Departmental Minute:

Indemnity for Police Area Returning Officers and Local Returning Officers at Police and Crime Commissioner Elections

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

January 2021
Indemnity for Police Area Returning Officers and Local Returning Officers at the 2021 Police and Crime Commissioner elections

Minister of State for the Constitution and Devolution

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £300,000 for which there is no specific statutory authority, for the Minister concerned to present a departmental Minute to Parliament giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until 14 Parliamentary sitting days after the issue of the Minute, except in cases of special urgency.

This Minute sets out the Cabinet Office’s proposal to indemnify Police Area Returning Officers and Local Returning Officers (“PAROs” and “LROs”) at forthcoming elections for Police and Crime Commissioners against uninsured claims that arise out of the conduct of their duties. We will also provide a certificate confirming that we will bear any employee liabilities of the PARO or LRO which would otherwise be covered by insurance procured under the Employers’ Liability (Compulsory Insurance) Act 1969. The Cabinet Office previously provided an indemnity in 2016 for the Police and Crime Commissioner (“PCC”) elections. The Cabinet Office also provided an indemnity for the 2019 European Parliamentary election and the 2019 UK Parliamentary election and has also provided one in respect of recall petitions.

The indemnity will only apply so far as any charges are not otherwise recoverable under the charges provisions contained in section 55 of the Police Reform and Social Responsibility Act 2011 (and see further the exclusions below).

PCC elections will be held on 6 May 2021 in every police area in England and Wales (excluding London and Greater Manchester). If there is a subsequent vacancy, by-elections can be called any time up to six months before the next ordinary elections in May 2024.

In England, PAROs and LROs will be conducting local elections in combination with the PCC elections on 6 May 2021. In Wales, PAROs and LROs will be conducting Welsh Parliamentary elections in combination with PCC elections on 6 May 2021. The Welsh Government will provide its own indemnity to returning officers working on the Welsh Parliamentary polls. Where a claim is made against the actions or conduct of a returning officer in relation to both Welsh Parliamentary and PCC elections, any losses, liability, damages, costs, claims, proceedings or expenses incurred in relation to the combined polls will be apportioned equally, so far as that is reasonable.

Under powers granted under the Police Reform and Social Responsibility Act 2011, LROs will be responsible for the conduct of the poll in each local authority area (except in Wales at the ordinary election, where the polls will be administered on Welsh
Parliamentary constituency boundaries). In addition, 40 PAROs have been appointed to coordinate the elections and any by-elections across police areas.

PAROs and LROs are independent officers appointed by statute and are separate from both central and local government. As such, they are personally liable for the conduct of the PCC elections. They are therefore potentially exposed, as a result, to a variety of legal risks and challenges. Existing insurance that covers PAROs and LROs in discharging their statutory duties as returning officers at local elections will not, in most cases, cover them at the PCC election. However, where a PARO or LRO does have insurance which covers liabilities incurred at the PCC election, they will be required to claim under that insurance (or to seek to claim under it) before making a claim under this indemnity.

In the light of this, the Cabinet Office proposes to provide PAROs and LROs with a specific indemnity, where existing insurance coverage will not apply.

It is intended that the indemnity will apply to any liability already incurred in respect of the forthcoming ordinary elections on 6 May 2021 and in that respect, therefore, will be retrospective.

Besides the elections on 6 May 2021, we also wish to cover liabilities incurred in respect of any subsequent PCC by-election that takes place before the next scheduled ordinary elections in May 2024. It will therefore cover liabilities and claims arising in relation to PCC elections where the date of the poll is on or before 1 May 2024. Any claim must be made within 13 months of the day of the poll at the election to which it relates.

The likelihood of the indemnity being called upon, and the value of claims that might be made, are difficult to quantify. However, the Government has provided similar indemnities in relation to previous elections and the value of claims has been very low. There were no claims against the indemnity for the European Parliamentary election on 23 May 2019, and no claims have been received so far with respect to the UK Parliamentary election on 12 December 2019. The largest claim met under previous government insurance or indemnity arrangements for a national election was £24,036 at the 2009 European Parliamentary election. Minor injury and damage claims met under government insurance or indemnity arrangements at national elections have amounted to less than £10,000 over the last decade.

However, the possibility of a significant claim in the future cannot be ruled out. For example, the costs for the Winchester election petition in 1997, following the General Election of that year, amounted to £250,000. If a petition involving a PARO or LRO went to a full trial and ran for several days it is possible that the bill for legal costs would be considerable. It is also conceivable that there could be more than one occurrence associated with a single election. The costs of an election petition might not be completely covered through any existing insurance arrangements and may require the
indemnity to be called upon.

The indemnity will provide PAROs and LROs with cover for:

Amounts that exceed the upper limits on any existing insurance policies held by them, or local authorities on their behalf, that will provide coverage;

Any reasonable costs resulting from their liabilities to the public, as an employer or in their professional role.

The indemnity will be limited to the extent that:

(i) it will not cover any costs which arise in whole or part from any wrongful act or omission committed intentionally or recklessly by the PARO or LRO;
(ii) it will not cover any claim relating to the carrying out of electoral registration duties;
(iii) it will not cover any claim relating to the use of a motor vehicle where such use should have been covered by a valid insurance policy but was not;
(iv) it will not cover situations where the PARO or LRO’s insurance policy, a local authority’s insurance policy or an insurance policy arranged by Welsh Ministers (so far as the indemnity covers combined elections in Wales) and/or other indemnity offers an alternative means of cover;
(v) it will not generally cover any excess costs on such an insurance policy (although individual claims for excess costs will be judged on their merits);
(vi) it will not cover charges which are otherwise recoverable by PAROs or LROs under section 55 of the Police Reform and Social Responsibility Act 2011 (including such charges so far as they exceed the maximum recoverable amount set out in secondary legislation), which charges are payable from the Consolidated Fund;
(vii) it will not cover any penalty imposed in relation to a criminal offence.

Subject to those exclusions, therefore, the indemnity is unlimited. If the liability is called, provision for any payment will be sought through the normal Supply procedure. HM Treasury has approved the proposal in principle.

We will also certificate PAROs and LROs under the Employer’s Liability (Compulsory Insurance) Regulations 1998 in respect of any liability to their employees. Employers are required by the Employers’ Liability (Compulsory Insurance) Act 1969 to insure themselves against liability arising out of and in the course of their role as an employer. Because PAROs and LROs can’t find cover at a reasonable cost and have required excessive resource to negotiate something suitable in the past, we are providing PAROs and LROs with a certificate of exemption, and in the unlikely event of any liability being incurred by a PARO or LRO this will instead be met by monies provided by Parliament (pursuant to the indemnity).
The Treasury has approved the proposal in principle. If, during the period of fourteen Parliamentary sitting days beginning on the date on which this Minute was laid before Parliament, a Member signifies an objection by giving notice of a Parliamentary Question or by otherwise raising the matter in Parliament, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.
POLICE AND CRIME COMMISSIONER ELECTIONS

Employers’ Liability (Compulsory Insurance) Regulations 1998:
Certificate of Exemption

Introduction

This certificate applies in relation to the ordinary election of police and crime commissioners, the poll for which is due to take place on 6 May 2021 and any subsequent elections held under section 51 of the Act before the next scheduled ordinary election in May 2024. It does not apply to the ordinary election due to take place in May 2024.

Interpretation

In this certificate—

“the Act” means the Police Reform and Social Responsibility Act 2011; “election” means an election of a police and crime commissioner; “employee” means a person employed by a returning officer in connection with an election; “returning officer” means—
(a) a person designated as a police area returning officer for the purposes of section 54(1)(b) of the Act; or
(b) a local returning officer (within the meaning of section 54(5) of the Act) on whom functions are conferred in relation to an election by virtue of regulations made under section 54(2)(b) of the Act.

Exemption

In accordance with the provisions of regulation 9 of, and paragraph 1 of Schedule 2 to, the Employers’ Liability (Compulsory Insurance) Regulations 1998 (S.I. 1998/2573), the Chancellor of the Duchy of Lancaster, certifies that any claim established against a returning officer in respect of any liability to an employee of the kind mentioned in section 1(1) of the Employers’ Liability (Compulsory Insurance) Act 1969 will, to any extent to which it is incapable of being satisfied by the returning officer, be satisfied out of moneys provided by parliament.

Signed: [Signature]

Date: 14/01/2021

Chloe Smith MP
Minister of State for the Constitution and Devolution Cabinet Office