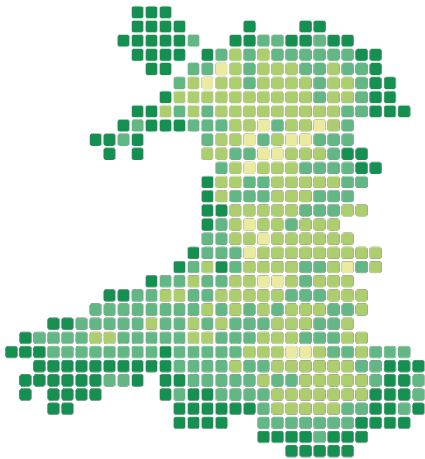


LOCAL DEMOCRACY AND BOUNDARY COMMISSION FOR WALES



Comisiwn Ffiniau a
Democratiaeth Leol
Cymru

Local Democracy and
Boundary Commission
For Wales

ELECTIONS AND ELECTED BODIES (WALES) BILL

**LOCAL GOVERNMENT AND HOUSING COMMITTEE –
STAGE 1 SCRUTINY**

CONSULTATION RESPONSE

NOVEMBER 2023

FOREWORD

This document sets out the response of the Local Democracy and Boundary Commission for Wales (“**the Commission**”) to the Local Government and Housing Committee’s consultation in relation to the Elections and Elected Bodies (Wales) Bill introduced to the Welsh Parliament on 2 October 2023 (“**the Elections Bill**”).

In this document the Commission provides detailed observations in relation to the Bill, including twelve suggestions for amendment.

The Commission welcomes the opportunity to engage in the development of the Bill.

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LOCAL DEMOCRACY AND BOUNDARY COMMISSION FOR WALES

**ELECTIONS AND ELECTED BODIES (WALES) BILL –
CONSULTATION RESPONSE**

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1. ABOUT THE COMMISSION

- 1.1 The Commission is an independent Welsh Government Sponsored Body. The Commission was established in 1974 under the terms of the Local Government Act 1972, and was known at the time as the Local Government Boundary Commission for Wales. The Commission was renamed by section 2 of the Local Government (Democracy) (Wales) Act 2013 (“**the 2013 Act**”).
- 1.2 At present, the Commission’s principal functions are to monitor and review the areas and electoral arrangements relevant to local government in Wales.
- 1.3 For this purpose, the Commission’s powers include reviewing the boundaries of principal council areas in Wales and the electoral arrangements for principal councils. The Commission also has certain powers in relation to reviews of community boundaries and community electoral arrangements, although the principal councils have primary responsibility for these reviews in their respective areas. The Commission’s principal powers and duties are set out in the 2013 Act.
- 1.4 At the time of preparing this response, a separate Bill known as the Senedd Cymru (Members and Elections) Bill (“**the Senedd Bill**”) has been introduced to the Welsh Parliament. The Senedd Bill includes provisions designed to rename the Commission as the Democracy and Boundary Commission Cymru, and to confer on the Commission the additional function of reviewing and determining the boundaries of Senedd constituencies. The Senedd Bill will also rename the 2013 Act as the Democracy and Boundary Commission Cymru etc. Act 2013.

2. DETAILED OBSERVATIONS ON THE BILL

2.1 Part 1 of the Elections Bill includes provision for the establishment by the Commission of the Electoral Management Board (“**the EMB**”), and the conferral on the Commission of functions which are to be carried out by the EMB. Chapter 1 of Part 2 of the Bill amends the existing provisions of the 2013 Act governing (among other things) reviews under that Act of community boundaries, community electoral arrangements and principal area electoral arrangements. The following sections of this document set out the Commission’s detailed observations relating principally to these aspects of the Elections Bill.

Clause 16(3) – Welsh election pilot forums – membership

2.2 Chapter 3 of Part 1 of the Elections Bill provides for the Welsh Ministers to make regulations for the “piloting” of new electoral administration arrangements for limited periods in defined areas (“**Pilot Regulations**”).

2.3 Before Pilot Regulations may be made, the Commission must prepare a report assessing a proposal for the regulations, pursuant to clause 15 of the Bill. Furthermore if the Pilot Regulations will affect the area of more than one principal council (on their own or together with other pilots being carried out at the same

time), the Commission must establish a “Welsh election pilot forum” pursuant to clause 16 of the Bill – which is a “*forum for discussion of issues relating to the pilot or pilots with a view to providing persons implementing the pilot or pilots with information and advice*”.

2.4 Although the functions under clauses 15 and 16 are expressed as functions of the Commission, the Elections Bill provides that they must be exercised by the EMB: see the new proposed section 20E(2) and (3)(b) of the 2013 Act, which would be inserted by clause 1(2) of the Elections Bill. Accordingly it is in fact the EMB which must report on proposals for Pilot Regulations, and must establish a Welsh election pilot forum in the relevant situations.

2.5 Clause 16(3) of the Elections Bill lays down a compulsory list of participants in a Welsh election pilot forum. That list includes, in sub-paragraph (c), “*one or more members of the [Commission] with relevant experience*”.

2.6 The Commission considers that this wording in clause 16(3)(c) ought instead to refer to “*one or more members of the Electoral Management Board with relevant experience*”. This is because the membership of the EMB will be distinct from the membership of the Commission, and the relevant expertise and experience for the purposes of a Welsh election pilot forum will be held by the members of the EMB rather than the members of the Commission.

2.7 This follows from the new proposed section 20F of the 2013 (which would be inserted by clause 1(2) of the Elections Bill), which provides that the EMB’s members will include two members of the Commission and at least four members who are either elections officers (i.e. returning officers or electoral registration officers) or former elections officers. It is those elections officer members who are likely to hold expertise and experience of particular relevance for the purposes of a Welsh election pilot forum.

2.8 The Commission also considers that the mechanism in the new proposed section 20E(2) and (3) of the 2013 Act which confers functions on the EMB (referred to in paragraph 2.4 above) would not, based on its current wording, have the effect that the “*members of the [Commission]*” referred to in clause 16(3)(c) would be deemed to refer to “*members of the EMB*”, who are a distinct group.

2.9 The Commission therefore **suggests that clause 16(3)(c) of the Elections Bill should read as follows** (with proposed new text shown underlined):

“*one or more members of the Electoral Management Board with relevant experience*”.

Clause 45(3) – duty to take into account representations received

2.10 Clause 45 of the Elections Bill amends sections 34 and 35 of the 2013 Act, which regulate the procedure by which a review under Part 3 of the 2013 Act (such

as a review of principal area electoral arrangements or of community boundaries) is carried out.

2.11 Section 35 of the 2013 Act currently provides (in broad summary) that when a reviewing body (i.e. the Commission or a principal council) conducts a review under Part 3 of the 2013 Act, the reviewing body must carry out an initial process of consultation and investigation, then publish an initial report containing any proposals for relevant changes (which the Commission refers to as a “Draft Proposals Report”) and consult on the proposals in the report. Thereafter, section 36 of the 2013 Act provides that the reviewing body must “*consider its proposals for change having regard to any representations received*” in response to its Draft Proposals Report, then must prepare a further report containing any recommendations for change (which the Commission refers to as a “Final Recommendations Report”).

2.12 Section 35(3) of the 2013 Act regulates the specific practical steps which a reviewing body must take after publishing its Draft Proposals Report. As it is currently worded, clause 45(3)(b) of the Elections Bill would amend section 35(3) by clarifying the requirements for consultation on a Draft Proposals Report (see sub-paragraph (i) of clause 45(3)(b)), by renaming the “period for representations” as the “public consultation period” (see sub-paragraph (ii)), and by specifying that the reviewing body must “*take into account any representations made to it during the public consultation period*” (see sub-paragraph (iii)).

2.13 The Commission observes that the amendment made to section 35(3)(e) by clause 45(3)(b)(iii) (which specifies that the reviewing body must take into account representations received) adds nothing new to the 2013 Act, but rather duplicates the requirement already contained in section 36(1) of the 2013 Act that the reviewing body must “*consider its proposals for change having regard to any representations received*”. This duplication would be avoided, and the Elections Bill would be tidier as a result, if clause 45(3)(b)(iii) were removed.

2.14 The amendment set out in clause 45(3)(b)(iii) is also arguably out of place, since section 35(3) of the 2013 Act regulates *practical steps* which the reviewing body must take upon publication of its Draft Proposals Report, rather than regulating the reviewing body’s substantive consideration of issues in the review.

2.15 The Commission therefore **suggests that clause 45(3)(b)(iii) should be removed from the Elections Bill**, for the principal reason that it duplicates provision already made by section 36(1) of the 2013 Act.

Clause 45(4) – typographical error

2.16 Clause 45(4) of the Elections Bill is designed to rename the “period for representations” referred to in section 36(1) of the 2013 Act as the “public consultation period” (mirroring the change made to section 35(3) of the 2013 Act by clause 45(3)(b)(ii) of the Bill, referred to in paragraph 2.12 above).

2.17 However clause 45(4) of the Elections Bill currently refers to the “period of representations”. This appears to be a typographical error. The Commission **suggests that clause 45(4) should read as follows** (with the correction shown underlined):

“In section 36 (reporting on review), in subsection (1), for “period for representations” substitute “public consultation period”.”

Clause 46(2) – communication with mandatory consultees

2.18 Clause 46(2) adds additional bodies to the list of mandatory consultees for the purposes of reviews under Part 3 of the 2013 Act.

2.19 The Commission supports this change. However, in practice, the Commission has encountered difficulty contacting some mandatory consultees, in particular in instances where the Commission’s email communications have gone unacknowledged.

2.20 It would aid the Commission’s carrying out of its functions if mandatory consultees were required to nominate, and provide contact details for, a single point of contact for the purposes of reviews under Part 3 of the 2013 Act.

2.21 The Commission therefore **suggests that an additional provision should be inserted into clause 46 of the Elections Bill, which would amend section 34(3) of the 2013 Act such that its opening text reads as follows** (with amended wording shown underlined):

“For the purposes of a review under this Part, the “mandatory consultees” are the following bodies, any of which shall however cease to be a mandatory consultee for the purposes of the review if it should fail to nominate to the reviewing body upon request, and provide contact details for, an individual to act as single point of contact for the purposes of the review –“.”

Clause 48(2) – deadlines for completion of reviews

2.22 Clause 48(2) would insert a new section 36B into the 2013 Act. Section 36B lays down a new system of deadlines for reviews carried out under Part 3 of the 2013 Act, pursuant to which (among other things):

2.22.1 the Commission must “*use its best endeavours*” to complete a principal area electoral arrangements review under section 29 within 12 months;

2.22.2 the Commission must “*use its best endeavours*” to complete a review of seaward boundaries under section 28 within 18 months;

- 2.22.3 the Commission must “*use its best endeavours*” to complete a community boundaries review under section 26 or a community electoral arrangements review under section 32 within 24 months; and
- 2.22.4 a principal council must “*use its best endeavours*” to complete a community boundaries review under section 25 or a community electoral arrangements review under section 31 within 24 months.
- 2.23 Nonetheless the new proposed section 36B(6) would provide that a failure to meet these deadlines does not affect the validity of the review.
- 2.24 The Commission suggests that an obligation to use “best endeavours” to meet the relevant deadline in the course of a review under Part 3 of the 2013 Act may be disruptive and may have unintended consequences. This is because an obligation to use “best endeavours” may require the reviewing body to use all reasonable measures available to it to meet the deadline, and (if challenged) to justify why it has not taken particular steps which may be suggested by others.¹ This could significantly impact on the work of the Commission and other reviewing bodies.
- 2.25 For example, section 35(4) of the 2013 Act (in its current form, as well as in the amended form which would be substituted by clause 45(3)(b)(iv) of the Elections Bill) permits the reviewing body to determine the length of the consultation on its Draft Proposals Report, so long as the consultation period is at least 6 weeks and not more than 12 weeks.² If the reviewing body were to permit a consultation period of *more than the minimum* (i.e. more than 6 weeks), it could be criticised for failing to use *all reasonable measures* to meet the deadline for that review. In this way, the provision in section 35(4) of the 2013 Act which permits the reviewing body to determine the length of the consultation (taking into account, for example, the breadth and complexity of the proposals for change in its Draft Proposals Report) may be deprived of its effect.
- 2.26 Furthermore, by reason of the additional functions introduced by both the Elections Bill and the Senedd Bill, the Commission will in the future be subject to significant additional workload. It might be argued that the obligation to use “best endeavours” to complete a review under Part 3 of the 2013 Act by the deadline requires the Commission to divert resources away from a Senedd constituency boundaries review, depriving the Commission of the ability to determine its own priorities and the appropriate management of its new workload.
- 2.27 The Commission also has the power to carry out community boundaries reviews and community electoral arrangements reviews by agreement with the relevant principal council, pursuant to sections 26 and 32 of the 2013 Act. It might be argued in the future that a decision by the Commission to undertake such a community review had jeopardised its ability to complete a principal area electoral

¹ See for example the judgment of the High Court in *Brooke Homes v Portfolio Property Partners* [2021] EWHC 3015 (Ch) (Hugh Sims QC) at paragraphs 97 to 98 (available at <https://www.bailii.org/ew/cases/EWHC/Ch/2021/3015.html>)

² The term “Draft Proposals Report” in this context is explained in paragraph 2.11 above

arrangements review within the deadline, and thus represented a failure to use “best endeavours” to meet that deadline. This could have a chilling effect on the conduct by the Commission of community reviews, which could in turn have numerous adverse impacts.

2.28 The Commission therefore **suggests that the obligation on the reviewing body to “use its best endeavours” to meet the deadlines in the new proposed section 36B of the 2013 Act** (which will be inserted by clause 48(2) of the Elections Bill) **should be replaced in each instance by an obligation to “endeavour” to meet those deadlines.** That obligation remains likely to influence the reviewing body in its conduct of the review, but in a manner which avoids disrupting the reviewing body’s operations and management of its workload.

Clause 48(2) – erroneous cross-reference

2.29 As outlined above, clause 48(2) would insert (among other things) a new section 36B(4) into the 2013 Act, laying down a time limit for the conduct by the Commission of community reviews.

2.30 The new proposed section 36B(4) currently refers to community reviews conducted by the Commission “*under section 26, 31 or 32*” of the 2013 Act. The Commission suggests that, in this context, the cross-reference to section 31 is included in error: the Commission’s powers to carry out community reviews are conferred only by sections 26 and 32. Section 31(5) of the 2013 Act does make reference to the ability of the Commission to carry out a community electoral arrangements review by agreement with the principal council; however that provision expressly makes clear that any such review by the Commission would be conducted “under section 32”.

2.31 The Commission therefore **suggests that the cross-reference to section 31 in the new proposed section 36B(4) of the 2013 Act (which would be inserted by clause 48(2) of the Elections Bill) is deleted.**

Clause 51(3) – obligation to complete community reviews

2.32 Clause 51(3)(a) of the Elections Bill would insert a new subsection (A1) into section 31 of the 2013 Act, which would require each principal council to “*conduct a review of the electoral arrangements for each community in its area at least once in every [12-year] review period*”.

2.33 The 2013 Act currently places a series of obligations on principal councils for the purpose of ensuring that community areas and electoral arrangements are kept up to date. Principal councils are required:

2.33.1 to monitor the communities in their areas and the electoral arrangements for those communities;

2.33.2 to consider whether those communities or electoral arrangements should be changed;

2.33.3 to carry out reviews in certain circumstances; and

2.33.4 in carrying out these duties, to “*seek to ensure effective and convenient local government*”.³

2.34 In this context, there are two kinds of review which principal councils can carry out: reviews of community boundaries under section 25 of the 2013 Act (known as “community boundaries reviews”) and reviews of the electoral arrangements of communities under section 31 of the 2013 Act (known as “community electoral arrangements reviews”). Both of these types of review together are known as “community reviews”.

2.35 A community boundaries review is a review of the boundaries of one or more communities within the principal council’s area. This may be appropriate for example if new housing developments have made significant differences to the map or to patterns of settlement within an area, if there are anomalies which have not been identified in previous reviews (such as golf courses split across two communities, or areas where a small road or cul-de-sac is ‘split off’ from the rest of a community), or if there are changes to water courses or large landholdings such as farms.

2.36 At the conclusion of a community boundaries review, the principal council may recommend “*such community boundary changes as it considers appropriate*”.⁴ In this context, a “community boundary change” may mean a change to the boundary of an existing community, or the abolition of an existing community and/or the creation of a new community.⁵

2.37 Where a principal council recommends community boundary changes at the conclusion of a community boundaries review, it also has power to recommend certain kinds of further change where the further changes are a *consequence of* the boundary changes. The permitted further changes are:

2.37.1 “*community council changes*”, meaning the dissolution of an existing community council, the establishment of a new community council, or the addition of communities to (or subtraction of communities from) a common community council;⁶ and

2.37.2 “*associated changes to the electoral arrangements*” of one or more of the communities under review or of the principal area.⁷ In this context the “electoral arrangements of a community” refers to the number of members of the community council and any arrangements for the division of the community into wards for the purposes of elections to the community council, while the

³ 2013 Act, section 22(1) to (3)

⁴ 2013 Act, section 25(3)(a)

⁵ 2013 Act, section 23(4)(a)

⁶ 2013 Act, section 23(4)(b)

⁷ 2013 Act, section 25(3)(b)

“electoral arrangements of the principal area” refers to the number of elected members of the principal council and the arrangements for electoral wards.⁸

2.38 In contrast, a *community electoral arrangements review* addresses the arrangements for representation on the community council within a given community. The principal council does not have the power in a community electoral arrangements review to propose changes to the *boundaries* of communities under review, and a review of this kind therefore proceeds on the basis that those boundaries are fixed. A review of this nature may be appropriate in particular where the populations of communities have changed, but the changes do not mean that it is appropriate to change the boundaries of those communities.

2.39 At the conclusion of a community electoral arrangements review, a principal council is entitled to “propose and make” changes to the electoral arrangements for a community under review, as well as consequential changes to the electoral arrangements of the principal area.

2.40 In summary, therefore, in the course of a community *boundaries* review a principal council can examine and recommend changes to the electoral arrangements of a community if that community’s *boundaries* are changed. But the principal council does not have the power in a community boundaries review to change the electoral arrangements for a community the boundaries of which are not changed – for this purpose, it must carry out a separate community electoral arrangements review.

2.41 In contrast, when it carries out a community *electoral arrangements* review the principal council cannot change the boundaries of the community (or communities) under review. This kind of review assumes that the boundaries are fixed. For this reason, it is only likely to be appropriate for the principal council to devote resources to a community *electoral arrangements* review if the principal council considers that the boundaries of the communities to be reviewed are *appropriate*, so that those boundaries will not themselves require review in the near future.

2.42 As a consequence, if a principal council is to conduct a *full* review of the communities in its area, it must conduct a community boundaries review first, *followed by* a community electoral arrangements review for any communities in its area the boundaries of which were *not* changed as a consequence of the boundaries review. The only exception to this need for two reviews would be if the boundaries of *all* communities in the principal council’s area were changed in the course of the boundaries review. The Commission anticipates that this would be a highly exceptional situation.

2.43 The Commission’s general policy is that the interests of effective and convenient local government are best served where local government electoral boundaries are coherent, in the sense that principal council electoral ward boundaries correspond with the boundaries of communities and community wards. The Commission’s general policy is therefore that communities form the “building blocks” of principal council electoral wards.

⁸ 2013 Act, sections 29(9) and 31(7)

2.44 Accordingly it is useful if the principal council has recently completed a full review of the communities in its area before the Commission commences a principal area electoral review in the same area – so that the community boundaries (and also community electoral arrangements) which will form the Commission’s “building blocks” for the purposes of the principal area electoral review are appropriate and up-to-date.

2.45 Given this background, the Commission suggests that the Elections Bill should be modified in three respects.

2.46 First, each principal council should be obliged to conduct a review of the boundaries of each community in its area under section 25 of the 2013 Act at least once in every review period. Clause 51 should be supplemented in order to introduce an amendment to section 25 of the 2013 Act to this effect. This is because communities form the “building blocks” for the Commission’s principal area electoral reviews under section 29 of the 2013 Act, and it is in the public interest that community boundaries are regularly reviewed and updated.

2.47 Second, the obligation on a principal council to review the electoral arrangements for each community in its area at least once in every review period (which would be created by the new proposed section 31(A1) of the 2013 Act, to be inserted by Clause 51(3)(a) of the Elections Bill) **should be subject to an exception for communities in respect of which:**

2.47.1 the principal council has recommended changes to the boundaries of that community in a review under section 25 completed during the same review period; and

2.47.2 in the course of that review under section 25, the principal council has either:

2.47.2.1 recommended consequential changes to the electoral arrangements of that community; or

2.47.2.2 recorded its conclusion in its final report that no change is required to the electoral arrangements of the community.

2.48 This exception is designed to avoid situations in which the principal council has already reviewed the electoral arrangements for a community in the course of a boundaries review under section 25, but becomes obliged to re-consider the same matters in a review under section 31 during the same review period. The Commission considers that this is likely to be highly wasteful of resources.

2.49 Third, the obligations on principal councils to complete reviews under section 25 and section 31 should be subject to express provisos that they can be satisfied if the review is instead completed by the Commission by agreement with the principal council, pursuant to section 26 or section 32 of the 2013 Act. Without those provisos, the mechanisms in section 26 and 32 for the Commission to complete a review in place of the principal council seem likely to be deprived of much of their effect in practice.

Clause 51(3) – new 12-year review cycle for community reviews

2.50 Clause 51(3)(a) of the Elections Bill would also insert a new subsection (A2) into section 31 of the 2013 Act, which would provide that the review period during which a principal council must carry out an electoral arrangements review for each community in its area will be 12 years *beginning with the day on which clause 51 of the Bill becomes law*, and each subsequent period of 12 years.

2.51 The *duration* of this review period is the same as the duration of the new extended review period during which the Commission will be required to carry out a review of the electoral arrangements for each principal area in Wales – see clause 41(2)(a) of the Elections Bill (which would amend section 29(3) of the 2013 Act) together with section 29(1) of the 2013 Act. However the *starting date* for the 12-year review period applying to principal councils will not be the same as the starting date for the 12-year review period applying to the Commission – since the Commission’s 12-year review period will run from the earlier date of 30 September 2023 (and each 12-year period thereafter).⁹

2.52 In its January 2023 response to the *Electoral Administration and Reform White Paper* which preceded the Elections Bill, the Commission suggested that:

2.52.1 if a principal council is to be required to carry out a community boundaries review and a community electoral arrangements review within a given period, then that period should be *the same* period during which the Commission is required to carry out its principal area electoral review in the same area;

2.52.2 the duration of the review period should be extended to 12 years rather than the current 10, in order that there is enough time; and

2.52.3 the review periods should be organised in a way which recognises and responds to workload challenges. If *all* principal councils are subject to the same review period, then the Commission is unlikely to be able to carry out *any* principal area electoral reviews during the first half of the review period, and is likely to have to carry out *all* its principal area electoral reviews during the second half of the period – with obvious consequences for the Commission’s management of its personnel, expertise and workload. This problem could be mitigated by “staggering” the review periods for different groups of principal areas, although this would render the legislation more complex.

2.53 The Commission welcomes the provisions in the Elections Bill which would extend the review periods for both the Commission and the principal councils to 12 years. The Commission also again acknowledges that the “staggered” system which it has previously proposed may introduce significant complexity into the 2013 Act.

2.54 However the Commission suggests that, if all principal councils are to be subject to the same 12-year review period, then the 12-year review periods

⁹ See clause 41(2)(a) of the Elections Bill

applying to principal councils and to the Commission should be *the same*, and therefore *should start on the same date*. In short, this is because review periods which run from different dates will likely mean that there are “dead” periods at the start and/or end of each review period during which no action can be taken. This in turn is likely to mean that the available time during the review period for compliance with each reviewing body’s obligation to undertake reviews is in fact less than 12 years, with knock-on effects for the reviewing bodies’ workloads and abilities to manage their resources. This is explained in the following paragraphs.

2.55 As noted above, the Commission considers that it is in the interests of effective and convenient local government for local government electoral boundaries to be coherent, in the sense that principal council electoral ward boundaries correspond with the boundaries of communities and community wards. The Commission’s general policy is therefore that communities form the “building blocks” of principal council electoral wards.¹⁰

2.56 As a consequence, it is useful if the principal council has recently completed community reviews in its area before the Commission commences a principal area electoral review in the same area – so that the community boundaries (and also community electoral arrangements) which will form the Commission’s “building blocks” for the purposes of the principal area electoral review are appropriate and up-to-date.

2.57 Furthermore, if the Commission finds during a principal area electoral review that new electoral ward boundaries may be appropriate, the Commission will also consider exercising its power to recommend changes to community boundaries, community councils and community electoral arrangements which are a *consequence of* changes to the electoral arrangements of the principal area.¹¹ In this way, principal area electoral reviews can result in changes to community arrangements in the same area.

2.58 Accordingly the Commission’s general policy is to wait until a principal council has completed its community reviews before the Commission commences its principal area electoral review in that council’s area, in order that the community arrangements which inform the Commission’s review are up-to-date and are not changed due to actions of the principal council during the course of the Commission’s review.

2.59 Similarly it is likely to be most efficient if a principal council refrains from commencing its community reviews until after the Commission has completed a principal area electoral review in the council’s area. Otherwise there will be a risk that the principal council’s work may be wasted, if the principal council conducts a community review on the basis of arrangements which are subsequently changed as a result of a review conducted by the Commission.

2.60 Furthermore, at the end of any review conducted under the 2013 Act the implementing authority (which receives the final report in the review) will generally

¹⁰ Above, paragraph 2.43

¹¹ See section 29(7)(b) of the 2013 Act

have a choice as to whether to make an Order which implements the outcome of the review. In the Commission's view, therefore:

2.60.1 if a principal council is conducting (or has recently completed) a community review in its area, ideally the Commission will not commence a principal area electoral review in the same area until the implementing authority (which in some instances will be the Commission itself) has taken its implementation decision in relation to the principal council's community review. Otherwise the Commission will commence its principal area electoral review in circumstances where the community arrangements, which form the "building blocks" of electoral reviews, may be uncertain; and

2.60.2 if the Commission is conducting (or has recently completed) a principal area electoral review in an area, ideally the principal council will not commence a community review in the same area until the implementing authority has decided whether to implement the recommendations made in the Commission's final recommendations report. This is for similar reasons, given that the Commission has power in a principal area electoral review to recommend consequential changes to community arrangements.¹²

2.61 In summary, therefore, the Commission considers that it should not start a principal area electoral review unless any community reviews in the same area have been completed and implemented. Similarly the principal council should not start a community review in its area unless any principal area electoral review that the Commission is conducting (or will soon conduct) has been completed and implemented.

2.62 As noted in the Commission's response to the *Electoral Administration and Reform White Paper*, if the same 12-year review period applies to all principal councils and to the Commission, it is likely that during approximately the first half of that 12-year period the principal councils will conduct their community reviews, and during approximately the second half of the period the Commission will conduct its principal area electoral reviews.¹³ This is likely to present obvious challenges in the Commission's management of its personnel, expertise and workload.

2.63 However, as noted above, the current wording of the Elections Bill is likely to entail that the Commission's 12-year review period starts in the region of 6 to 12 months *before* the start of the 12-year review period for principal councils. On this basis, the Commission is unlikely to commence its principal area electoral reviews in the period before the 12-year review period for principal councils *starts*, nor in approximately the first half of the 12-year review period for principal councils, since during that time the community arrangements will not have been updated. Thus the Commission is likely to commence its principal area electoral reviews *later than* halfway through its own 12-month review period, leaving *less time* for the Commission to complete those reviews. Furthermore, once the Commission's

¹² See above, paragraph 2.57

¹³ The Commission notes in this regard the deadline of 24 months for each community review, as provided for in the new proposed section 36B(5) of the 2013 Act, to be inserted by clause 48(2) of the Elections Bill

reviews are completed and implemented, the principal councils may be forced to wait before commencing a new round of community reviews, as their own new review period may not yet have begun.

- 2.64 In this way, there may be “dead periods” at the start and end of each review cycle during which no action can be taken, which would involve an inefficient loss of time.
- 2.65 The Commission **suggests that the 12-year review periods for principal councils and for the Commission should commence on the same date**, in order to avoid these potential “dead periods”. This change could be achieved by amending clause 51(3)(a) to provide that the first 12-year review period for principal councils commences on 30 September 2023, mirroring the provision in clause 41(2)(a)(i) for the Commission’s review period. Alternatively (since this change would limit the available time in the first such review period for principal councils), clause 41(2)(a)(i) could instead be amended such that the 12-year review period for the Commission commences on the day on which clause 51 of the Bill enters into force, mirroring the provision currently in clause 51(3)(a) for principal councils.

Clause 55 – transitional provisions

- 2.66 Chapter 1 of Part 2 of the Elections Bill contains clauses 40 to 55, which principally amend Part 3 of the 2013 Act. Chapter 1 of Part 2 will come into force 2 months after the Elections Bill receives Royal Assent – see clause 70(2)(a).
- 2.67 Clause 55(1) of the Bill provides that reviews under Part 3 of the 2013 Act which are ongoing at the time when Chapter 1 of Part 2 of the Bill comes into force are to be completed as if the changes in the Elections Bill had not been made. Clause 55(2) provides that, for the purposes of those ongoing reviews, Part 3 of the 2013 Act and any related subordinate legislation is to continue in effect as it currently stands.
- 2.68 The Commission confirms that it is currently carrying out a number of community boundary reviews by agreement with the relevant principal council under section 26. The Commission is also aware that other community reviews are currently being conducted by principal councils.
- 2.69 It currently appears likely that most of these ongoing reviews will be completed *after* Chapter 1 of Part 2 of the Bill becomes law. These reviews will therefore be completed once the first 12-month review period for principal councils has commenced (see above, paragraph 2.50). However, by reason of clause 55(1) and (2), they will not count towards fulfilment of the obligation on principal councils to conduct reviews during the 12-month review period (which the Commission suggests should include an obligation to conduct community *boundary* reviews under section 25 of the 2013 Act, as set out in paragraph 2.46 above).
- 2.70 The Commission suggests that **clause 55(1) and (2) of the Elections Bill should be modified such that any community reviews which are ongoing when Chapter 1 of Part 2 enters into force will be conducted under the**

unamended version of the 2013 Act, but will count towards fulfilment of any obligation on a principal council to complete a community review during the first 12-year review period. This is to avoid possible situations in which a principal council completes a review during the first review period but is then required to repeat the review during the same period for the sole reason that the review was commenced before Chapter 1 of Part 2 came into force. The Commission suggests that such situations would be wasteful of resources.

Clause 70 – entry into force of Part 1 of the Bill

2.71 Clause 70(1)(a) of the Elections Bill provides that Chapter 3 of Part 1 will enter into force on the day after the Bill receives Royal Assent.

2.72 Chapter 3 of Part 1 lays down provisions for Pilot Regulations, and includes new functions for the Commission – most importantly to review proposals for Pilot Regulations under clause 15, and to establish Welsh election pilot forums in some circumstances under clause 16.¹⁴

2.73 As noted above, although these are functions of the Commission, the Elections Bill provides that they must be exercised by the EMB: see the new proposed section 20E(2) and (3)(b) of the 2013 Act, which would be inserted by clause 1(2) of the Elections Bill. Accordingly it is in fact the EMB which must report on proposals for Pilot Regulations, and must establish a Welsh election pilot forum in the relevant situations. This is, in turn, because the relevant expertise and experience for these purposes will be held by the members of the EMB rather than the members of the Commission.¹⁵

2.74 The provisions of the Elections Bill which would create the EMB (new section 20E(1) of the 2013 Act) and confer functions on it (new section 20E(2) and (3)) are inserted by clause 1(2) of the Bill, which is contained in Chapter 1 of Part 1. Under clause 70(3) of the Bill, those provisions will *not* be brought into force automatically upon Royal Assent, but rather by an Order made by the Welsh Ministers.

2.75 It follows that, by reason of the current wording of clause 70, functions will be conferred on the Commission under Chapter 3 of Part 1 from the day after Royal Assent, which are intended to be functions of the EMB (and require the expertise and experience of the members of the EMB), but will be conferred on the Commission before the EMB is established. Unless the Welsh Ministers swiftly make an Order bringing clause 1(2) of the Bill into force, the Commission may be called upon to review proposals for Pilot Regulations and/or to establish Welsh election pilot forums before the EMB is created, or at least before the members of the EMB have been appointed and the EMB has become operational.

2.76 The Commission therefore **suggests that clause 70 is amended in order that clause 1(2) of the Bill is brought into force no later than Chapter 3 of Part 1 of the Bill.**

¹⁴ See above, paragraph 2.3

¹⁵ See above, paragraphs 2.4 to 2.7

3. SUMMARY – SUGGESTED AMENDMENTS OF THE BILL

3.1 First, the Commission suggests that **clause 16(3)(c) of the Elections Bill should read as follows** (with proposed new text shown underlined):

“one or more members of the Electoral Management Board with relevant experience”.

3.2 Second, the Commission suggests that **clause 45(3)(b)(iii) should be removed from the Elections Bill**, for the principal reason that it duplicates provision already made by section 36(1) of the 2013 Act.

3.3 Third, the Commission suggests that **clause 45(4) should read as follows** (with the typographical correction shown underlined):

“In section 36 (reporting on review), in subsection (1), for “period for representations” substitute “public consultation period”.”

3.4 Fourth, the Commission suggests that **an additional provision should be inserted into clause 46 of the Elections Bill, which would amend section 34(3) of the 2013 Act such that its opening text reads as follows** (with amended wording shown underlined):

“For the purposes of a review under this Part, the “mandatory consultees” are the following bodies, any of which shall however cease to be a mandatory consultee for the purposes of the review if it should fail to nominate to the reviewing body upon request, and provide contact details for, an individual to act as single point of contact for the purposes of the review –”.

3.5 Fifth, the Commission suggests that **the obligation on the reviewing body to “use its best endeavours” to meet the deadlines in the new proposed section 36B of the 2013 Act** (which will be inserted by clause 48(2) of the Elections Bill) **should be replaced in each instance by an obligation to “endeavour” to meet those deadlines.**

3.6 Sixth, the Commission suggests that **the cross-reference to section 31 in the new proposed section 36B(4) of the 2013 Act (which would be inserted by clause 48(2) of the Elections Bill) is deleted** on the grounds that it appears to be included in error.

3.7 Seventh, the Commission suggests that **each principal council should be obliged to conduct a review of the *boundaries* of each community in its area under section 25 of the 2013 Act at least once in every review period.** Clause 51 should be supplemented in order to introduce an amendment to section 25 of the 2013 Act to this effect.

3.8 Eighth, the Commission suggests that **the obligation on a principal council to review the electoral arrangements for each community in its area at least**

once in every review period (which would be created by the new proposed section 31(A1) of the 2013 Act, to be inserted by Clause 51(3)(a) of the Elections Bill) **should be subject to an exception for communities in respect of which:**

3.8.1 **the principal council has recommended changes to the boundaries of that community in a review under section 25 completed during the same review period;** and

3.8.2 in the course of that review under section 25, **the principal council has either:**

3.8.2.1 **recommended consequential changes to the electoral arrangements of that community;** or

3.8.2.2 **recorded its conclusion in its final report that no change is required to the electoral arrangements of the community.**

3.9 Ninth, the Commission suggests that **any obligations on principal councils to complete reviews under section 25 and section 31 of the 2013 Act should be subject to express provisos that they can be satisfied if the review is instead completed by the Commission by agreement with the principal council, pursuant to section 26 or section 32 of the 2013 Act.**

3.10 Tenth, the Commission suggests that **the 12-year review periods for principal councils and for the Commission should commence on the same date**, and to this end:

3.10.1 clause 51(3)(a) should be amended to provide that the first 12-year review period for principal councils commences on 30 September 2023, mirroring the provision in clause 41(2)(a)(i) for the Commission's review period; or

3.10.2 alternatively clause 41(2)(a)(i) should be amended such that the 12-year review period for the Commission commences on the day on which clause 51 of the Bill enters into force, mirroring the provision currently in clause 51(3)(a) for principal councils.

3.11 Eleventh, the Commission suggests that **clause 55(1) and (2) should be modified such that any community reviews which are ongoing when Chapter 1 of Part 2 of the Elections Bill enters into force will be *conducted under the unamended version of the 2013 Act*, but *will count towards* fulfilment of any obligation on a principal council to complete a community review during the first 12-year review period.**

3.12 Twelfth, the Commission suggests that **clause 70 is amended in order that clause 1(2) of the Bill is brought into force no later than Chapter 3 of Part 1 of the Bill**, since otherwise the Bill will create functions for the Electoral Management Board before the Board is brought into existence.