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## **JOINT NATURE CONSERVATION COMMITTEE**

### **A POSSIBLE LANDSCAPE FUNCTION FOR THE JNCC: BACKGROUND AND OPTIONS**

**Paper by Tony Weighell and Marcus Yeo**

#### **1. Introduction**

- 1.1 At its December 2004 meeting, the Joint Committee discussed the draft Natural Environment (Delivery) Bill (now the Natural Environment and Rural Communities (NERC) Bill), which will create a new Integrated Agency in England, as well as making various changes to the JNCC's remit and governance.
- 1.2 Committee discussed the possibility that the Bill could be used to give the JNCC the power to advise the country councils and Government on 'landscape' issues. In principle, Committee supported the expansion of the JNCC's remit to include landscape, and asked that a paper detailing options in this respect be presented to them.
- 1.3 As a result of the proposed new legislation, each of the country nature conservation agencies in the UK will have a 'landscape' role but, as presently envisaged, the JNCC will not. The JNCC would, therefore, be unable to provide advice on landscape issues as it would be operating *ultra vires*. This point is particularly important given the increasing emphasis on holistic management approaches such as the ecosystem approach, and on sustainable development as an overarching framework for environmental policy. Nature conservation cannot be seen in isolation from wider environmental, social and economic issues.
- 1.4 This paper assesses the desirability of the JNCC having a wider role in relation to landscape.

#### **2. Legal basis for the 'landscape' functions of the country agencies**

- 2.1 Each of the three GB country agencies has 'nature conservation' functions, which are set out in the Environmental Protection Act 1990 and (for SNH) in the Natural Heritage (Scotland) Act 1991. Nature conservation is defined in section 132 of the Environmental Protection Act 1990 as 'the conservation of flora, fauna or geological or physiographical features'. In Northern Ireland, nature conservation functions are the responsibility of the Council for Nature Conservation and the Countryside (CNCC) and the Environment and Heritage Service (EHS).

- 2.2 In addition to their nature conservation functions, SNH and CCW have wider 'countryside' functions concerned with natural beauty and amenity (see Annex 1). In Northern Ireland, CNCC has advisory functions relating to natural beauty and amenity; the relevant executive functions are discharged by EHS.
- 2.3 English Nature's functions are currently restricted to nature conservation. 'Countryside' functions in England are the responsibility of the Countryside Agency (see Annex 1). The proposed Integrated Agency will combine the functions of these bodies, and its general purpose includes responsibilities relating to nature conservation, landscape conservation and access.
- 2.4 The 'special functions' of the country agencies, to be discharged through the JNCC, are concerned solely with 'nature conservation' (Environmental Protection Act 1990, section 133(2)). The draft NERC Bill gives the JNCC the same functions, but sets most of them in a UK, rather than a GB, context. The draft Bill also states that in discharging its functions the JNCC must have regard to 'the desirability of contributing to sustainable development'.

### **3. JNCC's current role in advising on landscape-based approaches**

- 3.1 There is a clear trend within nature conservation work in the UK and the rest of Europe towards applying landscape-based approaches that have a significant socio-economic component, including taking account of such activities as farming, fishing and forestry. The JNCC is already involved, to a greater or lesser extent, in a range of such programmes, in particular:
  - i. development of the ecosystem approach, as advocated by the Convention on Biological Diversity (e.g. through the Irish Sea Pilot project);
  - ii the establishment and management of the Natura 2000 network, and the growing emphasis on coherence of the site network and application of Article 10 of the Habitats Directive (concerned with corridors and 'stepping stones');
  - iii. the UNESCO Geoparks programme, that aims to links recognition of geological and geomorphological heritage to social and economic development;
  - iv. the increasing focus within agricultural policy on cross-compliance through such concepts as 'Good Agricultural and Environmental Condition'.
- 3.2 It is significant that these activities cover both biological and geological conservation, and terrestrial and marine environments. The JNCC's role is focused on nature conservation but takes account of wider landscape issues (i.e. the JNCC is not advising on issues relating to the appearance of the landscape nor on the recreational use of the countryside). Work on wider

ecosystem issues is clearly in line with the JNCC's strategy, which emphasises the importance of sustainable development as a framework for the JNCC's activities. This approach is bolstered by the reference to sustainable development in the draft NERC Bill.

- 3.3 In relation to issues of access and recreation, the JNCC advises from time to time on issues where these have the potential to disturb wildlife, or otherwise affect nature conservation detrimentally.

#### **4. The desirability of a wider landscape role for the JNCC**

- 4.1 From the foregoing analysis, it is clear that JNCC can advise Ministers on issues that have the potential to affect nature conservation (adversely or beneficially), and that such issues might include:

- i. policies relating to the human use or management of landscapes;
- ii. policies relating to access to, or recreational use of the countryside, where this could affect nature conservation.

- 4.2 Issues falling outside the JNCC's *vires* would include advising Ministers on issues directly relating to:

- i. the appearance and general amenity of the landscape/countryside;
- ii. the enjoyment of the countryside by people, and the health benefits resulting from this;
- iii. measures taken to support rural communities where there is little likelihood of an effect on nature conservation;
- iv. matters relating to the cultural component of landscapes.

- 4.3 A specific example of where the JNCC's lack of such *vires* constrains its ability to advise Government is provided by the case of marine windfarms. Currently, the JNCC can advise only on the nature conservation implications of such developments, not on the wider landscape implications. Consequently, in our responses to Government consultations we have restricted ourselves to the nature conservation implications of proposals. To draw attention to the important issue of the visual impact of such developments, as the country agencies wished, we have had to resort to drawing attention to individual country agency views on this issue.

- 4.4 An example of the sort of international advice issue where extended *vires* might be beneficial is in relation to such initiatives as the European Landscape Convention (which has not yet been signed by the UK).

- 4.5 The Convention aims to encourage public authorities to adopt policies and measures at local, regional, national and international levels for protecting, managing and planning landscapes throughout Europe. It covers all landscapes, both outstanding and ordinary, that determine the quality of people's living environment. The Convention proposes legal and financial measures at the national and international levels, aimed at shaping landscape policies and promoting interaction between local and central authorities as well as trans-frontier co-operation in protecting landscapes. It sets out a range of different solutions which Member States can apply, according to their specific needs. The Convention combines matters which relate to the planning and management of landscapes, including their natural components and processes and also their social, cultural and economic components. The JNCC would be able to advise on the Convention in relation to the management of landscapes from a nature conservation perspective, but not from the social and cultural perspectives.
- 4.6 Under present legislation, and under the draft Bill, the individual county agencies can only/will only be able to advise their respective administrations on the issues referred to in paragraph 4.2 within their area of geographical interest. If it is considered that there is a need for Government to receive advice on such issues at the UK or international level, or of being able to provide a unified response to such issues as those referred to under paragraphs 4.3 and 4.5 above, then a mechanism needs to be provided for doing so.
- 4.7 It is difficult to foresee the precise nature of future needs. While paragraphs 4.3 and 4.5 above give an indication of the type of issue that may occur, future needs cannot be predicted at this stage. However, it is a reasonable assumption that a need for advice at the UK and international level in relation to the issues referred to in paragraph 4.2 will arise from time to time. Given that the opportunity for legislation to refine country agency functions does not occur very often, and that the current Bill provides such an opportunity, it would be prudent to consider whether the opportunity to remedy the current deficiency should be taken.
- 4.8 Given that the JNCC is the established forum which brings the country agencies together, potentially it could have a role in meeting future needs.

## **5. Possible courses of action**

- 5.1 If it is decided that there is not a compelling case for extending the JNCC's remit to include landscape, then there is no need to seek an amendment to the draft Bill. The JNCC will continue to advise under its nature conservation *vires*, and current constraints will continue. The risks associated with this course of action are that there is unlikely to be another legislative opportunity to amend the JNCC's functions for a considerable time, and it may not be possible to meet needs which arise from time to time sufficiently.
- 5.2 The alternative is to seek to amend the draft Bill so that the JNCC is provided with an explicit and clearly defined landscape function in line with its nature conservation functions. The need for this would have to be demonstrated to,

and accepted by, Government.

- 5.3 Another possibility which has been explored is to seek an enabling power in the Bill that would allow the Committee to provide advice on any of the country agencies' landscape functions that affect the UK as a whole or which relate to international issues. Use of such an enabling power could be subject to either Committee or Ministerial approval. This option has the benefit of being capable of being triggered only when there is a need for it; it provides proofing against future uncertainty. However, this option is unlikely to be acceptable to Government.

**Annex 1. Extracts from legislation relating to the countryside functions of agencies in Great Britain.**

***Environmental Protection Act 1990, section 130***

- (2) The **Countryside Council for Wales** shall discharge those functions –
- (a) for the conservation and enhancement of natural beauty in Wales and of the natural beauty and amenity of the countryside in Wales, both in the areas designated under the National Parks and Access to the Countryside Act 1949 as National Parks or as areas of outstanding natural beauty and elsewhere;
  - (b) for encouraging the provision or improvement, for persons resorting to the countryside in Wales, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby;
- and shall have regard to the social and economic interests of rural areas in Wales.
- (3) The reference in subsection (2) above to the conservation of the natural beauty of the countryside includes the conservation of its flora, fauna and geological and physiographical features.

***Natural Heritage (Scotland) Act 1991, section 1***

- (1) There shall be established a body to be known as “**Scottish Natural Heritage**” (in this Part of this Act referred to as "SNH") whose general aims and purposes shall be –
- (a) to secure the conservation and enhancement of; and
  - (b) to foster understanding and facilitate the enjoyment of,
- the natural heritage of Scotland; and SNH shall have regard to the desirability of securing that anything done, whether by SNH or any other person, in relation to the natural heritage of Scotland is undertaken in a manner which is sustainable.
- ....
- (3) For the purposes of this Act, "the natural heritage of Scotland" includes the flora and fauna of Scotland, its geological and physiographical features, its natural beauty and amenity; and references to "natural heritage" shall be construed accordingly.

***Environmental Protection Act 1990, schedule 8, section 1***

The purposes for which the functions of the [**Countryside**] **Commission** are exercisable are –

(a) the preservation and enhancement of natural beauty in England, both in the areas designated under this Act as National Parks or as areas of outstanding natural beauty and elsewhere;

(b) encouraging the provision or improvement, for persons resorting to National Parks, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby.

***Draft Natural Environment and Rural Communities Bill, section 2***

The [**Integrated**] **Agency's** general purpose includes –

(a) promoting nature conservation and protecting biodiversity,

(b) conserving and enhancing the English landscape,

(c) securing the provision and improvement of facilities for the study, understanding and enjoyment of nature,

(d) promoting access to the countryside and open spaces and encouraging open-air recreation, and

(e) contributing in other ways to social and economic well-being through management of the natural environment.