

**Minutes of the 83rd meeting of the
Scottish Records Advisory Council
held in General Register House,
Monday 26th April 2004**

Present: Professor Hector MacQueen, Chairman; Dr Mike Barfoot; Mr Peter Daniel; Professor Roger Davidson; Mr Hamish Hamill; Lord Kingarth; Mr Jim McGonigle; Mr Frank Rankin; Miss Marion Stewart.

In attendance: Mr G P Mackenzie, Keeper of the Records of Scotland; Mr Duncan Macniven, Registrar General; Stephen Bruce from the Public Records Branch of the Scottish Executive and Dr Alison Rosie, Secretary.

1. Membership: Fiona Watson and Vicki Wilkinson had resigned. Four members had undergone the new appraisal system and the Chairman would be appraised shortly. Private owners of archives were still unrepresented on the Council and the Chairman asked for any suggestions. There remained the option of co-opting new members, while the continuing status of the SRAC was unclear under the public records review, rather than going through the full appointment process.

2. Apologies Apologies had been received from Sheriff David Smith and Professor Lynn Abrams.

3. Minutes Only one correction was required.

4. Matters Arising

i Sub-group on retention and disposal

One of the statutory responsibilities of the SRAC was to advise on such issues but this was difficult to do in such a large group. At the sub-group's first meeting on 26th January there had been a useful discussion on the general principles of retention and disposal. It had been agreed that the group would meet only once a year.

ii Scottish National Health Service Records

Dr Barfoot reported that he, the Keeper and Dr Anderson had met with the Health Department on 26 January and a draft document had been amended and circulated. The document was still circulating as more consultation was felt to be required. The Department was treading very carefully but by delaying the schedule Dr Barfoot felt they were actually promoting what the schedule was designed to avoid: the destruction of records. The Keeper agreed to pass on the SRAC's concern to the Department and the Chairman would raise this issue in the SRAC's Annual Report.

iii Postgraduate Training

The Keeper reported that he had been in touch with both the universities offering the new postgraduate training courses. Glasgow University would be starting their taught one year course this academic year. Dundee University's course was distance learning and would take longer to complete. The courses provided a range of options both as to content and method of study. NAS would participate through lectures and visits. The

Keeper welcomed both courses but, he added, time would tell whether the market could sustain two courses.

iv. Visit of NAAC

The Chairman reported that the visit of the NAAC in November had proved very successful. He had recently met with staff from The National Archives and thought it would be a good idea to encourage visits between the SRAC and its English counterpart. He would pursue this in the summer.

5. Freedom of Information

Stephen Bruce summarised progress on FoI since the last meeting:

- The section 61 code on records management and the Generic Model Action Plan had both been published in November and were available on the Scottish Executive and NAS websites.
- The Executive's publication scheme had been sent to the Scottish Information Commissioner (SIC) before the deadline at the end of February and was due to be approved by 1 June. The core scheme had been agreed with the SIC who was now in discussion with agencies and non-Ministerial office holders regarding changes to their components of the scheme.
- Section 60 Code of Practice on functions was being revised and would be sent to the SIC shortly for formal consultation
- Work continued on the completion of the framework of secondary legislation to support the main Act: a consultation paper on the draft fees regulations and guidance had been published on 8 March with the aim of laying the regulations before the Scottish Parliament before the summer recess on 5 July; the statutory bars were being reviewed and the result would be set out in the Ministerial report to Parliament at the end of May; a third commencement order would be made shortly to ensure that certain powers would be available to SIC for enforcement of publication schemes and for laying his annual report.
- All three elements of the training materials prepared by Masons (leaflet template, open learning workbook and 'train-the-trainer' package) were now available on the Scottish Executive website and had been issued to FoI contacts. They would be amended to ensure that they were relevant for the key interests of the Executive's staff.
- A review of the Scottish Freedom of Information Implementation Group (SFOIIG) was completed in January. Its remit had been revised to focus on best practice, training and networks, and membership had been extended to include Unison, CBI Scotland, the Scottish Consumer Council and the Campaign for FoI in Scotland. The first meeting took place on 2 April with the next scheduled for 25 June which would be held in public.

The Chairman sensed from the FoI conference he had attended in November, and from other events and information gathered since, that the guidance given out by SIC was not considered to be detailed enough, though the SIC could not be expected to give rulings on everything that might arise.

The Keeper reported that the NAS had recently hosted a one day seminar for the Society of Archivists with representatives from OSIC and Tim Ellis from the Scottish Executive. There had been a great deal of discussion centred on archivists' concerns about the level of enquiries generated by FoI. He had, however, been reassured by OSIC's attitude - they seemed open to suggestions and willing to look at the guidance again. It was important for the archive community to go to OSIC and give a professional input to the discussion. He and Lesley Richmond, Chair of Society of Archivists Scottish Region had arranged to meet up with OSIC to discuss these concerns.

Ms Stewart felt that the seminar and other correspondence archivists had had with OSIC were far from reassuring. The guidance from OSIC was confusing. She identified two main concerns:

1. In the run-up to the 28 February deadline for publication schemes, there was conflicting advice from OSIC as to whether or not the historical archives could be included as a class in these schemes. If the archives were well catalogued, the catalogues readily available and reasonable arrangements in place for public consultation of the archives, it was assumed that the archives could be so included. Inclusion in publication schemes would give the archives "exemption" under section 25 of the FoI Act. Unfortunately, the guidelines that emerged under the OSIC after the 28 February deadline (and that SIC had reiterated in meetings with archivists since then) said that the historical archives could not themselves be included as a class in publication schemes and therefore do not have section 25 exemption.
2. If the historical archives are, therefore, not covered by section 25 exemption, the fee-based research services (on which most archive services depend) would be disallowed. The first £100 worth of any query would have to be provided free and only 10% of the next £500 worth of work could be charged (such calculations themselves being based on an unrealistic estimate of a maximum cost to a record office to carry out research of £15 per hour). The situation could then arise of professional genealogists (or other professional researchers) lodging repeated FoI requests with a record office - each incurring £600 worth of work for the record office but netting only £50 of revenue - the enquirer then charging his client full rate for the information so supplied, effectively being subsidised by the record office. This would put a severe strain upon the budgets and manpower of Scotland's fledgling archive services. When this problem was raised with the SICO and the SIC himself, responses varied from a declaration that no special case can be made for historical archives to an indication that in "special circumstances" fees might be permissible for "value added" research (no definition of these terms being available), with the main response being that we must wait for cases to arise. As archive-holding bodies need to budget for the levels of staff they must provide to meet FoI requests from the archives and need to know what income they can expect, this was not a satisfactory situation.

Mr Bruce recognised that OSIC were sometimes finding it difficult to advise on archive matters because they did not have a records manager/archivist on their staff, (although they had advertised for one), but they were open to discussion. Mr Bruce's

understanding was that they did not, however, expect archivists to undertake research for free. The Fees Regulations would apply only to FoI requests, which would not prevent authorities charging appropriate fees for value-added research. Requests under FoI needed to be fairly specific rather than general fishing expeditions. Also the legislation does not oblige authorities to comply with requests where the cost of compliance would be excessive, or with vexatious or repeated requests. Taken together, these various provisions might help to separate research queries from FoI requests.

Ms Stewart also raised the issue of the acquisition of records. In the future she believed it would be difficult to take in records which imposed certain conditions of closure. Mr Bruce said that OSIC's advice on this had been clarified. There would be no problem for deposited (i.e. loaned) papers as they would not be subject to the FoI Act and papers gifted with conditions limiting their disclosure would probably be covered by the exemption under section 36.

Mr Rankin felt there was a wider danger: that, paradoxically, FoI might result in an overall loss of access to records. FoI might remove the incentive for local authorities to move records to their record centres and might also lead to the destruction of records which did not have a perceived value to the administration.

Dr Anderson said that OSIC freely admitted that they didn't understand archives, and suggested that it was up to the SRAC to spell out the practicalities. Mr Rankin thought the SRAC should go further and offer solutions. The Keeper wondered whether one solution to the problems faced by archivists might be to argue in favour of treating all enquiries relating to records beyond a certain cut off date (perhaps 50 years) as outwith FoI.

If the Information Commissioner was given reassurance and support there would be nothing to stop him, when approving a publication scheme, accepting information held in a particular archive is reasonably accessible. Mr Bruce said he believed that there was a concern at OSIC that some authorities would transfer current records to their archive to avoid FoI. The Commissioner would require a good standard of public access to an archive before accepting it as reasonably accessible but it hadn't been clarified what this standard would be. Ms Stewart pointed out that the archivist at Falkirk had had her publication scheme returned with the comment that her archives could not be considered reasonably accessible if the public had to travel to see them.

The implementation of FoI could, all agreed, hold certain risks for archive services. The SRAC was, however, concerned that the implementation of FoI was successful. The Council discussed how it could best highlight the issues which were causing archivists most concern. It was agreed that the Chairman would raise these issues in his Annual Report and would write to the Information Commissioner to express the views of Council.

6. Public Records Strategy/ National Records and Archives Legislation

Mr Bruce reported on the latest developments regarding the Public Records Strategy. Seven workshops had been completed and the discussions had proven very useful. There had been lots of agreement on some issues but widely divergent views on

others. A summary of these discussions was available on their website. The unit was now developing proposals for a formal consultation based on the outcomes of the workshops. There was still a lot of work to be done to develop the detail, including discussions with affected interests, but he hoped that the consultation paper would be available by late summer. Once the consultation paper had been produced, these would also be sent to Chief Executives and COSLA. He welcomed further input from the SRAC.

Mr Bruce outlined some of the issues which would appear in the consultation paper.

- The introduction setting the paper in context and selling the importance of archives would be worked up.
- The definition of public records might be one of the easier parts of the paper and a section that wouldn't go out of date when technology moved on
- Enforcement was one of the areas where there was a divergence of views. There were potentially three levels: the Keeper and NAS, an audit system for compliance and the enforcement powers of OSIC
- Resources was an area which required a lot more thought
- Local archives (health service, university and local authority) should have a statutory basis the same as the NAS and the FoI legislation should be changed accordingly. The model of the local registrars, where consistent national standards were followed, might be a model worth pursuing.
- Private archives would also be mentioned.

The Chairman queried whether there should be a separate heading for court records: these might have an active life over many years. Mr Bruce replied that standards and guidance could be tailored for particular sectors.

Mr Bruce admitted that the relationship between the SCA and the SRAC was a tricky one to resolve. Ministers and the Executive did need some sort of independent expert advice. The problem was that the SRAC, being a statutory body, attracted bureaucratic requirements. This was burdensome for an organisation where the members were volunteers. One option might be to give the SCA funding or to allow the Keeper to seek ad hoc advice from expert groups, or to establish a working group which would perform much the same function as the SRAC but without the cumbersome administration associated with a statutory group. The Chairman felt that the third option was the only one that made any sense. The SCA was essentially an archivists' group whereas SRAC benefited from both archivists and non-archivists. The SRAC served a useful function and should actively promote the notion that the Keeper and other archives had some accountability to the Council. Mr McGonigle felt that the strength of the SRAC was that it ensured gender/user/geographical balance and played an important role in offering independent advice. Mr Daniels agreed that Ministers needed to have independent advice but could not remember an occasion where the Council had taken a different view to the Keeper. The Chairman pointed out that the SRAC could write to ministers without recourse to the Keeper. It was agreed that whatever body succeeded the SRAC and SCA in future would need to include users.

Mr Bruce added that it was hoped to complete work on the Strategy in Spring 2005 and implement it during the rest of the year and into early 2006 for items not requiring legislation.

7. UK Archive Issues: Archives Task Force

The Keeper reported that the Archives Task Force report - *Listening to the Past, Speaking to the Future* - had been launched on 24th March. The report was to be welcomed though some in the archival community felt that it had not gone far enough. Its main thrust related to access. It recognised that archives were under-funded and under-utilised and recommended the creation of a UK 'archives gateway' which would both provide information and engage people with an emphasis on community involvement. The initial development of this gateway – called 'Linking Arms' - would be led by The National Archives. NAS would be involved and would ensure the Scottish content of the site.

The report's proposed archive development programme did not apply to Scotland in all aspects and indeed, funding had not been promised in Scotland as yet. The Chairman was concerned however, that co-ordination would be driven from London. Mr Bruce added that Scottish Ministers were supportive of the report but reserved the right to develop matters in their own way.

8. News from the NAS

The Keeper updated the Council on recent developments in the NAS

a Scottish Family History Service

Details of the new service had been announced on 28 January by Hugh Henry, Deputy Minister for Justice, (and minister responsible for the General Register Office for Scotland) at General Register House, which had generated press and TV interest. The new search rooms were due to open in March 2006.

b Register of Sasines

With the steady decline in legal business, and the new use for the Dome area in General Register House, the NAS had been actively considering proposals to digitise at least parts of the Register of Sasines in partnership with Registers of Scotland. This would allow NAS to provide a better service across the Internet, and to manage the end of the Legal Search Room. The first stage would be to re-equip the reprographic section with digital cameras, so that routine copying work would be replaced with capture of a digital image, which can be re-used.

c Fees and Charges

Following an audit recommendation, the NAS had reviewed the charges made to legal search firms for the use of desk spaces in the Dome area. This had led to a significant increase, to £5 per workspace per day. For this the firms get an allocated space, and permission to connect up computers, fax and telephone lines. The new charge would be introduced on 1 May.

d Accommodation

The GRH refurbishment was continuing to programme, and work had shifted to the first floor west side of the building. New storage rooms on the basement and first floors on the east side of the building had provided more capacity, and NAS was investigating bringing more popular records to GRH. The new furniture in the Historical Search Room had boosted the number of places available. The final phase

of the work, in conjunction with the new family history facilities, would start early in 2005 and be completed by the beginning of 2006.

Planning for the new extension to Thomas Thomson House (TTH) continued. Following advice from specialist colleagues in the Executive, independent consultants would be asked to look again at the financing options at the beginning of 2005, in order to prepare a bid for the 2006 spending review. In line with government policy on major projects, there would also be a gateway review to examine the need for the new building and the viability of the proposals. The Minister had indicated that he was content with this process.

e Extended opening hours

The review of the 2003 trial of extended opening concluded that there was significant demand, but NAS had been unable to find sufficient volunteers among staff to continue it during the winter months. NAS would be looking at options for extending hours again, initially on a temporary basis for the summer months. The Chairman commented that SRAC was very keen on extending access and he would touch on this in his letter to the First Minister.

f Freedom of Information

The NAS publication scheme required under the Act was submitted to the Scottish Information Commissioner (SIC) within the deadline of 28 February and was available on the NAS website, though it had not yet been approved. A generic Model Action Plan, showing what public authorities need to do on records management in order to comply with the Act, had also been published on the NAS website, together with links to other materials from the Executive.

g Electronic cataloguing

There were now over 2 million entries in the NAS catalogues available over the Internet. Some software problems had arisen, and DS, who provided the system, were working to resolve these. Subject to this, there would be a formal launch of the catalogue in the autumn.

h SCAN

Following a highly successful celebration event at the Hub in Edinburgh on 23 October, hosted by Magnus Magnusson, the SCAN project was finally completed at the end of March. The on-line catalogues now contained summaries of the holdings of all 51 participating archives across Scotland, indexes and images of wills down to 1901 were available. The latest on-line service, a palaeography website, of interest to beginners and experts alike, was launched on 1 April. All staff seconded to the project had been reabsorbed into NAS, or have left.

i Exhibitions and Publications

The exhibition on the Union of the Crowns, *The Universal King*, in Edinburgh Castle had attracted over 107,000 visitors during its run from 1 October to 30 November, confirming it as the most popular ever. The Duke of Edinburgh visited on 27 October. NAS had held a reception at GRH on 2 December to mark the publication of the third edition of the best selling *Tracing Your Ancestors* by Mercat Press. The first of the NAS' archive education packs would be launched on 25 May and four

more were in preparation. Feedback on the packs from the recent SATH conference had been very positive.

9. Scottish Council on Archives

The Chairman had attended the meeting of the SCA in March. The SCA were very keen on holding user workshops in conjunction with the SRAC. The SRAC would support these but didn't have the resources to organise and run them. Mr Rankin felt there was a value in the SRAC lending its name and providing representatives to such workshops. Mr Bruce hoped that these would go ahead as early as possible so that the discussion could feed into the consultation paper.

The issue of access to SCAN in local authority archives was being actively pursued in the SCA. The Keeper said that paying for the digital images of the wills provided SCAN with a revenue stream to keep it going. He was open to making this service available by licence but would be reluctant to give the local authority free images. The situation regarding church records was different. Where the local authority archive held church records on charge and superintendence, the archive would get the images free and it would be up to them whether they wished to give access to the originals or copies.

10. Registrar General's report

The results of the 2001 census on migration and travel patterns to and from Scotland had been published on the website www.scrol.gov.uk. Practical problems with image quality had delayed the completion of the DIGROS project to the end of April. Over the summer the GROS genealogical website would be augmented by images of old Parish Registers and the 1881 Census, and the index and images of the Censuses from 1841- 1871. The task of improving the indexing of the pre-1854 OPRs was about to be put out to tender. The indexes would be available on the website in the autumn.

There had been pressure to publish the 1911 census returns. The 1911 census had asked more intimate questions than the 1901 which, as Dr Rogerson pointed out, was precisely why social historians wanted access to it, though the main pressure was from family historians. Since the mid-1970s, the policy had been to keep personal data from the Census confidential for 100 years and it was intended to continue this as to abandon it would call into question the '100 year promise' on modern Census forms. This was the line also being taken in England, Wales and Northern Ireland – although by a quirk of history, the Northern Ireland returns were already available in the Record Office in Dublin along with the other returns from the 1911 census of a then united Ireland. In Ireland the closure period had been set at 70-80 years. The role of the SRAC in the original decision to keep the Census closed had been recently queried by the main proponent of publication, Mr McCready, and the Secretary had responded that the GROS had not at that time been part of the SRAC's remit and had therefore not been consulted. Nowadays, Mr MacNiven noted, there were various groups the GROS would consult on such issues and in the future the Information Commissioner might have a role. The SRAC felt that the GROS had struck the right balance on this issue.

11. ASLAWG/ASLA

Miss Stewart reported that the proposed name change to Archivists of Scottish Local Authorities (ASLA) had yet to be ratified by the Society of Archivists. She also

summarised the main concerns emerging from the group's meeting in January. Publication dates for publication schemes had been brought forward from January 2005 to February 2004 and this, coupled with the brief time left between the issuing of the Scottish Information Commissioner's guidelines and the date on which the schemes had to be lodged, meant that public consultation and cooperation between local authorities was extremely difficult.

A questionnaire was to be sent to ASLAWG members on charge and superintendence and the results would be sent to Ian Hill of External Relations Branch in the NAS. It was felt that the promise of the deposit of important collections under Charge and Superintendence from the NAS might help encourage the improvement of facilities in record offices at a local level.

She reported that West Lothian Archives were moving to new premises with good archive storage and shelving, in Deans Industrial Estate in Livingstone. East Lothian was still hopeful of appointing an archives manager and an archivist. Inverclyde, however, were unlikely to appoint an archivist. Mr Rankin noted that Inverclyde along with the Western Isles were the only local authorities who didn't currently have plans for archival provision. The Chairman agreed to write to the Chief Executive.

12. Society of Archivists (Scotland)

Miss Stewart brought issues of concern to the Society to the attention of the Council. The Society's major concerns about FoI were discussed under item 5.

The Society were uneasy about the planned allocation of major funds (£6 million) from the Scottish Executive to the NLS towards the purchase of the archives of the publishers John Murray, when archives which were already part of our written heritage were at risk because of serious underfunding of the smaller record offices across Scotland. At Miss Stewart's suggestion, the Chairman agreed to write to the Scottish Executive welcoming the money given towards the purchase of these papers but asking whether a similar sum might be made available for the wider benefit of archives throughout Scotland in years to come. Mr Bruce hoped that more money would be made available as a result of the public records strategy. Mr Rankin felt that this was an issue where the SRAC could have been usefully consulted. The decision sent out the message that there was plenty money available for archives when in fact many archives were in a poor condition.

There was considerable disquiet in the Society over the reliance placed by funding bodies on evidence gained from statistics derived from CIPFA. The CIPFA questionnaires were firmly based on the practices and outlook of libraries and were often misleading as an interpretation of archive services. Mr Rankin pointed out that there was a separate and more relevant template for England which might usefully be adopted in Scotland. Dr Anderson agreed to look into this.

Miss Stewart also circulated a memo from Elspeth Reid, archivist in Falkirk, who was concerned about the Scottish Information Commissioner's attitude towards exemption for archives (section 25). She gave a specific example demonstrating the amount of time spent on a query from one person under FoI, highlighting the problems facing local authority archivists. Mr Bruce thought it would be worth forwarding this as an example for OSIC of the practical problem facing archivists.

13. AOB

There was no outstanding business

14. Date of next meetings

The next meetings of the SRAC would take place on 25 October 2004 and 25 April 2005.