

Review of the "thirty year" rule

Joint Response by the Clerks of the two Houses of Parliament

Although this review of the "thirty year rule" is looking only at when Government records are made available to the public, any changes to the definition of a "historical record" under section 62 of the Freedom of Information Act 2000 (FOIA) could have implications for Parliament.

Although the Houses of Parliament were never formally subject to the "30 year rule", they kept in step with Government by observing a self-imposed "30 year rule" covering the release of privileged material. The "30 year rule" was repealed under schedule 8 of the FOIA.

The two Houses, like Government departments, are public authorities under the terms of that Act. Section 34 of the FOIA confers exemption from the provisions of section 1(1)(b) of the FOIA if the exemption is required "for the purpose of avoiding an infringement of the privileges of either House of Parliament". This exemption is not among those time-limited by section 63 of the FOIA, and is not subject to any public interest test. A certificate signed by the Speaker of the House of Commons, or, on behalf of the House of Lords, the Clerk of the Parliaments, is deemed to be "conclusive evidence" that the exemption is required.

Despite this absolute exemption from the duty to disclose privileged material under the FOIA, the House of Commons and House of Lords have continued to allow the release of privileged material after 30 years, as was the practice before the passing of the FOIA.

An amendment to section 62 of the FOIA would have no direct effect upon the rules governing the disclosure of privileged material. However, Parliament, though very aware of the need to protect parliamentary privilege, has shown over a long period that it would not wish to be substantially out of step with Government in the way it treats its documents. It follows that if there were to be a simple reduction in the 30 year period after which a record becomes a "historical record", the two Houses would be willing to consider corresponding changes to their internal arrangements.

However, a more complex approach within Government to the definition and release of "historical records", for instance prioritising some categories of information for release above others, could create significant practical difficulties, given the absolute nature of privilege.

If Parliament was unable to keep in step, different regimes for Government papers and those covered by parliamentary privilege could also create additional administrative burdens for departments, which in many cases hold privileged documents, which they would not be able to release until the parliamentary period of exemption had elapsed.

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