Summary: Intervention & Options

Department /Agency:	Title:	
Ministry of Justice/HMCS/ Tribunal Service etc	**Impact Assessment of reducing the "30-year rule" for release of official documents to 20 years**	
Stage: Decision	**Version: 1.1**	**Date:** 3 March 2010

Related Publications: 30-year rule review final report; Government response to 30-year rule review.

Available to view or download at: http://www.30yearrulereview.org.uk/final-report.htm; http ://www.justice.gov.uk /publications/30-year-rule-review.htm

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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 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 30-year rule review team recommended in January 2009 that this period could be reduced, while protecting good government and other important public interest considerations.

What are the policy objectives and the intended effects?

To amend both the PRA and the FOIA to increase openness and transparency in the conduct of public affairs; improve public confidence in the machinery of government; promote understanding of public administration; 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 to maintain the public interest in good government and protection of certain information from premature disclosure.

What policy options have been considered? Please justify any preferred option.

Option 0: Do nothing. Maintain the current 30 year rule on disclosure.

Option 1 (preferred): Adoption of a 20-year rule, phased in over 10 years. This option strikes the best balance between increased access, constitutional principles underpinning good governance, and value for money.

Option 2: Adoption of a 15-year rule, phased in over 15 years.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? In year 5 of implementation.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (i) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and, (ii) the benefits justify the costs.

Signed by the responsible Minister:

Michael Wills .....Date: 3 March 2010

Summary: Analysis & Evidence

Policy Option: Option 1	Description: adoption of a 20-year rule, phased in over 10 years

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition)	**Yrs**	There will be increased reviewing costs for central government departments and other public bodies during the transition period.
£ 50m - 80m	15	
Average Annual Cost (excluding one-off)		
£ 0		**Total Cost** (PV) **£ 50m - 80m**

Other **key non-monetised costs** by 'main affected groups' Information held in Electronic Document Records Management systems ('e-DRM' - i.e. digital records) 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

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'
One-off	**Yrs**	.
£	15	
Average Annual Benefit (excluding one-off)		
£		**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' A 20-year rule will improve transparency and openness in public affairs and promote understanding of the machinery of government while protecting essential constitutional arrangements and the broader public interest.

Government departments would have 10 years less storage and managing 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 The estimates presented are based on the costs arising from the management of paper records only, not digital records; we assume that the removal of certain exemptions under the FOIA will not significantly increase costs for those bodies subject to that Act.

Price Base Year 2010	Time Period Years 15	**Net Benefit Range** (NPV) **£ -50m to -80m**	**NET BENEFIT** (NPV Best estimate) **£ -65m**

What is the geographic coverage of the policy/option?			E & W (variable)	
On what date will the policy be implemented?			2011-2021	
Which organisation(s) will enforce the policy?			MoJ, TNA, ICO	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase	£ N/A	Decrease	£ N/A	**Net**	**£** N/A

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Summary: Analysis & Evidence

Policy Option: Option 2	Description: adoption of a 15-year rule, phased in over 15 years

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition)	**Yrs**	There will be increased reviewing costs for central government departments and other public bodies during the transition period.
£ 75m – 120m	15	
Average Annual Cost (excluding one-off)		
£ 0		**Total Cost** (PV) **£ 75m – 120m**

Other **key non-monetised costs** by 'main affected groups' Information held in Electronic Document Records Management systems ('e-DRM' - i.e. digital records) 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

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'
One-off	**Yrs**	.
	15	
Average Annual Benefit (excluding one-off)		
£		**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' A 15-year rule will improve transparency and openness in public affairs and promote understanding of the machinery of government while protecting essential constitutional arrangements and the broader public interest.

Government departments would have 15 years less storage and managing costs for paper records and digital information if records have to be destroyed or transferred by 15 rather than 30 years.

Key Assumptions/Sensitivities/Risks The estimates presented are based on the costs arising from the management of paper records only, not digital records; we assume that the removal of certain exemptions under the FOIA will not significantly increase costs for those bodies subject to that Act.

Price Base Year 2010	Time Period Years 15	**Net Benefit Range** (NPV) **£ -75m to -120m**	**NET BENEFIT** (NPV Best estimate) **£ -90m**

What is the geographic coverage of the policy/option?			E & W (variable)	
On what date will the policy be implemented?			2011-2026	
Which organisation(s) will enforce the policy?			MoJ, TNA, ICO	
What is the total annual cost of enforcement for these organisations?			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ N/A	
What is the value of changes in greenhouse gas emissions?			£ N/A	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase £ N/A Decrease £ N/A **Net** **£** N/A

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

1. Introduction and Background

1.1 Under the Public Records Act 1958 (PRA), public records selected for permanent preservation must be transferred to The National Archives or another "place of deposit" appointed by the Lord Chancellor not later than 30 years after their creation. Additionally, under the Freedom of Information Act 2000 (FOIA), a range of exemptions protecting information cease to apply at the end of a period of 30 years following the year in which they were created.

1.2 In October 2007, the Government appointed an independent review team to look at the operation of the 30-year rule under the FOIA, and make recommendations as to whether there ought to be changes to that rule. In its report (published in January 2009) the review team noted that the FOIA had already brought about significant changes to the UK's information access arrangements with its presumption of openness, allowing access to some official information much sooner than 30 years. The review team's main recommendation was that the 30-year rule should be reduced to 15 years.

1.3 In its response (published on 25 February 2010), the Government agreed with the principle of such a reduction, but argued that the 30-year rule should be reduced to 20 years. In addition, the Government agreed that most of the FOIA exemptions listed at **Annex A** should cease to have effect after 20 years. However, the Government proposed to continue to apply the exemptions under the FOIA at sections 28 (prejudice to relations within the UK) and 43 (commercial interests) for 30 years, and would not reduce these in line with a new 20-year rule.

1.4 The exemption at section 36 of the FOIA (prejudice to the effective conduct of public affairs) will 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 will apply for 30 years. In addition, information relating to communications with the Sovereign, the Heir to the Throne and the second in line to the Throne, and those acting on their behalf (which have up to now been covered by a qualified public interest exemption for 30 years) will be covered by an absolute exemption for a period of 20 years or five years after the death of the relevant person, whichever is later. Information relating to communications with other members of the Royal Family and the Royal Household (also up to now covered by a qualified exemption for 30 years) will be covered by a qualified exemption for a period of 20 years or until five years after the death of the relevant person, whichever is later. Where the information relates to communications with the Royal Household the relevant person is the Sovereign in whose reign the information was created.

1.5 Further detail on public access to official information can be found by reading the 30-year review report (available to view at http://www.30yearrulereview.org.uk/final-report.htm) and the Government's response (at http://www.justice.gov.uk/publications/30-year-rule-review.htm).

1.6 The Government has also recently launched its new policy for the archives sector, which encourages local archives to work together to provide shared services and seek collaborative working arrangements to raise capability. Much work is already progressing in this area, for example, the Norfolk Record Office and the University of East Anglia and the Hull History Centre will offer improved facilities for the City Archives and University Special Collections.[1]

[1] Archives for the 21st Century, CM7744, November 2009.

2. Scope of the Impact Assessment

2.1 This Impact Assessment (IA) looks at the impact on central government departments and places of deposit of reducing the so-called “30-year rule” to 20 years, implemented over a period of 10 years. The possible impact is assessed in terms of costs and resources. The assessment also looks at the risks to a smooth, cost effective implementation aimed at facilitating an earlier release of meaningful quantities of official papers into the public domain as early as possible.

Scope of the proposals

2.2 The transfer process to The National Archives or a place of deposit includes an access examination by the department to decide whether the records should be designated as ‘open’ on transfer, or instead ‘closed’ because one or more of the FOIA’s exemptions apply. If the decision is to transfer them as ‘closed’, the department also decides a release date, i.e. when that 'closed' status should change or be reviewed.

2.3 Alternatively, if the department designates public records which are more than 30 years old to be retained by the department and not transferred to The National Archives, the Advisory Council on National Records and Archives is consulted, who provide advice and guidance on this, as well as on whether records should be transferred as ‘closed’. The Lord Chancellor will then make a determination, based on the Council’s advice, about whether to authorise the retention.

2.4 The sensitivity reviews carried out in departments sometimes need to be performed by people with particular expertise in the subject matter examined. Some records will require a more careful and detailed check as issues of national or personal security or commercial sensitivities may be at stake.

2.5 A significant proportion of public records selected for permanent preservation (20-25%) are transferred to places of deposit appointed by the Lord Chancellor. Just over half of these places of deposit are local authority record offices and records held at these locations are drawn from local sources to ensure that they remain accessible to local people. Local branches of central government departments also make transfers to places of deposit, particularly where they have locally-based branches and units.

2.6 Any reduction of the 30-year rule would see a transitional period where the release of official documents was accelerated to a point where two years’ worth of information is transferred annually, instead of one year’s worth. The impact and implications of a reduction therefore fall largely in three areas, representing costs to central Government and to the various other Public Authority bodies that are covered under the legislation in terms of:

- **departmental review costs;**
- **information movement costs;**
- **access costs.**

Stakeholder groups and organisations in the scope of the proposal

2.7 The PRA requires those bodies covered by the Act to transfer records selected for permanent preservation to The National Archives or to a place of deposit no later than 30 years after creation. Additionally, the FOIA applies to over 100,000 public authorities in England Wales and Northern Ireland, including government departments and local assemblies, local authorities and councils, health trusts, hospitals, schools, colleges and universities, publicly funded museums, police authorities and many Non-Departmental Public Bodies, committees and advisory councils.

2.8 Details of the names and status of the departments and public authorities covered by each Act can be found under the PRA (Schedule 1, Table - Part 1 and Part 2 and under the FOIA (Schedule 1, Parts I – VII). A non-exhaustive sample of the bodies covered is attached at **Annex B**.

2.9 In terms of devolution, Scotland has its own freedom of information and public records arrangements. These are set out in the Freedom of Information (Scotland) Act 2002 (which applies to "Scottish Public Authorities") and the Public Records (Scotland) Act 1937. Northern Ireland is currently subject to the UK FOIA but has its own public records legislation, the Public Records Act (Northern Ireland) 1923. Wales is currently subject to both the UK's FOIA and PRA, but the Government of Wales Act 2006 also contains provisions on public records specific to Wales. The MoJ will continue to engage with the Devolved Administrations on costs and other issues.

3. Problem under consideration

3.1 In deciding on whether to reduce the 30-year rule (and if so, by how much), the Government's overriding goal is to produce the very best national record of the conduct of public affairs possible, to make this available at the earliest opportunity and to do all this while maintaining the best value for money possible. Considerations which need to be weighed up are:

- the effective promotion of openness and transparency in public affairs;
- the desire to produce valuable and lasting records of the conduct of public affairs and to make those records accessible as soon as possible;
- the public interest in protecting certain sensitive information from premature disclosure;
- the administrative costs of making the transition to a new shorter rule; and
- the need to provide reviewers with an adequate context to judge which files are of lasting historical significance.

3.2 The Government assumes throughout this IA and the response to the 30-year rule review report that there is a greater gain to society from the openness and transparency achieved by such an amendment to the rules governing release of information, than there is a loss in keeping confidential the majority of such information, which often relates to important decision-making.

3.3 The key risk in not taking action now, particularly in light of the findings of the review team, is that Government is seen as not being as transparent as possible. On the other hand, a risk of reducing the 30-year rule is the potential of a "chilling effect", with earlier disclosure leading to a tendency for officials not to record events. This last risk should be seen in light of the Civil Service Code, which requires civil servants to fulfil their duties and obligations responsibly and always to act in a way which is professional and that deserves and retains the confidence of all those with who they have dealings.

4. Cost Benefit Analysis

PRINCIPLES UNDERPINNING CBA

4.1 This IA appraises the do-nothing base case against the options of reducing the rule to 15 years and reducing the rule to 20 years. For consistency, both of these policies are appraised on the assumption that implementation would be managed through the review of an additional year's worth of records each year until a new rule is functioning. A 15-year rule would therefore be implemented over 15 years and a 20-year rule over a 10 year period (see tables 1 and 3, below).

4.2 The costs set out below are the costs provided by five central government departments (FCO, MoD, Cabinet Office, Home Office and DWP) that release a high volume of documents to The National Archives. Between 2005 and 2008 these departments contributed, in different years, between 27% and 41% of the total files sent to The National Archives. From that we have extrapolated the total costs to central government departments over 15 years of a doubling in this processing, adjusted for real wage inflation, with a social discount applied over the period.

4.3 For both options, we have provided a range of costs. The low figure for central government assumes the above five departments contribute 41% of the total, with the high figure assuming a contribution of 27%. The middle figure assumes a contribution of 34%, which is the average. In addition, The National Archives has provided a general estimate of the equivalent costs to local public record bodies and places of deposit over the implementation period, and for these we have again provided a range between £1m and £2m and adjusted the figures for wage inflation and social discount.

ECONOMIC RATIONALE

4.4 The economic rationale of greater transparency relates to finding the right balance between economic welfare losses to the individual department, Ministers and affected stakeholders in terms of reduced confidentiality relating to past episodes, and economic welfare gains to society and the media from being able to access more information. These gains may include the value of learning about past events and applying any lessons to the future. The former economic welfare losses tend to diminish with the passage of time.

OPTIONS ANALYSIS

Base Case / Option 0

Description

4.5 This would retain the current position where official documents are transferred from responsible authorities to The National Archives or a place of deposit (or reviewed for retention or destruction) 30 years after creation.

Costs and benefits

4.6 The do-nothing scenario carries no presently identifiable additional costs or benefits, but would fail to improve transparency and openness, allowing inconsistencies in our information access regime to continue. Financially, departments would continue to include the costs of archival and FOI procedures in their annual budgets and CSR bids, and at some stage within the next 12 years would nevertheless need to re-organise or introduce new records management procedures to deal with the management and archiving of digital records.

4.7 The net present value of the base case is zero.

Option 1 – 20-year rule: implementation period

Description

4.8 This option would see release of official documents earlier, at 20 years after their creation, implemented over a period of 10 years, as set out (for illustrative purposes only) in table 1:

Table 1

Implementation year	Release under 20-year rule
2011	1981 and 82
2012	1983 and 84
2013	1985 and 86
2014	1987 and 88
2015	1989 and 90
2016	1991 and 92
2017	1993 and 94
2018	1995 and 96
2019	1997 and 98
2020	1999 and 00
2021	**TRANSITION COMPLETED**

4.9 Under this option, digital records being reviewed, then transferred, retained or erased would begin as a routine issue around 2020 under the current 30-year rule, when records from 1990 would start to be considered for review. This would increase throughout the 2020s for records created throughout the 1990s, becoming a key issue around 2026 on the assumption that 1996 saw the first widespread introduction of desktop computers across Government. This is therefore an issue in any case, and will be informed by The National Archives-led Digital Continuity Project and independent review of the strategy for managing digital records planned for 2012.

4.10 Additionally, information relating to communications with the Sovereign, the Heir to the Throne and the second in line to the Throne, and those acting on their behalf, will now be covered by an absolute exemption for a period of 20 years. If the Member of the Royal Family to whom the information relates is not deceased after the end of this 20-year period the absolute exemption will continue to apply until five years after their death.

4.11 At the same time, information relating to communications with Members of the Royal Family other than the Sovereign, the Heir to the Throne, or the second in line to the Throne and those acting on their behalf, will now be covered by a qualified exemption (considering the public interest in disclosure) for a period of 20 years. If the Member of the Royal Family to whom the information relates is not deceased after the end of this 20-year period, the qualified exemption will continue to apply until five years after their death.

Costs of option 1

Implementation period

4.12 Option 1 would almost certainly impose **departmental review costs** to departments and authorities during the transition period. These would largely be made up of the salaries of reviewers. It is highly probable that, given the increased workload during the transitional period, additional review staff would need to be recruited and trained. There would also probably be resource costs in terms of increased stationery and accommodation for the reviewers.

4.13 **Information movement** costs would be brought forward with an increase in the number of records being reviewed in the next ten years. These would include insurance and travelling costs as well as the cost of destruction, where this occurs.

4.14 Currently, places of deposit are not funded to preserve and manage locally created public records and there is no intention to change this policy as a result of the reduction in the 30-year rule. An accelerated transfer of records over the transition period will place increased pressure on the storage capacity of places of deposit and their ability to provide access. There may be a need to acquire additional storage space in the short-term. Nevertheless, places of deposit may not have the storage capacity to meet the accelerated transfer of records.

4.15 We do not know currently whether more members of the public are likely to start requesting access to the newer information given that it will gradually become more recent. There is no evidence available at present to know whether this will happen, although it is more likely to be a factor towards the end of the transition period.

4.16 Using the methodology and the figures as set out in paragraph 4.2, we have calculated the below transitional costs of option 1 to central government departments and local public record bodies and places of deposit.

Table 2

20-year rule costs (£m)			
	Low	Middle	High
Cost to central government departments	40	50	60
Cost to local public record bodies and places of deposit	10	15	20

4.17 This provides an overall range of between £50m and £80m for the transitional costs over a period of 15 years, for ease of comparison with the transitional costs of a 15-year rule (see option 2 below). The transitional costs are all borne in the first 10 of those 15 years. The middle overall cost is £65m.

4.18 After the transitional period, official documents will be released to The National Archives or a place of deposit (or reviewed for retention or destruction) after a reduced period. Where this is currently 30 years after creation, it would in future be 20 years.

Post-implementation period

4.19 When implementation of the policy is complete, the rate of release of public documents will probably be broadly the same as at present. It is therefore likely that **departmental review costs** will be the same, although there is a risk that the increased sensitivity of more recently created documents may require a more careful review process, resulting in higher staffing costs. Similarly, the costs of **movement of information** (including destruction) would probably be the same as at present, as any information that is classed as “closed” after 20 years, or retained by departments, may still be designated as ‘open’ or transferred at 30 years.

4.20 In terms of **access**, it is possible post-implementation that either: (a) there would be an increase in the numbers of people seeking access to official documents at The National Archives or other places deposit, given the more recent information available; or (b) interest would generally remain the same. There is no evidence available to allow a judgement to be made in favour of either outcome at present, but possibility (a) would incur greater costs to The National Archives and other places of deposit in terms of making information available to the public. This cost is unquantifiable at present.

4.21 Post-implementation, The National Archives and other places of deposit will hold more information earlier. Higher storage standards are required for historically significant records and there will be additional capacity constraints.

Digital records

4.22 It is important to note that under a 20-year rule, this process becomes accelerated. The **departmental review costs** and **transport costs** associated with digital records start to become a consideration around 2015 and will become routine by 2018. There is insufficient evidence available to estimate the costs of this process, but we might consider that the technology which would have been available in 2020 (but that will not be available in 2015) would have led to lower costs in rolling out digital archiving.

4.23 The **access costs** for digital records are uncertain. Volumes will inevitably be higher and the costs of sensitivity review and any redaction will therefore be higher.

Changes to the Freedom of Information exemptions

4.24 There is a risk that the increased availability of information under the FOIA will lead to a higher volume of requests, which may increase the costs for those bodies covered by the Act. There is no evidence available about whether this will be the case, and so these costs and benefits are not quantified in this IA..

Benefits of option 1

4.25 Most of the identifiable benefits are non-quantifiable and are as follows:

- reinforcement of the Government's commitment to openness and transparency in public affairs;
- fulfilment of the Government's desire to produce valuable and lasting records of the conduct of public affairs and to make those records accessible as soon as possible;
- reaffirming the Government's intention to act in the public interest in protecting certain sensitive information from disclosure.

Implementation and post-implementation periods

4.26 The costs of **access** will change during this period, with responsible authorities starting to store fewer records, and The National Archives and other places of deposit beginning to store more. Typically, however, only 5% of government records are selected for permanent preservation. Therefore the net storage costs will reduce, although the potential of these savings has not been monetised.

Digital records

4.27 It may be the case that the one-off costs of the switchover to digital records will be lower because of its earlier implementation. The main issue as it relates to digital records is one of obsolescence, so that the earlier the process begins, the less obsolete the creation and storage technology becomes. It also means that the material is more current and that more expertise will be available within departments to determine its value and worth, as opposed to relying on external reviewers.

4.28 As above, the **access** benefits for digital records are unclear and unquantified. However, because digital records can be made easily accessible, the access costs themselves are likely to be lower than for paper records.

Changes to the Freedom of Information exemptions

4.29 The changes that are proposed to the FOIA exemptions may have a small impact on the workload of departments. In general, it is quicker and therefore less expensive in staff terms to disclose information, without consideration of exemptions, and the weighing of public interest. If fewer documents are subject to exemptions, it follows that there may be a slight decrease in the burden on authorities in complying with those requests which would previously have been exempt for 30 years.

4.30 Similar considerations apply to the changes made to the exemptions covering the Royal Family and Household. The absolute exemption applied to information on communications with the Sovereign, the Heir to the Throne and the second-in-line to the Throne could lead to a decrease in the cost of considering the public interest, but, again, the volumes of information involved are not estimated to be so high as to be able to quantify the costs meaningfully.

Net Impact of option 1

4.31 It is difficult to assess accurately the overall impact of the rule reduction as there are a number of affected organisations (for example, non-local authority places of deposit) who have not yet contributed to discussions regarding the effect on their costs and resources. Given the higher costs of maintaining historical records against the net savings in storage space set out above, it is currently unclear whether total costs would increase or reduce over the transitional period. However, for main government departments, a 20-year rule is manageable. Adherence to the implementation window will result in meaningful amounts of records becoming accessible each year.

Option 2 – 15-year rule

Description

4.32 This option would see release of official documents earlier, at 15 years after their creation, implemented over a period of 15 years, as set out (for illustrative purposes only) in Table 3 below:

Table 3

Implementation year	Release under 15-year rule
2011	1981 and 82
2012	1983 and 84
2013	1985 and 86
2014	1987 and 88
2015	1989 and 90
2016	1991 and 92
2017	1993 and 94
2018	1995 and 96
2019	1997 and 98
2020	1999 and 00
2021	2001 and 02
2022	2003 and 04
2023	2005 and 06
2024	2007 and 08
2025	2009 and 10
2026	**TRANSITION COMPLETED**

4.33 Equivalent provisions relating to exemptions under the FOIA would be in place under option 2, but adjusted to 15 years. The consideration of the acceleration of the preservation of digital records is exactly the same as under option 1.

Costs of option 2

Implementation period

4.34 The implementation costs of option 2 broadly reflect the costs of option 1, but extended over a longer time period, resulting overall in higher costs.

4.35 Using the methodology and the figures as set in paragraph 4.2, we have calculated the below transitional costs of option 2 to central government departments and local authorities.

Table 4

15-year rule costs (£m)			
	Low	Middle	High
Cost to central government departments	60	70	90
Cost to public record bodies and places of deposit	15	20	30

4.36 This provides an overall range of between £75m and £120m for the transitional costs over a period of 15 years. The middle overall cost is £90m.

4.37 However, a key difference between options 1 and 2 is the cost of redaction. More recent material (15 years old, rather than 20) is more likely to be sensitive and need a higher level of redaction. This will add additional costs to both departments and The National Archives as compared with a new 20-year rule. However given each department is responsible for sensitivity review and redaction, at this stage we cannot quantify the costs for the whole of Government.

Digital records

4.38 As with option 1, under a 15-year rule, the process of archiving becomes accelerated. There is insufficient evidence available to estimate the costs of this process.

Changes to the Freedom of Information exemptions

4.39 The considerations for option 2 in this respect are similar to those of option 1. However with a 15-year rule, more information will be available than under a 20-year rule, which could lead to more FOI requests being made, resulting in higher costs to responsible authorities.

Benefits of option 2

4.40 The benefits of this option are again mainly non-quantifiable, in that this option would result in much earlier access to information by the public, which would aid the purpose of understanding government. In establishing the benefits, the same considerations as set out above under option 1 would apply in terms of the Government's commitment to transparency.

Implementation and post-implementation periods

4.41 Compared with option 1, the net storage costs will reduce to a greater extent under a 15-year rule, as even less material will be held by departments and responsible authorities. The potential of these savings has not been monetised.

Digital records

4.42 One-off costs may be lower the earlier the issue of digital records is addressed. Along the lines set out above, obsolescence is less of a factor under a 15-year rule than a 20-year rule, as the earlier the process begins the less obsolete the creation and storage technology becomes. It also means that the material is more current than under a 20-year rule and that more expertise will be available within departments to determine its value and worth, as opposed to relying on external reviewers.

4.43 As above, if more digital records are made accessible under a 15-year rule, the overall access costs are likely to be lower than would be the case under a 20-year rule.

Changes to the Freedom of Information exemptions

4.44 Under option 2, even fewer documents would be subject to exemptions, which would mean less of a burden on authorities in complying with those requests than would be seen under a 20-year rule.

Net Impact of option 2

4.45 The overall impact would be a significant increase to departments and other bodies, in the costs and work of preparing records for transfer to The National Archives or other places of deposit. The National Archives and places of deposit would need to cope with at least twice as much work each year during the period of implementation. Departments and local authorities would need to make provisions for their yearly costs within their annual budgets and at CSR as necessary.

Summary of Options

4.46 Having weighed the arguments for each option the Government believes that a 20-year rule strikes the right balance between ensuring that constitutional arrangements and the broader public interest are protected whilst promoting access to official information. The Government accepts that the valuable record of the United Kingdom's Government should be made public at the earliest opportunity, but not at the expense of the broader public interest.

4.47 A new 20-year rule is considered to be the best option in balancing earlier access against the following:

- a commitment to openness;
- a desire to produce valuable and lasting records;
- the public interest in protecting certain categories of information;
- the costs of moving to a new rule;
- allowing sufficient space for our sensitivity reviewers to make decisions;
- the need to protect good governance by allowing Ministers and officials sufficient confidential thinking space in which to consider policy options and give full and frank advice and views without suffering from a "chilling effect".

4.48 As set out in the Government's response to the 30-year rule review, the Government has considered the length of ministerial and official careers in coming to a decision. Where ministerial careers rarely extend beyond 15 years, a few may do so. In the Civil Service, careers exceeding 15 years are very common. Therefore, a new 20-year rule reduces the risk of both Ministers and officials being distracted from their current roles by the release of information on significant decisions taken earlier on in their careers. It also reduces the risk to the public record by ensuring that decisions by Ministers are properly recorded and ensures that more material will be transferred open to The National Archives.

4.49 However, it is important to note that although much work has taken place in scoping the various possibilities and costs involved in a new rule, much work remains to be done. There is a need to ascertain and, if necessary, factor in costs to bodies other than main government departments and there is also an emphasis on the need to engage those bodies outside of central Government in relevant discussions regarding implications of a new reduced rule.

5. .Enforcement and Implementation

5.1 A phased in introduction of the new 20-year rule should follow the terms of the phased implementation plan set out at table 1 above. The Lord Chancellor will have overall responsibility for monitoring the implementation of the new rule, with day-to-day oversight the responsibility of The National Archives. The National Archives will report annually to Ministers on progress towards implementation of the new rule, once it is enacted. We expect that a change from a 30-year to a 20-year rule will not affect compliance with the legislation.

6. Specific Impact Tests

Rural proofing

6.1 There is no evidence to suggest that the proposals will disadvantage rural communities.

Environmental tests

6.2 There may be some minor environmental impacts associated with increased transportation of files during the transition period. These may be mitigated to some extent by the accelerated progress towards archiving digital records, when transportation should decrease.

Competition Assessment

6.3 No impact on competition is anticipated from the proposals set out in this IA.

Sustainable Development

The Government has committed to five principles of sustainable development: living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly. These proposals will especially work towards ensuring a strong, healthy and just society and promoting good governance by opening up records in a proportionate manner to increase confidence in government decision making, whilst allowing Ministers and officials sufficient confidential thinking space in which to consider policy options and give full and frank advice and views.

Health Impact Test

6.4 No impact on health is anticipated from the proposals set out in this IA

Small Firms Impact Test

6.5 Assessment of the potential impact of additional capacity on small firms has relied on the Department for Business, Innovation and Skills' Small Firms Impact Assessment Guidance (September 2007). As the proposals only affect public sector bodies subject to the requirements of the PRA and the FOIA, the proposals will have no impact on small firms.

Legal Aid and Justice Impact Test

6.6 There are no legal aid impacts envisaged as a result of the proposals set out in this IA.

Human Rights

6.7 The proposals set out in this IA are consistent with the Human Rights Act 1998.

Privacy Impact Test

6.8 Given the incidental processing of personal data in public records a privacy impact assessment has been developed alongside the proposals.

Equality Impact Assessment

6.9 An equality impact screening has been carried out and is set out at **Annex C**.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Annex A

Relevant exemptions under the Freedom of Information Act 2000 (FOIA)

Under the FOIA a range of exemptions protecting information cease to apply at the end of a period of 30 years following the year in which they were created.

These exemptions are:

- section 28: relations within the United Kingdom;
- section 30: investigations and proceedings conducted by public authorities;
- section 32: court records, etc;
- section 33: audit functions;
- section 35: formulation of government policy, etc;
- section 36: prejudice to effective conduct of public affairs;
- section 37(1)(a): communications with Her Majesty and members of the Royal Household;
- section 42: legal professional privilege;
- section 43: commercial interests.

Annex B

The non-government bodies covered by the Public Records Act 1958 (PRA) and the Freedom of Information Act 2000 (FOIA) include, but are not limited to:

(under the PRA)

- the Big Lottery Fund;
- the British Council;
- the National Audit Office;
- the National Lottery Commission;
- the British Library;
- the British Museum;
- the Environment Agency;
- the Health and Safety Executive;
- the UK Atomic Energy Authority;
- the Office of Fair Trading;
- the Post Office.

(under the FOIA)

- public Authorities, such as Local Authorities in England and Wales;
- Transport for London;
- Police Authorities;
- the Arts Councils of England and Wales;
- the Bank of England;
- the BBC;
- the General Medical Council;
- the Welsh language Board;
- the Welsh Medical Committee.

Ministry of JUSTICE

Equality Impact Assessment Initial Screening – Relevance to Equality Duties

Before you complete an EIA you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course

The EIA should be used to identify likely impacts on:

- Disability
- Gender (including gender identity)
- Race
- Age
- Caring responsibilities (usually only for HR policies and change management processes such as back offices)
- Religion and belief
- Sexual orientation

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

Reduction to 20 years of the 30-year rule, governing the release of official documents under the Public Records Act 1958 (PRA) and certain exemptions under the Freedom of Information Act 2000 (FOIA). Under the proposals, records would be released to the Public Records Office (or other place of deposit) at any time up to 20 years after creation.
In addition, communications with the Sovereign, the Heir to the Throne and the second in line to the Throne, and those acting on their behalf, will be covered by an absolute exemption for a period of 20 years or five years after the death of the relevant person, whichever is later.
Communications with other members of the Royal Family and the Royal Household will be covered by a qualified exemption for a period of 20 years or until five years after the death of the relevant person, whichever is later.

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

Ollie Simpson
Freedom of Information Policy
Information Policy Division

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?

.1.1 Aims/objectives	.1.2 Outcomes
• To increase openness and transparency in the conduct of public affairs; • to improve public confidence in the machinery of government and promote understanding of public administration; • 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 • to maintain the public interest in good government and protection of certain information from premature disclosure.	• Earlier and consistent access to the public of official documents, where this is appropriate and possible; • greater transparency for the public in the workings of government; • improved confidence in the machinery of government and public administration; • maintenance of good government, with specific information protected from premature disclosure, where this is necessary and in the public interest.

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

(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings submissions or business reports, comparative policies from external sources and other Government Departments)

We have relied mainly upon the 30-year rule review team report, which was published in January 2009. This review was appointed in October 2007 to look at the operation of the 30-year rule under the FOIA and to make recommendations as to whether there ought to be changes to that rule. In its report, the review team noted that the FOIA had already brought about significant changes to the UK's information access arrangements with its presumption of openness, allowing access to some official information much sooner than 30 years. The weight of the evidence taken by the review team pointed towards a significant reduction from 30 years. The review team's main recommendation was that the 30-year rule should be reduced to 15 years.

The Ministry of Justice also monitors the application of the FOIA through its Clearing House. 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.

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?

Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.

We do not know whether certain types of information subject to release relate disproportionately to people from different groups. However, the Ministry of Justice monitors the application of the FOIA through its Clearing House. 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. 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 adverse impacts are identified along these lines, a review will take place 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 increase transparency and public confidence in the machinery of government. 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.

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 the 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 through its Clearing House. 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
(If no, please explain why not)

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 machinery 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

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA**, including the review mechanism. The summary will be published on the external MoJ website. This EIA screening relates to the policy of changing the "30-year rule", which governs the point at which records of lasting historical value are normally transferred to The National Archives or other places of deposit. This will mean corresponding changes to certain exemptions under the Freedom of Information Act 2000. Based on the information in the 30-year rule review report, 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): Belinda Crowe
Department: Ministry of Justice
Date: 3 March 2010
Note: If a full EIA is required hold on to the initial screening and when the full EIA is completed send the initial and full screening together. **If a full EIA is not required send the initial screening by email to the Corporate Equality Division (CED), for publication.** **Where an EIA has also been completed in relation to ICT specific aspects, email this to CED and copy to MoJ ICT**