

# **NATIONAL PARKS (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

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## INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the National Parks (Scotland) Act 2000, (asp10) which received Royal Assent on 14 August 2000. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. 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.

3. The ACT

### Section 1: The National Park Aims

4. This section sets out the four aims of National Parks.

### Section 2: National Park proposals

5. This section sets out the criteria for considering an area for National Park status.

6. *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 all the conditions in *subsection (2)* are met. Such a proposal is referred to in the Act as a “National Park proposal” (*subsection (4)*).

7. *Subsection (3)* 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 3: 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.

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 (e)* 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; determine the period (which must be at least 12 weeks) for which the proposal and requirement are to be made available for public inspection under subsection (7) and notify every such local authority of that period. The reporter 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)* allows the Scottish Ministers to direct the reporter on the conduct of the consultation.

14. *Subsection (7)* 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.

15. *Subsection (8)* requires the reporter, when preparing a report, to take account of a number of factors: whether the matters in section 2(2) are satisfied in relation to the proposed area; the aims of National Parks (in section 1); views expressed during the consultation period; and anything else the reporter considers relevant (such as administrative boundaries).

16. *Subsection (9)* 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.

17. *Subsection (10)* requires the Scottish Ministers to publish the report and lay it before the Parliament.

#### **Section 4: Statements by the Scottish Ministers**

18. 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 3, and requires Ministers to publish a statement following public consultation on the proposal.

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

20. *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, determine the period (which must be at least 12 weeks) for which the proposal and requirement are to be made available for public inspection under subsection (4) and notify every such local authority of that period. The Scottish Ministers must 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.

21. 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.

22. *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)); views expressed during the consultation period; and anything else they consider relevant (such as administrative boundaries).

#### **Section 5: Local inquiries**

23. 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 6: Making of designation orders**

24. This section and section 7 set out how a National Park is set up through a designation order.

25. *Subsection (1)* provides that, following a report or statement under section 3 or 4, 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.

26. Under *subsection (2)*, in making their decision they must take account of the report or statement, and of any local inquiry held.

27. However, *subsection (3)* provides that before laying a draft of a designation order before Parliament for consideration under section 34(5), Scottish Ministers must consult as follows: send a copy of the proposed draft order to every local authority with all or part of its area within the proposed National Park, determine the period (which must be at least 12 weeks) for which it is to be made available for public inspection, publicise it in a manner it they think fit; lay it before the Parliament and consult every such local authority, every community council wholly or partly in the area, such persons as appear to them to be representative of the interests of those who live, work or carry on business in the area, and other such persons as they think fit.

28. *Subsection (4)* requires local authorities receiving a copy of the proposed draft order under subsection (3)(a) to make it available for public inspection for the period stated under subsection (3)(b).

29. *Subsection (5)* requires the Scottish Ministers to take into account views and comments received during the consultation. *Subsection (6)* requires the Scottish Ministers when laying a draft designation order before the Parliament for consideration under section 34(5) to also lay before the Parliament a statement which details the views and comments received during the consultation under subsection (3) and also the changes (if any) which were made in light of those.

## **Section 7: Designation orders: further provisions**

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

31. 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. It must also specify the matters mentioned in paragraph 3(2) and (5) of schedule 1 (the number of elected members, the number of local members and which authorities are to nominate local members).

32. *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.

33. *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.

34. *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 8: National Park authorities: constitution etc.**

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

## **Section 9: General purpose and functions of National Park authorities**

36. *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 are achieved in a way which is mutually supportive, rather than looking at each of the aims separately and in isolation.

37. *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 10. There may be additional functions conferred in the relevant designation order.

38. *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.

39. *Subsections (4) and (5)* make clear that this power does not allow any activity which is specifically restricted by the Act, 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).

40. *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 9(1) – in other words, to ensure that the aims set out in section 1 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(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 10: Planning functions**

41. 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 11: National Park Plans**

42. 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 9(1).

### **Section 12: National Park Plans: procedure**

43. 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, who 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 (at least 12 weeks) for consultation and for which the draft Plan is to be made available for public inspection.

44. 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 or reject it. 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.

45. 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.

46. 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 13 National Parks Plans: review**

47. This section requires a National Park authority to review its National Park Plan, from time to time, and if it thinks fit prepare and submit a revised National Park Plan to the Scottish Ministers. This review is to take place within 5 years (or less as the Scottish Ministers may direct) from the Plan's adoption, or as the case may be, the previous review. Section 12 applies in relation to an amended Plan as it applies to a National Park Plan prepared under section 11.

#### **Section 14: Duty to have regard to National Park Plans**

48. 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 15: Management agreements**

49. 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.

50. 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.

51. *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 16: Directions and guidance**

52. *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.

53. *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).

54. *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 17: Agency arrangements and joint operations**

55. *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.

56. *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.

57. Under *subsection (3)* provides that “function” in this context does not include a function of making subordinate legislation, or any function conferred by the Act. Under *subsection (4)* two National Park authorities may arrange to carry out functions jointly, and under *subsection (5)* these arrangements may include establishing a joint committee or for an officer carrying out the functions.

58. Under *subsections (6) to (8)* persons who are not members of any of the authorities making the arrangements may be members of the committee but a majority of the members of the committee must be members of those authorities. Those authorities must pay to a member of the joint committee such remuneration and allowances (if any) as the Scottish Ministers may determine. The joint committee must comply with directions given to it by the authorities making the arrangements.

59. *Subsection (9)* provides that such arrangements do not affect responsibility for exercising the functions in question.

### **Section 18: Delegation of functions by the Scottish Ministers**

60. 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 Act, from the functions of the Scottish Ministers which can be delegated under this section.

### **Section 19: Use of resources**

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

### **Section 20: Advisory groups**

62. 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 21: General financial duties**

63. *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 22: Grants and loans by the Scottish Ministers**

64. 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 23: Borrowing powers**

65. 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.

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

## **Section 24: Guarantees**

67. 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 25: Accounts**

68. 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 26: Information and annual reports**

69. 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 and publish it (*subsection (5)*). The report

must set out any directions received under section 16 which relate to the year in question (*subsection (4)*).

### **Section 27: Records**

70. This section sets out how a National Park authority must deal with its records.

71. 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 28: Inquiries and other hearings**

72. 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 29: Transfer of staff, property and liabilities**

73. 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 or the exercise of its functions.

### **Section 30: Modification and revocation of designation orders**

74. *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 9(2)(d) or 10;
- the local authority membership of a National Park authority (under section 7(1)(c) or (d)).

75. *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 3 to 7 of the Act, 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 2 to 7 of the Act 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 34(5)).

### **Section 31: application in relation to marine areas**

76. This section enables the Scottish Ministers by order to modify the provisions of the Act listed in *subsection (1)* in their application to areas that includes the sea. Such an order would be subject to affirmative resolution, under section 34(5).

77. When an order under subsection (1) modifies any provision relating to consultation with bodies representative of those who live, work or carry on business in the area, *subsections (2) and (3)* ensure that the provision for consultation must include consultation with the representatives of those organisations who carry on commercial fishing activities in the proposed area of a marine National Park.

### **Section 32: Crown application**

78. This section makes clear the extent to which the Act applies to the Crown.

### **Section 33: Ancillary provision**

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

### **Section 34: Orders**

80. This section sets out the procedures under which the powers to make orders under the Act are to be exercised. Under *subsection (1)*, orders under the Act 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 33 - in other words, incidental provisions can be included in a designation order or in a free-standing order under section 33.

81. *Subsection (4)* makes clear that the powers in sections 6(1), 30(1) and 33 or paragraph 4 of schedule 1 include power to modify enactments, instruments and documents. *Subsection (5)* requires any order made under section 6(1) (a designation order setting up a National Park), 30(1) (an order modifying or revoking a designation order) or 31 (an order relating to marine National Parks) or paragraph 4 of schedule 1 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 33 which provides for textual amendment of an Act.

82. *Subsection (7)* provides that certain orders made under the Act 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 30(4) (modifying the procedure to be followed for publication/consultation on modifications to, or revocation of, a designation order) or orders made under section 33 (unless textually amending other Acts, in which case they are subject to the affirmative procedure).

### **Section 35: Interpretation**

83. This defines certain terms used in the Act.

### **Section 36: Modification of enactments**

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

### **Section 37: Commencement and short title**

85. This provides for the Scottish Ministers to set by order when the provisions of the Act 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**

86. *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.

87. *Paragraphs 3 to 10* set out how membership of a National Park authority is to be determined. *Paragraph 3(1)* sets a maximum of 25 members with the exact number to be set in the designation order for the Park.

88. *Paragraph 3(2)* requires the designation order to specify the number of members, which must be at least one fifth of the total, to be directly elected by poll of those entitled to vote as electors in a local government election. These are people in an

electoral ward which is wholly or partly in the area of the National Park, and are registered in the register of local government electors at an address within the Park.

89. *Paragraph 3(3)* specifies that the remaining members are to be appointed by the Scottish Ministers, with half of those members being appointed on the nomination of relevant local authorities whose areas are wholly or partly within the Park. The number of members to be appointed on the nomination of each local authority is to be specified in the designation order (*paragraph 3(4)*).

90. *Paragraph 3(5)* requires the designation order to state the number of members who are to be appointed as local members, and how many of these will come from nominations of each local authority.

91. *Paragraph 3(6)* defines “local members” as follows: that the person’s sole or main residence is within the National Park or the person is a councillor for an electoral ward, or member of a community council, whose area is wholly or partly within the National Park.

92. *Paragraph 4* enables the Scottish Ministers to make an order to make provisions for matters associated with the elections, under *paragraph 3(2)*, the period of office (as mentioned in mentioned in *paragraphs 8(a) and (b)*), and rules of disqualification and the procedure for holding the elections.

93. *Paragraph 5* requires the Scottish Ministers, before making appointments of directly appointed members, to consult with those who are representative of people living and working in the Park, the local authorities, community councils and anyone else they think appropriate.

94. *Paragraph 6* requires 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 requires local authorities to nominate only people with relevant experience or knowledge. It requires the Scottish Ministers 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 (although this does not apply in respect of elected members).

95. *Paragraph 7* enables the Scottish Ministers to seek information from people in order to satisfy themselves in relation to the criteria for “local” appointments, or in relation to a person’s financial or other interests which might compromise their ability to act as a member.

96. *Paragraphs 8 to 10* 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). For elected members, the terms of their office are determined under *paragraph 4* (which provides for these matters to be covered in an election order). 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 or re-elected. The Scottish Ministers may remove an appointed member from office if they are satisfied that any of the conditions set out in *paragraph 9* is met. Where a vacancy arises, the appointment of a replacement will be in accordance with the provisions set out in *paragraph 10*.

97. *Paragraph 11* deals with the appointment of convener and deputy convener. Both positions are to be filled by election by members of one of their number. 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 (other than an elected 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.

98. *Paragraph 12* 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.

99. *Paragraphs 13 to 15* 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 14* makes clear that the authority may decide, without the need for approval, all other appointments of staff and their terms and conditions. *Paragraph 15* 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.

100. *Paragraphs 16 and 17* cover an authority's ability to set up committees to deal with business. *Paragraph 16* 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 17* 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).

101. *Paragraph 18* 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.

102. *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)*).

103. *Paragraph 19* 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 or election of a member, will not make proceedings invalid.

## **Schedule 2: General powers of National Park authorities**

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

105. *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.

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

107. *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 9(1)). Such financial assistance requires the consent of the Scottish Ministers.

108. *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 excludes Crown land and 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.

109. *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.

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

111. *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.

112. *Paragraph 9* sets out the rules which apply to the making of byelaws by National Park authorities under *paragraph 8*. These provide for a transparent and consultative process and require the National Park authority to publicise proposed bylaws; make copies of them available for public inspection for such a period (which must be at least 12 weeks) as it determines, and consult every relevant local authority and community council and such persons as appear to it to be representative of the interests of those who live, work, carry on business, or engage in recreational activities in the bylaw area.

113. *Sub-paragraph (2)* places a requirement on a National Park authority to take account of any views and comments received during the consultation and enables it to make any alterations to the byelaws in light of these views and comments.

114. *Sub-paragraph (3)* sets out the process for the confirmation of byelaws under the Act by the Scottish Ministers as being that provided for in the Local Government (Scotland) Act 1973.

115. *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.

116. *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.

117. *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.

118. *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.

119. *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.

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

### **Schedule 3: Miscellaneous functions**

121. This schedule confers on National Park authorities various functions, some of which are provided for by reference to other Acts.

122. *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.

123. *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.

124. *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.

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

126. *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.

127. *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.

128. *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.

129. *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**

130. *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.

131. *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.

132. *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.

133. *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.

134. *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.

135. *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)*).

136. *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**

137. This schedule makes modifications of other enactments.

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

139. *Paragraph 2* makes amendments to the Countryside (Scotland) Act 1967 in respect of country and regional parks and byelaws. *Sub-paragraphs (1) and (2)* allow National Park authorities to carry out work relating to rights of way, similar to that undertaken by local authorities. *Sub-paragraphs (3) and (4)* 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 and relevant local authority to agree what arrangements to make in this respect. *Sub-paragraphs (5) and (6)* apply the same principle to byelaws made in respect of country or regional parks. *Sub-paragraph (7)* includes a National Park as a consultee on byelaws made by local authorities or Scottish Ministers where those byelaws would apply within area of the National Park.

140. *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.

141. *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.

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

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

144. *Paragraph 8* adds National Park authorities to the list of statutory consultees in respect of areas of special scientific interest and adds National Parks to the areas in respect of which Ministers have duties in relation to certain grants (provided for under the Wildlife and Countryside Act 1981).

145. *Paragraph 9* adds National Park authorities to the list of consultees in respect of notification of public processions held under the provisions of the Civic Government (Scotland) Act 1982.

146. *Paragraph 10* adds the National Park authorities to the list of consultees in relation to the provisions for the abatement of litter under the Litter Act 1983.

147. *Paragraph 11* adds National Park authorities to the list of “consultation bodies” in respect of road traffic regulation orders under the Road Traffic Regulation Act 1984. It also allows a National Park authority to make submissions to the Scottish Ministers on the desirability of these orders in relation to a National Park.

148. *Paragraph 12* 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.

149. *Paragraph 13* adds National Park authorities to the bodies covered by Part II of the Local Government Act 1988 dealing with fairness and letting of contracts.

150. *Paragraph 14* 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.

151. *Paragraph 15* 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.

152. *Paragraph 16* 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.

153. *Paragraph 17* adds National Park authorities to the bodies that must be consulted when local authorities undertake air quality reviews.

153. *Paragraph 18* 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

the other planning Acts, special attention shall be paid to the desirability of exercising the power consistently with the National Park Plan.

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