



Cabinet Office

Departmental Minute:

COVID-19 Indemnity for Returning Officers and Counting Officers at Local Government Elections and Referendums

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

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COVID-19 Indemnity for Returning Officers and Counting Officers at Local Government Elections and Referendums

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 Returning Officers and Counting Officers at forthcoming local government elections and referendums¹ in England on 6 May 2021 (and subsequent local government elections and referendums taking place on or before 4 May 2022) 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 or Counting 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 and Counting 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 the 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.

In England, Returning Officers and Counting Officers will be conducting local government elections and referendums in combination with the Police and Crime Commissioner elections on 6 May 2021. Returning Officers at PCC elections have been separately indemnified by HM Government in relation to those polls. Where a claim is made against the actions or conduct of a Returning Officer or Counting Officer in relation to both local government elections and referendums and PCC elections in relation to COVID-19, any losses, liability, damages, costs, claims, proceedings or expenses incurred in relation to the combined polls will be claimable under this indemnity subject to the limitations and exclusions listed below.

At Local Government elections and referendums, Returning Officers and Counting Officers are appointed to exercise functions in the conduct of the election or referendum. Functions are conferred on Returning Officers and Counting Officers by the

¹ This refers to council tax referendums, neighbourhood planning referendums and governance referendums held in England under the relevant legislation.

Representation of the People Act 1983 and associated electoral legislation, by the Town and Country Planning Act 1990, and by the Local Government Finance Act 1992.

Returning Officers and Counting 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 their functions.

Returning Officers and Counting Officers 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 elections and referendums. In the ordinary course of events, Returning Officers and Counting 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 and Counting 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 the indemnity on the strictly limited basis that it is solely for purposes of local government elections and referendums (as defined in the indemnity) 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.

The Returning Officer or Counting 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.

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. The possibility of a significant claim in the future, however, cannot be ruled out.

The indemnity covers (but is not limited to) a Returning Officer's or Counting Officer's liabilities to the public, as an employer, or otherwise incurred in his or her professional capacity:

- I. in relation to any claim for personal injury or death where the cause of action arises from the contracting of COVID-19 due to participation in the election or referendum process in the context of the Returning Officer's or Counting Officer's exercise of functions as Returning / Counting Officer, or;
- II. 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 caused by the COVID-19 pandemic.

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 or Counting 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 or Counting Officer,
 - ii. a local authority,
 - iii. a Combined Authority, or
 - iv. the Greater London Authority

of which the Returning Officer or Counting 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.

The indemnity also 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.

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. Subject to the above 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.

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.