

THE		
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Retention

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Any enquiries regarding this publication should be sent to us at governmentaudience@nationalarchives.gov.uk

Legal position

Section 3(4) of the [Public Records Act 1958 \(PRA\)](#) requires departments to transfer to The National Archives, or to an approved place of deposit, those records which have been selected for permanent preservation. This must take place by the time the records are 20¹ years old, unless departments receive authorisation to retain them for longer. Provision for retention is made in the second part of s3(4):

Provided that any records may be retained after the said period if, in the opinion of the person who is responsible for them, they are required for administrative purposes or ought to be retained for any other special reason and, where that person is not the Secretary of State, the Secretary of State has been informed of the facts and given his approval.

This provision refers not only to records selected for transfer and preservation but also to records not selected which departments need to retain for administrative use. Records cannot be retained without the Secretary of State's approval which is given only after applications have been reviewed by the Advisory Council. Retained records that have been selected for permanent preservation are listed on Discovery, The National Archives catalogue, even though the physical records continue to be held by the department.

Government policy requires departments to review retained records, other than those retained for administrative purposes, every ten years, and to consider whether actual damage would be caused by their release (that is, transfer as open to an archives service, or transfer closed if the sensitivity has sufficiently diminished). This is achieved by retention being approved for a period of ten years or less.

Note that retention of records is not open-ended and does not necessarily make them inaccessible to the public. Retention is about who holds the information, not access, therefore retained records are still subject to Freedom of Information (FOI) requests, made to the

¹ From 2013 there is an incremental transition from 30 years to 20 years over a 10 year, provisions are set out by [the Public Records \(Transfer to Public Record Office\) \(Transition and Savings Provisions\) Order 2012, SI 2012 No. 3028](#)

department holding the records. The Secretary of State must be consulted about a proposed refusal to disclose in the public interest information in a historical record retained within a government department.

The only exception is for records held by those few bodies which are excluded from the operations of the Freedom of Information Act² (FOIA). For this reason the criteria for retention are not dependent on the exemptions of the FOIA.

Categories of retained documents

Administrative retention

Documents retained for administrative purposes fall into two categories.

- those which are in continued use (criteria 1 and 2). These could be maps relating to operations still under way, or contracts or leases which are still live.
- or records which should have been transferred or disposed of, but the selection, sensitivity review and the tasks of the transfer process, for example cataloguing and preparation of records has not been completed (referred to as a 'backlog', criteria 4a and 4b)

Where records have been selected as suitable for permanent preservation, but are retained because of a continuing administrative need, departments are expected, wherever possible, to make them available to the public in line with legislation and statutory access conditions, and to inform the public of their availability if appropriate. If the administrative retention is because records need to be accessible to public inquiries, police investigations or other statutory bodies, these should be referenced in the application. Where retention is required because legislation indicates records cannot yet be destroyed or disposed of, this should also be referenced in the

² Bodies subject to the Scottish FOIA, the Security Service, the Secret Intelligence Service, the Government Communications Headquarters, units assisting GCHQ, and the special forces

application.

Where selection, sensitivity review and transfer of records to The National Archives has not taken place before the records are 20 years old, the Secretary of State's approval is necessary to authorise the retention of the records within a department.

This type of retention is the exception, not the rule, and the Advisory Council scrutinises such applications with particular care. The department will need to work with The National Archives when drawing up their plans to address the backlog. The department will need to satisfy the Council that sufficient resources are being made available for the backlog to be cleared in the stated period, including specifying when it expects to have transferred the records. The retention will only be authorised for the period needed to clear the backlog. Regular progress reports to the Advisory Council may be necessary.

Retentions for 'any other special reason'

Government policy indicates that retention for 'any other special reason', in the words of s3(4), is appropriate for records whose sensitivity is such that it cannot be estimated when the record may be released. In other words, the sensitivity is indefinite, and the current security classification of the record is above OFFICIAL, and therefore too high to allow for transfer to The National Archives as a closed record.

This provision has most commonly been used for national security and defence records and material originating from the intelligence bodies which remain classified. This includes files and documents where the current classification is too high for The National Archives to hold. It will include records which if requested under FOI would engage sections 23 (intelligence bodies), 24 (national security) and 26 (national defence), and may include some records engaging sections 27 (international relations) and 31 (law enforcement), especially where release would cause serious damage³. One subset of records with an indefinite sensitivity is the existence of a Statute Bar

³ Pages 7-10, 25, [Government Security Classification April 2014](#)

which prohibits disclosure, but can also prevent transfer – the bar may only be in place whilst the records are held by the department, where the Bar has no cut-off. Departments should consider redaction if the removal of a small portion of the record would enable the rest of the file to be transferred.

Blanket retentions

In some instances approval has been given for the retention of large categories of records of a similar character. The reasons for non-disclosure are the same for each record covered by such approvals. These instruments are referred to as giving a 'blanket' approval to retain. Current retention approvals giving blanket coverage to retain include:

- Security and Intelligence material
- classified records of the Special Branch of the Metropolitan Police
- records relating to defence applications of atomic energy
- personal records of civil servants
- personal records of the members of the armed forces and Home Guard
- Teachers' pensions files and teachers' misconduct files created between 1914 and 1978

Previous blanket approvals were given in relation to various defence matters, but these have expired and have not been renewed.

The most widely used blanket is that relating to intelligence and security. It covers records held by or on behalf of the Government Communications Headquarters (GCHQ), the Secret Intelligence Service (SIS) and the Security Service, and other records which relate to security or intelligence service activities, and which are held by the agencies themselves or by any other department. Details of this [blanket](#) have been published.

Intelligence-related documents held in other departments are to be reviewed in the normal manner and released if they are no longer sensitive. There is no obligation to retain all material which could fulfil the criteria of the instrument; the blanket is an administrative tool to avoid the

need for a long list of itemised applications to retain records. Some records, previously held by GCHQ and the Security Service, have been transferred to The National Archives.

Guidelines on retention

The retention of individual records will be considered by the Advisory Council, unless there is a standing authorisation already in place for the retention of a whole category of records. It will consider application on the basis of the guidance in chapter 9 of the [Open Government White Paper](#) (Cm 2290, 1993) or subsequent revisions of government policy on retention. If it is satisfied with the application, the Advisory Council will recommend approval by the Secretary of State. The public can be told which of these grounds for retention applies to the records unless to do so would put at risk the information which has led to the material being withheld. The Advisory Council requires sufficient detail about the records to be satisfied that the retention is proper. The Advisory Council uses an aide-memoire of commonly cited grounds for retention, which is based on the previous practice of the Council and distinguish a number of categories of administrative retention from retention for special reasons. The table is regularly reviewed to ensure it meets the needs of departments, The National Archives and the Advisory Council; criterion 8 was added in 2016, and criterion 4 split in 2019 to reflect reporting needs. In the same year criteria 3, 5 and 7 were 'retired' as they had not been used recently or regularly over the years. The Advisory Council has indicated they view retention on security grounds as two-fold: firstly, whether the information should be released or not, and secondly, whether there is reason (classification) for retention over closure. Therefore, Departments should indicate the up-to-date classification of the material when applying for retention where it is not apparent.

This table provides a summary of the most common grounds for retention. The numbers below are those used on applications to the Advisory Council. Normally a retention period of between one and five years is granted when grounds 1, 2, 4 or 8 are satisfied and up to ten years for ground 6. More recently if retention is requested under grounds 1 or 2 because of legislation

requirements, then a retention period of up to ten years is considered.

Number	Grounds for retention
1	Records or series of records which have not been selected for transfer to The National Archives or a place of deposit, but which the department has retained after they are defined as historical records because they are required for its own administrative purposes
2	Records or series of records that have been selected for transfer to The National Archives or place of deposit but are still required for administrative purposes
4a	Records or series of records not yet appraised which form part of a backlog awaiting appraisal
4b	Records or series of records selected for transfer which form part of a backlog awaiting sensitivity review, or preparation for transfer to The National Archives or place of deposit
6	Records retained in departments on security or other specified grounds
8	Records or series of records where no decision has yet been taken with regard to selection or transfer to The National Archives or a place of deposit, but which the department requires for administrative purposes, for example legal proceedings

Classification level of records which can be transferred to The National Archives

Following the implementation of the new [Government Security Classifications](#) on 2 April 2014, Government departments should not transfer as open or closed records with a security classification of SECRET or TOP SECRET.

In line with the new government policy, The National Archives advise that:

- Access decisions should be made on the basis of sensitivities that exist at the time of review⁴
- All records judged to be in the lowest security classification (known as OFFICIAL) should be transferred (open, or closed if FOI exemptions apply) to The National Archives and not retained by the originating department
- Those records judged to be SECRET or higher must be retained by the originating department
- Records transferred to The National Archives, including closed records, may retain their original protective markings, but these will no longer be valid, and the closure of records and the reasons behind the closure drive the storage and handling of records at The National Archives.

⁴ Page 15, [Government Security Classification April 2014](#)