

Classification: Protected

Commission Board Date: 25 January 2011

Agenda Item no.4

Wales referendum: voter information

1 Purpose

1.1 The purpose of this paper is to enable the Board to consider:

- In the event that the Commission does not designate lead campaign organisations in the Wales referendum, whether to provide information for voters on the arguments for each answer to the referendum question
- If provided, what form that activity should take.

2 Recommendations

2.1 In the event that the Commission does not designate lead campaign organisations, the Commission Board is invited to:

- Consider whether or not we should provide voter information on the arguments for each answer to the referendum question, based on the specific circumstances of this case
- If the Board decides the Commission should provide additional information:
 - Consider the options provided in this paper
 - Consider whether to:
 - take a decision on the options on 25 January or
 - establish a framework for subsequent decision-making (a Board meeting is scheduled for 1 February).
 - Decisions need to be made in order for voter information to be available at the latest before the despatch of postal votes, that is by 16 February 2011.

3 Background

3.1 In the event that the Commission does not designate lead campaign organisations for the Wales referendum, the Government of Wales Act 2006¹ (GOWA) provides that:

“The Electoral Commission may take such steps as they think appropriate to provide such information for persons entitled to vote in the referendum as the Commission think is likely to promote awareness among those persons about the arguments for each answer to the referendum question.

Information ...must be provided by whatever means the Electoral Commission thinks is most likely to secure (in the most cost-effective way) that the information comes to the notice of everyone entitled to vote in the referendum.”

3.2 The *Explanatory Notes* to GOWA² state:

Paragraph 8: Provision of information to voters

714.The effect of section 108 of the Political Parties, Elections and Referendums Act 2000 is that, in a referendum on the coming into force of the Assembly Act provisions, the Electoral Commission can designate two persons or organisations, which meet certain criteria, as eligible to receive financial and other assistance to assist with their campaigns – one which will be campaigning *for* the Assembly Act provisions to come into force, and one which will be campaigning against them coming into force.

715.The purpose of this provision is to help to ensure that voters in a referendum have adequate information about the issue on which they are to vote and about the arguments *for* and *against* the possible outcomes.

716.Paragraph 8 (2) says that if the Electoral Commission has not, by the appropriate day (see note to paragraph 8 (4)), made a designation of a person or organisation campaigning *for* the Assembly Act provisions coming into force, and one campaigning *against* them coming in to force, then it can itself take steps to ensure that voters are adequately informed about both sides of the argument.

3.3 In November 2009, the Commission Board considered the principles which would underpin its conduct of a referendum, based on recommendations of the Referendums Reference Group. The Board agreed at the time that:

- Decisions on the extent of the Commission’s public awareness activity, including possible information on meaning of a “yes” and “no” vote in event

¹ Schedule 6, section 8

² Explanatory notes to an Act are not part of it and should not be taken to have legal status.

Commission does not designate, should be on a case-by-case basis and based on:

- Voter information requirements based on assessment of level of campaign information reaching the public
- Salience of the referendum issue (how much the public knows about it)
- Fit with the Commission's other roles (what we're doing in the particular referendum)

3.4 The Referendums Reference Group noted the different types of activity that could be undertaken in the event that we are unable to designate, to be considered on a case-by-case basis:

- Provide website summary of the relevant issues and arguments that each side is campaigning on
- Provide website links to registered permitted participants
- Send an information leaflet to every household, again directing people to permitted participants for more information
- Run limited advertising explaining the implications of voting yes and no or directing people to the website / leaflet

3.5 In the event that the Commission does not designate, the Board should therefore consider whether to provide information to voters in Wales on the arguments for each answer to the referendum question, taking into account the specific circumstances of the case.

4 Summary of issues

4.1 The public opinion research that we undertook for our assessment of the proposed referendum question³ found a low level of public awareness that a referendum on the law-making powers of the National Assembly was to be held or what the referendum is about. We noted that even those who did know that a referendum would be taking place came to the research with many misconceptions as to what the referendum question would ask them. Only a few individuals in our research had a good understanding of the subject of the referendum. We noted in our report that the low level of public knowledge was not a new issue and had been well-documented by others.

4.2 Our report also noted that the referendum campaigns would be the main source for getting across to potential voters what is at stake, encouraging people to vote and influencing how they vote.

³ *Report of views of the Electoral Commission on the proposed referendum question* Electoral Commission (September 2010)

4.3 We reported that there was likely to be limited prominence for the referendum campaign in the media that is consumed by most of the public in Wales. A majority of the daily newspapers bought in Wales are those that cover the whole of Britain. The All Wales Convention described them as having 'scant reporting of political developments in Wales'.⁴

4.4 What our report anticipated has continued to be the case. Although both Yes and No campaigns have been formally launched by the main campaign groups and there is now increased coverage in Welsh media about the referendum, this is largely limited to BBC Wales politics/current affairs programmes such as 'Dragons Eye' and on BBC Wales news coverage. There is minimal coverage of the Wales referendum in daily newspapers covering the whole of Britain or on nationwide television news.

4.5 Partly as a result of the low level of public knowledge, the Commission already has in place a comprehensive public information campaign about the referendum, as recently reported to the Board. Our information campaign includes a leaflet to all households in Wales explaining what a referendum is, what the referendum is about, and how to vote in it. The leaflet is supported by an advertising campaign on television, radio, print media and online.

4.6 The key issue is the extent to which Yes and No campaigners will be able to reach voters in Wales with their arguments, when there are no lead campaign organisations in receipt of the benefits that would have followed designation.

4.7 Not being designated, the Yes or No campaign organisations will not have:

- The grant of up to £70,000 from the Commission for infrastructure costs
- Freepost mailing of referendum leaflets
- Referendum broadcasts
- Higher spending limit of £600,000. The spending limit of the main campaigners - 'Yes for Wales' and 'True Wales' - will be £100,000 each.
- Free use of public rooms for meetings
- As no permitted participants are designated as lead organisations, they will not be able to accept donations from political parties.
- However, there are no provisions in the legislation for the Wales referendum on the aggregation of spending limits and no bar to

⁴ All Wales Convention Report, p 82 (2009)

permitted participants working to a common plan. Political parties which have registered to campaign have spending limits according to their share of the vote at the last Assembly election.

4.8 Permitted participants registered with the Commission to date are:

Campaigning for a Yes vote

Cymru Yfory (Tomorrow's Wales)

Ie dros Gymru Cyfengedig (Yes for Wales Ltd) (applicant for designation)

Plaid Cymru

UNISON

Campaigning for a No vote

David Alwyn ap Huw Humphreys (individual applicant for designation)

True Wales

Mark William Beech (an individual, member of Monster Raving Loony Party)

4.9 The spending limit for all permitted participants that are not political parties is £100,000. The spending limit for Plaid Cymru is £480,000.

4.10 All permitted participants have the right to copies of the electoral register for campaigning purposes. They may also attend postal vote opening sessions and the counting of votes.

4.11 The spending limit applying to permitted participants and the lack of a freepost mailing means that campaigners are likely to have to rely on volunteers to a greater extent for the delivery of referendum materials to voters and on news coverage to convey their campaign messages.

4.12 Media coverage of True Wales' decision not to apply for designation has reflected a widespread assumption or expectation amongst political commentators that the Commission will now provide some material to voters, possibly a leaflet, about the arguments on both sides of the referendum debate. This is despite extensive briefing to political and media audiences about our planned public awareness campaign. Our campaign and booklet drop will be launching on 28 January and this will, of course, affect stakeholder perception of whether or not additional information is required.

Options to consider

4.13 In deciding whether or not to provide additional information to voters on the arguments for and against the referendum question, the Commission will need to consider whether this could be done in a form that would genuinely

inform and engage voters in a sufficiently neutral way without compromising the Commission's independence. Any information we provide is likely to be very carefully scrutinised for its neutrality and we would need to be confident that we had a robust process that we can defend, including against potential legal challenge.

4.14 Some options to consider are below and reflect the limited timescale available to prepare and deliver this material. The options are not mutually exclusive and could be combined.

- **Option A:** We could provide some basic arguments for a Yes and a No vote on our aboutmyvote website. See Annex A for a draft of the kind of information we could provide.
- **Option B:** We could establish a page on our website that would provide links to the websites of all of the permitted participants.
- **Option C:** We could offer permitted participants the opportunity to place a limited amount of text (eg up to 100 / 200 words) on our website.

4.15 There are two main risks with Option A. Firstly, that because the text is limited to the arguments for and against the question on the ballot paper, it does not address any wider implications in the debate and its consequent effect on informing or engaging voters is likely to be limited. Secondly, the text may attract criticism from either or both sides of the debate, meaning that the text and the Commission's role could be drawn into the substance of the referendum debate.

4.16 Option B would provide a straightforward mechanism for the public to access material provided by campaigners, without any involvement in the material provided. We would need to include a suitable disclaimer as to the content of campaigners' websites.

4.17 Option C would provide a mechanism for giving the public access to some direct and undiluted messages from campaigners. It would require some careful vetting of the information to ensure there was nothing in it that would expose the Commission to legal challenge (by, for example, being defamatory).

4.18 There is also a risk with Option C that we are drawn into exercising our discretion on campaign arguments if, say, one group asserts that another group's statement contained misleading information that should be removed from our web-site unless amended.

4.19 In Option C, we would need to provide and then make sure permitted participants used our template and word limit, but would not in any other way seek to change the material we provided them with.

4.20 It should be noted that our aboutmyvote website will be promoted heavily through our public information booklet and advertising campaign so we are expecting a high volume of traffic to it in the weeks leading up to the referendum. Therefore, any information or links placed on it would be seen by a significant number of people.

4.21 There is not an option to include information on the arguments for a Yes or No vote in our public information booklet as it has already been printed and delivered to Royal Mail for distribution. The booklet does include a paragraph encouraging people to look out for yes and no arguments through the media.

4.22 According to OFCOM Wales, 99.9% of households in Wales are able to access broadband but OFCOM also tell us there is no up to date reliable data on how many homes in Wales have computers linked to the internet or how many adults regularly access the internet at home or at work.

5 Wider implications

5.1 The wider implications of the decision in this case are reflected in the advantages and disadvantages already identified.

5.2 In promulgating the Commission's decision, it will be essential to emphasise publicly that it relates to the circumstances of this particular referendum, in order to manage stakeholder expectations in relation to the referendum on UK Parliamentary voting system in May 2011 or indeed for any subsequent referendum.

5.3 It will be important to reflect the circumstances of the case and the outcomes (which we will be able to measure at least to extent through our post-referendum public opinion research and tracking research) in our lessons learnt report on the referendum.

6 Risk

6.1 There are significant reputational risks both to providing information and to not providing it.

6.2 If we provide information on the arguments on both sides of the debate, we can mitigate the risks by:

- Using the findings published in our referendum question assessment report to formulate the information, especially in terms of use of language and accessibility
- Using reliable factual sources for information, such as the public information provided by the National Assembly for Wales Commission (the 'parliamentary' and educational arm of the Assembly)

6.3 If we decide to include text provided by permitted participants we would seek legal advice before publishing that there was nothing in it that would expose us to challenge and make clear these were not the views of the Commission.

6.4 If we decide to provide links to permitted participants we would again make clear that these contained information that did not represent the views of the Commission.

6.5 We can mitigate the risks both to providing information and to not providing it by communicating our decision clearly in the public domain with a careful handling plan.

7 Milestones, next steps and key audiences

7.1 If we do provide information on the arguments, we will do so as quickly as possible consistent with assuring the quality of the information. The statutory ban on publicity from public sources other than the Electoral Commission commences on 4 February; postal votes will start to be issued on 17 February so it is important that information for voters is available before that time. Our public information booklets will be delivered to households from 31 January to ensure that information is with voters before the distribution of postal votes.

7.2 What we will say publicly is set out below.

If we decide that the Commission should provide information about the arguments for and against the referendum question, or that this should be considered further

7.3 Our press release announcing our decision not to designate will make clear what the law allows us to do, why we have made our decision and what the implications of it are. It will also set out our existing public awareness plans and we will use these as an opportunity to push our message that every household in Wales will be receiving an information booklet about the referendum. We will add that we are considering what, if any, further information the Commission should provide to help inform voters about the arguments for and against the referendum question in addition to what permitted campaigners and the media provide.

7.4 We will then use the remainder of the designation period to develop our plans and make these public on or before Wednesday 2 February (the end of the two week designation period). As part of this we will consider how best to communicate our plans to campaigners, politicians and others with an interest in what we might do.

If we decide that the Commission should not provide information about the arguments for and against the referendum question

7.5 Our press release will contain the same information as above on the reasons for our decision on designation and public awareness plans, and then set out the reasons why we do not believe we should not provide additional information about the arguments for and against the referendum question.

8 Attachments

8.1 The following are attached as appendices:

Appendix A: Draft text for webpage, giving arguments for and against

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Appendix A

Draft Commission website page

(To follow existing text of our voter information leaflet, already on website)

What are the arguments? *(this text is already on our website)*

Campaigners in the referendum will explain why they think you should vote 'yes' or 'no'. They will communicate through TV, the radio, newspapers and websites.

(Draft new text)

Campaign websites

Anyone who spends more than £10,000 on campaigning in the referendum has to register with the Electoral Commission. Below are links to the websites of campaigners who have registered with us. On their websites, campaigners say why they think you should vote 'yes' or 'no'.

Links to websites of permitted participants

Disclaimer [eg: The information from and views of campaigner on their websites have not been checked or endorsed by the Commission. We are an independent body overseeing the referendum and not involved in campaigning for either outcome]

Here is some information from the Electoral Commission about why you should vote 'yes' or 'no'.

First you can read our information about the law-making powers of the National Assembly for Wales and what you will be asked in the referendum ([link](#))

Why you should vote 'yes'

The change proposed in the referendum should happen. The Assembly will no longer need to ask the UK Parliament for its agreement each time it wants to make laws on new matters in the 20 subject areas it has powers for. At the moment, the process of getting agreement from the UK Parliament can take a long time. The UK Parliament may not agree to what the Assembly asks for.

Why you should vote 'no'

The change proposed in the referendum should not happen. The UK Parliament should continue to be asked whether the Assembly can make laws

on new matters in the 20 subject areas that it has powers for. The UK Parliament should continue to look carefully at what those laws are about before deciding whether the Assembly can make the laws.