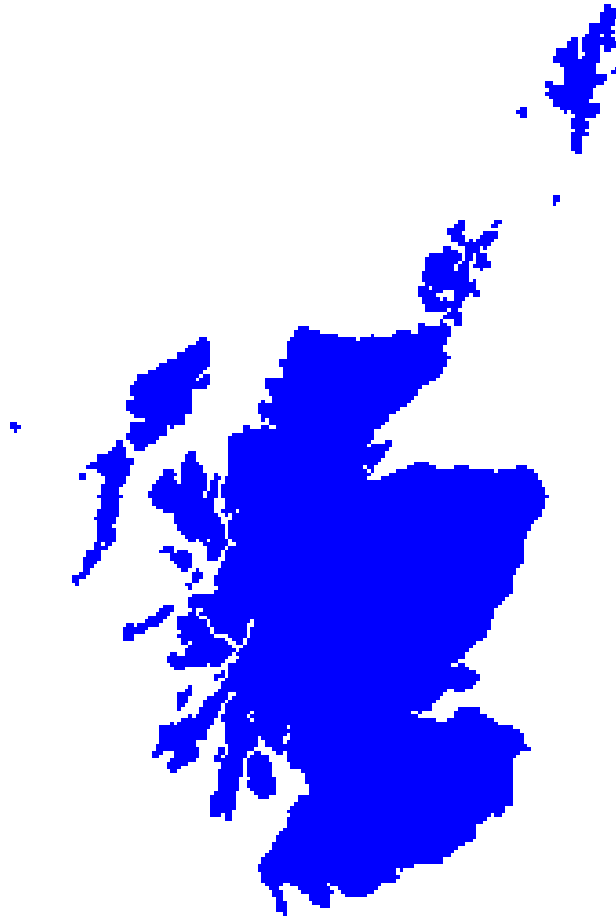


# **Boundary Commission for Scotland**

## **Fifth Periodical Review of Parliamentary Constituencies in Scotland**



### **Background, Processes and Procedures**

## **Fifth Periodical Review of Parliamentary Constituencies in Scotland**

### **The Boundary Commission for Scotland**

#### **Statutory Requirements**

1. The Boundary Commission for Scotland has a statutory obligation under the Parliamentary Constituencies Act (1986) to keep under review the Parliamentary constituencies in Scotland and to conduct a general review between 8 and 12 years from the date of the report on its last general review. Since its last review report was submitted to the Secretary of State for Scotland in 1994, the Commission's next report must be made between December 2002 and December 2006.
2. Changes to the 1986 Act arising from the Scotland Act 1998 require the Commission to apply the electoral quota for England to determine the number of Scottish seats at the Westminster Parliament. On the basis of a quota of around 70,000 electors, the number of Scottish seats at Westminster would fall from the present 72 to around 57. Further, on that basis, the number of seats at the Scottish Parliament would reduce from 129 to around 102.
3. The Scotland Act 1998 also requires that, following a review of parliamentary constituencies in Scotland, the Commission must consider the boundaries of the regions which return additional members to the Scottish Parliament when it makes recommendations that affect constituency boundaries. Further, the Commission must make recommendations regarding the appropriate number of additional members at the Scottish Parliament should it recommend an increase or decrease in the number of Scottish constituencies. The Act requires that the proportion of additional member seats to seats for directly elected members is 56:73. In complying with the Scotland Act 1998, the Commission is required to make any such recommendations in its general report to the Secretary of State for Scotland. Consideration of the Commission's duties in respect of the Scotland Act can take place only after the Commission has completed its statutory obligations under the 1986 Act.

#### **Timing of Reviews**

4. The period required for the Commission's review is dictated partly by the size of the task and partly by the statutory procedures. These are intended to allow full expression of opinion about the proposals at various stages. The Commission is required by statute to submit its report in respect of the Fifth Periodical Review of Parliamentary constituencies in Scotland between December 2002 and December 2006. The constituencies, if approved by both Houses of Parliament, come into operation at the general election that next follows the making of the Order in Council providing the new constituencies. In terms of the Scotland Act 1998, an Order in Council may come into force on a different day from the day it comes into force for the purpose of any election for the Westminster Parliament.
5. The coming into force of such an Order in Council, so far as it has the effect of making any alteration to any constituency of the Scottish Parliament or makes an alteration to any of the eight regions or the number of regional members, shall not affect the return of any member of the Scottish Parliament, or its constitution, until that Parliament is dissolved.

## **Commission Members**

6. The ex officio Chairman of the Commission is the Speaker of the House of Commons. However, the Speaker takes no part in the process of reviewing constituency boundaries. The Deputy Chairman, the Honourable Lady Cosgrove, is a judge of the Court of Session, who is appointed under the terms of the 1986 Act by the Lord President of the Court of Session. Two other members are appointed to the Commission by the Secretary of State for Scotland, after consultation with the leaders of the political parties in Scotland represented in Parliament. The present members of the Commission are Professor R G L McCrone and Dr E F Graham. The Commission has two Assessors, the Registrar General for Scotland and the Director General of Ordnance Survey.

## **Secretariat**

7. Support to the Commission in undertaking its statutory functions is provided by a small Secretariat. Correspondence should be addressed to the Boundary Commission for Scotland, 3 Drumsheugh Gardens, Edinburgh, EH3 7QJ. Alternatively, the Commission can be contacted by e-mail at [secretariat@bcomm-scotland.gov.uk](mailto:secretariat@bcomm-scotland.gov.uk) or by fax or telephone at 0131 538 7240 and 0131 538 7200 respectively. The Commission's web site can be found at [www.bcomm-scotland.gov.uk](http://www.bcomm-scotland.gov.uk).

## **Rules for the Redistribution of Seats**

### **Introduction**

1. Under the Parliamentary Constituencies Act 1986, the Commission is charged with the duty of keeping the representation of Scotland in the House of Commons under review. In discharging its functions, the Commission is required to observe the rules for the redistribution of seats set out at Schedule 2 of the 1986 Act. The rules, as amended by Section 86 of the Scotland Act 1998, are set out in full at Appendix A.

### **Changes to the Rules**

2. Section 86 of the Scotland Act 1998 made a number of changes to the Parliamentary Constituency Act 1986, Schedule 2 rules, the outcome of which was as follows:

- Rule 1(2) was removed: there is now no minimum number of Scottish seats at Westminster.
- Rule 3A was inserted: a constituency which includes the Orkney Islands and/or the Shetland Islands shall not include the whole or part of any other local authority area.
- Rule 5 was altered: for the first review following the Scotland Act 1998, the electoral quota for England must be used to determine the appropriate number of Scottish seats at Westminster.
- Rule 7 was modified: rule 3A, regarding the Orkney Islands and Shetland Islands (see above), cannot be disregarded.

3. Removal of a minimum number of seats for Scotland at the Westminster Parliament, coupled with the requirement that the electoral quota for England must be used to determine the level of Scottish representation, will inevitably result in an overall reduction of the number of Scottish seats. On the basis of the provisional electoral quota for England of around 70,000, Scotland would be entitled to around 57 seats rather than the 72 presently allocated. Whilst the statutory rules do provide the Commission with some scope to modify the level of representation, it is unlikely that any such modification would result in more than a minor adjustment to the overall level of Scotland's representation at Westminster.

### **Constituency Size**

4. Constituencies must comprise as nearly as possible the electoral quota. However, the Commission has discretion to depart from this rule where there are special geographical considerations such as the size, shape and accessibility of a constituency. The Commission also has regard to local ties when formulating proposals for revised constituencies.

5. So far as is practicable, the Commission must have regard also to the boundaries of local government areas. At the time of the last periodical review of constituency boundaries in 1992 - 1994, there were 12 Regional and Islands Areas authorities. The Commission's general policy was to avoid making recommendations for constituencies which would cross the Regional

authority boundaries, although the Commission recognised that this might not always be possible. At the time, the Commission also declared an aim to make proposals for constituencies which were wholly within a District Council area or comprised a number of whole District Council areas. However, it was recognised that this might not be achievable because the electorates of many of the District Council areas were not of the right size.

6. At previous reviews, the geography and electorate of the regional authorities was such that there were few instances where, in observing the statutory rules, the Commission had a need to consider proposals which led to a constituency comprising parts of more than one local authority area. However, following the reorganisation of local government in 1996, a number of constituency boundaries that had come into effect following the Fourth Periodical Review now straddle the new Council boundaries. As a consequence of the change to the structure of local government which was introduced in 1996, there are now 32 Unitary Authorities in Scotland as opposed to the 12 Regions and Islands Areas. It is likely, therefore, that the Commission will feel obliged to make proposals for constituencies which cross Council boundaries, particularly in view of the reduced number of constituencies.

### **Scotland Act 1998**

7. Schedule 1 of the Scotland Act 1998 defines constituencies for the Scottish Parliament to be the same as for the Westminster Parliament, save for the Orkney Islands and the Shetland Islands, which are to be separately represented. Schedule 1 also requires the Commission to consider the implications of recommendations made in respect of changes to constituencies for the Westminster Parliament. In its report to the Secretary of State for Scotland, the Commission must make recommendations in respect of any consequential alterations to either any of the boundaries of the regions for returning additional members to the Scottish Parliament or the number of regional members to be returned for any of the regions. In the Commission's opinion, consequential alterations will require to be made at this review in order to give effect to the statutory rules set out at Schedule 1 to the Scotland Act. The Schedule 1 rules are set out in full at Appendix B.

## **The Commission's Practice**

### **Introduction**

1. The Commission concludes that the changes to Schedule 1 of the Parliamentary Constituencies Act 1986 clearly signal Parliament's intention that the number of Scottish seats at the House of Commons should be reduced. However, possible consequential changes to the composition of the Scottish Parliament cannot be considered until the Commission has discharged its duties under the 1986 Act and agreed final recommendations for changes to Scottish constituencies. These consequential changes concern the number of additional members to be elected to the Scottish Parliament and possible changes to the boundaries of the eight regions for returning such members.

### **Initial Proposals**

2. In keeping with its practice at previous reviews, the Commission will make proposals for constituencies based upon aggregations of the existing local government electoral wards which were introduced in May 1999 following the Third Statutory Review of Local Government Electoral Arrangements undertaken by the Local Government Boundary Commission for Scotland.

3. Because of the fundamental changes to the statutory rules, and to comply as far as is reasonably practicable with the rule regarding the electoral quota, the Commission has decided that it may be necessary to make recommendations for constituencies which cross local authority boundaries. However, the Commission will make every effort to keep to a minimum such proposals.

### **Naming and Designation**

4. Section 3.4 of the 1986 Act requires that the Commission's recommendations for each constituency must include the name by which it should be known and whether it should be classified as a county constituency or a burgh constituency. The designation of a constituency affects the expenses allowable at elections.

5. The 1986 Act does not define the terms 'burgh' or 'county', which relate to the designation of local authority areas in Scotland prior to 1974. The Commission considers, therefore, that, where constituencies comprise predominantly urban areas, they will normally be designated as burgh constituencies. Where constituencies contain more than a token rural electorate, they will normally be designated as county constituencies.

### **Other Considerations**

6. The 1986 Act makes no provision for the Commission to take account of special considerations that may affect an area which, according to those who make the request, may justify more favourable representation than that of other areas. For example, the Act makes no provision for forecast increases or decreases in the electorate to be taken into account. Nevertheless, when deciding constituencies, the Commission does have regard to perceptible trends in the electorate.

7. With regard to rules 4 and 5, the Commission may depart from the strict application of these rules if special geographical considerations, including in particular the size, shape and accessibility of a constituency, appear to render a departure desirable.

8. The Commission is not bound to give full effect in all circumstances to all of the statutory rules but it must take into account, as far as it reasonably can, the inconveniences attendant on alterations to constituencies, other than alterations arising from the need to have regard to local authority boundaries and/or any local ties which would be broken by such alterations.

## **Procedure for Review**

### **Provisional Recommendations**

1. The Commission first determines its provisional recommendations, usually for a group of constituencies. For its forthcoming review the Commission will follow the established practice of publishing provisional recommendations without prior consultation with local authorities and other interests. The Commission considers that it should take the initiative by preparing provisional recommendations using all information available to it. In this way it is not influenced by any particular viewpoint.

### **Publication**

2. Provisional recommendations are made available for public comment. Statute requires the Commission to publish a notice of its provisional recommendations in at least one newspaper circulating in the constituency. The notice has to specify a place in the constituency where details of the proposals may be inspected. Proposals are always illustrated by maps to help make the public more aware of the effect of the Commission's proposals. Maps and associated electorate data will also be made available via the Internet at [www.bcomm-scotland.gov.uk](http://www.bcomm-scotland.gov.uk).

3. The legislation stipulates that representations should be made within a limited period of 1 month from the date of publication of the statutory notice. Representations objecting to or supporting the Commission's provisional recommendations should be directed to the Commission's Secretary by post, fax or e-mail – addresses etc are provided at paragraph 7, page 2 above and further information is contained in each statutory notice.

### **Local Inquiry**

4. The Commission is required to hold a local inquiry if representations objecting to proposed recommendations are received from an interested local authority (that is the Council for the area lying wholly or partly within the affected constituency) or a body of 100 or more parliamentary electors for such a constituency.

5. The inquiry is conducted by an Assistant Commissioner appointed by the Secretary of State for Scotland at the request of the Commission. No statutory procedure is prescribed for the conduct of a local inquiry. The purpose is:

- to get to know local opinions;
- to hear criticisms of or support for the provisional recommendations;
- to receive counter-proposals and enable everyone who wishes to comment on these or on the Commission's proposals to do so.

6. The Commission is not represented at the inquiry, although a member of the Secretariat may be present as an observer. Those who seek to express their views may do so in person, or through a representative, even though they may not have filed written representations.

7. The Assistant Commissioner reports in writing directly to the Commission. Apart from commenting on various objections received, the Assistant Commissioner is fully at liberty to suggest amendments or alterations to the Commission's proposals – or even to substitute completely different proposals if these are acceptable within the rules and appear to command wider support than the original proposals.

### **Final Recommendations**

8. The Commission will consider the Assistant Commissioner's report and the matters discussed at the inquiry, together with any relevant information, when formulating its final recommendations. If the Commission decides to alter the provisional recommendations, the revised proposals are published in at least one local newspaper and made available for public inspection. Details will also be made available on the Commission's web site. If there has been a local inquiry, a copy of the Assistant Commissioner's report is also made available. Those who took part in the inquiry each receive a copy of the report, which will also be made available on the Commission's web site. Representations about these further proposals may then be made to the Commission within a one-month period.

9. The Commission is not required to hold a further inquiry in respect of a constituency, but may do so if it considers it necessary to obtain more information on local opinion or certain matters. If the Commission decides to modify its revised recommendations before finally submitting them to the Secretary of State for Scotland, these fresh proposals will be published and representations again invited. However, no further inquiry will be held.

### **Representation at the Scottish Parliament – Procedure for Review**

10. Schedule 1 of the Scotland Act 1998 determines that the constituencies for the purpose of that Act shall be the constituencies in Scotland for the Westminster Parliament, save for the Orkney Islands and Shetland Islands which must be separately represented.

11. For the purposes of the Scotland Act, there are eight regions, each of which currently returns 7 members to the Scottish Parliament. These regions are, at present, the eight European Parliamentary Constituencies that were provided for by the European Parliamentary Constituencies (Scotland) Order 1996, although this Act is no longer in force for European Parliamentary Elections.

12. The Commission is required by Schedule 1 of the Scotland Act to recommend any alteration in any of the regions or in the number of regional members to be returned for any of the regions that, in the Commission's opinion, are required in order to give effect to the statutory rules. Such recommendations must be contained in the Commission's general report to the Secretary of State for Scotland. Even if the Commission does not make any recommendations regarding the number of additional members of the Scottish Parliament and/or alterations to the boundaries of the eight regions, it must report to the Secretary of State for Scotland that no changes are, in the Commission's view, necessary. The statutory rules are set out in full at Appendix B.

13. Schedule 1 of the Scotland Act 1998 clearly defines the rules to be applied when calculating any necessary change to the number of additional members to be returned for each of the eight regions (the total number of additional members is expressed as the ratio of 56:73, the latter being the number of directly elected members). The rules also clearly state that, in determining changes to the boundaries of any region a constituency shall fall wholly within a region, and the

regional electorate of any region shall be as near the regional electorate of each of the other regions as is reasonably practicable having regard, where appropriate, to special geographical considerations. The Commission does, therefore, have powers to propose variations in the sizes of regions on the grounds of special geographical considerations.

14. Until the Commission has completed its review of Westminster constituencies and has decided upon its final recommendations in respect of these constituencies, it will not be in a position to consider what changes may be necessary in respect of the number of additional members at the Scottish Parliament or whether the boundaries of the eight regions may require revision.

15. On completion of its review of the Westminster constituencies, the Commission will consider what changes may be required to fulfil its obligations under the Scotland Act. The Commission will follow broadly the same practice established for reviewing Westminster constituencies and will publish provisional recommendations in respect of its obligations without prior consultation with local authorities and other interests. By independently preparing provisional recommendations, the Commission will be free to consider all the information available to it and will not be influenced by any particular viewpoint

16. The Commission will then follow the procedures set out at paragraphs 2– 9 above. It should be noted, however, that, with regard to local inquiries (as set out at paragraph 4 above), a local inquiry will be held if representations objecting to proposed recommendations are received from an interested local authority, that is the Council for the area lying wholly or partly within the affected region, or a body of 500 or more parliamentary electors for such a constituency.

17. Once it has completed its considerations under the Scotland Act, the Commission will, as required by statute, submit its recommendations in a report to the Secretary of State for Scotland. A copy of its report will also be laid before the Scottish Parliament.

**Parliamentary Constituencies Act 1986 (as amended)**  
**Schedule 2**

**Appendix A**

1. (1) The number of constituencies in Great Britain shall not be substantially greater or less than 613.  
  
(2) The number of constituencies in Wales shall not be less than 35.  
  
(3) 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 will return a single member.
3. There shall 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.  
  
3(a). A constituency which includes the Orkney Islands or the Shetland Islands shall not include the whole or part of a local government area other than the Orkney Islands and the Shetland Islands.
4. (1) So far as is practicable having regard to rules 1 to 3(a)
  - (a) In England and Wales,
    - (i) no county or part of any county shall be included in a constituency which includes the whole or part of any other county or the whole or part of any other 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 (*as amended by the 1994 Local Government etc. Scotland Act*).
5. The electorate of any constituency shall be as near the electoral quota as is practicable having regard to rules 1 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. For the purposes of the first report of the Boundary Commission for

Scotland to be submitted under section 3(1) of that Act after the commencement of this subsection, “electoral quota” means the number which, on the enumeration date in relation to that report, is the electoral quota for England.

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 (except rule 3(A)) but they shall take account as far as they reasonably can

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

(b) 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 of that part of the United Kingdom by the number of constituencies in it existing on the enumeration date.

(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.

9. In this Schedule a reference to a rule followed by a number is a reference to the rule set out in the correspondingly numbered paragraph of this Schedule.

**Scotland Act 1998**  
**Schedule 1**

**Appendix B**

**General**

1. The constituencies for the purposes of this Act are:
  - (a) the Orkney Islands,
  - (b) the Shetland Islands, and
  - (c) the parliamentary constituencies in Scotland, except a parliamentary constituency including either of those islands.
2. (1) There shall be eight regions for the purposes of this Act.
  - (2) Those regions shall be the eight European Parliamentary constituencies which were provided for by the European Parliamentary Constituencies (Scotland) Order 1996.
  - (3) Seven regional members shall be returned for each region.
  - (4) Sub-paragraphs (2) and (3) are subject to any Order in Council under the Parliamentary Constituencies Act 1986 (referred to in this Schedule as the 1986 Act), as that Act is extended by this Schedule.

**Reports of Boundary Commission**

3. (1) This paragraph applies where the Boundary Commission for Scotland (referred to in this Schedule as the Commission) submit a report to the Secretary of State under section 3(1) or (3) of the 1986 Act recommending any alteration in any parliamentary constituencies.
  - (2) In the report the Commission shall recommend any alteration:
    - (a) in any of the regions; or
    - (b) in the number of regional members to be returned for any of the regions, which, in their opinion, is required to be made in order to give effect to the rules in paragraph 7
  - (3) If in the case of a report under section 3(1) or (3) of that Act the Commission do not make any recommendation within sub-paragraph (2), they shall in the report state that, in their opinion, no such alteration is required.
  - (4) A report making a recommendation for an alteration in any region shall state:
    - (a) the name by which the Commission recommend that the region should be known; and
    - (b) the number of regional members to be returned for the region.

(5) The Commission shall lay any report recommending any alteration in parliamentary constituencies before the Parliament.

4. (1) An Order in Council under section 4 of the 1986 Act which has the effect of making any alteration in any constituency of the Parliament, or makes any alteration within paragraph 3(2), may come into force for the purposes of any election for membership of the Parliament on a different day from the day on which it comes into force for the purposes of any parliamentary election and paragraph 1(c) shall be read accordingly.

(2) The coming into force of such an Order, so far as it has the effect of making any alteration in any constituency of the Parliament or makes any alteration within paragraph 3(2), shall not affect the return of any member of the Parliament, or its constitution, until the Parliament is dissolved.

### **Notices**

5. (1) Where the Commission have provisionally determined to make recommendations affecting any region, they shall publish in at least one newspaper circulating in the region a notice stating:

- (a) the effect of the proposed recommendations and (except in a case where they propose to recommend that no alteration within paragraph 3(2) be made) that a copy of the recommendations is open to inspection at a specified place or places within the region, and
- (b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of the notice and the Commission shall take into consideration any representations duly made in accordance with any such notice.

(2) Where the Commission revise any proposed recommendations after publishing notice of them under sub-paragraph (1), the Commission shall comply again with that sub-paragraph in relation to the revised recommendations, as if no earlier notice had been published.

### **Local inquiries**

6. (1) The Commission may, if they think fit, cause a local inquiry to be held in respect of any region.

(2) If, on the publication of a notice under paragraph 5(1) of a recommendation for:

- (b) from an interested authority, or
- (c) from a body of electors numbering 500 or more,

the Commission shall not make the recommendation unless a local inquiry has been held in respect of the region since the publication of the notice.

(3) If a local inquiry was held in respect of the region before the publication of the notice under paragraph 5(1), sub-paragraph (2) shall not apply if the Commission, after considering the matters discussed at the local inquiry, the nature of the representations received on the publication of the notice and any other relevant circumstances, are of the opinion that a further local inquiry would not be justified.

(4) In this paragraph, in relation to any recommendation:

- "interested authority" means the council for an area which is wholly or partly included in the region affected by the recommendation, and
- "elector" means an elector for the purposes of an election for membership of the Parliament in any constituency included in the region.

(5) Sections 210(4) and (5) of the Local Government (Scotland) Act 1973 (attendance of witnesses at inquiries) shall apply in relation to any local inquiry held under this paragraph.

## **The Rules**

7. (1) The rules referred to in paragraph 3 are:

1. A constituency shall fall wholly within a region.
2. The regional electorate of any region shall be as near the regional electorate of each of the other regions as is reasonably practicable having regard, where appropriate, to special geographical considerations.

3 So far as reasonably practicable, the ratio which the number of regional member seats bears to the number of constituency member seats shall be 56 to 73.

4. The number of regional member seats for a region shall be:

(d) one eighth of the total number of regional member seats, or

(e) (if that total number is not exactly divisible by eight) either one eighth of the highest number which is less than that total number and exactly divisible by eight or the number produced by adding one to one eighth of that highest number (as provided by sub-paragraphs (2) to (4)).

(2) If the total number of regional member seats is not exactly divisible by eight, the Commission shall calculate the difference between:

(a) the total number of regional member seats, and

(b) the highest number which is less than that total number and exactly divisible by eight, and that is the number of residual seats to be allocated by the Commission.

- (3) The Commission shall not allocate more than one residual seat for a region.
- (4) The Commission shall divide the regional electorate for each region by the aggregate of:
- (a) the number of constituencies in the region, and
  - (b) one eighth of the highest number which is less than the total number of regional member seats and exactly divisible by eight, and, in allocating the residual seat or seats for a region or regions, shall have regard to the desirability of allocating the residual seat or seats to the region or regions for which that calculation produces the highest number or numbers.
8. (1) For the purposes of any report of the Commission in relation to a region, the regional electorate is the number of persons:
- (a) whose names appear on the enumeration date on the registers of local government electors, and
  - (b) who are registered at addresses within a constituency included in the region.
- (2) In sub-paragraph (1), "the enumeration date" means the date on which the notice about the report is published in accordance with section 5(1) of the 1986 Act.