Draft Order laid before Parliament under section 103(4) of the Government of Wales Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

CONSTITUTIONAL LAW
DEVOLUTION, WALES
REFERENDUMS
REPRESENTATION OF THE PEOPLE

The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010

Made - - - - ***

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order has been laid before and approved by a resolution of each House of Parliament and the National Assembly for Wales in accordance with section 103(4) and (5) of the Government of Wales Act 2006(**1**).

Before a draft of this Order was laid before each House of Parliament or the National Assembly for Wales, the Secretary of State—

(a) undertook such consultation as the Secretary of State considered appropriate in accordance with section 103(6) of that Act, and

(b) consulted the Electoral Commission on the wording of the referendum question and the preceding statement in accordance with section 104(4)(a) of the Political Parties, Elections and Referendums Act 2000(**2**).

Accordingly, Her Majesty, in pursuance of section 103(1) of, and Schedule 6 to, the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

(**1**) 2006 c. 32.
(**2**) 2000 c. 41.

Citation, commencement and extent

1.—(1) This Order may be cited as the National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010.

(2) This Order comes into force on the day after the day on which it is made.

(3) The modifications(**3**) made by this Order have the same extent as the enactments(**4**) modified.

Interpretation etc.

2.—(1) In this Order, except where the context requires otherwise—

"the 1983 Act" means the Representation of the People Act 1983(**5**);

"the 2000 Act" means the Political Parties, Elections and Referendums Act 2000;

"the 2006 Act" means the Government of Wales Act 2006;

"the 2001 Regulations" means the Representation of the People (England and Wales) Regulations 2001(**6**);

"the 2007 Order" means the National Assembly for Wales (Representation of the People) Order 2007(**7**);

"absent voter" means an elector who is entitled to vote by proxy in the referendum or an elector or proxy who is entitled to vote by post in the referendum; and absent vote is to be construed accordingly;

"anonymous entry" in relation to a register is to be construed in accordance with section 9B of the 1983 Act(**8**) and "record of anonymous entries" means the record prepared in pursuance of regulations made by virtue of paragraph 8A of Schedule 2 to the 1983 Act (**9**);

"available for inspection" means available for inspection during ordinary office hours;

"Chief Counting Officer" means the Chief Counting Officer for the referendum (**10**);

"the Commission" means the Electoral Commission established by section 1 of the 2000 Act;

"counting agent" means a person appointed under rule 17(1)(b) of the Referendum Rules;

"counting officer", in relation to a voting area, means the officer appointed for that area under section 128(3) of the 2000 Act;

"designated counting agent" means a counting agent designated under rule 17(2) of the Referendum Rules;

"disability", in relation to doing a thing, includes the short term inability to do it;

"elector" means any person entitled to vote on that person's own behalf in the referendum(**11**);

(**3**) For the meaning of "modifications", *see* section 158(1) of the Government of Wales Act 2006.
(**4**) For the meaning of "enactments", *see* the said section 158(1).
(**5**) 1983 c. 2.
(**6**) S.I. 2001/341, as amended by S.I.s 2001/1700, 2002/1871, 2004/294 and 1848, 2005/2114, 2006/752 and 2910, 2007/1025 and 1368, 2008/1901 and 3296, 2009/725 and 2010/882.
(**7**) S.I. 2007/236 to which there are amendments not relevant to this Order.
(**8**) Section 9B of the Representation of the People Act 1983 was inserted by section 10(1) of the Electoral Administration Act 2006 (c. 22). There is an amendment to it not relevant to this Order.
(**9**) Paragraph 8A of Schedule 2 to the Representation of the People Act 1983 was inserted by paragraph 15 (1) and (6) of Schedule 1 to the Electoral Administration Act 2006; and see SI2006/2910 made thereunder.
(**10**) *See* section 128(2) of the Political Parties, Elections and Referendums Act 2000.
(**11**) *See* paragraph 1 of Schedule 6 to the Government of Wales Act 2006, as read with section 12 of that Act, for the persons entitled to vote in the referendum.

"electoral number" means a person's number in the register to be used in the referendum(**12**);

"legal incapacity" includes any disqualification imposed by this Order or by any other enactment;

"list of proxies" means the list kept under paragraph 4(3) of Schedule 1;

"permitted participant" has the same meaning as in section 105(1) of the 2000 Act;

"polling agent" means a person appointed under rule 17(1)(a) of the Referendum Rules;

"postal ballot paper" means a ballot paper issued to a postal voter;

"postal proxy" means a person entitled to vote by post as proxy in the referendum;

"postal voter" means an elector or proxy who is entitled to vote by post in the referendum;

"postal voters list" means the list kept under paragraph 4(2) of Schedule 1;

"postal voting statement" is the form B set out in Schedule 6 that is to be sent with the postal ballot paper to a postal voter in accordance with rule 12 of the Referendum Rules;

"presiding officer" is to be read in accordance with rule 14 of the Referendum Rules;

"proxy postal voters list" means the list kept under paragraph 6(8) of Schedule 1;

"qualifying address" has the same meaning as in section 9(8)(b) of the 1983 Act;

"qualifying Commonwealth citizen" means a Commonwealth citizen who is either—

(a) not a person who requires leave under the Immigration Act 1971(**13**) to enter or remain in the United Kingdom, or

(b) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act,

but a person is not a qualifying Commonwealth citizen if he does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases);

"the referendum" means the referendum under article 3;

"referendum agent" means a person appointed under article 18;

"the referendum period" means the period specified in article 5;

"Referendum Rules" means the rules for the conduct of the referendum set out in Schedule 3;

"register" means the register of local government electors;

"registration officer" has the meaning given by section 8 of the 1983 Act;

"relevant citizen of the Union" means a citizen of the Union who is not a qualifying Commonwealth citizen nor a citizen of the Republic of Ireland and "citizen of the Union" is to be construed in accordance with Article 20 of the Treaty on the Functioning of the European Union;

"relevant registration officer" is to be construed in accordance with rule 42(3) of the Referendum Rules;

"relevant time" means 5p.m. on the eleventh day before the day of the poll in the referendum;

"responsible person" has the same meaning as in section 105(2) of the 2000 Act;

(**12**) As to electoral numbers, *see* section 9 of the Representation of the People Act 1983 as substituted by paragraph 3 of Schedule 1 to the Representation of the People Act 2000 (c.2) and as amended by paragraph 4 of Schedule 1 and Schedule 2 to the Electoral Administration Act 2006.

(**13**) 1971 c. 77. There are amendments to section 8 that are not relevant to this Order.

"service voter" means a person who has made a service declaration in accordance with section 15 of the 1983 Act(**14**) and is registered or entitled to be registered in pursuance of it;

"universal service provider" has the same meaning as in the Postal Services Act 2000(**15**);

"valid postal voting statement" means a postal voting statement, which, in accordance with paragraph 19 or 20 of Schedule 2, the counting officer is satisfied has been duly completed;

"voter" means a person voting in the referendum and includes a person voting as proxy and, except in the Referendum Rules, a person voting by proxy, and "vote" (whether noun or verb) is to be construed accordingly, except that in those Rules any reference to an elector voting or an elector's vote includes a reference to an elector voting by proxy or elector's vote given by proxy; and

"voting area" means a county or county borough in Wales.

(2) For the purposes of this Order a person is to be deemed not to have attained a given age until the commencement of the relevant anniversary of the day of that person's birth.

(3) A power conferred by this Order to give a direction includes power to vary or revoke the direction.

Referendum and date of poll

3.—(1) A referendum is to be held throughout Wales about whether the Assembly Act provisions should come into force(**16**).

(2) The poll at the referendum must be held on 3 March 2011.

Referendum question and statement

4.—(1) The question, in English and Welsh, that is to appear on the ballot papers in the referendum is—

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

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

(2) The statement, in English and Welsh, that is to precede the question on the ballot papers is—

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

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

agriculture	health
education	housing
the environment	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.

(**14**) Section 15 was amended by S.I. 1995/1948, Schedule 2 paragraph 4; the Representation of the People Act 2000, Schedule 1 paragraphs 1 and 8 and by the Electoral Administration Act 2006, sections 12(7) and 13(1).
(**15**) 2000 c. 26. *See* section 4(3) and (4) of that Act.
(**16**) For the meaning of "the Assembly Act provisions", *see* section 103(8) of the Government of Wales Act 2006.

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.

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

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

Amaethyddiaeth	iechyd
Addysg	tai
yr amgylchedd	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 unrhyw un 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.".

Referendum period

5. For the purposes of Part 7 of the 2000 Act, the referendum period for the referendum begins with the date on which this Order comes into force and ends with the date of the poll at the referendum.

Polling districts and polling places

6.—(1) Every voting area must be divided into the same polling districts, each with the same polling place, as would have effect for the purposes of local government elections(**17**) if held for that area on the day of the poll at the referendum.

(2) Paragraph (1) has effect subject to any direction of a counting officer changing polling districts or polling places where the counting officer considers it necessary to do so by reason of special circumstances.

(3) The referendum is not to be questioned by reason of—

(a) any non-compliance with the provisions of this article, or

(b) any irregularity relating to polling districts or polling places.

Other voting provisions

7.—(1) Schedule 1 makes further provision about voting in the referendum, including—

(a) provision about the manner of voting (including provision for absent voting); and

(**17**) For the meaning of "local government election" in relation to Wales *see* section 203(1) of the Representation of the People Act 1983 to which there are amendments not relevant to this Order. *See* section 31(1A) and (3) of that Act as to polling districts and polling places for such elections; sub-section (1A) was inserted by the Local Government (Wales) Act 1994 (c. 19) Schedule 16 paragraph 68(6).