REGULATORY IMPACT STATEMENTS

in respect of

(1) THE ELECTION CAMPAIGN FINANCING REGULATIONS, 2026

made under Section 29 of the Election Campaign Financing Act (Cap. 7A)

AND

(2) THE ELECTION CAMPAIGN FINANCING (NOTICE ON CONTRIBUTIONS AND SPENDING LIMITS FOR CANDIDATES AND POLITICAL PARTIES FOR PURPOSES OF THE GENERAL ELECTION SCHEDULED TO BE HELD ON 10TH AUGUST, 2027)

prescribed under Sections 12, 18 and 19 of the Election Campaign Financing Act (Cap. 7A)

Prepared pursuant to Sections 6, 7 and 8 of the Statutory Instruments Act, Cap. 2A

Prepared by:
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REGULATORY IMPACT STATEMENTS

Each of the two instruments named on the cover page is a discrete statutory instrument in its own right and a separate Regulatory Impact Statement is accordingly set out for each below, containing the elements Section 7 of the Statutory Instruments Act, 2013 requires: the objectives of the proposed instrument and the reasons for it; the effect of the proposed instrument; other practicable means of achieving the same objectives; an assessment of costs and benefits; and the reasons why the alternative means are not appropriate. Each Statement should be read together with the fuller Regulatory Impact Assessment prepared separately in respect of both instruments, to which cross-references are made throughout.

STATEMENT 1: THE ELECTION CAMPAIGN FINANCING REGULATIONS, 2026

1. Name and Legal Basis of the Proposed Statutory Instrument

The Election Campaign Financing Regulations, 2026, proposed to be made by the Independent Electoral and Boundaries Commission in exercise of the power conferred by Section 29 of the Election Campaign Financing Act, Cap. 7A.

2. Objectives of the Proposed Instrument and Reasons for It

The Regulations operationalize the ECF Act by establishing the administrative and procedural architecture through which candidates, political parties, referendum committees and supporting organizations discharge their statutory obligations on campaign financing on —

i. the appointment and registration of authorized persons;

ii. the opening and operation of dedicated campaign financing accounts;

iii. the receipt, recording and disclosure of contributions and donations, including harambee proceeds, proxy contributions, loans and anonymous donations;

iv. the regulation and reporting of campaign expenditure, including the audit of accounts above a prescribed threshold;

v. the treatment of surplus campaign funds; and

vi. an expedited, proportionate mechanism for the resolution of disputes arising under the Act or the Regulations.

The reason for the instrument is straightforward: the ECF Act has, since its enactment in 2013, remained substantially unenforced for want of implementing regulations, a deficiency the High Court in ***Katiba Institute & 3 Others v Independent Electoral and Boundaries Commission & 3 Others; Law Society of Kenya & Another (Interested Parties), Consolidated Constitutional Petitions Nos. E540 and E546 of 2021, [2022] KEHC (KLR)*** found the Commission to be in default of remedying, and directed it to correct.

STATEMENT 2: THE ELECTION CAMPAIGN FINANCING (NOTICE ON CONTRIBUTIONS AND SPENDING LIMITS FOR CANDIDATES AND POLITICAL PARTIES FOR PURPOSES OF THE GENERAL ELECTION SCHEDULED TO BE HELD ON 10TH AUGUST, 2027)

3. Name and Legal Basis of the Proposed Statutory Instrument

The Notice prescribing contribution limits, spending limits and authorised expenditures for the 2027 General Election, proposed to be issued by the Independent Electoral and Boundaries Commission by notice in the Kenya Gazette in exercise of the powers conferred by Article 88(4)(i) of the Constitution of Kenya, 2010, Section 4(i) of the Independent Electoral and Boundaries Commission Act, 2011, and Sections 12, 18 and 19 of the Election Campaign Financing Act, Cap. 7A.

4. Objectives of the Proposed Instrument and Reasons for It

The Notice discharges the Commission's self-executing statutory duty, at least twelve months before a general election, to prescribe by Gazette notice the limits on total contributions, contributions from a single source, paid-up media coverage and loans forming part of a contribution (Section 12); the spending limits applicable to candidates, political parties and referendum committees, including the limit for media coverage (Section 18); and the nature of authorized items or activities for which campaign expenses may be incurred (Section 19).

Its objectives are to afford candidates an approximately equal opportunity to compete; to prevent the corruption or monopolization of the electoral process through unchecked resource deployment; to guard against partisan enforcement; to keep

proceeds of corruption and organized crime out of the political system; and to compel financial transparency.

5. Effect of the Proposed Instrument

The Notice fixes, as binding ceilings enforceable under Section 22 and Section 23 of the Act, the maximum sums that may lawfully be contributed to and spent by a presidential candidate (Kshs 6,112,543,133), by candidates for Governor, Senator and County Woman Member to the National Assembly at each of the forty-seven counties, by candidates for Member of the National Assembly at each of the two hundred and ninety constituencies, by candidates for Member of the County Assembly at each of the one thousand four hundred and fifty wards, and by political parties generally (an aggregate limit of Kshs 24,450,172,531, apportioned across eleven expenditure heads), together with the categories of expenditure for which campaign funds may lawfully be applied. It revokes and supersedes, for the 2027 General Election, the limits published in and subsequently withdrawn from earlier Gazette notices, including the notice published on 9 August 2021 (Gazette Notice No. 8024, subsequently revoked) and any successor notice issued for the 2022 General Election.

6. Other Practicable Means of Achieving the Same Objectives

As with the Regulations, the Commission considered maintaining the status quo of unpublished or unenforced limits, self-regulation by political parties, co-regulation, incentive or market-based structures tied to voluntary spending caps, and pure information and education campaigns. It also considered, and rejected, a flat, undifferentiated national ceiling of the kind used in Nigeria, in favour of a formula calibrated to the specific population and land area of each of Kenya's 1,450 wards, 290 constituencies and 47 counties.

7. Assessment of Costs and Benefits

The methodology used to determine the spending limits is explained in detail in the accompanying Regulatory Impact Assessment. It sets out the eleven categories of allowable election expenditure, how each category was costed at the ward, constituency and county levels across urban, sparsely populated and other areas, and how the recommended 70:30 population-to-land-area weighting formula was applied.

The costs the Notice imposes are the compliance costs of operating within a fixed ceiling, and the benefits. In the Commission's assessment, the benefits of preventing illicit money from influencing the political system and promoting a level playing field between well-funded and less well-funded candidates significantly outweigh the associated costs.

8. Reasons Why the Alternative Means Are Not Appropriate

The reasons given in Statement 1, paragraph 6 above apply with equal force to the Notice. In addition, Sections 12, 18 and 19 of the Act are self-executing statutory duties that leave the Commission no lawful discretion to decline to prescribe limits by Gazette notice; the only genuine choice available to the Commission is the methodology by which those limits are calculated, and not whether limits should be published at all.

9. Public Consultation Undertaken

The public consultation undertaken in respect of the Notice mirrors, and was in substance conducted jointly with, the consultation undertaken in respect of the Regulations, as recorded in Statement 1, paragraph 7 above, and additionally drew on cost data gathered from counties and from political parties during the 2017 and 2022 stakeholder engagement, which formed part of the evidentiary base for the costing exercise.

10. Certification

The Commission certifies that it has, prior to prescribing this Notice, prepared this Regulatory Impact Statement in accordance with Sections 6 and 7 of the Statutory Instruments Act, 2013, that independent consideration has been given to the adequacy of the assessment and the costing methodology described in it, and that all comments and submissions received during public consultation have been or will be considered before the Notice is issued, and will be tabled in Parliament as required by section 11 of the Statutory Instruments Act, 2013.

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The costs the Notice imposes are the compliance costs of operating within a fixed ceiling, and the benefits. In the Commission's assessment, the benefits of preventing illicit money from influencing the political system and promoting a level playing field between well-funded and less well-funded candidates significantly outweigh the associated costs.

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