



Pemberton, H. R. 30-year rule review

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30 Year Rule Review: written evidence

I would like, if I may, to make a few points that may be relevant to the Review Committee's deliberations on the 30-year Rule.

As a contemporary British historian I would be only too pleased to see a reduction in the 30-year rule. I cannot in principle see any reason why one could not move to a 20-year rule, or even to a 15-year rule.

Plainly there are issues surrounding the full disclosure of public records relating to the recent past. If the 30-year rule were to be relaxed it might, for example, it might be argued that it could prove awkward for civil servants to have their earlier advice to ministers paraded in public view whilst they were still in post. It might be argued that this could constrain their willingness to raise difficult issues with their ministers. Equally, release could potentially prove politically embarrassing for ministers who themselves might still be playing a role in government.

All these issues, however, can be said to apply to the 30-year rule. Margaret Beckett, for example, was a minister for 34 years. Many senior civil servants today joined the service before 1978 and their opinions and advice can easily be found in files on open access at the National Archive. Such arguments cannot, therefore, be deployed against relaxation. That horse has already bolted.

However, whilst I would argue in favour of relaxing the 30-year rule in principle, I would qualify this support in the following respects:

1. Release of public records requires expert staff to undertake it. Expert departmental records officers are needed to determine which files are to be released, which are to be withheld, and which are to be destroyed. Expert archivists needed to catalogue the material. Any relaxation of the 30-year rule must take this into account. Any such change must be fully-funded. And it must involve a transition period sufficient to allow a well-planned and well-executed 'catch-up' exercise to be undertaken.
2. On no account do we want to end up with a relaxation that, in order to meet a lack of financial resources and/or skilled records officers and archivists, incentivises the destruction of public records that would ordinarily have been preserved under the 30-year rule.
3. Thus, whilst I am in principle in favour of a reduction in the 30-year threshold for the release of public records I would argue against the change if it was made without sufficient resources being devoted to it to enable it to be carried out professionally and with due consideration for the spirit of openness implicit in the term 'public records'.

I would suggest that in addition, the Committee might usefully also consider two other aspects of the 30-year rule.

1. Whether or not the Committee finds in favour of a relaxation of the 30-year rule created by the Public Records Act, I feel that we need urgently to consider the exact meaning of the term 'public record'. Since the institution of the 30-year rule by the Public Records Act, 1967 there have been major changes in the structure and operation of British governance. The concept of the political adviser, for instance, was in its infancy in 1967, the concept of executive and other agencies had yet to be invented, charities had not yet become deliverers of government policy. We need to acknowledge these major changes and revisit our definition of who exactly produces 'public' records.
2. Consideration might also be given by the Committee to the interrelationship between the 30-year rule and the provisions of the Freedom of Information Act, 2000. As things stand, Section 35 of the Freedom of Information Act provides for the exemption of records bearing on the formulation of government policy, ministerial communications, and the operation of ministerial private offices. At present the default position of many departments seems to be that for a vast swathe of records this automatically precludes release in advance of the 30-year rule. I am by no means convinced that departments are presently giving due weight to the many references in the Information Commissioner's guidance on exemptions to the need to take into account 'the passage of time' when deciding whether or not documents are to be exempted from release under the Act. Clarification of this 'passage of time' concept, and thus clarification of the relationship between the Freedom of Information Act and the 30-year rule, is urgently required.

Yours faithfully,

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