

The Electoral Commission

Rt Hon Cheryl Gillan MP
Secretary of State for Wales
The Wales Office
Gwydyr House
Whitehall
London
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26 May 2010

Dear Secretary of State

At our meeting of 24 May, I undertook to write to you confirming the key principles that the Commission believes should underpin any referendum, together with some further points of detail.

I attach a copy of our summary of those key principles, which we circulated to interested parties across the UK in March 2010. The principles underpin our decisions in areas where we have a role and underpin our approach to the referendum on the law-making powers of the National Assembly for Wales.

Most of the detail relating to these areas has been covered by discussions in the Project Board led by your office and our views are on record there. For your ease of reference, I am providing further detail on points that we mentioned at our meeting on Monday. I have written to you separately about question assessment of course and we discussed that at our meeting.

Referendum period

The Political Parties, Elections and Referendums Act 2000 (PPERA) provides for a minimum statutory referendum period of 10 weeks. The referendum-specific legislation may specify a longer statutory period than this. Whatever the length of the statutory period for a particular referendum, the period will consist of three stages. The first stage is a 28 day period during which campaigners may begin registering as permitted participants, and may apply for designation as the lead campaigner for the outcome they support. The second stage is a 14 day period in which the Commission makes the designation decision. The third stage, which lasts for a minimum of 28 days in a 10

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week statutory referendum period, and will be longer if the statutory period is set at longer than 10 weeks, is the main campaign period

It is possible for the minimum statutory period of 10 weeks to be shortened further by way of an order. However, based on the Commission's experience in the North East referendum in 2004, we are of the view that the minimum 10 week statutory period provided for in PPERA is the minimum period needed for campaigners to apply for registration and designation, for the designation decision to be taken, and for campaigners to campaign and adequately inform voters about the referendum issue.

Whatever the length of the statutory referendum period, it will always be important for the polling date, the spending limits and the other provisions applying to any specific referendum to be confirmed well in advance of the start of the statutory period. This will enable us to produce accurate guidance for all those considering campaigning in the referendum, as well enabling planning by local counting officers.

Restriction on publicity about the referendum

Based on lessons learnt at the referendum in 2004, we have called for an extension of the statutory ban on government publicity about a referendum that currently applies for the 28 day referendum campaign period. I attach a summary of our view on the issues, which has been put to the Project Board. We appreciate that Welsh Assembly Government has concerns about the effect that an extension of the statutory ban could have on its wider business and consequently opposes the extension.

As mentioned at our meeting on Monday, if there is no extended statutory ban throughout the referendum period, then we call on the UK Government and Welsh Assembly Government to adopt a voluntary (self-imposed) restriction on producing publicity about the referendum for at least the 28 days prior to the earliest issue of postal votes, that is, 43 (calendar) days before the date of poll. The First Minister has indicated that he is amenable to such voluntary restriction.

Public awareness activity

The Commission intends to provide information for voters about how to take part in the referendum, including how to register to vote and details of when and how to vote. In response to concerns expressed by the former Secretary of State and the First Minister about the public information deficit about the subject of the referendum, we have said that we will include within our voter information materials a short description of what the referendum is about. In order to enable us to do so, we believe that suitable provision in the referendum Order is necessary.

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I do hope this information is helpful and I look forward to our ongoing communication as we continue with our preparations for a possible referendum in Wales.

I am copying this letter to the First Minister.

With best wishes,


Jenny Watson
Chair

Restriction on government publicity during referendum campaign period

Current statutory controls on publications

The Political Parties, Referendums and Elections Act 2000 (PPERA) s. 125 provides that no materials shall be published during the 'relevant period' by or on behalf of:

- Any Minister of the Crown, government department or local authority or
- Any other person or body whose expenses are defrayed wholly or mainly out of public funds or by any local authority (excluding the BBC or S4C)

if that material:

- Provides general information about a referendum
- Deals with any of the issues raised by any question on which such a referendum is being held
- Puts any arguments for or against any particular answer to any such question or
- Is designed to encourage voting at such a referendum.

The 'relevant period' is the 28 days ending on polling day.

The restriction does not apply to:

- material made available in response to specific requests for information or to access to information by people specifically seeking it
- to anything done by or on behalf of the Electoral Commission
- designated organisations
- the publication of information related to the holding of the poll
- the issue of press notices.

The Electoral Commission's preference is that the restriction be extended to cover the total duration of the referendum period, no matter how long it is, or at least the 28 day period before postal ballot packs are issued.

In the referendum held in 2004 in the North East, the UK Government did not agree to the Commission's proposal to extend the restriction to the whole period but adopted a voluntary restriction from 28 days prior to earliest issue of postal votes: ie 43 (calendar) days