



Advisory Council on National Records and archives

Role and functions of the council

The Lord Chancellor and Secretary of State for Justice is the government minister responsible for The National Archives. The National Archives is a government department and an executive agency of the Secretary of State for the Ministry of Justice. The National Archives brings together the Public Record Office, the Historical Manuscripts Commission, the Office of Public Sector Information and Her Majesty's Stationery Office. On normal policy matters concerning The National Archives and public and other records the Lord Chancellor relies on advice from the chief executive of The National Archives, who is Keeper of Public Records and Commissioner of Historical Manuscripts, and from his officials in the Ministry of Justice. As minister responsible for the Public Record Office, the Lord Chancellor has had the benefit of independent advice on public records¹ matters from his Advisory Council on Public Records, established in 1959. Because the Lord Chancellor's records responsibilities broadened in 2003, he now also needs independent advice on all kinds of records, archives and manuscripts. He has this from the Advisory Council on National Records and Archives, which speaks to the government on records issues on behalf of the general public.

The structure of the Council

For legal reasons the Advisory Council on National Records and Archives embraces two further bodies: the statutory Advisory Council on Public Records (created by s1(2) of the Public Records Act 1958) and the Advisory Council on Historical Manuscripts. For practical purposes the three bodies, while legally distinct, act as a single advisory council under the name of the Advisory Council on National Records and Archives.

The chairman of the Council, *ex officio*, is the Master of the Rolls, one of the most senior judges and head of the Civil Division of the Court of Appeal, who is the statutory custodian of the records of the Chancery of England and has the statutory charge and superintendence of manorial records. The Master of the Rolls is currently the Rt Hon Sir Anthony Clarke.

¹ Public records, as defined in the Public Records Act 1958, are the records of central government and the central courts of law and related organisations and bodies.

The Council's members are appointed by the Lord Chancellor. They are unpaid. They come from a wide range of different fields, including Parliament, users of historical records (including academic, local and family historians), owners of private papers, retired senior civil and diplomatic servants, and information professionals such as archivists, librarians and records managers. Although the Keeper and Historical Manuscripts Commissioner attends meetings of the Council, it is quite independent of her.

The Council has no executive functions or powers. It is an advisory Non Departmental Public Body (NDPB) within the remits of the Parliamentary Commissioner for Administration, the Commissioner for Public Appointments and the Information Commissioner.

The Council's Role

The Council has a particular statutory responsibility to advise the Lord Chancellor on matters relating to public records, including their selection and preservation and public access to them, and the facilities provided for researchers at The National Archives. It also advises him on major strategic archival policy matters and matters relating to the preservation of and public access to local authority, business and private records, archives and manuscripts in archival repositories and in private hands. The Council also advises the Historical Manuscripts Commissioner on matters relating to non-public records. The Council's terms of reference are attached.

The National Archives is responsible for the public records of the United Kingdom as a whole and of England and Wales in particular, and the Council's remit in relation to public records is the same. The remit of the Historical Manuscripts Commission and of the Council in relation to non-public records extends to the whole of the United Kingdom, without prejudice to the special responsibilities of the Keeper of the Records of Scotland, the Scottish Records Advisory Council and the Deputy Keeper of the Records of Northern Ireland. The Council therefore seeks to have representation from all parts of the United Kingdom. The National Archives of Scotland and the Public Record Office of Northern Ireland are responsible for records of Scotland and Northern Ireland respectively, but the Welsh Assembly has yet to establish a national archives for Wales or a comparable advisory body.

The Council has no role in the day-to-day running of The National Archives, and no authority over the Keeper and Historical Manuscripts Commissioner.

What the Council Does

The Council's most important task relates to access to public records. Under the Freedom of Information (FoI) Act 2000, it is responsible for advising the Lord Chancellor on the application of the Act to historical public records (those over 30 years old). In particular this involves acting

for the Lord Chancellor in advising government departments on the relative strengths of the public interest in the release of particular records and the public interest in their non-disclosure. In addition, the Council reviews applications from departments for the retention of public records under the Public Records Act². The Lord Chancellor never signs a retention instrument until he has received advice on it from the Council. The justification for the use of FoI exemptions and for retentions is scrutinised closely, and departments are often asked for further information. This reconsideration can lead to a document being made available after all. If the Council cannot reach a decision by any other means, it may ask the Master of the Rolls to nominate a member to inspect documents and make recommendations.

Given the short periods allowed for the consideration of applications for access under the Freedom of Information Act, members are asked on occasion to act between meetings. Panels of three members are sent the necessary papers and asked to consult as necessary and report their conclusions to the Secretary on behalf of the whole Council. Reports on the conclusions of such panels are presented to the next meeting, when similar public interest issues are also debated. A member is likely to be asked to serve on no more than five panels each year.

The Council considers policy proposals relating to non-public records, and has a particular interest in ensuring the preservation of private collections of manuscripts for the benefit of both owners and the public. It advises the Commissioner on her recommendations on the allocation to appropriate record repositories of manuscripts accepted by the nation in lieu of tax.

Other subjects considered by the Council include the corporate plan of The National Archives and the performance of The National Archives against its objectives and targets; the sale and export of historical manuscripts; public services provided by the National Archives and other UK archives; preservation policy for records and manuscripts of all sorts; the impact on records and archives of new legislation; and the level and fairness of fees.

The Council reports to the Lord Chancellor every year in an annual report by the Master of the Rolls, which is published with the Report of The National Archives. On matters of urgency or of particular importance it asks the Master of the Rolls to write to him directly.

Amended by Lale Ozdemir

² 'Retention' is the process under which government departments and other records-creating bodies may retain records themselves rather than transfer them to The National Archives. The Public Records Act 1958 s3(4) provides that records may be retained with the approval of the Lord Chancellor. He issues 'instruments' authorising retention, which may be in two forms: normal instruments identify particular documents or parts of documents, while blanket instruments identify whole classes of documents. Where only part of a document is retained that part is said to have been 'redacted'.

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