

EXPLANATORY MEMORANDUM TO
THE POLICING PROTOCOL ORDER 2023

2023 No. 649

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

- 2.1 This instrument revokes the Policing Protocol Order 2011 following a targeted stakeholder consultation and replaces the Policing Protocol 2011 with the Policing Protocol 2023. This fulfils the recommendation arising from Part One of the Police and Crime Commissioner (PCC) Review to consult on potential changes to the Policing Protocol to provide a “brighter-line” on the boundaries of operational independence and reflect changes in the relationship between the parties to the Policing Protocol which have taken place over time.

3. Matters of special interest to Parliament

- 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 Regrettably, the convention of laying 21 days before the instrument comes into force was not met due to an administrative error in having submitted the papers to the House after 5pm on 12 June 2023. They were therefore laid on the next available date on 13 June 2023, 20 days before the Protocol comes into force. The Government has undertaken extensive consultation with parties directly affected by the Protocol, which we assess will ensure this minor delay will not result in any significant prejudice to the process.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Policing Protocol was issued under the Policing Protocol Order 2011 which came into force in 2012 following the establishment of PCCs. Section 79 of the Police Reform and Social Responsibility Act 2011 requires the Secretary of State to issue a Policing Protocol that sets out how the Home Secretary, all PCCs (including Mayors exercising PCC functions and the Mayor's Office for Policing and Crime), Chief Constables and Police and Crime Panels should exercise their roles and responsibilities in relation to each other to encourage, maintain or improve working relationships. It seeks to clarify the operational independence of Chief Constables, which is not explicitly defined in statute but remains a fundamental principle of British policing.

7. Policy background

What is being done and why?

- 7.1 The Policing Protocol Order 2011 sets out how policing governance relationships should work, including the role of the Home Secretary, and clarifies the roles and responsibilities of PCCs, Chief Constables and police and crime panels. The Policing Protocol cannot provide powers to create new law, provide actors with powers they do not already have, or take away the discretion of any relevant body to use their existing powers.
- 7.2 Evidence collected in Part One of the PCC Review demonstrated the importance of ensuring that both PCCs and Chief Constables have a clear, shared definition of their respective roles and responsibilities to enable effective and constructive working.
- 7.3 On 16 March 2021, the then Home Secretary announced their intention to consult parties to the Policing Protocol on potential changes to the document, as required by statute.
- 7.4 The Policing Protocol Order 2023 will ensure that the roles and responsibilities within policing are accurately reflected and seeks to better reflect the Home Secretary's role in the policing system. This includes the Home Secretary's role in setting the strategic direction on national policing policy and their ability to request information about policing matters as part of their duty to be accountable to Parliament for safeguarding the public and protecting national security.
- 7.5 Other changes include more plainly outlining when a Police and Crime Panel may require a Chief Constable to attend a meeting; introducing more clarity and consistency in relation to PCCs' financial delegation to Chiefs to ensure this does not 'interfere' with operational independence by constraining day-to-day management of allocated budgets; and some simple changes that reflect how the system has evolved since the Policing Protocol's inception, such as updating the current names of relevant parties as well as reflecting that some Mayors now exercise PCC functions.
- 7.6 The Policing Protocol Order 2023 will deliver on the consultation's objectives, in line with the PCC Review's recommendation to consult on the Policing Protocol Order 2011.
- 7.7 The Government response to the consultation was published on 12 June 2023 and is available [here](#). This includes a summary of the responses to each question and how the feedback received has been incorporated into the new version of the Policing Protocol.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This Order revokes and replaces the Policing Protocol Order 2011.

10. Consultation outcome

- 10.1 The consultation on the Policing Protocol 2011 was taken forward as a recommendation from the PCC Review. To inform the recommendation, we engaged with a number of key stakeholders across the policing, justice and local government landscape.
- 10.2 To vary or replace the Policing Protocol, the Home Secretary has a statutory duty to consult persons they consider to represent the views of: elected local policing bodies; chief officers of police forces maintained by elected local policing bodies; police and crime panels; and such other persons as the Secretary of State thinks fit.
- 10.3 In accordance with the above mentioned statutory duty and further to the PCC Review recommendation to consult on changes to the Policing Protocol, a targeted stakeholder consultation ran from 7 March 2022 to 2 May 2022 and received 56 responses. This included consulting parties to the Policing Protocol and policing sector partners, in line with the Home Secretary's statutory duty to do so ahead of making any changes to the Policing Protocol. The Government consulted with the Association of Police and Crime Commissioners (who represent all PCCs, including those in Wales); the National Police Chiefs' Council (who represent all Chief Constables, including those in Wales); the Local Government Association and the Welsh Local Government Association. We also engaged with the nine Mayoral Combined Authorities which existed at the time of the consultation's publication and the Mayor's Office for Policing and Crime. Other stakeholders consulted include Her (now His) Majesty's Inspectorate of Constabulary and Fire & Rescue Services, the College of Policing, the Independent Office for Police Conduct, the Association of Police and Crime Chief Executives, the Police Federation, the Police Superintendents' Association and the National Crime Agency.
- 10.4 The [Government response to the consultation](#) includes further information on how the consultation was carried out, including a list of those who responded and a summary of the responses to each question.

11. Guidance

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

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because this has a low level of impact on the private or voluntary sector or community bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through ongoing engagement with policing sector partners, particularly those who are party to the Policing Protocol.

15. Contact

15.1 Lauren Diffey at the Home Office Telephone: 0207 0353011 or email: lauren.diffey@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kayleigh Chapman, Deputy Director for the Police Strategy and Reform Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp, Minister of State for Crime, Policing and Fire at the Home Office can confirm that this Explanatory Memorandum meets the required standard.