



## BRIEFING PAPER

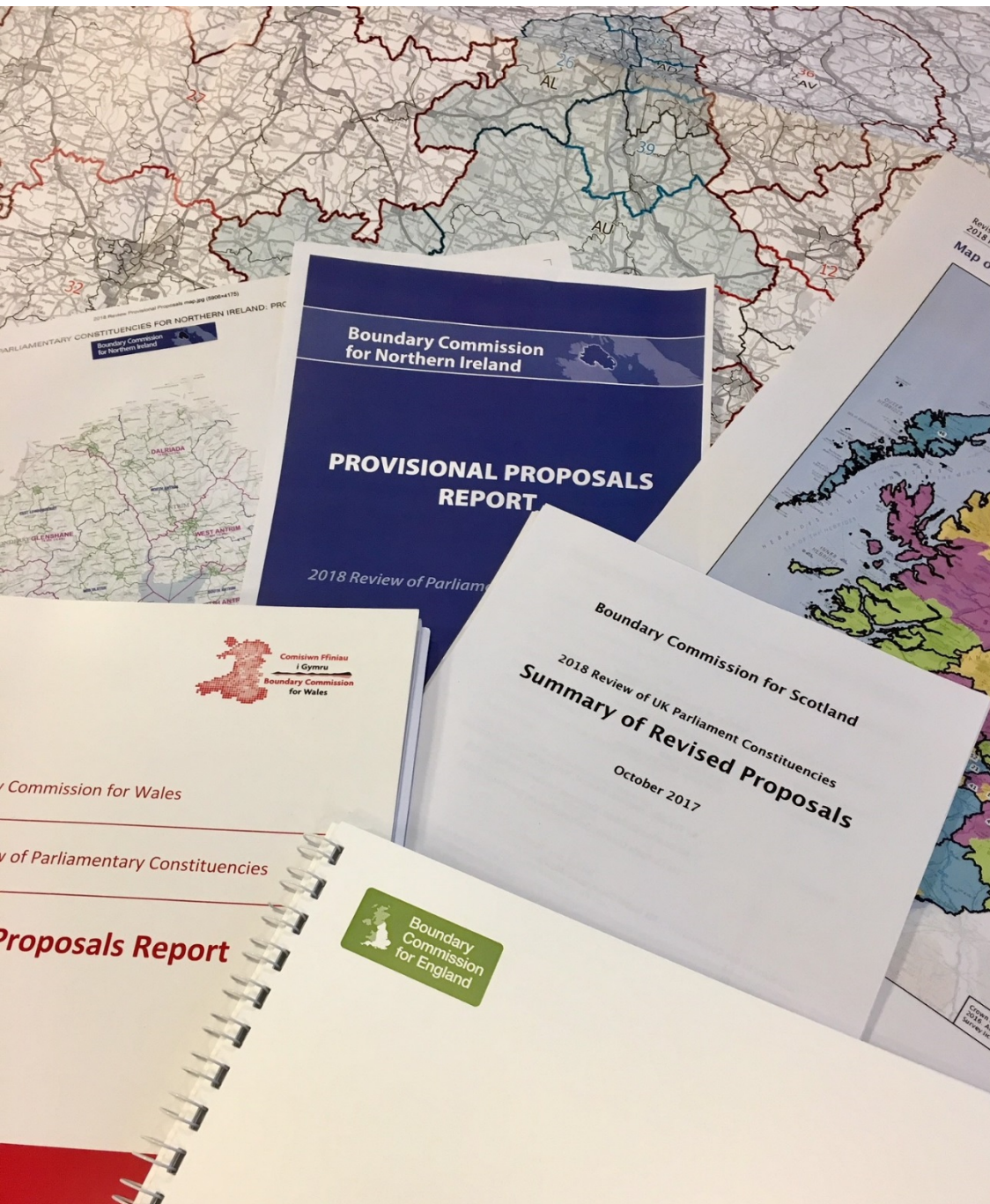
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# The *Parliamentary Constituencies (Amendment) Bill 2017-19*

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## Summary

This paper summarises the changes that the *Parliamentary Constituencies (Amendment) Bill 2017-19* sought to make to the *Parliamentary Constituencies Act 1986*, as amended. The 1986 Act provides the legislative basis for the periodical reviews of Parliamentary constituencies. The 1986 Act was amended by the *Parliamentary Voting System and Constituencies Act 2011* to introduce the current Rules for Redistribution of seats.

It also gives a brief background to Parliamentary constituency boundary reviews and the changes to the Rules for Redistribution of seats introduced in 2011.

The *Parliamentary Constituencies (Amendment) Bill 2017-19* was a Private Member's Bill, sponsored by Afzal Khan MP (Labour), which sought to amend the Rules for Redistribution in the *Parliamentary Constituencies Act 1986*, as amended. The Bill would have applied to the United Kingdom if passed.

A similar Private Member's Bill was introduced in the previous session by Pat Glass. The *Parliamentary Constituencies (Amendment) Bill 2016-17* had its Second Reading on 18 November 2016 but made no further progress.

The *Parliamentary Constituencies (Amendment) Bill 2017-19* was introduced on the 19 July 2017 and was given a Second Reading on Friday 1 December 2017.

The Public Bill Committee for the Bill held its first session on 9 May 2018 and the last 10 July 2019. However, the Committee could not consider the clauses of the Bill in detail as the House of Commons had not yet agreed a money resolution for the Bill.

The Bill made no further progress by the time of the Prorogation of Parliament in September 2019 and therefore fell.

The main effects of the Bill would have been:

- To retain 650 constituencies (the current boundary review is required to reduce the size of the House of Commons to 600 seats).
- Allow for constituencies to be within 7.5% of the electoral quota rather than the 5% currently required.
- Make the Boundary Commissions use more up to date electoral registration data than is currently being used for the 2018 Review.
- Alter the timing of reviews so that the next reports of the four Boundary Commissions would be due by 1 October 2020 and that they should be subsequently held every 10 years. The current Review is due to be reported by 1 October 2018 and then held every five years.

### **Number of seats in the House of Commons**

The Rules for Redistribution had been changed by the *Parliamentary Voting System and Constituencies Act 2011* to reduce the size of the House of Commons to 600 seats. This would be achieved by a general review of Parliamentary constituencies by the Boundary Commissions.

Although the Bill would have changed the Rule for the total number of seats in the House of Commons to take it back up to 650, the Bill did not seek to change the excepted islands seats contained in the 2011 Act (Orkney and Shetland, Na h-Eileanan an Iar, and two seats for the Isle of Wight); these would have remained preserved.

The first review to implement the reduction in the number of seats should have been the 2013 Review, but this was cancelled before it was completed. The final recommendations of the 2018 Review, which were presented to the Government in September 2018, would be the first to reduce the House to 600 seats. These are due to be implemented at the next general election held after the agreement of the draft Order in Council to implement the recommendations. The draft Order must be agreed by both Houses of Parliament. The next scheduled general election, under the terms of the *Fixed-term Parliament Act 2011*, is due in May 2022.

If the Order is not agreed or an early Parliamentary election is held before the draft Order is approved, then existing constituency boundaries are used. By-elections continue to use existing constituency boundaries as a general review can only be implemented at a general election.

### **Changing the 5% requirement**

Under the current Rules for Redistribution, each seat proposed by one of the Boundary Commissions (with the exception of the preserved islands seats) must be within 5% of the UK electoral quota.

For the current Review, the **UK electoral quota is 74,769**. This is calculated by dividing the registered electorate in the non-preserved seats of 44,562,440 (for the 2018 review this is the electorate on the 1 December 2015) divided by the number of non-preserved seats (596).

Recommended constituencies must be within the statutory electoral range of 71,031 to 78,507 (inclusive).

The Bill made provision to change the 5% rule to allow for a 7.5% deviation from the quota.

It did not seek to alter the primacy of the requirement that recommended seats be within a certain range of the electoral quota, but would allow the Boundary Commissions more leeway in how far from the electoral quota recommended seats may deviate.

Before the 2011 changes, the Boundary Commissions had to take into account the electoral quota, along with other factors including local ties and geography, but there was no requirement that the electorate of the proposed constituencies should be the primary factor.

### **Electorate data**

The Rules for Redistribution currently require the Boundary Commissions to use the electorate data published on the 'review date'. This is defined in the legislation as two years and ten months before the final reports are due.

The final reports for the 2018 review had to be presented to the Government by 1 October 2018. This made the review date 1 December 2015.

The Bill would have required the Boundary Commissions to use more up to date electorate data from the 2017 General Election.

### **Timing of reviews**

Changing the data that the Boundary Commissions must use and altering the number of seats the Commissions must recommend half way through a review would have effectively bring the work on the 2018 Review to a halt.

The Bill recognised this and would have required the Boundary Commissions to deliver their final recommendations to the Government by 1 October 2020, instead of 1 October 2018.

The Bill also changes the timing of the general reviews, from every 5 years to every 10 years.

The timing of the reviews was last changed by the *Boundary Commissions Act 1992*. The Commissions were required to report every 10-15 years, but the 1992 Act brought forward the deadline for the Fourth Periodical Review (that was underway at the time) and reduced the cycle of review to every 8-12 years. There had been concerns expressed during the Third Review (started in 1976 and implemented at the 1983 General Election) that the interval was too long, leading to seats being contested on electorate data over five or six years old in the case of England and Scotland. Similar concerns were expressed during the Fourth Review.



# 1. Background

During the twentieth century there was a steady increase in the number of Parliamentary constituencies from 615 in 1922, to 659 from 1997. It remained at 659 until 2005. In 2005 the number dropped following the reduction in the number of Scottish seats, following the creation of the Scottish Parliament. The number rose again in 2010 following the implementation of the Fifth Periodical Boundary Review of Parliamentary constituencies. Since the 2010 General Election there have been 650 seats.

There had been several Private Members' Bills to reduce the size of the House of Commons in the years before the 2010 General Election.

In a speech on political reform on 26 May 2009, David Cameron said that a Conservative government would reduce the number of MPs.<sup>1</sup> The Conservative party manifesto for 2010 subsequently said that a Conservative government would reduce the number of MPs by 10 per cent.<sup>2</sup>

At the 2010 General Election, Labour proposed a non-partisan Parliamentary Boundary Review to examine the rules for the redistribution of seats, together with a referendum on introducing the Alternative Vote (AV) system for elections to the Commons. The Party's 2010 manifesto stated:

The cost of politics to the taxpayer must be minimised, but we reject using this as an excuse to gerrymander constituency boundaries in the interests of one political party. We will establish a non-partisan Parliamentary Boundaries Review to examine the rules for constructing parliamentary constituencies.<sup>3</sup>

The Liberal Democrats have a long-standing policy of electoral reform, preferring the Single Transferable Vote system. The Party's manifesto in 2010 stated that the Liberal Democrats would introduce electoral reform for elections to the House of Commons and reduce the number of MPs by 150.<sup>4</sup>

Following conclusion of the coalition negotiations, the Coalition Government announced on 20 May 2010 that it would bring forward a Bill on electoral reform which would make provision for the creation of fewer and more equal sized constituencies as well as for a referendum on the introduction of the Alternative Vote system for Parliamentary elections.

The subsequent *Parliamentary Voting System and Constituencies Act 2011* made changes to the Rules for Redistribution in the *Parliamentary Constituencies Act 1986*. [Section 11](#) of the 2011 Act specifies that the Rules now state:

- The number of constituencies in the United Kingdom shall be 600; The electorate of any constituency shall be—

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<sup>1</sup> Speech by David Cameron, [Fixing Broken Politics, 26 May 2009](#)

<sup>2</sup> Conservative Party manifesto 2010, p8

<sup>3</sup> Labour Party Manifesto 2010, p9:4

<sup>4</sup> Liberal Democrat Manifesto 2010, p89

- (a) no less than 95% of the United Kingdom electoral quota, and
- (b) no more than 105% of that quota

- There are exceptions to this rule:
  - Protected constituencies: Orkney and Shetland, and Na h-Eileanan an Iar continue to exist as they are, and the Isle of Wight shall have two constituencies;
  - Constituencies with an area of more than 12,000 square kilometres, and where the Boundary Commission concerned are satisfied that it is not reasonably possible for the constituency to comply with the numerical rule;
  - There is scope for greater variation in size for the constituencies in Northern Ireland;
- The electoral quota is calculated by dividing the electorate of the UK, minus that of the protected constituencies, by 596 (the total number of seats minus the four protected constituencies);
- Each constituency shall be wholly within one of the four parts of the United Kingdom (England, Wales, Scotland and Northern Ireland);
- A constituency shall not have an area of more than 13,000 square kilometres;
- A Boundary Commission may take into account, if and to such extent as they think fit—
  - (a) special geographical considerations, including in particular the size, shape and accessibility of a constituency;
  - (b) local government boundaries as they exist on the most recent ordinary council-election day before the review date;
  - (c) boundaries of existing constituencies;
  - (d) any local ties that would be broken by changes in constituencies;
  - (e) the inconveniences associated with such changes.

Key differences implemented by the 2011 Act are:

- The restriction of the total number of seats in the House of Commons to 600.
- A single UK electoral quota.
- The primacy of the electoral quota over other statutory considerations.
- Revision of the public consultation process
- Removal of the power of the Commissions to hold interim reviews.

## 2. The Bill

**Clauses 1-3** would make amendments to the Rules for Redistribution contained in Schedule 2 of the *Parliamentary Constituencies Act 1986*, as amended by the *Parliamentary Voting System and Constituencies Act 2011*

**Clause 4** would amend the timings of general reviews as set out in Section 3 of the 1986 Act.

### 2.1 The number of constituencies

**Clause 1** of the Bill would have the effect of maintaining the size of the House of Commons at 650 MPs.

The clause specifies that Northern Ireland should have 18 seats and that the number of seats in the rest of the United Kingdom should be 632 seats.

This would require separate electoral quotas for mainland Great Britain and for Northern Ireland. Provision for this is made in clause 2 (see below).

Clause 1 would also maintain the principle of having a fixed number of seats in the House of Commons and therefore prevent a return to the 'ratchet effect' (see Section 3.3)

### 2.2 Electorate per constituency

**Clause 2 (2)** provides for separate electoral quotas for Northern Ireland and for Great Britain to allow for the allocation of seats between Great Britain and Northern Ireland as set out in clause 1.

The electorate data to be used for is considered in section 2.3 below.

The provision maintains the excepted constituencies contained in Rule 6 of the Rules for Redistribution, Orkney and Shetland, Na h-Eileanan and the two seats allocated to the Isle of Wight.

The electoral quota for Great Britain is based on the electorates of England, Scotland and Wales minus those registered electors within the four excepted seats. That total is then divided by 628 to give the electoral quota for Great Britain.

The allocation of seats between Scotland, England and Wales remains calculated as before, based on a proportional distribution based on electorate. **Clause 3** of the Bill makes consequential amendments to allow for this allocation to exclude Northern Ireland by substituting references to "the United Kingdom" with "Great Britain".

The electoral quota for Northern Ireland is taken as the electorate used for the review divided by 18. There are no excepted constituencies in Northern Ireland.

Before the 2011 changes, the Boundary Commissions had to take into account the electoral quota, along with other factors including local ties



and geography, but there was no requirement that the electorate of the proposed constituencies should be the primary factor.

This Bill does not seek to alter the current requirement of primacy of the Rules, but will allow the Boundary Commissions more leeway in how close to the electoral quota proposed seats will be.

The clause amends the requirement that all non-expected seats must be within 5% of the electoral quota. It substitutes this a new requirement that all seats should be within 7.5% of the electoral quota.

This is likely to cause less disruption to the redrawing of constituency boundaries. Leading academics pointed to the 5% requirement as the biggest disruption to the drawing of Parliamentary constituency boundaries rather than the reduction of the number of seats to 600. The Political and Constitutional Reform Committee report, *What next on the redrawing of constituency boundaries?*, at the end of the last Parliament, noted Professor Ron Johnston's evidence:

67. In terms of the ability of the Boundary Commissions to bring forward satisfactory proposals for new parliamentary constituencies, Professor Ron Johnston told us that the number of constituencies:

makes very little difference indeed. In all of this debate, that is the red herring; the size of the House is not an important factor in the degree of disruption or fitting into local government boundaries. The Boundary Commission was not making all of these changes because it was going to 600 seats; the Boundary Commissions were making these changes because they were fitting into a 5% tolerance.

The current Rules make special provision for the electoral quota in Northern Ireland. It allows for a greater than 5% deviation from the UK electoral quota in certain circumstances. This provision is removed by **clause 2 (4)**.

## 2.3 Electorate data

**Clause 2 (3)** alters the data which the Commissions use to calculate electoral quotas and subsequently use to formulate recommendations.

It requires that the data to be used for the current review is the register of electors used at the most recent general election, June 2017.

It also states that all subsequent boundary reviews should be based on the most recent general election preceding the review.

Changing the data that the Boundary Commissions must use and altering the number of seats the Commissions effectively means that the current review would have to be abandoned and re-commenced. Clause 4 (see below) amends the timing of the current review to allow the Commissions sufficient time to carry out this revised work.

Electoral registration officers currently carry out an annual canvass of electors. The results of that canvass are then reported to the Office of National Statistics and published as an annual statistical release. The December 2015 data used for the current review is as a result of that

year's annual canvass. The current legislation leaves no discretion to the Commissions and directs them to use the electoral registers on a certain date.

There have been criticisms that the 2018 Review is using the Parliamentary electoral register data from December 2015 for determining the electoral quota and drawing of constituency boundaries.

This is in light of two main concerns:

- The increase in electoral registration in the run up to the EU referendum in June 2016 and the 2017 General Election.
- The under-registration of people on the December 2015 registers following the move to individual electoral registration (IER).

With online registration now available there have been large peaks in the number of people registering in the run up to key electoral events. Between 1 December 2015 and polling day for the referendum on the UK's membership of the EU on 23 June 2016 the number of registered Parliamentary electors increased by 1.75 million.

The 2017 General election electorate has approximately 2.1 million more entries on the electoral registers than the 2015 figures. On 22 May 2017, the deadline for registering to vote for the 2017 General Election, 613,000 people applied to register to vote online.

Under-registration has been recognised as more associated with some groups than others, such as students, younger people, those in private rented accommodation and some ethnic minorities.

Whichever data Parliament directs the Commissions to use there will always be a latency between the data used for a review and the boundaries that come out of a review being implemented.

The currency of electoral data underpinning constituency boundaries has been raised before. During the Fourth Periodical Review the Major Government introduced legislation shortly after the 1992 general election. This was to bring forward the submission date of the review and to reduce the time period between reviews to between 8 and 12 years; the argument being that the reviews were being based on out of date electoral registration data.

The then Home Secretary, Ken Clarke, said at Second Reading:

But for the proposals in the Bill there would be a serious risk of an election in 1996—a perfectly feasible date to contemplate—being fought on electoral figures that would be 20 years out of date.<sup>5</sup>

At Second Reading of the *Parliamentary Voting System and Constituencies Bill 2010-12* the Deputy Prime Minister said:

By having more frequent boundary reviews—one every five years—constituencies will be kept more up to date, reflecting changes in where people live.

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<sup>5</sup> HC Deb 15 June 1992, c669.

The current constituency boundaries in England, contested at the 2010, 2015 and 2017 General Elections, are based on electoral data from 2000.

## 2.4 Timing of the review

The Commissions are currently statutorily required to complete their work and present their reports to the Secretary of State by 1 October 2018. This would be impossible if the Commissions were required to abandon their current work and start again.

This issue is acknowledged by **Clause 4** of the Bill, which amends the date by which the Commissions must report to 1 October 2020.

It also amends the period between reviews from 5 to 10 years.

Critics of the current Rules point to the possible consequences of frequent reviews. The Political and Constitutional Reform Committee highlighted a British Academy report on the *Parliamentary Voting System and Constituencies Bill* which concluded:

population movements are considerable over relatively short periods of time, and it is likely that within five years a not-insignificant number of constituencies could fall outwith the +/- 5% size constraint in some parts of the country.

It went on to say:

some MPs...could find that the constitution of their constituencies changes considerably with great regularity (or even that they are, in effect, abolished after only five years); party organisers and electoral administrators would have to change their arrangements very frequently; and electorates would be confused by the frequent changes.<sup>6</sup>

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<sup>6</sup> Political and Constitutional Reform Committee, *Parliamentary Voting System and Constituencies Bill*, HC437, 2010-12, paras 82-3

## 3. A brief history of redistribution

Before the present machinery was set up four great redistributions took place, in 1832, 1868, 1885 and 1918. All of them were done on an 'ad hoc' basis and all were linked to extensions of the franchise.

Initially the franchise was so restricted that the anomalies in seat distribution were not so apparent but as the franchise was extended these anomalies became more obvious.

It came to be accepted that equal voting rights needed to be accompanied by equality of representation which meant that there needed to be numerical equality of electors between constituencies. By 1917 this had become a settled principle and the report of the Speaker's Conference of that year stated that "each vote shall as far as possible, command an equal share of representation in the House of Commons."<sup>7</sup>

### 3.1 Creation of periodical reviews

In January 1942 a committee was appointed to inquire into various electoral matters. This committee was chaired by the Registrar General, Sir Sylvanus Vivian. In its report, published in December 1942, the committee commented that the equal representative status of MPs and the territorial nature of representation were essential features of the British electoral system.

The Committee recommended that there should be three permanent statutory Boundary Commissions, one for England and Wales, one for Scotland and one for Northern Ireland. The committee also recommended that the commissions should carry out a general review of constituencies once in the lifetime of every full term Parliament.<sup>8</sup>

The Speaker's Conference of 1944, which was asked to consider the question of detailed rules for the Boundary Commissions to follow, subsequently agreed that there should be four Commissions (one for each of the four constituent parts of the UK) and that these Commissions would carry out reviews at intervals of not less than three and not more than seven years.

#### The 1944 Act

The *House of Commons (Redistribution of Seats) Act 1944* established four permanent Boundary Commissions to redistribute parliamentary constituencies. This Act required the Boundary Commission for England to undertake an immediate Special Review of "abnormally large" constituencies (those with an electorate that exceeded 100,000).

The four Boundary Commissions were then required to conduct an initial review of all Parliamentary seats with a view to keeping them under constant review. The 1944 Act allocated primacy to the

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<sup>7</sup> Conference on Electoral Reform, [Letter from Mr Speaker to the Prime Minister](#), Cd 8463, para 13

<sup>8</sup> Report of the Committee on Electoral Machinery, Cmd 6408, December 1942

achievement of equal constituencies over the principle of respect for local government boundaries.

The Conference had also recommended that redistribution should be on the basis of an electoral quota for Great Britain calculated from the qualified electorate and with 25% tolerance on either side; local and Parliamentary boundaries would coincide 'where convenient' and the Commissioners were to be permitted to depart from the strict application of the rules if they felt that this was desirable because of special geographical considerations such as area, shape and accessibility of a constituency.

## The 1947 Act

The provision for 25% tolerance on either side in the Rules for Redistribution had been removed by the *House of Commons (Redistribution of Seats) Act 1947* after informal complaints from the Commissioners.

Not only was the 25 per cent rule abolished, but the electoral quota Rule was moved to below the requirement to have regard to local government boundaries. This effectively made equality electorates subordinate to local government boundaries.

When introducing the Bill, the then Home Secretary, James Ede MP, made clear that the intention was to make local communities more important than "mere mathematics" of the electorates.

We desire that the principle of community of interest, of local government boundaries, shall be made superior to mere mathematics

...

Now I found—and I have their permission to say it—that the Commissioners had felt themselves gravely handicapped by the strict mathematical formula within which their activities have been confined, and therefore the present Bill has been introduced in an effort to make the future representation of this House more in accordance with the historic precedent of representing communities than would have been possible under the Act of 1944.<sup>9</sup>

## The 1949 Act

The *House of Commons (Redistribution of Seats) Act 1949* repealed the 1944 and 1947 Acts, but took the principle of periodic review forward and consolidated the Rules for the reviews.<sup>10</sup> These Rules operated until the passing of the *Parliamentary Voting System and Constituencies Act 2011*.

Rule 1 gave the number of seats as follows:

Great Britain – not substantially greater or less than 613

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<sup>9</sup> HC Deb 13 December 1946, c1560

<sup>10</sup> The *House of Commons (Redistribution of Seats) Act 1949* (12 & 13 Geo 6 chapter 66)

Scotland – not less than 71 (repealed by the *Scotland Act 1998* which then directed the Scottish Commission to use the same electoral quota as that for England).

Wales – not less than 35

Northern Ireland – 12 (this was amended in 1979 following a Speaker's conference. The *House of Commons (Redistribution of Seats Act) 1979* gave the Commission in Northern Ireland the power to allocate from 16 and 18 seats).

Rule 2 stated that each seat shall return a single MP

Rule 3 made provision that the City of London should not be divided between seats and that the seat containing the City should include the City of London in its name.

Rule 4 said that the Commissions should have regard for local government boundaries and 'so far as is practical having regard to Rules 1-3'. This provision was altered by the *Local Government Act 1972*, to take account of revised local government structures.

Rule 5 made provision that a seat should be as close to the electoral quota as possible whilst having regard to Rules 1-4 but that a Commission could depart from the strict application of Rule 4 to avoid creating seats with excessive disparities in their electorates.

Rule 6 allowed Commissions to depart from the strict application of the Rules based on special geographical considerations.

Rule 7 made provision for the enumeration date for calculating electorates. It also stated that the electoral quota for Great Britain was the number of registered voters on the enumeration date divided by the number of existing seats. For Northern Ireland the electoral quota was the number of registered voters on the enumeration date divided by the number of existing seats (set at 12 by Rule 1).

The implementation of the First Periodical Review, based on the 1949 Rules, attracted controversy (see below). There was opposition to large changes so soon after the Initial Review and a court case was brought challenging how the Boundary Commission for England had interpreted the Rules for Redistribution. The Court of Appeal concluded that the Commissions had interpreted with some discretion, which what the Rules allowed for.

## The 1958 Act

Following inter-party consultations in 1956 and 1957 cross-party support was gained for changes which were incorporated into the *House of Commons (Redistribution of Seats) Act 1958*. This sat alongside the 1949 Act until a consolidation in 1986.



The Home Secretary, R.A Butler, said on second reading: “the effect of the Bill is to bring in a presumption against making changes unless there is a very strong case for them”..<sup>11</sup> The main changes were as follows:

- The electoral quota was to be calculated separately in each of the four parts of the UK by amending Rule 7
- The interval between general redistributions was increased from 3-7 to 10-15 years.
- The composition of the Commissions was changed, reducing membership from five to three, with the Registrars General and directors of the Ordnance Survey becoming Assessors instead of Commissioners. The Speaker continued to be the *ex-officio* Chairman but lost the power to select the Deputy Chairman who was henceforth to be a High Court judge (Court of Session judge in Scotland).
- The Boundary Commissioners were given greater latitude to depart from the electoral quota to leave constituencies undisturbed.
- Provision was made for more local inquiries (mandatory in certain circumstances) and two rounds of representations.

## The Foot case

The interpretation of the Rules was again challenged in the courts in the 1980s (see the Third Review below). The Boundary Commission for England had just completed its Third Periodic Review and was preparing to submit its report to the Home Secretary when Mr Foot sought orders restraining the submission of the report on the ground that the Commission had failed to give proper weight to the principle of equality of electorates in Rule 5. The case contested that the Commission had failed to use its discretion to cross county and London borough boundaries and in consequence had recommended constituencies very disparate in size. This was a position that the Labour Party had opposed when invited to comment on the issue by the Boundary Commission..<sup>12</sup>

The *Local Government Act 1972* (and corresponding legislation in Scotland and Northern Ireland) amended the Rules so that the Commissioners were given discretion to cross the boundaries of the new districts, many of which were too large to form one constituency and too small for two.

For England and Wales only county and London boroughs were to be respected; in Scotland, the legislation merely constrained the Commission to ‘regard’ for boundaries of local authority areas. For Northern Ireland, the only regard was that no ward be split between two constituencies.

The Court of Appeal found against Foot:

It is clear, in our judgment, that ..the requirement in rule 4 that ‘so far as practicable’ constituencies shall not cross country or

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<sup>11</sup> HC Deb 11 February 1958 c230

<sup>12</sup> Rossiter, Johnston and Pattie, *The Boundary Commissions: redrawing the UK’s map of Parliamentary constituencies*, 1999, p115

London borough boundaries must be regarded as taking precedence over the requirement in rule 5 concerning the size of the electorate for each constituency. This appears from the facts that (1), rule 4 is on its face not qualified by reference to rule 5, whereas rule 5 provides that the electorate of any constituency shall be as near as the electoral quota as is practicable having regard to the foregoing rules, which of course include rule 4; and (2) the second limb of rule 5 authorises departure from rule 4 only in the circumstances there specified...The requirement of electoral equality is, subject to the second limb of rule 5, subservient to the requirement that constituencies shall not cross county or London borough boundaries.<sup>13</sup>

Crucially, the judgment interpreted the Rule that gave the Commissions greater leeway (to recommend constituencies that deviated from the electoral quota to minimise the pattern of existing seats disruption) to the mean that the Commission was relieved from the duty to give effect in all circumstances to the Rules.

The judgment was queried by commentators who argued that the Rule had been designed to exempt the Commission from rigid adherence to Rule 5 (electoral quotas) and that it could not be correct to categorise the other Rules as merely guidelines. The overall effect was to give the Boundary Commission greater discretion in its work.<sup>14</sup>

## 3.2 Current Rules

### The 1986 Act

The current Rules for Redistribution and legislative background to the reviews are contained in the *Parliamentary Constituencies Act 1986*, as amended.

The 1986 was a consolidation Act to bring together the existing enactments from 1949 to 1979. The current Rules for Redistribution were inserted into the Act by the *Parliamentary Voting System and Constituencies Act 2011*

The Act was amended by the *Boundary Commissions Act 1992* to define the time period between the general reviews of all constituencies as 8 to 12 years.

The *Political Parties, Elections and Referendums Act 2000* (PPERA) established the Electoral Commission and provided for the functions of the Boundary Commissions to be transferred to this new agency after the completion of the fifth general review (which was completed in 2007). However, the Committee on Standards in Public Life (CSPL) recommended in its report on the work of the Electoral Commission, published in January 2007, that this legislation should be repealed and that the responsibility for conducting Parliamentary boundary reviews should remain with the Boundary Commissions.<sup>15</sup>

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<sup>13</sup> 1983 QB 600 631-2

<sup>14</sup> Oonagh Gay, *The Rules for the Redistribution of Seats- history and reform*, SN/PC/05628, July 2010.

<sup>15</sup> Review of the Electoral Commission, Committee on Standards in Public Life Eleventh report, Cm 7006, January 2007

## The 2011 Act

At the 2010 General Election all three main parties included proposals on boundary reform.

The Conservative party manifesto 2010 said that a Conservative government would reduce the number of MPs by 10 per cent.<sup>16</sup>

This followed a 2009 speech by David Cameron when he pledged to reduce the number of MPs and make constituency electorate sizes more equal. The Conservatives linked the proposals to reducing the cost of politics.<sup>17</sup>

The Labour manifesto proposed a non-partisan Parliamentary Boundary Review to examine the rules for the redistribution of seats, together with a referendum on introducing the Alternative Vote (AV) system for elections to the Commons.<sup>18</sup>

The Liberal Democrats have a long standing policy of electoral reform, preferring the Single Transferable Vote system. The Liberal Democrat manifesto in 2010 introducing a fair Single Transferable Vote elections for the House of Commons and reduce the number of MPs by 150.<sup>19</sup>

Following the inconclusive election result at the 2010 General Election, the Coalition Government announced its programme on 20 May 2010.<sup>20</sup> The section on political reform promised 'a Referendum Bill on electoral reform, which includes provision for the introduction of the Alternative Vote in the event of a positive result in the referendum, as well as for the creation of fewer and more equal sized constituencies.'<sup>21</sup>

As noted above, the current Rules for Redistribution were substituted by the *Parliamentary Voting System and Constituencies Act 2011*. The 2011 Act inserted a new Schedule 2 to the 1986 Act.

The *Parliamentary Voting System and Constituencies Bill* was introduced on 22 July 2010 and details of the passage of the Bill can be [found on the Parliament website](#).

### 3.3 The number of MPs and the 'ratchet effect'

As noted above, there was a steady increase in the number of MPs in the 20<sup>th</sup> century.

The number of seats rose at the 1945 General Election because of the division of the 'abnormally large' constituencies into seats with smaller electorates. The number of seats fell at the 1950 General Election, principally because of the abolition of university seats.

The table shows the steady increase since the Initial Review was implemented (at the 1950 General Election).

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<sup>16</sup> Conservative Party manifesto 2010, p8

<sup>17</sup> [David Cameron: Cutting the Cost of Politics](#), 8 September 2009

<sup>18</sup> Labour Party manifesto 2010

<sup>19</sup> Liberal Democrat Manifesto 2010

<sup>20</sup> [The Coalition documentation](#),

<sup>21</sup> *Ibid*, p27

**Members elected at general elections, 1832-2017**

Election	Total number of Members elected
1832, 1835, 1837, 1841	658
1847	656
1852, 1857	654
1859, 1865, 1868	658
1874, 1880	652
1885, 1886, 1892, 1895, 1900, 1906, 1910(Jan), 1910 (Dec)	670
1918	707
1922, 1923, 1924, 1929, 1931, 1935	615
1945	640
1950, 1951	625
1955, 1959, 1964, 1966, 1970	630
1974 (Feb), 1974 (Oct), 1979	635
1983, 1987	650
1992	651
1997	659
2005	646
2010, 2015, 2017	650

**Source:** Rallings & Thrasher, *British Electoral Facts 1832-2006*, House of Commons Library Briefing Papers

The reasons for the incremental growth in the number of seats and the concerns that were voiced by the Home Affairs Select Committee in a report published in February 1987.<sup>22</sup> It found:

9. The consequences of the application of Rules 5 and 6 is that whenever seats are awarded under those Rules above a review area's entitlement on the basis of the electoral quota alone the number of constituencies recommended will be greater than the previous total. These new, higher, totals will in turn be used as divisors for calculating the electoral quotas at the next general review. At that review Rules 5 and 6 will again operate, so that the tendency for the numbers of seats to increase will be increasingly cumulative. Rule 1 provides for minimum numbers of seats for Scotland (71) and Wales (35). There is no mechanism in the Rules for offsetting increases in one country by reductions in another. Indeed it is impossible under the Rules for any reduction to take place.

This 'ratchet effect' has been previously highlighted by the Boundary Commissions themselves. In the guidance booklet for the Fifth Review published by the Boundary Commission for England explained that any extra seats created in one review then become included in the next review and so continue the upwards trend.

25. The cause of the incremental growth is the combined effect of the Rules for Redistribution of Seats contained in Schedule 2 of the Parliamentary Constituencies Act 1986... Rule 8 defines the electoral quota (the figure to which constituency electorates should approximate) as the total electorate of England divided by the existing number of seats. Any extra seats created under rules 5 and 6 (for reasons of electoral parity and geography) in one review are therefore included in the divisor for calculating the

<sup>22</sup> *Redistribution of seats*. Home Affairs Select Committee second report with proceedings & appendices. HC 97 1986/87

electoral quota for the next review, thus creating a ratchet effect..<sup>23</sup>

At the completion of the Fifth Review the Boundary Commission for England reported that, mindful of the 'ratchet effect' it had attempted to limit the increase in the number of seats overall. However, it commented that this was unpopular in places where this affected the Commission's decisions and that it should not be the role of the Commission to assess how many seats the House of Commons should have:

We consider that Rule 1 envisages a relatively stable number of constituencies. However, as mentioned in previous periodical reports, and by the Home Affairs Committee..., the combined effect of the Rules is to increase the number of constituencies at every general review. As reported in Chapter 2, we have taken steps to limit the increase, and these steps have been unpopular with the affected local electorate, but we do not consider it right for us arbitrarily to set a fixed target number of constituencies and adhere rigidly to that number, particularly as the term "substantially greater" in Rule 1 is not defined in the 1986 Act..<sup>24</sup>

When the Committee on Standards in Public Life reviewed made its recommendation that the responsibility for conducting Parliamentary boundary reviews should remain with the Boundary Commissions and not be transferred to the Electoral Commission it commented on the Rules for Redistribution.

The Committee noted that there appeared to be a broad consensus amongst most academics, the Boundary Commissions, the Electoral Commission and many politicians on the need for a review of the Rules for Redistribution.

The Committee commissioned research from experts Dr David Butler and Professor Iain McLean of Nuffield College Oxford on the operation of the rules, and the resulting report included a recommended set of rules devised by Professor Ron Johnston (Bristol University) and Dr David Rossiter..<sup>25</sup>

In its final recommendations, the CSPL stated that current legislation in relation to the conduct of Parliamentary boundary work should be reviewed and "where necessary amended before the commencement of the sixth general review due around 2012."..<sup>26</sup>

It said a review should be held to address the "progressive inequality of electoral quotas, and increase in the size of the House of Commons that appear inbuilt to the operation of the current rules."..<sup>27</sup>

The Labour Government responded to these recommendations in November 2007 and agreed that it was appropriate to review the

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<sup>23</sup> Ibid, p7

<sup>24</sup> Boundary Commission for England, [Fifth Periodical Report](#), Cm 7032, Volume 1, p485

<sup>25</sup> [The Electoral Commission and the redistribution of seats](#) David Butler and Iain McLean 8 June 2006

<sup>26</sup> The Government response to the Committee on Standards in Public Life's Eleventh Report: Review of the Electoral Commission, Cm 7272, November 2007, p11

<sup>27</sup> [Review of the Electoral Commission, Committee on Standards in Public Life Eleventh Report](#), Cm 7006, January 2007, p47

legislation; that the Government should commission such a review and that it should look at all aspects of the current legislation on Parliamentary boundary reviews with two specific exceptions. These were “(1) the deliberate over-representation of Wales and Northern Ireland in the UK Parliament and (2) that each constituency shall return a single MP.”<sup>28</sup> However, the Labour Government did not commission such a review.

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<sup>28</sup> The Government response to the Committee on Standards in Public Life’s Eleventh Report, review of the Electoral Commission. Cm 7272, November 2007.



## 4. Previous Reviews

This section gives a brief overview of the Initial Review, held under the 1944 Rules, and the subsequent six general reviews held. The seventh general review was known as the 2018 Review.

### 4.1 The Initial Review 1947

The recommendations of the Initial Review were published in 1947.<sup>29</sup> This formed the basis of the *Representation of the People Act 1948*.<sup>30</sup> The following year the *House of Commons (Redistribution of Seats) Act 1949* was passed, which repealed the 1944 Act, but took the principle of periodic review forward and established the rules for the reviews.<sup>31</sup>

Writing in 1963, David Butler looked back at the 1948 redistribution and commented:

A tribute to the fairness of the 1948 redistribution is perhaps to be found in the fact that in 1950 the average electorate in seats won by the Conservatives was only a fraction more than in seats won by the Labour Party (55,270 compared to 55,161). Estimates made by the parties and a careful check of individual boundary changes suggest that the 1948 redistribution may have cost the Labour Party thirty seats. One of the benefits of continuous redistribution is that no party is likely to suffer so sharply in future.<sup>32</sup>

### 4.2 First Periodical Review 1954

Under the 1944 rules incorporated into the 1949 Act a further general review was due between three and seven years after the Act implementing the initial review, i.e. not earlier than 1951 or later than 1955. Subsequent reviews were to be dated from the submission of the previous report. The publication of the final reports of the Boundary Commissions in 1954 aroused controversy. David Butler summarised the main problems:

1. There was no administrative procedure for appeal from the Commissioners' revised recommendations.
2. The English Boundary Commissioners (unlike the others) failed to explain their decisions.
3. The redistribution took place too soon. There were few gross anomalies, but the rigorous pursuit of mathematical equality meant that, after only five years, 170 constituencies had their boundaries altered, often drastically.
4. There was no real possibility of Parliament or the Government altering the Commissioners'

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<sup>29</sup> *Boundary Commission for England Constituted in accordance with the House of Commons (Redistribution of Seats) Act 1944 Initial Report*, Cmd 7260, October 1947

<sup>30</sup> *Representation of the People Act 1948*, (11 & 12 Geo 6, chapter 65)

<sup>31</sup> *The House of Commons (Redistribution of Seats) Act 1949* (12 & 13 Geo 6 chapter 66)

<sup>32</sup> *The Electoral System in Britain since 1918* by David Butler, 2<sup>nd</sup> ed., 1963, p219

recommendations, so that the debates on them became farcical.

5. In several major respects, the rules laid down for the Boundary Commissions were ambiguous, contradictory, or inadequate.<sup>33</sup>

A challenge was made in the courts in December 1954 in attempts to block the implementation of the Commissions' proposals. In *Harper v the Home Secretary* a challenge was made to a draft Order in Council which had been approved by the Commissions relating to one of the recommendations made by the Boundary Commission for England.

The plaintiffs claimed that the report did not comply with the Rules for Redistribution as the English Boundary Commission had wrongly calculated the electoral quota. An interim injunction was granted but this was overturned by the Court of Appeal which held that questions as to whether the Boundary Commissions had followed the correct procedure were for Parliament rather than the courts and that it had been unable to detect any error in the Commission's approach. This view has been contested by some academics.<sup>34</sup>

### 4.3 Second Periodical Review 1969

When the Boundary Commissions reported in June 1969 the then Home Secretary, James Callaghan, decided not to lay draft Order to implement the recommendations. He announced that the government had decided not to implement the proposals in full in view of the impending reorganisation of local government. Critics claimed the real reason was that the proposals would have lost Labour between 10 and 20 seats.<sup>35</sup>

Callaghan introduced a Bill to suspend the alteration to constituencies until this reorganisation was completed. There were many accusations of gerrymandering<sup>36</sup> and the Bill was eventually blocked in the House of Lords in October 1969.

The Labour government abandoned the Bill. An elector in an affected constituency sought *Mandamus* (a type of judicial order) requiring the

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<sup>33</sup> *The electoral system in Britain since 1918*, by David Butler, 2<sup>nd</sup> ed., 1963

<sup>34</sup> See Rossiter et al, *The Boundary Commissions: redrawing the UK's map of Parliamentary constituencies*, 1999, p95 where they quote Hugh Rawlings' conclusion that the Commissions 'clearly misinterpreted and misapplied the Rules' (1988, *Law and Electoral process*, pp281-9)

<sup>35</sup> Robert Blackburn, *Electoral System in Britain*, 1995, pp134-7

<sup>36</sup> *An Encyclopaedia of Parliament* by Wilding and Laundry defines gerrymandering as dividing a country into electoral districts in such a way as to give a political advantage to the party in power and gives details of the term's origin:

The word perpetuates the memory of Governor Gerry of Massachusetts, who resorted to this stratagem in 1812, and is formed by coupling his name with the latter half of the word 'salamander'. The story runs that while a group of politicians were studying an electoral map one of them, commenting on the unusual shape of one of the constituencies, remarked, 'It looks like a salamander,' whereupon another rejoined, 'You mean a gerrymander!'

Home Secretary to lay the Orders. The Home Secretary gave an undertaking to lay them, and the case was withdrawn.

Callaghan laid the Orders, with a recommendation to reject them. They were consequently rejected on a three line whip and the Labour Government used its majority to defeat the Orders implementing the Boundary Commissions' recommendations on 12 November 1969.

The 1970 general election was therefore fought on unchanged boundaries. The Conservatives had promised in their manifesto to implement the Commissions' recommendations in full and this was done on 28 and 29 October 1970. The recommendations did not take effect until the next general election in February 1974, nearly five years after the Commissions' final reports.

#### 4.4 Third Periodical Review 1983

The Third Periodical Review followed the reorganisation of local government between 1972 and 1974 and the redrawing of local boundaries. The general review of English constituencies began early in 1976 and it was hoped that it might be completed in time for a general election in the autumn of 1978.

The review ran into trouble; the Local Government Boundary Commissions, which are separate independent bodies, were behind in their timetable for boundary reviews and there were delays in getting the local figures to the Boundary Commission for England. There were challenges in the courts over the Local Government Boundary Commission for England's proposals for Enfield and then challenges to the Parliamentary Boundary Commission for England's recommendations for Tyne and Wear.

The Boundary Commission for England had just completed its review and was preparing to submit its report to the Home Secretary in 1982 when Michael Foot, then leader of the Labour Party, Michael Cocks, the Chief Whip, Jim Mortimer, the general secretary and David Hughes, the national agent, acting in a personal capacity, challenged the Commission's findings in a large number of constituencies. The Third Review was commonly considered by commentators to have benefitted the Conservative Party.<sup>37</sup>

This was known as the Foot case (see Section 3.1 above) and the Labour Party argued that the Commissions had not given sufficient weight to the principle of equality of electorates. The Court of Appeal found that there were 'no grounds for thinking that the Commission has misunderstood Parliament's instructions or has ignored them.'<sup>38</sup>

The Orders implementing the Boundary Commissions' recommendations for England, Scotland and Wales were made on 16 March 1983; the Order for Northern Ireland had been made on 22

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<sup>37</sup> Oonagh Gay, Research Note 92/61, *The Parliamentary Boundary Commissions and the Boundary Commissions Bill*.

<sup>38</sup> *R v Boundary Commission for England ex parte Foot* [1983 QB600]

December 1982. The recommendations took effect at the general election on 9 June 1983.

## 4.5 Fourth Periodical Review 1997

The Fourth Periodical Review recommended an increase of five seats in England, from 524 to 529; an increase of two seats in Wales, from 38 to 40 and an increase of one seat in Northern Ireland, from 17 to 18. Scotland continued to have 72 seats. The size of the House of Commons was therefore increased from 651 to 659.

The Boundary Commission for England had initially intended to limit increases in the number of seats; in its introductory booklet, published in 1991, the Commission stated that it took the view that 'where it is necessary to do so in order to give effect to Rule 1 (total number of constituencies) it would be proper for them in the exercise of the discretion given to them in the other Rules to limit any further increase in the number of seats.'

There was little controversy over the Fourth Review.

## 4.6 Fifth Periodical Review 2005/2010

The Boundary Commission for Scotland had submitted its final report to the Secretary of State for Scotland on 30 November 2004 and the new constituencies came into being at the general election on 5 May 2005.

The Boundary Commission for England completed its fifth general review of the Parliamentary constituencies in England. The *Parliamentary Constituencies (England) Order 2007* came into force on 27 June 2007 and the new constituencies came into being at the 2010 general election.

Usually the recommendations of the Boundary Commissions' periodical reviews come into effect at the same time; this was the first time that a review was implemented at an earlier general election than the reviews of the three other constituent parts of the UK.

The Boundary Commission for Wales submitted its final report on 31 January 2005; the Order was made on 11 April 2006.

The Boundary Commission for Northern Ireland missed the statutory deadline for submission of its final report (by June 2007). This was because the Boundary Commission deferred its consideration of the revised Parliamentary constituency boundaries because of a major review of local government. This had been designed to create seven new 'super councils' to replace the existing 22 and was introduced by the UK Government during suspension of the power sharing executive in Northern Ireland (the plans were later abandoned).

On 3 October 2007, the Boundary Commission announced that as the local government boundaries review was not yet completed and the Northern Ireland Executive had now announced a review of the future shape of local government in Northern Ireland, the Commission had decided that it should not delay the submission of its final

recommendations. These were then approved by both Houses of Parliament in May/June 2008.

## 4.7 2013 Review

The four Parliamentary Boundary Commissions announced the commencement of the Sixth Periodical Review, generally known as the 2013 Review, on 4 March 2011. This was the first general review using the new Rules for Redistribution implemented by the *Parliamentary Voting System and Constituencies Act 2011*.

On 6 August 2012 the then Deputy Prime Minister, Nick Clegg, announced that plans to reform the House Lords were to be dropped and that the Liberal Democrats would not vote to approve the Order implementing the recommendations of the Boundary Commissions.

In October 2012, an amendment was tabled to the *Electoral Registration and Administration Bill 2012-13* during the Committee stage in the House of Lords.

The amendment postponed the date on which the Boundary Commissions would have to submit their final reports to the Secretary of State from 2013 to 2018. This would have the effect of ending the 2013 review.

The amendment was passed in January 2013 and the Bill received Royal Assent on 31 January 2013. All four Boundary Commissions subsequently announced that the 2013 Review would therefore cease.

All four Commissions had, by this stage, published their initial and revised proposals in the 2013 Review. The public consultation on the revised proposals in each of the four constituent parts of the UK had been completed but none of the Commissions had published final recommendations at the stage the review was cancelled.

## 4.8 2018 Review

The 2018 review is the seventh general review of Parliamentary constituencies and had to report between 1 September and 1 October 2018.

The Boundary Commissions launched their reviews on 24 February 2016. The electoral quota for the 2018 Review was 74,769. This meant that, apart from the four island constituencies that are excepted from the quota rule, constituencies must have an electorate between 71,031 and 78,507 because of the 5% rule (see above).<sup>39</sup>

If implemented, this review would reduce the number of seats in the House of Commons to 600, as provided for by the 2011 Act.

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<sup>39</sup> Boundary Commission for Wales, [2018 Review](#), 24 February 2016; Boundary Commission for England, [2018 Review](#), 24 February 2016; Boundary Commission for Scotland, [2018 Review of UK Parliament constituencies](#), 24 February 2016; Boundary Commission for Northern Ireland, [Current Review](#), 24 February 2016

## 5. Implementation of a Review

Once the Boundary Commissions have submitted their reports to the Secretary of State the Commissions' have fulfilled their role in the review process.

### 5.1 Draft Order in Council

Section 3 of the *Parliamentary Constituencies Act 1986* (as amended) requires the Secretary of State 'as soon as may be' after the submission of each report by the Boundary Commissions to lay the report before Parliament.

After all four reports have been submitted the Secretary of State 'shall lay before Parliament the draft of an Order in Council for giving effect to the recommendations contained in them.' A single draft Order is now required to implement the recommendations of all four Commissions.

This also has to be done 'as soon as may be'.<sup>40</sup> The deadline is therefore not defined, but this is a statutory duty to take action following submission of the final reports and one which must be exercised within a reasonable timescale.

As noted above, in 1969, James Callaghan, when Labour Home Secretary in the Wilson Government, indicated he would not lay the appropriate Orders to implement the Second Periodical Review (separate draft Orders were introduced for each part of the UK). Instead he brought in a Bill to require the Boundary Commissions to change their recommendations. The Bill came up against stiff opposition in the Lords and was lost in October 1969 when the two Houses could not agree.

The refusal to lay draft Orders was to be subject to a challenge in the courts, but the case was dropped before proceedings commenced when Callaghan indicated draft Orders would be brought forward following the loss of the Bill.

The Government may not modify the recommendations of any of the Parliamentary Boundary Commissions, unless it has been expressly requested to do so (in writing and with reasons) by the relevant Parliamentary Boundary Commission (section 3(5B) of the *Parliamentary Constituencies Act 1986*). Section 4(2) of the 1986 Act states that in such a case, the Secretary of State must also lay before Parliament the reasons for the modification.

### 5.2 Parliamentary approval

The legislation requires both Houses to pass the Order for the new boundaries to take effect.

If the draft Order is debated but not approved, the Government may then amend the draft and lay an amended draft before Parliament for approval (Section 4(4) of the 1986 Act).<sup>41</sup>

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<sup>40</sup> S10, *Parliamentary Voting System and Constituencies Act 2011*

<sup>41</sup> Guide to the 2013 Review, Boundary Commission for England, p15



However, there is no precedent for the use of this amending power, and the constraints of the Rules for Redistribution may limit the capacity for altering the recommendations of the Boundary Commissions.

The Acts are silent as to the consequences if the Order is not approved although the legal effect is clear; the law simply does not change and the current boundaries continue in force under the existing statutory instruments made under section 3 of the *Parliamentary Constituencies Act 1986*.

There is precedent for Orders not being approved, again involving Home Secretary Callaghan in 1969. Having conceded that draft Orders in Council had to be brought forward the Home Secretary then recommended that the House of Commons reject them.

He laid the Orders before the Commons on 12 November 1969 and moved that they be not moved. The Commons rejected the Orders by 303 votes to 250.<sup>42</sup> The Orders were not moved in the Lords, given the outcome in the Commons.<sup>43</sup>

When Edward Heath won the general election of June 1970, his Government reintroduced the same Orders, which passed both Houses in October 1970 and were implemented before the 1974 general election.<sup>44</sup>

### 5.3 Boundary changes take effect

Once the draft Order in Council has been approved by Parliament, the Government is required to submit it to be made by Her Majesty in Council.

The validity of an Order in Council, once made, may not be called into question in any legal proceedings

The new constituencies must come into force all at once, so the Order takes effect at the next general election. Under the terms of the *Fixed Term Parliaments Act 2011* the next general election is due to be held in May 2022 (unless an early election is triggered under its provisions). Any by-elections held in the meantime have to be held on the basis of the old (existing) constituencies.

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<sup>42</sup> [HC Deb 12 November 1969 c429](#)

<sup>43</sup> [HC Deb 29 October 1970 c240](#)

<sup>44</sup> For a full history, see *The Boundary Commissions: Redrawing the UK's map of Parliamentary constituencies* DJ Rossiter, R.J. Johnston, and CJ Pattie 1999

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