



Cabinet Office

Local Government Elections and Referendums – Cabinet Office COVID-19 Indemnity

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

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Background

1. The polling day for the next Local Government elections is 6 May 2021. For purposes of this indemnity,
 - a. “Local Government election and / or referendum” means the following elections / referendums held on 6 May 2021:
 - i. Local council elections in England;
 - ii. Combined authority mayoral elections in England;
 - iii. Local authority mayoral elections in England;
 - iv. Mayor of London and London Assembly elections;
 - v. Council tax referendums held in England under the Local Government Finance Act 1992;
 - vi. Governance referendums held in England under Part 1A of the Local Government Act 2000; and
 - vii. Neighbourhood planning referendums held in England under the Town and Country Planning Act 1990.and any local or combined authority by-elections of the above type held in England on or after 6 May 2021 and on or before 4 May 2022.
 - b. “Returning Officer” means the person or persons appointed to execute functions in conduct of the local government election or referendum in question, and includes the counting officer for a referendum.
2. At Local Government elections and referendums, Returning Officers are appointed to exercise functions in the conduct of the election or referendum. Functions are conferred on Returning Officers by the Representation of the People Act 1983 and associated electoral legislation, and by the Town and Country Planning Act 1990.
3. Returning Officers are personally responsible for the conduct of the election or referendum in their relevant area and therefore may be subject to claims relating to the conduct of the election or referendum in respect of which they are exercising functions.
4. In the ordinary course of events, Returning Officers for Local Government elections and referendums are indemnified in respect of liabilities and costs arising from execution of their duties by way of insurance cover by the relevant Local Authority; however, on the basis that Local Authority insurance cover may not cover Returning Officers in relation to liability arising from the COVID-19 pandemic in existence at the time of the May 2021 Local Government elections and referendums, the Cabinet Office has agreed to provide this indemnity on the strictly limited basis that it is solely for purposes of Local Government elections and referendums (as defined) held in the period 6 May 2021 to 4 May 2022 (inclusive of both dates), and only in relation to

liabilities and costs arising from COVID-19 as set out in the terms of the indemnity below.

5. Further information about the indemnity is set out below.

Indemnity

6. Subject to paragraphs 7 to 13, the Cabinet Office agrees to indemnify Returning Officers from and against all and any losses, liabilities, damages, costs (including, but not limited to, reasonable legal costs), and/or reasonable expenses which may be taken or made against or incurred by the Returning Officer in connection with a Local Government election or referendum, which arise from the contracting of COVID-19 due to participation in the election or referendum process, and which arise in relation to the Returning Officer's discharge of responsibilities. For the avoidance of doubt this includes any liability arising from the contracting of COVID-19 due to participation in the election or referendum process that arose before the date of this indemnity, provided that a causative link is established between the contracting of COVID-19 and the relevant local election or referendum, the poll for which takes place within the time period covered by the indemnity.
7. The indemnity covers (but is not limited to) a Returning Officer'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 relates to the contracting of COVID-19 due to participation in the election or referendum process in the context of the Returning Officer's exercise of functions as Returning Officer, or
 - b. as a result of a challenge to the conduct of the election or referendum by an election or referendum petition arising from alleged poll irregularities said to have been caused by the COVID-19 pandemic.
8. There is no limit on the number of claims which a Returning Officer may make under this indemnity in respect of claims against him or her arising from the contracting of COVID-19 due to participation in the election or referendum process, or from challenges to the conduct of the election or referendum as set out above.

Exclusions

9. The indemnity does not cover:
 - a. any losses, liability, damages, costs, claims, proceedings or expenses which arise in whole or in part from any wrongful or negligent act or omission committed intentionally or recklessly by the Returning Officer, including but not limited to any omission to follow guidance or Regulations as to conduct of the

election or referendum, or other relevant guidance issued by the Electoral Commission, HM Government and / or Public Health England.

- b. any claim to the extent that such claim relates to the acts or omissions of the Electoral Registration Officer in carrying out registration duties in relation to the election, whether negligent or otherwise;
- c. any claim to the extent that such claim is covered by the terms of an existing insurance policy held by:
 - i. the Returning Officer,
 - ii. a local authority,
 - iii. a Combined Authority, or
 - iv. the Greater London Authority

of which the Returning Officer is a beneficiary, and which covers the conduct of the Local Government election or referendum (whether or not it also covers other matters);

- d. any excess costs on such an insurance policy mentioned in sub-paragraph c;
- e. 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 Local Government election or referendum (whether or not it also covers other matters), including but not limited to any indemnity provided by a Local Authority in relation to the Local Government election or referendum;
- f. any claim for expenses properly incurred in relation to the holding of an election or referendum which expenditure is payable under section 36 of the Representation of the People Act 1983 or equivalent provision elsewhere in relation to a Local Government election or referendum;
- g. any penalty imposed in relation to a criminal offence.

10. It does not cover any losses, liability, damages, costs, claims, proceedings or expenses whatsoever incurred in relation to the conduct of the Local Government election or referendum other than such losses, liability, damages, costs, claims, proceedings or expenses arising from the contracting of COVID-19 due to participation in the election process.

Conditions

11. The indemnity is subject to the following conditions:

- a. the Cabinet Office must be notified before the Returning Officer makes any admission of liability, or settles any claim to which he or she considers this indemnity may apply;
- b. the Returning Officer 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 Returning Officer 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 Returning Officer 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 or referendum to which the claim relates.

Duration of the Indemnity

12. Subject to the provisions that follow, the indemnity applies in relation to the Local Government elections, the polls for which are due to take place on 6 May 2021, and it remains in force in respect of claims (subject to compliance with paragraph 14.d) in relation to those local government elections and any local government by-elections between 6 May 2021 and 4 May 2022 (inclusive of both dates).
13. Insofar as it applies to a particular Returning Officer, the indemnity may be terminated early by the Cabinet Office on 30 days' written notice to that officer.

25 March 2021