



Ministry of  
**JUSTICE**

# **Government Response to the 30-Year Rule Review**

February 2010





## **Government Response to the 30-Year Rule Review**

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

February 2010

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## Foreword

1. This Government is committed to openness and transparency in public affairs as enhancing good governance. Since the Freedom of Information Act into force on 1 January 2005, the right to access information has become a cornerstone of our democracy. When the public can access as much public information as possible society benefits from a wider range of contributions to public debate; public authorities are held to account by those they serve; and the way Government has handled recent events can be analysed better.
2. On 25 October 2007, the Prime Minister announced an independent review of the '30-year rule', which governs the point at which records of lasting historical value are normally transferred to The National Archives. The Review, chaired by Paul Dacre, published its findings in January 2009.
3. Today, the Government is announcing the details of a reduction of the rule to 20 years. We will make amendments to the Public Records Act and Freedom of Information Act so that the public has access to a huge number of records 10 years sooner than they would under the current rule. The 30-Year Rule Review preferred a reduction of the rule to 15 years. But it also noted that "*neither the case for 15 years nor the case for 20 years is beyond argument*" and that "*it must be a matter of judgement how to strike the balance*". We believe that this new rule will give the best balance between openness, affordability and the protection of information which, if released prematurely, would harm good government and be contrary to the public interest.
5. The Review also made recommendations relating to how the Government manages its records and on how any change to current practices should be implemented and monitored. The Government is pleased to accept almost all of the report's recommendations beyond the length of the new rule.
6. The Government would like to thank Paul Dacre, Sir Joseph Pilling and Professor Sir David Cannadine for their helpful contribution to the wider discussion on open government. The package of proposals contained in this, our response to the Review's report, represents a significant step forward in offering unprecedented access to information held by public authorities on the public's behalf.

## Recommendation 7.6

**We recommend that the Government should replace the current 30-year rule with a 15-year rule, regarding both the transfer of public records to The National Archives and other places of deposit, and the allowing of access to them. We further recommend that these changes should be effected by appropriate amendments to the Public Records Act and the Freedom of Information Act [FOIA].**

7. We support the recommendation that the current 30-year rule should be reduced substantially – to 20 years. We consider that a 20 rather than a 15-year rule provides the better balance between increased openness, affordability and the need to protect information which, if released prematurely, would harm good government. The Government also agrees that the Freedom of Information Act (2000) and Public Records Act (1958) should be amended in parallel to ensure that files which are transferred to The National Archives and other places of deposit are made fully available to the public at that point wherever possible.
8. We will therefore also legislate to amend the Freedom of Information Act so that those exemptions which currently last for 30 years will apply for only 20 years with the exception of the exemptions relating to information where we consider release before the 30 year point may be harmful, namely; commercially sensitive information, information whose disclosure could prejudice relations within the United Kingdom, and information whose disclosure would otherwise prejudice the effective conduct of public affairs insofar as this prejudice relates to undermining the devolved governance and internal relations of the United Kingdom.
9. The Government's overriding goal is to produce the best national record of the conduct of public affairs possible, to make this available as soon as possible and to do all this while maintaining the best value for money possible.
10. The 30-Year Rule Review's report stated "we recognise that neither the case for 15 years nor the case for 20 years is beyond argument. It must be a matter of judgement how to strike the balance between these conflicting considerations". The Government agrees, and has considered the balance of this judgement very carefully. We have taken into account:
  - our commitment to openness and transparency in public affairs;
  - our desire to produce valuable and lasting records of the conduct of public affairs and to make those records accessible as soon as possible;
  - the public interest in protecting certain sensitive information from disclosure;

- the administrative costs of making the transition to a new shorter rule; and
  - the need to provide reviewers with an adequate context to judge which files are of lasting historical significance.
11. Balancing these considerations, we have concluded that reducing the rule to 20 years will be of greatest benefit to current and future generations of researchers and the public. We will therefore bring forward legislation to amend the Public Records Act so that all public record bodies currently covered by the Act become subject to a 20-year rule.
  12. When files are transferred to The National Archives and other places of deposit under the current 30-year rule, they may be kept 'closed' if the Freedom of Information Act's exemptions continue to apply to the information they contain. To ensure that the public, historians and researchers have access to the widest range of information as soon as is appropriate, we propose to reduce the duration for which many FOI exemptions are applicable at the same time as we reduce the 30-year rule.
  13. After 20 years, exemptions relating to investigations conducted by public authorities, court records, audit functions, the formulation of government policy and legal professional privilege will cease to have any application to official information. The Government has looked again carefully at the information falling within the scope of these exemptions and has decided that, although there are occasions when information could properly remain exempt from disclosure under these provisions, it is nevertheless appropriate, under a new rule, to make available all such information at the end of the period in the interests of promoting public understanding about the machinery of government.
  14. In certain circumstances, however, the particular sensitivities surrounding certain categories of information mean that it is right for a limited set of the relevant exemptions to continue to remain applicable for 30 years. When the new rule is introduced, files may still remain closed after transfer to archive facilities when they engage exemptions relating to prejudice to relations within the United Kingdom (FOIA section 28), the section 36 exemption insofar as is necessary to protect the devolved governance and internal relations of the United Kingdom and prejudice to commercial interests (FOIA section 43) if the public interest is against disclosure. These exemptions relate to information whose release before the 30-year point may be harmful. For example, in relation to the section 43 exemption a number of contracts, particularly those relating to large scale infrastructure projects and procurement, can run for periods in excess of 20 years and may therefore contain information which remains commercially sensitive after that point.
  15. When deciding on the length of the new rule, we have been acutely aware of the fundamental need to protect good governance. To enable Ministers to make decisions in the best way possible, it is important that they have a confidential thinking space available in which they can consider every

available policy option and discuss matters freely and frankly. They must have confidence in the integrity of that confidential space for it to be effective. We must also guard against allowing a ‘chilling effect’ to develop in government, where ideas and information are not properly recorded for fear of premature disclosure. Keeping full and accurate records of decision-making both supports that process and provides a valuable resource for other officials and researchers.

16. We also agree with the Review team that “*effective government is by definition in the public interest, and our system vitally depends on the collective responsibility of ministers and a neutral but fully engaged civil service*” and that “*it is undesirable for serving ministers to be distracted from their current responsibilities by re-fighting old battles because the relevant papers have just been released*” [chapter 7.4]. Both principles can be undermined by premature disclosure. The Government has paid close attention to the length of ministerial and official careers in this context. While it accepts that ministerial careers rarely extend beyond 15 years, a few may do so. The permanent nature of a politically neutral civil service also means that official careers stretching over 15 years are very common. Compared to a reduction to 15 years, a 20-year rule substantially reduces the risk of both Ministers and officials being distracted from their current roles by the release of information on significant decisions which they took earlier on in their careers.
17. It is essential that under a new rule we continue to ensure that the right information is retained and released. To that end, we must ensure that the review of records is conducted sufficiently far enough in time from the events in question: distance lends perspective. We want to ensure that information released offers an insight into events fresh in the public’s memory but also that only the most useful information is preserved and released. Sometimes the full historical significance of events is only apparent some time after they take place. After 20 years, events are still of real relevance to the lives of many people, but reviewers will also have enough perspective to decide which are of lasting historical significance.
18. Current estimates suggest that central government departments hold at least two million paper files aged between 20 and 30 years old. When the new rule comes into force, each of these files will be reviewed and considered for transfer to The National Archives during the 10-year implementation period, as departments make the transition to a 20-year rule.

## Recommendation 7.7

**Our terms of reference charged us with examining whether any categories of official information should have their release prioritised and accelerated. We have heard no evidence that varying the timetable according to category is desirable or practicable, and recommend no change to the current practice.**

19. We agree with the Review's conclusion that the current arrangements, whereby a large volume of information of the same age is released at the same time, provide the best way of publishing and preserving historical records.
20. These arrangements ensure that historical material can be accessed with the benefit of all other relevant information being available at the same time; a practice which offers the most comprehensive access to public records in the useful context of other relevant records, and which delivers the best value for money. The Government is persuaded that accelerated release of certain categories of information would be an unpredictably and unnecessarily expensive exercise, requiring an immediate analysis of 10 years' worth of records across Government to isolate the relevant information and diverting resources away from putting the bulk of information into the public domain on time, given that tens of thousands of papers are transferred each year.
21. In addition, the Freedom of Information Act allows requests to be made to public authorities covered by the Act for the release of specific information at any point. The Act provides a right of access to all information held by the wide range of public authorities, including that held by bodies not covered by the Public Records Act, and for records that may not eventually be selected for permanent preservation.
22. Therefore, as the Review recommends, we will not accelerate the release of different categories of information.

## Recommendation 7.8

**We recommend that the requirement for departments to seek the approval of the Lord Chancellor, acting on the advice of his Advisory Council on National Records & Archives, for the retention of records, should remain in place.**

23. The Government agrees that the Lord Chancellor's Advisory Council's important role should be maintained. It comprises experienced and knowledgeable members who provide valuable advice and guidance to the Lord Chancellor not only on the issue of retaining records, but also on that of transferring closed records to The National Archives. The body of expertise it has built up in discharging its multiple functions indicates that it will continue to exercise its role effectively. We see no reason why departments should cease to submit applications for retention of records under a reduced transfer rule.
24. The Government believes that any reduction in the transfer rule must improve public access to public records. Nevertheless, we also have a responsibility to ensure certain categories of information receive a sufficient level of protection. There will remain limited categories of information – as under the current 30-year rule – which will not be suitable for transfer at the end of the new transfer period. It is also possible that under a new 20-year rule, departments will have to retain more information for current business needs or due to its sensitivity.
25. The burden for much of this work will fall to the Advisory Council on Public Records, which advises the Lord Chancellor on whether records should be retained or have continued closure. To ensure that records will continue to be expertly reviewed on time, the Government intends to:
  - review the Council's membership, to ensure that experts familiar with the management of digital information are adequately represented;
  - review the way the Council meets, so it can assess applications for retention and closure in smaller, more frequent meetings;
  - review the Council's retention criteria – simplifying them, and reducing the bureaucratic process surrounding their application; and
  - develop new 'class' retention schemes, where the Council will spot check the application of criteria, rather than taking a line-by-line approach.
26. However, the Government believes the fundamental framework underpinning the Council can support migration to a new rule, and that the Lord Chancellor has ample powers to deal with exceptional cases where information needs to be retained after the rule has expired.

## **Recommendations 7.10, 7.16 and 7.24**

**We recommend that the 15 year rule should be applied fully retrospectively.**

*and*

**We recommend that the transition to a 15 year rule be managed by releasing one additional year's worth of records every year until the backlog has been processed.**

*and*

**In order to minimise the risk that implementation will be uneven between years and between departments we recommend that a single central authority is given responsibility for monitoring and reporting on progress.**

27. We have considered the practical arrangements for introducing the reduction to the 30-year rule and agree with the Review's suggestion that a new rule should be phased in, as a general rule by processing an extra year's records each year. UK Government Departments, most of their sponsored bodies and other public authorities to which UK public records legislation applies will have to prepare and review a large number of records, a task which requires a careful approach by specially trained staff if the quality and breadth of released records is to be maintained. Because of the highly sensitive nature of some government information, many of these staff must be specialists in their field.
28. A reduction in the rule needs to be managed carefully to ensure current standards of records management are maintained when processing greater volumes of information. Therefore the Government has decided to legislate for a phased implementation, providing departments with targets to reduce their backlog according to their individual circumstances and the nature of their business and the information they hold. While the records management practices of each department vary, the general expectation will be that each will review an extra year's worth of records each year until the transition to the new rule is complete.
29. We also agree that the new rule should be applied to all records that have already been created by the Government, ensuring that historical documents are brought into the public domain as soon as possible after a new, shorter rule is achieved. While the Government is keen to ensure that those people to whom information relates are treated fairly, it is satisfied that to implement the new rule retrospectively is appropriate. Government's records are already subject to disclosure under the standards of openness brought about by the introduction of the Freedom of Information Act. Therefore, making them also subject to a shorter historical records rule does not represent an unfair change.

30. In implementing any changes, the Government will have to be confident that departments of state and their executive agencies have the necessary capacity, skills and resources to achieve a transfer rule reduction within the allotted time and at current standards. It is crucial that central government departments are provided with a sufficient level of support, guidance and advice on how to implement any change and government must be able to carry this work forward consistently across departments.
  
31. We intend therefore that the Lord Chancellor will assume overall responsibility for monitoring implementation of the new historical records rule, and that this non-statutory role will be delegated to The National Archives on a day-to-day basis. Given the established position of The National Archives in the field of records and information management, the Government believes it will be well placed to monitor the work of departments of state and report on their progress as required to the relevant department. The National Archives will report annually to Ministers on progress towards implementation of the new rule once it has been enacted through legislation.

## Recommendation 7.22

**We recommend that the Government make adequate additional provision in the 2011–14 and subsequent Comprehensive Spending Review for all records-related activities during the remainder of the implementation period, including work on digital records and FoI request handling.**

32. We are committed to achieving the transition to a new shorter historical records rule in the most cost-effective manner possible and to ensuring that information is handled correctly across Government. It is crucial to ensure that the new historical records rule is affordable in the long term.
33. Introducing a new shorter rule will place burdens on public record bodies as they are required to recruit and train an increased number of file reviewers, fund file transportation, and prepare to deal with the challenge of maintaining and reviewing digital records. While records management is an integral part of the administrative infrastructure of government departments and other public records bodies, practice varies between organisations and has a variable impact on each organisation's core business. We have concluded accordingly that the Government will not be making central provision for additional funds to cover the costs of implementing a new rule or other record-related activities.
34. Departments will achieve the phased transition to a new rule by managing the annual budgetary resources allocated to them via the normal processes. The Government currently estimates that the cost to central government of implementing a new rule will be in the region of £28m for the first five years of implementation, assuming departments were to transfer an extra year's worth of files each year until the transition is complete and work were to begin shortly.
35. As outlined under Recommendation 7.8 above, we will work to make the process of review by the Lord Chancellor's Advisory Council deliver even better value for money, for example by simplifying retention criteria and reducing the bureaucratic process surrounding the criteria for retaining files in departments.

## Recommendation 7.25

### **We recommend that the amendments to the FoI Act referred to at 7.6 should apply to all information covered by the FoI Act.**

36. The Government recognises the importance of ensuring fair and equal access to information across central and local government. Therefore we will ensure that the reduction in the transfer rule for historical records is accompanied by a concurrent reduction in the length of time for which many Freedom of Information Act exemptions can apply.
37. The Freedom of Information Act currently governs access to UK Government information as well as Welsh Assembly Government and Northern Ireland Executive information and applies to both central and local government.
38. The Public Records Act governs the transfer of government information for permanent preservation, and while local authorities are not covered by this Act, they are covered by the Lord Chancellor's code of practice on records management.<sup>1</sup> This stipulates that records selected for permanent preservation and no longer in regular use by the authority should be transferred as soon as possible to an archival institution that has adequate storage and public access facilities.<sup>2</sup>
39. It is important to recognise that the 30-year rule is the upper time limit on transfer, not a target, and that a significant amount of information is already being transferred and made public before 30 years. We therefore see no justification for extending the scope of the Public Records Act to include local authorities at the current time.
40. The Government recognises that different records management and freedom of information arrangements exist in Scotland, Wales, and Northern Ireland. The Government will seek to work with the devolved administrations and legislatures to bring about as coherent a regime as possible for the UK as a whole.

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<sup>1</sup> FOIA, s46.

<sup>2</sup> Lord Chancellor's Code of Practice on the Management of Records, para 12.15.

## Recommendation 8.4

**We recommend that the Government revisit the Civil Service Code to see whether it needs an amendment to include an explicit injunction to keep full, accurate and impartial records of government business.**

41. The Civil Service Code was revised and updated in 2006. The new Code is principles-based and sets out the standards of behaviour expected of all civil servants. The Code does not prescribe specific tasks, but concentrates instead on the core values that support good government and an impartial civil service.
42. The Civil Service Code requires civil servants to fulfil their duties and obligations responsibly and always to act in a way which is professional and that deserves and retains the confidence of all those with whom they have dealings. In addition, there is guidance set out in the Lord Chancellor's Code of Practice on Records Management as prescribed by the Freedom of Information Act and Cabinet Office Guidance on the Management of Private Office Papers.
43. Nonetheless, the Review's analysis notes that "*as the demand for earlier disclosure of official records intensifies [...] the detail and accuracy of that documentation can correspondingly diminish*" [chapter 5.19]. Whilst the revised Code of Practice for Records Management issued in July 2009 makes explicit provision for authorities to ensure that staff keep adequate records of their daily work and for those records to be kept in a way that enables them to continue to be accessed and used, the Government will consider when the Civil Service Code is next reviewed whether there is a need to put a more explicit reference in the Code.

## Recommendation 8.6

**We recommend the use, wherever possible, of redaction of official documents, as they are made publicly available, to protect the identity of civil servants.**

44. The Government agrees that it is important to protect the identities of civil servants. When responding to freedom of information requests, the Government takes the view that it is usually appropriate for senior civil servants to be identified as working in a given area since they are already likely to be publicly associated with a particular set of responsibilities, for example, through their entries in the Civil Service Yearbook. In the main, the names of more junior officials are not released – except perhaps where they have a public role.
45. The same is not necessarily true of information created before the Freedom of Information Act came into force. It will not always be possible to determine what grade a particular civil servant was, or is, at the time of the release. It is also the case that for a large number of records that pre-date the Freedom of Information Act the individuals named on such documents will not have had any expectation that their names will be made public. Therefore, the Government agrees that it is better to err on the side of caution and presume that names will generally be redacted where it is appropriate, necessary and practicable to do so. For the most senior civil servants, for example Permanent Secretaries, it would not normally be appropriate to redact names. The Government will continue to assess all files on a case by case basis.

## **Recommendation 8.8**

**We recommend that, in parallel with the adoption of a 15 year rule, the Government, in consultation with interested parties, may wish to consider whether there is a case for enhanced protection of certain categories of information.**

46. The Government agrees that, in tandem with increasing openness under a new rule, some categories of information need greater protection than is afforded under current arrangements. We have considered whether it is necessary to make amendments to the Freedom of Information Act to ensure that our information access arrangements allow essential constitutional relationships and conventions to be preserved. The Government has therefore considered two categories of information. Firstly, the principle of collective responsibility is a bedrock of our constitutional arrangements, and is integral to ensuring that Parliament can hold the Executive to account. Secondly, it is also essential to ensure that constitutional conventions surrounding the Monarchy and its records are protected.

### **Cabinet Collective Responsibility**

47. It is of fundamental importance that any new arrangements support good governance. Transparency of information has an essential role to play in ensuring good governance and enhancing the accountability of the Executive to Parliament and the public. Cabinet's place at the heart of the Executive's decision making system means that its deliberations are of particular significance and will often affect society and individuals, both in the United Kingdom and abroad. A move to a 20-year rule recognises this and will make such information generally available after 20 years rather than the current 30 years.

48. The Government has also considered whether greater protection is necessary for such material within the 20-year period.

49. The Government believes that there are arguments on both sides and that the importance attached to the principle of openness means that greater protection should only be introduced if it is essential to maintaining the constitutional position of collective responsibility. Having considered the arguments, on balance the Government does not consider such enhanced protection to be necessary as a result of the reduction to 20 years.

### **Information relating to communications with the Royal Family and the Royal Household**

50. The Government believes it is important to protect the constitutional conventions surrounding the Monarchy and its records. Of particular importance are the political impartiality of the Monarchy, the Sovereign's right and duty to counsel, to encourage and to warn her Government, as well as the right of the Heir to the Throne to be instructed in the business of Government in preparation for the time when he will be King. These rely on well-established conventions of confidentiality.
51. In order to ensure that the constitutional position of the Monarchy is not undermined, information relating to communications with the Sovereign, the Heir to the Throne and the second in line to the Throne, and those acting on their behalf, will be covered by an absolute exemption for a period of 20 years. If the Member of the Royal Family to whom the information relates is not deceased after the end of this 20-year period the absolute exemption will continue to apply until five years after their death.
52. However, in recognition of the fact that the position of other Members of the Royal Family will vary in a constitutional sense, information relating to communications with Members of the Royal Family other than the Sovereign, the Heir to the Throne, or the second in line to the Throne and those acting on their behalf, will be covered by a qualified exemption for a period of 20 years. If the Member of the Royal Family to whom the information relates is not deceased after the end of this 20-year period the qualified exemption will continue to apply until five years after their death.
53. This will mean that information relating to communications with the Sovereign, the Heir to the Throne, and the second in line to the Throne, will generally be suitable for release at the 20-year point, or five years after their death, whichever is later. Information relating to communications with other members of the Royal Family may be available much earlier, depending on the balance of public interest.

## Recommendation 8.10

**We recommend that the Government confirm that special advisers' non-political records are not exempt from the Public Records Act and the Fol Act; that as temporary civil servants they, too, are under a duty to keep a full record of their deeds and doings; and that any misunderstanding about the matters on the part of minister, departments or special advisers is removed.**

54. Special advisers are temporary civil servants, and are subject to the requirements of the Public Records Act and the Freedom of Information Act in the same way as other civil servants. The Code of Conduct for Special Advisers, most recently published in November 2007 (and amended in April 2009), makes clear that special advisers are employed to serve the objectives of the Government and the Department in which they work. As with all civil servants, special advisers are required to keep appropriate records of their work.

## Recommendation 8.12

**We recommend that the Government commission an independent review of the Radcliffe system, with the aim of overhauling and updating it in the light of the FoI Act and of our principal recommendations concerning a reduction in the 30 year rule.**

55. The Radcliffe rules govern the publication by former Ministers of memoirs relating to their period of office. The issue of memoirs has been the subject of a recent thorough review by the Public Administration Select Committee. Their 2006 report “Whitehall Confidential: the Publication of Political Memoirs” and their 2008 report “Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants”, examined the issue of the publication of memoirs by Ministers and officials.
56. In response to the Committee’s recommendations, the Government has put in place a number of measures to provide more certainty and clarity to the principles and procedures involved in the consideration of memoirs. In particular, it believes that there are certain categories of information which should not be disclosed in memoirs and diaries and this has been clarified in the recent revisions of the Civil Service Management Code and the Diplomatic Service Regulations. In particular, authors should not include information which may cause damage to international relations, national security, the confidential relationships between Ministers, and Ministers and civil servants, or which would inhibit the free and frank exchange of views and advice within government.
57. The Government agrees with the Public Administration Select Committee that it would be difficult to apply a fixed time period before publication.
58. As the issue of memoirs has already been the subject of two reviews by the Public Administration Select Committee since the introduction of the Freedom of Information Act, the Government does not believe that another full independent review of the rules is necessary. However, the Cabinet Office will look again at the rules in light of the recommendations made by the Review.

## Recommendation 8.14

**We applaud the practice of proactive release by government, and recommend that it should be made more widespread, so that, wherever possible, records should be put into the public domain as early as their sensitivity permits.**

59. Departments are encouraged to publish material which has been released to the public via the freedom of information regime and which may be of wider public interest. As part of the Government's 'Better FOI' programme of work to enhance openness and increase public access to information, Government will be working with practitioners across departments to promote best practice in proactive publication.
60. The Information Commissioner's Office (ICO) published a new model publication scheme and definition documents. Public Authorities were asked to adopt the new scheme by 1 January 2009. The ICO's model publication scheme was developed to encourage greater openness and transparency, to increase awareness and expand and improve proactive dissemination of information. The Department for Environment, Food, and Rural Affairs has also produced guidance for public authorities on proactive dissemination of environmental information.
61. A publication scheme sets out the kinds of information the public authority will proactively publish or make available as a matter of routine.
62. Under the Information Commissioner's model scheme, public authorities are required to make information available which falls into seven general classes:
- who we are and what we do;
  - what we spend and how we spend it;
  - what our priorities are and how we are doing;
  - how we make decisions;
  - our policies and procedures;
  - lists and registers;
  - the services we offer.
63. Public Authorities also produce a guide to the specific information they will make available under the publication scheme, giving details of:
- the information it will routinely make available, for example financial reports;
  - how the information can be accessed, for example on a website; and

- whether or not a charge will be made for it.
64. After consideration of the responses to the Government consultation on designating additional public authorities to the Freedom of Information Act (2000) (by an order under Section 5), the Government is also proposing to extend the coverage of the Act. Academy Schools, The Association of Chief Police Officers, University Central Admissions Service (UCAS) and the Financial Ombudsman Service (FOS) were all consulted as part of this process and, if considered to be eligible for inclusion in Freedom of Information Act (2000), they will be added via a section 5 order.
65. Further, the Ministry of Justice is also taking forward a cross-government programme of work called 'Better FOI' to improve the delivery of the Freedom of Information Act. We are now in the sixth successful year of the Act's operation and departments have gained a wealth of experience and expertise. It is important that this is shared amongst FOI practitioners to ensure that we are all achieving the highest level of compliance and customer service. The Ministry of Justice is looking at a number of areas in which to identify and disseminate best practice which has helped others to deal with requests for information effectively.
66. The project's terms of reference are:
- "To provide advice, expertise, leadership and make strategic decisions to support the successful delivery of 'Better FOI' programme initiatives with particular consideration to best practice guidance to tackle concerns raised by practitioners and requesters in relation to the Freedom of Information Act."
67. The Government will be looking specifically to improve:
- the range of information included in publication schemes;
  - the timeliness of responses across Whitehall; and
  - the quality of customer service given to requesters – especially in relation to the duty to provide 'advice and assistance' under section 16 of the Act.
68. The Government will otherwise continue to encourage the proactive publication of information that is of legitimate interest to the public, including those organisations that are not public authorities within the meaning of the Act. The Government supports the use of disclosure logs, where public authorities proactively publish information they have already released under the Freedom of Information Act. In particular, the Government will support and promote observance by those organisations of the ICO's model publication scheme.

## Recommendations 8.20 and 8.23

**We recommend that as a matter of urgency the Government should review its strategy for digital records, and that it should reassess the system of review of them so as to ensure that they are in a sustainable storage environment by the time they are ten years old.**

*and*

**We recommend that electronic record capture should be an integral part of the IT infrastructure of government, and not a 'bolt-on' activity. Work on creating an IT strategy to ensure that records are automatically kept needs to be accelerated.**

69. The Government agrees with the Review that there are many important issues to be faced in managing digital records due to the inherent fragility and vulnerability of digital information.
70. The Government shares the assessment of the Review that if steps are not taken to address these issues '*there is a real danger that the official record may not survive*' [chapter 8.19] and that urgent action is required. This digital challenge is not only faced by UK Government, it is shared with both governments internationally and the private sector.
71. As such, the Government has established the Digital Continuity Project, a cross-departmental initiative led by The National Archives, which will establish a coherent approach for government to ensure it can continue to use its digital information as needed. The project will establish a structure of guidance, standards and supporting technology that will enable government (and the wider public sector) to effectively manage the risks associated with maintaining digital information over time and through organisational and technological change. The aim is to ensure ongoing continuity of access to and use of digital records, both when the information is held within a department and when it is transferred to the archive for permanent preservation. The National Archives has a digital archive for the permanent preservation and public accessibility of digital records once they have been transferred from government departments.
72. Government will use the structures and processes provided by The National Archives to identify their digital information assets, actively review and monitor what they need to keep, and manage their digital information with a view to its long term sustainability. This will include establishing business processes and technology solutions to reduce the likelihood of risks arising from technological change in future, as well as identifying and managing any legacy issues from digital information that has not been managed in a way that supports continuity. It will also use new IT contracts to ensure that future Government procurements include provisions for the

ongoing sustainability of digital information. Further information on the Digital Continuity project and The National Archives' work on electronic records management can be found here:

<http://www.nationalarchives.gov.uk/electronicrecords>

73. Successfully addressing this digital challenge will drive a refocus of resources from paper records to digital and bring extensive benefits. Not only will Government be able to improve transparency and public accountability and secure the historical record, but we will also be able to support the more efficient management of information that has value, improving public service delivery through ready access to the right information, at the right time.
74. We support the recommendation that the Government should review its strategy for digital records, to provide us with an assurance that we are appropriately managing these risks and successfully delivering the benefits. However, this review must be timed to allow for the completion of the Digital Continuity Project and for government departments to embed the resulting approach. An independent review of the strategy for managing digital records will therefore take place from 2012. The review will assess how effectively government has implemented appropriate digital record capture and preservation processes and technologies and whether it is on track to realise the benefits from managing digital information in a sustainable way.

## Recommendation 8.25

**We recommend that the appropriate central government authority does more to monitor and prompt continuing work on the preservation of electronic records that are generated by local government.**

75. The Government welcomes the attention paid by the review to local authorities, particularly in the area of electronic records preservation. With the full support of central government, local authorities have been at the forefront of the e-government agenda and developed a range of innovative electronic services for the public. Ensuring local authorities are able to meet new challenges such as the shift to electronic records management remains of key importance to the Government. We see clear benefits to local communities if authorities put in place the necessary infrastructure and procedures to acquire, maintain and make available archives in electronic form.
76. The National Archives has in the past supported local government on electronic records management. This included work with individual councils and building on progress made by local authorities in implementing new records strategies. The National Archives will support local government on the management and preservation of electronic records through an advocacy and influencing programme in partnership with other government departments and agencies in England and Wales.
77. The National Archives, in partnership with the Digital Preservation Coalition and the Society of Archivists started a series of digital preservation road shows in 2009 which is continuing into 2010. These will raise awareness in local government of success stories, positive initiatives, toolkits and methodologies that demonstrate viable strategies that could be adopted by other councils.
78. The Lord Chancellor's Code of Practice on Records Management was revised in July 2009. It takes account of changes in the technology used to create and store records, new ways of collaborative working, and the relevance of good information management to data security and freedom of information and other information legislation. It also addresses issues raised by the 30-Year Rule Review team's report in relation to management and preservation of digital records in both central and local government.
79. Among other things, it recommends that government and other public sector bodies should create and keep the records they will need for the continuing conduct of business; keep those records in systems that support their continued maintenance and use, and have a strategy for digital preservation that will ensure those records can be retrieved and used for as long as they are required. It will be an important tool for the

Government in ensuring that best practice and high standards are maintained for both paper and digital records.

80. The Government recognises that any reduction in the 30-year rule will need to consider the effect on places of deposit (PODs). Under current legislation the Lord Chancellor<sup>3</sup> can appoint PODs if he believes they afford “suitable facilities for the safe-keeping and preservation of records and their inspection by the public”. The success of any transition will depend upon local public record bodies improving their partnership with PODs. Many PODs do not have the capacity to engage continuously with public record bodies or the authority to ensure that transfers occur regularly and to the standard that The National Archives expects of departments of state and their agencies.
81. In line with any reduction, the Government must therefore balance the need for all public records to be properly selected and transferred, alongside the challenges faced by PODs in meeting current and future demand. In order for PODs to cope with any reduction, the Government believes that the foundation for reform in this area must come from local public record bodies. The National Archives has issued detailed guidance<sup>4</sup> to which all public record bodies should adhere, but we accept that consistency across central government and its outlying bodies must be improved.
82. The National Archives is well placed to take forward its leadership role within the archives sector and we are confident that further improvements can and should be made in conjunction with other departments. The key priorities for the Government will be promoting closer co-operation between local PODs and outlying bodies and local elements of government departments; encouraging compliance with official guidance for selection and transfer of records; and pro-active identification of regional and local public records suitable for transfer through forward plans.

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<sup>3</sup> In practice, the power has been delegated to the Chief Executive of The National Archives, in her capacity as Keeper of Public Records.

<sup>4</sup> Preparation of records for transfer to The National Archives and approved places of deposit (2005), and Freedom of Information Act (2000): Procedures and guidance relating to public records transferred to and held by places of deposit (2004).





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