

**Written Ministerial Statement:
Indemnity for Returning Officers at Police and Crime Commissioner elections**

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £250,000 for which there is no specific statutory authority, for the Department concerned to present to Parliament a Minute giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen parliamentary sitting days after the issue of the Minute, except in cases of special urgency.

It is on this basis that I lay this Minute setting out the Home Office proposal to indemnify returning officers in the 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 returning officer which would otherwise be covered by insurance procured under the Employers' Liability (Compulsory Insurance) Act 1969. Indemnities were previously provided by the Ministry of Justice to returning officers for the 2009 European Parliamentary elections and 2010 Parliamentary Elections.

The first elections for Police and Crime Commissioner will be held in every police area outside of London in England and Wales on the 15 November 2012. If there is a subsequent vacancy, by-elections can be called any time up to six months before the next elections in May 2016.

Under powers granted under the Police Reform and Social Responsibility Act 2011, Local Returning Officers (LROs) will be responsible for the conduct of the poll in each local authority area. In addition, 41 Police Area Returning Officers (PAROs) are being appointed to coordinate the elections and by-elections across the police area.

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 Police and Crime Commissioner elections. They are exposed, as a result, to a variety of legal risks and potential challenges. Existing insurance that covers returning officers in taking forward their statutory duties at local elections will not, in most cases, cover them in these elections. This applies to both LROs and PAROs.

In light of this, the Home Office proposes to provide PAROs and LROs with a specific indemnity, where existing insurance coverage will not apply. We will also certificate the returning officers under The Employers' Liability (Compulsory Insurance) Regulations 1998 in respect of any liability to their employees.

We expect that returning officers will be liable for their election activities until at least three months after the PCC elections. We also wish to cover liabilities incurred in subsequent by-elections. Therefore this indemnity is expected to run until May 2016.

The precise level of the legal risks covered by this indemnity and likelihood of their arising are difficult to quantify. Although, the level and value of claims arising in recent UK Parliamentary and European Parliamentary elections has been very low. The largest claim met under indemnity arrangements for a national election was £24,035 at the 2009 European Parliamentary election. Minor injury and damage claims met at national elections have amounted to less than £10,000 over the last ten years.

However, it is not possible to rule out the possibility of a successful claim in future. If a election petition involving a PARO or LRO went to a full trial and ran for several days it is conceivable that the bill for legal costs could run into many £100,000s or more. It is also conceivable that there could be more than one such occurrence associated with an election. This has, however, not happened in the recent past with other elections and is considered an extremely remote possibility.

The indemnity will provide PAROs and LROs with cover for:

- i) Amounts excluded by the excess or that exceed the upper limits on any existing insurance policies held by returning officers, or local authorities on their behalf, that will provide coverage;
- ii) Any reasonable costs resulting from their liabilities to the public, as an employer and in their professional role.

The indemnity will be unlimited, except in the following ways:-

- iii) It will not cover any costs which arise in whole or part from any deliberate or wilful negligence by a PARO or LRO;
- iv) It will not cover situations where an existing insurance policy offers an alternative means of cover.

If the liability is called, provision for any payment will be sought through the normal Supply procedure.

The Treasury has approved the proposal in principle.

I am aware that Departmental Minutes normally allow fourteen parliamentary sitting days after the Minute is laid for Members to scrutinise and object to the proposals if they wish. However, in this case there is special urgency as the elections will take place in just a few months. As returning officers need to act now to enable these elections and need to be confident they are covered in respect of those actions, the indemnities need to commence immediately. As the Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012 are still before Parliament, it was not appropriate to notify Parliament of these indemnities earlier. Although returning officers will be formally appointed shortly, they have been informally appointed for some time to allow for preparations for the elections. As a result, they have been exposed to risks in carrying out their statutory duties and so liability will cover retrospective claims, such as those arising from advice they may have already given. I apologise to Members that they have not been allowed the normal scrutiny period in this case, but given the urgency of the situation, combined the parliamentary timetable, it was necessary to provide these indemnities in advance of notifying Parliament.

NICK HERBERT

Minister of State for Policing and Criminal Justice
Home Office

17 July 2012