

EXPLANATORY MEMORANDUM TO
THE PUBLIC RECORDS (TRANSFER TO THE PUBLIC RECORD OFFICE)
(TRANSITIONAL AND SAVING PROVISIONS) ORDER 2014

2014 No. 3249

1. This explanatory memorandum has been prepared by The National Archives and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

2. **Purpose of the instrument**

2.1 This Order provides for transitional and saving arrangements for changes to the Public Records Act 1958 (“the 1958 Act”). These have been introduced to reduce the date (from 30 years to 20 years after their creation) by which certain public records selected for permanent preservation must be transferred to The National Archives or other place of deposit appointed by the Lord Chancellor.

These provisions were commenced for certain records with effect from 1st January 2013, subject to transitional arrangements applying for a ten year period starting with that date. The explanatory memorandum forms the second part of this Annex. This Order sets out separate transitional arrangements that will apply to the commencement of the provisions for all remaining records, which will take effect from 1st January 2015 by virtue of the Constitutional Reform and Governance Act 2010 (Commencement No. 9) Order 2014.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The previous commencement was highlighted by the House of Lords Secondary Legislation Scrutiny Committee as an “instrument of interest” in its Twentieth Report of December 2012, albeit for its content rather than legal or technical matters.

4. **Legislative Context**

4.1 Section 3(4) of the 1958 Act provides that public records selected for permanent preservation by the person responsible for them are to be transferred by that person to the Public Record Office (which has operated as part of The National Archives since 2003) or other place of deposit authorised by the Lord Chancellor no later than 30 years following the date of their creation.

4.2 Section 45(1)(a) of the Constitutional Reform and Governance Act 2010 amends section 3(4) to reduce the maximum transfer period in the Public Records Act 1958 for public records to be archived from 30 to 20 years. Section 45(1)(b) of the 2010 Act inserts a new section 3(4A) into the 1958 Act to provide that for a period of 10 years

beginning with the commencement of section 45 of the 2010 Act the new 20 year deadline for transfer takes effect subject to any transitional, transitory or saving provision made by Order. Sections 45(2) and (3) of the 2010 Act provide powers for the Lord Chancellor to make such provision by Order.

4.3 Section 45(1)(a) was commenced in part from 1st January 2013 by the Constitutional Reform and Governance Act 2010 (Commencement No. 7) Order 2012, SI 2012/3001. For the purposes of section 3(4A), transitional arrangements for a 10 year were put into place by the Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012, SI 2012/3028.

4.4 Certain specified record categories were expressly carved out from that commencement and remained subject for the time being to a continuing obligation to transfer records 30 years after their creation. These were those records that are ordinarily transferred to places of deposit appointed for the purpose under section 4 of the 1958 Act and maintained by local authorities.

4.5 The Constitutional Reform and Governance Act 2010 (Commencement No. 9) Order 2014 will now bring into force section 45(1)(a) and, hence, the 20 year deadline, for all remaining purposes from 1st January 2015. This will apply the new arrangements to the records that were previously carved out. In tandem this Order puts in a 10 year transitional period for those records which will start to run from that date. This will phase in implementation and require two years' worth of records to be prepared and transferred per annum until all records are transferred in line with the new 20 year rule.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Justice has made the following statement regarding Human Rights:

In my view the provisions of the Public Records (Transfer to the Public Record Office) (Transitional and Savings Provisions) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1 Following an independent review chaired by Paul Dacre in 2007-09 recommending a reduction in the timing of transfer of records of historical importance to the Public Record Office (operating as part of The National Archives since 2003), the Constitutional Reform and Governance Act 2010 section 45 enacted a change from 30 to 20 years after their creation. Section 45 made the change in section 3 of the Public Records Act 1958 and section 46 the equivalent change to s.61 of the Freedom of

Information Act 2000. Both provisions provided an Order-making power under which transitional arrangements phasing in the new rule could be put in place, to last for a maximum of 10 years from commencement of the new rules. Whilst these changes were un-commenced at the time of the 2010 general election, in January 2011 the Government committed itself to making them as part of its transparency policy.

7.2 The changes were brought into force in part from 1st January 2013 in respect of records ordinarily transferred to the Public Record Office (primarily records of central government). As part of those arrangements, a 10 year transition was put into place in respect of records affected by the change to facilitate implementation by phasing it over that period. Two years' worth of records rather than one were required to be prepared and transferred for each of the subsequent 10 years until a 20 year rule was reached.

7.3 Records of local interest were not included in the first stage of commencement and continued to be subject to the 30 year rule. This was to enable further work to be done on the impact of this part of the policy change on the local archives which usually receive such records. That has since been completed. In September 2014, the Home Affairs Committee of the Cabinet gave clearance for the present changes to be implemented on the basis that commencing the changes for all remaining records (i.e. those of local interest) did not involve unacceptable burdens for local archives.

7.4 Accordingly, the present instrument relates to the final commencement of the Public Records Act 1958 change in section 45 and puts into place a separate 10 year transition for those records newly subject to the 20 year arrangements. Again the principal aim is to phase in implementation and require two years' worth of records to be prepared and transferred per annum. At the end of this transition, implementation of the two will be completely synchronised with one another and all public records will be transferred at the 20 year point. As a result a 20 year rule will have been implemented across the board for all records by the end of 2024.

7.5 Several of the record categories affected by the new arrangements contain significant amounts of personal data (i.e. data concerning living, identifiable individuals), especially magistrates' court and some NHS records. A review of the sensitivity of each record is completed by the authority responsible for the record before it is transferred to an archive and before the archive takes a decision on whether to make that record 'open' and so routinely accessible in its facilities or whether further protective measures are required. This process ensures that personal data that should not be made accessible to the public is properly protected.

8. Consultation outcome

8.1 The independent Dacre Review (2007-09) consulted widely and considered evidence presented to it by government departments, historians, members of the public and others. In preparation for the present change, public bodies holding the records and local authority archives receiving them have had extensive briefing and contact with National Archives and their own Cabinet departments accurately to assess the impact and

prepare for the change. The National Archives has also run a contact group comprising representatives of the Archives and Records Association *Chief Archivists in Local Government Group*, the Welsh Government and the managers of selected places of deposit.

9. Guidance

9.1 The Orders make specific express provision about which records fall within the 2012 and 2014 arrangements. Any specific questions about which set of arrangements apply to a particular record will be resolved under the guidance and supervision of The National Archives, with the policy intention of public transparency in mind.

9.2 Further guidance is in preparation for hosting on The National Archives' website to clarify the preparation standards for historical records and the roles and responsibilities of both holding organisations and receiving archives.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is £20.2m over 10 years.

10.3 An Impact Assessment is attached to this memorandum and is published at <http://www.nationalarchives.gov.uk/archives-sector/20-year-rule-and-records-of-local-interest.htm>.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 A post-implementation review will be conducted three years after the beginning of transition.

13. Contact

Malcolm Todd at The National Archives Tel: 020 8392 5208 or email: malcolm.todd@nationalarchives.gsi.gov.uk can answer any queries regarding the instrument.