

SCOTLAND ACT 1998 as amended by

SCOTTISH PARLIAMENT (CONSTITUENCIES) ACT 2004

REPORT

by

Sheriff Principal S F Murphy KC

In respect of a Local Inquiry into the provisional recommendations of Boundaries Scotland relating to the Scottish Parliament Constituencies in the local authority areas of North Ayrshire, East Ayrshire and South Ayrshire

Background

1. Boundaries Scotland is a statutory commission which is obliged under Schedule 1 of the Scotland Act 1998, as amended, to review the boundaries of mainland electoral constituencies for the Scottish Parliament and to report to the Scottish Parliament at intervals of between eight and twelve years. The present review requires that a report be submitted to the Scottish Parliament by 1 May 2025. It relates only to the boundaries for Scottish Parliament elections and does not alter the boundaries of local government areas, school catchment or community council areas, nor does it affect the arrangements for local council or health services or for council tax.

2. Schedule 1 of the Scotland Act 1998 established the following rules for conducting reviews of Scottish Parliamentary Boundaries:

Rule 1 – So far as is practical, regard must be had to the boundaries of local government areas;

Rule 2 – (1) The electorate of a constituency must be as near the electoral quota as is practical, having regard to Rule 1; and

(2) Boundaries Scotland may depart from the strict application of Rule 1 if it thinks that it is desirable to do so to avoid an excessive disparity between the electorate of a constituency and the electoral quota or between the electorate of a constituency and that of neighbouring constituencies;

Rule 3 – Boundaries Scotland may depart from the strict application of Rules 1 and 2 if it thinks that special geographical considerations (including in particular the size, shape and accessibility of a constituency) render it desirable to do so; and

Rule 4 – Boundaries Scotland need not aim at giving full effect in all circumstances to Rules 1 to 3 but must take account (so far as it reasonably can)

(a) of the inconveniencies attendant on alterations of constituencies other than alterations made for the purposes of Rule 1; and

(b) of any local ties which would be broken by such alterations.

3. The electoral quota is determined by dividing the total number of local government electors on the September 2022 electoral registers by 70, being the number of mainland constituencies in Scotland. For the current review the electoral quota is 59, 902 electors

per constituency. It is generally considered that a variation of 10% from the electoral quota is acceptable.

4. The Commission may exercise its discretion in deciding the appropriate weight to be attached to each of the above rules in the circumstances of a particular constituency. It does not take account of the results of previous elections nor does it speculate on any effect which its recommendations may have on future voting patterns or on the political composition of the Scottish Parliament. The main concern for Boundaries Scotland arises as a result of the need to take account of the movement of electors within Scotland.

5. Proposals are published during the review and members of the public are encouraged to respond. A Local Inquiry must be held if representations objecting to the Commission's proposals are received from a local authority for an area within a constituency or from 100 or more electors for a constituency or 500 for a region. The Commission may also hold a discretionary Local Inquiry if it needs further information regarding a constituency or region. The purposes of a Local Inquiry are: to get to know local opinion; to hear criticism of, or support for, the published proposals; to receive counter proposals; and to enable everyone who wishes to do so to comment on the Commission's proposals and any counter proposals. In the present instance an objection was received from East Ayrshire Council as detailed below so that a Local Inquiry was held at the Park Hotel, 2 Dundonald Place, Kilmarnock in two sessions during the afternoon and evening of 12 December 2023. By letter dated 6 December 2023 I was appointed to chair that Local Inquiry.

Summary of the Proposals – Ayrshire

6. There are five constituencies covering the local authority areas of North Ayrshire, East Ayrshire and South Ayrshire. The Commission proposed changes to two of these, the existing Cunninghame South and Kilmarnock and Irvine Valley constituencies, by splitting the East Ayrshire ward of Annick along the centre line of the M77 motorway. This would add the towns of Dunlop, Kilmaurs and Stewarton (with approximately 10,800 electors) to a revised Cunninghame South constituency. North Ayrshire Council and East Ayrshire Council opposed these proposals. It was submitted that East Ayrshire's Annick ward looked toward Kilmarnock rather than the communities in Cunninghame South so that it should remain in a Kilmarnock and Irvine Valley constituency and that the Commission's proposals did not take into account new housing developments and population growth.

Submissions made at the Local Inquiry

7. David Mitchell, the Chief Governance Officer for, and solicitor to, East Ayrshire Council presented the Council's position. He emphasised that it reflected the unanimous view of all the parties within the Council. Essentially the Council's objections related to the breaking of local ties. The communities within the Annick ward – Stewarton, Dunlop, Lugton and Kilmaurs – had always had a stronger link to Kilmarnock as their administrative base; they had never had any particular links with the communities within Cunninghame South. They identify with East Ayrshire. Their children attend schools in East Ayrshire, not Cunninghame South. The result of the proposed change would be that three different MSPs would represent different parts of East Ayrshire. If

people felt less connected with their altered constituency there was a concern that they would be far less likely to turn out and vote which would have the opposite effect to recent Council campaigns to encourage people to vote. Proposed housing developments within Cunninghame South would be likely to move that constituency from being below the desired level of departure from the electoral quota to being above it, although it was accepted that might be a matter for a future review to consider. Kilmarnock and Irvine Valley was presently around 10% above the quota but would be reduced to -8.3% by the proposed alterations. All of the Ayrshire local authorities had a recent history of co-operation over the running of elections to Westminster and to the Scottish Parliament. However, the proposed changes would require North Ayrshire Council to lease buildings in another local authority's area to use as polling stations which would involve undesirable costs and inconvenience in terms of leasing and staffing the buildings for the required period. In one instance (Ward 109) would be split between Cunninghame South and Kilmarnock and Irvine Valley which would require separate polling stations adjacent to each other but separately administered. The overall effects of the proposed changes would be disproportionate to the modest gains in relation to the electoral quota. At the very least Kilmaurs should be retained within the Kilmarnock and Irvine Valley constituency. In answer to a question from Mr Tosh, Mr Mitchell admitted that he did not have the specific figures for local housing development with him, but he suggested that if Cunninghame South were to receive extra electors from elsewhere it would be likely to only be a matter of time before its quota rose towards the upper level if housing development continued within its area.

8. Tom Cook, the President of the East Ayrshire Conservative and Unionist Association, on behalf of his organisation supported removing Kilmaurs from the Commission's original proposals but considered that the proposals otherwise remained objectionable and wished to offer an alternative. While Stewarton and Dunlop were not far from Cunninghame South, public transport links were restricted or absent in contrast to the direct rail links between Kilmarnock, Stewarton and Dunlop and the direct bus service between Kilmarnock and Stewarton, used by people of those smaller towns to travel to Kilmarnock for work, shopping and leisure. Crosshouse Hospital provided acute, maternity and outpatient services not only for Kilmarnock but also for the residents of Irvine, Kilwinning, Stevenston and elsewhere in Cunninghame South. Transferring the electors in the villages of Crosshouse, Knockentiber and Gatehead, sited along the A71 corridor and all located within the electoral ward of Kilmarnock West and Crosshouse, into Cunninghame South would add just under 4,000 electors into that constituency while reducing the number of electors in Kilmarnock and Irvine Valley to an acceptable level. The large housing development under construction at Fardalehill would be part of Cunninghame South, having a natural boundary from Kilmarnock formed by Annanhill golf course and the area nearby. Future housing growth was scheduled to occur in both Cunninghame South and Kilmarnock and Irvine Valley constituencies. This was commended to Boundaries Scotland as a workable alternative to the Commission's own proposals. Councillor Douglas sought clarification from him about the suggested boundaries in the Fardalehill area.
9. Barry Douglas, Councillor for Kilmarnock East ward on East Ayrshire Council, spoke in his capacity as Vice-Chair of the Kilmarnock and Irvine Valley Constituency Labour

Party. He stressed the close ties which existed between the Annick ward villages and Kilmarnock. While Stewarton had been part of a different Westminster Parliamentary constituency from Kilmarnock before 1950, Kilmaurs had never been separate from Kilmarnock. The local Labour Party strongly supported the counter-proposals advocated by North and East Ayrshire Councils. He added that East Ayrshire's amendment, that Kilmaurs remain within Kilmarnock while the rest of Annick moved into Cunninghame South, was preferable to the Commission's own proposals. The suggestion made by Mr Cook, that the housing in the Faredalehill area move to Cunninghame South, would split community ties as that area was a suburban part of the town of Kilmarnock. It was undesirable that the urban fabric of the town should be divided in such a way for the purpose of Scottish Parliament representation.

10. Murray Tosh spoke on behalf of the Scottish Conservative and Unionist Party. He explained that he had been resident in Kilmarnock, Kilwinning and Cunninghame South for many years and had worked in Irvine. He had formerly represented Cunninghame South as a Regional MSP. He recognised the structure imposed by the Rules which the Commission was obliged to follow and that every review altered former constituencies and broke some ties. While not necessarily agreeing with them, the Commission's provisional proposals were acceptable in principle. Cunninghame South was well below the electoral quota and it was logical to transfer some electors from the neighbouring constituency of Kilmarnock and Irvine Valley which was at the upper limit. Boundaries Scotland could not take account of future house building but could consider long-term trends in population and electorate. In that regard the suggestions made by East Ayrshire Council were not accepted. An examination of the

North Ayrshire and East Ayrshire development plans shows that more building is planned for the Kilmarnock and Irvine Valley constituency area than for both of the North Ayrshire constituencies added together. An examination of the electoral roll for Cunninghame South since 1980 indicated that the electorate there had only altered slightly over the last forty years despite the house building which had taken place in that period, mostly in the areas of Kilwinning and Irvine. The population is ageing and it is projected that in North Ayrshire it will fall in the long-term. The identified household need is for affordable, social housing for the local people. The level of private housing in the area does not fuel net inward migration. Over approximately the same period the electorate of the former Kilmarnock and Loudoun district had dipped until 2007 but since then it had risen from around 61,000 to 65,500. This was a result of the completion of the M77 motorway link which made commuting into Glasgow and beyond much more attractive so that there had been significant house building and migration into Kilmarnock and Stewarton in particular. This had raised the electorate of Kilmarnock and Irvine valley to its present high level which inevitably led to the conclusion that it was the location from which some electors would need to be transferred to top up the falling roll in Cunninghame South. Inevitably some local ties would be broken, and some electors with ties to Kilmarnock would find themselves in a constituency based on Irvine. The Commission's proposals respected Rules 1 and 2 as did the further proposal that Kilmaurs be retained in Kilmarnock and Irvine Valley. Rule 3 did not apply so that the Commission had to be guided by Rule 4 in rebalancing the two constituencies by assessing the impact of breaking existing local ties.

11. From a personal point of view, Mr Tosh added that Stewarton and Dunlop had been included with Kilmarnock between 1918 and 1950, then they had moved into a Central Ayrshire constituency until 1974, when they had again been aligned with Kilmarnock. The former position had been changed more than fifty years ago and was not particularly relevant for the present exercise. Stewarton formed a distinct local community which had little interaction with Irvine. In practical terms it was very firmly in Kilmarnock's orbit. From personal experience he doubted that Stewarton was on the radar of most people in Cunninghame South. Crosshouse Hospital served the population of Cunninghame South for acute and maternity services and the links operated both ways. Mr Cook's alternative proposals did not suggest that the people of Crosshouse had close links with Irvine but the real question was who would be less disadvantaged by a transfer of electors which led to the suggestion regarding the new developments at Fardalehill. Residents of Crosshouse and Knockentiber also looked to Kilmarnock but were far more likely to work in Irvine and perhaps to have family and social ties with residents of Springhouse and Dreghorn which lie just within Cunninghame South. The A71 communities would be a better fit with Irvine, certainly much more so than the communities in polling district E109 along the M77 between Fenwick and Glasgow whom the provisional proposals would place in Cunninghame South. Change could not be avoided but the details required fine tuning. Councillor Douglas also asked him about the Fardalehill area boundaries, which concluded the afternoon session of the Local Inquiry.

12. In the evening session, Councillor David Richardson, who represented North Kilmarnock on the East Ayrshire Council and was a member of its SNP group, spoke in

his personal capacity to object to the proposals on the basis that the historical ties between the town of Kilmarnock and the villages of Kilmaurs, Fenwick, Stewarton and Dunlop were too strong for them to be separated. People from those places commonly commuted together to Kilmarnock by rail for work. While the proposals were understandable, new housing developments in the area would soon create an imbalance in the other direction so the overall rationale or the benefit behind it was difficult to appreciate. All local authorities worked to a local development plan so the figures relating to future development were not speculative. His statement concluded the evening session.

13. Boundaries Scotland has also received a number of written submissions from various interested parties, including some of those who spoke at the hearings. However, this report is concerned solely with the discussion which took place at the Local Inquiry itself.

Summary of the Issues

14. The Commission's provisional proposals make alterations to only two of the five Scottish Parliament constituencies in the area under consideration, Cunninghame South and Kilmarnock and Irvine Valley. At present the former is 14% below the electoral quota and the latter is 10% above it so, as was mentioned at the Local Inquiry, the logical approach would be to move some electors from Kilmarnock and Irvine Valley into Cunninghame South to improve the position with regard to Rules 1 and 2. The question is how best to achieve that aim.

15. It is clear that the provisional proposals have aroused strong local feelings. Mr Mitchell indicated that the present review appeared to be the first time that East Ayrshire Council had ever formally objected to Parliamentary boundary proposals. Everyone who spoke at the hearings of the Local Inquiry had devoted considerable care and attention to the issues. The single proposal which attracted most comment and most opposition was that of detaching the section of Annick ward which contained Kilmaurs, Dunlop and Stewarton from Kilmarnock and Irvine Valley and attaching it to Cunninghame South. Opposition centred on Rule 4 (a) and (b). Practical inconveniences were raised in relation to the conduct of an election in these circumstances by East Ayrshire Council but most opposition centred on the disruption to long-established local ties because these smaller towns were much more closely linked with Kilmarnock than with Irvine and the rest of Cunninghame South. This had been the position for decades. More support was voiced for leaving Kilmaurs within the same constituency as Kilmarnock even if other parts of the Annick ward were to make the transfer than were expressed for the original proposals.

16. A number of submissions were made in relation to the local development plans in the area under consideration. However, Boundaries Scotland is required to operate on the basis of the Scottish Parliament electorate as at the start date of the review, 1st September 2022, and the electoral quota has been calculated according to the number of electors within mainland Scotland on that date. It cannot take into account movements which may have taken place since that date and it cannot speculate on any movement of

electors which may appear to be imminent. These factors will be picked up in the next review and is one of the reasons why such reviews take place regularly, between every eight to twelve years. It would not be a practicable proposition to reconsider the position annually, for example. The proposals which were based on plans to develop new housing in various areas must be seen in that context. Mr Tosh's proposal that the Commission take into account long term trends in development and in population rise and fall in particular districts must be considered in the same context. There was clearly a degree of disagreement over the likely effect of development in some of the areas under consideration between Mr Tosh and Mr Mitchell in any event. For present purposes Boundaries Scotland must focus on the location of the electorate as at the enumeration date.

17. In relation to the question of local ties, most speakers concentrated on transport links, shopping, commuting patterns for work, social ties and traditional historical and administrative links. Mr Mitchell also mentioned that the children of those in the part of the Annick ward who would be moved into Cunninghame South attended schools in East Ayrshire, a local tie which may be of considerable importance.
18. The possible transfer of a sector of the housing at Fardalehill will require to be considered by the Commission. Differing views about the level of its ties to Kilmarnock were expressed by Mr Cook and Councillor Douglas. They also differed over whether the area offered a clear boundary. These factors must also be taken into account by Boundaries Scotland in deciding whether transferring electors in Fardalehill into Cunninghame South may be a realistic option.

19. I do not consider that it would be appropriate for me to make recommendations to the Commission on the basis of the information available to me and in view of the conflicting presentations which were made. I commend each of the proposals and counter-proposals summarised above to Boundaries Scotland for their consideration and the points raised within paragraphs 15 to 18 above are presented with the intention of offering assistance to the Commission as it seeks to exercise its statutory discretion to determine a practical solution in accordance with Rules 1-4.

Reported by

Sean F Murphy KC

22 January 2024

Appendix

List of those who gave evidence at the Local Inquiry hearings (in order of presentation)

Afternoon Session:

David Mitchell, Chief Governance Officer and Solicitor for East Ayrshire Council

Thomas Cook, President of the East Ayrshire Conservative and Unionist Association

Councillor Barry Douglas, Vice-Chair of the Kilmarnock and Irvine Valley Constituency

Labour Party

Murray Tosh, member of the Scottish Conservative and Unionist Party

Evening Session:

Councillor David Richardson, member of East Ayrshire Council SNP group, but speaking in his personal capacity