

Electoral Arrangements Regulations

A report by the Local Government, Housing and Planning Committee on electoral arrangement regulations considered on 28 September 2021.

Introduction

1. The Local Government, Planning and Housing Committee reports to the Parliament as follows on the—
 - [Draft SSI 2021/Na h-Eileanan an Iar \(Electoral Arrangements\) Regulations 2021](#)
 - [Draft SSI 2021/ Orkney Islands \(Electoral Arrangements\) Regulations 2021](#)
 - [Draft SSI 2021/ Shetland Islands \(Electoral Arrangements\) Regulations 2021](#)
 - [Draft SSI 2021/ Highland \(Electoral Arrangements\) Regulations 2021](#)
 - [Draft SSI 2021/ Argyll and Bute \(Electoral Arrangements\) Regulations 2021](#)
 - [Draft SSI 2021/ North Ayrshire \(Electoral Arrangements\) Regulations 2021](#)
2. The instruments were laid on the 26th and 27th August 2021 and referred to the Local Government, Housing and Planning Committee.
3. The regulations are subject to affirmative procedure (Rule 10.6).
4. At its meeting on 7 September 2021, the Delegated Powers and Law Reform Committee considered the instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit. You can read the report of the Committee below—
 - [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 7 September 2021](#)
5. It is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the regulations should be approved.
6. At its meeting on the 28 September 2021, the Committee took evidence on the instruments from—
 - John Swinney, Deputy First Minister and Cabinet Secretary for COVID Recovery
 - Maria McCann, Head of Elections Team, Scottish Government
 - Kenny Pentland, Senior Policy Officer, Elections, Scottish Government
 - Craig McGuffie, Lawyer, Scottish Government
7. Following the evidence session, Deputy First Minister, John Swinney moved the following motions—
 - S6M-00961—That the Local Government Housing and Planning Committee recommends that the Na h-Eileanan an Iar (Electoral Arrangements) Regulations 2021 be approved.

- S6M-00960—That the Local Government Housing and Planning Committee recommends that the Orkney Islands (Electoral Arrangements) Regulations 2021 be approved.
- S6M-00959—That the Local Government Housing and Planning Committee recommends that the Shetland Islands (Electoral Arrangements) Regulations 2021 be approved.
- S6M-00974—That the Local Government, Housing and Planning Committee recommends that the Highland (Electoral Arrangements) Regulations 2021 be approved.
- S6M-00973—That the Local Government, Housing and Planning Committee recommends that the Argyll and Bute (Electoral Arrangements) Regulations 2021 be approved.

S6M-00975—That the Local Government, Housing and Planning Committee recommends that the North Ayrshire (Electoral Arrangements) Regulations 2021 be approved.

8. The motions were approved with the exception of S6M-00974 (relating to Highland Council) and S6M-00973 (relating to Argyll and Bute Council).
9. The evidence taken and debate held at that meeting on this instrument can be found in the Official Report (available from Friday 1 October 2021) at the following link—

[Official Reports Local Government, Housing and Planning Committee.](#)

10. The Local Government, Housing and Planning Committee recommends to Parliament that the Na h-Eileanan an Iar (Electoral Arrangements) Regulations 2021 be approved.
11. The Local Government, Housing and Planning Committee recommends to Parliament that the Orkney Islands (Electoral Arrangements) Regulations 2021 be approved.
12. The Local Government, Housing and Planning Committee recommends to Parliament that the Shetland Islands (Electoral Arrangements) Regulations 2021 be approved.
13. The Local Government, Housing and Planning Committee recommends to Parliament that the Highland (Electoral Arrangements) Regulations 2021 are not approved.
14. The Local Government, Housing and Planning Committee recommends to Parliament that the Argyll and Bute (Electoral Arrangements) Regulations 2021 are not approved.
15. The Local Government, Housing and Planning Committee recommends to Parliament that the North Ayrshire (Electoral Arrangements) Regulations 2021 be approved.

Boundaries Scotland review and recommendations

16. The [Islands \(Scotland\) Act 2018](#) placed a duty on Boundaries Scotland to review the electoral boundary arrangements for the six local authorities in Scotland which contain inhabited islands “as soon as practicable”.
17. The [review](#) formally commenced in January 2019 and Boundaries Scotland reported to the Scottish Government in May and June 2021. The reports are—
 - [Na h-Eileanan an Iar Council Area](#)
 - [Orkney Islands Council Area](#)
 - [Shetland Islands Council Area](#)
 - [Highland Council Area](#)
 - [Argyll and Bute Council Area](#)
 - [North Ayrshire Council Area](#)
18. The Scottish Government is mandated to give effect to the proposals from Boundaries Scotland in draft legislation and cannot amend or reject the proposalsⁱ. The Deputy First Minister wrote to the Presiding Officer outlining this process.

Island Communities Impact Assessment

19. Section 8 of the [Islands \(Scotland\) Act 2018](#) places a duty on authorities to conduct an islands impact assessment "which, in the authority's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions."ⁱⁱ
20. The Explanatory Note to the Act sets out that "The question of which other communities differential impact is measured against will depend on whether the authority operates locally or nationally. Where the relevant authority's scope is limited geographically (for example a Health Board) then the assessment of differential impact would only include other communities in the same geographical area; whereas national bodies must consider the impact on communities across the whole of Scotland."ⁱⁱⁱ
21. When asked why a separate impact assessment had not been carried out in respect of the reviews, Ronnie Hinds, Chair of Boundaries Scotland told the Committee—

ⁱ Local Government (Scotland) Act 1973, [section 17](#)

ⁱⁱ Islands (Scotland) Act 2018, section 8

ⁱⁱⁱ Islands (Scotland) Act 2018. [Explanatory Notes](#)

"We took advice on that question from the Scottish Government, among others, and we were told that, because the work that we were doing was being carried out under the auspices of the Islands (Scotland) Act 2018 and the whole point of it was to try to recognise the specific characteristics of island communities, a separate impact assessment was unnecessary. We set out the reasoning in our reports and on our website. We do not think that a separate assessment would have added anything to what we did, and we were following the advice that we had been given."^{iv}

22. He went on to describe how assessment of impact on islands had been "intrinsic"^v in Boundaries Scotland's work.
23. However, in evidence to the Committee, the Deputy First Minister spoke of the decision to do an island impact assessment being one for Boundaries Scotland. He also said the nature of the work required of Boundaries Scotland in assessing island council ward boundaries would have taken into account special circumstances experienced in island communities.
24. The Committee is unclear as to whether advice has been provided by the Scottish Government to Boundaries Scotland on the requirement for an island impact assessment and would appreciate clarity on this.
25. The Committee invites the Scottish Government and Boundaries Scotland to provide clarification on what advice was issued to Boundaries Scotland on the need to undertake an island impact assessment.

^{iv} Local Government, Housing and Planning Committee, [Official Report](#), 21 September 2021, Col 32

^v Local Government, Housing and Planning Committee, [Official Report](#), 21 September 2021, Col

Engagement

26. The majority of witnesses spoke positively about the engagement and consultation process undertaken by Boundaries Scotland during the review period. However, some concerns about this process were drawn to the Committee's attention.

Engagement with local authorities

27. Shetland Islands Council, Orkney Islands Council, Argyll and Bute Council and Comhairle nan Eilean Siar praised the engagement and consultation process undertaken by Boundaries Scotland. North Ayrshire Council described^{vi} having "ample" time and information.
28. In particular, councils welcomed the chance to have pre-consultation discussions with Boundaries Scotland, which they noted had incorporated comments and been reflected in proposals for formal consultation. Boundaries Scotland told the Committee of the benefits of having more time to work with councils in advance of the formal consultation process and to share ideas at that stage. In explaining the use of single or multi-member wards on islands and the mainland, Ailsa Henderson of Boundaries Scotland suggested^{vii} Boundaries Scotland had interacted with local authorities on the issue and, as they all had different views on what would work best in their local area, been accommodating to local requirements. Shetland and Orkney Islands Councils agreed this had been their experience.
29. Highland Council had a different view on preconsultation discussions and said the organisation was so "dismayed"^{viii} by the proposals arising from those discussions, it declined to engage further with Boundaries Scotland in the requested form.
30. Ailsa Henderson of Boundaries Scotland suggested^{ix} Highland Council had preconceived ideas prior to the review from which it would not deviate.
31. As the Committee has not agreed the motion proposing approval of the regulations pertaining to Highland or Argyll and Bute, it has been indicated by the Scottish Government and Boundaries Scotland a further review and consultation process will follow in these local authority areas.
32. The Committee notes that where the recommendations have been welcomed by local authorities, those authorities have also been very

^{vi} [Letter from Craig Hatton, Chief Executive, North Ayrshire Council, to the Convener of the Local Government, Housing and Planning Committee on the electoral arrangement proposals](#) - 13 September 2021

^{vii} Local Government, Housing and Planning Committee, *Official Report*, 21 September 2021, Col 34

^{viii} Local Government, Housing and Planning Committee, *Official Report*, 14 September 2021, Col 21

^{ix} Local Government, Housing and Planning Committee, *Official Report*, 21 September 2021, Col 41

positive about the consultation and engagement work undertaken by Boundaries Scotland. This points to the value of effective dialogue between local authorities and Boundaries Scotland and the Committee would encourage all parties to participate in such conversations in the context of the re-examination of proposals for Argyll and Bute and Highland Council areas with a view to reaching recommendations acceptable to all parties.

33. The Committee recommends the benefits from building in additional time for discussion with councils in advance of the formal consultation stage of a review should be incorporated into all future reviews of local authority boundaries.

Digital engagement

34. Several respondents to the Committee's questionnaire^x advocated meaningful public engagement could not take place during the pandemic when public meetings were not possible. Although Boundaries Scotland highlighted^{xi} the success of using digital means to engage with those impacted by the reviews, some respondents felt poor internet connections meant virtual events did not compare to public meetings. Like Boundaries Scotland, the Deputy First Minister was positive about the use of digital meetings and suggested that they allowed for interactions with more people.

35. The Committee notes the benefits of digital engagement, but also recognises the challenges it will present to others. The Committee asks that these concerns are taken into account in any future engagement.

^x [Summary of responses to Boundaries Scotland's proposals](#)

^{xi} Local Government, Housing and Planning Committee, *Official Report*, 21 September 2021, Col 42

Criteria used by Boundaries Scotland

36. Boundaries Scotland is required to take the following legislative factors into consideration when reviewing electoral arrangements^{xii}—
- "The interests of effective and convenient local government;
 - Within each council, each councillor should represent as closely as possible the same number of electors;
 - Local ties which would be broken by making a particular boundary;
 - The desirability of fixing boundaries that are easily identifiable; and
 - Special geographical considerations".
37. Councils such as Orkney Islands Council and Shetland Islands Council told the Committee they were happy with how the criteria had been applied. Maggie Sandison of Shetland Island Council told the Committee Boundaries Scotland had been clear about the criteria and the deviations they were able to make. The Chief Executive of North Ayrshire Council, Craig Hatton, similarly said^{xiii} Boundaries Scotland had been clear on the criteria in all communications.

The prominence of parity

"Within each council, each councillor should represent as closely as possible the same number of electors"

38. In evidence to the Committee Boundaries Scotland described the prominence of parity in considering boundary changes and said it was the "main thing that we look at"^{xiv}. Chair of Boundaries Scotland Ronnie Hinds told the Committee—
- "My view and the view of the commission is that parity is paramount for a reason. It is not a numbers game, but that is sometimes how it is dismissed by people; it is about electoral fairness, which is fundamental. The legislation is intended to create a system in which, as far as possible, every vote counts equally within a given council area. That principle needs to be enshrined and respected, so that is what we try to do."^{xv}
39. He suggested Boundaries Scotland was not "enslaved" by the principle of parity and suggested there was flexibility by utilising other criteria. However, he noted its importance by saying—

^{xii} Boundaries Scotland. [News Release](#), 10 June 2021

^{xiii} [Letter from Craig Hatton, Chief Executive, North Ayrshire Council, to the Convener of the Local Government, Housing and Planning Committee on the electoral arrangement proposals](#) - 13 September 2021

^{xiv} Local Government, Planning and Housing Committee, *Official Report, 21 September 2021*, Col 32

^{xv} Local Government, Housing and Planning Committee, *Official Report, 21 September 2021*, Col 38

"If we took at face value and did what Highland Council has asked for in the review—different ratios within a council area to demonstrate that parity is not the be-all and end-all—the result would be that the four most northern wards in the Highlands, which have some of the most sparsely populated communities, would have 37 councillors. That is what would happen if there were the same ratios as used for the islands, which is what Highland Council has asked for. That demonstrates that parity matters, because, in a council with 74 members, it does not make sense for half of them to come from the most sparsely populated area."^{xvi}

40. Councils had varying views on the way the parity principle had been applied and, particularly, how flexibility to deviate when appropriate had been applied.
41. Shetland Island Council suggested parity was beginning to erode in the wards in Shetland and it was important this was resolved by approving the regulations and allowing alterations to happen prior to the elections next year.
42. Both Shetland Islands Council and Orkney Islands Council suggested parity had been important but flexibility required by the special geography of the area had served its purpose in developing good solutions for those areas. Comhairle nan Eilean Siar was content with the criteria as explained and applied by Boundaries Scotland, and said the variation from parity in 3 wards was welcome. Argyll and Bute felt more flexibility could have been demonstrated, as did Highland Council. Ailsa Henderson of Boundaries Scotland said, however, that Highland Council was asking Boundaries Scotland to act beyond the scope of the legislation^{xvii}.
43. The Electoral Reform Society^{xviii} has previously suggested that parity is an outdated criteria. Margaret Davidson, Leader of Highland Council, echoed^{xix} that view. Douglas Hendry of Argyll and Bute Council disagreed with Boundaries Scotland that parity should be of "fundamental"^{xx} concern.
44. The Committee appreciates Boundaries Scotland's views on the importance of the principle of parity and the international standing this has. The Committee also recognises the capacity for Boundaries Scotland to deviate from this principle where required and suggests the question as to whether parity and flexibility to deviate from this are welcome depends entirely on whether it produces the desired results by councils. The Committee believes Boundaries Scotland has demonstrated a willingness to deviate where circumstances require this, but it can only do so to the degree dictated by the Local Government (Scotland) Act 1973.
45. The Committee would encourage Boundaries Scotland where possible to continue to demonstrate that flexibility and ensure that, wherever possible,

^{xvi} Local Government, Housing and Planning Committee, *Official Report*, 21 September 2021, Col 39

^{xvii} [The Local Government \(Scotland\) Act 1973](#)

^{xviii} Local Government and Communities Committee, *Official Report*, 26 October 2016, Col 2

^{xix} Local Government, Housing and Planning Committee, *Official Report*, 14 September 2021, Col 26

^{xx} Local Government, Housing and Planning Committee, *Official Report*, 14 September 2021, Col 27

parity is not applied in such a way as to be detrimental to community cohesion.

Population sparsity

46. The Committee was concerned about the size of areas proposed for single or small numbers of councillors to cover. Boundaries Scotland suggested this was part of their thinking as population sparsity was a key criteria. Chair of Boundaries Scotland, Ronnie Hinds, also cited^{xxi} research showing most of councillors' working time was spent in headquarters on council business rather than around a ward. The Deputy First Minister spoke of increased opportunities to connect with constituents arising from the necessity of virtual meetings.
47. In response to questions on Argyll and Bute, Ronnie Hinds suggested^{xxii} transport connectivity issues between individual islands was an issue, but it was not sufficiently emphasised to present a barrier to the creation of an island ward. Representatives of Orkney Islands Council and Shetland Islands Council both suggested^{xxiii} transport was an issue for councillors and retention of multi member wards helped with this as councillors could allocate their work load according to the travel involved.
48. While agreeing with the Deputy First Minister's view on the opportunities arising from digital engagement with constituents, the Committee sympathises with the view a large ward can impede the work of a councillor.

Location of the electorate

49. Representations to the Committee suggested predicted population growth, particularly in the new context of the COVID-19 pandemic, should be taken into account. Boundaries Scotland explained their requirement to "put councillors where the electorate is—it cannot be the reverse."^{xxiv} However, Ronnie Hinds, Chair of Boundaries Scotland, also noted^{xxv} interim reviews could be carried out and wards with predicted growth were candidates for those.
50. The issue of depopulation was also raised with the Committee as a policy at odds with some of the recommendations. It was suggested more councillors were required in some areas to support efforts to increase the population. However, the Deputy First Minister asserted it was the role of the Council as a whole to work on behalf of communities and support repopulation efforts in sparsely populated communities.

^{xxi} Local Government, Housing and Planning Committee, *Official Report, 21 September 2021*, Col 33

^{xxii} Local Government, Housing and Planning Committee, *Official Report, 21 September 2021*, Col 44

^{xxiii} Local Government, Housing and Planning Committee, *Official Report, 21 September 2021*, Col 4

^{xxiv} Local Government, Planning and Housing Committee, *Official Report, 21 September 2021*, Col 32

^{xxv} Local Government, Planning and Housing Committee, *Official Report, 21 September 2021*, Col 38

51. Margaret Davidson, Leader of Highland Council noted^{xxvi} previous reviews of boundaries had led to reductions in the number of councillors, despite increases in the overall population of the region.
52. The Committee notes the views on this issue and encourages all parties to keep in mind the potential for depopulation when considering any recommendations.

Identifiable boundaries

53. The Committee received representations from Highland Council^{xxvii} on the drawing of a boundary through the centre of Loch Ness. The Council was concerned this had an impact on the community but Boundaries Scotland stated^{xxviii} this was a clearly identifiable place to host a boundary. Having only been in place for 5 years since the previous review, the organisation also believed it would not have the detrimental community impacts asserted by Highland Council.

^{xxvi} Local Government, Planning and Housing Committee, *Official Report, 14 September 2021*, Col 20

^{xxvii} [Letter to the Convener of the Local Government, Housing and Planning Committee from the Leader of Highland Council, Margaret Davidson, on the electoral boundary review](#) - 9 September 2021

^{xxviii} Local Government, Housing and Planning Committee, *Official Report, 21 September 2021*, Col 35

Conclusion

54. At its meeting on 28 September 2021, the Committee agreed to approve the instruments, with the exception of those relating to Highland Council and Argyll and Bute Council.
 55. Both Highland and Argyll and Bute Councils made strong representations to the Committee they wished for the instruments to be rejected.
 56. Argyll and Bute told the Committee their objections stemmed from the "all or nothing" nature of the decision and because there was some objection within the council to some of the proposals, it had to oppose them in their entirety.
 57. While the Committee commends the work of Boundaries Scotland in these areas and recognises the organisation's views on the detrimental impact of failing to realign the boundaries in time for next year's local authority elections, it believes there is still work to be done in finding a solution acceptable to both Boundaries Scotland and Highland and Argyll and Bute Council. It has therefore agreed to recommend the instruments are not approved.
 58. Similarly, the Committee recognises the range of views on the proposals for Arran and the Western Isles. It received responses to its questionnaire disagreeing with the recommendations of Boundaries Scotland in those locations and has accepted the satisfaction of the local authorities as a basis for approving the instruments.
 59. The Deputy First Minister indicated to the Committee that if instruments were not approved, he would seek leave from Parliament to withdraw those instruments. Boundaries Scotland would be requested to conduct another review and the Committee is interested in the place those reviews will take in the overall work programme of Boundaries Scotland.
60. The Committee asks the Scottish Government to provide detail of whether the further reviews of the boundaries in Highland and Argyll and Bute will be carried out in as a separate piece of work or as part of a suite of other reviews.

Annexe A - Extracts from the Minutes of the Local Government, Housing and Planning Committee

4th Meeting, 2021, (Session 6), Tuesday 14 September 2021

2. Electoral Arrangements Regulations:

The Committee took evidence from—

- Karen Greaves , Head of Executive Support, Orkney Islands Council;
- Maggie Sandison, Chief Executive, Shetland Islands Council;

and then from—

- Douglas Hendry, Executive Director, Argyll and Bute Council;
- Councillor Margaret Davidson, Leader, Highland Council;
- Derek Mackay, Governance and Elections Manager, Comhairle nan Eilean Siar .

The following interests were declared—

- Meghan Gallacher as a councillor in North Lanarkshire Council;
- Elena Whitham as a councillor in East Ayrshire Council;
- Ariane Burgess as a Highlands and Islands Region MSP.

3. Electoral Arrangements Regulations (In Private):

The Committee considered evidence heard earlier in the meeting.

5th Meeting, 2021 (Session 6), Tuesday 21 September 2021

3. Electoral Arrangements Regulations:

The Committee took evidence from—

- Ronnie Hinds, Chair;
- Ailsa Henderson, Deputy Chair; and
- and Colin Wilson, Review Manager for the Scottish Boundary Commissions Secretariat, Boundaries Scotland .

Ariane Burgess declared an interest as a Highlands and Islands Region MSP.

5. Electoral Arrangements Regulations (in private):

The Committee considered evidence heard earlier in the meeting.

6th Meeting, 2021, (Session 6), Tuesday, 28 September 2021

1. Decision on taking business in private:

The Committee agreed to take items 11 and 12 in private.

3. Subordinate legislation:

The Committee took evidence on electoral arrangement regulations from—

- John Swinney, Deputy First Minister and Cabinet Secretary for COVID Recovery;
- Maria McCann, Head of Elections Team;
- Kenny Pentland, Senior Policy Officer, Elections; and
- Craig McGuffie, Lawyer, Scottish Government

4. Subordinate legislation:

John Swinney (Deputy First Minister) moved—

S6M-00961—That the Local Government, Housing and Planning Committee recommends that the Na h-Eileanan an Iar (Electoral Arrangements) Regulations 2021 [draft] be approved.

The motion was agreed to.

5. Subordinate legislation:

John Swinney (Deputy First Minister) moved—

S6M-00960—That the Local Government, Housing and Planning Committee recommends that the Orkney Islands (Electoral Arrangements) Regulations 2021 [draft] be approved.

The motion was agreed to.

6. Subordinate legislation:

John Swinney (Deputy First Minister) moved—

S6M-00959—That the Local Government, Housing and Planning Committee recommends that the Shetland Islands (Electoral Arrangements) Regulations 2021 [draft] be approved.

The motion was agreed to.

7. Subordinate legislation:

John Swinney (Deputy First Minister) moved—

S6M-00974—That the Local Government, Housing and Planning Committee recommends that the Highland (Electoral Arrangements) Regulations 2021 [draft] be approved.

The motion was disagreed to (by division: For 0, Against 7, Abstentions 0).

8. Subordinate legislation:

John Swinney (Deputy First Minister) moved—

S6M-00973—That the Local Government, Housing and Planning Committee recommends that the Argyll and Bute (Electoral Arrangements) Regulations 2021 [draft] be approved.

The motion was disagreed to (by division: For 0, Against 7, Abstentions 0).

9. Subordinate legislation:

John Swinney (Deputy First Minister) moved—

S6M-00975—That the Local Government, Housing and Planning Committee recommends that the North Ayrshire (Electoral Arrangements) Regulations 2021 [draft] be approved.

The motion was agreed to.

12. Subordinate Legislation (in private):

The Committee considered evidence heard earlier in the meeting.

Annexe B - Written Submissions

The Committee used a questionnaire to seek the views of people living in the council areas impacted by the regulations and [produced a summary of the responses](#).

The Committee received the following correspondence

- [Letter from the Leader of Highland Council to the Convener regarding electoral arrangement regulations](#)- 9 September 2021
- [Letter to the Convener from the Chief Executive of North Ayrshire Council regarding electoral arrangement regulations](#) - 13 September 2021
- [Letter from Edward Mountain MSP to the Convener on the Highland Council regulations](#)- 27 September 2021