

BIS | Department for Business
Innovation & Skills

**NESTA: RECONSTITUTION AS
CHARITY AND TRUST**

Government Response to
Consultation

JANUARY 2012

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Executive Summary

1. As part of the Government's public bodies reform programme, on 18 October 2011, Minister for Universities and Science, David Willetts, announced a six week consultation on the Government's preferred option to abolish NESTA as a non-departmental public body (NDPB) and reconstitute it as an independent charity and charitable trust.
2. The consultation was made available on the BIS and NESTA websites and was sent directly to over 100 stakeholders. It was aimed at employees and trustees of NESTA and anyone who has an interest in their work; in particular partners of NESTA in the public, private and voluntary sector, including central and local government and the devolved administrations. In total 27 responses were received, from businesses, charity or social enterprises, individuals and others.
3. There was strong support for our proposal, with a large majority of responses concurring with our preferred policy option as the most suitable choice for NESTA, and agreeing that we had explored all the options relevant to NESTA. A few responses called for greater clarity of NESTA's role in the devolved nations and clarity about NESTA's ability to fund commercial interests if it becomes a charity. We have provided further information about this in our summary section.
4. In addition, a significant majority of responses agreed that NESTA would benefit from increased independence from Government. Responses highlighted that the change in status would improve NESTA's abilities to support innovation in the UK – giving NESTA greater freedom to be creative and at the forefront of developing ideas to help drive economic growth.
5. Given this response, the Government will now proceed with its plan to abolish NESTA using the powers of the Public Bodies Act 2011 and reconstitute it as an independent charity with a separate charitable trust to hold the National Lottery endowment. Our estimated transition date is April 2012.

Introduction

Background

1. NESTA is an executive NDPB with 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, as well as providing an independent, well-informed voice and commentary on innovation policy. NESTA is funded by the return on its National Lottery endowment, currently valued at £321 million.

2. The Government has decided that it needs to reform the crowded public bodies landscape in the UK in order to enable the Government to deliver public services more efficiently. In line with its wider review of public bodies, the Government applied three tests to determine whether NESTA should remain a public body:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

3. In the Government's view, NESTA did not meet these three criteria to remain a public body. Whilst we believe that NESTA performs a valuable function and wants to see its activities continue, we do not think that it is necessary for NESTA to remain an NDPB or be part of the public sector in order to carry out its functions.

4. The Government's view is that NESTA's activities are better suited to the voluntary sector and on 18 October 2011, the Government launched a consultation on its proposal to abolish NESTA as an NDPB and reconstitute it as an independent charity with a separate charitable trust to hold the National Lottery endowment. The purpose of the consultation was to gather views from interested parties in three key areas: whether NESTA should have increased independence from Government; whether Government's proposal was the most suitable option to allow NESTA to continue with its work; and whether the Government had explored all the options relevant to NESTA.

Consultation Process

5. The consultation opened on 18 October 2011 and closed on 29 November 2011. As the scope of the consultation was narrow, the Government conducted a focused and targeted consultation which lasted six weeks. Although the consultation was not a formal public consultation, the general principles of the Code of Practice for Consultations were followed as far as practicable.

6. The consultation was aimed at employees and trustees of NESTA and anyone who has an interest in their work; in particular partners of NESTA in the public, private and voluntary sector, including central and local government and the devolved administrations. It was publicised through the BIS departmental website and on the NESTA website, as well as being sent directly to over 100 stakeholders.

Statistical Analysis of Responses

7. The consultation asked three questions about the proposal to abolish NESTA. A fourth question provided opportunity to give any other views on the proposal. All questions provided

opportunity for open comments where respondents wished to provide them, plus an opportunity to provide further open comments of a more general nature.

8. In total, we received 27 responses to the consultation. Some responses ticked more than one category for type of respondent, so we chose the category most reflective of their work e.g. charity or social enterprise rather than medium-sized business. The type of responses can be categorised as: business representative organisation/trade body (one response), charity or social enterprise (10 responses), devolved administration (one response); individual (12 responses), micro business (one response), other (two responses - one Sector Skills Council and NESTA itself). Out of the 12 responses from individuals, we had one response from the NESTA chairman, six responses from current NESTA trustees and three responses from trustees of the new NESTA charity.

9. Not all respondents chose to answer all questions, or to provide enough information that enabled them to be categorised precisely. As most responses were received by email and not all respondents filled the address box in, it was not always possible to identify accurately which response represented interest outside England. In total, three responses could be identified from outside of England: two from Scotland; and one from Wales.

Summary of Responses to Questions 1-3

Question 1 Do you agree that NESTA should have increased independence from Government?						
Yes		No		Not Sure		Total
24	96%	0	0%	1	4%	25

1. 24 respondents (96%) agreed that NESTA should have increased independence from Government, with one respondent being unsure.

2. NESTA already has a large amount of independence from Government, as its programmes and strategy are determined by its trustees and it is funded by the return on its National Lottery endowment, currently valued at £321 million. A range of supporting statements were given for why NESTA would benefit from increased independence including: consistency with Big Society principles by decentralising power; making NESTA more effective in its mission, if it is seen to be acting independently; a reduction in administrative burdens; and allowing NESTA to pursue a broader agenda.

“This independence will benefit NESTA as an organisation, giving NESTA more freedom to be creative, innovative and at the forefront of the development of new ideas that can help drive positive economic progress.”

The People Who Share

Question 2 Do you consider the Government’s proposal to be the most suitable option to allow NESTA to continue with its current work?						
Yes		No		Not Sure		Total
23	85%	0	0%	4	15%	27

3. This question asked whether the Government’s proposal to reconstitute NESTA as an independent charity and charitable trust was the most suitable option. 23 respondents (85%) agreed with the Government’s preferred option, whereas four respondents were unsure.

4. Many of the main reasons given in support of this policy option echoed the reasons given why NESTA would benefit from greater independence: increased flexibility to be more entrepreneurial and responsive to sectors; and allowing NESTA to concentrate on the longer-term innovation agenda whilst saving Whitehall some administrative costs.

5. Several responses commented that moving NESTA to the private sector would give it important independence. It was also noted that the role of the Protector was an appropriate method of protecting the National Lottery endowment. Two responses questioned whether separating out the charity from the charitable trust would create more administrative burdens as a result.

6. Concern was also raised about whether the change of NESTA’s status would have any implications on their funding of innovative small businesses and its ability to support commercial activity.

“The implications on the criteria for new investments, being subject to Charity Commission guidance, remain unclear. We wish to see the value of investments at least maintained while supporting innovation and accepting the inherent and acceptable risk therein.”

Race Online 2012

“We recognise that this proposal affords NESTA even greater flexibility in their work and hope that this will enable them to be even more entrepreneurial and responsive to their sectors.”

Arts Council England

Question 3 Do you consider that the Government has explored all the options relevant to NESTA?						
Yes		No		Not Sure		Total
20	80%	2	10%	3	15%	25

7. From the 25 respondents who answered this question, 20 responses (80%) agreed that the Government has explored all of the options relevant to NESTA. In particular, responses from trustees reflected that all the options have been considered at NESTA board level and that the options were all given due consideration in the consultation document. Two respondents thought that all options had not been considered and three respondents were unsure.

8. Whilst they were content that the Government had explored all the relevant options, two responses asked for greater clarity about how NESTA would function in the devolved nations.

“We have undergone extensive work with colleagues at BIS and are satisfied that all other potential options for NESTA were explored.”

NESTA

Please let us know if you have any other comments on the proposal

9. In addition to the three questions above, we also asked an open question for wider views on the proposal. There were a range of responses including: some responses adding further support for the proposal; and some responses offering further advice to the new NESTA organisation. In support, one response highlighted the benefit of separating out education in the charity’s objects, as a critical factor in spreading successful innovation.

10. A response from UnLtd (the charity and social trustee of the Millennium Awards Trust) highlighted the benefits of keeping the objects broad and appointing the best possible Protector to guide interpretation of the Trust Deed.

11. Finally, a couple of responses stressed the importance of paying attention to the membership of the charity and also how a model of membership from which trustees were identified could give greater accountability to the charity.

12. We received some comments from respondents responding to the question about wider views on the work of NESTA. These did not form part of the official consultation response and we have passed these views onto NESTA.

Government Response and Next Steps

Government Response

1. The consultation sought views on whether:
 - NESTA should have increased independence from Government
 - Government's proposal is the most suitable option to allow NESTA to continue with its current work
 - Government has explored all the options relevant to NESTA
2. BIS received 27 responses to the consultation and there was strong support for the proposed policy option – to abolish NESTA as an NDPB and reconstitute it as an independent charity and charitable trust. The majority of responses supported our proposal that NESTA does not need to be part of the public sector, and that it will benefit from having more independence from Government. 80% of the responses to the consultation concurred with our preferred policy option as the most suitable choice for NESTA, with 85% agreeing that we had explored all the options relevant to NESTA.
3. In addition, over 90% of responses agreed that NESTA would benefit from increased independence from Government. Responses highlighted that the change in status would improve NESTA's abilities to support innovation in the UK - allowing NESTA to be more effective and giving it "more freedom to be creative, innovative and at the forefront of the development of new ideas that can help drive positive economic growth".
4. A number of issues were raised in response to the consultation, including about the endowment, so we wanted to give further clarification. Whilst the Government considers that NESTA would be better placed to operate outside the public sector, the National Lottery endowment is required to remain within the public sector. The majority of the endowment is currently invested in Government gilts and sits as a liquid asset benefitting Public Sector Net Debt (PSND). For National Accounts purposes, transfer of the endowment out of the public sector would have a detrimental effect on PSND, as this would reduce the stock of government's assets. The charitable trust in the public sector will ensure that Ministers maintain assurance for propriety of the way in which the endowment is used, through the Protector, but the trust will not be directly monitored by Government
5. Clarity was also sought on NESTA's role and their position in the devolved nations. NESTA will continue to support innovative companies, both as part of a diversified portfolio invested for financial return, and through grant funding and programme-related investment in line with their charitable objects. NESTA is not intending to set up a separately constituted charity in Scotland but the charity has been registered in Scotland by the Office of the Scottish Charity Regulator, as well as by the Charity Commission for England and Wales. NESTA will remain a UK-wide organisation and is keen to increase its levels of activity in Scotland, Wales and Northern Ireland, both by disseminating its ideas and insights, and by running events and practical programmes. Their recruitment processes will ensure that the trustee body reflects the diverse constituencies and audiences with which the charity works.
6. In response to questions raised about the membership of the charity, the new NESTA charity will not be a membership organisation. Its trustees will also automatically become members of the charity for as long as they are trustees; when trustees leave, they will also cease to be members. The charity will be accountable to the Protector, appointed by the Secretary of State, in relation to its role as trustee of the Trust, who will ensure that Ministers

maintain assurance for propriety of the way in which the National Lottery endowment is used. As an independent charity, NESTA will also be required to submit annual reports to the Charity Commission and will be subject to charity law and regulation by the Charity Commission.

7. As a result of the responses to the consultation, the Government is proceeding with its preferred policy option to abolish NESTA as an NDPB and reconstitute it as an independent charity with a charitable trust to hold the National Lottery endowment.

8. A final-stage Impact Assessment has been published on the BIS website alongside this Government response.

Next Steps

9. The Public Bodies Act gained Royal Assent on 14 December 2011 and gives powers to Ministers to abolish, merge, or modify or transfer functions of public bodies through secondary legislation. We will now seek Parliament's approval to abolish NESTA using these powers and reconstitute it as a charity and charitable trust.

10. Along with the Order to abolish NESTA as an NDPB, we will also lay in Parliament 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 estimated transition date is April 2012.

List of Respondents

Arts Council England

Big Innovation Centre

Camelot Group

Sir Chris Powell

Cooperatives UK & Social Enterprise UK

Coram Williams (Trustee of NESTA)

Sir David Henshaw (Trustee of NESTA)

Sir John Chisholm (Chairman of NESTA)

Sir John Gieve (Trustee of new NESTA charity)

John Sheldrick (Trustee of NESTA)

Liam Black (Trustee of NESTA)

Professor Madeleine Atkins (Trustee of new NESTA charity)

NESTA

Pathcreating Ltd

Patrick McKenna (Trustee of new NESTA charity)

Patrick Shine

Race Online 2012

Rick Seymour

Rob Woodward (Trustee of NESTA)

Scottish Council for Voluntary Organisations

Sidekick Studios

Skillset

Professor Stephen Emmott (Trustee of NESTA)

The Innovation Unit Ltd

The People Who Share

UnLtd

Welsh Assembly Government

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