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Proposed changes to JNCC's governance arrangements

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Joint Nature Conservation Committee

Proposed changes to JNCC's governance arrangements

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1. Background

1.1 JNCC is classified as an executive Non-Departmental Public Body (NDPB). NDPBs are usually established under statute with corporate status or as a company limited by guarantee.

1.2 JNCC was initially established under the Environmental Protection Act 1990. Under the Act, all resources were to be provided to JNCC by the country agencies and accordingly the JNCC did not require corporate status.

1.3 Stage 2 of the Financial Management and Policy Review of JNCC, which commenced in 2001, resulted in agreement that JNCC should employ its own staff and enter into contracts itself. This was in order to simplify administration and mitigate risks associated with varying terms and conditions of staff assigned to JNCC. In order to avoid individual Committee members being personally responsible for any liabilities relating to JNCC, it was agreed that JNCC required corporate status. The options available were amending primary legislation or giving members the power to set up a company.

1.4 No legislative opportunity was foreseen to amend primary legislation and it was decided to provide JNCC with the powers necessary to set up a company limited by guarantee through a Regulatory Reform Order. The company was established in 2005.

1.5 The company was set up to bind it in with the Committee as tightly as possible. In particular:

i. membership is restricted to Joint Committee members;

ii. the objects of the company are the provision of services to the Joint Committee in connection with its functions;

iii. the powers can only be exercised to the extent that JNCC's Financial Memorandum would not be breached;

iv. the directors of the company must broadly represent the membership of Committee.

1.6 We are not aware of any other NDPB which comprises both a statutory body without corporate status and a company limited by guarantee set up to provide the necessary executive support.

2. Current situation

2.1 The Joint Committee reviewed the effectiveness of its governance arrangements through a self-assessment questionnaire in July 2012 and through the sub-group preparing for JNCC's 2013 Triennial Review and associated discussions by the full Committee.

2.2 The Committee identified opportunities to simplify and increase the effectiveness of the governance arrangements in the short term irrespective of any recommendations arising out of the Triennial Review.

2.3 Proposals to change governance have been developed with the following aims:

i. put in place robust governance arrangements that allow non-executive Directors/Members to discharge their scrutiny, accountability and responsibility functions in an effective and efficient way;

ii. give a clearer line of sight to the devolved administrations of the benefits/outputs of JNCC's work on their behalf and how this is funded;

iii. eliminate or reduce the confusion of 'shareholders' (devolved administrations), stakeholders and staff about the dual roles of non-executives as Committee and Board members;

iv. provide timely opportunities for discussion about business by all non-executive Directors/ Members;

v. ensure the Audit and Risk Management Committee is equipped with sufficient business acumen;

vi. ensure that executives of the country nature conservation bodies are included in scientific and business discussions.

3. Overview of proposed changes

3.1 It is proposed that the Committee will take on a role similar to that of a NDPB Board, and will cover matters such as strategic direction and scientific oversight as well as overall responsibility for the performance of the organisation in meeting its obligations. This would include business management matters (including performance management and risk management) and scientific matters. The Audit and Risk Management Committee would become a sub-committee of the Joint Committee (at present it is a sub-committee of the Company Board).

3.2 The Committee would delegate to the Company the operational delivery of the organisation and the Board would in turn delegate this responsibility to the Chief Executive. The Company Board would meet once a year to approve the annual accounts.

3.3 The Company Board currently seeks to include all Committee members (although this cannot be enforced if a Committee member is not willing and able to act in that capacity) and up to four executive Directors. The proposed model would restrict executive membership of the Board to the Chief Executive (who is the only person qualified to sign the accounts under JNCC's public sector governance framework) so that its membership is as close to that of the Committee as possible.

4. Benefits

4.1 The proposed arrangements above would:

i. provide the opportunity for non-executives to discharge the responsibilities of their Member and Director roles more overtly, particularly regarding their collective responsibilities for overall organisational performance including legislative compliance;

ii. address various anomalies and complications with the current arrangements, e.g. the range of issues associated with strategic decisions usually span those that are currently reserved for Committee (science quality, reputation, legal) and currently reserved to the Company Board (financial). An example is the range of issues associated with charging industry for discretionary advice on offshore windfarms;

iii. avoid duplication of discussions at Committee and Company Board meetings;

iv. be simpler for stakeholders to understand, e.g. the same body is determining the corporate plan and overseeing its delivery as is the norm within organisations;

v. require interested parties to look only to the Joint Committee to obtain the full range of papers and minutes to access information about what is being discussed;

vi. have a decision-making body which is true to the founding legislation, i.e. exclude executive directors, though it would be important for them to continue to attend and support meetings;

vii. allow executives from each of the country conservation bodies to be present for discussion of all JNCC business (at present they are excluded from attending Company Board meetings), ensuring that their non-executive members are effectively supported and making the link with country conservation body staff;

viii. enable JNCC to comply with all of its governance obligations as set out in its governance documents, *Managing Public Money*, and codes of practice. The governance code for companies says companies should normally comply unless there is a good reason not to. The good reason in our case would be that the statutory body, whose membership and objects mirror that of the company, complies with a governance code based on best practice in the private sector;

ix. make available the wide range of competencies necessary for Joint Committee business. In terms of the business acumen of Committee members, we should not overlook that at least four of these (JNCC Chair and three country conservation body Chairs) are experienced in heading up medium/large organisations. We would need to ensure the Audit and Risk Management Committee has suitable experience on it, drawing membership from external members and country conservation body 'non-Committee' Board members if necessary (although the balance should be in favour of Joint Committee members). It may be appropriate in recruiting independent members of the Committee to seek candidates who have experience at Board or senior management level as well as a range of technical competencies.

5. Role of the Joint Committee

5.1 Under the revised governance arrangements the Committee would have a range of roles, including:

i. ensuring the organisation delivers ministerial priorities through developing appropriate strategies and advice to inform Government policies and plans;

ii. providing organisational and scientific leadership;

iii. providing strategic oversight of the organisation's science and evidence work;

iv. agreeing the organisational corporate plan;

v. overseeing cost-effective annual plans to implement the corporate plan;

vi. undertaking effective performance and risk management;

vii. challenging and holding to account the Chief Executive and executive team for the delivery of annual plans;

viii. providing a level of scrutiny and challenge to ensure effective corporate governance;

ix. ensuring the organisation upholds the Principles of Public Life;

x. raising the profile of JNCC and its role across the UK.

6. Role of the Company Board

6.1 The Company Board would remain responsible for everything delegated to the Chief Executive but in practice would only meet once a year to sign off the annual accounts.

7. Role of the Audit and Risk Management Committee (ARMC)

7.1 The ARMC would become a sub-committee of the Joint Committee (at present it is a sub-committee of the Company Board) and would meet at a frequency and timing to support the Joint Committee's deliberations. Its purpose is to provide advice to the Joint Committee on corporate governance and audit matters including risk management. The ARMC can provide a greater level of scrutiny than is possible by the Committee as a whole, but this does not detract from Committee members' overarching collective and individual responsibility for scrutiny and governance.

8. Role of the Chief Executive

8.1 The Chief Executive would continue to be responsible for all executive matters carried out in the company as a company Director and as JNCC's Accounting Officer. In his/her Accounting Officer role the Chief Executive has responsibilities (and associated powers) to advise Committee and to take action if he/she feels that the Committee makes any decisions that would infringe their governance or statutory responsibilities.

9. Role of the Executive Management Board

9.1 The Executive Management Board would be renamed to signal the change in status (e.g. Management Team). It would have delegated authority via the Committee, Board and Chief Executive to appoint staff and deliver the organisation's work programme. It would be accountable to the Committee through the Chief Executive.

10. Meeting arrangements and processes

10.1 The number of meetings of Joint Committee should increase to four per year to allow regular review of business management. The timing of the June meeting would need to allow for a meeting of the Company Board to accommodate approval of the accounts.

10.2 Two of the meetings each year (preferably summer and winter) would be hosted by a country conservation body or administration and include a pre-meeting dinner discussion and/or presentation with invitees from the administrations and other relevant bodies.

10.3 In managing agendas and papers it will continue to be important to clearly identify the purpose of the paper and the actions/decisions sought from the Committee, e.g. decision, discussion, information. For transparency, any information papers circulated inter-sessionally will be listed on the agenda.

10.4 The Company Board would meet annually (after the June Committee meeting) to approve the accounts. These would be signed, as now, by the Chief Executive in his/her Accounting Officer role.