

# REGIONAL ASSEMBLY (PREPARATIONS) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Local government reviews**

##### *Sections 13 - 14: Local government reviews*

55. [Section 13](#) enables the Secretary of State to direct the Boundary Committee to conduct a local government review and make recommendations as to the matters considered by the review, in respect of a region where he is considering holding an assembly referendum.
56. The Boundary Committee must carry out the review on the assumption that there is an elected regional assembly (*subsection (8)(a)* of section 14). They must consider what wholly unitary local government structure is appropriate for the existing two-tier parts of a region (*subsection (3)* of section 14) and must recommend structural change to a single tier of local government for those parts (*subsection (8)(b)* of section 14), together with any boundary changes in connection with or to facilitate the structural change. Changes to the boundaries of existing unitary authorities, such as the metropolitan districts, cannot be considered unless they would have the effect of making any part of a two-tier authority part of the area of an existing unitary authority. The Boundary Committee cannot consider any boundary change in relation to any area outside the region (*subsection (5)* of section 14).
57. The Boundary Committee must have regard to various factors when conducting a local government review (*subsections (8)(c), (d)* and *(e)* of section 14), in line with the precedent for reviews under the 1992 Act.
58. For various reasons it may not be appropriate for directions to be given in relation to two or more regions at the same time. In this case, the Secretary of State may wish to take various factors into account in deciding in relation to which region or regions (if any) he should give a direction.
59. It is a precondition to the giving of a direction in relation to any region that the Secretary of State has considered the level of interest in that region in the holding of an assembly referendum (*subsection (2)* of section 13). But in a situation where two or more regions are under consideration for a local government review, it may be that the Secretary of State will want to compare the levels of interest in the holding of a referendum in those different regions. Hence *subsection (3)* of section 13.
60. The level of interest in holding a referendum does not equate to the level of interest in having an elected regional assembly. Level of interest in having such an assembly will be what is tested by an assembly referendum itself.
61. *Subsection (5)* of section 13 sets out a range of additional factors which the Secretary of State may also consider if, in his view, for example:

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- the level of interest test is inconclusive in informing his decision as to whether to give a direction to the Boundary Committee in relation to a region; or
  - the comparison of levels of interest in different regions is not decisive in his choice between different regions in relation to the giving of that direction.
62. *Subsection (7)* of section 13 states that it is immaterial that anything done for the purposes of assessing the level of interest in a region in the holding of an assembly referendum, or for the purposes of comparing such levels of interest between different regions, or for consideration of the factors in section 13(5), was done before this Act received Royal Assent.
63. *Subsections (6) and (7)* of section 14 enable the Boundary Committee to require a public body to supply information required in connection with a local government review. This follows the precedent set by the 1992 Act (Schedule 2, paragraph 4(3)) which gave a similar power to the Local Government Commission.

***Sections 15-18: Review procedure and Boundary Committee recommendations***

64. **Sections 15 to 18** apply certain provisions of the 1992 Act (some with modifications) to the Boundary Committee's local government reviews. Under this Act, the Boundary Committee and not the Electoral Commission conduct the reviews; the reviews do not apply to London or to parish councils; and electoral change falls outside the ambit of these reviews. Where there is a 'yes' vote at an assembly referendum an electoral review can be undertaken by the Electoral Commission under other statutory powers to determine the most suitable electoral areas for the new unitary authorities that are to be established.

***Section 15: Review procedure***

65. A structural change is defined in section 14(1)(a) together with section 14(2) of the 1992 Act. It amounts to "the replacement, in any non-metropolitan area, of the two principal tiers of local government with a single tier".
66. A boundary change, as defined in section 14(1)(b) together with section 14(3) of the 1992 Act, includes the alteration of a boundary, the constitution of a new local government area by the amalgamation of two or more local authorities, and the abolition of an existing authority.
67. Section 14 of the 1992 Act also sets out matters which may be included in the Boundary Committee's recommendations. These include:
- the abolition or establishment of a local authority;
  - the extent to which joint arrangements between authorities should be made in relation to functions affected by the structural change;
  - whether, as a result of the changes, any modifications are needed to the arrangements for the preparation of unitary plans, structure and local plans, and mineral and waste plans;
  - whether there should be any change in police areas in connection with the structural change recommended.
68. Section 15 of the 1992 Act sets out the procedure for a review, which is applied with modifications to reviews under this Act. As soon as reasonably practicable after being directed to conduct a review, the Boundary Committee must take steps to ensure that interested persons are informed of the direction and the period within which they may make representations. The Boundary Committee must take into consideration any representations made to them within this period. They must then prepare draft recommendations, again taking steps to ensure that interested persons are informed of

them and of the period within which they may make representations; and they must deposit copies of the draft recommendations at the principal office of any principal council (or police authority) likely to be affected. The Boundary Committee must take into consideration any representations made to them in respect of the recommendations within the set time period.

69. The Boundary Committee must subsequently submit a report on the review to the Secretary of State along with their recommendations, acting to ensure that interested persons are informed of the recommendations and of the period within which they may be inspected. They must also deposit copies of the recommendations at the principal office of any principal council (or police authority) likely to be affected.
70. The application of section 15A of the 1992 Act enables the Boundary Committee to use an alternative shortened procedure when conducting a review in circumstances where they think this would be appropriate. The Boundary Committee might decide to do so where, for example, the Secretary of State has chosen to direct that a further review is to be held in a region after an earlier review and a 'no' vote in a previous referendum.
71. Section 16 of the 1992 Act requires the Audit Commission, if consulted, to provide a written opinion on the likely impact of any proposed structural changes on economy, efficiency and effectiveness in the provision of services provided by the bodies likely to be affected by the changes. The Audit Commission may require any body to supply it with information to carry out this task, and may charge fees to cover the cost of this task.

### ***Section 16: Boundary Committee recommendations***

72. **Section 16(2)** requires the Boundary Committee, in providing recommendations as to the matters considered by a local government review, to provide at least two structural change options in relation to each two-tier county area. Options for structural change include any boundary changes in connection with or to facilitate the structural change, as provided by section 14(3)(b) of the Act.
73. **Subsections (3) and (4)** provide that, after the receipt of the recommendations, the Secretary of State may direct the Committee to provide him with additional information and advice and that he may reject one or more of the options. Where the Secretary of State rejects an option he may direct the Boundary Committee:
  - (a) to make different recommendations; or
  - (b) to carry out a further review of the region, making further recommendations.

A further review is subject to the same procedural provisions as the first review, but the direction to the Boundary Committee is made without consideration of the level of interest in the region in an assembly referendum. The Secretary of State is entitled to respond in the same way to further recommendations received from the Boundary Committee.

### ***Section 17: Implementation of recommendations***

74. **Section 17** of the Act allows the Secretary of State by order under **subsection (2)** to give effect to recommendations of the Boundary Committee with or without modifications. Such an order is subject to the affirmative resolution procedure under section 29. The section sets out the procedure for implementing the recommendations and applies with modifications parts of section 17 of the 1992 Act for this purpose. The relevant subsections of that section set out the provisions that may be included in an order. These include provision as to:
  - the area of any authority and the name of such area;
  - the name of any authority;

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- the establishment of any new authority for a county or district or winding up and dissolution of an existing authority;
  - the constitution, election and membership of public bodies in the areas affected by the order; and
  - the abolition or establishment, or the restriction or extension of the jurisdiction, of any public body in or over any part of any area affected by the order.
75. Section 17(6) of the 1992 Act requires the Secretary of State, when implementing the Boundary Committee's recommendations, to do so in such a way as to ensure that neither a county in which there are no district councils, nor a district in any other county, is divided between two or more police areas.
76. There is also a power under *subsection (5)* of section 17 of this Act to make an order correcting a mistake in the preparation of the original order where it may not be possible to give the intended effect to a recommendation by a further order under subsection (2). A correction order is subject to the affirmative resolution procedure.

***Section 18: Application of the 1992 Act***

77. **Section 18** applies further provisions of the 1992 Act with certain modifications. The modifications substitute the Boundary Committee for the Electoral Commission. They also apply the provisions contained in section 26 of the 1992 Act (which relate to the order-making powers under Part 2 of that Act) to those provisions applied by section 18 for the purposes of the Act. This means that apart from section 17, which makes specific provision as described above, the provisions and powers to make orders or regulations relating to a local government review under this Act are substantially the same as for structural change reviews under the 1992 Act.
78. Section 18 of the 1992 Act states that, where the functions of a district council are to be transferred to a county council, the county council shall become the billing authority for the purposes of Part 1 of the Local Government Finance Act 1992 and shall not be a major precepting authority for those purposes. A district council which is to have the functions of a county council under the order will become the area of a fire authority for the purposes of the Fire Services Act 1947.
79. Section 19 of the 1992 Act enables the Secretary of State by regulations of general application to make such incidental, consequential, transitional or supplementary provision as he thinks necessary or expedient to support an order under section 17.
80. Section 20 of the 1992 Act enables any public bodies affected by an implementing order to make agreements in relation to any property, income, rights, liabilities and expenses (so far as affected by the order) of, and any financial relations between, the parties to the agreement.
81. Section 21 of the 1992 Act enables the Secretary of State to establish a joint authority to carry out any functions which are to be functions of any authority as a result of any structural or boundary change.
82. Section 22 of the 1992 Act enables the Secretary of State to establish one or more bodies ('residuary bodies') for the purposes of taking over any property, rights or liabilities, and any related functions, of local authorities which cease to exist as a result of an implementation order.
83. Section 23 of the 1992 Act enables the Secretary of State to establish one or more staff commissions to consider staffing issues relating to the authorities affected by the implementation order.

84. Section 26 of the 1992 Act concerns orders and regulations made by the Secretary of State under sections 19, 21, 22 and 23 of the 1992 Act as applied by section 18. Any such order shall be subject to the negative resolution procedure. This means that the statutory instrument by which the order or regulations are made must be laid before Parliament and either House has forty days within which it can move a resolution to annul it.
85. But an order under those provisions which effects a structural change or establishes a joint authority for two or more local government areas is subject to the affirmative resolution procedure.
86. With regard to any orders or regulations made under sections 19, 21, 22 or 23 of the 1992 Act, section 26 enables the Secretary of State:
- to make different provision for different cases;
  - to make incidental, consequential, transitional or supplementary provision with power for that purpose to amend, apply (with or without modifications), extend, exclude, repeal or revoke any enactment or any instrument made under any enactment or any charter;
  - to make provision relating to staffing matters and the legal status of bodies. He is able to do this where he has power under the above-mentioned sections of the 1992 Act to make provision for the transfer of any functions, property, rights or liabilities (or to make transitional provision in connection with such a transfer or with the establishment of any body);
  - by a subsequent direction to vary or revoke any direction he makes under the applied provisions of the 1992 Act; and
  - to rectify a mistake by order made under those provisions if a mistake has occurred in the preparation of an order and that mistake cannot be rectified by a subsequent order.
87. **Section 26(4)** contains a limited power to modify or amend enactments where an order giving effect to local government reorganisation may require incidental, consequential, transitional or supplementary provision. It is a common form of this type of power and is restricted to the practical purposes of adjusting enactments or instruments to fit the changing circumstances that arise from structural and boundary changes.

### ***Section 20: Isles of Scilly***

88. Local government in the Isles of Scilly differs from that elsewhere in England. The Council of the Isles of Scilly is neither a county nor district council, though various provisions have been made for the Council to exercise and perform specified local government functions, some of which are functions exercised elsewhere in England by non-metropolitan county councils or district councils.
89. A local government review and subsequent reorganisation will not affect the local government structure of the Isles of Scilly, which already have a single tier of local government. However, certain functions are performed by Cornwall County Council for the benefit of the Isles of Scilly. Section 20 enables the Secretary of State to make appropriate provisions for the special case of the Isles of Scilly. Thus in the event of an order implementing changes to Cornwall County Council, for example, provision may be made for functions performed for the benefit of the Isles of Scilly to be performed by one or more successor unitary authorities.