

**Summary of evidence presented to the 30-Year Rule Review Committee,
26 February 2008 at Church House, Westminster.**

Committee members present:

Paul Dacre (chair)

Professor David Cannadine

Sir Joseph Pilling

Evidence from Lord Turnbull

Asked by the Chair how Freedom of Information (Fol) had changed the 30-year rule, Lord Turnbull said that it had not changed it very much at all. Once 30 years of Fol had gone by a lot of the information that would have been released at that point would have been “mined out and already released.” But with Fol people have to identify the information they want whereas with the rule entire files are made available. Governments have not always waited 30 years to release something of interest, for instance Lawrence Freedman’s history of the Falklands Conflict.

“You could say why have a 30-year rule but the effect of that would be to make things worse because only things which had been asked for would be revealed and if nobody thought to ask for it, it would never come out. There is a case for a default date.”

Lord Turnbull described a seminar he had attended recently on the UK’s exit from the Exchange Rate Mechanism in 1992. “A lot of the participants were there: Norman Lamont, Geoffrey Howe, Dr Schlesinger, President of the Bundesbank... There was a lot of anger at the time but people were able to have a rational discussion about the implications of this and made me think 15 or 20 years was a more reasonable figure.” He noted that the official limit for memoirs, “now not much observed”, was 15 years, and that “we have not had a prime minister that has lasted 15 years. In that [time] two things would have happened: a lot of the participants would have moved on; and, secondly, there is a certain kind of natural radioactive decay which means that things which were hot politically are less hot.”

He was then asked whether Fol had affected the openness of debate between civil servant and politician. Lord Turnbull said that he retired six months after Fol came in, so it had been too early to say. He had been more concerned about the quality of formalised discussion and record keeping – they were already poor and he feared they could worsen under Fol. “If you have a view which says the Cabinet Secretary is always pressing me to have a formal committee with pre-decided membership of those who actually have a locus in this affair, papers circulated in advance, records kept and records circulated, do I want all that? No. I will just decide all this in the study and I will decide it with my special advisers. That is encapsulated in the term ‘sofa government’ and Fol is a further incentive to go that route rather than the others.”

When it was put to him that a reduction in the rule to 10 or 15 years would increase the pressure on “civil servants to keep a proper trail because early release would expose the fact they have not and they would be culpable for not doing so”, Lord Turnbull disagreed. “You would take the short-term view... ‘I will write it all up later in a White Paper.’” Work previously done by civil servants was diverted into more “political channels” with “more work between the minister and the special adviser with less presence of the civil servants.” He said that during his career there had been a “casualisation” of government. The Wilson/Callaghan government had 90 cabinet meetings a year (now 38) and took over 100 papers a year (now 14 or 15 papers).

Lord Turnbull said: “I think the [FoI] Act is flawed in the sense that when the harm test is drawn up it looks at the piece of information which has been requested. You have read this. This is what I regard as the fallacy of composition. It says because something is true of a part it is also true of the sum of the parts. There would be many cases where the piece of information itself will not cause the roof to fall in but if the forum in which those discussions take place is now regarded as perfectly normal that those records of what that forum discussed will now be allowed or released you will change the basis of behaviour in that forum. The Act does not adequately deal with that problem.”

He asked whether one could leave the FoI Act as it was if there was a reduction in the rule. He thought the damage done by reducing to 15 or 20 years “would not be very great”, but the shorter the time period, the more active the process of sieving material would need to be. There would be resource implications, which was why he had argued that two years’ of papers should be released every year “for as long as you wanted until you got to the date you wanted to be.”

“You have also have got an argument to deal with which is some people may feel that they are being double-crossed in the sense that they acted in a way under a certain regime and we have retrospectively changed the rules of the game. The alternative would be to say that everything from now on will be released within 15 but we will allow the system to grow out. That is the softest way of reducing it.”

He went on to observe: “Take Mrs Thatcher's time, what is now left? The Falklands events have come out, Westland is due in about eight years time. If you started shortening it, it would come up in four years from now. The miners’ strike would start coming out six years from now. A lot already has. I cannot think there is anything that particularly concerns me.”

Lord Turnbull was then asked if the publication of personal memoirs made the case for a reduction, so that the official documentation for the period covered was also made available. He said that it was a powerful argument, but that the authors should not be quoting the advice they were given and who gave it. “Issues of security, foreign relations, et cetera, are not revealed and in particular the position and actions of people who do not have the right of reply, i.e. public servants, are not revealed. In the governance of memoirs we

are recognising there are still arguments for not having full release.” There was a place for memoirs of ministers such as Nigel Lawson, John Major and Margaret Thatcher as “they do give you a very good historical record.”

He returned to the theme of “sofa” government. The number of special advisers had doubled since the days of John Major, from 38 to 76. “I do not think you can increase the special adviser presence by that amount and not have some influence.” He said he was a supporter of the special adviser arrangements, but that “the trouble comes when special advisers seek to suppress or supplant the advice of civil servants.”

“They are free to comment on it. They are free to disagree with it. They are free to try to persuade the minister not to accept it but when they start to say “I do not want you doing this. I do not want you doing that,” and they start to control who goes to the meetings, then the system has deteriorated. In my view it has deteriorated in that respect because special advisers are suppressing and supplanting the advice of civil servants rather than supplementing the advice which ministers get.”

He said that minuting of special advisers’ business had deteriorated – “extremely lacking, almost non-existent”, and that “record-keeping in government has declined.” A particular problem was with e-mail. With a flurry of e-mails going backwards and forwards it was difficult to authenticate an audit trail. Asked if advice from special adviser should be recorded and released under the rule, Lord Turnbull said that as they were public servants it should, but “large parts of it have not been kept.” He said there was a real issue about whether civil servants had been “in the room” at the time when decisions were made. “You will find that senior civil servants feel they are less in the room or they are in the room later in the process than they were a decade or so ago.”

If there was to be a reduction in the rule then “you have got to make sure that whatever change you make is consistent with what I think were the original intentions of the [Fol] Act”, such as the need for “safe space” when formulating policy advice. Policy-making should not take place in a goldfish bowl. Views should be exchanged in private, and a collective agreement reached. “It is quite difficult to say we have all had an argument, we will all agree, and we will do this collectively if then it turns out that ...it was actually a kind of 12 to 11 vote, their chance of implementing that policy successfully is reduced.”

There was then a discussion about the possible effect on individual civil servants if there was a reduction in the rule to 15 years. Lord Turnbull said that one could consider deleting references to named individual civil servants. At the moment under Fol civil servants do not have a right to say why they should not be named, and unlike politicians they do not have a right of reply. “If [a senior civil servant] were named and you went to him and said you are a civil servant and you cannot set out why you thought [minister named] was wrong, then...you would be in an intolerable situation and it would not hold. This is exemplifying the point that this is about more than moving one date to

another date because the closer you get the way in which the system is operated would be not same. By and large after 30 years, things about relations with foreign governments, the Royal family, a small number of areas where the material is [not] made available. I think you would be asking a lot more questions and people would be appealing more...you will get a lot more hard cases at 15 than you get at 30.”

Lord Turnbull went on to note that “15 years would give you some protection...although not many political careers last right at the very top, quite a few official careers do.”

Asked for the views of former senior civil service colleagues, Lord Turnbull said they believed there had been a “casualisation” of government, some aspects of FoI were unhelpful, and that lip service had been paid to the principle of “safe space.”

“I think their main concern is you are now a senior person in the department, are you going to suddenly find yourself spending weeks of your life fending off all the accusations about what you did 20 years earlier.” They were sympathetic to reducing the rule but there should be a transitional period.