

## **Response received via email 27 Feb 2008**

Dear Mr Strachan

The Scottish Records Advisory Council is grateful for the opportunity to make a submission to the 30-year rule review. The Council discussed the matter at its meeting on 27 February 2008.

In general, the Council notes that strictly there is no 30-year rule applying to public records in Scotland. The Public Records Act 1958 exempts Scottish governmental records from its terms, and any application of the 30-year rule in Scotland has been the result of administrative decision rather than law. In practice, the Council understands, Scottish government records are often transferred to the National Archives of Scotland and become available to the public there well before any 30-year period has expired. There has been a significant further impact from the provisions of the Freedom of Information (Scotland) Act 2002, which meant that any Scottish public body's files were in principle open to the public unless some exemption applied. A '30-year rule' has some application here, in that after that period many exemptions fall away.

The Council is strongly supportive of the moves towards more open government which have occurred with the advent of freedom of information legislation and digitisation. It takes the view that the 30-year rule, whether a matter of law or practice, is inconsistent with that commitment to open-ness, and should therefore be abolished or modified. A necessary corollary is that the '30-year rule' embodied in the Freedom of Information (Scotland) Act 2002 should be brought into line with whatever shorter period is deemed appropriate for restricted access. The Council accepts that some shorter period may be necessary rather than a complete abolition, if the deliberations and advice of officials and Government Ministers are to be recorded candidly; there is some evidence already that freedom of information has had an effect in formalising and freezing the record defensively. This has potentially adverse effects on the work of historians and other students of government.

Ten years was generally thought to be enough if there was to be a new rule, with the only exemptions applying thereafter arising from the application of data protection rules or such other exemptions under the Freedom of Information legislation as would justify a longer period of protection. There is a good case, however, for the re-introduction of a process that existed before freedom of information law came in, namely one under which for research purposes scholars could gain access to material still otherwise under restriction.

The Council recognises that there are significant resource implications for

records managers and archivists in handling the increased access that would follow from a relaxation of the 30-year rule, but believes that many of these already exist as a result of freedom of information. Pro-active clearance of records for release already takes place in Scotland to a significant degree, and appears to be the most efficient way forward.

The Council believes that the publicity which in the past has attended the release of documents under the 30-year rule has been beneficial for public awareness of archives and their value, and has encouraged their use. If the rule goes, archives should give careful consideration to how similar media publicity might be attracted within processes of release to the public domain.

Yours sincerely

Hector MacQueen

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Hector L MacQueen FBA FRSE  
Chair, Scottish Records Advisory Council  
Professor of Private Law  
University of Edinburgh  
Old College  
South Bridge  
Edinburgh EH8 9YL  
UK  
Tel (UK)-(0)131-650-2060  
Fax (UK)-(0)131-650-6317  
Email: [hector.macqueen@ed.ac.uk](mailto:hector.macqueen@ed.ac.uk)  
Web: <http://www.law.ed.ac.uk/>