

*These notes refer to the Regional Assembly (Preparations) Act 2003
which received Royal Assent on 8 May 2003*

REGIONAL ASSEMBLIES (PREPARATIONS) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Regional Assemblies (Preparations) Act 2003 which received Royal Assent on 8 May 2003. They have been prepared by the Office of the Deputy Prime Minister in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to 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 part of a section does not seem to require any explanation or comment, none has been given.

SUMMARY

3. The Act extends only to England and Wales.
4. This Act provides the Secretary of State with the power to order referendums on the establishment of elected regional assemblies (“assembly referendums”), in any of the eight English regions outside Greater London. If an assembly referendum is to be held in a region, the Act also requires the Secretary of State to hold “local government referendums” in areas with two tiers of local authorities about the Government’s proposed options for single-tier local government in those areas. The assembly referendum and associated local government referendums in a region are to be held on the same date.
5. Before ordering an assembly referendum, the Act requires the Secretary of State to have received recommendations from the Boundary Committee for England (“the Boundary Committee”) as to the restructuring of local government in the two-tier areas of the region into a single tier. So the Act provides him with the power to direct the Boundary Committee to carry out a local government review of a region to produce such recommendations, if he is considering holding an assembly referendum there.
6. In carrying out a review the Boundary Committee must recommend at least two options for single-tier local government for each part of the region that currently has both a county council and district councils – referred to by the Act as a “county

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area". The Act also requires the Secretary of State to seek the Electoral Commission's advice on such matters as the electoral areas for a regional assembly, following the holding of an assembly referendum. And it creates a new power for funding the existing regional chambers.

7. This Act is the first step towards implementing the proposals in the White Paper *Your Region, Your Choice: Revitalising the English Regions* ("the White Paper"), which was published on 9 May 2002 and set out how the Government proposes to deliver the Labour Party's 2001 manifesto commitment that:

"provision should be made for directly elected regional government to go ahead in regions where people decided in a referendum to support it and where predominantly unitary local government is established."

BACKGROUND

8. The White Paper set out the Government's policy to enable elected regional assemblies to be established in regions (outside London) where the inhabitants of a region vote for one in a referendum. The decision on where a referendum will be held will be largely based on whether the Secretary of State considers that there is sufficient public interest in a region in holding one. So it may be that referendums on the establishment of a regional assembly are not held in all eight regions at one time. Indeed, it may be that in the first instance only one, two or three are held. The Act (additionally to what was proposed in the White Paper) further requires separate referendums to be held, in areas with two tiers of local government, about options for the reorganisation of local government into a single tier in the event of an elected assembly being established.

9. The White Paper proposed that, before a referendum on an elected assembly is to be held in a region, the Boundary Committee must first conduct a review of local government in that region. In areas that currently have a county council and district councils, a regional assembly would add a third tier of elected government below the national level, increasing the layers of government.

10. Under the Act, the Boundary Committee is required to review local government in a region before the holding of an assembly referendum there. However, in addition to what was set out in the White Paper on local government reviews, the Boundary Committee is to recommend at least two options for a single tier of local government in those parts of the region that currently have two tiers.

11. Between 1974 and 1986 a two-tier system of local government operated throughout the United Kingdom. Under a two-tier system, county councils are responsible for social services, strategic planning, education, refuse disposal, traffic, highways, libraries, fire and consumer protection. District councils are responsible for

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local planning, housing, leisure services and parks, markets and fairs, cemeteries and crematoria, tourism, electoral registration, environmental health and refuse collection.

12. In 1986, the Greater London Council and the six metropolitan county councils were abolished. Since then the London boroughs (in the capital) and metropolitan districts (in the six major conurbations of Tyne & Wear, West Yorkshire, South Yorkshire, Greater Manchester, Merseyside and the West Midlands) have formed a unitary tier of local government.

13. In the early 1990s, the Local Government Commission for England looked at the case for replacing the two-tier structure of local government with a unitary structure in the rest of England. As a result, a mixed system was established whereby some urban areas moved away from the two-tier system to a unitary structure, with one body responsible for all the local government functions previously carried out by district and county councils; other areas remained under the two-tier system. Around the same time, following public consultation in Scotland and an independent review in Wales, a unitary system was introduced in those nations.

Other relevant legislation

14. The Local Government Act 1992 (“the 1992 Act”) and the Political Parties, Elections and Referendums Act 2000 (“the PPER Act”) are both relevant for the purposes of this Act and this Act should be read alongside them.

15. The 1992 Act established the Local Government Commission for England to carry out reviews of local government structure, boundaries and electoral areas in England and to recommend changes, when so directed by the Secretary of State. In April 2002 these functions of the Local Government Commission for England were transferred, with some modifications, to the Electoral Commission by the Local Government Commission for England (Transfer of Functions) Order 2001 (SI 2001/3962). A number of the Secretary of State’s powers were also transferred to the Electoral Commission, including the responsibility for initiating electoral reviews. Structural, boundary and electoral reviews are now undertaken by the Boundary Committee under direction by the Electoral Commission. Many of the provisions in the 1992 Act are relevant to local government reviews by the Boundary Committee under this Act.

16. The PPER Act established the Electoral Commission (as well as the Boundary Committee). Among other things, the PPER Act sets out the legal framework within which national and regional referendums will be held in future (see Part 7 of that Act). These provisions apply to assembly referendums (and to local government referendums to the extent that they are applied by an order under section 2(9) of this Act). The key provisions as regards assembly referendums are:

- the Electoral Commission is required to publish a statement of its views as to the intelligibility of the referendum question (section 104(2)) (the Commission

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commented under this provision on the wording of the assembly referendum question and preamble on 25 November 2002, and, in addition on 16 April 2003);

- the Commission is responsible for appointing the Chief Counting Officer for a referendum, who then appoints counting officers for local authority areas in the region (section 128). These officers are responsible for conducting a referendum;
- ‘permitted participants’ (political parties, campaign groups and other similar bodies) in a referendum must be registered with the Electoral Commission. The Commission is able to decide to designate a group to represent the ‘yes’ campaign and a group to represent the ‘no’ campaign at any referendum. If it does so, these groups will be entitled to financial support and other assistance (such as the distribution of a ‘referendum address’ free of charge and the use of rooms free of charge for public meetings) (see sections 108 to 110 and Schedule 12);
- the Secretary of State may, after consulting the Electoral Commission, make an order capping the amount that a permitted participant can spend (see section 118 and paragraph 2 of Schedule 14);
- expenditure by other bodies and individuals at a referendum is also regulated (see Chapter II of Part 7);
- there are statutory stages in the run-up to a referendum vote, including a period for permitted participants to register with the Commission;
- there are restrictions on the promotional material which central and local government can issue in the 28-day period before the referendum date (see section 125).

17. The eight English regions (outside London) to which this Act applies are those specified in Schedule 1 to the Regional Development Agencies Act 1998 (“the RDA Act”). They are the North West, North East, Yorkshire and the Humber, East Midlands, East of England, West Midlands, South East and South West. The Government Offices for the regions (created in 1994) and other parts of central government also operate to these boundaries.

Regional chambers

18. Regional chambers (designated under section 8(1) of the RDA Act) contribute to the regional economic strategies produced by Regional Development Agencies and scrutinise their delivery. In most regions they also advise the Secretary of State on the content of regional planning guidance prepared by him under section 31(6) of the Town and Country Planning Act 1990. The intention of Ministers, as stated in the

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White Paper, is that all eight regional chambers should carry out this role, in the absence of an elected regional assembly. Where an elected regional assembly is established, the assembly will carry out this function. A new power is provided so that the Government can make arrangements for funding, amongst other things, the regional planning activities of the chambers.

OVERVIEW

19. This Act:

- makes provision enabling the Secretary of State to order referendums (assembly referendums) on the establishment of elected regional assemblies to be held in any of the English regions outside London, including conditions to be satisfied before the making of such an order;
- requires the Secretary of State to order referendums (local government referendums) to be held in each “county area” of a region where an assembly referendum is being held, on the same date as that referendum, about the Government’s proposals for the unitary structure of local government in such areas;
- sets out, in respect of both assembly and local government referendums, the referendum questions and the statements to precede them on the ballot paper, and who is entitled to vote in the referendums. It also sets out the frequency of any subsequent assembly referendum following a ‘no’ vote (Part 1);
- provides the Secretary of State with power to direct the Boundary Committee to carry out a local government review in any of the English regions outside London to consider structural change to existing two-tier local authorities. Structural change must lead to a wholly unitary local government structure in the region. The Secretary of State must have received recommendations from the Boundary Committee with respect to a region before ordering an assembly referendum to be held in the region. The criteria for deciding in which region(s) reviews should be carried out, the procedure for reviews and the implementation of local government reorganisations are provided for in Part 2;
- requires the Secretary of State (once certain preconditions have been satisfied) to seek the Electoral Commission’s advice on one or more matters relating to the electoral areas for, or the total number of members of, an assembly (Part 3);
- creates a new power for funding the activities of existing regional chambers (Part 4);
- authorises expenditure relating to the matters referred to above and the preparatory work to be undertaken in connection with regional

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assemblies (Part 5).

Territorial application: Wales

20. This Act concerns only the English regions (excluding London). It does not affect the functions of the National Assembly for Wales.

COMMENTARY ON SECTIONS

Part 1: Referendums

Section 1: Assembly referendums

21. Section 1 gives the Secretary of State the power to order a referendum to be held in a region on the establishment of a regional assembly there. Such an order must specify the date of the referendum.

22. Two preconditions need to be satisfied before the Secretary of State can make an order for the holding of an assembly referendum. The first precondition is that he must consider the level of interest in the region in holding such a referendum (*subsection (4)*). However, *subsection (6)* means that the Secretary of State does not, in fact, need to consider the level of interest in *subsection (4)* if certain requirements are met. These are, first, that the order is made within two years of a direction to the Boundary Committee to conduct a local government review of the region concerned (prior to which he will have already considered the level of interest in the holding of an assembly referendum). Secondly, that, before making the order, he has no cause to think that the level of interest in holding a referendum in the region has changed materially since giving the direction.

23. What constitutes a material change is defined in *subsection (7)*. In effect, the Secretary of State is required to cast himself back to the time when he gave a direction to the Boundary Committee in relation to the region. He must then ask himself whether he would have given that direction if the level of interest which he thinks exists now (when he is considering making an order for the holding of an assembly referendum) had been the same when he gave the direction.

24. If the conditions in *subsection (6)* are not satisfied the Secretary of State has to consider the level of interest. In this connection *subsection (8)* requires him to consider views expressed, information provided to him, and any published material he thinks appropriate.

25. The second precondition to the making of an order for a referendum is that the Boundary Committee have made recommendations arising out of their review of the local government structure of the region (*subsection (5)*).

Section 2: Local government referendums

26. Where the Secretary of State makes an order causing an assembly referendum to be held, *subsection (2)* of section 2 requires him to make an order causing a referendum to be held in each county area in the region about the Government's proposals for the structure of local government in that area. That is to say, he must also hold local government referendums in the region.

27. *Subsection (5)* provides that the options to be put to the voters in each county area are such of the recommendations for structural change of the Boundary Committee as the Secretary of State thinks appropriate (subject to any modifications that he makes to those recommendations). There must be at least two options for structural change for each county area in the region.

28. "County area" is defined in *subsection (3)* as the area of an existing county council where there are both county and district councils. But if one or more of the options for structural change is for a unitary authority with an area crossing the county boundary, the "county area" is the combined areas of the county councils in question (*subsection (4)*).

29. *Subsection (6)* means that a local government referendum under *subsection (2)* must be held on the same day as the assembly referendum for the region.

30. *Subsection (7)* prevents the Secretary of State from making an order for the holding of a local government referendum until six weeks after he has received the recommendations of the Boundary Committee.

31. *Subsection (8)* gives the Secretary of State a power to vary (subject to Parliamentary approval) an order for a local government referendum. This permits, for example, minor corrections to the description of the options for a county area.

32. But the Secretary of State cannot revoke an order for a local government referendum unless he also revokes the order for the assembly referendum (in which event he is obliged to revoke the order for a local government referendum). This prevents him from cancelling the local government referendum(s) while proceeding with the assembly one.

33. *Subsection (9)* provides a Minister of the Crown with a wide power to make provision, by order, in connection with local government referendums. For instance, this allows provision to be made regulating the conduct of such referendums; requiring the Electoral Commission to report on how they are administered; and prescribing rules about the publication of information relating to them. The power in *subsection (9)* includes power to apply any enactment relating to elections or referendums, to modify provisions made under the PPER Act in relation to an assembly referendum and to provide for the creation of offences.

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Section 3: Referendum questions

34. Section 3 sets out the question to be asked in assembly referendums and the first part of the question to be asked in local government referendums. It also sets out brief preambles about the purpose of each referendum (which must precede each question on the ballot paper).

35. The section contains two versions of the preamble for a local government referendum, depending on whether there is a single ballot paper or two separate ballot papers. The Government's aim, where possible, is to have a single ballot paper where an assembly referendum is held simultaneously with a local government referendum. But it might be necessary to have separate ballot papers, for example where the local government options are numerous or particularly complex and would render a single ballot paper unwieldy.

36. An order under section 2(2) causing a local government referendum to be held must set out the text of the options that will appear in the referendum question and any explanatory material about the options that will be made available to voters when voting. *Subsection (7)* requires the Secretary of State to consult the Electoral Commission on these things. When laying an order he must report to each House of Parliament the Commission's response as to the intelligibility of the text of the options and any views they express on the explanatory material.

Section 4: Entitlement to vote

37. Section 4 provides for who is entitled to vote at each type of referendum under the Act. So under *subsection (1)*, a person is entitled to vote in an assembly referendum if, on the date of the referendum, he is entitled to vote at the election of councillors for any electoral area in the region.

38. Similarly, under *subsection (2)*, a person is entitled to vote in a local government referendum if, on the date of the referendum, he is entitled to vote at the election of councillors for any electoral area in the county area where the referendum is being held. Those living in existing unitary areas are not entitled to vote in a local government referendum.

39. *Subsections (3) and (4)* provide a regulation-making power that allows provision to be made qualifying the basic entitlement to vote set out in the preceding subsections. Thus provision may be made so that alterations to a register of electors are to be ignored if made after a specified date. So, for example, if a referendum is to be combined with a local government election, it may be desirable to ensure that alterations to a register of electors for the purposes of entitlement to vote in a referendum can be made no later than they could be made for the election.

Section 5: Referendum period

40. Section 5 requires the Secretary of State to set, by order, the referendum period for each assembly referendum. This relates to provisions in Part 7 of the PPER Act which impose limits on expenditure and controls on the publication of

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referendum-related material during the referendum period. This period will generally need to be a minimum of 10 weeks (by virtue of sections 103 and 109 of the PPER Act).

Section 6: Further referendums

41. Section 6 provides that, where an assembly referendum in a region has resulted in a 'no' vote, a second or subsequent assembly referendum cannot be ordered for at least another seven years.

42. *Subsection (4)* enables the Secretary of State to cause a local government referendum to be repeated (independently of an assembly referendum) where the result of a prior local government referendum is declared or held to be invalid by a court. *Subsections (5) and (6)* apply provisions in section 2 of the Act to any such repeat referendum as if it is a local government referendum ordered under section 2(2). But no further local government referendums are required to be held in a county area where the result is not invalid.

43. *Subsection (7)* has the effect that the Secretary of State is only required to consult the Electoral Commission on the wording of the question or explanatory material for any such repeat referendum where that wording or material differs from the first local government referendum.

Section 7: Combination of polls

44. Section 7 enables provision to be made by order for the polls at an assembly or local government referendum to be combined with one another or with other polls for any election or at referendums held under Part 2 of the Local Government Act 2000.

45. *Subsection (2)* expressly provides for the order-making power to cover the making of provision in connection with the combination of polls, the creation of criminal offences and the application of enactments relating to referendums or elections.

46. Examples of what such an order might provide are: a requirement for the same polling station to be used; for different coloured ballot papers to be used; and the application (with or without modifications) of provision made under section 129(1) of the PPER Act.

Section 9: Provision of information to voters

47. Under section 108 of the PPER Act, the Electoral Commission has the power to designate one "permitted participant" (such as a political party or a campaign group) as a campaign representative for each possible outcome of an assembly referendum. The benefits of such a designation are outlined in paragraph 16 above.

48. But if, for whatever reason, the Electoral Commission do not act under section 108, section 9 gives the Commission the power to make available to those entitled to vote in an assembly referendum information aimed at promoting awareness about the

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arguments for and against each answer to the referendum question.

49. *Subsection (6)* similarly enables the Electoral Commission to provide information for persons entitled to vote at a local government referendum in order to promote awareness about the arguments relating to the options proposed for unitary local government. This power is not subject to the procedural requirements that apply to the power to provide information to voters in assembly referendums.

Section 10: Expenditure

50. Section 10 enables provision to be made, amongst other things, for payment by the Electoral Commission of counting officers' charges in connection with referendums held under Part 1 of the Act.

Section 11: Legal challenge

51. Section 11 circumscribes the circumstances under which the formal result of a referendum under the Act may be challenged in legal proceedings. It does this by prohibiting the courts from considering any challenge to a certificate of the number of ballot papers or votes cast (as produced by a Chief Counting Officer or counting officer or person with the equivalent role) unless the challenge is brought by way of judicial review. In addition, the proceedings for such a challenge must be commenced within six weeks of the date of the relevant certificate. A six week period ensures that the process of establishing an elected assembly is not unduly delayed, whilst allowing sufficient time for challenge.

Section 12: Supplementary

52. This section sets out supplementary matters relating to Part 1. The effect of *subsection (1)* is that, notwithstanding provision in or under Part 1 of the Act in connection with the conduct of assembly referendums, an order under section 129(1) of the PPER Act for or in connection with referendums would nonetheless apply to assembly referendums. *Subsection (2)* clarifies that this will be the case in respect of any order under section 129(1) of the PPER Act, whenever made.

53. *Subsection (4)* requires the Secretary of State to consult the Electoral Commission before making an order containing provision:

- in connection with a local government referendum (section 2(9));
- for the combination of polls (section 7(1));
- for the payment by the Electoral Commission of counting officers' charges in connection with a referendum held under the Act (section 10(1)).

54. The section also provides for the interpretation of certain terms and expressions used in Part 1 (*subsections (5) to (7)*).

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:

- 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

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- 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.

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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

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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;
- 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

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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

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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.

Part 3: Advice of Electoral Commission

90. This Part broadly follows similar provisions to be found in Part 2 of the Greater London Authority (Referendum) Act 1998.

91. In relation to a region where an assembly referendum has been held and where the Secretary of State proposes to establish an elected assembly, section 21 requires the Secretary of State to direct the Electoral Commission to provide advice on one or more of the matters set out in *subsection (3)*. These matters relate principally to the electoral areas for a regional assembly. A direction (under *subsection (2)*) must be made within two years of the date on which the assembly referendum was held. The effect of section 26 of this Act is that the Secretary of State may propose the establishment of an elected regional assembly (in this case for the purposes of section 21) regardless of whether an enactment is in force conferring power on him to establish such assemblies.

92. *Subsection (4)* enables a direction under this Part to require the Electoral Commission to give advice in respect of a specified number of options. For example, this power might be used in a situation where there is a legal challenge to the result of a local government referendum but the assembly referendum itself is not subject to challenge and the Secretary of State proposes to establish an assembly. In that situation, it might be appropriate for the Electoral Commission to start preparing its advice on electoral matters relating to the assembly. But it would need to do so on the basis of different potential local government options, since the Secretary of State would not be able to indicate what would be likely to be implemented in the area in which the local government referendum is subject to challenge.

93. Section 22 sets out the procedure for the preparation and submission of advice by the Electoral Commission.

94. Section 23 sets out matters to which the Electoral Commission is to have particular regard when preparing its advice. In considering the need to secure that the numbers of electors in each electoral area are broadly similar, the Electoral Commission is expressly required to take account, where appropriate, of special geographical considerations. A similar provision is to be found, for example, in rule 2 in paragraph 8(1) of Schedule 1 to the Government of Wales Act 1998. This is designed to address problems that could arise if there were no regard, for example, to the fact that an area is sparsely populated. For a rural electoral area to have a similar number of electors to an urban electoral area in the same region, the rural area would need to be much larger. This could make it more difficult for its assembly member to represent the needs of the whole area. So in such a case, the need for effective representation of the rural area could outweigh the need for similarity in numbers of electors between areas.

Part 4: Funding for regional chambers

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95. Section 25 gives the Secretary of State a new power to make grants in respect of the activities of regional chambers. These are the bodies designated as such under section 8 of the RDA Act.

96. This power will be used to fund the chambers, in particular in their role in scrutinising the Regional Development Agencies. It is also intended that grants will cover the chambers' costs in providing advice to the Secretary of State in respect of regional planning guidance prepared by him under section 31(6) of the Town and Country Planning Act 1990. As stated in the White Paper, it is proposed that all eight regional chambers should carry out this role, in the absence of an elected regional assembly.

97. The power in section 25 is to make grants for the purposes of the activities of regional chambers, rather than to make grants only to regional chambers. This is because some regional chambers are currently unincorporated associations and in dealing with such organisations it is often simpler to make the grant to an "accountable body" – one single legal entity as opposed to all the members of the association or some of them. In the case of chambers, this might be the regional Local Government Association or a member local authority, against which action could be taken in the event of a breach of the grant conditions.

Part 5: General

Section 26: Enactment establishing assemblies immaterial

98. Section 26 ensures that the Secretary of State is able to use his powers under this Act without there being an enactment conferring on him power to establish an elected regional assembly. So he may, for example, give effect to the recommendations resulting from a local government review because section 17(1)(b), read together with section 26, allows him to propose to establish an elected regional assembly without yet having the necessary powers to proceed to do so.

Section 29: Orders and regulations

99. Section 29 makes provision in connection with the making of orders or regulations under the Act. Orders or regulations made under provisions of the 1992 Act (as applied by section 18 of this Act) are provided for separately by section 26 of the 1992 Act. Section 29 requires that the exercise of a power to make orders and regulations in the Act is to be subject to the affirmative resolution procedure. This is because it is appropriate that they should be subject to a significant level of Parliamentary scrutiny.

100. Section 29(3) contains a limited Henry VIII power to make consequential, incidental, supplementary or transitional provision or savings including provision amending, repealing or revoking enactments. The wording reflects the approach of the 1992 Act as well as section 156(5)(a) of the PPER Act. However, by virtue of section

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29(2) the affirmative resolution procedure applies to all orders or regulations made under the Act (with the exception of orders or regulations made under provisions of the 1992 Act applied by section 18).

101. Section 29 also ensures that the hybrid procedure for affirmative resolution instruments does not apply to any orders or regulations made under Part 1 or section 17 of the Act, or to any provision made under section 129(1) of the PPER Act for referendums held under this Act (for example, a single order under Part 1 of the Act which sets different referendum dates and different referendum periods for different regions).

COMMENCEMENT

102. Section 27 means that Parts 2 and 4 (and sections 27 to 31) of the Act will come into force as soon as the Act receives Royal Assent:

- Part 2 includes the Secretary of State's power to direct the Boundary Committee to conduct a review of local government structures in a region and for the Committee to undertake reviews.
- Part 4 is the new power for funding the existing regional chambers.

103. Commencing these provisions on Royal Assent prevents unnecessary delay in starting local government reviews, and ensures that a suitable mechanism for the funding of regional chambers is up and running as soon as possible. Ordinarily, provisions of the Act would only come into force two months after Royal Assent.

104. The other provisions of the Act will come into force two months after Royal Assent.

HANSARD REFERENCES

105. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

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which received Royal Assent on 8 May 2003*

Stage	Date	Hansard Reference
House of Commons		
Introduction	14 th November 2002	Vol 394, Col 164
Second Reading	26 th November 2002	Vol 395, Cols 188 – 286
Committee	3 rd , 10 th , 12 th , 17 th and 19 th December 2002	Hansard Standing Committee A
Committee of Whole House	18 th December 2002	Vol 396, Cols 875 – 973
Report and Third Reading	23 rd January 2003	Vol 398, Cols 466 – 537
Consideration of Lords Amendments	30 th April 2003	Vol 404, Cols 304 – 370
House of Lords		
Introduction	27 th January 2003	Vol 643, Col 919
Second Reading	20 th February 2003	Vol 644, Cols 1245 – 1266, 1276 – 1338
Committee	13 th March 2003 20 th March 2003 24 th March 2003	Vol 645, Cols 1438 – 1474, 1484 – 1545, Vol 646, Cols 339 – 375, 396 – 447 Vol 646, Cols 462 – 477, 493 – 642
Report	7 th April 2003 8 th April 2003	Vol 647, Cols 14 – 75, 91 – 124 Vol 647, Cols 139 – 194

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Third Reading	28 th April 2003	Vol 647, Cols 448 - 497
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Royal Assent

8th May 2003

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