

**POLITICAL PARTIES, ELECTIONS AND  
REFERENDUMS ACT 2000**



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**THE SPEAKER'S COMMITTEE  
ON THE ELECTORAL  
COMMISSION**

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**THIRD REPORT 2022**

**Response to the Government's consultation on  
the draft Strategy and Policy Statement for the  
Electoral Commission**

*Ordered by the House of Commons  
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## The Speaker's Committee

The Speaker's Committee is appointed in accordance with the provisions of section 2 of the Political Parties, Elections and Referendums Act 2000 to perform the functions conferred on it by that Act.

### Membership

[Rt Hon Sir Lindsay Hoyle MP](#), Speaker of the House of Commons (Chair)

[Mr Clive Betts MP](#), Chair of the Levelling Up, Housing and Communities Committee

[Felicity Buchan MP](#), Minister of State for Levelling Up Communities, and Minister for Equalities

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### Previous Publications

First Report 2022 was published 28 April 2022 as HC 1274 of Session 2022–23

Second Report 2022 was published 10 June 2022 as HC 353 of Session 2022–23

First Report 2021 was published 3 March 2021 as HC 1276 of Session 2019–21

Second Report 2021 was published 7 July 2021 as HC 522 of Session 2021–22

Third Report 2021 was published 7 July 2021 as HC 523 of Session 2021–22

Fourth Report 2021 was published 24 November 2021 as HC 882 of Session 2021–22

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# Consultation on a draft strategy and policy statement for the electoral commission

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1. The Elections Act 2022 amended the Political Parties, Elections and Referendums Act 2000 ('the Act') to introduce a power for the Secretary of State to prepare a Strategy and Policy Statement for the Electoral Commission ('the Commission') which sets out:
  - i) strategic and policy priorities of His Majesty's Government relating to elections, referendums and other matters in respect of which the Commission have functions, and
  - ii) the role and responsibilities of the Commission in enabling His Majesty's Government to meet those priorities.
2. Under section 4C of the Act, the Secretary of State is required to consult the Speaker's Committee on the Electoral Commission on a draft of the Statement ('the Statement', 'the draft Statement') before the designation process can proceed. Legal background to this consultation process, and other procedural requirements relating to the Statement, is appended to this report (Appendix 1).
3. On 22 August, the then Minister of State for London, Local Government and Communities wrote to the Speaker to formally launch the statutory consultation. The Minister's letter is appended to this report (Appendix 2), along with the text of the draft Statement (Appendix 3).
4. We note the observation in the Minister's letter that the draft Statement "maintains the scope and format of the illustrative Statement" published during passage of the Elections Act 2022, and that much of the content remains unchanged. However, that illustrative Statement was tangential to the legislative process, and was not approved by the House in any way. The aspects of the draft Statement which were also in the illustrative Statement are no less subject to consultation by virtue of being so, and we therefore consider it our duty to examine the draft Statement in full. It is similarly the Government's duty to consider equally views arising from the consultation on all aspects of the draft Statement - not just those which vary from the illustrative Statement.
5. The Speaker's Committee met on 27 October and 20 December to consider its response to the draft Statement. The Committee's consideration was also informed by the responses from the other statutory consultees - the Electoral Commission, and the Levelling Up, Housing and Communities Committee.<sup>1</sup>
6. What follows is the Speaker's Committee's response to the consultation.

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<sup>1</sup> Electoral Commission, [Consultation on a draft Strategy and Policy Statement for the Electoral Commission](#), 6 October 2022; Levelling Up, Housing and Communities Committee, [Draft Strategy and Policy Statement for the Electoral Commission, Fourth Report of Session 2022-23, HC 672](#)

### *Speaker's Committee's response to the consultation*

7. As an independent body, the Electoral Commission's priorities are set by its board, and (other than its devolved functions) approved by the Speaker's Committee through our consideration of the Commission's Five-Year Plan, pursuant to paragraph 15 of Schedule 1 of the Act. We consider these arrangements to be rigorous, and to have resulted in aims and objectives for the Commission which are robust and independently assured. Were we to consider, at any point, that the aims and objectives proposed to us by the Commission were not consistent with the economical, efficient and effective discharge by the Commission of its functions, we would be statutorily obliged to modify them to achieve this consistency. We approved without any such concerns the Commission's current priorities, as set out in its Corporate Plan 2022/23 to 2026/27. We remain of the view that these priorities are the right ones for the Commission. **We note that designation of a Statement is a power the Government *may* use, rather than one it *must* use. It is in this context that we have concluded the draft Statement is currently neither necessary, nor likely to assist the Commission in its pursuit of the aims and objectives already approved by the Speaker's Committee and adopted by the Commission.**

8. **Moreover, there is nothing in our experience of overseeing the Electoral Commission which leads us to conclude that the Statement, as currently drafted, would assist it in the fulfilment of its functions more generally.** We consider that the Electoral Commission generally performs its role effectively, and that designation of this draft Statement would be likely to hinder, rather than enhance, the Commission's work, for the reasons outlined in more detail below. We do not consider that the Government has adequately articulated what issues it is seeking to resolve through the Statement. Where issues may exist in the areas covered by the draft Statement, we are not persuaded that designation of a Statement is the most effective way to address them.

9. **More generally, we share many of the concerns expressed by the Commission and the Levelling-Up, Housing and Communities Committee in their own responses.** We will not repeat at length in this response all of the issues which they have already explored in theirs, and will instead focus on a few key areas.

### *Operational interference*

10. The purpose of section 4A of the Act is to enable the Government to set out its "strategic and policy priorities" in respect of electoral matters of which the Commission has functions, and "the role and responsibilities of the Commission in enabling [the] Government to meet those priorities". This provision does not, however, require the Commission to prioritise these over the Commission's own independently agreed objectives. Yet, the draft Statement appears not to observe this, and assumes that the Government's priorities must take precedence over the Commission's. This is apparent in paragraphs 3, 4 and 5, which claim the priority functions identified by the Government should be "the focus of the Electoral Commission's work".

11. Despite the Government's repeated commitment not to infringe on the Commission's operational independence, the draft Statement then sets out specific operational objectives for the Commission, as well as the methods by which those objectives should be achieved. This is evident on the issue of enforcement. The Statement purports not to affect the

Commission's ability to undertake enforcement activity "as it sees fit", yet goes on to provide detailed instruction as to how the Commission should exercise its responsibilities, and the particular factors it should consider therein. For example, paragraph 20 specifies that the Commission should "be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure". The merits or not of this consideration are irrelevant; *how* the Commission approaches enforcement is a matter for the Commission alone to independently determine, as required by it in law.

12. The draft Statement similarly provides improper operational instruction on the issue of guidance. For example, paragraphs 13(b), 14 and 25, amongst others, detail what the Commission's guidance should contain, as well as its format. Again, whether or not the matters specified are sensible or desirable, is irrelevant - the point is it is not for the Government to specify in a Statement, which would have a form of binding statutory effect, how the Commission should execute its legal functions.

13. The Government's claim that the Commission "will remain operationally independent", and its claim that the Statement "does not suggest that the Commission should cease to carry out any of its other statutory duties" is of little material consequence in practice, because implicit in the Statement's prioritisation of the Government's objectives is a substitution or de-prioritisation of the Commission's own objectives. This is further underlined by the reference in paragraph 3 that the Government's priority functions "should be the focus of the Electoral Commission's... allocation of resources". This provision has the effect of legally requiring the Commission to have regard to the view that the Commission's resources should be allocated in such a way that they are focused on the Government's priorities, at the expense of those independently identified by the Commission, and assured and approved by the Speaker's Committee.

14. We note the emphasis in the draft Statement, and the Minister's accompanying letter, on the fact that the Act requires the Commission only to 'have regard' to the Statement and that, ultimately, it would be up to the Commission "to consider the content of the Statement and weigh it up against other relevant considerations". However, we are concerned that with such a detailed and specific set of operational instructions, without any guidance in the Statement on how to reconcile divergent or conflicting Government and Commission priorities, and with the looming threat of expensive legal challenge increased, the Government's instructions in this Statement may, in practice, be determinative.

**15. We do not agree with the Government's assessment that the draft Statement protects the Electoral Commission's operational independence. The effect of paragraphs 3, 4 and 5 is to effectively replace the Commission's objectives with a set of operational instructions which reflect the Government's preferred objectives. Use of a Statement in this way is incompatible with the Commission's operational independence, and the Government's stated commitment to preserving it.**

**16. If the Government is minded to proceed with designation of a Statement after this consultation, it should remove paragraphs 3, 4 and 5, and reflect carefully on the wording of section 4A of the Act. Anything brought forward in place of these paragraphs should observe that the Statement is intended to set out *the Government's***

**priorities, and should not assume that these are the same as, interchangeable with, or take precedence over, the Commission's own priorities, as agreed by the Speaker's Committee.**

### *Confused responsibilities*

17. Much of the first section of the draft Statement restates the existing functions of the Commission, but in terms which differ from the language used in statute. We consider that, at best, this adds limited value given that the Commission's functions as set out in legislation are well-understood. Yet, this also needlessly introduces confusion about the Commission's role, and increases the risk of legal challenge. We are concerned about the potential for the Commission's work to be mired in and distracted by constantly needing to consider how to mitigate the potential for, and responding to, legal challenges (including vexatious ones) which exploit confusion about the Commission's functions and obligations. In addition to the negative impact this could have on the effectiveness of the Commission's work, this burden may also reduce the value for money achieved by the Commission.

18. In places, the draft Statement also suggests a misguided view of the Commission's responsibilities. For example, despite appearing to acknowledge in paragraph 5 that "the Commission is not responsible for taking enforcement action regarding electoral fraud allegations", the draft Statement goes on in paragraph 21 to state that; "where decisions are taken by the prosecuting bodies not to take forward prosecutions, and where the Commission is aware of a decision not to prosecute and it is appropriate to do so, the Commission should ensure the record is clear that individuals or organisations do not remain under criminal investigation". Decisions on prosecutions are a matter for the prosecuting authorities, rather than the Commission, as set out in law. It is improper - and, in any case, unworkable in practice - for the Government to suggest the Commission should act as a spokesperson for a prosecuting authority, or be held accountable for their decisions. Such a misguided articulation of the Commission's responsibilities also does little to inspire confidence in the rigour and worthiness of the draft Statement as a whole.

**19. We consider that the Commission's roles and responsibilities are already well understood, and that restating them in the manner the draft Statement currently does achieves little of value, whilst introducing confusion about the Commission's role and responsibilities, as well as increased legal risk. This, in turn, is likely to reduce the Commission's efficiency, economy and effectiveness. If the Government is minded to proceed with designation of a Statement after this consultation, it must ensure the Statement accurately reflects the Commission's actual roles and responsibilities, and that these are articulated in the Statement using existing statutory terms.**

20. We also consider the Statement to be unduly long. The longer the Statement is, the more potential there is for the risks mentioned above to materialise. **The Government should consider what is achieved in a Statement of this length, which cannot be achieved through a considerably shorter Statement.**

### *Confused regulatory landscape*

21. We are also concerned that the draft Statement emphasises proportionality in relation to *particular* aspects of electoral law, and that it articulates what proportional enforcement



looks like in relation to those aspects. For example, paragraph 14 says the Commission “must have regard to the importance of proportionate enforcement of the new digital imprint regime, including the need to avoid disproportionate sanctions against genuine mistakes where reasonable steps have been taken to comply with the new digital imprint regime”. This potentially has the effect of implying relative importance and seriousness of particular aspects of electoral law, and setting the parameters of what may or may not constitute an offence or contravention under them.

22. The detailing of specific factors the Commission should consider when carrying out its enforcement work in this way also potentially conflicts with the requirement under paragraph 25 of schedule 19C of the Act for the Commission to prepare and consult on guidance relating to its enforcement approach (which it then publishes as its Enforcement Policy). The factors set out in the draft Statement are articulated differently to those in the Commission's existing Enforcement Policy. Rather than enable the Government's stated objective of ensuring that regulation of political finance is transparent, this risks creating confusion about the standards applied to regulated activity and how the Commission will, or should, exercise its responsibilities.

**23. The operation of the Commission's enforcement responsibilities is clearly a matter for the Commission alone to independently determine, and should not be referenced in a draft Statement in this manner. If the Government is minded to proceed with designation of a Statement after this consultation, these aspects should be removed, with nothing included in their place which effectively establishes alternative, and potentially conflicting, sets of standards for regulated activity; otherwise, the Statement will cause confusion for the electoral community, undermine voter confidence, and compound the risk of legal challenge for the Commission.**

### *Executive priorities*

24. The section ‘Executive priorities in relation to elections as approved by Parliament’ is underpinned by the tendency referenced in paragraphs 13 and 15 above, to assume that there is a duty on the Commission to implement the Government's policy through the performance of its own functions. However, whereas the focus of the first section (‘Priorities for the Electoral Commission’) is on highlighting which of the Commission's *existing* statutory functions the Government considers to be core priorities, the second section appears to presume upon the Commission a duty to implement Government policy, *for some of which Parliament has not yet legislated or approved, or which may not even be official Government policy.*

25. For example, paragraph 7 references “the UK Government's 2019 Manifesto”. Apart from being constitutionally misguided (there is no such thing as “the UK Government's 2019 Manifesto” – only the *Conservative Party's* 2019 Manifesto), when read with paragraph 8, which guides the Commission to the effect that it should “support the Government's delivery of legitimate executive priorities in relation to elections during this Parliament, including [*but not limited to*] changes brought by the Elections Act 2022”,<sup>2</sup> **the effect could be to place upon the Commission an improper expectation that it will**

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<sup>2</sup> Our insertion and emphasis.

**circumvent Parliament by supporting the delivery of priorities which Parliament has not legislated for, or which conflate Government policy with the policy of a particular political party.**

26. **If the Government is minded to proceed with designation of a Statement after this consultation, it should remove these provisions and ensure that any future Statement is not drafted in such a way as to direct, endorse or imply that the Commission should undertake activity for any ends other than those for which Parliament has approved, or which is otherwise incompatible with the Commission's statutory functions and Corporate Plan.**

### *Form and status of guidance*

27. Section 4A(2) of the Act sets out that the principal (and mandatory) purpose of a Statement is to set out the Government's priorities, and how the Commission's functions relate to them. Section 4A(3) provides that a statement *may* also set out guidance for the Commission. On the face of it, this power may appear broad. However, inclusion of guidance is optional and, in any case, subsidiary to the principal elements of a Statement (those under section 4A(2)). To the extent that any guidance may be needed, we consider that it ought to be limited to particular matters that the Government has knowledge of or expertise on, but which the Commission may not, and which may enable the Commission to carry out its functions more effectively. Any guidance under section 4A(3) should be circumspect, demonstrably respect the Commission's independence from Government, and not presume that the Government has any supervisory or other superior role for which there is no legal justification.

28. It would be no more appropriate for a Statement to set out what the Government considers the Commission's priorities should be, what principles should govern it, or otherwise how it should go about its work, under the guise of section 4A(3) guidance, than it would be to set this out under section 4A(2). **For the avoidance of doubt, the Government should not be mistaken in thinking that the elements of the draft Statement which effectively replace the Commission's objectives with a set of operational instructions, including those addressed in paragraphs 10 to 16 above, are justified by the provisions of section 4A(3).**

29. As currently drafted, it is not possible to distinguish the provisions of the Statement which are inserted pursuant to sections 4A(2) and 4A(3). This impairs the ability of us, the Commission, and others to fully consider the basis, appropriateness, and status of the provisions of the draft Statement. **Any future Statements should clearly attribute each section to the applicable statutory authority under which they are included.**

### *Conclusion*

30. **This draft Statement is not fit for purpose. Taken together with the responses from the Commission and the Levelling Up, Housing and Communities Committee, the Government should have a comprehensive understanding of the reasons why this is the case.**

31. We do not believe the designation of this draft Statement would improve the Commission's performance. It would, however, introduce uncertainty, confusion, and new legal risks, which are likely to reduce the Commission's efficiency, economy and effectiveness, in return for no material benefit to the democratic process.

32. Designation of a Statement is a power the Government *may* use, rather than one it *must* use. We encourage the Government to reflect carefully on the points raised through this statutory consultation, and reconsider whether it wishes to proceed with the designation process. If the Government concludes that a Statement is necessary, we would encourage it to work constructively with the consultees to bring forward a revised Statement which recognises and addresses the concerns raised. Minor adjustments to the language of this draft would not be sufficient; it must be entirely rewritten. We are prepared to assist the Government in this effort.

33. If the Government proceeds to designate this draft Statement in its current form despite the concerns raised, there is the potential to undermine what have, to date, been effective working relationships between the Government and the Commission, as well as the other statutory consultees.

34. We also note that, just as the Secretary of State's power to designate a Statement is optional, the power of the Speaker's Committee to hold the Commission accountable for its duty to have regard to that Statement is also optional. Were the Government to proceed to designate a Statement which we consider not fit for purpose, we would need to consider carefully what account we could take of such a Statement, and whether we could legitimately hold the Commission to account for their duty in relation to it.

35. The Government should therefore be mindful not to set a precedent of disregarding concerns during consultations on draft Statements; doing so could, ultimately, be to the detriment of our electoral integrity and public confidence in the UK's democratic processes.

# Appendix 1: Legal background to the Strategy and Policy Statement process

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## Part I: Strategy and Policy Statement

### *Strategy and Policy Statement*

1. Section 4A of the Political Parties, Elections and Referendums Act 2000 ('PPERA'), as amended by the Elections Act 2022 ('the Act'), allows the Secretary of State to designate a Strategy and Policy Statement. A Statement sets out:

- i) strategic and policy priorities of His Majesty's Government relating to elections, referendums and other matters in respect of which the Commission have functions, and
- ii) the role and responsibilities of the Commission in enabling His Majesty's Government to meet those priorities.

2. The Statement may also set out:

- i) guidance relating to particular matters in respect of which the Commission have functions; and
- ii) any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate.

3. Section 4A precludes the Statement from containing provisions relating to the Commission's devolved Welsh and Scottish functions. The Secretary of State must also have regard to the duties imposed on the Commission by section 145(1) of PERA, when preparing a draft Statement.

4. Section 4B of PERA requires the Electoral Commission to "have regard to the statement when carrying out their functions". This duty does not apply in relation to information included in the Statement pursuant to section 4A(3)(b).

### *Strategy and Policy Statement: consultation*

5. Section 4C of PERA require the Secretary of State to consult the following on a draft of the Statement, before the Statement can be designated:

- i) the Electoral Commission;
- ii) the Speaker's Committee for the Electoral Commission; and
- iii) the Levelling Up, Housing and Communities Committee.<sup>1</sup>

6. After the above have been consulted, the Secretary of State must:

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<sup>1</sup> Or another Committee of the House of Commons, if the functions of the Levelling Up, Housing and Communities Committee at the passing of the Act with respect to electoral matters (or functions corresponding substantially to such matters) become functions of a different Committee.

- i) make whatever changes the Secretary of State considers necessary in light of responses to the consultation, and
- ii) prepare a report containing the Secretary of State's response to the consultation.

7. There is no legal requirement for the report mentioned above to be published unless the Secretary of State wishes to continue proposing that the Statement be designated. In that case, the Secretary of State must lay before Parliament a document which:

- i) explains the Secretary of State's proposals;
- ii) sets them out in the form of a draft statement; and
- iii) includes the report mentioned above.

### ***Strategy and Policy Statement: approval***

8. The document mentioned in para 7 above, must then be laid in Parliament for 60-days. During this 60-day period, representations may be made regarding the draft Statement by Parliamentarians. The Secretary of State must "consider" any representations made during this 60-day period.

9. If, after this 60-day period, the Secretary of State intends to proceed with the designation of the Statement, they must lay before Parliament the draft Statement, and a report containing the Government's response to any representations made during the 60-day period.

10. The draft statement is then subject to the affirmative approval procedure, and must therefore be approved in both Houses of Parliament within 40 days of being laid.

### ***Strategy and Policy Statement: Commission's duty to report***

11. After a Statement has been designated, section 4B of PPERA requires the Commission to publish a report as soon as practicable after the end of the 12-month period after the Statement has been designated, and every 12 months thereafter. This report must set out what the Commission has done during the year "in consequence of the statement". A copy of this report must be provided to the Speaker's Committee. Under section 4B(5), the Commission would not need to produce another report if a new Statement were to be designated during the 12-month reporting period applying to a previous Statement. Similarly, under section 4B(7), if a Statement were to be withdrawn during a 12-month reporting period, the Commission would not be required to produce a report on the withdrawn Statement.

### ***5-yearly review of Statements***

12. Under section 4D of PPERA, the Secretary of State must review a Statement 5 years after it is first designated, or was last revised (and the consultation requirements under 4C were not disapplied under 4E(5)). After reviewing the Statement, the Secretary of State may:

- a) revise it,

- b) leave it as it is, or
- c) withdrawn it.

However, if the Secretary of State is reviewing a revised Statement, and the consultation requirements were disapplied during that revision, the designation date for the previous/original Statement will apply.

13. Section 4D of PPERA also allows for the Secretary of State to retain the originally designated Statement unamended, or withdraw it.

### **Revising Statements**

14. Under section 4E of PPERA, the Secretary of State may revise a Statement, outside of the five-yearly review process set out above. The Statement may be revised in the following circumstances:

- i) on the Government's initiative;
- ii) at the request of the Electoral Commission; or
- iii) at the request of the Speaker's Committee.

15. If the request comes from the Electoral Commission, the request must be made in writing to the Secretary of State and the Speaker's Committee, and must give details of the changes to the Statement that the Electoral Commission proposes should be made. If the request comes from the Speaker's Committee, the request must be made in writing to the Secretary of State. It must also give details of the changes to the Statement that the Committee proposes to make.

16. When revising a Strategy and Policy Statement, the Secretary of State can disapply the consultation requirements set out in section 4C, provided that they have given notice to the Speaker's Committee, and have considered any representations made in response to the notice. If, thereafter, the Secretary of State wishes to proceed with disapplying the consultation requirement, the Secretary of State must notify the Speaker's Committee, Electoral Commission and Levelling Up, Housing and Communities Committee of the revisions they intend to make to the draft Statement.

17. If the Secretary of State seeks to disapply the consultation requirements set out in section 4C, and the Speaker's Committee, Electoral Commission, or Levelling Up, Housing and Communities Committee objects, the Secretary of State may still disapply the requirements and lay the revised statement, but they must also lay a statement of their reasons for the determining that the consultation requirements do not apply.

## **Part II: Elections Act background: Examination of duty to have regard strategy and policy statement**

18. Section 13ZA of PPERA, as amended by the Act, provides that the Speaker's Committee "may examine the performance by the Commission of the Commission's [duty to have regard to the strategy and policy statement]".

19. Section 13ZA(2) provides that the Speaker's Committee can require the Electoral Commission to provide any information they hold for the purposes of exercising this power.<sup>2</sup>

20. Schedule 2 of PPERA, as amended by the Act, includes a statutory protection that written and oral evidence given to the Speaker's Committee may not be used against them in any civil or disciplinary proceedings, or in criminal proceedings, unless the evidence was given in bad faith.

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<sup>2</sup> This does not include information which might adversely affect any current investigation or proceedings.

## Appendix 2: Letter from the then Minister of State for London, Local Government and Communities

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I am writing to you in your role as the Chair of the Speaker's Committee on the Electoral Commission ('Speaker's Committee') to inform you that, today, the Government published the draft Strategy and Policy Statement ('Statement') for the Electoral Commission on GOV.UK, thus officially launching the statutory consultation on the Statement. I have also written to members of the Parliamentary Parties Panel and other relevant stakeholders to inform them about the start of the statutory consultation. The Government will also lay a Written Ministerial Statement before both Houses as soon as possible following summer recess.

As you know, Section 16 of the Elections Act 2022 ('the Act') provides for a Statement to be approved by the UK Parliament, that will set out guidance and principles, to which the Electoral Commission must have regard in the discharge of its functions. The Commission will remain operationally independent and governed by its Commissioners. The duty to have regard to the Statement means that when carrying out its functions the Commission will be required to consider the content of the Statement and weigh it up against other relevant considerations.

In recent years, some parliamentarians have also questioned the adequacy of the existing accountability structures for the Electoral Commission. Given the nature of the Commission's work, it is right that the regulator remains accountable to the UK Parliament via your Committee. The Act therefore also expanded the role of your Committee to include examining the Commission's compliance with its duty to have regard to the Statement. Together, these measures will facilitate scrutiny by the UK Parliament of the Electoral Commission's performance of its duty in relation to the Strategy and Policy Statement whilst respecting the Commission's operational independence.

The Act requires the Secretary of State to consider the views of the Electoral Commission, the Speaker's Committee, and the Levelling Up, Housing and Communities Committee via a statutory consultation before submitting the draft Statement for the approval of the UK Parliament. I have therefore also written to the Chairs of the Levelling Up Committee and the Electoral Commission.

### Overview of the Strategy and Policy Statement

In September 2021, the Government published an illustrative example of the Statement (DEP2021-0736) to aid parliamentarians' understanding of the measure during the passage of what was then the Elections Bill. The revised Statement maintains the scope and format of the illustrative Statement and is split into three main components:

- **Priorities for the Electoral Commission:** articulating the Government's view of the Commission's priorities and functions that support the Government's priorities in relation to elections, referendums and other matters in respect of which the Commission has functions.



- Executive priorities in relation to elections as approved by Parliament: This section contains functions and responsibilities of the Commission, including those that are in the Elections Act.
- Principles for the Electoral Commission: This section contains the Government view of the core principles that should be prioritised by the Electoral Commission in the exercise of its functions.

The Government in its 2019 manifesto committed to securing the integrity of elections. While the Commission is not responsible for taking enforcement action against electoral fraud allegations, it plays an important role in tackling electoral fraud through some of its other core statutory duties, such as setting performance standards for Returning Officers. The draft Statement therefore requires the Commission to have regard to tackling voter fraud when exercising relevant functions.

The draft Statement also provides that the Commission should:

- Pay specific attention to the need to provide greater support to Electoral Registration Officers and Returning Officers through advice and guidance in local authorities at higher risk of electoral fraud, including those with a history of electoral fraud (e.g. Tower Hamlets);
- Support Returning Officers in ensuring the secrecy of the ballot inside polling stations;
- Support participation by informing the public about the franchise and electoral registration, as well as associated changes such as extension of the franchise to all British citizens overseas who were previously registered or resident in the UK, and a new online application process for absent vote arrangements;
- Proportionately enforce the new digital imprint regime, and support compliance recognising the importance of protecting free speech by individuals when producing statutory guidance;
- Consider best practice from other regulators on proportionate enforcement and the need to conduct investigations in a timely manner;
- Provide guidance to campaigners that sets out the rules as simply as possible and offers practical advice, with illustrative examples, of how to comply with the rules, as legislated by Parliament.

The draft Statement includes various changes to the illustrative Statement which are outlined in detail in Annex A, including reflecting necessary changes now that the Elections Bill is enacted.

## Next steps

I would be grateful for your views on the draft Statement by 5 December 2022. Once the consultation is closed, the Secretary of State will consider all responses and make any changes deemed necessary before laying the draft Statement in Parliament alongside a response to the statutory consultation. Following an initial 60-day period during which parliamentarians of both Houses can make representations about the draft Statement,

the Secretary of State will consider parliamentarians' representations, summarise the Government's response to those in a report and make any changes deemed necessary to the Statement before submitting it to parliamentary approval for up to 40 days via the affirmative procedure.

The Government is grateful for your engagement throughout the development of these proposals and for the valuable contributions of the members of your Committee. I look forward to receiving your views and continuing to work with you on these important provisions which will ensure that the Electoral Commission operates as an effective, operationally independent regulator, discharging its responsibilities efficiently and commanding the trust and confidence of both Parliament and the public.

PAUL SCULLY MP

Annex A: Key changes in the revised Strategy and Policy Statement for the Electoral Commission

- **Opening statement:** A sentence has been added expressly stating that 'this Statement does not apply to the Commission's devolved Welsh or Scottish functions'. This follows the Welsh and Scottish Parliaments' decision during the Bill's passage not to give consent to this measure and is in line with the provisions in the Act, which ensure the Statement must not contain provisions relating to the Commission's devolved Welsh and Scottish functions.
- **Paragraphs 5a-e:** These new paragraphs acknowledge that whilst the Commission is not responsible for taking enforcement action regarding electoral fraud allegations, it does play an important role in tackling fraud through some of its other core statutory duties. This section of the Statement will require the Commission to have regard to tackling voter fraud when exercising these specific functions.
- **Executive priorities in relation to elections as approved by Parliament:** Various paragraphs in this section have been updated now that the Elections Bill is enacted. This includes adding guidance in relation to measures which were added during the Bill's passage, such as 'a new online application process for absent vote arrangements' in paragraph 12, and the code of practice for third party campaigners in paragraph 13b.

## Appendix 3: Draft strategy and policy statement for the Electoral Commission

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### Priorities for the Electoral Commission

This section comprises the Government's view of the Electoral Commission's priorities and functions that support the Government's priorities in relation to elections, referendums and other matters in respect of which the Commission has functions. As such, this is not an exhaustive list of all the Commission's duties and responsibilities and does not suggest that the Commission should cease to carry out any of its other statutory duties. This Statement does not apply to the Commission's devolved Welsh or Scottish functions, and any reference in this Statement to "functions" excludes those devolved functions.

1. The Electoral Commission is the independent regulatory body responsible for giving guidance and support to Electoral Registration Officers and Returning Officers in undertaking electoral registration and conducting elections effectively and in accordance with the law. The Commission sets performance standards for these officers in Great Britain in terms of their activities and produces statutory reports on electoral events. It is also responsible for registering political parties, giving guidance to political parties, candidates and third party campaigners among others on electoral rules, and regulating donations and loans to political parties and other campaigners, and their spending.
2. The Chair of the Commission has the responsibility in law for acting as the Chief Counting Officer at national referendums in the UK (held under the Political Parties, Elections and Referendums Act 2000) and the staff of the Commission support the Chair in that role, when it is required, to work through local electoral authorities to deliver such events.
3. The Government believes the Electoral Commission has an important role to play in maintaining the integrity of our elections and public confidence in that integrity. As a statutory body, the Electoral Commission has a range of duties and responsibilities, most notably set out in the Political Parties, Elections and Referendums Act 2000. Amongst these duties and responsibilities, the Government considers several to be core priority functions. It is the Government's view that these priority functions should be the focus of the Electoral Commission's work and allocation of resources. This Statement is intended to provide guidance to which the Commission must have regard in the discharge of its functions. This Statement does not seek to interfere with the governance of the Commission and the Commission remains operationally independent. When preparing the Statement, the Secretary of State has had regard to the duty placed on the Commission by Section 145 (1) of the Political Parties, Elections and Referendums Act 2000 to monitor and ensure compliance with the rules set out in that Act. Further, this Statement does not affect the ability of the Commission to undertake enforcement activity within its remit as it sees fit and it cannot include reference to specific investigatory or enforcement activity of the Commission. The duty to have regard to the Statement means that when carrying out its functions, the Electoral Commission will be required to consider this Statement and weigh it up against any other relevant considerations. The Statement seeks to ensure greater accountability to the UK Parliament on how the Electoral Commission discharges its functions.

4. The Government considers the core priority functions of the Electoral Commission, rooted in priorities already established in law, are as follows:

- a) The Commission is responsible for supporting Returning Officers and Electoral Registration Officers with clear advice and guidance, and in Great Britain for setting and monitoring robust performance standards, to ensure the successful delivery of polls that meet the UK's high standards of democratic integrity and free and fair elections.
- b) The Commission is responsible for informing the public about and promoting awareness of current electoral systems in the UK, including systems that have been enacted by the UK Parliament but are not yet in force, and connected matters. As part of this duty, the Commission encourages accurate voter registration and access to polls.
- c) Alongside the police and prosecution authorities, the Commission is responsible for enforcing the rules as legislated by Parliament relating to the regulation of political finance and electoral spending that provide for an even playing field and public confidence in the electoral process. As part of this, the Commission has a wide range of investigatory and civil sanctioning powers and can refer criminal matters to the police. The Electoral Commission has never brought criminal prosecutions. The Elections Act 2022 maintains that status quo and makes clear that the proper place for criminal prosecutions relating to electoral law lies with the prosecution authorities.
- d) The Commission is responsible for providing clear and high-quality guidance, advice and support to political parties, candidates and other campaigners, that help their understanding of the rules as legislated by Parliament, with which they must comply.
- e) With regards to national referendums held in pursuance of the Political Parties, Elections and Referendums Act 2000, the Commission's core functions include considering the wording of the referendum question and reporting on its intelligibility; maintaining a register of permitted participants; and enforcing the rules as legislated by Parliament relating to the regulation of referendum expenses. The Chief Counting Officer (be it the Chair of the Commission or someone appointed by the Chair) is responsible for the conduct of these referendums and for certifying the results of these referendums.

5. In addition, whilst the Commission is not responsible for taking enforcement action regarding electoral fraud allegations, it plays an important role in tackling fraud through some of its other core statutory duties. As part of this, the Commission should:

- a) Effectively support Electoral Registration Officers and Returning Officers in the discharge of their functions by providing them with clear guidance to deliver robust polls that meet the UK's high standards of democratic integrity. In particular, the Commission should support Returning Officers in ensuring the secrecy of the ballot inside polling stations, by making it clear in both advice and guidance that any breach of the secrecy laws or attempt to influence someone's vote while in the polling booth is an offence. The law expressly provides for children accompanying their parents into polling stations. The

Government considers this important in order to allow children to witness how the democratic process works. The law also expressly provides for a companion (to assist a disabled voter). The Commission should also pay specific attention to the need to provide greater support to Electoral Registration Officers and Returning Officers through advice and guidance in local authorities at higher risk of electoral fraud, including those with a history of electoral fraud.

- b) Effectively support Returning Officers, Electoral Registration Officers and the police in identifying and addressing the risk of corrupt and illegal practices, including intimidation and undue influence as evident from past Election Court judgements including the London Borough of Tower Hamlets in 2015. This includes identifying and reporting on the observation of potential electoral fraud when publishing reports on the administration of elections and referendums.
- c) Assist the relevant authorities in tackling electoral fraud when observing working practices of Electoral Registration Officers, Returning Officers and Counting Officers.
- d) Have regard to the importance of improving electoral integrity when setting performance standards and monitoring the level of performance against those standards, by Electoral Registration Officers, Returning Officers and Counting Officers.
- e) Support tackling electoral fraud when promoting public awareness about current electoral systems in the UK and any pending such systems and connected matters as detailed in paragraph 9 of this Statement.

6. Any allegations of electoral fraud should be referred to the police and prosecution authorities for investigation and prosecution.

Executive priorities in relation to elections as approved by Parliament

This section contains functions and responsibilities of the Commission that are included in the Elections Act 2022. As such, the parts of the Statement that relate to such a function will only apply after that function in the Act has been commenced.

7. The UK Government's 2019 Manifesto set out this Government's commitment to protecting our democracy and ensuring that it remains secure, modern, transparent and fair. The Government places citizens' participation at the heart of our democracy, trusting their choices and maintaining their confidence in our elections. We are guided by important principles that underpin our democracy:

- a) that those who are entitled to vote should always be able to exercise that right freely, securely and in an informed way;
- b) that fraud, intimidation and interference have no place in our democracy;
- c) that we are the stewards of our shared democratic heritage which we seek to keep up to date for our age.

8. The Commission in its work should support the Government's delivery of legitimate executive priorities in relation to elections during this Parliament, including changes brought by the Elections Act 2022 and as listed below.

9. To support the Government's objective of tackling electoral fraud with the introduction of voter identification in Great Britain and by addressing weaknesses in the current absent voting arrangements, the Commission should:

- a) Support continued effective delivery of voter identification by raising public awareness about the requirements to show an approved form of photographic identification before taking part in UK parliamentary elections, local elections in England and elections in Northern Ireland.
- b) Support issuing authorities in meeting the requirement to issue a free Electoral Identity Document to any elector requiring it through the provision of guidance to Electoral Administrators and the police that will support their understanding of the operation of voter identification.
- c) Assist in tackling electoral fraud by promoting awareness amongst voters about absent voting arrangements (postal and proxy voting).

10. The Government aims to improve accessibility of elections by allowing a wider range of people to assist voters with disabilities if needed when voting in a polling station and by broadening the requirements for Returning Officers to provide equipment to support voters with disabilities in polling stations. The Commission should support this goal by issuing guidance to Returning Officers on these new requirements introduced by the Elections Act 2022, and reviewing and updating the guidance where appropriate.

11. Another key Government priority is supporting participation by championing freedom of expression and tolerance and by working to stamp out intimidation in public life through the delivery of a new electoral sanction. The Commission should support this work and candidates facing intimidatory or abusive behaviour by updating guidance in the 'Joint Guidance on Intimidation for Candidates' jointly produced with the National Police Chiefs Council, Crown Prosecution Service and the College of Policing. The Commission should also update other relevant guidance, including the guidance for candidates about qualifications for standing for election and the guidance for Returning Officers regarding the nomination process for offenders who have been disqualified from standing at a relevant election.

12. The Commission should also support participation by informing the public about the franchise and electoral registration, as well as associated changes such as extension of the franchise to all British citizens overseas who were previously registered or resident in the UK, and a new online application process for absent vote arrangements. This will include:

- a) Making sure electors are clear about the online and offline process for registering to vote and for applying for an appropriate absent vote arrangement where desired.
- b) Raising awareness among British citizens overseas of the extension of the franchise for expatriates.

13. To support the Government in combating foreign interference in UK elections by ensuring compliance with the political finance framework, the Commission should:

- a) Publish clear and easily accessible information about the rules and requirements in relation to the registration, spending, and donations received, of political parties candidates, campaigners and others. The Commission should also produce high-quality and accessible guidance for campaigners on how to comply with new rules legislated by Parliament in the Elections Act, such as the restriction on foreign third-party campaigning (section 26).
- b) When carrying its functions under section 100A of the Political Parties, Elections and Referendums Act 2000 (PPERA) to prepare a code of practice on the controls for third party campaigners, the Commission should ensure that this guidance is clear, easily accessible and comprehensive. In particular, with regards to guidance on qualifying expenses in Part 1 of Schedule 8A of PERA, the Commission should include clear and comprehensive guidance about the test of who should count as “the public at large or any section of the public”. As part of the statutory consultation process, the Commission must consult “such other persons as the Commission consider appropriate” and the Commission must have regard to the desirability of doing a public consultation before submitting the draft code to the Secretary of State.

14. To further the aim of improving transparency in UK elections, alongside the police and prosecuting authorities, the Electoral Commission must have regard to the importance of proportionate enforcement of the new digital imprint regime, including the need to avoid disproportionate sanctions against genuine mistakes where reasonable steps have been taken to comply with the new digital imprint regime. The Commission should also support compliance with the regime and recognise the importance of protecting free speech by individuals when producing the statutory guidance for the digital imprint regime.

15. To support the Government's efforts to clarify the law on notional expenditure, the Commission should reflect changes to the law on notional expenditure introduced by the Elections Act 2022 when updating the guidance on spending.

#### Principles for the Electoral Commission

This section contains the Government's view of the core principles that should be prioritised by the Electoral Commission in the exercise of its functions. This does not suggest that these are the only relevant considerations that the Commission may wish to consider.

16. Impartiality: The Commission should uphold and demonstrate the principle of political impartiality by ensuring that the Commission and its staff communicate and treat all operations, decisions, regulated entities and political matters neutrally and impartially.

17. Accountability: The Commission should be fully accountable as a public body with such important responsibilities relating to our democratic processes. The Commission should, as appropriate, provide transparency around its decision making including but not limited to its Report required under section 4B(4) of the Political Parties, Elections

and Referendums Act 2000 in relation to this Statement. The Commission should work closely with the Speaker's Committee on the Electoral Commission, as well as the UK Parliament to ensure public and democratic accountability.

18. Responsiveness to the public and the public interest: The Commission should respond to the need of the public and the public interest in the discharge of its functions, including when prioritising competing interests. For example, the Commission must have regard to the importance of accurate and prompt election results through supporting Returning Officers' conduct of counts and setting adequate performance standards for Great Britain.

19. Value for money: The Commission should ensure value for taxpayers' money in the discharge of its functions by carefully considering the balance between executive priorities in relation to elections as approved by Parliament listed in this Statement and its other functions. As part of this, the Commission should consider the principles set out in Government guidance entitled 'Managing Public Money' on the spending of money in the UK public sector, including Cabinet Office guidance on grant standards and on lobbying by public bodies. For example, the Commission should ensure value for taxpayers' money when exercising its discretionary power to give advice and assistance (under section 10 of the Political Parties, Elections and Referendums Act) by considering whether such requests are in the public interest and a justifiable use of the Commission's resources.

20. Enforcement:

- a) The Commission should ensure robust, consistent, transparent and proportionate enforcement of the rules legislated by Parliament, by balancing the need to engage constructively with campaigners to support compliance, with the need to sanction electoral offences. Proportionate enforcement includes the need for the Commission to balance the impact of its enforcement policy on providing an effective deterrent for deliberate breaches of electoral law and not unduly discouraging participation in public life. The Commission should be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure. The Government is committed to engaging with the police to assess where support may be needed to enforce electoral regulation proactively and effectively. In addition, as recommended by the Committee on Standards in Public Life's report on 'Regulating Election Finance', the Commission must have regard to the importance of improving confidence in the fairness of its decision-making. This includes providing, where appropriate, those it regulates with a clear explanation of the rationale for the size of the sanctions it imposes in individual cases.
- b) In its approach to enforcement, the Electoral Commission should consider best practice from other regulators (such as the 'Macrory principles'), including where appropriate the use of requests for improvements before resorting to fines and the need to conduct investigations in a timely manner. The Electoral Commission should work closely and effectively with the police who hold responsibility for enforcing areas of electoral law and investigating where criminal offences are suspected.

21. Cooperation: Where appropriate, the Electoral Commission should cooperate with other regulators (such as the Information Commissioner and Ofcom) and public bodies



and executive agencies (such as Companies House), to deliver its functions and avoid regulatory duplication or confusion. This includes ensuring the effective enforcement of electoral law by continuing to work with the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service and the Public Prosecution Service NI for criminal prosecutions. Where decisions are taken by the prosecuting bodies not to take forward prosecutions, and where the Commission is aware of a decision not to prosecute and it is appropriate to do so, the Commission should ensure the record is clear that individuals or organisations do not remain under criminal investigation.

22. Communication and consultation: The Commission should consider the views of political parties, candidates and other campaigners to better understand the realities of campaigning activities when preparing guidance by seeking regular feedback and consulting with relevant stakeholders including the Parliamentary Parties Panel to ensure its guidance is helpful to campaigners. This will help to ensure engagement with the guidance and trust in the Electoral Commission amongst the public and interested parties. The Commission should use the full skills and experience of its Electoral Commissioners, including those nominated by parties.

23. Devolution: The Commission is a UK wide body with responsibilities relating to electoral matters in all parts of the United Kingdom. The Commission must have regard to the importance of acting for all parts of the UK equally. This will involve an understanding of where electoral law, processes and practices differ and ensuring that the Electoral Commission in the discharge of its functions, particularly through advice provided to campaigners and published guidance, reflect such differences accurately. This includes providing clear advice and guidance to political parties, candidates and third-party campaigners among others in relation to the impact on reserved rules of any regulatory divergence which may arise across the UK's nations as a result of the devolution settlements. In relation to political finance regulation, this should include the application of the reserved rules during combined regulated periods, which can occur retrospectively.

24. Support to campaigners: The Commission should provide campaigners with clear, consistent and user-friendly guidance that supports campaigners in complying with electoral law. Electoral law can be complex and the Commission should provide guidance that sets out the rules as simply as possible and offers practical advice, with illustrative examples, of how to comply with the rules, as legislated by Parliament. As recommended by the Committee on Standards in Public Life's report on 'Regulating Election Finance', the Commission should ensure that its website and online guidance are as user-friendly, interactive and accessible as possible to campaigners and the public. As recommended in the same report, the Commission should seek regular feedback from the Parliamentary Parties Panel and voluntary organisations, to ensure the Commission's advice meets the needs of those that require it.

25. Ensuring clarity on the law: When drafting guidance for campaigners, the Commission should clearly identify whether the guidance is statutory, which must reflect electoral law (and other legislation) or whether it is non-statutory guidance. In any guidance, the Commission should clearly identify the scope of legal obligations. Such guidance should clearly distinguish between legal requirements which must be complied with, and behaviour or activity which is being encouraged or discouraged as a matter of best practice, to help campaigners in their decision-making.