

<b>Title:</b> Constitutional Reform and Governance Act (2010) : 20 Year Rule : Records of Local Interest <b>IA No:</b> MoJ042/2014 <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> The National Archives	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 08/12/2014			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
	<b>Contact for enquiries:</b> Malcolm Todd, Information and Legislative Policy Manager, The National Archives. 020 8392 5208 malcolm.todd@nationalarchives.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCGB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£16-24m	£n/a	£0	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

At present public records of local interest must be transferred to a local Place of Deposit after 30 Years. Section 45(1)(a) of the Constitutional Reform and Governance Act (2010) (CRAGA) reduces the period by the end of which such records are required to be transferred to 20 years. This will have an impact on the public records system across the UK Government, England and Wales, including government departments, arms-length bodies and a wide range of organisations covered by the Public Records Act (1958). The change began for central government departments over a 10-year transition from 01.01.2013 and implementing for the remaining record categories would resolve the disparity and carry out the will of Parliament.

**What are the policy objectives and the intended effects?**

This change will make most public records of historical value and local significance accessible to the public after 20 years rather than the current 30 years in line with transparency policy; improve processes and efficiency and reduce disruption to public business. The transition to a 20-year rule at local level will have these benefits, whilst also maintaining local availability of records through a robust place of deposit network. The disparity of the two transitions would be limited to 2 years and would resolve at the end of the second. The costs involved are limited to the transition period, since at the end of the transition, creating bodies would again be processing, and places of deposit receiving, one year's worth of records each year.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

1. Complete commencement from a 30 to 20-year transfer rule in full. This is the preferred option to bring the transfer process in line with that for central government records and to benefit transparency at a local level. The change would involve (a) commencing the 20 year rule fully from 01.01.2015; (b) putting in place a 10-year transition so that each year two years' of records are transferred to local places of deposit and transition will be two years out of step with records transferring to TNA; and (c) by the end of 2024 transition will be complete, although the full financial benefits would only be felt in 2025.(see timetable on p.7).

2. Do nothing. Risks an inconsistent and confusing two-tier public records system, reducing transparency at local level, as well as creating unnecessary costs and risks to records associated with large accumulations. The will of Parliament and government transparency commitments including under the Open Government Partnerships would remain unfulfilled.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 01/2018					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Simon Hughes \_\_\_\_\_ Date: 08/12/2014

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 11	Net Benefit (Present Value (PV)) (£m)		
			Low: -£16.2m	High: -£23.9m	Best Estimate: -£20.2m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£19.9million	Optional	<b>£19.9 million</b>
High	£27.6million	Optional	<b>£27.6 million</b>
Best Estimate	£23.9million		<b>£23.9 million</b>

#### Description and scale of key monetised costs by 'main affected groups'

Key monetised costs are due to processing records earlier than at present. Records creating bodies and places of deposit will be processing twice as many records per year than at present. Costings are taken from surveys of the local places of deposit and the creating bodies. The cost will be spread over c.1000 record creating bodies and 82 places of deposit over the ten year transition period. Costs comprise £7.1m New Burdens for local authorities and costs to creating bodies (see Appendix A).

#### Other key non-monetised costs by 'main affected groups'

None identified

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£3.7m	Optional	<b>£3.7m</b>
High	£3.7m	Optional	<b>£3.7m</b>
Best Estimate	£3.7m		<b>£3.7m</b>

#### Description and scale of key monetised benefits by 'main affected groups'

Data collected from creating bodies has shown that approximately £3.7m will be saved over the period 2015-25 in storage costs as creating bodies which currently pay for external storage provision benefit from earlier transfer to a local place of deposit. Places of deposit may seek opportunities to benefit from shared services.

#### Other key non-monetised benefits by 'main affected groups'

The savings on storage costs will continue beyond the 10 year transition period. Many creating bodies will also benefit from a reduction in internal space required to maintain public records in their care; these savings could be monetised if they allow reductions in space occupancy. Users of local records benefit from increased transparency due to earlier transfer of records. Creating bodies will store smaller volumes of records, making it easier to locate and retrieve records when required.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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Figures are based on information supplied by relevant public records creating bodies for records of local interest and by places of deposit. The return rates varied between 17 and 45%, so some of the information has been taken from existing information held by The National Archives to achieve an overall measurement of records and current costs for storage and transfer of affected material.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	NA

## 1. Problem under consideration

- 1.1 Section 45(1)(a) of the Constitutional Reform and Governance Act (2010) (CRAGA) reduces the period by the end of which Public Records selected for permanent preservation are required to be transferred to The National Archives from 30 to 20 years. Implementation of this change through a 10-year transitional programme began on 1 January 2013. However, the secondary legislation to bring this into effect excluded from its scope those Public Records of local interest which are held permanently by local authority archive services (as Places of Deposit) on behalf of the Lord Chancellor, and subject to supervision by The National Archives. Implementation of the change for these records was deferred to enable further work to be done to determine: i) the likely net cost of the change for the bodies responsible for creating and transferring these records; and ii) the extent of any new burden which accelerated transfer would place on the local authorities receiving them in terms of additional storage and the work involved in providing public access to them. That work has now been completed, and this impact assessment proposes a timetable and models the cost of transition for the bodies affected.
- 1.2 At present Public Records of historical value and of local interest must be transferred to a designated Local Authority place of deposit within 30 years of their creation. This is known as the '30-year rule'. The records concerned are those generated by the bodies listed in paragraph 1.4 below. These are normally stored on site by the body concerned or by a commercial storage contractor until either a pre-determined retention period has expired or the records are 30 years old. At the 30-year point, the records have to go through a process of appraisal and selection which identifies the material worthy of permanent preservation as an historical record; selected records then have to be sensitivity reviewed to identify any data protection or FOI exemption reasons for extended closure; and then they have to be listed, packaged and transferred to the receiving repository to agreed standards. Records are normally available for public inspection once they are 30 years old, unless a Freedom of Information Act 2000 (FOIA) exemption still applies.<sup>1</sup> The CRAGA changes already implemented also involved reducing the maximum duration of a number of FOIA exemptions for all historical records, irrespective of destination archive. Compliance with the 30-year rule is a statutory duty which must be fulfilled by records creating bodies.
- 1.3 Approximately 20% of all Public Records selected for permanent preservation are held by a network of 89 local authority places of deposit across England and Wales, and these bodies would need to take in additional records over a transitional period if the transfer period is to be reduced from 30 to 20 years to give effect to section 45(1)(a) of the CRAGA and make the arrangements for locally deposited records consistent with those for other public records. The local place of deposit network is a voluntary arrangement mandated by the Public Records Act, developed and maintained in consultation between The National Archives and the local authority concerned so that public records of primarily local interest are kept and made available in the local area.
- 1.4 The move to a 20-year rule for records of local interest would affect approximately 1000 public records bodies (creating bodies) across the UK Government and the NHS in Wales.<sup>2</sup> The bodies concerned are those scoped out in the schedule attached to the Constitutional Reform and Governance Act 2010 (Commencement Order No. 7) 2012 (SI 2012 No. 3001):
- Records of prisons, remand centres, secure training centres or young offenders institutions;
  - Records of coroner's courts;
  - Records of the Environment Agency, except board minutes or records which relate to the formulation or development of policy governing the work of the Environment Agency, which transfer directly to The National Archives;
  - Records of Family Practitioner Committees for localities in England and Wales;

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<sup>1</sup> Records may be made available to the public earlier in response to FOIA requests or at the discretion of the creating body, but this applies only to a small minority of records. Most records continue to become accessible to the public at the 30-year point.

<sup>2</sup> The only Welsh public records relating to devolved matters that are affected by this proposal are those relating to the NHS in Wales; all the remainder refer to non-devolved matters.

- Records of the Forestry Commission, except board minutes or records which relate to the formulation or development of policy governing the work of the Forestry Commission, which transfer directly to The National Archives;
- Records of health service hospitals within the meaning of the National Health Service Act 1977 (a) in England;
- Records of health service hospitals within the meaning of the National Health Service Act 2006 (b) in Wales;
- Records of the Homes & Communities Agency that were formerly records of the Commission for New Towns or the Urban Regeneration Agency, except board minutes or records which relate to the formulation or development of policy governing the work of the Commission for New Towns or the Urban Regeneration Agency, which transfer directly to The National Archives;
- Records of Magistrates' courts;
- Records of the Maritime and Coastguard Agency;
- Records of National Health Authorities including Primary Care trusts, National Health Service trusts and NHS Foundations in England;
- Records of National Health Authorities for district or localities in Wales, or for areas in or consisting of Wales, including National Health Service trusts all of whose hospitals, establishments and facilities are situated in Wales.
- Records of Natural England, except board minutes or records which relate to the formulation or development of policy governing the work of Natural England, which transfer directly to The National Archives;
- Records of Rent Tribunals or Local Valuation Courts.

These organisations would all need to review, select, sensitivity review, prepare and transfer more records each year for the period of the transition.

## **2. Rationale for intervention**

- 2.1 The extension of a 20-year transfer period to public records of local interest would complete the implementation of section 45(1)(a) of the CRAGA, and give effect to the will of Parliament.
- 2.2 It would bring the arrangements for the selection, preservation and access to public records of local interest back into conformity with those for other public records by 2025, avoiding the confusion and uncertainty caused by a 'two-speed public records system'.
- 2.3 The CRAGA also amended the FoI Act (2000) to reduce the lifespan of certain exemptions from 30 to 20 years. The provisions to do this are in force and subject to a 10 year transition that began at the beginning of 2013. For the records of local interest, completing transition would bring transfer back into line with the FOIA reduction to a 20-year rule, improving the accessibility of information at a local level. It would ensure a coherent approach for all public records.

## **3. Policy objective**

- 3.1 To contribute to delivering the Government's Transparency policy by completing the implementation of the legislation for a 20-year rule for public records.
- 3.2 To improve records management in the creating bodies by the provision of clearer guidance on the selection, preparation and transfer of records and increased oversight of the transfer of such records to places of deposit.

## **4. Description of options considered (including do nothing)**

### **4.1 Do nothing.**

To do nothing would risk the formation of a two-tier public records system and fail to deliver increased transparency at local level. The transfer period for records of central departments would gradually move to 20 years, while that for records of local interest remained at 30 years. Part of the government's transparency policy would be undelivered, and the availability of resources valuable for historical research and essential for local democratic accountability would

be substantially delayed. Additionally, since changes to the Freedom of Information Act (2000) have already reduced the maximum lifespan of certain exemptions from 30 to 20 years, the transfer period for public records of local interest would remain out of step with the lifespan of FOIA exemptions, leading to additional work for creating bodies in managing FOIA requests.

#### 4.2 Complete the ongoing transition from a 30 to 20 year transfer rule

This option would reduce the transfer period from 30 years to 20 years over a transitional period between 2015 and 2025 that mirrors the way in which the transfer period for other public records is being reduced between 2013 and 2023. The proposed timetable of records transfer is set out in Table 1 below. It will result in an extra year of records being transferred for each year of transition.

Implementation of this option would complete the Government’s policy objective of reducing the transfer period to 20 years, make transfer arrangements consistent across the public records system, and bring transfer arrangements back into line with lifespan of Freedom of Information Act exemptions.

**Table 1: Proposed schedule for transitional arrangements for records of local interest**

Year	Transferring under 30 years	Transferring under 20 years
2014	1984	1984
2015	1985	1985 & 1986
2016	1986	1987 & 1988
2017	1987	1989 & 1990
2018	1988	1991 & 1992
2019	1989	1993 & 1994
2020	1990	1995 & 1996
2021	1991	1997 & 1998
2022	1992	1999 & 2000
2023	1993	2001 & 2002
2024	1994	2003 & 2004
2025	1995	2005

The costs and benefits associated with this option are set out in the following two sections.

### 5. Monetised and non-monetised costs and benefits (including administrative burden)

#### 5.1 Monetised costs of transition to affected bodies:

In the impact assessment for the CRAGA it was projected that the implementation stage for records of local interest would cost £10-20 million. Following a data gathering exercise with the creating bodies conducted during 2013, costs have been revised, resulting in an updated net cost projection of £16.2-£23.9 million for transferring organisations.

The costs of implementation laid out in Table 2 (see Appendix A for detailed methodology) include:

- the additional cost creating bodies will bear in processing twice as many records each year for ten years;
- the cost of transporting selected records to the appropriate place of deposit;
- the costs TNA will incur in monitoring implementation and providing guidance and training;
- the ‘New Burdens’ costs which local authorities will incur in storing and providing access to increased volumes of records.

The costs would be spread over the ten year transition period and between some 1,000 creating bodies and 89 places of deposit maintained by 82 local authorities. The best estimate of the net cost is £20.2m, including the new burdens cost: this reflects the most likely of three models for the cost of processing Records of Local Interest. All the costs are one-off transition costs over the

10 year transition period and there are no long run costs of the policy (because once the transition is over, creating bodies will again be processing, and places of deposit will be receiving, one year's worth of data per year).

The breakdown of net cost by department responsible for the bodies concerned is calculated as follows:

**Table 2: Breakdown of (discounted) costs and benefits by department (based on best estimate)**

	Additional metres of records to be processed (A)	Proportion of holding by department (B)	Cost over ten years (C) (£ million)	Benefits over 10 years (D) (£ million)	Net cost over 10 years (E) (£ million)	Net cost per annum (F) (£ million)	Additional new burdens over 10 years (G)
Ministry of Justice (HM Courts and Tribunals Service, National Offender Management Service)	29,340	39.62%	£6.97	£0.32	£6.65	£0.66	£7.1
DEFRA (Forestry Commission, Natural England, Environment Agency)	3,544	4.79%	£0.78	£0.11	£0.67	£0.07	-
DfT (Maritime and Coastguard Agency)	2,250	3.04%	£0.50	£0.09	£0.41	£0.04	-
DCLG (Homes and Communities Agency)	2,256	3.05%	£0.50	£0.05	£0.45	£0.04	-
DH, Welsh Government (NHS bodies in E&W)	36,667	49.51%	£8.07	£3.11	£4.96	£0.49	-
<b>Total</b>	<b>74,057</b>		<b>£16.82</b>	<b>£3.68</b>	<b>£13.14</b>	<b>£1.30</b>	<b>£7.1</b>
<b>Total net cost (E+G)</b>	<b>£20.2 million</b>						

The costs specifically relating to Welsh organisations are specified separately in Appendix C, but are included in the table above.

## 5.2 New burdens for local government

5.2.1 The National Archives has conducted a new burdens assessment to understand what costs will be created for or transferred to local government, using two key sources of data. Firstly, a survey conducted in January 2013 asked all local authority places of deposit whether they currently generated revenue from the management of records belonging to public records bodies between 20 and 30 years old, and the level of any such revenue<sup>3</sup>.

5.2.2 Secondly, The National Archives holds existing data based on an annual survey of places of deposit, and was able to estimate the volume of records likely to be transferred based on the previous ten years' worth of activity. The volume of records will vary between years for individual local authorities; however given that the majority of material remains in paper format, the assumption is that the types and volumes of records for the next twenty years will be much like the records for the last ten.

5.2.3 On this basis, the total cost to the 89 local authority places of deposit affected by the transition is estimated at £6.6 million over ten years. It will be necessary to accelerate record selection from local creating bodies, review resources and business processes and build transfer plans and agreements with The National Archives and local places of deposit.

5.2.4 In addition to these costs for local authority places of deposit, the additional costs incurred by Coroners Courts as creating bodies will represent a new burden, since these courts are provided by local authorities. The total cost to Coroners Courts in England is estimated as £505,000 and to Coroners Courts in Wales as £40,000, in both cases spread over the ten years of the transition period.

## 6. Monetised benefits of transition:

6.1. Over the ten years of transition, savings should be realised by the creating bodies through the freeing up of paper storage capacity. In the calculation of monetised benefits, account is taken only of the proportion of records for which a payment is currently made to an external storage contractor; some creating bodies may be able to realise further savings by releasing space on their own premises. This is therefore likely to be an underestimate.

6.2. The figures are based on data supplied about costs and volumes of material in external storage by creating bodies. Only some organisations were able to provide this information, and the available data has been extrapolated to provide an estimate for all creating bodies. On this basis, storage savings 2015-25 are estimated to amount to £3.7m. There will be continuing benefit in future years, but only benefits occurring up to 2025 have been included in the calculations. See **Appendix 1: Table 3** for further detail.

**Table 3: Anticipated Storage Savings**

Year	Transferring under 30 years	Transferring under 20 years	% of total storage cost for material 1985-2005 saved	Annual cash saving	Discount Rate	Discounted saving
2014	1984	1984	0%	£0		£0
2015	1985	1985 & 1986	5%	-£74,000	0.965	-£71,000
2016	1986	1987 & 1988	15%	-£147,000	0.931	-£137,000
2017	1987	1989 & 1990	25%	-£221,000	0.899	-£199,000
2018	1988	1991 & 1992	35%	-£295,000	0.867	-£256,000
2019	1989	1993 & 1994	45%	-£369,000	0.837	-£309,000
2020	1990	1995 & 1996	55%	-£442,000	0.808	-£357,000

<sup>3</sup> The response rate to this was 56.2%. Of 89 bodies, 50 responded to the survey

2021	1991	1997 & 1998	65%	-£516,000	0.779	-£402,000
2022	1992	1999 & 2000	75%	-£590,000	0.752	-£444,000
2023	1993	2001 & 2002	85%	-£664,000	0.726	-£481,000
2024	1994	2003 & 2004	95%	-£737,000	0.700	-£516,000
2025	1995	2005	100%	-£811,000	0.676	-£548,000
Total				-£4,866,000		-£3,720,000

## 7. Non-monetised benefits of transition

- 7.1 The reduction in the volume of records stored by creating bodies will have a continuing financial benefit beyond the transition period. The extent of this will vary from organisation to organisation, depending on the date at which their records begin to shift noticeably from paper to digital form and the timing of realisable storage savings reducing space occupancy. By 2025, only records dating from 2006 and later would be in store, and the proportion held in paper form is expected to decrease gradually after that in most organisations, leading to an attenuation of the annual storage saving.
- 7.2 In addition to the realisable savings on existing storage contracts for records which are set out in **Tables 2 and 3**, some creating bodies may be able to realise further savings depending on their local circumstances. Many courts, most prisons and some NHS bodies hold all their records on-site at present. If the transition to a 20-year rule reduces the space required for such storage, it may be possible for these bodies to give up or repurpose space, leading to reduced premises costs or increased space-productivity. Where services are being relocated it may also enable them to be moved to smaller premises with comparable benefits.
- 7.3 The number of public records of historical value which are transferred to local places of deposit will be increased and, where appropriate, made accessible to the public earlier than at present.
- 7.4 There will be improved transparency and accessibility benefits at local level, and greater local availability of records.
- 7.5 The introduction of improved selection criteria and a standardised approach to preparation and cataloguing of records before transfer will help to reduce the unit cost of processing records.
- 7.6 The National Archives will streamline processes for record transfers to local places of deposit, improve and update guidance for selection and transfer and ensuring appropriate support is offered to creating bodies so that they can process additional records. The National Archives will provide central monitoring and support for transition through Departmental statistical returns accounting for arm's length bodies, ensuring transparency and more consistent performance of statutory responsibilities under the Public Records Act. The costs of this supervision of the system are included in the costs set out in Table 2 above.
- 7.7 A transitional approach similar to that adopted for records transferring to The National Archives will minimise business disruption and risk to transferring and receiving organisations.
- 7.8 After the end of the transition process, there will be opportunities to release staff resources from paper records management, as much lower volumes of paper records will remain in local creating bodies after 2025.

## 8. Risks and Assumptions

- 8.1 The calculations of data volumes, costs and benefits used in this Impact Assessment are based on information collected from surveys of the classes of creating body responsible for generating the records during 2013, and from some follow-up work to explore issues that emerged during the data analysis. Survey responses were received from between 17% and 45% of organisations in different categories, and not all respondents were able to supply accurate figures or indeed to answer all the questions. The resulting data represents, however, the best available to enable conclusions about the whole population of organisations to be drawn, and has been extrapolated



to provide estimates of data volumes, costs and benefits for all the organisations generating public records of local interest.

- 8.2 The volume of records held by organisations for the whole period 1984-2005 has been assumed to be evenly distributed across the years. Experience suggests this will be broadly the case, although there may be local variations caused by factors such as changes in record-keeping practice (which may alter the format and extent of records), past accidental losses of data (e.g. by fire or flood), or local circumstances (e.g. the closure of a hospital or court) which make accelerated transfer of records appropriate. These variations are not expected to be sufficiently substantial to affect the broad picture of costs and benefits provided above.