REPORT 4: Defra Grant Funding Agreement

1. Purpose of Report
   a. To seek members’ approval of a new Defra funding Agreement to replace the previous Financial Grant Memorandum last agreed in 2008.

2. Recommendations
   Members are recommended to:
   a. To note the intention and implications of Clause 23.2 of the Defra Funding Agreement as set out at Appendix 1 to Report 4
   b. Approve the Defra Funding Agreement as set out at Appendix 1 to Report 4.

3. Implications
   a. Financial: The inclusion of Clause 23 has the potential to create a financial implication if Defra requires the Authority to divert resources at a future date. There are no quantifiable financial implications.
   b. Equalities: None
   c. Business Plan: Defra grant in aid is essential to the ongoing operation of the National Park Authority and to providing the capacity to deliver the Authority’s Business Plan. Clause 23 has the potential to fetter the discretion of the Authority to prioritise the delivery of aspects of the Business Plan.

4. Background
   a. Section 72 of the 1995 Environment Act makes provision for the Secretary of State to make a grant to National Park Authorities and allows the Secretary of State to set out the terms on which this grant is offered and on its use. Known as ‘National Park Grant’ (NPG), this is the single biggest source of the Authority’s income.
   b. The framework for payment of NPG, reporting, claiming and setting restrictions on its use have previously been set out in a Financial Grant Memorandum (FGM) between the National Park Authorities (NPAs) and Defra. The most recent version of this was agreed back in 2008.
   c. Recent changes in rules around funding have required Defra to re-visit the FGM, and earlier this year Defra engaged with national parks in order to update the agreement which frames NPG.
   d. Defra have been working with the Yorkshire Dales NPA (on behalf of and with the agreement of all 10 English NPAs) on a new Grant Funding Agreement (GFA) and it is intended that this new agreement replaces the current (2008) FGM under which our National Park Grant is paid.

5. The New Grant Funding Agreement
   a. A teleconference with chief financial officers and finance officers from all 10 NPAs and Defra was held on 1st July 2019. This allowed the NPAs to feed back to Defra on an early draft of the proposed agreement. This was a positive meeting and Defra agreed to make a number of changes and clarifications to the document.
   b. The proposed new agreement is a more detailed contract than the original FGM and is based on a typical Defra grant agreement format, with additional clauses such as intellectual property rights and grant clawback, default, and termination inserted.
   c. Key changes/additions from the 2008 FGM include:
Additional quarterly reporting as part of the standard grant drawdown form to include fraud, land disposals at less than best value, debts and liabilities written off, special payments and breaches of the members code of conduct. This is not considered onerous by officers.

Restriction around use of grant – mainly paying for lobbying. However the remit on eligible expenditure remains wide (see Annex 2 of the proposed agreement attached at Appendix 1 to Report 4). This is considered appropriate and acceptable.

**Outstanding Concerns**

d. Following the 1st July teleconference, Defra agreed to some revisions (mostly minor or around clarity of wording) to the document and asked NPAs for any further comments.

e. Officers were at this point generally content with the proposed changes and detail of the GFA, with one exception. With respect to clause 23 of the proposed GFA, there are concerns that as a new clause (it is not in the 2008 FGM) this introduces a potentially open ended commitment from national parks (and as it is intended to allow Defra to make ‘reasonable’ requests of NPAs to change the funded activities), it has the potential to fetter the discretion of NPAs as independent special purpose local authorities.

f. Clause 23 reads:

23. **CHANGES TO THE AUTHORITY’S REQUIREMENTS**

23.1. *The Authority (Defra) will notify the Grant Recipient (NPA), where reasonably possible of such changes to the activities, which are supported by the Grant, in advance to coming into effect. The Authority will have regard to any legally binding agreements the Grant Recipient has already entered into, which might be affected by such changes.*

23.2. *The Grant Recipient will accommodate any reasonable changes to the Authority’s needs and requirements under these Conditions.*

g. The inclusion of clause 23 would enable Defra to notify NPAs of changes to the activities that are supported by the grant and where it is reasonable to do so it will give advance notice before the changes come into effect. There is a requirement on Defra to “have regard to” any legally binding agreements that NPAs have in place but as we are aware the “have regard to” requirement is weak.

h. Defra have indicated that they are, on legal advice, keen to retain this clause, and that they are relying on Section 72 of the 1995 Environment Act for the power to insert such a clause. Defra have following discussion put some safeguards around notice and legally binding agreements in to this clause and have stated that they would endeavour to give warning and discuss / agree any changes to the requirements under the grant agreement.

i. In discussions with the Yorkshire Dales NPA, Defra officials have indicated that from their verbal discussions with Defra this clause is intended to capture to ‘emergency direction’ type incidents, for examples Foot & Mouth (where Defra did engage with us in terms of management) and major flooding, because we’ve got people on the ground.

j. In raising our concerns officers have indicated that NPAs have and would always work with Defra and to provide support and meet requests where possible. We have an existing mechanism to do this whereby we would seek the agreement of our Authority, where necessary, following a request from Defra.
6. Conclusions
   
a. The new Defra GFA will frame how the Authority receives its NPG in future. The existing FGM has been in place for some time and the process of agreeing an updated agreement has been an engaging and positive one.

b. This report has highlighted some concerns over the inclusion of a new Clause 23.2 and Defra have sought to offer reassurance that it is intended only to be used in exceptional circumstances. Given the potential of this clause to fetter the discretion of the Authority, it is recommended that the decision to sign up to this new Grant Funding Agreement needs to be made by the Authority members.

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Background papers: None