

The Referendum

Your questions answered

AGORWYD GAN Y MAWRHYDDESS GŵYNETH IFFAENHINES
OPENED BY HER MAJESTY THE QUEEN ON 13-2006

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

01

Referendum on law-making powers of the National Assembly for Wales

At present, the National Assembly has powers to make laws for Wales on some subjects within the 20 devolved areas shown below. The Assembly can gain further powers to make laws in those areas with the agreement of the UK 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 without needing the agreement of the UK Parliament first. If most people vote 'no', then the present arrangements will continue.

The National Assembly can make laws in the following 20 areas:

- 01 Agriculture, fisheries, forestry and rural development
- 02 Ancient monuments and historic buildings
- 03 Culture
- 04 Economic development
- 05 Education and training
- 06 Environment
- 07 Fire and rescue services and promotion of fire safety
- 08 Food
- 09 Health and health services
- 10 Highways and transport
- 11 Housing
- 12 Local government
- 13 National Assembly for Wales
- 14 Public administration
- 15 Social welfare
- 16 Sport and recreation
- 17 Tourism
- 18 Town and country planning
- 19 Water and flood defence
- 20 Welsh language

Frequently asked questions

Will this referendum increase the subject areas on which the Assembly can make laws?	03
When is the referendum going to be held?	04
What will be the question we're asked in the referendum?	04
Under the present system, how does Parliament give the authority to the Assembly to make laws?	05
What actually happens if the Assembly requests the authority to change the law?	05
In the event of a 'yes' vote, how would the National Assembly make laws?	06
Will it lead to an increase in the number of Assembly Members?	06
Would it cost more?	06

In principle, the National Assembly can make laws for Wales in the 20 areas listed on page 01, known as 'policy fields'. Each of the fields can be broken down into more detailed areas, known as 'matters'. Before the Assembly can make a law in any one of the 20 fields, the UK Parliament in Westminster must have agreed that the Assembly can make law on the relevant matter.

So, for example, the Assembly is currently examining a proposal to change the law in order to make it easier to reduce the amount of waste and litter in Wales. 'Environment' (which includes waste and litter) is one of the 20 fields of policy in which, in principle, the Assembly is able to make law.

In June 2007, the Welsh Government asked Parliament to transfer the power to make laws on the specific issue of preventing and reducing waste. After scrutiny of the proposal in the Assembly and Parliament and a period of negotiation between the UK and Welsh Governments over the precise powers that would be transferred to the Assembly, Parliament agreed to that request in February 2010. This meant the Assembly could then start to make the necessary legislation.

This referendum asks whether the people of Wales think Westminster should grant the Assembly the authority to make laws in all of these 20 policy areas all at once, rather than the current system of having to request or acquire it, bit by bit.

Will this referendum increase the subject areas on which the Assembly can make laws?

No. The Assembly will still only be able to make laws in the 20 subject areas.

The referendum is asking whether we should stick with the current system where Westminster grants authority to legislate one chunk at a time, or have the full authority to legislate in the 20 devolved fields conferred once and for all on the Assembly.

When is the referendum going to be held?

At the moment we don't know the precise date. The decision is one for the Secretary of State for Wales. She has indicated that she believes it should be held before the end of the first quarter of 2011.

What will be the question we're asked in the referendum?

It is the responsibility of the Secretary of State for Wales to set the question as well as the date. Before doing that, the law requires her to seek the views of the Electoral Commission who will look at a proposed question from the perspective of voters, to see if it is written in a way they are likely to understand. The Secretary of State has asked the Electoral Commission to test the following wording from that perspective:

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.

Do you agree that the Assembly should now have powers to pass laws on all subjects in the devolved areas without needing the agreement of Parliament first?

Under the present system, how does Parliament give the authority to the Assembly to make laws?

There are two ways:

- (i) by passing Acts of Parliament that transfer particular powers to the Assembly; or
- (ii) by approving Assembly Legislative Competence Orders (Orders) which are requests for transfer of power made by the Assembly itself.

What actually happens if the Assembly requests the authority to change the law?

The request is first examined by an Assembly committee and by various committees of the UK Parliament. They consider whether a case for the transfer has been made. The committees can also make recommendations about how the details of the proposed transfer might be improved.

A final proposal is then put to the Assembly, the House of Commons and the House of Lords for formal approval, and each of these three chambers votes on the draft Legislative Competence Order. If approved by all three, the Order is formally made and the power to legislate on that issue is transferred to the National Assembly.

The length of time the process takes varies from request to request. It has ranged from ten months to 32 months for those considered so far, with the typical period being around a year.

This system would remain in place if the result of the referendum were 'no'. The Assembly would still be able to change the law on specific areas where the power to do so has now been transferred, and to request further powers, piece by piece, as the need to change the law in these areas arises.

In the event of a 'yes' vote, how would the National Assembly make laws?

If the referendum results in a 'yes' vote, the other option for law making powers set out in the Government of Wales Act 2006 would come into force.

Under this alternative model, the 20 broad areas of policy would remain the same but the Assembly would be free, from day one, to make laws within the boundaries of those devolved fields without having to request the authority to make those laws from Westminster.

So the choice to be made in the referendum is whether the Assembly should:

- stay as it is now – able to acquire powers to change the law, but piece by piece if the UK Parliament agrees; or
- move instead to a position where it can make laws without first having to get the approval of the UK Parliament for the power to do so.

Will it lead to an increase in the number of Assembly Members?

Any change in the number of Members in the Assembly would require entirely fresh legislation to be made by the UK Parliament in Westminster. The referendum has nothing to do with the number of Assembly Members.

Would it cost more?

It would remove many of the steps that need to be taken at the moment before the Assembly can make laws. Each of those steps has a cost associated in terms of the time and resources expended by the UK and Welsh Governments, Parliament, the Assembly and civic society.

The evidence submitted to the All Wales Convention suggested that the likely impact on the National Assembly for Wales and Welsh Government of a 'yes' vote would be, broadly speaking, financially neutral. In Whitehall, there should be a small, but unquantifiable, release of capacity if consideration of Orders were no longer needed.

In the National Assembly

Roughly half of the time the Assembly has so far committed to legislative scrutiny has been taken up by Orders and half by Measures. Under a different system, the resources underpinning that work could either be saved or deployed to do different things. In evidence to the All Wales Convention, senior staff responsible for the provision of those services said that the Assembly has sufficient staff to support Members in scrutinising legislation under either system. They said that there would be no capacity issues within the Assembly that would prevent it from dealing with the consequences of a 'yes' vote in the referendum if that is what the people of Wales wish to see.

In Welsh Government

In its evidence to the All Wales Convention, the Welsh Government estimated that the cost of policy and legal officials' time spent on getting powers through Orders and UK Bills in 2008/09 was around £2 million. This work would not be needed should there be a 'yes' vote in the referendum though the saving would likely be reallocated to the formulation of policy and drafting of Assembly Bills.

In Whitehall Government Departments

A 'yes' vote could produce some savings in Whitehall. The Wales Office's role in handling Orders would cease though they would continue to have a monitoring role in terms of Assembly primary legislation. Whitehall officials, who currently consider draft Orders covering their Departmental interest, would not need to do so. The All Wales Convention was unable to quantify the resulting savings, because data on time spent was not available, and each Order is in itself different.