SCOTTISH STATUTORY INSTRUMENTS

2003 No. 1

COUNTRYSIDE

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

Made - - - - 6th January 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**);

"the 2000 Act" means the National Parks (Scotland) Act 2000;

"the establishment date" means 25th March 2003;

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

"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.

(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

(**6**) 1994 c. 39.

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.

(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–

(**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).

(**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.

"(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.

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

(**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.
(**13**) 1982 c. 45.

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;

(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.

(**14**) 2000 asp 10.
(**15**) 1973 c. 65.
(**16**) Paragraph 7(3) was inserted by the Local Government and Housing Act 1989 (c. 42) ("the 1989 Act"), Schedule 11, paragraph 36.