

THE REGULATORY REFORM (JOINT NATURE CONSERVATION COMMITTEE) ORDER 2005

STATEMENT BY THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

INTRODUCTION

This statement is laid before Parliament in accordance with section 8(5) of the Regulatory Reform Act 2001 (“the 2001 Act”) together with the draft of the Regulatory Reform (Joint Nature Conservation Committee) Order 2005 for approval by each House under section 4(2) of the 2001 Act.

The purpose of the draft Order is to amend the Environmental Protection Act 1990 (“the 1990 Act”) in order free the Joint Nature Conservation Committee of various constraints presently upon it and to enable it to operate more effectively by, inter alia, providing the ability for it to employ its own staff, remunerate its Chairman and independent members and receive certain monies direct from Government.

BACKGROUND

1. A document was laid before Parliament on 12 October 2004 in accordance with Section 6 of the 2001 Act, in the form of a proposed draft Order and an explanatory document. Reports were subsequently made to Parliament by the Regulatory Reform Committee of the House of Commons (First Report, Session 2004-05) and the Delegated Powers and Regulatory Reform Committee of the House of Lords (Second Report, Session 2004-05).

BURDENS TO BE REMOVED OR REDUCED

2. The proposed Regulatory Reform Order proposes to remove the following burdens.

Inability to employ staff, etc.

3. The requirement in paragraph 7 (1) of Schedule 7 to the 1990 Act that the country bodies provide the JNCC with staff, accommodation and other facilities imposes a burden on the JNCC. This is an impediment to the JNCC carrying out its statutory functions. Many of the administrative procedures are unduly complex and the JNCC is unable to make decisions on some fairly routine issues without involving the country bodies.

(ii) Limit on power to delegate

4. This proposal is both incidental to the proposal to allow the JNCC to employ staff and reduces the burden of restricted power to delegate in paragraph 9(1) of Schedule 7 to the 1990 Act. The scope for delegation will

be extended to include employees of the JNCC, or of a company limited by guarantee formed by it, and such a company itself.

(iii) Inability to seek direct funding

5. The current requirement arising from section 129 of the 1990 Act that all funding must be made via the country bodies places a burden on the JNCC in that it cannot seek direct funding for work it undertakes on UK-wide matters where there is no specific individual or collective responsibility. At present the only way that core funding can be supplemented by Government is by making payments via the country bodies adding administrative complexity by 'double handling'.

(iv) Inability to conclude work on remuneration of members and chairman, etc.

6. This proposal will remove burdens on the JNCC found in paragraphs 5 and 6 to Schedule 7 of the 1990 Act to allow it to deal directly with the pay, pensions and related issues of those members of the JNCC who are appointed as 'independents' by the Secretary of State without (as is necessary at present) having to do so via the country bodies. This removes an unnecessary layer of administrative complexity to the arrangements which is an impediment to the JNCC carrying out its statutory functions efficiently.

REPRESENTATIONS MADE DURING THE PERIOD OF PARLIAMENTARY CONSIDERATION (section 8(5)(a) of the 2001 Act)

7. No written representations were received by the Department concerning the proposal during the period of Parliamentary consideration.

PARLIAMENTARY REPORTS (section 8(5)(a) of the 2001 Act)

The House of Commons' Regulatory Reform Committee

8. The Regulatory Reform Committee of the House of Commons reported to the House in its First Report of the 2004-05 session. It concluded that that the proposal for the Order is within the vires of the Regulatory Reform Act 2001 and that a draft Order should be laid before the House subject to some technical drafting changes. These changes have now been made and are detailed at paragraph 11 below.

The House of Lords Select Committee on Delegated Powers and Regulatory Reform

9. The Select Committee on Delegated Powers and Regulatory Reform of the House of Lords reported to the House in its Second Report of the 2004-05 session. It concluded that the proposal is an appropriate use of the 2001 Act and meets its requirements subject to receiving further reassurance about the extent to which protection is provided for staff who elect to transfer to employment with the JNCC but subsequently return to the employment of one

of the 3 country agencies.

10. Defra believes the Committee's concern arises from a misunderstanding over the extent of the Common Trawling Agreement. The Agreement works in much the same way as the arrangements for staff transferring from one Department to another within the Civil Service. Staff transferring from one agency to another, including those who elect to transfer to JNCC once the Order is made but subsequently return to the employment of one of the 3 country agencies, will do so without breaking continuity of employment for all terms and conditions that require a qualifying period, including Early Retirement and Redundancy. On level transfer, staff will also retain their current salary where this is in the pay range/scale of the importing agency for their grade/band.

CHANGES MADE TO THE DRAFT ORDER (section 8(5)(b) of 2001 Act)

11. The following amendments have been made to the draft Order as a result of recommendations made by the House of Commons' Regulatory Reform Committee:-

Preamble (d) – the words “Deregulation and” have been deleted;

Article 2 – insertion of “(“the 1990 Act”)” after the existing text;

Article 4(3) - inclusion of the words “(within the meaning of section 133 of this Act)” at the end of new para 7(5)(a) to Schedule 7; and

Article 5(1) – substitute “, and “Councils” shall have the same meaning as in section 128(4)(a) of the 1990 Act.” for “for the purposes of section 128(4)(a) of the 1990 Act.”

In addition the following minor errors have been corrected:-

In Article 5(1) the word ‘the’ has been inserted between the words ‘have’ and ‘same’;

In the penultimate paragraph of the Explanatory Note the word ‘Paragraph’ at the start of the second sentence has been replaced with the word ‘Paragraphs’;

In the penultimate paragraph of the Explanatory Note the second occurrence of the words ‘a company’ before the words ‘limited by guarantee’ have been deleted; and

In the final indent of the Explanatory Note the reference to Article 6 has been changed to Article 5.

In the Preamble (a) – the words “the Law Commission” have been deleted on the advice of the Cabinet Office.

PUBLICITY STRATEGY

12. If the draft Order is approved by both Houses of Parliament JNCC proposes to issue a press release as soon as the Order comes into force to ensure the implications of the Order are widely known. The Department will also write to the individuals and organisations that responded to the public consultation exercise to ensure they are aware of the Order coming into force. Defra aims to have the Order in force by 1 April 2005.

Department for Environment, Food and Rural Affairs

19 January 2004