



TRIENNIAL REVIEW

**LORD CHANCELLOR'S ADVISORY COUNCIL ON
NATIONAL RECORDS AND ARCHIVES**

January 2014

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1. Executive summary

This Triennial Review of the Advisory Council on National Records and Archives (ACNRA) was announced by Written Ministerial Statement on 17 July 2013. The review was conducted in accordance with the June 2011 Cabinet Office Guidance on Reviews of Non-Departmental Public Bodies (NDPBs).

The review has concluded that there remains a need for the ACNRA to continue its current functions, in its current form. The ACNRA provides independent advice to the Lord Chancellor, on matters relating to records and archives in the United Kingdom, and in particular England and Wales. The functions of the ACNRA are written into statute in the Public Records Act 1958 section 1.2 and in the Freedom of Information Act 2000 Schedule 5, which amends the Public Records Act.

The review found that the case for retaining the ACNRA as an independent advisory NDPB is widely and strongly supported. The role played by the ACNRA in the UK's public records system is an essential one and no other model for delivering the statutory duties of the ACNRA offers the same level of assurance to government and the public that these duties will be discharged independently, impartially and with consideration of the public interest as the primary concern. Bringing the functions of the ACNRA within the remit of existing bodies such as The National Archives or the Information Commissioner's Office would create significant conflicts of interest, prejudicing the independence that is currently so highly valued. Moving these functions out of government may also prejudice this independence. Transferring the ACNRA to the private sector would almost certainly increase its costs, particularly if its work was to be undertaken by paid staff, rather than by volunteer members, as is currently the case.

The current model offers excellent value for money. The Master of the Rolls chairs the ACNRA as one of his statutory duties and members are unpaid. Despite this lack of remuneration, the ACNRA has an eminent membership of wide experience and great expertise. These members are drawn from across the public and private sectors and include former senior civil servants, academic experts, archivists, specialists in information rights and information management, journalists and members of the legal profession. It is difficult to see how any non-voluntary model operated by a private or not-for-profit organisation could maintain this level of expertise without incurring substantial additional cost.

Finally, it is clear that the ACNRA meets all three of the tests set by the Government for the delivery of functions by an NDPB:

1. It performs a technical function, which needs external expertise to deliver.
2. The function, set in statute, must be and be seen to be, delivered with absolute political impartiality.
3. Delivery of the function must be independent of ministers, given that in large part its role requires the ACNRA to scrutinise facts and figures presented to it relating to the work of ministerial departments.

The review has found that the ACNRA may benefit from reviewing its governance structures, its recruitment processes and its reporting arrangements in respect of wider archives sector responsibilities. The review has made recommendations to address these findings. These are quoted in Section 10.

2. Introduction

This report sets out the finding of the 2013 triennial review of the ACNRA. It describes the purpose of triennial reviews, sets out the process adopted for this review and presents findings based on the evidence provided by members of the ACNRA, officials at The National Archives, stakeholders and other bodies that interface with the ACNRA. This report draws on this evidence to make recommendations as to the future of the ACNRA.

This is the second review of the ACNRA. The first was undertaken in 2010 as part of the Government's wider review of public bodies and the outcome was published as part of the report of the Public Bodies Reform Review¹. The 2010 review recommended that the ACNRA be retained as an NDPB on the ground that it fulfilled a technical function which should be independent of government.

The Cabinet Office guidance identifies two principal aims for triennial reviews and these aims are met in two stages. Accordingly, the first stage of this review looked at the core functions of the ACNRA, assessed the need for these functions to continue and the structural options for continued delivery of these functions. The second stage examined the control and governance arrangements in place to ensure that the ACNRA was operating in line with government policy including good corporate governance, openness, transparency and accountability.

This second review started with the announcement of the Written Ministerial Statement on 17 July 2013.

3. Approach to this review

This review was conducted by the Head of Strategic Projects and the Head of Corporate Planning at The National Archives. It was supported by colleagues in The National Archives' Chief Executive's Office. Additional support was provided by officials at the Ministry of Justice. The project was led by The National Archives' Director of Finance and Corporate Services as Senior Responsible Owner (SRO).

One of The National Archives' non-executive directors held the role of 'critical friend' for the review. He provided comments and challenge in reviewing the draft questionnaire, and advised on the range and scope of individuals invited to provide evidence. He also provided comment on the high-level summary of the outcomes from the review. Five project boards were held at key milestones during the review period. The National Archives' Management Board, on which the review's critical friend sits, reviewed the stage one report on 3 September 2013 and the final report on 5 November 2013.

The chair of the House of Commons' Justice Committee, and the Master of the Rolls, chair of the ACNRA, were both notified of the start of the review by letter dated 17 July 2013.

The review was scoped and delivered to be in line with the Cabinet Office's requirement that reviews should be proportionate to the size and nature of the NDPB and should also offer value for money. The reviewers sought the views of members, stakeholders and other bodies which interface with the ACNRA, ensuring that the evidence used was broad and robust. The review was announced in Parliament and was also announced on The

¹ <https://www.gov.uk/government/news/public-body-review-published--2>

National Archives' website, inviting responses from members of the public. The final report will be laid before Parliament. A copy will also be made available on gov.uk. The reviewers would like to thank all those who gave their time to provide views and evidence on the ACNRA. Attached as Appendix A are details of the content of the questionnaire which was sent to members of the ACNRA, stakeholders and other bodies who interface with the work of the ACNRA. Appendix B lists the individuals and bodies who contributed to the reviews. Over 70% of individuals, who were invited to contribute, responded.

4. Function of the ACNRA

The role of the ACNRA is framed in statute, section 1 of the PRA 1958, which states:

(2) There shall be an Advisory Council on Public Records² to advise the Lord Chancellor on matters concerning public records in general and, in particular; on those aspects of the work of the Public Record Office³ which affect members of the public who make use of the facilities provided by the Public Record Office.

The Master of the Rolls shall be chairman of the said Council and the remaining members of the Council shall be appointed by the Lord Chancellor on such terms as he may specify.

The function of the ACNRA was extended with the introduction of the FOI Act. Schedule 5 of the FOI Act states:

The matters on which the Advisory Council on Public Records may advise the Lord Chancellor include matters to the application of the Freedom of Information Act 2000 to information contained in public records which are historical records.

As set out in the Terms of Reference, attached as Appendix C to the report, the function of the ACNRA is as follows:

The ACNRA, chaired by the Master of the Rolls, advises the Lord Chancellor on issues relating to public records that are over thirty years old under the Public Records Act (PRA) 1958, including access to them, under the Freedom of Information Act (FOIA) 2000. From January 2013, following implementation of the Constitutional Reform and Governance Act 2010, government began a ten-year transition to a new '20-year rule', with the previous 30-year rule being reduced progressively until the new rule is in effect. The ACNRA also advises on general policy issues linked to the public records system. For example, following a request by the Lord Chancellor asking the ACNRA for its views on the 20-Year Rule review, the ACNRA provided advice as the Government formulated its response to the review, recommending that implementation should be undertaken transitionally over a 10-year period.

The ACNRA currently has 17 members and meets four times a year. The number and diversity of membership was reviewed as part of stage two. The ACNRA depends on the expertise and experience of a diverse range of members. A list of the current membership is attached as Appendix D and brief biographical details are included in the

² The functions of the Advisory Council on Public Records are now part of the remit of the ACNRA

³ The functions of the Public Record Office are now part of the remit of The National Archives

ACNRA's 2012-13.⁴ The ACNRA is a small body and members are only paid travelling expenses, but receive no other remuneration. For 2012/13 the total for claimed travelling costs and other associated costs such as light refreshments was £6.3k for the whole of the ACNRA. Secretariat support is provided by The National Archives staff and is equivalent to 0.5 of a full-time post. All members of the ACNRA are appointed in line with the Code of Practice issued by the Commissioner for Public Appointments. Each appointment is up to 3 years. The cost for undertaking a public appointment recruitment process is on average c£8k in total every three years, the term of an ACNRA member.

The ACNRA reviews applications by government departments for closure and retention of records where they continue to contain sensitive information. Under FOIA it is responsible for advising the Lord Chancellor on the application of the Act to historical records. Under the Public Records Act it considers the government's decisions to retain records beyond the date by which they would usually be transferred to The National Archives and released to the public.⁵

ACNRA members also regularly contribute to Freedom of Information panels, made up of three members on a rotating basis and convened virtually, with members joining the panel remotely rather than meeting in person. The purpose of these panels is to consider public interest test applications relating to FOI requests for closed records held by The National Archives. The government department from which the record originates puts forward evidence on whether the public interest is greater in non-disclosure, partial or complete disclosure (section 66 (4) and (5) of the FOIA). Panel members assess the strengths of the public interest test arguments put forward to establish whether the balance lies with non-disclosure (application of the qualified exemption) or favours release to the public. The panel reviews up to nine cases each time they convene and approximately 13–20 panels may be called within a financial year. The panel can raise queries in connection to these applications, for which further information may be required. Because the panels take place virtually, they do not generate any additional travel or venue costs.

The Lord Chancellor's Forum on Historical Manuscripts and Academic Research (the Forum) is a sub-committee of the ACNRA, and was set up in May 2010. This sub-committee considers and provides advice to the Historical Manuscripts Commissioner on matters relating to historical manuscripts, records and archives, other than public records. The ACNRA took on this advisory function at its formation in 2003 following the merger, also in 2003, of the Historical Manuscripts Commission and the Public Record Office to form The National Archives. The travel costs of Forum members attending meetings are included in the ACNRA cost of £6.3k referred to above.

The ACNRA is an advisory NDPB and has no role in the day-to-day running of The National Archives. The ACNRA reports annually to Parliament on its activities.⁶

⁴ <http://www.nationalarchives.gov.uk/documents/archives/advisory-council-on-national-records-and-archives-tenth-annual-report-2012-13.pdf>

⁵ 'Retention' is the process under which government departments and other record-creating bodies may retain records themselves, rather than transfer them to The National Archives. The Public Records Act 1958 section 3(4) provides that records may be retained with the approval of the Lord Chancellor. He issues instruments authorising retention, which may be in two forms: normal instruments identify particular documents, or parts of documents, while blanket instruments identify whole classes of documents.

⁶ See footnote 4.

5. Evaluation of the ACNRA

The ACNRA's function has been evaluated against the following three criteria:

- contributions to the core business of The National Archives;
- whether it is still necessary; and
- whether the function could be performed elsewhere

5.1 Contribution to core business of The National Archives

The ACNRA advises the Lord Chancellor on matters concerning the public records system, responsibility for which is part of the core business of The National Archives. It also advises the Lord Chancellor on the work of The National Archives providing services to the public. During this review the general opinion of ACNRA members and most officials in government departments was that the independence of the ACNRA encourages The National Archives and government departments to work more effectively together.

The Forum, as a sub-committee of the ACNRA, provides advice to the Chief Executive and Keeper of The National Archives, in his/her role as Historical Manuscripts Commissioner, on the wider archives sector and management of records within private archives. The Forum advises the ACNRA and ultimately the Lord Chancellor, on matters relating to manuscripts, record and archives, other than public records. The Forum also advises the Chief Executive and Keeper in his/her role as Commissioner on the possible allocation of archives and manuscripts accepted for the nation in lieu of inheritance tax.

5.2 Necessity of the ACNRA

All respondents to the review stated that the function of the ACNRA was essential. Respondents shared the view that there are strong constitutional and practical arguments for the Lord Chancellor and The National Archives to receive advice from a source independent of government. Respondents noted the public benefit of these functions being discharged by a body equipped to challenge government departments and independently reach its own conclusions. Respondents to the review also noted the compatibility of the work of the ACNRA with the Government's transparency agenda.

The Review Team observed an ACNRA meeting on 25 July 2013. It was evident to the team that the members of the ACNRA have considerable knowledge and expertise. Also clear to the team was the value the ACNRA can bring in its scrutiny of government departments' management of their historical public records.

The current Master of the Rolls, Lord Dyson, told the Review Team that the functions of the ACNRA are very much needed. In his view it is essential that the ACNRA's function remains independent from Government, has a chairperson with the seniority of the Master of the Rolls and retains a wide diversity of experience within its membership. In Lord Dyson's opinion the ACNRA provides a valuable 'public interest test' stance when considering the retention or closure of records proposed by government departments. The Master of the Rolls has the option to write to the Lord Chancellor if he has a concern with the way a government department is managing selection and transfer of public records to The National Archives.

Lord Neuberger of Abbotsbury held the post of Master of the Rolls between October 2009 and September 2012 before moving to his current post as President of the Supreme

Court of the United Kingdom. He told the Review Team that the function of the ACNRA in reviewing records for closure and retention is becoming increasingly difficult and more technical. In his view, members undertake this role with authority and experience. Lord Neuberger is very much a supporter of the function and the way it is currently carried out. A number of other respondents also highlighted the likely increase in the scale and complexity of the work required from the ACNRA in the years to come, particularly once large volumes of digital records start to be opened to the public. The role of the ACNRA will become even more essential, with an increased level of expertise required, as digitally created records are selected and transferred to The National Archives.

One indication of the effectiveness of members is the outcome of panels (see section 4 for more details on the role of the panels). On a number of occasions decisions by panels have resulted in either the complete opening of a public record, rather than the proposed closure under the ‘public interest test’, or the opening of the record with just sections or even one or two words redacted. Since the panels began in February 2005, there has been only one instance of the Information Commissioner’s Office or Information Tribunal ordering a disclosure of information that remained closed following a panel recommendation.

The Forum supports the Chief Executive and Keeper of The National Archives in their role as Historical Manuscripts Commissioner and the minutes of this sub-committee come to the ACNRA for discussion. A number of individuals who submitted statements on the function of the Forum suggested a review of the effectiveness of the interface between the ACNRA and its subcommittee. The structure and governance of the Forum, as part of the structure and governance of the ACNRA was examined as part of stage two of this review.

5.3 Assessment of alternative delivery models

A requirement of the triennial review process is to undertake an assessment against alternative delivery models, including abolition. In doing so, the Review Team took full account of the views of stakeholders, such as government departments, other bodies which interface with the ACNRA and the views of ACNRA members, as well as the marginal cost involved in the ACNRA operation. The table below summarises the findings of this assessment for the ACNRA:

Option	Recommendation	Rationale
Abolition	No	The review has found no support for the abolition of the ACNRA or the repeal of its statutory functions.
Move out of central government to:		Such a move may prejudice independence and impartiality and may result in a less expert body with diminished authority. Also, given the primary focus of the ACNRA on the records of central government any move to local government would be a particularly poor fit. In addition, the costs of moving this function out of central government would not save money and would risk substantially exceeding the costs of
a) private sector	No	
b) voluntary sector	No	
c) local government	No	

		the current ACNRA.
Delivery by a new Executive Agency	No	The creation of a new Executive Agency would not represent value for money. The ACNRA is advisory and has no executive functions.
In-house delivery at The National Archives	No	As an advisory body, the ACNRA needs to remain independent of The National Archives. In-house delivery would require additional resource and would have the potential to create a conflict of interest.
Merger with the Information Commissioner's Office (ICO) or another NDPB	No	Any merger would likely require primary legislation. Most importantly, in relation to the ICO, this would have the potential to create a conflict of interest with the same organisation responsible both for decisions on closure and retention of records and for reviewing these decisions. There is no other suitable candidate NDPB to take on the functions of ACNRA. The ICO is not currently resourced to deliver this function and would require additional funding to do so, either to deliver the function through paid staff or to administer a NDPB body similar to the current ACNRA.
Retain as an independent NDPB	Yes	The ACNRA meets all three of the Government's three tests for continuing NDPB status.

All stakeholders strongly favoured retention of the ACNRA. Both the present and former Master of the Rolls stated that the functions of the ACNRA are very much needed.

The Government departments that completed the questionnaire agreed that the ACNRA's role and functions provide valuable assurance to the Lord Chancellor that historical records are transferred and opened or retained in a way that complies with the Public Records Act. Other respondents emphasised that the public must be certain that the process is impartial, with the public interest at its core. It was clear to the Review Team that government departments viewed an independent ACNRA, chaired by a very senior member of the judiciary, as having the requisite authority and stature to focus the attention of departments on their statutory obligations.

The ACNRA is a good counter balance to, and means to challenge the strength of government departments in the public records system. This supports government policy on improving openness and access in an appropriate way. The ACNRA's ability to hold government departments to account for their decisions on public records justifies the use of a very small amount of taxpayers' money, given the overall government objectives on transparency and accountability. The risk in reducing the level of scrutiny currently provided by the ACNRA, would be that government departments could become complacent and redact (close) more information than is really needed, in the knowledge that only a small number of cases are likely to be challenged via a complaint to the Information Commissioner's Office (ICO).

The 2009 Review of the 30 Year Rule chaired by Paul Dacre, commented on the ACNRA function and the role of the ACNRA when proposing an earlier release date for public records:

'We recommend that this approval [the retention of records is subject to the consent of the Lord Chancellor, who is advised by his Advisory Council on National Records and Archives] should continue to be required in such cases if the 15 year rule is now adopted'.⁷

The current Master of the Rolls could see no scope for privatising the functions of the ACNRA – it would cost considerably more than the current cost of delivering the functions of the ACNRA and could prejudice the independence of the ACNRA.

One government department stated that if the function was outsourced to a private organisation or another such body, it would be difficult for it to undertake the functions of the ACNRA in a fair and unbiased manner that would be acceptable to departments.

One contributor raised the possible alternative models provided by mutuals, community interest companies, or social enterprises, as the aims of such organisations are independent, but the contributor also suggested that these bodies would require a level of public funding greater than the cost of the current ACNRA. The Review Team considers that having the work undertaken by a voluntary sector body would likely incur similar additional costs. No respondents to the review identified any voluntary sector body as a possible candidate to take on the function.

While the option of bringing the ACNRA 'in-house' may have some surface attraction, in reality it would weaken the function, compromise its independence and create significant potential for conflict of interest. The ACNRA's current role includes advising on elements of the work of The National Archives. This independent view would inevitably be lost in any move in-house.

ACNRA members bring to their role great expertise, objectivity and an understanding of how the records are used. As the former Master of the Rolls noted, the independence and expertise of ACNRA would be lost if the function were to be brought in-house and undertaken by officials. One government department stated that if the function was managed by The National Archives' officials, it is likely that departments would require an acceptable appeals process in the event of a difference in opinion between The National Archives and the department, further adding to the cost of this option.

Given the wide acceptance that there is a continuing need for the work carried out by ACNRA, and that this should be discharged by an independent body, some consideration was given by respondents to the possibility of a merger between the ICO and the ACNRA. However they stated that such a merger would create a conflict of interest, with the same organisation responsible both for decisions on the closure and retention of records and for reviewing these decisions at the request of the public.

The ICO was invited to consider its interface with the ACNRA and whether some or all of the functions of the ACNRA could be undertaken by the ICO. The ICO stated that the respective scope and responsibilities of the ACNRA and the ICO are quite distinct and

⁷ Section 7.8 of the 30 Year Rule Review report <http://www2.nationalarchives.gov.uk/30yrr/30-year-rule-report.pdf>

specific. The ICO does not consider that the ACNRA's role could be accommodated without substantial change to primary legislation. Furthermore, taking on this additional function would require appropriate funding – even if this was a matter of transferring the existing voluntary body to the ICO's oversight, it is unlikely that the cost of administering the ACNRA would be less than is currently the case.

Both the present and former Master of the Rolls stated that the role of the ACNRA is very much self contained and that the case for retaining the function, as is, is compelling. The National Archives of Australia has an Advisory Council which performs a similar function to the ACNRA. The Australian Council advises its Minister and Director-General on matters of relevance to the Australian Archives.

6. The three tests for continued delivery by an NDPB

The government has set three tests to determine whether a function is best delivered by an NDPB. The Review Team's assessment of the ACNRA against each of these tests is set out below:

- Is this a technical function (which needs external expertise to deliver)?

Yes. In fulfilling its statutory role, the ACNRA delivers a technical function. This requires a membership with substantial collective experience and expertise, drawn from a wide variety of backgrounds and sectors, necessarily including the private and academic sectors.

- Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?

Yes. The ACNRA has a statutory function under the PRA and FOI Acts providing advice to government and scrutinising the decisions of government departments in relation to their public records. The ACNRA provides a level of assurance to the public that government departments do not act as their own 'judge and jury' in deciding which historical public records should be opened or closed in the public interest.

- Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

Yes. A core part of the ACNRA's function is to evaluate and advise on issues relating to access to historical public records, to scrutinise applications from government departments for the retention of records, and to review departments' application of specific exemptions for FOI requests. Given ministerial responsibility for the departments concerned and ultimately for the facts and figures supplied for the ACNRA's scrutiny, independence from ministers is essential to the ACNRA's delivery of this function.

7. Stage one: Conclusion

The Review concluded that the functions performed by the ACNRA are still required. It has assessed possible delivery models and concluded that the advisory NDPB is the most suitable and best value for money. The ACNRA meets all three of the tests for continued NDPB status.

8. Stage two: Introduction

Stage Two of the review examined control and governance arrangements in place to ensure that the ACNRA is operating in line with recognised principles of good corporate governance. The ACNRA is a NDPB, without any executive functions or responsibilities. This review focuses on those governance arrangements that are relevant and proportionate to advisory bodies, including openness, transparency and accountability.

9. Defining corporate governance

Cabinet Office Triennial Review guidance, and the associated corporate governance guidance for advisory NDPBs,⁸ defines Stage Two of the review process as being a review of governance arrangements in place, led by the sponsoring Department, working closely with the Chair and CEO who will have a key responsibility for ensuring that strong and robust corporate governance arrangements are in place. The 'Findings and recommendations' section below (Section 10) assesses the ACNRA against the principles in this guidance.

As a minimum, the controls, processes and safeguards in place in advisory NDPBs should be assessed against the principles and policies set out in this guidance. These reflect, in a manner proportionate for smaller advisory bodies, best practice in the public and private sectors and, in particular, draw from the principles and approach set out in the draft *Corporate Governance in Central Government Departments: Code of Good Practice*.

Corporate governance is the way in which organisations are directed, controlled and led. It defines relationships and the distribution of rights and responsibilities among those who work with and in the organisation, determines the rules and procedures through which the organisation's objectives are set, and provides the means of attaining those objectives and monitoring performance. Importantly, it defines where accountability lies throughout the organisation. It is central to the effective operation of all public bodies.⁹

10. Stage two: Findings and recommendations

10.1 Accountability

The Lord Chancellor and Secretary of State for the Ministry of Justice is the Minister ultimately accountable to Parliament and the public for the overall performance, and continued existence of the ACNRA. The Lord Chancellor and The National Archives, as the sponsoring department, exercise appropriate scrutiny and oversight of the ACNRA as described below.

⁸ *Guidance on Review of Non Departmental Public Bodies* (Cabinet Office, June 2011) see http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011_tcm6-38900.pdf and "Advisory NDPBs: Corporate Governance Arrangements" (Cabinet Office, December 2012) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80073/Advisory_NDPBs_corporate_governance_arrangements_Dec12.pdf

⁹ *The UK Corporate Governance Code* (Financial Reporting Council, September 2012) <http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx>

10.1.1 Accountability for public money

Findings

The ACNRA is a small body and members are only paid travelling expenses, but receive no other remuneration. For 2012/13 the total for claimed travelling costs and other associated costs, such as light refreshments were £6.3k for the whole of the ACNRA. These costs are administered by The National Archives which carries out the required financial controls. These costs are included in The National Archives' Annual Report and Accounts which are audited by the National Audit Office and laid before Parliament.

10.1.2 Appointments

Findings

The position of the Master of the Rolls as Chair of the ACNRA is framed in statute, section 1 of the Public Records Act 1958, which states '*The Master of the Rolls shall be chairman of the said Council and the remaining members of the Council shall be appointed by the Lord Chancellor on such terms as he may specify.*' All members of the ACNRA are appointed in line with the Code of Practice issued by the Commissioner for Public Appointments. Each appointment is up to three years. Members' performance is reviewed on an annual basis, by the Master of the Rolls. The Master of the Rolls and ultimately the Lord Chancellor can remove any individual whose performance or conduct is unsatisfactory. This has not been required to date.

10.1.3 Annual report

Findings

The ACNRA only meets four times a year, and while the Master of the Rolls, as chair of the ACNRA, is able to refer issues of concern to the Lord Chancellor, this is rarely required. The Master of the Rolls compiles an annual report for the Lord Chancellor which details the work undertaken by the ACNRA in the previous year under its statutory responsibilities.¹⁰ This report is added as an appendix to The National Archives' Annual Report and Accounts, which are laid before Parliament and published on The National Archives' website.

10.1.4 Data Protection Act and Public Records Acts

Findings

The ACNRA is compliant with Data Protection legislation. This is a core function carried out by Panel members when assessing FOI requests to open records that are closed. The functions of the ACNRA are framed within the Public Records Acts 1958 and 1967.

The overall assessment of accountability is GREEN
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¹⁰ See footnote 4.

10.2 Governance arrangements in place with the ACNRA

The Cabinet Office principles are that the sponsoring department ensures that there are appropriate governance arrangements in place with the advisory NDPB, and that there is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to the advisory NDPB.

10.2.1 Dialogue between the sponsoring department and the ACNRA

Findings

The ACNRA's role is established in statute (as quoted in Section 4 above) and therefore there should be a clear division of responsibility between the running of the ACNRA and the executive responsibility for the running of The National Archives' business. The Chief Executive and Keeper of The National Archives may seek the view of ACNRA on specific issues relating to their role and that of The National Archives, but this is a purely advisory process. The Chief Executive and Keeper of The National Archives may table agenda items for ACNRA relating to the development of National Archives business or policy but this is on the basis of information sharing and is not part of a formal approvals process. The Review Team finds that the division of responsibilities is clear and there is no overlap with the corporate responsibilities of The National Archives Management Board or indeed with any management function within The National Archives.

Dialogue is through the Secretariat and ACNRA members in between meetings and the provision of secretariat support at each of the four meetings per year. The Review Team noted the resources that The National Archives devotes to ensuring that the business of the ACNRA and the FOI Panels is run efficiently. This includes dedicated secretariat support.

The role of the sub-committee that is the Forum and its working relationship with ACNRA was examined and the Review Team has made several recommendations in relation to Forum business (see paragraph 10.4.4). The Review Team noted that a register of members' interests was maintained but declarations of interest were not sought at each ACNRA meeting. This is not in line with accepted governance standards.

Recommendation 1

Declarations of interest should be added to the agenda for each ACNRA meeting, with members being asked to declare any interests which have changed since the previous ACNRA meeting. The Register of Interests should be tabled for formal review annually as a separate agenda item.

10.2.2 Terms of reference

Findings

The ACNRA carries out its function within agreed written terms of reference. The terms of reference are included in recruitment packs and in induction packs issued to new members of the ACNRA. The Terms of Reference are also available on The National Archives' website. The ACNRA's Terms of Reference are attached as Appendix F (see also recommendation 2).

10.2.3 Sponsor team and secretariat support

Findings

The Chief Executive's Office within The National Archives provides appropriate and proportionate oversight of the ACNRA. The Chief Executive's Office provides 0.5 full-time equivalent staff member secretariat support to the ACNRA, which includes creation of draft agendas, issue of paperwork prior to each of the four meetings per year and communication with both the Master of the Rolls and with members of the ACNRA prior to each meeting. The Chief Executive's Office also liaises with ACNRA members to appoint people to undertake the virtual Panel reviews and circulates the relevant paperwork.

10.2.4 Annual evaluation

Findings

A formal assessment of the performance of individual ACNRA members is carried out annually by the Chair. As stated above, the Chair's role is statutory. One indication of the effectiveness of members is the outcome of Panel investigations. On a number of occasions decisions by Panels have resulted in either the complete opening of a public record, under the 'public interest test', or the opening of the record with just sections or even just several words redacted. The Review Team noted during Stage One of the review that since Panels began in February 2005, there has been only one instance of the Information Commissioner's Office or Information Tribunal ordering a disclosure of information that remained closed following a Panel recommendation.

However the Review Team noted that there is no regular, formal review of the effectiveness of the ACNRA as a whole carried out by ACNRA members. The Review Team felt that the ACNRA should undertake a formal and rigorous evaluation of its own performance and that of its sub-committees.

Recommendation 2

Periodic review of the effectiveness of public sector bodies is recognised best practice. Given the size and particular role of the ACNRA, a formal effectiveness review undertaken annually would be disproportionate. However, the ACNRA annual report could contain an assessment of the effectiveness of its composition, the way in which ACNRA business is managed and any induction activities undertaken during the reporting year. The Chair should ensure that the ACNRA reviews its terms of reference annually and uses that review as a catalyst for members to consider these effectiveness issues.

Any changes made to those terms of reference should be reflected in the ACNRA annual report. The ACNRA should consider the frequency at which formal reviews of effectiveness might be appropriate.

The overall assessment of governance is GREEN
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10.3 Role of the members

10.3.1 Role of the Chair

The Cabinet Office principle is that the Chair is responsible for leadership of the ACNRA and for ensuring its overall effectiveness.

Findings

The ACNRA Chair is the Master of the Rolls as one of his statutory functions. Such appointments are exempt from the Office of Commissioner for Public Appointments process. The Chair is responsible for advising the Lord Chancellor on all matters relating to records and archives in the United Kingdom and in particular in England and Wales, and matters relating to manuscripts, records and archives, other than public records. The Chair of the ACNRA directs the ACNRA's work and ensures its overall effectiveness, involving other members to ensure that the work is shared and that the skills and experience of members are utilised. The Review Team attended an ACNRA meeting as observers in July 2013. It was evident to the team that the Chair ensured that the meeting was run effectively and efficiently and ensured that all members contributed where appropriate, based on their knowledge and experience.

On appointment to Master of the Rolls, new chairs receive a comprehensive briefing setting out the role of the ACNRA and the Lord Chancellor's Forum on Historical Manuscripts and Academic Research and how they operate as well as background information on current issues. In addition a newly appointed Chair will have introductory meetings with the Chief Executive and Keeper of The National Archives and with the Secretary to the ACNRA.

Given the confidential nature of most of the ACNRA's business, the Chair's responsibility for representing the views of the ACNRA to the public is necessarily limited. A summary of each ACNRA meeting is published on The National Archives' website.

10.3.2 Role of ACNRA members

Findings

Appointments to the ACNRA are made in accordance with rules set out by the Office of The Commissioner of Public Appointments. The Review Team makes no recommendations about the recruitment process, as such, though definition of roles, responsibilities and commitments of ACNRA members should be made clear during that process. The Review Team asked the opinion of recent ACNRA appointees about their workload expectations. While their feeling was that the workload overall was manageable, there would have been benefit in the time commitments (in terms of induction, pre-meeting reading, attendance at ACNRA meetings and likely required participation in Panels) being advertised up front as part of the recruitment process. The commitment to representation on Panels was raised as an issue during Stage One of the review. The constitution of any Panel's membership seems based on availability of individual ACNRA members which may change depending on individuals' circumstances and the process by which a lead Panel member emerges is informal. The Review Team found that this informality does not work well for some members in terms of forward planning their time commitments.

New ACNRA members undertake an induction process on appointment, including training/familiarisation sessions with The National Archives' FOI Manager and The National Archives' Accessions and FOI Centre Manager. However, interpreting Freedom of Information and public records legislation is not always straightforward without a clear understanding of the Acts and the nuances of historical sensitivities. This is particularly important for new ACNRA members taking part in Panel deliberations. The Review Team considers that newly appointed ACNRA members should be offered additional support during their first year.

The Review Team noted that the ACNRA has the appropriate skill sets for its current role and function. However, as the nature of records and formats of information ACNRA is asked to consider changes with digital records becoming increasingly the rule the skill sets needed to enable the ACNRA to discharge its responsibilities effectively are likely to change. The Review Team observed that the ACNRA should consider the diversity of skills required within its membership make-up to ensure that the skills continue to match its workload. The ACNRA reviewed its membership in 2010 and its view then was that the number could be reduced from 17 to 15 as long as the commitments on FOI Panels did not increase. The Review Team considered that due to commitments for FOI Panels (14 Panels in 2011-12 considering 101 cases; 13 Panels in 2012-13 considering 108 cases, and 9 Panels in the first six months of financial year 2013-14 considering 77 cases – extrapolating this out to the full year, the number of Panels could be as many as 19 considering 154 cases) the number of ACNRA members remains appropriate, but that this number should be kept under review.

Recommendation 3

The ACNRA should develop a strategy for ensuring its membership maintains the right balance of skills to meet its current and future business.

Recommendation 4

The length of appointment of ACNRA members should be varied and allow for greater flexibility to ensure both continuity of experience, as well as the ability to respond to changes in necessary skill sets.

Recommendation 5

The number of ACNRA members needed should be kept under review, with a formal review of numbers to be undertaken biennially as a minimum.

Recommendation 6

The time commitment required of new members in all aspects of ACNRA and Panel business should be made clearer when inviting expressions of interest in vacant ACNRA roles and during interview/selection processes. A fuller description of the time commitment should be written into the role description issued with any job advertisement.

Recommendation 7

The ACNRA should determine a process for identifying a lead person when a Panel is established. The lead person should determine what tasks need to be undertaken and set deadlines for completion of those tasks.

Recommendation 8

The ACNRA should consider pairing new appointees with experienced ACNRA members to help support and coach them during first year of their appointment.

The overall assessment of the role of the Board is GREEN

10.4 Communication and engagement

The Cabinet Office principle is that the ACNRA should be open, transparent, accountable and responsive.

10.4.1 Freedom of Information requests

Findings

The National Archives has received two Freedom of Information requests regarding the ACNRA since November 2010. These were dealt with within the specified time limits of the Freedom of Information Act 2000 and are available on the Information Requests section of The National Archives' website.

10.4.2 Engagement with key stakeholders and wider bodies

Findings

The ACNRA in the main advises on matters which are confidential and therefore it would not be appropriate to consult publicly about such matters. Engagement with other government departments on routine matters (including those dealt with by Freedom of Information Panels) is handled via the ACNRA Secretariat and The National Archives' Freedom of Information Centre. Representatives of government departments attend ACNRA meetings regularly. One of the four meetings of the ACNRA each year is usually hosted by another government department. In the past few years ACNRA meetings have been hosted by the Foreign and Commonwealth Office, the Cabinet Office and the Department of Energy and Climate Change. Engagement with the wider archives sector is handled by the Lord Chancellor's Forum on Historical Manuscripts and Academic Research (see paragraph 10.4.4).

A summary of each meeting is published on The National Archives' website under the ACNRA section. In addition the ACNRA's annual report is also published on The National Archives' website.

10.4.3 Ensuring that there is no engagement in political lobbying

Findings

A core part of the ACNRA's function is to evaluate and advise on issues relating to access to historical records, to scrutinise applications from government departments for

the retention of records and to review departments' applications for retention and closure of information. This function has to be delivered with absolute political impartiality. As noted in recommendation 1, ACNRA members are required to provide declarations of interest on an annual basis. It is recommended that members are asked to declare any interests which have changed from the previous meeting. This includes any political engagement.

10.4.4 Channels of communication with key stakeholders

Findings

The Review Team looked in detail at the relationship between the Lord Chancellor's Forum on Historical Manuscripts and Academic Research (the Forum) and the ACNRA and the history behind the present separation of duties. The Team noted that the ACNRA's role advising the Historical Manuscripts Commissioner became part of the ACNRA's remit in 2003 and looked at the statutory responsibilities of the Historical Manuscripts Commissioner as defined in the Royal Warrant, which are:

[to] "make enquiry as to the existence and location of manuscripts, including records or archives of all kinds, of value for the study of history, other than records which are for the time being public records by virtue of the Public Records Acts; with the consent of the owners or custodians inspect and report on them; with the consent of the owners or custodians reproduce and publish or assist the publication of such reports; record particulars of such manuscripts and records in a national register thereof; promote and assist the proper preservation and storage of such manuscripts and records; assist those wishing to use such manuscripts or records for study or research; consider and advise upon general questions relating to the location, preservation and use of such manuscripts and records; and promote the co-ordinated action of all professional and other bodies concerned with the preservation and use of such manuscripts and records."

The Forum is a sub-committee of the ACNRA, and was set up in May 2010. This sub-committee considers and provides advice on matters relating to historical manuscripts, records and archives, other than public records. The ACNRA took on this advisory function at its formation in 2003 following the merger in 2003 of the Historical Manuscripts Commission and the Public Record Office to form The National Archives. The Forum, as a sub-committee of the ACNRA, provides advice to the Chief Executive and Keeper of The National Archives, in his/her role as Historical Manuscripts Commissioner, on the wider archives sector and management of records within private archives. The Forum advises the ACNRA and ultimately the Lord Chancellor, on matters relating to manuscripts, records and archives, other than public records. The Forum also advises the Chief Executive and Keeper of The National Archives in his/her role as Commissioner who makes recommendations on the possible allocation of archives and manuscripts accepted for the nation in lieu of inheritance tax.

The minutes of this sub-committee come to the ACNRA for discussion.

The work of the Forum concerns the statutory responsibilities as defined by the Royal Warrant, the core responsibilities of the Archives Sector Development Department (ASD) of The National Archives and academic research. Several interviewees commented during Stage One of the review that the relationship between the ACNRA and its sub-committee needed to be reviewed to ensure that the work of the Forum was being delivered in the most effective manner. However, the necessity for a forum to provide

independent advice on wider archives issues, and particularly to advise the Historical Manuscripts Commissioner, was widely accepted.

Recommendation 9

As the Forum is a sub-committee of the ACNRA, the Terms of Reference for and governance of the Forum should be reviewed to clearly set out its precise function and relationship with the ACNRA to ensure its work both becomes more closely aligned with aims and objectives of the ACNRA and is being delivered in the most effective manner. The ACNRA should determine how the management of its time might be appropriately adjusted to best accommodate Forum business in order to bring about that closer alignment and oversight.

The overall assessment of the role of the communication and engagement is **GREEN**

10.5 Conduct and propriety

The Cabinet Office principle is that ACNRA members should work to the highest personal and professional standards. They should promote the values of the Council and of good governance through their conduct and behaviour.

Findings

The Review Team noted that ACNRA members are aware of, and have received a copy of, the Cabinet Office Code of Conduct for Members of Public Bodies. The Code forms part of the terms and conditions of a member's appointment to the ACNRA. This includes guidance on political activities and the conduct required of members, including key principles of public life.

As noted in recommendation 1, ACNRA members are required to provide declarations of interest on an annual basis. It is recommended that members are asked to declare any interests which have changed from the previous meeting. This includes any political engagement.

ACNRA members claim expenses in line with civil service arrangements. The expenses for 2012/13 were approved by The National Archives and a record kept for review and audit purposes. The total annual costs of running the ACNRA are published on The National Archives' website.

The overall assessment of the conduct and propriety is **GREEN**

11. Conclusion

The Review Team conclude that the governance arrangements for the ACNRA as a NDPB are in line with the Cabinet Office Guidance on Corporate Governance for Advisory Non Departmental Public Bodies. The arrangements reflect a proportionate approach given the infrequent sittings, that the ACNRA is an advisory body of voluntary, unpaid members, and the confidential nature of its business.

12. Implementation of recommendations

We anticipate that these recommendations can be fully implemented within six months. Progress with implementation will be monitored by the Sponsoring Team within The National Archives.

Appendix A: Questionnaire



Triennial Review of the Lord Chancellor's Advisory Council on National Records and Archives

Background

The periodic review of Non-Departmental Public Bodies (NDPBs) is one of the ways the government ensures that it maintains a lean, but effective public sector.

A Triennial Review is a Cabinet Office mandated process for reviewing the functions of NDPBs, the appropriateness of the body's delivery mechanism and its governance arrangements. It must consider abolition, a move of the functions out of central government, bringing the functions in-house, merging with another body, delivery by a new Executive Agency and continued delivery by a NDPB.

The review of the Council is being conducted by The National Archives in two stages, in accordance with Cabinet Office guidance.

- **Stage 1** will look at core functions of the Council, assess the need for these functions to continue and the structural options for continued delivery of these functions and, if the conclusion of Stage 1 is that the Council should continue as a NDPB,
- **Stage 2** will examine the control and governance arrangements in place to ensure that the Council is operating in line with government policy including good corporate governance, openness, transparency and accountability.

The Review Team is seeking views of stakeholders as part of Stage 1 and invites you to complete a questionnaire. A detailed list of the questions we are seeking answers to can be found in Annex A below. Please feel free to answer either some or all of the questions in your response. Your responses may be quoted in Stage 1 report, but will only be attributed to you if you have indicated that we may do so. Wherever possible we would appreciate you giving examples to evidence your responses.

Responses to the questionnaire should be e-mailed to the Triennial Review mailbox acconsultation@nationalarchives.gsi.gov.uk by midday on **Tuesday 6th August 2013**. If you would prefer to be interviewed by members of the Review Team either in person or by telephone please let us know via this email address. We will make every effort to accommodate your preference but cannot guarantee that an interview will be possible. Hard copy responses should be sent to Ms P Humphries, Chief Executive's Office, The National Archives, Kew, Richmond, Surrey TW9 4DU by the same deadline.

Please note that Stage 1 the review will not consider whether the remit of the Council should be extended or changed. A detailed terms of reference appears as Annex B below.

To help frame your responses we thought it would be helpful to quote the current costs of the Council, which are:

- Travelling expenses: Council Members are paid travelling expenses (a total of around £5K per annum) but no other paid remuneration.
- Secretariat Support: This is provided by National Archives staff, the equivalent to 0.5 of a full-time equivalent post. Costs of this are around £15K per annum.

Alison Webster

Peter Brooker

Triennial Review Team

25 July 2013

Annex A Questions for Respondents

NAME

FUNCTION:.....

Please click here to indicate that your responses may be attributed to you

When completing this questionnaire, the Review Team would be grateful if you would consider both the **risks** and **benefits** presented by the current means of delivery and of alternative delivery options.

Theme	Questions
<p>1. Purpose</p>	<p>Are functions of the Council (detailed here) still required by the government?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Why the functions need to continue • How it contributes to the core business of the National Archives and advising the Lord Chancellor • How it contributes to wider government policy objectives • Whether there is a demand for the functions or activity from government and central government record creating bodies • Whether the functions provide a justifiable use of taxpayers' money • What evidence supports your response
<p>2. Retaining function in government</p>	<p>Could functions of the Council be moved out of Central Government?</p> <p>What are the risks and benefits of doing so?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Why central government needs to deliver these functions • Whether the functions can be delivered by local government, the voluntary sector or the private sector • If there is an existing provider (or providers) in local government, the voluntary or private sectors that could deliver these functions • Whether the functions could be privatised or delivered under contract by the voluntary or private sector • Whether the functions could be delivered by a mutual, Community Interest Company or social enterprise • What evidence supports your response
<p>3. In-House options</p>	<p>Could functions of the Council be brought in-house (to the National Archives or another body e.g. the Ministry of Justice)?</p> <p>What are the risks and benefits of doing so?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Why the functions of the Council need to be delivered at arm's

	<p>length from Ministers</p> <ul style="list-style-type: none"> • Whether the functions can be delivered more efficiently or effectively by the Ministry of Justice, the National Archives, another existing agency of the Ministry of Justice or another body • What costs and benefits of bringing the functions in-house might be • What evidence supports your response
<p>4. Merger Options</p>	<p>Are you aware of any bodies with which the Council could be merged? What are the risks and benefits of doing so?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Whether any other areas of central government or another NDPB deliver similar or complementary functions • Whether functions of the Council duplicate work undertaken elsewhere • What evidence supports your response
<p>5. NDPB Delivery</p>	<p>Should the functions of the Council continue to be delivered by an NDPB?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Whether the Council's functions: <ul style="list-style-type: none"> (i) are technical, needing external expertise to deliver (ii) needs to be, and be seen to be, delivered with absolute political impartiality – such as certain regulatory or funding functions; <p style="text-align: center;">or</p> (iii) need to be delivered independently of Ministers to establish facts or figures with integrity <ul style="list-style-type: none"> • How the Council defines effective service delivery and how is this currently measured/assessed and reported • How well the Council is currently delivering the functions • Freedoms and flexibilities inherent in the NDPB model being used to deliver the function • What evidence supports your response

The Review Team welcomes your views on specific elements of the Council’s work, namely that of the Forum on Historical Manuscripts and Academic Research and the Freedom of Information Panels:

<p>1. Forum</p>	<p>Functions of the Forum are detailed here</p> <p>Could the functions of this Council Sub-Committee be delivered differently? What are the risks and benefits of doing so?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Why central government needs to deliver these functions • Whether the functions can be delivered by local government, the voluntary sector or the private sector • If there is an existing provider (or providers) in local government, the voluntary or private sectors that could deliver these functions • Whether the functions could be privatised or delivered under contract by the voluntary or private sector • Whether the functions could be delivered by a mutual, Community Interest Company or social enterprise • Whether the functions be brought in house (to the Ministry of Justice or the National Archives or another body) • What evidence supports your response
<p>2. Forum Interfaces</p>	<p>Are communications and engagement between the Forum and the Council as effective as they should be?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Whether the types of interface are right • What value is added by the work of the Forum • What evidence supports your response
<p>3. Freedom of Information Panels</p>	<p>Could functions of the Freedom of Information Panels¹¹ be brought in-house (to the Ministry of Justice or the National Archives or another body)?</p> <p>What are the risks and benefits of doing so?</p> <p><i>Please consider:</i></p> <ul style="list-style-type: none"> • Whether communications and engagement between the Panels and the Council are as effective as they should be • The extent to which breadth of experience of Panel members adds value to, and provides sufficient rigour for the public interest testing • What evidence supports your response

¹¹ Freedom of Information cases that engage qualified exemptions require a public interest test. When applying a qualified exemption for transferred public records the National Archives and the responsible authority (i.e. the transferring department) are required, in accordance with s66(5)(a) of the Freedom of Information Act, to consult with representatives of the Lord Chancellor. For historical records this is done through submitting applications (via Freedom of Information Panels) to the Council.

Appendix B: List of contributing stakeholders

Lord Dyson: Master of the Rolls: Chair of ACNRA
Lord Neuberger: President of the Supreme Court: Former Master of the Rolls
Professor Clive Field: ACNRA member
Professor Michael Moss: ACNRA member
Stephen Hawker : ACNRA member
Else Churchill: ACNRA member
Professor Harry Dickinson: ACNRA member
Sir David Durie: ACNRA member
Christine Gifford: ACNRA member
Graeme Herd: ACNRA member
Professor Arthur Lucas: ACNRA member
Hamish Macarthur: ACNRA member
John Millen: ACNRA member

Dr Christopher Ridgway: ACNRA Forum sub-committee member
Dr Ian Mortimer: ACNRA Forum sub-committee member
Clive Cheesman: ACNRA Forum sub-committee member

Trudi Packman on behalf of the Chief Executive: National Records of Scotland
Sue Markey: Information Commissioner's Office

Simon Marsh: Ministry of Defence
Roger Smethurst: Cabinet Office
Christine Ferguson: Foreign and Commonwealth Office
Janet Altham: Crown Prosecution Service
David Capus: Metropolitan Police

Carol Tullo, Director of Information Policy and Services: The National Archives
Julia Stocken, Head of Information Management and Practice: The National Archives
Stuart Abraham, Accessions and FOI Centre Manager: The National Archives
Nick Kingsley: Head of Archives Sector Development, The National Archives
Norman James: Head of Private Archives: Archives Sector Development Department:
The National Archives
Susan Healy, former staff member responsible for Data Protection: The National
Archives
Tim Padfield: former ACNRA Secretary: The National Archives

Appendix C: Triennial Review Terms of Reference

Triennial Review of the Advisory Council on National Records and Archives

AN ADVISORY NDPB SPONSORED BY THE NATIONAL ARCHIVES

Terms of Reference

1. To review the functions of the Advisory Council on National Records and Archives (ACNRA) in providing independent advice to the Lord Chancellor, on all matters relating to records and archives in the United Kingdom, and in particular England and Wales, in accordance with Government guidelines for reviewing Non-Departmental Public Bodies.
2. To consider the effectiveness of how the functions are currently delivered, whether there is a continuing need for the function and how it might be best delivered in the future. In doing this, the review will identify and consider alternative delivery options and compare these with the existing operating model.
3. Issues to consider should include:
 - The role the ACNRA undertakes of advising the Lord Chancellor on:
 - Issues relating to public records, over 30 years old, including access to them, under the Freedom of Information Act 2000; and from January 2013 the transition to open records when they are over 20 years old, under the Constitutional Reform and Governance Act 2010
 - Considering applications by government departments for retaining records longer than 30 years and closure of historical records under certain exemptions and where applicable, impact on the public interest
 - Major objectives, programme or policy changes proposed by The National Archives
 - Proposed legislation affecting The National Archives
 - The implications for records and public services of any proposed change to the status of The National Archives
 - Advice provided to the ACNRA by the Forum on Historical Manuscripts and Academic Research
 - Any ongoing work or planned work by the ACNRA to improve the efficiency and effectiveness of delivering the function
 - The structure and membership of the ACNRA and how secretariat support is provided

- Impact on accountability and Ministerial responsibility
 - Other functions currently undertaken
4. The review will make recommendations to Cabinet Ministers based on analysis of the issues covered in paras 1-3. In considering alternative options, the review should outline any likely transition costs, resources and when would be the optimum time for change. If recommendations are to retain the existing model, then the review should identify any aspects where delivery can be improved. This will be considered as part of stage 2.

Time and costs

5. The review will start on 22 July and will report by late September 2013 on Stage One of the review. The costs of the review will be minimal, mainly travel costs, which will be met within departmental budgets. The cost for printing the report will be met by TNA.

Governance

6. The review is conducted on behalf of the Secretary of State for Ministry of Justice and will be overseen by Helen Grant, Justice Minister and by The National Archives' Management Board

Conduct of the Review

7. The review will take account of any recent reviews involving the ACNRA, but not be constrained by their recommendations. The reviewers will consult with officials in TNA, members of the ACNRA, a number of government departments, and other parties as they see fit.

Appendix D: Members of the Advisory Council on National Records and Archives

Lord Dyson: Master of the Rolls: Chair of ACNRA
Dr Clive Field
Professor Michael Moss
Mr Stephen Hawker
Ms Else Churchill
Professor Harry Dickinson
Sir David Durie
Ms Christine Gifford
Mr Graeme Herd
Professor Arthur Lucas
Mr Hamish Macarthur
Mr John Millen
Mr John Collins
Dr Jeevan Deol
Ms Sarah Fahy
Dr Bendor Grosvenor
Ms Elizabeth Lomas
Mr Ian Soutar

Appendix E: ACNRA Terms of Reference

Terms of reference

The Advisory Council on National Records and Archives also encompasses the Advisory Council on Public Records and the Advisory Council on Historical Manuscripts. All three Councils function as one body to advise the Lord Chancellor.

The Advisory Council on Historical Manuscripts was turned into a subcommittee of the Advisory Council on National Records and Archives in May 2010 in order to provide a means through which recommendations can be made to the Advisory Council about activity relating specifically to historical manuscripts (private archives), as well as a place for discussion about academic research issues. The subcommittee is known as the Forum on Historical Manuscripts and Academic Research. The terms of reference for each are set out below.

Advisory Council on National Records and Archives

The function of the Lord Chancellor's Advisory Council on National Records and Archives is to advise the Lord Chancellor, and through him other ministers as appropriate, on all matters relating to records and archives in the United Kingdom and in particular in England and Wales(1).

It is chaired by the Master of the Rolls. The terms of reference of the Advisory Council on National Records and Archives are to consider and advise the Lord Chancellor upon:

- Major objectives, programmes and policy changes for The National Archives
 - Proposed legislation affecting The National Archives
 - The implications for records and public services of any proposed change to the status of The National Archives
 - Any subjects brought to its attention by the Lord Chancellor
-

Advisory Council on Public Records

Certain topics are within the scope of the statutory responsibilities of the Advisory Council on Public Records. It will consider and investigate the following matters and provide advice to the Lord Chancellor on them as necessary(2):

- Applications from departments for the retention of public records Pending the repeal of s5(1) of the Public Records Act 1958 by the Freedom of Information Act 2000, applications from departments for the extended closure of public records and restrictions placed by departments on the release of public records under the Open Government Initiative
- Matters relating to the application of the Freedom of Information Act 2000 to information contained in public records which are historical records within the meaning of Part VI of that Act(3)
- Preservation of public records in places of deposit and facilities for public access to them

Forum on Historical Manuscripts and Academic Research (formerly the Advisory Council on Historical Manuscripts)

The Forum on Historical Manuscripts and Academic Research will consider and provide advice to the Lord Chancellor as necessary on, matters relating to manuscripts, records and archives, other than the public records, and in particular:

- The location, collection, care, custody, preservation, acquisition, sale and use in all formats of such documents
- The compilation and dissemination of information about them
- Any questions affecting such documents as may be referred for its consideration, including issues relating to the statutory duties of the Master of the Rolls in respect of manorial and tithe documents, and the making of recommendations to appropriate Ministers on the allocation of archives and manuscripts accepted for the nation in lieu of tax
- Other issues which would formerly have come within the terms of reference of the Royal Commission on Historical Manuscripts as set out in the Royal Warrant

The Forum will act as a vehicle for the development of constructive and collaborative engagement between The National Archives and its academic stakeholders, sharing knowledge and developing trust and understanding. The Forum will also provide an open, independent and authoritative advisory voice to the organisation, to support research and academic liaison at The National Archives.

Footnotes

(1) The remit of the Advisory Council on National Records and Archives for the United Kingdom as a whole is without prejudice to matters covered by records and archives legislation of the devolved administrations.

(2) [Public Records Act 1958](#) s1(2):

There shall be an Advisory Council on Public Records to advise the Lord Chancellor on matters concerning public records in general and, in particular, on those aspects of the work of The National Archives which affect members of the public who make use of the facilities provided by The National Archives. The Master of the Rolls shall be chairman of the said council and the remaining members of the council shall be appointed by the Lord Chancellor on such terms as he may specify.

(3) Inserted as s1(2A) of the [Public Records Act 1958](#) by sch 5 para 1 of the Freedom of Information Act 2000.