

The Local Government Review in England

Research Paper 95/3

10 January 1995



The Local Government Act 1992 created the Local Government Commission, an independent body which has recently completed a review of the structure of local government in the English shire counties. Recommendations by the Commission must be approved by the Secretary of State and by Parliament before they can be implemented. This paper looks at the background and legal framework of the review and charts its progress to date (updates and replaces *Research Paper 94/55*).

**Edward Wood
Home Affairs Section**

House of Commons Library

CONTENTS

	Page
I Background	1
II The Consultation Paper of April 1991	5
III The Legal Framework for the Review	12
A. The Local Government Act 1992	12
1. The Conduct of the Review	12
2. Implementation of the Local Government Commission's Recommendations	15
B. Guidance to the Local Government Commission	18
1. Changes to the Policy Guidance	18
2. Size of Unitary Authorities and Other Issues	21
IV The Progress of the Review	23
A. The Initial Timetable	23
B. The Draft Plans for the First Tranche Counties	24
C. The Final Recommendations for the First Tranche Authorities	25
D. Government Decisions on the First Tranche Counties	28
E. The Remainder of the the Review: the Revised Timetable	28
F. The Final Recommendations for the Remaining Counties	31

	Page
G. Paying for the Review	33
H. Staffing Issues	34
I. Shadow Elections	36
J. Judicial Review Applications	36
K. The Other Parties' Positions on the Review	38
L. Commentary	39
Appendix 1: County-by-County Progress	43
Appendix 2: Proposed Unitary Authorities with Population of less than 150,000	45
Appendix 3: Estimated Costs and Savings of Local Government Reorganisation¹	46

¹ Supplied by Bryn Morgan, Social and General Statistical Section

I Background

The present structure of local government in the non-metropolitan counties derives from the *Local Government Act 1972*. The Act established the county councils in their current form and set up the Local Government Boundary Commission for England whose first task was to make recommendations for the pattern of district councils. The Commission's proposals were accepted by the Government and given effect by the *English Non-Metropolitan Districts (Definition) Order 1972*, SI 1972/2039. The Act also put a duty on the Commission to review periodically the areas of the county councils, and to keep the areas of the non-metropolitan districts under review. The new structure came into force on 1 April 1974. Local authority functions in non-metropolitan areas are described by R J B Morris² as follows:

"County councils' principal responsibilities include education, the personal social services, libraries, museums and art galleries, structure plans, highways and parking, national parks (though there are two separate national parks authorities for the Lake District and Peak District), refuse disposal, mineral and gravel extraction control, police, fire and rescue services, civil defence, county farms and smallholdings, weights and measures and consumer protection services, and residual housing powers. They have also associated involvement with, rather than orthodox direct responsibility for, certain other services including magistrates' courts, coroners, probation, the rent officer and registration (births, marriages and deaths) services.

Shire districts' principal responsibilities include housing, environmental health services, refuse collection, local plans and development control, a variety of licensing and registration functions, markets, land charges, parks, recreation and leisure facilities generally, museums and art galleries (concurrently with county councils), car parks, allotments, crematoria and cemeteries.

Parish and community councils, where they exist, are principally concerned with lighting, allotments, open spaces and recreation grounds, public clocks, and also car parks: see the Parish Councils Act 1957."

Alan Alexander, in *Local Government in Britain since Reorganisation* [1982] argued that one of the major failings of the reorganisation was the demotion of county boroughs such as Southampton, Norwich, Plymouth and Nottingham which had previously enjoyed all-purpose status, to districts having relatively few powers. These cities found the reorganisation particularly hard to accept, he suggested, because the other major authorities from the pre-1974 era, the counties, not only continued to exist with only minimal changes to their boundaries, but also took on the function of providing in the cities those services whose removal from the county boroughs meant the end of those authorities as all-purpose authorities.

² in *Local Government Ground Rules*, 1990, pp6-7

Research Paper 95/3

A further dimension was the fact that county boroughs were commonly governed by Labour majorities whilst the counties were commonly Conservative. Alexander noted that after the county elections in 1977, Durham was the only county in England to have a Labour-controlled council [p.16].

Alexander concluded³:

"The two-tier structures throughout Britain were unstable from the moment of their creation because of the combined effects of the dissatisfaction of many urban areas at the loss of their local government autonomy and a distribution of functions between the tiers, especially in non-metropolitan England and in Scotland, that maximised the chances of inter-authority conflict".

Major reform of local government structure in non-metropolitan areas did not, however, return to the political agenda until the late 1980s. Although the 1983 Conservative manifesto pledged to abolish the Metropolitan County Councils and the GLC the Conservatives were careful to restrict the debate to change in the metropolitan areas, rather than the two-tier structure as a whole. Nevertheless, change in the metropolitan areas inevitably aroused interest in the functioning of the two-tier system elsewhere.

In 1987 the ADC published *Closer to the People* which argued for a single-tier structure. In 1983 it had published proposals for a new local government structure based on 'most purpose' district councils, but the 1987 document represented a clear strategy for reorganisation based on districts. The ADC argued that the 1972 reforms were now unacceptable⁴:

"Our starting point is a strong conviction that several features of the system introduced in the Local Government Act 1972 are unacceptable in the current climate. These include the two-tier system which divides responsibilities; concurrent powers and agency arrangements that cloud accountability; the remoteness of the Counties from ordinary citizens; the gradual transfer of functions from local government to appointed bodies; and the increasing control on local finance exerted by central government.

The main objectives of change should be to secure:

- (i) democratic, more easily understood, decision-making at the level closest to the people;
- (ii) more cost-effective local services to the public, financed from locally controlled sources of revenue; and
- (iii) decentralisation of powers to local government and removal of unnecessary controls by central government.

³ p.171

⁴ paras 1.2-1.4

The Association proposes the creation of a single tier of most-purpose district authorities which would exercise, either directly or through joint arrangements, all of the functions now exercised by themselves and the County Councils. These proposals compare closely with the arrangements now obtaining in metropolitan areas. It would not entail the dismantling of counties as such, for which people have a proper emotional attachment; merely the disappearance of an unnecessary tier of government."

The ACC countered by emphasising the value of a strategic approach. In February 1988 Christopher Chope, then junior Minister at the DoE, was quoted as saying that he did not foresee any major alterations to local government structure⁵.

In 1989 the Adam Smith Institute published *Wiser Counsels: The Reform of Local Government* which also argued for slimmed-down single-tier local authorities; it also suggested that a Boundary Commission might consult residents about their wishes on local structure⁶:

"Natural communities

If some theoretical optimum size can be disregarded as a factor in determining how big local authorities must be, then it becomes possible to move towards a new pattern of local councils related to the kind of natural communities that people themselves identify with. Some of the artificial linkings of largely unrelated communities created at reorganisation can be divided into new and more meaningful districts. Some city suburbs might wish to take the opportunity to develop their own distinct identity by seeking a council of their own.

An average size for these new authorities might be a population of the order of 40,000 to 60,000 but there seems no reason why smaller communities should not be recognised if those who live in them believe they can be viable. Determining the wishes of communities and the best boundaries for the new councils should be the responsibility of the Local Government Boundary Commission who carried out just such a consultative exercise as part of the 1974 re-organisation. Its remit on this occasion, however, should be to seek, and take full account of, the views of ordinary individuals rather than rely on the opinions of local councils."

On 14 June 1989 Edward Leigh MP introduced a Ten Minute Rule Bill to create unitary authorities in Great Britain and Northern Ireland⁷ but the Government stance remained against reorganisation. In response to a Question, Lord Hesketh, junior Minister at the DoE, quoted

⁵ *Municipal Journal* 5 February 1988 "Councils' two-tier structure to remain says Chope"

⁶ p.49

⁷ HC Deb Vol 154 cc919-20

Research Paper 95/3

the then Secretary of State's comments at the ACC centenary conference that as a pragmatist he believed that "another reorganisation was something we needed like a hole in the head", and that reorganisation was not on the agenda⁸.

However by May 1990 there were some indications that local government reorganisation might feature in a new Parliament following the General Election. At Prime Minister's Question Time Mrs Thatcher referred to the problem of the structure of local authorities as being for longer term consideration⁹. In June Phillip Oppenheim MP introduced a Ten Minute Rule Bill to abolish the county councils¹⁰. Following higher than expected community charge bills from April 1990, attention had focused on the spending levels of county councils which precept on the districts.

In the autumn of 1990 there were press reports that the functions and structure of local government were under review by the Downing Street policy unit¹¹. In September 1990 the 'No Turning Back' group of Conservative MPs published *Choice and Responsibility: The Enabling State* which argued for the creation of single-tier authorities, based on existing counties or districts.

⁸ HL Deb Vol 163 13 December 1989 cc1300-1302

⁹ HC Deb Vol 172 15 May 1990 c739

¹⁰ HC Deb Vol 175 26 June 1990 cc189-192

¹¹ *Guardian* 28 August 1990

II The Consultation Paper of April 1991

Following the appointment of Michael Heseltine as Secretary of State for the Environment, a review of local government began. In a debate on the poll tax on 5 December 1990 Mr Heseltine said that a comprehensive review of local government was underway and that "we rule nothing in and nothing out"¹². It has often been suggested that in starting the review the Government hoped to divert attention away from its embarrassment over the poll tax. In his memoirs, Nigel Lawson described the review as "a respectable if somewhat oversized cloak for covering what urgently needed to be done"¹³.

By February 1991 there were reports that the government review would favour local referendums to decide the shape of local government in a particular area¹⁴. At the Conservative local government conference on 2 March John Major said that differing structures might be right for different parts of the country¹⁵.

Mr Heseltine made a statement on the Local Government Review in England on 21 March 1991. The interim conclusions on structure were as follows¹⁶:

Many parts of England now have, in effect, unitary local government. The Greater London Council and the metropolitan county councils were abolished in 1986. The Inner London education authority went in 1990. There is little demand for their restoration. Indeed, it is difficult now to perceive any real role that they played.

Outside the main conurbations, leaving aside the valuable role played by parishes, the system of two principal tiers is being questioned. Also being questioned is the continued existence of certain of the authorities which were created by the local government reorganisation of 1974, but which have not succeeded in inspiring local loyalty. Another challenge is that the role of authorities is changing as they increasingly become enablers rather than direct providers of services.

There is, therefore, now an opportunity to think afresh about the structure of local authorities. But the Government do not see this as an opportunity to impose a new pattern of local authorities according to a national prescription. Nor do

we believe that it is necessary to have a uniform pattern of authorities in every part of the country. Local people should have an important role in determining what structure of local government best reflects their community loyalties. That does not mean, therefore, the wholesale abolition of either county councils or district councils, nor even unitary authorities everywhere. It means arriving at the right solution for each community. We intend to adopt a practical approach in response to local views and local conditions, but it seems likely that we shall move to a larger number of unitary authorities.

We shall, therefore, consult on the proposition that a local government commission shall be charged with responsibility for evaluating the most appropriate form of local government for individual areas, taking account of the wishes of local people and putting forward proposals for reform. We will proceed area by area.

On 23 April 1991 Mr Heseltine made a further statement on the review and published a consultation paper: *The Structure of Local Government in England* [Dep 6993]. He emphasised the need to take local views into account:¹⁷

¹² HC Deb Vol 182 c319

¹³ The View from No.11, 1992, p1004

¹⁴ *Independent* 22 February 1991 "Heseltine plans referendums on council reform"

¹⁵ *Municipal Journal* 8 March 1991 "Structure review 'should show variety'"

¹⁶ HC Deb Vol 188 cc401-402

¹⁷ HC Deb Vol 189 c901

Research Paper 95/3

The consultation paper on local government structure builds upon the announcement that I made on 21 March. As I made clear then, the Government intend no significant changes in the structure of local government in London or the metropolitan areas. In the remainder of England today services are provided both by county councils and by district councils

The Government believe that this structure of two tiers needs to be re-examined for the following reasons. First, unitary authorities are more clearly responsible for the delivery of services, and more clearly accountable for the bill local people are expected to pay. Secondly, two tiers may lead to excessive bureaucracy and duplication of effort. Thirdly, the Government are committed to developing the concept of enabling authorities. Councils will increasingly be able to take advantage of competition between those seeking to provide a service. It is, therefore, less important today to insist on councils of a particular size. Fourthly, the Government intend to increase the momentum of their existing policies to enable decision making and responsibility to be more directly in the hands of the people. Fifthly, the present structures of local government do not win universal favour with local people, who have their own ideas about what sort of structure would best reflect local loyalties and communities.

We therefore propose to establish a body to draw up recommendations-

Hon. Members: A quango.

Mr. Speaker: Order. The House and the country have been waiting for this statement. Let us hear it in silence.

Mr. Heseltine: We therefore propose to establish a body to draw up recommendations for improving the structure of local government area by area, taking account of local views and the costs and benefits of the change. The proposed local government commission would consult on its recommendations and submit them to the Secretary of State. Final decisions would rest with Parliament.

The Government do not intend that either county or district councils should be abolished wholesale. In some places, it may be best for existing authorities to be merged, in others, the best approach may be to create or re-create quite different authorities. In some areas, there may continue to be two tiers. In all cases, the Government will expect a proper regard for economy and effectiveness of service delivery to feature in any new arrangements. The consultation paper maps out how this process would work and invites views.

In response, Bryan Gould, for the Opposition, promised a positive response to the Government proposals on structure, provided that the process of consultation was seen to be independent.¹⁸

After a brief historical survey, the consultation paper set out the current structure and functions of local government and emphasised the new role of the enabling authority. The paper then argued for a move towards unitary authorities:

21. The changing role of local government has significantly altered the presumption, widely current in the years leading up to the Local Government Act 1972, that there is an ideal size of authority for the most efficient delivery of services. Indeed, as well as contracting out services, many authorities already combine with others or organise themselves into smaller units for the delivery of particular services to achieve greater efficiency or responsiveness.

22. In the shire counties, certain aspects of the current two-tier system are unsatisfactory. Some authorities which emerged from the 1974 reorganisation are still not wholly accepted by all the local communities which they serve. There is still a feeling in some areas that history and tradition were perhaps disregarded in a search for administrative uniformity. This is not a problem confused to one

¹⁸ HC Deb Vol 189 c903

tier or the other sometimes it is the county which has not gained acceptance locally, sometimes one or more of the districts.

23. The very existence of two tiers can also cause confusion over which tier is responsible for which service. Under the present financial arrangements district councils are responsible for collecting all local taxes, even though the bulk of the expenditure on local services is by county councils. Local people are often unaware which authority is responsible for expenditure. This confusion clouds the accountability of both county and district councils.

24. It is also desirable that there should be close coordination of the functions for which local government is responsible. This is purely important where some functions are related yet are at present the responsibility of two different tiers (for example, social services and housing, litter clearance and road cleaning). In some areas where the two tiers need to work together, such as planning, there may sometimes be conflict and tension between the policies of county and district councils.

Benefits of moving to unitary authorities in the shire counties

25. Changing the structure of local government will not in itself solve all the problems. But in the main it is desirable that people can identify one authority which secures services in their area. Having a single tier should reduce bureaucracy and improve the coordination of services, increasing quality and reducing costs. This argument holds even if both the county council and the district councils in a county are efficient and if the two tiers cooperate closely with each other; there can still be benefits in a clearer and more streamlined structure. Such a structure is also important for proper financial accountability on the part of local authorities to local taxpayers: people must know who is responsible for setting a budget and achieving value for money in services in their area, and how the size of their local tax bills relates to what is spent on local public services.

26. Introducing unitary authorities in shire counties would also offer the opportunity of relating the structure of local government more closely to communities with which people identify, whether these are the present counties or districts, the former counties or county boroughs or perhaps places where new communities have grown up since the 1974 reorganisation. This should increase interest in local affairs and make for more responsive and representative local government. The Government would normally expect any changes to reflect as far as possible the traditional status of certain authorities.

Research Paper 95/3

27. The Government certainly do not intend that either county or district councils should be abolished wholesale. They feel it right to begin a process of change towards unitary authorities to achieve more efficient and more accountable local government that will also reflect local people's own sense of identity with the community in which they live. In some places, it may be best for existing authorities to be merged; in others the best approach may be to create or recreate quite different authorities. In some areas there could be a case for two tiers. The aim will be to achieve the structure which best matches the particular circumstances of each area.

The paper made clear that the structure in the London and metropolitan county areas was not under review, although it welcomed suggestions on ways to improve certain services, such as grants to the voluntary sector and the arts [para 28].

The paper did invite views however on the possible enhancement of the role of parish councils [paras 29-32].

The following mechanism for change was proposed:

1. A new independent body would be established, the Local Government Commission. It would carry out the work formerly done by the Local Government Boundary Commission, which would be abolished. In addition it would look at cases for change to the current two-tier structure in the shire counties in England. The Government would set guidelines for the review; within these guidelines the Commission would advise the Secretary of State on structural reforms and any arrangements which were needed for the performance of local government functions.
2. The LGC would carry out its work according to a fixed programme drawn up by the Government, under which the country would be divided into areas within which a coherent pattern of structural reform might be devised. The Commission would make an initial outline proposal for each area upon which local comment would be invited.

The Consultation Paper stated that where change was proposed in an area,

"There must be a proper justification for the upheaval and costs which are inevitably involved in reorganisation. Change must be worthwhile and cost-effective"¹⁹

¹⁹ Para 40

The Government did not propose to lay down guidelines for the size of the new authorities:

"38. Where new unitary authorities are established there should be no presumption that they will all be either smaller than counties or bigger than existing districts. The Government would expect a range of sizes to emerge according to local circumstances."

It was proposed, however, that any new authorities should be responsible for most local government functions in their areas: hence the term unitary authorities. The Consultation Paper envisaged that in some cases voluntary arrangements would be needed for the joint carrying out of particular functions and the Secretary of State would have the power to create statutory arrangements ("joint boards") where necessary.

3. After the Commission had made a final proposal for an area the Secretary of State would reach a decision and would invite Parliament to bring the decision into effect by Order.
4. A period of twenty years after a major review was suggested before restructuring would be considered again. Minor boundary changes could continue to be accommodated within that period in a manner similar to the present arrangements.

More than 1,700 responses to the consultation paper were received by the DoE. A list of respondents is available in the Library. A large proportion came from local authorities and parish councils.

The Association of District Councils' response gave a wholehearted welcome to the principles guiding the consultation paper, but expressed some concerns about the process of change which, in retrospect, seem quite pertinent²⁰:

"19. The Association fully supports local consultation on future proposals and indeed firmly believes it is ideas emerging from local areas that should set the Commission's agenda, not plans drawn up in Whitehall. There are hazards entailed however. The work of the Local Government Boundary Commission has demonstrated how difficult and time consuming a process it can be to identify local views that are widely supported (the most vocal are not always

²⁰ Para 19

the most representative) - or even what the options may be. It has also demonstrated the scale of local campaign activity which can be generated when the abolition of a principal authority is proposed. The Government's proposals inevitably open up a widespread risk that time and money will be spent on this process rather than on service delivery and a balance must be found between the desirability of local choice and the inefficiency of unrestrained campaigning, where the largest expenditure wins the argument."

Unsurprisingly, the ADC paper went on to suggest that the best solution would be to adopt existing district council boundaries as the basis of a unitary structure. The ADC concluded with the implication that such an approach could yield savings rather than incurring extra costs²¹:

"Abolition of the metropolitan county councils secured revenue savings of £100 million per annum and released £117 million of surplus capital assets. Expenditure in London and the metropolitan county areas grew by less than 17% from 1984/5 to 1987/8 during the period of abolition while in the non-metropolitan areas it grew by over 24%. There is no reason therefore to fear that change necessarily means increased costs. The precise impact of the change on costs must be speculative. It will depend on the decisions of the councillors responsible for the activities of the new authorities. The ADC is confident that local government will benefit from rapid progress towards new unitary authorities based on existing shire districts."

The Association of County Councils, on the other hand, argued that the case for unitary authorities was far from cut and dried²²:

"Changes in local government structure should not be made lightly or without full justification. The ACC believes that the case for major structural change is not made out in the consultation paper. Nor does the paper contain an adequate empirical analysis of the relative merits of two-tier and unitary systems. It merely asserts that the unitary principle is better. We do not accept that a unitary structure exists in the metropolitan areas which should be regarded as a model or precedent for change in the shire counties. The network of joint boards at county level show that this is not so. The suggestion that the 1986 reorganisation in metropolitan areas has produced savings is highly questionable. Recent research shows that there were large staff increases.

The paper rightly acknowledges that a two-tier system may continue to be best in some areas while a unitary solution may be preferable in others. The ACC believes there is a case to be made for both systems and we are strongly in support of a

²¹ Para 24

²² Paras 5-6

diverse structure. With these important reservations we accept that it is reasonable to explore the case for unitary authorities in the shire areas and that this process should be conducted by an independent Commission. A similar Commission should apply in Wales."

The ACC did not support the suggestion in the consultation paper that some of the functions of local government after reorganisation would be administered by joint boards, which it argued might lead to poor local accountability. The ACC response also expressed concern about the proposal that reorganisation should be carried out on a sequential basis. The ACC claimed that this would be "unlikely to produce a coherent and sensible structure"²³. Retrospectively, this is interesting in view of widespread claims that no consistent pattern is discernible in the recommendations which have emerged from the Local Government Commission.

The response produced by the CBI, whilst supporting the principle of unitary authorities, urged that change within a particular area should be carried out only if it could be convincingly demonstrated that the economy, efficiency and effectiveness of existing services would be enhanced as a result²⁴.

The Audit Commission response adopted a similar tone and voiced the concern that restructuring destroys pre-existing benchmarks of performance, potentially undermining controls on expenditure. The Audit Commission observed:

"3. In its study work the Commission has rarely encountered a situation in which the structure of local government was critical in securing value for money in the provision of services. Some structures are more conducive to accountability than others, but local government can make any reasonable structure function, and though it is important to configure management units for service delivery correctly, the shape of the democratic body supervising them is not normally the key determinant of value for money. So it should not be assumed that an apparently more 'logical' structure will automatically improve economy, efficiency and effectiveness. (It is worth noting at the same time that Commission studies have rarely found economies of scale to be the systematic or decisive influence on relative performance levels.)"

²³ Para 14

²⁴ Para 23

III The Legal Framework for the Review

A. The Local Government Act 1992

The proposals contained in the consultation paper were enacted in Part II of the *Local Government Act 1992*, which established the Local Government Commission for England and abolished the Local Government Boundary Commission. In addition to the new powers given to the LGC (see below), the broad functions of the old Commission were transferred to the new Commission. Details of the progress of the Local Government Bill through the Lords are given in Reference Sheet 92/1.

1. The Conduct of the Review

Section 12 and Schedule 2 of the 1992 Act establish the Local Government Commission, to consist of between 5 and 15 members appointed by the Secretary of State.

Section 13 places a duty on the Commission to conduct reviews of such local authority areas as directed by the Secretary of State and to recommend to him whether or not structural, boundary or electoral changes should be made. Changes recommended by the Commission should take account of the need:

- (a) to reflect the identities and interests of local communities; and
- (b) to secure effective and convenient local government.²⁵

The kinds of change which the LGC may recommend are defined as follows²⁶:

- "(a) a structural change is the replacement, in any non-metropolitan area, of the two principal tiers of local government with a single tier;
- (b) a boundary change is any of the changes specified in subsection (3) below, whether made for the purpose of facilitating a structural change or independently of any such change; and
- (c) an electoral change is a change of electoral arrangements for any local government area whether made in consequence of any structural or boundary change or independently of any such change."

²⁵ section 13(5)

²⁶ section 14(1)

In the definition of structural change above, the phrase "the replacement... of the two principal tiers of local government with a single tier" means one of the following²⁷:

- "(i) the transfer to a council for a county consisting of that area of the functions in relation to that area of district councils; or;
- (ii) the transfer to a district council for that area of the functions in relation to that area of a county council."

This would appear to mean that when a unitary structure is created in a given area without a corresponding boundary change, the unitary council or councils in that area must be continuing authorities. It would seem that a "fresh start" involving new councils which do not inherit the identity of any of the existing authorities in that area is not possible. This aspect of the legal framework for structural change reportedly dismayed the districts which face abolition under the Isle of Wight (Structural Change) Order²⁸ and it remains the view of the Local Government Commission that "all unitary authorities must be perceived to be new authorities so as to emphasise the fresh start which reorganisation offers to local government"²⁹.

The boundary changes which may be recommended by the Commission are as follows³⁰:

- (a) the alteration of a local government area, including the alteration of so much of the boundary of any such area as lies below the high-water mark of medium tides, but excluding the extension of any local government area into Wales;
- (b) the constitution of a new local government area of any description outside Greater London by the amalgamation of two or more such areas of the like description or by the aggregation of parts of such areas of the like description or by the separation of part of any local government area,
- (c) the abolition of a principal area of any description outside Greater London, or of a metropolitan county, and its distribution among other areas of the like description;
- (d) the constitution of a new London borough by the amalgamation of two or more London boroughs or by the aggregation of parts of London boroughs or by the separation of part of a London borough,
- (e) the abolition of a London borough and the distribution of its area among other London boroughs;

²⁷ section 14(2)(b)

²⁸ *Local Government Chronicle* 25 March 1994 "Government faces legal battle over Isle of Wight proposals"

²⁹ Final Recommendations of the Future Local Government of Hereford & Worcester, HMSO, December 1994

³⁰ section 14(3)

Research Paper 95/3

- (f) the constitution of a new parish by-
 - (i) the establishment as a parish of any area which is not a parish or part of one, or
 - (ii) the aggregation of the whole or any part of any such area with one or more parishes or parts of parishes, and
- (g) the abolition of a parish, with or without the distribution of its area among other parishes.

Greater London and the metropolitan areas fall outside the scope of the present review. Boundary changes within these areas cannot therefore be recommended as part of the current review. Nevertheless, the presence of Greater London and the metropolitan counties in the list above leaves open the possibility of future boundary changes in those areas without the need for further legislation, and the Government has indicated that such a review will be carried out when the review in the shires has been finished³¹. If the Commission felt that as part of the current review, the boundary between a metropolitan and a non-metropolitan area needed to be changed, it would have had to request the Secretary of State to widen the scope of the review to enable this.

The following electoral changes may be recommended by the Commission (in relation to a local government area other than a parish):

- (i) the number of councillors of the council for that area,
- (ii) the number and boundaries of the electoral areas into which that area is for the time being divided for the purposes of the election of councillors,
- (iii) the number of councillors to be elected for any electoral area in that principal area and the years in which they are to be so elected, and
- (iv) the name of any electoral area,

The LGC also has a duty under Section 13 to conduct periodic reviews of local government areas in England (independently of the major reviews described above) to find out whether electoral changes are needed. The Act [s13(3)] specifies that so far as is reasonably practicable, the first periodic electoral review for an area should be conducted between ten to fifteen years after the Local Government Boundary Commission conducted a review of local electoral arrangements³² in that area. Subsequent electoral reviews should take place at

³¹ David Curry, speaking at a fringe meeting of the Conservative Party Conference, reported in *Metropolitan Review & AMA News*, November 1993

³² Under Schedule 9 of the *Local Government Act 1972*.

ten to fifteen year intervals.

When making recommendations to the Secretary of State, the Commission must make such recommendations as it thinks appropriate as to the following matters:

- (a) the abolition of any local authority whose functions would all vest in another as a result of any recommended structural change or whose area would be abolished or otherwise substantially affected by any recommended boundary change;
- (b) the establishment, as a county or district council, of a new authority for any area which would result from any recommended boundary change involving the amalgamation or aggregation of areas or parts of areas or involving other substantial alterations of areas;
- (c) the extent to which a structural or boundary change requires (whether because functions become vested in an authority for a smaller area or for any other reason connected with the change) that joint arrangements should be made in relation to functions affected by the change; and
- (d) whether, in connection with any recommended structural change, any authority should, for the purpose of the vesting of functions under Part 11 of the Town and Country Planning Act 1990 (development plans) in that authority-
 - (i) be treated as an authority to whose area Chapter I of that Part (unitary plans) applies, instead of Chapter II (structure and local plans); or
 - (ii) be authorised to include any of the policies mentioned in section 37 or 38 of that Act (mineral and waste plans) in their local plan.

Section 13(6) makes provision for guidance to the Commission to be issued by the Secretary of State: this is discussed later.

Section 15 specifies certain general procedural requirements which the Commission must conform to, most notably the need to inform and consider representations by interested parties when conducting a review of any area. Section 15 also provides that on receipt of a final report from the Commission, the Secretary of State

"may, if he thinks fit, direct the Local Government Commission to conduct a further review of any area to which the report relates and to make revised recommendations as respects that area."

At the time of writing, this power had been used on three occasions, in connection with the

Local Government Commission reviews in Derbyshire, County Durham and Gloucestershire.

Section 16 requires the Audit Commission, if so required by the Local Government Commission, to produce a written opinion as to the likely impact of any proposed changes on economy, efficiency and effectiveness in the provision of services provided by the authorities affected.

2. Implementation of the Local Government Commission's Recommendations

Section 17 sets out the procedure for implementation of the Commission's recommendations. When the LGC makes a final recommendation, if the Secretary of State does not wish to direct the Commission to carry out a further review of the area [section 15] he may, "if he thinks fit", make an Order giving effect to the recommendations "with or without modifications" [section 17(1)]. The first Order to be made was the draft *Isle of Wight (Structural Change) Order 1994* which was debated in the Commons on Monday 18 April and in the Lords on 28 April 1994.³³

The modifications which the Secretary of State may make to the Commission's recommendations are defined in **section 28(1)** as additions, alterations and omissions. The Department of the Environment has interpreted this power narrowly, so the Secretary of State could not make a substantial change to the LGC's recommendations. Thus if the Secretary of State wishes to overturn the Commission's recommendations altogether he either has to make use of the power under section 15(6) to order a further review of an area, or decide not to proceed with reorganisation in the area concerned.

The Secretary of State must wait for at least six weeks after receiving a final report from the Commission before making an order [section 17(2)], to give time for consultation on the proposals. During this time he may direct the Commission to provide additional information on the proposal.

Orders made under section 17 may cover the following³⁴:

- (a) the area of any authority and the name of any such area..
- (b) the name of any authority,
- (c) the establishment of any new authority for any county or district or the winding up and dissolution of any existing authority,
- (d) the total number of councillors of any authority, the

³³ HC Deb Vol 241, cc 689-706; HL Deb Vol 554, cc 871-880

³⁴ section 17(3)

apportionment of councillors among electoral areas, the assignment of existing councillors to new or altered electoral areas, and the first election of councillors for any new or altered electoral area;

- (e) without prejudice to paragraph (d) above, the holding of a fresh election of councillors for all electoral areas in a local government area where substantial changes have been made to some of those areas, or the order of retirement of councillors for any electoral areas in the local government area in question,
- (f) in the case of an order relating to the system of election of district councillors, the ordinary year of election and the order of retirement of parish councillors for any parish situated in the district;
- (g) the constitution and election of public bodies in any area affected by the order,
- (h) the abolition or establishment, or the restriction or extension, of the jurisdiction of any public body in or over any part of any area affected by the order.

Thus the Secretary of State may abolish existing counties and districts; create unitary authorities; name the 'historic county' to which an area belongs; make appropriate electoral arrangements; set the number of councillors for any authority; and make corresponding arrangements for public bodies in the area affected by the order.

Section 18 of the 1992 Act sets out in detail the arrangements for police and fire authorities which will follow from any structural change. **Section 19** gives the Secretary of State power to make regulations as necessary transferring functions, property and JPs, lords lieutenant etc from old to new authorities. **Section 20** enables public bodies affected by the reorganisation to make agreements for the transfer of property rights and so forth.

The Secretary of State may create by Order joint authorities ('joint boards') to carry out local authority functions in the affected areas where it appears to him that satisfactory joint arrangements have not been made on a voluntary basis by new or shadow authorities [**section 21**].

The Secretary of State may create residuary bodies to dispose of the property of any abolished authorities and a staff commission or commissions to deal with any staffing matters resulting from the reorganisation [**sections 22 and 23** respectively]. A Local Government Staff Commission for the whole of England was established by the then Secretary of State Michael Howard in April 1993.

If an order under section 17 does any of the things listed below it is subject to the affirmative procedure, that is to say a draft of the order must be laid before and approved by resolution

Research Paper 95/3

of each House of Parliament. The affirmative procedure applies if the order:

- a) effects a structural change;
- b) establishes a joint authority;
- c) effects only electoral changes or relates only to parishes

[section 26]

An SI subject to the affirmative procedure may be debated in Standing Committee or on the floor of the House; important SIs are more likely to be debated on the floor of the House.

If a section 17 Order does none of the things listed above (for example, if only a boundary change is made) it is subject to the negative procedure. Any Order may be considered by the Joint Committee on Statutory Instruments, whose role is to draw the House's attention to secondary legislation on a number of grounds³⁵. **Section 26(2)** of the 1992 Act provides that any Order made under part II of the Act which would otherwise be considered hybrid will not be considered hybrid for the purposes of the standing orders of either House of Parliament. The procedure for hybrid instruments in the Lords is complex and would have considerably slowed down the progress of any Order deemed hybrid.

B. Guidance to the Local Government Commission

1. Changes to the Policy Guidance

The Government has issued two sets of guidance to the Commission under section 13(6) of the *Local Government Act 1992*:

Policy Guidance to the Local Government Commission for England, June 1992, Dep 8073 revised November 1993, Dep 9829.

Procedure Guidance to the Local Government Commission for England, June 1992, Dep 8073 revised November 1993, Dep 9879.

The Policy Guidance is of more interest in terms of the general nature and direction of the review. The Procedure Guidance is concerned largely with supplementing the requirements on consultation and preparation of reports contained in section 15 of the 1992 Act. Draft guidance was issued on 25 November 1991 by Michael Portillo, then Minister for Local Government [Dep 7589]. When the Draft Policy Guidance was replaced by the June 1992 Policy Guidance there was perceived to be a shift in Government policy away from any overt

³⁵ Statutory Instrument Practice, second edition

preference for unitary authorities³⁶. For example, the following passage from the Draft Policy Guidance was absent from the June 1992 version:

"Unitary authorities

5. The Government believes that this assessment of community identities will suggest that unitary authorities could be the most beneficial structure for local government in most areas. Unitary authorities are not only most able to reflect community interests, but also offer the benefit of clarifying accountability and responsibility. The Commission should therefore look for structures consisting of unitary authorities, each responsible for all local government functions, unless there are clear reasons for different arrangements. In some areas the Commission may wish to recommend the retention of the existing two-tier structure."

Another change between November 1991 and June 1992 was the approach to statutory joint arrangements (joint boards involving two or more authorities for the joint carrying out of functions). The Draft Policy Guidance indicated that local government structures requiring joint boards for the satisfactory performance of functions should be very much the exception:

"11. The Commission should consider recommending joint arrangements for some functions if a satisfactory structure seems unlikely to be achieved without them. Statutory joint authorities detract from accountability and the Government intend them to be very much the exception."

The June 1992 Policy Guidance, however, was less firm on this issue and stated³⁷:

"Joint authorities do not benefit from the same direct accountability as individual authorities and a structure which does not require them is therefore to be preferred."

On 30 September 1993 the Secretary of State for the Environment John Gummer announced that the timetable for the review was being speeded up (see below) and that draft revised guidance to the Local Government Commission had been issued³⁸. Mr Gummer said:

"I have also taken this opportunity to ensure there is no uncertainty over our views on the advantages of unitary authorities, on co-operation between authorities over the provision of services and also on bringing accountability for those services as close to local people as possible."

The revised Policy Guidance was issued formally on 2 November 1993³⁹. The Government

³⁶ See "Policy erases tilt towards districts" *Local Government Chronicle* 12 June 1992 and "Retreat from Unitary Option" George Jones & John Stewart, *Local Government Chronicle* 10 July 1992

³⁷ Dep 8073 para 14

³⁸ *DoE News Release* 630, 30 September 1993 "Speed up for local review"

³⁹ HC Deb Vol 231 c105W

clearly set out the expectation that although the Commission could still recommend a two-tier structure within a particular area, this should only be in exceptional circumstances:

"The Government does not wish to impose a national blueprint for reform, or to require the wholesale abolition of either district or county councils. In some areas the Commission may wish to recommend a continuation of the existing two-tier structure. But the Government expects that to be the exception, and that the result will be a substantial increase in the number of unitary authorities in both urban and rural areas.

Lancashire and Derbyshire County Councils applied for judicial review, *inter alia*, of the Secretary of State's guidance, on the grounds that the Policy Guidance of November 1993 undermined the Local Government Commission's duties under section 13 of the 1992 Act (see above). Mr Justice Jowitt held that although it was legitimate for the Secretary of State to state his belief that unitary authorities are in general more likely to fulfil the statutory criteria than a two-tier system of local government, he should not convey the message to the Commission that the Government's hoped-for result was to be seen as an end in itself. The sentence in the November 1993 Policy Guidance which set out the Government's expectation that recommendations in favour of the existing structure would be exceptional had the effect of undermining the statutory criteria in section 13. The inclusion of that sentence was outwith the Secretary of State's powers and was unlawful⁴⁰.

The Secretary of State announced in a Written Answer on 3 February 1994 that the Government would not appeal against the court's ruling and that the review would continue on the basis of the November 1993 Policy Guidance with the omission of the final sentence of paragraph 3, the one which Mr Justice Jowitt held to be unlawful⁴¹.

The revised Policy Guidance of November 1993 also contained a new passage emphasising the Government's approval of proposals emerging as a result of local consensus. This may be seen as a counter to the in-fighting between counties and districts which is seen by many to have dogged the review:

4. The Government attaches great importance to local consensus; proposals which are put forward by groups of authorities will be an important starting point for the Commission. Where those proposals demonstrate that a range of options including amalgamations of districts or disaggregations of counties has been fully considered, along with the implications for individual services (as indicated in Annex B), the Government expects the Commission to give them particular weight. Proposals to make existing authorities unitary authorities will therefore demand special scrutiny

⁴⁰ Times Law Report 3 February 1994, Queen's Bench Division, *Regina v Secretary of State for the Environment, Ex parte Lancashire County Council Regina v Same, Ex parte Derbyshire County Council*

⁴¹ HC Deb Vol 236 c880W

by the Commission unless it is clear that the proposers have also considered other options. The Commission will wish to measure proposals from local authorities against expressed views from those outside local government.

2. Size of Unitary Authorities and Other Issues

The Policy Guidance (references below are to the November 1993 version) states that local authorities should be based on natural communities [para 5] and that the Commission should take account of people's expressed preferences [para 6]. The Government expects that any structural changes recommended by the Commission should be worthwhile and cost-effective over time [para 8]. A suggested methodology for assessing costs and benefits is set out at Annex A to the guidance.

The Policy Guidance states explicitly that there is no maximum or minimum size for the area or population covered by a unitary authority [para 11]. The Commission are informed, however, that:

Unitary authorities covering either a very large area or a very small population will need a specially strong justification, because of concerns in the former case about remoteness and in the latter about the effectiveness of service delivery.

The Local Government Commission's progress report *Renewing Local Government in the English Shires*⁴² seems to adopt a slightly different emphasis, however. After a discussion of some of the salient considerations in relation to size, the Commission's approach is set out:

41 Given all these considerations, together with the cost implications which are discussed further below, and the wish to ensure that the new authorities have the capacity to manage the delivery of the whole range of principal local government services, the Commission expects that the areas for which it will recommend unitary authorities will in most cases have populations in the range of 150,000 to 250,000. These figures are, of course, indicative rather than prescriptive: indeed, of the Commission's draft recommendations for unitary status in the first tranche reviews, both the Forest of Dean and Hartlepool have populations well below the lower figure. There is a difficult balance to be struck. A lower figure may be justified in more isolated areas with a very strong local identity. A higher figure may be justified in an area for which it is particularly important to secure a strategic overview. A higher figure may also be appropriate in the bigger cities, where there is a sense of community identity with the city area, and in larger rural areas with a strong shared sense of identity. A lower range is envisaged in the Government's proposals for Wales, where the proposed figures lie between 67,000 and 295,000, with 11 of the proposed 21 new authorities falling within the range of 100,000 to 150,000 and an average population of 137,000.

⁴² HMSO, December 1993, para 41

Research Paper 95/3

However, Wales is relatively small in terms both of population and geography, and the Welsh Office and other public agencies are able to discharge many strategic functions which in shire England currently rest with the counties. In Scotland the range (excluding the three islands' councils) is wider from 76,000 to 620,000, but the average population of the proposed new unitary authorities is just over 200,000

A list of Commission proposals for unitary authorities with a population of less than 150,000 is given in Appendix 2.

The Policy Guidance states that the Commission should take account of the role parish and town councils could play in an area under review and how they would fit into the structure it recommends [para 19]. Subsequent reports by the Commission have recommended an enhanced consultative role for all town and parish councils, although this would not lead to any additional statutory powers for parishes and would depend on co-operation between parishes and the principle authorities in an area.⁴³

The Government appears to recognise that the new structures created by the review may not always "wholly satisfy local people's feelings of identity" [para 21]. Where a county council is to be abolished, county areas of historical or traditional significance could be recreated or retained as statutory areas without councils:

Such county areas without councils could have significance for a variety of purposes including perhaps maps, boundary signs and heritage, culture and sport. This would mean that new unitary authorities could continue to be treated as part of historic counties if that best reflected community identities. Similarly, historic districts, cities or towns could retain their identity within a wider unitary authority without district councils of the same name.

⁴³ See the Local Government Commission News Release "Parish and town councils - the flavour of the month", 9.8.94, for an indication of the Commission's attitude towards parishes

IV The Progress of the Review

A. The Initial Timetable

The Government announced on 27 November 1991, before the Local Government Bill was passed, that the chairman of the Local Government Commission would be Sir John Banham, then Director-General of the CBI and a former Controller of the Audit Commission [HC Deb Vol 199 c506W]. The appointment of further Commissioners was announced in June and July 1992 and the Commission was launched formally on 1 July 1992.

On 3 June 1992 Michael Howard, then Secretary of State for the Environment, announced a "rolling programme" of reviews of the shire counties of England⁴⁴. The review was to be carried out in five tranches. The Local Government Commission was to go through each tranche in turn conducting reviews area by area. The five tranches were:

<i>First</i>	<i>Third</i>
Avon	Bedfordshire
Gloucestershire	Berkshire
Somerset	Oxfordshire
Cleveland	Buckinghamshire
Durham	Cheshire
Derbyshire	East Sussex
Humberside	West Sussex
Lincolnshire	Kent
North Yorkshire	Northamptonshire
Isle of Wight	
<i>Second</i>	<i>Fourth</i>
Cambridgeshire	Dorset
Cumbria	Essex
Lancashire	Hereford and Worcester
Devon	Norfolk
Hampshire	Suffolk
Leicestershire	Wiltshire
Nottinghamshire	
Staffordshire	<i>Fifth</i>
	Cornwall
	Hertfordshire
	Northumberland
	Shropshire
	Surrey
	Warwickshire

Thus the first tranche contained all of the "artificial" shire counties created by the previous reorganisation in 1974 and which had frequently been cited as evidence of the need for change. Under the initial timetable announced by Mr Howard the Commission's recommendations for the shire counties would have taken effect between 1994 and 1998. Within the first tranche of counties, work started first on the Isle of Wight, in August 1992, and reviews of all the other first tranche areas had started by the end of September. Draft plans for all of the first tranche areas were produced by June 1993. The first Final Report

⁴⁴ HC Deb Vol 208 cc545-6W

Research Paper 95/3

(for the Isle of Wight) was published in April 1993 and the last one (Humberside, Lincolnshire and North Yorkshire) was published in January 1994.

In each of the groups of counties in the first tranche, a pair of 'lead commissioners' was appointed by the Commission in order to direct the review in those areas.

A timetable for the second tranche of counties was given in a Written Answer on 4 February 1993⁴⁵. The review of Leicestershire (the first county in the second tranche) started in May 1993 and the final report was due in May 1994. The review of the last counties in the tranche, Cambridgeshire and Devon, were due to start in January 1994 and final recommendations on those counties were due in December last year.

B. The Draft Plans for the First Tranche Counties

The draft plans contained a range of structures. In the **Isle of Wight** the Commission recommended, as expected, a single unitary authority to cover the whole island. At present there are two districts on the island, but both are in favour of the unitary option.

Derbyshire was known to be a controversial area, in part because of friction between the Labour-controlled county council and many local Conservatives. A "doughnut" solution was proposed: the City of Derby would attain unitary status with a unitary council running the remainder of the county.

In **County Durham** a unitary council would control all of the county save the current borough of Darlington which would become a unitary authority. The four current districts in **Cleveland** were all to become unitary councils; most parts of the existing county would become part of the "historic county" of Yorkshire.

In **Gloucestershire** the existing districts would be amalgamated to form three unitary authorities. **Avon and Somerset** County Councils were both to be abolished, to be replaced by a unitary structure of five councils partially based on the existing districts in the two counties, including a unitary authority for Bristol. The new councils would be divided between the historic counties of Bristol, Somerset and Gloucestershire.

The areas of **North Yorkshire and Humberside** would be controlled by seven unitary authorities mostly based on existing district boundaries, featuring an enlarged area for the

⁴⁵ HC Deb Vol 218 cc244-5W

City of York. The new authorities in Humberside would be divided between the historic counties of Yorkshire and Lincolnshire. **Lincolnshire** itself would retain a two-tier structure.

C. The Final Recommendations for the First Tranche Authorities

The Commission's final recommendations for the **Isle of Wight, Cleveland, Lincolnshire, and North Yorkshire and Humberside** contained no major change to the draft plan. In **County Durham** the Commission confirmed that Darlington should be a unitary authority but noted that the consultation exercise had uncovered widespread support for the existing structure in the rest of the county. It therefore recommended a two-tier system for the remainder of Durham. This kind of "hybrid" solution has subsequently been adopted in a number of counties.

A similar development occurred in **Derbyshire**. The final recommendation for the county featured unitary authorities in Derby and also in Chesterfield. For the rest of Derbyshire, however, the Commission announced that consultation had failed to find agreement on a suitable unitary structure. Further, the Commission found considerable support for the present two-tier structure and therefore recommended the continuation of that structure in the remainder of Derbyshire.

The draft plan for **Gloucestershire** was abandoned, with the two-tier structure to be retained. The plan for a unitary City and County of **Bristol** was kept, and in the rest of **Avon** three new unitary authorities would be created. Three unitary authorities based on the six existing districts were recommended for **Somerset**.

Reactions to the Commission's draft and final recommendations for the first tranche counties were, predictably, extremely mixed⁴⁶. Robert Jones, then chairman of the Environment Select Committee and now a junior Environment minister, described the proposals for Derbyshire, Durham and North Yorkshire as "utterly ridiculous" in the House Magazine⁴⁷. An article in the *Municipal Journal* defended the Commission against charges of inconsistency⁴⁸:

"A brickbat frequently hurled at the LGC is that the commission's

⁴⁶ *Local Government Chronicle* 14 May 1993 "Bad news for rural districts in review proposals for Durham"
Guardian 17 May 1993 "MPs attack 'arrogant' Local Government Commission's proposal for Derbyshire"
Times 20 May 1993 "Why I won't buy this doughnut" (Matthew Parris on Derbyshire)
Guardian 15 June 1993 "Boundary plan fails to please West Country"
Guardian 9 November 1993 "Council anger over plan to shake up counties" (Derbyshire, Durham & Cleveland)
Financial Times 21 December 1993 "Gummer snubbed on reform of councils" (Gloucestershire, Somerset & Avon)
Times 24 January 1994 "Yorkshire sees red over return of the Ridings"

⁴⁷ "Time to slow down the review and listen to the views of the people" 14 February 1994

⁴⁸ 28 January 1994 "A mission to be inconsistent" by Jerry March

Research Paper 95/3

recommendations are inconsistent; such attacks overlook the fact that, in a way, the commission's mission *is* to be inconsistent".

Nevertheless a paper by Steve Leach of the Institute of Local Government Studies at Birmingham University suggested that different solutions were chosen by the Commission in similar areas⁴⁹:

"Nowhere is the look of a consistent set of principles more apparent than in the comparison between the approach and outcome in Lincolnshire [where the status quo was recommended] and the approach and outcome in a number of ostensibly similar counties".

Leach went on to analyse the Commission's approach in some depth. In an earlier paper, also written for the European Policy Forum, Professor John Stewart warned of the dangers which he claimed were inherent in the "piece-meal" approach which the Commission had to adopt⁵⁰:

"While it may seem correct to adopt an approach that appears to focus on local conditions, the danger of the approach is that unless each local review is guided by clear nationally agreed principles and by a shared agreement about issues that affect local government structure, one will get recommendations that reflect not local circumstances, but the views of the local commissioners".

In its progress report published in December 1993, the Local Government Commission defended itself against such charges. It asserted that reports on individual reviews had not provided an appropriate vehicle for a developed statement of general principles, but conceded that this may have made it less easy to see the principles behind its recommendations⁵¹. The progress report set out three specific objectives which the Commission had set itself in conducting the first tranche reviews⁵²:

- i The review should examine the extent to which dissatisfaction remains with the local outcomes of the last reorganisation of local government in 1974, and take steps to rectify any apparent mistakes that were made then.

- ii The review should reflect the changes that have taken place since 1974 in the role of

⁴⁹ The Local Government Review: A Crisis of Credibility. European Policy Forum, November 1993, p5

⁵⁰ The Local Government Review Itself Reviewed, July 1993, p11

⁵¹ Renewing Local Government in the English Shires, HMSO, para 14.

⁵² Ibid, para 22

local government and in the environment in which local authorities operate.

- iii The review should aim to strengthen the institution of English local government, and provide a structure which can wield sufficient resources to be able to maintain a strong voice not only in Britain but in a new Europe of regions, and be flexible enough to adapt to a fast changing and unpredictable environment in the future.

The progress report also contained some general conclusions reached as a result of public consultation during the review⁵³:

- It is not universally the case that local people wish to see a change in their local government. In some cases, the Commission has found strong support for change; in others, a definite preference for leaving the present arrangements in place;
- In the main, people identify more strongly with quite small local communities, closer in many cases to the size of a parish than a district council area. Nonetheless, some county areas command high recognition and loyalty among local residents. The structure of unitary local authorities should build upon these community building blocks;
- The role of councillors in the new unitary authorities should change;
- A system of unitary authorities based on existing district boundaries would be more expensive in administrative costs than the present arrangements, and the substantial transitional investment could not be justified.

The Commission was highly critical of the conduct of some councils during the review:

"The first tranche reviews were characterised by unseemly wrangling between existing local authorities as each tier attempted to wrest unitary local government away from the other, and in several cases spent large sums of public money in attempting to persuade the public of the strength of their case. The Commission found few instances of agreement between the district councils in each area, or between the districts and the county council. The Commission noted a general reluctance on the part of the districts to consider the needs of their whole county area."⁵⁴

D. Government Decisions on the First Tranche Counties

⁵³ Ibid, para 75

⁵⁴ Ibid, para 100

The Government has now given decisions on the Commission's recommendations for all of the first tranche counties, although in the cases of Derbyshire, Durham⁵⁵ and Gloucestershire⁵⁶ the Commission has been directed under section 15(6) of the *Local Government Act 1992* to carry out further reviews. The Government pointed out that the reviews in these three areas were carried out under the June 1992 Policy Guidance and it wanted the Commission to carry out fresh reviews according to the November 1993 Guidance. Some councils in those areas also made representations to that effect. See below for details of the second review in those counties.

The Government has given its approval to Local Government Commission proposals for the following areas: the Isle of Wight⁵⁷, Cleveland⁵⁸, Humberside, Lincolnshire and Avon⁵⁹. The *Isle of Wight (Structural Change) Order 1994* [SI 1994/1210]⁶⁰ gave effect to the Commission's recommendations for that county, and the draft **Cleveland (Structural Change) Order 1994** would implement a unitary structure in Cleveland. The decision on Lincolnshire was the first and, to date, the only instance where the Government has approved a recommendation for no change in a county. For North Yorkshire⁶¹ the Government accepted the Commission's recommendation that the City of York should become a unitary authority based on expanded boundaries. It did not, however, accept the Commission's proposal for a unitary structure in the rest of the county. It has therefore sanctioned a "hybrid" solution for North Yorkshire: a unitary York combined with a two-tier structure elsewhere.

E. The Remainder of the Review: the Revised Timetable

During the summer of 1993 there was intense speculation that the review would be speeded up or abandoned, or truncated by allowing councils to opt-in to the review process if they were unhappy with arrangements in their own areas⁶². A report in the *Local Government Chronicle* suggested that the new Secretary of State John Gummer favoured this option but that it was overruled by the Prime Minister⁶³. On 30 September 1993 Mr Gummer announced that the review would be speeded up in order to "counter uncertainty about the future and so ensure effective provision of local services"⁶⁴. This move was condemned by the Labour Party as "'an unwarranted political interference' in the work of an ostensibly independent body"⁶⁵. The full details of the new timetable were revealed by the Minister for Local

⁵⁵ HC Deb Vol 233, 29 November 1993, c376W. See also Dep 9911

⁵⁶ HC Deb Vol 238 1 March 1994 c643W. See also Dep 10410.

⁵⁷ HC Deb Vol 231 cc 104-5W. See also Dep 9828

⁵⁸ HC Deb Vol 235, 18 January 1994, cc581-2W. See also Dep 10134

⁵⁹ HC Deb Vol 248, 25.10.94, cc 534-7W

⁶⁰ Debated in the Commons on 18.4.94 (HC Deb Vol 241 cc 689-706) and in the Lords on 28.4.94 (HL Deb Vol 554 cc 871-880)

⁶¹ Ibid

⁶² See for example *Financial Times* 26 July 1993 "Council reformer meets resistance"

⁶³ 30 July 1993 "Major rejects Gummer's review plans"

⁶⁴ *DoE News Release* 630, "Speed up for local government review"

⁶⁵ *Guardian* 30 September 1993 "Local government review speeded up"

Government David Curry in a Written Answer on 22 November 1993⁶⁶. Mr Curry announced that the Secretary of State had directed the Local Government Commission to begin reviews of the remaining shire counties on 13 December and to submit all reports on or before 31 December 1994. The Commission would have more flexibility as it would not have to devote a prescribed period to each stage of each review; it would nevertheless have to devote at least two months to public consultation after announcement of draft plans for each area.

The initial target for the Commission was that draft reports on the remaining counties would be produced between April and May 1994. Final recommendations on fourteen counties would be produced on 3 October 1994 and the remainder would be produced later in the year. An article in the *Local Government Chronicle* quoted a Commission spokeswoman as saying that the extension of the timetable following the judicial review decision would make completion of the review by the end of 1994 "very tight"⁶⁷. The article suggested that the new timetable would also lead to extra pressure on the DoE to speed up its consideration of Commission reports, but in fact the Government's progress in making decisions on reorganisation did not become appreciably quicker. The Commission made it clear to councils that it did not expect them to carry out public consultation, "expensive presentations" or financial assessments during the remainder of the review⁶⁸. The Commission also announced that it would apply certain assumptions on costs based on its experience during the first tranche reviews to all councils to be reviewed during 1994⁶⁹.

In the event, the last of the draft reports from this second phase of the review were not issued until September 1994. The draft reports contained a by-now familiar mix of unitary solutions (e.g. Bedfordshire, Berkshire, Buckinghamshire, Lancashire, Oxfordshire, Surrey), status quo solutions (retention of the two-tier system, e.g. Cornwall, Gloucestershire, Hertfordshire, Northumberland) and "hybrid" solutions (one or more unitary councils co-existing with the two-tier structure, e.g. Derbyshire, Durham, Essex, Kent, Leicestershire, Nottinghamshire, Staffordshire). In most cases, the draft reports differed from the first tranche draft reports in that in addition to the Commission's preferred option, one or more alternative options were clearly laid out for consultation, with the apparent hope that if all of the feasible options had been fully explored at the draft report stage the Government would find it harder to reject the Commission's final recommendations in future. Another noticeable feature of the second phase of the review was that district councils in a number of counties produced joint submissions to the Commission⁷⁰, responding to the passage in the Government's revised Policy Guidance which stated that "proposals which are put forward by groups of authorities will be an important starting point for the Commission" [Dep 9829].

After the first tranche reviews the Commission were directed to perform a second review in three counties: County Durham, Derbyshire and Gloucestershire. For the first two, the

⁶⁶ HC Deb Vol 233 cc8-10W

⁶⁷ 11 February 1994 "Review deadlines put back six weeks"

⁶⁸ *Renewing Local Government in the English Shires*, HMSO, December 1993, paras 109, 114.

⁶⁹ *Ibid*, para 110.

⁷⁰ See *Local Government Chronicle* 11.2.94 "Districts compromise over shire options"

Commission had recommended a hybrid solution, and in Gloucestershire it had recommended the status quo. In the cases of Durham and Gloucestershire the Commission's draft reports on the second review recommended exactly the same solution as in the the first review; in addition, no alternative structure was presented for consultation in either county. This was widely interpreted as a snub to the Government, with the Commission being seen to be determined to maintain its independence of the Environment Secretary. For Derbyshire, another hybrid solution (status quo plus a unitary Derby City) was proposed, with yet another hybrid solution presented as an alternative (in addition to Derby City, there would be a unitary council based on three districts in the north-east of the county). The Commission had seemingly done everything it could to ensure that a unitary solution, involving the abolition of Derbyshire County Council, would not be imposed by the Government. It is in theory possible for a disagreement between the Commission and the Government over structural reforms in any area to continue indefinitely, with the Government directing the Commission to conduct third or fourth (etc) reviews and the Commission coming back with exactly the same proposals on each successive occasion. The Government's decisions on the second reviews in Durham, Derbyshire and Gloucestershire will therefore be awaited with interest.

In May 1994 the Local Government Commission announced that it intended to leaflet all residents in the areas under review, setting out the options for reform.⁷¹ The leaflets each had a questionnaire which could be returned to the Commission free of charge. The Commission later published the results of NOP analyses of the responses to the questionnaires and the results were widely interpreted as indicating that, of the available options, public opinion favoured the status quo in the majority of counties. For example, in the first batch of responses to be analysed⁷², the status quo or a hybrid solution was the most popular option in 8 out of the 10 counties surveyed⁷³. The Association of District Councils accused county council staff of distorting the results of the consultation exercise: it claimed that in Cheshire 27% of the 4,400 letters received by the Commission "could be traced to Cheshire County Council and its staff"⁷⁴.

In its progress report of December 1993 the Commission had already made clear its view that it would be "most unwise to press ahead with changes to create unitary authorities unless there is clear local support for change, and there are local champions for particular local solutions".⁷⁵ It was not surprising, therefore, when the results of the consultation exercise led the Commission to recommend the status quo or hybrid solutions in many areas (see below).

F. The Final Recommendations for the Remaining Counties

Final recommendations have now been published for all of the counties from the second

⁷¹ *Municipal Journal* 13.5.94 "Government confirms Cleveland councils must exist before elections"

⁷² NOP Analysis of Public Consultation Responses, 27.9.94: Beds, Berks, Cheshire, Cumbria, Hampshire, Kent, Lancs, Oxon

⁷³ *Financial Times* 28.9.94 "Councils shake-up finds scant backing"

⁷⁴ *Ibid*

⁷⁵ *Renewing Local Government in the English Shires*, HMSO, para 119.

phase of the review, including those counties for which a second review was ordered by the Secretary of State. The recommendations of the Local Government Commission are summarised below.

Local Government Commission final recommendations: No decision yet from Secretary of State

<u>County</u>	<u>Recommendation</u>	<u>Date published</u>
Bedfordshire	3 unitary councils	26.10.94
Berkshire	5 unitary councils	15.12.94
Buckinghamshire	4 unitary councils	26.10.94
Cambridgeshire	status quo	26.10.94
Cheshire	status quo	26.10.94
Cornwall	status quo	11.1.95
Cumbria	status quo	26.10.94
Derbyshire	1 unitary council + status quo (second review)	11.1.95
Devon	2 unitary councils + status quo	15.12.94
Dorset	4 unitary councils	15.12.94
Durham	1 unitary council + status quo (second review)	15.12.94
East Sussex	1 unitary council + status quo	15.12.94
Essex	1 unitary council + 2 tier system with minor changes	15.12.94
Gloucestershire	status quo (second review)	11.1.95
Hampshire	3 unitary councils + status quo	26.10.94
Hereford & Worcester	unitary council for Herefordshire; status quo for Worcestershire	15.12.94
Hertfordshire	status quo	11.1.95

Research Paper 95/3

Kent	status quo	26.10.94
Lancashire	status quo	26.10.94
Leicestershire	2 unitary councils + status quo	15.12.94
Norfolk	status quo	15.12.94
Northamptonshire	status quo	15.12.94
Northumberland	status quo	15.12.94
Nottinghamshire	1 unitary council + status quo	15.12.94
Oxfordshire	status quo	26.10.94
Shropshire	status quo	11.1.95
Staffordshire	1 unitary council + status quo	15.12.94
Suffolk	status quo	15.12.94
Surrey	status quo	15.12.94
Warwickshire	status quo	15.12.94
West Sussex	status quo	15.12.94
Wiltshire	1 unitary council + status quo	15.12.94

G. Paying for the Review

The anticipated costs of the work of the Local Government Commission and the Commission's estimates of the costs and savings resulting from their recommendations (transitional and ongoing) are set out in a table at Appendix 3. Local authorities affected by reorganisation will be able to borrow money to pay for the transitional costs of reorganisation: invitations have been issued to authorities in the Isle of Wight, Cleveland, Avon, North Yorkshire and Humberside to apply for Supplementary Credit Approvals £50 million in total for the financial year 1995/96⁷⁶. The Government had already made it clear that councils' capping limits would not be raised to take account of any costs incurred (in addition to those funded by the SCAs) as a result of reorganisation.⁷⁷ Authorities would also be able to use

⁷⁶ HC Deb Vol 250 c921W; see also Local Government Reorganisation: Arrangements for Reorganisation Costs in 1995/96, Dep 746 (3S)

⁷⁷ See, for example, DoE News Release 494, 23.8.94, "Proposed arrangements for local government reorganisation costs published"

receipts accrued from the sale of surplus capital assets.

The Government's approach has been criticised by local government finance expert Rita Hale on the grounds that "it is impossible at this stage to quantify with any certainty the transitional costs of reorganisation in England"⁷⁸. She comments that the Local Government Commission's estimates of transitional costs "appear relatively modest compared with those produced by the Association of District Councils and the Association of County Councils", giving rise to fears that councils affected may have to use their reserves to help fund reorganisation. This is being seen against the background of an overall provisional financial settlement for local government in 1995/96 which was described by the Secretary of State as "tough"⁷⁹ and which led Rita Hale to comment: "Unusually, the proposals... appear to live up to local authorities' fears for the coming year"⁸⁰.

H. Staffing Issues

In June 1993 the Government issued **Policy Guidance to the Local Government Staff Commission**⁸¹ which set out the Government's expectation that the "vast majority" (at least 90%) of staff affected by reorganisation would simply transfer to the new authority [para 4.6]. Staff in outgoing authorities who were not in senior management positions and who were not automatically transferred should have prior consideration for jobs in new authorities, the Policy Guidance stated [para 4.8]. In cases where TUPE is deemed not to apply (see below) staff will be transferred by means of a Statutory Transfer Order made by the Secretary of State. The Staff Commission's **Circular 3**⁸² will be the basis for deciding which staff should be included in an STO: in broad terms, all staff concerned with providing a direct service to the public will be covered. The local authority associations, however, estimate that STOs will cover only around 75% of staff⁸³.

The question of whether the *Transfer of Undertakings (Protection of Employment) Regulations 1981* [SI 1981/1794] applies to staff employed by outgoing authorities continues to attract controversy. The Regulations (known as TUPE) implement the EU Acquired Rights Directive [77/187] which is intended to safeguard employees' rights in the event of transfers of undertakings, businesses or parts of businesses. TUPE became infamous in local government because of court cases on the issue of whether or not the Regulations should apply where private companies won contracts to provide services as a result of CCT (Compulsory Competitive Tendering).

⁷⁸ *Local Government Chronicle* 14.10.94 "Bring on the reserves". See also *LGC* 5.8.94 "Government ducks its £1bn review bill"

⁷⁹ HC Deb Vol 250, 1.12.94, c1337. The Local Government Minister David Curry is reported in the *Local Government Chronicle's SSA Briefing* of 5.12.94 to have said "We've all been stuffed by the Treasury" at the press conference announcing the settlement

⁸⁰ *Local Government Chronicle* 9.12.94 "Forecasts and a funeral"

⁸¹ Dep 9383

⁸² 9.5.94

⁸³ ACC Brief: Local Government Review. Staffing: Progress so far. September 1994

Research Paper 95/3

In April 1994 the Local Government Management Board (LGMB) obtained legal advice from Patrick Elias QC which suggested that TUPE would apply in most cases: while "it is not possible to state categorically whether TUPE will apply, in my opinion it is likely to do so where the functions of an authority are transferred to a new body even though the identity of the transferor becomes merged into the new body". Dr Elias stated that many chief officers "could still be fairly and legally dismissed after transfer" because redundancies for 'economic, technical or organisational reasons' are permitted under TUPE⁸⁴. The Staff Commission has also commissioned legal advice, from Professor Upex of Kingston University. The Staff Commission believes that Professor Upex's opinion is broadly in line with that obtained by the LGMB but it has been commented that under Upex's interpretation TUPE is less widely applicable than under Elias⁸⁵, for example with regards a county council which is being abolished.

A joint national agreement on staff transfers has been produced by the National Employers (ADC, ACC and LGMB)⁸⁶. The agreement strongly recommends that councils affected by reorganisation should enable all staff who do not seek redundancy to transfer to the successor authorities⁸⁷. This is intended to avoid the possibility of legal challenges from the unions on the grounds that TUPE applies and to ensure continuity of functions. The County Council for the Isle of Wight, which will become a unitary authority in April 1995, had already agreed that all staff should be transferred from the outgoing district councils. Nevertheless the issue of staff transfers has provoked continuing controversy on the Isle of Wight because of friction between the districts and the county over the proposed handling of transferred staff⁸⁸.

Draft regulations on redundancy terms were issued by the Government in June 1994⁸⁹ and were heavily criticised for failing to guarantee sufficiently generous compensation to local government employees not transferred after reorganisation. In particular, the proposals to give councils an element of discretion over how to apply the scheme, and to impose a 66 week maximum for lump-sum compensation packages, were attacked for ignoring the advice of the Staff Commission⁹⁰. A revised scheme was set out on 5 December 1994 in the *Local Government (Compensation for Redundancy) Regulations 1994* [SI 1994/3025]: although the 66 weeks limit on lump sum payments has been retained, the effect of the Regulations will be that all staff made redundant as a result of the review who are under 50 and who have at least two years' service will receive compensation according to a mandatory framework⁹¹. Local authorities will, however, have discretion in how to compensate employees who are over 50 years of age. There remains a certain amount of dissatisfaction with the redundancy scheme and Labour's Environment spokesman Frank Dobson was reported as saying that Labour would vote against all future reorganisation Orders unless the compensation package

⁸⁴ Quoted in *Municipal Journal* 29.4.94 "Elias warns that restructure lay-offs possible under TUPE"

⁸⁵ *Local Government Chronicle* 12.8.94 "New opinion questions Elias transfer advice"

⁸⁶ Local Government Review. The Personnel Framework: A Policy Statement (undated)

⁸⁷ Para 12. See also "Associations' staff transfer decision bypasses commission" *Local Government Chronicle* 21.10.94

⁸⁸ See "Doing the Wight thing" *Local Government Chronicle* 6.1.95

⁸⁹ Dep 446 (3S)

⁹⁰ see for example "Government ignores compensation advice" *Local Government Chronicle* 17.6.94; "Baldry attacked over flexible job loss compensation plans" *Local Government Chronicle* 1.7.94; "Jeynes slates DoE over ignored advice" [Colin Jeynes is a member of the Staff Commission] *Local Government Chronicle* 22.7.94

⁹¹ Details of the scheme are given at HC Deb Vol 251 cc 10-11W; see also Dep 753 (3S) and DoE News Release 691, 5.12.94 "Package of measures to help local government staff affected by reorganisation"

was improved⁹².

At the same time as the final redundancy compensation scheme was announced, the Government also opened consultation on a scheme to compensate staff suffering a drop in salary as a result of reorganisation, and on draft regulations concerning general staffing matters⁹³.

The Staff Commission has produced a simple 'question and answer' brief on staff transfers which is reproduced on page 19 of the *Local Government Chronicle* of 6.1.95.

I. Shadow Elections

The Government's policy is that "wherever possible there will be all-out elections to shadow unitary authorities in the May preceding the April start-up date"⁹⁴. Provision for the creation of shadow authorities is contained in part 3 of the *Local Government Changes for England Regulations 1994* [SI 1994/867]. Where existing counties or districts are to inherit unitary status they will be "continuing authorities" and will not technically speaking be considered "shadow authorities" in the period preceding reorganisation. Nevertheless the Order giving effect to reorganisation will give them extra powers to plan for transition in what is termed the "preliminary period" (see, for example, part III of the draft *Cleveland (Structural Change) Order 1994*). In these cases the Government's intention is to consult with the authorities concerned over the timing of elections and there will generally be all-out elections to continuing authorities in the May before they assume unitary status.

J. Judicial Review Applications

A number of authorities which have been threatened with abolition have sought to overturn decisions of the Secretary of State or the Local Government Commission in the high court by seeking judicial review. Lancashire and Derbyshire's successful challenge over the Secretary of State's Policy Guidance to the Commission is dealt with above in Part III. On 28 June 1994, the high court dismissed an application for judicial review by Cleveland, Somerset and Avon over the Commission's conduct of the review in those areas⁹⁵. The three Counties were refused leave to appeal; Somerset and Avon decided not to proceed but Cleveland decided to apply directly to the Court of Appeal for leave to continue the case⁹⁶.

⁹² *Financial Times* 6.12.94 "Adviser attacks town hall pay-off terms"

⁹³ Dep 752 (3S)

⁹⁴ David Curry, HC Deb, Vol 248, 2.11.94, c1150W

⁹⁵ *Local Government Chronicle* 1.7.94 "Counties unbowed by court verdict"

⁹⁶ *Local Government Chronicle* 29.7.94 "Only Cleveland to push on with appeal"

Cambridgeshire County Council and East Cambridgeshire District Council both failed to obtain a judicial review of the Local Government Commission's consultation procedures in the county⁹⁷. Later in 1994 three district councils in Gloucestershire announced that they would seek leave to apply for a judicial review, also over the manner in which the Commission carried out the consultation process in the county⁹⁸. The districts' applications for judicial review were dismissed⁹⁹.

The applications for judicial review of the reorganisation process has clearly been a factor which has made it hard for the Government to make as much progress towards structural changes as it would have liked. In the case of Cleveland the Government's decision was given in January 1994 but the county's judicial review application and subsequent ongoing appeal has slowed down the making of the reorganisation Order considerably. On 16 June last year the Leader of the House Tony Newton said that "it would clearly be inappropriate to proceed while (the judicial review) is going on"¹⁰⁰. In an attempt to proceed with reorganisation in Cleveland in 1 April 1995 the Government announced on 11 May 1994 that transfer of functions from Cleveland County Council to the districts would take place *before* elections for the districts, which would be held in May 1995.¹⁰¹ It was stressed that this was as a result of the particular conditions which applied in Cleveland and that "as a general rule... elections will unusually be held at the start of the shadow period leading up to reorganisation".

The court dismissed Cleveland's application for judicial review of the abolition of the county (see above), but the Government, "mindful of the need to ensure a smooth transition, with an adequate time for the planning of change", decided to postpone reorganisation in Cleveland until 1 April 1996¹⁰². Elections to the districts concerned will now be in May 1995, assuming that the draft Order is passed by both Houses and depending on the progress of Cleveland's application for an appeal against the judicial review decision. Clearly the Government does not relish the prospect of reorganisation being postponed indefinitely because of legal action by the authorities concerned and has decided that it must make progress. Mr Newton, on 8 December, stated in response to a business question from Frank Cook that "Clearly, we would not have laid the order... had we felt that it was any longer inappropriate to do so. [The hon. Gentleman] will know that there has been an extensive amount of legal action on the matter. My right hon. Friend the Secretary of State for the Environment would say that there must come a stage when it is appropriate to proceed"¹⁰³. On 20 December Mr Curry said that if the Cleveland Order is approved by Parliament, "we shall consider the position in relation to the county council's outstanding application for leave to appeal to the Court of Appeal before the order is made"¹⁰⁴.

⁹⁷ *Local Government Chronicle* 12.8.94 "Cambridgeshire's challenge rejected"

⁹⁸ *Local Government Chronicle* 7.10.94 "Gloucester City starts legal fight"

⁹⁹ LGC Net database/Strand News, 4.11.94

¹⁰⁰ HC Deb Vol 244 c759

¹⁰¹ HC Deb Vol 242 c170W

¹⁰² David Curry, HC Deb Vol 245, 6.7.94, c246W

¹⁰³ HC Deb Vol 251 c495

¹⁰⁴ HC Deb Vol 251 c1107W

K. The Other Parties' Positions on the Review

The Labour and Liberal Democrat parties both support the principle of unitary local government in the context of elected regional assemblies. In contrast to both parties' outright opposition to the Government's plans for the reform of local government in Scotland and Wales (on the grounds that change was being imposed from above), Labour and the Liberal Democrats did not oppose the creation of the Local Government Commission during the passage of the Local Government Bill of 1992-3. The Labour Party, however, has grown increasingly uneasy about the conduct of the review, principally due to concern over the effect on staff (see above) and its fear that the Government would "cherrypick" for reorganisation only those areas in which it wished to see the demise of 'unpopular' (i.e. Labour controlled) county councils. Hence during the debate on the draft *Isle of Wight (Structural Change) Order*, Doug Henderson, then Labour's local government spokesman, set out the following conditions for continued Labour support on the review:¹⁰⁵

I make the Opposition's position clear to the Government. We stated in meetings that were held with authorities throughout the country that we will examine each order on its merit. But that approach is not without condition. The Government should not take our attitude to the order as a signal of our attitude to mainland reorganisation. I warn the Government tonight that parliamentary support for the procedures of the review will depend on undertakings being given on the following five issues: first, that the review will be thorough and genuinely cover the country as a whole; that there will be no cherry picking of areas such as Cleveland, Humberside, Derbyshire or Avon; that the review will be completed; that recommendations will be acted on; and that consistent principles will be adopted throughout.

Secondly, there should be no gerrymandering of specific boundaries for narrow party political advantage. Thirdly, in shadow authorities, there should be all-out elections-as I argue for the Isle of Wight-from day one. Fourthly, in subsequent years, a third of the council should be up for election annually. That could be advantageous for the Government, because if they accepted condition three -that there should be all-out elections-and suffered a horrendous defeat, if there are elections on the basis of a third of the council, it is easier for the Government to recoup some of their position in later years. So there may be strong arguments in that for the Government. Fifthly, the Government should meet the reasonable representations that will be made to them by the staff commission about the way in which staff are treated when their jobs have been changed as part of the reorganisation.

¹⁰⁵ HC Deb Vol 241, 18.4.94, cc693-4

The Labour Party Conference in 1994 passed a motion imposing similar conditions for Labour support but also seeking guarantees that the review would not result in the creation of "more non-elected quangos"; that all staff who wished to do so would be able to transfer to the new authorities with full protection of pay and conditions; that any staff made redundant would be offered adequate compensation; and that any Direct Service Organisation contracts affected by the review would be protected¹⁰⁶. The local authority union Unison voted at its annual conference in May 1994 for outright opposition to the review¹⁰⁷.

The Liberal Democrats have also expressed frustration over the conduct of the review but have tended to emphasise dissatisfaction with the Commission's departure from the unitary ideal in its recent recommendations, rather than opposition to the arrangements for staff affected by the review. A press release by the party's local government spokesman David Rendel described the review as "a missed opportunity - to decentralise political authority from central government to the regions and on down again to districts and parishes"¹⁰⁸.

L. Commentary

The changes announced last September to the timetable of the review failed to halt the flow of controversy and criticism to which the review has been subjected. The Secretary of State for Scotland Ian Lang, writing about the Government's proposals for local government reform in Scotland, acknowledged early last year the difficulties which the English review was experiencing¹⁰⁹. In late 1993 and early 1994 there was a spate of leading articles in the *Times*, *Financial Times* and *Daily Telegraph* calling for the review to be scaled down or abandoned¹¹⁰ and there were also a number of reports of backbench unease over the course the review was taking¹¹¹. In February 1994 the Foreign Office Minister David Heathcoat-Amory was quoted in the *Local Government Chronicle* as saying that he might be driven to vote against Local Government Commission proposals for Somerset if the Government accepted them¹¹² and according to a report in the *Municipal Journal* the Foreign Secretary Douglas Hurd wrote to the Local Government Commission stating his preference for no change in his own county of Oxfordshire¹¹³. A debate in the Lords on 30 March 1994 produced further evidence of discontent at a local level¹¹⁴.

¹⁰⁶ Reported in *Local Government Chronicle* 14.10.94 "Labour sets demands for backing review"

¹⁰⁷ *Local Government Chronicle* 20.5.94 "Unison joins campaign against the review"

¹⁰⁸ "Making a molehill out of a mountain" - Rendel" 15.12.94

¹⁰⁹ *Scottish Affairs* Issue No 6, Winter 1994, p23

¹¹⁰ *Times* 16 March 1994 "If it ain't broke"; *Financial Times* 22 December 1993 "Local difficulties"; *Daily Telegraph* 11 November 1993 "Tinkering at the borders"; *Daily Telegraph* 5 January 1994 "A respite for local councils".

¹¹¹ *Times* 3 December 1993 "Major faces backbench revolt"; *Financial Times* 31 January 1994 "Tory unrest threatens council reforms"; *Times* 4 February 1994 "Ministers head off revolt on council reform"; *Local Government Chronicle* 18 March 1994 "Internal party rows intensify over review".

¹¹² 11 February 1994 "Minister threatens to rebel over Somerset"

¹¹³ 25 March 1994 "Hurd's 'no change for Oxon' letter hits structure review".

¹¹⁴ HL Deb Vol 553 cc1076-1158

The chairman of the Local Government Commission Sir John Banham made it clear on many occasions that he would guard the Commission's independence and has frequently made comments on the progress of the review which have attracted controversy¹¹⁵. Sir John is reported as having said in a BBC Radio 5 Live discussion on 8 January that the Government should have come to decisions on the functions, financing and management of councils before embarking on a review of local authority structures¹¹⁶. The then chairman of the Environment Select Committee Robert Jones (now a junior Environment minister) called for Sir John's replacement by "a new, less bombastic and more listening chairman"¹¹⁷. Despite reports that Sir John would stand down before the end of the review, he was reported in the *Local Government Chronicle* as saying that he intended to stay on until his contract expires in June 1996¹¹⁸.

A detailed analysis of the review produced in May 1994 by INLOGOV (the Institute of Local Government at Birmingham University) criticised the review in the strongest possible terms:

"What had become in 1992 and 1993 an example of policy drift - the survival of a policy initiative beyond the time when there is any real political commitment to it - is increasingly becoming a policy fiasco, with the potential for inflicting considerable harm both on local government as an institution and on the Government itself"¹¹⁹.

Debate has continued as to the likely effects of reorganisation upon services. During a Lords debate on county archive services on 14 July 1994, fears were expressed that the abolition of county councils would lead to this service being threatened.¹²⁰ Cheshire county council warned that trading standards officers would not be able to operate effectively in small unitary councils.¹²¹ It has frequently been claimed that smaller unitary authorities would be less well equipped to provide specialised and flexible personal social services, but this claim was disputed by Norman Warner, former director of social services in Kent turned adviser to the Association of District Councils.¹²² The former Social Services Inspectorate chief inspector Sir William Utting called for a ten-year delay in the local government review to avoid disrupting the introduction of community care.¹²³

¹¹⁵ See, for example: *Financial Times* 21 October 1993 "Banham announces Whitehall meddling"; *Guardian* 26.1.94 "Banham upsets Somerset" (regarding Sir John's apparent preference for no change in Cornwall); *Municipal Journal* 28 January 1994 "Politicians 'foolish' to ignore local views argues Banham"; *Local Government Chronicle* 8.7.94 "Banham rallies districts to sell unitaries to public".

¹¹⁶ LGCNet database/Radio 5 Live "Government's approach to reorganisation wrong, says Banham" 9.1.95

¹¹⁷ *House Magazine* 14 February 1994 "Time to slow down the review and listen to the views of the people".

¹¹⁸ "Sir John to go on and on..." 11.11.94

¹¹⁹ *The Local Government Review: Key Issues and Choices*, edited by Steve Leach, p1

¹²⁰ HL Deb Vol 556, cc 2029-2043

¹²¹ "Trading standards provide latest war fodder" *Local Government Chronicle* 5.8.94

¹²² "Size doesn't matter" *Guardian* 27.7.94

¹²³ "Utting wants review delayed by 10 years" *Local Government Chronicle* 2.9.94

Research Paper 95/3

Steve Leach of INLOGOV has suggested that where small unitary authorities are created, joint arrangements for service provision will need to be made for a variety of services. He argues that the quality of service provision could be undermined unless joint arrangements are underpinned with sufficient power to take the difficult political decisions necessary for effective planning of services. In other words, joint boards with statutory powers might be needed. This, however, would undermine the unitary principle: power would not have been brought closer to the people by the creation of unitary councils.¹²⁴

The growing tendency of the Commission to recommend no change or "hybrid" solutions has, understandably, alienated the Association of District Councils (which had campaigned for unitary districts) and delighted the Association of County Councils (which realised, after the early stages of the review, that unitary counties were not an option in most cases and therefore campaigned for the status quo). The emergence of "hybrid" solutions for many areas has been criticised on the grounds that the establishment of unitary pockets within two-tier county structures would lead to asset stripping and a legacy of instability in the rump of the existing county councils¹²⁵.

There is currently much speculation as to whether the Government may be prepared to accept no change in many parts of the country. The Government's decision to accept the status quo in Lincolnshire and to implement a hybrid solution in North Yorkshire (see above) obviously indicates that the Government is resigned to accept two tiers in at least some areas. In a PQ on 13 December Robert Jones announced a change to the timetable for the introduction of CCT for white collar services¹²⁶. Areas subject to the local government review were previously due to be allowed a two year delay before the commencement of white collar CCT, even where no reorganisation subsequently took place, in recognition of the uncertainty caused by the review process. Mr Jones announced in December, however, that the Government wished to secure "the benefits of competitive tendering as soon as possible in 'status quo' authorities" and therefore intended to consult local authorities on alternative proposals in the new year. One possible interpretation of this move is that the Government has accepted that there will be a large number of status quo areas after the review and therefore wishes to proceed more swiftly with white collar CCT instead.

George Jones and John Stewart, two widely respected commentators on local government, wrote recently in the *Local Government Chronicle*:¹²⁷

"As the smoke clears on the battlefield of local government reorganisation, the futility of the whole process becomes more obvious. For nearly two years, counties have devoted significant time to the issue and have been distracted from tackling urgent problems in their areas. Important developments have been postponed.

¹²⁴ "Arguments about joint arrangements" in *The Local Government Review: Key Issues and Choices*, May 1994, p97

¹²⁵ See, for example *Local Government Chronicle* 1.7.94 "Hybrid solutions threaten worst of both worlds" by Pamela Whitford-Jackson, an associate with Touche Ross

¹²⁶ HC Deb Vol 251 cc 561-2W

¹²⁷ 9.12.94 "Review ideals up in smoke"

A limited reorganisation is the likely result. It could have been achieved without an attempt at total upheaval of the system. It is a grave mistake to take general actions to deal with particular problems. It creates maximum disruption when all that was needed was carefully directed change."

For the longer term the Local Government Commission envisaged in its Progress Report of December 1993¹²⁸ a situation in which at any time in the future local authorities or local people could invite the Secretary of State to direct the Commission to undertake a further review. This could be done, the Commission suggests, without changes to the existing legislation¹²⁹. It remains to be seen whether the Government will feel well-disposed to such a suggestion by the time it has made all of its decisions on the current review.

¹²⁸ *Renewing Local Government in the English Shires*, HMSO, para 122

¹²⁹ *Local Government Act 1992*, section 13.

Appendix 1: County-by-County Progress

Procedure in Brief:

1. Draft report by Local Government Commission
2. Final recommendations by Local Government Commission
3. Sec of State agrees, rejects proposals or directs LGC to review area again
4. Both Houses must agree any changes, which are implemented by Order

<u>County</u>	<u>Stage reached</u>	<u>Date</u>
Avon	Reorganisation agreed by Sec of State	25.10.94
Beds	Final recommendations published	26.10.94
Berks	Final recommendations published	15.12.94
Bucks	Final recommendations published	26.10.94
Cambridgeshire	Final recommendations published	26.10.94
Cheshire	Final recommendations published	26.10.94
Cleveland	Reorganisation agreed by: HoC: HoL:	11.1.95
Conwall	Final recommendations published	11.1.95
Cumbria	Final recommendations published	26.10.94
Derbyshire	Final recommendations published (second review)	11.1.95
Devon	Final recommendations published	15.12.94
Dorset	Final recommendations published	15.12.94
Durham	Final recommendations published (second review)	15.12.94
East Sussex	Final recommendations published	15.12.94
Essex	Final recommendations published	15.12.94
Gloucestershire	Final recommendations published (second review)	11.1.95
Hampshire	Final recommendations published	26.10.94
Hereford & Worcester	Final recommendations published	15.12.94
Hertfordshire	Final recommendations published	11.1.95
Humberside	Reorganisation agreed by Sec of State	25.10.94
Isle of Wight	Reorganisation agreed by: HoC HoL	18.4.94 28.4.94
Kent	Final recommendations published	26.10.94
Lancashire	Final recommendations published	26.10.94
Leicestershire	Final recommendations published	15.12.94
Lincolnshire	Status quo agreed by Sec of State	25.10.94
Norfolk	Final recommendations published	15.12.94
Northamptonshire	Final recommendations published	15.12.94
Northumberland	Final recommendations published	15.12.94
North Yorks	Partial reorganisation agreed by Sec of State	25.10.94
Notts	Final recommendations published	15.12.94
Oxfordshire	Final recommendations published	26.10.94
Shropshire	Final recommendations published	11.1.95
Somerset	Reorganisation rejected by Sec of State	25.10.94
Staffs	Final recommendations published	15.12.94

Suffolk	Final recommendations published	15.12.94
Surrey	Final recommendations published	15.12.94
Warwickshire	Final recommendations published	15.12.94
West Sussex	Final recommendations published	15.12.94
Wiltshire	Final recommendations published	15.12.94

Appendix 2: Proposed Unitary Authorities with Population of less than 150,000

<u>Authority</u>	<u>Population</u>	<u>Status of Proposal</u>
Bedfordshire		Final recommendation (26.10.94)
Bedford	137,400	
Berkshire		Final recommendation (15.12.94)
Newbury	139,800	
Reading	137,100	
Slough	102,800	
Wokingham	142,500	
Cleveland		Agreed by Sec of State (18.1.94)
Hartlepool	91,900	
Redcar & Cleveland	145,800	
Middlesborough	145,700	
Dorset		Final recommendation (15.12.94)
Poole	136,300	
Western Dorset	149,700	
Durham		Final recommendation (15.12.94 - second review)
Darlington	100,100	
Isle of Wight	125,600	Agreed by both Houses (April 1994)
Leicestershire		Final recommendation (15.12.94)
Rutland	33,400	

Population estimates are for the mid-1992 population based on figures given in the *Local Government Chronicle Review Focus 2*, rounded to the nearest hundred. The LGC used OPCS figures supplemented, where existing districts are to be split, by information from local authorities and Local Government Commission reports

Appendix 3: Estimated Costs and Savings of Local Government Reorganisation

Table A1 shows the estimated costs and savings associated with the restructuring of local government in England. Transitional costs and benefits are those once-and-for-all costs and savings following the changes. These include redundancy payments and salary protection, staff relocation expenses, new accommodation, redundant buildings, planning for change, elections, information technology, recruitment and training, changes to records, publicity concerning the changes and removal costs.

In addition there are additional on-going costs and benefits which are annual expenditure differences which will exist beyond the transitional period. These include amounts for pension enhancement, new staff structures, new accommodation, elections, information technology and changes in the number of elected members.

The proposals shown are the final recommendations of the Local Government Commission, except in the case of the five counties where final recommendations are yet to be published. In these five counties predictions of the final recommendations as published in the *Local Government Chronicle* of 16 December 1994 have been given.

The table also includes the costs of the Local Government Commission itself as well as the costs to the Ordnance Survey of publishing revised maps. The estimated total transitional costs of the reorganisation therefore range between £167 million and £240 million, while the estimates of on-going annual changes in expenditure range from £25 million costs to £57 million savings. In the best case scenario this indicates that the reforms will pay for themselves within three years. However, given these estimates, it is possible that the reforms will never pay for themselves.

Table A1

Estimated costs and savings of Local Government Reorganisation: England

County	Proposal	Transitional cost (£ million)	Annual savings (£ million)(g)	Payback period
Avon (a)	4 unitary councils	13 - 18	4 - 9	From 1 to 5 years
Bedfordshire	3 unitary councils	8 - 11	-1 - 2	From 4 years
Berkshire	5 unitary councils	10 - 14	-7 - -3	Never
Buckinghamshire	4 unitary councils	10 - 13	-5 - -2	Never
Cambridgeshire	status quo			
Cheshire	status quo			
Cleveland (a)	4 unitary councils	13 - 18	6 - 11	From 2 to 3 years
Comwall	status quo			
Cumbria	status quo			
Derbyshire(b)	1 unitary council and status quo	3 - 5	-2 - 2	From 2 years
Devon	2 unitary councils and status quo	5 - 9	-5 - -1	Never
Dorset	4 unitary councils	17 - 19	-1 - 2	From 9 years
Durham(b)	1 unitary council and status quo	1 - 5	-3 - 0	Never
East Sussex	1 unitary council and status quo	3 - 5	-2 - 2	From 2 years
Essex	1 unitary council and 2 tier system with minor changes	4 - 8	-3 - 1	From 4 years
Gloucestershire(b)	status quo			
Hampshire	3 unitary councils and status quo	10 - 12	-5 - -1	Never
Hereford & Worcester	unitary council for Herefordshire; status quo for Worcestershire	6 - 9	1 - 2	From 3 years
Hertfordshire	status quo			
Isle of Wight(a)	unitary county council	2	1 - 2	From 1 to 3 years
Kent	status quo			
Lancashire	status quo			
Leicestershire	2 unitary council and status quo	3 - 4	-4 - 1	From 3 years
Norfolk	status quo			
North Yorkshire(c), Humberside(a) and Lincolnshire(a)	3 unitary councils for N.Yorks, 4 unitary councils for Humbs., status quo for Lincs.	28 - 38	13 - 22	From 2 to 3 years
Northamptonshire	status quo			
Northumberland	status quo			
Nottinghamshire	1 unitary council and status quo	1 - 7	-4 - 2	From 1 year
Oxfordshire	status quo			
Shropshire(d)	status quo			
Somerset (e)	3 unitary councils	7 - 12	-2 - 3	From 2 years
Staffordshire	1 unitary council and status quo	1 - 5	-4 - 2	From 1 year
Suffolk	status quo			
Surrey	status quo			
Warwickshire	status quo			
West Sussex	status quo			
Wiltshire	1 unitary council and status quo	5 - 7	-2 - 1	From 5 years
Costs of Local Government Commission and other costs (f)		17 - 19		
English Shire Counties Reorganisation		167 - 240	-25 - 57	From 3 years

Notes: (a) Local Government Commission proposals accepted by the Secretary of State.
 (b) Second review ordered by Secretary of State.
 (c) Proposal for unitary York accepted by Secretary of State, other proposals rejected.
 (d) Draft proposals only published, Local Government Chronicle predictions for final recommendations shown (due 11 January 1995).
 (e) Proposal rejected in favour of status quo.
 (f) Includes costs to Ordnance Survey of redrawing maps to show new boundaries.
 (g) Negative values indicate continuing annual costs

Sources: *Local Government Commission for England, Final and Draft Recommendations*
HC Deb 28 November 1994 c480w
HC Deb 28 June 1994 c492w
Local Government Chronicle 16 December 1994

Please cut

Research Paper 95/3

Section Code: HA

Title: The Local Government Review in England

It would greatly help to ensure that Research Papers fulfil their purpose if Members (or their staff) would fill in and return this brief pre-addressed questionnaire. Negative responses can be as useful as positive.

For your purposes, did you find this paper:

	Very useful	Quite useful	Not much use	Any comments?
1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2.	Too long <input type="checkbox"/>	The right length <input type="checkbox"/>	Too short <input type="checkbox"/>	_____
3.	Clear <input type="checkbox"/>	Not always clear <input type="checkbox"/>	Rather unclear <input type="checkbox"/>	_____

Name MP/Assistant to
(Please print)

Please fold

INTERNAL

**Miss Nicola Harland
House of Commons
Department of the Library
1 Derby Gate
London SW1A 2DG**

Please fold

Related Research Papers include:

Local government

94/69	The Local Elections of 5 May 1994	10.05.94
94/45	Local Government (Wales) Bill [HL] (Bill 68 of 1993/94)	14.03.94
94/6	Local Government etc (Scotland) Bill [Bill 6 of 1993/94]	14.01.94
94/4	The Non-Domestic Rating Bill [Bill 8 of 1993/94]	07.01.94
93/75	Local Government reorganisation in Scotland	13.07.93
93/64	Council tax capping	04.06.93
93/60	The council tax	14.05.93
93/58	The county council elections of 6 May 1993	12.05.93