

**Title:****Introduction of the Twenty Year Rule**

IA No: MOJ182

**Lead department or agency:**

Ministry of Justice (MoJ)

**Other departments or agencies:**

The National Archives

**Impact Assessment (IA)**

Date: 28/11/2012

Stage: Enactment

Source of intervention: Domestic

Type of measure: Secondary legislation

**Contact for enquiries:**

informationrights@justice.gsi.gov.uk

**Summary: Intervention and Options****Cost of Preferred (or more likely) Option**

| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, One-Out? | Measure qualifies as One-Out? |
|-------------------------|----------------------------|--|------------------------------|-------------------------------|
| -£31m                   | £0                         | £0   | N/A                          | N/A                           |

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

The present 30-year rule governs the point at which public records are usually transferred to The National Archives (TNA) or other places of deposit and generally made available for public inspection through statutory mechanisms in the Public Records Act 1958 (PRA) and Freedom of Information Act 2000 (FOIA). The Constitutional Reform and Governance Act 2010 (CRAGA) provided for the replacement of the 30-year rule with a 20-year rule and reduction in the lifespan of certain FOIA exemptions. In January 2011 the Government announced its intention to commence these provisions from 2013.

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

To commence amendments to both the PRA and the FOIA to increase openness and transparency in the conduct of public affairs by making historical information available sooner where it is no longer sensitive. The commencement of these CRAGA provisions and related transitional and saving provisions forms a key part of the Government's Transparency Agenda, which also includes the extension of FOIA to additional bodies and increased proactive openness to aid accountability, public understanding, and economic growth. However this change is a substantial undertaking which must be implemented in a cost effective way proportionate to the benefits it will bring.

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

Option 0: Do nothing. Maintain the current 30-year rule and keep CRAGA provisions under review.

Option 1: Commencement of a 20-year rule for records ordinarily transferred to TNA (mainly by central Government departments) and parallel reduction in the lifespan of FOIA exemptions for all public authorities, phased in over 10 years.

If Option 1 is adopted, we intend, subject to the outcome of further work on the cost of implementation, to commence from 2015 a 10 year transitional period for public records transferred to local authority places of deposit. Further impact assessments will be developed.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date:** January 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.                       | Micro<br>N/A | < 20<br>N/A | Small<br>N/A     | Medium<br>N/A | Large<br>N/A |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) | Traded:<br>0 |             | Non-traded:<br>0 |               |              |

*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:

Tom McNally

Date: 29/11/2012

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

|                      |                   |                      |                                       |            |                     |
|----------------------|-------------------|----------------------|---------------------------------------|------------|---------------------|
| Price Base Year 2011 | PV Base Year 2012 | Time Period Years 11 | Net Benefit (Present Value (PV)) (£m) |            |                     |
|                      |                   |                      | Low: -£29                             | High: -£32 | Best Estimate: -£31 |

| COSTS (£m)    | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low           | £34m                                    | N/A  | £29m                       |
| High          | £38m                                    | N/A  | £32m                       |
| Best Estimate | £36m                                    | N/A  | £31m                       |

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

There will be increased reviewing costs for central government departments and agencies transferring records to TNA. These are estimated at £26m - £30m over a ten year transitional period starting in 2013 with one preparatory year in 2012. TNA will also incur costs of £4m through the transitional period as a result the additional volumes of records being transferred. In addition, specialist places of deposit, including organisations that act as their own archive and collecting institutions, will incur total costs of £3.5m.

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

Information held in Electronic Document Records Management systems ('e-DRM' - i.e. digital records) and other digital environments will need to be considered for review and disclosure at an earlier point under a new rule. Additional storage costs to places of deposit have not been quantified.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low           | N/A                                     | N/A  | N/A                           |
| High          | N/A                                     | N/A  | N/A                           |
| Best Estimate | N/A                                     | N/A  | N/A                           |

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

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

The 20-year rule and reduction in exemptions will make historical information available sooner, enhancing transparency and promoting understanding of the machinery of government.

Government departments will have 10 years fewer record storage and management costs for paper records and digital information if records have to be destroyed or transferred by 20 rather than 30 years.

#### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The estimates presented are based on the costs arising from the management of paper records only, not digital records. They are also based on an assessment of the costs of those bodies transferring around 90% of records received by TNA, scaled up to provide an estimate of total cost but incorporating sufficient margin for error. The removal of certain exemptions under the FOIA will not significantly increase costs for those bodies subject to that Act.

### BUSINESS ASSESSMENT (Option 1)

|   |              |         |                   |                      |
|---|--------------|---------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: N/A |              |         | In scope of OIOO? | Measure qualifies as |
| Costs: £0   | Benefits: £0 | Net: £0 | N/A               | N/A                  |

# Evidence Base (for summary sheets) – Notes

## References

| No. | Legislation or publication   |
|-----|--|
| 1   | Public Records Act 1958 ( <a href="http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51">http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51</a> )  |
| 2   | Freedom of Information Act 2000 ( <a href="http://www.legislation.gov.uk/ukpga/2000/36/contents">http://www.legislation.gov.uk/ukpga/2000/36/contents</a> )  |
| 3   | Constitutional Reform and Governance Act 2010 ( <a href="http://www.legislation.gov.uk/ukpga/2010/25/contents">http://www.legislation.gov.uk/ukpga/2010/25/contents</a> )  |
| 4   | Impact Assessment for public records and freedom of information provisions in the Constitutional Reform and Governance Act 2010 ( <a href="http://www.legislation.gov.uk/ukia/2010/112">http://www.legislation.gov.uk/ukia/2010/112</a> )                            |
| 5   | <i>Review of the 30 Year Rule</i> (2009) ( <a href="http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf">http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf</a> )   |
| 6   | <i>Government Response to the 30 Year Rule Review</i> (2010) ( <a href="http://www.official-documents.gov.uk/document/cm78/7822/7822.pdf">http://www.official-documents.gov.uk/document/cm78/7822/7822.pdf</a> )   |
| 7   | MoJ announcement relating to the 20-year rule and other freedom of information measures (2011) <a href="http://www.justice.gov.uk/news/press-releases/moj/press-release-070111a">http://www.justice.gov.uk/news/press-releases/moj/press-release-070111a</a>         |
| 8   | Written Ministerial Statement on 20-year rule (2012) ( <a href="http://www.parliament.uk/documents/commons-vote-office/July_2012/13-07-12/16-PublicRecords.pdf">http://www.parliament.uk/documents/commons-vote-office/July_2012/13-07-12/16-PublicRecords.pdf</a> ) |

## Key Figures

Table 1 gives the key costs of the reforms shown over the 11 year transition period. The costs are shown for each year in nominal values, constant 2011 prices and present value terms. The main figures used throughout this Impact Assessment are in constant 2011 prices; on this basis the reforms are expected to have a total cost of between £34 million and £38 million.

**Table 1: Annual profile of monetised costs\* - (£m) constant prices (as assessed in 2011)**

|                      |      | Y0<br>2012 | Y1<br>2013 | Y2<br>2014 | Y3<br>2015 | Y4<br>2016 | Y5<br>2017 | Y6<br>2018 | Y7<br>2019 | Y8<br>2020 | Y9<br>2021 | Y10<br>2022 | Total |
|----------------------|------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------|
| Nominal Values       | Low  | £4         | £3         | £3         | £3         | £4         | £4         | £3         | £3         | £4         | £4         | £4          | £39   |
|                      | High | £4         | £4         | £3         | £4         | £4         | £4         | £4         | £4         | £4         | £4         | £4          | £44   |
| Constant 2011 Prices | Low  | £4         | £3         | £3         | £3         | £3         | £3         | £3         | £3         | £3         | £3         | £3          | £34   |
|                      | High | £4         | £4         | £3         | £3         | £4         | £4         | £3         | £3         | £3         | £3         | £3          | £38   |
| Net Present Value    | Low  | £4         | £3         | £3         | £3         | £3         | £3         | £2         | £2         | £2         | £2         | £2          | £29   |
|                      | High | £4         | £4         | £3         | £3         | £3         | £3         | £3         | £2         | £2         | £2         | £2          | £32   |

Note: Real cost calculated using Treasury's GDP deflator, costs have been rounded the nearest £million.

Table 2 gives the split of the total costs for the different organisations affected by the reforms. The majority of the transition costs are incurred by the main bodies transferring records to TNA, totalling £23 million over the transition period. The cost to the remaining 200 bodies transferring approximately 11% of TNA's holdings has been estimated on the basis of those to be incurred by the 21 bodies surveyed. There are also costs to The National Archives (TNA) and specialist places of deposit.

**Table 2: Total Costs split by organisation; £million; 2011 prices**

| Organisation  | Estimated cost impact (£m) LOW | Estimated cost impact (£m) HIGH |
|---|--------------------------------|---------------------------------|
| Cost to bodies transferring 89% records to TNA                        | 23                             | 23                              |
| Estimated cost to remaining bodies transferring 11% of records to TNA | 3                              | 7                               |

|  |           |           |
|--|-----------|-----------|
| Specialist Places of Deposit (including organisations that act as their own archive and collecting institutions) | 3.5       | 3.5       |
| TNA  | 4         | 4         |
| <b>Total</b>   | <b>34</b> | <b>38</b> |

*Note: totals may not sum due to rounding.*

The cost to the main central government departments and agencies transferring records to the TNA (£23million) has been assessed on the basis of a survey of the 21 bodies transferring the largest quantities of records to TNA (Annex 3). This survey was carried out by the TNA and departments provided figures in constant 2011 prices. However, costs throughout the Impact Assessment are rounded to the nearest £1 million to account for any differences in methodology that departments may have used to assess their costs.

# Evidence Base (for summary sheets)

## 1. Introduction

- 1.1 This Impact Assessment examines the impact of the gradual commencement of transparency provisions in the Constitutional Reform and Governance Act 2010 (CRAGA) through the Constitutional Reform and Governance Act 2010 (Commencement No. 7) Order 2012, the Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012 and the Freedom of Information (Definition of Historical Records) (Transitional and Saving Provisions) Order 2012 (the “orders”).
- 1.2 These orders have the effect of reducing from 30 to 20 years over a ten year period:
  - the point at which records selected for permanent preservation are transferred (mainly by central Government departments) to TNA and a limited number of specialist places of deposit under the Public Records Act 1958 (PRA) from 2013; and
  - the maximum duration of a number of exemptions in the Freedom of Information Act 2000 (FOIA) for all public authorities from 1 January 2014.
- 1.3 Although the CRAGA also provides for a gradual reduction from 30 to 20 years in the point at which other records subject to the PRA are transferred to all places of deposit (including local authority places of deposit) the orders will preserve the current 30 year point of transfer for records ordinarily deposited in local places of deposit. Therefore this Impact Assessment does not examine the effect of such a change. While the Government currently intends also to reduce the point at which such records are transferred at a future date, this is subject to the outcome of further work to assess the impact of such a change. An additional Impact Assessment will be published before any future orders are made to give effect to this intended further change.
- 1.4 The reduction in the point at which historical records are transferred is commonly known as the transition from the current 30-year rule to a 20-year rule.

## Background

- 1.5 Under the PRA records selected for permanent preservation must be transferred to TNA or another “place of deposit” appointed by the Lord Chancellor not later than 30 years after their creation. Additionally, under the FOIA, a range of exemptions protecting information cease to be engaged at the end of a period of 30 years following the year in which it was created.
- 1.6 In October 2007 the previous Government appointed an independent review team to look at the operation of the 30-year rule, and to make recommendations for its possible reform. The main recommendation in its report, published in January 2009, was that the 30-year rule should be reduced to 15 years. In its response, published on 25 February 2010, the previous Government agreed in principle that the 30-year rule should be reduced, but argued that it should be reduced to 20 rather than 15 years on the basis that this struck the right balance between openness, affordability, and the protection of sensitive information. The review team itself had expressed the view that “neither the case for a 15-year rule nor the case for a 20-year rule is beyond argument” and that “it must be a matter of judgement how to strike the balance”.
- 1.7 In addition to changes to the PRA, the review team recommended that FOIA should also be amended to help give effect to a reduction in the 30-year rule. The previous Government announced, in its published response, that it would reduce the maximum duration of a number of exemptions in FOIA from 30 to 20 years unless likely sensitivities meant that this would be inappropriate.
- 1.8 The intentions announced in the previous Government’s response to the review were provided for in sections 45 and 46 of, and Schedule 7 to, the CRAGA, which gained Royal Assent on 8 April 2010. These provided for the gradual reduction of the 30-year rule with a 20-year rule over a ten year transitional period; and for a similar reduction in the maximum duration of the following FOIA exemptions<sup>1</sup>:-

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<sup>1</sup> CRAGA also amended section 37 of the FOIA, the exemption for information relating to communications with the Royal Family and Honours, to make it in part an absolute exemption and to alter its maximum duration. However, these changes were commenced in January 2011 through the Constitutional Reform and Governance Act 2010 (Commencement No. 4 and Saving Provision) Order 2011. That change is therefore not relevant to the orders which are the subject of this Impact Assessment.

- section 30: investigations and proceedings conducted by public authorities;
- section 32: court records;
- section 33: audit functions;
- section 35: formulation and development of government policy;
- section 36: prejudice to effective conduct of public affairs (except in relation to Northern Ireland<sup>2</sup>); and
- section 42: legal professional privilege.

1.9 In January 2011 the current Government announced a package of measures to support Coalition Agreement commitments on transparency. This included the intention to commence parts of the CRAGA which provide for a 20-year rule and the parallel reduction in the maximum duration of the exemptions listed at paragraph 1.8. On 13 July 2012, the Minister of State for Justice, Lord McNally, issued a Written Ministerial Statement to provide further detail on how this would be achieved. He announced that a first phase in the transition to a 20-year rule, affecting primarily central Government records transferred to TNA (and a limited number of specialist places of deposit), would commence from 2013 together with a parallel reduction in the lifespan of the above exemptions in FOIA for all public authorities from 1 January 2014. He also announced the intention, subject to further assessments of the cost of implementation, to introduce a second phase of 20-year rule implementation for records transferred to local authority places of deposit, from 2015.

1.10 The Orders to which this Impact Assessment relates will introduce the first phase of the move to a 20-year rule and the reduction in the lifespan of the above FOIA exemptions for all public authorities.

### Problem under consideration

1.11 In deciding when and how to commence the relevant CRAGA provisions the Government's overriding goal has been to ensure that transparency is increased by making historical information available sooner, but that this is achieved in as manageable and cost effective way as possible.

1.12 The move to a 20-year rule is a very significant undertaking. Over 250 central government departments and agencies and over 1000 local record transferring bodies (e.g. magistrates and coroners courts, NHS organisations, and local prisons transfer records to TNA or other places of deposit, In addition almost 70 institutions are places of deposit for their own records or specialist collecting institutions appointed to receive government records (e.g. some museums, such as the Imperial War Museum); and there are 116 local authority archives across England and Wales. This change will affect an estimated 4.4 million paper records in Central Government, of which approximately 3.3 million (75%) are eligible for transfer to TNA.

1.13 However, only a fraction of these affected records will ultimately be deemed to be of lasting historical value and be transferred to TNA or other place of deposit. Government has transferred an average of 45,000 records for each year of the 1970s, and it is anticipated that at least this number of records will be transferred for each year throughout the 1980s and 1990s. This means that by the end of the transition to a 20-year rule TNA alone will hold an estimated 900,000 (approximately 10km) of records from 1982-2002, of which it has already received approximately 200,000 under existing arrangements. Figure 1 shows that the majority of records preserved at TNA are from Ministerial departments.

**Figure 1: Sources of records preserved at TNA**

| Type of Organisation           | Proportion of Records |
|--------------------------------|-----------------------|
| Ministerial departments        | 68%                   |
| Non-ministerial departments    | 10%                   |
| Executive Agencies             | 5%                    |
| Non-departmental public bodies | 5%                    |
| Other bodies                   | 12%                   |

<sup>2</sup> It was announced that section 36 would cease to have effect after 20 years except where the information would or would be likely to prejudice the effective conduct of public affairs in Northern Ireland or the work of the Executive Committee of the Northern Ireland Assembly, in which case the exemption would continue to apply for up to 30 years.

- 1.14 Transferring bodies work with TNA to determine which records are worthy of permanent preservation. In addition, it is necessary for transferring bodies to assess whether records selected for preservation can be made available on transfer or whether they contain sensitive information which needs to be withheld for a longer period. The extent to which it is necessary to redact information from such records, or withhold the entire record, varies from department to department; but overall, 95% of preserved 1970s files are available to the public (although some will have been partially redacted).
- 1.15 The public records process therefore has several stages. First, records are selected for preservation or destroyed. Second, those that are selected for preservation are subject to a sensitivity review after which information may be redacted from the record. Third, records are cleaned, repaired, and catalogued prior to finally being transferred and made available at TNA. In addition, a relatively small number of selected records are retained by departments for operational or security reasons. Any decision to redact information from selected records before transfer or to transfer closed must be approved by the Lord Chancellor, following recommendations from the Advisory Council on National Records and Archives. The Lord Chancellor must approve any proposal to retain records within departments. In order for that approval to be given, the person responsible for the records in question must inform him of the relevant facts and demonstrate that an administrative, or other special reason, exists to justify retention.
- 1.16 The financial impact of this change will be significant during the transitional period, and approximately double the normal cost given that two years worth of records will be transferred every year as opposed to the usual one. The independent review team estimated that the cost of implementing its 15-year rule would be £75m. The Impact Assessment published during the passage of the CRAGA estimated the cost of full implementation at £50-80m, with £40-60m of the cost falling to those bodies affected by the phase of commencement covered by the orders to which this Impact Assessment relates (mainly central government, including TNA). Since that Impact Assessment was published in 2010, further work to assess the cost of change in more detail and to streamline the selection process has resulted in the estimated cost being revised downwards. It is now estimated that the total cost of full implementation, if taken forward, would be £49m-£63m. However the cost of implementation to the extent facilitated by the current orders is estimated at £34m-£38m over the transitional period. Despite the reduction in estimated cost, this remains a very significant undertaking even when spread over ten years; although it should also be noted that this is not an additional burden but one which is being brought forward by transition, except in the case of TNA because of the ongoing additional provision of storage and access.
- 1.17 The introduction of a 20-year rule would potentially be undermined if it was still possible to rely on all exemptions in FOIA (subject, where relevant, to the public interest test) for up to 30 years. It was for this reason that CRAGA also provided for the reduction in the maximum duration of certain FOIA exemptions to 20 years, and that the orders will commence this change in parallel with the reduction of the 30-year rule for records transferred to TNA.
- 1.18 The implications of this change will be minor for public authorities. With a few exceptions (e.g. Cabinet minutes) it is unusual to rely on the affected exemptions to withhold information over 20 years old, and consequently it will make little practical difference to the handling of most FOI requests.
- 1.19 Scotland and Northern Ireland have their own public records legislation and are unaffected by the commencement of the PRA-related changes in the CRAGA. The FOIA changes will apply more widely, but not to Scottish public authorities subject to the Freedom of Information (Scotland) Act 2002. Scotland's FOI regime is moving to a 15 year rule.

### **Affected Stakeholder Groups, Organisations and Sectors**

- 1.20 The main impact of the orders will be on TNA and those central government departments and agencies transferring historical records to it as the transition from a 30-year rule to a 20-year rule proceeds. Specialist Places of Deposit holding records subject to the transition will also be affected. While transition will impose costs on these bodies, it will also bring positive benefits to society in terms of greater transparency and accountability.

1.21 All public authorities subject to FOIA will also be affected by the parallel reduction in the lifespan of certain exemptions, but the impact will be negligible in the vast majority of cases given that it is unusual to withhold most categories of information under the affected exemptions after 20 years. The impact is likely to be greater in central government where, for example, information relating to Cabinet meetings is usually withheld for 30 years.

1.22 Users of TNA (and other affected archives) and FOIA, including private citizens, journalists, and researchers will be able to access historical records sooner than is currently the case.

## 2. Costs and benefits

2.1 This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of the option are compared to the "do-nothing" option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

2.2 In conducting the cost benefit analysis, we have considered the effects of each policy option over 11 years – ten years of increased data transfer and a one year preparatory period. In order to estimate costs over this period we have used the 3.5% social discount rate (taken from the Treasury's Green Book<sup>3</sup>).

2.3 The underlying data comes from a TNA commissioned report into the 20 Year Rule. All figures are presented in constant 2011 prices, although figures have been rounded to the nearest £1 million to account for uncertainty in the way costs have been assessed by the individual government departments transferring records to TNA.

### Option 0: "Do Nothing"/Base Case

2.4 This would retain the current position where historical records are transferred 30 years after creation, and the maximum duration of the affected FOIA exemptions would also remain 30 years.

2.5 The do-nothing scenario carries no presently identifiable additional costs or benefits, but would fail to improve transparency and accountability and run counter to the Government's stated intention to commence the relevant CRA/GA provisions. The costs imposed by the current 30 year rule would be maintained. It would also be necessary to reorganise or introduce new records management procedures to deal with the management and archiving of digital records, although in slower time than required during transition to a 20-year rule.

2.6 The cost of the base case is zero.

### Option 1: Transitional commencement of a 20-year rule for records ordinarily transferred to TNA (mainly central Government departmental records) and reduction in the lifespan of FOIA exemptions for all public authorities

Description:

2.7 This option introduces, through the orders to which this Impact Assessment relates, a reduction in the point at which records ordinarily transferred to TNA (mainly central Government departmental records) are made available at TNA and others at specialist places of deposit from 30 to 20 years over a ten year transitional period starting in 2013 as set out in figure 2. It does not reduce the time at which other historical records are transferred to local authority places of deposit.

**Figure 2: Timetable for reduction in the 30-year rule**

| Year of Creation | Year of Transfer |
|------------------|------------------|
| 1984             | 2013             |
| 1985             | 2014             |
| 1986             | 2014             |
| 1987             | 2015             |
| 1988             | 2015             |
| 1989             | 2016             |
| 1990             | 2016             |

<sup>3</sup> HM Treasury's Green Book, Appraisal and Evaluation in Central Government, [http://www.hm-treasury.gov.uk/d/green\\_book\\_complete.pdf](http://www.hm-treasury.gov.uk/d/green_book_complete.pdf)

|      |      |
|------|------|
| 1991 | 2017 |
| 1992 | 2017 |
| 1993 | 2018 |
| 1994 | 2018 |
| 1995 | 2019 |
| 1996 | 2019 |
| 1997 | 2020 |
| 1998 | 2020 |
| 1999 | 2021 |
| 2000 | 2021 |
| 2001 | 2022 |

2.8 This option also reduces from 30 to 20 years the maximum duration of affected FOIA exemptions over a ten year transitional period starting from 1 January 2013, by lowering the point at which information becomes a historical record for the purposes of FOIA as set out in figure 3.

**Figure 3: Timetable for reduction in the maximum duration of FOIA exemptions**

| Year of Creation | Date Record becomes a Historical Record |
|------------------|---|
| 1984             | End of 2013                             |
| 1985             | End of 2014                             |
| 1986             | End of 2014                             |
| 1987             | End of 2015                             |
| 1988             | End of 2015                             |
| 1989             | End of 2016                             |
| 1990             | End of 2016                             |
| 1991             | End of 2017                             |
| 1992             | End of 2017                             |
| 1993             | End of 2018                             |
| 1994             | End of 2018                             |
| 1995             | End of 2019                             |
| 1996             | End of 2019                             |
| 1997             | End of 2020                             |
| 1998             | End of 2020                             |
| 1999             | End of 2021                             |
| 2000             | End of 2021                             |
| 2001             | End of 2022                             |

2.9 The above tables show that a record will not become a historical record for the purposes of FOIA until the end of the year in which they are transferred to TNA. Under FOIA, records only become historical records at the end of the year of transfer.

2.10 There will be a one year preparatory period in 2012-3 in anticipation of increased record transfer.

2.11 Following the conclusion of the transitional period, during which historical records will be transferred to TNA at a rate of two years' worth per annum, the rate of transfer will revert to the current practice of a single year's worth of records being transferred per annum.

**Costs of Option 1**

**Transition costs**

2.12 The total projected cost of this transitional option is £34m-£38m to all bodies affected by it, with a best estimate of £36m. This can be broken down into the cost to central government bodies transferring records to TNA; to Specialist Places of Deposit; and to TNA, as summarised in Figure 4 below.

**Figure 4: Cost to different types of bodies; £million, 2011 prices**

| Organisation                             | Estimated cost impact (£m) LOW | Estimated cost impact (£m) HIGH |
|--|--------------------------------|---------------------------------|
| Central Government (transferring to TNA) | 26                             | 30                              |

|  |           |           |
|--|-----------|-----------|
| Specialist Places of Deposit (including organisations that act as their own archive and collecting institutions) | 3.5       | 3.5       |
| TNA  | 4         | 4         |
| <b>Total</b>   | <b>34</b> | <b>38</b> |

*Note: totals may not sum due to rounding.*

2.13 The year by year breakdown is set out in figure 5 below. Cost variations between individual years exist because of the different number of central government records due to be reviewed in any given year.

**Figure 5: Yearly cost of 20-year rule to affected bodies; £million, 2011 prices**

|                              |      | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | Total |
|------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|-------|
| Bodies Transferring to TNA   | Low  | £3   | £3   | £2   | £2   | £3   | £3   | £2   | £2   | £2   | £2   | £2   | £26   |
|                              | High | £3   | £3   | £3   | £3   | £3   | £3   | £2   | £2   | £2   | £2   | £2   | £30   |
| TNA                          |      | £0.5 | £0.3 | £0.3 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £4    |
| Specialist Places of Deposit |      | £0.4 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £3    |
| Total                        | Low  | £4   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £34   |
|                              | High | £4   | £4   | £3   | £3   | £4   | £4   | £3   | £3   | £3   | £3   | £3   | £38   |

*Note: totals may not sum due to rounding.*

2.14 Costs are already being incurred by affected bodies in preparation for the beginning of the transition from 2013. No additional funding is being provided to public records bodies affected by the transition, and the costs are being met from existing resources.

#### *Costs to central government public records bodies*

2.15 The main impact is on central government departments transferring records to TNA. During the transitional period they will review, and where appropriate select and transfer historical records to TNA at double the normal rate. The total projected additional cost to these bodies is £26m-£30m. It includes the costs of all activities in the public records process, including staff costs.

2.16 This cost estimate of £26m-£30m is based on a survey of 21 government departments who have been the source of approximately 89% of records transferred to TNA since 2000. The costs vary considerably between departments, depending on a number of factors including the volumes of records due to be reviewed, the volumes selected for permanent preservation, and the extent to which detailed sensitivity review and redaction is necessary. For example, in 2011 it was estimated that approximately 300,000 Ministry of Justice (MoJ) records, 40,000 Cabinet Office (CO) records, and 28,000 Department of Health (DH) records are due for review during the transitional period. FCO consider that approximately 340,000 files (including electronic files) will be reviewed. Approximately 35% of CO and 40% of FCO records are selected for preservation at TNA; but only 10% and 5% of MoJ and DH records respectively.

2.17 These variations impact on the projected costs to be incurred by departments, which are also influenced by the sensitivity of the papers and resultant necessary redaction. The records of the FCO, for example, frequently remain sensitive for reasons relating to international relations and national security, for longer than those of some other departments, such as MoJ and DH. Consequently, the projected cost to the latter is considerably more than to the former (in excess of £6m as opposed to approximately £1m). As a result of these variations, the different areas of the public records process will require differing levels of additional investment during transition.

2.18 Figure 6 shows the proportion of the total cost that is anticipated for each of the activities involved in transferring records to TNA under the 20 year rule. The area requiring extra greatest investment will be sensitivity review, accounting for 36% of additional expenditure. This differs from current costs, where the most costly part of the process is appraisal and selection, accounting for 38% of costs in 2011-12.

**Figure 6: Split of additional resource requirement by activity (excluding storage), 20 year rule**

| Activity | Proportion of additional resource requirements |
|----------|--|
|----------|--|

|                             |     |
|-----------------------------|-----|
| Appraisal and selection     | 21% |
| Sensitivity review          | 36% |
| Preparation and cataloguing | 11% |
| Transfer                    | 22% |
| Destruction                 | 10% |

*Source: TNA*

- 2.19 The projected cost of implementation has fallen significantly since 2010, when the cost to central government was estimated at £40-60m. In part, this is due to the more detailed analysis of the impact of transitional commencement that has been carried out since 2010; but also due to TNA's ongoing work with government departments to reduce costs. This work is likely to lead to further, currently unquantifiable, reductions in cost as the transitional period progresses. Particular attention is being paid to developing improved selection criteria, the macro-appraisal of records, streamlined record transfer processes, revised standards for pre-transfer record preservation, and the adoption of a more strategic approach to disposition. TNA is also exploring the potential for shared services to deliver key stages in the public records process.
- 2.20 The cost of implementation will be offset to some extent by reduced storage costs for older records. The Government currently spends £34 million per annum on paper record storage, including storing a large number of paper case files which will not be impacted upon by the 20-year rule. Despite this, the fact that the majority of records caught by the transition will be destroyed earlier than would otherwise have been the case rather than transferred to TNA, will mean that there is some reduction in the cost to Government of record storage.

#### *Costs to Specialist Places of Deposit*

- 2.21 Some records affected by this change are not held at TNA, but at 70 specialist Places of Deposit including organisations that act as their own archive and collecting institutions. This includes, for example, trading funds such as the Met Office, survey organisations like the British Antarctic Survey, and national museums such as the Imperial War Museum. The total cost to such bodies is estimated at £3.5m over the transitional period. Approximately 10% of all public records are kept by specialist Places of Deposit.

#### *Costs to TNA of PRA changes*

- 2.22 The estimated cost of managing the additional throughput of records is £4m, including a preparatory year before transition commences. TNA is already undertaking extensive business change, to ensure that it introduces aforementioned efficiencies to the transfer process to manage this cost. As with other central government departments, TNA will manage this impact within its budget settlement for the current CSR period.
- 2.23 The Lord Chancellor's Advisory Council on National Records and Archives has considered the impact of 20 year rule change to its own workload, and is of the view that a true picture will not be known until applications begin to come through during the first few years of transition. The Council has agreed to continue to review their processes during this period.

#### *Costs to public authorities subject to FOIA*

- 2.24 More than 100,000 public authorities in England, Wales and Northern Ireland are subject to FOIA, ranging from government departments and their agencies, to local government, NHS, universities, maintained schools, and the police. Central records of FOIA requests received across all public authorities are not kept, but central and local government are estimated to have received in excess of 1 million information requests since FOIA came into full effect on 1 January 2005. Numbers have generally increased and in 2011 alone central Government received over 47,000 initial requests costing an estimated £8.5m in staff time alone (and excluding the cost of processing subsequent appeals).
- 2.25 Despite this, it is anticipated that the reduction in the lifespan of affected exemptions will have no significant financial impact on public authorities. It is already unusual for public authorities to

withhold information over 20 years old which falls within the scope of these exemptions, especially outside central government.

- 2.26 Even in central government only certain categories of information within the scope of the affected exemptions are typically withheld for more than 20 years, such as that which would undermine the collective responsibility of Cabinet or legal professional privilege. As the reduction in the lifespan of exemptions is to be made gradually and in parallel with the transition to a 20-year rule information which is no longer exempt should generally either have been transferred to TNA or destroyed with the result that public authorities will no longer have to consider disclosure in response to FOIA requests. However, evidence collated from central government departments in preparation for Post Legislative Scrutiny of FOIA suggests that very few requests are made for information from the period covered by the transition. Out of 431 requests received in a single week in late 2011, none was for information from this period. Where historical information was requested it tended to be older still, and often in relation to matters of personal interest (e.g. genealogical research).

#### *Costs to the ICO*

- 2.27 The ICO regulates compliance with FOIA. There is no reason to expect that the reduction in the duration of some exemptions will lead to a noticeably increased burden on the ICO. It is not anticipated that the ICO will have cause to request additional grant-in-aid funding from MoJ as a result of this change.

#### *Costs to users of historical information*

- 2.28 For those who wish to use the records, the cost impact of records being transferred to TNA earlier will in most cases be zero. Records are free to view at TNA, and it is free to take copies with a reader's own camera, or using digital cameras at TNA which transmit images to the reader's email. Readers can also use TNA's self-service copying facilities and remote copying service for a small fee.
- 2.29 There will be no new costs to public authorities as a result of the reduction in the lifespan of exemptions where information that ceases to be exempt is requested, although public authorities may continue to make charges as provided for under Fees Regulations made under sections 9, 12 and 13 of FOIA. In practice, however, it is rare for public authorities, especially in central government, to exercise their charging rights and there is no reason to think that this situation to change as a result of the reduction in the lifespan of exemptions. The Government response to Post Legislative Scrutiny of FOIA does not propose any new charges for answering FOIA requests.

#### **Post-transition costs**

- 2.30 The transitional period for records transferred to TNA will end in 2022. This will be the last year in which records are transferred at the rate of two years worth per annum. Thereafter the current regime of transferring one year's worth of records to TNA will recommence in 2023, but after 20 rather than the current 30. In addition, from 1 January 2023, the transition in the maximum duration of affected exemptions to 20 years will also be complete.

#### *Ongoing cost of PRA changes*

- 2.31 When transition is complete, the rate of release of public documents will probably be broadly the same as at present. However, the positive effects of work being undertaken by departments and TNA to improve the efficiency of the public records process to reduce the impact of transition will continue to be felt in the longer term. It is therefore likely that departmental review costs may be somewhat lower in real terms than has been the case. Although there is a risk that the increased sensitivity of more recently created documents may require a more careful review process and may therefore result in higher staffing costs, this will be offset by current work to identify and implement preparation and transfer strategies which keep the cost of sensitivity review within reasonable limits.
- 2.32 In terms of access, it is possible that post-implementation there will either be an increase in the numbers of people seeking access to official documents at TNA, given the more recent information available; or that interest will generally remain the same. There is no evidence available to allow a judgement to be made in favour of either outcome at present, but if demand does increase significantly TNA would incur additional costs in making this information available to the public. This cost is unquantifiable at present. It is certainly the case, however, that there is an initial surge of interest in papers when initially transferred. This typically reduces with the passage of time, but

may increase again where records become newsworthy once again or of heightened research interest.

- 2.33 Post-implementation, TNA will hold more information earlier, which will increase its costs. The standards of archival storage provided for historical records at the National Archives are higher than those generally used for storage of records prior to selection in departments (including those provided outsourced contractors) because it requires a stable physical environment and affords a higher standard of care. However, Government will have disposed of approximately 75% of paper records not selected for preservation ten years earlier than would otherwise have been the case resulting in lower overall storage costs across their departments.
- 2.34 Transition will also bring forward the end of mass transfers of paper records and see the earlier transfer of digital records. The impact of this change will be felt most keenly after the end of the transitional period, as the majority of departments do not have significant digital records until 2002 onwards (the main exceptions being FCO, HMT, and DEFRA). Figure 7<sup>4</sup> provides an illustration of the volumes of digital records dating from 1983-2002 held by the 21 departments transferring the largest volumes of records to TNA, which were consulted about the impact and cost of the 20-year rule (See Annex 3).

**Figure 7 – Proportion of departments estimating that they will want to transfer varying numbers of digital records created before 2003**

| Number of Files       | Proportion of surveyed departments <sup>5</sup> |
|-----------------------|---|
| None                  | 55%   |
| A few isolated files  | 23%   |
| Less than 5000 files  | 9%  |
| 5001 – 10000 files    | 0%  |
| More than 10000 files | 14%   |

2.35 However, this is not necessarily as significant a shift as it might be as current operational practice is to encourage digital records to be transferred well in advance of the 30-year point. Digital material is more vulnerable than paper with more risks to its long term survival, and early intervention can be required to ensure that digital records can be appropriately stored and preserved. TNA is undertaking work to ensure that it is able to receive and preserve in accessible formats large quantities of digital records.

2.36 There will be no additional costs to users post-transition.

*Ongoing cost of FOIA changes*

2.37 The FOIA changes will impose no additional costs post-transition.

**Benefits of Option 1**

2.38 The majority of the benefits are non-quantifiable and are summarised below.

**Transitional benefits**

2.39 Transition has clear benefits in making the reduction in the 30-year rule both affordable and manageable. Rather than impose the full cost in a very short period, the average cost across all bodies affected by the change will be at most £4m per annum. Although this is an important consideration, especially in the current financial situation, it is outweighed by practical ones. Given the volumes of records affected by change, it would be entirely impractical to move straight from a

<sup>4</sup> This number is the total provided by the organisations surveyed that represent 90% of record transfers, scaled up to estimate the total number of records held by central government.

<sup>5</sup> The 21 departments surveyed to estimate the cost of the 20 year rule (Annex 3)

30-year to a 20-year rule in one go. A ten year transition will balance increased transparency against impact in an appropriate way.

- 2.40 It is logical to reduce the maximum duration of affected FOIA exemptions in parallel with the move to a 20-year rule; although if that change were being introduced in isolation there would be little benefit in transition, other than to avoid a potential rush of FOIA requests for information that would previously have been withheld until it was 30 years old. However, the majority of information potentially subject to the affected exemptions is not ordinarily withheld beyond 20 years in any event.

## **Ongoing Benefits**

### *Benefits to society*

- 2.41 The reduction in the 30-year rule and parallel reduction in the lifespan of FOIA exemptions commenced by the orders which are the subject of this Impact Assessment will make historical information available sooner. This forms an important part of the Government's commitment to increase openness and transparency in order to enhance accountability, to allow the public to understand better the decisions that affect them, and to promote economic growth. While other work underway, for instance through the Transparency Agenda and extension of FOIA to more bodies, inevitably concentrates on current information, it is also beneficial that older records should be made available as soon as possible. This is of benefit not only to those conducting research for private purposes, but also to those interested in reusing public sector information contained in historical records for commercial purposes, including journalism and publishing, as well as academic research. The demand for access to historical records is clearly demonstrated by the numbers of records accessed by TNA customers: in 2011 it supplied access to over 600,000 records on site and over 126 million records online.
- 2.42 The adoption of a 20-year rule and parallel reduction in the lifespan of exemptions will also help to strike the right balance in ensuring that information is not published while disclosure would be harmful and not in the public interest. Although there will be no requirement to make such information available at TNA until it is 20 years old, it is also worth noting that FOIA exemptions do not preclude its disclosure at an earlier date on request. The affected exemptions do not prohibit disclosure, rather they permit withholding where disclosure would not be in the public interest. Conversely, the reduction in the maximum duration of exemptions facilitated by the CRAGA will not leave information likely to remain sensitive for periods longer than 30 years vulnerable to inappropriate premature disclosure. For example, the maximum duration of the exemptions provided in sections 28 (relations within the United Kingdom) and 43 (commercial interests) will remain at 30 years; while section 40 (personal data) will remain tied to the Data Protection Act 1998 (DPA).

### *Benefits to public records bodies and other public authorities*

- 2.43 Although the costs imposed by the reduction in the 20-year rule are very significant, they will lead to (and to some extent be offset by) reduced record storage costs. By the end of the transitional period approximately double the number of paper records will have been transferred or destroyed than would be under a continued 30-year rule. The increased efficiency and reductions in the cost of the public records process will continue to deliver benefits in the years following transition. In addition, speeding up the process of dealing with the paper record legacy will, by the end of the transition period, free up staff and resources in record management across government to focus on the challenge of managing digital records.
- 2.44 Although this phase of a transition to a 20-year rule will not apply to public records transferred to local places of deposit, the phased approach has added benefits to those transferring such records and the repositories themselves. Not only will later implementation, subject to the further work on the impact of change, allow for a more accurate assessment of the costs involved; but it will also allow full benefit of the efficiencies realising and lessons learnt as a result of the initial phase to be acted upon.
- 2.45 The Justice Committee Post Legislative Scrutiny report on FOIA found it to have been a "significant enhancement to our democracy". Although historical information is, by its very nature, less relevant to current issues etc, its earlier release will nonetheless increase accountability and encourage efficiency by public authorities.

## Key assumptions

- 2.46 The cost estimates are based on a sample of 21 departments (see Annex 3) responsible for around 89% of transfers to TNA. Research has been conducted into the volumes of material involved and cost to those departments. The cost to the 200 bodies which contribute the remaining 11% of TNA's holdings has not been researched directly, and as a result there is a risk that the estimated costs to these bodies may not be representative. To allow for this possibility, the cost estimate for the bodies providing 11% of TNA's holdings has been increased to allow a sufficient margin of error. On the basis that the cost of the public records process for 89% of TNA's records is £23m, it could be inferred that the cost of the process for 11% would be approximately £3million (£26m in total). However to take account of any economies of scale that might be enjoyed by the biggest transferring departments, the maximum projected cost for the remaining 11% of records has been scaled up to allow an appropriate margin for error. Hence the total cost to transferring bodies is estimated at £26 million to £30 million.
- 2.47 The costs to specialist places of deposit have been estimated by TNA by taking a pro rata estimate of the costs to central government based on the proportion of public records held and archived by these organisations. This is based on the assumption that costs to specialist places of deposit are analogous to central government.

## Key risks

- 2.48 Bringing forward the point at which digital records are preserved has the potential to increase risks around their permanent preservation. This is a complex, recent and therefore relatively untested area requiring additional management to ensure the survival of the government's digital record. Operational and technical solutions for the long term are still in development but there remains sufficient time to work out plans in more detail over the next few years, prior to the mass transfer of digital records beginning after 2022. Work already underway at TNA to support this includes:
- Redesigning the digital transfer process and technical infrastructure to support higher volumes and help minimise transfer costs to departments;
  - Researching technology to support digital selection and sensitivity review;
  - Building on existing success at archiving websites and exploring whether harvesting methods can be used to capture and transfer other forms of digital data;
  - Continuing to support departments in maintaining the digital continuity of their information so that it survives for the future prior to its transfer.
- 2.49 The public records and FOIA changes both pose a potential risk to the safeguarding of sensitive information. However, not all FOIA exemptions are affected by the change, and together they will continue to provide appropriate protection for sensitive information. In addition, information will continue to be reviewed for ongoing sensitivity issues prior to release under FOIA or opening at TNA.

## Net Impact of Option 1

- 2.50 In terms of monetised costs and benefits there would be an expected net present value of approximately of between -£29million and -£32million over a 11 year period starting in 2012. However, this may to some extent be offset by reduced record storage costs. There will also be non-monetised benefits from increased transparency, accountability and openness.

## Summary

- 2.51 The Coalition Agreement made key commitments on transparency:

*"The Government believes that we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account. We also recognise that this will help to deliver better value for money in public spending, and help us achieve our aim of cutting the record deficit. Setting government data free will bring significant economic benefits by enabling businesses and non-profit organisations to build innovative applications and websites."*

*"We will extend the scope of the Freedom of Information Act to provide greater transparency."*

2.52 The gradual replacement of the 30-year rule with a 20-year rule for central government records transferred to TNA and the parallel reduction in the lifespan of relevant FOIA exemptions plays a key role in meeting and supporting these commitments. Historical records, where they have not already been published proactively or released under FOIA, should be made public at the earliest opportunity. The approach provided for in the orders to which this Impact Assessment relates strikes the right balance between promoting increased transparency through the early release of older records and ensuring both that change is managed and affordable and that sensitive material is adequately protected.

### **3. Enforcement and Implementation**

3.1 TNA will provide ongoing monitoring and regular reporting on progress and compliance with the transition to a 20-year rule, including:

- Annual reporting to the Lord Chancellor and Secretary of State for Justice on the progress of ministerial government departments.
- Transparency of transition via publishing of relevant department-level data on its website, including volumes of records held for each year, and how many of these are expected to be transferred to TNA.

3.2 This will be the first time that such comprehensive data on the record transfer process will be published and it is envisaged that it will provide much greater transparency for the public, not only on departmental performance, but on the type and content of records that are due for transfer.

3.3 TNA has a central role in guiding, co-ordinating, and supervising the selection and preservation of public records. TNA already provides extensive support to organisations on records management issues and advises departments on the selection and transfer of historical records. TNA will continue to fulfil this role during and after the transitional period, to help ensure that the move to a 20-year rule is implemented effectively.

3.4 The Information Commissioner's Office (ICO) enforces the proper application of FOIA, and ensures that exemptions are only used where appropriate. The ICO regulates the application of exemptions both by public authorities responding to FOIA requests, and where they are used as the basis for continued closure after selection for preservation. The ICO is independent of government in its regulation of FOIA and may issue Decision Notices requiring a public authority to release information where it is determined that an exemption has been misapplied.

3.5 There are further rights of appeal beyond the ICO. It is possible to appeal against a Decision Notice issued by the ICO to the First-Tier Tribunal (Information Rights). Further appeals can be made, but only on a point of law, to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently the Court of Appeal and the Supreme Court.

## **Specific Impact Tests**

### **Equality Impact Assessment**

1. An Equalities Impact Assessment initial screening has been completed and is attached in Annex 2. No adverse equality impact is anticipated and we expect a general positive equality impact as a result of the orders to which this Impact Assessment relates.

### **Competition Assessment**

- 4.2 Affected public records bodies and other public authorities subject to FOIA are not in competition with other organisations in ways which could be adversely affected through the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions.
- 4.4 Public records bodies and other public authorities subject to FOIA may hold information of long term commercial sensitivity either to themselves or to non-public sector partners. However the duration of relevant exemptions in FOIA, most notably those for commercial interests and actionable breaches of confidence (sections 43(2) and 41) are not affected by the reduction in the maximum duration of exemptions.

### **Small Firms Impact Test**

- 4.5 It is not envisaged that any small firms would be directly impacted as a result of the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions.

### **Carbon Assessment**

- 4.6 It is not considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions will lead to any significant change in carbon emissions.

### **Environmental Assessment**

- 4.7 It is not considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions would have any other environmental impacts.

### **Health Impact Assessment**

- 4.8 It is not considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions would have a significant impact on health.

### **Human Rights**

- 4.9 It is considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions is consistent with the Human Rights Act 1998.

### **Justice Impact Test**

- 4.10 The impact on the Justice System has been assessed in the main body of this impact assessment. There is no reason to expect that the reduction in the duration of some exemptions will lead to a noticeably increased burden on the ICO, and therefore we do not expect to see any noticeable change in the workload of the First Tier Tribunal (Information Rights) or Upper Tribunal, or the courts.

### **Rural proofing**

- 4.11 It is not considered that there would be any specifically rural impacts from the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions.

### **Sustainable Development**

- 4.12 The implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions will increase the openness, transparency and accountability of affected public records bodies and other public authorities. Although the effects are not as immediate in terms of the age of the information affected, this may still contribute to the promotion of good governance through increased public scrutiny and awareness of the decisions that these organisations and their senior management take.

## **Privacy Impact Test (an MoJ Specific Impact Test)**

- 4.13 There will be no significant adverse impact on privacy. The exemption provided section 40(2) of FOIA provides appropriately robust protection for personal data requested under FOIA or contained in historical records transferred to TNA. However, given the incidental processing of personal data in public records the privacy impact assessment developed at the time of CRAGA has been updated.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:**

We plan to undertake a formal review of the move to the 20-year rule and reduction in the maximum lifespan of FOIA exemptions in 2018, half way through the transition process. This review will assess the costs and benefits realised by the transition, and any unrealised efficiencies that can be introduced. However, the 20-year rule transition will also be subject to continuous monitoring and work is already ongoing to enhance the efficiency of the public records process.

**Review objective:**

To measure the costs and benefits of the move to a 20-year rule and reduction in the lifespan of FOIA exemptions against those anticipated before commencement of the transition, and identify necessary changes to address any compliance issues and improve efficiency.

**Review approach and rationale:**

The transition to the 20-year rule is a very significant undertaking in both practical and financial terms. It is therefore appropriate that as well as conducting a more formal review in 2018, progress is monitored on an ongoing basis to ensure that issues are addressed as speedily as possible. The cost implications of the parallel reduction in the maximum duration of certain FOIA exemptions is much less significant, and a therefore a single review in 2018 to be conducted by MoJ to feed into TNA's wider review of the 20-year rule is considered proportionate.

**Baseline:**

The review will consider the impact of the move to a 20-year rule and reduction in the lifespan in FOIA exemptions since commencement of the transition.

**Success criteria:**

Increased accountability, openness and transparency through the gradual introduction of a 20-year rule and reduction in the maximum duration of a number of FOIA exemptions. To be introduced in as cost efficiently as possible and in accordance with the timetable set by the orders to which this Impact Assessment relates.

**Monitoring information arrangements:**

TNA will provide ongoing monitoring and regular reporting on progress with the transition, and compliance with the introduction of the 20-year rule, including:-

- Annual reporting to the Lord Chancellor on the progress of government departments; and
- Transparency of transition via publishing relevant department-level data on TNA's website, including volumes of records held for each year, and how many of these are expected to be transferred to TNA.

The information collated and published will be used to inform the review of the move to a 20-year rule to be carried out in 2018, as well as on an ongoing basis to identify and resolve compliance issues at an earlier stage.

In addition, MoJ will conduct a survey of a sample of public authorities across the public sector in 2018 to establish the extent to which information is being released earlier as a result of the reduction in the maximum duration of exemptions. It will focus most closely on those which are not subject to the PRA and

are therefore under no duty to transfer selected historical records to TNA and other places of deposit.

**Reasons for not planning a PIR:**

N/A

## Equality Impact Assessment Initial Screening – Relevance to Equality Duties

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

To commence relevant parts of the Constitutional Reform and Government Act 2010 (CRAGA) to amend the Public Records Act 1958 (PRA) and the Freedom of Information Act 2000 (FOIA) to increase openness and transparency by making historical public records available sooner where they are no longer sensitive. The changes will:

1. Reduce from 30 to 20 years the point at which official records (mainly central Government departmental records) are ordinarily transferred for permanent preservation at the National Archives (TNA) over a ten year transitional period beginning in 2013; and
2. Introduce a parallel reduction from 30 to 20 years in the maximum duration of certain FOIA exemptions from 1 January 2014. This will apply to all public authorities. Adequate protection will be maintained for information of longer term sensitivity.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Oliver Lendrum, Information and Devolution, Justice Policy Group, Ministry of Justice

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

| <b>Aims/objectives</b>   | <b>Outcomes</b>   |
|--|---|
| <ul style="list-style-type: none"> <li>• To increase openness and transparency in the conduct of public affairs;</li> <li>• to improve public confidence in the machinery of government and promote understanding of public administration;</li> <li>• to ensure continued production of valuable and lasting records of the conduct of public affairs and to make those records accessible as soon as possible; and</li> <li>• to maintain the public interest in good government and protection of certain information from premature disclosure.</li> </ul> | <ul style="list-style-type: none"> <li>• Earlier and consistent access to the public of official documents, where this is appropriate and possible;</li> <li>• greater transparency for the public in the workings of government;</li> <li>• improved confidence in the machinery of government and public administration; and</li> <li>• maintenance of good government, with specific information protected from premature disclosure, where this is necessary and in the public interest.</li> </ul> |

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

The 30 Year Rule review team's report and recommendations on the operation of the 30-Year Rule published in January 2009 and the Government response it. The weight of the evidence taken by the review team pointed towards a significant reduction in the 30 Year Rule – its report noted that FOIA had already brought about significant changes to the UK's information access arrangements with its presumption of openness, which allowed access to some official information much sooner than 30 years. In response, the previous Government decided to legislate through CRAGA to provide for the introduction of a 20-year rule and parallel reduction in the maximum duration of some FOI exemptions.

The Freedom of Information Act 2012 (FOIA).

Subject to the need to provide a name and an address for correspondence, FOIA is 'requester blind': access is unrestricted – anyone, anywhere may make a request under FOIA. The changes we propose will not have any adverse impact on this principle of open and equal access to FOIA.

The Justice Committee Post Legislative Scrutiny report on FOIA published in June 2012.

This found FOIA to have been a “significant enhancement to our democracy”, and that the increased transparency it has brought has done much to enhance the accountability of public authorities. The PLS report made no specific recommendations for the 30 Year Rule but did set out a range of proposals to improve the operation of FOIA.

The Ministry of Justice also monitors the application of FOIA and publishes quarterly and annual statistics on its use in relation to central government bodies.

The Information Commissioner provides independent administration and enforcement of FOIA.

We are not aware of any evidence from any of these reports and other sources to suggest that the changes to be commenced will have any adverse or unequal effect on any group of people.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

The Government will review the policy in five years' time and consider any evidence presented to us that it adversely affects people from different groups. If we become aware of adverse impacts in advance of this review point, we will address the issue earlier.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

The Government believes that the earlier access to official documents represented by this policy will have a positive impact on all groups of people, as it will contribute to greater transparency and openness in government, and increase accountability. There is no evidence to suggest that these benefits will be distributed unequally along lines of race, gender, age, religion and belief or sexual orientation.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

In respect of the proposed changes, there is no evidence that additional work could be done to promote equality of opportunity.

8. Is there any evidence that proposed changes will have an **adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

There is no evidence that the proposed changes will have an adverse equality impact on different groups of people.

The proposals potentially affect anyone whose personal data is included in the official documentation scheduled for earlier release under the new rule. There is no suggestion that this is broken down along lines of race, gender, age, religion and belief or sexual orientation.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

The Ministry of Justice monitors the application of the FOIA. Since the commencement of the legislation in 2005, there has been no indication that it has had an adverse effect on any of the different groups of people. The Information Commissioner also administers and enforces the FOIA, and he has so far produced no evidence of an adverse effect on different groups of people.

10. Is a full Equality Impact Assessment Required? **No**

There is no evidence to indicate any adverse impact of the proposals on equality of race, gender, age, religion and belief or sexual orientation. The Government believes that the earlier access to official documents will have a positive impact on all groups of people, regardless of these factors, as it will increase transparency and public confidence in the accountability of government.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

A review of the revised rules governing release of official documents will take place five years into implementation of the new policy.

12. Name of Senior Manager and date approved

This EIA screening relates to the gradual replacement over ten years from 2013 of the 30-year rule with a 20-year rule, which governs the point at which records of lasting historical value are normally transferred to TNA or other places of deposit. This phase of the change will not apply to records transferred to local archives, but records ordinarily transferred to TNA (mainly central Government departmental records). The lifespan of certain exemptions in FOIA will be reduced for all public authorities in parallel with the reduction in the 20-year rule commencing in 2013.

Based on the information in the 30-year rule review report and government response to it, the evidence provided by Post Legislative Scrutiny of FOIA, the ongoing freedom of information work of the Ministry of Justice and the Information Commissioner, no positive or negative impacts along lines of race, gender, age, religion and belief or sexual orientation have been identified. The policy will be reviewed in the fifth year of its implementation, and sooner if evidence of adverse impact on these groups comes to light.

Name (must be grade 5 or above): Glenn Preston

Department: Ministry of Justice

Date: 20 November 2012

### **Annex 3: List of 21 public records bodies transferring the largest volumes of records to TNA consulted in 2011 to provide cost projections**

Cabinet Office  
Crown Prosecution Service  
Department for Business Innovation and Skills  
Department for Communities and Local Government  
Department for Culture Media and Sport  
Department for Education  
Department for Energy and Climate Change  
Department for Environment Food and Rural Affairs  
Department for International Development  
Department for Transport  
Department for Work and Pensions  
Department of Health  
Foreign and Commonwealth Office  
Health and Safety Executive  
HM Revenue and Customs  
HM Treasury  
Home Office  
Ministry of Defence  
Ministry of Justice  
Ordnance Survey  
UK Atomic Energy Authority

Title:

# Introduction of the Twenty Year Rule

IA No: MOJ182

Lead department or agency:

Ministry of Justice (MoJ)

Other departments or agencies:

The National Archives

## Impact Assessment (IA)

Date: 28/11/2012

Stage: Enactment

Source of intervention: Domestic

Type of measure: Secondary legislation

Contact for enquiries:

informationrights@justice.gsi.gov.uk

### Summary: Intervention and Options

#### Cost of Preferred (or more likely) Option

| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, One-Out? | Measure qualifies as |
|-------------------------|----------------------------|--|------------------------------|----------------------|
| -£31m                   | £0                         | £0   | N/A                          | N/A                  |

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

The present 30-year rule governs the point at which public records are usually transferred to The National Archives (TNA) or other places of deposit and generally made available for public inspection through statutory mechanisms in the Public Records Act 1958 (PRA) and Freedom of Information Act 2000 (FOIA). The Constitutional Reform and Governance Act 2010 (CRAGA) provided for the replacement of the 30-year rule with a 20-year rule and reduction in the lifespan of certain FOIA exemptions. In January 2011 the Government announced its intention to commence these provisions from 2013.

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

To commence amendments to both the PRA and the FOIA to increase openness and transparency in the conduct of public affairs by making historical information available sooner where it is no longer sensitive. The commencement of these CRAGA provisions and related transitional and saving provisions forms a key part of the Government's Transparency Agenda, which also includes the extension of FOIA to additional bodies and increased proactive openness to aid accountability, public understanding, and economic growth. However this change is a substantial undertaking which must be implemented in a cost effective way proportionate to the benefits it will bring.

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

Option 0: Do nothing. Maintain the current 30-year rule and keep CRAGA provisions under review.

Option 1: Commencement of a 20-year rule for records ordinarily transferred to TNA (mainly by central Government departments) and parallel reduction in the lifespan of FOIA exemptions for all public authorities, phased in over 10 years.

If Option 1 is adopted, we intend, subject to the outcome of further work on the cost of implementation, to commence from 2015 a 10 year transitional period for public records transferred to local authority places of deposit. Further impact assessments will be developed.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** January 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.                       | Micro<br>N/A | < 20<br>N/A | Small<br>N/A     | Medium<br>N/A | Large<br>N/A |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) | Traded:<br>0 |             | Non-traded:<br>0 |               |              |

*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:

Tom McNally

Date: 29/11/2012

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

|                      |                   |                      |                                       |            |                     |
|----------------------|-------------------|----------------------|---------------------------------------|------------|---------------------|
| Price Base Year 2011 | PV Base Year 2012 | Time Period Years 11 | Net Benefit (Present Value (PV)) (£m) |            |                     |
|                      |                   |                      | Low: -£29                             | High: -£32 | Best Estimate: -£31 |

| COSTS (£m)    | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low           | £34m                                    | N/A  | £29m                       |
| High          | £38m                                    | N/A  | £32m                       |
| Best Estimate | £36m                                    | N/A  | £31m                       |

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

There will be increased reviewing costs for central government departments and agencies transferring records to TNA. These are estimated at £26m - £30m over a ten year transitional period starting in 2013 with one preparatory year in 2012. TNA will also incur costs of £4m through the transitional period as a result the additional volumes of records being transferred. In addition, specialist places of deposit, including organisations that act as their own archive and collecting institutions, will incur total costs of £3.5m.

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

Information held in Electronic Document Records Management systems ('e-DRM' - i.e. digital records) and other digital environments will need to be considered for review and disclosure at an earlier point under a new rule. Additional storage costs to places of deposit have not been quantified.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low           | N/A                                     | N/A  | N/A                           |
| High          | N/A                                     | N/A  | N/A                           |
| Best Estimate | N/A                                     | N/A  | N/A                           |

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

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

The 20-year rule and reduction in exemptions will make historical information available sooner, enhancing transparency and promoting understanding of the machinery of government.

Government departments will have 10 years fewer record storage and management costs for paper records and digital information if records have to be destroyed or transferred by 20 rather than 30 years.

#### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The estimates presented are based on the costs arising from the management of paper records only, not digital records. They are also based on an assessment of the costs of those bodies transferring around 90% of records received by TNA, scaled up to provide an estimate of total cost but incorporating sufficient margin for error. The removal of certain exemptions under the FOIA will not significantly increase costs for those bodies subject to that Act.

### BUSINESS ASSESSMENT (Option 1)

|   |              |         |                   |                      |
|---|--------------|---------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: N/A |              |         | In scope of OIOO? | Measure qualifies as |
| Costs: £0   | Benefits: £0 | Net: £0 | N/A               | N/A                  |

# Evidence Base (for summary sheets) – Notes

## References

| No. | Legislation or publication   |
|-----|--|
| 1   | Public Records Act 1958 ( <a href="http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51">http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51</a> )  |
| 2   | Freedom of Information Act 2000 ( <a href="http://www.legislation.gov.uk/ukpga/2000/36/contents">http://www.legislation.gov.uk/ukpga/2000/36/contents</a> )  |
| 3   | Constitutional Reform and Governance Act 2010 ( <a href="http://www.legislation.gov.uk/ukpga/2010/25/contents">http://www.legislation.gov.uk/ukpga/2010/25/contents</a> )  |
| 4   | Impact Assessment for public records and freedom of information provisions in the Constitutional Reform and Governance Act 2010 ( <a href="http://www.legislation.gov.uk/ukia/2010/112">http://www.legislation.gov.uk/ukia/2010/112</a> )                            |
| 5   | <i>Review of the 30 Year Rule</i> (2009) ( <a href="http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf">http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf</a> )   |
| 6   | <i>Government Response to the 30 Year Rule Review</i> (2010) ( <a href="http://www.official-documents.gov.uk/document/cm78/7822/7822.pdf">http://www.official-documents.gov.uk/document/cm78/7822/7822.pdf</a> )   |
| 7   | MoJ announcement relating to the 20-year rule and other freedom of information measures (2011) <a href="http://www.justice.gov.uk/news/press-releases/moj/press-release-070111a">http://www.justice.gov.uk/news/press-releases/moj/press-release-070111a</a>         |
| 8   | Written Ministerial Statement on 20-year rule (2012) ( <a href="http://www.parliament.uk/documents/commons-vote-office/July_2012/13-07-12/16-PublicRecords.pdf">http://www.parliament.uk/documents/commons-vote-office/July_2012/13-07-12/16-PublicRecords.pdf</a> ) |

## Key Figures

Table 1 gives the key costs of the reforms shown over the 11 year transition period. The costs are shown for each year in nominal values, constant 2011 prices and present value terms. The main figures used throughout this Impact Assessment are in constant 2011 prices; on this basis the reforms are expected to have a total cost of between £34 million and £38 million.

**Table 1: Annual profile of monetised costs\* - (£m) constant prices (as assessed in 2011)**

|                      |      | Y0<br>2012 | Y1<br>2013 | Y2<br>2014 | Y3<br>2015 | Y4<br>2016 | Y5<br>2017 | Y6<br>2018 | Y7<br>2019 | Y8<br>2020 | Y9<br>2021 | Y10<br>2022 | Total |
|----------------------|------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------|
| Nominal Values       | Low  | £4         | £3         | £3         | £3         | £4         | £4         | £3         | £3         | £4         | £4         | £4          | £39   |
|                      | High | £4         | £4         | £3         | £4         | £4         | £4         | £4         | £4         | £4         | £4         | £4          | £44   |
| Constant 2011 Prices | Low  | £4         | £3         | £3         | £3         | £3         | £3         | £3         | £3         | £3         | £3         | £3          | £34   |
|                      | High | £4         | £4         | £3         | £3         | £4         | £4         | £3         | £3         | £3         | £3         | £3          | £38   |
| Net Present Value    | Low  | £4         | £3         | £3         | £3         | £3         | £3         | £2         | £2         | £2         | £2         | £2          | £29   |
|                      | High | £4         | £4         | £3         | £3         | £3         | £3         | £3         | £2         | £2         | £2         | £2          | £32   |

Note: Real cost calculated using Treasury's GDP deflator, costs have been rounded the nearest £million.

Table 2 gives the split of the total costs for the different organisations affected by the reforms. The majority of the transition costs are incurred by the main bodies transferring records to TNA, totalling £23 million over the transition period. The cost to the remaining 200 bodies transferring approximately 11% of TNA's holdings has been estimated on the basis of those to be incurred by the 21 bodies surveyed. There are also costs to The National Archives (TNA) and specialist places of deposit.

**Table 2: Total Costs split by organisation; £million; 2011 prices**

| Organisation  | Estimated cost impact (£m) LOW | Estimated cost impact (£m) HIGH |
|---|--------------------------------|---------------------------------|
| Cost to bodies transferring 89% records to TNA                        | 23                             | 23                              |
| Estimated cost to remaining bodies transferring 11% of records to TNA | 3                              | 7                               |

|  |           |           |
|--|-----------|-----------|
| Specialist Places of Deposit (including organisations that act as their own archive and collecting institutions) | 3.5       | 3.5       |
| TNA  | 4         | 4         |
| <b>Total</b>   | <b>34</b> | <b>38</b> |

*Note: totals may not sum due to rounding.*

The cost to the main central government departments and agencies transferring records to the TNA (£23million) has been assessed on the basis of a survey of the 21 bodies transferring the largest quantities of records to TNA (Annex 3). This survey was carried out by the TNA and departments provided figures in constant 2011 prices. However, costs throughout the Impact Assessment are rounded to the nearest £1 million to account for any differences in methodology that departments may have used to assess their costs.

# Evidence Base (for summary sheets)

## 1. Introduction

- 1.1 This Impact Assessment examines the impact of the gradual commencement of transparency provisions in the Constitutional Reform and Governance Act 2010 (CRAGA) through the Constitutional Reform and Governance Act 2010 (Commencement No. 7) Order 2012, the Public Records (Transfer to the Public Record Office) (Transitional and Saving Provisions) Order 2012 and the Freedom of Information (Definition of Historical Records) (Transitional and Saving Provisions) Order 2012 (the “orders”).
- 1.2 These orders have the effect of reducing from 30 to 20 years over a ten year period:
  - the point at which records selected for permanent preservation are transferred (mainly by central Government departments) to TNA and a limited number of specialist places of deposit under the Public Records Act 1958 (PRA) from 2013; and
  - the maximum duration of a number of exemptions in the Freedom of Information Act 2000 (FOIA) for all public authorities from 1 January 2014.
- 1.3 Although the CRAGA also provides for a gradual reduction from 30 to 20 years in the point at which other records subject to the PRA are transferred to all places of deposit (including local authority places of deposit) the orders will preserve the current 30 year point of transfer for records ordinarily deposited in local places of deposit. Therefore this Impact Assessment does not examine the effect of such a change. While the Government currently intends also to reduce the point at which such records are transferred at a future date, this is subject to the outcome of further work to assess the impact of such a change. An additional Impact Assessment will be published before any future orders are made to give effect to this intended further change.
- 1.4 The reduction in the point at which historical records are transferred is commonly known as the transition from the current 30-year rule to a 20-year rule.

## Background

- 1.5 Under the PRA records selected for permanent preservation must be transferred to TNA or another “place of deposit” appointed by the Lord Chancellor not later than 30 years after their creation. Additionally, under the FOIA, a range of exemptions protecting information cease to be engaged at the end of a period of 30 years following the year in which it was created.
- 1.6 In October 2007 the previous Government appointed an independent review team to look at the operation of the 30-year rule, and to make recommendations for its possible reform. The main recommendation in its report, published in January 2009, was that the 30-year rule should be reduced to 15 years. In its response, published on 25 February 2010, the previous Government agreed in principle that the 30-year rule should be reduced, but argued that it should be reduced to 20 rather than 15 years on the basis that this struck the right balance between openness, affordability, and the protection of sensitive information. The review team itself had expressed the view that “neither the case for a 15-year rule nor the case for a 20-year rule is beyond argument” and that “it must be a matter of judgement how to strike the balance”.
- 1.7 In addition to changes to the PRA, the review team recommended that FOIA should also be amended to help give effect to a reduction in the 30-year rule. The previous Government announced, in its published response, that it would reduce the maximum duration of a number of exemptions in FOIA from 30 to 20 years unless likely sensitivities meant that this would be inappropriate.
- 1.8 The intentions announced in the previous Government’s response to the review were provided for in sections 45 and 46 of, and Schedule 7 to, the CRAGA, which gained Royal Assent on 8 April 2010. These provided for the gradual reduction of the 30-year rule with a 20-year rule over a ten year transitional period; and for a similar reduction in the maximum duration of the following FOIA exemptions<sup>1</sup>:-

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<sup>1</sup> CRAGA also amended section 37 of the FOIA, the exemption for information relating to communications with the Royal Family and Honours, to make it in part an absolute exemption and to alter its maximum duration. However, these changes were commenced in January 2011 through the Constitutional Reform and Governance Act 2010 (Commencement No. 4 and Saving Provision) Order 2011. That change is therefore not relevant to the orders which are the subject of this Impact Assessment.

- section 30: investigations and proceedings conducted by public authorities;
- section 32: court records;
- section 33: audit functions;
- section 35: formulation and development of government policy;
- section 36: prejudice to effective conduct of public affairs (except in relation to Northern Ireland<sup>2</sup>); and
- section 42: legal professional privilege.

1.9 In January 2011 the current Government announced a package of measures to support Coalition Agreement commitments on transparency. This included the intention to commence parts of the CRAGA which provide for a 20-year rule and the parallel reduction in the maximum duration of the exemptions listed at paragraph 1.8. On 13 July 2012, the Minister of State for Justice, Lord McNally, issued a Written Ministerial Statement to provide further detail on how this would be achieved. He announced that a first phase in the transition to a 20-year rule, affecting primarily central Government records transferred to TNA (and a limited number of specialist places of deposit), would commence from 2013 together with a parallel reduction in the lifespan of the above exemptions in FOIA for all public authorities from 1 January 2014. He also announced the intention, subject to further assessments of the cost of implementation, to introduce a second phase of 20-year rule implementation for records transferred to local authority places of deposit, from 2015.

1.10 The Orders to which this Impact Assessment relates will introduce the first phase of the move to a 20-year rule and the reduction in the lifespan of the above FOIA exemptions for all public authorities.

### Problem under consideration

1.11 In deciding when and how to commence the relevant CRAGA provisions the Government's overriding goal has been to ensure that transparency is increased by making historical information available sooner, but that this is achieved in as manageable and cost effective way as possible.

1.12 The move to a 20-year rule is a very significant undertaking. Over 250 central government departments and agencies and over 1000 local record transferring bodies (e.g. magistrates and coroners courts, NHS organisations, and local prisons transfer records to TNA or other places of deposit, In addition almost 70 institutions are places of deposit for their own records or specialist collecting institutions appointed to receive government records (e.g. some museums, such as the Imperial War Museum); and there are 116 local authority archives across England and Wales. This change will affect an estimated 4.4 million paper records in Central Government, of which approximately 3.3 million (75%) are eligible for transfer to TNA.

1.13 However, only a fraction of these affected records will ultimately be deemed to be of lasting historical value and be transferred to TNA or other place of deposit. Government has transferred an average of 45,000 records for each year of the 1970s, and it is anticipated that at least this number of records will be transferred for each year throughout the 1980s and 1990s. This means that by the end of the transition to a 20-year rule TNA alone will hold an estimated 900,000 (approximately 10km) of records from 1982-2002, of which it has already received approximately 200,000 under existing arrangements. Figure 1 shows that the majority of records preserved at TNA are from Ministerial departments.

**Figure 1: Sources of records preserved at TNA**

| Type of Organisation           | Proportion of Records |
|--------------------------------|-----------------------|
| Ministerial departments        | 68%                   |
| Non-ministerial departments    | 10%                   |
| Executive Agencies             | 5%                    |
| Non-departmental public bodies | 5%                    |
| Other bodies                   | 12%                   |

<sup>2</sup> It was announced that section 36 would cease to have effect after 20 years except where the information would or would be likely to prejudice the effective conduct of public affairs in Northern Ireland or the work of the Executive Committee of the Northern Ireland Assembly, in which case the exemption would continue to apply for up to 30 years.

- 1.14 Transferring bodies work with TNA to determine which records are worthy of permanent preservation. In addition, it is necessary for transferring bodies to assess whether records selected for preservation can be made available on transfer or whether they contain sensitive information which needs to be withheld for a longer period. The extent to which it is necessary to redact information from such records, or withhold the entire record, varies from department to department; but overall, 95% of preserved 1970s files are available to the public (although some will have been partially redacted).
- 1.15 The public records process therefore has several stages. First, records are selected for preservation or destroyed. Second, those that are selected for preservation are subject to a sensitivity review after which information may be redacted from the record. Third, records are cleaned, repaired, and catalogued prior to finally being transferred and made available at TNA. In addition, a relatively small number of selected records are retained by departments for operational or security reasons. Any decision to redact information from selected records before transfer or to transfer closed must be approved by the Lord Chancellor, following recommendations from the Advisory Council on National Records and Archives. The Lord Chancellor must approve any proposal to retain records within departments. In order for that approval to be given, the person responsible for the records in question must inform him of the relevant facts and demonstrate that an administrative, or other special reason, exists to justify retention.
- 1.16 The financial impact of this change will be significant during the transitional period, and approximately double the normal cost given that two years worth of records will be transferred every year as opposed to the usual one. The independent review team estimated that the cost of implementing its 15-year rule would be £75m. The Impact Assessment published during the passage of the CRAGA estimated the cost of full implementation at £50-80m, with £40-60m of the cost falling to those bodies affected by the phase of commencement covered by the orders to which this Impact Assessment relates (mainly central government, including TNA). Since that Impact Assessment was published in 2010, further work to assess the cost of change in more detail and to streamline the selection process has resulted in the estimated cost being revised downwards. It is now estimated that the total cost of full implementation, if taken forward, would be £49m-£63m. However the cost of implementation to the extent facilitated by the current orders is estimated at £34m-£38m over the transitional period. Despite the reduction in estimated cost, this remains a very significant undertaking even when spread over ten years; although it should also be noted that this is not an additional burden but one which is being brought forward by transition, except in the case of TNA because of the ongoing additional provision of storage and access.
- 1.17 The introduction of a 20-year rule would potentially be undermined if it was still possible to rely on all exemptions in FOIA (subject, where relevant, to the public interest test) for up to 30 years. It was for this reason that CRAGA also provided for the reduction in the maximum duration of certain FOIA exemptions to 20 years, and that the orders will commence this change in parallel with the reduction of the 30-year rule for records transferred to TNA.
- 1.18 The implications of this change will be minor for public authorities. With a few exceptions (e.g. Cabinet minutes) it is unusual to rely on the affected exemptions to withhold information over 20 years old, and consequently it will make little practical difference to the handling of most FOI requests.
- 1.19 Scotland and Northern Ireland have their own public records legislation and are unaffected by the commencement of the PRA-related changes in the CRAGA. The FOIA changes will apply more widely, but not to Scottish public authorities subject to the Freedom of Information (Scotland) Act 2002. Scotland's FOI regime is moving to a 15 year rule.

### **Affected Stakeholder Groups, Organisations and Sectors**

- 1.20 The main impact of the orders will be on TNA and those central government departments and agencies transferring historical records to it as the transition from a 30-year rule to a 20-year rule proceeds. Specialist Places of Deposit holding records subject to the transition will also be affected. While transition will impose costs on these bodies, it will also bring positive benefits to society in terms of greater transparency and accountability.

1.21 All public authorities subject to FOIA will also be affected by the parallel reduction in the lifespan of certain exemptions, but the impact will be negligible in the vast majority of cases given that it is unusual to withhold most categories of information under the affected exemptions after 20 years. The impact is likely to be greater in central government where, for example, information relating to Cabinet meetings is usually withheld for 30 years.

1.22 Users of TNA (and other affected archives) and FOIA, including private citizens, journalists, and researchers will be able to access historical records sooner than is currently the case.

## 2. Costs and benefits

2.1 This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of the option are compared to the "do-nothing" option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

2.2 In conducting the cost benefit analysis, we have considered the effects of each policy option over 11 years – ten years of increased data transfer and a one year preparatory period. In order to estimate costs over this period we have used the 3.5% social discount rate (taken from the Treasury's Green Book<sup>3</sup>).

2.3 The underlying data comes from a TNA commissioned report into the 20 Year Rule. All figures are presented in constant 2011 prices, although figures have been rounded to the nearest £1 million to account for uncertainty in the way costs have been assessed by the individual government departments transferring records to TNA.

### Option 0: "Do Nothing"/Base Case

2.4 This would retain the current position where historical records are transferred 30 years after creation, and the maximum duration of the affected FOIA exemptions would also remain 30 years.

2.5 The do-nothing scenario carries no presently identifiable additional costs or benefits, but would fail to improve transparency and accountability and run counter to the Government's stated intention to commence the relevant CRA/GA provisions. The costs imposed by the current 30 year rule would be maintained. It would also be necessary to reorganise or introduce new records management procedures to deal with the management and archiving of digital records, although in slower time than required during transition to a 20-year rule.

2.6 The cost of the base case is zero.

### Option 1: Transitional commencement of a 20-year rule for records ordinarily transferred to TNA (mainly central Government departmental records) and reduction in the lifespan of FOIA exemptions for all public authorities

Description:

2.7 This option introduces, through the orders to which this Impact Assessment relates, a reduction in the point at which records ordinarily transferred to TNA (mainly central Government departmental records) are made available at TNA and others at specialist places of deposit from 30 to 20 years over a ten year transitional period starting in 2013 as set out in figure 2. It does not reduce the time at which other historical records are transferred to local authority places of deposit.

**Figure 2: Timetable for reduction in the 30-year rule**

| Year of Creation | Year of Transfer |
|------------------|------------------|
| 1984             | 2013             |
| 1985             | 2014             |
| 1986             | 2014             |
| 1987             | 2015             |
| 1988             | 2015             |
| 1989             | 2016             |
| 1990             | 2016             |

<sup>3</sup> HM Treasury's Green Book, Appraisal and Evaluation in Central Government, [http://www.hm-treasury.gov.uk/d/green\\_book\\_complete.pdf](http://www.hm-treasury.gov.uk/d/green_book_complete.pdf)

|      |      |
|------|------|
| 1991 | 2017 |
| 1992 | 2017 |
| 1993 | 2018 |
| 1994 | 2018 |
| 1995 | 2019 |
| 1996 | 2019 |
| 1997 | 2020 |
| 1998 | 2020 |
| 1999 | 2021 |
| 2000 | 2021 |
| 2001 | 2022 |

2.8 This option also reduces from 30 to 20 years the maximum duration of affected FOIA exemptions over a ten year transitional period starting from 1 January 2013, by lowering the point at which information becomes a historical record for the purposes of FOIA as set out in figure 3.

**Figure 3: Timetable for reduction in the maximum duration of FOIA exemptions**

| Year of Creation | Date Record becomes a Historical Record |
|------------------|---|
| 1984             | End of 2013                             |
| 1985             | End of 2014                             |
| 1986             | End of 2014                             |
| 1987             | End of 2015                             |
| 1988             | End of 2015                             |
| 1989             | End of 2016                             |
| 1990             | End of 2016                             |
| 1991             | End of 2017                             |
| 1992             | End of 2017                             |
| 1993             | End of 2018                             |
| 1994             | End of 2018                             |
| 1995             | End of 2019                             |
| 1996             | End of 2019                             |
| 1997             | End of 2020                             |
| 1998             | End of 2020                             |
| 1999             | End of 2021                             |
| 2000             | End of 2021                             |
| 2001             | End of 2022                             |

2.9 The above tables show that a record will not become a historical record for the purposes of FOIA until the end of the year in which they are transferred to TNA. Under FOIA, records only become historical records at the end of the year of transfer.

2.10 There will be a one year preparatory period in 2012-3 in anticipation of increased record transfer.

2.11 Following the conclusion of the transitional period, during which historical records will be transferred to TNA at a rate of two years' worth per annum, the rate of transfer will revert to the current practice of a single year's worth of records being transferred per annum.

**Costs of Option 1**

**Transition costs**

2.12 The total projected cost of this transitional option is £34m-£38m to all bodies affected by it, with a best estimate of £36m. This can be broken down into the cost to central government bodies transferring records to TNA; to Specialist Places of Deposit; and to TNA, as summarised in Figure 4 below.

**Figure 4: Cost to different types of bodies; £million, 2011 prices**

| Organisation                             | Estimated cost impact (£m) LOW | Estimated cost impact (£m) HIGH |
|--|--------------------------------|---------------------------------|
| Central Government (transferring to TNA) | 26                             | 30                              |

|  |           |           |
|--|-----------|-----------|
| Specialist Places of Deposit (including organisations that act as their own archive and collecting institutions) | 3.5       | 3.5       |
| TNA  | 4         | 4         |
| <b>Total</b>   | <b>34</b> | <b>38</b> |

*Note: totals may not sum due to rounding.*

2.13 The year by year breakdown is set out in figure 5 below. Cost variations between individual years exist because of the different number of central government records due to be reviewed in any given year.

**Figure 5: Yearly cost of 20-year rule to affected bodies; £million, 2011 prices**

|                              |      | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | Total |
|------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|-------|
| Bodies Transferring to TNA   | Low  | £3   | £3   | £2   | £2   | £3   | £3   | £2   | £2   | £2   | £2   | £2   | £26   |
|                              | High | £3   | £3   | £3   | £3   | £3   | £3   | £2   | £2   | £2   | £2   | £2   | £30   |
| TNA                          |      | £0.5 | £0.3 | £0.3 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £0.4 | £4    |
| Specialist Places of Deposit |      | £0.4 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £0.3 | £3    |
| Total                        | Low  | £4   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £3   | £34   |
|                              | High | £4   | £4   | £3   | £3   | £4   | £4   | £3   | £3   | £3   | £3   | £3   | £38   |

*Note: totals may not sum due to rounding.*

2.14 Costs are already being incurred by affected bodies in preparation for the beginning of the transition from 2013. No additional funding is being provided to public records bodies affected by the transition, and the costs are being met from existing resources.

#### *Costs to central government public records bodies*

2.15 The main impact is on central government departments transferring records to TNA. During the transitional period they will review, and where appropriate select and transfer historical records to TNA at double the normal rate. The total projected additional cost to these bodies is £26m-£30m. It includes the costs of all activities in the public records process, including staff costs.

2.16 This cost estimate of £26m-£30m is based on a survey of 21 government departments who have been the source of approximately 89% of records transferred to TNA since 2000. The costs vary considerably between departments, depending on a number of factors including the volumes of records due to be reviewed, the volumes selected for permanent preservation, and the extent to which detailed sensitivity review and redaction is necessary. For example, in 2011 it was estimated that approximately 300,000 Ministry of Justice (MoJ) records, 40,000 Cabinet Office (CO) records, and 28,000 Department of Health (DH) records are due for review during the transitional period. FCO consider that approximately 340,000 files (including electronic files) will be reviewed. Approximately 35% of CO and 40% of FCO records are selected for preservation at TNA; but only 10% and 5% of MoJ and DH records respectively.

2.17 These variations impact on the projected costs to be incurred by departments, which are also influenced by the sensitivity of the papers and resultant necessary redaction. The records of the FCO, for example, frequently remain sensitive for reasons relating to international relations and national security, for longer than those of some other departments, such as MoJ and DH. Consequently, the projected cost to the latter is considerably more than to the former (in excess of £6m as opposed to approximately £1m). As a result of these variations, the different areas of the public records process will require differing levels of additional investment during transition.

2.18 Figure 6 shows the proportion of the total cost that is anticipated for each of the activities involved in transferring records to TNA under the 20 year rule. The area requiring extra greatest investment will be sensitivity review, accounting for 36% of additional expenditure. This differs from current costs, where the most costly part of the process is appraisal and selection, accounting for 38% of costs in 2011-12.

**Figure 6: Split of additional resource requirement by activity (excluding storage), 20 year rule**

| Activity | Proportion of additional resource requirements |
|----------|--|
|----------|--|

|                             |     |
|-----------------------------|-----|
| Appraisal and selection     | 21% |
| Sensitivity review          | 36% |
| Preparation and cataloguing | 11% |
| Transfer                    | 22% |
| Destruction                 | 10% |

*Source: TNA*

- 2.19 The projected cost of implementation has fallen significantly since 2010, when the cost to central government was estimated at £40-60m. In part, this is due to the more detailed analysis of the impact of transitional commencement that has been carried out since 2010; but also due to TNA's ongoing work with government departments to reduce costs. This work is likely to lead to further, currently unquantifiable, reductions in cost as the transitional period progresses. Particular attention is being paid to developing improved selection criteria, the macro-appraisal of records, streamlined record transfer processes, revised standards for pre-transfer record preservation, and the adoption of a more strategic approach to disposition. TNA is also exploring the potential for shared services to deliver key stages in the public records process.
- 2.20 The cost of implementation will be offset to some extent by reduced storage costs for older records. The Government currently spends £34 million per annum on paper record storage, including storing a large number of paper case files which will not be impacted upon by the 20-year rule. Despite this, the fact that the majority of records caught by the transition will be destroyed earlier than would otherwise have been the case rather than transferred to TNA, will mean that there is some reduction in the cost to Government of record storage.

#### *Costs to Specialist Places of Deposit*

- 2.21 Some records affected by this change are not held at TNA, but at 70 specialist Places of Deposit including organisations that act as their own archive and collecting institutions. This includes, for example, trading funds such as the Met Office, survey organisations like the British Antarctic Survey, and national museums such as the Imperial War Museum. The total cost to such bodies is estimated at £3.5m over the transitional period. Approximately 10% of all public records are kept by specialist Places of Deposit.

#### *Costs to TNA of PRA changes*

- 2.22 The estimated cost of managing the additional throughput of records is £4m, including a preparatory year before transition commences. TNA is already undertaking extensive business change, to ensure that it introduces aforementioned efficiencies to the transfer process to manage this cost. As with other central government departments, TNA will manage this impact within its budget settlement for the current CSR period.
- 2.23 The Lord Chancellor's Advisory Council on National Records and Archives has considered the impact of 20 year rule change to its own workload, and is of the view that a true picture will not be known until applications begin to come through during the first few years of transition. The Council has agreed to continue to review their processes during this period.

#### *Costs to public authorities subject to FOIA*

- 2.24 More than 100,000 public authorities in England, Wales and Northern Ireland are subject to FOIA, ranging from government departments and their agencies, to local government, NHS, universities, maintained schools, and the police. Central records of FOIA requests received across all public authorities are not kept, but central and local government are estimated to have received in excess of 1 million information requests since FOIA came into full effect on 1 January 2005. Numbers have generally increased and in 2011 alone central Government received over 47,000 initial requests costing an estimated £8.5m in staff time alone (and excluding the cost of processing subsequent appeals).
- 2.25 Despite this, it is anticipated that the reduction in the lifespan of affected exemptions will have no significant financial impact on public authorities. It is already unusual for public authorities to

withhold information over 20 years old which falls within the scope of these exemptions, especially outside central government.

- 2.26 Even in central government only certain categories of information within the scope of the affected exemptions are typically withheld for more than 20 years, such as that which would undermine the collective responsibility of Cabinet or legal professional privilege. As the reduction in the lifespan of exemptions is to be made gradually and in parallel with the transition to a 20-year rule information which is no longer exempt should generally either have been transferred to TNA or destroyed with the result that public authorities will no longer have to consider disclosure in response to FOIA requests. However, evidence collated from central government departments in preparation for Post Legislative Scrutiny of FOIA suggests that very few requests are made for information from the period covered by the transition. Out of 431 requests received in a single week in late 2011, none was for information from this period. Where historical information was requested it tended to be older still, and often in relation to matters of personal interest (e.g. genealogical research).

#### *Costs to the ICO*

- 2.27 The ICO regulates compliance with FOIA. There is no reason to expect that the reduction in the duration of some exemptions will lead to a noticeably increased burden on the ICO. It is not anticipated that the ICO will have cause to request additional grant-in-aid funding from MoJ as a result of this change.

#### *Costs to users of historical information*

- 2.28 For those who wish to use the records, the cost impact of records being transferred to TNA earlier will in most cases be zero. Records are free to view at TNA, and it is free to take copies with a reader's own camera, or using digital cameras at TNA which transmit images to the reader's email. Readers can also use TNA's self-service copying facilities and remote copying service for a small fee.
- 2.29 There will be no new costs to public authorities as a result of the reduction in the lifespan of exemptions where information that ceases to be exempt is requested, although public authorities may continue to make charges as provided for under Fees Regulations made under sections 9, 12 and 13 of FOIA. In practice, however, it is rare for public authorities, especially in central government, to exercise their charging rights and there is no reason to think that this situation to change as a result of the reduction in the lifespan of exemptions. The Government response to Post Legislative Scrutiny of FOIA does not propose any new charges for answering FOIA requests.

#### **Post-transition costs**

- 2.30 The transitional period for records transferred to TNA will end in 2022. This will be the last year in which records are transferred at the rate of two years worth per annum. Thereafter the current regime of transferring one year's worth of records to TNA will recommence in 2023, but after 20 rather than the current 30. In addition, from 1 January 2023, the transition in the maximum duration of affected exemptions to 20 years will also be complete.

#### *Ongoing cost of PRA changes*

- 2.31 When transition is complete, the rate of release of public documents will probably be broadly the same as at present. However, the positive effects of work being undertaken by departments and TNA to improve the efficiency of the public records process to reduce the impact of transition will continue to be felt in the longer term. It is therefore likely that departmental review costs may be somewhat lower in real terms than has been the case. Although there is a risk that the increased sensitivity of more recently created documents may require a more careful review process and may therefore result in higher staffing costs, this will be offset by current work to identify and implement preparation and transfer strategies which keep the cost of sensitivity review within reasonable limits.
- 2.32 In terms of access, it is possible that post-implementation there will either be an increase in the numbers of people seeking access to official documents at TNA, given the more recent information available; or that interest will generally remain the same. There is no evidence available to allow a judgement to be made in favour of either outcome at present, but if demand does increase significantly TNA would incur additional costs in making this information available to the public. This cost is unquantifiable at present. It is certainly the case, however, that there is an initial surge of interest in papers when initially transferred. This typically reduces with the passage of time, but

may increase again where records become newsworthy once again or of heightened research interest.

2.33 Post-implementation, TNA will hold more information earlier, which will increase its costs. The standards of archival storage provided for historical records at the National Archives are higher than those generally used for storage of records prior to selection in departments (including those provided outsourced contractors) because it requires a stable physical environment and affords a higher standard of care. However, Government will have disposed of approximately 75% of paper records not selected for preservation ten years earlier than would otherwise have been the case resulting in lower overall storage costs across their departments.

2.34 Transition will also bring forward the end of mass transfers of paper records and see the earlier transfer of digital records. The impact of this change will be felt most keenly after the end of the transitional period, as the majority of departments do not have significant digital records until 2002 onwards (the main exceptions being FCO, HMT, and DEFRA). Figure 7<sup>4</sup> provides an illustration of the volumes of digital records dating from 1983-2002 held by the 21 departments transferring the largest volumes of records to TNA, which were consulted about the impact and cost of the 20-year rule (See Annex 3).

**Figure 7 – Proportion of departments estimating that they will want to transfer varying numbers of digital records created before 2003**

| Number of Files       | Proportion of surveyed departments <sup>5</sup> |
|-----------------------|---|
| None                  | 55%   |
| A few isolated files  | 23%   |
| Less than 5000 files  | 9%  |
| 5001 – 10000 files    | 0%  |
| More than 10000 files | 14%   |

2.35 However, this is not necessarily as significant a shift as it might be as current operational practice is to encourage digital records to be transferred well in advance of the 30-year point. Digital material is more vulnerable than paper with more risks to its long term survival, and early intervention can be required to ensure that digital records can be appropriately stored and preserved. TNA is undertaking work to ensure that it is able to receive and preserve in accessible formats large quantities of digital records.

2.36 There will be no additional costs to users post-transition.

*Ongoing cost of FOIA changes*

2.37 The FOIA changes will impose no additional costs post-transition.

**Benefits of Option 1**

2.38 The majority of the benefits are non-quantifiable and are summarised below.

**Transitional benefits**

2.39 Transition has clear benefits in making the reduction in the 30-year rule both affordable and manageable. Rather than impose the full cost in a very short period, the average cost across all bodies affected by the change will be at most £4m per annum. Although this is an important consideration, especially in the current financial situation, it is outweighed by practical ones. Given the volumes of records affected by change, it would be entirely impractical to move straight from a

<sup>4</sup> This number is the total provided by the organisations surveyed that represent 90% of record transfers, scaled up to estimate the total number of records held by central government.

<sup>5</sup> The 21 departments surveyed to estimate the cost of the 20 year rule (Annex 3)

30-year to a 20-year rule in one go. A ten year transition will balance increased transparency against impact in an appropriate way.

- 2.40 It is logical to reduce the maximum duration of affected FOIA exemptions in parallel with the move to a 20-year rule; although if that change were being introduced in isolation there would be little benefit in transition, other than to avoid a potential rush of FOIA requests for information that would previously have been withheld until it was 30 years old. However, the majority of information potentially subject to the affected exemptions is not ordinarily withheld beyond 20 years in any event.

## **Ongoing Benefits**

### *Benefits to society*

- 2.41 The reduction in the 30-year rule and parallel reduction in the lifespan of FOIA exemptions commenced by the orders which are the subject of this Impact Assessment will make historical information available sooner. This forms an important part of the Government's commitment to increase openness and transparency in order to enhance accountability, to allow the public to understand better the decisions that affect them, and to promote economic growth. While other work underway, for instance through the Transparency Agenda and extension of FOIA to more bodies, inevitably concentrates on current information, it is also beneficial that older records should be made available as soon as possible. This is of benefit not only to those conducting research for private purposes, but also to those interested in reusing public sector information contained in historical records for commercial purposes, including journalism and publishing, as well as academic research. The demand for access to historical records is clearly demonstrated by the numbers of records accessed by TNA customers: in 2011 it supplied access to over 600,000 records on site and over 126 million records online.
- 2.42 The adoption of a 20-year rule and parallel reduction in the lifespan of exemptions will also help to strike the right balance in ensuring that information is not published while disclosure would be harmful and not in the public interest. Although there will be no requirement to make such information available at TNA until it is 20 years old, it is also worth noting that FOIA exemptions do not preclude its disclosure at an earlier date on request. The affected exemptions do not prohibit disclosure, rather they permit withholding where disclosure would not be in the public interest. Conversely, the reduction in the maximum duration of exemptions facilitated by the CRAGA will not leave information likely to remain sensitive for periods longer than 30 years vulnerable to inappropriate premature disclosure. For example, the maximum duration of the exemptions provided in sections 28 (relations within the United Kingdom) and 43 (commercial interests) will remain at 30 years; while section 40 (personal data) will remain tied to the Data Protection Act 1998 (DPA).

### *Benefits to public records bodies and other public authorities*

- 2.43 Although the costs imposed by the reduction in the 20-year rule are very significant, they will lead to (and to some extent be offset by) reduced record storage costs. By the end of the transitional period approximately double the number of paper records will have been transferred or destroyed than would be under a continued 30-year rule. The increased efficiency and reductions in the cost of the public records process will continue to deliver benefits in the years following transition. In addition, speeding up the process of dealing with the paper record legacy will, by the end of the transition period, free up staff and resources in record management across government to focus on the challenge of managing digital records.
- 2.44 Although this phase of a transition to a 20-year rule will not apply to public records transferred to local places of deposit, the phased approach has added benefits to those transferring such records and the repositories themselves. Not only will later implementation, subject to the further work on the impact of change, allow for a more accurate assessment of the costs involved; but it will also allow full benefit of the efficiencies realising and lessons learnt as a result of the initial phase to be acted upon.
- 2.45 The Justice Committee Post Legislative Scrutiny report on FOIA found it to have been a "significant enhancement to our democracy". Although historical information is, by its very nature, less relevant to current issues etc, its earlier release will nonetheless increase accountability and encourage efficiency by public authorities.

## Key assumptions

- 2.46 The cost estimates are based on a sample of 21 departments (see Annex 3) responsible for around 89% of transfers to TNA. Research has been conducted into the volumes of material involved and cost to those departments. The cost to the 200 bodies which contribute the remaining 11% of TNA's holdings has not been researched directly, and as a result there is a risk that the estimated costs to these bodies may not be representative. To allow for this possibility, the cost estimate for the bodies providing 11% of TNA's holdings has been increased to allow a sufficient margin of error. On the basis that the cost of the public records process for 89% of TNA's records is £23m, it could be inferred that the cost of the process for 11% would be approximately £3million (£26m in total). However to take account of any economies of scale that might be enjoyed by the biggest transferring departments, the maximum projected cost for the remaining 11% of records has been scaled up to allow an appropriate margin for error. Hence the total cost to transferring bodies is estimated at £26 million to £30 million.
- 2.47 The costs to specialist places of deposit have been estimated by TNA by taking a pro rata estimate of the costs to central government based on the proportion of public records held and archived by these organisations. This is based on the assumption that costs to specialist places of deposit are analogous to central government.

## Key risks

- 2.48 Bringing forward the point at which digital records are preserved has the potential to increase risks around their permanent preservation. This is a complex, recent and therefore relatively untested area requiring additional management to ensure the survival of the government's digital record. Operational and technical solutions for the long term are still in development but there remains sufficient time to work out plans in more detail over the next few years, prior to the mass transfer of digital records beginning after 2022. Work already underway at TNA to support this includes:
- Redesigning the digital transfer process and technical infrastructure to support higher volumes and help minimise transfer costs to departments;
  - Researching technology to support digital selection and sensitivity review;
  - Building on existing success at archiving websites and exploring whether harvesting methods can be used to capture and transfer other forms of digital data;
  - Continuing to support departments in maintaining the digital continuity of their information so that it survives for the future prior to its transfer.
- 2.49 The public records and FOIA changes both pose a potential risk to the safeguarding of sensitive information. However, not all FOIA exemptions are affected by the change, and together they will continue to provide appropriate protection for sensitive information. In addition, information will continue to be reviewed for ongoing sensitivity issues prior to release under FOIA or opening at TNA.

## Net Impact of Option 1

- 2.50 In terms of monetised costs and benefits there would be an expected net present value of approximately of between -£29million and -£32million over a 11 year period starting in 2012. However, this may to some extent be offset by reduced record storage costs. There will also be non-monetised benefits from increased transparency, accountability and openness.

## Summary

- 2.51 The Coalition Agreement made key commitments on transparency:

*"The Government believes that we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account. We also recognise that this will help to deliver better value for money in public spending, and help us achieve our aim of cutting the record deficit. Setting government data free will bring significant economic benefits by enabling businesses and non-profit organisations to build innovative applications and websites."*

*"We will extend the scope of the Freedom of Information Act to provide greater transparency."*

2.52 The gradual replacement of the 30-year rule with a 20-year rule for central government records transferred to TNA and the parallel reduction in the lifespan of relevant FOIA exemptions plays a key role in meeting and supporting these commitments. Historical records, where they have not already been published proactively or released under FOIA, should be made public at the earliest opportunity. The approach provided for in the orders to which this Impact Assessment relates strikes the right balance between promoting increased transparency through the early release of older records and ensuring both that change is managed and affordable and that sensitive material is adequately protected.

### **3. Enforcement and Implementation**

3.1 TNA will provide ongoing monitoring and regular reporting on progress and compliance with the transition to a 20-year rule, including:

- Annual reporting to the Lord Chancellor and Secretary of State for Justice on the progress of ministerial government departments.
- Transparency of transition via publishing of relevant department-level data on its website, including volumes of records held for each year, and how many of these are expected to be transferred to TNA.

3.2 This will be the first time that such comprehensive data on the record transfer process will be published and it is envisaged that it will provide much greater transparency for the public, not only on departmental performance, but on the type and content of records that are due for transfer.

3.3 TNA has a central role in guiding, co-ordinating, and supervising the selection and preservation of public records. TNA already provides extensive support to organisations on records management issues and advises departments on the selection and transfer of historical records. TNA will continue to fulfil this role during and after the transitional period, to help ensure that the move to a 20-year rule is implemented effectively.

3.4 The Information Commissioner's Office (ICO) enforces the proper application of FOIA, and ensures that exemptions are only used where appropriate. The ICO regulates the application of exemptions both by public authorities responding to FOIA requests, and where they are used as the basis for continued closure after selection for preservation. The ICO is independent of government in its regulation of FOIA and may issue Decision Notices requiring a public authority to release information where it is determined that an exemption has been misapplied.

3.5 There are further rights of appeal beyond the ICO. It is possible to appeal against a Decision Notice issued by the ICO to the First-Tier Tribunal (Information Rights). Further appeals can be made, but only on a point of law, to the Upper Tribunal (Administrative Appeals Chamber) and then subsequently the Court of Appeal and the Supreme Court.

## **Specific Impact Tests**

### **Equality Impact Assessment**

1. An Equalities Impact Assessment initial screening has been completed and is attached in Annex 2. No adverse equality impact is anticipated and we expect a general positive equality impact as a result of the orders to which this Impact Assessment relates.

### **Competition Assessment**

- 4.2 Affected public records bodies and other public authorities subject to FOIA are not in competition with other organisations in ways which could be adversely affected through the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions.
- 4.4 Public records bodies and other public authorities subject to FOIA may hold information of long term commercial sensitivity either to themselves or to non-public sector partners. However the duration of relevant exemptions in FOIA, most notably those for commercial interests and actionable breaches of confidence (sections 43(2) and 41) are not affected by the reduction in the maximum duration of exemptions.

### **Small Firms Impact Test**

- 4.5 It is not envisaged that any small firms would be directly impacted as a result of the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions.

### **Carbon Assessment**

- 4.6 It is not considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions will lead to any significant change in carbon emissions.

### **Environmental Assessment**

- 4.7 It is not considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions would have any other environmental impacts.

### **Health Impact Assessment**

- 4.8 It is not considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions would have a significant impact on health.

### **Human Rights**

- 4.9 It is considered that the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions is consistent with the Human Rights Act 1998.

### **Justice Impact Test**

- 4.10 The impact on the Justice System has been assessed in the main body of this impact assessment. There is no reason to expect that the reduction in the duration of some exemptions will lead to a noticeably increased burden on the ICO, and therefore we do not expect to see any noticeable change in the workload of the First Tier Tribunal (Information Rights) or Upper Tribunal, or the courts.

### **Rural proofing**

- 4.11 It is not considered that there would be any specifically rural impacts from the implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions.

### **Sustainable Development**

- 4.12 The implementation of the 20-year rule and the parallel reduction in the lifespan of FOIA exemptions will increase the openness, transparency and accountability of affected public records bodies and other public authorities. Although the effects are not as immediate in terms of the age of the information affected, this may still contribute to the promotion of good governance through increased public scrutiny and awareness of the decisions that these organisations and their senior management take.

## **Privacy Impact Test (an MoJ Specific Impact Test)**

- 4.13 There will be no significant adverse impact on privacy. The exemption provided section 40(2) of FOIA provides appropriately robust protection for personal data requested under FOIA or contained in historical records transferred to TNA. However, given the incidental processing of personal data in public records the privacy impact assessment developed at the time of CRAGA has been updated.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:**

We plan to undertake a formal review of the move to the 20-year rule and reduction in the maximum lifespan of FOIA exemptions in 2018, half way through the transition process. This review will assess the costs and benefits realised by the transition, and any unrealised efficiencies that can be introduced. However, the 20-year rule transition will also be subject to continuous monitoring and work is already ongoing to enhance the efficiency of the public records process.

**Review objective:**

To measure the costs and benefits of the move to a 20-year rule and reduction in the lifespan of FOIA exemptions against those anticipated before commencement of the transition, and identify necessary changes to address any compliance issues and improve efficiency.

**Review approach and rationale:**

The transition to the 20-year rule is a very significant undertaking in both practical and financial terms. It is therefore appropriate that as well as conducting a more formal review in 2018, progress is monitored on an ongoing basis to ensure that issues are addressed as speedily as possible. The cost implications of the parallel reduction in the maximum duration of certain FOIA exemptions is much less significant, and a therefore a single review in 2018 to be conducted by MoJ to feed into TNA's wider review of the 20-year rule is considered proportionate.

**Baseline:**

The review will consider the impact of the move to a 20-year rule and reduction in the lifespan in FOIA exemptions since commencement of the transition.

**Success criteria:**

Increased accountability, openness and transparency through the gradual introduction of a 20-year rule and reduction in the maximum duration of a number of FOIA exemptions. To be introduced in as cost efficiently as possible and in accordance with the timetable set by the orders to which this Impact Assessment relates.

**Monitoring information arrangements:**

TNA will provide ongoing monitoring and regular reporting on progress with the transition, and compliance with the introduction of the 20-year rule, including:-

- Annual reporting to the Lord Chancellor on the progress of government departments; and
- Transparency of transition via publishing relevant department-level data on TNA's website, including volumes of records held for each year, and how many of these are expected to be transferred to TNA.

The information collated and published will be used to inform the review of the move to a 20-year rule to be carried out in 2018, as well as on an ongoing basis to identify and resolve compliance issues at an earlier stage.

In addition, MoJ will conduct a survey of a sample of public authorities across the public sector in 2018 to establish the extent to which information is being released earlier as a result of the reduction in the maximum duration of exemptions. It will focus most closely on those which are not subject to the PRA and

are therefore under no duty to transfer selected historical records to TNA and other places of deposit.

**Reasons for not planning a PIR:**

N/A

## Equality Impact Assessment Initial Screening – Relevance to Equality Duties

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

To commence relevant parts of the Constitutional Reform and Government Act 2010 (CRAGA) to amend the Public Records Act 1958 (PRA) and the Freedom of Information Act 2000 (FOIA) to increase openness and transparency by making historical public records available sooner where they are no longer sensitive. The changes will:

1. Reduce from 30 to 20 years the point at which official records (mainly central Government departmental records) are ordinarily transferred for permanent preservation at the National Archives (TNA) over a ten year transitional period beginning in 2013; and
2. Introduce a parallel reduction from 30 to 20 years in the maximum duration of certain FOIA exemptions from 1 January 2014. This will apply to all public authorities. Adequate protection will be maintained for information of longer term sensitivity.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

Oliver Lendrum, Information and Devolution, Justice Policy Group, Ministry of Justice

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

| <b>Aims/objectives</b>   | <b>Outcomes</b>   |
|--|---|
| <ul style="list-style-type: none"> <li>• To increase openness and transparency in the conduct of public affairs;</li> <li>• to improve public confidence in the machinery of government and promote understanding of public administration;</li> <li>• to ensure continued production of valuable and lasting records of the conduct of public affairs and to make those records accessible as soon as possible; and</li> <li>• to maintain the public interest in good government and protection of certain information from premature disclosure.</li> </ul> | <ul style="list-style-type: none"> <li>• Earlier and consistent access to the public of official documents, where this is appropriate and possible;</li> <li>• greater transparency for the public in the workings of government;</li> <li>• improved confidence in the machinery of government and public administration; and</li> <li>• maintenance of good government, with specific information protected from premature disclosure, where this is necessary and in the public interest.</li> </ul> |

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

The 30 Year Rule review team’s report and recommendations on the operation of the 30-Year Rule published in January 2009 and the Government response it. The weight of the evidence taken by the review team pointed towards a significant reduction in the 30 Year Rule – its report noted that FOIA had already brought about significant changes to the UK’s information access arrangements with its presumption of openness, which allowed access to some official information much sooner than 30 years. In response, the previous Government decided to legislate through CRAGA to provide for the introduction of a 20-year rule and parallel reduction in the maximum duration of some FOI exemptions.

The Freedom of Information Act 2012 (FOIA).

Subject to the need to provide a name and an address for correspondence, FOIA is 'requester blind': access is unrestricted – anyone, anywhere may make a request under FOIA. The changes we propose will not have any adverse impact on this principle of open and equal access to FOIA.

The Justice Committee Post Legislative Scrutiny report on FOIA published in June 2012.

This found FOIA to have been a "significant enhancement to our democracy", and that the increased transparency it has brought has done much to enhance the accountability of public authorities. The PLS report made no specific recommendations for the 30 Year Rule but did set out a range of proposals to improve the operation of FOIA.

The Ministry of Justice also monitors the application of FOIA and publishes quarterly and annual statistics on its use in relation to central government bodies.

The Information Commissioner provides independent administration and enforcement of FOIA.

We are not aware of any evidence from any of these reports and other sources to suggest that the changes to be commenced will have any adverse or unequal effect on any group of people.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

The Government will review the policy in five years' time and consider any evidence presented to us that it adversely affects people from different groups. If we become aware of adverse impacts in advance of this review point, we will address the issue earlier.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

The Government believes that the earlier access to official documents represented by this policy will have a positive impact on all groups of people, as it will contribute to greater transparency and openness in government, and increase accountability. There is no evidence to suggest that these benefits will be distributed unequally along lines of race, gender, age, religion and belief or sexual orientation.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

In respect of the proposed changes, there is no evidence that additional work could be done to promote equality of opportunity.

8. Is there any evidence that proposed changes will have an **adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

There is no evidence that the proposed changes will have an adverse equality impact on different groups of people.

The proposals potentially affect anyone whose personal data is included in the official documentation scheduled for earlier release under the new rule. There is no suggestion that this is broken down along lines of race, gender, age, religion and belief or sexual orientation.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

The Ministry of Justice monitors the application of the FOIA. Since the commencement of the legislation in 2005, there has been no indication that it has had an adverse effect on any of the different groups of people. The Information Commissioner also administers and enforces the FOIA, and he has so far produced no evidence of an adverse effect on different groups of people.

10. Is a full Equality Impact Assessment Required? **No**

There is no evidence to indicate any adverse impact of the proposals on equality of race, gender, age, religion and belief or sexual orientation. The Government believes that the earlier access to official documents will have a positive impact on all groups of people, regardless of these factors, as it will increase transparency and public confidence in the accountability of government.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

A review of the revised rules governing release of official documents will take place five years into implementation of the new policy.

12. Name of Senior Manager and date approved

This EIA screening relates to the gradual replacement over ten years from 2013 of the 30-year rule with a 20-year rule, which governs the point at which records of lasting historical value are normally transferred to TNA or other places of deposit. This phase of the change will not apply to records transferred to local archives, but records ordinarily transferred to TNA (mainly central Government departmental records). The lifespan of certain exemptions in FOIA will be reduced for all public authorities in parallel with the reduction in the 20-year rule commencing in 2013.

Based on the information in the 30-year rule review report and government response to it, the evidence provided by Post Legislative Scrutiny of FOIA, the ongoing freedom of information work of the Ministry of Justice and the Information Commissioner, no positive or negative impacts along lines of race, gender, age, religion and belief or sexual orientation have been identified. The policy will be reviewed in the fifth year of its implementation, and sooner if evidence of adverse impact on these groups comes to light.

Name (must be grade 5 or above): Glenn Preston

Department: Ministry of Justice

Date: 20 November 2012

### **Annex 3: List of 21 public records bodies transferring the largest volumes of records to TNA consulted in 2011 to provide cost projections**

Cabinet Office  
Crown Prosecution Service  
Department for Business Innovation and Skills  
Department for Communities and Local Government  
Department for Culture Media and Sport  
Department for Education  
Department for Energy and Climate Change  
Department for Environment Food and Rural Affairs  
Department for International Development  
Department for Transport  
Department for Work and Pensions  
Department of Health  
Foreign and Commonwealth Office  
Health and Safety Executive  
HM Revenue and Customs  
HM Treasury  
Home Office  
Ministry of Defence  
Ministry of Justice  
Ordnance Survey  
UK Atomic Energy Authority