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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 103 of and Schedule 6 to the Government of Wales Act 2006 (c.32) (“the 2006 Act”) empowers Her Majesty, by Order in Council, to provide for the holding of a referendum throughout Wales about whether the Assembly Act provisions in the 2006 Act should come into force. The Assembly Act provisions are sections 107, 108 and 110 -115 of the 2006 Act. Those sections will be brought into force, by Order made by the Welsh Ministers, if a majority of voters in the referendum vote “yes” to the referendum question. The Assembly Act provisions provide for the legislative competence of the National Assembly for Wales to be defined by reference to Schedule 7 of the 2006 Act (rather than by Schedule 5 as currently) and for the Assembly to make laws, that can make any provision that an Act of Parliament can make provided they are within that competence. These laws will be known as Acts of the National Assembly for Wales (or Assembly Acts).

If the majority of voters in the referendum vote “no” to the referendum question, then there will be no change to the current arrangements, which are that the National Assembly for Wales has legislative competence to pass Measures in relation to the matters listed in Schedule 5 to the 2006 Act.

In addition to section 103 of and Schedule 6 to the 2006 Act, Part 7 of the Political Parties, Elections and Referendums Act 2000 (c.41) (“the 2000 Act”) also makes provision for the conduct of referendums within the UK including any held just in Wales. Part 7 of the 2000 Act applies to a referendum under section 103 of the 2006 Act. In particular, section 128 of the 2000 Act provides that there shall be a Chief Counting Officer for the referendum who appoints counting officers to conduct such a referendum in the voting areas in Wales. Voting areas are the county and county boroughs in Wales. The franchise for the referendum is that for Assembly elections, i.e. those registered to vote in local government elections. Paragraph 2 of Schedule 6 to the 2006 Act provides that an Order in Council under section 103(1) can make provision for and in connection with the referendum and this includes applying or incorporating with or without modifications any enactment relating to referendums, elections or donations. “Enactment” is defined in section 158(1) of the 2006 Act and includes subordinate legislation. Schedule 6 also sets out what must be included in an Order in Council made under section 103 of the 2006 Act.

This Order in Council made under section 103 and Schedule 6 provides for the holding of a referendum throughout Wales about whether the Assembly Act provisions should come into force and prescribes the procedure to be followed for the conduct of that referendum.

The provisions of the Order are largely based on existing electoral law precedents (e.g. the corresponding provisions applicable in Assembly general elections as set out in the National Assembly for Wales (Representation of the People Order) 2007 (S.I. 2007/236) ).

Article 3 provides for the holding of the referendum and that the poll at the referendum must take place on 3rd March 2011.

Article 4 prescribes the question and the statement that are to appear on the ballot paper in the referendum. The form of the ballot paper is prescribed in Schedule 6 to the Order in Council (Form D). Before a draft of this Order in Council was laid before Parliament and the National Assembly for Wales, the Secretary of State for Wales consulted the Electoral Commission on the wording of the question and statement as required by section 104(4)(a) of the 2000 Act and, as required by section 104(4)(b), has laid with the draft Order in Council, a report setting out the Electoral Commission’s views on the intelligibility of the question and the statement. A copy of that report has also been sent to the First Minister of Wales, as required by paragraph 3(3) of Schedule 6 to the 2006 Act, so that he may lay it before the Assembly in accordance with paragraph 3(4) of that Schedule.

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Article 5 makes provision about the referendum period. This period starts on the day that the Order in Council comes into force (i.e. 16th December 2010) and ends with the date of the poll at the referendum (3rd March 2011). This period engages provisions in Part 7 of the 2000 Act. In particular, persons intending to incur expenditure over £10,000 during the referendum period must notify the Electoral Commission who will register them as permitted participants (see section 105 of the 2000 Act). The Electoral Commission has the function of designating one permitted participant as an organisation to lead the “Yes” campaign and one to lead the “No” campaign in the referendum and make available assistance, including grants, to such organisations (see sections 108 - 110 of the 2000 Act).

Normally, those who wish to apply to the Electoral Commission to be the designated organisations must apply within 28 days of the start of the referendum period. However, for the purpose of this referendum that period is extended to 35 days to take into account the seasonal holidays (see article 3 of the National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses Etc.) Order 2010). Following that period the Electoral Commission must consider the applications and decide whether to designate organisations within 14 days. Paragraph 8 of Schedule 6 to the 2006 Act applies in the event that the Electoral Commission has not, at the end of that 14 day period, designated any organisations to lead the “Yes” and “No” campaigns. In that case the Electoral Commission may provide information to those entitled to vote in the referendum about the arguments for each answer to the referendum question (see paragraph 8(2) of Schedule 6 to the 2006 Act). This is a complementary power to that conferred by Article 16 which gives the Electoral Commission the power to promote public awareness throughout the referendum campaign, not just after the conclusion at the designated period.

Article 6 provides that the polling districts and places to be used in the referendum are those that would be used at an election to county and county borough councils in Wales.

Article 7 and Schedules 1 and 2 make provision as to:

- the manner of voting (including for absent voters, voting by post and by proxy) in the referendum;
- the register of electors; and
- the issue and receipt of postal ballot papers.

Article 8 and Schedule 3 set out the rules for the conduct of the referendum (the Referendum Rules). Generally, the Referendum Rules are based on those that would apply if an Assembly general election were held on the day of the poll but with appropriate modifications to reflect that this is a referendum on a proposal and not an election with candidates.

Articles 9 to 11 make provision in respect of the Chief Counting Officer and counting officers that is in addition to that in section 128 of the 2000 Act. In particular these articles provide for:

- the Chief Counting Officer to appoint one or more Deputy Chief Counting Officers to assist the Chief Counting Officer;
- the appointment by counting officers of persons to assist them;
- the issuing of directions by the Chief Counting Officer to counting officers as to the exercise of their functions.
- Article 12 empowers counting officers (including the Chief Counting Officer and any Deputy Counting Officer) to correct procedural errors made by them and certain other officers and persons assisting them in the referendum.

Articles 13 to 15 make provision for the funding of counting officers and scrutiny of their expenditure. In particular:

- article 13(1) empowers the Welsh Ministers to determine by order the maximum amount that counting officers can recover for their fees and charges in the referendum;

- article 13(3) empowers the Welsh Ministers to authorise payment above such maximum in specified circumstances;
- article 13(7) requires the Welsh Ministers to pay counting officers on the submission of an account;
- article 13(10) empowers the Welsh Ministers to make regulations as to these accounts by counting officers;
- article 13(11) provides that payments by the Welsh Ministers under article 13 are a charge on the Welsh Consolidated Fund;
- article 14 provides for application to the county court for a counting officer's account to be taxed by the court;
- article 15 empowers Her Majesty's Treasury to direct the Welsh Ministers to prepare accounts in respect of their expenditure in relation to the referendum.

Article 16 empowers the Electoral Commission to take such steps as they think appropriate to promote public awareness in Wales about:

- the referendum;
- the subject matter of the referendum; and
- how to vote in the referendum.

Article 17 provides for the Electoral Commission to be supplied by electoral registration officers with free copies of the full register of electors to be used in relation to the referendum.

Article 18 provides for a permitted participant in the referendum to appoint a referendum agent for a voting area to act on behalf of that permitted participant. A referendum agent can appoint polling agents to attend polling stations and counting agents to attend the count (see rule 17 of the Referendum Rules).

Articles 19 to 22 provide respectively for:

- translation of certain documents to be used in the referendum;
- issuing of public notices;
- sending applications and using electronic signatures;
- publication of documents and taking copies.

Articles 23 and 24 provide for matters relating to advertisements and non-domestic rating which correspond to provision applying in relation to elections.

Article 25 provides for equipment such as ballot boxes and compartments used at Parliamentary and local government elections to be lent to counting officers for use in the referendum.

Article 26 and Schedule 4 make provision for offences in connection with the referendum. Generally, these correspond to offences that apply to elections.

Article 27 and Schedule 5 provide for the application to the referendum of some enactments relating to elections and referendum, with modifications. Schedule 5 makes provision for a charge to be made on the Welsh Consolidated Fund. This is for the charges payable to universal service provider for the distribution of a leaflet from each lead organisation of the yes and no campaigns (the designated organisations), which the designated organisations are entitled to.

Article 28 and Schedule 6 make provision for the forms to be used in the referendum. Apart from the ballot paper (Form D) these forms can be adapted as circumstances may require. This includes adaptation by electoral registration and counting officers to use any electronic templates of forms provided for their use by the Electoral Commission. This would also include varying the format of forms that are set out in English and in Welsh in Schedule 6.

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This Order should be read in conjunction with the National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses) 2010, which sets out the limit on referendum expenses that can be incurred by different categories of permitted participants.