



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

Report of views of the Electoral Commission on the proposed referendum question

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# 1 Background

## Consultation by the Secretary of State

1.1 The Secretary of State for Wales, Rt Hon Cheryl Gillan MP, consulted the Electoral Commission on 23 June 2010 on the 'Preceding Statement and Question' for a referendum on the law-making powers of the National Assembly for Wales. The statement and question is attached as Appendix A to this report.

1.2 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate party and election finance and set standards for elections and electoral registration.

1.3 In a referendum, we are responsible for:

- giving our views on the referendum question
- registering campaigners who want to spend significant amounts in the referendum
- where appropriate, appointing lead campaign groups for each outcome
- providing lead campaign groups with grants that we determine within statutory limits
- monitoring and reporting on campaign spending
- reporting on the administration of the referendum

1.4 The Chair of the Commission, or someone she appoints, is Chief Counting Officer for a referendum.

### Legal framework

1.5 Where a referendum question is contained in secondary legislation, as it will be in this case, the Political Parties, Referendums and Elections Act 2000 (PPERA) <sup>1</sup> confers a duty on the Secretary of State to:

- consult the Electoral Commission on the wording of the referendum question
- do so before the draft secondary legislation is laid in the UK Parliament
- at the same time as the legislation is laid, lay before each House a report stating any views as to the intelligibility of the question which the Electoral Commission have expressed.

1.6 In addition, the Government of Wales Act 2006<sup>2</sup> requires that:

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<sup>1</sup> Section 104(4).

- The Secretary of State must, no later than the time that the report of the Commission's views is laid in Parliament, send to the First Minister a copy of the report.
- The First Minister must lay a copy of the report before the National Assembly for Wales as soon as is reasonably practicable.

## Publication of our views

1.7 As the independent body charged with giving our views on the referendum question, we want to ensure that our approach is open and transparent. Our usual practice is to publish reports we produce on all matters for which we are responsible. Consistent with that practice, we are publishing this report of our views on the referendum question.

## Question assessment process

1.8 Our duty is to consider the intelligibility of the referendum question. We want to make sure that the question is one that voters can understand, so that they know what they are voting on.

1.9 When referring to 'referendum question' in this report, we mean the preamble, the question and the responses. Where we have comments particular to the preamble, the question or the responses, we make this clear.

1.10 The Commission's preferred approach to assessing referendum questions and revised question assessment guidelines were published in November 2009. These are attached as Appendix B.

1.11 We have followed our published preferred approach to assessing referendum questions by:

- undertaking public opinion research through focus groups and in-depth interviews
- writing to interested parties (including the main political parties) and would-be campaigners to seek their views, and offering meetings to hear from them
- seeking advice from experts on plain language and accessibility and from the Welsh Language Board.

1.12 A report of the findings of our public opinion research, including the methodology adopted, is available on our website.<sup>3</sup>

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<sup>2</sup> Schedule 6, section 3.

<sup>3</sup> [www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0012/102018/GfK-NOP-NAW-Referendum-Report.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0012/102018/GfK-NOP-NAW-Referendum-Report.pdf)

1.13 A list of interested parties who gave us their views through correspondence or in meetings held for the purpose is attached as Appendix C. The views we have received are summarised and addressed where relevant in this report. We much appreciate the time taken by individuals and organisations in giving their views to us.

## Timescales

1.14 The Secretary of State agreed that the Commission should have the time required to undertake our preferred approach to assessing the referendum question. In line with our published approach, we advised the Secretary of State that this would take about 10 weeks to complete.

1.15 The subject of the referendum is a challenging one to communicate. We have been committed to giving constructive views based on clear evidence that will help to ensure that the clearest possible question is put before voters. We appreciate that the Secretary of State has allowed the necessary time for us to carry out our assessment thoroughly.

1.16 We commenced our question assessment process immediately on receiving the question from the Secretary of State on 23 June 2010. This report is the outcome of our question assessment process.

## Scope of our power to give views on 'intelligibility'

1.17 We interpret the scope of our power to give views on 'intelligibility' as going further than simply looking at whether people understand the language used in the referendum question. The Commission has powers to suggest alternative drafting or to offer suggestions as to how a particular question and preamble might be reframed.

1.18 However, these suggestions must be confined to changes to the language or structure and framing of the question. We have no power to suggest alterations that would change the substance of the question or introduce new factors which might alter the nature of the debate.

# 2 The referendum question in context

## Complexity of the subject

2.1 The main issue that featured in our question assessment process was the complexity of the subject being voted on in the referendum, both in terms of the context and the proposal. The subject of the referendum is a matter of constitutional process, familiar only to a minority of well-informed people.

2.2 This issue is not new and has been well-documented by others. For example, the All Wales Convention, set up to establish what people thought about more law-making powers for the National Assembly for Wales, reported: ‘...it became clear that the complexities of the current arrangements were little understood. People didn’t understand exactly who had the power for what and how laws were made.’<sup>4</sup>

2.3 The complexity of the issue has been commented on in the press and media during our assessment process, as some people who made submissions to us also put their views in the public domain.<sup>5</sup>

2.4 Some senior academics and commentators have made submissions to us to the effect that the question as drafted does not accurately represent the constitutional position and/or does not comply with the provisions of the Government of Wales Act 2006 on the referendum. The submissions vary as to how the question should cover the constitutional position. Some would place more emphasis on the pace of change, whereas others see the constitutional outcome and the diminished role for the UK Parliament as at least equally significant.

2.5 Two submissions from leading academics considered that the referendum question was open to legal challenge unless it expressly referred to the relevant provisions of the Government of Wales Act 2006 in correct terminology.

2.6 We deal with the key points raised with us in greater detail below. We highlight these issues early in our report to emphasise that the subject matter in the question is far from straightforward. Further, even amongst those well-

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<sup>4</sup> [www.allwalesconvention.org](http://www.allwalesconvention.org) set up by Welsh Assembly Government to establish what people thought about more law-makings powers for the National Assembly for Wales. Report Pg 7.

<sup>5</sup> For example, *Western Mail*, 22 July 2010.

informed people who understand the constitutional issues, there is debate about the relative emphasis that should be given to them.

## Low level of public understanding

2.7 We found a substantial gulf between, on the one hand, public understanding of the subject of the referendum and the high level academic and political debate about the constitutional nuances of the referendum question on the other.

2.8 Participants in our public opinion research generally had a low level of public awareness that a referendum on law-making powers of the Assembly is to be held; what the referendum is about or, indeed, what a referendum is.

2.9 Even those who did know that a referendum would be taking place nevertheless came to the research with many misconceptions about what the question would be asking them. Some people had expected that the vote would be about more substantial change. They expected the referendum to deliver more powers for the Assembly than it is currently possible for it to obtain. Some people thought the referendum will be about the Assembly gaining tax-raising powers or independence for Wales.

2.10 While these misconceptions may to an extent be resolved by campaigning and information presented to the electorate before the referendum, our research has clearly shown that the question in its current form is not taking account of these misconceptions adequately.

2.11 A few individuals in our research who had a good understanding of the subject of the referendum prior to attending the research came to doubt their understanding after reading the question. In these instances, the question was not supporting or reinforcing the existing knowledge which more well-informed people have.

2.12 This calls into question the suitability of the question in its current form and shows that poor awareness of devolution and the powers of the Assembly was not the only reason for people misinterpreting the referendum question. The structure of the question and the particular words and phrases used also affected their understanding.

2.13 It could not have been known how the question would work with voters without testing it thoroughly. Our public opinion research has revealed issues with the draft question that would otherwise have been difficult to anticipate. The subject of the referendum is not easy to describe to voters in everyday language and the drafters of the question did not have the benefit of user-research. Our views on the question are based on the evidence now available from all the sources we have used.

# Information for voters about the referendum

2.14 The referendum campaigns for a 'yes' and 'no' vote have a key role to play in informing the public what the issues are in the referendum. The campaigns are the main source for getting across to potential voters what is at stake, encouraging people to vote and influencing how they vote.

2.15 It can be expected, however, that as part of that campaigning, there will be debate in the public domain to the effect that campaigners are misleading voters about the referendum subject matter. Such debate is a normal part of any election or referendum campaign, but where public knowledge of the referendum subject matter is low, real or perceived misinformation is likely to become more of an issue in the campaign.

2.16 There is also likely to be limited prominence from 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'.<sup>6</sup>

2.17 To bridge the information gap, some people have called for a public information campaign from the Electoral Commission.<sup>7</sup> The Commission intends to provide a public information leaflet about the referendum to all households in Wales. The leaflet will explain what the referendum is, a short description of what it is about, and how to vote in it. The leaflet will be timed to reach people who vote by post just before they receive their postal ballot packs. However, although such a leaflet will assist, as will website information, it will only be a partial solution, and the context in which the referendum question is being asked means that there will be more reliance by voters on the preamble as a source of information than ideally would be the case.

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<sup>6</sup> All Wales Convention Report, p 82 (2009).

<sup>7</sup> For example, submission by Alan Trench, Institute of Governance, Edinburgh University.

## 3 What the public thinks

3.1 Because we wanted to look at whether or not voters can understand the referendum question, we needed evidence from potential voters themselves. We carried out research to see how people reacted to and understood the question.

3.2 The full report from research agency GfK NOP, which undertook the research for us, can be downloaded from our website.<sup>8</sup> The report also describes who took part in the research and where: we wanted to hear from people from a wide range of backgrounds, of different ages, and who live in different parts of Wales.

3.3 The research helped us find out people's understanding of the proposed question, their attitudes towards it, and the reasons why they think or feel the way they do about it. The research also helped us explore how the question could be made more intelligible. The research focused on the question itself and how it is written, rather than on how people would vote.

### Key areas considered in our public opinion research

- **Completion** – respondents were asked to complete an individual written task. This included answering the question as if for real and marking any words or phrases they found difficult to understand.
- **Literal meaning** – the respondents discussed what they thought the question was asking and any difficulties they had with the question.
- **Contextual meaning** – the respondents set out their understanding of the reasons for the referendum and the impact of the proposed change.
- **Improvements** – the respondents considered what improvements they would make to the question wording and discussed their suggestions.

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<sup>8</sup> [www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0012/102018/GfK-NOP-NAW-Referendum-Report.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0012/102018/GfK-NOP-NAW-Referendum-Report.pdf)

# Summary of what we learnt from our research

3.4 What follows is a summary of the key points that emerged. The report from GfK NOP contains a full executive summary.

## Background awareness

3.5 People did not understand the background issues well or the terminology used in the question. This limited their understanding of it. For instance, many were unfamiliar with the concept of devolution and struggled to understand the term 'devolved areas', which is used repeatedly in the question. While awareness of the existence of the National Assembly for Wales was higher than awareness of the concept of devolution, most respondents had a limited understanding of the powers of the Assembly. With the exception of a few high profile initiatives, such as free prescriptions, reduced tuition fees and free swimming, the majority of respondents were not sure which policy areas the Assembly had legislative power over. Furthermore, many were not aware how the Assembly makes laws and did not know that on some matters within devolved areas the Assembly needs the agreement of the UK Parliament to make laws.

3.6 Some people were aware that a referendum on the powers of the Assembly was due to take place in 2011. These respondents tended to be older (35+), had previously voted in Assembly elections and were more likely to follow Welsh political issues in the news. Welsh language speakers had slightly higher levels of awareness of the forthcoming referendum than non-Welsh speakers.

3.7 One consequence of respondents' lack of awareness of devolution, the powers of the Assembly and the subject of the forthcoming referendum was that they came to the research with many misconceptions about what the question would be asking them. For instance, some assumed that the question was about independence for Wales or an increase in the tax-raising powers of the Assembly and answered it in this way.

3.8 A significant finding of our research was that where people had misconceptions about the subject of the referendum, the preamble as currently drafted did not dispel these.

## Interpretation of the question

3.9 Having read the referendum question, the vast majority of participants in the research could see that it was asking them to decide whether or not the law-making powers of the Assembly should be increased. Nevertheless, most had difficulty identifying the exact nature of the increase in law-making powers proposed. A range of interpretations were provided by the participants with varying degrees of accuracy.

3.10 Those who had misconceptions before taking part in the research did not have their misconceptions challenged by the question. Some believed the question was about extending the scope of the Assembly's powers by introducing new devolved areas. Others thought the question was asking about increasing the Assembly's powers in deprived or developing areas of Wales. They misinterpreted the words 'devolved areas' and took them to mean 'deprived areas' or 'developing areas'.

3.11 People with the greatest understanding of what the question was asking tended to be older (35+) Assembly voters. There was no significant difference in the proportion of English and Welsh language speakers within this category. They recognised that, at present, the Assembly needed UK Parliamentary agreement to be able to make laws on certain matters, and that the question was asking whether the need for agreement should be removed.

3.12 A few individuals who had a good understanding of the subject of the referendum prior to attending the research came to doubt this understanding after reading the question. Therefore poor awareness of devolution and the powers of the Assembly was not the only reason for people misinterpreting or misunderstanding the referendum question. The question structure, as well as individual words and phrases, also had an impact.

## Question structure

3.13 Most respondents believed that the existing question structure should be retained, including a preamble. There was a consensus that the following elements should be retained:

- a short and clear title
- an account of the current legislative arrangements
- an indication of how legislative arrangements would be affected if a yes / no vote was given
- a short and clear question

3.14 However, a range of structural problems were identified and these include the following:

- overall length
- sentence length and complexity
- distinction between present and future scenarios

3.15 Across the sample, respondents believed the overall question was too long. When reading it, many found that they lost the gist of the question and had to read individual sections a number of times before they were able to piece together its meaning.

3.16 There were frequent complaints that the question was repetitive and people wondered whether repeated sections could be dispensed with.

3.17 When reading the preamble, some found it difficult to distinguish the present legislative arrangements from possible future arrangements (that is, following the outcome of the referendum). While most understood that the first two sentences of paragraph one were describing present arrangements, some believed the third sentence was describing a possible future arrangement.<sup>9</sup>

3.18 Distinguishing between the present arrangements and possible future arrangement was made even more difficult for many Welsh language readers, as the words used in the third sentence of paragraph one ('Caiff y Cynulliad ennill mwyl o bwerau') were often unfamiliar to them.

## Question layout

3.19 No difficulties were reported in the research with the question layout. All found the division of the question into a title, preamble, question and answer boxes to be easy to follow and all found the division of the page into Welsh and English versions to be appropriate.

## Neutrality of the question

3.20 After they were asked to look for any leading elements, some people identified what they thought could be leading. The main point that some people thought was leading was that the question was framed in terms of:

'Do you agree...'/ 'Ydych chi'n cytuno...'

3.21 They thought that it was not impartial because it was really asking 'Do you agree with me...?' They felt this made 'I do not agree' a less easy option to choose.

3.22 People also found the relative presentation of the two options imbalanced. The description of the 'agree' response seemed more simple and straightforward than the description of the 'disagree' response. They thought this encouraged them to look upon the 'disagree' response less favourably.

3.23 People also thought that the presentation of the 'disagree' response was repetitive in a negative way. They saw it as repeating what was already in the first paragraph of the preamble, with a slightly different, rather negative, formulation.

## Accuracy of response

3.24 A large majority of people testing the question in our research were able to vote in line with their intentions. Even those who did not understand the question

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<sup>9</sup> Text of preamble and question is attached as Appendix A.

on first reading said they had given the response they would have done had they understood it fully at the outset.

3.25 Although that appears encouraging, there is a downside. It means that although most people were able to vote in line with their intentions, many would have walked away from reading the question with an inaccurate perception of what the referendum was about and its possible outcomes.

3.26 A small number of people said that they had not been able to answer the question in line with their intentions. These respondents initially believed that the question was asking about a larger increase in the powers of the Assembly than it actually was (either independence for Wales or tax-raising powers). They did not want the Assembly's powers to be increased to this extent and had answered 'No'.

3.27 However, they said that if they had understood the true meaning of the question and the limitations in the powers being voted on, they would have voted 'Yes'. This shows that the question may cause voters who are in favour of a limited increase in the powers of the Assembly (in line with the subject of the referendum) not to vote in line with their intentions.

## 4 Views of interested parties

4.1 We wrote to interested parties (including the main political parties) and would-be campaigners to seek their views. We also offered meetings to hear from them. A list of those who responded giving their views is attached as Appendix C. What follows is a summary of key points raised.

### Is the proposed question lawful?

4.2 Two submissions questioned whether the referendum question proposed by the Secretary of State for Wales was compatible with the requirements of the Government of Wales Act 2006 (GOWA), which contains the framework for the referendum. Keith Patchett, Emeritus Professor of Law at the University of Wales, and Alan Trench, of the Institute of Governance at the University of Edinburgh, both put to us that the proposed question used language inconsistent with that of the GOWA.

4.3 Because the response from Alan Trench was publicly available on his blog and reported in the *Western Mail*<sup>10</sup>, two other respondents commented to us on the issues he raised. Cynog Dafis (writing in a personal capacity) and Laura McAllister, Professor of Governance at Liverpool University were of the view, in light of Alan Trench's comments, that legal clarity appeared desirable.

4.4 The GOWA provides that the referendum must be 'about whether the Assembly Act provisions should come into force'. Those provisions are defined in the GOWA by reference to the relevant sections of the legislation. Professor Patchett submitted that it was open to argument that the referendum question must explicitly ask voters whether they agree that the scheme as formulated in Part 4 of GOWA should be implemented. A more generalised reference that merely seeks approval for powers on 'all subjects in the devolved areas' was not specific enough.

4.5 Alan Trench made the point that the proposed question referred to 'areas' and 'subjects' instead of 'matters' and 'fields'. He submitted that this meant that the question was less precise and therefore ambiguous.

4.6 Professor Patchett told us he appreciated that a question expressed in terms that followed the GOWA more closely would present problems for the electorate and at minimum require elaborate explanatory matter.

4.7 Alan Trench was of the view that a different approach from that proposed by the Secretary of State would be preferable. He called for a short preamble

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<sup>10</sup> *Western Mail*, 22 July 2010.

and question (expressly referring to Part 4 and Part 7 of the GOWA), supported by a public information campaign, including a leaflet from the Electoral Commission.

4.8 We have considered the issues raised by these submissions. In our view, although it is clear that the referendum question must be 'about' whether the Assembly Act provisions should come into force, this does not mean that the question must specify the legislative provisions in express terms. GOWA provides that the question is to be contained in secondary legislation proposed by the Secretary of State. It also provides that the Commission is required to give views on the intelligibility of the question. It appears to us, therefore, that GOWA envisages that the question to be proposed by the Secretary of State will be in terms that can be understood by voters.

4.9 In our view, a question that asks expressly whether the National Assembly for Wales should have the law-making powers set out in Part 4 and Schedule 7 to the Government of Wales Act 2006 would not be understood by voters. Expecting voters to read explanatory material to accompany such a question, either in a lengthy preamble or in a leaflet, is unrealistic. While a leaflet can help, as we have explained in the 'Context' earlier in this report, it can never be a complete answer. In this particular case, our public opinion research has amply demonstrated the need for a question and supportive preamble to be written in language accessible to voters.

4.10 The question has been proposed by the Secretary of State for Wales and we must assume that the Secretary of State, who is required to comply with the provisions of the GOWA, considers that the question she has proposed is lawful. We further note that the First Minister and Deputy First Minister, although they have concerns about part of the wording of the proposed question, are in broad agreement with it and have not raised questions about its lawfulness.

4.11 All other people and organisations who wrote to us with their views on the proposed question stressed that the question should be understandable to voters. A number also said they supported or found helpful the Commission's guidelines for assessing the intelligibility of referendum questions.

4.12 For these reasons, our focus continues to be on the intelligibility of the referendum question that has been proposed by the Secretary of State. We do so on the basis that the question need not specifically refer to implementation of the scheme as formulated in Part 4 of the Government of Wales Act 2006 in order to be lawful.

## Use of a preamble

4.13 Both the United Kingdom Independence Party (UKIP) and ‘True Wales’<sup>11</sup>, opposed the use of a preamble. Both thought it was unnecessary, on the grounds that it could be used to sway the voting intentions of the electorate. They were of the view that the ‘Yes’ and ‘No’ campaigns would have plenty of time to educate the electorate what the referendum is about.

4.14 While we agree that it is the responsibility of the ‘Yes’ and ‘No’ campaigns to raise voter awareness of the issues at stake in the referendum, in this particular case we believe, for reasons already explained, that a preamble is necessary. Our public opinion research strongly reinforced the need for a preamble that would provide support to voters in understanding the referendum question.

## What the question is asking: constitutional issues

4.15 Submissions to us from academic or political commentators addressed the emphasis given in the question to some detailed constitutional points. There were some strong views in relation to the relative emphasis in the preamble and question on the pace of change and the involvement of the UK Parliament.

4.16 Sir Emyr Jones Parry, former Chair of the All-Wales Convention, was critical of the proposed text. In particular, he was of the view that the key issue in the referendum was the pace of change – ‘the speed at which primary legislation should come to Wales’. He proposed his own alternative question.

4.17 Because Sir Emyr Jones Parry’s views were reported in the press during our question assessment process<sup>12</sup>, other people commented on his views in their submissions to us.

4.18 For example, Cynog Dafis totally disagreed that the key choice for voters will be ‘the speed at which primary legislation should come to Cardiff’. In his view, this underplayed the possibility that the UK Parliament can currently reject a request by the Assembly to legislate on a specific matter.

4.19 Professor McAllister saw the referendum as being not only about the pace of change, but about the principle of the UK Parliament’s involvement in the law-making process.

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<sup>11</sup> An organisation in favour of a ‘No’ vote.

<sup>12</sup> *Western Mail*, 22 July 2010.

4.20 'True Wales' were of the view that the issue was 'Should the UK Parliament or the National Assembly for Wales make laws?' and 'Should there be a role for the UK Parliament to be involved in law making in Wales?' It was not a question of transferring powers.

4.21 The Institute of Welsh Affairs (IWA) also commented on how the preamble covered the role of the UK Parliament. Director John Osmond submitted that the use of the phrase in the preamble 'bit by bit, with the agreement of Parliament each time' invited people to make the judgement that this would be a moderate, middle ground and a common sense way to proceed. (Leading people to think it is a preferable option.) As well as introducing an argument into the explanation, in the IWA's view this did not cover the point that some powers are denied and others often take many years to achieve – three years in one example given.

4.22 Professor Richard Wyn Jones, Director of the Wales Governance Centre at Cardiff University, pointed out that the 'bit by bit' formulation repeated the formulation used by the All Wales Convention. He submitted that the formulation strongly implied that under the current dispensation one ends up moving towards the same destination as provided for in Part 4 of the GOWA<sup>13</sup>, albeit at a different pace. Professor Jones commented that this was the expectation of many at the time of the passing of the GOWA<sup>14</sup> and even as the All Wales Convention began its work. However, in his view, those expectations have proven to be sorely mistaken. He submitted that the latest version of Schedule 5 of the GOWA could not be compared with Schedule 7<sup>15</sup> and the conclusion reached that the direction of travel, let alone the destination, were the same. In his view, the 'bit by bit' formulation was now materially misleading.

4.23 We believe that the proposed question is intended to be understood by voters as relating to both the pace of change and the extent of involvement of the UK Parliament. We have no powers to suggest alterations that would change the substance of the question or introduce factors which might alter the nature of the debate.

4.24 Professor Jones also encapsulated another issue that a number of submissions commented on. He was very concerned that the proposed question wording misrepresented the nature of the constitutional change on

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<sup>13</sup> Moving to Part 4 of the Government of Wales Act 2006 (GOWA) is what the referendum is about; it gives the Assembly power to make Assembly Acts, subject to the conditions set out in Part 4 and Schedule 7 to the Act.

<sup>14</sup> Schedule 5 outlines what the National Assembly currently can make law on. An up to date list of the contents of Schedule 5 is available on the National Assembly's website at [www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation\\_fields/schedule-5.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields/schedule-5.htm).

<sup>15</sup> Schedule 7 outlines the 20 subjects on which the National Assembly would be able to make Acts, if there is a 'Yes' vote in the referendum. It is available at [www.legislation.gov.uk/ukpga/2006/32/schedule/7/enacted](http://www.legislation.gov.uk/ukpga/2006/32/schedule/7/enacted).

offer. He pointed out that, at the moment, once a matter is entered into Schedule 5 of the GOWA, then the National Assembly for Wales already has the power to legislate on it without first 'needing the agreement of Westminster'. The current wording erroneously suggested that this will only come to pass if there is an affirmative vote in the referendum.

4.25 The First Minister and Deputy First Minister also had concerns that the inclusion of 'without needing the agreement of Parliament first' at the end of the question could give the impression that, under the current system and therefore that in the event of a 'no' vote, the Assembly needs to obtain the agreement of Parliament to laws that it makes.

4.26 These views were echoed by Welsh Labour and Plaid Cymru, who put to us similar concerns about the inclusion of those words in the question.

4.27 The Secretary of State for Wales advised us that the inclusion of this wording was intended to show that, in the event of a 'yes' vote, there would no longer be any need to go through a process of obtaining the agreement of Parliament to give law-making powers to the National Assembly for Wales. She asked us for our views on this point.

4.28 Professor Jones commented that he could see what the authors of the question were trying to 'get at' in using the formulation 'without needing the agreement of Parliament first' in the question, but that the issue needed to be revisited.

4.29 We concur that the inclusion of 'without needing the agreement of Parliament first' in the question needs to be revisited. Our recommendations on redrafting the question address that point.

4.30 An issue raised by 'True Wales' was that there was a big difference between the term 'power' and 'powers'. In their view the referendum question should be about the power, not the powers, of the Assembly. The use of the plural 'additional powers' implied that this could at some point be extended further, that is, a green light for more functions such as policing being transferred.

4.31 Although we understand the point that 'True Wales' makes, we believe the use of the term 'powers' is correct. The Assembly currently has law-making powers in relation to specified matters in 20 fields provided for in the GOWA and the GOWA enables it to gain more law-making powers by more than one route. In our view, the term 'powers' should therefore be retained. The word 'power' has a different connotation, suggestive of powerfulness, whereas in this context it was understood by people in our public opinion research as applying to ability to make law.

# Examples of ‘devolved areas’

4.32 The preamble contains examples of ‘devolved areas’. These are: health, education, social services, local government and environment.

4.33 Very few people who contacted us commented on the examples used. The concerns of a small minority of people about the lawfulness of the question, already addressed above, included the concern that using examples and not the full list of devolved areas meant that people would not know what they were voting for. However, the vast majority of those contacting us were content with using examples. Beyond the points raised on lawfulness, there was no suggestion that the full list of 20 areas that the Assembly deals with should be included.

4.34 Indeed, in our view, there is a balance to be struck between listing all 20 devolved areas (so that voters are more informed) and providing too much information that would clutter the ballot paper still further.

4.35 Including all 20 devolved areas would also give the areas themselves undue emphasis, when the number or scope of the devolved areas is not the subject of this referendum. The outcome of the referendum, whichever way it goes, does not change the 20 devolved areas. We appreciate that this means that voters will not be absolutely certain of what is included in the scope of ‘devolved areas’ – however these are described. Based on the evidence we have gathered, we do not believe that including the full list of 20 devolved areas on the ballot paper is either desired nor would it improve voter understanding of the question. However, a list of the 20 devolved areas will be included in the Commission’s voter information booklet (see paragraph 2.17) and published on our website, as well as being available on the Assembly’s website. We will also consider the possibility of making this information available to voters at the point at which they cast their vote.

4.36 Our public opinion research showed that the people find the examples in the preamble helpful. Any difficulties with the examples were presentational, in that people would have preferred to have a bulleted list. The exception to this was the phrase ‘gwasanaethau cymdeithasol’ (social services), which is not commonly used in Welsh. Participants in our research had to refer to the English version of the question to understand the meaning of this phrase.

4.37 In our suggested redraft we have bulleted the list of examples, and have not included ‘social services’/‘gwasanaethau cymdeithasol’.

4.38 ‘True Wales’ raised the point that people would expect health, education and other public services to be included in the list of examples because these are the best known areas that the Assembly deals with. They were of the view that people might not necessarily realise that subjects such as economic development and culture are also included.

4.39 We agree that it would show a greater spread of the areas that the Assembly deals with if examples of 'devolved areas' other than public services were included. However the subject areas used as examples should be ones that most people would recognise and understand. We are concerned that the meaning of the terms 'economic development' and 'culture' would not be clear to most people. We have addressed this in our recommendations on redrafting the preamble and have suggested some alternative examples that could be used.

4.40 Some people who wrote to us, such as the Wales Council for Voluntary Action (WCVA), also felt that it would be helpful to include examples of what areas are not covered by the Assembly powers. This was also a significant point arising from our public opinion research; people had misconceptions about the subject of the referendum and the preamble as currently drafted did not dispel these. In particular, people thought the referendum might be about giving the Assembly tax-raising powers. For these reasons, we consider it important to include examples of what the Assembly does not deal with as well as examples of what it does.

4.41 In our recommendations on redrafting the preamble we have included examples of what the Assembly does not deal with, including tax.

## 5 Accessibility

5.1 An important issue for us in assessing the intelligibility of the proposed question is how accessible it is to all voters. Using public opinion research is one of the main ways we have gauged that. We have also sought advice from experts on accessibility and plain language. A number of third sector organisations gave us their views and we have found these very helpful in compiling our assessment. What follows is a summary of the key points made.

### Plain language

5.2 The Plain English Campaign and Plain Language Commission gave us a number of suggestions for improving the wording of the question, and both identified the words and phrases that people taking part in our public opinion research also had difficulty with.

5.3 Although these suggestions related to the English language version of the question, a number are also relevant to the Welsh language version. For example, their suggestions on the use of repeated words and consistency of terms are relevant to both versions of the question.

5.4 The Welsh Language Board gave us advice on the Welsh language question and, again, some of its comments were also relevant for the English version. On the Welsh version of the question, however, some issues also arose that were particular to the terminology used. These are explained below where relevant.

5.5 In particular, the plain language advisers noted that the term 'devolved areas' was not explained and anticipated that this would not be understood by most people.

5.6 They also pointed out that the third sentence of the first paragraph of the question was ambiguous and confusing. 'The Assembly can gain further powers' is capable of being read as meaning both 'is currently able to gain further powers' and 'could in future gain further powers'. In context, this means it is not clear whether the sentence referred to the current position or whether it means this would be the position in the event of a 'yes' vote.

5.7 A similar point arose in the Welsh language version of the question. The Welsh Language Board commented that the use of the word 'Caiff' ('can' or 'may') causes potential confusion as to whether it refers to the current or the future position.

5.8 Many other organisations and individuals who contacted us also made similar points on these particular issues.

5.9 A number of our respondents commented on another issue that also arose in our public opinion research – the use of ‘official’ sounding language. People found this off-putting and disliked the repetition of names in the phrases ‘National Assembly for Wales (the Assembly)’ and ‘Parliament of the United Kingdom (Parliament)’. There was a general preference for using only terms that are in common usage, such as ‘the Assembly’ and ‘UK Parliament’.

5.10 Linked to this many respondents noted how both the ‘National Assembly for Wales’ and ‘UK Parliament’ had been shortened in the English version to ‘the Assembly’ and ‘Parliament’. However in the Welsh version ‘Cynulliad Cenedlaethol’ is shortened to ‘y Cynulliad’ but no attempt is made to simplify ‘Senedd y Deyrnas Unedig’. It was assumed that this was in order to avoid any confusion with the use of the term Senedd (the home of the National Assembly for Wales) but several respondents suggested the use of ‘Senedd y DU’ in its place, DU already being a commonly used abbreviation.

5.11 There were further criticisms of the Welsh language version for being overly long and overly complex. The Welsh Language Board’s conclusion on the Welsh question is that, from the point of view of the voters, ‘the present situation is not sufficiently clear’ and ‘that the situation that is sought is not sufficiently clear and that voters will not be able to determine...the long and short of the proposed change’. Others also point that the lack of concise grammatical forms has resulted in an unnecessarily long question and that drafters should look to simplify the question using the forms of Welsh that are commonly spoken.

5.12 Finally, Richard Wyn Jones, Director of the Wales Governance Centre of Cardiff University suggested that the use of the concise form ‘datganoledig’ for ‘devolved’ instead of ‘sydd wedi’u datganoli’ (terminology that is used on five separate occasions in the Welsh version) would assist in cutting the length of the question somewhat.

5.13 RNID Cymru made the important point that improving the wording of the question to use words that are part of everyday language is helpful not only for people who are deaf or hard of hearing but for the wider public. Complex terminology and technical terms can cause confusion and reduce understanding for voters who are deaf or hard of hearing but cause confusion for many other people too. Drafters should avoid using terms that need further explanation.

5.14 The response from Wales Council for Voluntary Action (WCVA) contained a number of helpful points and suggestions that were based on evidence gathered from several sources, including the third sector organisations they work with and a referendum discussion session held in July attended by over 40 people.

5.15 Many of the points raised by WCVA reflected those coming from our public opinion research. For example, people taking part in an information session held by WCVA had felt they would not have been able to understand and interpret the question fully without the further information they were given. People with

learning disabilities especially would need a lot of support to understand the question.

5.16 RNIB Cymru, RNID, WCVA and the Pollen Shop also gave us advice about format of the ballot paper, including font size, spacing, use of colour, formatting and layout. The European Parliamentary Regional Returning Officer for Wales, Mr Bryn Parry Jones, and the Association of Electoral Administrators Wales also gave us advice about these issues based on their election experience.

5.17 We have not addressed such design issues specifically in this report, which focuses on the intelligibility of the question. However, we will respond to those issues by producing a template ballot paper which the Chief Counting Officer will be able to direct local counting officers to use. This will ensure that the appearance of the ballot paper is the same throughout Wales.

5.18 The Chief Counting Officer (the Chair of the Electoral Commission or someone she appoints) will produce a template ballot paper that, in terms of format and design, makes it easy for voters to make their mark in the way they intend. The Chief Counting Officers will direct local Counting Officers to use the template, to ensure consistency across Wales.

# 6 Our assessment of the question

6.1 We have considered the question against the guidelines for assessing referendum questions that we published in November 2009. Our guidelines are attached as Appendix B. We developed our guidelines to:

- help us assess how intelligible a proposed question is
- help people draft intelligible referendum questions

6.2 In this context, 'question' includes the question, the responses, and the preamble that comes immediately before the question.

6.3 In arriving at our assessment, we have taken into the context for the referendum question and all the evidence we have received.

6.4 Our guidelines say that a referendum question should present the options clearly, simply and neutrally. So it should:

- be easy to understand
- be to the point
- be unambiguous
- avoid encouraging voters to consider one response more favourably than another
- avoid misleading voters

## Our conclusions

6.5 We conclude that the preamble to the question and the wording of the question itself are not easy to understand and are ambiguous.

6.6 For these reasons, the question and preamble have the potential to mislead voters. In our view, this is because of a lack of clarity and some ambiguity in the language used rather than any intention to mislead.

6.7 Overall, people thought the preamble was densely worded. This is off-putting and some people will not read the preamble because of the density of words presented to them. Without reading the preamble, they are unable to understand the question. This means the question and preamble are not accessible to all voters.

6.8 Nevertheless, people do want an explanation of what they are being asked to vote for and prefer to have a preamble. Our public opinion research showed that people would prefer to have an easier to read format, rather than what appear as long paragraphs, and with bullet points. They would prefer to have

shorter paragraphs. Young people especially would prefer an easier to read format.

6.9 The basic structure of the preamble followed by the question should be retained. What people liked was:

- an explanation of the current arrangements for the National Assembly for Wales to make laws
- what will happen if there is a yes vote
- what will happen if there is no vote
- followed by a neutral question and a yes/no vote

6.10 The parts of the preamble and question that caused particular difficulty are:

- In the English language version, all uses of the term 'devolved areas'.
- In the Welsh language version, there was similar confusion with the use of the term 'meysydd sydd wedi'u datganoli' for 'devolved areas'. There was a real sense that voters would not understand the use of 'meysydd' (areas) in this context and that 'datganoli' (devolved) was not a term familiar to most people.
- In both versions of the question, the third sentence of the preamble, commencing 'The Assembly can gain further powers ...' is misleading. People understand this as meaning both 'is currently able to gain further powers' and 'could in future gain further powers'. This means it is not clear whether it is about the current law-making powers of the Assembly or whether this would be the position if most people vote yes in the referendum.
- Official-sounding terminology is difficult for people to understand, especially where there is repetition. For example, 'National Assembly for Wales (the Assembly)' and 'Parliament of the United Kingdom (Parliament)'.
- The inconsistency in wording leads to confusion. The phrases 'subject by subject basis' and 'bit by bit' are intended to mean the same thing but the different wording leads people to think there may be a difference.
- The use of 'bob yn damaid' (for 'bit by bit') was queried by many in the Welsh language public opinion research as it was not felt to be a familiar term. On the other hand, the Welsh Language Board, in its response, queried the use of 'bit by bit', but had no objection to the inclusion of 'bob yn damaid'.
- The use of 'with the agreement of the Parliament of the United Kingdom (Parliament) on a subject by subject basis' in the first paragraph; 'with the agreement of Parliament each time' in the second paragraph and 'without needing the agreement of Parliament first' in the question are seen as both repetitive and confusing because of the slightly different formulation each time. The repetition can also make people think the point is being pushed and mildly leading.

- Repetition in the question generally is disliked by people, an example of that being the presentation of the 'disagree' response to the question. They saw it as repeating what was already in the first paragraph of the preamble, with a slightly different formulation.

## The responses

6.11 People find the formulation of the question in terms of 'Do you agree ...' to be rather leading. They felt it implies 'Do you agree with me ...' and that it is harder to say 'No, I do not agree' than to say 'Yes, I agree'. For this reason, we recommend a more neutral formulation.

6.12 The elimination of any perceived bias, in our view, is a priority. The most neutral formulation, in our view, is a question that starts with 'Should the Assembly... etc'. 'Should' is objective rather than containing an expression of voters' views, compared with formulations such as 'Do you think' or 'Do you believe'.

6.13 If the formulation is used of 'Should the Assembly ...etc', in English the answer will be 'Yes' or 'No'.

6.14 However, there is a significant drawback to this in the Welsh language version of the question. The use of 'Should' in the English version means that the Welsh question would change to 'A ddylai'r Cynullaid gael pwerau yn awr...'. Changing the Welsh version in this way would impact on the answer. A simple 'Ydw/Nac Ydw' could not be used and instead the Welsh language response would need to be 'Dylai' (It should) or 'Ni ddylai' (It should not).

6.15 It is arguable that, despite the fact that the Welsh language answer of 'Dylai/Ni ddylai' would differ from the 'Yes/No' choice provided in the English question, using 'Should' in both English and Welsh would be, on balance, preferable. It eliminates any possible bias while remaining understandable.

6.16 However, the main difficulty would arise with referendum campaigning. The campaigns are likely to be formulated as 'Yes' and 'No' and would ideally in Welsh be 'Ydw' and 'Nac Ydw'. 'Dylai' and 'Ni ddylai' are unlikely to work well as campaign slogans and would point up the differences between the question responses in the two languages. There is an alternative approach, that is having campaign slogans that use 'Yes/Ydw' and 'No/Nac Ydw' regardless of the different choices on the ballot paper. This could cause confusion for voters when presented with a ballot paper that presents a response options of 'Dylai' and 'Ni ddylai'. The effects are untested and carry risk.

6.17 An alternative question formulation, equally neutral, is: 'Do you want the Assembly ..etc'. Compared with 'Should', it contains an expression of voters' wishes rather than going straight to the subject in question.

6.18 This formulation has the advantage that it can be answered in both English and Welsh with a straightforward 'Yes/Ydw' or 'No/Nac Ydw'. This means that the campaigns in both languages will be the same and the responses in both languages will more obviously reflect each other.

6.19 However, there is a further matter to be addressed in the Welsh version of the question, if 'Do you want ..' is used in English. A literal translation of 'Do you want' in Welsh is 'Ydych chi eisiau ..'. For most Welsh speakers this will have a connotation of greater informality than is the case with 'Do you want' in English. The Welsh Language Board advises us that 'Want' is a noun in Welsh, not a verb, so the common constructions used in speech are incorrect.

6.20 The Welsh Language Board have advised us that the preferred formulation would be: 'A ydych chi yn dymuno i'r Cynulliad ..'. Although this translates literally into English as 'Do you wish/desire the Assembly...' it is to be preferred.

6.21 Our recommendations for redrafting the responses are therefore based on these factors.

## Our recommendations

6.22 Our assessment means that some particular words, phrases and terminology must be redrafted if the question is to be understood by voters.

6.23 The preamble should be less densely worded and the format must be easier to read and more accessible.

6.24 Because all of these issues are linked, rather than recommend sections of wording or variations of terminology, we have taken the step of proposing a possible redraft of the preamble and question. It is for the Secretary of State to decide on the wording of the question that is included in the draft legislation put before Parliament and the Assembly. We have aimed to provide constructive suggestions and hope that these are helpful to the Secretary of State in making her decision.

6.25 Our redraft is intended to show how the difficulties we have found with the current draft could be addressed. As this report will have demonstrated, drafting a question for this referendum is a far from easy matter. The varying and strongly held views of senior political commentators and academics mean that whatever question is drafted is unlikely to gain support from every quarter. There have been a number of deconstructions of the current draft by commentators, but no complete proposals put to us that would be capable of attracting wider support or being understood by voters.

6.26 The complexity of the subject matter means it is difficult to draft in everyday language that is accessible to all voters.

6.27 In preparing our redraft, it has not been possible to user-test some of the phrases we have used or to test our alternative suggestions for the question

responses. There has been a limit to the time available for research. Although our public opinion research involved asking people who were taking part in the research for alternative suggestions, very few were put forward. For example, people were unable to suggest alternatives for 'devolved areas' because very few people knew what these terms meant. The complexity of the subject as a whole means that people were unable to set out how they preferred the question to have been reworded. We have sought as far as we can to base our redraft on the evidence we have gathered.

#### 6.28 Our redraft contains:

- Headings to make clear what follows and to break up the text on the page.
- Everyday language familiar to most people, rather than formal language used in official documents. For example, we have used 'What happens at the moment' rather than 'Current/present arrangements'.
- Avoidance of ambiguity. For example, we have used 'What happens at the moment' rather than 'What happens now' as that could be read as meaning 'now in the next few minutes' (while the voter is voting).
- Bold to emphasise key differences.
- Bullet points for a list of examples of the 20 subject areas the Assembly is responsible for, to make it easier to read.
- A list of examples of the 20 subject areas. We have used the examples included in the original question, but have removed 'social services' as our research found this was not easily understood in Welsh. We wanted to include additional subjects to reflect a broader spread than public services only. The terminology of some of the 20 subject areas, such as 'economic development' would not be easily understood by most people. It could be misleading, however, to change the descriptions of the 20 subjects set out in GOWA to make them easier to understand. This means a compromise has to be reached between using examples that voters will understand; being accurate and not misleading, and showing a range of different subjects. Based on this, we have suggested adding 'agriculture' and 'housing' to the list.
- Contents of the list in alphabetical order, for neutrality.
- Alphabetically-listed examples of subjects that the Assembly is not responsible for, to dispel the misconceptions that were clear from our public opinion research.
- Limited repetition and only to reinforce a point where necessary. Where repetition is used, consistent language.

#### 6.29 Our redraft does not contain:

- A full list of the 20 subject areas.
- A list of those matters that the Assembly currently has Parliament's agreement to make laws on and, correspondingly, those matters for which the Assembly requires Parliamentary agreement before making laws.

- Specific reference to Part 4 of the Government of Wales Act 2006. In our view, the question does not need to include a reference to the legislation for it to be lawful.

6.30 Our priority throughout has been a question that voters can understand, so they know what they are voting on. We strongly recommend that the final form of the question should be framed with that in mind.

6.31 Our suggested redraft follows, in English and in Welsh.

# Suggested redraft (English)

## The National Assembly for Wales: what happens at the moment

The Assembly has powers to make laws on 20 subject areas, such as:

- agriculture
- the environment
- housing
- education
- health
- local government

In each subject area, the Assembly can make laws on **some** matters, but not others. To make laws on any of these other matters, the Assembly must ask the UK Parliament for its agreement. The UK Parliament then decides each time whether or not the Assembly can make these laws.

The Assembly cannot make laws on subject areas such as defence, tax or welfare benefits, whatever the result of this vote.

### If most voters vote 'yes'

The Assembly will be able to make laws on **all** matters in the 20 subject areas it has powers for, without needing the UK Parliament's agreement.

### If most voters vote 'no'

What happens at the moment will continue.

### Question

Do you want the Assembly now to be able to make laws on **all** matters in the 20 subject areas it has powers for?

**Yes**

**No**

# Suggested redraft (Welsh)

Cynulliad Cenedlaethol Cymru: yr hyn sy'n digwydd ar hyn o bryd

Mae gan y Cynulliad y pwerau i lunio deddfau mewn 20 maes pwnc, megis:

- amaethyddiaeth
- yr amgylchedd
- tai
- addysg
- iechyd
- llywodraeth leol

Mae'r Cynulliad yn gallu llunio deddfau ar **rai** materion ym mhob maes pwnc ond nid ar faterion eraill. Er mwyn llunio deddfau ar unrhywun o'r materion eraill hyn, mae'n rhaid i'r Cynulliad ofyn am gytundeb Senedd y DU. Yna, mae Senedd y DU yn penderfynu bob tro a gaiff y Cynulliad lunio'r deddfau hyn neu beidio.

Ni all y Cynulliad lunio deddfau mewn meysydd pwnc fel amddiffyn, trethi neu fudd-daliadau lles, beth bynnag fo canlyniad y bleidlais hon.

## Os bydd y rhan fwyaf o bleidleiswyr yn pleidleisio 'ydw'

Bydd y Cynulliad yn gallu llunio deddfau ar **bob** mater yn yr 20 maes pwnc y mae ganddo bwerau ynddynt, heb orfod cael cytundeb Senedd y DU.

## Os bydd y rhan fwyaf o bleidleiswyr yn pleidleisio 'nac ydw'

Bydd yr hyn sy'n digwydd ar hyn o bryd yn parhau.

## Cwestiwn

A ydych yn dymuno i'r Cynulliad allu llunio deddfau ar **bob** mater yn yr 20 maes pwnc y mae ganddo bwerau ynddynt?

## Ydw

## Nac ydw

# Appendices

Appendix A 'Preceding statement and question' on which we were consulted by the Secretary of State for Wales

Appendix B 'Our approach to assessing the intelligibility of referendum questions' and 'Referendum question assessment guidelines' The Electoral Commission, November 2009

Appendix C List of interested parties who gave their views to us through correspondence or in meetings held for the purpose

# Appendix A ‘Preceding statement and question’ on which we were consulted by the Secretary of State for Wales

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## Refferendwm ar bwerau deddfu Cynulliad Cenedlaethol Cymru

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

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Ar hyn o bryd, mae gan y Cynulliad Cenedlaethol (y Cynulliad) y pwerau i ddeddfu ar gyfer Cymru ar rai pynciau mewn meysydd sydd wedi'u datganoli. Mae'r meysydd sydd wedi'u datganoli yn cynnwys iechyd, addysg, gwasanaethau cymdeithasol, llywodraeth leol a'r amgylchedd. Caiff y Cynulliad ennill mwy o bwerau i ddeddfu mewn meysydd sydd wedi'u datganoli trwy gael cytundeb gan Senedd y Deyrnas Unedig, a hynny fesul pwnc.

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.

Os bydd y rhan fwyaf o bobl yn pleidleisio 'Ydw' yn y refferendwm hwn, bydd y Cynulliad yn ennill pwerau i ddeddfu ar bob pwnc yn y meysydd sydd wedi'u datganoli. Os bydd y rhan fwyaf yn pleidleisio 'Nac Ydw', bydd y trefniadau presennol - sef trosglwyddo'r hawl i ddeddfu bob yn ddaid, gyda chytundeb Senedd y Deyrnas Unedig bob tro - yn parhau.

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.

Ydych chi'n cytuno y dylai'r Cynulliad gael pwerau yn awr i ddeddfu ar yr holl bynciau yn y meysydd sydd wedi'u datganoli heb fod angen cytundeb Senedd y Deyrnas Unedig yn gyntaf?

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?

**RHOWCH X MEWN UN BLWCH YN UNIG**

**PUT AN X IN ONE BOX ONLY**

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Ydw, rydw i'n cytuno - Yes, I agree

---

Nac ydw, dydw i ddim yn cytuno - No, I do not agree

# Appendix B

November 2009

The  
Electoral  
Commission

## Referendum question assessment guidelines

By law, the Electoral Commission must comment on the intelligibility of UK, national and regional referendum questions, and some local government referendum questions.<sup>1</sup> In this context, we mean referendums where voters are asked to vote on a proposal put forward by government. At this type of referendum, voters are given a ballot paper that contains the question and at least two possible responses to choose from.<sup>2</sup>

We have developed these guidelines to:

- help us assess how intelligible a proposed question is
- help people draft intelligible referendum questions

In this context, 'question' includes the question, the responses, and any statement that comes immediately before the question.

### Guidelines for assessing referendum questions

A referendum question should present the options clearly, simply and neutrally. So it should:

- be easy to understand
- be to the point

### Democracy matters

- be unambiguous
- avoid encouraging voters to consider one response more favourably than another
- avoid misleading voters

### Checklist

We will use the following checklist to help us assess how intelligible a question is.

- Is the question written in plain language? That is, language that:
  - uses short sentences (around 15–20 words)
  - is simple, direct, and concise
  - uses familiar words, and avoids jargon or technical terms that would not be easily understood by most people
- Is the question written in neutral language, avoiding words that suggest a judgement or opinion, either explicitly or implicitly?
- Is the information contained in the question factual, describing the question and the options clearly and accurately?
- Does the question avoid assuming anything about voters' views?

<sup>1</sup> Under the Political Parties, Elections and Referendums Act 2000.

<sup>2</sup> How many responses voters can vote for depends on the voting system used at that referendum.

### Feedback

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## Our approach to assessing the intelligibility of referendum questions

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### Our responsibilities

A referendum gives the public the opportunity to vote on a proposal put forward by government.<sup>1</sup> If a referendum is going to take place, a piece of legislation is written containing the proposed question. The law requires us to publish our views on the intelligibility of proposed questions for UK-wide, national or regional referendums.<sup>2</sup> The UK Government must also consult us on the intelligibility of proposed questions for local referendums in England and Wales on the way local authorities are run.<sup>3</sup>

This statement sets out the approach we will take to assess the intelligibility of referendum questions, including the timetable for this work.

### Our aim and approach

Our aim is to look at a proposed question from the perspective of voters,<sup>4</sup> to see if it is written in a way that means they are likely to understand it. This includes whether or not they can understand how to answer it. It is important that voters can mark their ballot papers easily, and that they are confident that they

have voted the way they intended to. Governments may make important decisions based on the outcome of a referendum, and so that outcome needs to be an accurate reflection of what voters want. This means that the question should present the options to voters clearly, simply and neutrally.

We have produced some referendum question guidelines that set out the criteria we will use to assess how intelligible a question is (see our referendum question guidelines).<sup>5</sup> As well as looking at the question ourselves, we will gather evidence to help us with our assessment. This will include:

- carrying out research with the public (see next section for more details)
- asking for advice from experts on accessibility and plain language
- talking to other people, for example political parties and campaign groups associated with the referendum, and other key groups or individuals who have an interest in the referendum and its outcome

We will publish the research reports and a summary of the other evidence we have gathered and used in our assessment.

### Research with the public

Because we want to look at whether or not voters can understand a proposed referendum question, we would need to get evidence of this from voters themselves. The best way for us to get this evidence is by carrying out research to see how people react to and understand the question, and we would want to do this for any referendum question we are asked to assess.

The research would usually be done through focus groups and one-to-one interviews. This type of research will help us to find out people's understanding of a proposed referendum question, their attitudes towards it, and the reasons why they think or feel the way they do about it. It also helps to explain why people may find a question easy or difficult to understand, and to

## Democracy matters

explore how the question could be made more intelligible. The research would focus on the question itself and how it is written, rather than on how people would vote.

We would include a wide range of people in the research, so that we can get the views of people with different backgrounds (e.g. people of different ages, gender, and levels of education), or people who live in different places.

### Timetable

We should be able to publish our views on the intelligibility of a proposed referendum question around 10 weeks after finding out what the question is. This includes eight weeks to carry out public opinion research, based on getting at least two weeks' notice of the date when we will be given the exact wording of the question. We will do as much advance preparation as we can for the research – which is the part of our evidence-gathering that will take the longest – so that we can make sure it is completed as quickly as possible.

- 1 This statement only covers referendums on proposals put forward by governments, although referendums can be held on other issues. By 'government' we mean the UK Government, the Scottish Government, the Welsh Assembly Government or the Northern Ireland Executive.
- 2 The requirement is set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). Our responsibility relates to referendums held under the framework of PERA.
- 3 Under Section 45 (8A)–(8D) of the Local Government Act 2000, inserted by Schedule 21 of PERA.
- 4 By 'voters' we mean people who would be eligible to vote in that referendum.
- 5 We produced our original guidelines in 2002 and have recently reviewed and updated them. The guidelines are available at [www.electoralcommission.org.uk/elections/referendums](http://www.electoralcommission.org.uk/elections/referendums)

### Feedback

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**The  
Electoral  
Commission**

# Appendix C: List of responses

The following individuals / organisations gave their views to us through correspondence or in meetings held for the purpose.

Name	Organisation
Phil Johnson / Peter Woodward	Association of Electoral Administrators Wales
Rhys George	Association of Electoral Administrators Wales
John Osmond	Institute for Welsh Affairs
Warwick Nicholson	UKIP Wales
Gwenllian Lansdown	Plaid Cymru
Sarah Rochira	RNIB Cymru
Richard Williams	RNID Cymru
Cynog Dafis	
Diane Banner/ Rachel Banner/ Stephen Senior	True Wales
Graham Benfield	Wales Council for Voluntary Action
Professor Richard Wyn Jones	Wales Governance Centre
Chris Roberts	Welsh Labour Party
Gwyn Jones	Welsh Language Board
Steve Thomas	Welsh Local Government Association
Bryn Parry Jones	Pembrokeshire County Council
Sir Emyr Jones Parry GCMG	All Wales Convention
Professor Keith Patchett	
Professor Laura McAllister	University of Liverpool
Alan Trench	University of Edinburgh
Gwilym Morris	The Pollen Shop
Ruth Thornton / Martin Cutts	Plain Language Commission
Tony Maher	Plain English Campaign
Rt Hon Carwyn Jones AM / Ieuan Wyn Jones AM	Welsh Assembly Government

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## Democracy matters