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**The Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013**

During my evidence session to the Local Government and Regeneration Committee on 11 December, I agreed to provide you with some additional information concerning the impact of the proposed order on the National Records of Scotland (NRS).

As discussed in Committee, the proposed order will reduce the lifespans of certain exemptions in the Freedom of Information (Scotland) Act 2002 (FOISA) so that, where information is requested under FOISA, it will no longer be possible for a public authority to rely on one of the affected exemptions in order to withhold information which was written or produced over 15 years ago (although there are still a number of longer term or 'in perpetuity' exemptions, such as those relating to personal data or national security, which may still be applied if appropriate). It is also important to note that the order does not require the proactive release of information at 15 years, but instead only affects information which is requested under FOISA. It is a matter for individual public authorities to decide whether or not they proactively release the information they hold which is older than 15 years (as the Scottish Government has since 2009).

While there is no legal obligation on the part of bodies to deposit records with the Keeper of the Records of Scotland, the Public Records (Scotland) Acts 1937 & 2011 (along with other legislation) set out arrangements concerning the transmission of records to the Keeper.

NRS accepts records from Scottish public authorities with a national remit. These include the Scottish Ministers, Scottish Government departments and agencies and the Scottish Parliament. Records will also be accepted from UK departments or public bodies based in Scotland or whose work wholly or mainly relates to Scotland.

NRS also takes in records of former nationalised industries, private companies, cultural institutions and the archives of significant families.

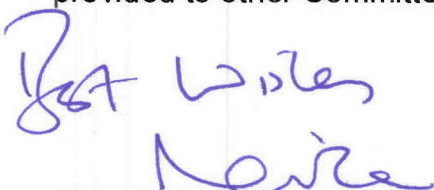
Selection policy and assessment criteria (currently under review) are issued to advise stakeholder clients and depositors on how to review and identify and transfer to NRS records worthy of permanent preservation. Criteria include whether records relate to the Scottish Parliament's deliberations, processes, functions and structures, the constitutional position of Scotland and the formulation and implementation of policy on, for example, civil and criminal law, social issues and the Scottish economy.

All records received from government stakeholders undergo a 'sensitivity review' prior to transfer to NRS. They are received either as 'open' or have access restrictions applied, for example under Freedom of Information or Data Protection legislation. Court records carry similar restrictions while any access restrictions for private records are specifically agreed with the depositing authority or record owner.

In practice, the proposed order is likely to have minimal impact on the existing arrangements for transferring files to NRS. The main potential impact is an increase in the number of records being transferred to NRS from public authorities as already 'open' - rather than with an open date determined by the original FOISA exemption lifespans.

For information, you may wish to read the response by NRS to the section 59 consultation earlier this year. The response can be found at: <http://www.scotland.gov.uk/Publications/2013/09/5421/downloads#res432438>.

I am copying this letter to Kevin Stewart and to the Committee Clerks so it can be provided to other Committee members for information.

  
NICOLA STURGEON