

The Parliamentary Boundary Review for England

Research Paper 95/74

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This Research paper examines briefly the procedures followed by the English Parliamentary Boundary Commission for England in its Fourth Periodical Report (HC 433 Session 1994-95). It looks at the development of the rules for the Redistribution of seats, and examines the effects of the Fourth Review's recommendations. The draft Parliamentary Constituencies (England) Order 1995 laid before the House on 6 June implements the Commission recommendations, and is due to be debated on 14 June.

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Summary

Permanent machinery for redistributing Parliamentary seats was instituted after the Speaker's Conference of 1944. There have been a number of significant changes to the operation of the Rules for the Redistribution of Seats now contained in the 1986 Parliamentary Constituencies Act. As presently constituted the Rules are designed to allow the Commissions a very wide discretion in their interpretation and they provide for the over-representation of Wales and Scotland in strict numerical terms. They also create a ratchet effect increasing the number of seats recommended at each review. The English Boundary Commission's Fourth Periodical Report recommends a fixed divisor system recommended by the Home Affairs Select Committee in 1986/87 as a solution.

The Fourth Review has recommended an increase in the number of seats in England to 529, despite 5 fewer seats in the metropolitan counties and 10 fewer in the London boroughs. There is a net increase of 20 in the non-metropolitan counties, reflecting population movements out of the cities.

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Part I

The Fourth Parliamentary Boundary Commission Report

This review of parliamentary constituencies in England is required under the 1986 Parliamentary Constituencies Act (amended by the 1992 Boundary Commission Act). Under the 1992 Act the Commission was required to report to the Home Secretary by 31st December 1994, but the Commission did not submit the report to the Home Secretary until 12th April 1995. However S.2(4) of the 1992 Act provides that such a failure would not invalidate the report or its implementation.¹ S.3(5) of the 1986 Act states that "as soon as may be after the Boundary Commission have submitted a report to the Secretary of State under this Act, he shall lay the report before Parliament, together, except in a case where the report states that no alteration is required to be made in respect of the part of United Kingdom with which the Commission are concerned, with the draft of an Order in Council for giving effect, whether with or without modifications, to the recommendations contained in the report."

No Home Secretary has ever laid orders modifying recommendations by the Boundary Commissions. In 1947 the Labour Government introduced a Bill to modify the rules following requests from the English Commission, and then asked the Commission to prepare proposals for 17 further urban seats (see below Part II). However the original recommendations were presented in a Schedule to a Bill, and could therefore be amended. In 1969 the then Home Secretary James Callaghan laid the report of the Second Periodical Review before Parliament, but without the Orders. Mr. Callaghan drew attention to impending local government reorganisation as a reason for non-implementation. Instead a Bill was introduced implementing the proposals in part, and providing immunity to the Home Secretary for any breach of statutory duty. The Bill was blocked in the House of Lords, and an elector in an affected constituency sought *Mandamus* requiring the Home Secretary to lay the order. The Home Secretary gave an undertaking to lay the orders, and the case was withdrawn. He laid the orders, with a recommendation to reject them. The 1970 General Election was then fought on the boundaries established in 1954.²

Once the Orders have been approved by affirmative resolutions of both Houses they are submitted to Her Majesty in Council who 'may' make an Order on the terms of the draft Order (S.4(5) of the 1986 Act.³)

¹ The Scottish and Welsh Boundary Commission reports for this review have already received affirmative resolutions in both Houses. The debates in the Commons were in Standing Committee (SC Deb 8/3/95 in Third and Fourth Standing Committee on S.Is. The orders are: Parliamentary Constituencies (Scotland) Order 1995 SI no. 1037 and the Parliamentary Constituencies (Wales) Order 1995 no. 1036

² See H.F. Rawlings *Law and the Electoral Process* (1988) pp 51-52

³ See Rawlings pp 54-8 for a discussion of the possibilities of a legal challenge to the draft orders, during the period between laying the orders and the creation of the final order in Council.

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After the order is made the redistribution comes into effect at the next General Election; S.4(6) of the 1986 Act provides that the order cannot come into force, or affect the constitution of the House until the dissolution of the current Parliament. By-elections are therefore fought on the old boundaries.

The English Boundary Review began on 21st February 1991. This forms the **enumeration date** which is important for the establishment of the electoral registration statistics which are used to determine the electoral quota. The 1991 electoral register was in force by the time of this enumeration date. The **electoral quota** is calculated by dividing the total number of electors in England by the number of constituencies in England. The quota which the English Commission used is 69,281 (36,302,984/524). There has been concern about a considerable variation in the degree of accuracy of the electoral register across the country. The Boundary Commission emphasised in a Newsletter (27/7/93) that they were bound to use the date as set, and that there was no provision for them to allow for under-registration of electors. However the Newsletter did note that potential population growth might be relevant in choosing between schemes.⁴

In considering their recommendations for boundary revisions the Boundary Commission is required to give effect to the rules for the Redistribution of Seats which form Schedule 2 of the Parliamentary Constituencies Act 1986:-

The rules

- 1.-(1) The number of constituencies in Great Britain shall not be substantially greater or less than 613.
 - (2) The number of constituencies in Scotland shall not be less than 71.
 - (3) The number of constituencies in Wales shall not be less than 35.
 - (4) The number of constituencies in Northern Ireland shall not be greater than 18 or less than 16, and shall be 17 unless it appears to the Boundary Commission for Northern Ireland that Northern Ireland should for the time being be divided into 16 or (as the case may be) into 18 constituencies.
2. Every constituency shall return a single member.
 3. There shall continue to be a constituency which shall include the whole of the City of London and the name of which shall refer to the City of London.

⁴ For further details of the factors influencing the declining accuracy of the electoral register in the early 1990s see Library Research Paper No 93/13 Electoral Registration.

4.-(1) So far as is practicable having regard to rules 1 to 3-

(a) in England and- Wales,-

(i) no county or any part of a county shall be included in a constituency which includes the whole or part of any other county or the whole or part of a London borough,

(ii) no London borough or any part of a London borough shall be included in a constituency which includes the whole or part of any other London borough,

(b) in Scotland, regard shall be had to the boundaries of local authority areas,

(c) in Northern Ireland, no ward shall be included partly in one constituency and partly in another.

(2) In sub-paragraph (1)(b) above "area" and "local authority" have the same meanings as in the Local Government (Scotland) Act 1973.

5. The electorate of any constituency shall be as near the electoral quota as is practicable having regard to rules I to 4; and a Boundary Commission may depart from the strict application of rule 4 if it appears to them that a departure is desirable to avoid an excessive disparity between the electorate of any constituency and the electoral quota, or between the electorate of any constituency and that of neighbouring constituencies in the part of the United Kingdom with which they are concerned.

6. A Boundary Commission may depart from the strict application of rules 4 and 5 if special -geographical considerations, including in particular the size, shape and accessibility of a constituency, appear to them to render a departure desirable.

General and supplementary

7. It shall not be the duty of a Boundary Commission to aim at giving full effect in all circumstances to the above rules, but they shall take account, so far as they reasonably can-

(a) of the inconveniences attendant on alterations of constituencies other than alterations made for the purposes of rule 4, and

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

8. In the application of rule 5 to each part of the United Kingdom for which there is a Boundary Commission-(a)the expression "electoral quota" means a number obtained by dividing the electorate for that part of the United Kingdom by the number of constituencies in it existing on the enumeration date,

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(b) the expression "electorate" means-

(i) in relation to a constituency, the number of persons whose names appear on the register of parliamentary electors in force on the enumeration date under the Representation of the People Acts for the constituency,

(ii) in relation to the part of the United Kingdom, the aggregate electorate as defined in sub-paragraph (i) above of all the constituencies in that part,

(c) the expression "enumeration date" means, in relation to any report of a Boundary Commission under this Act, the date on which the notice with respect to that report is published in accordance with section 5(1) of this Act.

The broad framing of the rules allows considerable discretion to the Commission in interpreting them, sometimes resulting in the criticism that the Commissioners are inconsistent. (See below in Part II)

The normal procedure as followed in this review, is to consider each county and London borough separately. The electorate of each county is divided by the electoral quota to calculate the number of constituencies to which the county is theoretically entitled. The entitlement was then rounded up or down to the nearest whole number (as a whole number of constituencies has to be allocated to a county unless the county boundary is to be crossed).

The Commissioners gave notice at the start of the review that they would consider using the discretion offered in Rule 5 to recommend the crossing of county or London borough boundaries. The Commission "paired" certain boroughs i.e. they combined their electorate and calculated a theoretical entitlement for the two boroughs as a whole; an appropriate number of seats is then allocated. This represents the first significant crossing of the current London boundaries.

The next step is to divide the county or London boroughs into the number of constituencies provisionally calculated. District wards are commonly used as building blocks for this process. Where the Commission's provisional recommendations caused opposition local inquiries took place and revised recommendations were issued; exceptionally modified recommendations were made following further representations or a second local inquiry. The importance of the local inquiry in modifying initial recommendations was recognised by Robert Waller in his review of the 1983 Third Periodical Review.⁵

⁵ Electoral Studies [1983] pp 195-206 "The 1983 Boundary Commission: Policies and Effects" see below for further details.

Part II

The Operation of the Rules for the Redistribution of Seats

The general history of the Parliamentary Boundary Commissions is examined in Library Research Note No 92/61 The Parliamentary Boundary Commissions and the Boundary Commissions Bill. This section concentrates on the operation of the Rules for the Redistribution of Seats, and their development since 1944.

A Speakers Conference on redistribution in 1944 had recommended that redistribution should be based on an electoral quota for Great Britain calculated from the qualified electorate and a 25% tolerance on either side; local and parliamentary boundaries would coincide where convenient; the Commissioners were to be permitted to depart from the strict application of the rules if they felt this was desirable because of special geographical considerations, such as area, shape and size of a constituency. The total number of Members of the House of Commons should remain substantially the same, and the Northern Ireland seats should be fixed at 12.⁶

These recommendations were incorporated into the House of Commons (Redistribution of Seats) Act 1944 and an initial review took place to subdivide certain abnormally large constituencies in time for the 1945 election. The first largescale redistribution was in 1947/48 and there was an immediate problem with the operation of the Rules. The 1944 Act allocated primacy to the achievement of equal constituencies over the principle of respect for local government boundaries. Rule 4 of the Act (in Schedule 3) had stated so far as practicable having regard to Rule 1 of these rules, the electorate of any constituency "shall not be greater or less than the electoral quota by more than approximately one quarter of the electoral quota" [Rule 1 provided for a norm for the overall representation of Great Britain]. Rule 5 provided "as far as practicable having regard to the foregoing rules" for respect for local government boundaries.

However the English and Welsh Boundary Commissions made informal representations to the Home Secretary for the relaxation of Rule 4 because of its strict formula. James Craig⁷ has argued that the difficulty arose because the Commissions accorded a higher priority to local unity as expressed by local government boundaries than was provided for by the 1944 rules. The Home Secretary said in introducing a Bill which amended Rule 4 that the Commissioners had felt themselves gravely handicapped by the strict mathematical formula with which their activities had been confined, and therefore the present Bill had been introduced in an effort to make the future representation of the House more in accordance with the historic precedent of representing communities than would have been possible under the Act of 1944⁸

⁶ Cmnd 6534 May 1944

⁷ Public Law 1959 "Parliament and Boundary Commissions"

⁸ HC Deb Vol 431 13/12/46 c1560

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The Bill became the 1947 House of Commons (Redistribution of Seats) Act which removed Rule 4, substituting for it a new Rule 5A "The electorate of any constituency shall be as near the electoral quota as is practicable having regard to the foregoing rules ". Thus not only was the 25 per cent rule abolished, but by putting the new electoral quota rule after Rule 5 the application of the electoral quota was subordinated to considerations of local government areas while leaving the Commission considerable discretion in the interpretation of the rules. Craig argues that the Scottish and Northern Irish Commissions had not expressed difficulties with the rules and that it would have been better to require the English and Welsh Commissions to carry out the review according to the rules set out in the 1944 Act.

A further modification of the rules took place in 1958 after the Second Periodic Review, following court action in December 1954. In *Harper v The Home Secretary*⁹ a challenge was made to a draft order in Council which had been approved by the Commissions relating to one of the recommendations made by the English Boundary Commission. The plaintiffs claimed that the report did not comply with the Rules as the English Boundary Commission had wrongly calculated the electoral quota.

Rule 1 of the 1944 rules had set a target number of seats for Great Britain as 591 originally which was raised to 613 in 1948. A minimum of 71 was set for Scotland and 35 for Wales but there was no minimum for England. In 1947 and 1954 the English Commission had taken its target number of seats as that set by Rule 1 less the minimum set for Scotland and for Wales. Under the electoral quota rules the Commission was supposed to use a Great Britain quota to determine the seats for England, but to use that would have created more constituencies than the number the Commission started with, so the Commission used an English electoral quota - ie it divided the English electorate by the target number of seats. This procedure was challenged by Harper who initially obtained an injunction, but the Court of Appeal overturned this a few days later holding that questions whether the Commission had followed the correct procedure were for Parliament rather than the courts¹⁰ and that it was unable to detect any error in the Commission's approach. Rawlings notes: "This with respect is incorrect, since the Commission clearly misinterpreted and misapplied the rules in the 1944 Act" (p 33). Had the Commission used the Great Britain quota England would have had 519 seats rather than the 506 allocated in the Second Review.

However, the 1958 House of Commons (Redistribution of Seats) Act by section 3 introduced four different electoral quotas for each part of the UK and so the obvious contradiction between the rules was resolved. The importance of local government areas was also enhanced since the Commissioners were given greater latitude to depart from the quota to leave constituencies undisturbed in S.2(2) which noted "it shall not be the duty of a Boundary Commission in discharging their functions to aim at giving full effect in all circumstances

⁹ 1955 ch. 238

¹⁰ See Rawlings pp 57-58 for a discussion of the legal principles behind such a challenge and Erskine May 21st ed p 26.

to the rules set out in the second schedule to the principal Act, but they shall take account, so far as they reasonably can, of the inconvenience attendant on alterations; and references in the section to giving effect to those rules shall be considered accordingly".

The debate on the 1958 Bill showed broad agreement that local ties were of greater importance than strict mathematical equality. The Home Secretary commented "The effect of the Bill is to bring in a presumption against making changes unless there is a very strong case for them". The Second Periodical review had caused strong opposition because, after only 5 years, 170 constituencies had had their boundaries changed, often drastically. However the 1944 rules, which had accorded primacy to the electoral quota, had now been subject to two dilutions - the abolition of the 25% rule in 1947 and the 1958 presumption against inconveniences attendant on alterations.

The 1958 Act also made provision for more local enquiries which were to be mandatory in certain circumstances. As will be seen below, local enquiries tended to emphasise the importance of local ties and local government boundaries.

The only change to the rules after 1958 were in consequence of local government re-organisation and in respect of Northern Ireland. The provisions in Rule 4 relating to the observation of county borough, metropolitan borough, burgh and county district boundaries were repealed in the 1972 Local Government Act (and corresponding legislation in Scotland and Northern Ireland) so that the Commissioners now had discretion to cross the boundaries of the new districts, many of which were too large to form one constituency and too small for two. However for England and Wales only county and London boroughs were to be respected; in contrast the Scottish Commission merely had to have 'regard' to the boundaries of local authority areas. Until 1973 the requirements to respect boundaries had been the same for both countries.¹¹ For Northern Ireland the only regard was that no ward should be split between constituencies.

The House of Commons (Redistribution of Seats Act) 1979 amended Rule 1 to require the Northern Ireland Commission to allocate between 16 and 18 seats to the province, instead of the 12 fixed in 1944. The background to this increase is covered in Part IV of Library Research Paper No 95/88 The West Lothian Question; briefly, a 1978 Speakers Conference had recommended it.

¹¹ 1973 Local Government (Scotland) Act Schedule 3, para 1

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The rules were consolidated in the 1986 Parliamentary Constituencies Act, and S.2(2) of the 1958 Act (giving Commissioners latitude on inconveniences occasioned by alterations) became Rule 7. Their operation had been further considered in a case brought in 1983 by Michael Foot, then Leader of the Labour Party, together with the General Secretary and National Agent of the Party. The Boundary Commission had just completed its Third Review and was preparing to submit its report to the Home Secretary when Mr. Foot sought orders restraining the submission of the report on the ground that the Commission had failed to give proper weight to the principle of equal representation in Rule 5. The Court of Appeal however found:-¹²

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

Moreover the judgment interpreted what is now Rule 7 (taking effect of inconveniences attendant on alterations) to mean that the Boundary Commission was relieved from the duty to give effect in all circumstances to the rules. Sir John Donaldson M.R. said "The practical effect is that a strict application of the rules ceases to be mandatory so that the rules, while remaining very important indeed, are reduced to the status of guidelines".¹³

Rawlings argues that Rule 7 had been designed to exempt a Commission from rigid adherence to Rule 5 (electoral quotas) and that it could not be correct to categorise Rules 1-6 as guidelines (pp 59-60). However the effect of the Foot judgment is to give the Boundary Commission greater discretion to determine its work. The judgment said the Commission's task was not merely "an exercise in accountancy" but it is required under the Act to "engage in more far-reaching and sophisticated undertaking, involving striking a balance between many factors which point in different directions. This calls for judgment not scientific precision". The effect is described by Iain Maclean and Roger Mortimore¹⁴ as follows:-

¹² [1983] QB 600 631-632

¹³ 1983 QB 600 624

¹⁴ 'Appointment and the Boundary Commission for England' in Electoral Studies 1992 pp 295-309

"..... But for Donaldson's interpretation, there would be a straightforward clash between Rules 1 and 8 on the one hand, and Rules 4, 5 and 6 on the other. Rule 1 requires that the number of seats in Great Britain do not 'substantially' rise above 613. Rule 8 requires each General Review to take as its baseline the existing number of seats when it starts work. But Rule 6 tends to create extra seats in thinly populated areas. Rule 5 as officially interpreted by the English Commission, increases the number of seats at every review." (pp 301-302)

These issues were considered by the Home Affairs Select Committee in 1986/87.¹⁵ The evidence submitted by the Home Office concluded:-

PART V-CONCLUSIONS

66. There is an urgent need to deal with the conflict between rule I and rules 5, 6 and 7 arising from the fact that the number of seats tends to increase. The view of the Home Office is that the increase should be stopped. This could be achieved by amending rule 7 alone. At the same time it would be desirable to consider whether to amend rule 5 so that there was no longer a bias towards rounding up seats.

67. The present rules allow for over-representation of Scotland and Wales, for reasons which have been considered sound in the past. But there has been no review of the statutory rules for some time. If the House of Commons were to remain the same size as now, then introducing an equal standard of representation for all parts of the United Kingdom would mean abolishing 12 Scottish seats and 6 Welsh ones. Alternatively, it would be possible to avoid any reduction in the number of seats for Scotland and Wales, and still to achieve equal representation, by creating a House of Commons with 783 seats, with 129 new seats going to England. It seems clear that such drastic changes would be unacceptable. If, on the other hand, it is judged that Scotland and Wales should continue to receive special treatment to give them an effective voice in parliamentary affairs, there may still be a case for reducing the difference between the standards of representation of the different countries of the United Kingdom by making some modest changes in the number of seats.

68. As for the other Rules:, opinions are usually fairly evenly divided about whether or not parity should take precedence over local government boundaries. The advantage of the present legislation is, of course, that it allows the Commissions to be flexible and minimise the disruption caused (at least, to some extent). However, such flexibility tends to lay them open to charges of inconsistency in different areas, where they appear to have paid less heed to parity in one than in another. Although there is a case for prescribing the extent to which the Commissions can deviate from the

¹⁵ HC 97

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electoral quota-even if they have to cross local government boundaries to comply-past experience points against it. All concerned would have to accept that there would be more disruption to local ties than at present.

The Committee's report concluded that there was a 'fundamental defect' in the rules. It found that the operation of the rules had led to a "progressive and cumulative increase in the number of seats in the House of Commons". The process was described in detail as follows:-

THE CUMULATIVE INCREASE IN THE NUMBER OF SEATS EXPLAINED IN DETAIL

7. Four times since the passing of the 1949 Act general elections have been held on the basis of revised constituencies. The number of seats involved in each case was:

	1950	1955	1974	1983
England	506	511	516	523
Wales	36	36	36	38
Scotland	71	71	71	72
Northern Ireland	12	12	12	17*
TOTAL	625	630,	635	650

[*up to 6 more seats awarded,by an Act of 1979].

8. Rule 8 requires each Boundary Commission to begin the general review process by calculating an electoral quota for its region. This quota is used for determining the theoretical entitlement to seats of each internal review area (in England and Wales counties; in Scotland regions, islands and districts) into which the Commissions divide the country for the purpose of recommending actual constituencies. The quota is obtained by dividing the total electorate of each part of the United Kingdom on the date when the review begins by the number of constituencies then in existence in each part. Rule 6 allows the Commissions to award extra seats over and above quota entitlements when special geographical considerations make this desirable. In addition Rule 5 requires the electorate of each constituency to be "as near the electoral quota as is practicable" in the light of Rules I and 4. This can sometimes mean that a county whose theoretical entitlement to seats on the basis of the quota is between x.4 and x.5 may obtain average electorates nearer to the quota if it is given x+ 1 seats than if it is given x seats. In such cases theoretical entitlements of less than x. 5 are required by Rule 5 to be rounded up to the next whole number. Whenever this happens the number of seats awarded will exceed quota requirements.

9. The consequence of the application of Rules 5 and 6 is that whenever seats are awarded under those Rules above a review area's entitlement on the basis of the electoral quota alone the number of constituencies recommended

will be greater than the previous total. These new, higher totals will in turn be used as divisors for calculating the electoral quotas at the next general review. At that review Rules 5 and 6 will again operate, so that the tendency for the numbers of seats to increase will be increasingly cumulative. Rule I provides minimum numbers of seats for Scotland (7 1) and Wales (3 5). There is no mechanism in the Rules for offsetting increases in one country by reductions in another. Indeed, it is impossible under the Rules for any reduction to take place.

10. The above remarks about Rule 5 should be qualified by observing that it has been the practice of the Boundary Commission for Scotland to seek to observe the limits implied in Rule I by not awarding the number of seats which could have been justified by Rule 5 (Q 134). This is in contrast to the practice of the Boundary Commission for England who have awarded seats under Rule 5 (see paragraph 7 above) to the point at which it has ceased to be possible to comply with the implied maximum of 507 seats for England. [The English total in 1983 was 523]. Also it must be noted that the larger the size of each review area the smaller is the impact of rounding up under Rule 5.

The Committee recommended that the size of the House of Commons be stabilised as nearly as possible at its present level by using a fixed divisor in Rule 8; the divisors proposed were 515 for England, 66 for Scotland, 36 for Wales and 17 for Northern Ireland. The Government response¹⁶ was sympathetic to the view that the Commons should be stabilised at its present level but it rejected the fixed divisor method as not always producing the same number of seats, without proposing an alternative of its own.

The Committee also considered the operation of Rule 4 on local authority boundaries. It divided on party lines so that paragraphs supporting the current phrasing of the rules were included and rejected an attempt by the Labour Members to recommend that the Commissioners be given greater discretion to cross London borough boundaries.¹⁷

The Committee decided not to recommend a change in the disparities of electoral quotas between the constituent parts of the UK concluding "it would not be feasible on political grounds to change the rules so as to provide a uniform electoral quota for the whole United Kingdom. In essence we believe that Scotland and Wales would successfully resist any change in the numbers of seats which was sought in the interests of electoral parity" (para 19). It did set out one solution however:-

20. Nevertheless we believe it ought to be explained that it would not be difficult

¹⁶ Cm 308 Feb 1988

¹⁷ Proceedings of the Committee p.xi

technically to amend the Rules to achieve a uniform UK quota. All that would be required would be for each Boundary Commission to determine the United Kingdom electoral quota by dividing the total United Kingdom electorate by a fixed common number (say 650). Each Commission would then divide its regional electorate by the United Kingdom quota to produce the region's theoretical entitlement to seats. It would also have to be provided that those entitlements could not be exceeded by more than what was required to reflect Rules 5 and 6, especially Rule 6. This change would, apart from bringing in equal standards of representation, allow for the special geographical needs of outlying areas and provide an automatic means of correcting shifts of population between the regions.

The only legislation which followed the Home Affairs Committee report was the 1992 Boundary Commissions Act which speeded up the cycle of reviews, and in particular provided for the Fourth Periodical reviews to be completed by 31st December 1994. It also ensured that the local authority boundaries to be taken account of would be those of 1st June 1994, and provided for the payment of Boundary Commission members. The major issues about increasing numbers of seats and the operation of the different electoral quotas raised by the Home Affairs Committee report were therefore not addressed.

Local inquiries

A final aspect of the discretionary nature of the Boundary Commission process is the importance of the local inquiry in modifying initial recommendations. Robert Waller noted in the Third Periodical review that nearly half of the constituencies underwent some change of boundary or nomenclature after the local inquiries, and he highlighted the fact that the inquiries were chaired by a large number of different people, normally barristers, appointed as Assistant Commissioners. He argued that there was evidence that a law of minimum disturbance operated significantly at inquiries whereas the provisional proposals tended to place a little more weight on equality of numbers.¹⁸ The English Boundary Commission noted in their evidence to the Home Affairs Select Committee inquiry their "heavy reliance on the advice given by Assistant Commissioners following their investigations into local ties, inter alia, at the local inquiries" (p.80 HC 97-I). Rallings and Thrasher¹⁹ surveyed 13 counties where revised recommendations had been made and found that revised recommendations tended to increase the deviation in constituency size from the national and local areas because Assistant Commissioners are swayed by arguments about local links.

¹⁸ Electoral Studies [1983] pp 195-206] "The 1983 Boundary Commission: Policies and Effects".

¹⁹ "The Parliamentary Boundary Commissions Parliamentary Affairs" July 1994 p 398.

III The Fourth Periodical Report - the results

The Fourth Periodical Report of the Boundary Commission for England was published on 6th June.²⁰ It recommends 529 constituencies for England (currently 524). The report raises a number of issues, which are reviewed below.

Increasing size of the House of Commons

The Welsh Boundary Commission has already recommended an additional 2 seats, bringing the total for that part of the UK to 40. In its report the Commission noted that the Home Affairs report had recommended that constituencies in Wales should not total substantially more than 38. The Commission reported noted "However unless the method for calculating the electoral quota is revised we can see little chance of entitlements being decreased".²¹ The report said later "we are of the firm opinion that legislative change is necessary to stop an upward drift in the number of seats caused merely by the arithmetic prescribed by the legislation" (para 190). It warned that provisional calculations indicated that the Fifth Review would result in the allocation of an extra 41st seat if Rule 5 were to be strictly applied.

The Northern Ireland Parliamentary Boundary Commission has yet to present its report to the Secretary of State for Northern Ireland but it has indicated that it does not plan to make changes to the recommendations made in January 1995 for 18 seats, an increase of one on the current number.

The Parliamentary Boundary Commission for Scotland has not recommended any increase in seats. In its report²² the Commission addressed the question of the total number of constituencies in Scotland as an issue of fundamental importance at the outset of the review.²³ It set a target of 72 seats, and then considered how the rounded theoretical entitlements could be cut back. It therefore crossed regional boundaries, despite the wording of Rule 4(1)(6) which provides that "in Scotland regard shall be had to the boundaries of local authority areas".²⁴ The report noted "Therefore, while Rule 4(1)(6) imposes a positive requirement on the Commission to keep in view regional and district boundaries, it does not prohibit the Commission from crossing the boundary of a local authority area".²⁵ It is worth noting that the wording of Rule 4 for Scotland is less stringent than in England and therefore the Commission has greater latitude to cross local boundaries. In its evidence to the Home Affairs Select Commission the Scottish Commission regarded their Rule 1 task of holding seats down as overriding Rule 5 on the electoral quota (para 10 of memo submitted by the Boundary Commission for Scotland).

²⁰ HC 433

²¹ HC 195 paras 5-7

²² Cm 2726

²³ para 5

²⁴ Tayside and Central were parted, as were Lothian and Borders

²⁵ para 7

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The English Commission's proposals to add a further five seats have emerged despite an initial intention to limit increases. Its introductory booklet published in 1991²⁶ stated "The Commission takes the view that, where it is necessary to do so in order to give effect to Rule 1 (total number of constituencies) it would be proper for them in the exercise of the discretion given to them in Rules 5, 6 and 7 to limit any further increase in the number of seats".

In the final report the Commission noted the reasons for the seemingly inexorable rise in the number of seats.²⁷

Number of Constituencies

2.8. The reasons for the in-built tendency for an increase in the number of seats allocated in England are:

- additional seats allocated to a county for special geographical considerations in a preceding review are already included in the denominator used to calculate the electoral quota in a current review before special geographical considerations are examined, resulting in double counting of the effect of those considerations,
- once the exact theoretical entitlement of seats for an area has been calculated to several decimal points the requirement of Rule 5 (seats should have electorates as near to the electoral quota as is practicable) leads to a complication in how the exact theoretical entitlement is rounded. For example, if the electoral quota were 60,000 and an area had 85,000 electors, it could be allocated either one or two seats. Allocating one seat would give it an electorate of 85,000 which is 25,000 above quota; allocating two seats would give an average electorate of 42,500 which is 17,500 below quota. The latter being significantly nearer the quota, would be, all other things being equal, the preferred solution. However, the exact theoretical entitlement is 1.42 (85,000/60,000). A formula can be derived which gives the point from which the exact theoretical entitlement should be rounded up. The larger the electorate the greater is the theoretical entitlement and the nearer is this point to .5,

<i>Theoretical Entitlement rounding up point</i>	<i>Rounded number of seats</i>
1.333	2
2.4	3
3.429	4
4.444	5
5.455	6
6.462	7

²⁶ The Review of Parliamentary Constituencies Chapter 3, para 19

²⁷ For a technical discussion on this phenomenon - see Iain Maclean and Roger Mortimore's "Appointment and the Boundary Commission for England in Electoral Studies 1992 pp293-309

7.467	8
<i>Theoretical Entitlement</i>	<i>Rounded number</i>
<i>rounding up point</i>	<i>of seats</i>
8.471	9
9.474	10
10.476	11

The mathematical explanation of this phenomenon is shown in the third periodical report at Appendix B. This rounding up of some seats with a theoretical entitlement below 0.5 tends to result in an increased allocation to England overall, and

- the extra allocation of seats in one review results in a smaller electoral quota than would otherwise have been the case at the following review. This in turn increases the theoretical entitlement to seats in every county and London borough leading, in some areas, to an increased allocation of seats.

The final report noted "we did not start the review with a pre-conceived number to recommend but, conscious of the limitation in Rule 1 to the total allocation of seats, we decided that, if we were to find that our proposals would lead to an increase of 10 or more seats, that would be substantially greater than was permitted, and then we would re-appraise our proposals to reduce the allocation. In the event the recommended increase, at only 5 seats did not lead to such a re-appraisal" (para. 6.20).²⁸

The report noted that the Commission could have recommended a higher number of seats than 529. In particular, the Commission had rounded up only once out of 6 possible cases in non-metropolitan counties when the theoretical entitlement had been below .5 of a seat. In London the Commission rounded up only once instead of a possible 6, and crossed London borough boundaries so reducing the overall number of London borough seats by ten.²⁹

Representation of Scotland, Wales and Northern Ireland

Part II of this Paper examined the process by which each constituent part of the UK was given separate electoral quotas. Library Research Paper No 95/58 *The West Lothian Question* p.16 has some data on the allocation of seats if these were to be distributed on a strict UK-wide pro-rata basis. Using 1994 electorates this would give 549 seats to England, 59 to Scotland, 33 to Wales and 17 to Northern Ireland.³⁰ McLean has argued³¹ the over-representation of Scotland and Wales had arisen not from considerations of principle but from the bargained compromises of the 1944 Speakers Conference, subsequently frozen into

²⁸ For a technical discussion on this phenomena see Iain McLean and Roger Mortimore in "Appointment and the Boundary Commission for England" in *Electoral Studies* 1992 pp 293-309

²⁹ See para 2.11 for more detail on these decisions

³⁰ The figures do not sum to 659 because of rounding but the exact figure for Northern Ireland of 17.49 suggests that 18 seats there would not be an unreasonable total

³¹ In *The Representation of Scotland and Wales in the House of Commons* 1995 to be published in *Political Quarterly*

legislation.

The fact that there is no provision within the legislation for the shares of seats of each constituent part of the UK to be reviewed means that the next review will be faced with similar problems.

Local Boundaries and Local Ties

As noted above, the Commission has, for the first time, crossed London borough boundaries despite the wording of Rule 4 (1)(a)(II) which states that as far as practicable having regard to Rules 1 to 3 "no London borough or any part of a London borough shall be included in a constituency which includes the whole or part of any other London boroughs".³² For this review seven pairings of adjacent Boroughs were made to calculate the theoretical entitlement.

The Commission has defended its decision on the basis of the wide deviation of electorates from the electoral quota which would occur if boundaries were not crossed.³³ It pointed out that the discretion to depart from Rule 4 given in Rule 5 is limited and may only be applied to avoid an 'excessive disparity' between an electorate and the electoral quota, or neighbouring electorates.

The recommendations in London reduce the total number of seats from 84 to 74, reflecting the reduction in the electorate, and greatly reducing existing deviations in the electors per seat. Eight seats will straddle seven London borough boundaries. The Commission calculate that there are 3 seats less than would have occurred if boundaries had not been crossed.³⁴ As Johnston, Rossiter and Pattie note³⁵ the Commission were clearly stating that the electoral disparities were such that Rule 5 had to take precedence over both Rule 4 and 7.

The Commission did not recommend the crossing of county boundaries outside London (apart from the electors of the Isles of Scilly who are counted with Cornish electors). Metropolitan county boundaries were also not crossed; these boundaries still exist despite the abolition of the councils in the Local Government Act 1985) but metropolitan borough boundaries and district boundaries were frequently crossed. The report noted that the number of constituencies which crossed such boundaries had remained almost stable since the Third Periodical Review:-

"In the previous review six constituencies were recommended which crossed metropolitan district boundaries whereas our recommendations include 13 which do so.

³² The few electors in the County of the City of London have previously been included with City of Westminster electors.

³³ See paras 32-36

³⁴ para 3.13

³⁵ A Change in the Rules and a Change in the Outcomes? Paper for Nuffield Conference 16/17 June 1995

Similarly, 167 constituencies crossed non-metropolitan district boundaries whereas our recommendations include 159 which do so."³⁶

The Commission invoked Rule 6 on special geographical considerations only twice - for the Isle of Wight and for the Copeland seat in Cumbria, whereas in the Third Review extra seats were allocated in Cumbria, Lancashire and Northumberland.

Johnston, Rossiter and Pattie³⁷ note that the main change between the Third and Fourth Reviews is that the latter has achieved greater electoral equality. Despite the Foot judgement which gave the Commission greater discretion in its interpretation of the rules, the Commission appear to have taken note of Parliamentary and Government pressure about the increasing size of the Commons. The authors found "constituencies were proposed in the Fourth Review which were both closer to the quota on average and less variable in their distance from that quota within each County and Borough than was the case a decade earlier" (p.9). Ward size appeared to be the main constraint to the achievement of relative equality. The equality of electorate achieved in the proposals for the London Boroughs was particularly marked. The Commission recommended no change in 132 constituencies, taking into account Rule 7 (inconveniences of alterations) and these constituencies deviated from the electoral quota by 6.52 per cent, much larger than the average for all constituencies (p 13).

The Commission Report summarises the disparity from the electoral quota as follows:

The Commission also commented on methods of dividing towns and cities between constituencies:-

Other Geographical Considerations: Doughnuts and Sandwiches

2.32. Objections were often made about the method used by us in dealing with cities and towns which had roughly the same number of electors as the electoral quota. On several occasions we provisionally recommended a constituency which comprised the town, with surrounding areas forming another constituency or constituencies. This arrangement was known as the "doughnut". In other areas we provisionally recommended that the town be split into two, often using a distinctive feature such as a river as a boundary, with each part being added to a rural hinterland. This arrangement was known as the "sandwich".

2.33. We had no single formula or policy for choosing between the alternatives but tried to find the best scheme for each town, within the overall consideration of the

³⁶ para 2.25

³⁷ "A Change in the Rules and a Change in the Outcomes" an evaluation of the work of the Boundary Commission for England in its Third and Fourth Periodic Reviews - paper for Nuffield Conference 16/17 June 1995

county, on an individual basis. For example, our solution in Chelmsford is to split Great Baddow from the rest of the town whereas in Colchester we recommend reuniting the two parts in one constituency.

2.34. Factors which we take into account in considering the geography of an area include estuaries, major roads and other lines of communication such as railways and rivers which are easily identifiable borders but not necessarily physical barriers.

Press reports have suggested that Labour presented evidence favouring 'doughnut' seats in a number of areas at the local inquiry stage, with successful results in a number of instances. Jack Straw singled out Redditch, Bedford, Crawley, Worcester and Stevenage as successful 'doughnuts' for the Labour Party.³⁸

Local inquiries

Local inquiries continued to play an important part in the process of redistributing seats. Local inquiries were held for 25 of the 32 London boroughs, for all of the metropolitan counties and for 36 of the 40 non-metropolitan counties.³⁹ In 74 per cent of Counties and London boroughs the Commission published revised and modified recommendations, compared with 77 per cent in the Third Periodical Review.⁴⁰ The report expresses concern about several occasions when a level of support for the provisional recommendations was made evident only after they had been revised following a local inquiry which was not attended by supporters of the provisional recommendations.⁴¹ Johnson, Rossiter and Pattie⁴² found that the Commissions reconsiderations following local inquiries had led to greater variability of electorate size than in the provisional recommendations. The authors also noted that much of the material presented at the local inquiry came from the political parties seeking electoral advantage, and the Commission and Assistant Commissioner had a particularly difficult task in sifting this type of evidence, so that their recommendations remained unbiased.

Rossiter (in "The Liberal Democrat response to the process - a semi-detached view", prepared for Nuffield Conference 16/17 June 1995) suggests that Labour was significantly more united than the Conservatives in their presentation of evidence to local inquiries and this had a positive effect for Labour in the partisan impact of the recommendations.

Rallings and Thrasher⁴³ examined this process in Leicestershire, where an extra seat had

³⁸ Guardian 7.6.95 "Labour prefers doughnuts to sandwiches as final boundary changes are put to MPs"

³⁹ para 2.43

⁴⁰ para 2.51

⁴¹ para 2.54

⁴² A Change in the Rules and a Change in the Outcomes? 1995

⁴³ "The Parliamentary Boundary Commissions: Rules, Interpretations and Politics" in Parliamentary Affairs July 1994

provisionally been recommended for the south of the county. A Labour council - proposed successfully set the agenda at the local inquiry, and opposition from Conservative party representatives tended to be piecemeal, constituency by constituency. The Assistant Commissioner accepted the counter proposals on the basis of causing minimal disruption and achieving reasonably equal electorates (p 401-2).

It is worth noting that the inquiries did not persuade the Commission to increase the provisional allocation of seats for each county or borough due under the theoretical entitlement merely to re-arrange their distribution.

The political effects of redistribution

The Boundary Commission's Report recommends changes to a considerable number of constituencies. Changes to constituency boundaries result from two main causes: on one hand, substantive redrawings by the Boundary Commission and, on the other, local government electoral and administrative boundary changes since 1983 which have not been reflected in subsequent changes to constituency boundaries⁴⁴. The effect is that very few constituencies will be absolutely unchanged by the review but many of these changes will be minor, reflecting the transfer of a few electors from one ward to another.

Drawing up a list of those constituencies which are essentially unaffected by the boundary review is, therefore, to some extent arbitrary. Table 1 (page 24) lists 163 constituencies in England where the change (based on 1991 electorates) is less than one per cent. There are several constituencies where the only changes being made are to realign the constituency boundaries with altered local government boundaries and where the change in electorate is only slightly more than this threshold. In Islington South and Finsbury, for example, the electorate falls by 1.2% as a result of such a realignment and in Wolverhampton South West it rises by 1.2%. In Somerset, where no changes are recommended other than those needed to take account of new ward boundaries, the transfer of 762 electors from Yeovil to Somerton and Frome leads to a decrease in the former's electorate of 1.03% and an increase in the latter's of 1.06%. None of these constituencies - and there are others with similar changes - is included in the table in Table 1.

In summary, the overall result of the review is that there will be 529 constituencies in England at the next general election compared with the present 524. Greater London has lost ten seats, Greater Manchester and the West Midlands two each and Merseyside and Lancashire one each. Hampshire gains two constituencies and nineteen counties each gain one. Details are given in Table 2 (page 26) which compares the present and future numbers

⁴⁴ A list of the local changes which have led to a realignment of constituency boundaries is given in Appendix B of the Report.

of seats, gives the average (1994) electorate in each county following the review and shows how many seats each county would be 'entitled' to on the basis of 529 seats in England. It can be seen that London remains relatively over-represented, with three more seats than a strict arithmetic allocation would give it. It could also be argued that Merseyside is over-represented and Avon, Derbyshire, Devon, Hampshire, Lancashire, Norfolk and Warwickshire are under-represented, but the table shows that the theoretical entitlements of each of these counties is close to the midpoint between two whole numbers. The Boundary Commission's report discusses matters such as these in much greater detail than can be given here.

At the time of the Parliamentary debates on the Boundary Commission Act 1992 there was press speculation that Labour could lose up to 20 seats as a result of the Fourth Boundary Review. Each set of boundary reviews since the war has tended to benefit the Conservatives since population movement trends are for people to leave cities for suburbs, and thus more seats are allocated to the shires and fewer to the metropolitan areas.⁴⁵

Rallings and Thrasher have calculated that at the 1992 General Election the disparity in the average electorate size between Conservative and Labour constituencies had grown to 8,000; that is the average electorate in those constituencies which returned Conservative MPs, was 8,000 more than in those constituencies where Labour MPs were elected. Furthermore, the exact recommendations on an area by area basis can, they argue, have a significant impact on the overall outcome; even the allocation of individual wards could affect the outcome. Rallings and Thrasher concluded that "The English Boundary Commission's determination to keep the total number of additional seats to a minimum and its preference, all things being equal, for minimal change have worked against the Conservatives. The disparity in the average electorate size of Conservative and Labour seats will be tempered at best, whereas more time consuming, root and branch review dedicated to putting electoral equality above most other considerations would have served the Conservatives better" (p 402).

There has been much speculation about the political effects of the review and the extent to which any party may gain or lose seats purely as a result of boundary changes. Estimating general election results on new boundaries is not an easy task and cannot be done purely scientifically, since any estimates have to be based on part on voting in local elections which do not coincide with general elections, in which electors often vote differently from a general election and for which the parties often do not field a full slate of candidates, so not all electors in a constituency have the opportunity to vote for the party of their choice. Work commissioned by the BBC, ITN, Sky News and the Press Association is being done by Colin Rallings and Michael Thrasher of the University of Plymouth to estimate the 1992 election results on the new boundaries and this will be published in September 1995.

⁴⁵ Colin Rallings and Michael Thrasher in "The Parliamentary Boundary Commissions: Rules, Interpretations and Politics" Parliamentary Affairs July 1994.

Preliminary estimates from the authors suggest that, had the 1992 general election been fought on the new boundaries, with 529 instead of 524 seats in England and two additional seats in Wales, the Conservative Party would have won seven more seats than it actually did, Labour would have won two more and the Liberal Democrats would have won two fewer. Another effect of the changes is that it is estimated - on the basis of uniform national swing - that it would now take a swing (since 1992) of some 0.8% from Conservative to Labour for the Conservative Party to lose its overall majority in the House of Commons compared with a swing of 0.5% on current boundaries. Labour would need a swing of 2.6% from the Conservatives to become the largest party, compared with 2.3% on present boundaries, and would need a swing of 4.5% to gain an overall majority in the Commons compared with 4.1% required under the existing boundaries. These figures contrast with some recent press reports⁴⁶ which suggest that the boundary changes are favourable to Labour in this sense.

Conclusion

There has been surprisingly little controversy over the report of the Fourth Review in England, bearing in mind the history of previous reviews; the First was followed by legislation, the Second was not implemented until after a General Election and the Third was subject to court action brought by the leader of the Labour Party (see Part II for details). No court action has been attempted in the course of the review in England.⁴⁷

Yet the relatively calm acceptance of these proposals has not prevented concern about the current operation of the rules, particularly in relation to the increasing size of the Commons.

On a historical note a Commons of 659 seats is not unprecedented. Between 1885 and 1918 the Commons had 670 MPs as there were 101 Irish MPs a number maintained by Gladstone in the 1885 Reform Act despite the fall in Irish population. This Act also awarded Scotland 12 extra seats in compensation, bringing its total to 70 (excluding university seats). However with the departure of Southern Ireland following the Government of Ireland Act 1920 the number of seats in the Commons fell back to 615 (including university seats) as Northern Ireland was represented by 12 Members (excluding the 1 university seat). Both the Speakers Conferences of 1916/17 and 1994 had wanted the Commons size to be stabilised yet it has increased from 615 in 1935 to 659 today (to take effect after the next General Election).⁴⁸

⁴⁶ for example, the Daily Telegraph 7 June 1995 p12.

⁴⁷ In Scotland Phil Gallie MP had unsuccessfully sought judicial review CT.L.R. Gallie v Boundary Commission for Scotland 3.2.95.) The Court of Session found that the Commission had been exercising its discretion in a particular way, rather than refusing to exercise a discretion in relation to the use of regional electoral divisions as building blocks.

⁴⁸ See Iain McLean "The Representation of Scotland and Wales in the House of Commons 1995, *Political Quarterly*, forthcoming. There were 640 seats in 1945 625 in 1950, 630 in 1955, 635 in 1974, 650 in 1983 and 651 in 1992. The reduction in 1950 resulted mainly from the abolition of 12 university seats

The reasons for the increase have been addressed by the Boundary Commission in its report, which recommends the fixed divisor proposed by the Home Affairs Select Committee as a solution. The Commission consider that its use "would, in our opinion, stabilise the number of seats allocated at about the same number existing when introduced" (para 6.22). It also noted that it had no power over the decisions about numbers taken by the Commissions for Scotland and Wales, and that the legislation contained no guidance on how to restrict the increase in the numbers of seats (para 6.23).

The Commission also recommended an increase in the statutory period for representations from one to two months, and power to define the scope of local inquiries. It also remarked on the difficulty of conducting its review at the same time as the local government review carried out by the Local Government Commission (paras 6.25-6.31).

But the Commission did not recommend the wide-ranging review of the interaction of the rules which some academics have called for. McLean for instance, has argued that "anything a boundary commission does can be justified by the rules - but so can almost any objection to it. This is good news for lawyers but not for citizens. A rational Parliament would re-write the law so that it no longer required the boundary commissions to do what is logically impossible".⁴⁹ McLean points to the Australian Electoral Commission as an example of a successful redistribution mechanism.

However there is an argument for seeking to retain the involvement of MPs in formulating the rules about redistribution through Speakers Conferences and the scrutiny of legislation. Redistribution is a process with major political outcomes, and it is difficult to see how the rules for redistribution can be formulated with no political input. It might be better to have a channel for political influence, rather than to ignore its presence altogether, just as political parties are the major participants at the local inquiries concerned with examining local ties. In addition, MPs might be unlikely to accept a redistribution process, when they had no involvement in the ground rules.

The Government have not indicated any recent intention to examine the operation of the rules, and any attempt to do so poses serious problems. It is worth noting that the Hansard Society Commission Report on Election Campaigns Agenda for Change 1991 agreed that the present distribution of seats between Scotland, Wales and England was unjust (para 2.49) and recommended a single Boundary Commission for the whole of the UK, but could not present a unanimous report on the weight to be placed on local boundaries and local ties versus

⁴⁹ *Guardian* 8/6/95 "House of the rising roll-call"

numerical equality. Finally Library Research Paper No 95/58 The West Lothian Question examines the related issue of the level of Scotland and Welsh representation at Westminster.

Research Paper 95/74

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