

Quick guide

Steps to a Referendum on further powers

Update: 17 December 2010

Summary

The **One Wales** coalition agreement between Labour and Plaid Cymru includes a commitment to:

... proceed to a successful outcome of a referendum for full law-making powers under Part IV (of the *Government of Wales Act 2006*¹ ['the 2006 Act']) as soon as practicable, at or before the end of the Assembly term.²

Following the completion of a number of processes by the National Assembly, the UK Parliament and the Secretary of State for Wales since February 2010, a referendum on further powers to the National Assembly will now take place on 3 March 2011.

Should the majority of the Welsh electorate vote in favour of proceeding to Part 4 of the 2006 Act in such a referendum, the National Assembly would then be free to make laws within the boundaries of those devolved subjects outlined in Schedule 7 of the 2006 Act without having to request the authority to make those laws from Westminster.

This bulletin summarises the steps taken since February 2010 in order to fulfil the One Wales commitment and provides information in relation to the referendum period, which started on 16 December 2010.

Provisions relating to the referendum in the Government of Wales Act 2006

Processes relating to a referendum enabling Part 4 of 2006 Act to be brought into force are governed by the following sections, together with Schedule 6:

- Section 103 deals with the mechanisms which would allow a referendum to be held in Wales on whether Part 4 of the 2006 Act should come into force.
- Section 104 provides the mechanism under which the First Minister or a Welsh Minister can initiate a proposal that a referendum be held on whether Part 4 of the 2006 Act should come into force. In particular, if at least 40 Assembly Members

¹ [Government of Wales Act 2006 \(c.32\)](#)

² [Welsh Assembly Government, *One Wales: A progressive agenda for the government of Wales*](#)

approve the proposal, the Secretary of State is required, within 120 days, to either lay before Parliament a draft Order in Council which will initiate a referendum, or give formal notice refusing to do so which sets out the reasons for that refusal.

Developments so far

On **9 February 2010**, the National Assembly unanimously approved a resolution (often referred to as a ‘trigger motion’) proposed by the First Minister, the Rt. Hon Carwyn Jones AM “that a recommendation should be made to Her Majesty in Council to make an Order in Council under section 103(1) of the Act”.³

A subsequent formal notice of the resolution (a requirement under section 104(2) of the 2006 Act) was included in a letter sent to the then Secretary of State for Wales, the Rt. Hon Peter Hain MP by the First Minister on **17 February 2010**.⁴ The then Secretary of State responded to this letter on **20 February 2010**, and confirmed that he had instructed his officials to take forward the preparatory work on the legal instruments required for holding the referendum.⁵ Schedule 6 of the 2006 Act states that this preparation should include agreeing:

- the date of the referendum;
- the question to be asked and any explanatory statement;
- the role of the Electoral Commission in relation to publicising the referendum;
- the organisation of the holding of the poll;
- the counting of the votes;
- the declaration of the result; and
- the funding of the costs of holding the referendum.

The UK General Election and subsequent change of government

Following the UK General Election on **6 May 2010**, the new Conservative-Liberal Democrat coalition stated in its programme for government its commitment to “introduce a referendum on further Welsh devolution” during the course of the current parliament.⁶

Subsequently, on **15 June 2010**, the newly appointed Secretary of State for Wales, the Rt. Hon Cheryl Gillan MP, wrote to the First Minister providing reasons why the original 120 day deadline for laying a draft Order before both Houses of Parliament was missed:

The principal reason I am unable to lay the draft Order within the period ending on 17 June

³ [RoP, p73, 9 February 2010 \[Accessed 12 July\]](#)

⁴ *Office of the Secretary of State for Wales*, Letter dated 17/02/2010 from Carwyn Jones AM to Peter Hain MP regarding the Notice of Resolution under section 104 of the Government of Wales Act 2006, DEP2010/0506 (p1)

⁵ *Office of the Secretary of State for Wales*, Letter dated 20/02/2010 from Peter Hain MP to Carwyn Jones AM regarding the Notice of Resolution, DEP2010/0506 (p2)

⁶ [UK Government, *The Coalition : our programme for government*, May 2010, p28 \[Accessed 12 July 2010\]](#)

2010 is that due to circumstances I inherited from the previous administration, I have not been able to fulfil my duty set out in section 104(4) of the Political Parties, Elections and Referendums Act 2000 to consult the Electoral Commission on the wording of the referendum question, and as a result the Electoral Commission has not yet tested and reported on the intelligibility of the question. Your decision that the date and question should not be considered until after the General Election has meant that we have not yet submitted a question to the Electoral Commission, which has confirmed that it will need at least 10 weeks to carry out its assessment and then report. This inevitably leads to a position where we cannot lay the referendum Order by the 17 June 2010 deadline.⁷

In the same letter, the Secretary of State also confirmed that the referendum should take place before the end of the first quarter of 2011:

Both you and I and the Deputy First Minister have discussed a possible timetable for the referendum, taking account of all the stages that need to be gone through to prepare for it. In the light of our discussion, we have agreed that we should aim for a referendum to be held before the end of the first quarter of 2011.⁸

Consultation on the referendum question

As is required under section 104 of the *Political Parties, Elections and Referendums Act 2000*⁹ (“the PPERA”) and stated in paragraph 3(3) of Schedule 6 to the 2006 Act, the Secretary of State wrote to the Electoral Commission on **23 June 2010** to invite its views on the intelligibility of the question and preceding statement for the proposed referendum submitted by the UK Government.¹⁰ A copy of the proposed question is included below:

At present, the National Assembly for Wales (the Assembly) has powers to make laws for Wales on some subjects within devolved areas. Devolved areas include health, education, social services, local government and environment. The Assembly can gain further powers to make laws in devolved areas with the agreement of the Parliament of the United Kingdom (Parliament) on a subject by subject basis.

If most people vote Yes in this referendum, the Assembly will gain powers to pass laws on all subjects in the devolved areas. If most people vote No, then the present arrangements, which transfer that law-making power bit by bit, with the agreement of Parliament each time, will continue.¹¹

On **20 May 2010**, the First Minister also proposed an alternative question and preamble on behalf of the Welsh Government¹²:

At the moment the Assembly can make laws about some, but not all, things which only affect people in Wales.

Parliament has decided that the Assembly should be able to pass its own laws for Wales on all devolved subjects. But this can only happen if voters in Wales support this in a

⁷ *Office of the Secretary of State for Wales*, Letter dated 15/06/2010 from Cheryl Gillian MP to Carwyn Jones AM regarding referendum on further law-making powers for the National Assembly for Wales. DEP2010/1304

⁸ Ibid

⁹ ***Political Parties, Elections and Referendums Act 2000 (c.41)***

¹⁰ ***Wales Office, Press Release: Welsh Secretary sends draft referendum question to Electoral Commission for consideration, 23 June 2010 [Accessed 12 July 2010]***

¹¹ ***Wales Office, The proposed Preceding Statement and Question : Referendum on law-making powers of the National Assembly for Wales [Accessed 18 August 2010]***

¹² ***National Assembly for Wales, Statement by the First Minister: Referendum Update, 20 May 2010 [Accessed 1 October 2010]***

referendum.

The devolved subjects include health and social services, housing, education and local government. The laws could not be about social security, defence or foreign affairs.

Do you want the Assembly to have the power now to pass laws on all the subjects which are devolved to Wales?

Section 104(4) of the PPERA however only provides for the Electoral Commission to comment on the intelligibility of a referendum question which is submitted by the Secretary of State only. It is therefore not required to comment on questions proposed by other individuals and organisations (including the above question suggested by the First Minister)

According to its assessment criteria, the Electoral Commission anticipated publishing its views on the intelligibility of a proposed referendum question around ten weeks after finding out what the question is¹³. Its Report was published on **2 September 2010**.¹⁴

To assess the proposed question the Electoral Commission carried out research with voters, took advice from accessibility and plain language specialists and asked would-be campaigners, politicians and other interested people to comment on the wording. In its summary to the Report it commented:

Our voter research revealed issues with the proposed question that it would have been difficult to anticipate without testing it thoroughly. One of the main challenges the drafters of the question faced was complexity: the referendum is about a constitutional process that is unfamiliar to most people. Many people are unaware of the referendum, what it is about, or even what a referendum is. This lack of awareness caused research participants problems when trying to answer the proposed question. After reading the question, most people said that they had voted in the way they wanted to, but many still did not understand what the referendum was about and its possible outcomes. A few people said that if they had understood the true meaning of the question and the scope of the powers they were voting on, they would have voted differently.¹⁵

The Electoral Commission's assessment showed that particular words, phrases and terminology required redrafting so that voters can understand the question. It was of the view that the introduction should be less densely worded and the format must be easier to read and more accessible. It suggested its own redraft of the question:

The National Assembly for Wales: what happens at the moment

The Assembly has powers to make laws on 20 subject areas, such as:

- agriculture, education, the environment, health, housing, local government.

In each subject area, the Assembly can make laws on **some** matters, but not others. To

¹³ [The Electoral Commission, *Our approach to assessing the intelligibility of referendum questions*, November 2009 \[Accessed 12 July 2010\]](#)

¹⁴ [Electoral Commission, *Referendum on law-making powers to the National Assembly for Wales: Report of views of the Electoral Commission on the proposed referendum question*, September 2010 \[Accessed 5 October 2010\]](#).

¹⁵ [Electoral Commission, *Referendum on law-making powers to the National Assembly for Wales: Report of views of the Electoral Commission on the proposed referendum question, Executive Summary*, September 2010 \[Accessed 5 October 2010\]](#).

make laws on any of these other matters, the Assembly must ask the UK Parliament for its agreement. The UK Parliament then decides each time whether or not the Assembly can make these laws.

The Assembly cannot make laws on subject areas such as defence, tax or welfare benefits, whatever the result of this vote.

If most voters vote 'yes'

The Assembly will be able to make laws on **all** matters in the 20 subject areas it has powers for, without needing the UK Parliament's agreement.

If most voters vote 'no'

What happens at the moment will continue.

Question

Do you want the Assembly now to be able to make laws on **all** matters in the 20 subject areas it has powers for?

Yes

No

The Secretary of State welcomed the publication of the Report:

I am grateful to the Electoral Commission for publishing today's report and for their comments on the intelligibility of the referendum question and preceding statement. It is a thorough report and an important part of the process in ensuring people understand what they are being asked to vote on.¹⁶

At Welsh Questions in the House of Commons on **8 September 2010** the Secretary of State said:

I am very grateful to the Electoral Commission for its report and the 10 weeks of examination that it gave to the question that was designed by the project board. On Monday I worked with the First Minister and the Deputy First Minister, and I have considered its findings. We have all agreed that we should accept its findings and take forward the preamble and the question that has been put forward, on an objective and independent basis, by the Electoral Commission, and I shall be making a further statement to Parliament.¹⁷

Referendum date

On **21 September 2010**, the First Minister and Deputy First Minister wrote to the Secretary of State stating their preference for the referendum to take place on **3 March 2010**.¹⁸

In response, the Secretary of State said:

I will do everything possible to accommodate that date and intend to lay the Referendum Order before Parliament next month.

¹⁶ [Wales Office, *Welsh Secretary welcomes Electoral Commission's Report on Referendum Question, September 2010* \[Accessed 1 October 2010\]](#)

¹⁷ [HC Debates, 8 September 2010, c301](#)

¹⁸ [Welsh Government Website, *Referendum Journey - The Secretary of State for Wales* \[Accessed 1 October 2010\]](#)

In the meantime, Wales Office officials continued to work with Welsh Assembly Government officials to fulfil the commitment to hold the referendum by the end of the first quarter of 2011.¹⁹

The Referendum Orders

Following the completion of the consultation with the Electoral Commission, the Secretary of State is required (under sections 104(3)(a) and 104(3)(b) of the 2006 Act) to lay a draft Order before both Houses of Parliament for approval or give notice to the First Minister stating the reasons for her refusal to do so. According to Schedule 6 of the 2006 Act, that Order must include:

- The question that is to be included on the ballot paper;
- The date of the poll for the referendum;
- The referendum period; and
- Provisions for the funding of costs of the referendum.

The Order may also include, at the discretion of the Secretary of State:

- Any preamble to the question that is to be included on the ballot paper;
- Any provision for and in connection with the combination of the referendum poll with any other election or referendum; and
- A provision which may authorise or require the Electoral Commission to do things for the purpose of encouraging voting in the referendum.

The Secretary of State is also required (under section 104(4) of the 2006 Act) to lay a draft of the Order before the National Assembly.

The draft Order requires the approval by resolution of both Houses of Parliament by simple majority, and the approval by resolution of the National Assembly by at least 40 Assembly Members (as stated under sections 103(4) and 103(5) of the 2006 Act).

If approved, the Order must finally be made the Queen in Council. This can only be done at a meeting of the Privy Council, where meetings usually take place monthly.

On the **21 October 2010** the Secretary of State for Wales, the Rt. Hon. Cheryl Gillan MP laid three draft Orders before Parliament²⁰:

- The *[draft Referendum Order \(National Assembly for Wales Referendum \(Assembly Act Provisions\) \(Referendum Question, Date of Referendum, Etc.\) Order 2010](#)* (“the draft Referendum Order”)
- The *draft Expenses Limits Order (National Assembly for Wales Referendum (Assembly*

¹⁹ [Wales Office, Welsh Secretary receives Assembly Government’s preferred date for Referendum, 21 September 2010 \[Accessed 1 October 2010\]](#)

²⁰ [Wales Office, Welsh Secretary lays Order for Referendum on 3 March, Press Release, 21 October 2010.\[accessed 26 October 2010\]](#)

Act Provisions) (Limit on Referendum Expenses Etc.) Order 2010) (“the Expenses Limits Order”)

- The *draft Schedule 7 Order (National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010)* (“the draft Schedule 7 Order”)

She has also made a written Ministerial statement to Parliament: *National Assembly for Wales: Referendum on law-making powers* which confirmed that she had laid these Orders. Mrs Gillan also placed in the libraries of both Houses a copy of the Electoral Commission’s report of its views on the proposed referendum question. She has accepted the Electoral Commission’s recommendations on the wording of the referendum question which is reproduced above.

The *draft Referendum Order* makes the bulk of the provision relating to the holding and running of the referendum. It makes provision for the date of the referendum (**the 3 March 2010**); the referendum question; how people can vote in the referendum (including provision for voting by post or by proxy) and the referendum rules (how the referendum is run and administered, including how the count is run). It also contains an appendix of forms, including the ballot paper, official poll cards, proxy and postal voting statements.

The *draft Expenses Limits Order* prescribes the spending limits for the permitted participants taking part in the campaign. The Secretary of State has set these at the level recommended by the Electoral Commission.

The Schedule 7 Amendment Order updates Schedule 7 of the *Government of Wales Act 2006*. The Schedule lists the subjects on which the Assembly could legislate in the event of a Yes vote. The changes update the Schedule to take account of the powers the Assembly has gained since the Schedule was last updated in 2007. In particular, it is intended to ensure that it does not omit competence which has been conferred on the Assembly in Schedule 5 to the 2006 Act. The Welsh Affairs Committee published a report considering this Order on 18 November 2010²¹.

The *Referendum* and *Schedule 7 Orders* were debated and approved in the Assembly on **9 November**. They were subsequently approved by the House of Commons on **23 and 24 November**. Both orders were also approved by the House of Lords on **25 November**.

The *Expenses Limits Order* was approved by the House of Commons on **24 November** and by the House of Lords on **25 November**. It will now be made by the Secretary of State for Wales. Assembly approval was not required for this Order.

The Secretary of State for Wales answered questions in relation to the referendum during Welsh questions in the House of Commons on 8 December 2010. In response to a question from David Amess MP on whether consideration had been given to the outcome of the referendum, the Secretary of State told MPs that:

²¹ *Welsh Affairs Committee, The proposed amendment of Schedule 7 to the Government of Wales Act 2006: Second Report of Session 2010-11, 22 November 2010, HC603 2010-2011*

Clearly, a yes vote will transfer primary powers to the Assembly over those areas already devolved, and that will mean a changed relationship with Westminster, including the impact of legislation made in Cardiff on this House and this legislature. If there is a no vote, we will retain the existing legislative process. In that eventuality, I will examine how we can make the system more effective and more efficient, because it is broadly agreed that the legislative competence order process, as it currently operates, is cumbersome and time consuming.²²

Referendum period

The referendum period officially started on **16 December 2010**, the date that the draft Referendum Order was made by Her Majesty in Council. In welcoming the beginning of the referendum period, the First Minister stated that:

The approval of the order by the Queen in the Privy Council means we can now proceed full steam ahead towards the referendum.²³

The First Minister also issued a written statement outlining the statutory restrictions placed on the Welsh Government in the days leading up to the poll and confirmed that the Welsh Government will not engage in any publicity relating to the campaign throughout the referendum period:

Statutory restrictions on government publicity relating to referendums are set out in section 125 of the Political Parties, Elections and Referendums Act 2000. These statutory restrictions will apply for the 28 days before the poll. However we have also agreed with the Electoral Commission that the Welsh Assembly Government will not engage in any publicity campaign about the referendum. This will apply from today, up to and including the date of the poll. Political parties, other organisations and individuals will set out the arguments for and against during the campaign.²⁴

Those wishing to campaign and spend a substantial amount of money (£10,000 or more) during the referendum period will be able to apply to the Electoral Commission to be registered as permitted participants, whose expenditure will then be regulated. Permitted participants will also have five weeks to apply to become the lead Yes or No campaign. The Electoral Commission will decide whether they can designate lead organisations on both sides of the campaign by **February 2 2011**. They have to designate organisations on both sides of the campaign, or not at all. If designated, the lead Yes and No campaigns will be eligible for some financial and other assistance, as provided for in the *Political Parties Elections and Referendum Act 2000*. The amount of the financial assistance available will be decided by the Electoral Commission.

²² [HC Debates, 8 December 2010, c295](#)

²³ [Welsh Government Press Release, *Referendum period begins as order made by the Queen, 16 December 2010* \[Accessed 17 December 2010\]](#)

²⁴ Welsh Government Written Cabinet Statement, *Referendum period*, 16 December 2010

Further information

Please note that this bulletin will be updated regularly with the latest information in relation to the referendum on further powers to the Assembly once details are announced by the UK Government.

The date included at the beginning of this document indicates when the bulletin was last updated.

For further information on aspects of the referendum, please contact **Owain Roberts** (owain.roberts@wales.gov.uk) or **Alys Thomas** (alys.thomas@wales.gov.uk) Members' Research Service.

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