

Concordat between The National Archives and the Welsh Assembly Government concerning the management of public records

Introduction.

1. This Concordat and its appendices set out the understanding between The National Archives and the Welsh Assembly Government. This Concordat is a statement of intent and should not be interpreted as a binding agreement or contract. It does not create legal rights, obligations or restrictions between parties. It does not create any rights to be consulted or to prevent consultation beyond that required by statute.
2. This Concordat is intended to promote constructive co-operation and communication. It sets out a working framework within which officials will continue to develop relationships between the two parties. The primary aim is to ensure that if either is planning action which may impinge on the responsibilities of the other, it provides adequate forewarning.
3. The principal channel of communication on all matters relating to Welsh public records¹ will be between the officer at The National Archives with lead responsibility for liaison with the Welsh Assembly Government on records and information matters and the Welsh Assembly Government and the Welsh Assembly Government Departmental Records Officer. Formal consultation should normally be in writing but should be supplemented by regular informal contact wherever possible. In all cases relating to Welsh public records where other channels are used, the designated officer from The National Archives and the Departmental Records Officer should be kept fully informed as a matter of course.

¹ Meaning of “Welsh public records”

(1) The following are Welsh public records—

- (a) administrative and departmental records belonging to Her Majesty which are records of the Welsh Assembly Government,
- (b) administrative and departmental records of the Auditor General,
- (c) administrative and departmental records belonging to Her Majesty which are records of or held in any government department which is wholly or mainly concerned with Welsh affairs,
- (d) administrative and departmental records belonging to Her Majesty which are records of any office, commission or other body or establishment under Her Majesty’s Government which is wholly or mainly concerned with Welsh affairs in a field or fields in which the Welsh Ministers have functions, or the First Minister or the Counsel General has functions,
- (e) administrative and departmental records of the bodies and establishments specified in subsection (2) (but not records of health service hospitals in Wales which are of the descriptions excepted from being public records for the purposes of the Public Records Act 1958 (c. 51) in the case of health service hospitals in England), and
- (f) any other description of records (other than records of the Assembly or the Assembly Commission or records of any court or tribunal or held in any department of the Senior Courts) which is specified by order made by the Lord Chancellor.

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Legal Framework.

4. The Government of Wales Act (GOWA) 2006, Part 6, ss.146 to 148.

- Identifies a category of records known as 'Welsh public records'². Records falling into this category are listed in s.148 of the GOWA 2006.
- Excludes the records of the National Assembly for Wales Commission (NAWC) (previously the Assembly Parliamentary Service) dating from May 2007 from the definition of Welsh public records.
- Enables the Welsh Assembly Government, if it so wishes, to make suitable arrangements for the selection and long term storage of, and public access services to, Welsh public records. Should the Welsh Assembly Government decide to do this these arrangements will be assessed by officials from The National Archives in accordance with the standards that apply to UK archives' repositories. Once the Lord Chancellor has approved these arrangements, he will make an Order transferring full responsibility for Welsh public records to either specified Welsh Ministers or a member of the Welsh Assembly Government to preserve those records.
- Requires the Chief Executive and Keeper of The National Archives, on behalf of the Lord Chancellor, to supervise the current arrangements for Welsh public records until such time as an Order is made.

5. This Concordat will remain in force while the current arrangements for dealing with Welsh public records apply.

Interaction between the National Archives and the Welsh Assembly Government's responsibilities.

6. Good communication is vital to enable constructive co-operation, therefore both parties will:

- Seek to involve each other, as and when appropriate, in information and records management policy formulation;
- Keep each other informed about developments affecting areas relating to information and knowledge management.
- Give appropriate consideration to the views of the other and where possible allow a reasonable timescale for proper consideration of comments, representations and information.
- Inform each other of anything which may require action or have resource implications for the other party.
- Give advance notification at the earliest practicable stage of substantive new records management related policy announcements.

² First defined in the Welsh Government Act 1998, s.116 to s.118.

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- Share information, analysis and research relating to information and records management, where such arrangements would be of mutual benefit
- Seek to involve each other on digital continuity issues within The National Archives and the Welsh Assembly Government and on the preservation of datasets and websites automatically into an appropriate web archive – see 10 below.

7. The National Archives will:

- Provide guidance and agree standards covering the following broad areas.
 - Information and records management.
 - Management of active records.
 - Appraisal of records.
 - Preparation of selected records for transfer to The National Archives or other places of deposit for public records approved under the Public Records Act 1958, s.4(1).
 - Public access services to Welsh public records.
- Provision of guidance and support will be carried out through:
 - Regular visits from The National Archives' staff as required.
 - Provision of specific advice in written, telephonic and electronic format.
 - Production of available published guidance and standards. .
 - Provision of seminars and meetings as required.

8. The Welsh Assembly Government will:

- Carry out the functions below to the standards produced by The National Archives:
 - Consult with The National Archives as necessary but particularly on information management issues and the management of current records.
 - Appraise, prepare and transfer selected records and datasets to The National Archives in a regular and timely manner.
 - Ensure that all staff working in the records environment are trained according to TNA standards and that relevant staff are to be encouraged to enrol on TNA training events as required.
 - Create, organise and store all records (regardless of format) in a way that will ensure their survival and retrieval.

Relationship with the Wales Office.

9. The Secretary of State for Wales is guardian of the devolution settlement and responsible for steering primary legislation relating to Wales through the

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Westminster Parliament. Under the umbrella of the Ministry of Justice, the Wales Office is responsible for ensuring that the interests of Wales and the views of the Welsh Assembly Government are fully taken into account in all central government matters, including primary legislation, that affect Wales.

Transparency.

10. The Welsh Assembly Government will publish datasets, which do not contain sensitive information, on Welsh Assembly Government websites in formats that will allow for the re-use of information. They should be presented without, for example, logins or picklist selections in order to enable the data to be downloaded without any further intervention by the user. The datasets will then be able to be automatically harvested into an appropriate web archive³ which should provide an appropriate portal for sharing open government dataset data. Datasets containing sensitive information should be maintained under a Digital Continuity regime within the Welsh Assembly Government.

11. The Welsh Assembly Government Departmental Records Officer will be responsible for coordinating this activity within the Assembly Government and reporting activities to the Practitioners Group on Transparency as coordinated by The National Archives or successor groups.

Welsh public record bodies.

12. See Appendix A.

13. The Welsh Assembly Government has funding responsibility for most of these bodies. The Welsh Assembly Government Departmental Records Officer in liaison with The National Archives, should ensure that records shared with other bodies or held on its behalf are managed in accordance with the Code of Practice issued under section 46 of the Freedom of Information Act 2000. The Welsh Assembly Government will use its best endeavours, in liaison with The National Archives to ensure that any body creating or holding records on its behalf will manage such records appropriately.

14. The Welsh Assembly Government should ensure that when any new sponsored body is set up, due consideration is given, to whether its records should have Welsh public record status under the Government of Wales Act 2006.

³ An 'appropriate web archive' is determined by the agreement between the National Library for Wales and The National Archives whereby it is agreed that National Library for Wales will archive the websites of the Welsh Assembly Government and the new National Assembly for Wales website (the latter body no longer comprising a public record body). National Library for Wales will also preserve websites of bodies which report to, are funded by, or established by either of these two government bodies. For the foreseeable future, The National Archives will also preserve the WAG website only.

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15. The Welsh Assembly Government should also consider whether the record status of any existing sponsored bodies whose records are currently not Welsh public records, should be changed and, if so, to advise The National Archives accordingly⁴.

A National Record Office for Wales.

16. Section 146 of the Government of Wales Act 2006 states that Welsh public records (as defined by s.148) are governed by the Public Records Act 1958 until such a time as the Lord Chancellor makes an Order under s.147. This Order would impose or confer on either the Welsh Ministers or a member of staff of the Welsh Assembly Government functions in respect of those records (for example, a duty to preserve them and provide access to them).

17. This action would effectively provide the authority to create a Welsh National Public Record Office. The Welsh Assembly Government will need to satisfy the Lord Chancellor that it is able to meet the standards that apply to the storage, access and preservation of UK public records. Should the Welsh Assembly Government decide to develop options for a National Archives of Wales then the Welsh Assembly Government will notify The National Archives at the earliest opportunity.

18. In these circumstances, The National Archives will:

- Provide timely advice on the likelihood of a particular proposal meeting the standards for preservation and access that apply to public records covered by the Public Records Act 1958 and 1967.
- Notify the Welsh Assembly Government in advance of any major changes to these standards.

⁴ In accordance with Cabinet Office and the National Archives guidance on informing "Customers" and "owners of processes" affected by the change as outlined in the National Archives publication "*Machinery of Government Changes: Guidance on Transfer of Records, Information and Knowledge*".

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Signatories to this Concordat.

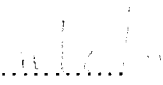
Addresses and Signatories.

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The National Archives
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Richmond
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TW9 4DU


**Signed by Dame Gillian Morgan [Permanent Secretary to the Welsh
Assembly Government] under the authority of Carwyn Jones First
Minister of Wales.**

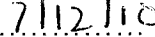
Dame Gillian Morgan.....

Date.....

Signed on behalf of The National Archives.

Acting Chief Executive and Keeper of The National Archives

Oliver Morley.....

Date.....

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Appendix A – Welsh public record bodies.

The Government of Wales Act 2006, s.148 describes Welsh public records as:

In s. 148(1)(a) “*administrative and departmental records belonging to Her Majesty which are records of the Welsh Assembly Government*”.

In s.148(1)(b) the records of the Auditor General are defined as Welsh public records.

In s.148(1)(c) records held in any government department that are wholly or mainly concerned with Welsh affairs are defined as Welsh public records.

In s.148(1)(d) the records of any office, commission or other body or establishment under HM Government that are wholly or mainly concerned with Welsh affairs (in which Welsh ministers have functions or the First Minister of the Counsel General has functions) are defined as Welsh public records

In s.148(1)(f) any records relating to Wales specified by order made by the Lord Chancellor are defined as Welsh public records; other than those of the Welsh Assembly or Assembly Commission or records of any court or tribunal or held in any department of the Senior Courts.

The following bodies are also defined as Welsh public record bodies under the Government of Wales Act 2006, s.2.

- (a) the Care Council for Wales,*
- (b) the Countryside Council for Wales,*
- (c) the Curriculum and Assessment Authority for Wales,*
- (d) Family Practitioner Committees for localities in Wales,*
- (e) the Further Education Funding Council for Wales,*
- (f) the General Teaching Council for Wales,*
- (g) Health Service hospitals, within the meaning of the National Health Service Act 1977 (c. 49), in Wales,*
- (h) the Higher Education Funding Council for Wales,*
- (i) the Local Government Boundary Commission for Wales,*
- (j) the National Council for Education and Training for Wales,*
- (k) National Health Service Authorities for districts or localities in Wales, or for areas in or consisting of Wales, including National Health Service trusts all of whose hospitals, establishments and facilities are situated in Wales,*
- (l) the Qualifications, Curriculum and Assessment Authority for Wales,*
- (m) the Wales Centre for Health, and*
- (n) the Welsh Board of Health.*

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Appendix B. List of organisations whose functions have transferred into or out of the Welsh Assembly Government.

Name of organisation	Date of transfer
Care and Social Services Inspectorate Wales (CSSIW) (transferred into the Welsh Assembly Government)	1 April 2002
Children and Family Court and Advisory Support Service (CAFCASS) CYMRU (transferred into the Welsh Assembly Government)	1 April 2005
Health Professions Wales (HPW) to the Welsh Assembly Government - Healthcare Inspectorate Wales (HIW)	Health Professions Wales (HPW) functions and associated staff transferred to the Welsh Assembly Government on 1 April 2006. This included the Quality Assurance and Local Supervisory Authority functions.
Health Commission Wales (HCW) (transferred into the Welsh Assembly Government)	1 April 2003 HCW transferred into the Assembly and will transfer out on 31 March 2010.
Rent Office (transferred into the Welsh Assembly Government)	1 April 2003
Welsh Development Agency (WDA) (transferred into the Welsh Assembly Government)	Transferred 1 April 2006. In accordance with National Assembly for Wales Statutory Instrument 2005 No.3226 (W.238) all WDA records and databases were to be transferred to the Welsh Assembly Government Departmental Records Officer (DRO) to facilitate the transfer of functions to this body agreed by Order in Council on 22 November 2005 by the National Assembly for Wales.
Wales Tourist Board (WTB) (transferred into the Welsh Assembly Government)	Transferred 1 April 2006. In accordance with National Assembly for Wales Statutory Instrument 2005 No.3225 (W.237) all WTB records and databases were transferred to the Welsh Assembly Government Departmental Records Officer (DRO) to facilitate the transfer of functions to this body agreed by Order in Council on 22 November 2005 by the National Assembly for Wales.

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<p>Education and Learning Wales (ELWa) was the brand used by the National Council for Education and Training for Wales (NCETW) (transferred into the Welsh Assembly Government)</p>	<p>Transferred 1 April 2006. In accordance with National Assembly for Wales Statutory Instrument 2005 No.3238 (W.243) all National Council for Education and Training for Wales (NCETW) records and databases transferred to the Welsh Assembly Government Departmental Records Officer (DRO) to facilitate the transfer of functions to this body agreed by Order in Council on 22 November 2005 by the National Assembly for Wales.</p>
<p>Awdurdod Cymwysterau, Cwricwlwm ac Asesu Cymru (ACCAC) was the Qualifications, Curriculum and Assessment Authority for Wales. (transferred into the Welsh Assembly Government)</p>	<p>Transferred 1 April 2006. In accordance with National Assembly for Wales Statutory Instrument 2005 No.3239 (W.244) all ACCAC records and databases were transferred to the Welsh Assembly Government Departmental Records Officer (DRO) to facilitate the transfer of functions to this body agreed by Order in Council on 22 November 2005 by the National Assembly for Wales.</p>
<p>Tir Gofal Scheme (transferred from Country Council for Wales to the Welsh Assembly Government))</p>	<p>Transfer took place on 16 October 2006</p> <p>In accordance with National Assembly for Wales Statutory Instrument 2006 No 1717 (W.179) all Tir Gofal records and databases were transferred to the Welsh Assembly Government Departmental Records Officer (DRO) to facilitate the transfer of functions to this body agreed by Order in Council on 28 June 2006 by the National Assembly for Wales.</p>
<p>Department for Environment, Food and Rural Affairs (DERFA - Animal Health Agency)</p>	<p>DEFRA - Animal Health Agency transferred to the Welsh Assembly Government's Animal Health Agency in October 2008</p>
<p>National Health Service Human Resources (NHSHR) – Workforce & Education Branch</p>	<p>On 1 April 2006 the functions of the at the NHSHR – Workforce and Education Branch at the Welsh Assembly Government transferred to the National Leadership and Innovation Agency for Healthcare (NLIAH).</p>

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DYSG (DYSG was the Learning and Skills Development Agency's executive department in Wales)	In accordance with the Public Records Act 1958 S.3 (6), all DYSG records and databases were transferred to Welsh Assembly Government Departmental Records Officer (DRO) as an alternative to destruction on 1 May 2006.
Wales Screen Commission	Created 2002. Part of the Welsh Assembly Government's Creative Industries Support Service (Creative Business Wales) managed by Finance Wales on behalf of the Welsh Assembly Government. Finance Wales formed by the Welsh Assembly Government in 2001 as limited company to invest in Welsh businesses and economy.
Fisheries and Marine Management	Transfer of function into the Welsh Assembly Government on 1 April 2010.
South Wales Sea Fisheries Committee & North Wales Sea Fisheries Committee	Transfer of function into the Welsh AG on 1 April 2010.
Local Government Data Unit	Transfer into the Welsh Assembly Government on 1 April 2010.
Health Commission Wales (HCW)	Transfer function from the Welsh Assembly Government to Cwm Taf Local Health Board