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

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
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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 Bill\(^1\).

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](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/88710.aspx)
INTRODUCTION

1. This Financial Memorandum has been prepared by the Non-Government Bills Unit on behalf of Christine Grahame MSP, the member who introduced the Bill, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Bill makes provision for the existing southern boundary of the Pentland Hills Regional Park (“the Park”) to be moved so that the Park encompasses all (or substantially all of) the entire Pentland Hills range. This will either happen by default, two years after Royal Assent, or by means of regulations made by the Scottish Ministers, triggered by a joint request by the five local authorities whose areas include part of the Pentland Hills. The Bill is not expected to give rise to any significant financial consequences for the Scottish Government, but will have financial consequences for the relevant local authorities and there are implications, too, for some other bodies, individuals and businesses.

BACKGROUND

The existing Park – funding history

3. The Park was first established in 1986, as a result of an initiative by the then Lothian Regional Council.

4. In 1997, to sustain the management of the Park following local government reorganisation (which created the current single-tier structure of 32 unitary authorities), a Minute of Agreement was entered into by the three local authorities whose area was covered by the Park. In 2005, this agreement was replaced by a new one to enable the City of Edinburgh Council to become the lead or “Managing Authority” through its management of a single ranger service previously shared with Midlothian Council. At that time, the split of the total expenditure for the Park was as follows—

   - City of Edinburgh Council – £138,700 (61.8%)
   - Midlothian Council – £75,000 (33.4%)
   - West Lothian Council – £10,760 (4.8%).

5. In 2009, funding arrangements for the Park were changed. As part of the local government finance settlement Scottish Natural Heritage (SNH) transferred £3.7 million to local authorities to be distributed on the basis of historical funding levels. SNH wrote to City of Edinburgh Council, Midlothian Council and West Lothian Council confirming the detail of the

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1 The Managing Authority is responsible for the employment of the Park staff.
2 City of Edinburgh Council, Regional Park finance report (October 2006), available at:
http://www.edinburgh.gov.uk/meetings/meeting/2306/pentland_hills_regional_park_joint_committee [Accessed April 2015]
3 City of Edinburgh Council report to the Pentland Hills Regional Park Joint Committee on arrangements for the transfer of Scottish Natural Heritage funding for the Regional Park.
new transfer amounts to be allocated to each and the proportional amount for the Pentland Hills Regional Park, which was to be split evenly between the three local authorities.

6. As the Managing Authority, the City of Edinburgh Council previously acted as the applicant and recipient for all SNH grant in relation to the Park business. The agreed financial contributions from Midlothian Council and West Lothian Council to the Park budget held by the City of Edinburgh Council had always been in addition to the income from SNH funding. The four year average core, administration and project costs for the Regional Park were assessed to be £44,037 per annum (£30,000 core and administration grant and £14,037 project grants). This was distributed evenly across the three local authorities with each receiving £14,697.

7. In 2013-14, the split of total contributions of £327,424 to the Park between the three local authorities was—
   - City of Edinburgh Council – £251,765 (76.9%)
   - Midlothian Council – £60,019 (18.3%)
   - West Lothian Council – £15,640 (4.8%).

8. In addition, the Park received £10,330 from Scottish Water, making a total income of £337,754.

**Current operating costs**

9. Total expenditure in the financial year 2013-14 was also £337,754, broken down under the following headings—
   - Employee £228,475
   - Property £29,356
   - Transport £4,943
   - Supplies and services £24,450
   - Support services £50,530.

10. The City of Edinburgh Council has provided further information about 2013-14 expenditure as follows—
   - Staff costs of £228,000 cover estate workers, Natural Heritage Officers, Senior Natural Heritage Officers and Management – amounting to 5 full-time equivalent staff working on Regional Park activities (NB: the majority of the costs in the bullet points below, with the exception of transport costs, also include staff costs)

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4 Scottish Water has representation on the Pentland Hills Regional Park Management Group and Joint Committee and operates assets and manages water supply catchments within both the existing Park area and the area by which it would be extended by the Bill.


6 Estimates provided by City of Edinburgh Council, March 2015.
These documents relate to the Pentland Hills Regional Park Boundary Bill (SP Bill 67) as introduced in the Scottish Parliament on 30 April 2015

- £29,000 on managing three visitor centres, office accommodation for the Park’s Headquarters, and associated property
- £5,000 on transport costs (excluding vehicle lease, purchase and maintenance costs)
- £24,000 on supplies and services, including path and access infrastructure maintenance, car park maintenance, information and interpretation, leaflets and projects (supplemented by capital funding when available, which averages £10,000 per annum)
- £51,000 on a share of corporate costs to the City of Edinburgh Council for payroll, human resources, finance, estates and legal functions.

11. Also in 2013/14, £31,000 of path improvements in the Park were financed through the City of Edinburgh Council capital fund and cycling revenue project bank.

12. A number of activities and projects in the Park are undertaken by volunteers and charitable organisations, such as Friends of the Pentlands whose work equated to an estimated £21,600 in 2011-12. In 2013/14, Friends of the Pentlands estimated that volunteers spent almost 6,000 hours working on various activities and projects on the hills which equates to an estimated £60,000 additional investment.

Current relevant local authority expenditure on access in the extended area of the Park

13. It has not been possible to establish overall figures for expenditure by Scottish Borders and South Lanarkshire Councils for those parts of the Pentland Hills that fall within their areas.

14. However, figures are available for current expenditure by those Councils on meeting their access obligations under Part 1 of the Land Reform (Scotland) Act 2003. This Act gives everyone statutory access rights to most land (and inland water) in Scotland and requires land managers to manage their land and water responsibly in relation to access rights. The Act also makes local authorities responsible for setting up Local Access Forums, producing a Core Paths Plan, upholding public access rights and publicising with SNH the Scottish Outdoor Access Code.

15. At present, Scottish Borders Council spends around £5,300 per annum on paths and access officers in that part of the Pentland Hills that falls within its area – which is only 1% of its total area, but would amount to 23% of the expanded Park (if the boundary was extended to the outer limit). South Lanarkshire spends around £3,000 on paths and access officers in the part of

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7This Support Services figure is provided annually by City of Edinburgh Council Finance Department.
8Pentland Hills Regional Park Annual Report 2013-14, page 5:
9The Friends of the Pentlands is a Scottish Charitable Incorporated Organisation whose aim is to seek to act as a catalyst to promote the conservation, protection and enhancement of the Pentland Hills, with particular emphasis on recreational quality, public access, cultural heritage, landscape and biodiversity.
the Pentland Hills that falls within its area – which is around 5% of that area, but would amount to 33% of such an expanded Park.

**COSTS ON THE SCOTTISH ADMINISTRATION**

16. The Bill gives Scottish Ministers the power by regulations to confirm an alternative southern boundary that is proposed to them jointly by the five relevant local authorities. Ministers have no discretion, however, to impose a boundary of their own choosing, or to vary the boundary that is proposed to them, so the cost implications of exercising this power are limited to the making of the regulations themselves. The Bill also allows Scottish Ministers, should they wish to do so, to make further provision in relation to the procedure to be followed by the relevant local authorities regarding their proposal for an alternative boundary. There is likely to be some administrative cost (mostly involving staff time) in preparing such regulations. These costs to the Scottish Government would be minimal and it is anticipated that they would be absorbed within the appropriate existing budget. In addition, it is assumed that any consequential implications of the Bill in relation to access reporting requirements under the 2003 Act would be absorbed within the existing departmental budget.

**COSTS ON LOCAL AUTHORITIES**

17. The costs to the relevant local authorities will involve both one-off costs associated with extending the boundary of the Park and on-going recurring costs associated with running an expanded Park which will include parts of the areas of Scottish Borders Council and South Lanarkshire Council.

18. Discussions between relevant local authorities will be required on the efficient and effective operation of existing financial investments and projects undertaken within the area to be included in the extended Park and existing access officer provision in each relevant authority area.

19. It is expected that, in addition to all the relevant authorities working jointly, advice and support from SNH, the Pentland Hills Consultative Forum, and South Lanarkshire and Scottish Borders Councils’ existing partnership bodies will be essential to the sustainability of the ongoing operational aspects of the expanded Park.

**One-off costs of expanding the Park**

*Preparation of alternative boundary proposals*

20. Costs in relation to preparation of the alternative boundary proposal, its publication and distribution of the notice are expected to be borne by all five relevant authorities (perhaps in conjunction with SNH). This will cover staff costs, particularly in relation to consulting with all

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11 The Consultative Forum is an advisory group that meets twice a year to discuss and advise on the issues affecting the Regional Park. The forum comprises representatives from recreational user groups, community councils, farmers and landowners, nature conservation groups and public agencies such as Scottish Natural Heritage.
interested parties, plus expenditure in relation to publication and notification of the proposal, and could amount to around £20,000.\textsuperscript{12}

21. Strictly speaking, the Bill does not require these costs to be incurred. However, as the default expansion of the Park to the outer limits two years after Royal Assent is likely to be regarded by the relevant local authorities as an undesirable outcome, it is reasonable to assume that the costs associated with the only means to avoid this outcome (i.e. the joint preparation by those authorities of an alternative southern boundary) are costs associated with the Bill.

\textit{Information and promotional material}

22. It is not anticipated that the expansion of the Park would cost significant amounts in terms of new recreational facilities or visitor services buildings. Costs will relate to changes to the website, promotional material, additional signage in the expanded southern area and general publicity relating to the expanded Park. These are expected to cost in the region of £5,000\textsuperscript{13} with an additional cost of £2,000 to reprint and/or rebrand existing material (for example, leaflets containing maps of the Park).

\textit{Parking provision}

23. It is anticipated that the Park would require a small additional car park located at a convenient access point for the new southern end of the expanded Park. That might cost roughly £1,500 to £2,400\textsuperscript{14} per parking space, with the ongoing maintenance cost to be funded from the Park’s general maintenance budget.

\textit{Overall running costs of the expanded Park}

\textit{Additional staff resource}

24. It is anticipated that there will be a need for some additional staff to provide additional ranger/heritage services within the expanded Park area. This would cost approximately £45,700 per annum for one full-time equivalent (FTE) post.\textsuperscript{15}

\textsuperscript{12} This figure includes an estimated £15,000 for preparing a proposal which will involve a feasibility/consultation exercise (for comparison, a smaller-scale 2013 Pentland Hills Regional Park study cost £6,000) and £5,000 for advertising and administration costs (including postage costs). The cost of producing the Cairngorms National Park plan was estimated at £15,000 in 2006 (source: \url{http://www.scottish.parliament.uk/S2_Bills/Cairngorms%20National%20Park%20Boundary%20Bill/CNPBill2006_ex notes.pdf} [Accessed March 2015]).

\textsuperscript{13} Figures based on discussion with local interest groups and estimated based on the time spent on producing leaflets and signage relating to the expanded Park and access routes in the area to be included in the extended Park. Additional signage for farmers and land managers will be have to be produced: SNH guidance on signage for land managers, \url{http://www.snh.gov.uk/docs/A302820.pdf} [accessed March 2014].

\textsuperscript{14} It is anticipated that the local authorities would identify a suitable location for a small car park (Guidance is produced by SNH: \url{http://www.snh.org.uk/docs/publications/heritagemanagement/carparks.pdf}) on land already owned by the local authority. The cost per parking space has been modelled on Arcadis UK 2011 figures for a surfaced car park, uprated to include inflation. \url{http://www.arcadis-uk.com/Content/ArcadisUK/docs/Buildings_cost_guide_A4_vfinalFeb2011.pdf} [accessed March 2014]

\textsuperscript{15} This figure and associated cost is based on current staff costs for the Park (£228,475) divided by the number of FTE staff currently employed (5).
**Path maintenance**

25. The Bill does not aim to impose any new requirements in the southern areas of the hill in terms of path maintenance, however, it is expected that by the inclusion of the southern half of the Pentland hills into the Park, that this would lead to a higher level of path maintenance being required in that southern half.

26. Four of the five local authorities directly affected by the Bill submitted their views to the member’s consultation, and one, South Lanarkshire Council whose area will contain roughly a third of the expanded Park, did not respond. Each expressed concerns around financial provision and the long term financial stability of the Park given the financial pressures on the existing Park. Scottish Borders Council noted that its current pro rata staffing and non-staffing costs to manage the current countryside access function (within that part of its area that stands to be included in the Park) amounts to around £5,300 per annum and South Lanarkshire Council estimated that over the last 3 years, it has spent £3,000 on core paths and rights of way maintenance in the area proposed within the new boundary.

27. SNH confirmed that it would continue to fund individual projects within an extended Park and will continue to provide advice and expertise as appropriate. This would include staff resource for particular initiatives or pilot projects which demonstrate wider economic and social benefits based on a “flourishing environment”. In addition, SNH confirmed its wish to work more closely with the health and environment sectors which could see cross-cutting biodiversity projects being funded within the expanded Park. In its response to the consultation, SNH stated—

> “there is no doubt that there will be significant financial implications for the local authorities in the extension area but we would argue that these should be seen alongside the potential benefits envisaged in health, well-being and increased economic development as well as environmental opportunities”.  

28. It is anticipated that all relevant local authorities will work together, with the help and guidance of members of the Consultative Forum, on path maintenance projects throughout the expanded Park, and that efficiency gains on specific projects could help to offset the additional cost involved.

29. The Bill allows two years before the boundary is altered by regulations, which will provide the necessary time for discussions to take place with the relevant local authorities, members of the Pentland Hills Regional Park Management Group, Pentland Hills Regional Park Consultative Forum, and all interested parties on how to secure a more financially stable future for the Park.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

30. The Bill could have small but direct financial implications for Scottish Natural Heritage, Scottish Water, NHS Scotland, and farmers and individuals with agricultural holdings within the Pentland Hills range and Small Business Enterprises.

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16 SNH response to the consultation: [http://media.wix.com/ugd/d17704_b8cfb25133da47b7b59f6eaf94028141.pdf](http://media.wix.com/ugd/d17704_b8cfb25133da47b7b59f6eaf94028141.pdf)
Scottish Natural Heritage

31. The Bill is likely to prompt discussions on the long term future funding and governance arrangements of the Park. Options for securing alternative funding mechanisms could involve the commission of a feasibility study to explore the options open to the Park including possible areas where savings can be made through a joined-up approach to managing the Park across all five local authority areas. SNH would be a likely candidate to carry out any such study.

Scottish Water

32. The expanded Park will include additional Drinking Water Protected Areas (DWPAs) and a number of reservoirs which are used for both water supply and compensation. According to Scottish Water, the Bill may have financial implications for its contribution to managing the Park and in relation to control measures for the purpose of protecting drinking water quality and security of supply. Scottish Water was unable to quantify these financial implications.

National Health Service Scotland

33. Currently there are around 600,000 visitors to the Park annually. Increasing the number of people enjoying access to the hills for recreational purposes could potentially result in savings to the NHS given the health benefits, both in relation to physical and mental wellbeing, of individuals accessing recreational pursuits in the extended Park. It would be difficult to quantify exact cost savings to the NHS without further information on who accesses the hills for what purpose. However, a 2013 report published on the value of countryside and visitor management services in the Pentland Hills Regional Park found that every £1 invested would generate around £9 of social benefits. A similar Social Return Investment Analysis on Clyde Muirshiel Park Authority in 2014 concluded a similar level of benefits.

Local landowners, farmers and other businesses

34. With increased usage and public access may come an increased impact on landowners and farmers within the extended Park. This could involve, for example, additional maintenance costs to paths, gates etc. and a possible increase in damage, litter and disturbance to stock. On the other hand, bringing the southern Pentlands within the more managed context of a Regional Park provides greater opportunities (e.g. through notices and leaflets) to remind people about the principles of responsible access (including the Scottish Outdoor Access Code). Overall, therefore, any negative impact from increased visitor numbers may be offset by an improved standard of visitor behaviour.

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17 Crosswood Reservoir (used for compensation flow only), Baddingsgill Reservoir, Baddingsgill Burn Intake, South Medwyn Intake, West Water Reservoir and West Water River. Scottish Water was unable to provide cost details associated with these additional DWPAs.


35. The Bill may have a financial benefit for local businesses (e.g. shops, cafes) operating in or near the area of the extended Park, depending on the extent to which visitor numbers increase.
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MEMBER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 30 April 2015, the member who introduced the Bill (Christine Grahame MSP) made the following statement:

“In my view, the provisions of the Pentland Hills Regional Park Boundary Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 30 April 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Pentland Hills Regional Park Boundary Bill would be within the legislative competence of the Scottish Parliament.”