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28 October 2003

Dear Susan,

**THE NATIONAL COUNCIL ON ARCHIVES (NCA) RESPONSE TO THE
PROPOSED NATIONAL RECORDS AND ARCHIVES LEGISLATION
CONSULTATION DOCUMENT FROM THE NATIONAL ARCHIVES**

General Comments

The NCA would wish to first congratulate the National Archives for succeeding in bringing forward this consultation paper following its preliminary discussions with Government. We are particularly pleased that the consultation paper contains proposals to tackle issues concerning records management and archives across central, regional and local government.

We would also like to applaud the National Archives for the clarity with which the arguments for legislation are proposed. It is also good to see that those arguments are based upon the use and relevance of records management and archive in relation to government policy, although, perhaps, we would liked to have seen some of the existing evidence in support of that use and relevance cited more obviously within the introduction and executive summary.

We understand the need for the consultation paper to make some distinction between the needs of central and local government and between records management and archives. Nevertheless, we would have liked to see the arguments for statutory provision of local archive services more closely aligned with those for new records management legislation at the local level. We do feel that a stronger case could be made for the value of statutory archive services. Archive services have never been more popular and their role in contributing towards government objectives in the fields of access, active citizenship, fostering community identity, accountability and democracy are clear and well documented.

The emphasis on seeking responses from users is to be welcomed.

The NCA would be happy to assist The National Archives, at the appropriate later stage, in providing evidence in support of the statements made in the partial regulatory impact assessment.

We understand from the consultation paper that, should legislation be deemed necessary, the route or routes to be followed will be determined at a later date. The NCA has an interest in championing any forthcoming legislation and would, therefore, like to be kept informed of those chosen routes in order to determine its own strategy for supporting the legislation through the Parliamentary process.

Q1 Should legislation establish a duty to keep and manage records that serve as evidence of policies, procedures, actions and decisions, applying broadly to all bodies subject at present to the Public Records Acts?

Yes for the reasons set out in Section 2.

Q2 Should the Minister responsible for the National Archives, acting on the advice of the National Archivist, have the power to set standards for records management?

It is clear that any additional duties to keep and manage records of central government would require a complementary standards regime to assist bodies in the exercise of those duties and that the power should rest with a nominee of the Minister sponsoring the legislation.

In exercising those powers, it would be sensible for any nominee to make best use of existing established standards for records management.

Q3 Should the National Archivist have the power to issue guidance and advice in support of these standards?

Yes in order to support bodies in the practical application of any additional records management duties. We believe the National Archives has a strong existing track record in the development of such guidance to central Government.

Q4 Should there be a power to regulate compliance with the standards, and if so, who should have responsibility?

While a lot can, and should, be achieved by voluntary compliance, powers will be needed if the new legislation is to achieve its objectives fully in ensuring that the standards are being applied rigorously and consistently across central Government. Such powers should be the minimum necessary to achieve the required result. The issue of responsibility for compliance monitoring need not necessarily rest with a different body from that setting standards and issuing guidance. The key issues are that the compliance monitoring should be sound, rigorous, form a basis for improvement and be carried out at proportionate cost to the benefits perceived.

Q5 Should the compliance regime be operated by an external body, or would some form of self-policing, subject to some overview, be an acceptable solution?

Though independent audit would be an acceptable approach, we feel that in this instance the combination of a degree of voluntary compliance with the necessary powers might best rest with an expert body, such as the National Archivist and, of course, subject to any appropriate checks.

Q6 Should a legislative framework for managing digital records be established, providing a framework for standards and guidance to be issued and revised from time to time as needed?

Yes, although the framework would need to make very clear the relationship to overall records management.

Q7 Should new legislation be specific about the issues affecting digital records, as distinct from the more traditional formats.

Yes. For the reasons outlined in the consultation paper it is vital, if nothing else, that the legal ambiguities over the digital records are sorted out.

If the National Archives has not already done, so we would recommend that any lessons learnt from the British Library's experiences with the Legal Deposit Libraries Bill in relation to non-print formats are fully exploited. There maybe some useful wording regarding, in particular, the definition of formats that could aid with the drafting process.

Q8 Should specific provision be made for the long-term preservation of digital records, through standards and guidance issued under legislation.

Yes.

Q9 Do you have any other comment, not covered by the other questions, on issues raised in sections 2 and 3 of the consultation document?

We are not clear whether the position of National Archivist has de facto been created from the merger of the Public Record Office and the Historical Manuscripts Commission. We assume that the creation of this position would be sought under legislative provision for the administrative arrangements for the merger described in Section 8.

We are not clear why evidence, such as that stated in 4.9 and 4.10 concerning local authorities provision for records management, has not been similarly stated for central Government, given the National Archives role in monitoring preparedness for electronic records management across central Government.

Q10. Should a consistent national framework for records management – including digital records – be extended to local government bodies?

Yes for the reasons highlighted in the consultation paper.

Q11 If so, should this be limited to principal councils only?

One of the primary arguments in support of extending the legislation to local

government is to ensure that the duties of new information legislation can be carried out effectively. It, therefore, follows that the legislation should be extended beyond principal councils covered under the Local Government Act of 1972.

Q12 Should it also extend to new regional assemblies (where they exist) and regional authorities?

Yes. This is considered essential as the assemblies may be carrying out both the functions of central and local government. If the legislation is not extended to new regional assemblies, a situation could arise in which the records of a local government function previously carried out by a principal council and transferred to a regional assembly are not covered by the legislation. There is likely to be a patchwork of different local government bodies mutating over time in the English regions. To ensure consistency, it is important for all such bodies to fall within the scope of the legislation.

Q13 Are there other public bodies, such as the police authority, to which it should also be extended?

Logically, any records management provisions should extend to all public bodies covered by the Freedom of Information legislation, although there will be a need for some flexibility in terms of application of the provision for different types of bodies. In particular, very small bodies such as Parish Councils might meet the required provision through joint arrangements with a larger authority.

Q14 Should the legislative duty proposed in question 1, be applied on a broader basis to local and regional authorities as specified in questions 11, 12, and 13.

Yes the same legislative duty framed in the same terms to ensure consistency between central and local government would be welcome.

Q15 Should the power to set standards for records management at regional and local levels be placed with the Minister responsible for the National Archives, acting on the advice of the National Archivist? If not, who should have this responsibility?

Yes the power should rest with the Minister responsible for central government records management with mechanisms in place for regional and local consultation. This will secure the necessary consistency across Government.

Q16 Should the power to issue guidance supporting these standards at local and regional level be placed with the National Archivist?

Yes.

Q17 Should local and regional bodies, or a representative body, have a right to consultation on the formulation of the standards and guidance?

Yes including Resource's Regional Agencies. Local and regional bodies should have the right to be consulted on the regulation of compliance.

Q18 Who should be responsible for regulation of compliance at local and regional level?

Regulation of compliance, and the necessary accountability, could be accomplished through representation at local level, ideally including regional directors of archives, operating under the aegis of the National Archives. The responsibilities of such a group would include, inter alia, consultation with regional and local bodies on standards, guidance and compliance monitoring in support of new records management legislation.

Q19 Should principal councils be required by statute to ensure provision of a local archive service?

Yes. Many in the archive community would welcome statutory provision. This is often argued on the basis, not that statutory provision would necessarily improve archive services for the public, but rather provide an element of protection from local authority spending cuts which tend to fall rather harder on discretionary services. There is concern at present that an increasing tendency to passport Government grant to local authorities to particular services will exacerbate this trend, and it may be difficult for authorities which wish to continue to provide high quality discretionary services to do so.

The archive sector has benefited enormously from access to lottery funding and we do need to ensure that any statutory provision does preserve that access. We believe that this access can be retained provided the arguments are made for projects that fulfill objectives above and beyond statutory provision. We understand that this has historically been the argument that the Heritage Lottery Fund (HLF) has applied to the funding of other areas of the heritage such as listed buildings eligible for English Heritage funding. Nevertheless, these arguments will need effective communication to the HLF, so that a clear understanding is arrived at of the impact on eligibility of any new legislation.

Q20 Should the statutory requirement to ensure provision of local archive services offer scope for authorities to work flexibly or in partnership to provide such services, in line with current practice?

Yes, partnerships are to be welcomed. Joint arrangements can create real benefits in terms of economies of scale and overcome the problems of sustainability. We would recommend that any joint arrangements are subject to approval by The National Archives, so that some of the fragile and inequitable arrangements made in the past are not repeated.

Q21 Should the power to issue standards for local archive services be placed with the Minister responsible for the National Archives, acting on the advice from the National Archivist?

Yes, although such powers would need to be defined through consultation.

Q22 Should the power to issue guidance supporting these standards at local and regional level be placed with the National Archivist?

Yes.

Q23 Should local and regional authorities, or a representative body, have a right to consultation on these standards and guidance?

Yes, including Resource's Regional Agencies.

Q24 Who should be responsible for regulation of compliance at local and regional level?

We believe the same arrangement should apply as in our response to Q18.

Q26 Should new regional arrangements, whether through elected assemblies or otherwise, in principle, be subject to the same requirements for their archive services as local authorities?

Yes, especially to guard against the long-term loss of access to the records of local government functions transferred to a number of different authorities over time.

Q26 Do you have any other comments on present provisions for records and archives of the public and private sector?

Proposed provision of a power for the National Archivist to give grants of money to specific projects. We would be interested to know the possible range and extent of that grant giving power and whether, in theory, this would enable the National Archivist to incentivise the swifter implementation of any legislative changes in relation to regional and local records management and archives.

We wonder whether the implications of the proposed legislative changes to Civil Registration have been taken into account in the consultation paper.

We would be happy to discuss further any of the comments made in this consultation response and would ask that you contact Katie Norgrove, our Policy and Development Officer in the first instance on 0208 392 5376.

Yours sincerely,

Nick Kingsley,
Chairman, The National Council on Archives

Enc: Members of the National Council on Archives.