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Paul Dacre
Chair
30 Year Rule Review
c/o The National Archives
Kew
TW9 4DU

Dear Paul,

**REVIEW OF THE '30 YEAR RULE': VIEWS OF THE FOREIGN AND
COMMONWEALTH OFFICE**

1. Thank you for your letter of 28 December 2007 in which you ask for the Foreign and Commonwealth Office (FCO) views on a possible change to the '30 year rule'. The FCO recognises that its records are of importance to historians and has already done much to facilitate access to material less than 30 years old, for example through its series *Documents on British Policy Overseas* and the proactive release of documents to The National Archives (TNA). We also recognise, however, that a commitment to openness must be balanced by the need to protect the workings of government. The FCO is in a different position from most other Government Departments because its work relates primarily to foreign governments and international organisations. Earlier access to public records could bring increased risks to the UK's international relations and its ability to promote and protect British interests overseas. From a practical point of view, moreover, any change to the '30 year rule' would require significant additional resources for the FCO to bring it into effect.

Benefits and risks

2. The FCO's files are among the most popular and frequently used of all the public records at TNA. A reduction in the rule would demonstrate the UK's commitment to open government. It would allow a more timely and more accurate understanding of how foreign policy decisions were reached in the past and provide increased scope for lessons learned. There would also probably be a reduction in the number of Freedom of Information requests for older material, although this might be offset by an increased number of requests for material that had been held back for sensitivity reasons.

3. We have examined the practice of other countries. The majority of countries that release their records to public archives do so at 30 years. In effect, only the US, New Zealand and Finland release the majority of their papers earlier



than we do, all at 25 years. A handful of countries release records after shorter periods, but they generally retain sensitive material for much longer. Greece, for example, has a 15 year limit for documents up to confidential level, but 60 years for material relating to issues of national security. Germany is contemplating reducing the closure period to 10 years for 'ordinary documents', but this will not apply to highly classified documents.

4. The main risk from a radical reduction is the damage it could bring to our international relations. Any move below 25 years would mean that the UK could be releasing classified material earlier than any other country. We would therefore risk releasing documents that are still sensitive and/or considered confidential by other states or international organisations. Of course, the risks are already there and are explicitly allowed for in both the Freedom of Information Act (Section 27, International Relations) and under the Public Records Act via the Lord Chancellor's Advisory Council. But they become more acute as we move closer to the present because the information is likely to be more sensitive. Moreover, in several countries important to our commercial and security interests, the personalities or parties in power have hardly changed in the last 20-30 years. This factor alone (sometimes a very sensitive one) will again tend to increase the number of papers withheld.

5. In order to provide some evidence for assessing these risks, we consulted a number of overseas posts about how their host governments might react to a change in the UK's 30-year rule.¹ The results suggest that the majority of western democracies would have little or no concern if UK government records were to be opened before 30 years, provided that the current safeguards on the release of sensitive material continued to operate at the highest standard. Two of our closest allies, however, have emphasised the need to protect classified information given in confidence. Not surprisingly, those countries with access regimes less developed than the UK's were more cautious, some of them outright opposed.

6. There could also be unwelcome consequences for FCO staff. Some of them expressed concern that negative reports about certain countries or foreign individuals, written early in an officer's career and released before 30 years, could limit their effectiveness in jobs dealing at senior rank with the countries concerned.

Implications for the FCO

7. We concluded from the above consultation that any decision to reduce the 30 year rule must not compromise our current very high standards of sensitivity review, whereby we read and review every file before it is released. If anything, the review would need to become more intensive because of the

¹ A confidential summary of their responses is attached for the Committee



increased risks and because we would need to consult other governments more frequently.

8. These constraints would need to be built into any transition period, which for the FCO would inevitably have to be lengthy. They also mean that the transition period would need to be handled methodically and in chronological sequence to avoid discontinuity. Moreover, all this new activity would be in addition to our current work in preparing material for release at 30 years.

9. We would expect the volume of FCO material remaining closed to increase in proportion with the length of the reduction. This would have a number of resource implications:

- More material would need to be considered by the Lord Chancellor's Advisory Council.
- The closed material would need to be re-reviewed at regular (5 or 10 year) intervals.
- There would be an increase in Freedom of Information requests for closed FCO material made both directly and via TNA.

Resources required by the FCO

10. We have made a number of projections using different periods of reduction and different transition periods. The main costs relate to:

- Staff to manage and support the transition.
- Additional sensitivity reviewers. These are usually retired senior management staff employed on a daily rate (equivalent to HCS 6).
- Accommodation and equipment.
- High-level security clearance for new staff and sensitivity reviewers.

11. Our detailed costings show that for each year of reduction in the rule, we would require additional resources of £0.5 million. So a reduction from 30 to 25 years would require additional resources of £2.5 million (£0.5 million x 5 years); a reduction from 30 to 20 years would require additional resources of £5 million (£0.5 million x 10 years); and so on. The transition period will also vary according to the length of the reduction. We estimate that a reduction from 30 to 25 years would require a transition period for us of two to three years; a reduction from 30 to 20 years would require a transition period of five years. We would be happy to provide detailed costings if you would find that helpful.

Electronic Records

12. One further consideration to bear in mind with any change to the 30 year rule is that electronic records will need to be selected, reviewed and transferred earlier than currently expected. This will mean that resources will be required to find technical solutions for carrying out these processes earlier than



anticipated. In the FCO's case, electronic records date from 1992, or some 16 years ago.

Lord Chancellors' Advisory Council

13. The FCO is well aware of the increased workload for the Lord Chancellor's Advisory Council that would be required during a transition period. One suggestion we have for helping the Council's work would be to appoint a small team of experts within the Council who would focus on FCO material and the international relations exemptions. This would allow them to build up their knowledge and understanding of the countries concerned and the different sensitivities involved.

Summary

14. The FCO is in favour of greater openness, though not at the risk of damaging the UK's international relations. The risks which a change to the 30 year rule would entail should be clearly understood and acknowledged, and the necessary steps taken to mitigate them. Any change would require additional and sufficient resources to allow the FCO's high standards of sensitivity review to be maintained, as well as an adequate transition period. It would need to be guided by recognition of the fact that more FCO material will be deemed sensitive at periods less than 30 years, and that this would entail disadvantages as well as advantages from the point of view of open government. In particular there would need to be more consultation, leading in turn to more delays and more papers being withheld, thus reducing the benefits to the public of earlier release. Frustrated expectations would inevitably lead to more FOI requests.

15. Bearing these considerations in mind, our preference would be for a reduction of the 30 year rule to 25 years. We think this is a realistic and practical timescale within which to operate. It would bring the UK into line with the best international practice and involve fewer risks than a move to 20 years or less. At the same time it would enable us to present to the public a very large amount of new archival material within a relatively short period.

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