

T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk

Mr Paul Dacre

30 year rule review

By email: secretary@30yearreview.org.uk

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Dear Mr Dacre

Review of the 30 year rule

Thank you for your letter of 28 December 2007 inviting the Scottish Government to comment on your review of the 30 year rule. The First Minister has asked me to respond as I am the Minister with portfolio responsibility for our Government's policy on Freedom of Information. I apologise for the delay in providing a response.

Your letter invites us to comment on the areas we consider relevant. In the first instance I will explain how the 30 year rule applies in Scotland, outline our current practice as regards access to Scottish Government records, and then comment on the 4 questions specifically raised in your letter.

Scottish context

Your letter outlines the 2 rules that work together as the '30-year rule' in England and Wales. At the outset I would explain that whilst rule 1, The Public Records Acts, has never had any statutory basis in Scotland, the 30 year closure period was followed in Scotland by administrative arrangement until the Freedom of Information (Scotland) Act 2002 (FOISA) took effect in January 2005.

In Scotland, the transfer of most government records to the National Archives of Scotland (NAS) takes place when they are less than 30 years old, for example those transferred following first (5 years) or second review (25 years) to determine their suitability for permanent preservation.

So far as rule 2 is concerned, the definition of "historical record" is the same in both the Freedom of Information Act (FOIA) and FOISA. Both define a 'historical record' as being 30 years old and as the long stop date by which most records should be made available.

The opening of Scottish Government records

Since January 2005, Scottish Government records selected for permanent preservation are only transferred to the NAS when they have been reviewed by Government officials to determine whether exemptions under FOISA apply. This means that a large number of government records transferred to the NAS are immediately made available for public viewing, many of which will be less than 30 years old.

I am not aware that the 30 year long stop period as defined in FOISA causes any practical difficulties. As already noted, our records (generally speaking) do tend to be made available at

an earlier stage and, even where exemptions are applied, it is difficult to envisage many circumstances in which these exemptions would apply for 30 or even 20 years.

The notion of keeping records 'closed' for a period of 30 years has in effect largely disappeared in Scotland.

Modernisation of the 30 year rule

Turning to the specific points you raise in your letter, I completely agree with the review team's statement that government culture has had to adapt to a more open environment, and this is to be welcomed. As already explained most government records in Scotland will be made available to the public before they are 30 years old. Any proposed modernisation in England and Wales of rule 1 of the 30 year rule could have the effect of bringing greater consistency of approach as regards the release of government records in England, Wales and Scotland.

Benefits and risks

There are undoubtedly benefits to making information available at an earlier stage; the public have greater access to information of potentially more relevance, thereby improving accountability, earlier access to government information improves transparency. I believe that the arrangements we operate in Scotland in relation to government records transferred to the NAS are viewed positively and contribute to that culture of openness.

It will be for the UK Government to determine any particular risks that could arise in relation to the earlier release of UK Government records.

Impact

You mention in your letter the potential for different closure periods for similar records if changes are made. There is, however, already scope for this to occur under current arrangements given the differences in the operation of regimes; we are not aware that this has to date given rise to particular difficulties.

I would note that your review is only concerned with government records, but that any change to the definition of a historical record in FOIA would, unless limited to government records only, relate to information held by all public authorities. If any changes were made in this respect, I would want to consider carefully what impact any similar change to FOISA would have for other Scottish public authorities.

Transition arrangements

In relation to this issue there is of course clearly merit in the various administrations taking a consistent approach. As such, my officials will continue to take an interest in the work and recommendations of the review team.

Yours sincerely,

