

# National Assembly for Wales

## The Local Government Boundary Commission for Wales

September 2011

This paper explains how the Local Government Boundary Commission is constituted and what its work is. It also outlines the recent developments that led to the Minister for Local Government and Communities, Carl Sargeant AM, terminating the appointments of the Commissioners.

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# **National Assembly for Wales**

## **The Local Government Boundary Commission for Wales**

September 2011

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# The Local Government Boundary Commission for Wales

## 1. Introduction

In June 2011 the Minister for Local Government and Communities, Carl Sargeant AM, announced that he was terminating the appointment of the three members of the Local Government Boundary Commission for Wales (“the Commission”). This<sup>1</sup> occurred following the publication of an independent report which concluded that the Commission has lost the confidence of its stakeholders and is “not fit for purpose”.

Furthermore, in his legislative statement on 12 July 2011 the First Minister announced that the Welsh Government intended to bring forward a *Democracy and Elections (Wales) Bill*, in the second year of the legislative programme, which will “make reforms to the structure and functions of the Local Government Boundary Commission for Wales”.<sup>2</sup>

This paper explains the how the the Commission is constituted and what its work is. It also outlines the recent developments that led to the Minister taking the actions that he did.

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<sup>1</sup> [Independent Review of the Local Government Boundary Commission for Wales, 2011](#)

<sup>2</sup> [RoP, 12 July 2011](#)

## 2. The Local Government Boundary Commission for Wales<sup>3</sup>

### 2.1. *Legal Basis*

The Local Government Boundary Commission for Wales (“the Commission”) was established in June 1974 under the terms of Section 53 of the *Local Government Act 1972* (“the 1972 Act”). The statutory functions of the Commission are specified in Sections 54 to 78 of the 1972 Act as amended by the *Local Government (Wales) Act 1994* (“the 1994 Act”). Schedule 8 to the 1972 Act makes provision for the Commission’s constitution and proceedings.

Wales is the only part of the United Kingdom which still relies on the *Local Government Act 1972*, as amended by the *Local Government (Wales) Act 1994*, as the legal basis for the work of its Local Government Boundary Commission.

From 1 April 1995 the Commission became an advisory Non-Departmental Public Body funded by Grant-in-aid from the former Welsh Office and after 1 July 1999, an Assembly Sponsored Public Body (ASPB). When the *Government of Wales Act 2006* came into effect on 25 May 2007 the Commission became an Assembly Government Sponsored Body (AGSB).

The purpose of the Commission is:

To review local government areas and electoral arrangements in Wales, with a view to considering whether or not to make proposals to the National Assembly for Wales for effecting changes which appear to the Commission to be desirable in the interests of effective and convenient local government.<sup>4</sup>

Since Part 4 of the *Government of Wales 2006* (“2006 Act”) has come into force following the referendum in March 2011, the National Assembly for Wales is able to legislate in respect to the Commission because it is covered under subject 12: Local Government in Schedule 7 of the 2006 Act.

### 2.2. *Membership*

The Commission is made up of three members including a chair and is appointed by Welsh Ministers, the relevant Minister being Carl Sargeant AM, the Minister for Local Government and Communities.

Following the termination of the appointments of the previous Commissioner, the Minister appointed Max Caller to be the interim Chair of the Welsh Commission in

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<sup>3</sup> [Local Government Boundary Commission for Wales website \[accessed 16 August 2011\]](#)

<sup>4</sup> [The Local Government Boundary Commission for Wales Annual Report 2009/2010](#), p1.



July 2011. Mr Caller is currently the Chair of the Local Government Boundary Commission England but has agreed to be appointed as Chair to the Welsh Commission on a temporary basis. He took up office on 22 July for a period of eight months. The Minister has also asked the interim Chair to nominate potential candidates for consideration as additional Commissioners. He will issue a further statement when interim Commissioners have been identified.

The Commission currently has a staff of 12, eleven of them full-time and seven of them directly employed.

### *2.3. The work of the Local Government Boundary Commission*

#### *Local Government Areas*

One area of the work of the Commission is to keep under review all principal areas (i.e. local authority areas) in Wales for the purpose of considering whether or not to propose to the Welsh Government changes appearing to the Commission desirable in the interests of effective and convenient local government. It also considers requests for reviews from local authorities.

The Commission considers reports made by principal councils in respect of community area reviews (i.e. community council areas) carried out by them and makes recommendations to the Welsh Government.

#### *Electoral Arrangements*

At ten to 15 year intervals the Commission is required to review the electoral arrangements for every principal area in Wales.

#### *Directions*

The Welsh Government may direct the Commission to conduct a review of Wales as a whole, or of any one or more local government areas or parts of such areas in Wales.<sup>5</sup>

#### *Guidance for reviews*

Section 60 of the *Local Government Act 1972* ('the 1972 Act') lays down procedural guidelines to be followed when undertaking all reviews. The basic stages of a review are:

- an announcement of the review's commencement in which initial suggestions and comments are invited by a specified date;

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<sup>5</sup> [The Local Government Boundary Commission for Wales Annual Report 2009/2010](#), p2-3.

- the publication of the Commission's draft proposals when comments on them are similarly invited by a specified date; and
- the publication of final proposals after which any further comments must be addressed to the Welsh Government.<sup>6</sup>

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<sup>6</sup>*ibid.*, p3.

### 3. The termination of the Commissioners' appointments

In December 2010 the then Minister for Local Government and Social Justice, Carl Sargeant AM, announced that he would not implement any of the **electoral reviews** recommended by the Commission ahead of the 2012 local elections but that he would establish an independent review of their programme of work. The reason for this is that the electoral reviews were running late and there was concern about the consistency and quality of those which had been completed. The Minister's statement said:

In light of these issues, in particular the delays in producing reports for a number of counties I have concluded that I will not make any orders in respect of the boundary reviews for any local authorities in Wales take effect for the 2012 elections. I do not wish to create a situation where some local authorities will conduct elections in 2012 under new arrangements and others under existing arrangements because of the imbalance inherent in such a situation. I am making this announcement now to provide certainty to local government and others concerned with the electoral process.

Clearly the fact that the Boundary Commission has failed to deliver this programme of reviews consistently and within the agreed timescales gives me cause for concern. I have therefore instructed my officials to establish an independent review to identify why these failures have occurred and identify actions that can be taken to ensure that the programme can be delivered efficiently and to a high standard in time for the 2016 elections.<sup>7</sup>

The Minister appointed Glyn Mathias to lead the Review. Max Caller, Chair of the Local Government Boundary Commission for England and Peter Mackay, Chair of the Local Government Boundary Commission for Scotland were invited to join the Panel as advisers, to contribute their expertise to the work of the review.

The terms of the Review<sup>8</sup> were:

- to identify the reasons for the delay in the programme of reviews and assess what action the Commission took to reschedule the programme on repeated occasions;
- to examine the methodology adopted by the Commission in the conduct of its reviews and make recommendations as to how it could be strengthened and improved in future;
- to review the Commission's corporate policies and operational objectives as relevant for electoral reviews to ensure they are consistent with the legislative requirements, Ministerial Directions and guidance provided to the Commission;

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<sup>7</sup> [Welsh Government, \*Written Statement: The Local Government Boundary Commission for Wales – Electoral Review\*, 8 December 2010 \[Accessed 19 July 2011\]](#)

<sup>8</sup> [Independent Review of the Local Government Boundary Commission for Wales, 2011](#)

- to assess the Commission’s quality assurance methods in the light of administrative errors made in connection with the conduct and reporting on the electoral reviews and make recommendations as to how they can be improved;
- to assess the capacity and capability of the Commission and its staff to complete the cycle of reviews in a satisfactory manner within a reasonable timescale in view of the future expansion in the work programme of the secretariat on other review programmes.<sup>9</sup>

In the course of setting out the evidence the Review identified some key points which require clarification, amendment or modification, namely:

- the constraints in the 1972 Act on the Commission preventing it from dividing community areas to create electoral divisions;<sup>10</sup>
- the meaning in both the legislation and the directions of the “desirability” of multi-member divisions and what exactly is meant by “the broad support of the electorate;”
- the ratio of councillors to electorate set out in the directions, and whether such a single ratio for all the local authorities in Wales is required in the first place.<sup>11</sup>

“This is a most serious conclusion and I have decided to terminate the appointments of the three existing commissioners. I believe that the taking of this decisive step and the early appointment of suitable replacements is necessary to recover the reputation of the commission in the eyes of the public, local government and other interested parties.”

The Review also concluded that:

Judging from the evidence received by this inquiry, there has been a loss of confidence among stakeholders in the work of the Commission. It is now vital that steps are taken to restore public confidence in the Commission and maintain and strengthen the independence of a body which is a vital pillar in the democratic process.<sup>12</sup>

The recommendations of the Review can be seen in **Annex 1**.

On 22 June 2011 the report of the review was published and the Minister made a **statement in Plenary**. He said:

I fully accept the findings of the report; it contains lessons for all of us who are concerned with the process of electoral reviews, including the Welsh Government. The most concerning finding, however, is the conclusion reached that the Local Government Boundary Commission for Wales has lost the confidence of its stakeholders and therefore it is not fit for purpose.

<sup>9</sup> Ibid.

<sup>10</sup> All of Wales is divided into communities.

<sup>11</sup> **Independent Review of the Local Government Boundary Commission for Wales, 2011**

<sup>12</sup> **Independent Review of the Local Government Boundary Commission for Wales, 2011**

This is a most serious conclusion and I have decided to terminate the appointments of the three existing commissioners. I believe that the taking of this decisive step and the early appointment of suitable replacements is necessary to recover the reputation of the commission in the eyes of the public, local government and other interested parties. I will be seeking to make temporary appointments to the posts until such time as a full and open appointment process can be organised.<sup>13</sup>

#### 4. The Local Government Boundary Commission for Wales and the Boundary Commission for Wales

The Local Government Boundary for Wales and the Boundary Commission for Wales, which determines Westminster and Assembly constituencies, have a separate legal basis. Moreover, the first is devolved and the other is not. Further information about the Boundary Commission for Wales can be found in this [research paper](#).

However, from 1 January 2002 the Commission's Secretariat undertook the responsibility of providing a Secretariat to the Boundary Commission for Wales for its reviews of the parliamentary constituencies in Wales under a Memorandum of Agreement between the Commission and the relevant Government bodies in Wales and at UK level. However, this arrangement was highlighted as an area of concern by the Review.

The secretariat of the Commission is shared with the Parliamentary Boundary Commission for Wales, which has a separate set of Commissioners. The Boundary Commission for Wales is now beginning work on reviewing the parliamentary constituencies of Wales under the terms of the Parliamentary Voting Systems and Constituencies Act 2011. This will inevitably constrain the capacity of the Commission to complete the remaining local government electoral reviews in good time.<sup>14</sup>

In fact two of the Local Government Boundary Commissioners were also Boundary Commissioners and following the termination of their appointments as the former, resigned as the latter.<sup>15</sup>

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<sup>13</sup> [RoP, 22 June 2011 \[Accessed 19 July 2011\]](#)

<sup>14</sup> [Independent Review of the Local Government Boundary Commission for Wales, 2011](#)

<sup>15</sup> [Wales Online, Boundary Commission abandons September deadline for proposals to cut Welsh constituencies, 4 August 2011](#)

## Annex 1 Independent Review of the Local Government Boundary Commission for Wales<sup>16</sup> *[RS emphasis]*

4.7 As a matter of policy, **the Commission should consult fully on the approach it proposes to take on electoral reviews, as a starting point to the review programme.** The consultation should include the steps it proposes to take towards assessment of **council size**, the balance between the different criteria, the need for any increase in **multi-member divisions**, and the responses it expects from key stakeholders.

4.8 Subject to 4.7, the Commission should **consult on an appropriate methodology for assessing the number of councillors for each authority.** It should include consideration of the approach taken in Scotland and the approach taken in England (see paragraphs 3.10 and 3.11). Whatever process is adopted, it should be clear and transparent to all stakeholders.

4.9 The Welsh Government should **abandon the requirement laid down in section 4(c) of the Directions to the Local Government Boundary Commission for Wales 2009 for a single councillor to elector ratio.** It should be replaced by the process outlined in the previous recommendation for a transparent approach to assessing council size.

4.10 The Commission should ensure there is a **clear audit trail**, based on minutes of decisions, legal advice and public consultation, for its approach to determining the balance of the criteria they propose to implement under paragraph 1A(5) of Schedule 11 to the 1972 Act. It should ensure that appropriate documentation exists to demonstrate both the way it dealt with the general criteria and how they were applied in each review.

4.11 The Commission should adopt an **appropriate methodology for assessing the desirability of multi-member divisions in each authority**, as required in Section 3(1) of the Ministerial Directions 2009.

4.12 The Welsh Government should seek, as a priority, **to amend the Local Government Act 1972 to remove paragraphs 5(c) and 5(d) of Schedule 11 relating to community councils.**<sup>17</sup> The Commission should be given power to ward community areas for the purpose of creating electoral divisions.

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<sup>16</sup> **Independent Review of the Local Government Boundary Commission for Wales, 2011**

<sup>17</sup> "(c) every ward of a community council having a community council (whether separate or common) shall lie wholly within a single electoral division; and  
(d) every community which is not divided into community wards shall lie wholly within a single electoral division"

4.13 The Welsh Government should **consider removing the need for orders implementing community reviews to be made by Welsh Ministers**. The Commission could be given an order-making power to implement community reviews, with a right of appeal to the Welsh Ministers.

4.14 The Welsh Government should **consider the approach it wishes to follow for future electoral reviews**. If the Minister decides the priority is to keep electoral imbalances under control on a regular and systematic basis, the 1972 Act should be amended so that such reviews are undertaken on a rolling basis without regard to having all authorities reviewed in time for an electoral cycle.

4.15 If however, the Minister sees value in a more comprehensive review approach on the current cyclical basis, it should set out and monitor the Commission's delivery on an agreed and resourced programme. The Minister should also consider directing the Commission to use its powers of interim review to deal with particular electoral imbalances.

4.16 The Commission should **improve its assessment of the risks of not meeting the timetable set by the Government**, and there should be a risk analysis on a review by review basis. The Commission should make regular assessments of the resources at its disposal to ensure they have sufficient to meet the timetable.

4.17 The Commission should **engage with all 22 local authorities** to ensure as far as possible that each of them puts forward electoral schemes for their own areas as part of the evidence that informs the Commission's preparation of draft proposals.

4.18 The Welsh Government should **review the structure, personnel and budget of the Commission** in the light of the increasing commitments faced by the secretariat.

4.19 As a matter of priority, the Welsh Government **should appoint two new Commissioners with direct experience at a senior level of running elections or other local government experience at a corporate management level**. In addition, the Government should consider exercising the power under 3(1) of Schedule 8 of the 1972 Act to appoint people with expert knowledge to advise and assist the work of the Commission.

4.20 The Commission should **review its communications strategy** to ensure it engages more pro-actively with all stakeholders.

4.21 The Welsh Government should **consider whether Ministerial Directions are a necessary addition to the requirements set out in an amended Act**. While it would be sensible to retain the power to issue Directions to meet particular circumstances, it might in general be more practical, and potentially more flexible, for the

Government and the Commission to conduct a public exchange of letters setting out the strategic direction of the review process.