

**Minutes of the 91st meeting of the
Scottish Records Advisory Council
held in the National Archives of
Scotland
Wednesday 27th February 2008**

Present: Professor Hector MacQueen, Chairman; Professor Lynn Abrams; Professor Roger Davidson; Ms Lesley Richmond, Sheriff David Smith, Mr Kevin Wilbraham.

In attendance: Mr George Mackenzie, Keeper of the Records of Scotland; Dr Peter Anderson, Deputy Keeper and Dr Alison Rosie, Secretary. Also attending were Mr Bruno Longmore and Dr Hugh Hagan of Government Records Branch, NAS.

1. **Apologies:** Mr Peter Daniels and Hamish Hamill

The Chair began the meeting by expressing regret at the recent decision to abolish the Council, although this had not been entirely unexpected. He circulated the three parliamentary questions, with the written responses, which would be asked in the Scottish Parliament that day relating to the cost of the Council over the previous two years and which bodies would take over its functions.

The meeting would combine the annual meeting of the SRAC Sub-Group on Retention and Disposal of Government Records, normally held every February, and the full meeting of Council.

2. **Minutes.** The minutes of Sub-group's meeting in 2007 and of the 90th meeting of the Council were approved.

3. **Matters arising.** There were no matters arising.

4. **Government Records Branch: Business Report 2007**

Mr Longmore and Dr Hagan took the meeting through some of the main issues raised in their report, pointing out that 2007 had witnessed many new Government initiatives which were having an impact on the work of the Branch.

i Freedom of Information

The branch had identified an increasing trend among Departments to view exemption as a mechanism whereby entire contents of files could be closed. This had been raised with the Freedom of Information Unit and the matter clarified.

ii Prime Ministerial announcement on the 30 year rule

The 30 year rule review would enable NAS to deal with the rump of closed files still held by the Scottish Government and to look at accelerating the release of this information. The SRAC had been consulted about this review.

iii The Shaw Report

Following the publication of the Report in November, with its recommendations on record keeping relating to children's homes, the Keeper had been invited to review public records legislation. The Keeper felt that review should take a broader view of the legislation than that raised in the Report.

iv *eDRM*

The Scottish Government had been using the eDRM electronic file system for about 18 months. The system was working well, though there had been some hiccoughs. Concerns had been raised about the long term maintenance of the system and the E-Records Sustainability Project had been commissioned to investigate this. The National Archives (TNA) in London had embarked on a Digital Continuity project looking at the option of secondary storage which would mean that the information remained accessible and could be imported back into the system. The Scottish Government and the NAS were watching these developments with interest.

Mr Longmore said that the TNA estimated that under eDRM, some 5% of records from UK departments would be accepted in the future. Currently the NAS was only taking in 1% of Scottish Government files. In the future the NAS would be taking in electronic files which, under the old paper review system, would not have been kept. This was the result of a new macro appraisal, ie. appraisal from the structure of the organisation and of file types rather than cherry picking individual files. A more complete range of files would survive but some of the less informative, which would have been destroyed previously, would also be preserved.

Ms Richmond asked whether staff were creating the same types of record electronically as they had done on paper. Dr Hagan responded that the system was being policed and files were being created in a more managed way that gave greater confidence that the structure would be better. Mr Wilbraham queried about the mechanisms for accessibility in the future. Mr Longmore replied that the Digital Data Archive would go live in May 2008. The projected date for transfer of electronic records from Scottish Government into the system had been revised to 2019. The reason for this date appeared to arise from the concerns of politicians that information would be made available to the public while they were still in office, though this was in fact a misconception as access could still be given under FOI. The current focus of the branch was the need to get information in to NAS sooner and the Digital Data Archive up and running, after which the issue of access would be looked into. The Keeper agreed that the question of access was critical. The NAS was also in discussion with Registers of Scotland (RoS) and the General Register Office for Scotland on long term preservation strategy as both bodies held large amounts of information. The first e-records to be transferred to the DDA would be born-digital e-sasines from RoS.

Professor Abrams queried whether non departmental public bodies had also moved to the new electronic records management system. Dr Hagan replied that the NDPBs had obligations under the s.61 Code of Practice in FOISA to look after their records. The Scottish Arts Council had implemented an eDRM system a number of years ago but in isolation. The Scottish Government system would allow 'alien' run systems to be brought in if required. The difficulty of finding out about records held by NDPBs and Government Agencies had been highlighted recently by the discovery of historical records at Saughton prison of which the NAS became aware purely by chance. This afforded the opportunity for further contact and to make organisations aware of the importance of record keeping. Ms Richmond thought that the NDPBs should identify their records on their asset registers and queried whether these were being policed. Not everything mentioned on the asset registers needed to be kept but what was

should be made clear to the public. A review of retention schedules should take place on a more regular basis. The Chairman queried whether the Information Commissioner could police the system but Dr Hagan thought that he was too involved with appeals to assume this role. Ms Richmond recommended that these issues should form part of the public records legislation review.

Professor Davidson asked how things might look in 10 years time. He was concerned that in the future students would be flooded with information. If, for example, a researcher was trying to track policy making, how would this be done? The Keeper replied that though this was still an unknown, searching would be more sophisticated with researchers able to conduct searches across a large series of catalogues or within a more selective group of records. For material preserved in electronic format, the catalogue might link straight through to the electronically created file.

Professor Davidson said that historians would still want to get paper copies from the files and he foresaw this might be difficult in the future, but the Keeper thought this would change with the next generation of scholars. Computer screens would also look very different. Dr Hagan added that search mechanisms would become crucial. The Scottish Government had found that searches of its system pulled up large numbers of files and that it needed to work on defining search terms. Mr Longmore added that the traditional drafting of information would change and speculated that early drafts would probably not be saved. The Keeper thought that with the electronic record the changes would be preserved in them though Dr Anderson pointed out that tracking these would be complicated. Dr Hagan said that the present system allowed for the retention of some drafts if they had been assigned as 'corporate value' within the eDRM system.

The Chairman, summing up, thought that the theme of the discussion seemed to be to urge continuing dialogue. The basic position inside government was to organise information to be useful for its own needs but he queried whether there needed to be greater co-ordination between bodies. He pointed to the TNA and OPSI which were now under the same umbrella whereas ministerial responsibility in Scotland was split. He also agreed with Professor Davidson that any future advisory group should involve younger scholars who were very computer literate.

v. Record appraisal

There had been a fall in the number of records appraised due to the reduction in the numbers of review teams. The paper record was, however, finite. It was estimated that over 800 000 paper files were in storage in Leith, 100 000 of which would be reviewed each year. In 2007, however, only 50 000 were reviewed and in 2008 this would drop to 40 000 due to the restructuring of the Information Management Unit and staff being moved to work on eDRM. The paper files were secure but it would take time for them to work through the system.

Dr Hagan said the files were only reviewed for FOI exemptions if identified for permanent preservation in NAS, or if someone had requested access under FOI to an archived file. The teams running the unit were doing what they could to make the system foolproof but were working at a slower pace as their number has been reduced. The primary goal was to ensure that Scottish Government staff could find the files they required for business purposes. There had been no indication that they

would have to empty the building in the near future. If the 30 year rule was reduced, NAS would not be able to take any anticipated rush of files all at once. It had been agreed, therefore, that the files would be drip fed through the review system to the NAS.

5. The 30 Year Rule Review

Mr Longmore outlined the background to the Prime Minister's 30 Year Review. The 30 year rule was more applicable to The National Archives (TNA) which did not accept files until this term had expired. In Scotland, however, under the first review (at 5 years) and second review (at 25 years), records could be accepted by the Keeper at any point. Under FOISA, historical files in NAS received before 1 January 2005 following FOISA review were either released or had exemptions applied. Any file transmitted to the NAS before 1 June 1999 was the responsibility of the Scottish Government if it was not a reserved matter. Anyone could ask to see a file but would not be given access until it had been reviewed under FOISA.

The NAS thought that a period between 20 and 30 years should be considered 'historical' at which point no FOI request was required. Sensitive records would, of course be treated differently, but this reduction would release a large number of the remaining closed files. In its submission to the review team the NAS argued that there was little risk in imposing this reduction. An order could be issued under s.59 of FOISA, and this would be required to reduce the historical period. This would also make the processing of FOI enquiries a lot easier.

Mr Macniven was concerned about the 100 year rule as it applied to census records. He was eager that this should continue because of the implications for future censuses. If the undertaking of his 1911 predecessors regarding confidentiality was threatened, this could have consequences for new censuses. Unlike England and Wales, however, this confidentiality was enshrined as an absolute exemption in FOISA. The Keeper added that TNA had found it impossible to convince the press that there was no such thing as a 30 year rule. The same had been true for PRONI.

It was hoped to continue the release of files to the press at the beginning of the year, as well as at other times of the year, though this was a labour intensive process. It was also difficult to convince civil servants to allow NAS to publicise the files. Dr Hagan added that when FOISA had come into force, the Scottish Government had undertaken a review programmed to proactively review any 'closed' files, but with the agreement of the Information Commissioner, this had ceased due to lack of resources. Review continues on a case by case basis.

Professor Davidson felt that there was a legitimate argument for reducing the period to 10 years. Having interviewed civil servants in the past, he felt that if there was not any closure period they would have found it impossible to give advice. There needed to be a balance between accountability and privacy. There was also the issue of the costs involved – the more files were opened up for access the cost of reviewing them became considerable.

The Keeper wondered whether the quality of the record created would remain if those creators knew that they would be looked at in 10 or 20 years time. There was a feeling

that this could lead to blander minutes or, anecdotally, to no minutes at all. He hoped this would change over time as people got more used to FOI.

The Chairman noted that society was trying to move from reactive open government to proactive open government. The review was consistent with this ambition but there were practicalities which needed to be considered. He would compose the response of the Council to the 30 Year Review.

6. Abolition of the SRAC

The Keeper gave his thoughts on what he would like to see happen after the abolition. The terms of the remaining officially appointed members of the Council would run out at the end of September but the Council still had some legal obligations, particularly regarding court records. These would be worked around until appropriate legislation was in place. He added that he would normally have looked to members of the SRAC for input on the review of Public Records Legislation, as the Council had been heavily involved in discussions about this in recent years. Any new body set up to replace the Council would have to be set up on an unofficial basis. He had considered the possibility of approaching one of the NAS' Non Executive Directors to act as Chair of such a body.

The Keeper had welcomed the richness of advice he had received over the years from the Council and was keen for this to continue in some form. He pointed particularly to the importance of the input from academics, local authority officials and the judiciary. There were already bodies such as the Scottish Council on Archives, ASLAWG and the Scottish Records Association upon whom he could call for advice, but he would miss the range of experience that he had found on the Council. He added that the NAS was currently forming a new committee with the Lord President's office to discuss concerns relating to court records. Professor Davidson asked whether users of court records would be included. The Keeper said that the focus of the committee was the relationship between the NAS and the courts creating the records and the Courts Administration which funded the Courts. However, the Lord President was very aware of the interests of scholarship and the Keeper agreed to discuss the needs of the user with him.

Ms Richmond thought that the review of public records legislation might be the place to advise that there should be a formal body to advise on record issues. This would be protective towards those who made decisions about record keeping. There was also the question of records which were not public records. She felt that the discussion needed to be broader than that raised by the Shaw review.

The Keeper said that the review would look at Public Records Strategy and what had come of it, though the ground had shifted considerably since the strategy document. He would also look back to the SRAC's input for views on legislation. Under the new minority administration ministers had a different attitude towards identity and culture and this could help the cause of archives. Ms Richmond queried whether the NAS would be making recommendations on children's homes in particular or whether the review would be wider? The Keeper responded that the review needed to be conscious of the Shaw Report which had stimulated it, but should not be narrowly focussed and he would be looking for as wide an input as possible.

Ms Richmond asked whether central government would require children's homes to have someone responsible to look after their records. The Keeper reported that the NAS had made clear to Government that it could not train all the people that would be required for this throughout Scotland and had pointed to sources for training already available. It would be too difficult to require particular standards for these records managers. The aim would be to provide guidance, some of which was already available, rather than be too proscriptive. There was no appetite in government to force local authority children's homes to keep particular records. The burden on local authorities had been one of the reasons for not pushing through the Public Records Strategy.

The Chairman said that the Keeper needed to avoid the reproach of reconstituting the SRAC under another guise. He mentioned the workshops that had been organised to discuss the Public Records Strategy which he had found extremely useful and wondered whether the information derived from these could be used in the forthcoming review. The Keeper would be reviewing a lot of raw material but would consult widely, using the website to encourage views.

7. AOB

Professor Davidson raised the problems he had been experiencing with the NAS' on-line catalogue, which would only work very slowly or sometimes not at all. The Keeper responded that the NAS recognised the difficulties that users were experiencing. The problem was that the CALM system had not been designed to carry such a large amount of information. The contract with DS Calm, which supported the on-line catalogue, would end at the end of March and the new system which replaced it should improve its performance. He asked the Secretary to find out when the handover would take place and inform Council members.

The Chairman concluded the meeting by thanking Council members past and present, the Registrar General and his predecessors from the GROS, the Keeper and the Secretary, for their contributions. In turn members thanked Professor MacQueen on behalf of the Council for his hard work on behalf of the Council during his 10 years as member and Chairman.