

Delegated Powers Memorandum – Parliamentary Constituencies Bill 2020

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Parliamentary Constituencies Bill (“the Bill”). The Bill was introduced in the House of Commons on 19 May and moved to the House of Lords on 15 July. This memorandum identifies the provision of the Bill that amends a power to make delegated legislation. It explains why the power has been amended and explains the nature of, and the reason for, the procedure selected.

Purpose and effect of the Bill

2. The Parliamentary Constituencies Act 1986 (“the 1986 Act”) is the key legislation governing Parliamentary constituencies. Section 2 of the 1986 Act established four permanent Boundary Commissions (for England, for Scotland, for Wales and for Northern Ireland). Section 3(1) requires each Boundary Commission to keep under review the representation in the House of Commons of the part of the United Kingdom with which they are concerned, and to submit to the Secretary of State¹ reports which show either the constituencies in relation to which the Commission recommends that part of the UK should be divided, or state that no alteration is required to be made to current constituency boundaries.
3. As amended by the Parliamentary Voting System and Constituencies Act 2011 (“PVSC 2011”), Schedule 2 to the 1986 Act contains the rules governing the number of parliamentary constituencies in the UK (currently set as 600); the allocation of those constituencies between the four parts of the United Kingdom (including the creation of 4 “protected constituencies”); and the factors that each Boundary Commission has to take into account in making recommendations in relation to constituency boundaries.
4. The Boundary Commission reports described in section 3(1) of the 1986 Act must be submitted periodically to the Secretary of State. As a result of the amendments made by the PVSC 2011 the Boundary Commissions were obliged by section 3(2) of the 1986 Act to submit reports between 1 September 2018 and 1 October 2018, and then at 5 year intervals after that. When a Boundary Commission report is submitted by a Boundary Commission, the Secretary of State, must “as soon as may be” lay it before Parliament (section 3(5) of the 1986 Act).
5. As soon as may be after all four reports have been submitted, the Secretary of State must lay before Parliament a draft Order in Council for giving effect to the recommendations made in them, unless none of the reports propose any change (section 3(5C) of the 1986 Act). Prior to the draft Order in Council being laid, a Boundary Commission may notify the Secretary of State that recommendations contained in its report should have effect with specified modifications, and any such modifications must be reflected in the draft Order (section 3(5B)).
6. If the draft Order in Council is approved by resolution of each House of Parliament, the Secretary of State must submit the draft to Her Majesty in Council (section 4(3) of the 1986 Act). If a motion for the approval of the draft is rejected by either House, the Secretary of State may amend the draft and lay the amended draft before each House. If the amended draft is approved, the Secretary of State must submit that draft to Her Majesty in Council (section 4(4)).

¹ Section 6C of the 1986 Act defines “Secretary of State” for the purposes of that Act as the Secretary of State or the Minister of the Cabinet Office.

7. The Bill, in particular:

- makes an amendment to Schedule 2 to the 1986 Act to increase the number of parliamentary constituencies from 600 to 650;
- makes amendments to section 3 of the 1986 Act to require each Boundary Commission to submit its report to the Speaker of the House of Commons; to place an obligation on the Speaker to lay the report before Parliament; and to require each Commission to publish its report as soon as reasonably practicable after the report is laid;
- brings forward the next deadline for the submission by each Boundary Commission of its review reports to 1st July 2023, and as a consequence shortens the period of review from 2 years 10 months to 2 years 7 months;
- sets the deadline for subsequent review reports as 1st October 2031 and then every 8 years thereafter;
- makes amendments to section 4 of the 1986 Act in respect of the Orders in Council giving effect to reports (described below);
- makes amendments to section 5 of the 1986 Act which sets out the publicity and consultation process associated with the development of Boundary Commission review reports—
 - for the 2023 review reports, the three potential consultation periods are set at 8, 6 and 4 weeks respectively to better fit the shortened timescale;
 - for each set of reports after 2023, each of the three potential consultation periods are set at 8 weeks, maintaining 24 weeks of consultation in total throughout the process;
 - for all review reports, moves the public hearings from the initial consultation period to the second consultation period;
- amends rule 5(1)(b) of Schedule 2 to the 1986 Act so that a Boundary Commission can take into account local government boundaries that exist or are prospective (i.e. boundaries that are specified in a provisions of primary or secondary legislation but where that provision is not yet in force) on the review date;
- as a consequence of the other measures included in the Bill, removes the duty on the Secretary of State to implement the 2018 Boundary Review, treating that duty as having ceased to have effect from 24 March 2020; and repeals the review of the 600 constituency number required by section 14 of the PVSC 2011, with the repeal treated as having ceased to have effect on 31 May 2020.

Delegated Powers

8. Clause 2 amends section 4 of the 1986 Act. The clause amends the current power to implement the recommendations of the Boundary Commissions resulting from periodic reviews by Orders in Council. The Bill does not introduce any additional delegated powers.

Clause 2: Amendment of the current power to give effect to Boundary Commission report recommendations

Power conferred on: the Secretary of State/the Minister for the Cabinet Office

Power exercised by: Order in Council

Parliamentary Procedure: No Parliamentary Procedure

Context and Purpose

9. Clause 2 of the Bill amends the power in section 4 of the 1986 Act (described in paragraph 6 above), exercisable by the Secretary of State to implement the recommendations of the Boundary Commissions by way of Order in Council. The Bill replaces existing section 4(1) to (4).
10. New section 4(1) of the 1986 Act will require the Secretary of State or the Minister for the Cabinet Office to submit to Her Majesty in Council a draft Order in Council giving effect to the recommendations (if any) in the reports of the Boundary Commissions as soon as reasonably practicable after the date on which all four reports are laid before Parliament. That draft Order in Council will no longer require laying before Parliament and approval by resolution from each House.
11. New section 4(2)(a) of the 1986 Act provides that in preparing the draft Order in Council under section 4(1) the Secretary of State or the Minister for the Cabinet Office may only give effect to the recommendations with modifications where a Boundary Commission has submitted a statement to the Speaker of the House of Commons that modifications are required in accordance with new section 4A (which is inserted by clause 4). In accordance with new section 4A(2)(a), a Boundary Commission may only specify modifications in a statement in order to correct any error in the Commission's recommendations. New section 4(2)(b) retains the provision (currently in section 4(1)) that a draft Order in Council may make provision which appears to the Secretary of State to be incidental to, or consequential on, the recommendations to which the draft Order gives effect, or any modifications notified by a Boundary Commission in accordance with section 4A.

Justification for taking the power

12. The continued delegation of the power in section 4 of the 1986 Act is necessary to give full legal effect to the recommendations of the Boundary Commissions as to parliamentary constituencies as future reviews are concluded. It is not possible to include such detail about individual parliamentary constituencies in the Bill itself.
13. A draft Order in Council under the existing power in section 4 of the 1986 Act will no longer require parliamentary approval before being submitted to Her Majesty in Council for making, and paragraphs 16 to 30 provide justification on the removal of this approval requirement as part of ensuring that the recommendations of the independent and impartial Boundary Commissions are implemented without the possibility of political influence. The amendments to the existing power have also reduced the role of government in the implementation of Boundary Commission's recommendations for the same reason.
14. The Secretary of State's duty to prepare a draft Order in Council to implement the recommendations of the Boundary Commissions in accordance with section 4 of the 1986 Act is a critical but limited remaining role for government in the process. Implementation via draft Order in Council allows the core of the recommendations to be crystalized in legislation as necessary to authoritatively define parliamentary constituencies and to provide legal certainty.
15. This role is critical because the content of Boundary Commission reports is not prescribed by the 1986 Act, and therefore those reports contain more than simply recommendations as to the final definition of constituencies. For example, the

Boundary Commission for England's 2018 Review of Parliamentary Constituencies² comprises three volumes. The first, containing the final recommendations, runs to 200 pages or so; volume 2 lists the constituency names and corresponding electorate size; the remaining volume is of maps. If reports of the Commissions or parts of those reports were to effectively determinate constituencies then some further specific provision would be required in the 1986 Act as to the content and form of the recommendations, how and when they should be taken to have effect, and the way in which an authoritative version could be authenticated and then published.

Justification for the procedure

16. The delegated power in section 4 of the 1986 Act as amended by the Bill will provide certainty that the recommendations of the independent and impartial Boundary Commissions will be implemented without political influence or interference from either government or Parliament.
17. As described above, the Secretary of State's duty is limited and will remain so once section 4 of the 1986 Act is amended by the Bill. When the draft Order is prepared, the Secretary of State will only be able to give effect to recommendations with modifications where a Boundary Commission has notified the Speaker of the House of Commons that those modifications are required in accordance with new section 4A.
18. In addition, at present if a draft Order in Council is rejected by either House of Parliament or withdrawn by leave of the House, the Secretary of State may amend the draft and lay the amended draft before Parliament (see section 4(4) of the 1986 Act). If this further draft is approved by resolution of each House of Parliament, the Secretary of State shall submit it to Her Majesty in Council. The current power for the Secretary of State to modify the draft Order potentially compromises the political impartiality of the scheme in the legislation. The Bill removes this power for the Secretary of State to amend the Order in Council.
19. Limiting the role of government in this way properly reflects the independence and impartiality of the Boundary Commissions granted by Parliament when it passed the 1986 Act and the subsequent primary legislation which amended that Act (such as the PVSC 2011). In the same way, removing the requirement for approval of the draft Order in Council in each House also properly reflects that independence and impartiality. It prevents either House from vetoing the implementation of Boundary Commission recommendations for political reasons.
20. It does not, however, mean the end of appropriate scrutiny of the work of the Boundary Commissions. Even though Parliamentary approval of the draft Order in Council will no longer be required, in-depth scrutiny of the proposed recommendations of each of the Boundary Commissions will continue. Section 5 of the 1986 Act, as amended by the Bill:
 - a. requires each Boundary Commission to publicise proposed constituencies;
 - b. provides an eight week initial consultation period for the making of written representations regarding the proposals;
 - c. requires each Boundary Commission to publish representations received during the initial consultation period;
 - d. provides a secondary consultation period of eight weeks for the making of further written representations in light of representations made during the initial consultation period;

² <https://boundarycommissionforengland.independent.gov.uk/2018-review/2018-review-final-recommendations-for-england>.

- e. provides for public hearings to be held during the secondary consultation period in accordance with Schedule 2A to the 1986 Act, and for the records of those public hearings to be published at the end of the secondary consultation period;
 - f. provides for a third consultation period of eight weeks for the making of further written representations in respect of the records of the public hearings conducted during the secondary consultation period and, where the Commission revises the proposals following earlier consultation periods, those revised proposals.
21. Therefore the process by which each Boundary Commission considers Parliamentary constituency boundaries and makes recommendations for changes is robust, impartial and open to extensive consultation and public participation at an appropriate formative stage.
 22. Section 3 of the 1986 Act, as amended by the Bill, will continue to require the Speaker of the House of Commons to lay the reports of the Boundary Commissions before Parliament when those reports have been completed and received. Additionally, where in accordance with new section 4A(2) a Boundary Commission submits to the Speaker a statement of modifications to be included in the Order in Council which implements the recommendations of the Commission's boundary review (and the reasons for those modifications), the Speaker must lay that statement before Parliament.
 23. A similar approach to the implementation of election constituency or district boundary changes is already used in other parliamentary democracies. For example, in Australia the Australian Electoral Commission (a politically impartial, independent statutory authority) is responsible for the "redistribution" process by which House of Representatives electoral division boundaries are drawn. Section 66 of the Commonwealth Electoral Act 1918 (CEA 1918) provides that a Redistribution Committee³ is appointed for each Australian state and territory and is responsible for proposing redistribution of electoral divisions.
 24. Once the redistribution process has commenced, there is a 30 day period in which suggestions about the redistribution can be lodged, with a further 14 days for the public to make comments regarding those suggestions. The Redistribution Committee then develops and publishes an initial proposed redistribution. There is then a further period for objections to be lodged in respect of the proposed redistribution, and then a period for written comments regarding those objections.
 25. The augmented Electoral Commission⁴ considers those objections and then makes a final determination of the election division boundaries. The final determination is then published and takes effect upon the next expiration or dissolution of the House of Representatives following publication (section 73(6) CEA 1918).
 26. In Canada, following the census every 10 years, the Governor in Council establishes an electoral boundaries commission for each province, in accordance with section 3(1) of the Electoral Boundaries Readjustment Act ('EBRA'). Each commission is required to consider and report on the readjustment of boundaries within each province for representation to the House of Commons. Following the publication of proposed electoral districts, public hearings are held and representations may be made.

³ Comprising the Electoral Commissioner, and for each state or territory the Australian Electoral Officer, the Auditor-General and either the Surveyor-General for the State or the person nominated by the relevant State Minister as the person holding an equivalent position to Surveyor-General for the State (Section 60 of CEA 1918).

⁴ Similar to the Redistribution Committee described above, but with three members of the Electoral Commission in place of the Electoral Commissioner.

27. Once a final report is submitted to the Speaker of the House of Commons, the Chief Electoral Officer prepares a draft order which implements the recommendations of each electoral boundaries commission. In accordance with section 25(1) EBRA, within 5 days of receipt of the draft order, the Governor in Council must by proclamation declare that the order is in force. The House of Commons is not required to approve the order prior to that proclamation. The revised boundaries apply to any general election called at least seven months after the date on which the order has effect.
28. In New Zealand, section 28 of the Electoral Act 1993 established an independent Representation Commission, which is required to provide for the periodical readjustment of representation of the people in the House of Representatives, in accordance with the provisions of that Act. As with the Australian and Canadian systems, there is an obligation on the Representation Commission to publish proposed boundary changes, followed by periods of time for objections, counter-objections and public hearings relating to those proposals. Once the Representation Commission then fixes and publishes the final electoral districts, those districts have legal effect for the purposes of the next general election called thereafter.
29. As the Australia, Canada and New Zealand examples outlined above demonstrate, in each of those parliamentary boundary review systems neither the executive nor the legislature is required to approve the proposed election district boundary changes before those changes take effect. Consequently, neither is able to unilaterally reject or modify the proposals of the independent and impartial authorities tasked with responsibility for boundary changes. The amendments made by the Bill to section 4 of the 1986 Act are intended to achieve the same outcome as those systems for the same reasons.
30. The amendments made to section 4 of the 1986 Act by the Bill do not affect Parliamentary sovereignty. Parliament would remain sovereign and can amend primary legislation as it sees fit.

Cabinet Office

29th April 2020