

PENTLAND HILLS REGIONAL PARK BOUNDARY BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Christine Grahame MSP. Its purpose is to assist consideration by the Delegated Powers and Law Reform Committee, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of the provisions in the Pentland Hills Regional Park Boundary Bill conferring power to make subordinate legislation. It describes the purpose of the two subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. This Bill makes provision for altering the boundary of the present Pentland Hills Regional Park. It will result in the existing southern boundary being altered so that the Park includes all (or substantially all) of the Pentland Hills range.

3. The enlarged Park will encompass the whole area lying inside the line of the main public roads bounding the Pentland Hills, namely, the A70, the A721, and the A702. This will happen automatically, 2 years after Royal Assent. That is, unless regulations are made under the Bill which designate an alternative area, again lying inside the line of those roads, and which includes named landmark summits within the southern reaches of the Pentland Hills.

4. The Bill provides for such regulations to be made by the Scottish Ministers. Before this could be done, it would be necessary for the 'relevant local authorities', whose areas include any part of what could become the enlarged park, to propose an area to be designated by the Scottish Ministers. In doing so, the local authorities would first require to have undertaken a notice and consultation process. Subject to those steps being taken the Scottish Ministers would be able then to make regulations providing for enlargement of the Park so as to include an area between the existing southern boundary of the present Park and the aforementioned, outer limit, public road boundary.

5. The Bill provides for a two year lead in period before the 'default' road boundary applies. That is intended to afford a sufficient period for a suitable extended boundary to be set at an

earlier date, by regulations, following the notice and consultation process. Such regulations could however follow beyond the end of that two year period.

Rationale for subordinate legislation

6. The Bill contains two powers to make subordinate legislation, both of which are delegated to the Scottish Ministers.

7. The first of these represents an integral element of this Bill. While the new legislation provides for a ‘default’ outer limit boundary, it is expected that use will be made of the subordinate legislation making power contained within section 1 so that the Scottish Ministers will make regulations providing for an alternative boundary to the default one, following an approach to them by the relevant local authorities.

8. The legislative background to Regional Parks and the context for this Bill are such that in order to take forward extension of the present Park by means of primary legislation it was considered that there was a need also to provide a further mechanism for subordinate legislation to be made under the Bill. This is explained further, below. The regulation making power within section 1 addresses that need.

9. The second regulation making power, in section 2, is of lesser significance. The Bill already makes provision with regard to the procedure to be followed by the relevant local authorities before proposing an area to be designated. It is possible that a need may however be identified to make further provision in that regard. The power set out within section 2 provides a means of doing so, and makes provision for what is considered to be an uncontroversial matter to be taken forward by means of subordinate legislation.

Delegated powers

Section 1(1) – altering boundary of park

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: the affirmative procedure

Provision

10. The Bill makes provision about altering the boundary of the Pentland Hills Regional Park. This can be achieved in one of two ways, either directly in terms of the ‘default’ measure set out on the face of the Bill, or by means of regulations made under the Bill.

11. In essence, a new extended boundary, following the line of the aforementioned public roads, will come into place 2 years after Royal Assent. That is the case unless an alternative boundary is established by means of regulations made by the Scottish Ministers, following a proposal having been made to them by relevant local authorities. In those circumstances the Scottish Ministers are empowered to designate an alternative area, lying inside the line of the public roads, and embracing a number of specified summits within the lower part of the Pentland Hills. Such regulations could also follow at a later date, following the establishment of the road based outer boundary on the default date.

Reason for taking power

12. It is anticipated that the extended boundary of the park will indeed be settled by means of regulations made under the Bill (ie rather than matters resting on the basis of the ‘default’ road boundary). The regulation making power in section 1 therefore represents a core part of the Bill and how its objective of an enlarged Park is to be delivered. The ‘fallback’ route to an enlarged Park is achieved by means of the ‘default’ boundary, which would follow automatically under the Bill if nothing is done in the 2 year period after Royal Assent. But a more suitable boundary is likely to be achieved by means of a consultative process and following the procedure detailed within sections 1 and 2, with regulations being the means of taking forward the process set out there.

13. The Bill has, necessarily, adopted the approach of incorporating a core regulation making power, to be used by the Scottish Ministers in designating an extended area. Legislative provision for Regional Parks is contained within section 48A of the Countryside (Scotland) Act 1967. This sets out a ‘designation order’ process under which local authorities can designate lands within their areas as Regional Parks. Ordinarily, then, that same process is what would be used by local authorities, in the event of them having looked to take forward extension of the Pentland Hills Regional Park. That course is not however one which local authorities have pursued, hence the proposed Bill. And in consequence of matters being taken forward by means of primary legislation, in the form of a Member’s Bill, it has been necessary also to devise a suitable overall legislative package for doing so. It was considered that this could best be achieved by means of the route provided in the Bill, in terms of which the regulation making provision in section 1 represents a component part.

Choice of procedure

14. In the event of the Scottish Ministers making regulations altering the boundary of the Regional Park then those regulations are to be subject to the affirmative procedure. At a general level, that procedure is considered appropriate given that it would be by means of such regulations that the Bill’s objective of an extended Regional Park would actually be delivered. They are therefore fundamental to the structure of the Bill. Further, in such circumstances the boundary which is settled by means of regulations may look rather different from the outer limit, road boundary. While embracing the named summits, so that the extended Park covers all (or substantially all) of the Pentland Hills, it might nonetheless deviate quite significantly from the road ‘boundary’.

15. It is important therefore, taking account of the above considerations, that there is the opportunity for such regulations to be subject to robust Parliamentary scrutiny, which is ensured in consequence of them being subject to the affirmative procedure.

Section 2(4) – procedure to be followed by the relevant local authorities

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: the negative procedure

Provision

16. The Bill makes provision about the procedure to be followed by the relevant local authorities before they propose an area to be designated by the Scottish Ministers. This includes such matters as who is to be given notice of their proposal, how that notice is to be provided, and what it is to contain. Section 2(4) enables the Scottish Ministers, by regulations, to make further provision about procedural matters, including the form of the notice, the persons to whom it is to be given, and the manner in which it is to be given or published.

Reason for taking power

17. As indicated, the Bill does already set out the procedure to be followed by the relevant local authorities. It is considered that a sufficient level of detail is provided in that regard, within section 2(1) to (3), to enable the new legislation to be satisfactorily operated. However, matters concerned with expansion of the park boundary will be of interest to a number of persons and the Scottish Ministers may wish to be able to make more comprehensive provision about the procedure to be followed. This might include, for example, specifying particular persons to whom notice is to be given. Or perhaps, so far as the manner in which notice is to be given, requiring notice to be contained in local newspapers and also on the websites of the relevant local authorities. It is considered reasonable that there should be a facility to do so by means of subordinate legislation, rather than for this to necessitate amendment to the primary legislation. Section 2(4) serves that purpose.

Choice of procedure

18. In the event of the Scottish Ministers wishing to make further provision regarding procedural matters then regulations made by them are to be subject to the negative procedure. That is considered to afford the Parliament an appropriate level of scrutiny. The subject matter of any regulations made under section 2(4) would be uncontroversial. Such regulations, being concerned with procedural matters, would not contain anything which would warrant or necessitate a higher level of scrutiny being applied to them.

19. While the list of matters which could be covered within such regulations (as set out at subsection (4), paragraphs (a) to (c)), is not an exhaustive one, any other matters dealt with in such regulations would be concerned (simply) with the procedure to be followed by the relevant local authorities before proposing an area to be designated. On that basis, the negative procedure is considered to be suitable, and appropriate to the subject matter of the regulations.

This document relates 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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