

## EXPLANATORY MEMORANDUM TO

### THE NATIONAL ASSEMBLY FOR WALES REFERENDUM (ASSEMBLY ACT PROVISIONS) (LIMIT ON REFERENDUM EXPENSES ETC) ORDER 2010

2010 No. 2985

1. This Explanatory Memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

This Order is supplemental to the National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc) Order 2010, which makes provision for the holding of a referendum in Wales on bringing the Assembly Act provisions of the Government of Wales Act 2006 (the 2006 Act) into force (the Welsh referendum). This Order extends by one week the time in which those who have registered as permitted participants in the referendum can apply to be designated as an organisation representing those campaigning for a particular outcome and, as such, eligible to receive financial or other assistance. It does not extend the time the Electoral Commission has in which to decide whether it is able to designate an organisation on each side of the campaign. The Order also sets limits for the expenditure of different categories of permitted participants in that campaign. Finally, the Order makes explicit that expenses related to media coverage of the referendum campaign are not regarded as referendum expenses in relation to the Welsh referendum.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

- 4.1 Section 103 of the 2006 Act empowers Her Majesty, by Order in Council, to cause a referendum to be held throughout Wales about whether the Assembly Act provisions should come into force. On 17 February 2010, the Secretary of State received written notification from the First Minister of the Welsh Assembly Government that the Assembly had passed a resolution that it was in favour of making a recommendation to Her Majesty to make such an Order in Council. Under section 104(3) of the 2006 Act, the Secretary of State was required, within 120 days, to either lay a draft Order making provision for a referendum, or give written notice with reasons of her refusal to do so. The Secretary of State informed the First Minister on 15<sup>th</sup> June 2010 of her reasons for refusing to lay a draft Order within 120 days and at the same time she gave a commitment to lay a draft Order

providing for a referendum as soon as was practicable. That Order, the National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc) Order 2010 (the referendum Order), has now been laid. It is subject to approval by both the National Assembly for Wales, where the draft Order must be approved by at least two thirds of the total number of Assembly Members, and by each house of Parliament.

- 4.2** This Order is supplemental to the referendum Order. The power to extend the time limit for application to be a designated organisation is conferred upon the Secretary of State by s109(6) of the Political Parties, Elections and Referendums Act 2000 (c41) (PPERA) and is subject to the approval of each House of Parliament only. The power to impose spending limits on permitted participants in the referendum campaign is conferred on the Secretary of State by paragraph 2(4) of Schedule 14 of PERA and is also subject only to approval by each House of Parliament. Section 156(5) of PERA together with paragraph 4 of Part 2 of Schedule 13 enables the Secretary of State to make amendments to Part 1 of that Schedule in relation to the Welsh referendum.

## **5. Territorial Extent and Application**

This instrument extends to the United Kingdom although the practical application of the Order is limited, principally, to Wales. The Order applies in relation to the referendum to be held in accordance with the National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010.

## **6. European Convention on Human Rights**

The Rt Honourable Cheryl Gillan MP, Secretary of State for Wales, has made the following statement:

*“In my view the provisions of the National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses Etc) Order 2010 are compatible with the Convention rights.”*

## **7. Policy background**

### ***Extension of period to apply to be designated organisations***

- 7.1** The Order extends from 28 days to 35 days the period, running from the start of the referendum period (which is the date that the Order comes into force), during which those who have notified the Electoral Commission that they intend to be permitted participants in the Welsh referendum, may subsequently apply to become a designated organisation campaigning for a particular outcome in the referendum campaign. A permitted participant who wishes to become a designated organisation must apply to the Electoral Commission in the manner the

Commission provides for, to show that they adequately represent those campaigning for a particular outcome at the referendum. If designated, the organisation will receive financial assistance from the Electoral Commission. The referendum period is proposed to start on the date on which the Order comes into force as set out in the National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc) Order 2010. Those who intend to be permitted participants in the Welsh Referendum cannot register as such until the start of the referendum period, once registered they may then apply to become a designated organisation.

- 7.2 The statutory period during which permitted participants may apply to become a designated organisation would, assuming that the referendum Order is made before the end of December 2010, therefore span the Christmas and New Year period. The extension of that statutory period from 28 to 35 days would allow additional time for applications to be submitted, taking into account the holidays.

#### *Limit on referendum expenses*

- 7.3 Where an individual or organisation plans to spend more than £10,000 on campaigning during the referendum period, they must register with the Electoral Commission as a permitted participant. PPERA sets out limits on referendum expenses in relation to referendums held throughout the United Kingdom in paragraph 1 of Schedule 14. For referendums held in particular parts of the United Kingdom, PPERA states that the Secretary of State may prescribe by Order, a limit on referendum expenses incurred by permitted participants; and different amounts may be prescribed for different categories of permitted participant. Before making such an Order, the Secretary of State must seek and have regard to the views of the Electoral Commission. Permitted participants are those registered with the Electoral Commission as being involved in campaigning for a particular outcome.
- 7.4 The Commission's response to the Secretary of State's consultation, published on its website, set out its view 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.
- 7.5 The PPERA limits on referendum expenses in relation to referendums held throughout the United Kingdom are £5 million in the case of designated organisations (those permitted participants designated by the Commission as lead campaigning organisations on both sides of the referendum question), £500,000 for all other permitted participants, and for those permitted participants which are political parties:
- £5 million for parties with more than 30 per cent of the vote at the last parliamentary general election before the referendum;

- £4 million for parties with more than 20% but not more than 30% of the vote;
- £3 million for parties with more than 10% but not more than 20% of the vote
- £2 million for parties with more than 5% but not more than 10% of the vote; and
- £500,000 for parties with not more than 5% of the vote.

The Electoral Commission recommended, in relation to the Welsh referendum that the limits applying to political parties that register as permitted participants should follow the PPERA structure for UK-wide referendums. The Commission also recommended that the maximum spending limit should be set by reference to the expenditure limits applying to elections to the National Assembly for Wales.

**7.6** In light of this, the Commission recommended that the maximum spending limit applying to designated organisations in the Welsh referendum should be £600,000. It also recommended that the spending limit applying to all permitted participants, other than designated organisations and political parties, should be £100,000. Following the PPERA model for the differentiation of the spending limits that should apply according to percentages of the vote, the Commission recommended that the spending limits applying to permitted participants that are political parties should be:

- £600,000 for permitted participants that are political parties with more than 30% of the vote at the National Assembly for Wales elections 2007;
- £480,000 for parties with more than 20% but not more than 30% of the vote;
- £360,000 for parties with more than 10% but not more than 20% of the vote;
- £240,000 for parties with more than 5% but not more than 10% of the vote; and
- £100,000 for parties with not more than 5% of the vote.

**7.7** The Commission further recommended that the level of parties' electoral support at the 2007 National Assembly elections should be calculated taking into account both constituency and regional results. To produce a single percentage figure for this purpose, the Commission recommended that a two-thirds weighting should be given to each party's share of the vote in constituencies and one-third for regions to reflect how the seats are distributed in National Assembly elections. With reference to the 2007 National Assembly for Wales elections, the main political parties' respective shares of the vote in Wales is:

Labour	- 31.33%	(Expenses limit - £600,000)
Conservatives	- 22.07%	(Expenses limit - £480,000)
Plaid Cymru	- 21.94%	(Expenses limit - £480,000)
Liberal Democrats	- 13.76%	(Expenses limit - £360,000)

The Commission also noted that all other parties received less than 5% of the vote in both the constituencies and regions and recommended that they, and all other permitted participants should be subject to an expenses limit of £100,000.

These calculations are set out in detail in the Electoral Commission's advice dated 30 March, which can be found on its website ([www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)). The limit on referendum expenses set out in article 4 of this Order only applies to those political parties and others which have registered as permitted participants under section 105 of PPERA.

- 7.8** Following careful consideration, the Secretary of State accepted the Commission's recommendations.

#### *Expenses related to media coverage*

- 7.9** There is some ambiguity in PPERA over whether media organisations are caught by the spending restrictions which apply to campaigning groups. For clarity, and following consultation with the Electoral Commission, this Order makes it explicit that the media is not covered by these spending rules. This ensures that material about the referendum printed by newspapers, for example, would not be regarded as referendum expenditure and those bodies would not be required to register as permitted participants campaigning in the referendum if their expenses in broadcasting non-advertising material about the referendum were over £10,000.

### **8. Consultation**

The Secretary of State has a duty, in relation to the limit on referendum expenses, to consult the Electoral Commission in accordance with paragraph 2(4) of Schedule 14 of PPERA. The Secretary of State sought and accepted that advice. The Commission was also consulted in relation to the provision on media coverage expenses in accordance with paragraph 4(2)(b) of Schedule 13 of PPERA. There was no public consultation on this draft Order, but the extension of the time limit for participants to apply to be a designated organisation was discussed and agreed with key stakeholders, such as the Electoral Commission.

### **9. Guidance**

No guidance has been, or will be, issued in relation to this draft Order. This Explanatory Memorandum explains the scope and policy context of matters included in the draft Order. However, the Electoral Commission will provide guidance to permitted participants on the requirements for registration and accounting for their expenditure running their campaigns, and will also provide guidance on applying to be designated organisations. They have the power to issue such guidance by virtue of section 10 of PPERA as modified by the draft referendum Order, to which this Order is ancillary.

**10. Impact**

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

**11. Regulating small business**

This does not apply to this Order.

**12. Monitoring & review**

This draft Order is supplemental to the Order in Council that enables a referendum in Wales to take place; if the majority of those voting in the referendum vote in favour of the Assembly Act provisions coming into force, they will be commenced by an Order made by the Welsh Ministers. The Electoral Commission has a duty to prepare and publish a report on the administration of the referendum under section 5 of PPERA. The Electoral Commission will monitor spending on referendum campaigning in line with the referendum spending limits specified in this Order through the expenditure and donation returns permitted participants must submit to the Commission.

**13. Contact**

Queries about the content of the instrument or this memorandum should be addressed to Susan Perry (Tel: 02920 89 8235 or email [susan.perry@walesoffice.gsi.gov.uk](mailto:susan.perry@walesoffice.gsi.gov.uk)).

Susan Olley (Tel: 02920 89 8568 or email [Susan.olley@walesoffice.gsi.gov.uk](mailto:Susan.olley@walesoffice.gsi.gov.uk)) can answer legal queries about the instrument.