

LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

EXPLANATORY NOTES

COMMENTARY

Part 3: Local Government Boundary and Electoral Change

Introduction

126. The Electoral Commission was established under the provisions of the Political Parties, Elections and Referendums Act 2000 to oversee the workings of political parties in the UK. That Act also included provision to establish Boundary Committees for each country in the UK within the Electoral Commission and contained provisions to transfer to them the functions of the four Parliamentary Boundary Commissions for Scotland, England, Wales and Northern Ireland, together with those of the Local Government Commission for England and the Local Government Boundary Commissions for Scotland and Wales. These provisions were only ever commenced in relation to England and no Boundary Committees were established elsewhere.
127. Responsibility for local authority administrative and electoral boundaries in England was transferred to the Electoral Commission on 1st April 2002 to be carried out thereafter largely by the Boundary Committee for England.
128. **Part 3** establishes a new body, the Local Government Boundary Commission for England, and transfers to it the functions of the Boundary Committee for England (subject to some modifications). In particular, sections 56 to 59 largely re-enact the provisions in Part 2 of the Local Government Act 1992, which make provision for changes to local authority electoral arrangements in England. A number of modifications have been made to reflect the removal of the role of the Electoral Commission from this process. The Local Government Boundary Commission for England will be able to initiate reviews of its own accord and Orders made by the Committee will now be subject to a Parliamentary procedure providing a line of accountability to Parliament. Section 60 transfers other functions from the Electoral Commission (see the note on section 60).
129. The sections that relate to the establishment of the Local Government Boundary Commission for England apply only to England. Section 61 applies to other parts of the United Kingdom (see the note on section 61).

Section 55 – Local Government Boundary Commission for England

130. **Section 55** establishes the Local Government Boundary Commission for England as a separate corporate body. Schedule 1 contains the detailed provisions for the constitution and administration of the new body.

Section 56 – Review of electoral arrangements

131. *Subsection (1)* provides that the Local Government Boundary Commission for England must from time to time conduct a review of electoral arrangements of each principal council in England (the term “principal council” is defined in the section). *Subsection (2)* provides that the Local Government Boundary Commission may, at any time, conduct a review of all, or any part, of the area of a principal council. Following a review under *subsection (1) or (2)*, the new Commission may recommend whether a change should be made to electoral arrangements. The section re-enacts, with changes, the provision previously made by sections 13(3), 13(4), 13(8) and 14(4) of the Local Government Act 1992.

Section 57 – Requests for review of single-member electoral areas

132. This section provides a power for the Local Government Boundary Commission for England to conduct a review of the area of a principal council (as defined by section 52), at that council’s request, with a view to making recommendations as to whether each electoral area in the area of the principal council should return only one member. It re-enacts, with changes, sections 14A and 14B of the Local Government Act 1992, which were inserted by the Local Government and Public Involvement in Health Act 2007. The main difference from those provisions is that the role of the Electoral Commission has been removed.

Section 58 – Review procedure

133. This section sets out the procedure which the Local Government Boundary Commission for England must follow when conducting electoral reviews under section 53. It provides, in particular, for a process of preparing and publishing draft recommendations, and for a period of time for interested persons to make representations about those draft recommendations (*subsection (2)*). At the end of its review, the Local Government Boundary Commission for England must publish a report stating its recommendations (*subsection 4(a)*). It re-enacts section 15 of the Local Government Act 1992 with some amendments to remove the role of the Electoral Commission.

Section 59 – Implementation of review recommendations

134. This section gives the Local Government Boundary Commission for England the power to make an order to give effect to all or any of the recommendations which it makes following a review of electoral arrangements for a local government area. It replaces section 17 of the Local Government Act 1992, removing the role of the Electoral Commission and making significant changes to the procedure for making an order to implement the Commission’s recommendations.
135. *Subsection (2)* sets out the electoral changes that may be made by the Local Government Boundary Commission for England in an order. *Subsection (3)* provides that any electoral change may only be implemented at the next ordinary election for that council.
136. *Subsection (9)* provides that any order made by the Local Government Boundary Commission for England must be laid in draft before both Houses of Parliament before it can be made. Such an order is subject to the draft negative resolution procedure in accordance with section 6(1) of the Statutory Instruments Act 1946. The Local Government Boundary Commission is not able to make any order until a period of 40 days, beginning with the day on which a copy of the draft order is laid in Parliament, has passed. If during that 40 day period either House of Parliament resolves that the order be not made the Local Government Boundary Commission would not be able to make the Order. Under the Local Government Act 1992, recommendations from the Local Government Boundary Commission for England’s electoral reviews were implemented by order by the Electoral Commission, and were not statutory instruments subject to Parliamentary procedure.

Section 60 – Transfer of functions relating to boundary change

137. This section transfers various functions from the Electoral Commission and the Boundary Committee for England to the new Local Government Boundary Commission for England. These functions are: the Boundary Committee for England's functions in providing advice to the Secretary of State on unitary local government (the replacement of a two tier system of county and district councils with a single tier of local government) and conducting boundary reviews under Part 1 of the Local Government and Public Involvement in Health Act 2007; the Electoral Commission's function of considering whether an electoral review is necessary following a structural or boundary change order being made; the Electoral Commission's functions for the review of constituencies of the Greater London Assembly under the Greater London Authority Act 1999, and its functions in relation to changes to local authorities' electoral arrangements and parish reorganisation under Parts 2 and 4 of the 2007 Act.

Section 61 – Removal of Electoral Commission boundary functions

138. This section abolishes the Electoral Commission's duty to establish a Boundary Committee for England and repeals section 14, so far as it relates to England, and section 15 of the Political Parties, Elections and Referendums Act 2000. Those provisions provided for the establishment of the Boundary Committee for England as a statutory committee of the Electoral Commission, and the appointment by the Electoral Commission of Deputy Commissioners to be members of the Boundary Committee.
139. **Section 61** also repeals section 14, so far as it relates to Northern Ireland, Scotland and Wales, sections 16, 17, 19 and 20 and the related provisions within the schedules to the Political Parties, Elections and Referendums Act 2000. Insofar as these sections relate to Northern Ireland, Scotland and Wales they were never commenced. The repeal removes the Electoral Commission's duty to establish Boundary Committees for Northern Ireland, Scotland and Wales and the provisions for the transfer of the functions of the existing local government and parliamentary boundary commissions to these Boundary Committees.

Section 62 – Transfer schemes

140. This section places the Electoral Commission under a duty to produce one or more schemes for the transfer of property, rights and liabilities from the Electoral Commission to the Local Government Boundary Commission for England. The Electoral Commission is required to consult with the Secretary of State on this scheme and seek the consent of the existing Boundary Committee for England before making the scheme. This section requires the Electoral Commission to make such a scheme on or before 31 December 2009. If the Electoral Commission and existing Boundary Committee for England are unable to reach agreement on the provisions to be included in a scheme then the Secretary of State may by order specify such matters.

Section 63 – Continuity of functions

141. This section provides that anything done by the Boundary Committee for England (which is part of the Electoral Commission) or by the Electoral Commission, in relation to structural or boundary changes or electoral arrangements, may be treated as having been done by the new Local Government Boundary Commission for England.

Section 64 – Interim provision

142. **Schedule 3** makes modifications to the Local Government Act 1992 to apply during an interim period starting on the day on which the Act is passed and ending on the date of the establishment of the Local Government Boundary Commission for England. *Subsection (2)* relates to recommendations made to the Electoral Commission by the Boundary Committee for England before the passing of this Act.

Section 65 – Electoral changes consequential on boundary change

143. This section makes amendments to sections 8, 10, 11 and 12 of the Local Government and Public Involvement in Health Act 2007. This section amends the process set out in sections 8 and 10 for the review by the Boundary Committee for England of the boundaries of local government areas, to enable the new Local Government Boundary Commission for England to consider whether consequential changes (including changes to constituencies of the Greater London Assembly) should be made to electoral arrangements as part of the same review. This enables, but does not require, both boundary and electoral matters to be considered in a single review rather than two separate reviews. Section 65 also makes consequential changes to the powers to implement boundary changes in sections 11 and 12 of the 2007 Act.

Section 66 – Repeal of redundant provisions

144. This section repeals provisions which relate to the defunct Local Government Commission for England. When the functions of that body were transferred to the Electoral Commission on 1st April 2002, the Local Government Commission for England was wound up.

Section 67 – Consequential and supplementary provision

145. This section gives effect to Schedule 4, which contains amendments consequential on provision made in Part 3 of the Act. It also gives the Secretary of State a power by order to amend, repeal or revoke enactments for the purposes of making further consequential provisions in relation to any provisions within Part 3.

Schedule 1 – The Local Government Boundary Commission for England

146. This Schedule provides the detailed arrangements for the creation of a new Local Government Boundary Commission for England, separate from the Electoral Commission. The Schedule replicates many of the arrangements which apply to the Electoral Commission.
147. It provides for the number of Committee members, which must be at least five and no more than 12, and requires a Chair and Deputy Chair to be appointed. The Schedule provides for appointments to be made by Her Majesty following, in relation to the Chair, an Address by the House of Commons, and for all other members, on the recommendation of the Secretary of State. The Schedule gives the Speaker's Committee the same role in the control and oversight of the funding of the Local Government Boundary Commission for England as it has for the Electoral Commission.

Schedule 2 – Electoral change in England: considerations on review

148. This Schedule sets out the criteria that the Local Government Boundary Commission for England must have regard to when conducting electoral reviews under section 56. It re-enacts and consolidates the provision previously made by Schedule 11 to the Local Government Act 1972 and sections 13(5), 13(5A) and 14(8) of the Local Government Act 1992. A number of drafting changes have been made to reflect other changes made in legislation.

Schedule 3 – Interim modifications of the Local Government Act 1992

149. This Schedule makes modifications to the Local Government Act 1992 to apply during the interim period starting on the day on which the Act is passed and ending with the establishment of the Local Government Boundary Commission for England. During that period, the procedure for implementing recommendations made by the existing Boundary Committee for England is modified so that it does not require the involvement of the Electoral Commission.

Schedule 4 – Local Government Boundary Commission for England: consequential and supplementary amendments

150. This Schedule makes amendments to the Local Government Act 1972, the Environment Act 1995, the Greater London Authority Act 1999 and the Local Government and Public Involvement in Health Act 2007 consequential upon Part 3 of the Act. These changes reflect the establishment of the Local Government Boundary Commission for England as an independent body, the transfer of local government boundary and electoral functions from the Electoral Commission to the new Commission, and the new electoral review procedures set out in Part 3 of this Act. In particular, paragraph 10 makes substantial amendments to arrangements for the review of Greater London Assembly constituency boundaries under the Greater London Authority Act 1999. Under these provisions, where the Secretary of State makes a boundary change order under section 10 of the 2007 Act which affects a London borough, the new Local Government Boundary Commission for England must consider whether or not to conduct a review of the Greater London Assembly constituencies. An order made by the Local Government Boundary Commission for England to implement any recommendation for changes to Assembly constituencies will be subject to the draft negative resolution procedure (see notes on section 59(9) above).