



Information Sheet

The referendum on the law-making powers of the National Assembly for Wales

Overview

This information sheet is about the Referendum on the law-making powers of the National Assembly for Wales that will be held in Wales in 2011. It sets out the background to the referendum, explains exactly what the referendum is about and highlights the implications for third sector organisations.

Please note that this information sheet relates **only** to the Welsh referendum on the law-making powers of the National Assembly for Wales. This should not be confused with the UK-wide referendum on the voting system for electing MPs (you may know this as the referendum on the Alternative Vote) which will also be held during 2011. This is a different and entirely separate issue which people in Wales will also vote on in 2011.

Background

Under Wales' current devolution settlement (which is set out in the Government of Wales Act 2006) the National Assembly for Wales has the power to make laws on some subjects. Welsh laws are known as Assembly Measures. The National Assembly for Wales can **only** make laws on the subjects that it has been given legislative competence over by the UK Parliament. Wales has already been given legislative competence over some subjects and can request legislative competence over new subjects **but only** if they fall within the list of 20 devolved policy areas shown below.

List of 20 areas where Wales can request to make laws:

Agriculture, fisheries, forestry & rural development	Housing
Ancient monuments and historic buildings	Local Government
Culture	National Assembly for Wales
Economic development	Public administration
Education & Training	Social Welfare
Environment	Sport & Recreation
Fire & rescue services and promotion of fire safety	Tourism
Food	Town & Country planning
Health & Health Services	Water & flood defence
Highways & Transport	Welsh language

For example the National Assembly for Wales was able to request the power to make laws on the subject of Mental Health because it falls under Health and Health Services. However, it would not be able to request the power to make Welsh laws about issues relating to Defence and the Armed Forces as these are “non-devolved” issues and are not included in the list of 20.

Powers to make laws are given to Wales via two mechanisms. Powers can be given to Wales by being included in an Act of the UK Parliament or the National Assembly can request them via the use of a Legislative Competence Order (known as an LCO - for more information on LCOs see our separate information sheet). However, the National Assembly cannot request powers over a policy area in its totality e.g. it could not propose an LCO asking for law-making powers over “Health” in its entirety, the LCO has to specify which area of “Health” the law-making powers relate to e.g. Mental Health.

This process means that Wales’ law-making abilities are increased incrementally as and when new powers are granted.

What is the referendum about?

The law-making system explained above came into force in May 2007 - which is when the Government of Wales Act 2006 officially came into operation. Since that time the law-making powers of the National Assembly for Wales have been increasing incrementally and some Wales - only laws (Assembly Measures) have been made. However, the Government of Wales Act also sets out a mechanism which would **remove the incremental system and see Wales achieve primary law-making powers in all of the 20 policy areas** (but only these areas) in one go. This will be the subject of the Welsh referendum in 2011.

In the referendum the people of Wales will be asked whether they agree that the National Assembly for Wales should have law-making powers in the 20 areas. If they vote YES the system of requesting powers on a case by case basis from the UK Parliament will end and the National Assembly will be able to make laws for Wales in the 20 policy areas. It will still not be able to make any laws in areas not in the list of 20 e.g. defence, immigration, the benefit system and others. If the people of Wales vote NO then the current system will remain, no powers will be lost or removed and Wales’ law-making powers will continue to be increased gradually (within the 20 areas) with the permission of the UK Parliament.

What is the referendum not about?

- The referendum will not increase or decrease the number of Assembly Members - it will stay at 60.
- The referendum is not about giving Wales tax-raising powers.
- The referendum is not about Wales becoming independent from the UK.
- The referendum is not about Wales having the same powers as Scotland. Even if we get a Yes vote Wales will still not have the same powers as Scotland.
- The referendum is not about reducing the powers of the National Assembly for Wales. Even if we get a No vote Wales’ law-making powers will still be able to be increased incrementally using the current system.

- The referendum is not about increasing the list of 20 policy areas on which the National Assembly can currently potentially make laws. Even if we get a Yes vote no new areas will be added to this list.
- This referendum is also entirely separate from the UK referendum on the voting system that we use to elect Members of Parliament which is also due to be held in 2011.

This referendum is ONLY about the possibility of Wales having primary law-making powers in 20 policy areas transferred to it all in one go rather than incrementally.

Why are we having a referendum?

The Government of Wales Act 2006 allowed Wales to make its own primary legislation for the first time. Part 3 of the Act sets out the law-making process as explained at the beginning of this information sheet. This involves legislative competence being granted to the National Assembly by Parliament before it can make its own laws on a case by case basis. However, the 2006 Act also contains a section known as "Part 4." Under Part 4 of the Act Wales is granted primary law-making powers in all 20 of the policy areas set out in the table at the beginning of this information sheet. Wales can only move from Part 3 to Part 4 of the Act if the people of Wales vote for this to happen in a referendum.

After the 2007 Assembly elections the Labour party and Plaid Cymru went into coalition government together. The coalition agreement contained a commitment to holding a referendum and campaigning for a Yes vote by May 2011. According to the Act, before a referendum can be held two thirds of the Assembly Members (40 of the 60 AMs) have to vote for it, the Secretary of State for Wales has to agree to lay the referendum order before Parliament and it has to be agreed by both Houses of Parliament. On 9 February 2010 the National Assembly voted unanimously for a referendum. There is cross-party support in Wales for a referendum and for a Yes vote. The referendum order is now in the hands of the Secretary of State, Cheryl Gillan, who will lay the order before Parliament setting out the referendum date and question. This is likely to be agreed by Parliament with the date for the referendum most likely to be March 2011.

Implications for the third sector

WCVA undertook research into the third sector's experiences of the current law-making system in order to provide written and oral evidence to the All Wales Convention. The Convention was set up in 2008 to assess people's understanding of the National Assembly's powers and the effectiveness of the current law-making arrangements. Our research showed that groups found the current system complex, frustrating and time-consuming. In some cases Legislative Competence Orders have taken up to two years to progress through the system. Examples of this include requests for powers to make laws in the areas of housing and the environment. This means that groups lobbying for new legislation can wait that long before the power to make the law is given to Wales, then the work starts again to actually influence the legislation itself. For groups who wish to suggest ideas for new legislation in Wales a move to Part 4 of the Government of Wales Act 2006 would mean that they could see outcomes from their work more quickly and that their time and resources can be put to more effective use.

The other problematic issue for third sector groups is that the current system means that Wales' legislative powers are constantly changing. This makes it hard to know exactly what legislative powers the National Assembly for Wales has at any one time. We believe that this is not good for democracy or for the ability of third sector groups to understand and engage with legislative structures.

WCVA believes that the third sector in Wales would benefit from a move to Part 4 of the Government of Wales Act. The current system under Part 3 of the Act is proving complex and time consuming and we believe that a move to Part 4 would enable greater and more effective engagement of the sector in suggesting and scrutinising legislation. Our main priority is to ensure that third sector organisations in Wales are informed about the referendum, and the issues related to it, and have access to information and advice that they can use with their service users / members / communities. Please feel free to use this information with your groups and contact us for any further advice or information.

Useful sources of further information

WCVA's Voices for Change Cymru information sheets on a range of associated issues:
<http://www.voicesforchangecymru.org.uk/information-resources/information-sheets>

The report of the All Wales Convention and WCVA's evidence to the Convention available at:
<http://www.voicesforchangecymru.org.uk/assembly-wag-information/law-making-in-wales/further-political-devolution>

The National Assembly for Wales Referendum information materials available at:
<http://www.assemblywales.org/gethome/vote2011.htm>

For further information about the Referendum or any related issues please contact the Voices for Change Cymru project team on vfcc@wcva.org.uk or visit www.voicesforchangecymru.org.uk