



Cabinet Office

Departmental Minute: Returning Officers Indemnity Arrangements (European Parliamentary Elections)

Presented to Parliament by the Chancellor of the
Duchy of Lancaster and Minister for the Cabinet
Office by Command of Her Majesty

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Returning Officers Indemnity Arrangements (European Parliamentary Elections)

The Chancellor of the Duchy of Lancaster

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 explain 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.

It is the intention of the Government to respect the 2016 referendum result and leave the European Union with a deal as soon as possible. However, there is now a legal need to prepare for possible participation in the European Parliamentary elections, although it remains the government's intention for the UK to leave the European Union with a deal before 22 May, so that we do not need to participate in these elections.

Returning officers and local returning officers are independent officers appointed by statute—see section 6 of the European Parliamentary Elections Act 2002, the European Parliamentary Elections (Returning Officers) Order 2013 and the European Parliamentary Elections Regulations 2004—and are separate from both central and local government. As such, they are personally liable for the conduct of the European parliamentary elections. They are therefore exposed, as a result, to a variety of legal risks and potential challenges. Existing insurance that covers returning officers and local returning officers in taking forward their statutory duties at local elections will not, in most cases, cover them in these elections.

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

Given the highly unusual circumstances, as I hope Hon. Members will appreciate, it has not been possible for the indemnity to be laid in Parliament for 14 sitting days before coming into effect.

It is normal practice for the Government to indemnify returning officers in this way to ensure their personal liabilities are covered. The Cabinet Office previously provided an indemnity in 2014 for the European Parliamentary ("EP") elections. The Cabinet Office also provided an indemnity for the 2015 and 2017 UK Parliamentary general elections, the 2016 Police and Crime Commissioner elections, and the Recall of MPs petitions.

This minute sets out the Cabinet Office proposal to indemnify returning officers and local returning officers in preparing for and, if necessary, for the conduct of the 2019 European parliamentary elections 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 or local returning officer which would otherwise be covered by insurance procured under the Employers' Liability (Compulsory Insurance) Act 1969.

The indemnity will make clear that it only applies so far as any charges are not otherwise recoverable under the charges provisions contained in regulation 15 of the European Parliamentary Elections Regulations 2004 (and see further the exclusions below).

Besides the elections on 23 May 2019, we also wish to cover liabilities incurred in respect of any subsequent EP by-election that takes place before the UK leaves the EU. It will therefore cover liabilities and claims arising in relation to 2019 EP elections or subsequent by-elections where the date of the poll is before the UK leaves the EU and will come to an end on the day that the UK leaves the European Union. It is the intention of the Government to respect the 2016 referendum result and leave the European Union with a deal as soon as possible. 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 22 May 2014, and no claims have been received so far with respect to the UK Parliamentary election on 7 May 2015 or 8 June 2017. 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 returning officer or local returning officer 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 returning officers and local returning officers with cover for:

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

The indemnity will be limited to the extent that:

- It will not cover any costs which arise in whole or in part from any deliberate or wilful negligence by a returning officer or local returning officer;

- It will not cover situations where an existing insurance policy offers an alternative means of cover;
- It will not cover any claim relating to the acts or omissions of a returning or local returning officer in carrying out registration duties;
- It will not cover any claim relating to the use of a motor vehicle where such use does not relate to the conduct of the elections and/or should have been covered by a valid insurance policy but was not;
- it will not cover situations where the returning officer or local returning officer's insurance policy, a local authority's insurance policy and/or other indemnity offers an alternative means of cover;
- 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);
- it will not cover charges which are otherwise recoverable by returning officers or local returning officers under regulation 15 of the European Parliamentary Elections Regulations 2004 (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;
- it will not cover any penalty imposed in relation to a criminal offence.

The indemnity is therefore unlimited save for those particular exclusions. If the liability is called, provision for any payment will be sought from the Consolidated Fund. HM Treasury has approved the proposal in principle.