

Shared in confidence

Elections Bill - Electoral Commission measures
Information pack

Policy summary	2
Draft clauses	5
Note on Elections Bill draft clauses on the Electoral Commission	13
Strategy and Policy Statement (illustrative example)	17

Policy summary

Parliamentary accountability on electoral policy

- The public rightly expects efficient and independent regulation of the electoral system. We must reflect on the current structures charged with this important responsibility, and where there is a need for change, be prepared to make it. To this end, the Government will make provisions in the Elections Bill for the introduction of a Strategy and Policy Statement that will empower Parliament to hold the Electoral Commission (EC) to account with respect to its broader work and performance. The Statement will contain statutory guidance for the Commission to have regard to in the discharge of its functions.
- The Statement will be drafted by the Secretary of State before being subject to parliamentary approval, thus providing an opportunity for Parliament to approve (or reject) the Government's guidance and communicate its expectations of the Commission, enabling greater visibility and scrutiny of its work. This is in line with other examples of statutory guidance for other independent regulators (e.g. Ofcom and the Office for Students) and provides a straight-forward process for the Government to articulate its vision of the Commission's priorities before seeking Parliament's approval on this vision.
- The Secretary of State will be required to consult the EC, the Speaker's Committee on the Electoral Commission (SCEC) (to which the Commission is accountable) and the Public Administration and Constitutional Affairs Committee (PACAC) on the draft Statement. The Secretary of State will also be required to consult the Scottish and Welsh Ministers with regards to any guidance relating to the EC's devolved Scottish and Welsh functions. The Secretary of State will have powers to make any necessary changes to the draft, or to decide to make no changes, before laying the draft before Parliament.
- The draft Statement will then be submitted to parliamentary approval via the affirmative resolution procedure on a non-amendable motion, which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period. This approval mechanism is in keeping with other statutory guidance in electoral law (such as the codes of practice on party and candidate spending) and in keeping with other statutory guidance for other regulators (such as the Ofcom Statement of Strategic Priorities).
- The Secretary of State will be required from time to time (at least once every five years since a Statement was last designated and subject to consultation) to review, consult on and then designate the Statement. The revised Statement, even if it had not been amended, would then be subject to parliamentary approval again. The Secretary of State will also be able to make smaller revisions to the Statement, at the Government's initiative, or at the request of the EC, and to consider requests from any of the other statutory consultees. For those smaller revisions (within the five-year review period),

the Secretary of State is able to decide whether consultation of the usual statutory consultees is needed, but must seek the SCEC's views on this point first. In the event that the Secretary of State disagrees with the SCEC's opinion on the need for a statutory consultation, the Secretary of State may proceed with laying the draft Statement before Parliament for approval without consultation, alongside a statement of the Secretary of State's reasons for the determination.

- An indicative example of a Strategy and Policy Statement is included in this pack¹. It contains example guidance on priorities for the EC, UK Government priorities in relation to elections, and overarching principles that the regulator would be required to have regard to in the exercise of its functions. The EC will be able to depart from the guidance set out in the Statement where it has statutory duties to fulfil or, if having had regard to the statement and to other relevant factors, it reasonably considers that other considerations justify departing from the guidance.
- The EC will continue to report to Parliament via the SCEC on its Five Year Plan, yearly Estimates and Accounts which will remain key tools in the Committee's ability to scrutinise the EC's finances. In addition, the EC will now be required to report yearly to the SCEC on the consideration given to the guidance set out in the Statement in the exercise of their functions. This can either be done separately or as part of its existing aforementioned annual reporting requirements.

Enhancing the remit of the Speaker's Committee

- Alongside this measure, the Government will make provisions in the Elections Bill to broaden the role and powers of the Speaker's Committee on the Electoral Commission (SCEC) to ensure that Parliament is able to hold the EC to account more effectively. The SCEC's remit is currently narrow and limited to examining the EC's estimates, accounts and Five Year Plan (where related to the Commission's reserved functions) and overseeing the appointment of the EC Commissioners and Chair. The SCEC's functions will be expanded to give it the power to examine the EC's compliance with its duty to have regard to the Strategy and Policy Statement in the exercise of its functions.
- With this additional role, the SCEC will be able to retrospectively examine the extent to which the EC had regard to the Statement in the exercise of their functions, in addition to its existing duties to examine the EC's finances and the appointment of Commissioners. This measure will not grant the Committee powers to interfere with the EC's governance or to direct its decision-making. The EC will remain independent of Government and Parliament and continue to be governed by its Chair and Electoral Commissioners. To support this expanded scrutiny function, the Committee will also be able to request information from the EC that the SCEC may require to examine the Commission's compliance with its duty to have regard to the Strategy and Policy Statement (e.g. via a public evidence session).

¹ The Elections Bill will make provision for the Statement to be introduced at a later date. The example Statement enclosed in this pack is intended for illustrative purposes only. The Government will produce a draft Statement proper and submit that draft to the statutory consultation process in due course, subject to the Bill receiving the approval of Parliament.

Clarity on criminal prosecutions

- The Government is clear that the proper place for criminal investigations and prosecutions relating to electoral law is with the police and the Crown Prosecution Service (and the Public Prosecution Service in Northern Ireland) who are experts in this domain. In recent years, the Electoral Commission has sought to develop the capability to bring criminal offences before the courts. This has never been agreed by the Government or Parliament. Having the EC step into this space would risk wasting public money as well as present potential conflicts of interest for a body responsible for providing advice and guidance on electoral law to initiate proceedings which might depend on the very advice that was given. We will therefore maintain the status quo by providing clarity in law that the Electoral Commission should not bring criminal prosecutions in England, Wales and Northern Ireland. This measure does not apply in Scotland where there is already a single prosecutorial body.
- Such reforms do not seek to interfere or inappropriately influence the investigative, operational or enforcement decisions of the Electoral Commission. These planned reforms predate any current inquiries, and stem from work initiated following the Pickles review into electoral fraud. The reforms would not in any way affect the ability of the Commission to undertake enforcement activity as it sees fit, but they will ensure greater accountability to Parliament on how the Electoral Commission discharges its wider functions.

Draft clauses

Elections Bill 1 [PRE-INTRODUCTION]

PART 3 THE ELECTORAL COMMISSION

Strategy and policy statement

12 Strategy and policy statement

After section 4 of PPERA insert –

“Strategy and policy statement

4A Strategy and policy statement

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 4C (consultation and procedural requirements) are satisfied.
- (2) The statement is a statement prepared by the Secretary of State that sets out –
 - (a) strategic and policy priorities of Her Majesty’s government relating to elections, referendums and other matters in respect of which the Commission have functions, and
 - (b) the role and responsibilities of the Commission in enabling Her Majesty’s government to meet those priorities.
- (3) The statement may also set out –
 - (a) guidance relating to particular matters in respect of which the Commission have functions;
 - (b) any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate.
- (4) A statement designated under this section must be published in whatever manner the Secretary of State considers appropriate.

4B Duties in relation to statement

- (1) This section applies where a statement has been designated under section 4A.
- (2) The Commission must have regard to the statement when carrying out their functions.
- (3) Subsection (2) does not apply to information contained in the statement by virtue of section 4A(3)(b).
- (4) The Commission must publish a report, as soon as practicable after the end of –

Shared in confidence

- (a) the period of 12 months beginning with the day on which the statement was first designated under section 4A, and
 - (b) every subsequent 12-month period, on what they have done during the period in question in consequence of the statement.
- (5) Where, before the end of a reporting period, the statement is designated by virtue of section 4D (5-yearly review) or section 4E (power to revise statement) –
- (a) the Commission are not required to publish a report under subsection (4) in relation to the reporting period, and
 - (b) subsection (4) has effect as if the reference in paragraph (a) to the day on which the statement was first designated under section 4A were to the day on which the statement was last designated under that section by virtue of section 4D or 4E.
- (6) “Reporting period” means a period in relation to which a report is required to be published under subsection (4).
- (7) The duty under subsection (4) does not apply in relation to a 12-month period if before the end of that period the statement’s designation is withdrawn under section 4D(4)(c) or treated as withdrawn under section 4D(5)(b).
- (8) The Commission must provide a copy of each report published under subsection (4) to the Speaker’s Committee.

4C Consultation and procedural requirements

- (1) This section sets out the requirements that must be satisfied before the Secretary of State may designate a statement under section 4A.
- (2) The Secretary of State must consult the following on a draft of the statement –
 - (a) the Commission,
 - (b) the Speaker’s Committee,
 - (c) the Public Administration and Constitutional Affairs Committee,
 - (d) the Scottish Ministers, so far as the draft relates to the Commission’s devolved Scottish functions, and
 - (e) the Welsh Ministers, so far as the draft relates to the Commission’s devolved Welsh functions.
- (3) After the Secretary of State has carried out the consultation required by subsection (2), the Secretary of State –
 - (a) must make whatever changes to the draft the Secretary of State considers necessary in light of responses to the consultation, and
 - (b) must then lay the draft before Parliament.
- (4) The draft as laid under subsection (3)(b) must, before the end of the 40-day period, have been approved by a resolution of each House of Parliament before the Secretary of State may designate the statement under section 4A.
- (5) In this section –
 - (a) “the 40-day period” means the period of 40 days beginning on the day on which the draft is laid before Parliament (or, if it is not laid before

- each House of Parliament on the same day, the later of the days on which it is laid);
- (b) the Commission's "devolved Scottish functions" are the Commission's functions in relation to –
 - (i) Scottish Parliamentary general elections, elections held under section 9 of the Scotland Act 1998 (constituency vacancies), and local government elections in Scotland, so far as those functions do not relate to reserved matters within the meaning of the Scotland Act 1998, and
 - (ii) referendums held throughout Scotland in pursuance of provision made by or under an Act of the Scottish Parliament;
 - (c) the Commission's "devolved Welsh functions" are the Commission's functions in relation to –
 - (i) general elections of members of Senedd Cymru,
 - (ii) elections held under section 10 of the Government of Wales Act 2006 (elections for Senedd constituency vacancies),
 - (iii) local government elections in Wales, and
 - (iv) referendums held under Part 2 of the Local Government Act 2000 or Part 4 of the Local Government (Wales) Measure 2011 (referendums relating to local authority executive arrangements),so far as those functions do not relate to reserved matters within the meaning of the Government of Wales Act 2006.

- (6) When calculating the 40-day period for the purposes of subsection (5)(a), ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (7) If the name of the Public Administration and Constitutional Affairs Committee is changed, the reference in subsection (2)(c) to that Committee is to be read (subject to subsection (8)) as a reference to the Committee by its new name.
- (8) If the functions of the Public Administration and Constitutional Affairs Committee at the passing of this Act with respect to electoral matters (or functions corresponding substantially to such matters) become functions of a different committee of the House of Commons, the reference in subsection (2)(c) to that Committee is to be read as a reference to the committee which for the time being has those functions.

4D 5-yearly review and designation of statement

- (1) The Secretary of State must review a statement designated under section 4A if a period of 5 years has elapsed since –
 - (a) the time when the statement was first designated under section 4A, or
 - (b) if later, the time when the statement was last designated under that section by virtue of this section or section 4E.
- (2) But where –
 - (a) the statement was last designated by virtue of section 4E, and
 - (b) the case was one in which the Secretary of State made a determination under section 4E(4) (disapplication of consultation requirements on revision of statement),

Shared in confidence

the designation of the statement in that case is to be ignored in determining for the purposes of subsection (1)(b) when the statement was last designated.

- (3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5-year period referred to in that subsection.
- (4) After reviewing the statement, the Secretary of State may –
 - (a) revise the statement,
 - (b) leave the statement as it is, or
 - (c) withdraw the statement's designation under section 4A.
- (5) Where the Secretary of State proceeds under subsection (4)(a) or (b) –
 - (a) the Secretary of State must designate the statement (whether or not revised) under section 4A(1);
 - (b) if the statement is not designated before the end of the review period, the designation of the statement (in the form reviewed under subsection (1)) is treated as withdrawn at the end of that period.
- (6) "The review period" means the 9 months beginning with the end of the 5-year period referred to in subsection (1).
- (7) Sections 4A(2) to (4) and 4C apply in relation to the statement and its designation in accordance with subsection (5)(a) as they apply in relation to the original statement.

4E Power to revise statement

- (1) The Secretary of State may revise a statement designated under section 4A otherwise than in consequence of a review under section 4D.
- (2) The power under subsection (1) may be exercised –
 - (a) on the Secretary of State's own initiative, or
 - (b) at the request of the Commission, where the request –
 - (i) is made by notice given to the Secretary of State and the Speaker's Committee, and
 - (ii) gives details of the changes to the statement that the Commission propose should be made.
- (3) Where the Secretary of State revises the statement under subsection (1) –
 - (a) the Secretary of State must designate the revised statement under section 4A(1), and
 - (b) subject to subsection (4), sections 4A(2) to (4) and 4C apply to the revised statement and its designation in accordance with paragraph (a) as they apply to the original statement.
- (4) The Secretary of State may determine in a particular case that section 4C(2) and (3) (consultation requirements) do not apply in relation to the revised statement.
- (5) Before making a determination under subsection (4), the Secretary of State –
 - (a) must give notice to the Speaker's Committee of the proposed determination (giving details of the revisions to the statement), and
 - (b) must consider any representations made by the Speaker's Committee in response to the notice.

- (6) Where the Secretary of State makes a determination under subsection (4), the Secretary of State must notify the following of the revisions to the statement –
 - (a) the Commission,
 - (b) the Speaker’s Committee,
 - (c) the Public Administration and Constitutional Affairs Committee,
 - (d) the Scottish Ministers, if the draft relates to any extent to the Commission’s devolved Scottish functions (within the meaning of section 4C), and
 - (e) the Welsh Ministers, if the draft relates to any extent to the Commission’s devolved Welsh functions (within the meaning of section 4C),and section 4C(7) and (8) apply for the purposes of paragraph (c) as they apply for the purposes of section 4C(2)(c).
- (7) Subsection (8) applies where the Secretary of State makes a determination under subsection (4) despite the Speaker’s Committee objecting to the proposed determination.
- (8) When laying the revised statement before Parliament in accordance with section 4C(3)(b), the Secretary of State must also lay before Parliament a statement of the Secretary of State’s reasons for the determination.
- (9) For the purposes of this section, corrections of clerical or typographical errors do not count as a revision of the statement.”

13 Examination of duty to have regard to strategy and policy statement

- (1) After section 13 of PPERA insert –

“Examination of Commission’s duty to have regard to strategy and policy statement

13ZA Examination of duty to have regard to strategy and policy statement

- (1) The Speaker’s Committee may examine the performance by the Commission of the Commission’s duty under section 4B(2) (duty to have regard to strategy and policy statement).
- (2) The Speaker’s Committee may require the Commission to provide the Committee with information that –
 - (a) the Committee require for the purposes of enabling them to exercise their power under subsection (1), and (b) is held by the Commission.
- (3) The Commission –
 - (a) must as soon as is reasonably practicable provide the Speaker’s Committee with information required under subsection (2), and
 - (b) must provide the information in such form as the Committee may reasonably require.
- (4) A requirement imposed on the Commission under subsection (2) does not require the Commission to provide information that, in their opinion, might adversely affect any current investigation or proceedings.
- (5) Except as provided by subsection (6), the disclosure of information pursuant to a requirement imposed under subsection (2) does not breach –
 - (a) any obligation of confidence owed by the Commission, or

Shared in confidence

- (b) any other restriction on the disclosure of information (however imposed).
- (6) A requirement imposed on the Commission under subsection (2) does not require them to disclose information if to do so would contravene the data protection legislation (but, in determining whether a disclosure would do so, the requirement imposed on the Commission is to be taken into account).
- (7) In subsection (6), “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).”
- (2) In Schedule 2 to PPERA (Speaker’s Committee), after paragraph 3 insert –
“Protection for witnesses etc
 - 4 (1) Evidence given by a person who is a witness before the Speaker’s Committee may not be used against the person in any civil or disciplinary proceedings, or in any criminal proceedings, unless the evidence was given in bad faith.
 - (2) For the purposes of the law of defamation the publication by the Speaker’s Committee of any evidence given by a person who is a witness before the Speaker’s Committee is absolutely privileged.”

Membership of the Speaker’s Committee

14 Membership of the Speaker’s Committee

- (1) In section 2 of PPERA (Speaker’s Committee), after subsection (2) insert –
“(2A) The functions of the Minister for the Cabinet Office under subsection (2)(b) are exercisable concurrently with any Member of the House of Commons who –
 - (a) is a Minister of the Crown with responsibilities in relation to the constitution, and
 - (b) is appointed to membership of the Committee by the Prime Minister in order to carry out those functions concurrently with the Minister for the Cabinet Office.”
- (2) In paragraph 2 of Schedule 2 to PPERA (the Speaker’s Committee: term of office), after sub-paragraph (1) insert –
“(1A) The reference in sub-paragraph (1)(c) to the member who is the Minister for the Cabinet Office does not include any member appointed under section 2(2A).”
- (3) The Transfer of Functions (Speaker’s Committee) Order 2021 (S.I. 2021/310) is revoked.

Criminal proceedings

15 Criminal proceedings

- (1) Paragraph 2 of Schedule 1 to PPERA (the Electoral Commission: incidental powers) is amended as follows.
- (2) The existing text becomes sub-paragraph (1).

- (3) In sub-paragraph (1)–
 - (a) after “may” insert “(subject to sub-paragraph (2))”;
 - (b) omit “(except borrow money)”.

(4) After sub-paragraph (1) insert –

“(2) The Commission may not –

- (a) borrow money;
- (b) institute criminal proceedings in England and Wales or Northern Ireland.”

Note on Elections Bill draft clauses on the Electoral Commission

This note provides a guide to the draft clauses relating to the Government's proposed legislative measures relating to the accountability of the Electoral Commission (ordered as in the draft clauses):

- Provisions to introduce a Strategy and Policy Statement that will set out guidance the Electoral Commission are required to have regard to (clause 12);
- Provisions to amend the functions of the Speaker's Committee to include a power to examine the Electoral Commission's compliance with their duty to give regard to the Strategy and Policy Statement (clause 13);
- Provisions to amend the membership of the Speaker's Committee on the Electoral Commission to allow concurrent membership for the Minister for the Cabinet Office and a Minister of the Crown with responsibility for the constitution appointed by the Prime Minister (clause 14);
- Provisions to remove the Electoral Commission's ability to bring criminal prosecutions in England, Wales and Northern Ireland (clause 15).

The draft clauses referred to hereafter have been provided alongside this note.

Clause 12. Strategy and Policy Statement

Clause 12 makes provisions for the introduction of a 'Strategy and Policy Statement' which will provide guidance to which the Electoral Commission (EC) is required to have regard, by inserting new sections into Part 1 of the Political Parties, Elections and Referendums Act 2000 ("PPERA"). The Statement will be drafted and designated by the Secretary of State (new section 4A(1) of PERA) and may contain guidance about:

- Government strategic and policy priorities relating to elections, referendums and other matters in respect of which the Commission have functions (s4A(2)(a));
- the role and responsibilities of the Commission in supporting or enabling those government priorities (s4A(2)(b));
- the Commission's exercise of its functions (s4A(3)(a));
- any other information (for example, about the roles and responsibilities of other persons) the Secretary of State considers appropriate (s4A(3)(b)).

Under new section 4B of PERA, the EC are required to have regard to the Statement, (except for any guidance within the Statement that pertains to the roles and responsibilities of other persons (s4B(3))). This new section also requires the EC to report to the Speaker's Committee on the Electoral Commission (SCEC) on consideration given to the Statement in the exercise of their functions (s4B(4)). This can either be done separately or as part of its existing annual reporting requirements to the House of Commons under PERA (existing paragraphs 18 and 20 of Schedule 1). This duty only applies after the end of a 12-month reporting period from the moment a Statement has been designated by the Secretary of State and every 12 months thereafter. If a new Statement is designated during the reporting period applying to a previous Statement, to avoid placing an undue burden on the EC, the Commission are only required to report on the discharge of their functions against the later Statement, after the end of a 12-month period (s4B(5)). In addition, if a Statement is withdrawn during a reporting period, the EC are not required to report on consideration given to the withdrawn Statement during that

particular reporting period (s4B(7)). Regardless of those exceptions to reporting requirements, the EC remain otherwise bound under PPERA to report annually to Parliament on its accounts and the performance of their functions during any given financial year.

New section 4C of PPERA outlines the consultation and approval process required before designating the Statement. Under s4C(2), the Secretary of State is required to consult the EC, the SCEC, and the Public Administration and Constitutional Affairs Committee (PACAC) on the draft Statement. He or she must also consult the Scottish and Welsh Ministers with regards to any guidance relating to the EC's devolved Scottish and Welsh functions. Following this consultation, the Secretary of State may make any changes to the draft he or she considers appropriate (including not making any changes) before laying the draft before Parliament (s4C(3)). The draft Statement is then submitted to parliamentary approval via the affirmative resolution procedure on a non-amendable motion, which means the Statement can either be accepted or rejected in full by Parliament within a 40-day period.

New section 4C(5) contains definitions, including of the relevant devolved Welsh and Scottish functions of the EC on which the Statement may contain guidance. The reason the definitions are included is because there is an obligation to consult the Scottish or Welsh ministers (as relevant) on the areas of guidance which apply in relation to those devolved matters.

Under new sections 4C(7) and 4C(8), if the name or functions of the Public Administration and Constitutional Affairs Committee change or become the functions of a different committee, then any reference to the Public Administration and Constitutional Affairs Committee under section 4C(2) is to be read as a reference to the committee which for the time being has that name or those functions.

The Government may review the content of the Statement from time to time and at a minimum every 5 years, as outlined in new sections 4D and 4E of PPERA:

- The 5-year point review of the Statement: When 5 years have elapsed since a Statement was last designated after being subject to the statutory consultation process in s4C(2), the Secretary of State must as soon as reasonably practicable review the existing Statement and determine whether to revise it, leave it unchanged or withdraw it (s4D(5)). Where the Secretary of State decides not to withdraw the Statement as a result of reviewing it, he or she must consult the statutory consultees previously listed on a revised or unamended draft Statement (s4D(6)). As with the original Statement, following this consultation, the Secretary of State may make any changes to the draft he or she considers appropriate (including not making any changes) before laying the draft before Parliament for approval via the affirmative resolution procedure on a non-amendable motion (s4D(8) applies the process in s4C).
- Intermediary reviews: The Secretary of State may also review and revise a designated Statement within the 5-year period (s4E) on his or her own initiative or at the request of the EC provided that the Commission notify both the Secretary of State and the SCEC and give details of the changes to the Statement that the Commission propose should be made (s4E(2)). The Secretary of State may make changes he or she considers appropriate to the Statement and may determine that a proposed revision of the Statement does not require the consultation process outlined in section 4C (s4E(4)). In this event, the Secretary of State is required to consult the SCEC on whether the proposed changes to the Statement require a statutory consultation and

consider the SCEC's view before making a final determination (s4E(5)). In the event where the Secretary of State disagrees with the SCEC's opinion on the need for a statutory consultation, he or she may proceed with laying the draft Statement before Parliament for approval alongside a statement of the Secretary of State's reasons for the determination (s4E(8)). The Government must also inform the statutory consultees of any proposed changes to the Statement even if he or she determines that a statutory consultation is not required (s4E(6)).

Clause 13. Examination of duty of have regard to strategy and policy statement

Clause 13(1) makes provision to: expand the role of the SCEC to include a power to examine the performance by the EC of their duty to have regard to the Strategy and Policy Statement under new section 4B(2) (new section 13ZA(1) of PPERA), thus expressly expanding the SCEC's existing remit under PPERA beyond financial scrutiny and scrutiny of appointment of Commissioners.

To support this work, new section 13ZA(2) gives the SCEC powers to request relevant information from the EC. The EC must provide this information as soon as reasonably practicable and in such form as the Committee may reasonably require (s13ZA(3)). The information in question may include oral evidence in a public or private meeting of the SCEC. The EC are not required to disclose to the SCEC information that, in their opinion, might adversely affect any current investigation or proceedings or where disclosure would contravene data protection legislation (s13ZA(4)-(6)).

Clause 13(2) inserts a new paragraph 4 into Schedule 2 to PPERA. This makes provisions for evidence (written or oral) provided by a witness to the SCEC to be covered by statutory privilege and for any evidence given by a witness not to be used in civil, disciplinary or criminal proceedings against the witness, unless the evidence was given in bad faith.

Clause 14. Membership of the Speaker's Committee

Clause 14(1) and (2) make provision to amend section 2, and paragraph 2, of Schedule 2 to PPERA which set out the membership of the SCEC. The amendments allow concurrent membership for the Minister for the Cabinet Office and a Minister of the Crown with responsibilities in relation to the constitution appointed by the Prime Minister (new subsection (2A)) and clarify the meaning of "appointed member" in the context of concurrent membership (new paragraph 2(1A) of Schedule 2)). Clause 14(3) revokes the Transfer of Functions (Speaker's Committee) Order 2021 (S.I. 2021/310) which served a similar purpose to clause 14(1).

Clause 15. Criminal proceedings

Clause 15 makes provision for expressly removing the potential for the EC to bring criminal prosecutions in England, Wales and Northern Ireland (s15(4)(2)) by amending paragraph 2 of Schedule 1 to PPERA.

Shared in confidence

Strategy and Policy Statement (illustrative example)

Electoral Commission Strategy and Policy Statement

1. Priorities for the Electoral Commission

- 1) The Electoral Commission is the independent regulatory body responsible for giving guidance and support to Electoral Registration Officers and Returning Officers to undertake electoral registration and run elections and referendums effectively and in accordance with the law. It is also responsible for registering political parties, giving guidance to political parties and candidates on electoral rules as legislated by Parliament, and regulating donations and loans to political parties and other campaigners, and their spending.
- 2) 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 does not seek to interfere or inappropriately influence the investigative, operational or enforcement decisions of the Electoral Commission. This Statement does not in any way affect the ability of the Commission to undertake enforcement activity as it sees fit, but ensures greater accountability to Parliament on how the Electoral Commission discharges its wider functions.
- 3) The Government considers the core priority functions of the Electoral Commission, rooted in priorities already set out in law, to be:
 - a) The Commission is responsible for supporting Returning Officers and Electoral Registration Officers with the clear advice and guidance, and 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 and promoting awareness of elections, including the different electoral systems used in the UK and encouraging accurate voter registration and access to polls;
- c) 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;
- 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 they must comply with.

2. Executive and legislative priorities in relation to elections

- 4) 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. We will place 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.
- 5) The Commission must have regard to supporting the Government's delivery of legitimate executive and legislative priorities in relation to elections during this Parliament, and as listed below.
- 6) Tackling electoral fraud by introducing voter identification and by addressing weaknesses in the current absent voting arrangements.

- a) The Commission must have regard to supporting effective delivery of the policy by raising public awareness about the requirements to show an approved form of photographic identification before taking part in UK parliamentary elections in Great Britain and local elections in England.
 - b) The Commission must have regard to supporting local authorities in meeting the requirement to issue a free Voter Card to any elector requiring it through the provision of guidance to Election Administrators and the police that will support their understanding of the operation of voter identification.
 - c) The Commission must have regard to tackling electoral fraud by promoting awareness amongst voters about absent voting arrangements (postal and proxy voting).
 - d) The Commission must have regard to the need to 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.
- 7) Ensuring clarity on the law.
- a) When drafting any non-statutory Code of Conduct for campaigners, the Commission must have regard to reflecting electoral law and other legislation, but not seek to go beyond it in stopping activity which is otherwise legal and proper.
- 8) Improving 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 support voters with disabilities.
- a) The Commission must have regard to supporting this policy by issuing guidance to Returning Officers on these new requirements.
- 9) Increasing participation by championing freedom of expression and tolerance, scrapping the 15 year rule, thus enfranchising all British citizens who were previously registered or resident in the UK, and by working to stamp out intimidation in public life through the delivery of a new electoral sanction.

- a) The Commission must have regard to continuing to support 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, including the new measures on intimidation introduced via the Elections Bill.
- b) The Commission must have regard to supporting increased enfranchisement by informing and encouraging the public about electoral registration, including newly-enfranchised overseas electors.

10) Improving transparency and combating foreign interference in UK elections:

- (a) The Commission must have regard to publishing clear and easily accessible information about the spending and donations received by political parties, campaigners and other groups, as well as high quality and accessible guidance for campaigners on how to comply with new rules legislated by Parliament.
- (b) The Electoral Commission must have regard to recognising the importance of protecting free speech by individuals, and the need to avoid disproportionate sanctions against genuine mistakes when producing statutory guidance on the new digital imprint regime.
- (c) The Electoral Commission must update the statutory guidance on spending by candidates and by parties, reflecting changes to the law on notional expenditure in the Elections Bill.

11) Supporting the Government's commitment to maintaining fair enforcement of electoral law.

- a) The Electoral Commission must have regard to ensuring robust, transparent and proportionate enforcement of the rules legislated by Parliament to avoid discouraging participation in public life.

3. Principles for the Electoral Commission

12) The following are key principles that the Electoral Commission must have regard to in the discharge of its functions.

- 13) Impartiality: The Electoral Commission must have regard to the need to uphold and demonstrate the principle of political impartiality by ensuring that it and its staff communicates and treats all operations, decisions, regulated entities and political matters neutrally and impartially.
- 14) Accountability: The Electoral Commission must have regard to the need to be fully accountable as a public body with such important responsibilities relating to our democratic processes. The Commission should at all times provide transparency around its decision making and work closely with the Speaker's Committee on the Electoral Commission, as well as the UK Parliament, Scottish Parliament and Senedd Cymru, to ensure public and democratic accountability.
- 15) Responsiveness to the public and the public interest: The Electoral Commission must have regard to responding to the need of the public and the public interest in the discharge of its functions, including when prioritising competing interests. The Commission must have regard to the importance of accurate and prompt election results through supporting Electoral Returning Officers' conduct of counts.
- 16) Value for money: The Electoral Commission must have regard to ensuring value for taxpayers' money in the discharge of its functions by considering carefully the balance between its core functions (protecting the integrity, security and effectiveness of elections) and its other functions. The Commission must have regard for the principles in guidance issued by the Government to Arm's Length Bodies on the spending of public money, including Cabinet Office guidance on grant standards and on lobbying by public bodies.
- 17) Enforcement: The Electoral Commission must have regard to the need to ensure their enforcement of electoral law is proportionate and consistent, so as not to unduly discourage democratic engagement by balancing the need to engage constructively with campaigners to support compliance, with the need to sanction malicious criminal activities. The Electoral Commission must have regard to best practice from other regulators (such as the 'Macrory principles'), including the use of requests for improvements before resorting to fines. The Electoral Commission should work closely and effectively with the police who hold responsibility for enforcing areas of electoral law and investigating more serious allegations of wrongdoing. In its approach to

enforcement, the Commission must have regard to the need to be sensitive and proportionate to the voluntary nature of much of political parties' infrastructure.

- 18) Cooperation: The Electoral Commission must have regard to the need to cooperate with other regulators (such as the Information Commissioner and Ofcom) and public bodies to deliver its functions and avoid regulatory duplication or confusion; and ensure the effective enforcement of electoral law by working 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, the Commission must have regard to ensuring the record is clear that individuals or organisations do not remain under criminal investigation.
- 19) Communication and Consultation: The Commission must give regard to the views of political parties, candidates and other campaigners to better understand the realities of campaigning activities when preparing guidance by consulting with relevant stakeholders including the Parliamentary Parties Panels to ensure its guidance is helpful to campaigners. This will help to ensure buy-in to the guidance and trust in the Electoral Commission amongst the public and interested parties. The Commission must have regard to using the full skills and experience of its Electoral Commissioners, including those nominated by parties.
- 20) The Union: The Electoral Commission is a UK wide body with responsibilities relating to electoral matters in all four parts of the Union. The Electoral Commission must have regard to acting as a regulator for all four parts of the Union equally and the UK as a whole. 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, reflects those differences accurately.
- 21) Support to campaigners: The Commission must have regard to the need to 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 must endeavour to 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.

22) Support to Electoral Registration Officers and Returning Officers: The Electoral Commission must have regard to the need to 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 and by monitoring performance against those standards. Greater support should be given to local authorities at higher risk of electoral fraud, including those with past history of electoral fraud.