

Standards, Procedures and Public Appointments Committee
Scottish Parliament
EDINBURGH
EH99 1SP

7 May 2024

SPPA.Committee@parliament.scot

Dear Committee,

Thank you for inviting Colin Wilson and me to attend the Scottish Elections (Representation and Reform) Bill evidence session, on behalf of Boundaries Scotland, on Thursday 28 March 2024.

Although we responded to the earlier consultation on the Scottish Elections (Representation and Reform) Bill, I am writing to you again as a follow up to both the consultation and attendance at the Committee to restate some of the points particularly as they relate to timing and automaticity.

Timing

The Committee enquired about moving the deadline for submitting the next reviews of electoral arrangements for local authority elections from 31 December 2028 to 30 April 2031.

In summary, I explained that the date change was a result of the electoral cycle for local elections changing from every four years to every five years. The elections were to have been 2021, 2025 and 2029, and our original date of 2028 was to be one year before that 2029 election. With five-year terms, the elections will be 2022, 2027 and 2032, so the 2031 date is to be one year before the 2032 election. If the date remained unchanged, it might be confusing for electors when they were voting on one set of wards while we were conducting a review at the same time. The date change also allows us to use the most up to date electorate data.

Approvals process and automaticity

The Committee asked us to explain why Parliament and Ministers have rejected the Commission's final recommendations in previous reviews. I provided two examples from the two recent rounds undertaken by Boundaries Scotland. The Minister had rejected our Dundee City Council area recommendations in 2016 because of opposition in Broughty Ferry as part of the fifth review of local authority wards. He had rejected other local authority designs because of the impending Islands bill, but also rejected proposals for Scottish Borders. Following the reviews conducted after

the Islands Act, the Local Government, Housing and Planning Committee recommended that the Parliament reject two: Argyll and Bute and Highland, the former because the person giving evidence said he felt unable to support them in full, the latter due to political lobbying from the Chair of Highland Council. The remaining four were put to a vote in the Parliament but members might recall that four Liberal Democrat and 22 Labour members voted to reject proposals in Shetland, because, as one MSP noted, the Shetland West community council felt it did not reflect community ties. This despite the fact the committee, and the Shetland witness to the committee, had recommended acceptance, and despite clear praise for our engagement in the process.

Each of these, to our mind, represent a significant deviation from best practice as they called for rejection not on procedural grounds - that Boundaries Scotland had ignored good process and its legislative requirements - but because individual actors did not like the substantive outcome, including in areas that they represent.

International best practice is clear that the boundary review process should be independent and impartial, driven by concerns about active and passive malapportionment or electoral unfairness. Our own rules also give us considerable flexibility to recognise local boundaries, community ties and geographic circumstances in designing wards. Given the direction of travel both internationally and within the UK, but also given the developing habit in Scotland of partisan rejection of boundary proposals we noted that it was a missed opportunity not to include automaticity in the Bill. The recent Senedd legislation, for example, will move Welsh boundary reviews to a system of automaticity, as already exists for Westminster reviews.

If it helps we are enclosing our original submission to the parliamentary consultation on the matter. In my capacity as Professor of Political Science at the University of Edinburgh I also submitted separate evidence on the basis of my academic research on international best practice.

Should you require any additional information please do not hesitate to contact me.

Kind Regards,

A handwritten signature in grey ink, appearing to read 'Ailsa Henderson', with a long horizontal flourish extending to the right.

Professor Ailsa Henderson
Chair
Boundaries Scotland

Boundaries Scotland
Written submission on the Scottish Elections (Representation and Reform) Bill

Standards, Procedures and Public Appointments Committee
The Scottish Parliament
Edinburgh
EH99 1SP

6 March 2024

Dear Committee,

Thank you for allowing Boundaries Scotland the opportunity to comment on Stage 1 of the Scottish Elections (Representation and Reform) Bill.

We were pleased to note that you have amended the date by which Boundaries Scotland should submit its next reviews of electoral arrangements (for the number of local government wards and number of councillors in each local authority), from 31 December 2028 to 30 April 2031. This is a helpful amendment to the status quo provision.

Although our proposal to add Boundaries Scotland to the list of organisations who receive the full electoral register, including attainers, has not been included in the Bill we expect Scottish Government officials to include this requirement at a later date.

In addition, we are disappointed that a change to the approval process for our recommendations to Scottish Ministers is absent from the Bill. The Committee will know that in each of our last two reviews of local authority boundaries, proposals were rejected either by the Minister or, more recently, by Parliament. We raised concerns at the time at the existence of lobbying based on partisan and political considerations and the role they played in the rejection of our recommendations. We believe this presented a significant infringement on our independence.

Boundaries Scotland is an independent, non-political public body making recommendations on electoral boundaries. We believe it is important that an independent body meeting its statutory duties should not have its recommendations rejected, least of all on grounds not covered by the legislation. Such practise risks bringing the fairness of Scottish elections into question. Worldwide, we can find no comparable example of repeated rejections of an independent commission's boundary recommendations. At the moment, therefore, Scotland is an outlier compared to international best practice.

Automaticity – the automatic acceptance of boundary recommendations from independent boundary commissions - is both widely employed in other

jurisdictions and is also the direction of travel to protect against partisan/political interference in the drawing of electoral boundaries. It is now accepted practice at Westminster for UK electoral boundaries. Further, the Senedd Cymru (Members and Elections) Bill recently introduced in the Welsh Senedd includes provisions to switch to a process of automaticity. This has been justified on the basis that it best protects the independence of the boundary commission in Wales and best guarantees electoral fairness and legitimacy. Given the history of rejecting boundary recommendations in Scotland we are particularly keen that Scotland also adopts this change so as to avoid future partisan or political interference.

A summary of our arguments highlighting issues we wished to be included in the Bill was shared with the Scottish Government in August 2022. This was in response to their pre-consultation engagement with the Commission and these have been added as an Appendix to this document for reference.

We also feel including automaticity in the draft legislation would send a strong signal at a time when Boundaries Scotland is currently undertaking a review of Scottish Parliamentary boundaries. We are aware that even if automaticity is included in the bill it would not be introduced before May 2025, the date by which we must submit the final recommendations of our Second Review of Scottish Parliament boundaries. We do believe a public move towards automaticity would send a strong statement about the independence of Boundaries Scotland, and would likewise signal that elected members should not select the boundaries by which they are elected. Including automaticity in the bill would likewise protect parliamentarians from lobbying to reject boundary recommendations.

Yours sincerely,



Ailsa Henderson
Chair

Appendix - Summary of issues to consider for inclusion in response to the Scottish Government consultation on electoral reform

Issue	Priority	Timing	Notes
Approval process for Commission recommendations	Essential	Immediate	It is not tenable to continue with an approval process which allows rejection of the proposals of an independent Commission in the way demonstrated by the islands electoral reviews.
Change of date for submission of next reviews of electoral arrangements	Essential	Immediate	The current deadline of 31 December 2028 no longer fits with the dates of local government elections given the move to 5 year terms and reviews every 15 years. A move to May 2031 would set the deadline 12 months before the elections expected in May 2032.
Scottish Parliament reviews	Important	Before the 3 rd Review of Scottish Parliament constituency boundaries	There are a number of anomalies or issues that should be considered before the 3 rd Reviews. These include: <ol style="list-style-type: none"> 1. use of the Edinburgh Gazette to announce the start of a review; 2. tying of the enumeration date to the Gazette publication date and the register in force on that date; 3. the ability of the Commission to request a full register on that date from EROs; 4. the access of the Commission to attainer information since the franchise was extended to 16 year olds; 5. local inquiries during reviews of electoral arrangements are at the Commission's discretion. For the Boundary Commission for Scotland's reviews of UK Parliament constituency boundaries, public hearings are fixed at between 2 and 5 for Scotland as a whole. The

			<p>system for Scottish Parliament allows Boundaries Scotland discretion plus request by a local authority plus request by a body of 100 or more. This makes planning, and costing, difficult and leaves how many local inquiries are held, and the reasons for holding them, out-with Boundaries Scotland's control; and</p> <p>6. Allowing in person, online and hybrid local inquiries at the discretion of the Commission.</p>
Reviews of electoral arrangements	Desirable	Before next reviews of electoral arrangements	It might be worth considering the current requirement to consult councils formally for a period of two months before public consultation. Also worth reviewing whether councils and others find physical display points of any value and whether these need to be statutorily required.