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REVIEW OF THE JOINT NATURE CONSERVATION COMMITTEE 2001: STAGE 1 REPORT

I am replying to Sophia Lambert's letter of 16 March 2001, covering a copy of the Stage 1 Report and inviting SNH's views on its recommendations.

At its meeting on 13 June, the Joint Committee agreed a response which you received from Sir Angus Stirling. This letter underlines the fact that SNH agrees entirely with his response, representing as it does the unanimous views of the Joint Committee, including SNH.

At its meeting on 9 May, the SNH Board considered the Reviewer's Report and agreed a complementary response, which is attached.

We understand that the Stage 1 Report remains a draft subject to the views of bodies represented on the Steering Group and responses from a range of other interested parties. We look forward to hearing from you how the Review will be carried forward.

Roger Crofts

REVIEW OF THE JOINT NATURE CONSERVATION COMMITTEE 2001: STAGE 1 REPORT: SCOTTISH NATURAL HERITAGE RESPONSE

The Environment Protection Act 1990 requires SNH, along with the Countryside Council for Wales and English Nature, to discharge the defined Special Functions through the Joint Nature Conservation Committee. SNH has fully discharged these responsibilities since being established in 1992. We have been represented on the Steering Group for the Review. We have a deep interest in this Review and its recommendations.

The principal shortcoming of the Report is its failure to describe and accommodate the roles, responsibilities and standpoints of the 3 country agencies. The Joint Committee is repeatedly portrayed as an entity apart from, and subject to the whim of, the country agencies. In reality, as the legislation makes clear, the JNCC is the three country agencies acting in partnership. All three country agencies have very clear lines of accountability to their respective sponsor departments set out in the usual NDPB Management Statements and Financial Memoranda, backed up by resource provision set out in annual grant-in-aid letters together with written statements of Ministerial priorities in their use of these funds.

In these circumstances, we cannot accept the central argument *“that the UK Government can only achieve the degree of control it needs over the advisory function by making the JNCC into a non-departmental public body funded directly by DETR on behalf of the UK Government, with defined functions of its own. This would end the status of the JNCC as a committee of the country agencies”* (p7 para 18).

Having said this, the Review exercise has brought out several shortcomings of the present arrangements in respect of priorities, funding and accountability arrangements. It is our view that all of these can be satisfactorily resolved within the present statutory and organisational arrangements, using the established lines of accountability. We therefore recommend that the Steering Group is asked to oversee Stage 2 of the Review to bring forward recommendations on these issues.

Our assessment of the Stage 1 Report has brought out several key issues for consideration as follows.

The Special Functions

The Report makes extensive reference to the findings of the House of Lords Select Committee on Science and Technology (the Carver Report), but neglects the subsequent passage of the Environmental Protection Act 1990 and especially the establishment of the Special Functions (Sections 131 to 134) of the country

agencies. These Special Functions, in context of the parliamentary debate which established them, (rather than the earlier recommendations of the Carver Report) should be the starting point for an assessment of the JNCC's track record. In addition, the performance against successive JNCC Corporate Plans approved by the Committee, and the performance improvements following the 'Chairman's Review' led by Lord Selborne should have been taken into account.

The role of Departments

The Report does indicate the transformation of the challenge facing Government resulting from establishment of a range of international agreements since 1990 (eg the Convention on Biological Diversity, 1992). The Report highlights concerns within Government that appropriate technical and scientific advice has sometimes not been as accessible as required. However, the Report overlooks the persistent failure of Government departments (especially DETR itself) to anticipate the scope and timing of their requirements in advance. One of the strengths of the Report is that it details these requirements, bringing them together in one document for the first time. We strongly welcome this.

The Report is especially weak on the implications of devolution. The fact is that nature conservation is devolved, with only a small element of reserved powers where UK obligations under European and wider international agreements are concerned. The JNCC is formally recognised in the Scotland Act 1998 as one of several 'cross-border public authorities'. However, the Report does acknowledge that DETR has failed to distinguish adequately its locus in England from its lead responsibility for the UK as whole.

Funding and accountability

The Report is extremely critical of the funding arrangements whereby country agency contributions to the annual budget are ring-fenced from grant-in-aid. Not only does the Report imply that country agencies have conspired to cut resources to the JNCC, it also suggests that the public accountability arrangements are indefensible.

The Report is quite wrong on both points. First, the country agencies have not been given individual guidance from their sponsor departments on the extent of JNCC contributions. On the contrary, successive grant-in-aid letters (certainly for SNH and, we understand, for CCW and EN) have emphasised additional work for which new resources have been supplied and which have no consequences for the expenditure required on the Special Functions. This could be resolved within the current framework. Second, although experience shows the present accountability arrangements to be cumbersome, the position is nowhere near as black as painted by the Report. It is possible to devise an accountability framework which gives the

JNCC, and especially the Support Unit staff, a much more cohesive basis for their operations.

The role of the country agencies

As noted above, the Report consistently and repeatedly fails to demonstrate an appreciation of the accountability of the country agencies to government, and the fact that the JNCC is the country agencies acting in partnership. Instead, JNCC is consistently treated as a body separate and distinct from the country agencies who, in turn, are repeatedly alleged to be 'working to their own agendas'.

DETAILED COMMENTS

Executive Summary

p4 para 4 – The prominence given to the Carver Report is evidence of the imbalance throughout. There is no corresponding assessment of the EPA 1990 or analysis of the Special Functions.

p4 para 6 – The penultimate sentence is evidence of the Whitehall-centred stance adopted by the author. The ultimate function of the JNCC is to serve government, including the devolved administrations. Within the terms of the devolution settlement, there is no fundamental reason why this should pose a conflict of interests.

p5 para 7 – The third sentence is a prime example of the expression of opinion throughout. No concrete evidence (here or elsewhere) is provided to support the view that the JNCC has been *'increasingly sidelined since its inception'*.

p5 para 8 – The last 3 sentences completely ignore each agency's accountability to its sponsor department and the personal accountability of Chief Executives. The country agencies are not *'left to their own devices'*, on the contrary they are agents of government as set out in their Management Statements & Financial Memoranda, working to Ministerial priorities set out in the annual grant-in-aid letters. The Report is wrong to suggest that the Special Functions were established because of government concern that the new agencies might wilfully fail to co-operate; rather the motive was to provide a framework within which an appropriate UK overview would be established and maintained. The penultimate sentence is therefore not the 'acid test' but rather a straw man.

p6 para 12 – The conclusion stated here we would go along with, but we do not accept the subsequent line of argument towards establishing a separate body.

p6 para 13 – The SNH view is to accept that experience has shown the specific requirements of government departments have not been spelt out. However, this is

not a result of *'concentrating the energies of the JNCC on their own agendas'*, but rather that departments have failed to specify their requirements and, in particular, follow this through with grant-in-aid guidance.

p6/7 paras 14 to 17 – This section summarises the author's assessment of options. The SNH view is that the pros and cons of each options have not been fully explored, that there are practical solutions within the present framework and that the preferred option, establishing a separate body funded by DETR, will create more operational problems than it resolves.

p7 para 19 – The author acknowledges the concerns of the country agencies about how they would relate to the proposed UKNAC. However, the assessment betrays an imperfect understanding of the nature of the co-ordinating function played by JNCC. Instead, there is a strong focus on the specific requirements of Whitehall departments for ad-hoc advice. The central value of the JNCC in maintaining a co-ordinated approach to implementation of international obligations (eg Natura 2000) is overlooked.

Introduction

p9 para 3 – It should be noted that the geographic locus of the JNCC is, strictly, GB. The Northern Ireland representatives are non-voting. However, the workload pressures resulting from international agreements are all UK in scope, and the locus of the JNCC should reflect this.

p9 para 4 – This betrays the unsatisfactory nature of the Review arrangements; JNCC is not sponsored by DETR, but jointly by the three country agencies. Thus the Review should preferably have been convened on similar lines.

Chapter 1

p13 para 4 – It should be noted that the 'research' carried out by NCC during the 1970s and 1980s after the establishment of ITE was dominated by species and habitat surveys in a desperate scramble to establish the baseline inventory of a rapidly changing countryside. Resources were extremely limited for research which aided understanding of the processes of change.

P13 para 5 – It is not clear what is intended by the reference to 'NCC's grants' (line 4). Very few NCC resources were ever allocated to 'grants' (as defined in the 1973 Act). Perhaps the reference is to grant-in-aid, ie the total subventions from Government, or perhaps the reference is to management agreements under the 1968 Act, which is directly relevant to the management of SSSIs.

p14 paras 7-10 – It is known that Scottish Ministers, at least, accepted from the outset that the Scottish agency would need a self-standing science capability and

this was, indeed, established. For Scotland, the purpose of JNCC was never to provide scientific services within Scotland, but rather to provide the basis for a co-ordinated UK perspective drawing on the expertise residing within all 3 country agencies.

p16 paras 16/17 – It is true that the bedding-in of the new arrangements took some time, especially because there was strong opposition to the new arrangements from some former NCC and NGO staff. However, the subsequent establishment of devolved administrations would have forced changes along these lines; the issues raised are thus no more than an historical footnote. The single source quoted (in italics) propagates one particular view, neglecting the changes in Chairman & Chief Officer which took place between 1991 and 1995, or the Treasury Review (?) which took place to explore functions, ways of working and priorities.

p16 para 18 – It should be acknowledged that the downward ‘pressures on the resources of the country agencies’ (lines 4/5) were the policy of the previous administration (particularly marked in Wales in 1995/96). The Selborne Review was a serious attempt to set priorities given limited, and potentially diminishing, resources and had no preconceptions of where the work required should be done. Again, one difficulty which Selborne tackled was the need to secure appropriate closure on a number of large long-term projects inherited from NCC.

p17 para 19 – These bullet points (many of which would have been easily resolved with departmental engagement) illustrate the lack of engagement from departments, especially the then DOE. This is fully acknowledged in para 21.

Chapter 2

P19 para 1 – One key issue which is persistently neglected throughout the report is the role and function of the country agencies themselves in furthering the ‘Government’s nature conservation objectives’. This issue forms an essential context for any discussion of the work of the JNCC and the country agencies’ special functions under the 1990 Act.

P19/ 20 paras 4/ 7 – The assessment in these paragraphs considers exclusively the constitutional position, neglecting the established fact that the nature conservation position is quite different in each of the countries. Much of Scotland, for example, is more closely analogous to Scandinavia than it is to lowland England. Hence there may be legitimate differences in approach derived from these differences in the ecology.

P20 para 10 – Again, this paragraph neglects the perspective of the country agencies. As the preceding text makes clear, they share a common interest in maintaining a thorough understanding of the UK position, and in making sure that the special circumstances of each territory are adequately understood. The shared

responsibility for the Joint Committee provides this framework, and facilitates provision of consistent and competent advice to whichever part of Government requires it.

P21 para 12 – This para is surely wrong to focus unduly on ‘a person or body’ to deliver informed advice. The correct approach is to develop and maintain a shared understanding of the issues such that the constitutional conflicts anticipated earlier do not materialise. Again, the country agencies’ shared responsibility for JNCC is a mechanism designed to secure this shared understanding.

P22 para 17 – It is difficult to reconcile this approach with the final recommendation to establish a UK body which is convened and resourced exclusively by a Whitehall department.

P24/ 25 paras 26/ 27 – It is puzzling to give so much prominence to the Rural White Paper for England without any obvious attempt to accommodate related policy statements by the devolved administrations.

Chapter 3

This chapter is flawed because it fails to consider the coordination arrangements in place to establish a shared approach under the aegis of the JNCC. Apart from country agency representation on the Committee itself, these include regular meetings of Chief Executives, Chief Scientists and Policy Directors, the Joint Management Group, lead agencies, lead coordination networks and interagency working groups.

P28 para 2 – This para betrays some confusion about the focus of the study. Considerable space in Chapter 2 has been devoted to an assessment of the Government’s requirements, concluding that nature conservation is a high priority. But here it is asserted that there is no ‘clear statement of objectives’ and suggested that wider consultation is required.

P30 para 14 – This para fails to place the capabilities of the JNCC Support Unit in the wider context of country agency staff, who equally possess ‘an extensive network of other contacts who they can draw on to supplement their own thinking’. It may be that the views expressed here result from a failure to appreciate the strength of the ‘science base’ in the country agencies, contradicting the fears expressed in the Carver Report.

P31 para 20 – This para introduces another misconception which is repeated later in the report. Since the country agencies are funded by government, with explicit Ministerial guidance on priorities, it is not plausible that they express ‘*their own initiative*’ outside this framework.

Chapter 4

This chapter understates the contributions of all country agencies, encouraged by guidance and funding from their sponsor departments, to contribute to implementation of the UK BAP. See especially the production of Species and Habitat Action Plans (paras 21 and 22), which implies a more substantial contribution from JNCC than their key role in securing a coordinated approach to the work conducted mainly by the country agencies and others.

Chapter 5

This chapter on implementation of the UK's Ramsar obligations nicely illustrates the contributions of country agencies and the coordinating role played by the JNCC.

Chapter 6

Again, paras 22 & 23 illustrate the contribution made by the country agencies (in this case SNH) within the shared JNCC framework.

Chapter 7

No comments

Chapter 8

This chapter neglects to highlight the fact that the JNCC provides a UK framework for the country agencies to advise government in the economic zone between the 12 mile and 200 mile limits, when their individual locus is restricted by the former.

P52 para 9 overlooks the substantial contribution of country agencies in providing emergency response cover for oil spills in coastal waters.

Chapter 9

This chapter overlooks the significant contributions made by the country agencies in their respective territories, for example in Scotland in preparing the case for an extension of the St Kilda World Heritage Site into the subsea environment.

Chapter 10

By focussing on the work carried out by JNCC Support Unit staff, this key chapter understates the 'close partnership across all the country agencies, the Support Unit, the relevant departments of the devolved administrations and other government departments' to secure implementation of the European Directives. For example, para 13 states baldly that 'most of the work in identifying individual sites for

proposing as SACs is undertaken by the country agencies', not acknowledging that this has involved hundreds of people and cost multi-millions over a period of several years. JNCC's role has been one of coordination and securing a consistent approach, an application of the common standards element of the special functions which was not fully appreciated at the time of the 1990 Act. Paras 22 and 23 make no mention of the equally substantial contributions of country agencies to identification, consultation on and advice to the respective departments on SPAs prior to their classification. In resource terms, the JNCC contribution is marginal.

P59 para 27 – This passing reference to the Water Framework Directive does not make clear the marginal nature of the JNCC contribution when set alongside the lead agencies (Environment Agency and SEPA) and their respective country agency partners.

Chapter 11

This chapter places the JNCC contribution in its proper context, where the principal channels of communication are between each country agency and the respective department.

Chapter 12

Common standards is one of the most clearly specified special functions, so it is no surprise that this is one area where the JNCC Support Unit clearly makes a leading contribution, along with the information sharing initiatives such as Recorder 2000 and the NBN.

Chapter 13

The interesting thing about the analysis in this chapter is that it largely acknowledges the contribution made by country agency staff to fulfilment of the 'JNCC role', which rather contradicts the analysis elsewhere which treats the country agencies as quite separate entities.

Chapter 14

P70 para 7 emphasises that JNCC delivery depends on the shared approach adopted by the country agencies.

The 'Government View' set out in paras 8 to 14 is deeply biased to the Whitehall view, neglecting the requirements of the devolved administrations. This section does not reflect the perspective of the recently published Millennium Biodiversity Report, that implementation of the UKBAP depends on the work of country biodiversity groups, pioneered and validated by the Scottish Biodiversity Group.

P72 para 21 – There is no relevant reference in ‘para 1 above’. Again, there is the suggestion that country agencies might act ‘as they see fit’, when in reality they are subject to guidance from their respective parent departments. This para is the first suggestion of an independent JNCC, but with ‘necessary links’ to the country agencies. It is not explained what form these links might take.

Chapter 15

P75 para 13 – There is little doubt that none of the country agencies are well-placed to provide the advisory service required for CITES licensing, but once again the phrase ‘provide as the (country agencies) see fit’ is used (see previous comments about this choice of language).

Chapter 16

No comments

Chapter 17

No comments

Chapter 18

P81 para 9 – The last sentence, stating that ‘the country agencies may not have sufficient interest in some issues to provide the necessary resources (to advise departments)’ again displays a lack of understanding of the relationship between country agencies and their parent departments expressed in resource subventions and Ministerial guidance on priorities.

P 19 para 11 – It is wrong to suggest that country agency marine expertise within the 12 mile limit is of no relevance beyond this administrative boundary.

Chapter 19

All the examples in chapter show how the JNCC, as a shared operation drawing in the expertise and data maintained by the country agencies, provides added value which would be difficult to envisage in any other framework.

P86 para 24 acknowledges the weakness in recent DETR engagement with JNCC, but wrongly attributes this to ‘blurred’ lines of accountability.

Chapter 20

P91 para 35 – This conclusion completely misrepresents the nature of the relationship between the country agencies. There are ‘mechanisms for the country

agencies to resolve disputes' through escalation to the parent departments and concordats which now exist between them. Such problems as have arisen are rooted in the indifferent collective engagement of these parent departments with the issues catalogued exhaustively in previous chapters. The track record of the JNCC has been a considerable degree of success in securing consensus in the face of this indifference.

Chapter 21

This chapter seems to overlook the substantial transformation of the demand for competent UK advice on nature conservation since the passage of the 1990 Act. For this reason, it is not sensible to judge the track record of the JNCC solely on the original criteria, but also to consider how these criteria themselves have stood the test of time.

The section headed 'Funding arrangements' provides an extremely prejudicial account of the history and present funding arrangements. It appears to invite the conclusion that public accountability rules forbid any substantial collaboration involving different arms of Government! What chance cross-cutting policies and joined-up Government if this were so? No authoritative evidence is provided that an arrangement along the lines of the JNCC cannot be reconciled with public accountability rules.

p100 para 33 – The need for departmental engagement is well-stated, but it is far too extreme to suggest that the lack of engagement need lead to 'JNCC being increasingly marginalised and its Chairman and independent members being reduced to impotent bystanders'.

p101 para 34 – It is factually incorrect to equate the combined grant-in-aid of the country agencies with 'total expenditure on nature conservation', given the wider remit of CCW and SNH.

Chapter 22

This chapter fails to present an even-handed assessment of the options, clearly favouring the author's preference.

Option 1 – Privatisation – The Report swiftly rejects this option in 3 paragraphs. Although this is not a desirable or realistic option, there are ways in which the JNCC expertise could be 'outsourced'. For example, component institutes of the Natural Environment Research Council and similar bodies might happily bid to provide advice at the right price. However, this approach would not easily be reconciled with the Special Functions partnership of the Country Agencies.

Option 2 – Government agency – The Report rejects this option even more quickly in 2 paragraphs. The brevity of this assessment alone suggests it has not been properly evaluated. One reading of the earlier part of the Report is that DETR, in particular, needs a trusted source of competent advice ‘on tap’. Perhaps this could be provided in-house without materially affecting the Special Functions. This opens up the possibility (not explored in the Report) that these substantial requirements of DETR for advice could be met in another way (in-house, contracted out, by a separate agency or NDPB), without impinging directly on the Special Functions roles of the country agencies working together in the JNCC. Certainly, elements of the DETR requirements such as advice on CITES licensing, the UK Dependent Territories and, possibly, the marine environment in the 200-mile Exclusive Economic Zone do not sit easily with the established locus of the country agencies. Perhaps they could more effectively be catered for by a separate agency.

Option 3 – Strengthen existing JNCC – Although the issues are explored in no less than 27 paragraphs, the bulk of the argument concentrates on perceived difficulties, preparing the ground for Option 4 (below). Paras 7 to 9 (p106) make a strong case for reinforcing the present framework with a more explicit engagement of departments. But Para 10 dismisses all this on the specious ground that the country agencies cannot be trusted with these co-ordinating functions. Para 14 (p107) makes a constructive suggestion about how departmental engagement could be more effectively organised by recognising the separation of England and UK responsibilities within DETR.

The following section on funding (paras 16 to 27, pp 108/109) displays once more the prejudice about country agency priorities and intentions. Para 16 presents one outline of a funding arrangement which could be made to work – if departments would engage. In this sub-option, there would be direct funding of those advisory functions which UK government especially required. This raises the difficulty of costing this work separately from the rest of the programme. However, a similar arrangement whereby Departments and country agencies together agreed a budget which was then ring-fenced through the grant-in-aid of the latter could avoid this artificial separation.

Paras 23 & 24 (p109) considers the question of lines of accountability. Many of the difficulties envisaged arise from the hybrid funding approach considered above. Para 26 points to the solution, especially since the difficulties set out there are relatively trivial.

It is hard to complete an evaluation of this option without entering into the Stage 2 analysis.

Option 4 – Create a new NDPB – The 10 paragraphs of assessment show that the author clearly favours this option and simply dismisses the difficulties it would create, especially the relationship with the existing country agencies and the devolved

administrations. The Report offers no reply to the argument that this option would simply add to the proliferation of public bodies. The legitimate concerns of the country agencies are noted but dismissed. In reality there would be real practical difficulties for SNH. Our principal lines of accountability are, and will remain, through Scottish Ministers to the Scottish Parliament. The proposed UKNAC would have a role in defining the implementation of the UK Government's international obligations (such as the Habitats Directive). Ensuring that legitimate Scottish perspectives were adequately accommodated in any guidance issued by UKNAC would pose a significant challenge.

Chapter 23

The proposals represent the culmination of the views expressed earlier in the report and are subject to all the shortcomings of the Report noted above.

Scottish Natural Heritage

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