

Scottish Parliament (Constituencies) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Scotland Office, are published separately as Bill 4 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Darling has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Scottish Parliament (Constituencies) Bill are compatible with the Convention rights.

Scottish Parliament (Constituencies) Bill

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TO

Replace Schedule 1 to the Scotland Act 1998 making new provision in relation to the constituencies for the Scottish Parliament.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Constituencies and regions

- (1) For Schedule 1 to the Scotland Act 1998 (c. 46) (which makes provision about constituencies, regions and regional members of the Scottish Parliament) there is substituted the Schedule set out in Schedule 1 below.
- (2) Until the appropriate date, Schedule 1 to that Act as so substituted has effect subject to the modifications set out in Schedule 2 below. 5
- (3) The appropriate date is the date of commencement of section 16 of the Political Parties, Elections and Referendums Act 2000 (c. 41) for the purpose of—
 - (a) transferring the functions of the Boundary Commission for Scotland to the Electoral Commission, and 10
 - (b) conferring functions on the Boundary Committee for Scotland.
- (4) But paragraphs 3 to 14 of Schedule 1 to the Scotland Act 1998 as so substituted or as so substituted and modified (as the case may be) have no effect until 30 June 2007.
- (5) Paragraphs 17 to 24 of Schedule 3 to the Political Parties, Elections and Referendums Act 2000 are repealed. 15

2 Current reviews

Schedule 3 has effect.

3 Expenditure

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums so payable under any other enactment.

4 Short title

This Act may be cited as the Scottish Parliament (Constituencies) Act 2004.

SCHEDULES

SCHEDULE 1

Section 1

SUBSTITUTION OF SCHEDULE 1 TO THE SCOTLAND ACT 1998

SCHEDULE 1

CONSTITUENCIES, REGIONS AND REGIONAL MEMBERS

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General

- 1 (1) There are to be 73 constituencies for the purposes of this Act.
- (2) The constituencies are –
 - (a) the Orkney Islands,
 - (b) the Shetland Islands, and
 - (c) the parliamentary constituencies in Scotland (except the constituency of Orkney and Shetland) provided for by Article 2 of and the Schedule to the Parliamentary Constituencies (Scotland) Order 1995 (S.I. 1995/1037).
- (3) The reference to the Parliamentary Constituencies (Scotland) Order 1995 is a reference to that Order as at 11 April 1995 (the day it was made).
- 2 (1) There are to be eight regions for the purposes of this Act.
- (2) The regions are the eight European Parliamentary constituencies which were provided for by the European Parliamentary Constituencies (Scotland) Order 1996 (S.I. 1996/1926).
- (3) Seven regional members are to be returned for each region.

Reports of the Electoral Commission

- 3 (1) The Electoral Commission must keep under review the boundaries of the constituencies (other than those mentioned in paragraph 1(2)(a) and (b)).
- (2) The review must be conducted in accordance with the constituency rules.
- (3) The Electoral Commission must submit to the Secretary of State a report –
 - (a) showing the alterations they propose to the boundaries, or
 - (b) stating that in their opinion no alteration should be made.
- (4) The first report of the Electoral Commission under this paragraph must be submitted to the Secretary of State not later than 30 June 2010.

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- (5) Subsequent reports must be submitted not less than eight nor more than twelve years after the date of the submission of the last report.
- (6) The Electoral Commission may also from time to time (but not before the submission of their first report) submit to the Secretary of State reports with respect to the area comprised in any two or more constituencies showing the constituencies into which they recommend the area should be divided in order to give effect to the constituency rules. 5
- (7) A report under sub-paragraph (6) must recommend the same number of constituencies as that in which the area is comprised. 10
- (8) A report of the Electoral Commission which recommends an alteration to the boundaries of constituencies must state as respects each constituency – 15
- (a) the name by which they recommend it is to be known;
- (b) whether they recommend that it is to be a county or a burgh constituency.
- (9) As soon as practicable after the Electoral Commission have submitted a report to the Secretary of State under this paragraph he must lay before Parliament – 20
- (a) the report, and
- (b) the draft of an Order in Council for giving effect to the recommendations contained in the report.
- (10) Sub-paragraph (9)(b) does not apply if the report states that no alteration is required to be made to the boundaries of the constituencies. 25
- (11) The Electoral Commission must at the same time as they submit a report in accordance with sub-paragraph (3) or (6) lay any report recommending an alteration in the constituencies before the Parliament. 30
- 4 (1) This paragraph applies if the Electoral Commission submit a report to the Secretary of State recommending an alteration in a constituency.
- (2) In the report the Electoral Commission must recommend any alteration in any of the regions which they think is necessary to give effect to the regional rules. 35
- (3) A report making a recommendation for an alteration in a region must recommend the name by which the Electoral Commission think the region should be known.
- Review and proposed recommendations by Boundary Committee for Scotland* 40
- 5 (1) If the Electoral Commission intend to consider making a report under paragraph 3 the Boundary Committee for Scotland (the Boundary Committee) must carry out a review for the purpose of enabling them to submit to the Electoral Commission proposals as to the recommendations to be included in the report. 45
- (2) After the Boundary Committee have carried out the review they must submit to the Electoral Commission a report containing the

- recommendations which the Boundary Committee propose should be included in the report under paragraph 3.
- (3) On receipt of a report from the Boundary Committee the Electoral Commission may –
- (a) accept in full the proposed recommendations and include them in their report under paragraph 3; 5
 - (b) accept the proposed recommendations subject to modifications agreed with the Boundary Committee and include them as so modified in their report;
 - (c) reject the recommendations. 10
- (4) If the Electoral Commission reject the proposed recommendations they may –
- (a) require the Boundary Committee to reconsider the proposed recommendations with a view to deciding whether to submit a further report under sub-paragraph (2) containing different proposed recommendations, 15
 - (b) require the Boundary Committee to carry out a fresh review under sub-paragraph (1) with respect to the whole, or any specified part of the area which was the subject of the original review, or 20
 - (c) if, and only if, the review was carried out for the purpose of a report under paragraph 3(6), take no further action.
- (5) In the exercise of their functions under this paragraph, the Boundary Committee must comply with any directions given to them by the Electoral Commission. 25
- (6) But a direction under sub-paragraph (5) must not be inconsistent with the constituency rules or the regional rules.

Orders in Council

- 6 (1) The draft of an Order in Council laid before Parliament by the Secretary of State for giving effect to the recommendations contained in a report by the Electoral Commission under paragraph 3 may make provision for any matters which he thinks are incidental to or consequential on the recommendations. 30
- (2) If the draft is approved by resolution of each House of Parliament the Secretary of State must submit it to Her Majesty in Council. 35
- (3) If a motion for the approval of the draft 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.
- (4) If the draft as so amended is approved by resolution of each House of Parliament the Secretary of State must submit it to Her Majesty in Council. 40
- (5) If a draft of an Order in Council is submitted to Her Majesty in Council under this Schedule, Her Majesty in Council may make an order in terms of the draft. 45
- (6) An Order in Council made as mentioned in sub-paragraph (5) comes into force on the date specified in the Order.

- (7) The coming into force of the Order does not affect the return of any member to the Parliament or its constitution until the Parliament is dissolved.
- (8) The validity of an Order in Council purporting to be made under this Schedule and reciting that a draft of the Order has been approved by a resolution of each House of Parliament must not be called in question in any legal proceedings whatsoever. 5

Notice of proposed report or recommendations

- 7 (1) If the Electoral Commission intend to consider making a report under this Schedule – 10
- (a) they must inform the Secretary of State by notice in writing;
 - (b) they must publish a copy of the notice in the Edinburgh Gazette.
- (2) If the Boundary Committee have provisionally determined proposed recommendations affecting a constituency which they are minded to include in a report under paragraph 5(2) they must publish in at least one newspaper circulating in the constituency a notice stating – 15
- (a) the effect of the proposed recommendations and (except if the effect is that no alteration should be made in respect of the constituency) that a copy of the recommendations is open to inspection at a specified place in the constituency, and 20
 - (b) that representations with respect to the proposed recommendations may be made to the Boundary Committee before the end of the period of one month starting the day after the notice is published. 25
- (3) The Boundary Committee must take into account any representations made in accordance with the notice. 30
- (4) If the Boundary Committee revise any proposed recommendations after publishing notice of them under sub-paragraph (2) they must comply again with sub-paragraphs (2) and (3) in relation to the revised recommendations as if no earlier notice had been published. 35
- (5) If the Electoral Commission are minded to exercise in relation to the Boundary Committee’s proposed recommendations any of the powers conferred by paragraph 5(3)(b) or (c) or (4) they must have regard to –
- (a) any representations made with respect to the recommendations in accordance with a notice published under sub-paragraph (2) above, or 40
 - (b) (if they are minded to exercise any of those powers in relation to part only of the area subject to the Boundary Committee’s review) any representations so made with respect to the recommendations so far as relating to that part of the area. 45
- (6) If the Boundary Committee’s proposed recommendations affecting a constituency have been modified by the Electoral

Commission under paragraph 5(3)(b) the Boundary Committee must publish in at least one newspaper circulating in the constituency a notice stating the effect of the recommendations as so modified.

- 8 (1) This paragraph applies if the Boundary Committee provisionally determine proposed recommendations which they are minded to include in a report under paragraph 5(2) which would involve any alteration in a constituency. 5
- (2) The Boundary Committee must consider whether any alteration within paragraph 4(2) would be required in order to give effect to the regional rules. 10
- (3) The Boundary Committee's report under paragraph 5(2) must include the recommendations which they propose should be included in the Electoral Commission's report under paragraph 3 in the light of the Boundary Committee's consideration as mentioned in sub-paragraph (2) above. 15
- (4) Paragraph 7 applies for the purposes of the proposed recommendations as if for any reference to a constituency there is substituted a reference to a region.

Local inquiries 20

- 9 (1) The Boundary Committee may if they think fit cause a local inquiry to be held in respect of any constituency or constituencies.
- (2) If the Boundary Committee receive any relevant representations objecting to a proposed recommendation for the alteration of a constituency they must not make the recommendation unless since the publication of the notice under paragraph 7(2) a local inquiry has been held in respect of the constituency. 25
- (3) If a local inquiry was held in respect of the constituency before the publication of the notice under paragraph 7(2), sub-paragraph (2) above does not apply if the Boundary Committee after considering— 30
- (a) the matters discussed at the inquiry,
 - (b) the nature of the relevant representations received, and
 - (c) any other relevant circumstances,
- think that a further local inquiry is not justified. 35
- (4) A relevant representation is a representation made in accordance with paragraph 7(2)(b)— 40
- (a) by the council for an area which is wholly or partly comprised in the constituency;
 - (b) by a body of not less than 100 persons entitled to vote as electors at an election for membership of the Parliament held in the constituency.
- 10 (1) The Boundary Committee may if they think fit cause a local inquiry to be held in respect of any region or regions.
- (2) If the Boundary Committee receive any relevant representations objecting to a proposed recommendation for the alteration of a region they must not make the recommendation unless since the 45

publication of the notice under paragraph 7(2) a local inquiry has been held in respect of the region.

- (3) If a local inquiry was held in respect of the region before the publication of the notice under paragraph 7(2), sub-paragraph (2) above does not apply if the Boundary Committee after considering—
- (a) the matters discussed at the inquiry,
 - (b) the nature of the relevant representations received, and
 - (c) any other relevant circumstances,
- think that a further local inquiry is not justified.
- (4) A relevant representation is a representation made in accordance with paragraph 7(2)(b)—
- (a) by the council for an area which is wholly or partly included in the region;
 - (b) by a body of not less than 500 persons entitled to vote as electors at an election for membership of the Parliament held in any one or more of the constituencies included in the region.
- 11 Section 210(4) and (5) of the Local Government (Scotland) Act 1973 (attendance of witnesses at inquiries) applies in relation to a local inquiry held under paragraph 9 or 10.

The constituency rules

- 12 These are the constituency rules.

Rule 1

- (1) So far as is practicable, regard must be had to the boundaries of local authority areas.
- (2) “Area” and “local authority” have the same meanings as in the Local Government (Scotland) Act 1973.

Rule 2

- (1) The electorate of a constituency must be as near the electoral quota as is practicable, having regard to Rule 1.
- (2) The Electoral Commission or the Boundary Committee (as the case may be) may depart from the strict application of Rule 1 if they think that it is desirable to do so to avoid an excessive disparity between the electorate of a constituency and the electoral quota or between the electorate of a constituency and that of neighbouring constituencies. 5
- (3) The electoral quota is the number obtained by dividing the total electorate by 71. 10
- (4) The electorate of a constituency is the aggregate of the persons falling within paragraphs (5) and (6) below.
- (5) A person falls within this paragraph if his name appears on the register of local government electors in force on the enumeration date under the Representation of the People Acts for a local government area which is situated wholly in the constituency. 15
- (6) A person falls within this paragraph if his name appears on the register of local government electors in force on the enumeration date under the Representation of the People Acts for a local government area which is situated partly in the constituency and his qualifying address is situated in the constituency. 20
- (7) The total electorate is the total number of persons whose names appear on the registers of local government electors in force on the enumeration date under the Representation of the People Acts for all of the local government areas in Scotland (except the local government areas of Orkney and Shetland). 25
- (8) The enumeration date is, in relation to a report of the Electoral Commission (or one made by the Boundary Committee for the purposes of it), the date on which notice with respect to the report is published in the Edinburgh Gazette in accordance with paragraph 7(1) above. 30
- (9) “Qualifying address” and “local government area” have the same meanings as in the Representation of the People Act 1983 (c. 2). 35

Rule 3

- The Electoral Commission or the Boundary Committee (as the case may be) may depart from the strict application of Rules 1 and 2 if they think that special geographical considerations (including in particular the size, shape and accessibility of a constituency) render it desirable to do so. 40

Rule 4

The Electoral Commission or the Boundary Committee (as the case may be) need not aim at giving full effect in all circumstances to Rules 1 to 3 but they must take account (so far as they reasonably can) – 5

(a) of the inconveniences attendant on alterations of constituencies other than alterations made for the purposes of Rule 1, and

(b) of any local ties which would be broken by such alterations. 10

The regional rules

13 These are the regional rules.

Rule 1

A constituency must fall wholly within a region.

Rule 2

The regional electorate of a region must be as near the regional electorate of each of the other regions as is practicable, having regard (where appropriate) to special geographical considerations. 15

- 14 (1) This paragraph applies for the purposes of the regional rules. 20
- (2) For the purposes of a report of the Electoral Commission in relation to a region, the regional electorate is the number of persons – 25
- (a) whose names appear on the enumeration date on the registers of local government electors in the region, and
- (b) who are registered at addresses within a constituency included in the region
- (3) The enumeration date is the date on which notice with respect to the report is published in the Edinburgh Gazette in accordance with paragraph 7(1) above. 30
- (4) Sub-paragraphs (2) and (3) also apply for the purpose of construing references to the regional electorate in relation to a report of the Boundary Committee made for the purposes of a report as mentioned in sub-paragraph (2).

SCHEDULE 2

Section 1

TRANSITIONAL MODIFICATIONS OF SCHEDULE 1 TO THE SCOTLAND ACT 1998

Electoral Commission and Boundary Committee for Scotland

- 1 Any reference to the Electoral Commission or to the Boundary Committee for Scotland (or to both) must be construed as a reference to the Boundary Commission for Scotland. 5

Review and proposed recommendations by Boundary Committee for Scotland

- 2 Paragraph 5 must be ignored.

Notice of proposed report or recommendation

- 3 (1) Paragraph 7 is modified as follows. 10
(2) For sub-paragraph (2) there is substituted the following sub-paragraph—
“(2) If the Boundary Commission for Scotland have provisionally determined to make recommendations affecting a constituency they must publish in at least one newspaper circulating in the constituency a notice stating— 15
(a) the effect of the recommendations and (except if the effect is that no alteration should be made in respect of the constituency) that a copy of the recommendations is open to inspection at a specified place in the constituency, and
(b) that representations with respect to the proposed recommendations may be made to the Commission before the end of the period of one month starting the day after the notice is published.” 20
(3) Sub-paragraphs (5) and (6) must be ignored.
- 4 (1) Paragraph 8 is modified as follows. 25
(2) For sub-paragraph (1) there is substituted the following sub-paragraph—
“(1) This paragraph applies if the Boundary Commission for Scotland provisionally determine to make recommendations which would involve any alteration in a constituency.”
(3) Sub-paragraph (3) must be ignored. 30

SCHEDULE 3

Section 3

CURRENT BOUNDARY COMMISSION REVIEWS

- 1 This Schedule has effect in relation to any report of the Boundary Commission for Scotland under section 3 of the Parliamentary Constituencies Act 1986 (c. 56) which is submitted to the Secretary of State at any time before the passing of this Act. 35
- 2 Any recommendation included in the report in pursuance of paragraph 3 of Schedule 1 to the Scotland Act 1998 (as it had effect at that time) (duty of

- Boundary Commission to make recommendations as to regions and regional members) must be ignored.
- 3 (1) This paragraph applies if before the passing of this Act the Secretary of State has laid before Parliament –
- (a) a report containing such recommendations, and 5
 - (b) a draft of an Order in Council giving effect (with or without modification) to the recommendations of the Boundary Commission.
- (2) The Secretary of State must –
- (a) withdraw the draft of the Order in Council;
 - (b) lay a new draft of an Order giving effect (with or without modification) to the recommendations of the Boundary Commission (ignoring any recommendation mentioned in paragraph 2). 10
- 4 (1) This paragraph applies if before the passing of this Act an Order in Council has been made giving effect (with or without modifications) to recommendations mentioned in paragraph 2. 15
- (2) So much of the Order as relates to regions or regional members for the purposes of that Schedule must be ignored.

Scottish Parliament (Constituencies) Bill

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B I L L

To replace Schedule 1 to the Scotland Act 1998 making new provision in relation to the constituencies for the Scottish Parliament.

*Presented by Mr Secretary Darling
supported by
The Prime Minister, Mr Chancellor of the Exchequer,
Mr Secretary Murphy, Peter Hain,
Mrs Anne McGuire and Mr Christopher Leslie*

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