Police and Crime Commissioner Elections - Cabinet Office Indemnity

Presented to Parliament by the Minister of State for the Constitution and Devolution by Command of Her Majesty

January 2021
Background

1. The polling day for the next ordinary police and crime commissioner elections ("PCC elections") is 6 May 2021.

2. At PCC elections police area returning officers ("PARO’s") exercise functions in respect of each police area. Police areas are divided into voting areas, and local returning officers ("LRO’s") exercise functions in respect of those voting areas. Functions are conferred respectively on PAROs and LROs by the Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012 (S.I. 2012/1918). PAROs also have a power of direction over LROs as to how they exercise their functions at PCC elections.

3. Where the ordinary PCC elections in May 2021 are combined with elections to the Senedd Cymru / the Welsh Parliament ("the Welsh Parliament"), the LRO for a voting area will be the constituency returning officer for that area (determined in accordance with the National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236), and the voting areas will be the Assembly constituencies.

4. Otherwise at PCC elections in England, and at PCC elections combined with by-elections to the Welsh Parliament, voting areas are local authority areas.

5. PAROs and LROs are personally responsible for the conduct of the election in their police or voting area and therefore may be subject to claims relating to the conduct of the election in respect of which they are exercising functions.

6. Accordingly, the Cabinet Office has agreed to provide an indemnity in respect of certain liabilities to which a PARO or LRO may be subject as a result of exercising functions in relation to the conduct of the PCC election for which he or she is responsible. Further information about the indemnity is set out below.

Indemnity

7. Subject to paragraphs 8 to 17, the Cabinet Office agrees on demand to indemnify and to keep indemnified PAROs and LROs from and against all and any losses, liability, damages, costs (including, but not limited to, reasonable legal costs), claims, proceedings and/or reasonable expenses which may be taken or made against or incurred by the PARO or LRO in connection with a PCC election, which arise in relation to the PARO or LRO’s discharge of responsibilities as PARO or LRO at that election (referred to together in this paragraph as “any liability arising”). For the avoidance of doubt this includes any liability arising before the date of this indemnity solely in connection with the ordinary PCC election the poll for which is on 6 May 2021.
8. The indemnity covers (but is not limited to) a PARO’s or LRO’s liabilities to the public, as an employer, or otherwise incurred in his or her professional capacity:

   a. in relation to any claim for personal injury or death where the cause of action arises in relation to the PARO’s or LRO’s exercise of functions as PARO or LRO, or
   
   b. as a result of a challenge to the conduct of the election by an election petition.

9. There is no limit on the number of claims which a PARO or LRO may make.

**Exclusions**

10. The indemnity does not cover:

   a. any losses, liability, damages, costs, claims, proceedings or expenses which arise in whole or part from any wrongful act or omission committed intentionally or recklessly by the PARO or LRO;

   b. any claim to the extent that such claim relates to the acts or omissions of the PARO or LRO in carrying out registration duties in relation to the election;

   c. any claim relating to use of a motor vehicle where such use should have been covered by a valid insurance policy, but was not;

   d. any claim to the extent that such claim is covered by the terms of an existing insurance policy held by:

      (i) the PARO or LRO,
      (ii) a local authority, or
      (iii) in relation to a PCC election combined with an Assembly election, Welsh Ministers,

      of which the PARO or LRO is a beneficiary, and which covers the conduct of the PCC election (whether or not it also covers other matters);

   e. any excess costs on such an insurance policy mentioned in sub-paragraph d;

   f. any claim to the extent that such a claim is covered by the terms of any other indemnity which is in force and which covers the conduct of the PCC election (whether or not it also covers other matters);

   g. any claim for charges in respect of services rendered or expenses incurred for or in connection with the PCC election which charges are payable under section 55
of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”);

h. any penalty imposed in relation to a criminal offence.

11. For the purposes of paragraph 10.d, an insurance policy does not include any self-insurance arrangements made by a local authority or (as the case may be in relation to a PCC election combined with a Welsh Parliamentary election) Welsh Ministers.

12. It does not cover any losses, liability, damages, costs, claims, proceedings or expenses whatsoever incurred in relation to the conduct of any other elections or referendums held whilst the indemnity is in force.

13. Where the poll at a PCC election is combined with the poll at another election (including, but not limited to, a Welsh Parliamentary election) or referendum, any losses, liability, damages, costs, claims, proceedings or expenses incurred in relation to the combined polls (excluding anything solely attributable to one poll) are to be apportioned equally, so far as that is reasonable, among the elections and referendums, and the indemnity covers only the relevant portion for the PCC election.

Conditions

14. The indemnity is subject to the following conditions:

a. the Cabinet Office must be notified before the PARO or a LRO makes any admission of liability, or settles any claim;

b. the PARO or LRO must use all reasonable efforts to mitigate any losses, liability, damages, costs which are, or are likely to be, the subject of the indemnity and must ensure that any expenses incurred are incurred properly and reasonably;

c. without prejudice to sub-paragraph b, the PARO and LRO must use all reasonable efforts to avoid the duplication of any costs or expenses which are, or are likely to be, the subject of the indemnity; and

d. the PARO or LRO must notify the Cabinet Office of any claims to which the indemnity applies, or is likely to apply, as soon as possible and in any event within 13 months after the day of the poll at the election to which the claim relates.

Duration of the Indemnity

15. Subject to the provisions that follow, the indemnity applies in relation to the ordinary PCC elections, the polls for which are due to take place on 6 May 2021, and any election held under section 51 of the 2011 Act (election to fill a vacancy) after that date but before the ordinary election referred to in paragraph 17.a, and it remains in
force in respect of claims arising (subject to compliance with paragraph 14.d) in relation to such an election.

16. Insofar as it applies to a particular PARO or LRO, it may be terminated early by the Cabinet Office on 30 days’ written notice to that officer.

17. For the avoidance of doubt:

a. the indemnity does not apply in relation to the ordinary PCC elections which will take place on the ordinary day of election in May 2024 (or such other day in 2024 as is determined in accordance with an order made under section 50(4) of the Police Reform and Social Responsibility Act 2011);

b. where the indemnity is terminated in accordance with paragraph 16, it remains in force in respect of claims that arise before that termination.

Date: 14 January 2021