



Referendum in Wales

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On 3 March 2011 a referendum was held in Wales to decide whether the National Assembly for Wales should gain the power to legislate on a wider range of matters in one go. This was in contrast to the previous situation, in which it had to gain approval from the UK Parliament each time it wanted to expand the range of matters.

The question was, “Do you want the Assembly now to be able to make laws on **all** matters in the 20 subject areas it has powers for?” This was a reference to the 20 broad headings within which its potential powers are defined. The referendum approved the change, by approximately 63% to 36%.

This note gives an account of the referendum campaign and vote, and the implications of this in constitutional terms. Previous notes of relevance, covering the reasons for the referendum and the technical arrangements for holding it, are [Referendum for Wales: extending the scope of Assembly powers](#), SN/PC/5685, and [Referendum in Wales: draft Orders](#), SN/PC/5759.

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1 Background

Hitherto, the National Assembly for Wales (the Assembly) could legislate on a relatively restricted range of subjects. These were arranged under 20 headings, but only a few specific matters were included under each heading. This range could be expanded piecemeal, either when enabling provisions were included in legislation in the UK Parliament, or if the Assembly requested an Order in Council for the purpose. However, under the *Government of Wales Act 2006* a mechanism existed to expand the range of specific matters significantly in one move. This could be done only if approved in a referendum.

The new powers available under this mechanism are contained in Part 4 of the 2006 Act, and are known as ‘Assembly Act provisions’.

The Assembly passed a resolution calling for a referendum on moving to Assembly Act provisions on 9 February 2010.

The referendum was held on 3 March 2011: the vote was affirmative.

The Assembly Act provisions will come into force on a date to be set by the Welsh Assembly Government and approved by the National Assembly for Wales. At that point, the current power to make measures for Wales will end, although existing measures will remain in force.

The background to the referendum is covered in [Referendum for Wales: extending the scope of Assembly powers](#), SN/PC/5685, and [Referendum in Wales: draft Orders](#), SN/PC/5759.

2 Campaign

The campaign was described by the *Guardian* as a “strikingly low-key contest.”¹ All parties in the Assembly supported the move to Assembly Act provisions, although the UK Government remained neutral. However, the main group campaigning for a ‘no’ vote decided not to seek funding by the Electoral Commission, with the result that the ‘yes’ campaign could not gain access to these funds either.

The conduct of referendums is governed by the *Political Parties, Elections and Referendums Act 2000* (PPERA). Under Section 108 of this Act the Electoral Commission may designate a group on each side of the campaign to receive financial assistance, but it cannot designate a group on one side only without the other. Groups wishing to be designated must apply, and the Commission must determine that a group adequately represents those campaigning for its preferred outcome before it can designate it.²

The main group campaigning for a ‘no’ vote in the referendum in Wales, [True Wales](#), decided not to apply for designation. Its stated reason was that it did not want to impose extra costs on the taxpayer:

There has been much speculation about whether we would apply to become the lead No campaign. We find that the referendum criteria make it impossible for grassroots groups in our democracy to work against political machines like the YES campaign – which comprises politicians, lobby groups and members of the Church hierarchy - the outdated rules have made it ridiculously one-sided and wasteful of public money.

¹ 1 March 2011.

² PERA, section 109.

After much consideration, we have informed the Electoral Commission of our intention to campaign, but to do so without the use of taxpayers' money. So we have not applied to the Electoral Commission to be appointed the lead 'NO' campaign.³

One applicant, the blogger David Alwyn ap Huw Humphreys, did seek designation for the 'no' campaign, but the Electoral Commission found that he did not 'adequately represent' that campaign.

The main group campaigning for a 'yes' vote, [Yes for Wales](#), did apply for designation, but the Electoral Commission was not able to grant this, as PPERA limits it to a designation for each side, or for none.

The Electoral Commission's decision not to designate lead campaign groups was announced in a press release.⁴

The effect of True Wales's decision was that neither it nor Yes for Wales received the assistance of up to £600,000 to which a designated organisation would have been eligible, as well as election broadcasts, free postage for campaign literature, and free rooms for public meetings.⁵

Under the *Government of Wales Act 2006*, if it does not designate an organisation on each side,

the Electoral Commission may take such steps as they think appropriate to provide such information for [voters] as the Commission think is likely to promote awareness [...] about the arguments for each answer to the referendum question.⁶

The Commission offered all registered campaigners the chance to express their views on its own website for voters, sent an information booklet to every household in Wales, and conducted an advertising campaign for the voters' website:

We have offered all registered campaigners – including the two that applied to become lead campaigners – the opportunity to each place a short statement on the About My Vote website as well as a link to their own website.

“The Commission has already launched an extensive public information campaign, which includes sending an information booklet to every household in Wales. This will be supported by an advertising campaign on television, radio, online and in the press that will drive traffic to our www.aboutmyvote.co.uk website.

“Registered campaigners including political parties, individuals and trade unions will continue to campaign to ensure that their arguments are heard across Wales. Our work will provide plenty of opportunities for voters to learn more about how to take part in the referendum and also hear the arguments being made by campaigners.”

The Commission will now ask each registered campaigner to submit a statement of no more than 200 words which it will then place on a specially-designed page on its www.aboutmyvote.co.uk website, along with a link to their own website. Campaigners

³ [Statement on the refusal of taxpayers' money and lead campaign status](#), 19 January 2011, accessed 3 March 2011.

⁴ [No 'lead campaigners' for National Assembly referendum](#), Electoral Commission, 25 January 2011, accessed 3 March 2011.

⁵ PPERA, section 110.

⁶ Schedule 6, para 8(2).

have the choice of providing both a statement and a link, or just one of these. Campaigners can provide the statements in both English and Welsh.

The information, which should set out their arguments in favour of voting 'Yes' or 'No', will be presented on the aboutmyvote.co.uk website in a way that makes clear to voters that the content of it is the responsibility of each registered campaigner. The statement will also need to meet with specific guidelines set by the Commission.⁷

The statement submitted by Yes for Wales was as follows:

On March 3rd the people of Wales will be asked to vote on the future of our National Assembly.

At the moment, Assembly Members have to ask permission from London before they can pass laws in areas that are already the responsibility of the Assembly. This can take a long time and holds back action in vitally important areas.

There have been long delays in providing more affordable housing, promoting recycling and improving mental health treatment - all because the Assembly doesn't have all the tools it needs to do the job.

A Yes vote in the referendum will speed up the process. It is not about adding to the Assembly's areas of responsibility. It will make the Assembly more efficient, more cost-effective and more accountable to the people of Wales.

People from all walks of life and all parties are coming together to support the simple principle that laws that only affect Wales, should be made in Wales.

The statement submitted by True Wales was:

True Wales' supporters are found everywhere throughout Wales. They are ordinary members of the public who are deeply disappointed at the way devolution has worked out.

The fault lies in the competence of the Assembly and more laws can't change that. In fact more power will make things even worse because the Assembly will be able to pass laws without adequate scrutiny.

The involvement of the elected Welsh MPs is vital for the health of our democracy. Good laws require scrutiny and that takes time. Many of the laws proposed by the AMs have been significantly improved by the MPs.

The Assembly currently has all the tools it needs to do the tasks the AMs were elected to undertake. More power isn't necessary but the involvement of the MPs is essential.

The simple principle is that laws that effect Wales should be made with the co-operation and involvement of the elected Welsh MPs.

People from all over Wales have come together to support and promote better democracy and devolution.

Statements by some of the other campaigners can be found on the About my vote website, hosted by the Electoral Commission.

⁷ Kay Jenkins, Head of the Electoral Commission in Wales, quoted in [Yes and No information to be placed on the Electoral Commission's website](#), 1 February 2011, accessed 3 March 2011. Full board papers on its decision to proceed in this way are available under the "campaigning" head on its [website](#) for this referendum.

The Electoral Commission's own [information booklet](#) is available on the same website.

3 Result

According to the [Electoral Commission](#) a total of 517,132 people, or 63.49%, voted 'yes' to the 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?" 297,380, or 36.51%, voted 'no'. Monmouthshire was the only one of the 22 voting areas in which a majority voted 'no', and then only by a margin of 320 votes.⁸

The provisional national turnout was 35.2%.⁹

A detailed statistical assessment of the referendum has been produced by the Members' Research Service at the Assembly, in [Results of the National Assembly for Wales Referendum 2011](#), March 2011.¹⁰

4 What happens next?

4.1 Commencement

The new arrangements, or Assembly Act provisions, will come into force on a date to be chosen by the Welsh Ministers.¹¹ This will be embodied in an order, which must first be approved by the Assembly. It is expected that commencement will take effect from the start of the new Assembly after the elections in May.¹²

When the Assembly Act provisions come into force, the existing power to make measures, under Part 3 of the *Government of Wales Act 2006*, will cease. However, existing measures will remain in force.

4.2 Acts of the Assembly

The Assembly will pass laws known as 'Acts of the National Assembly for Wales.'¹³ These will be introduced as Bills, and they will be subject to approval by the Assembly and then Royal Assent.

As previously, and as also in Scotland and Northern Ireland, the power of the UK Parliament to make laws for Wales is not affected by the Assembly Act provisions: it is affirmed for the avoidance of doubt in section 107 (5) of the 2006 Act.

Restrictions

An Act of the Assembly may make any provision that could be made by an Act of Parliament, subject to certain restrictions in the 2006 Act: Section 108 (4), (5) and (6) set out the areas of competence within which the provisions of an Act must fall.

First, the Act must relate to a subject on the list in Schedule 7, Part 1. This is discussed at greater length in section 4.3 below. Secondly, Acts must not apply other than in relation to Wales. These conditions do not apply if the provision in question is for enforcement of a provision that does satisfy the conditions, or is appropriate for making such a provision

⁸ [All local area voting declarations](#), Electoral Commission, accessed 7 March 2011.

⁹ [Final national result](#), Electoral Commission, accessed 7 March 2011.

¹⁰ Martin Jennings, Paper number 11/017.

¹¹ *Government of Wales Act 2006*, section 105.

¹² [Historic "Yes" vote gives Wales greater law-making powers](#), Welsh Assembly Government press release, 7 March 2011.

¹³ *Government of Wales Act 2006*, section 107.

effective, or is otherwise incidental or consequential to a satisfactory provision. Provisions of an Act of the Assembly, including incidental etc ones, may not extend beyond England and Wales, they must not be incompatible with the *European Convention on Human Rights* nor European law, and they must not breach restrictions set out in Schedule 7, Part 2.

The latter are similar to existing restrictions on Assembly measures, except that the provision that measures may not create criminal offences punishable above a certain level is not repeated in respect of Acts. So, under Schedule 7, an Act must not remove nor modify the functions of a UK Minister nor of the Comptroller and Auditor General, it must not, with some exceptions, modify the 2006 Act, it must not modify statutory provisions that require repayment of borrowed money to be charged on the Welsh Consolidated Fund, and it must not modify the provisions of certain existing Acts already protected in respect of measures.¹⁴

Procedure

Sections 110 to 116 of the 2006 Act cover the procedure on Bills and Acts of the Assembly, although this will be fleshed out in the Assembly's standing orders. The procedure is very similar to that for Assembly measures. Bills may be introduced by a member of the Welsh Assembly Government or by any Assembly member.¹⁵ As with measures, the proceedings on a Bill must have three stages, allowing a debate and vote on its general principles, consideration and voting on the details, and a final stage at which it is passed or rejected.¹⁶ Also as with measures, there is scope for the Attorney General, or the Counsel General in Wales, to refer a Bill to the Supreme Court to determine whether it falls within the Assembly's legislative competence.¹⁷ The Secretary of State has the power to block a Bill, by order subject to annulment by resolution of either House of Parliament. The terms of this power are the same as for measures: it applies if the Secretary of State has reasonable grounds to believe that the Bill would have an adverse effect on a matter not listed as within the Assembly's competence in Schedule 7, that it might have a serious adverse effect on water resources, supply or quality in England, that it would have an adverse effect on the operation of the law in England, or that it would be incompatible with international obligations, national security or defence. A broadly similar provision applies in relation to Scotland.¹⁸

4.3 Subject matter

Under the new arrangements, the 20 existing 'fields' within which the Assembly may legislate become 'subjects', but the headings stay almost identical.¹⁹ They will be:

Agriculture, forestry, animals, plants, and rural development

Ancient monuments and historic buildings

Culture

Economic development

Education and training

¹⁴ The whole of the *European Communities Act 1972*, *Data Protection Act 1998*, *Human Rights Act 1998*, and *Civil Contingencies Act 2004*; Sections 144 (7), 145, 145A and 146A (1) of the *Government of Wales Act 1998*; and the whole of the *Re-Use of Public Sector Information Regulations 2005*.

¹⁵ *Government of Wales Act 2006*, section 110.

¹⁶ Section 111.

¹⁷ Section 112.

¹⁸ *Scotland Act 1998*, section 35.

¹⁹ Under the outgoing system of measures the heading of field 1 was "agriculture, fisheries, forestry and rural development," while field 7 was "fire and rescue services and promotion of fire safety."

Environment
Fire and rescue services and fire safety
Food
Health and health services
Highways and transport
Housing
Local government
National Assembly for Wales
Public administration
Social welfare
Sport and recreation
Tourism
Town and country planning
Water and flood defence
Welsh language

Under the arrangements hitherto, the Assembly could not automatically legislate on every topic arising under one of these headings. Instead, it was restricted to those matters specified either in an Act of Parliament or in an Order in Council made for the purpose (a “legislative competence order,” or LCO). These matters, which can be very detailed, are listed in Schedule 5 to the *Government of Wales Act 2006*, which has been amended each time a new matter has been added.

There is a series of [notes](#) prepared by the Assembly’s research service, which tracks the successive amendments of Schedule 5. According to these notes, matters have been added to 14 of the 20 fields. There is also a version of [Schedule 5](#) as amended on the Assembly’s website, which gives the list of fields and matters as it currently stands.

Once the new powers approved in the referendum come into force, the Assembly will be able to pass laws on at least some matters under each subject. In some subjects it will be able to pass laws on a great many new matters.

The details of what is included in the subjects are set out in [Schedule 7](#) to the 2006 Act. This Schedule does not specify matters in the same detail as Schedule 5. Instead, it gives rather general descriptions of what each subject contains, and then specifies exemptions (matters that are reserved to the UK level).

As an example, here is the content of Field 3, Culture, under the present arrangements:

Matter 3.1

The functions of local authorities in the support, improvement and promotion of arts and crafts, museums and galleries, libraries, archives and historical records, and cultural activities and projects.

This matter does not include licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

In this matter “local authorities” means the councils of counties and county boroughs in Wales.²⁰

This is Subject 3, Culture, under the new arrangements:

Arts and crafts. Museums and galleries. Libraries. Archives and historical records. Cultural activities and projects.

Exceptions—

Public lending right.

Broadcasting.

Classification of films, and video recordings.

Government indemnities for objects on loan.

Payments to Her Majesty's Revenue and Customs in respect of property accepted in satisfaction of tax, apart from property in which there is a Welsh national interest.²¹

Amendments may be made to Schedule 7 by Order in Council. Such an Order will have to be approved by resolutions of both Houses of Parliament and, except for the first Order, of the Assembly.

5 Reaction to the referendum result

Labour First Minister Carwyn Jones said:

I am very pleased that the people of Wales have voted in favour of the Assembly having greater law-making powers

After more than a decade of devolution, we will for the first time now be able to legislate more effectively for the people of Wales, in Wales.

The system we have used so far, under the Government of Wales Act, had an element of duplication, and created confusion about who was responsible for what. Removing that duplication will enable us to use our legislative capacity more effectively, and people will gain a clearer understanding of the role and responsibilities of the devolved institutions in Wales.²²

Deputy First Minister Ieuan Wyn Jones of Plaid Cymru said:

This vote represents a historic day for Wales that will provide the Welsh people with full law-making powers for the first time.

I am also very proud that this referendum has marked the success of one of this Assembly Government's key One Wales commitments. This is a truly significant achievement that will resonate in this country every time legislation is needed. The

²⁰ *Government of Wales Act 2006*, Schedule 5, Part 1, as amended by *The National Assembly for Wales (Legislative Competence) (Culture and Other Fields) Order 2010*, SI 2010/1212.

²¹ *Government of Wales Act 2006*, Schedule 7, Part 1.

²² [Historic “Yes” vote gives Wales greater law-making powers](#), Welsh Assembly Government press release, 7 March 2011.

people of our nation have voted for a more efficient and more effective legislature here in Wales, and future generations will benefit from their actions.²³

Kirsty Williams, leader of the Welsh Liberal Democrats, said:

It will make our law-making more efficient, it will save money and it will make it crystal clear where responsibility lies for decision making.²⁴

Secretary of State Cheryl Gillan said:

Importantly, the people of Wales have had their say. The vote in favour of enhanced law-making powers will allow the National Assembly for Wales and Welsh Assembly Government to get on with their job of delivering better public services and improving the quality of life for the people of Wales in areas for which they have responsibility.

The result brings with it a greater degree of responsibility to Cardiff Bay as it enables the Assembly to legislate on its own in all the areas covered by the original devolution settlement.

The Government reinforces its commitment to working closely with the Welsh Assembly Government to make these legislative arrangements work effectively.²⁵

She concluded:

This result does not attract additional funding for the Assembly, but I have been pleased to note that the Welsh Assembly Government says that in the future full powers mean it will be able to legislate more efficiently and cheaply in the designated devolved areas.

The 'No' campaign had emphasised the cost implications of the Assembly, its building and staff, as part of its argument.

Rachel Banner, from True Wales, pointed to the low turnout, and asked, "has it got the full-hearted consent of the Welsh people?"²⁶

²³ Ibid.

²⁴ [Carwyn Jones says no rush to pass laws after Yes vote](#), BBC News online, 5 March 2011, accessed 7 March 2011.

²⁵ [Cheryl Gillan welcomes the 'Yes' referendum result, which brings greater degree of responsibility for the Welsh Assembly Government](#), Wales Office press release, 7 March 2011.

²⁶ [Carwyn Jones says no rush to pass laws after Yes vote](#), BBC News online, 5 March 2011, accessed 7 March 2011. There is further reaction to the turnout figure in [Welsh referendum: Low turnout 'a wake-up call'](#), BBC News online, 4 March 2011, accessed 7 March 2011.