

# **REVIEW OF THE 30 YEAR RULE**

January 2009

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# CHAIRMAN'S FOREWORD

## PRIME MINISTER AND LORD CHANCELLOR

Of all historic records, those of government are perhaps the most significant, making a vital contribution to our national memory and identity, and also allowing citizens to call to account those who govern them. As a society we rightly place high expectations on public bodies to keep full and accurate records of their business, and subsequently to make them available to those in whose name they were created. With this in mind, you asked Professor Sir David Cannadine, Sir Joseph Pilling and myself to examine the '30 year rule' – that is, the legal arrangements under which official records are made available to the public through The National Archives. We have completed our work and I am pleased now to present our report.

In the four decades since Harold Wilson's government changed what was then a 50 year rule to 30 years, British society has changed decisively. A rule that secured a break with a more secretive past has itself been overtaken by developments such as the televising of Parliament, 24-hour news, email and web access and the unprecedented transparency of many of today's public bodies. Parliament recognised these fundamental changes by passing the Freedom of Information Act, which reversed centuries-old official attitudes. Its presumption that official documents are "open" ceded to the electorate a measure of control over the records of government.

Above all this Act recognised that the relationship between government and citizen has changed. In a modern democracy, citizens' trust in those who hold power is not unquestioning. Increasingly they expect to know how public bodies spend taxpayers' money, why they take particular decisions, and what are their policies for the future. They are also increasingly aware that the growing number of memoirs being rushed out by politicians, civil servants and special advisers, while possessing their own fascination, are invariably self-serving and need to be counterbalanced by a dispassionate and true version of events. The Freedom of Information Act allows much of that truth to be released – albeit in a somewhat unsatisfactory patchwork fashion – putting the record straight and making the workings of Westminster and Whitehall more open, with the hope that a better-informed public and a more accountable government will improve the democratic process.

Our committee, however, was deeply aware that there are many good reasons why state records need to be kept confidential for a specific period of time and that there is a very necessary tension between the understandable need for governments to work in some privacy and the equally understandable wish of the people to know what is being done in their names. Our report examines whether the present 30 year rule sets the right tension, or whether a new system would be more appropriate for a 21st century democracy. In compiling it, we received evidence from politicians, civil servants, historians, the media and a wide variety of organisations and individuals. My thanks to them for their thoughts and suggestions. We were also significantly helped by many people across Whitehall and in local government, and

we should like to express our special thanks to the staff of the Cabinet Office, the Foreign Office, the Home Office and the Ministry of Defence. The administrative and secretarial support for our review was provided by The National Archives, and we are indebted to James Strachan and Catriona Massey for their labours on our behalf. My profound gratitude also to David Cannadine and Joe Pilling for the generosity with which they gave their time, knowledge and advice to this fascinating project.

I would only add that, in my own case, what tipped the balance for a robust reduction was the hope that this might make a small but significant contribution to a more mature democracy in which there is a greater trust between the electors and the elected. Indeed, if there has been a corrosion of that trust between politicians and people over the past few years – and my belief is that there has been – our recommendations might, in the longer term, go a little way to restoring it. Certainly, the possibility that my own sons will have greater opportunities to understand the working and thinking of the governments they elect, will, I believe, make them more responsible citizens. Such openness might even result in better governance.

**Paul Dacre**

*Chairman of the 30 Year Rule Review*

# 1

## “TIME TO LOOK AGAIN”

1.1 On 25th October 2007 the Prime Minister, the Rt Hon Gordon Brown MP, in what was later dubbed his “Liberty” speech, announced a number of constitutional initiatives. One of them was an independent review of the ‘30 year rule’. To an audience at the University of Westminster he said:

*“It is an irony that the information that can be made available on request on current events and current decisions is still withheld as a matter of course for similar events and similar decisions that happened 20 or 25 years ago.*

*“Under the present arrangements historical records are transferred to The National Archives and are only opened to public access after thirty years or where explicitly requested under the F[reedom] o[f] I[n]formation] Act. It is time to look again at whether historical records can be made available for public inspection much more swiftly than under the current arrangements.*

*“There are of course cost and security implications of a more open approach which we will need to examine thoroughly. So I have asked Paul Dacre, Editor-in-Chief of Associated Newspapers and member of the Press Complaints Commission – working with Sir Joe Pilling, former Permanent Secretary of the Northern Ireland Office, and the eminent historian David Cannadine – to review this rule.”*

1.2 The terms of reference for the review were as follows:

*The Prime Minister has appointed an independent team to review when government records are made available to the public. This review will centre on whether, in the light of Freedom of Information and other considerations, there should be any changes (and if so what) to the ‘30 year rule’ – the time span under which most public records are transferred to The National Archives and opened for inspection.*

*The review team will be chaired by Paul Dacre (Editor in Chief of Associated Newspapers and member of the Press Complaints Commission<sup>1</sup>), who will work with Professor David Cannadine (Queen Elizabeth the Queen Mother Professor of British History at the Institute of Historical Research, University of London), and Sir Joseph Pilling (former Permanent Secretary at the Northern Ireland Office).*

*The review team will seek to strike the balance between more openness and how long, in the interests of good governance and national security, state papers need to be kept closed. It will identify options for change and for implementation, bearing in mind such factors as cost, whether as part of any new arrangements some categories of information should be prioritised for release, and any other issues the team believes are relevant to modernising the existing system.*

<sup>1</sup> Paul Dacre ceased to be a member of the Press Complaints Commission in April 2008. He is now Chairman of the Editors’ Code Committee.

*To inform its recommendations, the review will gather evidence from and, where appropriate, consult with:*

*Previous administrations and political figures;*

*Users of the records, including the research community, the media and the public;*

*Government departments and agencies;*

*Others identified by the panel.*

1.3 Such was our remit. We began work in December 2007, and took evidence from politicians, senior civil servants, historians and people working in the media. Over 100 individuals and organisations responded to our consultation, we heard the opinion of members of the public through our own online consultation, and we also commissioned an opinion poll which obtained the views of 2,300 people. In the pages that follow, we give an account of that evidence, offer our evaluation of it, draw our conclusions and make our recommendations. But we begin with a brief history of the 30 year rule, and the implications for it of the Freedom of Information Act.

## 2

# THE RULE AND THE ACT

2.1 The ‘30 year rule’, which we have been asked to look into, is the shorthand term for the legal arrangements under which the government transfers its records to The National Archives with a view to their being made openly available for research by the time they are 30 years old. Before we can begin to assess their continued appropriateness or otherwise, in the light of the passing (2000) and implementation (2005) of the Freedom of Information [FoI] Act, we need to understand how these arrangements came to be made; and in order to be clear about that, we must look briefly at the historical background.

### PAST PERSPECTIVES

2.2 For as long as governments have existed, they have kept documents and generated records: of their own deeds and doings, of their relations with other peoples and powers, and of the subjects and citizens in whose name they act. As governments have acquired and accumulated more responsibilities, and as they have become more powerful and intrusive, their activities, and thus their official records, have increasingly encompassed a wider range of functions and human activity: taxation and revenue, customs and excise, trade and commerce, the armed services and national security, foreign policy and imperial administration, justice and the law, business and enterprise, planning and the environment, education and the arts, science and technology, medicine and health.

2.3 Such records, dating back to the Domesday Book and medieval pipe rolls, are essential documentation for the history of the nation-state, and for our understanding of the working of government in earlier times. They also tell us much about the lives of ordinary people as they have come to the attention of the authorities: as recorded in the decennial censuses, as payers of different forms of taxation, as government employees both civilian and military, as the victims or perpetrators of crime, as scientists and doctors, and in myriad other contexts and circumstances.

2.4 It is only since 1845 that the archives of the government of the UK have been collected and preserved, and it was 11 years later that the Public Record Office opened in Chancery Lane, consolidating the storage of government records for the first time. It was subsequently moved in 1977 to Kew, and in 2003 the Public Record Office became The National Archives.<sup>2</sup> The National Archives preserves the most important state papers and official documents for posterity, and makes them available to members of the public who wish to consult them, for professional or legal purposes (in the case of historians, lawyers and journalists), or out of personal interest (in the case of family history, or to establish legal rights).

<sup>2</sup> The National Archives is the official government archive for England, Wales and the United Kingdom. This function is performed in Scotland by the National Archives of Scotland and in Northern Ireland by the Public Record Office of Northern Ireland. Its name was changed following the merger of the Public Record Office with the Historical Manuscripts Commission.

## TRANSFER

2.5 Official documents are only preserved in this way, and for this purpose, if they have been formally selected as being of lasting historical value. Government departments work with The National Archives to determine which of their records should be kept, and they have customarily been transferred to Chancery Lane, and latterly to Kew, within 30 years of their origination.<sup>3</sup> There they are conserved, catalogued and stored, and they become a part of the permanent collection, where they join many millions of government records.

2.6 From departments such as the Foreign Office, whose records are of particular historical value, more than half of their materials may be selected for permanent preservation at Kew. But across central government as a whole, only five per cent of official documents are eventually transferred to The National Archives, following a sifting process by the departments which generated them. The remaining documents, which are deemed to be of no historical value, are destroyed according to agreed schedules and criteria. So while the holdings of The National Archives are voluminous, and are growing at an ever-expanding rate, they preserve for posterity only a tiny fraction of the official record.

## ACCESS

2.7 Although most official documents deemed worthy of preservation have long been transferred, within 30 years, to the Public Record Office, and subsequently to The National Archives, the rules governing public access to them have a more complex history.<sup>4</sup> It is helpful to begin with the Public Records Act of 1958, which made statutory provision for such access once the records were 50 years old.

2.8 In so doing, the Act struck what seemed an appropriate balance for the time between the necessary maintenance of confidentiality (the need to keep certain information restricted in the interests of good governance, collective responsibility and national security) and the wish to renounce secrecy (the deliberate withholding of information which the public should be able to see). Memories of the Second World War were recent, fears of another conflict were real, the men in Whitehall (and Westminster) were widely regarded as knowing what was best, and so the right of government to withhold all evidence of its workings for half a century was largely accepted.

2.9 Moreover, some records were closed for even longer than 50 years, at the request of particular government departments, and with the approval of the Lord Chancellor, acting on the advice of his Advisory Council and applying an agreed set of criteria.<sup>5</sup> This might be (for example), because they were still being used (and were thus retained by the originating department), or because they contained confidential information relating to national security or sensitive material concerning individuals who were still alive.

<sup>3</sup> Not all official records are transferred to Kew. The National Archives devolves care of about 25% of these records to approved 'places of deposit' across the UK, and lays down rules for the care of these records.

<sup>4</sup> For a valuable discussion of the restricted access which was allowed in an earlier time, see T.G.Otte, 'More Liberal Facilities for the Purpose of Historical Research': Whitehall and Public Records in the Early Twentieth Century', *Archives*, xxxiii (2008), pp. 162-79.

<sup>5</sup> The Lord Chancellor's Advisory Council on National Archives and Records (LCAC) was established by the Public Records Act 1958 as the Advisory Council on Public Records, under the Chairmanship of the Master of the Rolls. Its membership comprises experts on records, such as journalists, academics, archivists, genealogists and civil servants. One of its principal roles is to recommend to the Lord Chancellor whether the public interest lies in releasing or withholding historical records. Where a department needs to retain a document beyond the 30 year point, permission must be sought from the Lord Chancellor who relies on LCAC's advice.

## **FROM 50 YEARS TO 30 YEARS**

2.10 With all public records closed for at least 50 years, this meant that most politicians and civil servants could expect that papers concerning their work in government would not be made accessible before their careers (or, indeed, in many cases their lives) were over. This afforded them a sense of security from better-informed public scrutiny; but Harold Wilson, who became Prime Minister in 1964, took a different view. He believed that the 50 year access rule should be reduced, on the grounds that, "If criticisms are to be made of me and my conduct of affairs, I would rather be alive to answer them." More generally, he urged that such a move towards greater openness would "let some light and air into our public records" and allow people a chance to "form a more considered judgement of the management of public business".<sup>6</sup>

2.11 In 1966 Wilson announced the reduction of the closure period for government records from 50 to 30 years. But even this truncated time-frame still encompassed the career span of most civil servants, and so it continued to protect them from public scrutiny while they were at work. It also represented a political compromise with Edward Heath and Jo Grimond, the leaders of the other main parties, who respectively favoured more and less than 30 years.<sup>7</sup>

2.12 This new arrangement took effect from 1968, bringing 'access' to government documents into line with their 'transfer', in what was thus a consolidated 30 year rule. Since then, the majority of official records deemed worthy of preservation have become available to the public after 30 years when they are transferred to The National Archives (though the longer retention and closure periods which originated in the 1958 Act, and which were sanctioned by the Lord Chancellor continued to apply when necessary).

2.13 Accordingly, the tradition has continued that, at the end of each year, The National Archives announces the choicest items in the official records newly released from three decades before. Those made available last year for 1978, for example, reveal how the government of James Callaghan dealt with such matters as the growing awareness of Britain's insufficient defences in the event of an attack from the Soviets; the challenges of deciding the date of the next general election in the face of a worsening economic crisis; and the Prime Minister's determination to keep the leader of the Opposition, Margaret Thatcher, out of the royal box at a gala concert at the London Palladium commemorating 50 years of female suffrage.

## **SUBSEQUENT DEVELOPMENTS**

2.14 Since 1968, the continued existence and particular duration of the consolidated 30 year rule has been periodically examined, most comprehensively in 1976 by the then Cabinet Secretary, Sir John Hunt. But nothing came of his investigation, nor of subsequent inquiries conducted by the then Head of the Civil Service, Sir Douglas Allen, and by Sir Duncan Wilson, sometime British Ambassador to Russia and former Assistant Keeper at the British Museum.

2.15 During the administration of John Major, renewed consideration was given to the possibility of releasing greater quantities of official information into the public domain. In 1992, William Waldegrave, the Chancellor of the Duchy of Lancaster, invited historians to submit "wish lists" stating which records they would find it useful to consult that were

<sup>6</sup> The files relating to the introduction of the 30 year rule are now themselves available under the 30 year rule at The National Archives (reference PREM 13/1957).

<sup>7</sup> See Hansard for 9th March 1966, cols 561-3, and 10th August 1966, cols 1706-8.

currently closed for more than 30 years. Having reviewed these lists, the government responded by opening many of the documents that had been requested. As a result, papers were released covering such matters as the flight of Rudolf Hess to Britain in May 1941 and the signal intelligence shown to Winston Churchill during the Second World War. During the same year, Waldegrave announced that in future the records of the Joint Intelligence Committee would be reviewed and released on the same basis as other public records, and Douglas Hurd, the Foreign Secretary, made known that the Special Operations Executive (SOE) archive would also be reviewed for release.

2.16 In 1993, following on from the ‘Waldegrave initiative’, the Major administration published a White Paper on Open Government, which determined that in future, significant amounts of official information would be proactively placed in the public domain at the time it had been produced (or soon after), or that it might be made available if asked for<sup>8</sup>. A Code of Practice was introduced to guide departments in implementing the new policy, and in this changed climate of opinion and operation, ministers and civil servants began to accommodate themselves both to the earlier disclosure of many official documents, and to public requests for such information.

2.17 This Open Government White Paper also urged some changes to the access arrangements, outlining proposals to reduce the amount of material that departments were retaining beyond 30 years. It set “exacting new criteria” for extended retention and closure, it recommended specific closure periods and it required departments to justify why certain records could not be released. This in turn led to the opening of tens of thousands of official papers. Although the exact figures are difficult to calculate, one surviving document indicates that between April and September 1994, 2284 files and 1051 extracts were released that had previously been unavailable to the public.

## **THE FREEDOM OF INFORMATION ACT**

2.18 In 1997, Tony Blair’s newly-elected government announced its intention to introduce an FoI Bill, which would establish a new public right: to request information from any official record, whatever its age. The FoI Act came into effect in 2005, and it effectively turned the existing arrangement on its head. Before the FoI Act came into force, official records were presumed *closed* until they were at least 30 years old and had been transferred to the National Archives. Under FoI, such information is presumed *open* from the time it is created, and long before it is transferred to the National Archives, and it must be made available unless specific exemption criteria apply.

2.19 As we explain in more detail in Chapter Four, under the provisions of FoI, anyone can request official information, no matter how recent or confidential, from central, devolved and local government, and from approximately 100,000 public bodies, and the recipient of any such enquiries must respond within 20 working days. Since the FoI Act came into force, over 30,000 requests have been made annually to central government.

2.20 However, some categories of information can remain closed under exemptions specified in the FoI Act, which superseded the criteria for extended closure that operated under the 50 year and 30 year rules. Some of these exemptions are specific to particular types of record – for instance information supplied by or relating to the security and intelligence agencies and court records are automatically exempt from disclosure. Other exemptions involve forming a

<sup>8</sup> Cm 2290.

judgement as to whether some damage would result if the material were released – examples are records relating to national security, international relations and commercial interests. With many exemptions there is a further judgement to be made, namely whether the public interest lies in releasing or withholding the information.

2.21 Even when it has been decided by the public body that such an exemption does apply, either before or after 30 years, anyone requesting official information under FoI has the right to appeal against that decision, initially to the Information Commissioner, then to the Information Tribunal, and then to the High Court, the Court of Appeal and ultimately the House of Lords. At any of these levels of appeal, the public authority's decision may be upheld or overturned.

2.22 Many of the exemptions fall away at a specified period and cannot be applied once official information reaches a certain age. Nine of the FoI Act's exemptions cease to apply after 30 years, concerning (for example) material that could prejudice relations within the UK; that might harm the effective conduct of public affairs; that is concerned with the formulation of government policy; that relates to legal professional privilege, or to commercial interests; and also communications with the royal household.

2.23 A few exemptions last for longer. Material relating to the working of the honours system is closed for 60 years, and documents concerned with "law enforcement" – the prevention or detection of crime, the operation of immigration controls, the maintenance of security and good order in prisons – are closed for 100 years. Some exemptions have no specified time limit, including those concerning national security, international relations, and defence.

2.24 Some records are not transferred to The National Archives at 30 years, but are retained by departments for longer, either because of their continued sensitivity or because they are still in current use. Other records that are transferred to The National Archives at 30 years also remain closed, but departments must consult the Lord Chancellor's Advisory Council before it is agreed to apply a period of extended closure<sup>9</sup>. And some documents are made available, but with names redacted, in order to preserve essential confidentiality.

## **THE RELATIONSHIP BETWEEN THE FOI ACT AND THE 30 YEAR RULE**

2.25 Under the FoI regime that has been in place since 2005, the 30 year rule remains in operation, albeit in a modified way. Most government records deemed worthy of preservation are still transferred to The National Archives by the time they are 30 years old. It is at that point that they are defined in the FoI Act as being 'historical', and it is then that many of the FoI exemptions restricting public access fall away.

2.26 But it is also the case that as a result of FoI a great deal of official information is now available, if requested by members of the public, well before the 30 year point at which, until that measure came into force, it was initially accessible. Prior to the implementation of FoI, 30 years was the *first* stage at which records *could* be opened<sup>10</sup>; but under FoI, 30 years has become the *last* point at which most records *must* be opened.

<sup>9</sup> In theory, while communications with the royal household are only exempt for 30 years, in practice most remain closed for much longer by the application of other exemptions which continue to apply after 30 years.

<sup>10</sup> Although the vast majority of records would be closed for 30 years, the Lord Chancellor did have the authority to approve accelerated opening in some cases.

2.27 Hence the central question posed in our terms of reference: “whether, in the light of FoI and other considerations, there should be any changes (and if so what) to the ‘30 year rule’ “. Do we need any such rule? Should it be modified? If so, then what is the appropriate period? These are the matters that we shall address in this inquiry.

2.28 By way of preliminary, it will be helpful to obtain some sense of global patterns and trends. To this end we shall briefly survey how such transfer and access rules concerning official documents operate in other countries, and we shall also consider the impact of FoI legislation as it has been enacted elsewhere.

# 3

## INTERNATIONAL COMPARISONS

3.1 As is the case in the United Kingdom, most modern democracies have established regulations governing their historical records and official documents. In this chapter, we try to outline how transfer and access rules are operated by other nations, and also how Freedom of Information [FoI] legislation has been implemented elsewhere in the world.

3.2 Although it might seem a straightforward matter, this is by no means an easy task. Different governments operate varied systems for preserving their archives and for making official information available to the public. In some countries – as in the United Kingdom since devolution – there are distinct access procedures at alternative levels of government, which further complicates making international comparisons. And in the United States, Presidential papers are handled differently from all other records of the federal government.

3.3 We have therefore sought to concentrate on general trends regarding transfer and access rules and FoI legislation, and since our survey must be (and could only be) selective, our conclusions, though suggestive, are necessarily tentative.

### TRANSFER AND ACCESS

3.4 At the present time, most functioning democracies have determined a fixed point at which government records have to be transferred to an official repository and made accessible and available to the public. One exception is Canada, which operates no fixed transfer or access rule, and where arrangements are made between the originating government departments and the Library and Archives of Canada. Another is Sweden, where – although there is a long-established FoI law – documents may be withheld from public access for anything from two to 70 years or more, usually at the discretion of the government agency that created them.

3.5 Among nations which do operate transfer and access rules, some are more conservative. There are many countries which, like the United Kingdom, favour 30 years, including the Republic of Ireland, Germany and Australia (in the case of the federal government). And there are some where the period is shorter: in the Netherlands and South Africa, it has been set at 20 years since 1996, and in France, legislation passed in July 2008 reduced the closure period for some records from 30 to 25 years.

3.6 While it is difficult to generalise about these rules, the experience of two countries is worth highlighting.

3.7 In the United States, the 1978 Presidential Records Act changed the ownership of the official records of the President – by far the most crucial American state papers – from the former Presidents themselves to the American people. It also introduced a very liberal access rule: under the US FoI Act (for which see below), the public can look at Presidential records five years after an administration has ended, and although former Presidents can invoke six restrictions on such access, they can only do so for up to 12 years.

3.8 Other public authorities in the United States also release information in a fairly liberal fashion. The proceedings of special boards or commissions are usually published within ten years, and it is standard practice to make available the records of the Department of Justice before they are 15 years old.

3.9 Like Canada and Sweden, New Zealand has no fixed access point for its government papers. They must be transferred to Archives New Zealand within 25 years, but most of them are transferred and opened well before then.

## **FREEDOM OF INFORMATION**

3.10 A few nations have long-established FoI laws, and it appears that Sweden was the first to enact a recognisable version of such legislation as long ago as 1766. But most such measures have only been recently passed, the first significant instance being in the United States, where its FoI Act was signed into law by President Lyndon Johnson on Independence Day in 1966.

3.11 In the years since then, many international organisations have encouraged their member states to enact a public right of access to official information. To this end, the Commonwealth, the Council of Europe, and the Organisation of American States have all drafted guidelines and model legislation for their members. Financial institutions, too, such as the International Monetary Fund and the World Bank, have encouraged the adoption of FoI laws with the aim of reducing corruption in the governments of the nations to which they give aid and assistance, and of making their financial systems more accountable.

3.12 During the last 30 years the enactment of FoI legislation has become more widespread. In France and the Netherlands, such laws came into force in 1978, and Australia, Canada and New Zealand followed suit in the early 1980s. Since the millennium, South Africa and the United Kingdom have introduced their own FoI acts, and the most recent example of such legislation is Germany, which passed its measure in 2005.

3.13 Although this can be no more than an impressionistic estimate, it seems that, today, approximately one half of the world's population live in countries which have some form of FoI law, and it is certainly the case that most western nations have passed such legislation.

3.14 The practical effects of these FoI acts are disputed. Here is one version. It seems clear that in New Zealand, the passing of the Official Information Act in 1982 has had a very liberalising effect on public access to such materials, and also on the proactive willingness of government to make them available. Indeed, on occasions, Cabinet papers have been released immediately after a meeting has taken place. The Act is generally held by New Zealanders to have had a very positive effect, and Mark Prebble, until recently the head of the New Zealand Civil Service, has described it as “the most significant and valuable reform that has affected the public service during [his] career”.<sup>11</sup>

3.15 But there are also alternative perspectives on these recent developments. There is further evidence from New Zealand that Cabinet papers are “smoothed off” with a view to their likely early release, with sensitive matters not officially recorded. Human rights organisations point out that many FoI laws are inadequate, or lie dormant, or have exemptions which are too easily exploited. The promise of freedom of access to official information may thus be illusory.

<sup>11</sup> Free and Frank: Making the Official Information Act 1982 work better, Nicola White, 2007.

3.16 Nevertheless, it seems indisputable that, in statute at least, and often in practice as well, much of the world is moving inexorably in the direction of expecting and experiencing greater openness and transparency – and thus accountability – in the work of government.

## CURRENT TRENDS

3.17 It is difficult to generalise about international rules concerning the transfer and access of official documents, and also about the extent to which recent FoI legislation has been substantive and effective rather than merely cosmetic and symbolic. But it does seem clear that as such legislation has become more widespread, and as official cultures of openness, transparency and accountability have been strengthened, there has also been a discernible trend towards the liberalisation of the rules concerning the transfer of government documents, or concerning public access to them, or both.

3.18 Here are some recent developments that seem worth highlighting:

- In the Republic of Ireland, the FoI (Amendment) Act came into force in 2003, as a result of which Cabinet minutes must now be released no later than ten years after their creation.
- In Germany, there is a draft proposal to reduce the existing 30 year rule to a ten year rule for “ordinary documents”.
- In the Netherlands, which in 1995 reduced its 50 year rule to 20 years, the government announced in December 2005 that it was looking to liberalise its regime still further, and a draft Bill to this effect is currently being considered.
- In Australia, the government of Queensland has agreed to recommendations that the timescale for the complete release of Cabinet documents be reduced from 30 to 20 years – the lowest in the country. In addition, Queensland’s government plans to remove the Cabinet exemption after ten years so that access to specific information will be available on application, in line with the public interest test. These changes will be implemented by mid-2009.
- Even in Spain – which has no FoI legislation or fixed access rule – the Defence Minister announced proposals in August this year to declassify defence documents which have been inaccessible until now.

## CONCLUSION

3.19 It bears repeating that such international comparisons are invariably impressionistic, and that it is not easy to infer anything other than general trends from this brief survey. But in a world where people expect more rapid access than ever to information, both official and otherwise, it seems clear that FoI laws have recently become part of the accepted working conditions of many democratically-elected governments and that they are on the increase around the globe.

3.20 To be sure, there seems no clear evidence to support some of the more extravagant claims that have been made for FoI, namely that accelerated and timely disclosure of official records correspondingly increases public trust in government and in the democratic process. But the evidence that is available from countries that have maintained FoI for two decades or more, such as New Zealand and Canada, suggests that greater openness *does* result in a measure of increased government accountability and democratic engagement.

3.21 It is equally clear that some western governments have in place significantly more open regimes than our own, and also that where there are fixed access rules there is a noticeable trend, as a result of FoI, towards greater liberalisation and openness. From such an international perspective, the UK now operates one of the less liberal access regimes to its official records, and this suggests the preliminary conclusion that a significant reduction to the 30 year rule would be both timely and appropriate.

# 4

## DOMESTIC DEVELOPMENTS

4.1 In the light of these international comparisons, we now turn to consider recent domestic developments in the United Kingdom which, taken together, cast further doubt on the continued appropriateness of the 30 year rule. They are as follows: the existence and operation of the Freedom of Information [FoI] Act itself; the increased transparency of central government; the varied practices of devolved administrations; the growing openness of local government; the relative ease of access to information concerning public bodies; the use of government records that are less than 30 years old in the researching and writing of Official Histories; and the impact of the publication of memoirs by retired politicians and former civil servants.

### FREEDOM OF INFORMATION

4.2 The FoI legislation was a response to society's changed expectations concerning what governments and other official bodies should reveal about themselves, and when they should reveal it. Some of our witnesses argued that the UK government has not fully reconciled itself to the implications of its own Act; that the presumption of openness regarding official records has not yet become actual openness; and that the enhanced culture of transparency that the Act was passed to help promote has been slow to take root. Nevertheless, it is clear that FoI has resulted in a great deal of official information being provided to people which would not have been available previously.

4.3 In general, the older the document that is asked for, the more likely the request for it is to be granted without demur by the authority to which the request has been made. But there have also been many notable disclosures under FoI of more recent records, often as a result of appeals to the Information Commissioner and even higher authorities. These include: the full publication of official papers relating to the events of 'Black Wednesday' when some of the officials involved were still employed by government; an early draft of the so-called 'dodgy dossier' on Iraq's alleged weapons of mass destruction; the release of the Attorney-General's advice to the Prime Minister on the legality of military action against Iraq; the details of the contracts awarded by the Olympic Delivery Authority; documents relating to renewable energy target-setting; hundreds of files relating to UFOs; and detailed breakdowns of MPs' expense claims.

4.4 Such disclosures of recent and controversial documents have sometimes been the result of an extended appeal process by the person who made the original request, and on occasions (as with material released relating to the war in Iraq) they have caused embarrassment to the government. But they also represent a marked improvement in official openness and transparency, and based on the evidence we have heard, we support the view that FoI legislation has brought significant public benefit. The organised release of information by governments is now widely regarded as a natural part of our political culture and of the democratic process, and indeed it arguably helps to strengthen both.

4.5 As the examples given above suggest, most requests made under FoI are for official documents that are substantially less than 30 years old, relating to issues that are recent or even current. But despite technically being available under FoI rules, the vast majority of official documents that are not requested under FoI remain effectively invisible until the 30 year point is reached, when those that have been selected for preservation are transferred to, and systematically released by, The National Archives.

4.6 This means that the practical effect on the 30 year rule of the FoI Act has been what might be termed ‘patchwork history’ – an illogical situation in which (for example) some two-year-old documents are requested and released but the majority of others, most of which will be no more sensitive, will not be made available for a further 28 years, when they are transferred to The National Archives and made accessible there, because no one has asked for them under FoI. This is inconsistent and goes against modern expectations of more rapid access to a broad range of official information. Moreover, these isolated releases make it impossible for anyone to build up a fully-rounded picture of past events. Indeed, since they are taken out of the broader archival and documentary context, they can be positively misleading.

## CENTRAL GOVERNMENT

4.7 As well as requiring government at all levels, and other public bodies, to provide information to people on request, FoI also aims, in the spirit of the Code of Practice introduced in the Major years, to ensure that departments make more of their information proactively available as a matter of course. Like all public bodies, government departments are now required to specify very clearly the material they publish, how it is published and whether it is available free of charge.

4.8 Routinely, departments put up on their websites a large amount of information about their work and about what they do. Every departmental website contains organisation charts, data and details of its ministers, the remit of its responsibilities, recent media releases, and information about current consultations and pending legislation.

4.9 Some departments publish guidance: the Foreign Office website contains current travel advice, while the Treasury publishes economic data, and both these departments offer a *YouTube* channel to view interviews, presentations and speeches. The Treasury also provides Really Simple Syndication feeds that deliver information directly to subscribers, while the Foreign Office uses *Flickr* to publish photographs of its ministers and details of their engagements. Moreover, most government departments now have their own “bloggers” – from Secretaries of State to diplomats posted overseas.

4.10 It would be an exaggeration to say that all departments have fully grasped the opportunities presented by the internet to demystify the workings of government; but there has certainly been a significant increase in both the volume and the candour of the official information made available during recent years. One indication is the annual growth – both in extent and transparency – of that most significant of government documents, the Budget.

4.11 In 1998, the details of the Budget that were published amounted to 165 pages. A year later the government decided to produce two documents, one entitled *Economic and Fiscal Policy*, the other being the *Financial Statement and Budget*, and since then the provision of information has grown steadily, including more analysis of trends at both national and global level, along with a greater amount of background detail, illustrated by numerous

graphs and tables. There has been an additional shift towards linking the Budget's specific measures with the government's wider economic policy and objectives. By 2007, 326 pages were published concerning the Budget, providing a detailed insight into the thinking of the Treasury and the state of the nation's finances.

## **DEVOLVED ADMINISTRATIONS**

4.12 In the recently-devolved administrations of Scotland and Wales and the re-devolved administration of Northern Ireland, many official records are now being released before 30 years, and often much earlier.

4.13 In Scotland (which is outside the remit of this review), there is no legally defined point by which official records must be transferred to The National Archives of Scotland. But in practice most of them are transferred well before they are 30 years old. Following the introduction of the FoI (Scotland) Act, files are released at the point when they are deemed by Scottish Executive officials to be no longer sensitive, and this is often at 15 or 20 years.

4.14 Wales is legally subject to the 30 year transfer and access rules of the United Kingdom, but in practice, the Welsh Assembly Government transfers records to The National Archives well before 30 years, and they are released on the same basis as other records transferred to The National Archives.

4.15 Northern Ireland has its own Public Records Act, which provides for a 20 year transfer point. General release of information occurs at 30 years, although Northern Ireland is also subject to the provisions of the United Kingdom FoI Act.

## **LOCAL GOVERNMENT**

4.16 Local government in England has a comparatively long tradition of openness and accessibility. Indeed, the first legislation requiring local authorities to make public many of their decisions and proceedings dates back to the early 1960s, and a range of measures have subsequently been put onto the statute book to enhance the public's right to know about decision-making in their community.

4.17 It is, for instance, ten years since the Audit Commission Act 1998 obliged local authorities and police authorities to open their accounts for public inspection. Section 15 of the Act allows any elector or taxpayer in the area the right to inspect them, and to make copies of contracts, invoices and receipts that are related to the recent financial year (with certain exemptions for commercial confidentiality). Local electors also have a right to ask the appointed auditor questions about these matters.

4.18 Even more significantly, the Local Government Act 2000 established a number of new rights of access. Meetings at which "key decisions" are discussed or taken must be open to the public, reports, agendas and background papers for them must be made available at least three days in advance, and regularly updated rolling "forward plans" detail future decisions to be taken and the documents relating to them. The meetings are recorded, including the reasons for the decisions that were reached, and alternative options which were considered and rejected are also described. These records are then put up on local authority websites.

4.19 Advances in technology have given a further spur to openness. Some councils – including most notably the Greater London Assembly – broadcast their meetings live over their own website, and many local authorities publish full sets of minutes on their websites, although they are not statutorily obliged to do so.

4.20 While comparison is only partially valid because of the difference in the work undertaken by central and local government, it is clear that the latter is under a more onerous obligation than the former when it comes to openness and transparency. Moreover, we found no evidence that this had had a deleterious impact on the quality of decision making at local level.

## **PUBLIC BODIES**

4.21 Like central, devolved and local government, public bodies are by definition publicly accountable. There are over 100,000 of them in the United Kingdom, including non-departmental public bodies – or NDPBs – such as the Environment Agency and the Competition Commission, advisory bodies (such as the Advisory Committee on NHS Drugs and the Advisory Committee on Business Appointments), and also schools, hospitals, police forces, museums and galleries. Many of them are increasingly and proactively opening their records, putting them up on their websites to ensure immediate access and wide availability.

4.22 One significant example is the Monetary Policy Committee (MPC) of the Bank of England. When it was set up in 1997 it was required by the Treasury to publish its minutes six weeks after each meeting. In 1998 the MPC voluntarily decided to reduce this interlude to the shortest period that was practically possible (two weeks), meaning that the minutes of each meeting are publicly available before the next one.<sup>12</sup> MPC minutes always include a general assessment of the economic situation, provide arguments in favour of various courses of action, and specify how each committee member voted. Although much background information is not published, the material that is released does help the financial sector understand the reasons behind the MPC's decisions, and prepare for the longer term. It has also done much to educate the public about such matters as the causes of inflation and how it can be tackled.

4.23 The United Kingdom's NDPBs are responsible for providing a wide range of services, regulation and guidance, they produce a substantial amount of material that is of interest to the public, and many of them place a strong emphasis on openness. The Environment Agency, for example, describes itself as “an open and transparent organisation” that encourages the public to seek information about its work. It publishes the agenda and open papers of its Board Meetings before they take place, and the minutes are available on its website soon afterwards. The Financial Services Authority (FSA) publishes summary minutes of its Board meetings shortly after they have occurred and its Records Management Policy ensures that “full and accurate record of all business activities” are maintained and available under FoI, including letters, e mails, telephone recordings and the minutes of meetings.

4.24 Documents published in this way by NDPBs are often of immediate relevance and they do not need the long-term protection provided by the 30 year rule. Nevertheless, this increased transparency has served to heighten public expectations regarding the amount and type of official information that should be released, and at what time. We are not aware of

<sup>12</sup> The Governor of the Bank of England's letter to Giles Radice MP, then Chairman of the Commons Treasury Committee, explaining this decision may be found at <http://www.bankofengland.co.uk/monetarypolicy/radice.pdf>

any public body that has been damaged by this practice, and in some cases, early release may have helped increase public understanding and thus public trust. To have to wait 30 years to obtain access to similar documents from other bodies seems an excessively long time by contrast, and creates an impression that the present rule condones unnecessary secrecy, rather than protects necessary confidentiality.

## **OFFICIAL HISTORIES**

4.25 The programme under which governments produce “official histories” of key events and episodes dates back a century, when an initiative was taken in 1908 to start “compiling the naval and military history of the nation”<sup>13</sup>. Since 1945 this has been the responsibility of the Cabinet Office. Originally, the programme concentrated on military history but in 1966, the same year that he reduced the 50 year rule to the 30 year rule, Prime Minister Harold Wilson announced that the range of official histories was to be extended to include peacetime subjects.

4.26 Today, the programme – overseen by a Cabinet Committee on Official Histories – aims to provide “authoritative histories in their own rights; a reliable source for historians until all the records are available in The National Archives; and ‘a fund of experience’ for future government use.” Subjects for inclusion are selected initially by the Cabinet Committee and are then considered by a group of Privy Counsellors. The scholars identified to research and write these histories are given access to all relevant material in government archives, whether they are publicly available or not.

4.27 Recent subjects that have been treated in the Official Histories programme include the Falklands Campaign and the building of the Channel Tunnel – both of which clearly took place less than 30 years ago. Works in preparation or awaiting commission include the development of North Sea oil and gas, privatisation, devolution and policy towards the former Yugoslavia.

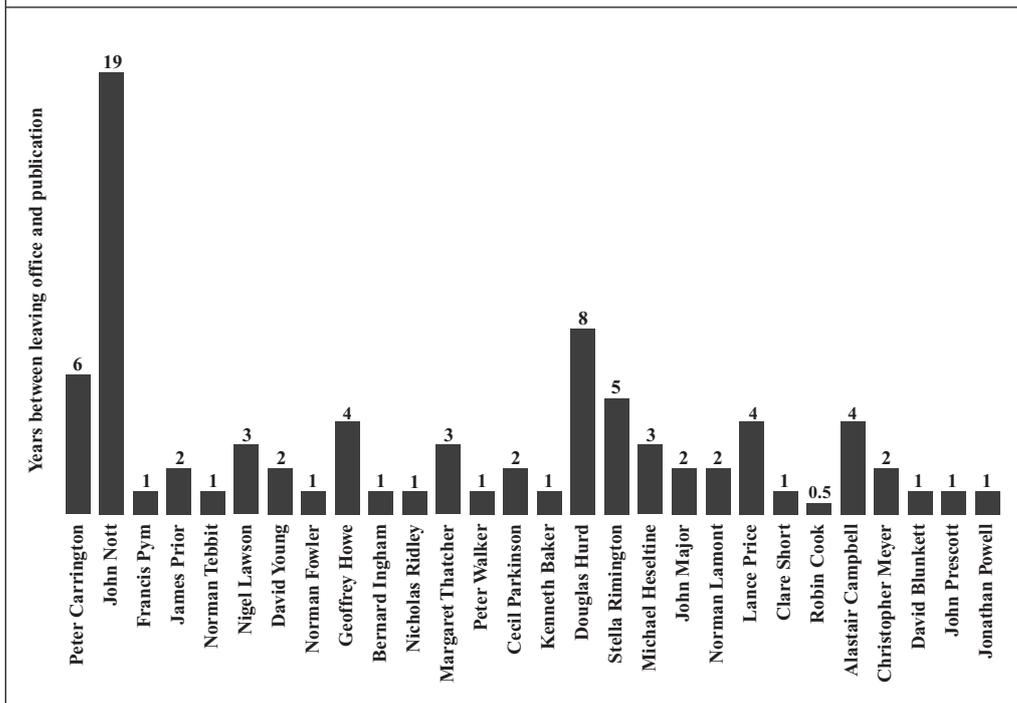
4.28 As these examples suggest, the use by scholars of unreleased government files is vital to the effective working of the Official History programme. This provides what might be termed ‘indirect’ public access to a portion of the official record well before the period of 30 years lapses. But this practice naturally raises the question of why all the documents themselves cannot be released earlier, at the same time as the official histories which are based on them are published.

## **MEMOIRS**

4.29 A less official version of recent history is provided by the memoirs of those who have left office (or, in some instances, have left government employment). Our analysis of such publications as have appeared over the last 25 years (the results of which are shown in Figure 4.1) reveals that the frequency of such works, and the speed of their production, has barely changed. Of 28 memoirs surveyed, 12 were published within one year of the author leaving office, and a further six appeared within another 12 months.

<sup>13</sup> See also [http://www.cabinetoffice.gov.uk/publicationscheme/published\\_information/1/officialhistory.aspx](http://www.cabinetoffice.gov.uk/publicationscheme/published_information/1/officialhistory.aspx)

**Figure 4.1: Length of time taken to publish memoirs after leaving office**



4.30 Since the millennium, however, there has been a growing trend for such accounts of government to emanate not just from ministers but also from former civil servants and special advisers. In recent years such memoirs have been produced by:

- Sir Christopher Meyer, the first British Ambassador to chronicle his time in Washington so candidly and so closely to the events he was describing;
- Dame Stella Rimington, the first head of MI5 to write a book revealing details about the functioning of one of the intelligence agencies;
- Alastair Campbell, Tony Blair’s communications chief, who published an account of his time in Downing Street soon after leaving (his volume appeared shortly after that of another prime ministerial press officer, Lance Price); and
- Jonathan Powell, who wrote a book describing his part in the Northern Ireland peace process.

4.31 In principle, these memoirs are subject to a code of conduct that was developed in 1975, after the government had unsuccessfully tried to prevent the publication of the Crossman diaries (which had revealed details of Cabinet meetings for the first time). Under what are termed the ‘Radcliffe’ rules, such memoirs may not reveal secrets that could prejudice national security, international relations, or confidential advice provided by an official for 15 years, and for longer if the official in question is still serving. Before publication, these memoirs should be submitted to the Cabinet Secretary, who may insist on changes to the text. However, the Cabinet Secretary has no effective legal sanction against publication, which means that determined authors can say almost anything they want, and our impression is that it is becoming increasingly difficult to maintain and enforce these rules.

4.32 Such memoirs, usually published soon after their author has left office, and while the political issues remain fresh, are one of the unofficial means by which the workings of government and, on occasions, the relations between ministers and civil servants, are exposed very rapidly to the public gaze. They often give a vivid and highly personal account of life

in Whitehall and Westminster, but since the official records relating to policy discussions and decisions generally remain closed for 30 years, unless subject to a successful request for access under FoI, it is impossible for the public to know how fair or accurate they are. Moreover, the airing of important political and governmental issues relating to the relatively recent past tends to undermine the continued existence of the 30 year rule for official records, by reinforcing increased expectations of openness.

## **CONCLUSION**

4.33 The developments that we have described here may be briefly summarised as follows. The passing and implementation of FoI means that a great deal of official information can now be accessed by the general public long before it is 30 years old. Central government, the devolved administrations, local government and public bodies proactively publish substantial amounts of material well before the 30 year threshold is reached. And official histories and unofficial memoirs, each providing their own accounts of recent events, further undermine the principle that public records are not generally available for three decades unless specifically requested under FoI. Taken together, these domestic developments cast serious doubt on the continued credibility and sustainability of the present 30 year rule.

# 5

## THE EVIDENCE

5.1 Having made some tentative international comparisons, and having outlined some important recent domestic developments concerning the increased availability of official records and information, we now set out the opinions on the 30 year rule which are currently held by the various national constituencies that we consulted: the general public and other interested parties, the media, professional historians, civil servants, and former ministers and politicians. We summarise below the views expressed by each group.

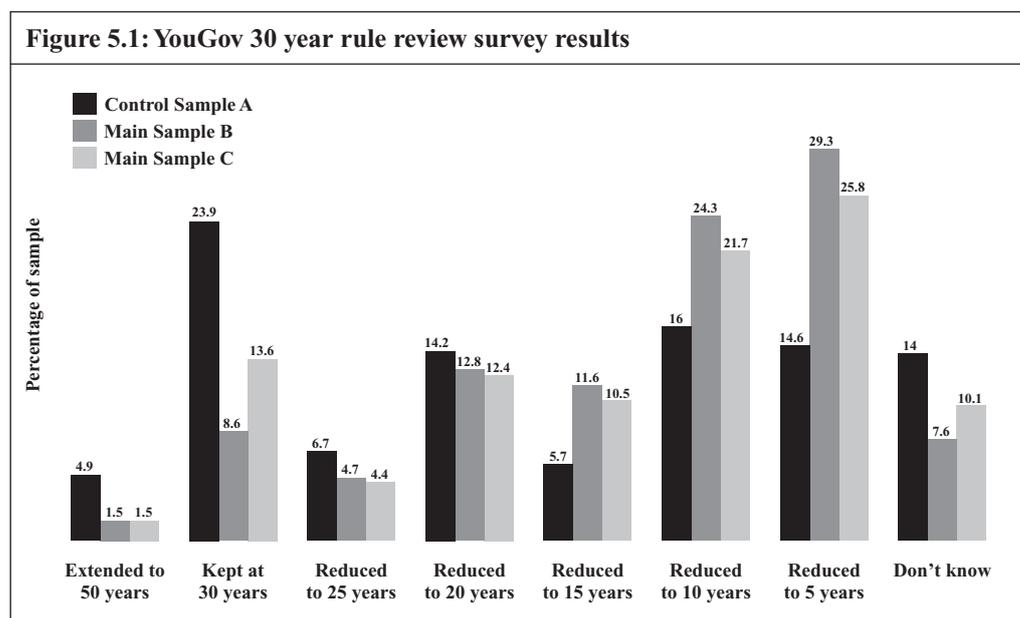
### THE GENERAL PUBLIC AND OTHER INTERESTED PARTIES

5.2 In order to try to gauge public opinion on this matter, we asked *YouGov* to conduct an opinion poll on our behalf (the results of which are shown in Figure 5.1). Polls can err, and such research can only be undertaken among a small if statistically valid sample; but we did find consistent patterns which we believe reflect widely held views.

5.3 The poll showed strong support for a significant reduction in the 30 year rule, with a clear majority – 62% – in favour of 15 years or less. More than a quarter preferred a reduction to five years, while only 13% supported the status quo or an increase beyond the present figure.

5.4 To test the strength of the arguments the sample was divided into three groups. A control (sample A) was asked to choose from a range of options for the rule, ranging from 50 years downwards. A second group (sample B) was exposed to arguments in favour of: a) reducing the current 30 year rule and b) keeping or extending it, before being asked to choose from the same list of options. The third group (sample C) was presented with the same arguments but in reverse order, and then asked to choose. Interestingly enough, exposure to the arguments both for and against reducing the rule increased the already clear support for reduction by 20%.

5.5 The poll also revealed that the results were the same regardless of political affiliation, demographic segment or geographical location.

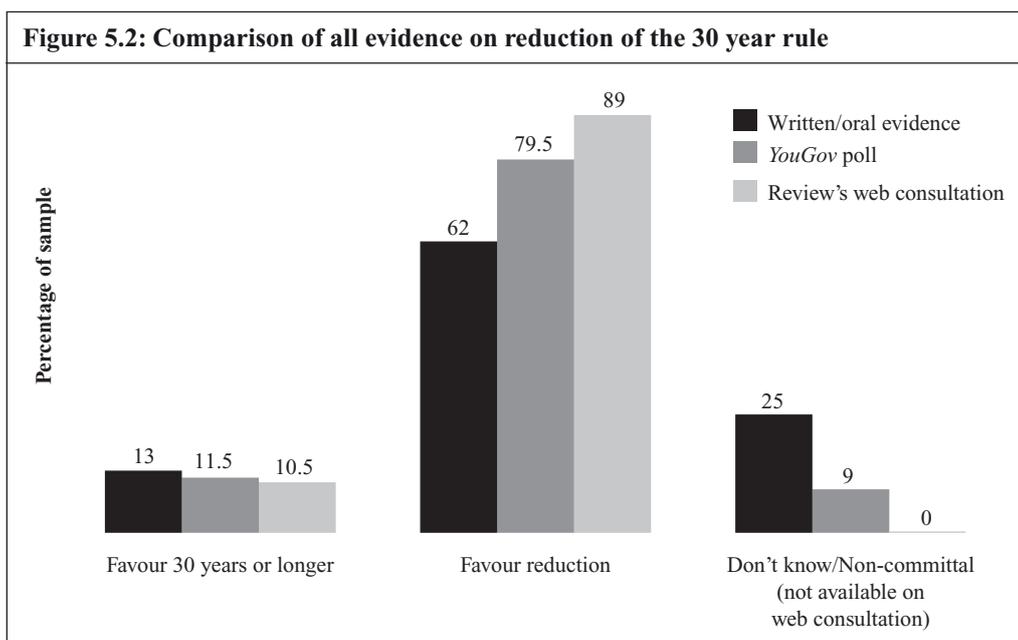


5.6 The results of this *YouGov* research bear out those from our own online consultation, conducted following an advertising campaign in the national and regional press. Of those who took part, 89% were in favour of reducing the 30 year rule. The many comments that were submitted varied greatly; but they indicated a general feeling that “these are our records”; that the public have a right to information about what governments do “in our name”; that earlier release might help rebuild trust and confidence between government and people; and that records ought to be proactively published rather than merely made reactively available in response to public requests. All of the comments for which permission to publish was given are available on our website.<sup>14</sup>

5.7 Taken together, these surveys showed that more than 80% of our sample favoured reduction, with very nearly one half indicating that such a reduction ought to be to less than 15 years.<sup>15</sup> We can therefore conclude that the general public – when they consider these issues – are overwhelmingly likely to favour substantial downward revision to the 30 year rule.

The 30 year rule should be...	%
More than 30 years	1.6%
30 years (i.e. no change)	10.5%
Reduced to 25 years	4.8%
Reduced to 20 years	14.1%
Reduced to 15 years	12.2%
Less than 15 years	49.7%
Don't know	7.1%

5.8 The public mainly submitted their views to us online, but in addition, more than 100 individuals and organisations from a wide cross-section of national life gave formal submissions or attended sessions to give us their views in person. This evidence is also available on our website, and once again, the conclusions are clear: 62% of our respondents were in favour of reduction of the rule and 13% against, while 25% gave no view, preferring to describe the consequences of change and list the matters that should be taken into account by the review. Figure 5.2 gives a statistical summary of all the views we obtained as to whether the 30 year rule should be reduced:



<sup>14</sup> [www.30yearrulereview.org.uk](http://www.30yearrulereview.org.uk)

<sup>15</sup> This table combines the results of the review's own online consultation with those of the opinion poll carried out for us by *YouGov*.

## THE MEDIA

5.9 Perhaps unsurprisingly, those whom we consulted from the media were unanimous in favouring a substantial reduction, believing that it would increase the transparency of government and improve the quality of public understanding and discussion. They told us that in today's world the 30 year rule had become "at best increasingly irrelevant, and at worst redundant"<sup>16</sup>, since so much information of various kinds was available many years before it is released by The National Archives. But they also deplored the lack of a fully available official record which could verify (or cast doubt on) what was already known and also fill the gaps in public knowledge. According to Mark Thompson, Director-General of the BBC, the Freedom of Information [FoI] Act had 'established the principle of earlier disclosure and has illustrated the value of it', but this 'does not mean that the most illuminating and useful material is put into the public domain.' As David Hencke, a distinguished investigative journalist, explained: it was possible to "circumvent" the 30 year rule by making specific requests under FoI, but that the resulting picture was unavoidably partial and regrettably random.

5.10 It was also pointed out to us that the earlier release of official information would mean that the media itself was better informed, and thus able to promote a more mature public debate on contemporary issues. This would, it was argued, improve governance by ensuring that mistakes made in the relatively recent past could be studied and analysed and avoided in the future. At the moment it is only possible to study the full record of events that took place 30 years ago, which seem to most people "remote and unimportant" and from "a bygone age" that only those who were 45 or over would remember.

5.11 It was further argued that earlier release would help neutralise the tendency in certain parts of the media to sensationalise a story simply because an FoI request has been refused by the government. Such refusals may be entirely proper and lawful, but they can be portrayed as being part of a suspicious conspiracy to withhold information. One witness said that he believed that governments withheld too much information that did not deserve to be classified, while The Press Association told us that "the longer information is kept secret, the deeper [becomes] the entrenchment of distrust."

## PROFESSIONAL HISTORIANS

5.12 Historians took a less uniform view of the issues than either the general public or those of our witnesses from the media. In general, they agreed that the 30 year rule now appears "odd and anachronistic", and they also urged that knowledge of past public affairs can help us to learn and apply beneficial lessons for today and the future, thereby improving governance and democracy. "The study of public policy", noted Professor Paul Addison, "provides a store of experience about the recent past, and an assessment of the successes and failures of government, upon which all participants in the political nation are free to draw." History, it was suggested, now embraces recent times in a way that was not true when the 30 year rule was instituted, and its continued existence has thus become "an impediment to historical research" rather than a facilitator of it.

5.13 Historians tended to share the media's view that earlier release of official records would enhance public understanding and improve the development and implementation of government policy by encouraging free discussion of serious issues. Some believed that the debate between academia, the media and government has degenerated substantially in recent years, and that the continued closure of official records for 30 years has contributed to "theorising", trivialisation and "the establishment of impregnable myths", all of which were

<sup>16</sup> Joint response from the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers Association, the Society of Editors, the Scottish Daily Newspaper Society, ITN and the Society of Editors.

seen as unhealthy. In the words of Professor Sir Brian Harrison: “since the past is the only source of guidance for human beings, it is worth making knowledge of it readily available, rather than having a hiatus in the recent past before ‘history’ gets into gear.”

5.14 But these views were not universally shared, and some historians preferred the status quo because, as Professor Rodney Lowe put it, the “current legislation offers an ideal mix.” Both enthusiasts for earlier release of official documents and those who were more cautious expressed some fears about the possible effect of a reduction in the 30 year rule. These included the following: that financial constraints could diminish standards of record-keeping functions such as cataloguing by expert staff; that the prospect of earlier disclosure would result in fewer, poorer or more cautious records being kept; that it could encourage more retention and destruction of documents by government departments; and that international relations with allies based on mutual confidence might suffer as a result.

## **THE CIVIL SERVICE**

5.15 Both retired civil servants and those currently in post expressed some concerns about any modification in the present 30 year rule which might lead to the premature disclosure of official records. They repeatedly reaffirmed the value and importance of the current practice, whereby confidential advice given by civil servants to ministers is protected under an FoI exemption for 30 years, on the grounds that this allows debate about policy options (which may be extremely controversial) to be completely frank and unhampered by any concern that the records of such discussions will become public before the policy is settled and implemented. They argued that such protection, which is often called ‘safe space’, makes for better government because it increases trust and candour between ministers and their officials, and also between ministers themselves, providing an environment that fosters robust and wide ranging debate in private, supported by collective responsibility in public.

5.16 From this perspective, some civil servants argued that the premature disclosure of official documents could have deleterious effects on the conduct and working of government. It might, for instance, reveal disagreements between ministers, and thus undermine the important principle of collective responsibility; or it might reduce the candour essential to the trusting relationships between ministers and officials (a candour already under threat because of recent disclosures in the memoirs of some civil servants, published in defiance of the Radcliffe rules). Others urged that it might limit the range of advice given to ministers, which would lead to less well informed and more guarded decision-making; and it could mean the disclosure of the names of civil servants who were still employed in government, exposing them, rather than ministers, to unfair and inappropriate public criticism. This, some contended, could undermine the service’s reputation for impartiality, especially if civil servants seemed too closely identified with a particular policy or party.

5.17 We were told by one witness that the working of FoI has already had a ‘chilling effect’ on record-keeping: that policy documents and minutes of meetings are written less candidly, less controversially and less fully, because of the fear of earlier disclosure. This concern was also expressed in another way, namely that a significant reduction in the 30 year rule, which would further intensify anxieties about premature disclosure, could lead to an increase in the practice of what is termed ‘sofa government’, a vague and shorthand phrase for the practice whereby proper processes are not always followed when important decisions are taken informally. Regrettable aspects of ‘sofa government’ are held to include: the lack of provision of full documentation, with sufficient notice, so that discussion is adequately informed; the absence of appropriate officials and ministers at meetings to argue the issues with authority; the failure to keep full records and accurate minutes of such meetings; and the acceptance of decisions taken in this way with no real debate or serious discussion.

5.18 According to some of the civil servants to whom we spoke, the result of the greater openness brought about by FoI (which would be further reinforced by a major reduction in the 30 year rule) has been paradoxical yet also predictable. As the demand for earlier disclosure of official records intensifies, with the intention that more may be known, and sooner, about how government operates, the detail and accuracy of that documentation can correspondingly diminish. This, in turn, means that government functions less well, and that the public are no better informed.

5.19 Some civil servants also expressed particular concerns about the premature release of certain categories of especially sensitive material under the FoI Act. The Foreign Office stated that a reduction in the 30 year rule could mean that the UK would “risk releasing documents that are still sensitive and/or considered confidential by other states or international organisations”; the Department for Business, Enterprise and Regulatory Reform said they would have “real concerns with commercially sensitive information, which would be placed in the public domain earlier than is currently the case”; the Northern Ireland Office felt it was important that earlier release should not “cause real damage to relationships and hamper the embedding of the devolution settlement”; and the Cabinet Office said that if ministers cannot confidently expect that their deliberations on policy will benefit from a high level of protection against future disclosure, they may well be reluctant to put forward dissenting and divergent views. We also took a great deal of evidence from departments about the operational implications of a reduction, much of which is available on our website.

5.20 This may suggest that senior civil servants are generally unsympathetic to FoI and oppose any reduction in the 30 year rule. But that would be a mistaken conclusion. Most of them have come to terms with the new FoI regime, and some argue that the prospect of early scrutiny concentrates the mandarin mind, and thus produces better argued papers and fuller record-keeping. And while they are clearly concerned about the risks associated with the premature disclosure of official documents, most civil servants currently in post accepted that in the present climate of opinion, the 30 year rule should be and could be reduced.

## **FORMER MINISTERS AND PARLIAMENTARIANS**

5.21 Of all those from whom we took evidence, MPs, peers and former ministers expressed the most wide-ranging set of views. A minority were cautious about the prospect of earlier disclosure. While accepting the general benefits of openness, they believed it essential that the confidentiality necessary to the conduct of official business should not be undermined by excessive pressure for disclosure, which could lead to a deterioration in standards of record-keeping, to more informal and unaccountable government, and also erode the principle of collective responsibility. All three former Prime Ministers took this view, and believed the current rules to be largely satisfactory: not – as some might cynically suspect – because of the prospect of the record of their administrations being disclosed sooner rather than later, but because of serious concern for the governance of the country and the UK’s national interest. They also argued that it was not in the public interest for serving governments to be distracted by revelations about previous events that might re-ignite controversy.

5.22 Nevertheless, among most former ministers we found a general appetite for significant reduction of the 30 year rule, and some were actively impatient for the release of the government papers relating to their own time in office. They argued, as Harold Wilson had done four decades before, that the official record should be released when the politicians concerned were still alive and in a position to defend their conduct, with most saying that this could safely be done after ten or 15 years. They also felt that earlier release would demonstrate the high quality

of advice that British ministers habitually receive from their officials, illustrating the thinking behind policy decisions and helping society to learn from the successes and failures of their own time in office. This would reassure the public that ministers considered issues seriously, and might help renew confidence in the working of government and trust in politicians.

5.23 Several former ministers said that there was a clear conflict between the provisions of the FoI Act and the continued existence of the 30 year rule. Lord Owen insisted that the Act had undermined the rule “quite considerably and beneficially”; Lord Falconer – who favoured the immediate release of most official papers – said that any fixed rule would be out of step with the Act’s principle of ‘presumed openness’; and Lord Fowler suggested that the Act had “probably knocked in the last nail in the [30 year rule’s] coffin”. Lord Hunt argued that civil servants had nothing to fear from earlier disclosure: they had “Rolls Royce minds” and should be confident that the high quality of the decision making process would be recognised by the public. On the issue of collective responsibility, some former ministers pointed out that much confidential information about Cabinet decisions was extensively leaked to the media at the time – often in an exaggerated form. They argued that it was better for the public to have the full story of events rather than to have to piece it together from partial releases, memoirs and leaks; and that highly confidential papers could still be withheld even if the 30 year rule was reduced.

5.24 We were further told that society had changed significantly since the 30 year rule was created, and that much greater openness was now expected. Landmark events and developments, such as the publication of the Crossman diaries, increased internet access and the FoI Act itself had all contributed to a new climate in which people were less deferential, wished to be able to hold their government to account, and expected to have access to the information that would enable them to do so. It was unnecessary that perceptions of secrecy, compounded by rumours and leaks, should breed public cynicism, because most of the files that normally remain confidential for 30 years could safely be released long before that point, setting the record straight and strangling half-truths and misrepresentations. Indeed, Tony Benn insisted that there should be no rule at all, and that disclosure of almost all official papers should be immediate.

## **CONCLUSION**

5.25 As with the international comparisons we undertook in Chapter 3, it is not easy to generalise on the basis of the wide-ranging domestic evidence we have gathered and heard: in part because it is not clear what relative weight should be given to each of the different constituencies who gave us their views; in part because there were – with the exception of the media – real and significant differences of opinion within each constituency as well as between them. Nevertheless, it seems important to attempt a summary.

5.26 In the case of the general public, opinion is varied but shows an overwhelming desire for a very significant reduction of the 30 year rule to less than 15 years. Our written and oral evidence shows a preference for a reduction of between 20 and 15 years, with small groups in favour of shorter or longer periods. The media advocated bringing the rule down to 10 or 15 years; historians and civil servants expressed opinions ranging from 15 to 30 years; and former ministers and Parliamentarians expressed the broadest spectrum of opinion, from scrapping the rule entirely to maintaining it at 30 years, but with the majority in favour of significant reduction. Indeed, it would be fair to say that ‘significant reduction’ was the most widely-expressed opinion.

# 6

## OUR ASSESSMENT

6.1 The majority of evidence we have received and heard strengthens our preliminary view that the maintenance of the present 30 year rule is anachronistic and unsustainable. Indeed the case for reduction is very powerful: internationally and domestically, that is the direction in which both government practice and public expectation are moving; the passing of the Freedom of Information [FoI] Act has decisively and irreversibly enhanced the right of the public to have greater access to much more recent official information; and a rule that allows records to remain closed for 30 years, unless access is requested under FoI, thus appears to be an unenforceable relic from a different age.

6.2 But while it seems generally agreed that there ought to be some reduction in the 30 year rule, we have received many different opinions as to what, precisely, that reduction should be. Accordingly, and before making our own recommendations, we take this opportunity to assess the views and concerns of our witnesses, and to comment on them.

### IMMEDIATE DISCLOSURE

6.3 A few witnesses advocated a policy of ‘total openness’: the systematic release of official documents shortly after their creation. We are un-persuaded by these arguments. Such a practice would be contrary to that of most democratic nations similar to our own, and it might seriously damage our international standing and the conduct of international relations. We further believe it would lead to reduced frankness between ministers and civil servants, and that it would make it impossible to sustain the important practice of collective cabinet responsibility. There is also very little evidence that what has been described as ‘conservatory government’ or ‘televised Cabinet’ commands support, even among the general public.

6.4 Some other witnesses, while not wishing to go this far, proposed the outright abolition of the 30 year rule, and urged that there should be no ‘rule’ at all. All official records would be released as soon as it was safe and appropriate to do so, consistent with satisfying the exemptions in the FoI Act. Such a policy, they argue, would be the only way of putting into practice the FoI’s principle of ‘presumed openness’. However, no practical way of managing this laborious, record-by-record approach has been explained to us; and there is a real risk that without a specified time as a stimulus to force release, many documents might never be put in the public domain at all. This is rightly seen as undesirable, and reinforces the continuing need for a ‘rule’ of some definite duration.

### PREMATURE DISCLOSURE

6.5 We heard extensive evidence that the consequences of releasing official records too soon could be deleterious in many ways. In regard to the arguments about ‘safe space’, we accept that freedom for confidential debate is essential for trusting relations between ministers and civil servants, and for collective cabinet responsibility; but we believe that its connection with any reasonable and responsible reduction in the 30 year rule is unproven. Several witnesses informed us that the fear of immediate leaks to the media, or of disclosure in response to a request made under FoI within a few years (while ministers and civil servants

are probably still in office) was a much more likely reason for cautious discussions and bland record-keeping. So while it may be true that record-keeping has changed as a result of such immediate concerns, we believe it would not change further because of a reduction of the 30 year rule to (say) 15 or 20 years.

6.6 As to the alleged ‘chilling effect’, opinion was divided on whether it exists or is significant, but again, we found no evidence that it is related to the 30 year rule rather than to FoI in general. It was argued by some of our witnesses that the prospect of early FoI disclosure contributes to ensuring that advice is thorough and rigorous. Others contend that the necessity of maintaining an audit trail for FoI purposes has had some effect in raising the standard of record-keeping. We also believe that the work of civil servants is not constrained by anxieties about what future historians may think. Their task is to give the best possible advice to ministers, and our view is that they do not withhold such advice for fear of what people may say in (for example) 15 or 20 years’ time. Now, as in the past, government primarily generates records to serve its current operational needs.

6.7 In the case of concerns regarding ‘sofa government’, and as with the arguments advanced vis a vis ‘safe space’ and ‘the chilling effect’, we could find no credible link between this alleged practice and the existence (or potential modification) of the 30 year rule. We accept that ‘sofa government’ may have occurred at certain times in twentieth-century British history – indeed, long before FoI and the introduction of the 30 year rule; but we believe that it is more likely to be a reflection of leadership style and political circumstances than to be motivated by any concern regarding the timing of the future disclosure of official documents.

## **CIVIL SERVANTS’ CAREERS**

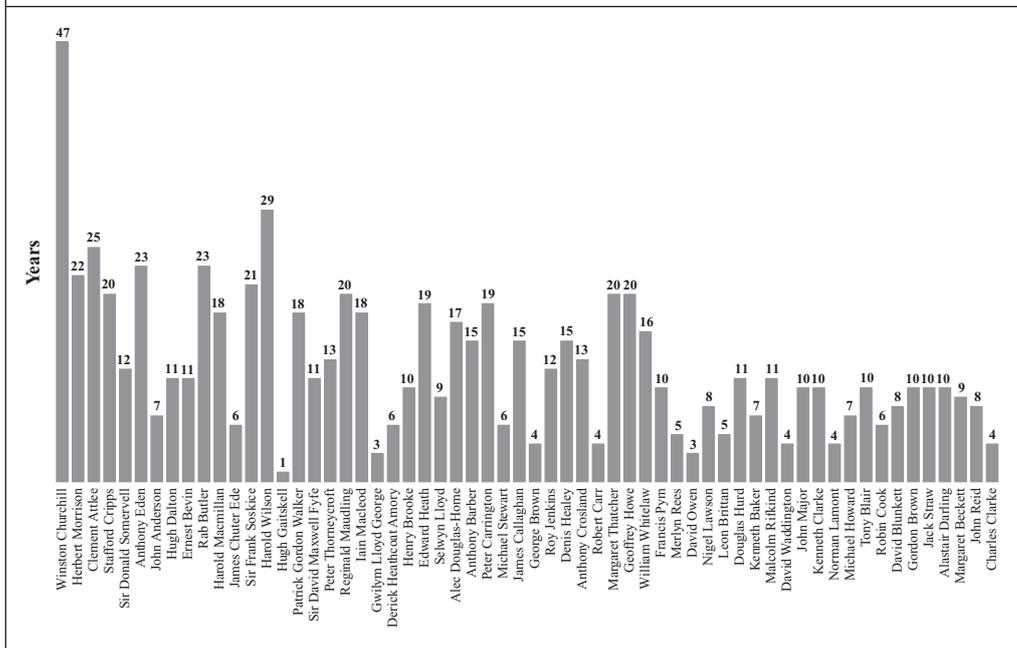
6.8 We accept that any significant reduction in the 30 year rule would mean that civil servants still in post might find their names in the public domain. But we do not consider this a sufficient justification for maintaining the 30 year rule. We recognise that appropriate consideration would need to be shown in particularly sensitive cases, but in the changed climate of opinion and expectation in which we now live, senior civil servants must accept the possibility of public exposure and accommodate themselves to it. Indeed, we have found some evidence that this is what many of them are already doing.

6.9 We further believe that ministers do understand clearly that civil servants work neutrally for them, regardless of their own party affiliation, and we note that many of today’s civil servants were in post during the time of the previous Conservative government without this having affected their careers and work under the present Labour administration. Indeed, it may well be that, if more official records were released earlier, public recognition of the importance of the political neutrality of the civil service would be enhanced rather than diminished

## **POLITICIANS’ CAREERS**

6.10 It was also put to us that the likely impact of possible reduction to 15 or 20 years would be harmful to long-serving ministers, who could be distracted from their current business by routine publication, while they are still in office, of official documents relating to their earlier careers. Yet in reality, such scrutiny was always extremely unlikely even under the 30 year rule, and it is even less likely today than it was when the rule was created: average ministerial career spans have steadily reduced over the last 60 years, and markedly so in the case of senior Cabinet ministers. Figure 6.1 shows that it is now exceptionally rare for a minister to be still in office after 20 or even 15 years, so it would be very unlikely for him or her to be affected by reduction of the 30 year rule to these levels.

**Figure 6.1: Ministerial career span of post-1945 senior ministers (Prime Ministers, Foreign Secretaries, Chancellors of the Exchequer and Home Secretaries) from year of first holding Cabinet office**



6.11 Moreover, any serving minister, however long or short his or her time in office, can be subject to requests made under FoI. Neither the 30 year rule, nor any reduction to it, would provide any safeguard from such requests being made, as the disclosure of documents relating to the Iraq war has shown.

## THE LENGTH OF ADMINISTRATIONS

6.12 While in recent times the span of individual ministerial careers has been getting shorter, the length of single-party administrations has been getting longer: the Conservatives under Thatcher and Major were in power from 1979 to 1997, and Labour under Blair and Brown has been in office ever since. Clearly, a significant reduction in the 30 year rule would have had implications in the first of these cases: had a 15 year rule, for example, applied in the 1990s, John Major's hard-pressed government would have been additionally obliged to defend the Thatcher administration of 1979-82 from critics who would have been well armed with material derived from the official records of that time.

6.13 On the other hand, no individual prime ministerial span in recent times has reached 15 years, let alone 20, so the likelihood of a premier having to defend his (or her) record when official documents were made available under a 15 or 20 year rule seems remote. And as with ministers, so with prime ministers: they can be subject at any time to requests that are made by the public under FoI. We also note that the length of these recent administrations is historically very rare, with the only previous examples dating back to the eighteenth and early nineteenth centuries.

## OTHER CONCERNS

6.14 Several departments expressed particular anxieties about the consequences of a significant reduction in the 30 year rule. The Foreign Office was concerned that premature disclosure would damage Britain's international standing. But as we have described in Chapter

Three, there is already a general international trend towards greater official openness; and in the future as in the past, particularly sensitive diplomatic documents would be covered by the exemptions for this class of information that are sanctioned by FoI<sup>17</sup>.

6.15 We also heard from some departments who feared that earlier disclosure of the details of long-term government contracts could prejudice future negotiations.<sup>18</sup> Against this we had to balance the clear public interest to know more about such arrangements, which involve the expenditure of considerable amounts of taxpayers' money. And it bears repeating that a long-term FoI exemption can be applied to particularly sensitive papers.

6.16 We also note academic anxieties about the likely impact of a reduction in the 30 year rule on record-keeping functions and on the retention and destruction of documents; but we believe that such changes are more likely as a result of FoI than of any future reduction in the 30 year rule.

6.17 We further recognise that if the date of general release were made less than 30 years, a greater proportion of documents will be withheld on the grounds of sensitivity. The National Archives estimated that a reduction to 20 years would result in a probable increase from 5% of records transferred being withheld to perhaps 10%. But this would still represent a major gain in the public disclosure of official documents, and the 10% withheld would in any case be subject to FoI applications and the appeals process.

## CONCLUSION

6.18 In the light of these reflections, our conclusions are as follows. The drawbacks of instant or premature disclosure of official records, both in terms of collective responsibility and effective government, and also in undermining the orderly and scheduled transfer of official records to The National Archives, mean that there must be *some* rule. But we do not believe that earlier general access, which would be made possible by a significant reduction in the 30 year rule, would be detrimental to good government. On the contrary, we consider it to be desirable in the public interest.

6.19 Accordingly, we conclude that the 30 year rule is no longer appropriate in the current climate of public opinion and expectation, and with a functioning FoI Act which allows access to many official records at much earlier dates.

6.20 We now turn to consider what would be an appropriate reduction in the 30 year rule, and we shall then address both the logistics and the costs of implementing our recommendations.

<sup>17</sup> Sections 27.1 and 27.2 of the Freedom of Information Act: international relations (prejudice) and international relations (confidence).

<sup>18</sup> The exemption covering 'commercial interests' (section 43.2 of the FoI Act), currently expires at 30 years and would be affected by any reduction of the 30 year rule.

# 7

## OUR RECOMMENDATIONS

7.1 In the preceding chapters, we have set out the evidence for and against reduction in the 30 year rule that we have accumulated and acquired during an extensive process of consultation. We have thoroughly explored and evaluated it, and we have also taken account of the practices in other countries. In the light of such considerations, we conclude that a substantial reduction in the present 30 year rule would strike a more appropriate balance between effective government and open government.

### A CHANGE IN THE RULE

7.2 As we explained at the end of Chapter Five, the weight of our evidence pointed overwhelmingly to a significant reduction from 30 years, to what we sense is a figure somewhere between 20 and 15 years. The choice between those two numbers is not so clear cut and we have considered it with great care.

7.3 To be sure, the arguments which point to a substantial reduction are strong and persuasive. We noted particularly the change in public expectations since we moved to the 30 year rule around four decades ago, the trend towards greater openness and accountability in many other areas of British life since then, the significant impact of Freedom of Information [FoI] legislation, and the discernible international moves towards greater official transparency and public access. All this points to a shorter rather a longer period for a new rule.

7.4 On the other hand, effective government is by definition in the public interest, and our system vitally depends on the collective responsibility of ministers and a neutral but fully engaged civil service. We noted particularly that it is undesirable for serving ministers to be distracted from their current responsibilities by re-fighting old battles because the relevant papers have just been released and that the case for the anonymity of senior civil servants to be protected is, if anything, strengthened as they assume heavy and potentially controversial responsibilities at an earlier stage and as they (increasingly) work beyond the retirement age of 60.

7.5 In attaching appropriate importance to all these matters, we recognise that neither the case for 15 years nor the case for 20 years is beyond argument. It must be a matter of judgement how to strike the balance between these conflicting considerations, further influenced by our belief that we could make a small but significant contribution to strengthening a responsive and responsible democracy. In our own deliberations, the balance has eventually come down in favour of 15 years.

**7.6 Accordingly, our most important recommendation is that the government should replace the current 30 year rule with a 15 year rule, regarding both the transfer of public records to The National Archives and other places of deposit, and the allowing of access to them. We further recommend that these changes should be effected by appropriate amendments to the Public Records Act and the FoI Act.**

## IMPLEMENTATION

7.7 Our terms of reference also charged us with examining whether any categories of official information should have their release prioritised and accelerated. We have heard no evidence that varying the timetable according to category is desirable or practicable; in fact numerous witnesses commented on the importance of continuing to release a year's papers all together, to provide the fullest possible picture. **We therefore recommend no change to the current practice.**

7.8 We have previously noted that some official records are currently retained by their originating departments beyond 30 years, and that, in exceptional cases, other documents are transferred to The National Archives at that time, but remain closed – including in some cases communications with the royal household. The retention of records is subject to the consent of the Lord Chancellor, who is advised by his Advisory Council on National Records and Archives. **We recommend that this approval should continue to be required in such cases if the 15 year rule is now adopted.**

7.9 We have also considered whether a 15 year rule should apply on a forward-only basis, or be fully retrospective. A 'forward' approach would mean that only official records created from the point of decision would be routinely opened after 15 years, while records already in existence would still be opened after 30 years. Alternatively, a retrospective application would mean that all official documents, regardless of when they were created, would be released after 15 years, so the backlog of records between 15 and 30 years old would need to be processed and released as quickly as possible in order for the new rule to be complied with.

7.10 Retrospective application could be seen as unfair to the original authors of official documents, who at the time of writing expected their work to remain confidential for 30 years. But there are two important precedents in favour of such a change: both the reduction of the 50 year rule to the 30 year rule and the implementation of the FoI Act were fully retrospective, and on each occasion ministers and the civil service adapted accordingly and without significant difficulty. Moreover, there is no evidence of likely damage to the national interest from a retrospective 15 year rule that would not be prevented by long-term exemptions. **We therefore recommend that the 15 year rule should be applied fully retrospectively.**

## PHASING-IN

7.11 A critical element of the practicability of a reduction is phasing-in: namely how rapidly the retrospectively-applied 15 year rule should be implemented. Many of those in favour of a significant reduction have argued for a gradual phasing-in so as to make the task both easier to pay for and to achieve. They urge that declaring the additional 15 years of documents to be immediately open would throw record-creating departments into a state of chaos which would serve historians and the public less well than a delay while records were processed in an orderly fashion. We accept these arguments in favour of an extended phasing-in period. But just how long ought that period to be?

7.12 We have received suggestions varying from three to 15 years as being the appropriate time span. The case for a shorter phasing-in period is that the records would be released as early as possible in the public interest, that it would give the civil service a greater incentive to get started in good time to complete the work, and thus to clear any paper backlogs. But we are more concerned that the backlog should be dealt with properly than quickly, and we fear that excessive haste might result in poor quality of work and rushed decisions. We further believe that anxieties about getting the process started would be mitigated by the drawing up of a strict annual timetable.

7.13 We are also well aware that many departments are experiencing serious budget pressures, in some cases a 5% year-on-year reduction in their operating costs. At the same time, their records units are coping with major challenges such as administrative savings, digital records and changes mandated by emerging government guidelines on information-handling. Under these circumstances, we acknowledge that it would be counter-productive – and simply unrealistic – to ask departments to introduce a 15 year rule too soon.

7.14 Beyond these considerations, the main argument for a longer period is that it increases the practicability of a reduction, lessening both the number of additional records that must be processed every year and also the other tasks that may have to be cancelled or postponed to enable such a reduction to be achieved.

7.15 On balance we favour a longer-term approach, minimising the additional work that needs to be done every year and making retrospective application gradual rather than sudden. A further benefit would be that civil servants and ministers who might feel that an immediate reduction to 15 years would be unfair (because they had expected their papers to remain confidential for 30 years) will find the release accelerated at only a gradual rate.

**7.16 We therefore recommend that the transition to a 15 year rule be managed by releasing one additional year’s worth of records every year until the backlog has been processed.**

7.17 Assuming a decision to begin implementation in 2010, the transition to operating the 15 year rule will be completed by the end of 2024, enabling departments to return to a ‘one year at a time’ approach from 2025 (see Figure 7.1).

**Figure 7.1: Illustrative timetable assuming implementation were to begin in 2010**

<b>Date of creation of records</b>	<b>When these records should be released</b>
1978	2009
1979 & 1980	2010
1981 & 1982	2011
1983 & 1984	2012
1985 & 1986	2013
1987 & 1988	2014
1989 & 1990	2015
1991 & 1992	2016
1993 & 1994	2017
1995 & 1996	2018
1997 & 1998	2019
1999 & 2000	2020
2001 & 2002	2021
2003 & 2004	2022
2005 & 2006	2023
2007 & 2008	2024
2009	2025

## COSTS

7.18 If these recommendations are accepted, then all bodies covered by the Public Records Act will need to process an additional 15 years' worth of paper records, in addition to their normal annual output, by the end of 2024. This will have significant cost implications.

7.19 Based on information provided to us by central government departments, moving to a 15 year rule will cost approximately £75 million<sup>19</sup>. The public benefits of increased access and understanding are clear and we do not believe that this figure overturns the case for a reduction. When applied over a 15 year period, the annual cost will be £5 million, which might usefully be compared to the £25 million yearly cost of operating the FoI system as a whole.<sup>20</sup>

7.20 We would not wish to see the government implement short-term efficiency savings in records management in order to achieve reduction to a 15 year rule. Equally we would not wish to encourage more casual document appraisal, which might result in the inadvertent release of records damaging to public or individual interests; in the lowering of cataloguing standards; or in resources being diverted from the vital work of ensuring the survival of digital records.

7.21 It seems unlikely that the government will consider providing additional funding for reduction of the 30 year rule within the current Comprehensive Spending Review cycle, which will come to an end in March 2011. For the following cycle, however, we would urge the government to recognise the fundamental importance of information management, described later in our report, and to disavow the traditional treatment of it as an administrative area that can be operated on perpetually smaller and smaller budgets.

**7.22 We recommend that the government make adequate additional provision in the 2011-14 and subsequent Comprehensive Spending Reviews for all records-related activities during the remainder of the implementation period, including work on digital records and FoI request handling.**

7.23 With a programme of work spread over 15 years across the whole of government, there is also a risk that implementation will be uneven between years and between departments, and this will further increase if additional resources are not made available.

**7.24 In order to minimise such a risk we recommend that a single central authority is given responsibility for monitoring and reporting on progress.**

7.25 The recommendation at paragraph 7.6 applies only to government records. However, we have considered whether it is appropriate to recommend earlier access to other records also, for example those of local authorities that are not covered by the Public Records Act. A two-tier system that applies one access rule to government records and another to the records of the wider FoI community seems undesirable. **Accordingly, we recommend that the amendments to the FoI Act referred to at 7.6 should apply to all information covered by the Act.**

<sup>19</sup> This figure excludes costs for non-central government bodies, for example local authorities, that will need to comply with one or both Acts; although such costs should be considerably lower given the nature of their records. It also excludes storage savings arising from the government's overall holdings being smaller, which are real but not material. For further details see Appendix A.

<sup>20</sup> As estimated in 2006: see <http://www.foi.gov.uk/reference/foi-independent-review.pdf>

## **CONCLUSION**

7.26 Such are our conclusions regarding the 30 year rule, and our recommendations as to its reduction and how that might be achieved. We turn now to the other relevant matters that we were asked to consider under our terms of reference.

## 8

# OTHER RELEVANT ISSUES

8.1 The primary task of this review – to look at the 30 year rule in the light of the Freedom of Information [FoI] Act and other considerations – has been discharged in the recommendations we have made in the previous chapter; but we were also asked to identify ‘any other issues’ that might be relevant to ‘modernising the existing system’ of government record-keeping.

8.2 Accordingly, we now raise some additional matters that have been drawn to our attention in the course of our enquiries, and we also offer recommendations as to how they might be investigated and addressed. They range from precise and specific issues to broad and general considerations, and are grouped under the following headings: the civil service; sensitive categories of information; special advisers; memoirs; proactive publication; the digital challenge; information overload; and local government.

### THE CIVIL SERVICE

8.3 Notwithstanding the form in which they are made and preserved, most records of central government are in practice generated by civil servants. Yet we have heard conflicting views about the completeness with which such records have been kept in recent times, and we were surprised to discover that there is no duty to keep such records specified in the current Civil Service Code. Although the Code is principally concerned with values, we believe that record-keeping is as much an issue of ethics as it is of evidence. Civil servants have a moral as well as a professional obligation to keep precise and comprehensive records, and we urge that they should be made aware of how important this is.

**8.4 We recommend that the government revisit the Civil Service Code to see whether it needs an amendment to include an explicit injunction to keep full, accurate and impartial records of government business.**

8.5 If our recommendations are accepted, and official records become available after 15 years, this means that named civil servants, who are in no position to defend themselves from public criticism, and who often have little choice about the work they are called upon to undertake, might have their careers prejudiced if it were thought that they were very closely identified with a particular minister, or if they happened to be involved in a particularly controversial matter.

**8.6 Accordingly, we recommend the use, wherever possible, of redaction of official documents, as they are made publicly available, to protect the identity of civil servants.**

## **SENSITIVE CATEGORIES OF INFORMATION**

8.7 As we noted in Chapter Five, there are genuine concerns among some ministers and civil servants about the early release of particularly sensitive types of papers<sup>21</sup>. Given that we are recommending a substantial reduction to the 30 year rule, we believe that the government may wish to look again at the exemptions set out in the FoI Act.

**8.8 We therefore recommend that, in parallel with the adoption of a 15 year rule, the government, in consultation with interested parties, may wish to consider whether there is a case for enhanced protection of such categories of information.**

## **SPECIAL ADVISERS**

8.9 During the course of our inquiries, we have frequently been struck by the number of people who think either that special advisers (who are temporary civil servants) are lackadaisical in their own record-keeping, or that their non-party-political papers are exempt from the Public Records Act and the FoI Act, or both. We are not sure that these fears are justified, but we are certain that the position needs to be clarified.

**8.10 We recommend that the government confirm that special advisers' non-political records are not exempt from the Public Records Act and the FoI Act; that as temporary civil servants they, too, are under a duty to keep a full record of their deeds and doings; and that any misunderstanding about these matters on the part of ministers, departments or special advisers is removed.**

## **MEMOIRS**

8.11 The present position concerning the publication of memoirs by former ministers, by civil servants and by special advisers, as defined in the Radcliffe rules, is both unclear and unsatisfactory. The rules themselves are insufficiently specific, they have been increasingly flouted in recent years, there is no effective mechanism for enforcing them, and it is not even clear whether there should be – or whether there could be – such a mechanism. Moreover, Radcliffe's 15 year rule was drawn up before the FoI Act was passed.

**8.12 We recommend that the government commission an independent review of the Radcliffe system, with the aim of overhauling and updating it in the light of the FoI Act and of our principal recommendations concerning a reduction in the 30 year rule.**

## **PROACTIVE PUBLICATION**

8.13 In the changed climate of opinion and expectations regarding official records, to which we have already drawn attention, the current government and its predecessor have urged (and implemented) a more proactive approach, wherever possible, to the early release of such documents. This brings such benefits of openness as increased understanding of how decisions are made and implemented by government, it makes unnecessary some FoI requests, and it lessens the significance of any time-specific 'rule' as the point at which most government records enter in the public domain. Already, under FoI, many public bodies are required to maintain such a publication scheme, listing classes of documents that they regularly make public.

**8.14 We applaud this practice of proactive release by government, and recommend that it should be made more widespread, so that, wherever possible, records should be put into the public domain as early as their sensitivity permits.**

<sup>21</sup> See para 5.19.

## THE DIGITAL CHALLENGE

8.15 Our recommendations for amending the 30 year rule will prove meaningless if the official records to which such a modified rule would be applied do not themselves survive. In the course of conducting this review, we have discovered that this is a real concern and pressing problem: not only from the deficiencies of current record-keeping practices, but also (and more importantly) from the long-term vulnerability of the digital records now produced, by all governments, and by businesses, organisations and institutions around the world, and additionally from the challenging complexity of managing them.

8.16 The recent explosion in digital records resulting from the universal adoption of email and websites as the principal means of government communication means that conventional paper-based procedures of preservation are no longer suited or appropriate. Unlike paper, digital records are subject to rapid obsolescence rather than slow decay, and they have a natural life which may be as little as five years. The oldest digital records that have been permanently preserved by the government date from 1992, which means they are 16 years old and thus at serious risk. Some important digital records are known to have been lost already, not intentionally but because of software that is no longer supported, corrupted storage media or lack of preservation systems.

8.17 But there are other issues involved in managing digital records. They include: their ‘easy come easy go’ nature (especially email); problems of authentication; the chaotic situation of data ‘litter’ with no common approach to management; the sheer volume of data that is created; and finally its variety, encompassing databases, emails, presentations, websites and video as well as conventional ‘papers’.

8.18 The pace of change is also a problem. New applications, recently including desktop video and internet-based telephone services, are typically developed and launched commercially before any thought is given to how the records they create can be captured and preserved.

8.19 The evidence we have heard is that ten years is probably the latest point by which digital records should be reviewed by departments and agencies and, if there are reasons to preserve them, transferred to a stable storage environment. If this is not done, there is a real danger that the official record may not survive, and it is difficult to overstate just how disastrous this would be.

**8.20 We recommend that as a matter of urgency the government should review its strategy in this area, and that it should re-assess the system of review of digital records so as to ensure that they are in a sustainable storage environment by the time they are ten years old.**

## INFORMATION OVERLOAD

8.21 In a world where all government business is now conducted electronically, there is not only the risk that essential records will not survive, but also the simultaneous danger of vast amounts of ephemeral information paralysing the system. For example, the Department for Culture, Media and Sport told us that it took just one year for the documentation they hold about the 2012 Olympics to outgrow their Listed Buildings database, which had been compiled over 60 years. Multiplied across government and the public sector, this exponential increase in electronically-available and sustained information may have the paradoxical effect of reducing the knowledge that can be usefully gleaned from it: if files are not created and preserved so as to be searchable, they simply disappear into this ‘digital landfill’, which is of no use either to serving governments or future historians

8.22 We know that some government departments are moving to a system of pre-determining the preservation status of documents at the time of their creation, offering the possibility of automatic deletion or transfer to The National Archives at a planned and specific time. This seems a helpful – indeed, essential – way of managing the overall system.

**8.23 We recommend that electronic record capture should be an integral part of the IT infrastructure of government, and not a ‘bolt-on’ activity. Work on creating an IT strategy to ensure that records are automatically kept needs to be accelerated.**

## **LOCAL GOVERNMENT**

8.24 For central government, this is a massive challenge and complication, but the situation is worse in local government, where there is even more emphatic evidence that it is unequipped to cope. The government has initiated some important projects, co-ordinated by The National Archives and involving many central departments; but it is clear that the threat posed by an inadequate response to digital records is not as well understood at the highest levels as its importance merits. We believe that it deserves the highest possible priority, including regular consideration by senior decision-makers alongside normal business and financial planning.

**8.25 We recommend that the appropriate central government authority does more to monitor and prompt continuing work on the preservation of electronic records that are generated by local government.**

## **CONCLUSION**

8.26 Such are our more general observations and recommendations, in the light of the evidence that has been brought to our attention during the course of our inquiry. From one perspective, we have addressed a very specific matter: the continued or diminished viability of the 30 year rule, in the light of the FoI Act and the broader shifts in public expectation and outlook of which that Act is but one example and illustration. From another, we have considered the wider challenges to government record-keeping in an age which, in terms of technology, is very different from any that has gone before.

8.27 Throughout our inquiry, we have constantly borne in mind that official records, whether set down on paper or generated electronically, are the most vital component of our national memory, and are thus essential to our continued national well-being. Their preservation, for access and use by the public, is of critical importance for the proper working of government and for a well-informed people, and we believe that our recommendations, if accepted and implemented, will be in the public interest, and will thereby help safeguard freedom and strengthen democracy.

# TABLE OF RECOMMENDATIONS

7.6	We recommend that the government should replace the current 30 year rule with a 15 year rule, regarding both the transfer of public records to The National Archives and other places of deposit, and the allowing of access to them. We further recommend that these changes should be effected by appropriate amendments to the Public Records Act and the Freedom of Information [FoI] Act.
7.7	Our terms of reference charged us with examining whether any categories of official information should have their release prioritised and accelerated. We have heard no evidence that varying the timetable according to category is desirable or practicable, and recommend no change to the current practice.
7.8	We recommend that the requirement for departments to seek the approval of the Lord Chancellor, acting on the advice of his Advisory Council on National Records & Archives, for the retention of records, should remain in place.
7.10	We recommend that the 15 year rule should be applied fully retrospectively.
7.16	We recommend that the transition to a 15 year rule be managed by releasing one additional year's worth of records every year until the backlog has been processed.
7.22	We recommend that the government make adequate additional provision in the 2011-14 and subsequent Comprehensive Spending Review for all records-related activities during the remainder of the implementation period, including work on digital records and FoI request handling.
7.24	In order to minimise the risk that implementation will be uneven between years and between departments we recommend that a single central authority is given responsibility for monitoring and reporting on progress.
7.25	We recommend that the amendments to the FoI Act referred to at 7.6 should apply to all information covered by the FoI Act.
8.4	We recommend that the government revisit the Civil Service Code to see whether it needs an amendment to include an explicit injunction to keep full, accurate and impartial records of government business.
8.6	We recommend the use, wherever possible, of redaction of official documents, as they are made publicly available, to protect the identity of civil servants.
8.8	We recommend that, in parallel with the adoption of a 15 year rule, the government, in consultation with interested parties, may wish to consider whether there is a case for enhanced protection of certain categories of information.
8.10	We recommend that the government confirm that special advisers' non-political records are not exempt from the Public Records Act and the FoI Act; that as temporary civil servants they, too, are under a duty to keep a full record of their deeds and doings; and that any misunderstanding about the matters on the part of minister, departments or special advisers is removed.

<b>8.12</b>	We recommend that the government commission an independent review of the Radcliffe system, with the aim of overhauling and updating it in the light of the FoI Act and of our principal recommendations concerning a reduction in the 30 year rule.
<b>8.14</b>	We applaud the practice of proactive release by government, and recommend that it should be made more widespread, so that, wherever possible, records should be put into the public domain as early as their sensitivity permits.
<b>8.20</b>	We recommend that as a matter of urgency the government should review its strategy for digital records, and that it should re-assess the system of review of them so as to ensure that they are in a sustainable storage environment by the time they are ten years old.
<b>8.23</b>	We recommend that electronic record capture should be an integral part of the IT infrastructure of government, and not a ‘bolt-on’ activity. Work on creating an IT strategy to ensure that records are automatically kept needs to be accelerated.
<b>8.25</b>	We recommend that the appropriate central government authority does more to monitor and prompt continuing work on the preservation of electronic records that are generated by local government.

# APPENDIX A:

## COST ESTIMATES

1. To help us understand the likely cost of reducing the 30 year rule, we asked central government departments to supply us with an estimate of the cost of transition to a 20 year rule; i.e. the additional cost of processing an extra ten years' worth of records on top of their normal business. Twenty years was chosen as a convenient benchmark. Departments were asked to include the costs likely to be incurred by their sponsored agencies.
2. Because every department operates differently, it was not always possible to compare the figures directly. For example, some departments gave the cost as a single monetary amount, while others provided a calculation of the number of records they thought might have to be processed and the number of additional staff they might require. We therefore had to make some assumptions about (for example) average salaries and numbers of files processed per head annually. Departments also used varying assumptions about the length of time they would have to complete the process, although in theory the total cost (before inflation) should be the same regardless of the time taken.
3. Although we heard from some agencies sponsored by central departments, we believe that there will be other bodies from whom we did not hear that would incur costs if a 20 year rule were introduced.
4. We adjusted the departments' estimates only so far as was necessary to produce an overall total; and we included a significant contingency in our total estimate.
5. The figures received from each department are laid out in Table A.
6. Based on these figures, we estimate that the cost of moving to a 15 year rule is £75 million. Although we have not investigated the costs of transition outside central government, we believe that our contingency of £10 million would be sufficient to complete the transition to a 15 year rule.

**Table A: Cost estimates received from government departments**

<b>Department or agency</b>	<b>Estimated cost of transition to 20-year rule</b>
Atomic Weapons Establishment	£2,028,000
Business, Enterprise and Regulatory Reform	£1,234,590
Cabinet Office	£2,250,000
Communities and Local Government/Transport	£2,100,000
Department for Children, Schools and Families	£118,125
Department for Culture, Media and Sport	£135,000
Department for Environment, Food and Rural Affairs	£1,710,000
Department for International Development	£210,000
Department for Work and Pensions	£620,760
Foreign Office	£5,000,000
HM Treasury	£3,933,628
Home Office	£4,260,618
Ministry of Defence	£11,841,200
Ministry of Justice	£535,714
Northern Ireland Office	£1,800,000
The National Archives	£2,500,000
(Contingency)	£10,000,000
<b>Total</b>	<b>£50,277,635</b>

# **APPENDIX B:**

## **LIST OF CONTRIBUTORS TO THE WORK OF THE REVIEW**

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Department for Environment, Food & Rural Affairs  
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Professor Michael Moss

Museums, Libraries & Archives Council  
National Council on Archives  
National Library of Wales  
Newspaper Publishers Association  
Newspaper Society  
Northern Ireland Office  
OFCOM  
Ordnance Survey  
Rt Hon the Lord Patten of Barnes  
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Copies of all written and oral evidence can be found at  
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ISBN 978-0-10-850785-4

