

PENTLAND HILLS REGIONAL PARK BOUNDARY BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Pentland Hills Regional Park Boundary Bill introduced in the Scottish Parliament on 30 April 2015:

- Explanatory Notes;
- a Financial Memorandum;
- Christine Grahame's statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 67-PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Christine Grahame MSP, the member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE BILL

3. The Pentland Hills Regional Park Boundary Bill makes provision to alter the existing southern boundary of the Pentland Hills Regional Park (“the Park”) so that the Park includes all (or substantially all) of the Pentland Hills range. It provides for this to happen in one of two ways – either in regulations made by the Scottish Ministers (under section 1) or automatically, 2 years after Royal Assent (under section 3).

COMMENTARY ON SECTIONS

Section 1: Regulations altering the boundary of the Pentland Hills Regional Park

4. Subsection (1) allows the Scottish Ministers to make regulations to alter the southern boundary of the Park. The regulations must designate the area that, as a result of the altered boundary, is to be included in the Park.

5. Subsection (2) sets three restrictions on the area that may be so designated. Two of these – in paragraphs (a) and (c) – are geographical, while the third – in paragraph (b) – is procedural.

6. The first geographical restriction is that the area must lie between the existing southern boundary and the outer limit. The “existing southern boundary” is defined (in section 4(1)) as that part of the boundary defined in the 1984 designation order (under which the Park was established) which runs across the range of hills between the A70 and A702, while the “outer limit” is defined (also in that section) by reference to three A-roads, the A70, A721 and A702, which together contain the Pentland Hills range to the south and west. The second geographical restriction is that the designated area must include the three “southern summits” – defined in section 4(1) as Seat Hill, Black Mount and Mendick Hill.

7. The net effect of these two (geographical) restrictions is that any new southern boundary must bring within the Park all three of the southern summits (and hence most if not all of the southern end of the Pentland Hills range) but cannot extend the Park beyond any of the three A-roads. This still leaves a substantial degree of discretion as to where the line of the (altered) southern boundary is to lie.

8. The third restriction is that the designated area must have been proposed to Ministers by all five “relevant local authorities” (listed in section 4(1)), acting jointly, having followed the procedure specified in section 2 of the Bill. Ministers, therefore, have no power, in regulations, to alter the Park boundary on their own initiative or in ways other than what has been proposed to them; their only discretion is either to accept or reject the boundary proposed.

9. Under subsection (3), any regulations (to alter the boundary) are subject to the affirmative procedure – that is, they require approval, by resolution, of the Parliament.

Section 2: Procedure to be followed by the relevant local authorities

10. Section 2 sets out the consultation procedure to be followed by the relevant local authorities before proposing an alteration of the boundary to Ministers. Under subsection (1), they must first notify every person who owns, occupies or leases land within the area that they propose to designate (i.e. the area by which the Park is to be extended beyond its existing southern boundary), and such other persons or bodies as they consider appropriate. This latter category could include, for example, persons owning, occupying or leasing land outside the area in question (but whose land could have been included within it). It could also include those with a different sort of interest in the land within (or outside) the area in question – such as those with expertise in how that land is or may be used (but who are not themselves owners, occupiers or lessees). Notice of the proposal must also be published in whatever way the relevant local authorities consider reasonable – for example, on their websites, or in local newspapers.

11. Under subsection (2), a period of at least 28 days must be provided for consultation on the proposal. Subsection (2) also allows the five local authorities to divide up the task of giving notice to specific persons, and publishing that notice more generally, e.g. with each taking responsibility for doing so within its own area, or with one doing all of the work on behalf of all five.

12. Subsection (3) requires the five authorities to consider any representations made during the consultation period – and to do so jointly. This ensures that any proposal made to Ministers is made on the basis of the authorities’ shared understanding of stakeholders’ views.

13. While subsections (1) to (3) set out the core requirements of the consultation procedure that the five local authorities are required to follow, subsection (4) allows Ministers to make further provision about that procedure in regulations. This would allow Ministers, for example, to specify in greater detail the information that is to be included in any notice given or published, or to require certain methods of notification or publication to be employed. Under subsection (5), any regulations further specifying the consultation procedure are subject to the negative procedure – that is, they are subject to annulment by resolution of the Parliament.

Section 3: Alteration of the boundary of the Park on the default date

14. Subsection (1) provides a default mechanism for altering the existing southern boundary of the Park. This mechanism only operates if, on the “default date” (defined as two years after Royal Assent – section 4(1)), the boundary has not already been moved by means of regulations (under section 1). Where this default mechanism does operate, the boundary moves immediately

to the outer limit (defined in section 4(1) by reference to three A-roads) – thus expanding the Park to the maximum extent permitted under the Bill.

15. Subsection (2) provides that the power to alter the boundary by regulations (under section 1) can be exercised after the two-year “default date” as well as before it. This ensures that if the five local authorities are able to agree on a southern boundary that satisfies the requirements of section 1(2), then it is still possible for that to become the Park’s southern boundary even if the process of consulting on it, proposing it to Ministers, and having it given effect to in regulations is not completed until after the two-year deadline has expired. In other words, the fact that the southern boundary has moved to the outer limit on the default day (by operation of subsection (1)) does not prevent it moving (back in) again on a later day to the local authorities’ preferred boundary (by virtue of regulations under section 1).

Section 4: Interpretation

16. Section 4 defines key terms used in the Bill. The definitions of “the existing southern boundary of the Park”, “the southern summits” and “the outer limit” are best understood by reference to the illustrative map which is available on the Scottish Parliament website along with the Bill¹.

17. Each of the five local authorities named in the definition of “relevant local authorities” either has some part of the current Park, or at least one of the southern summits, in its area. As a result, any proposed alteration to the boundary that could validly be proposed to Ministers under section 1 is bound to create a Park whose area overlaps with those of all five authorities.

¹ An overview map has been produced by the Scottish Parliament’s Non-Government Bills Unit, for illustrative purposes only, and is available on the Scottish Parliament’s Bill pages: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/88710.aspx>

These documents relate to the Pentland Hills Regional Park Boundary Bill (SP Bill 67) as introduced in the Scottish Parliament on 30 April 2015

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