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Briefing: Draft Strategy and Policy Statement First published: 16 June 2023 Last updated: 28 June 2023 Summary Date: June 2023 For: UK Parliament Overview

The Elections Act 2022 includes provision for the UK Government to designate a Strategy and Policy Statement for the Electoral Commission, setting out the Government's priorities relating to elections and the roles and responsibilities of the Commission in enabling the Government to meet those priorities. The Commission must have regard to any such Statement and report on this duty to the Speaker's Committee for the Electoral Commission. A draft of the Statement was laid in Parliament for consideration on 8 June and published by the House of Commons Library on 15 June. Following a 60-day period in which parliamentarians can make representations on the draft Statement, a final version may be laid for approval by both Houses. The Government consulted on an earlier draft of the Statement in 2022; the Commission, the Speaker's Committee, and the Levelling Up, Housing and Communities (LUHC) Committee responded as statutory consultees. The Government has published a statement highlighting changes made to the draft Statement following the consultation. During the Act's passage, electoral commissioners wrote to ministers with serious concerns about the impact of the introduction of a Statement on the Commission's independence. This briefing sets out the Commission's views to inform parliamentary consideration of the draft Statement.

Overall considerations It is fundamental to maintaining confidence in our electoral system that an electoral commission remains independent from governments, and that this independence is clear for voters and campaigners to see. The introduction of a mechanism such as a strategy and policy statement – by which a government can guide an electoral commission's work – is inconsistent with this independent role. During the passage of the Elections Act, there was cross-party agreement that the Commission's independence is vital to the health of our democracy. The Government has stated that it "agrees that the Statement must always be compatible with the foundational principle that the Commission is operationally independent". Despite this intention, introducing a Statement would enable actual or perceived guidance of the Commission's decision-making by future UK governments. The Commission's research suggests that public confidence has already been damaged. It shows a significant decline in public perceptions of the Commission's independence since the introduction of proposals for a Statement. The LUHC Committee and Speaker's Committee both previously concluded that no statement was necessary and "no evidence has been provided justifying it". In its response, the Government has not provided additional evidence demonstrating the need for a Statement. The Commission remains accountable to the UK's parliaments, to parliamentary committees including PACAC, which concluded a report on the Commission's work in 2022, and to other public bodies such as the Committee on Standards in Public Life, which published a review of election finance regulation in 2021.

Specific considerations While any Statement would affect the Commission's independence, the current draft Statement would create additional challenges. Although the Government has made changes following the statutory consultation, the guidance in the draft Statement would still add complexity, confusion, and extra legal risk. Key issues with the draft Statement are highlighted below:

Conflict with the Commission's statutory functions and priorities In some areas, the draft Statement restates the Commission's functions or duties, emphasising particular aspects based on the Government's priorities. The Commission's statutory functions are set out in law, and it independently agrees its priorities with the UK's parliaments through approval of its five-year Corporate Plan. As the Commission is legally required to have regard to the Statement, any differences in

wording or emphasis would set up alternative – and potentially conflicting – direction for the Commission. Differences from existing sources of the Commission's priorities could be exploited for legal challenge of its decisions, undermining confidence in its regulation. Operational guidance in the Statement The draft Statement includes detailed and specific guidance on the Commission's functions, which could undermine its operational independence. The Speaker's Committee has previously criticised the inclusion of "improper operational instruction", stating that it is not appropriate for a Statement to specify "how the Commission should execute its legal functions". The guidance given in this Statement demonstrates the broad scope for any future government to give operational instruction, thereby impacting on the independence of the Commission. The guidance provided is not linked to the Government's strategic and policy priorities, and the Government has not set out the need for providing this broad guidance in the Statement. The Statement also increases risks for the Commission in its operational functions. These risks are clear where the Statement includes detailed guidance on the operation of its enforcement functions. The inclusion of specific factors for the Commission to consider outside of its statutory enforcement policy could multiply opportunities for legal challenge of its decisions, and damage confidence in the impartiality of its enforcement activities. It also includes detailed provisions on the content and format of the Commission's guidance and performance standards. This could potentially hinder the Commission's ability to act swiftly to support campaigners and electoral administrators. The Commission's role across the UK The draft statement does not appropriately reflect the complexity of the Commission's existing accountability to each of the UK's legislatures. The Commission is accountable to the UK Parliament through the Speaker's Committee and is also accountable to the Scottish Parliament and Senedd for its functions in respect of devolved legislation and elections. While the Statement excludes the Commission's devolved functions, some cross-cutting areas of the Commission's work are funded jointly by the three parliaments. The Statement does not properly reflect this, which creates a risk that UK Government guidance in the Statement could affect work undertaken for the other legislatures to which the Commission is accountable. Reporting on the Statement Should a Statement be designated, the Commission will report annually to the Speaker's Committee on how it has had regard to the Statement. The Commission will continue to act in an independent and impartial way to maintain public confidence in elections. Additional information Government response to statutory consultation, including amended draft Statement Electoral commissioners' letter to ministers, Feb 2022 The Commission's response to the statutory consultation on the earlier draft Statement Letter from chair of Levelling Up, Housing and Communities Select Committee on draft Statement Levelling Up, Housing and Communities Select Committee consultation response Speaker's Committee for the Electoral Commission consultation response . A key part of our role is to provide advice to government and parliament on legislation relating to elections. If you would like any further information, please contact our public affairs team: publicaffairsteam@electoralcommission.org.uk