This document relates to the National Parks (Scotland) Bill (SP Bill 12) as introduced in the Scottish Parliament on 27 March 2000

NATIONAL PARKS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the National Parks (Scotland) Bill introduced in the Scottish Parliament on 27 March 2000:

   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on Legislative Competence; and
   - the Presiding Officer’s Statement on Legislative Competence.

A Policy Memorandum, also prepared by the Scottish Administration, is printed separately as SP Bill 12–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Administration 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.

3. 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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Section 1: National Park proposals

4. This section sets out the criteria for considering an area for National Park status, and the aims of National Parks.

5. Subsection (1) allows the Scottish Ministers to propose an area for designation as a National Park, with a corresponding National Park authority to exercise certain functions if it appears to them that the conditions in subsection (2) are met. Such a proposal is referred to in the Bill as a “National Park proposal” (subsection (5)).

6. Subsection (3) sets out the aims of National Parks.

7. Subsection (4) requires a proposal made by Ministers under subsection (1) to be in writing, specifying the general area of the Park and the functions which the National Park authority should exercise. The area can only be in general terms at this stage, since the whole purpose of the process set out in the following sections is to provide for a process of consultation to inform the decision of the Scottish Ministers on matters such as park boundaries.

Section 2: Reports on National Park proposals

8. This section sets out the process through which the Scottish Ministers may obtain from a public body with the relevant expertise a report on a National Park proposal, prepared following consultation. The Scottish Ministers must publish that report.
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9. Subsection (2) sets out the matters which the report must cover. These include at paragraph (b) the specific question whether or not the area set out in the proposal should be designated as a National Park. Paragraph (d) allows the Scottish Ministers to specify any other particular matters which the report should cover. These might include, for example, the number of members a particular National Park authority should have.

10. Subsection (3) requires the Scottish Ministers to send a copy of the proposal to the person who is to provide the report.

11. Subsection (4) covers the situation in which more than one body/person (“the reporter”) is required to report (for example, to ensure that certain areas of expertise are adequately addressed). This subsection therefore makes clear that where a requirement is addressed to more than one body/person, it can impose different requirements on each, and can modify the requirements set out in subsection (5) regarding publication and consultation, to avoid having more than one set of consultation and publicity arrangements. It provides though that in these circumstances the requirement will be for one reporting document.

12. Subsection (5) sets out the duties on a reporter with respect to publicity and consultation. The reporter must send a copy of the proposal and the Scottish Ministers’ requirement to every local authority which has at least part of its area covered by the proposal; must publicise the proposal as it sees fit; and must consult every local authority and community council, people representative of those living and working in the area covered by the proposal, and anyone else it sees fit, on the proposal.

13. Subsection (6) requires local authorities which receive a copy of the proposal and the requirement under subsection (5) to make these available for public inspection over a period specified by the reporter.

14. Subsection (7) requires the reporter, when preparing a report, to take account of a number of factors: whether the matters in section 1(2) are satisfied in relation to the proposed area; the aims of National Parks (in section 1(3)); views expressed during the consultation period; and anything else the reporter considers relevant (such as administrative boundaries).

15. Subsection (8) requires the report to include the views of the reporter on the matters specified in the requirement by the Scottish Ministers (i.e. those set out in subsection (2)), but also allows the reporter to include consideration of other matters thought to be relevant. This means that while the reporter has some discretion in deciding what issues have a bearing on the question of whether the area should be designated as a National Park, advice must nevertheless be given on the matters set out under subsection (2) as required by the Scottish Ministers.

16. Subsection (9) requires the Scottish Ministers to publish the report.
Section 3: Statements by the Scottish Ministers

17. This section sets out the process which the Scottish Ministers must follow in cases where they wish to consider an area for National Park designation, but do not require a report from another body. The process is similar to that set out in section 2, and requires Ministers to publish a statement following public consultation on the proposal.

18. Under subsection (1), if the Scottish Ministers do not want a report prepared under section 2, they must undertake consultations as set out under subsection (3) and prepare and publish a statement on the National Park proposal dealing with specified issues. Subsection (2) sets out those issues, which are the same as in section 2(2).

19. Subsection (3) requires that before publishing their statement the Scottish Ministers must send a copy of the proposal to every local authority which has at least part of its area covered by the proposal; publicise the proposal as they see fit; and consult every local authority and community council, people representative of those living and working in the area covered by the proposal, and anyone else they see fit, on the proposal.

20. Under subsection (4) local authorities which receive a copy of the proposal must make it available for public inspection over a period specified by the Scottish Ministers.

21. Subsection (5) requires Ministers, in preparing a statement under subsection (1), to take account of a number of factors: whether the matters in subsection (2) are satisfied in relation to the proposed area; the aims of National Parks (in section 1(3)); views expressed during the consultation period; and anything else they consider relevant (such as administrative boundaries).

Section 4: Local inquiries

22. After publication of a report or a statement, the Scottish Ministers may, if they think fit, provide for a local inquiry to be held. The rules governing such an inquiry would be the same as those governing inquiries or hearings under the Local Government (Scotland) Act 1973.

Section 5: Making of designation orders

23. This section and section 6 set out how a National Park is set up through a designation order.

24. Subsection (1) provides that, following a report or statement under section 2 or 3, the Scottish Ministers can decide to make a designation order setting up a National Park either in terms of the original proposal or in a modified form.
25. Under subsection (2), in making their decision they must take account of the report or statement, and of any local inquiry held.

26. However, subsection (3) provides that, if they decide to make a designation order, the Scottish Ministers must wait 6 weeks from the date of the report or statement before doing so, and 6 weeks from the publication of the report of local inquiry if one is held. Section 32(5) of the Bill provides that a designation order setting up a National Park must be considered in draft and approved by affirmative resolution of the Scottish Parliament before the order can be made.

**Section 6: Designation orders: further provisions**

27. This section sets out what a designation order must contain.

28. Under subsection (1) it must designate the area of the National Park; it must provide for the establishment of a National Park authority; and it must specify the total number of members of the authority and, for the members to be nominated by local authorities, the names of the authorities and how many members each is to nominate.

29. Subsections (2) and (3) enable the order to specify the area of the National Park by reference to a map laid before the Scottish Parliament.

30. Subsection (4) requires the designation order to specify the date on which the functions conferred on the National Park are exercisable. Not all functions will be exercisable from the same date.

31. Subsection (5) requires the Scottish Ministers to send a copy of a designation order and deposited map to the local authorities whose areas are at least partly within the designated area. Local authorities must make these available for public inspection.

**Section 7: National Park authorities: constitution etc.**

32. This section introduces the provisions about the constitution of National Park authorities as set out in schedule 1.

**Section 8: Functions of National Park authorities**

33. Subsection (1) sets out the general purpose of a National Park authority. That purpose is to ensure that the aims set out in section 1(3) are achieved in a way which is mutually supportive, rather than looking at each of the aims separately and in isolation.

34. Subsection (2) summarises the various powers of a National Park authority and where these are set out. In particular, general powers are in schedule 2 and specific
functions in schedule 3. Planning functions may be conferred by virtue of section 9. There may be additional functions conferred in the relevant designation order.

35. Subsection (3) sets out a general enabling power so that a National Park authority may do anything incidental to its main functions which it considers will help to accomplish its general purpose set out in subsection (1) or carry out its functions.

36. Subsections (4) and (5) make clear that this power does not allow any activity which is specifically restricted by the Bill, nor does it include a separate power to raise money (without excluding an activity simply because it has financial consequences or involves acquiring or disposing of property).

37. Subsection (6) sets out the guiding principle for a National Park authority in exercising its functions: to act with a view to accomplishing its general purpose set out at section 8(1) – in other words, to ensure that the aims set out in section 1(3) are collectively achieved in relation to the National Park in a co-ordinated way. However, recognising that there will be occasions when even having taken a co-ordinated approach there remains conflict between the aim at section 1(3)(a) and the others, greater weight must be given to (a), the conservation of natural and cultural heritage. This acknowledges that the high quality of the natural and cultural heritage is one of the main reasons for designating an area as a National Park.

Section 9: Planning functions

38. This section enables the arrangements for the exercise of the town and country planning function (under the Town and Country Planning (Scotland) Act 1997 and related planning Acts) in a National Park to be specified in the designation order setting up that National Park. These arrangements may take the form of—

- the National Park authority being the planning authority for the area of the Park,
- the National Park authority being the planning authority only in respect of development plan preparation, or
- the National Park authority having such functions in respect of planning as the designation order specifies: this option could include, for example, the possibility of the planning function remaining with local authorities in the area, with the National Park authority being given statutory powers as a consultee.

Section 10: National Park Plans

39. This section places a duty on a National Park authority, within a time limit set by the Scottish Ministers, to prepare and submit a plan (a National Park Plan) which sets
out its policy for the management of the National Park and the co-ordination of activities of public bodies and office-holders so far as affecting the Park. A National Park authority in doing so must be guided by its general purpose in section 8(1).

Section 11: National Park Plans: procedure

40. Under subsections (1) and (2), once it has prepared a draft National Park Plan, the National Park authority must send a copy to the local authorities with part of their area in the National Park, which must make it available to the public. The National Park authority must also publicise the draft Plan and consult local authorities, community councils, people representative of those living and working in the Park, and anyone else it sees fit. It must determine the time period for consultation and for which the draft Plan is to be made available for public inspection.

41. Under subsection (3) the National Park authority must take account of any comments which it receives in this period. Following the consultation, and any resulting amendments, the plan must be submitted to the Scottish Ministers (subsection (4)) who may approve it with or without modification. They must (under subsection (6)) give reasons for modifying or rejecting the Plan. Subsection (5) provides that where the Scottish Ministers are minded to approve a Plan with modifications, they must send a copy of the intended modifications to the National Park authority, and take account of its comments.

42. Where the plan is approved (subsection (7)), the National Park authority must adopt the Plan, send a copy to the Scottish Ministers and relevant local authorities, make a copy available for inspection, and publicise its existence.

43. If a National Park Plan is rejected (subsection (8)) by the Scottish Ministers, the National Park authority must submit a revised Plan for approval.

Section 12: Duty to have regard to National Park Plans

44. This section requires public bodies, including the Scottish Ministers and the National Park authority itself, to have regard to the National Park Plan when exercising their functions so far as affecting the National Park.

Section 13: Management agreements

45. This section enables a National Park authority to enter into agreements with a person with an interest in land, in order to ensure that its aims are met.

46. Under subsection (2) the agreement can involve conditions, including the making of payments to the person concerned. Subsections (3) and (4) make technical
provisions about interests in land which entitle a person to enter into such agreements with the National Park authority.

47.  Subsection (5) provides for the registration of such an agreement in the Land Register, subsections (6) and (7) for the enforcement of the agreement, and subsections (8) and (9) for the termination of the agreement by agreement of both parties.

Section 14: Directions and guidance

48.  Subsections (1) and (2) provide for the Scottish Ministers to issue directions to a National Park authority on the exercise of its functions, having first consulted the authority. The National Park authority must comply with such directions.

49.  Subsections (3), (4) and (5) provide for the Scottish Ministers to issue guidance to one or more National Park authorities about how they exercise their functions, also after consulting the National Park authorities concerned. The authorities must have regard to any guidance in exercising its functions. Guidance tends to be more about how to go about various matters than about requiring a particular course to be followed (as under directions).

50.  Subsections (6) to (9) require proposed guidance to be laid in draft before the Scottish Parliament for 40 days before it is issued, but if during that time the Parliament so decides, the guidance must not be issued. Any guidance which is issued must be published.

Section 15: Agency arrangements and joint operations

51.  Subsection (1) provides for a National Park authority to arrange for its functions to be carried out by a local authority on its behalf, or by another National Park authority.

52.  Subsection (2) provides for the converse, for local authorities to be able to arrange for any of their functions (insofar as they are exercisable in relation to a National Park) to be carried out by a National Park authority.

53.  Under subsection (3) two National Park authorities may arrange to carry out functions jointly, and under subsection (4) these arrangements may include establishing a joint committee or for an officer carrying out the functions. However, subsection (5) provides that such arrangements do not affect responsibility for exercising the functions in question.
Section 16: Delegation of functions by the Scottish Ministers

54. This section allows the Scottish Ministers to make arrangements for a National Park to exercise functions on their behalf, so far as these are exercisable in relation to a National Park. However (subsection (2)) the arrangement does not affect the responsibility of the Scottish Ministers for the functions, and subsection (3) excludes making, confirming or approving subordinate legislation, or any other function conferred by the Bill, from the functions of the Scottish Ministers which can be delegated under this section.

Section 17: Use of resources

55. This section places a duty on National Park authorities to use their resources economically, efficiently and effectively.

Section 18: Advisory groups

56. National Park authorities are required by this section to put in place an advisory group or groups to advise it on its functions. The membership of the group is to be decided by the authority, who can also decide what allowances or expenses to pay members of the group. This section provides a mechanism for the views of the wide range of interest and community groups, and individuals, with a legitimate interest in the running of the National Park, to feed into the National Park authority. No constraints are placed on the size or membership of advisory groups.

Section 19: General financial duties

57. Subsection (1) enables the Scottish Ministers to determine the financial duties of a National Park authority, after consultation with the authority concerned. They may decide on different arrangements for different National Park authorities. They must inform a National Park authority of such a determination, and subsection (2) sets out what this may contain. Subsection (3) enables the Scottish Ministers to require an authority to pay them an amount if this is provided for in the determination; subsection (4) enables them to require payment of a surplus amount of revenue or capital.

Section 20: Grants and loans by the Scottish Ministers

58. This section provides for the Scottish Ministers to pay grant or loan money to a National Park authority, with a loan repayable under terms they determine.
Section 21: Borrowing powers

59. This section sets out the arrangements under which a National Park authority may borrow money. Under subsection (1) an authority may borrow money from the Scottish Ministers, or from someone else with the Scottish Ministers’ consent (which may be granted with conditions). Subsections (3) and (4) require that the amounts borrowed in a year, net of any repayments (other than interest) must not be greater than the amount specified in a Budget Act.

60. Subsection (5) makes clear that a National Park authority may borrow money only under the provisions set out in this section.

Section 22: Guarantees

61. This section enables the Scottish Ministers to provide a guarantee, with conditions, to a National Park authority in respect of its borrowing from another person. If they do so, the Scottish Ministers must provide a statement of the guarantee to the Scottish Parliament (subsection (2)). If they pay out any money to fulfil such a guarantee, they must also inform the Parliament (subsection (3)), and the National Park authority must repay the amount and interest as directed (subsection (4)).

Section 23: Accounts

62. This section places a duty on a National Park authority to keep proper accounts and prepare an account of its expenditure at the end of each financial year in accordance with directions from the Scottish Ministers who, having received a copy from the authority, must send the account to the Auditor General for Scotland for auditing.

Section 24: Information and annual reports

63. This section sets out a duty on National Park authorities to report on their activities each year. They must under subsection (1) provide information on their activities as required by the Scottish Ministers, including providing this to a person authorised by the Scottish Ministers (subsection (2)). Subsection (3) requires a National Park authority to send a report on its year’s activities to the Scottish Ministers as soon as practicable after the end of the year, the Scottish Ministers being required to lay a copy of the report before the Scottish Parliament (subsection (5)). The report must set out any directions received under section 14 which relate to the year in question (subsection (4)).

Section 25: Records

64. This section sets out how a National Park authority must deal with its records.
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65. Under subsection (2) it must make arrangements in consultation with the Keeper of the Records of Scotland for the preservation and management of its records. Under subsection (3) the authority must consult the Keeper before making substantial changes to the arrangements. Under subsection (4) it may dispose of records which are not worth preserving. Under subsection (5) it must ensure that the Keeper and members of the public have access to their records. A reasonable fee can be charged for providing extracts or copies of records. Subsection (6) makes clear that these provisions are subject to other enactments about particular kinds of records.

Section 26: Inquiries and other hearings

66. This section enables the Scottish Ministers to hold an inquiry or hearing into National Park authority functions, or the functions of the Scottish Ministers in relation to a National Park authority. The rules governing such inquiries or hearings would be the same as those governing inquiries or hearings under the Local Government (Scotland) Act 1973.

Section 27: Transfer of staff, property and liabilities

67. This section introduces the provisions in schedule 4 in relation to transfer of staff, property and liabilities in connection with the setting up of a National Park authority.

Section 28: Modification and revocation of designation orders

68. Subsection (1) allows the Scottish Ministers to make an order modifying or revoking an existing designation order. Subsection (2) provides if the Scottish Ministers propose to revoke a designation order, or if the modifications are of a certain type, then the procedures set out in the following subsections (2) and (3) must be followed. Those modifications are changes to:

- the area of the National Park;
- the functions of the National Park authority set out in the designation order and conferred under sections 8(2)(d) or 9;
- the local authority membership of a National Park authority (under section 6(1)(c)).

69. Subsection (3) requires that before making an order, the Scottish Ministers must set out in writing how they wish to modify an existing designation order, or that they wish to revoke the designation order, and in either case give reasons. The process which applies to the making of such a modification/revocation order is that set out in sections
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2 to 6 of the Bill, appropriately modified (subsection (4)). This means that generally the same requirements will apply for publication and consultation as for the making of a designation order. Subsection (5) provides that where the modifications are not of the type listed in subsection (2), sections 1 to 6 of the Bill do not apply in relation to a modification order. The effect of subsections (2) to (5) is to allow for a minor changes to a designation order to be handled in a proportionate manner, without the need for the full process which applies when making a designation order. In both cases, however, the orders are subject to the affirmative resolution procedure (under section 32(5)).

Section 29: application in relation to marine areas

70. This section enables the Scottish Ministers by order to modify the provisions of the Bill in their application to areas wholly or mainly comprised of sea. Such an order would be subject to affirmative resolution, under section 32(5).

Section 30: Crown application

71. This section makes clear the extent to which the Bill applies to the Crown.

Section 31: Ancillary provision

72. This section allows the Scottish Ministers to make orders dealing with various kinds of incidental provisions as a consequence of the Bill. Such orders are subject to affirmative resolution where they make textual amendments of Acts, and negative resolution in any other case.

Section 32: Orders

73. This section sets out the procedures under which the powers to make orders under the Bill are to be exercised. Under subsection (1), orders under the Bill are to be made by statutory instrument. Subsection (2) makes clear that power to make an order includes power to make incidental provisions as the Scottish Ministers consider necessary or expedient. This is in addition to the power in section 31 - in other words, incidental provisions can be included in a designation order or in a free-standing order under section 31.

74. Subsection (4) makes clear that the powers in sections 5(1), 28(1) and 31 include power to modify enactments, instruments and documents. Subsection (5) requires any order made under section 5(1) (a designation order setting up a National Park), 28(1) (an order modifying or revoking a designation order) or 29 (an order relating to marine National Parks) to be considered and approved in draft by affirmative resolution of the Parliament before it is made. Subsection (6) applies the same procedure to any order made under section 31 which provides for textual amendment of an Act.
75. **Subsection (7)** provides that certain orders made under the Bill are to be subject to negative resolution procedure (i.e. laid before the Parliament and having effect unless a motion to annul the order is agreed to). These are orders made under section 28(4) (modifying the procedure to be followed for publication/consultation on modifications to, or revocation of, a designation order) or orders made under section 29 (unless modifying other Acts, in which case they are subject to the affirmative procedure).

**Section 33: Interpretation**

76. This defines certain terms used in the Bill.

**Section 34: Modification of enactments**

77. This section introduces schedule 5, which makes modifications of various enactments in respect of National Parks.

**Section 35: Commencement and short title**

78. This provides for the Scottish Ministers to set by order when the provisions of the Bill, once enacted, are to come into force, and gives the short title by which the Act is to be referred.

**Schedule 1: Constitution etc. of National Park authorities**

79. **Paragraphs 1 and 2** explain the status of National Park authorities. They are to be bodies corporate; they will not be Crown bodies and will therefore not have Crown immunity or be exempt from taxation, their staff will not be Crown servants (and therefore not civil servants), and their property will not belong to the Crown.

80. **Paragraphs 3 to 8** set out how membership of a National Park authority is to be determined. **Paragraph 3** sets a maximum of 20 members, with the exact number to be set in the designation order for the Park. It provides for half the members to be appointed directly by the Scottish Ministers and the other half by the Scottish Ministers after nomination by those local authorities specified in the designation order, having part of their area within the National Park. The Scottish Ministers are required to appoint the nominees put forward by the local authorities (subject to the provisions at paragraph 5(4) about prejudicial interests). Members appointed on local authority nomination are referred to as “nominated members”, and all others (i.e. those appointed at the discretion of the Scottish Ministers) are referred to as “directly appointed members”.

81. **Paragraph 4** requires the Scottish Ministers to consult those with an interest – local authorities, community councils, those who are representative of people living and
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working in the Park, and anyone else they think fit - before appointing directly appointed members.

82. Paragraph 5 requires (in sub-paragraphs (1) and (2)) all appointments to be made on the basis of the individuals having knowledge or experience relevant to what the National Park authority does or to the area of the Park (including particular interests as the designation order may specify). It also (in sub-paragraphs (3) and (4)) enables the Scottish Ministers to seek information from potential appointees in order to satisfy themselves that those to be appointed have no financial or other interests which might compromise their ability to act as a member of the National Park authority.

83. Paragraphs 6 to 8 deal with the holding and vacating of membership. The basis of appointments will be set out in the terms of appointment issued when a member is appointed, but shall not exceed five years (for a single term). A member may resign by writing to the Scottish Ministers. A member who ceases to hold office (whether by resignation or through expiry of their term of office) will be eligible to be re-appointed. The Scottish Ministers may remove a member from office if they are satisfied that any of the conditions set out in paragraph 7 is met. Where a vacancy arises, the appointment of a replacement will be in accordance with the provisions set out above.

84. Paragraph 9 deals with the appointment of convener and deputy convener. Both positions are to be filled by election by members from one of their number. Since the maximum term of office for a member is five years, by implication this is the maximum term for a convener or deputy convener, and as with a term of membership, at the end of a term of appointment, a convener or deputy convener may be re-elected to that position. However, a convener or deputy convener who ceases to be member, for whatever reason, will also cease to hold the position of convener or deputy convener. When a member either takes up or ceases to hold the position of convener or deputy convener, the Scottish Ministers may vary the terms of that member’s appointment in order to alter the date on which his or her membership comes to an end.

85. Paragraph 10 deals with payment of members. The Scottish Ministers will determine the amounts which a National Park may pay its members (either as remuneration or as allowances), and they can direct a National Park authority, in special circumstances, to pay compensation when someone ceases membership other than on the normal expiry of their term. The Scottish Ministers may also direct an authority to pay a member, in respect of an office held (as convener, deputy convener, or other office) a pension, allowance or gratuity.

86. Paragraphs 11 to 13 set out a National Park authority’s powers and duties in respect of their staff. Paragraph 11 requires an authority to appoint a chief executive, and the Scottish Ministers to approve the appointment and its terms and conditions. Approval of the Scottish Ministers is similarly required for any variation of those terms and conditions. Paragraph 12 makes clear that the authority may decide, without the need for approval, all other appointments of staff and their terms and conditions.
Paragraph 13 requires an authority to make arrangements for paying pensions, allowances and gratuities to its staff (including compensation for loss of office or employment) and to obtain approval from the Scottish Ministers for these arrangements.

87. Paragraphs 14 and 15 cover an authority’s ability to set up committees to deal with business. Paragraph 14 enables an authority to appoint people to a committee who are not members of the authority, provided a majority of members of the committee are authority members. This provision is subject to further specification in the designation order about particular committees. This would allow, for example, a requirement that a committee dealing with planning matters must include a sufficient proportion of local authority councillors. Committee members can be paid remuneration or allowances as determined by the Scottish Ministers. Committees set up by an authority require to act in accordance with directions given by the authority. Paragraph 15 allows an authority to authorise a committee, employee or member to act on its behalf (although this does not prevent the authority acting itself on the same matter).

88. Paragraph 16 deals with members’ interests. Under sub-paragraph (1) a member must declare any interest in a matter which is considered by a meeting of the National Park authority, and shall not take part in discussion or decision on the matter. The declaration of interest shall be recorded in the minutes of the meeting. Sub-paragraph (2) sets out the terms in which a notification of interest will be considered sufficient. Sub-paragraph (3) makes clear that provided a member has taken reasonable steps to ensure that his or her disclosure is notified in writing to the meeting, he or she need not attend in person.

89. Sub-paragraphs (4) and (5) enable the Scottish Ministers to decide to override the effects of the provisions of this paragraph. Under sub-paragraph (4) this can happen if the provisions lead to so many of the members being prevented from taking part in discussion that the authority’s ability to transact its business is severely impaired. Sub-paragraph (5) makes clear that the Scottish Ministers may also more generally override the effects of this paragraph, either indefinitely or for a period for reasons they specify. However, under sub-paragraph (6) nothing in this paragraph prevents a member from taking part in the authority’s consideration and discussion of whether to ask the Scottish Ministers to use their override powers. The provisions of this paragraph apply to meetings of committees as well as authorities, and to members of committees as well as members of the authority (sub-paragraph (7)).

90. Paragraph 17 deals with procedures of meetings. Each National Park authority is able to determine its own procedures. A vacancy on the authority or on a committee of the authority, or the fact of a defect in the appointment of a member, will not make proceedings invalid.
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Schedule 2: General powers of National Park authorities

91. **Paragraph 1** enables an authority to make a charge for any goods, services and facilities it provides.

92. **Paragraph 2** enables an authority to provide advice, assistance or training facilities in matters in which it has skill or experience, but if this is to be provided outside Scotland, the consent of the Scottish Ministers must be obtained.

93. **Paragraph 3** enables an authority to conduct research, or arrange for others to do this on their behalf, on matters connected with its functions.

94. **Paragraph 4** enables an authority to pay grants or loans, with conditions (including repayment), for activities which will help to further its purpose (as set out in section 8(1)). Such financial assistance requires the consent of the Scottish Ministers.

95. **Paragraph 5** enables an authority to acquire land which is within the National Park, either by agreement or compulsorily with the authorisation of the Scottish Ministers. In the latter case this is subject to any other legislation which gives a National Park authority powers of compulsory purchase, and to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

96. **Paragraph 6** prevents an authority from disposing of land for less than a reasonable market value unless it has the consent of the Scottish Ministers.

97. **Paragraph 7** sets out the circumstances in which a National Park authority can promote or oppose private legislation in the Scottish Parliament.

98. **Paragraph 8** sets out an authority’s powers to make byelaws. The general purposes for which it can make byelaws are set out in sub-paragraph (1). Sub-paragraph (2) sets out some particular examples of matters which byelaws might deal with. Sub-paragraph (3) provides National Park authorities with the power to make byelaws in respect of control of the seashore, adjacent waters and inland waters, as set out in section 121 of the Civic Government (Scotland) Act 1982. However, having been given this specific byelaw-making power in respect of the seashore etc., these matters cannot be covered by byelaws made under sub-paragraph (1) - this is simply to ensure the application of the procedural requirements of section 121 when byelaws are made under that section. (Schedule 5 paragraph 2 also makes provision for the continued operation of byelaws operating in country and regional parks that are within a National Park at the time of designation.)

99. **Paragraph 9** sets out the procedure which applies to the making of byelaws by National Park authorities under paragraph 8. This is the procedure which applies to
local authorities and other public bodies when making byelaws, and provides for an open, transparent and consultative process.

100. **Paragraph 10** sets out the authority’s powers to make and enforce management rules. These are rules to regulate the use of, and conduct of persons while on or in, land or premises owned, occupied or otherwise under the control of the authority, and to which the public have access. Sections 112 to 118 of the Civic Government (Scotland) Act 1982, which set out the processes governing the making of these rules by local government, will apply to the making of management rules by National Park authorities with minor modifications.

101. **Paragraph 11** provides for a National Park authority to be treated, for the purposes of the Local Authorities (Goods and Services) Act 1970 (c.39), as if it is both a local authority and a public body. The effect is to allow local authorities to provide goods and services to a National Park authority and vice versa, and to allow National Park authorities to provide goods and services to each other.

102. **Paragraph 12** applies Part IIIA of the Local Government (Scotland) Act 1973, which provides for access to meetings and documents, to a National Park authority and its committees and any joint committee as it applies to local authorities. Sub-paragraph (2) modifies that Part to make appropriate application to National Park authorities. Sub-paragraph (3) requires a National Park authority to appoint a proper officer from among its staff for the purposes of Part IIIA of the Local Government (Scotland) Act 1973.

103. **Paragraph 13** applies Part III of the Housing (Scotland) Act 1988 to National Park authorities as if they were public sector landlords. That Act provides that tenants of local authorities, on meeting certain conditions, are entitled to purchase their property.

104. **Paragraph 14** ensures that Part II of the Deregulation and Contracting Out Act 1994 has effect for a National Park authority in the same way as for a local authority. That Act allows Ministers by order to provide for delegation of functions as appropriate to permit contracting out.

105. **Paragraph 15** sets out a range of other functions a National Park is entitled to undertake.

**Schedule 3: Miscellaneous functions**

106. This schedule confers on National Park authorities various functions, some of which are provided for by reference to other Acts.
107. Paragraph 1 lists three enactments which will apply to National Park authorities as they apply to local authorities as referred to in those Acts. This means that National Park authorities have the equivalent power to develop land for the benefit or improvement of the area (with the prior approval of the Scottish Ministers); they may pay subscription in respect of corporate membership of any body formed to maintain or improve rights of way; and they may acquire land for the purpose of preserving or improving the amenity of land.

108. Paragraph 2 applies section 21 and 22 of the National Parks and Access to the Countryside Act 1949 to National Park authorities in the same way as these sections apply to local authorities. These sections enable local authorities to provide, or secure provision of, nature reserves on any land in their area, and allow for works to be carried out on nature reserves by drainage authorities.

109. Paragraph 3 enables a National Park authority to provide, or arrange for someone else to provide, information and educational services and facilities in order to promote the understanding and enjoyment of the special qualities of the National Park.

110. Paragraph 4 enables a National Park authority to provide facilities and encourage visitors to the National Park for leisure purposes.

111. Paragraph 5 provides for sections 49 and 50 of the Countryside (Scotland) Act 1967 to apply to National Park authorities in the same way as it applies to local authorities. This means that National Park authorities may provide camping sites for recreational purposes, may do anything desirable in connection with providing these sites, and can provide for accommodation, meals and refreshments where existing facilities are inadequate.

112. Paragraph 6 applies certain sections of the Local Government and Planning (Scotland) Act 1982 to National Park authorities in the same way as to local authorities, enabling them to do anything necessary or desirable towards ensuring that there are facilities in the Park for recreational, sporting, cultural or social activities as they consider appropriate.

113. Paragraph 7 makes amendments to Part II of the Countryside (Scotland) Act 1967 to allow National Park authorities the same powers as local authorities and Scottish Natural Heritage for facilitating access to the countryside.

114. Paragraph 8 enables National Park authorities to carry out improvement works on waterways in the countryside for purposes of open-air recreation.
Schedule 4: Transfer of staff, property and liabilities

115. Paragraph 1 enables the Scottish Ministers to require a local authority whose area is at least partly within a National Park to make schemes for the transfer of employees or property and liabilities to a National Park authority or another local authority, as necessary in consequence of the setting up or operation of the National Park authority. A National Park authority may also be required to make transfer schemes for transfers from the National Park authority to another National Park authority or a local authority where a National Park is wound up or modified or in connection with the operation of the National Park authority. Before making such schemes, the Scottish Ministers must consult the transferring and receiving authorities and any local authority with part of its area within the National Park.

116. Paragraph 2 sets out the procedure to be followed by a local authority or a National Park authority which is required to prepare a transfer scheme under paragraph 1. The authority must consult certain specified bodies before making a scheme including, in the case of a staff transfer scheme, staff associations. The authority must take into account any guidance on transfer schemes from the Scottish Ministers. Such a scheme has effect from a specified date, which would normally be the effective operational date of the new authority.

117. Paragraph 3 enables the Scottish Ministers to approve or reject the scheme, or approve it with modifications; but if the latter, they must send a copy of the proposed modifications to the organisations mentioned, and take account of any comments.

118. Paragraph 4 enables the Scottish Ministers to make a scheme themselves if the local authority or National Park authority does not prepare and submit a scheme, or if they reject the scheme submitted to them. The Scottish Ministers may if they wish approve a scheme submitted to them after the specified date.

119. Paragraph 5 enables the Scottish Ministers to modify a transfer scheme which they have already approved, at any time before the transfer date, provided they have consulted the receiving authority and the other relevant authorities.

120. Paragraph 6 sets out the effects of a transfer scheme for staff. It results in the relevant employees becoming employees of the receiving authority on the transfer date (sub-paragraph (1)), on terms and conditions set by the receiving authority but which must be no less favourable (sub-paragraph (2)) than those applying immediately prior to the transfer. The employee’s continuity of employment will not be broken by the transfer to the receiving authority (sub-paragraph (3)), and the ending of their employment with the transferring authority will not be treated as redundancy (sub-paragraph (4)).
121. **Paragraph 7** makes provision for the effect of the transfer of property and liabilities between authorities. **Sub-paragraph (2)** provides for the Scottish Ministers to issue a certificate confirming conclusively that a transfer has or has not occurred.

**Schedule 5: Modification of enactments**

122. This schedule makes modifications of other enactments.

123. **Paragraphs 1 and 3** enable National Parks authorities to second staff to local authorities (and vice versa).

124. **Paragraph 2** makes amendments to the Countryside (Scotland) Act 1967 in respect of country and regional parks and byelaws. **Sub-paragrapghs (1) and (2)** have the effect that new country and regional parks may not be created within areas after their designation as National Parks, although the provisions relating to existing country and regional parks will continue in force. In other words, the designation of a National Park will not in itself nullify the existence of a country or regional park – it will be for the National Park authority and relevant local authority to agree what arrangements to make in this respect. **Sub-paragrapghs (3) and (4)** apply the same principle to byelaws made in respect of country or regional parks. **Sub-paragraph (5)** includes a National Park authority as a consultee on byelaws made by local authorities or the Scottish Ministers where those byelaws would apply within a National Park.

125. **Paragraph 4** adds National Park authorities to the list of consultees for the purposes of nitrate sensitive areas under the Control of Pollution Act 1974.

126. **Paragraph 5** amends relevant parts of the Local Government (Scotland) Act 1975 with the effect that National Park authorities are included in the list of bodies subject to investigation by the local government ombudsman under Part II of that Act.

127. **Paragraph 6** gives powers (but not duties) to National Park authorities to deal with abandoned and removed vehicles, equivalent to those of local authorities.

128. **Paragraph 7** allows National Park authorities to acquire an ancient monument by agreement or by gift for its preservation or maintenance.

129. **Paragraph 8** adds National Park authorities to the list of statutory consultees in respect of areas of special scientific interest (provided for under the Wildlife and Countryside Act 1981).

130. **Paragraph 9** adds National Park authorities to the list of “consultation bodies” in respect of roads projects for the purposes of Environmental Impact Assessments as provided for under the Roads (Scotland) Act 1984.
131. *Paragraph 10* adds National Park authorities to the bodies covered by Part II of the Local Government Act 1988 dealing with fairness and letting of contracts.

132. *Paragraph 11* adds National Park authorities to the statutory consultees in respect of hydro-electric generating stations and the preservation of amenity when carrying out works connected with the generation, transmission or supply of electricity.

133. *Paragraph 12* applies section 5 of the Local Government and Housing Act 1989 to a National Park authority with appropriate modifications. A National Park authority is required to appoint a monitoring officer whose duty is to report to the authority and its members on anything in the operation of the authority which contravenes the law or amounts to maladministration.

134. *Paragraph 13* amends the Enterprise and New Towns (Scotland) Act 1990 so that the consultations by Scottish Enterprise and Highlands and Islands Enterprise in relation to certain functions include National Park authorities.

135. *Paragraph 14* adds National Park authorities to the bodies that must be consulted when local authorities undertake air quality reviews.

136. *Paragraph 15* provides that with respect to any land within a National Park, in the exercise of powers under the Town and Country Planning (Scotland) Act 1997 and related planning Acts special attention shall be paid to the National Park Plan.

FINANCIAL MEMORANDUM

INTRODUCTION

137. This memorandum is prepared by the Scottish Administration in pursuance of Rule 9.3.2 of the Standing Orders of the Scottish Parliament and sets out best estimates of the costs to which the provisions of the Bill may give rise.

138. The Bill is a framework measure, and it is the exercise of power under it which will give rise to financial consequences. The annual Budget process will authorise the payment out of the Scottish Consolidated Fund of the sums required to meet the resulting expenditure.
COSTS ON THE SCOTTISH ADMINISTRATION

139. The Bill gives the Scottish Ministers functions in connection with the process leading to designation of a National Park, the establishment of the National Park authority and the initial appointment of its members. The Scottish Ministers also have various functions in relation to the operation of a National Park authority, including appointing members to fill vacancies, approval of National Park Plans, issuing directions and guidance and financial oversight of the authority.

140. The costs involved will depend upon the circumstances of each case. It is estimated that the cost to the Scottish Ministers in connection with the procedure leading up to the making of a designation order, if they undertake the consultation process themselves rather than appointing a reporter to do so, will be of the order of £80,000. Further costs would be incurred if a local inquiry is held into a National Park proposal. The amount of those costs would depend on the particular circumstances of the inquiry.

141. The Scottish Ministers will also incur administrative costs in respect of their functions in connection with the operation of National Park authorities. These costs are unlikely to be substantial and will be met from within existing budgets.

142. The Bill gives the Scottish Ministers power to make grants and loans to National Park authorities and to guarantee their borrowings. The sums involved will vary from one National Park to another.

143. Inquiries and hearings held under section 26 may give rise to expenditure, the amount depending on the circumstances of the inquiry or hearing. Any proposal to modify or revoke a designation order under section 28 involves a consultation process similar to that for the making of a designation order, with similar cost implications.

144. If the Bill receives Royal Assent by Autumn 2000, it is hoped that the consultation process on the proposal for the first National Park (Loch Lomond and the Trossachs) will be completed in time to allow the designation order setting up the National Park to be prepared by early 2001. It is estimated that Loch Lomond and the Trossachs National Park will have core operating costs in the region of £2.4m once up and running. There may also be £1.5-£2.0m new programme costs plus the existing £1m programme costs. This money will come on line well into the 2001/2002 financial year.

145. It is likely that the second National Park proposal will be for a Park in the Cairngorms. It is estimated that this National Park will have running costs in the region of £1.96m, plus £1.5-£2.5 programme costs. These costs are likely to fall in the 2002/2003 financial year.
146. The costs for these National Parks are not expected to materialise fully until each Park has been established for 3 years. Programme costs are expected to be yearly. Programme expenditure will be used to create new facilities for visitors and improvements to the area.

147. The Bill provides for National Park authorities to charge for goods, services and facilities which they provide (schedule 2, paragraph 1) and National Parks will be able to generate income in this manner. National Parks will also be able to seek to raise money for capital projects through the likes of European Union money and National Heritage Lottery Funds.

COSTS ON LOCAL AUTHORITIES

148. The Bill will impose no major additional cost on local authorities. Some minor expenditure may be incurred by local authorities in connection with nominating members to National Park authorities and being involved in consultation exercises in relation to National Park proposals. There will be some minor administrative costs in preparing any transfer schemes for staff, property and liabilities which are required under schedule 4.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

149. There will be an additional cost to Scottish Natural Heritage if it is required by the Scottish Ministers to report on a National Park proposal under section 2. The cost will depend upon the circumstances of each case, but is estimated to be of the order of £80,000. SNH is funded by the Scottish Ministers (under the Natural Heritage (Scotland) Act 1991), and any such additional work will be factored into decisions on its annual grant in aid allocation. Any other body required to prepare a report under section 2 is likely to be required to report only on some specific aspect of the proposal, with correspondingly lower cost implications.

150. The Bill does not provide for National Park authorities to be regulatory bodies. If a National Park authority takes over town and country planning functions (wholly or in part) from local authorities there will be no additional regulatory function, merely a transfer of an existing function. The enhanced design standards which may need to be adopted by the planning authority within the National Park could lead to additional costs. With this possible exception, the creation of National Parks should not create any compliance costs for business. National Parks will help to provide for sustainable business opportunities within the Park. The National Park designation may bring considerable benefits to the areas in and surrounding the designated area.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

151. On 23 March 2000, the Minister for Transport and the Environment (Sarah Boyack) made the following statement:

“In my view, the provisions of the National Parks (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

152. On 24 March 2000, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the National Parks (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”