



Scottish Information
Commissioner

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Our Ref:

Your Ref

Mr Paul Dacre
Chair of the 30 Year Rule Review
30-year Rule Review
c/o The National Archives
Kew
TW9 4DU

25 February 2008

Dear Mr Dacre

Consultation response to the 30 Year Rule Review

Thank you for inviting me to contribute to the consultation as part of the 30 Year Rule Review. While my understanding is that the 30 Year Rule has never had the force of law in Scotland, the provisions of the Public Records Act 1958 were informally "adopted" here for records management until the Freedom of Information (Scotland) Act 2002 (FOISA) came into force. I expect that the National Archives of Scotland and the Scottish Government will provide you with the detail of the changes to their records management practices from 1 January 2005. I would propose only to provide my observations on the effect of those changes in Scotland.

The section 1 general entitlement of FOISA applies to all information of any age held by a Scottish public authority. The provisions for historical records and the falling away of exemptions with time in FOISA are broadly similar to the provisions in the Freedom of Information Act 2000.

The Scottish Government records manual sets out the disposal arrangements for records according to a programme of review. Records may be of any age when they are sent for permanent preservation to the National Archives of Scotland. If the Government considers that an exemption applies to the record it should advise the National Archives of Scotland that this is the case so that it is kept "closed". The exemptions described in section 58 of FOISA will fall away with time so that the records can then be opened.

This is a pragmatic approach between the two organisations. There is still a general entitlement to request records from both the Scottish Government and the National Archives of Scotland and to expect, subject to the application of exemptions, to receive that information. Where records are open at the National Archives of Scotland the public can benefit from the access arrangements and research support available. There is no evidence that the 30 Year Rule has operated here since 2005 and there has been no obvious negative impact.

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There are still issues for us here, however, with regard to the holdings at the National Archives of Scotland which were automatically closed under the 30 Year Rule before the end of 2004. Although the initial holding of some 27,000 files diminishes each year as the files are opened at the 30 year mark, it will be New Year 2035 before all of those files are open to public access.

The files are closed to public inspection, but information requests may be made under section 1 of FOISA. In the event of such a request, the National Archives of Scotland have to consult the Scottish Government about whether the information can be released. Even though an additional 10 working day response time is allowed for this process in our legislation, National Archives of Scotland annual reports indicate that the statutory timescales are all too often missed (22% of requests for such information in 2005/6 and 44% in 2006/7).

I welcomed the former Scottish Executive's initiative in 2005 and 2006 to review as many files in these closed holdings as possible and to make them available. The project was initially highly successful, with release of 99% of the 11,000 records reviewed. While this has substantially reduced the volume of closed files, it is regrettable that the resources were not available to continue the project to its conclusion.

I hope the above provides a helpful perspective from my experience in Scotland. The 30 Year Rule is not an issue in our work with public authorities and applicants. I welcome the pragmatic approach that has been taken to the transfer of records between the Scottish Government and the National Archives of Scotland and would commend this to you as an example of good practice.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Dunion', with a long horizontal flourish extending to the right.

Kevin Dunion
Scottish Information Commissioner