

These notes refer to the Scottish Parliament (Constituencies) Act 2004 (c.13) which received Royal Assent on 22 July 2004

SCOTTISH PARLIAMENT (CONSTITUENCIES) ACT 2004

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Scottish Parliament (Constituencies) Act 2004 which received Royal Assent on 22 July 2004. They have been prepared by the Scotland Office 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 is given.

SUMMARY

3. The Act removes the link between the constituencies for the Scottish Parliament and those for the House of Commons. The Act provides that the existing constituencies are to be retained for the Scottish Parliament notwithstanding any changes to these for the purposes of United Kingdom parliamentary elections. It also provides for the Scottish Parliament constituencies and regions to be reviewed by the Electoral Commission, separately from any review of Scottish Westminster constituencies.

BACKGROUND

4. Before it was amended by this Act, the Scotland Act 1998 provided for the constituencies of the Scottish Parliament to be the same as those for the United Kingdom Parliament, except that Orkney and Shetland were separate constituencies. There are currently 73 constituency Members of the Scottish Parliament (MSPs) and 56 regional list MSPs. The Scotland Act also provided that the Boundary Commission for Scotland when reviewing the Westminster constituencies should use the same (larger) electoral quota as used in England. This is likely to reduce the number of Scottish constituencies from 72 to 59. That in turn would have resulted in a reduction in the number of Scottish Parliament constituencies and, because of the requirement in the Scotland Act for proportionality between constituency and regional seats, a pro rata reduction in the number of regional members.
5. As a consequence of this linkage in the Scotland Act there would therefore have been an automatic reduction in the size of the Scottish Parliament when the number of MPs at Westminster representing Scottish constituencies reduces following the review currently being carried out by the Boundary Commission for Scotland.
6. The Scotland Act also required that, following their review of Parliamentary constituencies in Scotland, the Boundary Commission had to consider the boundaries of the regions which return additional members to the Scottish Parliament when making recommendations which affect constituency boundaries.

7. In December 2001 the then Secretary of State for Scotland launched a public consultation seeking views on the case for retaining or ending the linking of Westminster and Holyrood constituency boundaries as provided in the Scotland Act, in the light of the experience gained from the operation of the Scottish Parliament. The majority of respondents supported retaining the present size of the Parliament.
8. Following this consultation, the Secretary of State announced in a statement in the House of Commons on 18 December 2002 (*Hansard*, Columns 859-60) that legislation would be brought forward to retain the existing number of MSPs.

COMMENTARY ON SECTIONS

Section 1: Constituencies and regions

9. Subsection (1) replaces the previous Schedule 1 of the Scotland Act, which makes provision for constituencies, regions and regional members in relation to the Scottish Parliament, with a new Schedule 1 which retains the number of constituencies in the Scottish Parliament at 73, with the 8 regions continuing to return 7 regional list members, thereby preserving the size of the Parliament at 129 Members.
10. Subsections (2) and (3) introduce Schedule 2, which makes provision to deal, if necessary, with the period before the functions of the Boundary Commission for Scotland are transferred to the Electoral Commission.
11. Subsection (4) provides that the first review of the Scottish Parliament constituencies and regions will not commence until after the next general election to the Scottish Parliament in 2007.
12. Subsection (5) is a consequential amendment. Schedule 1 of the Scotland Act had been substantially amended (prospectively) by paragraphs 17 to 24 of Schedule 3 to the Political Parties, Elections and Referendums Act 2000. Those provisions, concerning the transfer of functions from the Boundary Commission for Scotland to the Electoral Commission, are superseded by the provisions in this Act.

Section 2: Current reviews

13. This *section* gives effect to the provisions in Schedule 3 concerning the current statutory review of Westminster constituencies and Scottish Parliament regions which is being carried out by the Boundary Commission for Scotland. The Boundary Commission are required to submit to the Secretary of State for Scotland, by December 2006, a report on Scottish Westminster constituencies. Under the Scotland Act before this Act, this report also had to include recommendations for consequential alterations to the regions for purposes of Scottish Parliament elections. Those recommendations would not have been relevant following the decoupling of the Scottish Parliament constituencies and regions from the Westminster constituencies. Schedule 3 provides that any recommendation on these regional boundaries must be ignored.

Schedule 1: Substitution of Schedule 1 to the Scotland Act 1998

14. This Schedule is linked to sections 1 to 12 in the Scotland Act 1998 concerning elections. It replaces the previous Schedule 1 to the Scotland Act, specifies the constituencies and regions for purposes of the Scottish Parliament, provides for the Electoral Commission to review the boundaries of the constituencies and regions, and provides for the holding of local inquiries following any objections in relation to proposed changes.
15. **Paragraphs 1 and 2** preserve the existing constituencies and regions, and the arrangements for election of regional members of the Parliament – 73 MSPs within the existing constituencies, and 56 list MSPs in 8 regions, with 7 members per region.

16. The provisions in this Schedule largely replicate the provisions for the review of Westminster constituencies set out in the Parliamentary Constituencies Act 1986 and existing provisions regarding the regions in Schedule 1 of the Scotland Act.
17. [Paragraphs 3 and 4](#) provide for the regular review by the Electoral Commission of the boundaries of the constituencies and regions. Paragraph 3, sub-paragraph (4) requires the first review to be completed and reported on not later than 30 June 2010, and thus some time in advance of the general election to the Scottish Parliament in May 2011. The Electoral Commission are required at the same time as they submit their report to the Secretary of State to lay the report before the Scottish Parliament. The Scottish Parliament has no power to reject or to effect changes to the report, although it could debate it. The Secretary of State, as soon as practicable after the Electoral Commission have submitted their report to him, is required to lay that report before Parliament, along with a draft Order in Council for giving effect to the recommendations in the report.
18. [Paragraph 5](#) sets out the procedures to be followed by the Boundary Committee for Scotland and the Electoral Commission in reviewing and making recommendations on the constituency and regional boundaries for the Scottish Parliament.
19. [Paragraph 6](#) makes provision for the implementation of the Electoral Commission's recommendations by Order in Council, which must be approved in draft by each House of Parliament.
20. [Paragraphs 7 and 8](#) require the Electoral Commission and the Boundary Committee for Scotland to give notice of their intention to consider making a report and of any proposed recommendations.
21. [Paragraphs 9 to 11](#) give the Boundary Committee power to hold local inquiries and to compel witnesses.
22. [Paragraphs 12 and 13](#) set out the rules for the conduct of constituency and regional reviews. These rules define how the electorate is to be established for each constituency and region and require the electorates to be similar respectively in each of the constituencies and regions, with the proviso that regard must be had to local authority boundaries, and geography and local ties may be taken into consideration. A constituency must fall wholly within a region.

Schedule 2: Transitional modifications of Schedule 1 to the Scotland Act 1998

23. This Schedule makes transitional provisions to deal, if necessary, with the position before the Electoral Commission takes over the functions of the Boundary Commission for Scotland. The Political Parties, Elections and Referendums Act 2000 provides that the Electoral Commission will in due course take on responsibility for determining Parliamentary electoral boundaries. It will establish four Boundary Committees, one for each part of the United Kingdom - the Scottish Committee will take over the present functions of the Boundary Commission for Scotland. That Commission will cease to exist when the Secretary of State for Scotland directs by order that he is satisfied that the Commission has no further functions to perform. The Government has indicated that the functions of the present Boundary Commissions will not transfer until after they have completed their current reviews.

Schedule 3: Current Boundary Commission reviews

24. The provisions of this Schedule (see also *Section 2*) ensure that any recommendations on changes to the regional boundaries included in the report of the Boundary Commission following their current review will not be acted upon.

COMMENCEMENT

25. This Act came into force on receiving Royal Assent.

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HANSARD REFERENCES

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

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
<i>House of Commons</i>		
Introduction	27 November 2003	Vol. 415 Col. 141
Second Reading	9 February 2004	Vol. 417 Cols. 1146-1233
Committee	4 May 2004	Vol. 420 Cols. 1225-1295
Report and Third Reading	4 May 2004	Vol. 420 Cols. 1295-1308
<i>House of Lords</i>		
Introduction	5 May 2004	Vol. 660 Col. 1110
Second Reading	25 May 2004	Vol. 661 Cols. 1201-1242
Committee	21 June 2004	Vol. 662 Cols. 1076-1112
Report	6 July 2004	Vol. 663 Cols. 744-755
Third Reading	13 July 2004	Vol. 663 Col. 1137

Royal Assent – 22 July 2004

House of Lords Hansard Vol. 664 Col. 333

House of Commons Hansard Vol. 424 Col. 514