

Electoral Reform Consultation – draft response

Purpose

1. To consider a draft response from Boundaries Scotland to the current Scottish Government consultation on electoral reform.

Electoral Reform Consultation

2. The Scottish Government launched its consultation on electoral reform (<https://consult.gov.scot/constitution-and-cabinet/electoral-reform/>) on 14 December 2022 with a closing date of 15 March 2023.
3. Attached in Appendix A is a copy of the consultation discussion and questions relating to Boundaries Scotland. While the consultation focuses on the approval process for both reviews of electoral arrangements and the Scottish Parliament there is also an opportunity to feed in views on other matters.
4. The Commission considered the consultation at its meeting of 9 February and asked the Secretariat to prepare a draft response for comment at the next Commission meeting, which will include the advantages and disadvantages of all the options presented and also include Appendix B from Paper 36.
5. Appendix B of this paper contains a suggested response. This lists the pros and cons of the options and provides a narrative on the key issues but steers towards Option 3, automaticity. The Commission may wish to consider how explicit it makes its support for this recommendation. At present question 41 is not answered directly.
6. With regard to Appendix B of paper 36, the suggested response summarises the issues raised there. It may not be helpful to suggest some specific changes, for example, that the 2-month consultation with councils be reviewed at the same time as suggesting a move to automaticity. The focus therefore is on the change of date to 2031 for submission of the next set of reviews of electoral arrangements and a more general call to consider the publicity and consultation arrangements for local government reviews in order to modernise arrangements and maximise flexibility, including use of online meetings.

Conclusion

The Commission is invited to consider the draft response and agree any changes in order that it is submitted by 14 March.

**Secretariat
March 2023**

Scottish Government Consultation on Electoral Reform

Chapter 5 – Administration and Governance

Reviews of electoral boundaries

Boundaries setting legislative process

Boundaries Scotland is an independent Commission responsible for reviewing and making recommendations for constituencies and regions for the Scottish Parliament; the number of councillors on each council in a Local Government area; the number of wards for Local Government elections and their boundaries; and the extent of council areas.

The [Scottish Elections \(Reform\) Act 2020](#) removed the discretionary power for Scottish Ministers to modify or reject Boundaries Scotland's proposals when making secondary legislation to implement the proposals. Ministers previously had discretion to modify or decide not to implement changes. Instead, Ministers were required to lay orders without having a say but those orders would only be passed if the Scottish Parliament voted to approve them. Changes were also made in 2020 to make legislation implementing Local Government boundary changes subject to parliamentary approval. These changes followed a Scottish Government consultation on boundary reviews in 2017 where 75% of those responding to the relevant question considered that the Scottish Parliament should be able to challenge the recommendations of the Boundary Commission on Scottish Parliament constituencies and council wards.

In the responses to the consultation, there was a commonly expressed view that independence and impartiality were crucial to the boundary setting process in order to protect against political interference or 'gerrymandering'. There was, though, a range of views on what constituted 'independence', and the type of arrangements that would deliver the required level of independence.

There was also a widespread view that the work of the Commission should – like the work of all public bodies – be transparent and open to scrutiny, and subject to challenge where justified by the evidence or where due process had not been followed. There were differing views on the form that scrutiny and challenge should take, with some suggesting this should be provided by the Scottish Parliament or Scottish Ministers, and others suggesting it should come from outwith Parliament and / or the Government.

UK and International practice:

Following changes made under the Parliamentary Constituencies Act 2020, UK constituency boundaries are no longer subject to specific parliamentary procedure and are approved automatically (this is referred to below as 'automaticity'). In Wales, the Special Purpose Committee on Senedd Reform has recently recommended to the Welsh Government, in its [Report on Senedd Reform](#), that boundary recommendations should be implemented without a requirement for Senedd approval. [Similar processes are used in Australia](#) and [New Zealand](#), where parliament and ministers have no role in approving recommendations.

The Scottish Government wishes to consult on whether further changes to the boundary-drawing process could be made to ensure non-partisan consideration of boundary proposals.

Why a change is being proposed:

The removal of ministerial discretion in modifying or rejecting Boundaries Scotland reviews in the Scottish Elections (Reform) Act removed a potential opportunity for political interference. Making further changes to restrict the ability of parliamentarians to exert political influence over the boundary-setting process is a potential further step.

The change that was made in the 2020 Reform Act has not fully achieved the goal of preventing political considerations from coming in to play. As required by the Islands (Scotland) Act 2018, Boundaries Scotland carried out reviews of all six local authorities with islands and made their recommendations for change in 2021. After Ministers laid the relevant measures, two reviews were rejected despite it [being acknowledged by the Local Government, Housing and Planning Committee](#) that Boundaries Scotland had followed the methodology set out in the legislation.

Under the current process Ministers are required to ask Boundaries Scotland to carry out a further review. It was not possible for them to do in time for the changes to be implemented for the 2022 Local Government elections so this matter is outstanding and can be seen as another aspect of the process that does not work well.

The same process will be followed for the Scottish Parliament review of constituency and regional boundaries which was announced in autumn 2022 and will be completed by Boundaries Scotland by May 2025. Under current arrangements MSPs will be asked to vote on the constituency and regional boundaries for their own seats. This gives rise to a potential conflict of interest or at least the perception of one.

Changes being proposed:

Any change in process could apply to reviews of both Local Government and Scottish Parliament boundaries in order to keep a consistent approach between both processes. Since the commencement of the review of Scottish Parliament Boundaries was recently announced, it is not desirable to bring in changes when the review has already commenced (the completion deadline for the review is May 2025). However, any change agreed could be brought in before the next Scottish Parliament review.

There are a range of approaches in drawing and approving boundaries taken across comparable democracies. There are several options for ways that Scotland could reduce the risk of political interference in the process, with some possible options set out below. It can be noted that there was a similar process for UK parliamentary reviews up until 2020 when they moved to a form of automaticity following a number of UK Parliament reviews not having been enacted and the boundaries being increasingly out of date.

Option 1:

To remove the requirement for Ministers to instruct Boundaries Scotland to conduct a review should their proposals be rejected by Parliament (as per [section 17A of the](#)

[Local Government \(Scotland\) Act 1973](#)), and [section 6 \(paragraphs 4 to 4D\) of schedule 1 of the Scotland Act 1998](#).

This would avoid the risk of ongoing cycles of reviews should the Parliament not be able to agree to the proposed changes, while accepting that the Commission has followed the methodology set out in legislation. However, should no further review be conducted, the existing boundaries would become increasingly outdated. The initial report submitted by Boundaries Scotland would then be either accepted or rejected.

This option changes the current process the least. While it removes the risk of an ongoing cycle of legislation being laid to implement Boundaries Scotland proposals and then being rejected, it does not address the wider issue of boundaries becoming increasingly out-of-date if reviews are rejected.

Option 2:

To add a provision to [section 17A of the Local Government \(Scotland\) Act 1973](#)), and [section 6 of schedule 1 of the Scotland Act 1998](#) which would only allow Parliament to reject or recommend changes to a Boundaries Scotland report if there were concerns that statutory guidance or duties had not been followed. This would allow Parliament to retain a limited scrutiny role in the process, while removing an avenue for potential political interference.

This approach would be unusual. Scottish Parliament Committees are not normally restrained in their scrutiny of legislation in such a specific and directed way.

Option 3:

To change the boundary-setting process to full automaticity. Legislation would immediately implement any reviews conducted by Boundaries Scotland, without Parliament or Ministers having any opportunity to object. If it were believed that Boundaries Scotland had not upheld its legislative duties, legal challenge would be required to contest a report, or legislation introduced to overturn the process.

Automaticity was adopted for the setting of new UK Westminster constituency boundaries in the Parliamentary Constituencies Act 2020. The Boundary Commissions submit their final reports to the Speaker of the House of Commons (who is the Chair of the Boundary Commissions), who lays the reports before Parliament. A draft Order in Council giving effect to the recommendations is submitted to His Majesty in Council as soon as reasonably practicable (and in any case within 4 months). MPs do not debate or vote on the recommendations, limiting political influence over the process. If Parliament disagreed with the reports, legislation would have to be introduced to overturn the current process, or a legal challenge would have to be submitted.

This approach also closely follows the process used in New Zealand's national constituencies. In the New Zealand model, the boundaries reports are carried out by an independent commission with two political appointees – one representing the Government and one representing the opposition. This level of automaticity is also seen in the drawing of Australian federal constituency borders; however, objections are considered by an augmented committee of boundaries and electoral commissioners.

Automaticity prevents situations where politicians can frustrate or amend the process to gain a political advantage. Automaticity ensures that boundaries are drawn in line with set methodology, and that legislators being unhappy with changes made does not result in undue influence over the process.

The Commissioners that make up Boundaries Scotland are impartial experts who operate independently of the Scottish Government and Scottish Parliament. Commissioners are appointed by Scottish Ministers, with a recruitment process overseen by the Independent Standards Commissioner. This process ensures that the Commissioners, who are responsible for the re-drawing of boundaries, are not making decisions on the basis of political pressure and can act independently.

Question 41: Do you think the process for approving boundary changes should be changed, and which of the options set out above would you prefer?

- No change
- Option 1
- Option 2
- Option 3
- Other option

Question 42: Do you have any further comments on this topic?