

	<p>Inter-Sessional Meeting of the Finance and Administration Committee</p> <p><i>Report of the Inter-Sessional Meeting of the Finance and Administration Committee</i></p>	<p>FACIS(24)06</p> <p>Duplicated as FAC(24)03</p>
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Report of the Inter-Sessional Meeting of the Finance and Administration Committee

The Black Diamond, Copenhagen, Denmark

5 & 6 February 2024

1. Opening of the Meeting

- 1.1 The Chair, Seamus Connor (United Kingdom), opened the meeting and welcomed members of the Finance and Administration Committee (FAC) to the Inter-Sessional Meeting. He noted the newest members of the Committee: the representative for Denmark (in respect of the Faroe Islands and Greenland), Julius Kristiansen and Anna Shulaeva, the new Head of Delegation to NASCO for the Russian Federation. Apologies were noted from the Icelandic representative, Dr Guðni Magnús Eiríksson, who is also Iceland's Head of Delegation to NASCO now that Iceland has re-acceded to the Convention. He was unable to attend.
- 1.2 The Chair reminded participants of the background to the meeting, both in relation to discussions around the lump sum, as laid out most recently in document FACIS(24)02), and in relation to the agenda item on a review of NASCO's observer rules, [CNL\(06\)49](#).
- 1.3 In relation to the lump sum, the Chair reminded the participants that, in 2022, Council agreed an interim policy on the interpretation and application of NASCO's Staff Fund Rule 3.2 and Staff Rule 8.2(b) concerning the lump sum entitlement, [CNL\(22\)44](#).
- 1.4 Then, at its 2023 Annual Meeting, the FAC referred a proposal to the Council on a procedure to develop a longer-term solution to the issues around staff benefits, including a number of questions to be posed to legal and human resource experts; to have the Staff Rules and Staff Fund Rules reviewed to ensure they were fit for purpose and commensurate with a modern working environment and good management practices; and to request that Council agree that professional advice could be sought to ensure there would be no detriment to part-time staff in relation to the lump sum entitlement.
- 1.5 The Chair also reminded participants that the questions to the legal and human resource experts, from the FAC, to inform the formulation of a longer-term solution to the issues related to the lump sum and other staff benefit issues were as follows:

Existing staff

1. *What are NASCO's legal obligations regarding existing staff that leave full-time employment, taking into consideration past practice associated with the awarding of the lump sum as outlined in NASCO Staff Rule 8.2(b) and in relation to existing employment contracts.*

New Staff

2. *Can NASCO change its Staff Rules to remove the lump sum element for new staff joining should they leave full-time employment and / or decide that it only applies after a certain period of full-time employment?*
3. *Would an arrangement be legally acceptable if only staff at a specific age were entitled to a lump sum?*
4. *If NASCO were to change its Deferred Salary Scheme, are there, and if so, what are the legal limitations of options based on the Staff Rules, Staff Fund Rules, Headquarters Agreement, and other relevant NASCO instruments?*
5. *If NASCO were to change its Deferred Salary Scheme, what would be the minimum requirements or elements, if any, of such a scheme to ensure compatibility with UK law?’*

1.6 At the NASCO 2023 Annual Meeting the Council agreed:

- to instruct the Secretary to seek professional legal advice, immediately, with respect to ensuring no detriment to part-time staff in relation to their employment with NASCO;
- that the Staff Rules and Staff Fund Rules should be reviewed, to ensure they are fit for purpose and commensurate with a modern working environment and good management practices.

Council also agreed a ‘Revised Interim Policy on the Interpretation and Application of NASCO Staff Fund Rule 3.2 and Staff Rule 8.2(b) Concerning the Lump Sum Entitlement, [CNL\(23\)71](#).

1.7 The legal firm Gunnercooke LLP was, subsequently, engaged to respond to the five questions listed above, to carry out the review of Staff Rules and Staff Fund Rules and to provide professional advice to ensure there would be no detriment to part-time staff in relation to the lump sum entitlement.

1.8 Gunnercooke’s response, ‘NASCO Report of Advice – Gunnercooke’, and a document for the FAC’s consideration at the Inter-Sessional Meeting, ‘Review of the Issues Related to the Lump Sum and Other Staff Benefit Issues’, FACIS(24)02, were circulated to the FAC on 18 December 2023.

1.9 In relation to the review of NASCO’s observer rules, [CNL\(06\)49](#), the Chair reminded participants that Council agreed, in 2023:

- that the FAC would undertake a review of the condition for attendance by observers at NASCO meetings ([CNL\(06\)49](#)) as recommended by External Performance Review recommendation 32 and to consider the results of that inter-sessional review during the 2024 NASCO Annual Meeting; and
- to direct the Finance and Administration Committee in its review of [CNL\(06\)49](#), ‘Conditions for Attendance by Observers at NASCO Meetings’, to consider whether and how these rules could be updated to accommodate Indigenous participants in a manner that appropriately recognises their interest in the work of NASCO and the value their strengthened engagement would bring.

1.10 He noted the paper provided by Canada, ‘Canada’s Proposal for Updating Revised Conditions for Attendance by Observers at NASCO Meetings’, FACIS(24)03.

1.11 A list of participants is contained in Annex 1.

2. Adoption of the Agenda

2.1 The Committee adopted its Agenda, FACIS(24)04 (Annex 2).

3. Consideration of No Detriment to Part-Time Secretariat Staff

3.1 The Chair reminded the participants that there is currently one part-time Secretariat staff member. This staff member receives most of the benefits that full-time staff receive, except that they are taxed at the appropriate rate before payment, i.e., Deferred Salary and various insurances (income protection, dental, life, medical). However, the existing rules have previously been interpreted to mean that this staff member is not eligible for the lump sum payment.

3.2 The Chair considered that the Gunnercooke report refers to part-time staff being at a detriment to full-time staff in several places in NASCO's existing Rules and it seems clear that, for any changes to NASCO's Staff Rules / Staff Fund Rules, the FAC may wish to recommend that part-time staff must, to all intents and purposes, be treated in the same manner as full-time staff to ensure no detriment to them.

3.3 There was general support from the FAC for NASCO's rules to be consistent with local employment law and to offer no detriment to part-time staff. However, the UK noted this change may increase NASCO's financial obligations.

3.4 In relation to the lump sum, Norway noted that the Headquarters Agreement, listing tax exemptions, applies only to full-time staff so part-time staff would not be tax exempt. The UK and United States noted that payment mechanisms would need to be different but equivalent for part-time staff to ensure no detriment. There was general agreement that the lump sum payment to part-time staff would be unable to be tax exempt given NASCO's Headquarters Agreement.

3.5 The FAC agreed to recommend to Council that, to ensure no detriment for part-time staff, legal advice would be required to ensure compliance with Scottish employment law and to avoid potential discrimination in any revision of NASCO's rules relating to staff.

4. Consideration of the Lump Sum Entitlement for Existing Secretariat Staff

4.1 The Chair reminded the participants that Gunnercooke's overall conclusion in its response on this issue was:

'The terms of the lump sum entitlement and the terms of the Deferred Salary Scheme in general appear clear. However those terms mean that the Deferred Salary Scheme is not lawful in that it fails to comply with current employment law applicable to discrimination and part time employees because it could potentially discriminate between full time and part time employees and it is in breach of the part time regulations (Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551) – see section C below.

If NASCO's implementation of the lump sum payment and the Deferred Salary Scheme in general has not caused any issue to date, that is good. It is unlikely to cause a problem in the future except as regards any person who could claim that the scheme has been applied more generously than its terms provide (i.e. payment of a lump sum more than the contractual entitlement which is set at

one tenth based on the Interim Policy) and those more favourable provisions should apply to them.'

- 4.2 Additionally that fraction of the lump sum to be awarded is at NASCO's discretion. However, the potential for future discrimination claims should be considered in the decision on the fraction to be awarded. Also that the Staff Rules are effectively the contract of employment for NASCO staff and should NASCO decide to change existing staff members' employment contracts, Council needs to consider that where this may have a negative impact on any employee a revised contract cannot simply be imposed without agreement of the staff members.
- 4.3 The United States noted the Gunnercooke advice to be consistent with its understanding of part-time and full-time employees, including the need to ensure no discrimination between them and asked for a transparent and clear process for Council to ensure the outcome to be fair with removal of subjective and discretionary lump sum payments.
- 4.4 The UK also asked for a transparent and objective process, to ensure clarity for the Parties on their financial liabilities and for the lump sum entitlement for Secretariat staff to be clear. The UK also noted that the lump sum should apply to all staff leaving unless dismissed.
- 4.5 The FAC agreed to recommend to Council that the lump sum entitlement be applicable to all current NASCO staff, i.e. both full- and part-time, leaving NASCO's employment, unless through termination due to gross dereliction of duties.
- 4.6 The FAC then discussed whether the lump sum fraction to be awarded should be at the discretion of Council or be fixed, and there was clear agreement that the fraction should be fixed.
- 4.7 The FAC considered the question of the fixed lump sum fraction to award at length, discussing various aspects, including: varying the fraction to be paid based on staff category or role or staff tenure; the precedent of the lump sums awarded to previous staff; ensuring certainty to existing staff members; litigation risks for the Organization for staff unhappy with the decision taken by Council; whether part-time staff's time in service would be pro-rated to the number of full-time equivalent years; and the lump sum as part of a larger benefits package.
- 4.8 Based on these discussions, the FAC agreed to recommend to Council that the same fraction should be awarded to all existing NASCO staff and that the fraction of the lump sum to be awarded should be fixed at one eighth after tax of the final year's gross salary and allowances for each full year of service with NASCO, fractions of a year to count pro-rata.
- 4.9 The FAC noted that the Staff Rules, [CNL\(14\)63](#), and the Staff Fund Rules, [CNL\(14\)62](#), would need to be revised to account for these changes should Council adopt the FAC's recommendations.

5. Consideration of the Deferred Salary Scheme and Lump Sum Entitlement for New Secretariat Staff

- 5.1 The Chair reminded participants that there were responses to four separate questions to consider under this agenda item and proposed to deal with them in turn. However, in all responses he noted that if the FAC wished to recommend changes to the Deferred Salary Scheme for new staff, further legal advice would be advisable to ensure compliance with Scottish employment law and to avoid potential discrimination.

- 5.2 **In relation to question 2** ‘Can NASCO change its Staff Rules to remove the lump sum element for new staff joining should they leave full-time employment and / or decide that it only applies after a certain period of full-time employment?’, Gunnercooke split its response into two sections: NASCO changing its Staff Rules; and changing the qualifying period. Gunnercooke stated that NASCO can remove the lump sum element for new staff providing it applies to both full- and part-time staff and that a qualifying period dependent on length of service is possible, but Council would need to consider the potential for any discrimination.
- 5.3 The FAC discussed Council’s ability to change the Staff Rules and noted that Article 12(3) of the Convention states ‘The Council shall determine the conditions of employment of the Secretary and staff’.
- 5.4 Recognising this, participants discussed removing the lump sum benefits for new staff and whether additional benefits would need to be added, such as increasing the salary to ensure competitiveness or the percentage paid by the Organization into the Deferred Salary Scheme.
- 5.5 It was noted that many UN organizations have Deferred Salary Schemes and pay the same percentage to employees as NASCO does under its rules. It was agreed, therefore, that it would be consistent to retain the 15.8% after tax of the gross salary of each Member of NASCO’s Scheme, for new staff. It was also noted that it is not standard practice in UN organizations to have a lump sum element.
- 5.6 The FAC agreed to recommend to Council that there should be no lump sum for new staff and the Deferred Salary Scheme as set out in Rule 8.2(a) of the Staff Rules, [CNL\(14\)63](#) should be retained.
- 5.7 Additionally, the FAC noted that the Staff Rules, [CNL\(14\)63](#), and the Staff Fund Rules, [CNL\(14\)62](#), would need to be revised to account for these changes should Council adopt the FAC’s recommendations. Any revisions would need to define what is meant by ‘new’ staff.
- 5.8 **In relation to question 3**, ‘Would an arrangement be legally acceptable if only staff at a specific age were entitled to a lump sum?’, Gunnercooke noted a number of legal complexities that may expose NASCO to discrimination if the criteria chosen were not objectively justified.
- 5.9 The Chair suggested that if the lump sum is to be removed for new staff then this no longer needed to be discussed and could be removed as an option.
- 5.10 The FAC agreed that no that further discussion of this issue was required.
- 5.11 **In relation to question 4**, ‘If NASCO were to change its Deferred Salary Scheme, are there, and if so, what are the legal limitations of options based on the Staff Rules, Staff Fund Rules, Headquarters Agreement, and other relevant NASCO instruments?’, Gunnercooke noted that, given that Council can determine the conditions of employment of the Secretary and staff, Council can in theory decide whatever it wishes as regards new employee contracts and benefits. The legal constraints relate to creating differentials with existing staff doing similar jobs.
- 5.12 The FAC agreed that it was unlikely that there would be differentials between staff doing similar jobs., given that new Secretariat staff are only employed to replace staff leaving NASCO’s employment and any legal constraints would not, therefore, exist. The advice from Gunnercooke was noted.

5.13 Finally, **in relation to question 5**, ‘If NASCO were to change its Deferred Salary Scheme, what would be the minimum requirements or elements, if any, of such a scheme to ensure compatibility with UK law?’, Gunnercooke noted that there is no legal obligation upon NASCO to offer a Deferred Salary Scheme, that the minimum changes would be those that make the DSS compliant with applicable law and various changes that need to be made for clarification purposes and that the main areas to consider are discrimination, differentiating part-time employees, looking at the Secretariat members definition and deciding on the conditions applying to the application of the lump sum and mortality allowance.

5.14 The FAC discussed that, by treating part-time staff equitably with full-time staff in relation to the Deferred Salary Scheme, there was no discriminatory element to consider. The FAC agreed that the mortality allowance element of the Staff Rules would need to be dealt with under the wider revision of NASCO’s Staff Rules.

6. Consideration of the Review of the Staff Rules and Staff Fund Rules

6.1 The Chair reminded the FAC that Council agreed that the Staff Rules and Staff Fund Rules should be reviewed, to ensure they are fit for purpose and commensurate with a modern working environment and good management practices.

6.2 He noted that the Gunnercooke review recommended that the Staff Rules, the Staff Fund Rules and Letter of Appointment needed updating and a list of policies that an employer the size of NASCO should consider putting in place was provided.

6.3 Also, that Gunnercooke suggested that legal counsel be appointed to prepare all relevant paperwork, updating the various Rules and Letter of Appointment to bring them up to date with more recent legislation and to incorporate good practice. This should also include the drafting of appropriate policies in a handbook for staff.

6.4 The FAC first discussed the necessity for a staff handbook given that most RFMOs contain their staffing policies within the staff rules themselves. Canada shared a table of contents of policies that are commonly contained in recent staff rules created in several other RFMOs, showing that they are, generally, more comprehensive than the current NASCO Staff Rules. The Chair noted that it is important for NASCO’s Staff Rules to comply with UK and Scottish legislation and that several of the Rules are currently non-compliant.

6.5 The FAC noted that there were two separate issues to deal with in the revision of the current Rules. First, agreement would need to be reached by Council at the 2024 Annual Meeting on the Deferred Salary Scheme and lump sum entitlement for both existing and new staff. The Staff Rules and Staff Fund Rules would, therefore, need to be revised to account for these changes, making them permanent and certain for Secretariat staff members. This would need to be done in advance of the 2024 Annual Meeting to enable their agreement by Council therein.

6.6 Second, to enable revision and consolidation of the Staff Rules to comply with Scottish employment law and modern working practice, that the FAC could work inter-sessionally and seek legal review of the proposed new rules prior to recommending a new set of rules to Council for agreement in 2025. The FAC agreed it was very likely that a single new set of rules would be created to replace the current Staff Rules and Staff Fund Rules.

6.7 The FAC agreed to recommend to Council that the Staff Rules and Staff Fund Rules should be revised and consolidated to enable them to comply with Scottish employment

law and modern working practice. The timetable for the process is given under item 8, Next Steps.

7. Consideration of Further Points Raised in the Gunnercooke Review

7.1 The Chair noted that Gunnercooke raised three additional issues, namely: the ‘Interim Agreement on the Lump Sum’, CNL(23)71 not being in line with UK employment law; UK pensions regulator advice relating to auto-enrolment in a workplace pension scheme; and the fixed-term nature of the Secretary’s employment.

7.2 The FAC discussed the extra points that were raised by Gunnercooke and decided that no actions were necessary.

8. Next Steps

8.1 In relation to the review of the Staff Rules, the Deferred Salary Scheme and the lump sum entitlement, the FAC agreed to recommend to Council that:

- i. it note the legal advice provided to NASCO in Gunnercooke’s ‘Report of Advice’ to ensure no detriment for part-time staff and to avoid potential discrimination in any revision of NASCO’s rules relating to part-time staff;
- ii. the lump sum entitlement is applicable to all existing NASCO staff, i.e. both full- and part-time, leaving NASCO’s employment, unless through termination due to gross dereliction of duties;
- iii. the fraction of the lump sum to be awarded to staff should be fixed at one eighth after tax of the final year’s gross salary and allowances for each full year of service with NASCO, fractions of a year to count pro-rata;
- iv. for new staff, the Council should consider eliminating the lump sum and retaining the Deferred Salary Scheme as set out in Rule 8.2(a) of the Staff Rules, [CNL\(14\)63](#); and
- v. the Staff Rules and Staff Fund Rules should be revised and consolidated to enable them to be consistent with Scottish employment law and modern working practice.

8.2 The FAC agreed to update the provisions relating to the lump sum in NASCO’s Staff Rules and Staff Fund Rules, inter-sessionally, to reflect the recommendations in paragraph 8.1 ii, iii and iv for existing and new staff, for agreement by Council at the 2024 Annual Meeting.

8.3 In relation to these revisions, the FAC agreed that the current Staff Rules and Staff Fund Rules should be kept as separate documents for the Deferred Salary Scheme and lump sum revisions. These could then be issued as ‘rev’ versions of the current rules after agreement by Council.

8.4 Further, the FAC agreed to revise the full Staff Rules and Staff Fund Rules, as part of the inter-sessional review agreed by Council in 2023, and noting Gunnercooke’s considerations, providing an update to Council at the 2024 Annual Meeting and agreeing a timetable for completion of revisions including any legal review.

8.5 To enable its inter-sessional work, the FAC agreed to a further inter-sessional meeting, on 4 and 5 April 2024.

8.6 The UK FAC member, Chair and Secretary agreed to revise the text on the Deferred Salary Scheme and lump sum entitlement for existing and new staff in the Staff Rules and Staff Fund Rules for discussion / agreement at the April meeting.

8.7 The FAC agreed that the full revision of the rules would be discussed at the April inter-session meeting, where the process and timeline would need to be agreed.

9. Conditions for Attendance by Observers at NASCO Meetings

9.1 The Chair reminded participants that Council agreed, in 2023 that the FAC would undertake a review of the condition for attendance by observers at NASCO meetings (CNL(06)49) as recommended by External Performance Review recommendation 32 and consider whether and how these rules could be updated to accommodate Indigenous participants in a manner that appropriately recognises their interest in the work of NASCO and the value their strengthened engagement would bring.

9.2 The Chair noted that Canada tabled a discussion paper, ‘Canada’s Proposal for Updating Revised Conditions for Attendance by Observers at NASCO Meetings’, FACIS(24)03, which had been circulated on 1 February 2024.

9.3 Canada provided commentary on its paper, noting that the suggested amendments were intended to make the conditions for observer attendance at NASCO meetings be more consistent with those of other RFMOs, be more readable and address recommendations from the third performance review. New points had been added to account for social media use. A process to include Indigenous organisations (IOs) was proposed.

9.4 The FAC had a wide-ranging discussion on many aspects of the new text, including: whether the document should be rules or conditions for attendance; in which NASCO bodies NGOs and IOs should be able to have observers; how different the conditions may need to be for NGOs versus IOs; which kinds of organizations should be included in the definitions for NGOs and IOs; how many IOs would be likely to be interested / involved from the different Parties; whether the Terms of Reference for the International Atlantic Salmon Research Board would need to be updated in light of revisions to NASCO’s conditions of attendance.

9.5 The FAC acknowledged that other RFMOs do not have observers in their Finance and Administration Committee meetings. These meetings are only for the Contracting Parties who pay for the organizations.

9.6 The FAC members from Canada, the EU and United States agreed to revise the document inter-sessionally, for further discussion at the April inter-session meeting. The aim would be to have a document ready to recommend to Council for its adoption at the 2024 Annual Meeting to enable Indigenous organizations to be able to attend the 2025 Annual Meeting in their own right.

10. Other Business

10.1 No additional business was raised.

11. Report of the Meeting

11.1 The FAC agreed to consider the Report of the Inter-Sessional Meeting by correspondence.

12. Close of the Meeting

12.1 The Chair thanked participants for their contributions and closed the meeting.

*February 2024 Inter-Sessional Meeting of the Finance and Administration
Committee – List of Participants*

Canada

*Doug Bliss

Denmark (In respect of the Faroe Islands and Greenland)

*Julius Kristiansen (virtual participant)

Katrine Kærgaard

European Union

*Ignacio Granell

Norway

*Heidi Hansen (Vice-Chair)

Raoul Bierach

Russian Federation

*Anna Shulaeva

UK

*Ruth Allin

Seamus Connor (Chair)

USA

*Rebecca Wintering

Kim Blankenbeker (virtual participant)

Shannon Dionne

Mahvish Madad (virtual participant)

Secretariat

Emma Hatfield

Clare Cavers

*FAC Member

FACIS(24)04

Inter-Sessional Meeting of the Finance and Administration Committee

The Black Diamond, Copenhagen, Denmark

5 & 6 February 2024

Agenda

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2. Adoption of the Agenda
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4. Consideration of the Lump Sum Entitlement for Existing Secretariat Staff
5. Consideration of the Deferred Salary Scheme and Lump Sum Entitlement for New Secretariat Staff
6. Consideration of the Review of the Staff Rules and Staff Fund Rules
7. Consideration of Further Points Raised in the Gunnercooke Review
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9. Conditions for Attendance by Observers at NASCO Meetings
10. Other Business
11. Report of the Meeting
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