INTRODUCTION

1. This document relates to the Cairngorms National Park Boundary Bill introduced in the Scottish Parliament on 21 September 2006. It has been prepared by John Swinney MSP, the member in charge of the Bill, with the assistance of Scott Martin, Solicitor. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament.

THE BILL

2. The Bill extends the boundary of Cairngorms National Park to bring parts of Highland and Eastern Perthshire within the National Park.

3. The areas to be added to the National Park include the Forest of Atholl and the community of Blair Atholl, the Beinn Udlamain mountain group to the West of the A9, an area around the A93 including Glas Tulaichean and the Spittal of Glenshee (excluding Kirkmichael). (See page 7)

4. As a consequence of adding these areas to the National Park, the Bill also gives Perth and Kinross Council the ability to nominate a member to serve on Cairngorms National Park Authority (“the Authority”). The number of members appointed to the Authority by the Scottish Ministers on the nomination of Highland Council will be reduced from five to four. The Bill allows the Authority to operate until 1 July 2007 with five Highland Council nominated members.

POLICY OBJECTIVE OF THE BILL

5. The National Park aims are set out in the National Parks (Scotland) Act 2000 (asp 10). These are: (a) to conserve and enhance the natural and cultural heritage of the area, (b) to promote sustainable use of the natural resources of the area, (c) to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public, and (d) to promote sustainable economic and social development of the area’s communities.

6. The objective of the Bill is to further the achievement of the National Park aims within the Cairngorms area.
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7. The inclusion of the Forest of Atholl, and Blair Atholl itself, would provide a natural gateway to the National Park in terms of economic opportunity and access through Glen Tilt to the Cairngorm mountains. The extended boundary would include the hill area of the Forest of Atholl, which encompasses the Beinn a’Ghlo and Drumochter Hill Sites of Special Scientific Interest. This area includes significant upland raptor populations. It would enable entire mountain summits to be managed in a more sustainable and cohesive manner over a wider area. This would ensure more uniform delivery on biodiversity. A proper buffer area around the central Cairngorms Massif would also be established. The Cairngorms have candidate World Heritage Status. These factors would improve the prospects of the National Park achieving World Heritage Status. The inclusion of the Spittal of Glenshee would also provide a more suitable geographical reference point and gateway for visitors entering from that end of the Park.

BACKGROUND TO THE BILL

8. In 1990, the Countryside Commission for Scotland recommended that the Cairngorms be designated as a National Park following a review of Scotland’s mountain areas. The Scottish Office established the Cairngorms Working Party in response to this recommendation. The Working Party reported to the Scottish Office in 1993.¹

9. Following the report of the Cairngorms Working Party, the Secretary of State for Scotland established the Cairngorms Partnership, which was formally constituted in March 1995 as a private company limited by guarantee with charitable status. The land area covered by the Cairngorms Partnership included all of the area which this Bill seeks to add to Cairngorms National Park. Perth and Kinross Council was represented on the Cairngorms Partnership Board and played an active part in the development of The Cairngorms Partnership’s Management Strategy, which was published in 1997.

10. In September 1997, Scottish Natural Heritage,² was asked to advise on how National Parks for Scotland could best operate. In February 1998 it launched an initial Invitation to Contribute, which resulted in almost 250 responses. It held a series of national seminars, and held a national conference attended by over 100 organisations. Many local meetings and other events were held. Bilateral talks were held with local agencies and other interested parties in the areas identified as being suitable for the first National Parks. On 29 September 1998, SNH launched a consultation paper based on findings from the first stage. Over 10,000 copies of the main and summary versions were printed and distributed. There were 451 responses to this consultation paper. Further meetings were held with interested national and local organisations. In 1999, SNH published the result of this extensive exercise: National Parks for Scotland: Scottish Natural Heritage’s Advice to Government.

11. The Scottish Executive published a draft National Parks (Scotland) Bill on 21 January 2000, with 2,500 copies of the consultation paper being issued and made available on the Scottish Executive’s website. There were over 330 responses to this document. The National

² Scottish Natural Heritage replaced the Countryside Commission for Scotland under the Natural Heritage (Scotland) Act 1991 (c. 28).
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Parks (Scotland) Bill was introduced into the Scottish Parliament on 27 March 2000 and received Royal Assent on 9 August 2000.

12. The National Parks (Scotland) Act 2000 (asp 10) (“the 2000 Act”) is enabling legislation making provision for the establishment of National Park authorities. On 19 September 2000, the Scottish Ministers made a formal proposal to designate the Cairngorms Partnership area as a National Park. They also required SNH to consider the proposal and report to them on the area which should be designated as a National Park, the functions which the National Park authority should exercise and other matters. SNH acted both as statutory reporter under the 2000 Act and national heritage advisor to the Scottish Ministers. A further extensive consultation exercise was undertaken by SNH over the period between December 2000 and April 2001. This involved a full engagement with local communities and other bodies. On 21 August 2001, SNH published The Report on the proposal for a National Park in the Cairngorms. The areas which the Bill seeks to include within the National Park are within the boundary recommended by SNH in this report.

13. On 29 May 2002, the Scottish Executive published Cairngorms National Park: Consultation on Draft Designation Order. The Draft Designation Order differed from the SNH recommendations on the Cairngorms National Park Proposal. The draft order excluded areas of Angus, Eastern and Highland Perthshire. The Executive consultation in relation to the draft designation order ran until 22 August 2002. A total of 463 responses were received to this consultation.

14. In August 2002, SNH wrote to the Scottish Executive with their submissions on the consultation document. They noted the absence in the document of a rationale for the rejection of SNH’s proposals. SNH indicated that they remained convinced that Cairngorms National Park should cover a larger area, including the Perthshire areas dealt with in this Bill. The final draft of the designation order prepared by the Scottish Executive added parts of the Laggan area as well as parts of Angus back into the National Park. All of the Perthshire areas remained excluded from the National Park.

15. The Rural Development Committee took evidence over four days on the draft Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order. The exclusion of the areas dealt with in this Bill was a significant part of the Committee’s deliberations. In accordance with subordinate legislation procedure, the Committee did not have the power to amend the designation order. On 10 December 2002, the Committee agreed to a motion approving the order, but in so doing, also agreed to an amendment to the motion which: “regrets the exclusion from the boundaries of the Cairngorms National Park of those areas of Highland Perthshire and Drumochter, including the Forest of Atholl, Beinn a’ Ghlo and Blair Atholl, all of which were recommended for inclusion within the park’s

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3 The letter from the Chairman of SNH is available on the Responses to Government Consultation section of the SNH website (which can be accessed from www.snh.org.uk).
4 See Official Report for the meetings of the Rural Development Committee on 24 September, 1 October, 11 October and 10 December 2002 as well as the Transcript of Informal Committee Session of Away Day Meeting Public Session in Kingussie, 11 October 2002.
boundary by Scottish Natural Heritage in its report, prepared for the Scottish Executive, on the proposal for a National Park in the Cairngorms, and is concerned that, if these areas remain excluded, the attainment by the park of World Heritage Status may be put in jeopardy.”

16. The motion to approve the draft designation order was subsequently agreed to by the Parliament unamended.6 Perth and Kinross Council were reported to have considered seeking judicial review of the designation order.7

17. Dissatisfaction about the treatment of the boundary of the Park has remained. Concerned individuals, businesses, mountaineers, ramblers and local communities joined with Perth and Kinross Council, the former Perthshire Tourist Board, and national environmental organisations to form PARC – the Perthshire Alliance for the Real Cairngorms. PARC was established to campaign for the boundary of the Cairngorms National Park to reflect the recommendations made by SNH to the Scottish Executive on the Perthshire areas. PARC has argued the environmental, social and economic case for extending the National Park’s boundaries.

CONSULTATION BY THE MEMBER IN CHARGE OF THE BILL

18. The consultation by John Swinney MSP, the member in charge of the Bill, sought to build on the huge amount of work SNH in particular had already undertaken in engaging with the local communities and other individuals and bodies interested in the Cairngorms area.

19. John Swinney MSP published a consultation paper, Extension of the Boundaries of the Cairngorms National Park, on 4 November 2005. Copies were distributed to 34 organisations and individuals and a copy was available on the Scottish Parliament website (www.scottish.parliament.uk). Responses to the paper were requested by 31 January 2006. The Consultation paper set out the background to the issue and made the case for extending the boundaries. Respondents were invited to express views on a series of nine questions set out in the consultation paper, including whether it would be necessary for the membership of the Cairngorms National Park Authority to be reconfigured to accommodate a member appointed by Perth and Kinross Council and, if so, how this should be accomplished. Twenty Seven responses were received from businesses, community groups and associations, local authorities, community councils, government agencies, non-governmental organisations and individuals. These responses can be inspected at the Scottish Parliament Information Centre.

20. On 8 June 2006, a document summarising the responses to the consultation was made available online. The majority of respondents to the consultation felt that extending the boundary would bring economic, environmental and social benefits, and would remove anomalies that have been created by the current Park boundary. Respondents felt that the four aims of the National Park would be better met by extending the boundary and would also enable better Gateway facilities in approaching the National Park from the South. There was general

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5 Rural Development Committee, 14th Report 2002 on Subordinate Legislation (SP Paper 717).
7 Ministers face Cairngorms lawsuit, Sunday Herald, 15 December 2002.
consensus that Perth and Kinross Council would require a seat on the Cairngorms National Park Authority Board, but there were divided opinions on how this should be achieved.

21. Overall, the strong message from the consultation carried out by the member in charge of the Bill is that there is a great deal of support for extension of the Cairngorms National Park boundary to include the areas of Highland and Eastern Perthshire that Scottish Natural Heritage recommended in their statutory report to the Scottish Ministers should be included in the National Park.

ALTERNATIVE APPROACHES

22. An Act of the Scottish Parliament is necessary to extend the boundary of the Park in the absence of a willingness from the Scottish Executive to amend the designation order. No other approach is available to members of the Scottish Parliament.

23. Alternatives to the creation of National Parks were addressed as part of the process which led up to the 2000 Act. It was identified that the fundamental issue was the need to manage, in an integrated and sustainable way, large areas of the highest natural and cultural heritage importance which are under pressure. This had to be done so as to maintain and enhance the qualities of the area so that these endure in the long term, while also bringing social and economic benefits to the area. In promoting the 2000 Act, the Scottish Ministers considered that the form, representation and powers possible under existing legislation of a local authority committee, joint committee or board were potentially too limited, and did not provide sufficient scope for the national interest to be represented in decision making in the area. The non-statutory or statutory partnership options and the national-agency led approaches were rejected by the Scottish Ministers on a number of grounds. The member in charge of the Bill agrees with this analysis of the alternatives to National Park designation – an analysis which applies with more force now that Cairngorms National Park has been established adjacent to the areas which would be brought into the Park by this Bill.

24. Other approaches to the ultimate composition of the Authority are possible. The Authority could be left as it is. This approach was rejected because it would leave Angus Council, with around 100 electors in the area, with a nomination to the authority but Perth and Kinross with around 690 electors without any representation.

25. Perth and Kinross Council could be given the ability to nominate a member to the authority without affecting the number of members Highland Council can nominate. This could only be achieved if the Bill permanently authorised the Authority to operate with more than 25 members and in breach of the obligation to have at least one fifth of its members elected. The member in charge of the Bill considers that these requirements should be retained for reasons of democratic accountability and to keep the authority to a more manageable size.

8 Paragraphs 8 and 11 of the Policy Memorandum accompanying the National Parks (Scotland) Bill (SP Bill 12-PM) Session 1 (2000).

9 These requirements are contained in schedule 1 of the 2000 Act.
26. A further possibility would be to reduce the number of members of the Authority appointed directly by the Scottish Ministers while retaining the five members appointed on the nomination of Highland Council. This would mean that the requirement that half of the members appointed by the Scottish Ministers are appointed on the nomination of local authorities would be breached. This position was rejected because it would disturb the National Park authority balance set out in the 2000 Act.

27. There are also other approaches possible to deal with the transition from the existing authority to the newly constituted authority. The ability of Perth and Kinross Council to nominate a member to the Authority could be delayed until any of the members nominated by Highland Council ceased membership. This option was rejected because it will be particularly important for Perth and Kinross to have a nomination to the Authority when the National Park is going through the process of change to the new boundary.

**EFFECTS ON EQUAL OPPORTUNITIES, ETC.**

28. Cairngorms National Park Authority will remain bound by equal opportunity legislation. It will continue to be a public authority for the purposes of the Human Rights Act 1998.

29. The area of Cairngorms National Park does not include any Island Communities.

30. There are implications for Highland Council in that they will lose one of their existing five nominations to the Authority. This is necessary to achieve a fair balance of membership of the authority between the local authorities with areas lying inside the National Park while retaining, after a transitional period, the principle that the membership of a National Park authority should not exceed twenty five and that one fifth of its members should be directly elected.

31. Perth and Kinross Council will acquire the ability to nominate a member to the National Park Authority. There will also be an effect on its planning functions. This will be the same as the effect on the functions of Highland Council, Aberdeenshire Council, Moray Council and Angus Council when the Authority was first established. Perth and Kinross Council fully supports the proposal to extend the area of Cairngorms National Park.

32. The National Park aims include the promotion of the sustainable use of the natural resources of the area and the promotion of sustainable economic and social development of the area’s communities. The extension of the Park will therefore have a positive effect on sustainable development goals.
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CAIRNGORMS NATIONAL PARK BOUNDARY BILL

POLICY MEMORANDUM

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