

Board notes: 5 December 2018 session on simplifying and modernising electoral law across the UK | Electoral Commission Search Board notes: 5 December 2018 session on simplifying and modernising electoral law across the UK

You are in the Electoral Commission Board section Home How we make decisions Electoral Commission Board First published: 18 July 2019 Last updated: 23 July 2019 Overview Date: 5 December Time: After the board meeting Location: Boothroyd Room, 3 Bunhill Row, London Who was at the meeting Who was at the meeting John Holmes (JH), Chair Anna Carragher (AC) Sarah Chambers (SC) Elan Closs Stephens (ECS) Alasdair Morgan (AM) Rob Vincent (RV) Stephen Gilbert (SG) Alastair Ross (AR) Joan Walley (JW) Claire Bassett (CB), Chief Executive Ailsa Irvine (AI), Director, Electoral Administration Bob Posner (BP), Director, Political Finance and Regulation Craig Westwood (CW), Director, Communications and Research Kieran Rix (KR), Director, Finance and Corporate Services David Meek (DM), Senior Adviser, Governance Tom Hawthorn (TH), Head of Policy Niki Nixon (NN), Head of External Communications David Hampson (DH), Lawyer Laura Mcleod (LM), Public Affairs Manager Petra Crees (PC), Planning, Performance and Governance Manager

Notes BP explained that the Commission had called for reform of electoral law since 2003, but this had not been a priority for successive governments. There had been targeted initiatives for change but these had merely tended to add complexity. The underlying framework was not fit for purpose, and the courts were struggling with interpreting the law. It might be that real change would only come in the context of an electoral or political crisis of some kind. A government with a large majority might also be needed to push through major change. TH provided a short introduction to the background paper. Modifying electoral legislation was one of our identified policy priorities. We wanted fewer pieces of legislation, which were better drafted and fit-for-purpose. We also wanted to focus on areas of greatest need, including definitions of offences, and ways to challenge elections. Ideally, a single bill would address the necessary changes, but the current environment was not conducive to this. We wanted to focus on seizing opportunities to promote reform as a good thing, and for people to think that the case for reform had become “irresistible”. We would look for opportunities to promote this, but we needed to be careful about timing this well. JH thanked the team for the useful presentation and agreed the chances of achieving significant change before upcoming elections was small. AM noted that addressing only one or two areas would exacerbate the existing problem of complexity. This approach might also give governments the opportunity to feel that they had done enough in the reform area. JH agreed that there was a risk with piecemeal change, but there was also a risk in not taking all opportunities for significant improvements. In any case there were not currently enough advocates for change. SC suggested that future political developments might force people to ask questions about wider constitutional issues, which we might then be able to take advantage of. AR suggested we should work with government officials to build support. We also needed legal organisations to lead the campaign to simplify the statute book. AC agreed that we should not ignore low-hanging fruit if opportunities offered. On the question of advocates, we needed a politician or politicians who made reform their particular passion. We should also not ignore the possibilities of a successful Private Member’s Bill at some stage. CB identified two distinct questions; what did we want to happen, and how should we try to make this happen? We needed to be clear about what was necessary to resolve the challenge; did we need a complete overhaul, or could piecemeal changes over time be enough? We should then focus on how it should be handled. JW suggested opportunities for major change only came along very rarely, so we needed to be ready with an

ambitious programme when any opportunities did arise. We also needed public awareness to push politicians to act. A Speaker's Lecture could be an opportunity to push for change. SG agreed the law had become too complex, made worse for practitioners when long-established practices appeared to be challenged by the courts. We should work with political parties for major reform. For example we could get the compliance teams in political parties and lawyers in this area together to agree a proper, comprehensive reform proposal. SG also suggested using retired practitioners in the House of Lords to support this. ECS agreed with JW and SG and thanked the team for preparing the paper, but noted the lack of firepower in governments, including the devolved administrations, to push through reforms in this area. Nevertheless political parties were nervous about the digital world, and the implications of it for their work. JH agreed that digital nervousness might help motivate parties to support change. BP noted that government officials were in principle supportive of change but he had concerns about their capacity to deliver significant reform. The Law Commission had done a good job at one stage of identifying and working with advocates for change, for example by organising appropriate conferences and seminars. We could resurrect this approach at some stage, to help generate useful noise, but there was a timing issue – it was probably not appropriate to do this at this time. JH noted again the risk that real change would only happen through a crisis. CB noted that developments could sometimes move very fast. We needed to be prepared with a well-defined solution. CB asked if we wanted to push for campaign finance reform in addition to what the Law Commissioners had recommended. This was the other area where change was certainly needed. Should we push for this now, and suggest the Law Commissions should do work in this area too? But we could not commission the Law Commissions directly ourselves, and would need to persuade the government to do this. ECS noted that the recent disputes had all been in the financial sphere. This was the area most requiring simplification. SG said there would be disagreement between political parties about sources of funding, as there had always been, but there could be areas of agreement too, for example about the party/candidate split. CB said it was not for a regulator alone to say what the law should be in detail; there needed to be a collaborative process. CB said that if there was enthusiasm for more work in this area, for example through a new project, there would be a need for additional capacity in the policy team to undertake this work and the Board would need to indicate whether we should build it into the business plan. JH concluded that the enthusiasm was there for an ambitious approach, including in the area of campaign finance, and the broad case for more resources was accepted. We needed to work on this as a long-term project, without ignoring short-term opportunities that came along. The current Law Commission work needed to be implemented. CB suggested that as part of medium to longer term forward planning a project initiation document could be produced to scope/define the problem, using the Executive Team as a sounding board, before bringing the item back to the Board. A steering group including Board members could be very helpful in this area. This was agreed.