

DERBYSHIRE COUNTY COUNCIL

CABINET

29 May 2012

REPORT OF THE CHIEF EXECUTIVE

**CONSULTATION ON CHANGES TO NATIONAL PARK GOVERNANCE
(Leadership and Culture)**

1. Purpose of the Report

To inform Cabinet of a current consultation being undertaken by the Department for Environment, Food and Rural Affairs (DEFRA) on proposed changes to primary legislation to facilitate changes to the governance arrangements of National Parks and the Broads Authorities, and to seek approval for the submission of a Derbyshire County Council response to the consultation.

2. Information and Analysis

The Government's "Programme for Government", published in 2010, gave a commitment to "...review the governance arrangements of National Parks in order to increase local accountability". To honour that commitment DEFRA, with the support of National Park Authorities, undertook public consultation between 9 November 2010 and 1 February 2011. A summary of the consultation was published in September 2011. Over 360 responses were received, 55 of which related specifically to the Peak District National Park. Key themes relating to the Peak District were:

- Pressure for a smaller authority. Alongside this there was also some preference for a greater local bias;
- Calls for better communication or greater engagement with communities;
- Improvements in relation to the Authority's role as a planning authority.

In response to the consultation, the Government concluded that the Peak National Park Authority's current membership size and structure was not necessarily best suited to meet local needs. They also noted the relatively high number of responses that called for directly elected members. The current membership structure was seen to provide a useful contrast to that of the New Forest, where respondents proposed increased representation for local interest groups or the abolition of the National Park Authority. The Government subsequently proposed that these two Park Authorities be selected to trial directly elected seats.

Following the initial consultation, the Government is now inviting comments on proposed changes to primary legislation, which it is likely to enact through a Public Bodies Act Order. The proposed changes with specific relevance to the Peak District National Park Authority are:

- Making it possible for National Park authorities to include some directly elected members;
- Removing the need for the Secretary of State to appoint parish members;
- Relaxing the political balance requirement on local authorities when appointing their members to a National Park Authority;
- Making it possible to allow parishes in subsequently specified National Parks to choose non-councillors for their seats (so that anyone who lived within a National Park would be eligible);
- Applying a maximum length of service of 8 years.

Other proposals which do not require changes to primary legislation, but which are still relevant to the Peak District National Park include:

- Asking Authorities to produce an annual report on the collective performance of the membership, including achievements and milestones;
- Asking Natural England and National Park Authorities to review the way they work together, leading to the possibility of repealing any of Natural England's remaining powers which are considered redundant.

An Order made under the Public Bodies Act requires consultation, but only addresses proposed changes to primary legislation, which would deal with the framework for National Park Authorities, not issues or proposals relating to each specific Authority. There would need to be separate consultation prior to any changes to the existing structure of the Peak District National Park to accommodate directly elected members. These changes would be effected by means of a statutory instrument.

Appendix 1 summarises the proposals put forward by the Government with specific relevance to the Peak District National Park Authority. The Council's proposed response to the issues raised is shown in italics.

4. Next Steps

The Department for Environment, Food and Rural Affairs consultation closes on 31 May 2012 and it is recommended that the comments on proposals put forward by the Government outlined in Appendix 1 form the basis of the County Council's response to the consultation. The Government have indicated that they will give all responses received, including those which propose an alternative to their preferred options, due consideration.

The Government envisage that the introduction of directly elected members will be trialled in the Peak District in May 2013 and as such proposals will have implications for the County Council in the short and medium term. It is

recommended that further reports relating to the governance of the Peak District National Park Authority be brought to a future meeting of Cabinet as and when details on confirmed arrangements become available.

5. Legal Considerations

Legal considerations are outlined within the report, but in particular the Government is consulting on proposals which will facilitate changes to primary legislation, which it is likely to enact through a Public Bodies Act Order.

5. Other Considerations

In preparing this report the relevance of the following factors have been considered: finance, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property and transport considerations.

6. Key Decision

No

7. Call-in

Is it required that call-in be waived in respect of the decisions proposed in the report? No

8. Background Papers

- DEFRA Consultation on the Governance arrangements for the National Parks and Broads – Summary of Responses. September 2011
- DEFRA Consultation on changes to National Park Governance. March 2012

OFFICER'S RECOMMENDATIONS

1. That Cabinet notes the current consultation being undertaken by the Department for Environment, Food and Rural Affairs on proposed changes to primary legislation to facilitate changes to the governance arrangements of National Parks and the Broads Authorities.
2. That Cabinet approves the comments outlined in Appendix 1 on Government proposals, as the basis of the County Council's response to the consultation.
3. That further reports on the governance of the Peak District National Park Authority and implications for the County Council are brought to a future meeting of Cabinet in due course.

Nick Hodgson
Chief Executive

Summary of Government proposed changes to primary legislation to facilitate changes to the governance arrangements of National Parks and the Broads Authorities, and the County Council's proposed response.

Direct Elections - The Government is proposing to make it possible for national parks to include directly elected members, with a view to increasing local accountability whilst maintaining or reducing the existing number of members. To ensure that National Park Authority membership is lean, whilst also accommodating directly elected members, the Government is proposing that, any reduction and/or replacement of members should come from the existing local authority membership, not those directly appointed by the Secretary of State. There are currently thirty members on the Peak District National Park Authority, of which sixteen are local authority representatives (four being appointed by the County Council). The Government are suggesting that directly elected members should make up approximately 20% of the overall membership of each Park. This would equate to a reduction of six local authority places in the case of the Peak District.

The Council has concerns about the widening of the categories of members, currently local authority, parish and national members, to include a fourth category of directly elected members. Should they be created however, this should not be at the expense of local authority representatives, particularly those from the council areas making up the vast majority of the National Park population.

The Council does not believe that the inclusion of directly elected members at the expense of local authority members would serve the purpose of increasing local accountability, but could potentially be detrimental to democratic legitimacy in the area. A more sensible option would be to reduce the number of national members appointed by the Secretary of State, or alternatively reducing the number of representatives from those authorities on the periphery of the National Park, who currently represent a smaller proportion of the population.

The Government proposes to utilise existing procedures for the conduct of local elections, using polling stations and proxy/postal ballots in May 2013 for directly elected members for the trial prior to national roll-out.

The cost implications of introducing these proposals are of concern to the Council, and as such the Authority would wish to point to commitments made by the Government in the New Burdens doctrine which requires Government departments to fund the net additional costs of any policy or initiative which increases the cost of providing local authority services. The Council is keen to ensure that additional costs are covered by this commitment, with no additional cost implications being placed on those residents living within the park boundaries. The Council therefore agrees with proposals outlined in the

consultation document, which suggest that the additional costs of accommodating directly elected members should be considered in the next Spending Review.

The proposals for directly elected members would also allow for a broader pool of potential candidates, as no restrictions relating to place of residence would be placed on those wishing to stand for election. The Government believe that the electorate are best placed to decide which candidates would be best placed to represent them adequately.

Whilst the Council broadly agrees with the principle behind this proposal, particularly that the most appropriate person to represent the views of the local community should be appointed, this must be balanced with the Government's stated aim within the proposals of increasing local accountability. A strong local understanding, connection and/or links into the community should underpin any appointment to a National Park Authority. A residency requirement of some miles from the boundary could be considered.

The Government are also consulting on proposals to "ward" areas covered by the National Park which would enable directly elected members to represent a defined geographical area, with the numbers of wards corresponding to the number of members to be directly elected.

Whilst the Council understands the importance of candidates representing a defined geographical area, the introduction of additional "wards" based on new geographies could lead to electoral confusion. Given the relatively small number of directly elected members, and as such potential "wards", combined with the already complex administrative boundaries currently in existence, the Council feels that this proposal would be difficult to implement and may not achieve the desired effect.

Removing the need for the Secretary of State to appoint parish members –

Parish appointments are currently made by the Secretary of State. The legislation also specifies that parish members must be Parish Councillors for a parish which is at least partly inside the National Park boundary. The Secretary of State will not appoint a parish member who is also eligible for one of the local authority seats (i.e. a local authority councillor).

The process for appointing parish members results in the Secretary of State appointing those representatives who have been put forward by parishes. Given the Secretary of State exercises no choice at all in the selection process the Government is proposing to remove the Secretary of State's confirming role providing that a suitable alternative can be found. The Government are suggesting that a new, independent body or office-holder should be named as a replacement. The obvious choice for this role would be the Chair of the National Association of Local Councils (NALC). Under this option the parishes in each National Park Authority would provide the names to one of the County

Associations for Local Councils in the National Park area who was willing to co-ordinate this work. The lead County Association for Local Council would undertake such checks as they thought necessary, before forwarding the names to NALC who would issue them with appointment letters.

This suggestion does not seem unreasonable and as such the County Council is broadly supportive of such proposals.

Political Balance - National Park Authorities are not organised on political lines. The Government's view, reinforced by the advice of National Park Authority Chairmen and others, is that this non-party political structure is appropriate to their work and should be maintained. However, the local authorities which appoint members to a National Park Authority are covered by the duty to allocate seats to political groups, as set out in section 15 of the Local Government and Housing Act 1989. This takes effect when the local authority is appointing three or more members to a National Park Authority. The intention behind the 1989 Act provisions is not in question and the Government has no intention of weakening or challenging this. It does, however throw up two practical issues: a lack of uniformity – the three appointments threshold means that it does not apply uniformly across all National Parks and Local Authorities, as approximately half of local authority appointments fall above the threshold; and conflict with the 1995 Environment Act. The Government sees the second issue, conflict with the 1995 Environment Act, as significant.

In the National Park Authority legislation, local authorities are encouraged to appoint local members to the National Park Authority. This is only advisory, but is a clearly expressed preference in the legislation. On occasions, local authorities have not been able to follow this steer because the local members did not come from the political party/ies which would deliver the political balance requirement in the 1989 Act. Because the 1989 Act wording is a requirement, whereas the 1995 Act asks them to take regard, it takes precedence. In those circumstances, the appointing Authority has no option but to look outside of the National Park area and to choose someone who will deliver the right political mix, whether or not they are otherwise the best choice for the National Park role.

The Government sees two ways of dealing with the potential conflict. The first would be to remove the political balance requirement entirely which, other things being equal would allow authorities to always appoint the local councillor, regardless of party affiliation. The second option would be to ask local authorities to comply with the political balance rules wherever possible but allow a departure from the rules only in those cases where it impedes the appointment of a local councillor. On balance the Government prefers the second approach, and would like to amend the 1989 Act, so that the rules set out are to be followed unless doing so prevents local authorities from complying with the 1995 Act to appoint a local member.

The Council believes that having regard to political balance when making appointments to National Park authorities is fair, and this requirement should only be removed when it prevents a local authority from appointing a local member, as encouraged in the 1995 Act. However, the Council believes that any appointments made should have regard for the need for members to have a good understanding of, and empathy for, the issues facing communities, underpinned by a strong local connection to the National Park.

Allowing parishes in subsequently specified national parks to choose non-councillors for their seats - Under the existing primary legislation (1995 Environment Act), the people whom the parish councils collectively choose for the parish seats on an National Park Authority must be serving parish councillors for one of the parishes in the Park.

The Council believes that in order to promote local accountability and democratic legitimacy the primary legislation should be maintained, and that all parish council seats should be taken up by serving Parish Councillors (or Chairs of Parish Meetings where applicable).

Applying a maximum length of service of 8 years - Although there is a limit (10 years) to the maximum term of appointment for the national members appointed by the Secretary of State to National Park Authority's, local authority and parish members can serve for an indefinite period as long as they remain as councillors and their Council(s) choose to re-appoint them after each election. The Government have already limited the maximum term of national members to 8 years in line with many other public bodies and this was introduced from April 2012. For consistency the Government proposes to make this a statutory requirement when legislating for a limit on local authority and parish members.

The Government believes that there are a number of benefits in applying a maximum length of service, specifically that the public will be provided with greater assurance that the nomination process is taking account of the need for fresh thinking. The Government also believe that this proposal will stimulate more interest in the work of the Authorities by encouraging a more frequent turnover.

The Council believes that as local authority and parish members are directly elected they have a legitimate mandate to represent residents on whichever authority they are appointed. Longstanding members bring with them significant knowledge and understanding of the issues facing the National Park, particularly if they also reside there, and many will have well established relationships with residents which it would be counter productive to break. The County Council believes that it should be free to decide which representatives are best placed to represent its interests and as such opposes the application of a maximum length of service to local authority members.