for the company to be set up

- Agree in principle to set up the CLG once the RRO is made and Secretary of State approval is obtained.
- Agree who will be Members and thereby directors of the company (preferably all Committee members).
- Agree who will be the company secretary.
- Endorse the Memorandum and Articles of Association.
- Authorise staff and Vizard Tweedie (JNCC's legal advisors) to proceed on its behalf in
 - seeking SoS approval in principle prior to the RRO being made
 - seeking final approval once the RRO is made
 - submitting the necessary papers to Companies House once SoS approval has been sought.

DRAFT ACCOUNTABILITY STATEMENTS FOR THE JOINT COMMITTEE AND THE COMPANY LIMITED BY GUARANTEE ESTABLISHED BY THE JOINT COMMITTEE

INTRODUCTION

This document sets out in detail the relative responsibilities of the Joint Committee established under the Environmental Protection Act (1990) and the company limited by guarantee established by the Joint Committee under the Regulatory Reform (JNCC) Order 2005. The document also sets out the various collective and individual roles within the Committee and the company.¹

The statutory responsibilities of the Committee and the roles of its members are set out in section 1. The objects of the company and the roles of members and officers within it are set out in section 2.

¹ In many cases several roles will be fulfilled by the same person. For instance it is preferable that Joint Committee Members also hold roles as members and directors of the company limited by guarantee.

SECTION 1 THE JOINT COMMITTEE

A STATUTORY RESPONSIBILITIES OF THE JOINT COMMITTEE

SECTION 133 – ENVIRONMENTAL PROTECTION ACT 1990 - SPECIAL FUNCTIONS

- (1) The Councils shall jointly have the following functions which may, however, be discharged only through the joint committee; and in this section the functions so dischargeable are referred to as "special functions".
- (2) The special functions of the Councils are—
 - (a) such of the functions previously discharged by the Nature Conservancy Council under the [1981 c. 61.] Wildlife and Countryside Act 1981 as are assigned to the Councils jointly as special functions in accordance with the amendments to that Act effected by Schedule 9 to this Act;
 - (b) the provision of advice for the Secretary of State or any other Minister on the development and implementation of policies for or affecting nature conservation for Great Britain as a whole or nature conservation outside Great Britain;
 - (c) the provision of advice and the dissemination of knowledge to any persons about nature conservation for Great Britain as a whole or nature conservation outside Great Britain;
 - (d) the establishment of common standards throughout Great Britain for the monitoring of nature conservation and for research into nature conservation and the analysis of the resulting information;
 - (e) the commissioning or support (whether by financial means or otherwise) of research which in the opinion of the joint committee is relevant to any matter mentioned in paragraphs (a) to (d) above;

and section 132(2) above shall apply to the special functions as it applies to the functions conferred by subsection (1) of that section.

- (3) The joint committee may give advice or information to any of the Councils on any matter arising in connection with the functions of that Council under section 132 above which, in the opinion of the committee, concerns nature conservation for Great Britain as a whole or nature conservation outside Great Britain.
- (4) For the purposes of this section, references to nature conservation for Great Britain as a whole are references to—
 - (a) any nature conservation matter of national or international importance or which otherwise affects the interests of Great Britain as a whole; or

- (b) any nature conservation matter which arises throughout Great Britain and raises issues common to England, Scotland and Wales,

and it is immaterial for the purposes of paragraph (a) above that a matter arises only in relation to England, to Scotland or to Wales.

OTHER STATUTORY RESPONSIBILITIES

The JNCC has a responsibility to act as a statutory consultee on casework (outside 12 nautical miles) under the Oil Pollution Preparedness, Response and Co-operation (OPRC) guidelines 2002, the Offshore Petroleum Production and Pipeline Regulations 1999 and also on policy under the Offshore Petroleum Activities Regulations.

OTHER RESPONSIBILITIES

Under the Convention on International Trade in Endangered Species and the corresponding EC Regulation, the UK is obliged to set up a Scientific Authority for flora and fauna. The Government has appointed the JNCC to act in the capacity of Scientific Authority on fauna.

B ACCOUNTABILITIES OF COMMITTEE MEMBERS

CHAIRMAN OF THE JOINT COMMITTEE

1. Appointment

The Chairman is appointed by the Secretary of State for the Department of Environment, Food and Rural Affairs (Defra – referred to as ‘the Department’) under schedule 7 of the Environmental Protection Act 1990. The Chairman is normally appointed for a term of three years, at which time, and after review, the period of appointment may be extended for a further three years.²

Although not required, it has been agreed that it would be preferable for the Chairman of the Committee also to hold the role of Chairman of the company board and the company’s Articles of Association reflect this. The tenure and review period of the Chairman of the Board shall reflect that of the Chairman of the Committee.

2. Specific role

The Chairman shall aim to ensure that the JNCC’s policies and actions support the wider strategic policies of the Secretary of State and Ministers in the devolved administrations and that the JNCC’s affairs are conducted with probity.

The Chairman has a particular leadership responsibility on the following matters:

- i. formulating the Committee’s strategy;
- ii. ensuring that the Committee, in reaching decisions, takes proper account of guidance provided by the Secretary of State or Department;
- iii. promoting the efficient and effective use of staff and other resources;
- iv. encouraging high standards of propriety;
- v. representing the views of the Committee to the general public and seeking consensus among Committee.

The Chairman shall also:

- vi. ensure that all members of the Committee, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities, and receive appropriate induction training, including on the financial management and reporting requirements of public sector bodies and on any differences which may exist between private and public sector practice;

² Terms of public appointments can be up to five years with a maximum term over a period of two terms of 10 years.

- vii. advise the Secretary of State of the needs of the JNCC when Committee vacancies for independent members arise, with a view to ensuring a proper balance of professional and financial expertise;
- viii. on request, assess the performance of individual Committee members when they are being considered for re-appointment to the Committee;
- ix. ensure that the Committee meets at appropriate intervals and that the minutes of meetings and any reports to the Secretary of State accurately record the decisions taken and, where appropriate, the views of individual Committee members.

The Chairman shall also ensure that a Code of Practice for Committee Members is in place, based on best practice for Public Bodies.

Communications between the Committee and Ministers shall normally be through the Chairman. The Chairman shall ensure that the other Committee members are kept informed of such communications.

When an issue requires a decision at a Committee meeting and where agreement cannot be reached by consensus or a majority vote is not reached, the Chairman will have a second or 'casting' vote in order to decide the issue.

3. Corporate responsibilities

The Chairman shares with other Committee members the corporate responsibilities set out in the accountability statement for Committee members and in particular for ensuring that the Joint Committee fulfils the special functions as set out in section 133 of the Environmental Protection Act 1990.

4. Membership of Company

The Chairman will seek to ensure that Committee members apply for and retain membership of the company so that the conditions as to the company set by the Secretary of State and listed in the JNCC Accountability Framework Document are met, to the effect that at all times there should be at least 7 such members of the company and that they should broadly represent the balance on the Joint Committee between the appointees of the country agencies and its independent members.

COMMITTEE MEMBER

1. Appointment

Independent Committee members are directly appointed to the Joint Committee by the Secretary of State for the Department of Environment, Food and Rural Affairs (Defra – referred to as 'the Department') under schedule 7 of the Environmental Protection Act 1990. The Chairman of each country agency (English Nature, Scottish Natural Heritage and the Countryside Council for Wales) sits on the Joint Committee alongside one other member of their council/board, who is appointed by their council/board. In addition there are three other members of the Joint Committee – the Chairman of the Countryside

Agency and two non-voting members appointed by the Department for the Environment for Northern Ireland. Independent Committee members are normally appointed for a term of three years³, at which time, and after review, the period of appointment may be extended for a further three years.

2. Specific role of the Joint Committee

The Committee has responsibility for fulfilling the special functions as set out in section 133 of the Environmental Protection Act 1990 and its other legal responsibilities. In doing this it will:

- take the initiative, and facilitate others, in identifying strategic issues for or affecting nature conservation;
- provide impartial scientific advice to Government, the country agencies and others;
- establish a collective UK stance on issues whilst empathising with any different positions of countries within the UK.

The Committee is also collectively responsible for promoting the efficient and effective use of staff and other resources by the JNCC. To this end, and in pursuit of its wider responsibilities, the Committee shall:

- i. establish the overall strategic direction of the JNCC within the policy and resources framework determined by Ministers;
- ii. ensure that Ministers are kept informed of any changes which are likely to impact on the strategic direction of the JNCC or on the attainability of its targets, and determine the steps needed to deal with such changes;
- iii. ensure that any statutory or administrative requirements for the use of public funds are complied with; that the Committee operates within the limits of its statutory authority and any delegated authority agreed with the Department and devolved administrations or with the country agencies (as set out in the JNCC's Financial Memorandum), and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Committee takes into account guidance issued by the Department;
- iv. ensure that the Committee receives and reviews an adequate and timely flow of information on the JNCC's performance, budgeting, control and risk management; is informed in a timely manner about any concerns about the activities of the JNCC; and provides positive assurance to the Department and devolved administrations that appropriate action has been taken on such concerns;
- v. demonstrate high standards of corporate governance at all times, including by using an independent audit committee to help the Committee to address the key financial and other risks facing the JNCC;
- vi. appoint a Managing Director to the JNCC and, in consultation with the

³ Terms of public appointments can be up to five years with a maximum term over a period of two terms of 10 years.

Department, set performance objectives and remuneration terms linked to these objectives for the Managing Director which give due weight to the proper management and use of public monies.

In fulfilling its role the Committee seeks to:

- make its decisions through a consensus approach;
- lead changes relating to its advice, within the JNCC and more widely, through its behaviour and decisions;
- work collaboratively with the country agencies and share in each others' successes.

Individual Committee members shall act in accordance with their wider responsibility as Members of the Committee – namely to:

- vii. comply at all times with the Code of Practice that is adopted by the Joint Committee and with the rules relating to the use of public funds and to conflicts of interest;
- viii. not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- ix. comply with the Committee's rules on the acceptance of gifts and hospitality, and of business appointments;
- x. act in good faith and in the best interests of the JNCC.

The Joint Committee also has corporate responsibility for ensuring that the conditions for the establishment and operation of the company, referred to at paragraph 3.2 of the Accountability Framework Document and set out in Annex 1 to it, are complied with at all times. The means by which the Joint Committee shall ensure compliance with those conditions shall be through control of membership of the company. Accordingly, the Joint Committee has procured that the Articles of Association with which the company has been formed contain provisions stipulating that it is a condition of the admission of any person to be a member of the company that he or she be a current member of the Joint Committee and that his or her membership of the company shall cease if he or she ceases to be a member of the Joint Committee.

- xi. The Joint Committee shall encourage each of its individual members to apply for membership of the company and to retain such membership for so long as he or she remains a member of Joint Committee so as to ensure, so far as possible, that there are at all times a minimum of 7 members of the company and that its membership broadly represents the balance on the Joint Committee between the country agencies' appointees and independent members.
- xii. Each individual member will exercise his or her individual powers and rights as a member of the company in such a way as to ensure compliance with the conditions referred to above. In particular, each individual member will exercise his or her voting rights as a member of the company to oppose any of the

following resolutions unless any such resolution shall first have been approved by the Secretary of State and the Treasury:

- to alter any provision of its Memorandum of Association; or
- to alter its Articles of Association in any way which affects their provisions as to:
 - the composition of membership of the company as referred to at xi. above; or
 - the voting rights of its members; or
 - the quorum for its general meetings or for meetings of its directors; or
 - the provision that members of the company be deemed to be directors of it; or
 - the maximum number of directors who are not members of the company; or
 - the requirement that such directors be and remain employees of the company or of JNCC; or
 - the qualification for service as an alternate director; or
 - the Chairman of the company; or
 - the indemnity for its directors and officers; or
 - that the company be wound up voluntarily, unless by reason of insolvency.

3. Role of independent members

Whilst all Committee members are charged with identifying strategic issues, bringing forward issues identified through their different interests and making decisions from a JNCC perspective, independent members should, in particular, endeavour to bring forward issues and thinking outside of the normal experience of the country agency bodies.

Devolved issues on which the country agencies 'agree to disagree' could also be brought to the Joint Committee to engage the views of independent members.

Independent members also have a role engaging in dialogue with the UK Government to help the needs of Government to be conveyed to the Committee and the views of Committee to Government.

4. Matters reserved for the Committee

Many of the Committee's responsibilities are delegated to and executed by the company established by the Committee under the Environmental Protection Act (1990) as amended by the Regulatory Reform (JNCC) Order 2005. The following matters are specifically reserved for the Committee. This list is not conclusive and additionally the Committee may take back any responsibilities that it has delegated.

Statutory Duties

- Ensuring that a process is in place to enable matters involving significant risk to the JNCC's or Government's reputation, legal standing or financial position to be

identified and referred the Joint Committee and addressing matters involving such risks.

- Advice to Ministers quinquennially on the animals and plants listed on schedules 5 and 8 to the Wildlife and Countryside Act (1981).
- Receiving, reviewing and endorsing proposals relating to high-level advice on science policy, strategy, standards and JNCC position statements.
- Giving guidance or information to any of the Councils on any matter arising in connection with the functions of that Council, which in the opinion of the Committee, concerns nature conservation for GB as a whole or nature conservation outside GB.
- Matters requiring the Committee's input to secure a common position across the country agencies.

Regulation and control

- Regulating the Committee's own procedures, including approving and amending Standing Orders and a schedule of matters reserved to the Committee.
- Establishing and amending corporate governance arrangements for the JNCC with the agreement of the country agencies and Government.
- Ensuring that the company is set up and run in accordance with the intentions of the Environmental Protection Act (1990) as amended by the Regulatory Reform (JNCC) Order 2005 and making recommendations as necessary to the Secretary of State on matters concerning establishing or winding up the company or changing its objects.
- Approving and submitting to the Secretary of State the JNCC's annual report and accounts.
- Receiving and reviewing annual reports from the Audit and Risk Management Committee on the JNCC's and company's control and risk management.

Appointments and staffing matters

- Appointing any voting member to be a deputy chairman of the Committee.
- Appointing a Managing Director and, in consultation with the Department, setting performance objectives.
- Setting the overall pay remit for staff employed by the company on the Committee's behalf with the approval of Defra and Treasury as required.
- Determining pensions with the approval of the Secretary of State.

Strategy, planning, review and reporting

- Establishing the strategic direction of the JNCC and approving Corporate and Business Plans and associated budgets to be executed through the company.
- Approving projects with a total full-life cost of more than £300k with the approval of Defra via English Nature.
- Approving high-level organisational strategies such as communications and funding strategies.

Financial approvals

- Accepting gifts or contributions over (amount to be specified)
- The financial memorandum outlines financial provisions that are outside the remit of the Joint Committee and require approval from either the Chief Executive of English Nature, as lead Accounting Officer, or from the Department.

SECTION 2 THE COMPANY

A OBJECTS OF THE COMPANY LIMITED BY GUARANTEE

Environmental Protection Act (1990) as amended by the Regulatory Reform (JNCC) Order (2005) Schedule 7, paragraph 7 (4 and 5).

- (4) 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 committee, form a company limited by guarantee the main objects of which fall within sub-paragraph (5).
- (5) The objects falling within this sub-paragraph are objects of—
- (a) providing administrative and corporate support services to the committee, including the employment of staff, for the purposes of the special functions;
 - (b) making charges and holding land or any interest in or right over land for those purposes; and
 - (c) doing such other things as are incidental or conducive to the exercise of those functions.

The Companies Acts 1985 & 1989, Company Limited By Guarantee, Memorandum Of Association Of [JNCC Clg]

The objects for which the Company is established (“the Objects”) are the provision of services to the Joint Nature Conservation Committee established pursuant to Section 128 Environmental Protection Act 1990 (as amended) (“JNCC”) and, through it, to English Nature, the Countryside Council for Wales and Scottish Natural Heritage in connection with the special functions specified in Section 133 Environmental Protection Act 1990 (as amended) and in connection with any other functions of the JNCC.

B ACCOUNTABILITIES OF COMPANY MEMBERS AND OFFICERS

COMPANY MEMBER

1. Appointments

It has been agreed that, on appointment, a Committee member (except those members nominated by the Department of Environment Northern Ireland who will be entitled to attend and speak (but not vote) at meetings) should normally also become a member of the company. The tenure and review period of a member shall reflect that of his/her appointment as a Committee member (the Articles of Association provide that, on a member ceasing to be a member of the Joint Committee, his or her membership of the company will also cease).

2. The role of company members

In the capacity of a company member individuals will have the following role:

- to use their voting and other powers as members (particularly with regard to resolutions to change the Memorandum or Articles of Association or to wind up the company) to ensure, so far as possible, that the conditions set by the Secretary of State in respect of the company and listed in the JNCC Accountability Framework Document are complied with;
- to undertake to contribute up to £1 to the assets of the company if it is wound up while he or she is a member or within one year after ceasing to be a member;
- to approve the destination for surplus assets of the company on a winding-up;
- to appoint up to 3 executive directors of the company from among its employees or those of JNCC (this power is shared between the members and the board);
- to receive and review the company's annual report and accounts.

A member of the company is deemed by its Articles to be a director of the company and accordingly also has the role and responsibilities of a director.

CHAIRMAN OF THE BOARD

1. Appointment

Although not required, it has been agreed that it would be preferable for the Chairman of the Committee to also hold the role of Chairman of the company board and the Articles of Association reflect this. The tenure and review period of the Chairman of the Board shall reflect that of the Chairman of the Committee. If it is necessary for the Chairman of the Board to be someone other than the Chairman of the Joint Committee then the Chairman should be chosen from among the members of the Joint Committee nominated by the Secretary of State. Best practice guidance should be followed in making this appointment.⁴

⁴ The Higgs Report on non-executive Directors has recommended that the Chief

2. Specific role

The Chairman is responsible for;

- i. leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda and frequency of meetings;
- ii. ensuring the provision of accurate, timely and clear information to directors;
- iii. ensuring effective communication with the Joint Committee;
- iv. arranging the regular evaluation of the performance of the board, its committees and individual directors;
- v. facilitating the effective contribution of non-executive directors and ensuring constructive relations between executive and non-executive directors;
- vi. ensuring effective implementation of board decisions;
- vii. acting as the chairman of general meetings of the Company at which he or she is present.

3. Corporate responsibilities

The Chairman shares the corporate responsibilities set out in the accountability statements for members and directors.

COMPANY DIRECTOR

1. Appointment

It has been agreed that, on appointment, a Committee member (except those members nominated by the Department of Environment Northern Ireland who will be entitled to attend and speak (but not vote) at meetings) should usually also become a non-executive director of the company. The tenure and review period of a director shall reflect that of his/her appointment as a Committee member. Additional executive directors may also be appointed by the board and/or members from amongst the staff of the company or of the JNCC up to a maximum of 3 in aggregate to serve at any one time.

2. Specific roles of executive and non-executive directors

Legally, there is no distinction between an executive and non-executive director. However, there is a sense that the role of a non-executive director should be to balance that of the executive director so as to ensure the board as a whole functions effectively.

Executive Officer (equivalent to the Managing Director in JNCC) should not hold the position of Chairman of the board. In addition, the report also recommends that on appointment the Chairman should be seen to be independent.

Where the executive director has an intimate knowledge of the company and is therefore expected to be able to provide this detail at board meetings, the non-executive director may be expected to have a wider perspective of the world at large. The Higgs Report (January 2003) covered a review of the role and effectiveness of non-executive directors, outlining some key focus areas. The following are relevant within the JNCC:

- *Performance* – non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.
- *Risk* – non-executive directors should satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible.

Outlined below are the legal responsibilities associated with being a company director, the corporate responsibilities of the Board as a whole and guidance on the role of non-executive directors within the company.

3. Legal responsibilities

Although it is primarily the function of the company secretary, every company director has a personal responsibility to ensure that statutory documents are delivered to the Registrar as and when required by the Companies Act (these are set out in Appendix 1),⁵ and that other requirements of the Companies Acts are complied with.

4. Corporate responsibilities as a Board

The JNCC company is not a listed company and also its Board has more limited powers and duties in some respects because of the role of the Joint Committee in its governance. However, it endeavours to meet acknowledged principles of good corporate governance which require the Board to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enable risk to be assessed and managed.

Individual directors shall act in accordance with their wider responsibility as a Board namely to:

- ii. pursue the objectives listed in the Memorandum of Association and act within the powers granted within the Memorandum and Articles of Association;
- iii. act in good faith, taking decisions objectively and in the interests of the company;
- iv. ensure the company's obligations to members, and thereby the Joint Committee, are understood and met;
- v. ensure that financial and human resources provided by the Joint Committee are deployed to meet the company objectives, and more specifically the corporate

⁵ If an annual return is filed late or not at all, the company and its directors and secretary can be prosecuted.

and business plans of the JNCC, and that financial controls and systems of risk management are robust and defensible;

- vi. maintain a sound system of internal control and review it at least annually;
- vii. establish an audit and risk management committee;
- viii. appoint/remove the company secretary;
- x. meet sufficiently regularly to discharge the duties of the Board and ensure that minutes are taken giving a record of decisions taken and any concerns raised;
- xii. ensure that all Board members receive an induction and appropriate training to refresh their skills;
- xiii. ensure that directors (especially non-executive directors) have access to independent professional advice.

5. Matters reserved for the Board

Many of the directors' legal responsibilities (appendix 1) and responsibilities as members of the Board have been delegated to appropriate staff. The following matters have been specifically reserved for the Board. The list is not conclusive and additionally the Board may take back any responsibilities that it has delegated.

Regulation and control

- Approval of any significant changes in financial policies and practice.

Appointments

- Admit members of the company in accordance with the articles of association.
- Appoint additional directors to the company in accordance with the articles of association.(Shared with Members)
- Appoint or remove the company secretary.
- Appoint, re-appoint or remove external auditors, and agree their remuneration.
- Appoint a chairman in accordance with the provisions of the Articles of Association and the requirements of the Secretary of State (in practice it is intended that the Chairman of the Joint Committee will also serve as Chairman of the company).

Board Committees

- Establish an Audit and Risk Management Committee and agree its Terms of Reference.
- Establish an Executive Management Board and agree its terms of reference.

- Establish any other Committees that it may from time to time be appropriate

Strategy, planning, review and reporting

- Receive and review the Executive Management Board's mid-year report on the company's performance and financial position.
- Approve the company's and Joint Committee's accounts and annual report (the Managing Director must sign the accounts as part of the Accounting Officer responsibilities delegated to him from English Nature's Chief Executive).
- Receive and review the Audit and Risk Management Committee's annual report on the JNCC and CLG's control and risk management.

Financial approvals (to be decided)

COMPANY SECRETARY

The specific responsibilities associated with the role of the company secretary are outlined below – these are derived from company law and also from functions delegated to the company secretary from the company Board. Attention should be drawn in particular to the legal requirements associated with some of the responsibilities outlined below.

1. Appointment

Section 283(1) of the Companies Act 1985 ('the Act') requires that every company must have a secretary. The Board appoints the company secretary as detailed in article 39 of the Articles of Association. The Board may also remove the secretary.

Notice of appointment of a secretary must be given to the Registrar on form 288a within 14 days, and on resignation on form 288b within 14 days.

2. Responsibilities

The company secretary usually undertakes the following duties. Those marked with an asterisk are delegated from the company Board and some others are also legal company requirements:

- i. maintaining the statutory registers, which are:
 - the register of members (section 352)
 - the register of directors and secretaries (section 288)
 - the register of directors' interests (section 325)
 - the register of charges (section 407)
- ii. ensuring that statutory forms are filed promptly *, these are:
 - *the accounts and annual report*, which must contain a directors' report signed by a director or the company secretary, a balance sheet signed by a

director, a profit and loss account (or income and expenditure account), an auditors' report signed by the auditor and notes to the accounts.

- *the annual return (form 363)*, which must be checked, signed and dated and returned to the Registrar within 28 days. (If the return is filed late or not at all, the company and its directors and secretary can be prosecuted.)
- *a notice of change of directors or secretaries or in their particulars (forms 288a/b/c)*, which must be sent to the Registrar within 14 days of the change.
- *a notice of a change of registered office (form 287)*

The secretary is allowed to sign most of the forms prescribed under the Act.

iii. ensuring that the accounts and annual report are considered at a general meeting of the company*.

iii. providing members and auditors with notice of meetings.

21 days written notice must be given for an annual general meeting, 14 days written notice is required for a meeting which is neither an annual general meeting or a meeting to pass a special resolution.

iv. sending the Registrar copies of resolutions and agreements

copies of every resolution or agreement to which section 380 applies, for example special and extraordinary resolutions, must be sent to the Registrar within 15 days of them being passed.

v. supplying a copy of the accounts to every member of the company and every person who is entitled to receive notice of general meetings and also copies demanded by anyone under section 239 of the Act. Accounts must be sent at least 21 days before a meeting at which they are to be laid.

vi. keeping, or arranging for the keeping, of minutes of directors' meetings and general meetings and ensuring that correct procedures are followed

vii. ensuring that people entitled to do so, can inspect company records

viii. custody of the company seal (if the company chooses to have a company seal)

3. Authority

A company secretary employed by the company and involved in the management of that company will have the following authority:

- *actual authority* – that is to say authority delegated by the directors to enter into a contract on the company's behalf;

- *implied authority* – authority to enter into contracts as a result of a course of dealings;
- *ostensible authority* – authority to act in relation to matters that would normally fall within the job of a company secretary. (Where a company secretary enters into a contract on behalf of the company he should make it clear that he does so as the company's agent; personal liability will therefore be avoided).

4. Legal requirements

As the secretary is an officer of the company under section 744 of the Act, they may be criminally liable for defaults committed by the company, for example, failure to file – in the time allowed – any change in the details of the company's directors and secretary, and the company's annual return.

The secretary may also have to make out a statement of the company's affairs if an administrative receiver or a provisional liquidator is appointed, or if a winding up order is made.

LEGAL RESPONSIBILITIES OF COMPANY DIRECTORS

Every company director has a personal responsibility to ensure that statutory documents are delivered to the Registrar as and when required by the Companies Act. In particular;

- **Accounts and annual report**, which will include the following
 - i. a directors' report signed by a director or the company secretary
 - ii. a balance sheet signed by a director
 - iii. a profit and loss account (or income and expenditure account)
 - iv. an auditors' report signed by the auditor
 - v. notes to the accounts

Directors must make sure that the annual report and accounts are considered at a general meeting of the company, normally the annual general meeting (AGM).

- **Annual returns** (Form 363)
This is a snapshot of general information about the company giving details of its directors and secretary, registered office address and shareholders. After the first annual return, Companies House routinely sends a pre-printed annual return which includes information already held on their database. This needs to be checked, signed and dated and returned within 28 days of the date shown on the form, with the filing fee.

If an annual return is filed late or not at all, the company and its directors and secretary can be prosecuted.

- **Notice of change of directors or secretaries or in their particulars** (Forms 288a/b/c)
These must be sent to the Registrar within 14 days of the change.
- **Notice of change of registered office** (form 287)

A director has duties to the company to exercise his or her powers in a fiduciary manner for the benefit of the company, and not for his or her personal benefit, using reasonable skill and care. A director is accordingly legally obliged to declare any potential conflict of interest.

A director can sometimes be **personally liable** if the company fails:

- to comply with employment law in their dealings with employees
- to ensure the health and safety of its employees
- to pay on time the proper amounts of tax, VAT and National Insurance
- to comply with data protection law requirements

THE COMPANIES ACTS 1985 & 1989

COMPANY LIMITED BY GUARANTEE

DRAFT MEMORANDUM OF ASSOCIATION

OF

[JNCC CLG]

1. The name of the Company is “[JNCC CLG]”.
2. The registered office of the Company is in England and Wales.
3. The objects for which the Company is established (“the Objects”) are the provision of services to the Joint Nature Conservation Committee established pursuant to Section 128 Environmental Protection Act 1990 (as amended) (“ the Joint Committee”) and, through it, to English Nature, the Countryside Council for Wales and Scottish Natural Heritage in connection with the special functions specified in Section 133 Environmental Protection Act 1990 (as amended) and in connection with any other functions of the Joint Committee
4. The Company has power to do anything within the law that may promote or may help to promote the Objects or any of them Provided That the exercise thereof would not be a breach of the provisions of the Financial Memorandum for the Joint Committee if exercised by the Joint Committee. In particular (provided as aforesaid but otherwise without limitation) the Company has the following powers:
 - 4.1. to pay out of the Company’s funds the costs incurred in forming the Company;
 - 4.2. to create, promote, organise and administer projects, courses, conferences, research and developments in any part of the world;
 - 4.3. to provide information, training, guidance, advice and management or consultancy services gratuitously or otherwise;

- 4.4. to co-operate and enter into arrangements with authorities, national, local or otherwise and other agencies or bodies;
- 4.5. to bring together representatives of, and to co-ordinate the activities of, authorities and statutory and other agencies and bodies engaged in the furtherance of the Objects;
- 4.6. to assist and support any person, authority, agency or body in the furtherance of the Objects;
- 4.7. to acquire or hire and hold land and property of any kind, and any interests in or rights over property of any kind;
- 4.8. to borrow and raise money in any manner; and to secure and guarantee by any means the repayment of any money borrowed, raised or owing, and the performance by the Company of any obligation or liability, by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future);
- 4.9. to invest and deal with the moneys of the Company not immediately required in any manner and to hold or otherwise deal with any investments made;
- 4.10. to sell, dispose of, let, mortgage, or charge any property of the Company and to grant licences, options, rights and privileges in respect of, or otherwise deal with, all or any part of the property and rights of the Company;
- 4.11. to make grants or loans of money and to give guarantees and indemnities on any terms; and to support and subscribe to any charitable or public object;
- 4.12. to act as agent or broker or trustee for any person, firm or company, and to undertake and perform any form of contract;
- 4.13. to reward any person, firm or company rendering services to the Company by cash payment or by any other means;
- 4.14. to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-contributory) for the benefit of any of the employees of the Company or of any subsidiary, holding company or fellow subsidiary of the Company and of their spouses, children and other relatives and dependants; and to lend money to any such employees or to trustees on their behalf to enable any such schemes to be established or maintained;
- 4.15. to pay out of the Company's funds premiums on insurance policies to cover the liability of the Directors which, by virtue of any rule of law, would otherwise attach to them in respect of any negligence, default, breach of duty or breach of

- trust of which they may be guilty in relation to the Company: provided that any such insurance or indemnity must not extend to any claim arising from criminal neglect or deliberate default on their part;
- 4.16 to draw, make, accept, endorse, discount, execute and issue cheques, bills of exchange, promissory notes, and other instruments and to operate bank accounts in the name of the Company;
 - 4.17. to apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests;
 - 4.18. to control, manage, finance, subsidise, co-ordinate or otherwise assist any company or other body carrying on any activity in furtherance of the Objects, to provide secretarial, administrative, technical, commercial and other services and facilities of all kinds for any such company or body and to make payments by way of subvention or otherwise and any other arrangements which may seem desirable with respect to any business or activity of or generally with respect to any such company or body;
 - 4.19. to receive, allocate and administer grants, gifts or bequests made available to the Company for any or all of its objects, whether from public funds or from private sources under the terms and conditions preferable to such grants, gifts, or bequests;
 - 4.20. to amalgamate with or support any other company or undertaking whose objects may (in the opinion of the Directors of the Company) advantageously be combined with the Objects;
 - 4.21. to sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, and to accept anything of value in return; and
 - 4.22 to do all or any of the things or matters permitted by this Memorandum of Association in any part of the world, and as principal, agent, contractor or otherwise, and by or through agents, brokers, sub-contractors or otherwise and either alone or in conjunction with others.

5. The income and capital of the Company must be applied solely towards the promotion of the Objects. No part of the income or capital may be paid or transferred, directly or indirectly, to the members of the Company, whether by way of dividend or bonus or in any other way that amounts to a distribution of profit or surplus. This does not prevent the payment of:
 - 5.1. reasonable and proper remuneration to any officer, employee, or member of the Company in return for any services provided to the Company;
 - 5.2. a reasonable rate of interest on money lent to the Company;
 - 5.3. reasonable rent for property let to the Company;
 - 5.4. expenses to any officer, employee or member of the Company; or
 - 5.5. premiums on the indemnity insurance referred to in clause 4.17Provided That such payment would not be a breach of the provisions of the Financial Memorandum for the Joint Committee if made by the Joint Committee.
6. The liability of the members is limited.
7. If the Company is wound up while a person is a member or within one year after that person ceases to be a member, every member of the Company will contribute such amount as may be required not exceeding £1 to the assets of the Company, for payment of the Company's debts and liabilities accrued before the member ceases to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
8. This clause applies on the winding up or dissolution of the Company. If there is any property of the Company remaining after all the Company's debts and liabilities have been paid or satisfied, it must not be paid or transferred to any or all of the members of the Company. Instead it must be paid or transferred to one or more companies, organisations or institutions that exist for purposes similar to the Objects, each of which has restrictions in its constitution or governing instrument on the distribution of profits and surpluses that are as least as restrictive as those in this Memorandum of Association. The companies, organisations or institutions will be nominated by the directors of the Company and approved by the members of the Company at or before the winding up or

dissolution. If the directors are unable to identify any similar companies, organisations or institutions then they may pay or transfer the surplus to any charity or charities.

9. Expressions defined in the Articles of Association have the same meanings in this Memorandum of Association.

We, the persons whose names are written below, wish to be formed into a Company under this Memorandum of Association.

DATED:

Witness to the above signatures:

THE COMPANIES ACTS 1985 & 1989
COMPANY LIMITED BY GUARANTEE

DRAFT ARTICLES OF ASSOCIATION

OF

[JNCC CLG]

INTERPRETATION

1. In these Articles:
 - 2.
- “the Act” means the Companies Act 1985 or any statutory re-enactment or modification of it;
- “AGM” means an annual General Meeting of the Company;
- “the Board” means the board of directors of the Company, acting collectively;
- “clear days” in relation to a period of notice means that period excluding the day on which the notice is given or is deemed to have been given, and the day for which the notice is given or on which it is to take effect;
- “the Councils” means English Nature, the Countryside Council for Wales and Scottish Natural Heritage
- “the Countryside Agency” means the Non-departmental Public Body formerly known as the Countryside Commission set up under the Countryside Act 1968 and the Wildlife and Countryside Act 1981.
- “the Countryside Council for Wales” means the Non-departmental Public Body of that name set up under the Environmental Protection Act 1990
- “Director” means a director of the Company acting individually;
- “English Nature” means the Non-departmental Public Body of that name, formerly known as The National Conservancy Council for England set up under the Environmental Protection Act 1990
- “the Joint Committee” means the Joint Nature Conservation Committee established pursuant to Section 128(4) Environmental Protection Act 1990
- “Member” means a member of the Company (save as provided otherwise in Articles 45– 51);
- “Memorandum” means the memorandum of association of the Company;

“Objects” means the objects of the Company as set out in the Memorandum from time to time;

“Scottish Natural Heritage” means the Non-departmental Public Body of that name formed under the Natural Heritage (Scotland) Act 1991 to replace the Nature Conservancy Council for Scotland as set up under the Environmental Protection Act 1990;

“Secretary” means any person appointed to perform the duties of the secretary of the Company;

“the Secretary of State” means the Secretary of State for the Department of the Environment, Fisheries and Rural Affairs;

“Subsidiary” has the meaning given to it in Section 736 of the Act

expressions referring to writing include references to printing, fax, e-mail and other methods of representing or reproducing words in a visible form;

unless the context otherwise requires, words or expressions contained in these Articles bear the meanings given to them in the Act; and

references in these Articles to ‘he’ or ‘him’ include male and female individuals and corporations.

ADMISSION OF MEMBERS

2. The Company must keep a register of Members as required by the Act.
3. The Members shall be:
 - 3.1 the subscribers to the Memorandum and Articles of Association, all being members of the Joint Committee; and
 - 3.2 such other persons as are admitted to membership in accordance with Article 4 below.
4. The Board shall admit to membership of the Company such persons as shall sign a written consent so to act in such form as the Board shall require and who are current members of the Joint Committee

RETIREMENT OF MEMBERS

5. A Member will cease to be a member of the Company:
 - 5.1 if he resigns by giving notice to the Company;
 - 5.2 (if the Member is a Director) on ceasing to be a Director for whatever reason;
 - 5.3 if an individual, upon death, or if he becomes of unsound mind, or is convicted of any indictable offence for which he is sentenced to a term of imprisonment; or
 - 5.4 if he shall at any time cease to be a member of the Joint Committee .
6. The rights attaching to membership of the Company shall not be transferable and shall cease on the death of the Member or on his ceasing to be a Member.

GENERAL MEETINGS

7. The Company must hold a general meeting in each calendar year as its AGM, in addition to any other meetings held in that year. The interval between the date of one AGM and the date of the next must not be more than 15 months. The Board will choose the time and place of the AGM. All general meetings of the Company other than AGMs are called Extraordinary General Meetings.
8. The Board may call a general meeting at any time; and must call a general meeting if it receives a requisition by the Members in accordance with the Act.
9. An AGM and a meeting called for the passing of a special resolution must be called by at least 21 clear days' notice, and all other general meetings must be called by at least 14 clear days' notice. A general meeting of the Company may be called by shorter notice if it is so agreed:
 - 9.1. in the case of an AGM, by all the Members entitled to attend and vote at that meeting; and
 - 9.2. in the case of any other meeting, by at least 95% of all the Members having the right to vote at that meeting.
10. The notice must specify the place, date and time of the meeting, and the general nature of all items of the business to be transacted; and must, in the case of an AGM, specify the meeting as an AGM. The text of all special, extraordinary and elective resolutions to be proposed at the meeting must be set out in the notice.
11. Notice must be given to the Members, to the Directors, and to the auditors; but if anyone entitled to receive notice does not receive it, this does not invalidate the proceedings at the meeting if the failure to notify was accidental.

PROCEEDINGS AT GENERAL MEETINGS

12. A general meeting is not valid unless a quorum of Members is present throughout the meeting; the quorum is Members together comprising at least four members of the Joint Committee of whom at least one was nominated to membership of the Joint Committee by the Secretary of State, present in person or by proxy.
13. If a quorum is not present within half an hour after the time set for the meeting, the meeting is automatically adjourned to the same day in the next week, at the same time and place, or to another day, time and place decided by the Board.
14. The chairman of the meeting (chosen as provided in Article 41) may adjourn the meeting with the consent of any quorate meeting (and must if required by a simple majority of the Members present at the meeting), but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice is required of an adjourned meeting unless the meeting is adjourned for 30 days or more, in which case notice must be given as in the case of the original meeting.

15. At any general meeting, a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands). Subject to the Act, a poll may be demanded:
 - 15.1. by the Chairman; or
 - 15.2. by at least two Members present in person or by proxy.
16. Unless a poll is demanded, a declaration by the Chairman that a resolution has been carried or lost on a show of hands, whether unanimously or by a particular majority, and an entry to that effect in the minutes, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
17. The demand for a poll may be withdrawn before the poll is taken, but only with the consent of the Chairman. The withdrawal of a demand for a poll does not invalidate the result of a show of hands declared before the demand for the poll is made.
18. Except as provided in Article 19, if a poll is demanded it may be taken in such manner as the Chairman directs but the Chairman has no authority in exercising this power to extend the poll to Members who are not present at the meeting in question. The result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.
19. A poll demanded on the election of a Chairman, or on a question of adjournment of a meeting, must be taken immediately. A poll demanded on any other question may be taken at such time as the Chairman directs. If there is an interval before the time for closing the poll, the meeting may deal with any business other than the business being determined by poll.

VOTES OF MEMBERS

20. Every Member whose name is entered in the Company's register of Members has one vote (both on a show of hands and on a poll) at every general meeting *save that Members nominated to membership of the Joint Committee by the Department of the Environment for Northern Ireland shall have no vote (but shall be entitled to receive notice of and to attend and speak) at any general meeting.* A resolution proposed at any general meeting will be approved if more than one half of the votes cast at the meeting are in favour of the resolution, except where the Act or these Articles prescribes a different majority.

PROXIES AND REPRESENTATIVES

21. A Member (*other than one nominated to membership of the Joint Committee by the Department of the Environment for Northern Ireland*) may appoint a proxy to attend general meetings in his place and to vote, both on a poll and on a show of hands provided that if a Member is also the proxy for another Member he shall only have one vote on a show of hands. The proxy form must be in writing in the form set out in Articles 54 (one-way proxy form) or 55 (two-way proxy form) or as near to one of those forms as possible, and signed by the Member or by another person under a power of attorney granted by a Member. A proxy must himself be:
 - 21.1 a Member; or
 - 21.2 a duly authorized representative of the Secretary of State, of one of the Councils or of the Countryside Agency

22. The proxy form (and the power of attorney, if any, under which it is signed, or a copy of that power certified by a solicitor) must be deposited at the registered office of the Company, or at another place within the United Kingdom specified for that purpose in the notice convening the meeting, not less than 48 hours before the time set for the meeting or adjourned meeting in question, or, in the case of a poll, not less than twenty four hours before the time appointed for the taking of the poll. If this Article is not complied with the proxy form is invalid
23. *The Department of the Environment for Northern Ireland may appoint a representative to attend and speak (but not to vote) at any general meeting in the place of one or both of the Members nominated to membership of the Joint Committee by it who is unable to attend.*
24. A vote given, or poll demanded, by a proxy for a Member, or by the authorised representative of a Member which is an organisation, remains valid despite the previous revocation of the authority of proxy or representative unless notice of revocation was received by the Company at its registered office before the start of the meeting or adjourned meeting in question.

DIRECTORS

25. The continuing Directors may act notwithstanding any vacancies in their number, and notwithstanding the provisions of Article 32, but, if the number of Directors is less than the number fixed as the quorum, the continuing Directors may act only for the purpose of filling vacancies, admitting new Members or of calling a general meeting.
26. Every Member shall for all purposes be and be deemed to be a Director save that a *Member nominated to membership of the Joint Committee by the Department of the Environment for Northern Ireland shall not be or be deemed to be a Director pursuant to this Article but shall be entitled to receive notice of and to attend and speak (but not vote) at meetings of the Board and to be appointed to any committee pursuant to Article 33 below.*
27. The Board and/or the Members (by ordinary resolution) may appoint any person other than a Member, who is willing to act and who is an employee of the Company or of the Joint Committee, to be an additional Director, but so that the number of Directors who are not themselves Members shall at all times be subject to a maximum of 3.
28. A technical defect in the appointment of a Director does not invalidate a decision taken at a Board meeting if the Directors present were not aware of the defect at the time of the meeting.
29. A Director will cease to be a Director:
 - 29.1. if he resigns his directorship by giving notice to the Company;
 - 29.2. upon death, or if he becomes bankrupt or makes any arrangement with his creditors, or becomes of unsound mind, or is convicted of an indictable offence for which he is sentenced to a term of imprisonment;
 - 29.3. if he is removed by a simple majority of the Members, following the procedure laid down in Section 303 of the Act;

- 29.4 if he is disqualified under the Company Directors Disqualification Act 1986 or otherwise;
 - 29.5 if, having been appointed pursuant to Article 27, he ceases to be an employee of the Company or of the Joint Committee; or
 - 29.6 if he ceases to be a Member.
30. The Board has control over all the affairs and property of the Company, and may exercise all the powers of the Company, except as otherwise provided by the Memorandum and these Articles and save that the Board shall not cause or permit the Company to acquire or set up any Subsidiary without the prior approval of the Secretary of State and the Treasury. Every Director has one vote at a Board meeting.
31. 25% of the total number of Directors may call a Board meeting at any time and the Secretary must call a Board meeting if requested to do so by two Directors. The Board may convene and regulate its meetings as it thinks fit. Questions arising at any Board meeting will be decided by a majority of votes.
32. Subject as provided in Article 25, a Board meeting is not valid unless a quorum is present throughout the meeting. The quorum is Directors together comprising at least four members of the Joint Committee of whom at least one was nominated to membership of the Joint Committee by the Secretary of State and one nominated to membership by the Councils.
33. The Board may delegate any of its powers to a managing director and to committees consisting of such Directors and Members as it thinks fit. In the exercise of the delegated powers, any managing director or committee must conform to any regulations or conditions which may be imposed by the Directors. Subject to any such regulations and/or conditions, the proceedings of any such committee shall be governed by the Articles regulating the proceedings of Directors so far as they are capable of applying. The acts and proceedings of such committees shall be reported fully to the Board.

ALTERNATE DIRECTORS

34. Any Director (other than an alternate director) may appoint any other Director or any duly authorized representative of the Secretary of State, of one of the Councils or of the Countryside Agency willing to act, to be an alternate director and may remove from office an alternate director so appointed by him.
35. An alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member, to attend and vote at any such meeting at which the Director appointing him is not personally present, and generally to perform all the functions of his appointor as a Director in his absence but shall not be entitled to receive any remuneration from the Company for his services as an alternate director. It shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom.
36. An alternate director shall cease to be an alternate director if his appointor ceases to be a Director.
37. Any appointment or removal of an alternate director shall be by notice to the Company

signed by the Director making or revoking the appointment or in any other manner approved by the Directors.

- 38 Save as otherwise provided in the Articles, an alternate director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

BENEFITS TO DIRECTORS

39. The Directors are entitled to receive such remuneration, expenses, and other benefits as the Board determines and as shall have been approved in accordance with the provisions of paragraph 1 of Schedule 7 to the Environmental Protection Act 1990 (as amended).

SECRETARY

40. The Company must have a Secretary who will be appointed by the Board on whatever terms the Board thinks fit. If there is no Secretary capable of acting, anything required or authorised to be done by or to the Secretary may be done by any Director authorised generally, or specially for that purpose, by the Board.

CHAIRMAN

- 41 The Chairman for the time being of the Joint Committee shall, providing he is a Director, act as Chairman of the Company. If at any time there shall not be a Chairman of the Joint Committee who is a Director and able and willing so to serve, then the Directors shall appoint one of the Members who were nominated to serve on the Joint Committee by the Secretary of State to act as Chairman of the Company until the Chairman for the time being of the Joint Committee is once more able and willing so to serve.
- 42 The Chairman of the Company will preside at every general meeting and of every meeting of the Board or of any committee at which he is present. In the absence of the Chairman of the Company at any general meeting or meeting of the Board, such other of the Members nominated by the Secretary of State shall preside as those of such Members who are present shall decide. At a meeting of a committee at which no Member nominated by the Secretary of State is present, such other Member shall preside as the Members there present shall decide.
43. The chairman of any general meeting of the Company or of any meeting of the Board or of any committee shall not have any second or casting vote.

SEAL

44. The Company is not required to have a common seal. If the Company has a common seal, it may only be used by the authority of the Board. Every document bearing an impression of the common seal must be signed by a Director, and countersigned by the Secretary or by a second Director.

NOTICES, MEETINGS AND RESOLUTIONS

45. The following Articles 46 to 51 apply to meetings and resolutions of, and notices given to, the Board, committees of the Board, and the Company in general meeting; and “member” there means a Director, committee member or a member of the Company in general meeting as the context requires.
46. Any notice to be given under these Articles must be in writing. The Company may give any notice to a member by handing it to him personally, or by sending it by post (airmail in the case of overseas members who have given no address for service within the United Kingdom) in a prepaid envelope addressed to the member at the address shown in the Company’s register of members, or by leaving it at that address. Where the member has given to the Company a fax number or e-mail address to which notices may be sent electronically, the Company may give valid notice by means of fax or e-mail.
47. A member present in person at any meeting is taken to have received notice of the meeting and, where necessary, of the purposes for which it was called.
48. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given to a postal address. Electronic confirmation of receipt shall be conclusive evidence that a notice was given to a facsimile number or e-mail address. A notice is deemed to be given at the expiration of 48 hours after it was handed to the member, posted or (as the case may be) transmitted by fax or e-mail.
49. Subject to the provisions of the Act (and in particular in the case of a resolution of the members of the Company, to any requirement to submit the proposed resolution to the auditors), a resolution in writing signed by all the members entitled to attend and vote at a meeting is as valid and effective as if it had been passed at a meeting properly convened and held. Any resolution in writing may consist of two or more documents in similar form, each signed by one or more members. Digital signatures and faxed signatures will suffice for the purpose of this Article.
50. A member entitled to attend and vote at a meeting may participate by means of a telephone conference or other facility enabling all people participating in the meeting to hear each other; and participation in a meeting in this manner is taken to be presence in person at the meeting.
51. The Secretary or a Director must take (or procure to be taken) minutes of proceedings at all meetings, and the minutes must be authenticated and kept in accordance with the requirements of the Act. Such minutes, if purporting to be signed by the chairman of the meeting or of the next succeeding meeting, shall be conclusive evidence, without any further proof, of the facts therein stated.

INDEMNITY

52. Subject to the provisions of the Act, the Company may purchase and maintain at the expense of the Company for any Director or for any officer of the Company, insurance cover against any liability which may attach to him, or loss or expenditure which he may incur, by virtue of anything done or omitted or alleged to be done or omitted in relation

to the Company provided that any such insurance cover would not be a breach of the provisions of the Financial Memorandum for the Joint Committee if purchased or maintained by the Joint Committee.

FORMS

53 The form of the application for membership referred to in Article 4 are as follows.

To the Board of [JNCC CLG]
I, [name]
of [address]
wish to become a member of [JNCC CLG], subject to the provisions of the Memorandum and Articles of Association of the Company.
* I am a current member of the Joint Nature Conservation Committee
* I have been nominated for membership in accordance with Article 4.2 of such Articles by [nominator].....
I agree to pay to the Company an amount of up to £1 if the Company is wound up while I am a member or for up to 12 months after I have left the Company. in accordance with the Company's Articles.

Signature:
Date:

54 The one-way proxy form referred to in Article 21 is as follows:

[JNCC CLG],
I [name]
of [address]
being a member of the above Company, appoint [name of proxy]
of [address of proxy]
being * a Member of the Company
* a member of the Joint Nature Conservation Committee
* the authorized representative of [nominator].....
as my proxy to vote for me on my behalf at the General Meeting of the Company to be held on [date] and at any adjournment, and to join in any demand for a poll in accordance with the Articles.

Signed:
Date:

55. The two-way proxy form referred in Article 21 is as follows:

[JNCC CLG]

I, [name]

of [address]

being a member of the above Company, appoint [name of proxy]

of [address of proxy]

being * a Member of the Company

* a member of the Joint Nature Conservation Committee

* the authorized representative of [nominator].....

as my proxy to vote for me on my behalf at the Annual/Extraordinary* General Meeting of the Company to be held on [date] and at any adjournment, and to join in any demand for a poll in accordance with the Articles.

Signed:

Date:

This form is to be used *in favour of/against the resolution.
Unless otherwise instructed, the proxy will vote as he/she thinks fit.

*Strike out whichever you do not want.

We, the persons whose names are written below, wish to be formed into a Company under these Articles of Association:

Dated

Witness to the above signatures:

Matters to be addressed at the first Board meeting

- Appoint additional directors namely the Managing Director, the Director of Science and the Director of Resources and External affairs.
- Appoint any new members (and thereby directors) of the company i.e. any new Committee members.
- Instruct the Secretary to lodge certain documents with the Companies registry and display the companies name as required.
- Agree the Accounting Reference date.
- Appoint the external auditors.
- Appoint the bankers.
- Adopt the common seal of the company.