



Home Office

# **The Policing Protocol Order 2011 Consultation**

## **Government stakeholder consultation**

This consultation begins on 7 March 2022

This consultation ends on 2 May 2022

## About this consultation

- To:** Relevant parties to the Protocol and other key stakeholders
- Duration:** From 7 March 2022 to 2 May 2022
- Enquiries (including requests for the paper in an alternative format) to:** Email: [REDACTED]
- How to respond:** Please send your response by 2 May 2022 to:  
Email: [REDACTED]
- Additional ways to respond:** A series of stakeholder meetings is also taking place. For further information please use the 'Enquiries' contact details above.

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## 1. Background

- 1.1 The Policing Protocol ('the Protocol') is a document that was issued to support effective, constructive working relationships in the policing sector following the establishment of Police and Crime Commissioners (PCCs).
- 1.2 The Protocol sets out how the Home Secretary, all PCCs (including Mayors with PCC functions and the Mayor's Office for Police and Crime, "MOPAC"), Chief Constables and Police and Crime Panels ("Panels") should, in the Home Secretary's view, exercise functions in relation to each other. The Protocol is a Schedule of the Policing Protocol Order 2011, a piece of secondary legislation made in accordance with the Police Reform and Social Responsibility Act 2011.
- 1.3 Section 79 of the Police Reform and Social Responsibility Act 2011 requires the Secretary of State to issue a Policing Protocol. The Protocol sets out the ways in which PCCs, CCs, Panels and the Home Secretary should exercise or refrain from exercising functions so as to encourage, maintain or improve working relationships or limit or prevent the overlapping or conflicting exercise of functions.
- 1.4 The Policing Protocol Order 2011 came into force in 2012 and has not been updated since. To amend the Protocol, the Home Secretary is required by statute to consult with bodies that represent the relevant parties to the Protocol and any other persons the Home Secretary sees fit. The Protocol will be updated by a negative resolution statutory instrument.

## 2. Purpose of the Protocol & scope of consultation

- 2.1 The fundamental purpose of the Protocol will remain the same; to support effective, constructive working relationships between parties. The Protocol will be updated and issued in accordance with the Police Reform and Social Responsibility Act 2011.
- 2.2 The legislative framework for the Protocol is section 79 of the Police Reform and Social Responsibility Act 2011, which allows for the Protocol to be amended by the Home Secretary, following consultation with bodies that represent the parties to the Protocol, and anyone else the Home Secretary sees fit. This consultation will not affect the legislative basis for the Protocol.
- 2.3 **The Protocol cannot 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.**

- 2.4 **Our work through the PCC Review concluded that whilst parties to the Protocol thought it a generally sound and helpful document, as roles had developed since 2012 there is an opportunity to update and refine its content.**
- 2.5 By updating the Protocol, we intend to bring greater clarity to the role of the Home Secretary in the policing landscape, as well as the role of Chief Constables, PCCs and Police and Crime Panels.

### 3. Parties to the Protocol

- 3.1 **The Home Secretary:** The Protocol describes the Home Office's approach to policing matters and the Home Secretary's role, responsibilities and powers. Any changes made to the Protocol cannot add to or remove any of the Home Secretary's statutory powers and responsibilities in relation to policing matters. The Protocol also describes the Home Secretary's statutory duty to issue a Strategic Policing Requirement. The 'Operational Independence' section of this consultation asks questions in relation to the Home Secretary's responsibilities and the Home Office's role within policing. Updating the Protocol will help to clarify the Home Secretary's role in bringing policing leaders together and setting the overall national policy direction for policing.
- 3.2 **The PCC:** The Protocol outlines the statutory duties and legal powers of PCCs. PCCs' legal powers and duties will not be changed by this update to the Protocol. Definitions of who the term 'PCC' refers to will be clarified in the 'Scope' section.
- 3.3 **The Chief Constable:** The Protocol outlines the responsibilities of Chief Constables and what they are accountable to their PCCs for. Chief Constables' statutory powers and responsibilities will not be changed by this update to the Protocol. There is an opportunity later in this document to comment on the responsibilities of the Chief Constable and how those link to operational independence.
- 3.4 **The Panel:** The Protocol describes the role of PCPs in providing checks and balances in relation to the performance of PCCs. The Protocol lists the functions of Panels and describes specific arrangements for the London Assembly Panel. There is an opportunity later in this document to comment on the role of the panel in scrutinising Mayors with PCC functions and operational policing matters.

## 4. The Scope of the Protocol

- 4.1 The current Protocol applies to the Home Secretary in the exercise of policing functions, all PCCs (including Mayors with PCC functions and MOPAC), Chief Constables and Panels in England and Wales. Although the Protocol legally applies to Mayors with PCC functions and PFCCs, it does not currently directly specify how it relates to those entities. The updated Protocol will clarify that when it refers to Police and Crime Commissioners, that also includes Mayors with PCC functions and Police, Fire and Crime Commissioners. This document will only refer to Mayors and PFCCs in their capacity as PCCs.
- 4.2 Developments since the Protocol was originally issued include some Combined Authority Mayors holding PCC functions. In these cases, Panels are one of a number of ways that these Mayors are held accountable for their responsibilities. The Protocol could specify and describe these differences, for example, that Panel members may also have other roles in the Authority.
- 4.3 **We will also update references to any relevant bodies' names which may have changed, including the Independent Office of Police Conduct (IOPC) and Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS).**

## 5. Introduction

- 5.1 This paper sets out for consultation potential changes to the Policing Protocol Order 2011 to provide a 'brighter-line' on the boundaries of operational independence and reflect changes in the relationship between the parties to the Protocol which have taken place over time, in line with the recommendations arising from Part One of the PCC Review. The Protocol sets out how the policing governance relationships should work, including that of the Home Secretary, and clarifies the roles and responsibilities of PCCs, Mayors with PCC functions, Chief Constables and Police and Crime Panels. The consultation is aimed at bodies that represent parties to the Protocol in England and Wales.
- 5.2 Copies of the consultation paper are being sent to:

### **Parties to the Protocol**

Association of Police and Crime Commissioners (APCC) (PCCs)  
National Police Chiefs' Council (NPCC)/ Chief Police Officers Staff Association (CPOSA) (CCs)  
MOPAC  
Local Government Association and Welsh Local Government Association (Police and Crime Panels)

### **Other stakeholders we will seek views from:**

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)  
College of Policing  
Independent Office for Police Conduct (IOPC)  
Association of Police and Crime Chief Executives (APACE)  
Police Federation  
The Police Superintendents' Association  
National Crime Agency (NCA)  
9 Mayoral Combined Authorities

## 6. The proposals

1. Do you agree/disagree that the Protocol should be updated so that it is clear on its face that it refers to PCCs and Mayors with PCC functions, except where specified that there is a difference?
2. Given that Mayors with PCC functions have a wider set of responsibilities, should we specifically clarify that the remit of the Police and Crime Panel extends only to their PCC functions, and not their wider mayoral functions or powers?

### The Home Secretary (paragraphs 27-29)

#### *Role in policing*

6.1 The Protocol currently describes the Home Office as having withdrawn from day-to-day policing matters and the Home Secretary as using her powers only as a last resort. Since the Protocol was drawn up in 2011 the Home Office's role with policing partners has changed with the Home Office and Ministers taking a keener interest in and 'leaning in' on policing matters (whilst respecting operational independence). This includes a stronger strategic grip, and reformed governance and oversight to provide central system leadership. The Home Secretary's role in, and interaction with, policing has changed since the Protocol came into force. For example, the creation of the National Policing Board in 2019 and the Home Secretary's role as Chair of this body has changed the relationship with and the governance of policing, including through the sub-governance committees of this Board. This strategic oversight and reformed governance, alongside the National Crime and Policing Measures, will ensure that we maintain a relentless focus on cutting crime.

6.2 Currently, paragraph 27 reads as follows:

*"The establishment of PCCs has allowed for the Home Office to withdraw from day-to-day policing matters, giving the police greater freedom to fight crime as they see fit, and allowing local communities to hold the police to account."*

6.3 The new revised wording could make reference to the Home Secretary's roles both as Chair of the National Policing Board and in holding PCCs and CCs to account. We propose to amend paragraph 27 to read as follows:

*"The establishment of PCCs has given the police greater freedom to fight crime to meet local priorities and enabled the public to hold the police to account. The Home Secretary, as the person responsible to Parliament for cutting crime and protecting the public, has a legitimate role in holding PCCs and CCs to account. As Chair of the National Policing Board, the Home Secretary convenes senior policing leaders to hold PCCs and CCs to account for their respective roles and responsibilities in safeguarding the public and protecting our national borders and security."*

3. Do you agree/disagree with the proposed revised wording?



## Powers and tools

- 6.4 The Home Secretary has reserved powers and legislative tools at her disposal, that enable intervention and direction. These include powers to intervene where a police force is failing or will fail to discharge their functions in an effective manner or to the required standard. These powers and legislative tools are subject to various conditions as outlined in the 1996 Police Act. The Protocol currently describes that action will only be taken where it is necessary to prevent or mitigate risk to the public or national security. These powers and tools are currently described as to be used only as a last resort, although there is no statutory basis for that qualification.
- 6.5 Given the Home Office is increasingly acting as a strategic centre for policing and is gripping national issues, we propose to lower the threshold for Home Secretary intervention in appropriate circumstances. This would equip the Home Secretary to intervene earlier as required, thus reducing the risk of failing to deliver effective policing. Such intervention would still need to meet the statutory tests and comply with public law principles.

- 6.6 Currently, Paragraph 28 of the Protocol reads as follows:

*“The Home Secretary is ultimately accountable to Parliament and charged with ensuring the maintenance of the Queen’s Peace within all force areas, safeguarding the public and protecting our national borders and security. The Home Secretary has reserved powers and legislative tools that enable intervention and direction to all parties, if it is determined by the Home Secretary that such action is necessary in order to prevent or mitigate risk to the public or national security. Such powers and tools will be used only as a last resort, and will not be used to interfere with the democratic will of the electorate within a force area, nor seek to interfere with the office of constable, unless the Home Secretary is satisfied on the advice of her Majesty’s Inspectorate of Constabulary that not to do so would result in a police force failing or national security being compromised.”*

- 6.7 We propose to amend this paragraph to remove the reference to the Home Secretary being able to use their powers and tools only as a last resort, clarifying that they will be used in the interest of public or national security. We propose the below revised wording:

*“The Home Secretary is ultimately accountable to Parliament and charged with ensuring the maintenance of the Queen’s Peace within all force areas, safeguarding the public and protecting our national borders and security. The Home Secretary has reserved powers and legislative tools that enable intervention and direction to all parties. These powers will be used if it is determined by the Home Secretary that such action is necessary in order to prevent or mitigate risk to the public or national security. Such powers and tools will not be used to interfere with the democratic mandate of the PCC within a force area or seek to interfere with the office of constable, unless the Home Secretary is satisfied on the advice of Her Majesty’s Inspectorate of the Constabulary and Fire & Rescue Services that not to do so would result in a police force failing or national security being compromised.”*

4. Do you agree/disagree with the proposed revised wording?
5. Based on the changes proposed here, can you provide any specific examples, either from previous situations/scenarios or likely future ones, where you would have/would envisage seeking Home Secretary intervention? Please explain why.

### Setting Direction

- 6.8 The Home Secretary sets the strategic direction on national policing policy and issues the Strategic Policing Requirement. However, the current drafting of the Protocol does not explicitly set out that it is the preserve of the Home Secretary to set the Government's strategic direction on national policing policy in contrast to the remit of PCCs and Chief Constables, however, they would of course remain consultees to changes in policy where applicable. PCCs have a clear statutory duty to set local strategic policy through their police and crime plan and Chief Constables set policy relevant to the direction and control of their police force.
- 6.9 Clarifying the Home Secretary's role in governance arrangements will enable greater strategic direction across the policing system. As Chair of the National Policing Board, the Home Secretary directly engages with the policing sector to set the long-term strategic direction for policing and holds the policing sector to account for the delivery of the government's key national policing commitments. We therefore propose amending the Protocol wording to make explicit the Home Secretary's role to set the Government's strategic direction on national policing policy; and to clarify that it is for the Home Secretary and Home Office to present it to the public. We believe the Protocol should also make clear that it is then the responsibility of PCCs and Chief Constables to reflect and implement that policy at a local level.
- 6.10 Currently, Paragraph 29 of the Protocol reads as follows:
- "The Home Secretary retains the legal accountability for national security and the role that the police service plays within the delivery of any national response. The Home Secretary has a duty to issue a Strategic Policing Requirement that sets out what are, in her view, the national threats at the time and the appropriate national policing capabilities that are required to counter them."*
- 6.11 To include the Home Secretary's role in setting the national long-term strategic direction of policing and to ensure that they have the information they need to inform this direction, we propose inserting a new paragraph (between the existing paragraphs 28 and 29) as follows:
- "The Home Secretary is responsible for setting the national, long-term strategic direction of policing and holding the policing sector to account for the delivery of the government's policing commitments. This includes, but is not limited to, chairing the National Policing Board and any related governance to ensure all parts of the policing system work together to deliver the best possible outcomes for the public. It is the responsibility of PCCs and Chief Constables to reflect on and implement national policy at a local level, in accordance with their police and crime plans."*

## 6. Do you agree/disagree with the proposed revised wording?

### *Access to Information*

- 6.12 The Policing Protocol makes clear that the Home Secretary is ultimately accountable to Parliament and responsible for ensuring the maintenance of the Queen’s Peace, safeguarding the public and protecting our national borders and security. Given the Home Secretary’s responsibility to Parliament and the public, we intend to make clear that the parties to the Protocol should expect the Home Secretary to ask questions to Chief Constables and Commissioners about operational and strategic policing matters, drawing on her existing powers.
- 6.13 We therefore propose adding wording into the Protocol to make clear the Home Secretary’s power to request information about policing matters by inserting the following to the end of the (new) paragraph 29:
- 6.14 *“In order to ensure that the Home Secretary is equipped with the information required to respond to the public and Parliament, PCCs and CCs should expect the Home Secretary to ask Chief Constables for information about policing matters. The Home Secretary may also ask PCCs and CCs to report to the National Policing Board.”*

## 7. Do you agree/disagree with the proposed revised wording?

### **Operational Independence**

- 6.15 The concept of operational independence is not defined by statute but is a fundamental principle of British policing. Multiple sections of the Protocol, some summarised above, concern operational independence. This section of the consultation details those areas that are linked to operational independence, across operational matters and the roles of different parties.

### **The Chief Constable** (paragraphs 21-23)

- 6.16 This section reiterates that the Chief Constable is operationally independent. Previous research and discussions with the policing sector have highlighted that the definition of operational independence and the line between strategic and operational issues between parties have, at times, been a source of disagreement. Through updating the Protocol, we aim to bring clarity and avoid further tensions between operational independence and oversight and accountability.
- 6.17 In order to make these definitions clearer, we intend to amend paragraph 23 (a) to reinforce that it is the role of the Chief Constable to ensure that their force acts at all times with impartiality and without any semblance of political bias or deliberate political stance. The proposed amendment will align with every constables’ attestation to serve “with fairness, integrity, diligence and impartiality” (schedule 4, Police Act 1996).
- 6.18 Currently, the Protocol reads as follows:

*“The Chief Constable is responsible to the public and accountable to the PCC for...leading the force in a way that is consistent with the attestation made by all constables on appointment and ensuring it acts with impartiality”.*

6.19 We propose to amend this paragraph, so the wording reads as follows:

*“The Chief Constable is responsible to the public and accountable to the PCC for...leading the force in a way that is consistent with the attestation made by all constables on appointment and ensuring that it acts with impartiality and in a politically neutral manner.”*

## 8. Do you agree/disagree with the wording suggested?

### Operational Matters (paragraphs 30-38)

6.20 This section of the Protocol describes the principle of operational independence and what the direction and control of a Chief Constable includes. This section attempts to illustrate the nature and character of operational independence in different scenarios and contexts.

6.21 The PCC Review found that in some instances, there has been doubt or confusion between PCC and CCs around the boundaries of operational independence which on occasion, could sometimes hamper decision-making or frustrate the relationship between the two parties and that a ‘brighter-line’ was needed.

**9. Are there specific changes to the Protocol that we could make to further clarify the distinct responsibilities that the PCC and CC have respectively with regard to policing?**

**10. In updating and refining the Protocol, are there any specific changes that we could make to the document which you consider would further clarify the relationship between the Home Secretary, the PCC and CC?**

### Operational matters and the role of the Panel (paragraph 26)

6.22 While the Panel may invite the Chief Constable to attend to offer factual accounts of operational matters, the Protocol clarifies that the Chief Constable is only accountable to the PCC. This must be viewed in the context of s.29(6) of the 2011 Act, which provides that the attendance of the Chief Constable is to answer questions that appear to the Panel to be necessary in order for it to carry out its functions.

6.23 The PCC Review found that policing partners had concerns that panels sometimes overstepped their remit by routinely asking detailed operational questions (for example, about the current or future deployment of officers in a given area), when their role is to hold the PCC to account for their delivery of the strategic objectives within their police and crime plan.

6.24 Whilst we are seeking to bring forward better guidance to panels (through a PCC Review recommendation) we are keen to hear whether the current drafting of the Protocol adds to this confusion given that it currently states that the Panel can seek to scrutinise the PCC on an operational matter, and that the Chief Constable may be invited to attend alongside the PCC to offer factual accounts

and clarity (if needed) of the Chief's actions and decisions.

6.25 The current wording reads as below:

*"The Chief Constable retains responsibility for operational matters. If the Panel seek to scrutinise the PCC on an operational matter, the Chief Constable may be invited to attend alongside the PCC to offer factual accounts and clarity (if needed) of the Chief Constable's actions and decisions. The accountability of the Chief Constable remains firmly to the PCC and not to the Panel."*

6.26 We propose revising paragraph 26 to further clarifying the Panel's role and remit in respect of operational policing matters, as follows:

*"The Chief Constable retains responsibility for operational matters. If the Panel seek to scrutinise the PCC on an operational matter, the Chief Constable may, by exception, be invited to attend alongside the PCC to offer factual accounts and clarity (if needed) of the Chief Constable's actions and decisions. The accountability of the Chief Constable remains firmly to the PCC and not to the Panel."*

## 11. Do you agree/disagree with the proposed revised wording?

### Financial Responsibilities

6.27 The Protocol sets out that the PCC is accountable to the public for the management of the police fund. The Chief Constable is responsible for the day-to-day management of allocated budgets after they have been approved by the PCC. Previous research has suggested that the limits of financial delegation between the PCC and Chief Constable can have an impact on operational independence.

6.28 The current wording reads as follows:

*"The PCC has the legal power and duty to...Decide the budget, allocating assets and funds to the Chief Constable; and set the precept for the force area".*

6.29 We suggest amending paragraph 17(d) to specifically reference the importance of schemes of delegation to assist in the effective financial management of forces as follows:

*"The PCC has the legal power and duty to...decide the budget, allocating assets and funds to the Chief Constable; and set the precept for the force area, using schemes of delegation to assist in the effective financial management of forces."*

## 12. Do you agree/disagree with the proposed revised wording?

6.30 This consultation does not seek to alter references to the financial responsibilities of PCCs and Chief Constables or seek to make any changes to the way in which funding is allocated. Where possible, the updated Protocol would reinforce a reasonable expectation that PCCs should not fetter the operational independence of their Chief Constable and day-to-day running of their police force through how they use their schemes of delegation.

6.31 The Protocol's current wording is as follows:

*"The Chief Constable is responsible to the public and accountable to the PCC for...Having day-to-day responsibility for financial management of the force within the framework of the agreed budget allocation and levels of authorisation issued by the PCC."*

6.32 We therefore consider that it would be helpful to reinforce the reasonable expectation that such schemes should not seek to fetter the operational independence of a Chief Constable and as such that paragraph 23(m) should be amended as follows:

6.33 *"The Chief Constable is responsible to the public and accountable to the PCC for...having day to day responsibility for financial management of the force within the framework of the agreed budget allocation and levels of authorisation issued by the PCC within the schemes of delegation. Such schemes should not seek to fetter the operational independence of a Chief Constable."*

**13. Do you agree/disagree with the proposed revised wording?**

# Contact details and how to respond

Please send your response by 2 May 2022 to:

Email: [REDACTED]

## Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

## Extra copies

Further paper copies of this consultation can be obtained from this address.

Alternative format versions of this publication can be requested from the above email address [REDACTED]

## Publication of response

A paper summarising the responses to this consultation will be published within two months of the consultation's closing date of 2 May 2022.

## Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In

view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.



# Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>





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