NATURAL ENVIRONMENT AND RURAL COMMUNITIES BILL
MEMORANDUM FROM THE SCOTTISH EXECUTIVE

Motion

1. The motion to be put to Parliament is:

Natural Environment and Rural Communities Bill: "That the Parliament agrees that the provisions in the Natural Environment and Rural Communities Bill relating to devolved matters and those that confer executive functions on the Scottish Ministers should be considered by the UK Parliament."

Background and Content of the Bill

2. The Natural Environment and Rural Communities Bill was introduced to the UK Parliament on 19 May 2005, having previously been published in draft on 10 February 2005. Full explanatory notes for the Bill have been prepared by the Department for Environment, Food and Rural Affairs and are available on the website of UK Parliament at:

www.publications.parliament.uk/pa/cm200506/cmbills/003/en/06003x--.htm

3. The Bill is predominantly concerned with matters outwith the legislative competence of the Scottish Parliament. (It is a central part of implementing the UK Government's Rural Strategy for England, published in July 2004, seeking to establish flexible new structures with a strong customer focus. Notably, the Bill would create a new and integrated agency 'Natural England' and a new Commission for Rural Communities, an independent advocate, adviser and watchdog for rural communities, whose remits will extend only to England.) However, the Bill also offers an opportunity to make some limited but useful provision in devolved areas in which, by convention, legislation at Westminster is subject to the consent of the Scottish Parliament. The purpose of this memorandum is to provide information specifically about those aspects of the Bill.

Purpose of Relevant Provisions

4. In line with the Partnership Agreement's commitment to improving public services, the overall purpose of the limited provisions for which consent is sought is to ensure that, as appropriate, specified agencies can either be reformed or abolished in line with current needs and circumstances in Scotland. Specifically, there are five areas of the Bill that relate to matters that are subject to the consent of the Scottish Parliament:

- reform of the Joint Nature Conservation Committee (JNCC) to increase its efficiency and effectiveness to enhance nature conservation throughout the UK with extension of its functions to apply to Northern Ireland and revised financial arrangements;
- renaming the Inland Waterways Amenity Advisory Council and revising the arrangements governing the composition of the new Council and giving it the function of providing advice to Scottish Ministers and the Waterways Board about matters relevant to inland waterways in Scotland;
- powers to abolish the 5 existing agricultural Levy Boards (which are all cross-border public authorities) and to confer power to establish new boards for the purpose of developing and promoting agricultural and related industries;

- the abolition of the GB-wide Consumers' Committees and Committees of Investigation established under the Agricultural Marketing Act 1958. The purpose for which these committees were created is now obsolete; and
- the abolition of the Hill Farming Advisory Committee for Scotland (HFACS) which last met in 2000. Again, the purpose of the Committee is now obsolete

Joint Nature Conservation Committee (Part 2, clauses 31-39 and Schedule 4)

5. Under the Environmental Protection Act 1990, the Joint Nature Conservation Committee (JNCC) is currently a statutory committee of the 3 country-based GB conservation bodies including Scottish Natural Heritage. The JNCC's role is to undertake the special (i.e. UK-wide and international) functions of the individual conservation bodies. This is essentially to advise on nature conservation issues, including the listing of protected animals and plants, to establish common standards for monitoring and research and to offer a coherent and integrated view of issues affecting GB as a whole. It was accepted at the time of the Scotland Act that the JNCC should be designated as a cross border public authority in accordance with section 88 of the Scotland Act. Scottish Ministers have since agreed to the terms of the Government response to the Financial Management and Policy Review of JNCC in 2002 which led to the inclusion of the JNCC provisions in the Bill.

6. The Bill (clauses 31 to 39) essentially restates the provisions of the 1990 Act but reconstitutes the JNCC as a UK-wide body (see Schedule 4) by extending its remit to Northern Ireland. It also enables it to receive funds from the Secretary of State for undertaking work unrelated to devolved matters (e.g. work in support of overseas territories). Schedule 4 enables the JNCC to establish a company limited by guarantee to employ staff and enter into leases, etc.

7. These provisions are intended to increase the efficiency and effectiveness with which JNCC operates (for example, by putting staff on common terms and conditions, staff turnover should be slightly reduced and there should be a small savings of SNH staff time in providing support to staff previously seconded to JNCC) and to improve service delivery, therefore enhancing nature conservation throughout the UK.

Inland Waterways Amenity Advisory Council (Part 7, clauses 65-69 and Schedule 11 Part 2)

8. The Inland Waterways Amenity Advisory Council was reviewed in 2003. Part 7 of the Bill reconstitutes the GB wide Inland Waterways Advisory Council, establishing it as an independent body reporting to and supported by DEFRA and the Scottish Executive. The proposed changes in the Bill to the constitution of the Council would involve:-

- renaming the Inland Waterways Amenity Advisory Council as the Inland Waterways Advisory Council;

- revising the arrangements governing the composition of the new Council and the procedures to be adopted for the appointment of the chairman and members (removing the requirement to consult the chairman of the Waterways Board (also known as British Waterways) before making appointments to the Council); and

- revising the terms under which the members of the new Council hold office and the procedure for the appointment of regional and other committees.

9. There would also be provision for the payment of members' expenses and allowances and the remuneration of the chairman. There would no longer be a requirement on the Waterways Board to provide the Council with staff and accommodation. In future, the Secretary of State and Scottish Ministers would fund the Council and the Council would be able to make its own arrangements for staff and accommodation.

10. The Council would be given the function of providing advice to Scottish Ministers and the Waterways Board about matters relevant to inland waterways in Scotland which are either owned or managed by the Waterways Board or in respect of which the Board is providing advice or assistance. It would also allow the Council to advise other interested persons about such matters.

11. The Bill strengthens the management arrangements for the Advisory Council, clarifies the functions of the Council in Scotland and improves arrangements for advice. As the Bill progresses through the Westminster Parliament we are also expecting it to be amended to widen British Waterways investment powers arising from the recent review of the Waterways Board. If this is the case we would propose that these provisions extended to Scotland. In these circumstances we would also wish to explore whether it would be within scope to extend British Waterways powers on the sale of water to Scotland. These powers already exist in England and Wales and are desirable in order to encourage British Waterways Scotland to increase its income from other sources and decrease its dependence on grant from Scottish Ministers. Given the difficulties in the short term of securing this change through Scottish legislation these powers might best be achieved by enactment at Westminster under the terms of the Sewel Convention, although the Committee is asked to note that this presents some complexities for the NERC Bill which are the subject of continuing discussions between DEFRA and Scottish Executive lawyers.

Levy Boards (Part 8, Chapter 2 – clauses 78-88 and Schedules 8-10)

12. In its Rural Strategy the UK Government, with the agreement of the Devolved Administrations, made a commitment to commission an independent and fundamental review of the five statutory levy-funded organisations covering the various agricultural sectors. These bodies are the British Potato Council, the Home-Grown Cereals Authority, the Horticultural Development Council, the Meat and Livestock Commission and the Milk Development Council. The review is due to report by October 2005. In the absence of the powers conferred by the NERC Bill primary legislation would be required to implement any significant recommendations arising from the review. Therefore this Bill presents the only opportunity for some time to implement whatever findings the review reaches. The Bill is likely to be well into its passage through Westminster when the review concludes.

13. To avoid introducing significant delay into delivering improvement to the agricultural industries, the Bill therefore provides for general powers to dissolve the existing levy boards (clauses 82 and 84) and to establish new levy boards in the agricultural sector (clause 78 and Schedule 8). Any new bodies would have the purposes and functions specified in clauses 79-81 and in Schedules 9 and 10. These powers would provide the Secretary of State and Ministers of the Devolved Administrations with the means to implement whatever

conclusions the review reaches, and also to retain flexibility for the future. The general powers in the Bill, covering all eventualities, do not pre-empt the outcome of the review.

14. Because the existing levy boards are cross-border public authorities, in terms of the Scotland Act, their dissolution would be effected by the Secretary of State and would require the consent of the Scottish Ministers and procedure in the Scottish Parliament (clauses 87 and 88). Similarly, the establishment of any new cross-border bodies, under clause 78, would require the same process. If, following the dissolution of any existing levy board, it was decided to establish a Scottish-only body, the Bill confers executive powers on the Scottish Ministers to provide for this, with the approval of the Scottish Parliament (clauses 78, 87 and 88). The Scottish Ministers, as the "appropriate authority" in relation to matters concerning Scotland only, would have the power to provide grants and issue directions to any new bodies which they established (clauses 85 and 86). Any new bodies established under the Bill can also be dissolved by Order (clause 83).

Abolition of the Food and Drink Committees (Part 9, Clause 91 and Schedule 11, paragraph 26)

15. This part of the Bill abolishes the GB-wide Consumers' Committees and Committees of Investigation established under the Agricultural Marketing Act 1958. These committees are cross-border public authorities in terms of the Scotland Act. The purpose for which these committees were created, based on the consumer interest in the operation of agricultural marketing schemes, is now obsolete. In March 2000 an announcement was made in the Westminster Parliament "to leave the Committee in abeyance and not re-appoint members" on the basis that the maintenance of the committees (with the associated cost) was not in the public interest. The Bill will remove the legal provision for such committees.

The Hill Farming Advisory Committee for Scotland (HFACS) (Part 9, Clause 91 and Schedule 11, paragraph 2

16. This part of the Bill would have the effect of abolishing the HFACS which is a devolved Scottish-only public body established by section 32 of the Hill Farming Act 1946. The HFACS last met in 2000. As the support mechanism was changing at that time stakeholders from a wider group of interests were engaged in the discussion process and it was concluded that the HFAC had come to the end of its useful life. It was decided to abolish HFACS and its members were subsequently notified of this decision in October 2002. Until now there has been no suitable primary legislation in the Scottish Parliament in which to insert a provision to formally abolish the HFACS and none is in immediate prospect. The Bill would be the most appropriate vehicle for abolishing the HFACS given that it also abolishes the similar committees for England, Wales and Northern Ireland.

Minor and consequential amendments (Schedules 11 and 12)

17. Paragraph 12 of Schedule 11 to the Bill amends the purpose of "nature reserve" to clarify that they can be used for wider public enjoyment over and above the existing purposes of providing a facility for scientific research. This is by far the most common reason for which people visit the reserves. It is desirable for this cost neutral amendment to be extended to nature reserves in Scotland to help encourage greater public interest in and access to the countryside and more effective management of Scotland's natural heritage.

18. Given the abolition of the Food and Drink Committees and the Hill Farm Advisory Committee for Scotland, outlined in paragraphs 16 and 17 of this Memorandum, the Bill provides for the deletion of references to these bodies from previous Scottish Parliament legislation. Schedule 11, paragraph 170 removes references to the Food and Drink Committees from the Scottish Public Services Ombudsman Act 2002 and paragraph 172 deletes the reference to HFACS in the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

Financial implications

19. Defra's explanatory notes to the Bill make clear that most of its financial implications relate to matters that do not affect Scotland. The Bill is not expected to have substantive financial implications insofar as devolved matters in Scotland are concerned. Indeed, in some respects (i.e. the Food and Drink Committee and the Hill Farm Advisory Committee) the Bill simply gives statutory recognition to the existing position. In other respects (e.g. the levy boards) funding does not fall on the public purse and, in any event, the financial implications arising from organisational restructuring are expected to be minimal. There may be some efficiency savings in the operation of the JNCC as administrative processes are improved but these may not always result in cash savings and are not readily quantified. The financial implications of the reconstitution of the Inland Waterways Amenity Advisory Council are not expected to be significant.

Conclusion

20. The Executive believe that it would be appropriate and desirable for Westminster to legislate for Scotland on the various reforming measures of the Bill described above mainly in order to strengthen the performance of cross border public authorities and to abolish three committees which are no longer required.

SCOTTISH EXECUTIVE
June 2005