

Explanatory Memorandum to the Electoral Commission Strategy and Policy Statement

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument is the Electoral Commission Strategy and Policy Statement (the “Statement”). The Statement sets out the strategic and policy priorities of the Government and the role and responsibilities of the Commission in enabling the Government to meet those priorities. The Statement also includes guidance relating to particular matters in respect of which the Commission has functions. The Commission must have regard to the Statement in the exercise of its functions.

3. Matters of special interest to Parliament

- 3.1 None.

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 Simon Hoare MP, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

“In my view the provisions of the Electoral Commission Strategy and Policy Statement are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Electoral Commission (the “Commission”) was established by section 1 of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) and is the independent regulatory body responsible for ensuring that elections and referendums are run effectively and in accordance with the law, registering political parties, and regulating the spending of – and loans and donations to – political parties and other campaigners. Its functions are outlined in PERPA and the Elections Act 2022 (“the Act”).
- 6.2 The Commission is independent of government and accountable to Parliament via the Speaker’s Committee on the Electoral Commission (“Speaker’s Committee”), which was established by section 2(1) of PERPA.
- 6.3 Section 16 of the Act (by inserting sections 4A to 4E into PERPA) provided the Secretary of State with the power to designate a Strategy and Policy Statement for the Commission and requires the Commission to have regard to the Statement when designated. This is the first use of this power.
- 6.4 In turn, section 17 of the Act (by inserting section 13ZA into PERPA) gives the Speaker’s Committee new powers to examine the Commission’s performance of its duty to have regard to the Statement.

7. Policy background

- 7.1 The Government made provision for a Strategy and Policy Statement in the Act to strengthen the accountability of the Electoral Commission to the UK Parliament. The Statement sets out the Government’s strategic and policy priorities and the roles and responsibilities of the Commission in enabling the Government to meet those priorities, including the Government’s determination to tackle issues such as voter fraud, to improve the accessibility of elections, and to improve participation. It also contains guidance for the Commission relating to particular matters in respect of which the Commission has functions. Once designated, the Commission will be required to have regard to the Statement when discharging its functions.
- 7.2 The Act also gave the Speaker’s Committee new powers to examine the Commission’s performance of its duty to have regard to the Statement. Before the Act, the Commission was already accountable to the Speaker’s Committee. However, the Committee had a limited statutory remit focused on scrutinising the Commission’s finances and corporate plans. The Committee’s expanded role will allow it to scrutinise what the Commission has done with regard to the Statement across a range of functions.

- 7.3 These provisions were debated extensively during the passage of the Act. In response to views expressed in Parliament at this time, the Government made amendments to the provisions. This included explicitly preventing the Statement from containing provisions regarding the Commission's investigatory and enforcement functions in relation to individual cases, requiring the Secretary of State to have regard to the Commission's statutory duties when preparing the Statement, and ensuring that the Statement would be subject to the enhanced parliamentary procedure.
- 7.4 In response to views expressed during the statutory consultation, the Government's revised draft Statement included a number of substantive amendments and was laid before Parliament on 8 June 2023.
- 7.5 The Government is clear that the Statement must always be compatible with the foundational principle that the Commission is operationally independent. The Commission will only be required to have regard to the Statement in the exercise of its functions. This legal duty does not replace or undermine the Commission's other statutory duties or give the Government powers to direct the Commission's decision making.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 No consolidation is required as a result of this Statement.

10. Consultation outcome

- 10.1 The consultation and procedural requirements for designating the Statement are set out in new section 4C of PPERA and have been satisfied.
- 10.2 Section 4C(2) of PPERA required the Secretary of State to consult the Electoral Commission, the Speaker's Committee, and the Levelling Up Committee on a draft of the Statement. The Government fulfilled this statutory duty by undertaking a written consultation between 22 August 2022 and 20 December 2022, inviting written responses to a draft Statement from the statutory consultees and other interested parties. The Government received responses from the Electoral Commission, the Speaker's Committee, and the Levelling Up Committee, and also took into consideration comments from PACAC and the Association of Electoral Administrators.

- 10.3 Section 4C(3) of PPERA required the Secretary of State to make any changes to the Statement deemed necessary in light of the consultation and prepare a report containing the Secretary of State's response to the consultation.
- 10.4 Section 4C(4) of PPERA then required the Secretary of State to lay before Parliament a document which included an explanation of the proposals, the revised draft Statement, and the report containing the Government's response to the statutory consultation. This was laid on 8 June 2023 for a period of 60-days in which parliamentarians could make representations on the revised draft and consultation report. The period ended on 14 September 2023. The Government received a total of two representations: one from the Chair of the Levelling Up Committee and one from the Speaker's Committee. Section 4C(6) of PPERA then required the Secretary of State to consider any representations made.
- 10.5 Pursuant to section 4C(7) of PPERA, on 14 December 2023 the Secretary of State laid before Parliament a final draft of the Statement and a report containing the Government's response to representations received. In accordance with section 4C(8) of PPERA, the final draft was approved in full by a resolution of each House of Parliament within a 40-day period. Only after being approved by Parliament may the Secretary of State designate the Statement. The House of Commons and House of Lords approved the Statement on 31 January and 6 February 2024 respectively.
- 10.6 No consultation took place with devolved administrations because the Statement does not apply to the Electoral Commission's devolved Scottish functions or devolved Welsh functions, in accordance with new section 4A(6) of PPERA. The Statement only contains provisions for the non-devolved functions of the Commission.

11. Guidance

- 11.1 No guidance has been prepared in respect of this Statement.

12. Impact

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

13. Regulating small business

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

14. Monitoring & review

- 14.1 New section 4E of PPERA sets out procedures whereby the Secretary of State may revise a designated Statement, which can be done on the Secretary of State's own initiative, at the request of the Commission, or at the request of the Speaker's Committee.
- 14.2 New section 4D of PPERA stipulates that the Secretary of State must review a Statement that has been designated if a period of 5 years has elapsed since the time when it was first designated or – if later – the time when it was last designated after a revision.
- 14.3 There is also a general provision in section 62 of the Act which requires the Secretary of State to prepare and publish a report on the operation of the Act, and lay a copy of the report before Parliament, between 4 and 5 years after the day on which the Act was passed.

15. Contact

- 15.1 Jeanne Delebarre at the Department for Levelling Up, Housing and Communities phone: 0303 444 0537, email: Jeanne.Delebarre@levellingup.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Becca Crosier, Deputy Director for Elections, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Simon Hoare MP, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities, can confirm that this Explanatory Memorandum meets the required standard.