

Welsh Local Government Association

Establishing Police and Crime Panels in Wales



Introduction

As part of the changes to be introduced by the Police and Social Responsibility Act 2011, on 15 November 2012 voters across Wales will be electing Police and Crime Commissioners (PCC) for each force area.

In broad terms, the PCCs will take over from the Police Authority, which will cease to exist. The PCC will set policing priorities, decide on the precept (the money which comes to policing from the Council Tax), appoint the Chief Constable, hold the Chief Constable to account and if necessary dismiss the Chief Constable.

The Commissioner will be scrutinised by a Police and Crime Panel (PCP) which will be made up of at least 10 local councillors from the local authorities within the police force area and two independent members. The Panel will act as a critical friend, offering challenge and support as appropriate.

The aim of this paper is to inform local authorities in Wales of the key roles and responsibilities of the PCP and to aid discussion and planning to prepare for these changes in each police force area.

Panel Arrangements

The Secretary of State (Home Secretary) is responsible for the establishment of PCPs in Wales. This arrangement follows on from the National Assembly vote to refuse consent for the UK Parliament to place duties on local authorities in Wales (a devolved responsibility). In England local authorities are wholly responsible for the establishment of PCPs with the Secretary of State only being required to intervene if arrangements are not made.

The Police and Social Responsibility Act lists the arrangements which must be in place for PCPs to operate (extracts from the Act are included in Appendix A):

- co-option of and holding of office by the co-opted members of the police and crime panel;
- the term of office of appointed members and co-opted members of the panel;
- resignation and removal of appointed members and co-opted members of the panel;
- conditions for re-appointment of appointed members and co-opted members of the panel;
- the payment of allowances to members of the police and crime panel;
- provision for promoting the role of the police and crime panel;
- administrative and other support to be given to the police and crime panel and its members;
- Support and guidance to be given to:

(i) members of relevant local authorities,

- (ii) members of the executives (if any) of relevant local authorities, and
- (iii) officers of relevant local authorities,

in relation to the functions of the police and crime panel.

The Act confirms that the Panel arrangements may make different provision for different areas.

Legal Status of the Panel

The Secretary of State must establish and maintain a separate Police and Crime Panel for each police area. In Wales, the Panel is not a committee or joint committee of any local authority or local authorities and the Home Office intends that the Panels will be unincorporated free standing bodies rather than non-departmental public bodies. Formal guidance on this point is expected from the Home Office in the near future.

Local Discretion and cost of establishing PCPs

The UK Government has indicated that there will be a relatively high degree of local discretion in establishing the most appropriate arrangements for a PCP. We understand that as far as possible, the Home Secretary wants the Panel itself to determine the way forward.

One of the most efficient means of providing support to PCPs would be through the local authorities, which have officers who are appropriately qualified and have officers with the appropriate experience who are locally based. In Wales there will be a requirement to translate formal reports and to provide simultaneous translation. These costs can best be kept manageable by using existing personnel. Another option for establishing PCPs could be through a national partner organisation, such as the WLGA. Such an arrangement would still draw from local government officers in the area to provide advice as required but could also enable the maximisation of the limited resources available and assist in cross boundary working.

Any contract under which a Welsh local authority or national body agrees to host the Police and Crime Panel would need to respect the different legal position in relation to the Home Secretary who is responsible for the Panel's liabilities. This may include spelling out which liabilities will be met within the HO funding provided to meet the costs of panels, and which may be deemed 'exceptional' liabilities requiring support from the Home Office. Clear terms of trade will help to reassure the Welsh Government that the costs will not fall on Welsh local government. It will also reassure the Home Office that funding is only being used to meet costs required by the legislation.

Given the responsibilities that remain with the Home Secretary in relation to a PCP in Wales, it is clear a protocol will be needed, setting out the circumstances in which additional costs will be incurred (whether in arranging further meetings or requiring further advice from officers) and how 'exceptional' liabilities would be managed.

Timeline for PCPs

To date our understanding of the timeline for establishing PCPs in Wales is as follows:

- In early 2012 the Secretary will write to invite local authorities to work together to form panels in each force area and to agree a host Authority in each area, with a deadline of July 2012.
- The nominated members of the panel (councillor members) will need to be submitted in June/July 2012 to the Secretary of State and lead authority.
- The Panels will need to be operating by November 2012 in order for them to be in place by the time of the election of the Commissioner.
- In England, the Association of Police Authorities (APA) and Local Government Association (LGA) are recommending that the panels should look towards July 2012 as a target date in order for the necessary training and other preparation including agreeing terms of working, membership (co-opted members) and other key issues to be resolved. However, the election in Wales may make this target date difficult.

Potential Operating Models for PCPs

The legislation does not take a view on whether serving on the PCP should be seen as something for executive members or for scrutiny members and we understand the Home Secretary does not intend to take a view either. It may be appropriate, however, for the local authorities in each police force area to adopt a consistent approach.

The core role of the PCPs, as outlined in the Police and Responsibility Act is to support, scrutinise and hold the Commissioner to account. At this stage it is difficult to pre-empt the type or level of engagement the PCC would like with the PCP, as they may value a model which encourages greater joint working or a more distant relationship based on checks and balances. However, as there is a requirement to establish the PCP ahead of the election of the PCC, local authorities in each Force Area should give consideration to the following potential operating models and determine the most appropriate model for their area:

A) Leadership-based Police and Crime Panel

Outwith the scrutiny role of PCPs, a strong cooperative relationship is required between the Commissioner and the leadership of each local authority. They will need to have regard to each others plans including community safety objectives and priority actions and work together to tackle particular problems within each force and local authority area.

Under this model, the appointment of Leaders or Lead Cabinet Members for Community Safety to the PCP would enable them to use the Panel to work closely together to scrutinise the PCCs Policing and Crime Plan and their proposals for the Policing Precept for the Force area.

Each local authority will have scrutiny arrangements which enable members to examine the progress being made by the Council and the Police in cutting crime and bringing offenders to justice within the County. The expectation might be that the lead Member and County Chief Inspector attend quarterly meeting and that the Commissioner and a member of the ACPO Team attend at least once a year, although individual PCCs will clearly have a view on arrangements in their area.

B) Scrutiny Based Panel

It could be argued that the arrangements described above could lead to too close a relationship between the Commissioner and the Panel, and expand the Panel from its conceptual basis within the Act. It could therefore be more appropriate for scrutiny members to represent local authorities on the PCP, thereby splitting responsibility with the Executive members (who will represent local authorities on the Safer Communities Board in North Wales).

By having a scrutiny based panel, it could be argued that further scrutiny of community safety at a local level would be duplication. The same members could conduct joint scrutiny of community safety work, potentially sitting immediately after the PCP as a force-wide Safer Communities Scrutiny Panel. It will be important not to conflate the roles of the bodies, however, and to be clear that the PCP is not scrutinising the force (which is the PCCs role).

A potential hybrid model would be for each Council to be represented by the Leader or lead Cabinet Member, with those councils with two seats also represented by the Chair of the relevant Scrutiny Committee.

Frequency of PCP meetings

It is expected that that Police and Crime Panels will meet significantly less often than Police Authorities and Ministers are clear that they do not intend the Panel to be replicating the activities of the Authority. PCPs take on only the scrutiny function of existing authorities.

While a quarterly cycle for scrutinising the Commissioner's performance seems reasonable (and reflects the status quo), there are a number of other reasons why further or additional meetings may be required:

- Co-option of members to the panel
- Confirmation Hearings for appointment of Chief Constable, Deputy Commissioner, Chief Executive and Chief Finance Officer of the Office of Commissioner (these meetings will require appropriate guidance from a human resources professional who has familiarised themselves with the process).
- Development of Policing Priorities, Police and Crime Plan and Budget Proposals. If the Commissioner is keen to build a consensus rather than engage in a confrontation, s/he may want to give the Panel early sight of proposals and an opportunity to influence them. Most police authorities have at least a couple of informal discussions in October to January before meeting formally in February to sign off the proposals.
- It may be appropriate for the Panel to scrutinise the collaboration efforts of Commissioners. It may make sense for this to be organised on a regional basis. In North Wales this implies participating in an all Wales forum and a joint forum with the North West of England at least once a year. It should be noted that this would be dependent on the preferred working method of the other Commissioners/Force areas, and that the Home Secretary has clear roles in relation to collaboration.

Allowances

The Home Secretary has indicated that she intends to pay members sitting on PCPs an annual allowance of £920. If membership of the Panel is seen as part of the duties of Cabinet members, the reluctance of the Home Secretary to pay allowances which recognise the level of commitment involved will be less of an issue. However, the Independent Remuneration Panel's annual report states that Cabinet members are remunerated for a full time role already and should consider carefully as to whether they undertake additional duties and remuneration (although the IRP has no powers on PCP allowances).

Achieving Political Balance

The "balanced panel" objective means that in nominating members to the Panel, local authorities are expected to ensure that the local authority members of a police and crime panel represent the political make-up of the relevant local authorities (when taken together). This will be particularly important if authorities wish to appoint a second member. If agreement cannot be reached, it is for the Home Secretary to decide which of the local authorities to ask to make further nominations. In some force areas this may be done on the basis of population, whereas in others the allocation of an additional seat could alternate between counties with a similar population.

The regulations allow for the co-option of further members to the Panel if this would assist in meeting a balance between parties which better reflects the balance across the force area as a whole and this may be particularly appropriate where the two methods deliver different results.

Although in Wales, the Home Secretary will be responsible for establishing panels, to ensure that these panels are right for the local area, she will invite local authorities within Wales to take a leading role in this process. This will include inviting local authorities in the force area to nominate councillors for appointment to the panel. In nominating panel members local authorities must consider, in line with legislation and as far as is practicable, the balanced appointment objective laid out in the Act. This includes the make-up of the local areas, including the political make-up, and the required skills, knowledge and experience for the panel to function effectively. In the absence of nominations, the Home Secretary will identify and determine members of local authorities for the panel taking into account the need for balance. The detail of this backstop process will be set out in guidance. Once established, panels will be able, with the Home Secretary's consent, to co-opt further members, both elected and independent, up to a maximum panel size of twenty.

Planning the transition from the Police Authority to the Commissioner and Panel

The Home Secretary recognises the importance of having the Panels ready to begin work in November, as outlined in the timeline section of this report. Because there are all-out elections for local authorities in May 2012, it is necessary to re-appoint all councillor members of the Police Authority – in a similar timescale as the appointments to the Panel.

There is a very strong argument for co-ordinating these two processes and ensuring that as far as is possible, the individuals who will serve on the PCP from November 2012 who serve on the Police Authority from June to October.

The appointments to the Police Authority are of course formally made by a Joint Committee whereas the nominations to the Panel are made by individual authorities, but it should be possible to co-ordinate the two. In North Wales and Gwent, there will be an additional member of the Panel compared to the Police Authority whereas in Dyfed Powys and South Wales the numbers will be the same (ten). It is impossible to predict what the political balance calculations in each Force area will look like post-election, but starting off by considering who each council will want to appoint to the Panel (with those Councils with two members appointing one from the political administration and one from the opposition) and considering whether this is "near enough" would seem reasonable.

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Appendix A

Police and Crime Panels in Wales

Extracts from the Police Reform and Social Responsibility Act 2011

1. Functions of the Panel

The functions of the police and crime panel for a police area must be exercised with a view to supporting the effective exercise of the functions of the police and crime commissioner for that police area.

Under Section 28 of the Act a police and crime panel must—

- (3) (a) review the draft police and crime plan, or draft variation, given to the panel by the relevant police and crime commissioner
- (b) make a report or recommendations on the draft plan or variation to the commissioner.
- (4) (a) arrange for a public meeting of the panel to be held as soon as practicable after the panel is sent an annual report from the Commissioner setting out the exercise of the Commissioner's functions in the financial year, and the progress which has been made in the financial year in meeting the police and crime objectives in the police and crime plan.
- (b) ask the police and crime commissioner, at that meeting, such questions about the annual report as the members of the panel think appropriate,
- (c) review the annual report, and
- (d) make a report or recommendations on the annual report to the commissioner.
- (6) (a) review or scrutinise decisions made, or other action taken, by the relevant police and crime commissioner in connection with the discharge of the commissioner's functions; and
- (b) make reports or recommendations to the relevant police and crime commissioner with respect to the discharge of the commissioner's functions,
- (7) publish any reports or recommendations made to the relevant police and crime commissioner.
- (8) send copies of any such reports or recommendations to each local authority whose area falls wholly or partly within the police area.

Scrutiny of senior appointments

When the Commissioner proposes to appoint:

- (a) the commissioner's chief executive,
- (b) the commissioner's chief finance officer, or
- (c) a deputy police and crime commissioner.

The Panel must be notified of the name of the proposed appointee, the criteria used to assess the suitability of the candidate for the appointment, why the candidate satisfies those criteria; and the terms and conditions on which the candidate is to be appointed.

The panel must hold a public confirmation hearing and then make a report to the Commissioner on the proposed appointment with a recommendation to the police and crime commissioner as to whether or not the candidate should be appointed. The report

must be published and must be delivered within three weeks. It is for the commissioner to decide whether to proceed with the appointment, regardless of the Panel's recommendation.

Appointment, suspension and removal of chief constable

When the Commissioner proposes to appoint a Chief Constable, the Panel must be notified of the name of the proposed appointee, the criteria used to assess the suitability of the candidate for the appointment, why the candidate satisfies those criteria; and the terms and conditions on which the candidate is to be appointed.

The panel must hold a public confirmation hearing and then make a report to the Commissioner on the proposed appointment with a recommendation to the police and crime commissioner as to whether or not the candidate should be appointed. The report must be published and must be delivered within three weeks. If two-thirds of the persons who are members of the panel at the time when the decision is made vote in favour of vetoing the appointment, the appointment shall not proceed.

It is for the commissioner to decide whether to proceed with the appointment, regardless of the Panel's recommendation.

If a police and crime commissioner suspends a chief constable from duty, the commissioner must notify the relevant police and crime panel of the suspension.

If the police and crime commissioner wishes to call upon a chief constable to retire or resign, he or she must first give a written explanation to the Chief Constable of the reasons and notify the Panel, giving the Panel a copy of the reasons.

The Commissioner must give the Chief Constable an opportunity to respond and provide the Panel with this response. If the Commissioner intends to proceed with the call to retire or resign, the Panel must (within six weeks) make a recommendation to the Commissioner (which must be published). Before making the recommendation, the Panel may consult the chief inspector of constabulary, and must hold a scrutiny hearing (a meeting of the panel, held in private, which the police and crime commissioner and the chief constable are both entitled to attend for the purpose of making representations relating to the proposal to call upon the chief constable to retire or resign).

It is for the commissioner to decide whether to proceed with the call to retire or resign in light of the Panel's recommendation.

Precept

The police and crime commissioner must notify the relevant police and crime panel of the precept which the commissioner is proposing to issue for the financial year. The Panel must review the proposed precept and must make a report to the commissioner, which may include recommendations – which the Commissioner must have regard to and must publish a response to.

If two-thirds of the persons who are members of the panel at the time when the decision is made vote in favour of vetoing the precept, then the Commissioner must not issue the precept. The Secretary of State may make regulations for the above process, including specifying timelines.

2. Establishing the Panel

There will be a police and crime panel for each force area, consisting of the following members—

- (a) ten persons appointed by the Secretary of State as members of the panel; and
- (b) the appropriate number of members co-opted by the panel.

The default “appropriate number” is two – but a police and crime panel may resolve that the panel is to have a greater number (but not more than ten). This requires the agreement of the Secretary of State.

A police and crime panel in Wales is not a committee or joint committee of any local authority or local authorities.

The Secretary of State must—

- (a) decide which of the relevant local authorities to ask to make nominations
- (b) decide what number of nominations under this sub-paragraph each nominating authority is to be asked to make; and
- (c) ask each nominating authority to nominate that number of the authority’s councillors to be members of the panel.

The Secretary of State must ensure that that each relevant local authority has at least one of its councillors as a member of the panel.

If the authority fails to make the nomination, or the nominee does not accept the nomination, the Secretary of State must either—

- (a) ask the authority to make another nomination, or
- (b) nominate a person who is a councillor of a relevant local authority to be a member of the police and crime panel

If the nominee does not accept the nomination, the Secretary of State must nominate another person who is a councillor of a relevant local authority to be a member of the police and crime panel.

All relevant liabilities relating to a police and crime panel are liabilities of the Secretary of State (and accordingly are not liabilities of any member of the panel).

20 (1) The Secretary of State may provide financial and other resources—

- (a) to a police and crime panel in connection with the exercise of the panel’s functions;
- (b) to the members of a police and crime panel in connection with the exercise of their functions; and
- (c) to one or more of the relevant local authorities covered by a police area in connection with the exercise of functions by—
 - (i) such an authority in relation to the police and crime panel for that police area,
 - (ii) that panel, or
 - (iii) the members of that panel.

(2) The Secretary of State may provide financial or other resources under subparagraph (1) subject to conditions.

(3) In the case of resources provided under sub-paragraph (1)(c), the conditions which may be imposed include conditions requiring a relevant local authority to pass resources to, or share resources with, another relevant local authority.

21 The police and crime commissioner for a police area may not be a member of the police and crime panel for the area.

22 A person may not be a co-opted member of the police and crime panel for a police area if the person is any of the following—

- (a) a member of the staff of the police and crime commissioner for that police area;
- (b) a member of the civilian staff of the police force for that police area;
- (c) a Member of Parliament;
- (d) a member of the National Assembly for Wales;
- (e) a member of the Scottish Parliament;
- (f) a member of the European Parliament.

23 (1) If the police and crime panel for a police area has two co-opted members, a member of a local authority which is covered by that police area may not be a co-opted member of that panel.

(2) If the police and crime panel for a police area has three or more co-opted members, a member of a local authority which is covered by that police area may be a co-opted member of that panel only if at least two of the other co-opted members are not members of any such local authority.

Panel Arrangements

The Secretary of State is responsible for making the arrangements for the establishment and maintenance of the police and crime panels. The Panel arrangements must cover the following:

- co-option of, and holding of office by, the co-opted members of the police and crime panel.
- the term of office of appointed members and co-opted members of the panel;
- resignation, and removal, of appointed members and co-opted members of the panel;
- conditions for re-appointment of appointed members and co-opted members of the panel.
- the payment of allowances to members of the police and crime panel
- provision for promoting the role of the police and crime panel
- administrative and other support to be given to the police and crime panel and its members
- Support and guidance to be given to—
 - (i) members of relevant local authorities,
 - (ii) members of the executives (if any) of relevant local authorities, and
 - (iii) officers of relevant local authorities,

in relation to the functions of the police and crime panel.

Panel arrangements may make different provision for different cases.

The following persons must comply with the panel arrangements relating to a police and crime panel—

- (a) each relevant local authority;
- (b) each member of the police and crime panel.

Rules of procedure

25 (1) A police and crime panel must make rules of procedure for the panel.

(2) A police and crime panel's rules of procedure must make provision about the appointment, resignation and removal of a person to chair the panel.

(3) The police and crime panel's rules of procedure may, in particular, make provision about—

- (a) the method of making decisions, and
- (b) the formation of sub-committees.

(4) A sub-committee of a police and crime panel may not co-opt members.

Voting by members

26 All members of a police and crime panel may vote in proceedings of the panel.

Exercise of special functions

The special functions of a police and crime panel may not be discharged by a committee or sub-committee of the panel. These "special functions" are the functions conferred on a police and crime panel by—

- (a) Section 28(3) (scrutiny of police and crime plan);
- (b) Section 28(4) (scrutiny of annual report);
- (c) Paragraphs 10 and 11 of Schedule 1;
- (d) Schedule 5 (issuing precepts); and
- (e) Part 1 of Schedule 8 (scrutiny of appointment of chief constables).

Validity of proceedings

The validity of the proceedings of a police and crime panel is not affected by a vacancy in the membership of the panel or a defect in appointment.

Duty to produce balanced panel

In making appointments to the panel, local authorities and the Secretary of State must secure that (as far as is reasonably practicable), the local authority members of a police and crime panel (when taken together)—

- (a) represent all parts of the relevant police area;
- (b) represent the political make-up of the relevant local authorities (when taken together);
- (c) have the skills, knowledge and experience necessary for the police and crime panel to discharge its functions effectively.

The Panel must consider from time to time whether changing the number of co-opted members would assist in achieving this objective (co-opted members who are members of

relevant local authorities count in the calculation described above) – and any appointments made must assist in achieving this objective.

In co-opting members who are not members of relevant local authorities, a police and crime panel must secure that (as far as is reasonably practicable) the appointed and co-opted members of the panel (when taken together) have the skills, knowledge and experience necessary for the police and crime panel to discharge its functions effectively.

If a relevant local authority has a mayor and cabinet executive, they need to nominate the Mayor as one of their representatives on the Panel.

The Secretary of State can make regulations (including timescales) regarding the making of nominations and appointments, the notification of nominations and appointments (and accepting and refusing nominations) and the termination of appointments (including provision about when appointments are to be treated as having been terminated).