

Draft Order made by the Scottish Ministers, laid before the Scottish Parliament under section 34(5) and (6) of the National Parks (Scotland) Act 2000 for approval by resolution of the Scottish Parliament

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2003 No.

COUNTRYSIDE

**The Cairngorms National Park Designation, Transitional
and Consequential Provisions (Scotland) Order 2003**

Made - - - - 2003

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by sections 6(1), 7(1), (2) and (4), 9(2) (d), 10(1), 33 and 34(2), (3) and (4) and paragraphs 3, 4, and 16(3) of Schedule 1 to the National Parks (Scotland) Act 2000⁽¹⁾, and of all other powers enabling them in that behalf, having had regard to the report prepared by Scottish Natural Heritage under section 3 of that Act as required by section 6(2) of that Act, and having complied with section 6(3), (5) and (6) of that Act, hereby make the following Order, a draft of which has been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“the 1973 Act” means the Local Government (Scotland) Act 1973⁽²⁾;

“the 1989 Act” means the Local Government and Housing Act 1989⁽³⁾;

“the 1993 Act” means the Crofters (Scotland) Act 1993⁽⁴⁾;

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997⁽⁵⁾

(1) 2000 asp 10.
(2) 1973 c. 65.
(3) 1989 c. 42.
(4) 1993 c. 44.
(5) 1997 c. 8.

- “the 2000 Act” means the National Parks (Scotland) Act 2000;
- “the establishment date” means 25th March 2003;
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(6), any part of whose area is within the National Park;
- “local member” has the same meaning as in Schedule 1 to the 2000 Act;
- “National Park” means the National Park designated by article 3 of this Order;
- “the Authority” means the National Park authority established by article 4 of this Order;
- “the operational date” means 1st September 2003.

Designation of National Park

3. The area shown delineated in black on the deposited map, marked “Cairngorms National Park Boundary” and subdivided into Boundary Maps 1 to 15, is hereby designated as a National Park, to be known as the Cairngorms National Park.

Establishment of the Authority

4. On the establishment date there shall be established the authority for the National Park to be known as the Cairngorms National Park Authority.

Constitution of the Authority

- 5.—(1)** There shall be 25 members of the Authority.
- (2) Five members of the Authority are to be elected in a poll in accordance with paragraph 3(2) of Schedule 1 to the 2000 Act.
- (3) Five members of the Authority are to be appointed as local members.
- (4) The nominated members of the Authority shall be nominated as follows:—
- (a) five members (including two local members) are to be nominated by Highland Council;
 - (b) three members (including one local member) are to be nominated by Aberdeenshire Council;
 - (c) one member is to be nominated by Moray Council; and
 - (d) one member is to be nominated by Angus Council.

First Election to the Authority

6. The date on which the poll at the first election to the Authority is to be held shall be 13th March 2003.

Planning functions

- 7.—(1)** The functions exercisable by a planning authority under—
- (a) Part II (but only in respect of functions in relation to local plans) of the 1997 Act shall, in relation to the area of the National Park, transfer to and be exercisable by the Authority and not by any local authority; and
 - (b) Parts VI (except sections 150 to 155) and VII of the 1997 Act shall, in relation to the area of the National Park, be exercisable by the Authority as well as by the planning authority.

(6) 1994 c. 39.

(2) So far as may be necessary or expedient for the purpose or in consequence of the exercise of a function by the Authority by virtue of paragraph (1) above, any enactment and any other instrument or document shall be read as if references to a planning authority (however described) were or included references to the Authority.

(3) The functions conferred by—

- (a) subsections (1) to (4) of section 46 of the Town and Country Planning (Scotland) Act 1997(7);
- (b) subsections (1) to (3) of section 11 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(8); and
- (c) subsections (1) to (3) of section 18 of the Planning (Hazardous Substances) (Scotland) Act 1997(9),

shall (subject to paragraphs (4), (5) and (6) below) be exercisable by the Authority but only where the Authority so directs in relation to a particular application for a proposed development in the National Park which, in the opinion of the Authority, raises a planning issue of general significance to the National Park aims under section 1 of the 2000 Act.

(4) The Authority may only issue a direction in exercise of its functions under paragraph (3) above within the period of three weeks beginning with the date on which it receives notification of the proposed development from the planning authority.

(5) The Authority shall, not later than five days from the date on which it is issued, notify the applicant of any direction issued in exercise of its functions under paragraph (3) above.

(6) The Authority may not exercise its functions under paragraph (3) above where the application has been, or should be, referred to the Scottish Ministers under the following provisions:—

- (a) section 46 of the 1997 Act;
- (b) section 11 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
or
- (c) section 18 of the Planning (Hazardous Substances) (Scotland) Act 1997.

(7) The following provisions shall apply to applications referred to the Authority by virtue of paragraph (3) above as they apply to applications made to planning authorities:—

- (a) section 46 of the 1997 Act;
- (b) section 11 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;
and
- (c) section 18 of the Planning (Hazardous Substances) (Scotland) Act 1997.

(8) In relation to any application referred to the Authority under paragraph (3) above, the functions which the planning authority would have had in relation to that application but for that referral, shall be exercisable by the Authority (except insofar as such functions have already been exercised by the planning authority) and for the purposes of this provision any enactment and any other instrument or document shall be read as if references to a planning authority (however described) were or included references to the Authority.

(7) The functions of the Secretary of State in the 1997 Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(8) 1997 c. 9. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(9) 1997 c. 10. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(9) Without prejudice to paragraph (2) above, the Town and Country Planning (General Development Procedure) (Scotland) Order 1992⁽¹⁰⁾ shall be amended in accordance with the following three paragraphs.

(10) After paragraph (9) of article 12 there shall be inserted–

“(10) The planning authority shall, within the period of five days beginning with the date on which it receives the application, notify the Cairngorms National Park Authority of any application made under any of articles 3 to 6 of this Order in respect of development situated in the area of that Authority.”.

(11) After paragraph (3)(a) of article 14 there shall be inserted–

“(aa) in a case where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, the date on which that direction was issued; or”.

(12) After paragraph (1)(a) of article 15 there shall be inserted–

“(aa) the Cairngorms National Park Authority, where it appears to the planning authority that the development is likely to affect land in the area of that Authority;”.

(13) The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993⁽¹¹⁾ shall be amended in accordance with the following paragraph.

(14) After paragraph (1)(n) of regulation 11 there shall be inserted–

“(o) the Cairngorms National Park Authority, where it appears to the planning authority that the development is likely to affect land in the area of the Cairngorms National Park Authority.”.

(15) Without prejudice to paragraph (2) above, the Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983⁽¹²⁾ shall be amended in accordance with the following two paragraphs.

(16) After paragraph (4) of regulation 4 there shall be inserted–

“(5) In the case of a planning authority preparing a structure plan in respect of an area which comprises the whole or part of the area of the Cairngorms National Park Authority the planning authority shall also consult the Cairngorms National Park Authority.

(6) Where paragraph (2) above applies in relation to the preparation of a local plan by the Cairngorms National Park Authority, the word “other” where it occurs at subparagraph (a) (i) shall be deleted.”.

(17) In regulation 12(d) after “regulation 4(2)” there shall be inserted–
“and (5)”.

(18) Notwithstanding the provisions of paragraph 16(1) of Schedule 1 to the 2000 Act, the Authority shall establish a committee for the purposes of exercising the planning functions conferred on it by this Order and a majority of the members of that committee shall consist of members of the Authority who are–

- (a) elected by virtue of an election held under paragraph 3(2) of Schedule 1 to the 2000 Act; or
- (b) members of a local authority.

⁽¹⁰⁾ S.I.1992/224 as relevantly amended by S.I. 1992/2083, 1993/1039, 1994/2585, 1994/3293, 1996/467 and 1997/749 and S.S.I. 2000/179.

⁽¹¹⁾ S.I. 1993/323 as relevantly amended by S.I. 1994/2567 and 1996/252 and S.S.I. 2000/179.

⁽¹²⁾ S.I. 1983/1590 (S.149) as relevantly amended by S.S.I. 2002/201.

Additional functions

8.—(1) The Authority shall, in relation to the National Park, have the function of making byelaws under section 121 of the Civic Government (Scotland) Act 1982⁽¹³⁾ in addition to those it has in terms of section 9(2)(a) and (b) of the 2000 Act and by virtue of article 7 above.

(2) The function specified at paragraph (1) above (so far as exercised prior to the operational date by a local authority in relation to a National Park), shall on the operational date cease to be exercisable by the local authority concerned and shall be exercisable by the Authority on and after that date.

(3) The exercise of the function specified at paragraph (1) above by the Authority is not limited by virtue of the powers at paragraph 8 of Schedule 2 to the 2000 Act.

Date on which functions to be exercised

9.—(1) The functions conferred by virtue of the provisions specified in Schedule 1 to this Order shall be exercisable by the Authority on and after the establishment date.

(2) The functions referred to in Schedule 2 to this Order shall be exercisable by the Authority on and after the operational date.

First meeting of the Authority

10.—(1) The first meeting of the Authority shall be held on the date which falls twenty one days after whichever is the later of—

- (a) the establishment date; or
- (b) the earliest date on which paragraph (2) below is complied with.

(2) This paragraph is complied with when—

- (a) there are no fewer than thirteen members of the Authority; and
- (b) no fewer than five such members are members elected by virtue of an election held under paragraph 3(2) of Schedule 1 to the 2000 Act.

(3) All necessary arrangements for the convening of the first meeting (including arranging for accommodation to be made available for the holding of that meeting) shall be made by the Chief Officer of the Highland Council (or the nominee of such Officer) for such time on the date referred to in paragraph (1) above and at such place as shall be fixed by that person.

(4) That person shall act as convener of that meeting until the election of a convener in terms of paragraph 11(1) of Schedule 1 to the 2000 Act⁽¹⁴⁾, which election shall be the first business transacted at the meeting.

(5) Subject to the provisions of this Order, Schedule 7 to the 1973 Act⁽¹⁵⁾ shall apply to the proceedings of the Authority until the determination by the Authority of its own procedure in terms of paragraph 19(1) of Schedule 1 to the 2000 Act, subject to the following modifications:—

- (a) references to a council shall be treated as references to the Authority;
- (b) references to a member of a council shall be treated as references to a member of the Authority;
- (c) in paragraph 1(1), the words from “and in an election year” to the end are omitted;

⁽¹³⁾ 1982 c. 45.

⁽¹⁴⁾ 2000 asp 10.

⁽¹⁵⁾ 1973 c. 65.

- (d) in respect of the first meeting of the Authority, the reference in paragraph 2(1)(a) to the council's offices shall be treated as references to the offices of the local authorities referred to in article 5(4) above; and
- (e) paragraphs 7(3)(16) and 8 shall not apply.

Acting proper officer and acting monitoring officer

11.—(1) Until such time as the Authority appoints a proper officer for the purposes of Part IIIA of the 1973 Act(17) or for the purposes of Schedule 7 to that Act (as applied by article 10(5) above), the proper officer of the Highland Council shall act as the proper officer of the Authority, for those respective purposes.

(2) Unless a monitoring officer is designated at its first meeting, the Authority shall appoint an interim monitoring officer to carry out the duties of monitoring officer required by section 5(1) of the 1989 Act(18) until the date of designation of such an officer under that section.

Continuity of exercise of functions

12.—(1) This article applies in respect of any function of a local authority exercisable in the National Park which ceases to be exercisable by that local authority and is transferred, so as to be exercisable instead by the Authority, in accordance with this Order.

(2) The transfer of such functions to the Authority shall not affect the validity of anything done by or in relation to any such local authority before that transfer.

(3) Anything which on the date of such transfer is in the process of being done by or in relation to a local authority in the exercise of, or in connection with, any such functions may be continued by or in relation to the Authority in respect of the National Park.

(4) Subject to paragraphs (8) and (9) below, anything done by or in relation to a local authority before the date of such transfer in the exercise of or in connection with any such function, or anything which by virtue of any enactment is treated as having been so done, shall, so far as is required for continuing its effect on and after that date, have effect as if it had been done by or in relation to the Authority.

(5) Paragraph (4) above applies in particular to—

- (a) any decision, determination, declaration, designation, agreement or instrument made by a local authority;
- (b) any byelaws;
- (c) any licence, permission, consent, approval, authorisation, exemption, dispensation or relaxation granted by or to a local authority;
- (d) any notice, direction or certificate given by or to a local authority;
- (e) any application, request, proposal or objection made by or to a local authority;
- (f) any condition or requirement imposed by or on a local authority;
- (g) any appeal allowed by or in favour of or against a local authority; and
- (h) any proceedings instituted by or against a local authority.

(16) Paragraph 7(3) was inserted by the Local Government and Housing Act 1989 (c. 42) ("the 1989 Act"), Schedule 11, paragraph 36.

(17) Part IIIA of the Local Government (Scotland) Act 1973 was inserted by section 2 of the Local Government (Access to Information) Act 1985 (c. 43) and was applied to National Parks authorities by virtue of the National Parks (Scotland) Act 2000, Schedule 2, paragraph 12(1).

(18) Section 5 of the 1989 Act is applied to National Park authorities by the 2000 Act, Schedule 5, paragraph 15.

(6) Paragraph (5)(h) above includes investigations in respect of the conduct of any person employed by a local authority which is subject to investigation by the Commissioner for Local Administration in Scotland under Part II of the Local Government (Scotland) Act 1975⁽¹⁹⁾.

(7) Any reference, however framed, to a local authority in any document constituting, or relating to, anything to which the foregoing provisions of this article apply shall, so far as is required for giving effect to those provisions, be construed as a reference to the Authority.

(8) The provisions of this article are without prejudice to any other provision made by this Order or by or under the 2000 Act in relation to any such function, and in relation to a local authority and the Authority, and are without prejudice to the operation of any transfer scheme made under Schedule 4 to the 2000 Act.

(9) Paragraph (4) above shall not apply to any conduct which constitutes a criminal offence on the part of a local authority for the purpose of the prosecution of that offence.

Duty of local authorities to assist the Authority

13. Each local authority shall provide the Authority with such assistance and information as the Authority may reasonably require for the purposes of discharging any function which ceases to be exercisable by that local authority and is transferred, so as to be exercisable instead by the Authority, in accordance with this Order, effectively and efficiently from the date of such transfer.

Transitional provisions in respect of finance

14. For the purposes of sections 23(3), 24(3), 25(1)(b) and 26(3) of the 2000 Act, “financial year” shall, in respect of the period prior to the financial year starting on 1st April 2003, be treated as the period from the establishment date to 31st March 2003.

Consequential amendments

15.—(1) Schedule 3 to the Ethical Standards in Public Life (Scotland) Act 2000⁽²⁰⁾ is amended by the insertion, after the entry for “The Royal Commission on the Ancient and Historical Monuments of Scotland” of “The Cairngorms National Park Authority”.

(2) For the purpose of the operation of section 15 of the 2000 Act in that part of the National Park to which the 1993 Act⁽²¹⁾ applies—

- (a) a grazings committee appointed under section 47 of the 1993 Act may, with the consent of a majority of the crofters ordinarily resident in the township, enter into an access agreement in relation to any part of the common grazings and may agree to the revocation or variation of any such agreement, and such agreement, revocation or variation shall be binding upon all the crofters who share in the common grazings and upon their successors;
- (b) where any agreement referred to in the last foregoing sub-paragraph contains a provision for the making of a payment, the payment shall be made to the grazings committee and shall be applied by them—
 - (i) in the case of a payment in consideration of the making of the agreement, either
 - (aa) by division among the crofters who share in the common grazings in proportion to their respective rights therein; or
 - (bb) subject to sub-paragraph (c) below, in carrying out works for the improvement of the common grazings or the fixed equipment required in connection therewith;

⁽¹⁹⁾ 1975 c. 30; applied to National Park authorities by the 2000 Act, Schedule 5, paragraph 5.

⁽²⁰⁾ 2000 asp 7.

⁽²¹⁾ 1993 c. 44.

- (ii) in the case of a payment in respect of expenditure incurred in consequence of the agreement, by defraying or contributing towards that expenditure;
- (c) a grazings committee to whom such a payment as is referred to in paragraph (i) of sub paragraph (b) above has been made and who are proposing to apply the payment in carrying out works in accordance with paragraph (ii) of that sub-paragraph shall give notice in writing to each crofter sharing in the common grazings of their proposals; and any such crofter may within one month of the date of such notice make representations in respect of the proposals to the Crofters Commission who may approve them with or without modifications or reject them; and
- (d) in this paragraph “crofter” has the same meaning as in section 3 of the 1993 Act.

St Andrew’s House,
Edinburgh
2003

Authorised to sign by the Scottish Ministers

SCHEDULE 1

Article 9(1)

PROVISIONS OF THE 2000 ACT CONFERRING FUNCTIONS ON THE AUTHORITY EXERCISABLE ON AND AFTER THE ESTABLISHMENT DATE

1. Section 8.
2. Section 9, but only in relation to the provisions of paragraphs 3, 5, 6, 11, 12 and 15 of Schedule 2.
3. Section 15 (but no management agreement under that section shall be effective from a date prior to the operational date).
4. Section 16 (for the purpose only of functions relating to consultation in respect of directions or guidance under that section).
5. Sections 17 and 18.
6. Sections 19 to 27.
7. Section 29.
8. Section 36, but not in relation to the provisions of paragraphs 2, 4, 6 to 12, 14, 16 and 17 of Schedule 5.

SCHEDULE 2

Article 9(2)

FUNCTIONS OF THE AUTHORITY UNDER THE 2000 ACT EXERCISABLE ON AND AFTER THE OPERATIONAL DATE

All the functions of the Authority, including the functions conferred by virtue of articles 7 and 8 of this Order, other than those functions specified in Schedule 1 to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates an area, as shown on the map deposited in Parliament with the Order, as the Cairngorms National Park (article 3). The map annexed to and forming part of this note gives a general guide to the area affected by this Order.

It establishes, on the establishment date of 25th March 2003, a National Park Authority for the Park (articles 2 and 4). The constitution of the National Park Authority is set out in article 5, which provides for 5 members to be elected in a poll, 5 members to be appointed as local members and 10 members to be nominated by the local authorities detailed in the article.

Elections to the National Park Authority will be held on 13th March 2003 (article 6).

Article 7 deals with planning matters. The functions of planning authorities under the Town and County Planning (Scotland) Act 1997 in relation to local plans are transferred to and exercisable by the National Park Authority and in relation to enforcement and special controls are to be exercisable

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
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by the National Park Authority and the planning authority with effect from the operational date of 1st September 2003. In addition, the National Park Authority is able to call in for its own determination applications under planning legislation which raise a planning issue of general significance to the National Park aims. The Order requires the National Park Authority to establish a committee to exercise the planning functions conferred by this Order.

The power to make byelaws under section 121 of the Civic Government (Scotland) Act 1982 is conferred on and exercisable by the National Park Authority with effect from the operational date (article 8 and Schedule 2).

The Order provides for the first meeting of the National Park Authority (article 10), for the appointment of proper and monitoring officers (article 11) and for continuity of exercise of functions in respect of functions transferred from local authorities to the National Park Authority (article 12).

The Order requires local authorities to assist the National Park Authority in discharging any function transferred by the Order (article 13).

Articles 14 and 15 make transitional and consequential provisions.

