

**EXPLANATORY MEMORANDUM TO  
THE POLICING PROTOCOL ORDER 2011**

**2011 No. 2744**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The instrument issues the Secretary of State's policing protocol ("the Protocol") – a document setting out the way in which various bodies involved in policing governance in England and Wales will exercise their functions in relation to each other.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Protocol is included as a Schedule to the instrument. Despite its incorporation in the instrument, the Protocol is not drafted in what might usually be regarded as legislative language. The Government regards this as a proper approach to take, bearing in mind that section 79 of the Police Reform and Social Responsibility Act 2011 ("the Act") describes the Protocol as a document setting out the Secretary of State's views on various matters.

- 3.2 Section 79 was inserted at a late stage in the Act's passage, after Parliament had been shown a draft of the Protocol (the intention, prior to the insertion of section 79, being that the Protocol would not have any statutory basis and would be issued by some means other than a statutory instrument). The Government takes the view that, in amending the Act so that it included provision for the Protocol to be issued by statutory instrument, Parliament did not intend to repudiate the drafting technique taken in the early version of the Protocol that they had seen.

4. **Legislative Context**

- 4.1 The Act makes significant changes to the governance arrangements for policing in England and Wales, with the exception of the City of London police area. The Act abolishes the police authorities responsible for maintaining police forces outside London and replaces them with directly elected Police and Crime Commissioners ("PCCs"). The Act also abolishes the Metropolitan Police Authority and replaces it with the Mayor's Office for Policing and Crime ("MOPC") – an office held by the Mayor of London. PCCs and the MOPC are referred to collectively in the Act as elected local policing bodies.

4.2 The Act provides for the establishment of a Police and Crime Panel (“PCP”) for each police area, with the function of scrutinising the actions and decisions of the elected local policing body. The PCP for the Metropolitan Police District is a committee of the London Assembly.

4.3 The Act further establishes Chief Officers of Police (Chief Constables of police forces outside London, and the Commissioner of Police of the Metropolis) as corporations sole with the capacity to employ staff and own property in their official capacity.

4.4 In the City of London the Common Council retains its role as the police authority, and the status of the Commissioner of the City of London Police remains unchanged.

4.5 Section 79 of the Act requires the Secretary of State to issue, by Order, a policing protocol. The Protocol is a document setting out the ways in which (in the Secretary of State’s view) she, elected local policing bodies, Chief Officers of Police and PCPs should exercise, or refrain from exercising, their functions so as to encourage, maintain or improve working relationships or limit or prevent the overlapping or conflicting exercise of functions. All of these persons and bodies are required to have regard to the Protocol in exercising their functions. This Order is the first use of the power to issue a Protocol.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The policy objective of the reform of policing governance under the Act is to change the way in which policing is held to account, replacing accountability to Government by means of overly bureaucratic central control with local accountability to the public via a clearly identifiable directly elected individual. The intention is that PCCs and the Mayor of London in his capacity as the MOPC will be powerful local representatives, able to set the policing priorities for the police force within their area in response to the needs and demands of their communities. They will ensure that local and national priorities are suitably funded by setting a budget and the local precept, and will hold the Chief Officer of Police to account for the police force’s performance.

7.2 During the passage of the Act concern was raised in Parliament and elsewhere that a directly elected individual might be more open to temptation to interfere in the operational decisions of the Chief Officer of Police than the existing police authorities. There was also a wider concern that there might be tension in the working relationship between the elected local policing body and the Chief Officer of Police. Mindful of these concerns, the Secretary of State undertook during debate in the House of Commons to develop a protocol in consultation with the Association of Chief Police Officers, the Association of Police Authorities and the Association of Police Authority Chief Executives, setting out the distinct roles and powers of Ministers, elected local policing bodies and Chief Officers of Police in the new policing landscape.

7.3 As a result, a draft protocol was published and made available for the House of Lords to consider during Committee Stage. At Lords Report Stage Baroness Browning assured the House that the Government remained open to considering whether this protocol needed to be placed on a statutory footing, but further work was required. At Lords Third Reading the Government put forward an amendment giving a statutory basis to the Protocol by the insertion of section 79.

- *Consolidation*

7.4 This Order does not amend any existing instrument.

## **8. Consultation outcome**

8.1 There is no statutory requirement in section 79 to consult on the first Protocol – only on any variation or replacement of it. However, a draft of the Protocol was published during the Parliamentary passage of the Act. The draft was prepared by a working group consisting of representatives of the bodies involved in policing governance, including the Association of Police Authorities, the Association of Chief Police Officers and the Association of Police Authority Chief Executives. The Metropolitan Police Service (“MPS”) welcomed the publication of the draft protocol and said that it provided clear direction on the respective roles of Chief Officers of Police, elected local policing bodies and the Secretary of State, ensuring the balance between operational independence and appropriate public accountability. The MPS specifically welcomed the clear statement that the elected local policing body would set the strategic direction and objectives of the force and decide the budget, while the Chief Officer of Police would remain operationally independent.

8.2 The working group continued to develop the Protocol after the Act received Royal Assent, and the final version issued by this Order reflects their views. All bodies represented on the working group are satisfied with this version.

## **9. Guidance**

9.1 The Protocol is intended to be self-explanatory to the lay reader, and no guidance will be issued.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This instrument is intended to contribute to the effective exercise of the functions of the bodies to whom it is addressed, and to promote effective working relationships between them. The smooth operation of the new policing governance arrangements is clearly a matter of significant interest to the Home Office and officials will keep this, and the contribution made by the Protocol, under ongoing review. The Secretary of State has the power to vary or replace the Protocol, should the need arise, following consultation with the persons bound by it and any other persons that she thinks fit.

## **13. Contact**

Adam Slonecki at the Home Office Tel: 020 7035 8029 or email: [adam.slonecki@homeoffice.gsi.gov.uk](mailto:adam.slonecki@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.