



ANALYSIS

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1961, No. 132

An Act to consolidate and amend the law relating to the review and reorganisation of the districts and functions of local authorities [1 December 1961]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—(1) This Act may be cited as the Local Government Commission Act 1961.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-two.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Appeal Authority” means the Local Government Appeal Authority appointed under this Act:

“Commission” means the Local Government Commission established under this Act:

“District” means the district of a local authority:

“Local authority” means a County Council, Borough Council, Town Council, Road Board, Harbour Board, River Board, Drainage Board, Catchment Board, Milk Authority, Water Supply Board, Urban Fire Authority, Tramway Board, Transport Board, Underground Water Authority, and such other local authorities or public bodies as are from time to time declared by the Governor-General, by Order in Council, to be local authorities for the purposes of this Act:

“Local governing authority” means a County Council, Borough Council, Town Council, or Road Board:

“Minister” means the Minister of Internal Affairs:

“Scheme” means a reorganisation scheme as provided for in this Act:

“Trading undertaking” means any tramway service, ferry service, or other service for the conveyance of passengers or goods, any gas or electric light undertaking, any power supply undertaking, any milk supply undertaking, and such other undertakings as may from time to time be declared by the Governor-General, by Order in Council, to be trading undertakings for the purposes of this Act.

Cf. 1953, No. 110, s. 2; 1957, No. 40, s. 158 (4) (a)

PART I

REORGANISATION SCHEMES

Local Government Commission

3. Local Government Commission—(1) For the purposes of this Act there shall be a Commission, to be called the Local Government Commission.

(2) The Commission shall consist of three members, to be appointed by the Governor-General in Council, of whom—

(a) One member, being a barrister or solicitor of the Supreme Court of New Zealand, shall be appointed as Chairman of the Commission:

(b) Two members shall be appointed as having a special knowledge of local government.

(3) Where any person appointed to the Commission is a member of or an office holder in or an employee of any local authority or association of local authorities or of local authority employees, he shall relinquish that membership or office or employment before entering upon his duties as a member of the Commission.

(4) Any member of the Commission who after appointment becomes a member of or an office holder in or an employee of any local authority or association of local authorities or of local authority employees shall thereupon cease to be a member of the Commission and the vacancy shall be deemed to be an extraordinary vacancy and the provisions of section 6 of this Act shall apply accordingly.

(5) For the purposes of subsections (3) and (4) of this section, any person who receives any remuneration from any local authority or association of local authorities or of local authority employees whether or not as an officer or servant of that local authority or association, and whether by way of salary, wages, fee, commission, allowance, or otherwise, shall be deemed to be an employee of that local authority or association.

(6) The powers of the Commission shall not be affected by any vacancy in its membership.

(7) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his being a member of the Commission.

Cf. 1953, No. 110, s. 3

4. Term of office of members of Commission—(1) Except as otherwise provided in this Act, every member of the Commission shall be appointed for such term, not exceeding five years, as the Governor-General in Council thinks fit, and may from time to time be reappointed.

(2) Notwithstanding that the term of office of a member of the Commission has expired, he shall, unless he sooner vacates his office under section 6 of this Act, continue to hold office until his successor comes into office.

Cf. 1953, No. 110, s. 4

5. Oath to be taken by members of Commission—Before entering upon the exercise of the duties of their office the members of the Commission shall take and subscribe an oath before a Judge of the Supreme Court that they will faithfully and impartially perform the duties of their office.

Cf. 1953, No. 110, s. 5

6. Extraordinary vacancies—(1) Any member of the Commission may at any time be removed from office by the Governor-General in Council for inefficiency, disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General in Council, or may at any time resign his office by writing addressed to the Minister.

(2) If any member of the Commission dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(3) In the case of any extraordinary vacancy the Governor-General in Council may appoint some qualified person to be a member of the Commission for the residue of the term for which the vacating member was appointed.

Cf. 1953, No. 110, s. 6

7. Deputies—(1) The Governor-General in Council may from time to time appoint one of the members of the Commission to be the Deputy Chairman thereof.

(2) Subject to the provisions of subsection (4) of this section, the Deputy Chairman shall have and may exercise and perform all the powers and duties of the Chairman—

(a) With the consent of the Chairman, at any time during the temporary absence of the Chairman:

(b) Without that consent, at any time while the Chairman is temporarily incapacitated or prevented by illness, absence, or other cause from performing the duties of his office:

(c) While there is any vacancy in the office of the Chairman.

(3) No acts done by the Deputy Chairman acting as the Chairman shall in any proceedings be questioned on the ground that the occasion for his so acting had not arisen or had ceased.

(4) In any case in which the Governor-General in Council is satisfied that any member of the Commission is incapacitated or prevented by illness, absence, or other sufficient cause from performing the duties of his office, the Governor-General in Council may appoint a suitable person, being in the case of a deputy of the Chairman a barrister or solicitor of the Supreme Court of New Zealand, to be a deputy to act for the member while he is so incapacitated or prevented as aforesaid, and any such deputy shall, while he acts as such, be deemed to be a member of the Commission and, if he is the deputy of the Chairman and notwithstanding that there is a Deputy Chairman of the Commission under subsection (1) of this section, to be the Chairman of the Commission.

(5) No such appointment of a deputy and no acts done by a deputy as such shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

Cf. 1953, No. 110, s. 7

8. Remuneration and travelling expenses—There shall be paid out of money appropriated by Parliament for the purpose to the members of the Commission remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Commission were a statutory Board within the meaning of that Act.

Cf. 1953, No. 110, s. 8

9. Meetings of Commission—(1) Meetings of the Commission shall be held at such times and places as the Commission or the Chairman thereof from time to time appoints.

(2) Subject to the provisions of section 41 of this Act, at all meetings of the Commission two members, including the

Chairman or the Deputy Chairman acting as the Chairman, shall form a quorum.

(3) At any meeting of the Commission the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote. The decision of the Commission on any matter shall be determined by a majority of the valid votes recorded thereon.

(4) Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

Cf. 1953, No. 110, s. 9

10. Commission to be a Commission of Inquiry—(1) The Commission shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly.

(2) The Chairman of the Commission, or any other member or the Secretary of the Commission purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Commission, or the production of documents, or may do any other act preliminary or incidental to the hearing of any matter by the Commission.

Cf. 1953, No. 110, s. 10

11. Proceedings before Commission not to be questioned except before Local Government Appeal Authority—No proceeding of the Commission under this Act shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commission under this Act shall be liable to be challenged, reviewed, quashed, or called into question in any Court, but there shall be a right of appeal to the Local Government Appeal Authority as hereinafter provided.

Cf. 1953, No. 110, s. 11

12. Functions and powers of Commission—(1) The functions of the Commission shall be to carry out all such investigations, prepare all such schemes, and make all such recommendations and reports as are required or authorised by this Act for the purpose of ensuring that—

(a) The system of local government in any locality shall be such as best provides or will best provide for the needs and continued development of that locality:

(b) Local authorities have such district boundaries and such functions and powers as are necessary or expedient to enable them to provide most effectively and economically essential or desirable local government services and facilities:

(c) The purposes and provisions of this Act or the purposes and provisions of any other Act in relation to local government or any aspect thereof are effectively implemented.

(2) In performing its functions, the Commission may exercise all or any of the following powers in accordance with the provisions of this Act, namely:

(a) To review from time to time the functions and districts of local authorities:

(b) To inquire into proposals and prepare schemes in accordance with the provisions of this Act for the reorganisation of the functions and districts of local authorities:

(c) Of its own motion, or at the request of the Minister or of any local authority, to carry out investigations and make recommendations to the Minister in respect of legislation necessary to provide for the establishment of any new form of local government in any particular locality or localities:

(d) Generally to review and to report to the Minister upon such matters relating to local government as may be determined by the Commission, or be referred to the Commission by the Minister.

(3) In carrying out any such review or investigation the Commission may in its discretion hold a public inquiry, and in every such case the provisions of section 17 of this Act, as far as they are applicable, shall apply as if that inquiry were a public inquiry to which that section applies.

(4) In inquiring into any proposal, the Commission shall take into consideration the following matters so far as, in the opinion of the Commission, they are applicable to the particular circumstances of each case and do not limit the provisions of subsection (1) of this section, namely:

(a) Whether the proposal conforms to recognised principles of town and country planning; and

(b) The desirability of ensuring that the boundaries of the district of any local governing authority affected are stabilised for a reasonable period; and

- (c) The possible effect on any local governing authority of the exclusion of any area from its district or of the transfer of any of its functions to any local authority.

Cf. 1953, No. 110, s. 13

13. Commission may direct investigations—(1) The Secretary of the Commission or any other person authorised by the Secretary may from time to time investigate and report to the Commission on such matters as the Commission directs.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding fifty pounds who, having the custody or possession of any books, papers, accounts, or documents, refuses or fails to allow to have access thereto any person investigating any matter under this section, or who obstructs any such person in the making of the investigation.

Cf. 1953, No. 110, s. 12

Schemes for Reorganisation

14. Matters to be provided for in reorganisation schemes—

(1) A reorganisation scheme under this Act may provide for one or more of the following matters:

- (a) The union into one district of two or more adjoining districts, whether districts of the same kind or not:
- (b) The merger of any district in any other district:
- (c) The constitution of a new district or districts:
- (d) The abolition of any district or districts:
- (e) Any alteration of the boundaries of adjoining districts:
- (f) The conversion of a district into a district of a different kind:
- (g) The inclusion in any district of any area adjoining that district:
- (h) The exclusion of any area from any district:
- (i) The transfer of all or any of the functions of any local authority, or all or any of the functions of any local authority exercisable in any portion of its district or elsewhere, to any other local authority:
- (j) The dissolution of any local authority.

(2) A scheme providing for any of the aforesaid matters may also provide for any other matters that may be declared by the Governor-General, by Order in Council, to be appropriate to such a scheme, and may also provide for any matters considered by the Commission to be incidental to the scheme.

(3) Without limiting the meaning of the expression “matters considered by the Commission to be incidental to the scheme” in subsection (2) of this section, such matters may include any supplementary provisions referred to in section 23 of this Act for giving effect to a scheme.

(4) No scheme shall provide for the transfer of the whole or any part of any trading undertaking or of any functions in relation thereto from any local governing authority, except upon the union, merger, or abolition of the district of the local governing authority.

(5) Any two or more districts shall be deemed to be adjoining districts and any area shall be deemed to adjoin a district for the purposes of this Act, notwithstanding that they may be separated by a public highway, any river or harbour, the sea, or any other natural feature.

(6) Without limiting the provisions of subsection (4) of this section, any two or more districts shall be deemed to be adjoining districts for the purposes of paragraph (a) of subsection (1) of this section if, subsequent to union, they would form one continuous area.

Cf. 1953, No. 110, s. 14

15. Commission may investigate proposals for a scheme—

(1) The Commission may from time to time of its own motion initiate, or at the request of the Minister or of any local authority consider, a proposal that a scheme be prepared in respect of any matters specified in subsection (1) of section 14 of this Act.

(2) Either before or immediately after any such request is made to the Commission, the Minister or, as the case may be, the local authority shall serve a copy of the proposal on every local authority to which the proposal relates.

(3) Where a request or recommendation is made under any enactment other than this Act to the Governor-General or to any local authority or other person, whether by petition or in such other manner as may be prescribed or permissible, asking for or recommending any action to be taken for the purpose of or with a view to giving effect to any proposal which could be provided for in a scheme under this Act, the request or recommendation shall be referred to the Commission, and no such action shall be taken under the enactment unless the Commission so recommends.

(4) Where the Commission does not make any such recommendation in respect of any such proposal, the Commission shall deal with the request or recommendation as if it were a request made under subsection (1) of this section.

Cf. 1953, No. 110, s. 15

16. Commission to investigate possibility of agreement on proposal—(1) Where the Commission initiates or decides to consider any such proposal as aforesaid, it shall, in such manner as it thinks fit, ascertain whether or not all local authorities likely in the opinion of the Commission to be affected by the proposal are in agreement on the proposal.

(2) Where the Commission considers that no such agreement exists and that the proposal warrants further investigation, it shall convene a meeting of representatives of all the local authorities likely in the opinion of the Commission to be affected by the proposal, for the purpose of discussing the proposal.

(3) The Commission may undertake, in such manner as it thinks fit, any other investigations and negotiations in relation to the proposal, separately or jointly with one or more local authorities or other interested persons.

(4) After the Commission has completed its investigations and negotiations under this section, it may, in its discretion—

- (a) Prepare a provisional scheme providing for all or any matters to which the proposal relates; or
- (b) Hold a public inquiry as to whether or not a scheme should be prepared; or
- (c) Decide not to proceed with the proposal.

Cf. 1953, No. 110, s. 16

17. Public inquiry—(1) Not less than one month before it commences any such public inquiry the Commission shall give public notice thereof. Every such notice shall state that representations on the matters to be inquired into may be made by any person either in writing addressed to the Commission before the inquiry or by oral or written submissions at the inquiry.

(2) The Commission shall also give notice of every public inquiry to the Minister, to every local authority likely in the opinion of the Commission to be affected by the inquiry, to every person or body having statutory authority to make decisions or recommendations in respect of the union, merger, constitution, alteration, or abolition of any districts likely in the opinion of the Commission to be affected by the inquiry:

Provided that the failure to give notice to any such person or body shall not affect the validity of any scheme prepared as a result of the inquiry.

(3) After completing any such public inquiry, the Commission may, in its discretion—

- (a) Prepare a provisional scheme providing for all or any of the matters inquired into; or
- (b) Decide not to proceed with the proposal.

Cf. 1953, No. 110, ss. 17, 18

18. Public notice of provisional scheme—As soon as a provisional scheme has been prepared by the Commission, the Commission shall give public notice of the scheme and of the place or places where it may be inspected and of the right of objection hereinafter provided for, and shall also give notice thereof to the persons and bodies referred to in subsection (2) of section 17 of this Act.

Cf. 1953, No. 110, s. 19; 1956, No. 106, s. 6 (2)

19. Objections to provisional scheme—(1) Any person or body interested shall have a right of objection to any provisional scheme, and may give notice in writing to the Commission of the objection and of the grounds thereof at any time within one month after the first public notification of the scheme, or within such further time as may in any case be allowed by the Commission.

(2) The Commission shall as soon as practicable consider all such objections, and may, if it thinks fit, convene a meeting of the local authorities affected by the scheme and any person or body who or which has lodged an objection pursuant to subsection (1) of this section, or hold a public inquiry for that purpose.

(3) At any such meeting or public inquiry under the provisions of this section, the Commission shall hear all objections to the provisional scheme and such other evidence submitted as the Commission considers relevant to the matters being inquired into.

(4) In determining any objection the Commission may uphold that objection wholly or partly, and may abandon or modify the scheme accordingly, or may dismiss the objection:

Provided that the Commission may, if it thinks fit, prepare a further provisional scheme in substitution for that to which objection has been made. All the provisions of this Act with

respect to provisional schemes shall apply with respect to every substituted scheme so prepared.

Cf. 1953, No. 110, s. 20

20. Final scheme—After all objections to any provisional scheme have been disposed of, the Commission may approve the scheme as originally prepared or as modified as a result of such objections, and the scheme shall then become a final scheme.

Cf. 1953, No. 110, ss. 21, 22 (1)

21. Public notice of final scheme—As soon as may be after a final scheme has been approved by the Commission, the Commission shall give public notice of the scheme and of the place or places where it may be inspected, and shall also give notice thereof to the persons and bodies referred to in subsection (2) of section 17 of this Act.

Procedure for Carrying Schemes into Effect

22. Effect to be given to final scheme—Subject to any decision of the Appeal Authority in relation to the scheme and to the provisions of section 39 of this Act, effect shall be given to every final scheme either—

- (a) By Order in Council; or
- (b) If the Minister so decides, in such other manner as may be prescribed by any Act for the time being in force making appropriate provision in that behalf.

Cf. 1953, No. 110, s. 35

23. Supplementary provisions for giving effect to scheme—
(1) For the purpose of giving full effect to any provisions of a final scheme, the Governor-General in the Order in Council or other instrument giving effect to the scheme or in a separate Order in Council may, subject to the provisions of this Act, make such provisions as he deems necessary for the purposes of the district thereby created or altered or for the discharge of the functions of the local authority of the district, or for any other matter rendered necessary through the carrying into effect of the provisions. In particular he may—

- (a) Determine the nature or constitution of any new district or any new local authority;
- (b) Declare that the union, merger, constitution, abolition, or alteration of boundaries of any district or districts or the dissolution of any local authority shall be

deemed to have been effected under any existing Act that he specifies in that behalf:

- (c) Determine the qualifications for electors or ratepayers of a new district or local authority if different qualifications were previously in force in the respective districts comprising the new district:
- (d) Make such provisions as are necessary with respect to the first or any election of Councillors or members of any local authority affected by the scheme:
- (e) Make provision for the apportionment or disposition of the assets and liabilities of all or any of the local authorities affected by the scheme:
- (f) Make provision for the division of any district into ridings, wards, or other subdivisions, as the case may require:
- (g) Where a new district is constituted, make such provisions as are necessary with respect to the discharge of the functions of the local authority pending the first election of Councillors or members of the local authority:
- (h) Where a district is merged in the district of any local authority or is abolished and the whole or any part thereof is included in the district of any other local authority, make such provision as he considers necessary for the representation of that first-mentioned district or part thereof on that local authority until the next general election of Councillors or members of that local authority:
- (i) Prescribe the date or dates on which the provisions or any of them shall come into force.

(2) In exercising the powers conferred by subsection (1) of this section, the Governor-General may apply for the purpose, with such modifications as may be necessary or desirable, any provisions of any Act for the time being in force which in his opinion are appropriate to the particular matter.

(3) No Order in Council or other instrument issued for the purpose of giving effect to any scheme shall affect any separate rate or special rate, and every such rate shall continue to be charged upon the whole of the area upon which it was charged before the issue of the instrument, and shall not by reason thereof become a charge upon any additional area; and the area within which any unexpended loan money may be expended shall not be affected by any such instrument.

Cf. 1953, No. 110, s. 36

24. Exercise of powers conferred by this Act not affected by provisions of other Acts—(1) An Order in Council or other instrument giving effect to any proposal contained in a final scheme may be issued under the authority of this Act, or of any Act applied for the purpose, notwithstanding that the requirements of any Act, other than this Act, as to the particular matter in relation to which the instrument is issued may not have been complied with.

(2) Any such instrument shall, for all purposes not inconsistent with the provisions of this Act, be deemed to have been issued under the authority of such other Act as is named therein as fully and effectually as if the provisions of that Act precedent to the issue of the instrument had been fully complied with.

Cf. 1953, No. 110, s. 37

25. Powers of local authority on which jurisdiction conferred for purposes of scheme—In any case where, pursuant to a final scheme,—

- (a) Two or more districts of a different kind are united; or
 - (b) A district is merged in another district or is abolished;
- or

- (c) The functions of any local authority are transferred to another local authority,—

the local authority that, pursuant to the scheme, assumes jurisdiction over an area formerly comprising a separate district, or takes over the functions of a previous local authority, shall have and may exercise, subject to any provisions which the Governor-General may, by Order in Council, make to the contrary, all the powers which were previously exercised by the controlling local authority or would have been so exercised by it if it had remained in existence or in control of the area, and shall be subject to the same duties, obligations, and liabilities as were or would similarly have been imposed on that controlling local authority.

Cf. 1953, No. 110, s. 38

26. Financial adjustments—(1) This section shall apply where, pursuant to an Order in Council or other instrument giving effect to a final scheme under this Act,—

- (a) A new district of a local governing authority is constituted comprising or including part only of another such district then existing; or

(b) The boundaries of the district of a local governing authority are altered by the inclusion therein of an area forming part of another such district,—

and the provisions of this section shall have effect, notwithstanding anything in the Municipal Corporations Act 1954 or in the Counties Act 1956.

(2) Where any such Order in Council or other instrument does not make provision for the apportionment of the assets and liabilities of the local governing authorities affected by the order or other instrument, those local governing authorities may by agreement determine the manner in which those assets and liabilities shall be apportioned.

(3) If no such agreement is entered into by the local governing authorities concerned within three months of the date of the coming into force of the order or other instrument, any local governing authority directly affected by the constitution of the new district or alteration of boundaries may apply to the Commission for an order apportioning assets and liabilities, and the Commission, having regard to such matters as the Governor-General, by Order in Council, specifies, shall make an order directing the manner in which assets and liabilities are to be apportioned as between the local authorities concerned.

(4) For the purpose of deciding any application to the Commission under this section, the Commission may make such inquiries as it thinks fit, and may obtain advice from any person who, in the opinion of the Commission, has expert knowledge concerning any aspect of the matter to be decided.

(5) Every order of the Commission under this section may be enforced as if it were an agreement between the local governing authorities concerned.

(6) Notwithstanding anything in this Act, every order of the Commission under this section shall be final.

PART II

APPEALS

Local Government Appeal Authority

27. Appointment of Local Government Appeal Authority—

(1) The Governor-General in Council may from time to time appoint a suitable person to be the Local Government Appeal Authority for the purposes of this Act.

(2) The person appointed to be the Appeal Authority shall be a barrister or solicitor of the Supreme Court of not less than seven years' practice, whether or not he holds or has held any judicial office.

(3) Any person appointed under this section to be the Appeal Authority may hold that office concurrently with any other office held by him.

(4) The person appointed to be the Appeal Authority shall be appointed for a term not exceeding five years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.

(5) Where the Appeal Authority becomes from any cause incapable of acting or where the Appeal Authority deems it not proper or desirable that he should adjudicate on any specified appeal, the Governor-General in Council may appoint a suitable person to be the Deputy Local Government Appeal Authority. The person so appointed shall, subject to the conditions or limitations and for the period specified in his appointment, have all the powers, duties, and functions of the Appeal Authority.

(6) The fact that any person is acting as the Deputy Local Government Appeal Authority shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether the occasion for his appointment had arisen or ceased.

(7) No person shall be appointed the Deputy Local Government Appeal Authority under this section unless he is eligible for appointment as the Appeal Authority.

Cf. 1953, No. 110, s. 25

28. Salary and allowances of Appeal Authority—(1) There shall be payable to the Appeal Authority and to the Deputy Local Government Appeal Authority out of the Consolidated Fund, without further appropriation than this section, such remuneration by way of fees, salary, and allowances as is fixed from time to time by the Minister of Finance.

(2) Nothing in subsection (1) of this section shall apply with respect to any Appeal Authority or Deputy Local Government Appeal Authority who for the time being receives out of public money a salary in respect of any office

that he holds concurrently with his office as the Appeal Authority or Deputy Local Government Appeal Authority.

Cf. 1953, No. 110, s. 26; 1954, No. 90, s. 11

29. Oath to be taken by Appeal Authority—Before entering upon the duties of his office, the Appeal Authority or the Deputy Local Government Appeal Authority (not being a person who has already taken the judicial oath in respect of any other judicial office) shall take and subscribe an oath before a Judge of the Supreme Court that he will faithfully and impartially perform the duties of his office.

Cf. 1953, No. 110, s. 27

30. Functions of Appeal Authority—The functions of the Appeal Authority shall be to sit as a judicial authority to determine appeals made from decisions of the Commission as hereinafter provided.

Cf. 1953, No. 110, s. 28

31. Evidence in proceedings before Appeal Authority—
(1) The Appeal Authority may receive as evidence any statement, document, information, or matter that may in his opinion assist him to deal effectually with the appeal before him, whether or not the same would be otherwise admissible in a Court of law.

(2) Subject to the foregoing provisions of this section, the Evidence Act 1908 shall apply to the Appeal Authority and to all proceedings before him in the same manner as if the Appeal Authority were a Court within the meaning of that Act.

Cf. 1953, No. 110, s. 29

32. Appeal Authority to be a Commission of Inquiry—The Appeal Authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly.

Cf. 1953, No. 110, s. 30

33. Proceedings before Appeal Authority not to be questioned for want of form or appealed against—Proceedings before the Appeal Authority shall not be held bad for want of form. No appeal shall lie from any order of the Appeal Authority, and, except on the ground of lack of jurisdiction,

no proceeding or order of the Appeal Authority shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

Cf. 1953, No. 110, s. 31

34. Sittings of Appeal Authority—(1) Every sitting of the Appeal Authority shall be held in public and at such place as he deems most convenient having regard to the matters to be decided.

(2) Subject to the provisions of this Act, the Appeal Authority shall determine his own procedure.

Cf. 1953, No. 110, s. 32

Appeals to Local Government Appeal Authority

35. Appeals to Appeal Authority—(1) There shall be a right of appeal to the Appeal Authority from the whole or any part of any decision of the Commission finally approving any scheme.

(2) The following persons, and no others, may appeal as aforesaid, namely:

(a) Any local authority affected by the scheme, whether in respect of its district or in respect of any of its functions or otherwise:

(b) Any person or body having statutory authority to make decisions or recommendations in respect of the union, merger, constitution, alteration, or abolition of any district to which the scheme relates:

(c) The Minister in any case where the scheme affects only one local authority, or only one local authority and an adjoining area that does not form part of a district, or does not affect any local authority.

(3) Every such appeal shall be made by notice in writing and shall be sent to the Secretary for Internal Affairs within one month after the date of the giving of public notice of the scheme under section 21 of this Act. Either before or immediately after the notice of appeal is sent to the Secretary, the appellant shall serve a copy of the notice on every local authority to which the scheme relates.

(4) Notwithstanding anything in subsection (3) of this section, the Appeal Authority may in his discretion determine an appeal of which notice is sent to the Secretary for Internal Affairs after the expiration of the period of one month specified in that subsection, if the notice is sent to the

Secretary for Internal Affairs not later than fourteen days after the date of the expiration of that period.

(5) Every notice of appeal shall set out the grounds for the appeal, and, in the case of an appeal against part only of the decision, shall specify the part or parts appealed against. The notice shall also specify the relief sought by the appellant.

(6) No proceedings may be taken in respect of the decision appealed against until the final determination of the appeal.

Cf. 1953, No. 110, s. 33

36. Hearing and determination of appeal—(1) Where any appeal is made to the Appeal Authority he shall, as soon thereafter as conveniently may be, fix a time and place for the hearing thereof.

(2) Not less than one month before the date fixed for the hearing, the Secretary for Internal Affairs shall give public notice thereof in the *Gazette* and in one or more newspapers circulating in the locality likely in his opinion to be affected by the scheme.

(3) The Secretary for Internal Affairs shall also give notice of the hearing to every local authority likely in his opinion to be affected by the scheme, and to every person or body having statutory authority to make decisions or recommendations in respect of the union, merger, constitution, alteration, or abolition of any of the districts likely in his opinion to be affected by the scheme:

Provided that the failure to give notice to any such body or person shall not affect the validity of any decision of the Appeal Authority.

(4) Every local authority likely to be affected by the scheme may be represented at the hearing by its solicitor or counsel or agent, the Crown may be represented by any person appointed in that behalf by the Minister, and any other person may appear at the hearing in person or by his solicitor or counsel or agent, and the Appeal Authority shall hear all evidence tendered and representations made by or on behalf of the local authorities, the Crown, and other persons which he deems relevant to the appeal.

(5) After hearing the evidence and representations as aforesaid, the Appeal Authority, having regard to the matters specified in subsections (1) and (4) of section 12 of this Act, shall make an order allowing the appeal in whole or in part or confirming the scheme subject to amendment or dismissing the appeal:

Provided that no amendment to any scheme may be made by the Appeal Authority that relates to any district or area not included in the scheme.

(6) If the appellant does not prosecute his appeal with due diligence the Appeal Authority may, on the application of any person affected by the appeal, dismiss the appeal.

Cf. 1953, No. 110, s. 34

PART III

MISCELLANEOUS PROVISIONS

37. Electors may request poll in certain cases—(1) Where any final scheme contains a proposal—

- (a) For the union, merger, or abolition of the district of any local governing authority; or
- (b) For the exclusion of any area from the district of any local governing authority, whether by the constitution of a new district or by the alteration of the boundaries of any district or districts, not being an alteration of any such boundaries that has been agreed to by all the local governing authorities affected thereby,—

a request in writing, signed by not less than fifteen per cent of the electors of the district or area, as the case may be, that a poll of the electors of the district or area be taken on the proposal in order to ascertain the extent of public opposition may be delivered to the Returning Officer of the district or, as the case may be, the district of which the area forms part, at any time within one month after the last day for lodging appeals against the decision of the Commission under section 35 of this Act or, in any case where an appeal against the decision is made to the Appeal Authority, within one month after the date of the decision of the Appeal Authority.

(2) For the purposes of subsection (1) of this section—

- (a) The number of electors of any district or of any riding, ward, or other subdivision shall be the number of electors on the roll of that district, riding, ward, or subdivision:
- (b) The number of electors of any area that is not a riding, ward, or other subdivision shall be the number of electors on the roll of the district of which that area forms part who possess a qualification in respect of that area—

as stated in each case in a certificate by the Clerk of the local authority, whose certificate shall be final.

Cf. 1953, No. 110, s. 22 (2), (3)

38. Conduct of polls—(1) Every poll of the electors of any district or of any area that is requested under section 37 of this Act shall be taken on a day to be appointed in that behalf by the local authority of the district or, as the case may be, of the district of which the area forms part, being not later than three months after the last day for lodging appeals against the decision of the Commission under section 35 of this Act, or, in any case where an appeal against the decision is made to the Appeal Authority, within three months after the date of the decision of the Appeal Authority.

(2) Subject to the provisions of this section, the provisions of the Local Elections and Polls Act 1953 shall, as far as they are applicable, apply to every poll under this section.

(3) Where any such poll is required to be taken of the electors of any area that forms a part of the district of a local governing authority and is not a riding or ward or other subdivision for electoral purposes, a special roll shall be prepared comprising the names of all persons in that part entitled to vote at any election of the members of the local governing authority; and that roll shall be prepared—

(a) By preparing a separate roll for the purpose; or

(b) By striking out from an official copy of the roll of electors of the local governing authority the name of every person who is not entitled to vote at the poll, and the name of every other person whose name appears on the roll more than once (except where that name first appears); or

(c) By indicating by appropriate words, abbreviations, or marks on an official copy of the roll of electors of the local governing authority the name of every person whose name appears on the roll and who is entitled to vote at the poll.

(4) Notwithstanding anything in any other Act, every elector shall have one vote only at each poll at which he is entitled to vote under this section.

Cf. 1953, No. 110, s. 22 (4)–(7)

39. Giving effect to scheme where poll held—(1) Effect shall not be given to any final scheme in so far as it relates to any proposal on which a poll is required to be taken pursuant to a request under section 37 of this Act, if—

- (a) Where the total number of valid votes recorded at any such poll is more than sixty-six and two-thirds per cent of the number of electors on the roll, more than fifty per cent of the valid votes recorded are against the proposal; or
- (b) Where the total number of valid votes recorded at any such poll is sixty-six and two-thirds per cent or less of the number of electors on the roll, not less than sixty per cent of the valid votes recorded are against the proposal.

(2) Every Returning Officer who conducts a poll under section 38 of this Act shall, as soon as practicable after the close of the poll, send to the Secretary for Internal Affairs a certificate stating the number of electors on the roll, the number of valid votes recorded for the proposal, and the number of valid votes recorded against the proposal.

Cf. 1953, No. 110, s. 23

40. Minister may request Commission to review scheme—

(1) Where any proposal contained in a final scheme is rejected as aforesaid at a poll of electors, and the Minister considers that as a result other parts of the scheme or any related scheme may require to be reviewed, he may request the Commission to give further consideration to that scheme or to any related scheme.

(2) In any such case the Commission, in its discretion, may recommend to the Minister that those other parts of the scheme or the related scheme be proceeded with or be not proceeded with.

Cf. 1953, No. 110, s. 24

41. Preliminary inquiries and meetings—(1) For the purposes of sections 12, 16, and 19 of this Act, the Chairman or any member or members of the Commission deputed by him may represent and act for the Commission at any meeting or public inquiry.

(2) In any such case the Chairman or any such member or members shall have and may exercise all the powers, duties, and functions of the Commission in so far as they relate to the conduct of any such meeting or inquiry.

(3) The Chairman or any such member or members so acting shall report his or their findings to the Commission.

(4) No decision on any matter the subject of any meeting or inquiry conducted in accordance with the provisions of this

section shall be made except at a meeting of the Commission pursuant to section 9 of this Act.

42. Commission may co-opt specialist advice—The Commission may invite any person or any officer of the Public Service or a representative of any body who or which, in the opinion of the Commission, has expert knowledge concerning any aspect of local government which is likely to be of assistance to the Commission to attend any meeting or public inquiry held under this Act and to take part in the proceedings.

43. Notices—(1) Any notice required by this Act to be given to a local authority may be given by leaving it at the office of the local authority or by sending it by post addressed to the local authority at its office.

(2) Any notice required by this Act to be given to any other person may be given by delivering it to that person or by posting it in a letter addressed to that person at his usual or last known place of abode or business.

(3) Every notice sent by post shall be deemed to have been delivered when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

Cf. 1953, No. 110, s. 39

44. Officers of Commission—(1) There may from time to time be appointed under the provisions of the Public Service Act 1912 a Secretary of the Commission and such other officers as may be required for the purposes of this Act.

(2) Any person may hold any office under this Act in conjunction with any other office in the Public Service.

Cf. 1953, No. 110, s. 40

45. Annual report—(1) The Commission shall furnish to the Minister a report of its proceedings and operations during each year ending with the thirty-first day of March as soon as practicable after the end of that year.

(2) A copy of the report shall be laid before Parliament.

Cf. 1953, No. 110, s. 41

46. Repeals and savings—(1) The following enactments are hereby repealed:

- (a) The Local Government Commission Act 1953:
- (b) Section 11 of the Finance Act 1954.

(2) This Act shall apply with respect to every inquiry under the Local Government Commission Act 1953 commenced but not completed by the Commission at the commencement of this Act, and all such inquiries shall be continued and completed under this Act.

(3) Where a provisional scheme has been prepared under the Local Government Commission Act 1953 before the commencement of this Act, or a scheme has been finally approved under that Act before the commencement of this Act but has not been given effect to before the commencement of this Act,—

- (a) The provisions of this Act shall apply with respect to the scheme as if it had been prepared or approved, as the case may be, under this Act:
- (b) Every appeal against a decision of the Local Government Commission finally approving any such scheme that is pending at the commencement of this Act shall be heard and determined under this Act:
- (c) Every poll that has been recommended or requested under the Local Government Commission Act 1953 but has not been held before the commencement of this Act shall be held under this Act:

Provided that nothing in this subsection shall be deemed to authorise the giving effect to any proposal in any such final scheme that could not be given effect to if this Act had not been passed.

This Act is administered in the Department of Internal Affairs.
