

National Assembly for Wales

National Assembly for Wales Election 2011 March 2011

This paper provides an introduction to and overview of the forthcoming election to the National Assembly for Wales, to be held on 5 May 2011.

It also outlines the rules of the election itself, including details relating to voter registration and campaigning.

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National Assembly for Wales

National Assembly for Wales Election 2011
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The National Assembly for Wales Election 2011

1. Introduction

The fourth election to the National Assembly for Wales will take place on 5 May 2011, the same day as elections to the Scottish Parliament, the Northern Ireland Assembly, Local Authorities in Northern Ireland and some Local Authorities in England. The election will also coincide with a referendum to decide on whether the electoral system to the UK Parliament should be changed.¹

This paper provides an introduction to and overview of the election. It includes information relating to the rules and administration of the election itself, including details relating to voter registration and campaigning.

Please note that the information provided here is not exhaustive and prospective candidates and others involved in supporting them should consult Electoral Commission Guidance or Electoral Administration Officers in their Local Authority area if they require advice.

1.1. Dissolution

Section 3(2)(a) of the *Government of Wales Act 2006*² (“the 2006 Act”) requires that the National Assembly be dissolved before a general election of its Members can be held. This will be the first time that the National Assembly is required to do so as under the *Government of Wales Act 1998* (“the 1998 Act”),³ the Assembly was constituted as a corporate body and AMs remained Members up to the election. The 2006 Act, however, brings the Assembly in line with the UK Parliament, the Scottish Parliament and the Northern Ireland Assembly.

Dissolution is the official term for the end of a Parliament or Assembly and signifies the end of an Assembly Members’ terms of office. During the period of dissolution therefore, there will be no Assembly Members.

Welsh Ministers, including the First Minister, Deputy Welsh Ministers and the Counsel General, however, remain in office during dissolution until a new First Minister is elected after the election.⁴ The 2006 Act also states that the Presiding Officer and Assembly Commissioners will remain in office, until a new Commission and a new Presiding Officer are elected after the election.⁵

¹ Further information about this referendum is available in the [MRS Research Paper: Referendum on the voting system for UK Parliamentary elections 2011](#).

² [Government of Wales Act 2006 \(c.32\)](#)

³ [Government of Wales Act 1998 \(c.38\)](#)

⁴ [National Assembly for Wales, Assembly Commission Paper AC 2010\(6\) P.2: Dissolution of the Assembly before the 2011 Elections, 30 September 2010 \[Accessed 9 March 2011\]](#)

⁵ [National Assembly for Wales, A Guide to the National Assembly Commission, paragraphs 107 and 109 \[Accessed 23 March 2011\]](#)

2. The Electoral System in Wales

2.1. *The Additional Member System*

Members are elected to the National Assembly through the Additional Member System (“AMS”). The AMS was put in place by the *Government of Wales Act 1998*⁶ (“the 1998 Act”) and was an integral part of the original devolution proposals, as explained in the White Paper, *A Voice for Wales*:

The electoral system will reflect the diversity of modern Wales and ensure fair representation for all areas and parties. Electors will have two votes – one for a candidate for their local constituency and another for a party list. This retains local constituencies while giving a strong element of proportional representation.⁷

The Assembly has 60 elected members and each voter has two votes. The first vote is used to elect a local or constituency Assembly Member in the same way as MPs are elected to the House of Commons using the First Past the Post system (“FPTP”). Forty Assembly Members are elected on this basis, one from each constituency in Wales.

The second vote is used to elect 20 additional members, on a regional basis, to ensure that the overall number of seats for each political party reflects the share of the vote they receive.

The AMS is a Mixed Member Proportional (“MMP”) system: It uses two elements one of which is a Proportional Representation (“PR”) system, the other is FPTP. The PR element compensates for any disproportionality arising under the FPTP.⁸ Mixed Member Proportional systems are used in nine nation states: Albania, Bolivia, Germany, Hungary, Italy, Lesotho, Mexico, New Zealand and Venezuela.⁹

For the PR element, there are five electoral regions, and each region returns four members to the Assembly.

Each electoral region covers between seven to nine constituencies. There are four regional Assembly Members elected to each of the five regions.

These five electoral regions are:

- North Wales;
- Mid and West Wales;
- South Wales East;
- South Wales West;
- South Wales Central.

⁶ [Government of Wales Act 1998 \(c.38\)](#)

⁷ Welsh Office, *A Voice for Wales: The Government’s proposals for a Welsh Assembly*, 1997, Cm3718

⁸ [IDEA, *Electoral System Design: the New International IDEA Handbook, 2011, chapter 2, paragraph 68* \[Accessed 22 February 2011\]](#)

⁹ [Ibid, chapter 3, table 4](#) [Accessed 22 February 2011]

The regional lists in Wales are “closed lists” which means that voters vote for a political party. Ballot papers show the list of named candidates nominated by each political party and successfully elected candidates are drawn in order from the top of the relevant party list. Single independent candidates may also stand on the list.

Regional party lists must not include a person who is on another party list in the same region or on another regional list, nor may individual regional candidates be simultaneously included on party lists or stand in more than one region. A maximum of twelve persons and a minimum of one may be included on a regional party list.

The 2006 Act, which transposed and modified the 1998 Act, sets out the methods and procedures for the return of Additional List Members to the National Assembly for Wales.

2.2. The d'Hondt formula

In Assembly elections, the d'Hondt formula, named after the Belgian mathematician and psephologist¹⁰ who invented it, is used for deciding which parties win regional list seats. It is commonly used for allocating seats in countries with PR systems using party lists, for example Belgium.

D'Hondt is a "highest averages method" which requires the number of votes for each party to be divided successively by a series of divisors, and seats are allocated to parties that secure the highest resulting quotient or average, up to the total number of seats available.

For the National Assembly for Wales, the four additional Members from each of the five regions are elected by the following method:

- the number of votes cast for each party on the electors' second ballot paper per electoral region is counted;
- this total is divided by the number of constituency seats won by that party under FPTP plus one.

The formula can be expressed as:

$A/(B+1)$ where:

A = the total number of electoral region votes cast for that party across all the constituencies in that electoral region;

B = the total number of constituency seats won by that party in that electoral region; and

¹⁰ A psephologist is a person who makes a study of elections and voting patterns.

3) The party with the highest number after this calculation gains the first additional Member.

4) The calculation is repeated for the second to fourth additional members, in each case dividing the party list vote by the number of constituency seats plus one, and any additional member seats allocated in previous rounds. The table below illustrates how the formula works. For example, Party A won 116 votes under the party choice votes of the electorate but had 4 constituency members elected, therefore 116 is divided by 5 (4 plus 1) giving a total of 23.2. Similarly, Parties C and D won 2 constituency seats each, so their second ballot votes are divided by 2 plus 1, giving totals of 20.3 and 18.7 respectively. The party with the highest number after this calculation gains the first additional Member. In this case it is Party B.

Table 1: Example of the use of the d'Hondt formula for the election of regional Assembly Members¹¹

This example covers four parties in a region with eight constituencies

	Party A	Party B	Party C	Party D
Total no. of party votes cast	50,000	62,000	48,000	36,000
FPTP seats won	3	3	2	0
Division total (FPTP + 1)	4	4	3	1

The calculation for the first seat would be as follows. The total number of votes for each party is divided by their division total:

1st additional seat	$50,000 \div 4 = 12,500$	$62,000 \div 4 = 15,500$	$48,000 \div 3 = 16,000$	$36,000 \div 1 = 36,000$
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Party D, with 36,000 votes, would be awarded the first additional seat, adding one to their division total. The calculation for the second seat would be:

2nd additional seat	$50,000 \div 4 = 12,500$	$62,000 \div 4 = 15,500$	$48,000 \div 3 = 16,000$	$36,000 \div 2 = 18,000$
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¹¹ [Source: National Assembly for Wales Website, How the Assembly is Elected \[Accessed 23 March 2011\]](#)

Party D, with 18,000 votes, would be awarded the second additional seat, adding another one to their division total. The calculation for the third seat would be:

3rd additional seat	$50,000 \div 4$ = 12,500	$62,000 \div 4$ = 15,500	$48,000 \div 3 =$ 16,000	$36,000 \div 3 =$ 12,000
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Party C, with 16,000 votes, would be awarded the third additional seat, adding one to their division total. The calculation for the final seat would be:

4th additional seat	$50,000 \div 4$ = 12,500	$62,000 \div 4$ = 15,500	$48,000 \div 4 =$ 12,000	$36,000 \div 3 =$ 12,000
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Party B, with 15,500 votes, would be awarded the final seat. So the total number of seats allocated for each party in this region would be as follows:

FPTP seats	3	3	2	0
Additional Members	0	1	1	2
Total AMs	3	4	3	2

2.3. *Dual candidacy*

In the 1999 and 2003 Assembly elections, candidates were able to stand for election in a constituency and put themselves forward for election on the regional list. However, following the passing of the 2006 Act candidates are no longer able to do this and the 2007 Assembly election was the first to be held with this new rule in place.

Section 7 of the 2006 Act lays down the following rules in relation to entitlement to be a candidate for Assembly constituencies and electoral regions at a general election:

- A person may not be a candidate for more than one constituency;
- A person may not be included by a registered political party in its list of candidates for more than one electoral region;
- A person who is a candidate for any constituency cannot be included in any of a party's regional lists; and
- A person may not be an individual candidate for an electoral region if that person is also a candidate for any constituency or on any list of candidates submitted by any registered political party for any electoral region.

3. The conduct and administration of the Assembly Election

Section 13 of the 2006 Act enables the Secretary of State to set out details for the conduct of National Assembly elections by Order. The rules for the conduct of the 2011 election are provided by *The National Assembly for Wales (Representation of the People) (Amendment) Order 2010* (“the 2010 Order”)¹² and *The National Assembly for Wales (Representation of the People) Order 2007* (“the 2007 Order”)¹³.

The 2007 Order covers the main details relating to election procedures, including the manner of voting, the organisation of polling stations, the duties of returning officers, the organisation of election campaigns and legal proceedings in the event of a challenge.

The 2010 Order updates certain aspects of the 2007 Order and makes largely technical and consequential changes to that Order.

3.1. Election date and time

Paragraph 1 of Schedule 5 to the 2007 Order states that **polling for the election will take place between 7am and 10pm on Thursday, 5 May 2011.**

3.2. Varying the election date

Section 3(1) of the 2006 Act states that elections to the National Assembly will take place every four years on the first Thursday in May. Previous elections were held in 1999, 2003 and 2007 and elections to the Fourth Assembly will take place on 5 May 2011.

Section 4 of the 2006 Act allows the Secretary of State however to vary the date of such elections by Order by a month earlier or later than the first Thursday in May.

The *Fixed-term Parliaments Bill*,¹⁴ which is currently being scrutinised by the UK Parliament, aims to introduce fixed-term Parliaments of five years for the House of Commons and sets the date of the next UK General Election for 7 May 2015. If enacted this will mean that the UK General Election in 2015 would fall on the same date of the next elections to the devolved nations.

The possibility of moving the devolved elections in 2015 to 2016 is currently being discussed between the Deputy Prime Minister and the First Ministers of Wales and Scotland.¹⁵ Both the Scottish Parliament and the National Assembly have

¹² [National Assembly for Wales \(Representation of the People \(Amendment\) Order 2010, \(SI/2931\)](#)

¹³ [The National Assembly for Wales \(Representation of the People\) Order 2007, \(SI/236\).](#)

¹⁴ [Fixed-term Parliaments Bill](#)

¹⁵ Politics.co.uk, *Whitehall defied over 2015 Election Date*, 18 February 2011.

passed motions supporting moves to extend the next term by an additional year.¹⁶ The final decision on the matter however will be taken by the UK Government.

3.3. *Combination of polls*

The election will take place on the same day as the referendum on the voting system for the UK Parliamentary elections.

Section 4(2) together with Schedule 6 to the *Parliamentary Voting Systems and Constituencies Act 2011*¹⁷ (“the PVSCA 2011”) allows for both polls to be taken together and states the processes required to be taken before and during the poll itself. These include rules that apply during the counting of votes and the declaration of results for both polls.

The PVSCA 2011 also provides a new management structure for the combined referendum and election polls. This includes the appointment of a Chief Counting Officer for the referendum who in turn appoints Regional Counting Officers for areas within the UK. **Jenny Watson, the Chair of the Electoral Commission has been appointed as Chief Counting Officer for the referendum. The Regional Counting Officer for the Wales electoral region is Bryn Parry-Jones, the Chief Executive of Pembrokeshire County Council. His role will be to:**

... co-ordinate the planning and administration of the poll across Wales, monitor the performance of Counting Officers for each voting area within Wales, deliver briefing sessions for Counting Officers in conjunction with the Chief Counting Officer, and manage the results collation process in Wales.¹⁸

In addition, **Counting Officers** will also be appointed for the conduct of the referendum in their area. The PVSCA 2011 provides for the Counting Officer to discharge a number of the functions common to the polls in a referendum for which a Returning Officer would normally be responsible at an election, such as the provision of polling stations, appointment of Poll Clerks and the issuing of combined poll cards.¹⁹

To ensure a consistent approach to the delivery of all the polls held on 5 May 2011, the *Electoral Commission’s Elections and Referendums Steering Group* has been meeting on a monthly basis since September 2010. In a statement issued following the passing of the PVSCA 2011 in February 2011, the Chair of the Electoral Commission and the Chief Counting Officer for the referendum, Jenny Watson, said that:

¹⁶ [RoP, 16 March 2011](#)

¹⁷ Parliamentary Voting Systems and Constituencies Act 2011

¹⁸ [Electoral Commission, *Referendum on the UK Parliamentary voting system and elections to the National Assembly for Wales 5 May 2011: Planning and organisation*, 2011, paragraph 1.8 \[Accessed 18 March 2011\]](#)

¹⁹ Ibid, paragraph 1.12

Our offices in Scotland, Wales, Northern Ireland and across England have been working with Regional Counting Officers to ensure that our instructions and guidance are understood and are being applied by Counting Officers and electoral administrators, as well as providing another opportunity for electoral administrators to feed back any concerns or comments they might have about the planning process.

We will continue to work with the hundreds of local Counting Officers across the UK, making sure that they have the plans in place to ensure voters have the best possible experience at the elections and referendum on 5 May.²⁰

3.4. *Returning Officers*

The 2007 Order prescribes two kinds of Returning officer that are appointed for Assembly elections who are responsible for the conduct of the election: Regional and Constituency.

Constituency Returning Officers are responsible in law for the conduct of National Assembly elections.

Each local authority appoints a Returning Officer, usually the Chief Executive or another senior officer of the council, who is personally responsible for the conduct of the election. This individual will be designated as a Constituency Returning Officer for the elections to the National Assembly.

The Constituency Returning Officer is responsible for the nominations and the counting of votes in his or her area.²¹ He or she is also required to appoint a Presiding Officer for each polling station in the electoral area, and may appoint as many of the following staff as are needed to assist in the conduct of the election:

- Deputy Returning Officers;
- Staff for the issue and receipt of postal votes;
- Presiding Officers and Poll Clerks;
- Counting staff; and
- Other staff to assist with other duties as part of the election process.

Regional Returning Officers must also be local government Returning Officers and are appointed by the National Assembly.²²

The Regional Returning Officer is solely responsible for:

- nominations for the regional election;
- calculating by the d'Hondt method the allocation of regional seats;
- recalculations of the allocation of regional seats, if requested; and

²⁰ [Electoral Commission, *Statement by the Chair of the Electoral Commission and the Chief Counting Officer on the PVSC Act*, February 2011 \[Accessed 25 February 2011\]](#)

²¹ [Electoral Commission, *Referendum on the UK Parliamentary voting system and elections to the National Assembly for Wales 5 May 2011: Planning and organisation*, 2011, paragraph 1.14 \[Accessed 18 March 2011\]](#)

²² [Ibid., Part B, paras.1.17-1.21.](#)

- return or forfeiture of deposits received in respect of the regional election.

The Regional Returning Officer is not responsible for the conduct of the poll or of the count, and cannot ask for a recount of either the constituency or the regional ballot papers. They are obliged to inform the Constituency Returning Officer of the regional result, and may request that they display locally notices, etc. relating to the regional part of the election.

In October 2010, the Minister for Social Justice and Local Government, Carl Sargeant AM, announced the appointment of the Regional Returning Officers for the 2011 Election:²³

- Mid and West Wales: the returning officer for Pembrokeshire, Mr Bryn Parry-Jones;
- North Wales: the returning officer for Denbighshire County Council, Dr Mohammed Mehmet;
- South Wales Central: the returning officer for Cardiff City Council, Ms Christine Salter;
- South Wales East: the returning officer for Newport City Council, Ms Tracey Lee;
- South Wales West: the returning officer for Swansea City Council, Mr Paul Smith.

3.5. *Registration of parties*

The *Political Parties, Elections and Referendums Act 2000*²⁴ (“the PPERA 2000”) requires political parties to register with the Electoral Commission in order to field candidates at an election. Parties can also register up to 12 descriptions with the Commission. Where parties have registered separate bilingual descriptions in English and Welsh both can be used.

Candidates may contest elections to the National Assembly for Wales as independents although in such circumstances the candidates may only use the description ‘Independent’ and/or ‘Annibynol’ on the ballot papers. Alternatively, they may choose to use no description at all.

All candidates have four options with regard to how they describe themselves:

- Leave the description part of the form blank, in which case no description will appear on the ballot paper.
- Use the description ‘Independent’ and/or ‘Annibynol’.

²³ [Welsh Assembly Government, Press Release, Minister appoints regional Returning Officers for 2011 National Assembly Election, 25 October 2010 \[Accessed 18 March 2011\]](#).

²⁴ [Political Parties, Elections and Referendums Act 2000 \(c.41\)](#)

- Use the name of a political party or one of its registered descriptions – the use of which has been authorised in writing by the nominating officer of a registered political party or someone appointed to act on their behalf. The name or description which is to be used must be **exactly** the same as that which is registered with the Electoral Commission. This applies to monolingual and bilingual descriptions.
- Use the joint description registered by two or more registered political parties. This applies to monolingual and bilingual descriptions. It should be noted that this final provision applies only to constituency candidates and **not** to regional candidates.²⁵

3.6. *Running for election*

To qualify as a candidate for the election (both at constituency and regional level), a person **must** satisfy the following criteria on the day they are nominated **and** on polling day. The criteria include that they:

- have attained the age of at least 18 years, **and**
- be a British citizen, a citizen of another Commonwealth country, a citizen of the Irish Republic, or a citizen of another member state of the European Union.

There are a number of disqualifications for membership of the National Assembly, some of which are similar to those which apply to membership of the UK Parliament or European Parliament. A person is disqualified from membership of the House of Commons under the *House of Commons Disqualification Act 1975* if they are a judge, a civil servant, a member of the armed forces, a member of a police force or a member of a foreign legislature. These disqualifications also apply to membership of the National Assembly for Wales.

The *National Assembly for Wales (Disqualification) Order 2010*²⁶ further identifies a number of specific office holders who are disqualified from membership of the National Assembly for Wales. These are listed in **Annex 2**. The Electoral Commission advises candidates to consult the relevant legislation to ensure that none of the relevant disqualifications apply to them.

3.7. *Nomination*

In order to contest the election potential candidates must complete a set of nomination papers and submit them to the appropriate Constituency or Regional Returning Officer by **12 noon** on 4 April 2011.

²⁵ [Electoral Commission, *Standing for a Political Party*, National Assembly for Wales Elections, 2011 \[Accessed 22 March 2011\]](#).

²⁶ [National Assembly for Wales \(Disqualification\) Order 2010. UK SI10 2965 2010](#) .

The nomination paper for Constituency Candidates must contain the candidate's full name, full home address and relevant description. The details on the nomination paper will be reproduced on the statement of persons nominated and, ultimately, the ballot paper.

Each regional list submitted must set out the full names and home addresses of each candidate included in that list in the order in which they would be allocated a regional seat and be accompanied by a statement of the names by which each candidate is to be described in the regional ballot paper.

When submitting their nomination papers, candidates must deposit £500 in either cash or banker's draft (other forms of legal tender may be accepted). Only candidates who receive over five per cent of the total votes cast within their constituency have their deposit returned; others are forfeited.²⁷

3.8. Campaigning

A person contesting elections to the National Assembly can only become an official candidate following the **publication of the notice of election on 25 March 2011**.

An official candidate is entitled to a copy of the register of electors and absent voters' lists and may also use publicly funded rooms and schools for public meetings. An official candidate is also entitled to send one postal mailing free of charge.²⁸

The Electoral Commission have also provided the following guidance to candidates on what can and cannot be included in their campaign publicity:

You should:

Use imprints on all your campaign material, including websites. See below for more information on imprints.

Consider how to make your campaign accessible to people who are visually impaired, have learning difficulties or Comply with planning rules relating to advertising hoardings and large banners you can ask the relevant local authority for advice.

Remember to make sure outdoor posters are removed promptly after the election you must do this within two weeks

You must not:

Produce material that looks like the poll cards sent to voters by the Returning Officer.

²⁷ [Electoral Commission, *Guidance for Candidates in the 2011 National Assembly for Wales Elections* \[Accessed 18 March 2011\]](#)

²⁸ [Electoral Commission, *Campaigning do's and don'ts*, Page 2 \[Accessed 18 March 2011\]](#)

Pay people to display your adverts (unless they display adverts as part of their normal business).²⁹

The Electoral Commission does not however regulate the content of campaign material and are not able to comment on the legality of any electoral material beyond what it covered above.

3.9. Campaign finance

Only certain people are authorised to incur election expenses. They are:

- the candidate;
- the election agent; and
- any individual or organisation authorised in writing by the election agent.

Candidates contesting constituency seats at elections to the National are subject to limits on their spending on items and services used during the regulated period in advance of an election. This also applies to **individual** List Candidates (i.e. List Candidates who are not on the List of a registered political party).³⁰

The current limits for each type of seat are outlined below:

Type of Seat	Limit
Borough (constituency)	£7,150 plus 5 pence per elector on the relevant register of electors
County (constituency)	£7,150 plus 7 pence per elector on the relevant register of electors
Individual in a Region	The sum of the maximum limit for each constituency in the region. ³¹

The relevant register of electors is the register of electors in the constituency on the last day for publication of notice of the election. To avoid the possible miscalculation of expenditure limits, the Electoral Commission advises that candidates and agents should confirm the relevant register figure with the Returning Officer.

Candidates can also incur “personal expenses”. These expenses do not count towards the maximum spending limits specified above, however they do need to be recorded because they must be reported on in the spending return submitted by each candidate after the election. Personal expenses are any spending on a candidate’s travel, accommodation and subsistence in relation to their election.³²

²⁹ [Electoral Commission, *Campaigning do’s and don’ts*, Page 8 \[Accessed 18 March 2011\]](#)

³⁰ [Electoral Commission, *Guidance for Candidates for Elections to the National Assembly for Wales, Candidate Spending, 2011* \[Accessed 23 March 2011\].](#)

³¹ *Ibid*, page 6

³² [Electoral Commission, *Guidance for Candidates for Elections to the National Assembly for Wales, Candidate Spending, 2011* page 9 \[Accessed 23 March 2011\].](#)

These spending limits only apply during the “regulated period”, which is the period between the earliest date a person becomes an official candidate (25 March 2011) and the date of the poll (5 May 2011).

3.10. Party campaign spending and party list candidates’ election expenses

At elections to the National Assembly, while all spending to promote constituency candidates constitutes candidates’ election spending and is regulated under the 2007 Order, it should be noted that expenditure to promote party list candidates constitutes party campaign spending and is regulated under PPERA 2000. All spending by party list candidates, therefore, must be reported as party campaign spending under the terms of PPERA 2000.

Party list candidates are not required to submit candidates’ election expenses returns. However, party list candidates are subject to limits on their personal expenses and must complete and submit a return of personal expenses.

4. Who Votes?

4.1. Who can vote?

Section 12(1) of the 2006 Act states that only persons who are registered to vote in Local Government elections in Wales are eligible to vote in National Assembly elections. According to the Electoral Commission, the following people can register to vote in such elections:

- a British citizen living in the UK;
- a qualifying Commonwealth citizen living in the UK;
- a citizen of the Irish Republic living in the UK; or
- a European Union citizen living in the UK.³³

They **must** also be registered in Wales to be eligible to vote in elections to the National Assembly.

Although a national of another Member State of the European Union (EU) resident in the United Kingdom has the right to vote in devolved, Local Government and European Parliamentary elections, they cannot vote in UK General Elections.

In practice this means that **an EU citizen resident in the UK will be eligible to vote in the elections to the National Assembly on 5 May 2011, but won't be eligible to vote in the referendum on the voting system for UK Parliamentary elections that will be held on the same day.**

4.1. Voting rights for prisoners

In October 2005, the ECHR ruled in the case of John Hirst that the existing ban on prisoners being able to vote was contrary to Article 3, Protocol 1 of the *European Convention on Human Rights* – the right to free and fair elections. As this decision had not been implemented by the UK Government since 2005, the ECHR handed down a further judgement in November 2010 which set a deadline for implementation by August 2011.

In a written statement issued in response to the ECHR's judgement on 20 December 2010, the Parliamentary Secretary for the Cabinet Office, the Rt. Hon Mark Harper MP, said that:

... this is not a choice: it is a legal obligation ... we will act to implement the judgment of the European Court of Human Rights ...

The Government will therefore bring forward legislation providing that the blanket ban in the existing law will be replaced. Offenders sentenced to a custodial sentence of four years or more will lose the right to vote in all circumstances, which reflects the Government's clear view that more serious offenders should not retain the right to vote. Offenders sentenced to

³³ [About My Vote, Elections taking place in your area: Can I vote in local government elections? \[Accessed 18 March 2011\]](#)

a custodial sentence of less than four years will retain the right to vote, but legislation will provide that the sentencing judge will be able to remove that right if they consider that appropriate. Four years has in the past been regarded as the distinction between short and long-term prisoners, and the Government consider that permitting prisoners sentenced to less than four years' imprisonment to vote is sufficient to comply with the judgment.

The right to vote will be restricted to UK Westminster Parliamentary and European Parliament elections only, and not in other elections or referendums [MRS emphasis].

That is the minimum currently required by the law (a case considering whether article 3, protocol 1 applies to elections to the Northern Ireland Assembly is currently before the European Court of Human Rights: the Government's position is that they do not).³⁴

In contrast to this view however, Aidan O'Neill QC, a barrister expert in prisoners' rights, told the House of Commons' Political and Constitutional Reform Committee that elections to the Scottish Parliament and the National Assembly, in addition to UK Parliamentary and European Parliament elections, would also be subject to the ECHR's ruling:

There are elections coming up on 5 May 2011 in Scotland and Wales. Those elections on the current franchise are going to be Convention-incompatible again; so there is an urgency about that. There is an added urgency to that because elections to the Scottish and Welsh parliaments are covered by not just European human rights law but European Union law.³⁵

A press release issued by the Cabinet Office in December 2010 confirmed that legislation on prisoners' voting rights would be brought forward by the UK Government sometime in 2011 for the UK Parliament to debate.³⁶ The UK Government has not brought forward such legislation to date, however a motion opposing the ECHR's judgment was overwhelmingly supported by MPs in the House of Commons on 10 February 2011.³⁷

As it currently stands therefore, convicted persons will remain ineligible to vote in the election and referendum on 5 May 2011.

4.2. Registration

Electoral registration is the compiling and keeping of the electoral register. Section 8 of the *Representation of the People Act 1983*³⁸ requires Electoral Registration Officers ("EROs") to be appointed in order to register electors. EROs are required to prepare and publish a register of electors for their area each year and maintain it throughout the year. It is their statutory duty to include the names of everyone who appears to them to be eligible, taking reasonable steps to obtain the required information.

³⁴ [HC Deb 20 December 2010 c150-1WS \[Accessed 2 March 2011\]](#)

³⁵ [HC Political and Constitutional Reform Committee Deb 1 February 2011 \[Accessed 2 March 2011\]](#)

³⁶ [Cabinet Office Press Release, *Government approach to prisoner voting rights*, 17 December 2010 \[Accessed 2 March 2011\]](#)

³⁷ [HC Deb 10 February 2011 c493 \[Accessed 2 March 2011\]](#)

³⁸ [Representation of the People Act 1983 \(c.2\)](#)

There are two ways to register to vote, the first one being the “Annual Canvass” during which a form is sent to every house to register between September and November every year. The second one is rolling registration where registration can be done at any time during the year as the register is updated every month between December and September.

Although registration is not in itself compulsory, an ERO has the power to require information for the purposes of maintaining the register of electors. A penalty for failing to complete and return the electoral registration form or for giving false information was first imposed in 1918 and extended to include rolling registration in 2006. The current penalty for this offence is a fine not exceeding £1,000.

It is not necessary to register specifically for the election or the referendum; if a voter is on the electoral register then they will be able to vote. If a voter is not on the electoral register however, the deadline for applications in order to be able to vote in the referendum is midnight on 14 April 2011.³⁹ If a voter has recently moved house or changed their name, they will need to re-register to be eligible to vote.

4.3. Proxy and postal voting

Those who do not want to go to the polling station on polling day can apply in advance either to vote by post or arrange for someone to cast their vote on their behalf (proxy votes). This can assist disabled and elderly voters to take part in the electoral process.

The right to choose to vote by post by all voters on demand was introduced by the *Representation of the People Act 2000*,⁴⁰ and the security provisions relating to postal votes were subsequently strengthened by *The Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006*⁴¹ and the *Electoral Administration Act 2006*⁴² (“the EEA 2006”).

In the UK General Election on 6 May 2010, 15 per cent of eligible electors were issued with a postal vote and 83 per cent returned them.⁴³ No information is currently available on the percentage of eligible electors who requested and returned a postal vote for the referendum on further powers to the National Assembly on 3 March 2011.

³⁹ [Electoral Commission, *Calendar: National Assembly for Wales Election 2011* \[Accessed 18 March 2011\]](#)

⁴⁰ [Representation of the People Act 2000 \(c.2\)](#)

⁴¹ [The Representation of the People \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2006 \(SI/2910\)](#)

⁴² [Electoral Administration Act 2006 \(c.22\)](#)

⁴³ [Electoral Commission, *Report on the administration of the 2010 UK general election*, July 2010, paragraph 5.5 \[Accessed 2 March 2011\]](#)

4.4. Language issues

Linguistic ability is an important factor in allowing individuals to access the electoral process, whether in terms of registration, as discussed above, or in the act of voting, such as understanding the ballot paper or being able to access advice. Currently, key statutory forms such as ballot papers and registration are available in English and Welsh in Wales.

Article 141 of the 2007 Order gives returning officers discretion to translate documents into languages other than English and Welsh and to use Braille, graphical representations or other means of communication.

The Electoral Commission website, aboutmyvote.co.uk, also provides information in Arabic, Bengali, Chinese (traditional), Gujarati, Punjabi, Urdu, French, Hindi, Latvian, Lithuanian, Polish and Portuguese and states that information in other languages may be available on request.⁴⁴

4.5. Promoting the Assembly Elections

Schedule 2 of the 2006 Act provides that the Assembly Commission may promote public awareness of the election system and devolved government, either directly or through financial support for the Electoral Commission.

The National Assembly launched its [Vote 2011](#) campaign on 10 January 2011. The aim of the campaign is to raise public awareness and to encourage people to vote in the elections to the National Assembly and the referendum on changing the voting system to the UK Parliament.

⁴⁴ [Electoral Commission, aboutmyvote webpages, Information in Languages other than English and Welsh. \[Accessed 10 November 2010\]](#)

5. Polling Day

5.1. *Who can attend the polling station?*

Paragraph 41 of Schedule 5 to the 2007 Order states that the following are entitled to enter the polling station:

- voters;
- persons under the age of 18 who accompany voters to the polling station;
- the candidates and the election agents of any constituency or individual candidates or in relation to any registered political party standing nominated, the election agent of such party in respect of the list it has submitted;
- the polling agents appointed to attend at the polling station;
- the clerks appointed to attend the polling station;
- persons who are entitled to attend by virtue of any of sections 6A to 6D of the 2000 Political Parties Act(18);
- the constables on duty; and
- the companions of voters with disabilities.⁴⁵

5.2. *Tellers*

The Electoral Commission has issued some guidance relating to the conduct of Tellers outside polling stations.⁴⁶ Tellers are usually volunteers from political parties who stand outside polling places and record the electoral numbers of electors who have voted. They can then identify likely supporters who have not voted and urge them to vote before the close of poll.

Tellers must however not impede or interfere with the efficient and secure administration of the election and must comply with any instructions issued by the Returning Officer or Presiding Officer of the polling station. They have no official legal status and may not be admitted to the polling station in their capacity as a Teller.

According to the Electoral Commission's guidance, Tellers must not:

- Be able to see or hear what is happening inside the polling station;
- Impede, obstruct or intimidate voters on their way in or out of the polling station/place;
- Demand any information relating to a voter's elector number, name or address;
- Ask voters to re-enter the polling station to ascertain their elector number;

⁴⁵ [The National Assembly for Wales \(Representation of the People\) Order 2007, Schedule 5, Paragraph 41](#)

⁴⁶ [Electoral Commission, Tellers: Do's and Don'ts \[Accessed 18 March 2011\]](#)

- Have discussions with voters that may give rise to allegations of undue influence (e.g. voting intentions, party affiliations or campaigns);
- Display any campaign material in support of or against any particular referendum campaigner, party or candidate other than a rosette.⁴⁷

Tellers may however:

- Approach voters for information as they enter/leave the polling station;
- Display a coloured rosette displaying the name of the referendum campaigner, candidate or party. While the rosette must not be oversized, it may carry a description or emblem.⁴⁸

5.3. *Exit polls*

In the case of this election, it is illegal for any person to publish the following before the polls are closed (**10pm on Thursday 5 May**):

- any statement relating to the way in which voters have voted at the election where that statement is (or is assumed) to be based on information given by voters after they have voted;
- any forecast or estimate as to the result of the election which is (or might reasonably be taken to be) based on information so given.

Anyone found guilty of committing such an offence will be liable to a fine of up to £5,000 or to a prison term of up to six months.

5.4. *Time of the count*

The counting of ballot papers for elections to the National Assembly for Wales is subject to the discretion of Returning Officers and **usually** takes place as soon as possible after the close of poll.

Both constituency and regional votes in the election are to be counted at constituency level. The Constituency Returning Officer will notify Counting Agents of the exact time and location of the count soon after 26 April 2011.⁴⁹

5.5. *Re-counts*

Paragraphs 56 and 57 of Schedule 5 to the 2007 Order specifies that a constituency or a regional candidate or his or her election agent, if present when the count is completed, may require the constituency Returning Officer to have the votes re-counted. The Constituency Returning Officer may however refuse such a request if he or she is of the opinion that the request is unreasonable.

⁴⁷ [Electoral Commission, *Tellers: Do's and Don'ts* \[Accessed 18 March 2011\]](#)

⁴⁸ Ibid

⁴⁹ [Electoral Commission, *The Count*, page 3 \[Accessed 18 March 2011\]](#)

5.6. *Declaration of the results*

Once the count of constituency ballot papers is completed, the Constituency Returning Officer will declare the constituency candidate with the most votes to be elected.

With regard to the poll for the return of regional Assembly Members, the Constituency Returning Officer shall, in accordance with any directions given by the Regional Returning Officer, draw up a statement showing the number of votes given for each registered party and each independent candidate and inform the Regional Returning Officer of the contents of that statement. The Constituency Returning Officer should then give public notice of the statement as soon as practicable after they have informed the Regional Returning Officer.

The regional results can only be calculated once all the results in both parts of the election are known. That is, all the constituency results have been declared in a region and all regional votes have been counted and declared in each constituency.

Individual constituency Returning Officers in Wales will be responsible for deciding whether the counting of votes for the National Assembly elections should commence directly after the close of poll from 10pm on Thursday 5 May 2011, or whether counting should commence the following morning of Friday 6 May. A paper produced by the Chief Counting Officer in November 2010 stated:

If counting commences directly after the close of poll and continues without stopping until the process is concluded, it is anticipated that both constituency and regional results should be declared by 9am on Friday 6 May 2011. If counting commences in the morning of Friday 6 May, it is anticipated that both constituency and regional results should be declared by 4pm on Friday.

The Chief Counting Officer's current planning assumption is therefore that the counting of votes for the National Assembly for Wales elections will be completed and results declared by 4pm on Friday 6 May 2011⁵⁰.

Following the declaration of the results, Section 3(3) of the 2006 Act requires the National Assembly to meet within seven days of the election date.

⁵⁰ [Electoral Commission, *Referendum on changing the voting system for UK Parliamentary elections*, Paper from the Chief Counting Officer on timing of the count for the proposed referendum, November 2010](#)

Annex 1: Key Dates for the Election⁵¹

Date	Event
Not later than 25 March 2011	Publication of notices of election (Constituency and Regional)
4 April 2011 (noon)	Close of nominations
6 April 2011 (noon)	Deadline for withdrawal of candidature
6 April 2011 (noon)	Notification of appointment of election agents
8 April 2011 (noon)	Publication of statement of persons and parties nominated and publication of notice of poll
14 April 2011 (5pm)	Deadline for new postal votes / changes to postal or proxy votes
14 April 2011	Registration deadline
21 April 2011 (5pm)	Deadline for applications for new proxy votes
26 April 2011	Appointment of counting and polling agents
5 May 2011 (7am to 10pm)	Polling day
5 May 2011 (5pm)	Deadline to apply for new applications to vote by proxy on grounds of medical emergency
5 May 2011 (5pm)	Replacement for lost/spoilt postal votes ends
5 May 2011 (5pm)	Alterations to register to correct clerical errors

⁵¹ [Electoral Commission, Candidates and agents information: Elections to the National Assembly for Wales, 2011 \[Accessed 18 March 2011\]](#)

Annex 2: Offices disqualifying holders from membership of the National Assembly for Wales

Bodies the members of which are disqualified

A committee established by the Pensions Regulator under section 9 of the Pensions Act 2004);

A National Park authority for a National Park in Wales;

A panel, established under Schedule 10 to the Rent Act 1977, of persons to act as chairmen and other members of rent assessment committees for an area or areas every part of which is in Wales;

A tribunal constituted under section 27 of, and Schedule 3 to the Education Act 2005;

A tribunal referred to in paragraph 10 of Schedule 26 to the Schools Standards and Framework Act 1998;

Adjudication Panel for Wales or Panel Dyfarnu Cymru;

Agricultural Land Tribunal;

An urban development corporation for an urban development area wholly in Wales;

Anglesey Recovery Board;

Any member of the Big Lottery Fund appointed under paragraph 1 of Schedule 4A to the National Lottery Etc. Act 1993 or of a committee established under paragraph 7(1)(b) of that Schedule;

Arts Council of Wales;

Board of Trustees of the National Library of Wales appointed by the Welsh Ministers;

Board of Trustees of the National Museum of Wales appointed by the Welsh Ministers;

Board of the Pension Protection Fund;

British Waterways Board;

Board of Medical Referees appointed by the Welsh Ministers;

British Broadcasting Corporation Trust;

British Transport Police Authority;

Care Council for Wales or Cyngor Gofal Cymru;

Care Quality Commission;
Central Arbitration Committee;
Channel Four Television Corporation;
Child Maintenance and Enforcement Commission;
Commission for Equality and Human Rights;
Competition Appeal Tribunal;
Competition Commission;
Competition Service;
Council for Healthcare Regulatory Excellence;
Council of the Advisory, Conciliation and Arbitration Service;
Countryside Council for Wales;
Electoral Commission or Comisiwn Etholiadol;
Environment Agency or Asiantaeth yr Amgylchedd;
First-tier tribunal;
Food & Drink Advisory Partnership;
Food Standards Agency or yr Asiantaeth Safonau Bwyd;
Food Standards Agency Advisory Committee for Wales;
Gas and Electricity Markets Authority;
General Teaching Council for Wales or Cyngor Addysgu Cyffredinol Cymru;
Health and Safety Executive;
Health Protection Agency or yr Asiantaeth Diogelu Iechyd;
Higher Education Funding Council for Wales other than a member who is also an employee of the Council;
Human Fertilisation and Embryology Authority;
Human Tissue Authority;
Independent Appeal Panel for Farmers;
Independent Police Complaints Commission;
Independent Remuneration Panel for Wales;
Independent Social Services Complaints Panel;

Joint Nature Conservation Committee;
Local Better Regulation Office;
Local Government Boundary Commission for Wales;
Meat Promotions Wales or Hybu Cig Cymru;
Mental Health Review Tribunal for Wales;
National Employment Savings Trust Corporation;
Office of Communications;
Office of Fair Trading;
Pensions Regulator;
Postal Services Commission;
Royal Commission on the Ancient and Historical Monuments of Wales;
Sianel Pedwar Cymru;
Spongiform Encephalopathy Advisory Committee;
Sports Council for Wales;
Statistics Board or Bwrdd Ystadegau established by the Statistics and Registration Service Act 2007;
Upper Tribunal;
Valuation Tribunal for Wales;
Welsh Industrial Development Advisory Board;
Welsh Language Board or Bwrdd yr Iaith Gymraeg;
Welsh Levy Board or Bwrdd Ardollau Cymru.

Other disqualifying offices

A person appointed by the Welsh Ministers under section 3(1) of the Local Government and Housing Act 1989;
An auditor appointed under section 13(2) of the Public Audit (Wales) Act 2004;
Ambassador or Permanent Representative to an international organisation representing Her Majesty's Government in the United Kingdom;
Auditor General for Wales and members of his or her staff;

Certification officer and any assistant certification officer having functions under the Trade Union and Labour Relations (Consolidation) Act 1992;

Chair of Welsh Health Specialised Services Committee;

Chair and members of the Marine Management Organisation;

Chair and members of the Welsh Committee of the Administrative Justice & Tribunals Council;

Chair and Chief Executive of the UK Commission for Employment and Skills or a Director or a Commissioner of that Commission appointed by the First Minister for Wales;

Chairman and Chief Executive of the Student Loans Company Limited;

Chairman and Chief Executive of the Technology Strategy Board;

Chairman and deputy chairman of the Civil Service Appeal Board;

Chairman and vice chairman of the Sustainable Development Commission;

Chairman and any other member of the Passengers' Council in receipt of remuneration;

Chairman and any member, not being also an employee, of a Local Health Board for an area in Wales;

Chairman and any member, not being also an employee, of a Special Health Authority performing functions partly or wholly in respect of Wales;

Chairman and Director General of the British Council;

Chairman and non-executive director of a National Health Service Trust all or some of whose hospitals, establishments or other facilities are situated in Wales;

Chairman of the Beef Assurance Scheme Panel;

Children's Commissioner for Wales or Comisiynydd Plant Cymru, Deputy Children's Commissioner and members of his or her staff;

Civil Service Commissioner;

Commissioner for Older People in Wales or Comisiynydd Pobl hŷn Cymru, Deputy Commissioner and members of his or her staff;

Commissioner for Public Appointments;

Commissioner and assistant Commissioner of the Boundary Commission for England;

Commissioner and assistant Commissioner of the Boundary Commission for Northern Ireland;

Commissioner and assistant Commissioner of the Boundary Commission for Scotland;

Commissioner and assistant Commissioner of the Boundary Commission for Wales;

Comptroller and Auditor General;

Director of Finance Wales Public Limited Company or any wholly owned subsidiary of Finance Wales Public Limited Company;

Director of the Pensions Advisory Service Limited;

Director of the Post Office company (within the meaning of Part 4 of the Postal Services Act 2000) being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown;

Forestry Commissioners and member of their staff;

Governor or Administrator of a British overseas territory within the meaning of section 50(1) of the British Nationality Act 1981;

Health Service Commissioner;

Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru;

High Commissioner representing Her Majesty's Government in the United Kingdom;

Independent Case Examiner for the Department for Work and Pensions;

Independent Groundwater Complaints Administrator appointed under section 21 of and paragraph 27 of Schedule 7 to the Cardiff Bay Barrage Act 1993;

Ombudsman for the Board of the Pension Protection Fund appointed under section 209 of the Pensions Act 2004 and any deputy to that Ombudsman appointed under section 210 of that Act;

Parliamentary Commissioner for Administration;

Pensions Ombudsman appointed under section 145 of the Pensions Schemes Act 1993 and any deputy to that Ombudsman appointed under section 145A of that Act;

Person holding a politically restricted post, within the meaning of Part 1 of the Local Government and Housing Act 1989, under—

(a) a local authority in Wales, within the meaning of that Part,

(b) a National Park Authority for a National Park in Wales;

President of the Special Educational Needs Tribunal for Wales, or member of a panel of persons appointed to act as chairman or other member of that Tribunal;

Returning officer for a constituency or an electoral region of the National Assembly for Wales;

Social Fund Commissioner;

Trustee of the Independent Living Fund (2006).

