PENTLAND HILLS REGIONAL PARK BOUNDARY BILL

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POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Pentland Hills Regional Park Boundary Bill introduced in the Scottish Parliament on 30 April 2015. It has been prepared by the Non-Government Bills Unit on behalf of Christine Grahame MSP, the member who introduced the Bill, in accordance with Rule 9.3.3A of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 67–EN.

BACKGROUND

Legislative framework for Regional Parks

2. The legislation that first provided for the designation of Regional Parks was the Countryside (Scotland) Act 1981 (“the 1981 Act”) (by adding a new section 48A into the Countryside (Scotland) Act 1967). A regional park is defined (in section 48A(1)) as “an extensive area of land, part of which is devoted to the recreational needs of the public”.

3. Under this legislation, local authorities – either individually or jointly – have the power to designate land within their area as a Regional Park, subject to approval by the Scottish Ministers. Details of the process to be followed are set out in the Regional Parks (Scotland) Regulations 1981 (SSI 1981/1613).

The existing Park – designation, operation and governance

4. The Pentland Hills Regional Park Designation Order 1984 defined the area of land to be designated as the Park (all of which, at that time, fell within the area of the then Lothian Regional Council). The order was confirmed by the Secretary of State in 1986, without amendment, following a public inquiry. The boundaries of the Park have not changed in the intervening period (of nearly 30 years).

5. The Park is one of three designated Regional Parks in Scotland, the others being Clyde Muirshiel\(^3\), and the Lomond Hills\(^4\). (A fourth park, the Loch Lomond Regional Park, has now been subsumed within the Loch Lomond and Trossachs National Park.)

6. The Park currently covers an area of 9,164\(^5\) hectares (approximately 25,000 acres) with the existing boundary largely following administrative boundaries rather than integrated landscape character.

7. The Pentland Hills Regional Park has four principal aims\(^6\)—
   - To retain the essential character of the hills as a place for the peaceful enjoyment of the countryside
   - To care for the hills, so that the landscape and habitat is protected and enhanced
   - Within this caring framework to encourage responsible public enjoyment of the hills
   - Co-ordination of these aims so that they can co-exist with farming and other land uses within the Park.

8. The Park is governed by the Pentland Hills Regional Joint Committee which brings together elected representatives of the three local authorities, parts of whose areas fall within the current boundaries of the Park. Governance and other arrangements are now covered under a 2005 Minute of Agreement, in terms of which the City of Edinburgh Council is the Managing Authority, providing more than half of the Park’s total funding, with Midlothian Council and West Lothian Council contributing roughly 33% and 5% respectively. The Joint Committee consists of seven members (three from the City of Edinburgh Council, three from Midlothian Council and one from West Lothian Council). The following organisations have observer status (i.e. no voting rights) on the Joint Committee: Scottish Water; Scottish Natural Heritage (SNH); East Lothian Council; the National Farmers Union (Scotland); and Scottish Land and Estates. In addition, the Joint Committee is advised on the operation of the Park by the Pentland Hills Regional Park Consultative Forum\(^7\), which brings together a wider range of stakeholders with an interest in the Park.

9. As previously noted, there was a public inquiry prior to the designation of the Park boundary which included discussions on whether the park should cover the entire Pentland Hills range. At that time, there was some opposition to designating the entire Pentland Hills range as the Regional Park, in particular from landowners, and this resulted in the current boundary of the Park not including the area around Balerno and the southern section of the Pentland Hills. It is

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\(^3\) [http://www.clydemuirshiel.co.uk/](http://www.clydemuirshiel.co.uk/) [accessed March 2015]

\(^4\) [http://fifecoastandcountrysidetrust.co.uk/](http://fifecoastandcountryside) [accessed March 2015]

\(^5\) The original Designation Order states the Park as covering 9,158 ha. This figure and subsequent percentages of land in each local authority area have been extracted from the GIS system which produced the illustrative maps to accompany the Bill.


\(^7\) The Consultative Forum is made up of representative interests of landowners, farmers and recreational user groups involved with the Regional Park, plus public bodies and other interests including Community Councils. The purpose of the Consultative Forum is to offer advice and opinion on the operation of the Regional Park. The Joint Committee members attend meetings of the Consultative Forum.
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this southern section of the Pentland Hills that is now to be included within an expanded Park, through the operation of the Bill.

POLICY OBJECTIVE OF THE BILL

Extending the Park

10. The aim of the Bill is to extend the existing Regional Park to encompass all (or nearly all) of the Pentland Hills range, thus ensuring it is protected and that decisions about how the land is used and maintained in the long term are guided by the Regional Park principal aims (see paragraph 7).

11. At present, the Park includes roughly half of the Pentland Hills range, namely the part lying to the north and east (which falls within the areas of the City of Edinburgh Council, West Lothian Council and Midlothian Council).

12. The Park’s southern boundary is drawn across the range of hills and excludes that part of the range of hills that lies further to the south and west (and that falls within the areas of South Lanarkshire Council and Scottish Borders Council).

13. The Bill will result in the existing southern boundary of the Park being extended so that the Park encompasses all (or substantially all) of the Pentland Hills range. The Bill provides two means by which this can be achieved.

14. Firstly, the Bill provides for the Park’s southern boundary to be extended automatically two years after Royal Assent to include the entire area between the current southern boundary and an outer limit defined by the route of the A702 to the east, the A721 to the south and the A70 to the west. The Bill also allows local authorities to propose an alternative boundary to Scottish Ministers, provided that it lies within that outer limit, but still includes the “southern summits” of Seat Hill, Black Mount and Mendick Hill. In proposing an alternative to the outer limit, the relevant local authorities must act jointly and consult with all interested parties within their area prior to seeking confirmation from Scottish Ministers on their proposed boundary.

15. The following table outlines the percentage of land in each local authority for the current Park, the (maximum) extension area and the (maximally) extended Park—

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8 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)
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<table>
<thead>
<tr>
<th>Local authority</th>
<th>Current Park</th>
<th>Extension area (maximum extent)</th>
<th>Expanded Park (maximum extent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edinburgh</td>
<td>3,290 ha (36%)</td>
<td>-</td>
<td>3,290 (13%)</td>
</tr>
<tr>
<td>Midlothian</td>
<td>4,170 ha (46%)</td>
<td>-</td>
<td>4,170 (16%)</td>
</tr>
<tr>
<td>West Lothian</td>
<td>1,704 ha (19%)</td>
<td>2,167 ha (13%)</td>
<td>3,871 ha (15%)</td>
</tr>
<tr>
<td>Scottish Borders</td>
<td>-</td>
<td>6,003 ha (36%)</td>
<td>6,003 ha (23%)</td>
</tr>
<tr>
<td>South Lanarkshire</td>
<td>-</td>
<td>8,528 (51%)</td>
<td>8,528 ha (33%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9,164 ha</strong></td>
<td><strong>16,698 ha</strong></td>
<td><strong>25,862 ha</strong></td>
</tr>
</tbody>
</table>

16. The Park currently operates under increasing financial pressure and focusses on how best to manage increasing visitor numbers while protecting the livelihoods of those who live and work in the Park and protecting the natural heritage of the Park. The Management of the Park is undertaken under five main themes—

- economic development
- health and well being
- community partnership and participation
- learning, development and responsible citizenship
- environmental quality and climate change

17. The main reason for extending the boundary is to bring the remaining parts of the Pentland Hills range into the protection of a Regional Park. Depending on where the new southern boundary is drawn, the extended Park could include some or all of the following designated Sites of Special Scientific Interest (SSSIs), Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar\(^9\) sites—

- Craigengar SSSI and SAC
- West Water Reservoir SSSI, SPA and Ramsar Site
- Dolphinton – West Linton Fens and Grassland SSSI
- Tributaries of the River Tweed SAC and SSSI
- Lynslieburn SSSI
- North Esk Valley SSSI

\(^9\) The Convention Wetlands of International Importance, adopted in Ramsar, Iran, in 1971. [http://www.ramsar.org/](http://www.ramsar.org/) [accessed March 2015] In Scotland, all Ramsar sites are either Natura sites and/or Sites of Special Scientific Interest and are protected under the relevant statutory regimes.
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- Windy Gowl and Carlylops Dean SSSI.  

18. The activities which are currently funded in the Park are guided by a number of national framework documents such as the Scottish Forestry Strategy and associated policy documents, the strategy for the conservation and enhancement of biodiversity in Scotland, and National Walking Strategy. In addition to these overarching strategic framework policies, the specific measures designed to support the key objectives of the Park are set out in the local plans of the three local authorities.

19. It is not envisaged that the Bill will significantly change how the land is used in those parts of the Pentland Hills currently outwith the existing Park boundary. These areas include peat bogs and wet surface peat areas which would not necessarily lend itself easily to those activities currently undertaken in the Park such as cycling and horse riding although the number of individuals walking over the hills could increase with additional maintenance of the Victorian right of way path networks. In addition, agricultural and grouse management activities currently undertaken in the extended area would not necessarily fit with opportunities to increase recreation and walking activities in large parts of the extended park.

20. Extending the Park to include two more local authorities could lead to a wider range of expertise being brought into the management of the Park and increased opportunities for collaborative initiatives and efficiency savings being made on joint ventures. As outlined in the consultation, the landscape in the southern part of the range is varied, moving from hills to moorland, and being part of the Park could bring the following benefits to landowners, homeowners and business—

- co-ordinated leadership
- co-ordinated investment
- better engagement of partners and local people
- better use of existing facilities
- improved standards of open space management
- a stimulus to sustainable growth through indigenous and inward business activity
- greater recreational opportunities
- improvements to the quality of life and health for local people, generating further pride in their area
- an environment that is an attractive destination for visitors.

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10 Scottish Natural Heritage, written response to consultation.
21. The expanded Park is likely to require some additional parking provision for those visitors with special access requirements, or for whom using public transport is not practical. It is expected that the relevant local authorities would agree the exact location under guidance from the Consultative Forum and that it would be located on land already owned by the local authority.

Finance and governance arrangements

22. The Bill is solely concerned with the boundary (and hence the extent) of the Park, and makes no direct provision about how it is funded or managed. However, the member believes that the Bill will provide a useful opportunity to debate how the existing Park is financed and operates under increasing financial constraints and the ways in which sustainable funding and governance arrangements could be developed for an extended Park.

23. The member acknowledges the financial pressures on those currently funding the existing Park, in particular, the City of Edinburgh Council as Managing Authority, and believes it is necessary for all relevant local authorities and stakeholders to explore possible funding models and options, particularly those that might allow access to additional sources of capital funding for the extended Park. Such an exercise might also identify ways in which acting jointly across local authority boundaries could result in efficiency savings. To this end, the Bill provides a period of up to two years (from the date of Royal Assent) within which the relevant local authorities can consult on a revised boundary and seek implementation of that boundary by Scottish Ministers (without the Park extending automatically to the outer limits). The member believes this will allow sufficient time for the five local authorities and stakeholders to explore future funding and governance models, while still ensuring that these discussions cannot delay indefinitely the expansion of the Park.15

ALTERNATIVE APPROACHES

24. Provision already exists in the 1981 Act for local authorities to designate an area of land as a Regional Park and, since the original designation of the Park almost thirty years ago, there has been no indication that the five local authorities whose areas include parts of the Pentland Hills would use that existing provision to extend the Park to encompass the entire range of hills. Given the increasing financial constraints under which local authorities operate, the member believes that it is essential for the long term protection of the hills that discussions around sustainable funding of the existing and extended Park take place as a matter of urgency.

25. Sustainability is a key aspect of the Park’s strategy and by extending the Park, the entire range of the Pentland Hills will benefit from the strategic approach to land management currently operated within the existing Park. The member recognises concerns regarding the finance and governance of the Park but firmly believes these can be addressed as part of a wider debate about the longer term development of the Pentland Hills. Scottish Land and Estates16 in their response to the consultation, although not in favour of expanding the Park, acknowledged

15 Paragraph 20 of the Minute of Agreement between the current three local authorities on the Park states: ‘Should the Regional Park’s boundary be extended or otherwise varied, the Joint Committee shall have the authority to review this Agreement to reflect the new Regional Park area and the relevant Local Authorities’.
16 Scottish Land and Estates consultation response.
that there can be advantages through obtaining regional park status in the form of branding and identity.

26. The member consulted on whether to extend the boundary of the Park to the north (to include the area around Balerno), as well as to the south. By the time the final proposal was lodged, she had rejected this option, taking account of responses which questioned the appropriateness of including a largely suburban area within the Park (which differs from the agricultural nature of the land in the existing park) and which suggested that this could dilute the influence of the rural population on decisions in relation to how the Park is run.

27. The consultation document also asked whether an extension to the south should include only the main area of high ground running south-west towards Carnwath, or also include the separate southern summit of Black Mount. There were conflicting views on this point from respondents. The member concluded that Black Mount should be included in order that the Park encompasses the entire Pentland Hills range and to link the boundary of the Park to the area currently designated as being a Special Landscape Area.

CONSULTATION

28. Christine Grahame MSP conducted a consultation on her draft proposal for this Bill between 26 February and 23 May 2014. The consultation process included preliminary meetings with stakeholders and the use of local and national press releases to publicise the proposal widely. The meetings were used as a method of stimulating debate as to the future funding of the Pentland Hills Regional Park. The consultation received 65 responses in total.

29. Overall, respondents to the member’s consultation were in favour of extending the current Park with just over half agreeing that the Park should include the entire Pentland Hills Range. The Woodland Trust Scotland stated that being included within a regional park would benefit the woodland and biodiversity of the area. Ramblers Scotland considered that the boundary should be drawn on geographical and geological grounds in order to have a boundary that is based on “landscape character” rather than administrative or land-ownership boundaries. SNH suggested that any extension should include “the upland massive and associated fringes” as this would make more sense in terms of landscape integrity than the current administrative boundary but made the point that objectives for the extended Park should be set, including landscape, recreation, access, bio-diversity and economic development and these should be tested against desk and field based information.

19 A summary of consultation responses, lodged alongside Christine Grahame’s final proposal, is available on the Scottish Parliament website, and includes (on page 1) a link to the individual responses: http://www.scottish.parliament.uk/S3_MembersBills/Final%20proposals/Summary_of_Responses_FINAL.pdf.
20 Woodland Trust Scotland, written response to consultation.
21 Ramblers Scotland, written response to consultation.
22 SNH, written response to consultation.
Association for the Protection of Rural Scotland (APRS) commented that the Bill will secure the integrated management of the Pentland Hills for the benefit of future generations.  

30. Respondents highlighted the socio-economic and environmental benefits which could be derived from the proposed extension as well as bringing the benefits of integrated management which the current Park experiences to the entire Pentland Hills range. Some respondents also considered that the proposed extension of regional park status could protect the Pentland Hills from developments such as wind farms. For a number of respondents, the current boundary of the Park was artificial and an expanded boundary would better reflect the natural geography of the Pentland Hills. A number of respondents supported the proposal in principle but highlighted the need for more information on level of demand for, and the impacts of, an extended Park.

31. Broadly speaking, respondents welcomed the consultation exercise on the grounds that it had highlighted the need for a wider debate about the long-term future of the Park and, in particular, the financial sustainability and governance arrangements associated with the Park’s operations. In this regard, a range of respondents suggested that there was a need for more information on the potential impacts of the proposed extension, particularly in terms of finance, governance of the park and the evidence of demand for an extension. Some stakeholders, such as City of Edinburgh Council and SNH, suggested that a feasibility study should be commissioned to provide a more detailed analysis of the issues associated with the proposal.

32. The main concern raised by respondents was how the proposed extension would be funded and the how the governance arrangements would work in practice as a result of increasing the number of stakeholders participating in the management of the Park. Responses from farmers and land managers highlighted the impact of public access upon farming land and the differing nature of the terrain and farming activity in the current Park compared to the proposed extension area. For some respondents, the proposed extension was an issue which would be better dealt with by adopting a partnership approach at a local level.

33. Of the five local authorities directly affected by the proposed Bill, the only one not to respond to the consultation was South Lanarkshire Council. Two local authorities, City of Edinburgh and West Lothian, broadly supported the proposal in principle. However, West Lothian qualified its support as being subject to there being no financial costs for it, and clarity on local authority representation within an expanded Park. The City of Edinburgh Council said that it could not provide any additional funding and that a feasibility study should be funded to explore the proposal further. Midlothian Council did not express a specific view on the proposal, but stated that there would have to be no additional costs for it, and that it would also need clarity on future funding arrangements and local authority representation within an expanded Park. Scottish Borders Council opposed the proposal on the grounds that the role of Regional Parks “was specifically to manage areas of intense recreational pressure” and that the proposed extension area was “peripheral to the main sources of recreational demand”.

34. The NFU Scotland, while supportive of public access to land within the Park for leisure pursuits, said it was essential that those individuals used the land responsibly and that the governing principles of the Scottish Outdoor Access Code can be to the detriment of those

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23 Association for the Protection of Rural Scotland, written response to consultation.
working the land within the Park – citing as examples instances of sheep worrying, dog fouling, littering and damage to farm land where members of the public venture from designated paths.

35. The Bill will have an impact on the relevant local authority budgets but the member believes that this could be addressed by a rearrangement of budget contributions already allocated to projects within the extended area. APRS stated that the extension to the Park would bring benefits to the extended area currently enjoyed by the area in the existing Park such as facilitating the enjoyment of the area by visitors, promoting understanding of the work of land managers, protecting and enhancing the area’s important landscape and biodiversity and integrated management of the relationships between these different objectives.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

36. The impact on people with disabilities including mental health issues could be positive in consequence of the effective management of the extended Park involving further investment in wheelchair accessible paths and information on the extended Park in a variety of formats as it would provide greater access to the positive benefits of enjoying recreational activities within the Pentland Hills range.

Human rights

37. The Bill’s provisions are considered to be compatible with the European Convention on Human Rights. Consideration has been given to Article 1 of Protocol 1 (Protection of property) of the ECHR, which sets out the right to “peaceful enjoyment of possessions” (including land and property). The Bill may interfere with the property rights of persons who currently own or occupy land within the additional area to be included in the Park. However, this is not considered to amount to an incompatibility with ECHR rights, taking into account the qualified nature of the A1P1 right and the recognition which it gives to wider public interest considerations.

Island communities

38. As the subject matter relates solely to the area around the Pentland Hills, there are no implications for island communities.

Local government

39. The Bill will impact on five local authorities parts of whose areas will lie within the extended Park, two for the first time. All of the relevant authorities will be expected to revise the existing Minute of Agreement and jointly manage the new extended Park. During the two-year period after Royal Assent, it is anticipated that discussions between the relevant local authorities, the existing Joint Committee and the Consultative Forum will take place around future governance and funding arrangements and, in consultation with farmers, landowners, local

24 Written response to consultation.
25 Written response to consultation.
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Businesses and other interested parties, regarding where the new southern boundary should be drawn.

**Sustainable development**

40. The Bill has a number of impacts on sustainable development based on the principles set out in both the UK Shared Framework for Sustainable Development (which was adopted by the Scottish Government in 2005) and the Scottish Government’s National Performance Framework, *Scotland Performs*[^26] namely—

- “Living within Environmental Limits – respecting the limits of the planet’s environment, resources and biodiversity – to improve our environment and ensure that the natural resources needed for life are unimpaired and remain so for future generations”. Among the principal aims of the Park was to provide protection for the landscape and habitat of the Pentland Hills. Concerns were raised by some respondents about potential damage to land, livestock and wildlife as a result of an increase in visitors to the hills, potentially resulting in bio-security issues for farmers. However, the extension of the Park would provide an opportunity for local authority Heritage Officers/Access Officers to liaise effectively across the five local authority areas to ensure landowners, farmers and small businesses can discuss any issues and concerns they might have and provide support and guidance on operations within the Park. Heritage Officers would also be in a position to encourage visitors to the area to act in a responsible manner. This links to one of the purposes of the Scottish Government’s National Performance Framework, *Scotland Performs* in which it states ‘we value and enjoy our built and natural environment and protect it and enhance it for future generations’.

- “Ensuring a Strong, Healthy and Just Society – meeting the diverse needs of all people in existing and future communities, promoting personal well-being, social cohesion and inclusion, and creating equal opportunity for all”. The health benefits both physical and mental associated with exercise such as walking, cycling and running have been well documented and this Bill will protect the Pentland Hills as a place where the public can continue to access the hills and are encouraged to explore the various recreational pursuits operating within the Park while observing the Scottish Outdoor Access Code. The Bill will also have a positive impact in relation to the *Scotland Performs* target which is to help the ‘population to increase its healthy life expectancy’.

- “Achieving a Sustainable Economy – building a strong, stable and sustainable economy which provides prosperity and opportunities for all, and in which environmental and social costs fall on those who impose them (Polluter Pays), and efficient resource use is incentivised”. The consultation responses highlighted concerns that an increase in the size of the Park could put further financial pressure on the management of the Park should additional resources and funding not become available. However, extending the Park could encourage more visitors to the hills which may in turn generate more income within the local area.

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