

Carwyn Jones AC/AM  
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Ein cyf/Our ref: MB/FM/0047/10

Rt Hon Peter Hain MP  
Secretary of State for Wales  
The Wales Office  
Gwydyr House  
Whitehall  
London  
SW1A 2NP

17 February 2010

*Dear Peter*

**NOTICE OF RESOLUTION UNDER SECTION 104 OF THE GOVERNMENT OF WALES  
ACT 2006**

I wish to inform you that on 9 February 2010 the National Assembly for Wales resolved, in accordance with section 104(1) of the Government of Wales Act 2006, that a recommendation should be made to Her Majesty in Council to make an Order in Council under section 103 (1) of the Act. The number of members who voted in favour of the motion was 53, with no members voting against and no abstentions. The motion for the resolution was tabled by Jane Hutt, Minister for Business and Budget.

I should be grateful if you could confirm receipt of this written notice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cj'.

**Carwyn Jones**

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**Rt Hon Peter Hain MP**

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Our reference: 10POM14

20 February 2010

### REFERENDUM: NOTICE OF RESOLUTION

Thank you for your letter of 17 February 2010 and enclosure, giving formal notice of the resolution of the National Assembly for Wales in respect of a referendum on additional powers, under Section 104 of the Government of Wales Act 2006. I have instructed Wales Office officials to take forward the preparatory work on the legal instruments required for holding the referendum, in accordance with your request.

I am grateful for your offer of assistance from Welsh Assembly Government officials and my Director will be in touch with them directly as and when it is necessary. I look forward to continuing to work closely with you and your Office to take this matter forward.

Carwyn Jones AC/AM  
First Minister of Wales  
Welsh Assembly Government  
Cardiff Bay  
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# The Electoral Commission

Rt. Hon Peter Hain MP  
Secretary of State for Wales  
The Wales Office  
Gwydyr House,  
Whitehall,  
London  
SW1A 2NP

23 February 2010

Dear Mr Hain,

## Key principles for Referendums

I am writing to you to set out the key principles which the Commission believe should underpin any referendum. We intend to take these principles into account when making any decisions in areas where we have a role in the running of the referendum and would welcome your views on our proposed approach.

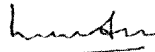
The Political Parties, Elections and Referendums Act 2000 (PPERA), which established the Electoral Commission, gave us statutory responsibilities in relation to referendums. These include ensuring that designated organisations have access to certain assistance - including grants - which we determine within statutory limits, and commenting on the intelligibility of the referendum question.

To help us develop our approach in good time for an expected referendum in Wales we are asking a range of stakeholders for their views on our proposed approach by Wednesday 14 April, and would also very much welcome any input that you might have.

You might also be interested to note that we gave evidence to the current Constitution Committee inquiry into referendums which has already given us a separate opportunity to explain our approach. Our written evidence to the Committee can be found on their webpage on Parliament's website.

I know that there is ongoing communications between my colleagues at the Commission and your office as we continue with our preparations for a possible referendum in Wales. The Commission's Chair Jenny Watson, Kay Jenkins, the Head of Wales Office and Referendums, and I look forward to meeting with you and your colleagues in the near future to discuss our approach in more detail.

Yours sincerely,



Ian Kelsall  
Commissioner

The Electoral Commission  
Trevelyan House  
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Democracy matters

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## The Electoral Commission – Key principles for Referendums

### Background

The Political Parties, Elections and Referendums Act 2000 (PPERA) established the Electoral Commission and gave us statutory responsibilities in relation to elections and referendums. A referendum under PERA is the only electoral event that has a framework for national coordination and accountability.

Our powers and responsibilities relating to referendums include:

- commenting on the intelligibility of the referendum question
- registering those who want to spend significant amounts on campaigning in the referendum as 'permitted participants'
- where appropriate, appointing lead campaign groups ('designated organisations') for each outcome
- ensuring that designated organisations have access to certain assistance, including grants that we determine within statutory limits
- making recommendations to Government on campaign spending limits for sub-UK referendums
- monitoring and reporting on campaign spending and
- reporting on the administration of the referendum

The Chair of the Commission (or someone they appoint) will be the Chief Counting Officer (CCO), responsible for the conduct of the referendum and ensuring the accuracy of the overall result.

### The key principles that should inform the way referendums are run

- Our focus is on voters and on putting their interests first, and that underpins everything we do.
- Referendums should be administered in a way that engenders confidence, is credible, transparent, and open to scrutiny.
- Our objectives for referendums are:
  - they should be well-run and produce results that are accepted
  - there should be integrity and transparency of campaign funding and expenditure
- In that context, we set out here the principles we believe should inform the way referendums are run.

### **Voters**

- There should be no barriers to voters taking part. This means:
  - those eligible can register to vote
  - voters can easily understand the question (and its implications)
  - voters are informed about the possible outcomes, and can easily understand the campaign arguments
  - voters can have confidence that:
    - campaign funding is transparent
    - distribution of any public support and access to media is fair
    - any rule-breaking will be dealt with
  - the voting process should be easy to take part in and well-run
  - the result and its implications should be clear and understood

### **Campaigners**

- There should be no barriers to campaigners putting forward arguments for any of the possible outcomes. This means that:
  - it is easy to register as a permitted participant and to take part in campaigning
  - the rules that govern campaign spending and fund-raising activity are clear and fair
  - the process for designating lead campaign organisations for each outcome (and consequent distribution of public funds and access to media) is easy to understand, and accepted as fair

### **Administration**

- The referendum should be administered efficiently and produce results that are accepted. This needs:
  - a clear legal framework with clear roles and responsibilities communicated to those who are bound by them
  - clear guidance and efficient procedures for voters, campaigners and administrators
  - Performance standards against which the performance of Electoral Registration Officers and Counting Officers at referendums is evaluated
  - an efficient process for distributing funds to campaigners and administrators
  - rapid and clear reporting on campaign funding and spending
  - a timely and persuasive report on how the referendum worked

## **The Key principles underpinning our role in future referendums**

This section provides more detailed information about the principles on which the Commission will make decisions in areas where we have a statutory role in referendums - for example the criteria by which we will decide which organisations to designate.

### **Intelligibility of the question**

- Our question assessment guidelines have been simplified and we republished them in November 2009.

- We also published our 'preferred approach' to question assessment, making clear that we want to undertake user-testing research, seek advice from experts on accessibility and plain language, and talk to campaign groups and other interested parties
- We have indicated that it is likely to take us 10 weeks after finding out what question is to complete our assessment work, and that we will undertake as much preparatory work as we can to ensure that we complete the steps as quickly as possible.

#### **Public awareness activity**

- We will give positive consideration to doing public awareness activity
- Our focus will be on providing voter information and ensuring that people are registered to vote
- A household voter information booklet will be the core communication (subject to delivery before postal votes arrive)
- The extent of the activity will be agreed on case-by-case basis, including the provision of information on the meaning of a 'yes' and 'no' vote in event that we can't designate. This will be based on a variety of factors such as the level of campaigning underway and how much voters already know about the referendum issue:

#### **The role of the Chief Counting Officer**

- We have taken the decision that we will be the CCO in a UK-wide, Wales, or English regional referendum.
- We will work closely with existing Regional Returning Officer structure – RROs could be formal deputies.
- In managing a referendum, we will make the most of important inter-relationship between: a power of direction (which we seek); performance standards; counting officer management structure and our guidance materials.

#### **Designating lead campaign organisations**

- We will consider applications for designation against the statutory test in PPERA. We must designate lead campaigning organisations on both sides of the referendum question, or not at all.
- We can only designate an organisation if it adequately represents those campaigning for the relevant outcome. If there is more than one applicant seeking to campaign for a particular outcome, we must designate the applicant which represents those campaigning for that outcome to the greatest extent.
- We will seek to make the designation process as transparent as possible:
  - We will invite applications via an application form that will seek specific evidence of how each applicant represents those campaigning for the relevant outcome
  - We will publish applications for designation on our website so that all those with an interest can see who is seeking designation and how they are making their case
  - We will explain the reasons for our designation decision

- In deciding which campaigning organisations to designate we will give particular consideration to evidence of:
  - The extent to which the applicant is an 'umbrella organisation' coordinating the activities of a number of member organisations
  - the level of support for each applicant
  - the level of grassroots campaigning associated with the applicant
  - the applicant's capacity to deliver their campaign, and
  - the range of interests represented by the applicant
- We will also look at, but give less weight to, factors such as:
  - how long the applicant's organisation has been in existence
  - its fundraising capacity, and its organisational structure
  - its capacity to ensure the proper use of public grant money
- These latter factors may help to indicate how effective an applicant might be in representing those campaigning for an outcome, but do less to show if they 'adequately represent' the campaign.

#### **Setting grants to designated organisations**

- We set the level of grants that are payable to designated lead campaigning organisations, within a statutory maximum of £600,000 per organisation. We are responsible for setting the terms and conditions of these grants and for administering their payment.
- We will set grants at a level that will help to ensure that voters are well-informed about arguments on both sides.
- Our view is that the level of grant to be provided for any given referendum campaign:
  - should be sufficient to help cover the basic infrastructure costs of each lead campaigning organisation, such as staff and office costs, but not the costs of campaigning materials. We will look at comparable costs in the relevant geographic area when assessing what the level of grant should be.
  - should take into account the duration of the statutory referendum period, which may be between 10 weeks and six months, as well as the size of the electorate.
  - should allow for any particular infrastructure issues in a given referendum, such as whether it may be desirable for lead campaigning organisations to establish multiple offices in order to communicate with voters effectively.
- Taking all these factors into account, the grant for a short campaign period in a sub-UK referendum will usually be much lower than the statutory maximum.
- We will need to set terms and conditions that will enable designated organisations to campaign effectively, while ensuring that public money is properly safeguarded. This is particularly important since designated organisations may in some cases be set up specifically to campaign in the referendum.
- We are considering making 30% of the value of the grant available up-front and paying the balance against evidence of relevant spending. We would welcome views on the appropriate level of up-front payment.

### **Reporting on the administration of the referendum**

- We will report in a way that ensures confidence, is credible, transparent, and includes scrutiny.
- For a referendum we are in 'operator' mode, rather than 'regulator' mode – as we would be for an election, so we will be describing what we did, not how well we did it.
- At the outset of a referendum, we will say what we propose to do and invite comment.
- We will, for example, have post-election seminars independently chaired; invite evidence; answer questions and be open to scrutiny in committee hearings at relevant democratic institutions.

### **Campaign expenditure limits**

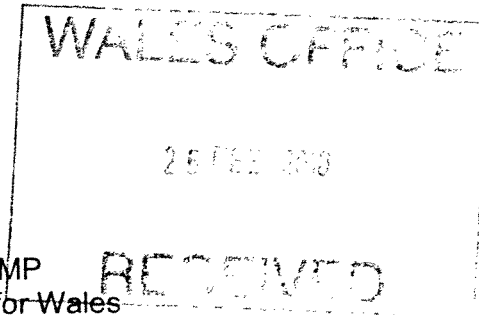
- Spending limits for UK-wide referendums are set out in PPERA. The Government will set the limits for sub-UK referendums but must have regard to our views.
- Our advice will be based on the principle that limits should be set at a level which allows effective campaigning for all outcomes of a referendum, deters excessive spending, and is not so low as to distort reasonable campaigning behaviour and affect transparency, for instance by giving campaigners an artificial incentive to split their spending between multiple campaigning bodies.

### **The combination of referendums and elections**

- We will consider each proposal for combination on its merits
- Any combined event should be well run and delivered in a way that is easy for voters to understand and participate in
- We will advise on what risks are likely to arise in the particular proposed combined event and how these can be mitigated
- Combination may not be appropriate in certain circumstances, such as when a significant administrative change in electoral process would be introduced at the same time. However, there are potential benefits which could be achieved through combination, for example, increased turnout.



The  
Electoral  
Commission  
Y  
Comisiwn  
Etholiadol



Rt Hon Peter Hain MP  
Secretary of State for Wales  
Wales Office  
Gwydyr House  
Whitehall  
London  
SW1A 2NP

25 February 2010

*Dear Secretary of State,*

#### **Referendum resolution**

I understand that you have received formal notice of the resolution of the National Assembly for Wales in respect of a referendum on additional powers, and consequently have instructed Wales Office officials to take forward preparatory work on the legislation needed to hold the referendum, working with Welsh Assembly Government officials.

I should like to confirm that the Commission stands ready to assist and advise on any issues that are connected with our functions and the conduct of the referendum. We should be glad to have dialogue with your officials where appropriate prior to formal consultation.

We wrote to you in November about our proposed approach to assessing the referendum question. We advised that we should be able to publish our views on the intelligibility of a proposed referendum question around 10 weeks after finding out what the question is, based on having around two weeks notice of the date when we will be given the wording of the question. We will do as much advance preparation as we can for the research that will form part of our preferred approach to question assessment.

In line with that approach, we should much appreciate notice, when possible, of when we are likely to receive the question for formal assessment.

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The  
Electoral  
Commission

Y  
Comisiwn  
Etholiadol

We had a preliminary discussion with Fiona Adams-Jones and Glyn Jones in December and look forward to further discussions with your officials in the near future.

*Yours,*  
*Kay*

**Kay Jenkins**  
**Head of Wales Office and Referendums**  
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3 March 2010



Kay Jenkins  
Head of Wales Office and Referendums  
The Electoral Commission  
Caradog House  
1-6 Saint Andrews Place  
Cardiff CF10 3BE

Dear Kay

**REFERENDUM RESOLUTION**

The Secretary of State has asked me to thank you for your letter of 25 February, confirming that the Commission stands ready to assist and advise on any issues connected to the conduct of any draft referendum order, including the intelligibility of the proposed referendum question.

The First Minister wrote to the Secretary of State on 17 February, giving formal notice of the resolution of the National Assembly in respect of a referendum on additional powers, under Section 104 of the Government of Wales Act 2006. [REDACTED]

Glynne Jones and I are scheduled to meet you and your colleagues later this week to discuss the arrangements being put in place for preparation of the necessary legal instruments and we look forward to working closely with the Electoral Commission on these preparations.

Yours sincerely  
Fiona Adams Jones

Fiona Adams-Jones  
Director



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4 March 2010

Kay Jenkins  
Head of Wales Office and Referendums  
The Electoral Commission  
Caradog House  
1-6 Saint Andrews Place  
Cardiff CF10 3BE

Dear Kay

As you will be aware, the First Minister for Wales wrote to my Secretary of State on 17 February giving formal notice of the National Assembly for Wales' resolution of 9 February under Section 104 of the Government of Wales Act 2006 in respect of a referendum on additional powers. The Secretary of State has instructed Wales Office officials to prepare the legal instruments and make the related arrangements required.

To that end, I am establishing a Project Board to oversee and co-ordinate the preparatory work, and I am writing to invite you or your nominated representative to be a member of the Board. I attach outline Terms of Reference.

The inaugural meeting of the Project Board will take place on Thursday 11 March at 2.30pm in the Wales Office, Gwydyr House, Whitehall. I very much hope that you will agree to sit on the Board and look forward to hearing from you.

Yours  
Fiona

Fiona Adams-Jones  
Director

Cardiff Office / Swyddfa Caerdydd

Wales Office, Discovery House, Scott Harbour, Cardiff Bay, Cardiff, CF10 4HA.  
Swyddfa Cymru, Tŷ Discovery, Harbwr Scott, Bae Caerdydd, Caerdydd, CF10 4HA.

Website: [www.walesoffice.gov.uk](http://www.walesoffice.gov.uk) / Gwefan: [www.swyddfa.cymru.gov.uk](http://www.swyddfa.cymru.gov.uk)

## WALES OFFICE PROJECT BOARD: REFERENDUM PREPARATORY WORK

**Remit:** To co-ordinate the preparatory work to be undertaken by Wales Office officials in relation to the legal instruments and other arrangements required for the holding of a referendum in accordance with the Government of Wales Act 2006, and to closely monitor progress throughout the 120-day process.

The Project Board will be chaired by the Director of the Wales Office.

**Sub-committees:** The Board will be supported by a working group which will be responsible for producing the outline legal instrument(s). Its membership will include lawyers from Wales Office, MoJ and WAG, and representatives at senior operational level from both WAG and the Electoral Commission.

The working group will be chaired and led by the Deputy Director of the Wales Office and Head of Legislation Division, who will also be Project Director.

**Project Plan:** A draft Project Plan will be circulated for consideration at the first meeting of the Project Board. This plan will detail the key individual elements and stages of the project, and will be underpinned by more detailed project documentation showing milestones and crucial interdependencies.

The Project Board will oversee delivery of the project, to the timescales shown in the Project Plan. The Chair of the Project Board is accountable to the Secretary of State for the delivery of the project in accordance with the Project Plan. The Project Board will meet on a regular basis.

The Project Manager will monitor day-to-day activity and be responsible for alerting the Project Director to any potential deviation (beyond agreed tolerance margins) from the timetable set out in the project plan.

The Project Manager will also will report progress to the Director and Project Director as necessary and to each meeting of the Project Board.



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4 March 2010

Hugh Rawlings  
Director  
Department of the First Minister and Cabinet  
Welsh Assembly Government  
Cardiff Bay  
Cardiff CF99 1NA

Dear Hugh

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Yours  
Fiona

Fiona Adams-Jones  
Director

Cardiff Office / Swyddfa Caerdydd

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4 March 2010

Frances Oram  
Head, Political Parties and Referendums Policy  
Team  
Elections and Democracy Division  
Ministry of Justice  
102 Petty France  
SW1H 9AJ

*Dear Frances*

As you will be aware, the First Minister for Wales wrote to my Secretary of State on 17 February giving formal notice of the National Assembly for Wales' resolution of 9 February under Section 104 of the Government of Wales Act 2006 in respect of a referendum on additional powers. The Secretary of State has instructed Wales Office officials to prepare the legal instruments and make the related arrangements required.

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*Yours sincerely  
Fiona Adams-Jones*

Fiona Adams-Jones  
Director

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Wales Office, Discovery House, Scott Harbour, Cardiff Bay, Cardiff, CF10 4HA.  
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**WALES OFFICE PROJECT BOARD:  
REFERENDUM PREPARATORY WORK**

**11/03/2010**

**AGENDA**

- 1) Introductions
- 2) Remit of Board: ***Agreement needed***
- 3) Electoral Commission's note on lessons learnt: **Information**
- 4) The Electoral Commission: Key principles for Referendums: ***Information***
- 5) Electoral Commission's note on Referendum spending: ***Agreement needed***
- 6) Project Plan: ***Agreement needed***
- 7) Date of next meeting: ***Agreement needed***
- 8) AOB



## Wales Office | Swyddfa Cymru

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**Rt Hon Peter Hain MP**

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Our reference: 10SUB139

18 March 2010

### **Referendum – Spending Limits**

I understand that you recently attended the first Referendum Project Board meeting on 11 March, chaired by my Director, Fiona Adam-Jones, for which I am most grateful.

In accordance with Schedule 14 of the Political Parties, Elections and Referendums Act 2000, I am formally writing to you to invite the Commission's views on the limit on referendum expenses to which I must have regard when making the order limiting such expenses.

I welcome your continued assistance with the advance preparation for the orders necessary for the referendum, and my officials will continue to work closely with you.

Kay Jenkins  
Head of Wales Office and Referendums  
The Electoral Commission  
Caradog House  
1-6 Saint Andrews Place  
Cardiff  
CF10 3BE



**WALES OFFICE PROJECT BOARD:  
REFERENDUM PREPARATORY WORK**

**23/03/2010**

**AGENDA**

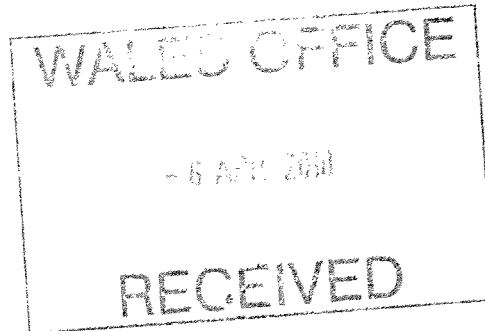
- 1} Introductions
- 2} Minutes of the last meeting
- 3} Update on action points from last meeting
  - **Response to EC on key principles for referendum**
  - **Public awareness on consequences of a "yes" or "no" vote**
  - **Restriction on the publication of promotional material**
  - **Formal Consultation with EC on referendum spending limits**
  - **Workload capacity**
  - **[REDACTED]**
- 4} Referendum expenses
- 5} The referendum sub committee
- 6} Date of next meeting

# The Electoral Commission

Rt Hon Peter Hain MP  
Secretary of State for Wales  
Office of the Secretary of State for Wales  
Gwydyr House  
Whitehall  
London SW1A 2NP

30 March 2010

Your reference: 10SUB139



*Dear Peter*

## Referendum – Spending Limits

Thank you for your letter of 18 March 2010 to Kay Jenkins inviting the Commission's views on the limits to referendum expenses that should apply at a referendum on the future powers of the National Assembly for Wales, in accordance with Schedule 14 of the Political Parties, Elections and Referendums Act 2000 (PPERA). We appreciate your attention to this question early in the process of legislative drafting and I am pleased to set out the Commission's recommendations in response.

The Commission has recently set out its view<sup>1</sup> that the expenditure limits for sub-UK referendums should be set at a level which allows effective campaigning for all outcomes of a referendum, deters excessive spending, and is not so low as to distort reasonable campaigning and affect transparency.

For referendums in devolved areas, the Commission recommends in general that:

- the maximum spending limit should be set by reference to the expenditure limits applying to elections to the relevant devolved body;

<sup>1</sup> The Commission's 'Key principles for referendums' paper is available at:  
[http://www.electoralcommission.org.uk/data/assets/pdf\\_file/0004/87412/Referendum-Principles-Paper.pdf](http://www.electoralcommission.org.uk/data/assets/pdf_file/0004/87412/Referendum-Principles-Paper.pdf)

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# The Electoral Commission

- where the Commission designates lead campaigning organisations on both sides of the referendum question, the maximum spending limit should apply to those 'designated organisations';
- the limit applying to all campaigners registered with the Commission as permitted participants, other than designated organisations and political parties, should be set at a minimum of £100,000 or 10% of the limit for designated lead campaigning organisations, whichever is higher;
- the limits applying to political parties that register as permitted participants should follow the PPERA structure for UK-wide referendums, which provides higher spending limits for those political parties with a track record of electoral support than for other permitted participants; and
- the track record of electoral support for political parties should be assessed on the basis of 'the most recent relevant election'.

The Commission Board met on 23 March 2010 to consider your formal request for the Commission's views, and agreed that these principles should be applied to a referendum on further powers for the National Assembly for Wales in the following way.

**We recommend that the maximum spending limit applying to designated organisations should be £600,000** which is the maximum campaign spending limit for elections to the National Assembly for Wales (calculated at £10,000 for each of 40 constituencies and £40,000 for each of 5 regions).

**We recommend that the spending limit applying to all permitted participants other than designated organisations and political parties should be £100,000.**

We recommend that the spending limits applying to political parties should be set with reference to the 2007 Welsh Assembly elections, rather than to UK Parliamentary general elections. This is because:

- i) the franchise for the National Assembly for Wales and the franchise for the referendum are the same, that is, the local government electorate; and
- ii) the subject of the referendum is a constitutional question for voters in Wales about the powers of the Assembly, so it is logical that party spending limits should be set with reference to parties' electoral support in the context of the Assembly. When voters in Wales cast their vote at UK Parliamentary general elections, they are likely to do so in the context of a much wider range of issues than when voting in Assembly elections.

# The Electoral Commission

Following the PPERA model for the value of the spending limit that should apply to different percentages of the vote, **we recommend that the spending limits applying to permitted participants that are political parties should be:**

- £600,000 for parties with more than 30% of the vote at the National Assembly for Wales elections 2007;
- £480,000 for parties with 21-30% of the vote;
- £360,000 for parties with 11-20% of the vote;
- £240,000 for parties with 6-10% of the vote; and
- £100,000 for parties with not more than 5% of the vote.

We further recommend that the level of parties' electoral support at the National Assembly elections should be calculated taking into account both constituency and regional results. Kay Jenkins is writing to your officials today with a technical note setting out our suggested approach to this. If you accept our recommendation, we calculate that the applicable spending limits for the referendum would be:

## Main party expenditure limits based on the 2007 Welsh Assembly elections

Type of organisation	Limit on Expenditure	(Major party expenses limits as per the 2007 Welsh Assembly election)
Designated organisations	£600,000	
Political Parties with a percentage of the vote at 2007 Welsh Assembly elections of:		
• More than 30%	£600,000	Labour (31.33%)
• Between 20% -30%	£480,000	Conservatives (22.07%) Plaid Cymru (21.94%)
• Between 10%-20%	£360,000	Lib Dems (13.76%)
• Between 5% - 10%	£240,000	None
• Less than 5%	£100,000	All other parties
Other permitted participants	£100,000	

As provided for in PPERA, **all those campaigning in the referendum who are not registered with the Commission as permitted participants will be subject to a statutory spending limit of £10,000.** The Commission will publish guidance on

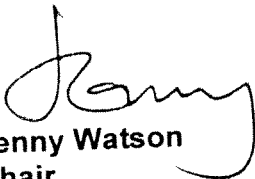
# The Electoral Commission

registration as a permitted participant in respect of the referendum, and on other regulatory matters, in good time before the beginning of the statutory period for registration.

We will make public this response by sending copies to interested parties and place this response and the related technical note on our website.

I know that Kay Jenkins is in close touch with your officials but if you have any questions, please do contact me.

*With best wishes,*

  
**Jenny Watson**  
Chair



## EXTRACT FROM AGENDA

### Wales Referendum Project

Project Board Sub-committee meeting, 13 April 2010, 12.00 – 13.00

#### Agenda

<b>Item</b>	<b>Description</b>
1 Chair's welcome and introductions	
2 Scope of Sub-committee's work	Consider and agree scope – see paper 1
3 Legal instruments	Agree what legal instruments are necessary, and how the work is to be taken forward (roles and responsibilities) – see paper 2
4 Referendum order	Consider first draft of parts of content of referendum order drafted by WAG lawyers, and agree on next steps (line by line consideration in the meeting not envisaged!)
5 Spending limits order	<ul style="list-style-type: none"><li>• Update on Secretary of State's consultation with Electoral Commission on what spending limits should be</li><li>• Agree on next steps for drafting of order</li></ul>
6 Explanatory material to ensure the Welsh public understand what the referendum is about	Discuss: <ul style="list-style-type: none"><li>• What can be done to ensure objective, clear information is available and easily accessible to the public?</li><li>• Could this be provided by the Electoral Commission (EC)?</li></ul>
7 Restriction on promotional activities	
8 Any other business	

## **Paper 1**

### **Scope of Sub-committee's work**

The Sub-committee's role is to co-ordinate the work required to produce the legal instruments that will allow a referendum to be held.

The scope of their work will cover:

- Drafting of the legal instruments required to allow the referendum to be held
- Considering and coming to a view on what the legal requirements and issues are relating to the calling of and holding of a referendum
- Ensuring that all legal requirements under GOWA 2006, PPERA 2000 and any other relevant legislation are complied with
- Considering and dealing with policy issues which need to be resolved to enable the referendum legal instruments to be drafted

**Paper 2**

**Legal instruments required to allow referendum to take place**

Are the following two orders the only orders that are necessary?

Referendum order (including provision making arrangements for payment of fees and charges of counting officers)

This is an Order in Council under GOWA 2006, section 103, and it is for the Secretary of State to recommend the making of the Order in Council to Her Majesty in Council.

Permitted Participants Expenses Limits Order

This specifies the limits on referendum expenses incurred by or on behalf of a permitted participant during the referendum period  
It is an order made by the Secretary of State, and the Secretary of State has to seek and have regard to the views of the Electoral Commission



**WALES OFFICE PROJECT BOARD:  
REFERENDUM PREPARATORY WORK**

**21/04/2010**

**AGENDA**

- 1) Introductions
- 2) Minutes of the last meeting
- 3) Update on progress and main issues arising from the sub-committee meeting
- 4) Funding of Referendum  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 6) Any other Business
- 7) Date of next meeting



**WALES OFFICE PROJECT BOARD:  
REFERENDUM PREPARATORY WORK**

**12/05/2010**

**AGENDA**

- 1} Introductions
- 2} Minutes of the last meeting
- 3} Oral update by Project Manager
- 4} Funding of Referendum
- 5} Explanatory material to raise public awareness/Restriction on publication of promotional material
- 6} Drafting and timing of order amending Schedule 7
- 7} Any other Business  
*Project Initiation document*  
*Project overview*
- 8} Date of next meeting

Extract from letter from Jenny Watson, Chair, Electoral Commission, dated 17 May 2010 to Rt Hon Cheryl Gillan MP

### **Referendums**

Clearly this will be a very significant area of work for the new Parliament and the Electoral Commission. We would be responsible for overseeing the conduct of any UK-wide referendum, and of referendums held under the Political Parties Elections and Referendums Act in England, Scotland or Wales, and as Chair of the Commission I would act as the Chief Counting Officer. We are also required to provide Parliament with an assessment of the intelligibility of any referendum question, to designate the lead campaigning organisations on each side of the referendum question, and to regulate the funding and spending of campaign groups. We recently published a paper summarising the principles we will apply in carrying out our responsibilities in relation to referendums, and have enclosed a copy of that paper.

We will be writing to you separately on an issue concerning the referendum on law-making powers for the National Assembly for Wales. We have concerns around the timeline for assessment of the referendum question, where we have a particular role. We should appreciate your early consideration of this issue and will write to you again in the next few days.



**WALES OFFICE PROJECT BOARD:  
REFERENDUM PREPARATORY WORK**

**18/05/2010**

**AGENDA**

- 1} Introductions
- 2} Minutes of the last meeting
- 3} Update on progress of drafting of the legal instruments
- 3} Policy Issues
- 4} Date of next meeting

Rt. Hon Cheryl Gillan MP  
Secretary of State for Wales  
The Wales Office  
Gwydyr House  
Whitehall  
London  
SW1A 2NP

18 May 2010

Dear Secretary of State

**Referendum question assessment**

I should like to congratulate you on your appointment as Secretary of State for Wales. Our Chair Jenny Watson has already written to you providing background, from the Commission's perspective, on some of the wider priorities for the new Parliament. I should like to address the particular issue of the question to be put to voters in the proposed referendum in Wales.

I know that Kay Jenkins and Rhydian Thomas from our Wales Office outlined some of the issues relating to timescales for assessing the referendum question when they met you in March. As the question is one of the two most pressing matters, along with the date, which require early decision, I wanted to set out some key issues and risks relating to the timetable for legislation.

The Commission has a significant statutory role in relation to the referendum, within the framework of the Political Parties, Elections and Referendums Act 2000. One of those is to provide you with a report stating our views as to the intelligibility of the referendum question, in response to your formal consultation with us before laying a draft Order. Our report will be laid, at the same time as the draft Order, before both Houses of Parliament and a copy sent to the First Minister.



We wrote to you in November 2009, along with others with an interest, about our preferred approach to assessing a referendum question and enclosing our updated question assessment guidelines. I enclose a copy of our approach and guidelines for ease of reference. Our preferred approach includes testing the question with the public, as well as seeking advice from experts on accessibility and plain language, and talking to campaign groups and other interested parties. It is likely to take us 10 weeks to complete our assessment, including eight weeks to carry out public opinion research. We have rigorously challenged this timetable to ensure that there is no slack in it. I am satisfied that it reflects the time needed to assess the question properly in English and Welsh, with a demographically broad sample that reflects the population of Wales, testing alternative forms of words and phrases where appropriate; and that this is the time we will need in order to give you a properly informed and considered view.

It may of course be that in the light of our views, the question will need some redrafting by Government before the Order is laid, again taking a little time.

However, we are aware that the 120 day period, which commenced when the former Secretary of State received the resolution of the National Assembly calling for a referendum, expires on 17 June 2010. To lay a draft Order by 17 June, you would need to have consulted us formally on the question within that period and we would need to have responded with a statement of our views.

Self-evidently, this timetable would not allow enough time for our preferred approach to referendum question assessment. Our concerns about this were recorded at an early stage at the Project Board that your office has established to manage the legislative process for the referendum. We appreciate that the UK Parliamentary general election has had a significant impact on the progress of draft legislation and decisions on the referendum date and question.

We believe that voters should be at the heart of the decision-making process and their needs considered first. It is generally acknowledged that the referendum is about a relatively complex constitutional issue about which there is low public understanding. Care will need to be taken to ensure that people are informed about and understand what they are being asked to decide. If we are unable to test the question through research, we will not be able to say with confidence whether it is intelligible to voters, without evidence on which to base such an assertion.

We ask that you take these matters into account in reaching a decision on the timescale for the referendum. We fully understand that the time taken to assess the referendum question will impact on the date that the referendum can be held; and we acknowledge of course that your decisions must take into account a wide range of factors. We believe, however, that assessing the question without undertaking any voter research carries with it some serious risks to the successful conduct of the referendum.

Our Chair Jenny Watson and I should be glad to meet with you, along with Kay Jenkins, to outline and discuss these issues further, if that would be helpful.

With best wishes,

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Kelsall', with a horizontal line underneath it.

Ian Kelsall  
Electoral Commissioner

## Our approach to assessing the intelligibility of referendum questions

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### Our responsibilities

A referendum gives the public the opportunity to vote on a proposal put forward by government.<sup>1</sup> If a referendum is going to take place, a piece of legislation is written containing the proposed question. The law requires us to publish our views on the intelligibility of proposed questions for UK-wide, national or regional referendums.<sup>2</sup> The UK Government must also consult us on the intelligibility of proposed questions for local referendums in England and Wales on the way local authorities are run.<sup>3</sup>

This statement sets out the approach we will take to assess the intelligibility of referendum questions, including the timetable for this work.

### Our aim and approach

Our aim is to look at a proposed question from the perspective of voters,<sup>4</sup> to see if it is written in a way that means they are likely to understand it. This includes whether or not they can understand how to answer it. It is important that voters can mark their ballot papers easily, and that they are confident that they

have voted the way they intended to. Governments may make important decisions based on the outcome of a referendum, and so that outcome needs to be an accurate reflection of what voters want. This means that the question should present the options to voters clearly, simply and neutrally.

We have produced some referendum question guidelines that set out the criteria we will use to assess how intelligible a question is (see our referendum question guidelines).<sup>5</sup> As well as looking at the question ourselves, we will gather evidence to help us with our assessment. This will include:

- carrying out research with the public (see next section for more details)
- asking for advice from experts on accessibility and plain language
- talking to other people, for example political parties and campaign groups associated with the referendum, and other key groups or individuals who have an interest in the referendum and its outcome

We will publish the research reports and a summary of the other evidence we have gathered and used in our assessment.

### Research with the public

Because we want to look at whether or not voters can understand a proposed referendum question, we would need to get evidence of this from voters themselves. The best way for us to get this evidence is by carrying out research to see how people react to and understand the question, and we would want to do this for any referendum question we are asked to assess.

The research would usually be done through focus groups and one-to-one interviews. This type of research will help us to find out people's understanding of a proposed referendum question, their attitudes towards it, and the reasons why they think or feel the way they do about it. It also helps to explain why people may find a question easy or difficult to understand, and to

explore how the question could be made more intelligible. The research would focus on the question itself and how it is written, rather than on how people would vote.

We would include a wide range of people in the research, so that we can get the views of people with different backgrounds (e.g. people of different ages, gender, and levels of education), or people who live in different places.

### Timetable

We should be able to publish our views on the intelligibility of a proposed referendum question around 10 weeks after finding out what the question is. This includes eight weeks to carry out public opinion research, based on getting at least two weeks' notice of the date when we will be given the exact wording of the question. We will do as much advance preparation as we can for the research – which is the part of our evidence-gathering that will take the longest – so that we can make sure it is completed as quickly as possible.

- 1 This statement only covers referendums on proposals put forward by governments, although referendums can be held on other issues. By 'government' we mean the UK Government, the Scottish Government, the Welsh Assembly Government or the Northern Ireland Executive.
- 2 The requirement is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). Our responsibility relates to referendums held under the framework of PERA.
- 3 Under Section 45 (8A)–(8D) of the Local Government Act 2000, inserted by Schedule 21 of PERA.
- 4 By 'voters' we mean people who would be eligible to vote in that referendum.
- 5 We produced our original guidelines in 2002 and have recently reviewed and updated them. The guidelines are available at [www.electoralcommission.org.uk/elections/referendums](http://www.electoralcommission.org.uk/elections/referendums)

### Feedback

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We are an independent body that was set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. We regulate party and election finance and set standards for well run elections. For more information see [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)

**The  
Electoral  
Commission**

## Referendum question assessment guidelines

By law, the Electoral Commission must comment on the intelligibility of UK, national and regional referendum questions, and some local government referendum questions.<sup>1</sup> In this context, we mean referendums where voters are asked to vote on a proposal put forward by government. At this type of referendum, voters are given a ballot paper that contains the question and at least two possible responses to choose from.<sup>2</sup>

We have developed these guidelines to:

- help us assess how intelligible a proposed question is
- help people draft intelligible referendum questions

In this context, 'question' includes the question, the responses, and any statement that comes immediately before the question.

### Guidelines for assessing referendum questions

A referendum question should present the options clearly, simply and neutrally. So it should:

- be easy to understand
- be to the point

- be unambiguous
- avoid encouraging voters to consider one response more favourably than another
- avoid misleading voters

### Checklist

We will use the following checklist to help us assess how intelligible a question is.

- Is the question written in plain language? That is, language that:
  - uses short sentences (around 15–20 words)
  - is simple, direct, and concise
  - uses familiar words, and avoids jargon or technical terms that would not be easily understood by most people
- Is the question written in neutral language, avoiding words that suggest a judgement or opinion, either explicitly or implicitly?
- Is the information contained in the question factual, describing the question and the options clearly and accurately?
- Does the question avoid assuming anything about voters' views?

<sup>1</sup> Under the Political Parties, Elections and Referendums Act 2000.

<sup>2</sup> How many responses voters can vote for depends on the voting system used at that referendum.

### Feedback

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