

BIS | Department for Business
Innovation & Skills

**NESTA: RECONSTITUTION AS
CHARITY AND TRUST**

Impact Assessment

OCTOBER 2011

Title: NESTA: Reconstitution as charity and trust IA No: URN 11/1304 Lead department or agency: Department for Business, Innovation and Skills Other departments or agencies:	Impact Assessment (IA)		
	Date: 28/09/2011		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Laura Hart, NESTA sponsor team, 0207 215 5322			

Summary: Intervention and Options	RPC Opinion: Amber
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.251m	£0m	£0m	No
			NA

What is the problem under consideration? Why is government intervention necessary?

The public bodies landscape in the UK is crowded and in need of rationalisation. The National Endowment for Science, Technology and the Arts (NESTA) is an executive non-departmental public body (NDPB) and is being considered as part of the Government's public bodies reform program. The Government does not consider it necessary for NESTA's functions to be carried out by an NDPB and believes that a charity and charitable trust to hold NESTA's National Lottery endowment would be a more suitable vehicle for NESTA's functions. NESTA was set up under the National Lottery Act 1998 so Government intervention is necessary in order to pass secondary legislation to effect changes to move NESTA into the voluntary sector.

What are the policy objectives and the intended effects?

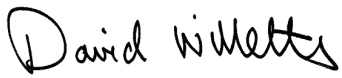
This Government is committed to reducing the number of public bodies and clarifying lines of accountability. Policy objectives are based on the three tests the Government is applying to all public bodies with the intention of reducing their number. The three tests applied to NESTA and all public bodies are: does it perform a technical function? does it perform a function that needs to be politically impartial? and does it need to act independently to establish the facts? NESTA did not meet the criteria to remain a public body. However, Government values NESTA and wants to see its activities continue but not within the public sector.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The Government's preferred option is to reconstitute NESTA as a charity with a charitable trust to hold the National Lottery endowment, subject to Charity Commission approval. This option allows NESTA to continue its work while ceasing to be part of the public sector and ensuring propriety of expenditure of the endowment. Other options considered were: do nothing - this was rejected as NESTA did not meet the criteria to remain a public body; abolition - this was rejected as there is currently no other suitable body to perform NESTA's functions; merger - NESTA could merge with another body which carries out similar functions but this would dilute NESTA's focus and unique status; reconstitution of NESTA as a private sector body - NESTA's activities could be transferred to a private sector (non-charitable) body but this was rejected as the need for suitable controls to ensure propriety of expenditure of the endowment is at odds with ensuring the level of Government control does not cause the new body to be classified as public sector.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2015					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 28/09/2011

Summary: Analysis & Evidence

Policy Option 1

Description: NESTA: Reconstitution as charity and trust

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.251

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.223	0	0.220

Description and scale of key monetised costs by 'main affected groups'

The transition process will incur costs associated with BIS staff costs, NESTA staff costs and legal costs required to implement the transition.

Other key non-monetised costs by 'main affected groups'

The Protector of the trust will be entitled to receive reasonable out-of-pocket expenses and reasonable remuneration from the trust. The exact amount has not yet been determined but is expected to be set at a similar level to that of the Protector for the Millennium Awards Trust who receives £5000 per annum.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0.055	0.472

Description and scale of key monetised benefits by 'main affected groups'

There will be savings associated with BIS staff costs as there will no longer be a sponsor team in BIS following transition.

Other key non-monetised benefits by 'main affected groups'

The non-monetised benefits of moving NESTA out of the public sector are still being identified but may include reduced accounting, governance and reporting requirements for NESTA, potentially allowing NESTA to redistribute resources previously allocated to such reporting requirements to other NESTA activities.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The analysis assumes constant wages and overhead costs at 30% of Total Pay Cost. There are no anticipated sensitivities as the announcement of our preferred policy option in October 2010 was received positively by NESTA and NESTA stakeholders. There are no anticipated risks for NESTA and its activities as discussions with the Charity Commission have indicated that there would not be a negative effect on NESTA's work as a consequence of charitable status.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	NA

Evidence Base (for summary sheets)

The public bodies landscape in the UK is crowded and in need of rationalisation in order to improve the delivery of public services by increasing transparency, improving efficiency and ensuring appropriate accountability. The Government is therefore conducting a review of public bodies in order to restructure this landscape to enable it to deliver public services more efficiently.

The National Endowment for Science, Technology and the Arts (NESTA) is an executive non-departmental body (NDPB) and its status is being considered as part of the wider reform of public bodies. NESTA has a remit to support and promote talent, innovation and creativity in the fields of science, technology and the arts. It promotes innovation and creativity to help tackle social and economic problems and provides an independent, well-informed voice and commentary on innovation policy.

NESTA has a large amount of independence from Government as it is funded by the return on its National Lottery endowment, currently valued at £321 million, and its programmes and strategy are determined by its trustees. The Government view is that NESTA performs a valuable function and we want to see NESTA's activities continue. However, it is not necessary for NESTA to remain an NDPB or to be part of the public sector in order to carry out its functions. NESTA's work could be carried out by a charitable body and the Government view is that NESTA's activities are better suited to the voluntary sector.

Policy objective

The policy objective is to reduce the number of public bodies. The Government is applying three tests to all public bodies to determine whether a body should remain in the public sector. The three tests are:

- Does it perform a technical function?
- Does it perform a function that needs to be politically impartial?
- Does it need to act independently to establish the facts?

Policy options

In assessing NESTA's future, several options were explored before reaching our preferred policy option. All of the options considered except 'do nothing' would require legislation as NESTA was set up under the National Lottery Act 1998. The options considered were:

1. Do nothing

If the Government did nothing, NESTA would continue as an NDPB. This option was considered alongside the Government's three tests for a public body. In our view, NESTA does not meet these three criteria and therefore should not remain a public body.

2. Abolition

NESTA could be abolished and the endowment returned to the National Lottery Distribution Fund for redistribution. This option was rejected as there is currently no other suitable body to perform NESTA's functions. NESTA's valuable programmes for wider public benefit would cease and the public investment in NESTA via the National Lottery Distribution Fund would be lost.

3. Merger

NESTA could merge with another body which carries out similar functions or operates in a similar policy area. This option might enable NESTA to enhance its impact by providing a wider array of stakeholders and opportunities for future programmes and could include efficiencies and savings from sharing accommodation and back office costs. However, this option was rejected as there is no comparable organisation that NESTA could merge with without considerably altering its direction, brand, mission and activities.

4. Reconstitution of NESTA as a private sector body

NESTA's activities could be transferred to a private sector (non-charitable) body; either a company limited by guarantee incorporated under the Companies Act 2006 or a company incorporated by royal charter. The body should be non-profit as the Government considers the potential for private shareholders to profit from National Lottery funds in the form of the endowment to be inappropriate. This option was ultimately rejected as the need for suitable controls to ensure propriety of expenditure of the

endowment is at odds with ensuring the level of Government control does not cause the new body to be classified to the public sector.

5. Reconstitution of NESTA as a charitable trust and charity

Subject to the approval of the Charity Commission, NESTA could be reconstituted as a charitable trust in the public sector which would hold NESTA's National Lottery endowment and a charity in the voluntary sector, a company limited by guarantee, which would apply the endowment in its capacity as trustee of the trust.

This would allow NESTA to continue its valuable work while protecting the endowment and further distancing NESTA from Government. This structure is based on the successful precedent of the Millennium Awards Trust created in 2003; an endowment established by the Millennium Commission and funded by National Lottery funds whose activities are carried out by the Foundation for Social Entrepreneurs (known as UnLtd). The trust would have oversight by a Protector, a person who has a duty to ensure the integrity of the administration of the trust and the propriety of its procedures.

The endowment would be held in the charitable trust in the public sector rather than directly transferred to the charity in the voluntary sector. This would ensure that Ministers maintain assurance for propriety of the way in which the National Lottery endowment is used as the Protector has the power to report matters of serious concern to the Secretary of State if the Protector considers it appropriate but the trust would not be directly monitored by Government. The Charity Commission has indicated that the majority of NESTA's current activities could be carried out by a charitable body to promote charitable objects for the wider public benefit in accordance with charity law. As NESTA's portfolio of projects changes from year to year as NESTA experiments and adapts to changing societal and economic challenges, neither the Government nor NESTA anticipate any negative effect on NESTA's work as a consequence of charitable status. The charity and charitable trust would comply with charity law requirements for accounts, annual reports and audits and would be subject to regulation by the Charity Commission.

The Government's preference is to see NESTA's work continue outside of the public sector while ensuring propriety of expenditure of the endowment. Neither abolition nor reconstitution as a private sector body would achieve this and a merger could dilute NESTA's effectiveness and mission. However, the proposal to reconstitute NESTA as a charitable trust and a charity enables protection of the endowment and enables NESTA to continue its work while enhancing NESTA's independence from Government and this is therefore the Government's preferred option.

Costs and benefits for preferred policy option

Cost and benefit analysis for the Government's preferred policy option, to reconstitute NESTA as a charity and trust, is presented here. The cost of transition includes BIS staff costs, NESTA staff costs and legal costs necessary to implement the transition over a period of 18 months. The benefits of the preferred policy option include benefits from a reduced sponsor team in BIS over a period of ten years. Sponsor team responsibilities such as approving and laying of NESTA's accounts in Parliament and the OCPA-regulated appointments process for NESTA's board of trustees would no longer be necessary and these responsibilities would not need to be continued by NESTA staff following transition.

BIS staff costs include Total Pay Cost which comprises annual salary, Earnings Related National Insurance Contribution (ERNIC) and Accruing Superannuation Liability Charges (ASLC). We have assumed constant wages and overhead costs at 30% of Total Pay Cost (based on Cabinet Office's *UK Standard Cost Model*). NESTA staff and legal costs were provided by NESTA. Savings are calculated for the 10 year period following transition. Future costs and benefits have been discounted at a rate of 3.5%.

Cost (PV) to Department for Business, Innovation and Skills for implementing transition: £138,854

Staff grade	Total Pay Cost (p.a.)	Overheads @ 30% (p.a.)	Time fraction	Cost (p.a.)	Cost (PV) (transition period)
HEO(D)	£36,205	£10,862	0.7	£32,947	£48,863
G7	£65,645	£19,694	0.4	£34,135	£50,625
G6	£81,671	£24,501	0.25	£26,543	£39,366

Cost (PV) to NESTA for implementing transition: £81,570

	Cost (p.a.)	Cost (PV) (transition period)
NESTA staff	£20,000	£29,662
NESTA legal	£35,000	£51,908

Total cost (PV) for transition: £220,424**Total benefit (PV) for Department for Business, Innovation and Skills from reduced sponsor team: £471,770**

Staff grade	Total Pay Cost (p.a.)	Overheads @ 30% (p.a.)	Time fraction	Benefit (p.a.)	Benefit (PV) (10 years)
HEO	£40,556	£12,167	0.33	£26,362	£226,916
G7	£65,645	£19,694	0.5	£28,446	£244,854

Non-monetised costs include reasonable out-of-pocket expenses and reasonable remuneration which the Protector will be entitled to receive from the trust. The exact amount has not yet been determined but is expected to be set at a similar level to that of the Protector for the Millennium Awards Trust who receives £5000 per annum. Non-monetised benefits are still being identified but may include reduced accounting, governance and reporting requirements for NESTA, potentially allowing NESTA to redistribute resources previously allocated to such reporting requirements to other NESTA activities.

NET BENEFIT (Present Value): £251,346

There are no sensitivities around the preferred policy option as the announcement of our preferred policy option in October 2010 was received positively by NESTA and NESTA stakeholders. There are no anticipated risks for NESTA or its activities as discussions with the Charity Commission have indicated that there will be no negative effect on NESTA's work as a consequence of their transition to charity status. There are no risks regarding reduced scrutiny of NESTA's accounts and activities as the charity will have to submit independently audited accounts, a Trustees' Annual Report and an Annual Return to the Charity Commission each year. As the charity will be a company limited by guarantee, the charity will also have to prepare a directors' report and accounts under the Companies Acts and file these with Companies House.

Specific impact tests

Our preferred policy option is to reconstitute NESTA as a charity and charitable trust which would enable NESTA to continue its valuable work in the voluntary sector. We do not anticipate any impact on:

- diversity;
- competition;
- small firms;
- carbon emissions or other wider environmental factors;
- health and well-being;
- the justice system;
- human rights;
- rural communities; or
- sustainable development

as a result of the preferred policy option.

Summary and next steps

Our preferred policy option for NESTA is reconstitution as a charity and charitable trust. Our proposal will require enactment of the Public Bodies Bill and secondary legislation under the Bill to effect the changes to NESTA. The impact assessment for the Public Bodies Bill is available online from the Impact Assessment Library at <http://www.ialibrary.bis.gov.uk/>. The secondary legislation will comprise an order to abolish NESTA as an NDPB and a transfer scheme to transfer the endowment and NESTA's investments portfolio to the trust and to transfer other assets, liabilities and staff to the charity. The proposal will also require approval from the Charity Commission and NESTA will take steps to set-up the charity and trust prior to the passing of the legislation as preparatory steps. The charity and trust will effectively be shells until the Government has considered the outcome of the consultation on NESTA's transition and the necessary secondary legislation is passed to move NESTA out of the public sector. The estimated transition date is April 2012.

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