



department for
culture, media
and sport

Consultation on the Future Constitution of the English Tourist Board (known as the VisitEngland Board)

15 August 2012

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the quality
of life for all

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Chapter 1: Introduction

The Government is minded to use the powers in the Public Bodies Act 2011 to implement the proposals outlined in this consultation for future appointments to the English Tourist Board. This will deliver the policy pledges made in the Government's Tourism Strategy (March 2011) to modify the constitution of the English Tourist Board in order to increase representation from local destinations.

VisitEngland has already taken some initial steps in this direction by appointing three Board members from local destinations. In future, the Government is minded to consolidate this progress by asking Destination Management Organisations (DMOs) to elect three or four of the appointments to the English Tourist Board via a representative body, with Ministers' only involvement being to nominate that representative body. Ministers would continue to appoint the remaining two or three members of the English Tourist Board, plus the Chair, through the existing Public Appointment arrangements. Together, this will ensure that Board members' role in dispersing public money (the grant-in-aid provided by DCMS) will not be compromised, as essentially, the chain of accountability will not be broken.

The Public Bodies Act, as approved by Parliament, requires that Ministers consult on their proposals before laying a draft order. On that basis, the Minister for Tourism and Heritage invites comments on these proposals as measures that might be carried forward by order under the Public Bodies Act, subject to the outcomes of this consultation. All responses, including those which propose an alternative to the Government's preferred approach, will be given due consideration.

In developing legislative proposals, Departments need to be aware of their legal responsibilities under the public sector Equality Duty. In particular, they need to consider whether their proposals might have a disproportionate impact on any particular groups of people (such as women, older people, disabled people, or people from different religious or ethnic groups, or of a particular sexual orientation). The Equality Duty requires Departments to ensure that the impact of proposals on different groups is considered as part of the policy making process. The Department for Culture, Media & Sport (DCMS) has given full consideration to this in developing proposals in respect of future arrangements for making appointments to the English Tourist Board and we do not consider that these proposals have a disproportionate impact on any of these groups.

It should be noted that this process of review is not intended to lead to the establishment of VisitEngland as a body independent from Government. VisitEngland will remain an arm's length advisory body of Government, receiving core funding from Government. Indeed, Government's aspiration remains to create a 'national body to develop and promote English tourism in parallel with VisitScotland, Visit Wales and the Northern Ireland Tourist Board'.

Chapter 2: Background

Local Tourism Bodies / Destination Management Organisations

England needs strong and independent local tourism bodies to manage, develop and promote our different destinations effectively. As set out in the Government's Policy for Tourism, published in March 2011, we are modernising and updating local tourism bodies to become more focused and efficient Destination Management Organisations (DMOs) which are led by and, increasingly, funded through partnership with the tourism industry itself.

These local tourism bodies (for example: VisitBath, Cumbria Tourism, VisitCornwall) act as the voice of the visitor in their destination, and of the businesses which form the local visitor economy too of course. They must be strong partners with Local Authorities and Local Enterprise Partnerships so the importance of tourism within the wider economy is understood, supporting the area's wider ambitions around driving enterprise, growth and employment. It is for individual DMOs to develop their own working arrangements, based on their analysis of local conditions, challenges and opportunities. To achieve the right kind of influence and partnership, the best existing tourism bodies have a strong, shared vision with the local community about what they want their destination to be.

It's vital that these local tourism bodies remain responsive and responsible to local tourism industry and the communities that they serve. This means that their governance must follow a series of important principles:

- ***They must be partnerships between the public sector, usually the Local Authority or LEP, and local businesses.***

The precise legal form of these organisations varies depending on local wishes and legacy institutions. They can be membership-based associations based on mutuals, subscriptions, companies with shareholders, charities with trustees, co-ops with members or some other structure. But no matter what legal form they take, local tourism businesses must have majority power over hiring, firing and directing the management to local private and third sector visitor economy organisations instead of the Local Authority, LEPs or other Government bodies

- ***They must be self-righting organisations if (or when) results aren't satisfactory, without needing political intervention or bailouts from public funds.***

It's inevitable that, amongst the scores of local tourism bodies formed around key English tourism destinations, some will perform better than others. Again, regardless of their precise legal form, it's essential that their governance allows each business within a local Tourism Body, to become part of an alternative structure should they wish, so the management can never feel they have a monopoly where local tourism firms have no choice but to join.

The English Tourist Board's Statutory Functions

The English Tourist Board ("ETB") and the British Tourist Authority ("BTA") were established under the Development of Tourism Act 1969 ("the DTA").

On 1 April 2003, the activities of the ETB (then trading as the English Tourism Council,) were merged with those of the BTA and the BTA assumed responsibility for the domestic marketing of England as well as the international marketing of Britain and adopted the new trading name of 'VisitBritain'. ETB ceased to be funded and was re-classified as an unfunded advisory body (then known as the England Marketing Advisory Board).

In 2008/09, the then Secretary of State for Culture, Media and Sport asked BTA to carry out a wide-ranging review: *The British Tourism Framework Review*, where it became clear that there was a demand for the development and promotion of tourism in England to be undertaken by a separate body.

ETB, now known as VisitEngland, worked with BTA to achieve this to the extent possible within the existing statutory and funding framework and, on 1st April 2009, BTA established a VisitEngland Executive team with a Chief Executive reporting directly to the Chairman of ETB. In its current guise, the VisitEngland Executive team remains a part of BTA for funding and governance purposes and undertakes its role as British Tourist Authority trading as VisitEngland. (BTA also trades as VisitBritain.) A Memorandum of Understanding between the English Tourist Board and the British Tourist Authority has been put in place to record the detailed corporate governance arrangements which have been established between BTA and ETB. The Chief Executive of VisitBritain acts as accounting officer for BTA trading as VisitBritain and VisitEngland.

As a separate and parallel process to the proposals being consulted on in this document, the Government will simplify and realign these arrangements so that Visit England's executive team become part of the ETB rather than the BTA. This will make the ETB Board directly accountable and responsible for Visit England's operations, as it should be. The key responsibilities of the Board are:

- Set the strategic direction of the organisation
- Oversee the proper dispersal of Government funds

- Support and implement tourism policy as directed by the Secretary of State
- Act in good faith and in the best interests of ETB

The detail of the roles and responsibilities of the Chairmen and Board Members of the English Tourist Board and the British Tourist Authority are set out in a Management Agreement between BTA and DCMS, which is reviewed annually by the Secretary of State.

Helping Local Tourism Bodies Fulfil Their Potential

The focus of Destination Management Organisations (DMOs) is, by definition, local. Even where they elect to group together to market a wider area, they will still be working within relatively small geographical boundaries. No matter how many local tourism bodies eventually emerge, and regardless of the areas they cover or the groups they form, we will also need a national body to develop and promote English tourism in parallel with VisitScotland, VisitWales and the Northern Ireland Tourist Board. So we have refocused VisitEngland into a small, highly efficient, industry-led national body for English Tourism.

As part of this process, the Government's Tourism Policy (March 2011) pledged to modify the constitution of Visit England to increase representation from local destinations on its Board. The proposals in this consultation document explore ways to deliver on that policy pledge.

Destination Management Forum

The Destination Management Forum exists to manage the exchange of information on national and local issues between Destination Management Organisations and VisitEngland. It is an assembly of senior executives from destination organisations, with sufficient organisational and remit similarities, to enable productive collective engagement to discuss strategic issues and also to connect the national and local levels at key points of the year.

Destinations have to meet 'commonality criteria' to qualify for forum membership, including:

- Meet the Government's ***Tourism Policy criteria on Governance*** (or be working towards it).
- They must be partnerships between the public and private sector, including newly-formed Local Enterprise Partnerships (LEP) where they exist. These partnerships should be representative of the local tourism

and visitor economy stakeholders, with a majority of private sector Directors or Trustees. .

- Have an established (published) **destination management plan**, or be in the process of developing one (with - published completion/ publication dates). The plan should be a shared statement of intent between public and private partners and include the priorities for growing, developing and managing the destination, identifying clear actions and the roles & responsibilities of stakeholders.
- Be committed and actively working to **deliver the National Strategic Framework** for Tourism 2010 – 2020 and England Marketing Strategy, e.g. be working to develop and promote attract and disperse brands.

Public Bodies Act 2011

The *Public Bodies Act* received Royal Assent on 14 December 2011. The Act is an enabling Act, which confers a series of order-making powers on Ministers in sections 1-5 to abolish, merge, or modify constitutional or funding arrangements or modify or transfer functions of public bodies through secondary legislation. The Act also contains a number of schedules; these list bodies which are subject to the powers in the corresponding sections.

Schedule 3 of the Act sets out an order making power to modify constitutional arrangements (as follows).

(1) A Minister may by order modify the constitutional arrangements of a body or office specified in Schedule 3.

(2) In this Act, references to the constitutional arrangements of a body include matters relating to:

- (a) the name of the body;
- (b) the chair of the body (including qualifications and procedures for appointment and functions);
- (c) members of the body (including the number of members, qualifications and procedures for appointment and functions);
- (d) employees of the body exercising functions on its behalf (including qualifications and procedures for appointment and functions);
- (e) the body's powers to employ staff;
- (f) governing procedures and arrangements (including the role and membership of committees and sub-committees);
- (g) reports and accounts;
- (h) the extent to which the body is accountable to Ministers;
- (i) the extent to which the body exercises functions on behalf of the Crown.

The English Tourist Board is named in Schedule 3 of the Act. The Government has said that it is minded to use the powers in Section 3 of the Act (that apply to public bodies named in Schedule 3) to modify the constitution of the English Tourist Board in order to increase representation from local destinations. The Government's proposal would be achieved by bringing forward a draft Order for scrutiny and approval by Parliament following this consultation.

Chapter 3 of this consultation sets out the Government's proposal for achieving this objective.

Chapter 3: Proposals for delivery

The Development of Tourism Act (DTA) specifies that ETB shall consist of a Chairman and not more than 6 members appointed by the Secretary of State.

The Government is inclined to use the Destination Management Forum as the representative body through which elections for three or four English Tourist Board appointments will be held, with Ministers removed from the process except that they would be responsible, in the Order, for nominating the representative body. This will deliver the policy pledge made in the Government's Tourism Policy (March 2011) to give local DMOs directly-elected seats on Visit England's Board.

Ministers would continue to appoint the two or three other members of the English Tourist Board, plus the Chair, through the existing Public Appointment arrangements. This sees all appointments, plus the Chairman, being made through the Public Appointment arrangements known as the 'Nolan Principles'. The selection criteria vary in order to ensure that the Board members have a balanced mix of sectoral and professional backgrounds and regional experience. Vacancies are advertised and anyone may apply. In addition to DCMS officials and the Chairman of ETB, the interview panel includes an independent member.

Nevertheless, necessary protection would remain because Ministers will still determine the representative body making the appointments to the English Tourist Board and retain their powers of intervention under the DTA to remove those Board members who are unfit or unable to properly discharge their role from the Board.

How this will be achieved

DMOs are constituted in a variety of public and private-sector partnerships. As a result, they have no clearly identifiable and consistent legal personality which could be defined in legislation. The Destination Management Forum will therefore need to be formally constituted, to provide it with an established legal personality (a body incorporated under the law of England & Wales) e.g. an LLP or company limited by shares or guarantee – of which all eligible DMOs would be a member. Once established, VisitEngland itself will have no formal involvement in the DM Forum process of holding elections for appointments to

the English Tourist Board.

We invite comment on whether it would be preferable for 3 or 4 ETB Board members to be appointed in this way.

If Parliament gives its consent, the powers in the Public Bodies Act 2011 would be used to amend section 1(3) of the Development of Tourism Act 1969 by providing that the English Tourist Board shall consist of a chairman and not more than six other members. The Board members elected by the Destination Management Forum shall be installed over a period of time, as existing ETB Directors reach the end of their current terms, so there is a steady and orderly transition period.

DCMS aspire to diversity on the boards of public bodies. We would expect the Forum and its members, in nominating and making appointments to the Board members, to aspire to this too.

All Board Members, whether elected or appointed in accordance with the Nolan Principles, will act in good faith and will comply with good governance practices, such as alerting the Chairman to potential conflicts of interest and excusing themselves from discussion, declaring any pecuniary interests etc.

Board members could be elected for a term of 3, 4 or 5 years. **We invite comment on the appropriate length of term for Directors elected in this way.**

Composition of the electorate

It is proposed that the Forum's constitutional arrangements would bind it to poll only those DMOs that conform to the following constitutional arrangements:

- The DMO must have audited accounts;
- The DMO must not exclude any business who wants to join the body – it must be open to everyone on an equal basis and should not be based on geographical or local government boundaries;
- The DMO's governance must give the private sector a majority of the voting seats on the DMO board;
Members of a DMO must have the right to membership of multiple DMOs;
and
- There is a minimum participation criteria – (de minimis factor). **We invite comment on how best to prevent DMO's that only represent a very small area (e.g. a DMO only representing 2 businesses on a small street) from skewing election results. Solutions might include a**

minimum number of members, a minimum size or a minimum turnover for the businesses involved in the DMO, and making sure that the DMOs have aims and objectives about developing tourism/visitor economy and being a destination marketing or managing organisation.

Alternative Option

The Destination Management Forum would elect members to the ETB as described above, but Ministers would confirm the appointment. Ministers would have no discretion other than to follow the DMO Forum's decisions unless those elected were unable or unfit to properly discharge their role. If the Secretary of State couldn't ratify the DMF's selection then the DMF would be required to make a fresh selection by holding by-elections.

This option provides an alternative route to ensure that the Government's statutory duties over appointments to public bodies are being correctly discharged.

Regulatory Impact Assessment

An impact assessment has not been produced for this consultation exercise. It is the Government's assessment that that the new arrangements and legislative changes for making appointments to the English Tourist Board will have negligible financial impact on either VisitEngland, the DM Forum, for the individual DMOs that take part in the appointments process or for individual businesses.

Members of the English Tourist Board appointed by the DM Forum will continue to be remunerated and will be able to claim expenses in the usual manner.

Similarly, we have considered the equality impacts of the proposals. We believe that it would be disproportionate to produce an equality impact assessment. As indicated above, it is proposed that only those DMOs that conform to certain constitutional arrangements will be able to participate in the appointments process. These include that the DMOs themselves must not exclude any business who wants to join the body – it must be open to everyone on an equal basis.

Chapter 4: Questions

- 1. Which of the proposed options do you prefer (if any) and why? Are there better ways the Government's stated policy objective could be achieved?**
- 2. Under equality legislation, public authorities have legal duties to have "due regard" to the need to eliminate discrimination and promote equality with regard to race, disability and gender, including gender reassignment, as well as to promote good race relations. In the Equality Act 2010, these three duties are harmonised into one, and also extend the scope to cover protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. **What effect would the proposed changes have on these duties?****
- 3. How best could the 'de minimis' criteria be resolved?**
- 4. How many of the ETBs members (if any) should be elected in future? How long should their elected term be?**

Chapter 5: How to Respond

Email

Please send your responses to: VEGovernance@culture.gsi.gov.uk

Letter

If you wish to send your response by letter please address it to:

Tourism Team (*English Tourist Board Consultation*)
Department for Culture Media and Sport
2-4 Cockspur Street,
London SW1Y 5DH

Closing Date

This consultation will close on 10th October 2012