

**SRAC Sub-group meeting on retention and disposal of government records
General Register House, 16 February 2007**

Attended by:

SRAC: Professor Hector MacQueen (Chairman), and Dr Alison Rosie (Secretary)

NAS: Mr George Mackenzie (Keeper of the Records of Scotland), Dr Peter Anderson (Deputy Keeper), Mr Bruno Longmore, Dr Hugh Hagan and Ms Jenny McDermott (all of Government Records Branch).

Also attending: Professor Ian Levitt, Department of Social Work, University of Central Lancashire.

Apologies were received from Professor Lynn Abrams and Professor Roger Davidson.

1. Minutes and matters arising

The minutes of the previous meeting were approved with one minor amendment.

Matters arising:

Freedom of Information Guidance: Professor MacQueen queried whether the NAS had noted cases relating to FoI appearing before the Court of Session. (Appeals by (1) The Scottish Ministers, Appellants; against The Scottish Information Commissioner (**William Alexander's Application**) Respondent; and (2) The Scottish Ministers Appellants; against The Scottish Information Commissioner (**David Elstone and Martin Williams's Applications**) 23 January 2007). Mr Longmore said that the case in January against the Scottish Executive was of particular interest as the ruling could potentially have long term repercussions for the NAS. The Court of Session ruling had required a review of a file on a paper by paper basis which could have implications for the way the Scottish Executive reviewed its files in the future. Professor MacQueen also mentioned the case of the Common Services Agency against the Scottish Executive in December 2006 where the ruling seemed to suggest that the Executive should not play the exemptions card too often.

Record keeping section of NAS website: Government Records Branch [GRB] had been unable to push this forward in 2006 due to the number of staff changes but the content would be reviewed this year. The Branch was seeking to build up better information for its clients and stakeholders and was restructuring its client portfolio thematically. For example, Ms McDermott, who had recently joined the staff of GRB, would take responsibility for NHS clients.

The draft of the NAS' selection policy was available for comment on the website but there had been no feedback. Professor Levitt said that it would be useful to have some information on the site from a user's point of view explaining what was being kept and why, information which some stakeholders might also find helpful.

The meeting discussed whether Departments were properly aware of information in files kept by the NAS which might shed light on issues of current concern. The example of Foot and Mouth was given as an instance of this: a report on a previous

outbreak had not been considered in the Executive's approach to the outbreak of 2001. Departments tended to look no further than their Registries for information rather than looking to what was held by the NAS. Mr Longmore agreed that there was a need to ensure that policy makers and advisers were aware of relevant material in files and in order to assist identification of such material, the Branch made the catalogue entries as full as possible. He added that though Departments were borrowing back a lot of files (150 per quarter) he thought that many of these were in response to Freedom of Information enquiries. Few files were borrowed to feed into policy and decision making. The Keeper wondered whether the NAS should attempt to anticipate issues – eg. nuclear power - both for internal and external purposes.

Dover House: The Keeper thanked Professor Levitt for his briefing note on the administrative background of the Scottish Secretary's Private Office and added that it would prove most useful in identifying the various strands of the Department. Prior to the 1980s, when a quantity of files had come back to Scotland from Dover House, the assumption had been that the departmental 'top' copy of a document (with the minister's annotations) had been sent back to St Andrews House for filing. The Dover House files contained briefing notes for ministers but not the top copies with the minister's annotations. However, c70-80 metres of Dover House files were awaiting review in Saughton House and they remained under embargo until 2009. These files were possibly category one ministerial papers, which would not have been transferred to departments, but they may also contain category three ceremonial papers. The SE Corporate Records Manager was eager for them to be appraised by the NAS but this was dependent on resources available.

Digital cameras: There were a number of objections against the use of digital cameras in the search rooms on conservation and operational grounds but the Keeper agreed not to lose sight of the issue. Professor Levitt pointed out that the National Archives in London had ceased their photocopying order service, except for large documents or bulk orders intended for postal delivery.. Researchers could now copy papers themselves. The Keeper undertook to look into this, but pointed out that there were issues of handling and supervision to be considered.

Review of Files not worthy of preservation: Details of these had been submitted to the Council after the meeting last February and, as a result, the seven files in question had been destroyed.

2. Government Records Branch Business Report, 2006

Mr Longmore and Dr Hagan took the meeting through some of the main issues raised in the report.

Freedom of Information [Section 1]

This occupied a lot of the branch's time. The enquiries received had become more sophisticated and researchers were also submitting separate requests for individual files. 38 requests had been processed during the year and the target of 30 days had been missed on 6 separate occasions. This was due to circumstances outwith the control of GRB as once the enquiry had been forwarded to the Scottish Executive, the branch had no control over the response time. Procedures to improve the transfer and

processing of FoI files had been agreed between NAS and the Scottish Executive, though time taken to reach review decisions still varied. The Freedom of Information Unit in the SE was dealing with large numbers of complicated requests and on a number of occasions had been forced to use the vexatious requests procedure of the Act. To NAS's knowledge, only one appeal had been made directly to the Scottish Information Commissioner following refusals to view SE information held by the NAS. There was also one request for an internal review for information supplied by NAS.

One difficulty was whether the matter under question was reserved or devolved. If reserved, a separate application had to be made and sent to the Scotland Office under UK FoI legislation. This was frustrating for researchers. There was also the suspicion among some researchers that on occasion the Scottish Executive was using the UK FoI legislation to avoid having to respond to an enquiry. The Executive appeared to take a rigid interpretation of any request and was considered in some circles as possibly less open than other Whitehall departments. Professor Levitt pointed out that the Scottish Executive might find that the material which they might want to close in Scottish files was actually open in a UK departmental file. It was also pointed out that The National Archives reviewed all files, whereas in Scotland, this was undertaken by the Department.

Scottish Executive Review of files [1.4]

The review had ceased in May 2006 due to the lack of resources available to carry it out. No files now came to the NAS which had not been reviewed first, but there remained some 10 000 historical files still under 30 years closure which would have to be individually reviewed if an application were made.

Mr Longmore brought to the attention of the sub-group a private members bill which could have an effect on the review of files. The bill sought a further exemption under UK legislation for MPs correspondence with constituents. If this Bill were to go through Parliament, it would be retrospective for 30 years and all the files which had been reviewed would have to be reviewed again to redact or remove affected papers. The Keeper added that this would cause the NAS to increase the frequency with which it was required to remove and store separately individual documents from files.

Publicity [1.5]

GRB had abandoned its attempt to publicise the review of files. Instead the Branch had chosen to publicise less controversial areas. Information from files, such as the fisheries files on the loss of the 'Vaila' in 1957, had been made available on the NAS website. Prof Levitt queried whether it would be possible to publish a file in its entirety on the website, including photographs, much as The National Archives do. Mr Longmore responded that the Branch was working on a programme to publicise files, linking in with current issues, such as transport, power generation, the Forth Road Bridge. He emphasized that for this programme to succeed, the Scottish Executive had to be on board.

Electronic Document and Records Management System (EDRM) [3.]

NAS was currently looking at the Scottish Executive file plan to assess what could be retained in its entirety. With the electronic record, there would no longer be the same facility for NAS to look at individual files. More material would be taken in to the

NAS, but in an electronic form which would take up less physical space. The system would go live in 2007 but the Executive would not be delivering records until 2009. Planning for this was well in hand.

Accessions [4.1]

The amount of material coming in to NAS had declined. It was anticipated that the number of files which would be appraised over the coming year were 50% fewer than in previous years. Part of the reason for this had been the amalgamation of the old Records Management Branch with the Library which had resulted in a loss of staff. Also, with the advent of EDRM, the Executive were not opening as many paper files. The Keeper pointed out that the majority of the files coming in to NAS over the next 20 years would still be in paper format.

Records Management [5]

The evaluation workbook, compiled by the NAS based on The National Archives version, had proven very successful. The Executive had been assessed using this workbook and had been 91% compliant. The workbook had also been well received by the Scotland group of the Records Management Society. NAS would like to roll the workbook out further but does not currently have the resources to do this. There is certainly a demand for it in Non Departmental Public Bodies and other agencies but this would have huge resource implications for the NAS.

3. NHS Guidance

Ms McDermott updated the meeting on current developments. The Retention and Disposal schedule for NHS administrative records had been released at the end of 2006. This document had been worked on for many years but its eventual release had come as something of a surprise, particularly to the Working Group. The preamble to the document was out of date, eg. it mentioned FoI and Data Protection legislation but it did not tie up with the Code of Practice which the Working Group had been preparing. It was proposed that when the Records Management Code of Practice was circulated, it would mention the Schedule and point out the outdated issues.

The Retention and Disposal of Health Records document had been given an initial public consultation. This document dealt mainly with general records, though some of these, particularly children's records, were proving a contentious area. The aim was to keep the guidance in line as much as possible with its English counterpart, though there were significant differences as a result of the separate legal systems. The release of this document would probably be delayed because of the election in May.

The consultation on clinical health records had not been a public one because it dealt with very specific records and issues. This was very different from general health records on which members of the public held strong views. Professor Levitt raised the issue of individual's DNA being kept and the research and privacy issues involved. Mr Longmore suggested that the GROS might have a view on issues relating to DNA. Their National Privacy Committee, which advised the GROS on any medical enquiries, involved lay and medical representatives and was chaired by the Head of Statistics at ISD.

NHS Education Scotland had appointed Frank Rankin, a former member of the SRAC, as their records manager. The head of the working group, Trish Ruddy, had

met with him and it was hoped that he would be able to set up a model practice for other Health Boards and Agencies.

4. AOB

None to report.

The Keeper thanked the members of the Council and others for their attendance at the meeting.