



OPERATIONAL SELECTION POLICY OSP40

RECORDS RELATING TO INDICTABLE CRIMINAL
PROCEEDINGS 1972 TO 1992 (INDICTMENTS AND CASE
FILES) EXCLUDING MILITARY LAW

October 2006

Contents

Section	Sub - section	Description
Introduction		
1		Authority
2		Scope
3		Background and functions – Crown Courts, Court of Appeal (Criminal) Office and the Criminal Cases Review Commission
4		The division of criminal offences into categories for the appropriate allocation of Court and Judge
5		Early processes involved in the bringing of a defendant before a Crown Court for trial
Current selection practices for records relating to Indictable Offences		
6		Report of the Committee on Legal Records (Cmnd. 3084, August 1966)
7		Records currently preserved at The National Archives – Crown Court Indictments
	7.1	Disposal of Crown Court Indictment records – current practice
	7.2	Difficulties in locating individual Indictments
	7.3	Review of current selection and disposal practices for Crown Court Indictment records
8		Records currently preserved at The National Archives – Crown Court Case Files
	8.1	Disposal of Crown Court case records – current practice
	8.2	Procedures leading to the conviction and sentencing or liberty of defendants in Crown Courts
	8.3	Review of current selection and disposal practices for Crown Court records
9		Records currently preserved at The National Archives – Court of Appeal (Criminal Division) Registers and Case Files
	9.1	Court of Appeal (Criminal) Registers - preservation criteria to

- date
- 9.2 Summary e-Log of Criminal Appeals
- 9.3 Court of Appeal (Criminal Division) Case Files - preservation criteria to date
- 9.4 Court of Appeal (Criminal Division) Case File records – disposal of remaining files to date

Proposals for the future preservation of records relating to Indictable Offences

- 10 Crown Court Indictments
- 11 Crown Court case files
- 12 Court of Appeal (Criminal Division) records 1966 to 1992
- 13 Implementation

Appendices

Appendix 1 – Records created by the Crown Courts Division of the Supreme Court of Judicature and indicating The National Archives custody as of January 2006

Appendix 2 – Procedures leading to the conviction / liberty of defendants in Crown Courts

Introduction

1 Authority

- 1.1 In 1998 the Public Record Office (hereafter to be referred to as The National Archives) published its first Acquisition Policy. This set out the principles that are to guide the selection of records for permanent preservation in The National Archives. The following year The National Archives produced a complementary Disposition Policy dealing with the selection of public records to be held in places of deposit other than The National Archives.
- 1.2 Operational Selection Policies are intended to be working tools for those involved in the selection of public records for permanent preservation. They may be reviewed and revised at any time in the light of comments from record creators, reviewers or users of the records or as a result of newly discovered information. The extent of any review or revision exercise will be determined according to the nature of the comments received.
- 1.3 Both acquisition and disposition policies are being implemented through the production of Operational Selection Policies. These are detailed statements of appraisal plans as they apply to categories of records found in one or more government departments. They are developed by The National Archives in partnership with other government departments and in consultation with other repositories appointed by the Lord Chancellor as places of deposit. They are subject to public consultation.
- 1.4 Operational Selection Policies do not provide guidance on public access to selected records.

2 Scope

- 2.1 To date, records relating to indictable criminal proceedings have been selected for permanent preservation in accordance with The National Archives' Acquisition policy theme 2.1.4 Administration of justice and the maintenance of security.
- 2.2 This paper covers the period from 1972 to 1992. The choice of this time period is significant. The year 1972 comprises the first year of operation of the Crown Court system. The year 1992 has been chosen as the closing date for this paper because this was the year when the Court Service underwent a modernisation programme and replaced many of its Court paper systems with electronic systems: for example, the introduction of the Crown Court Electronic Support

(CREST) system. The possibility that such electronic systems have introduced significant changes to the structure, context and even to the very existence of the traditional paper records is possible. One example is that paper nominal indexes to indictments have now been replaced by the latter system. For this reason, The National Archives has decided it would be unsafe to deal with paper and electronic records within a single paper. Therefore, this paper targets mainly those paper records whose content, structure and context were consistently recorded throughout the whole Crown Court system from 1972 to 1992- with the exception of the Criminal Appeals database (see 9.2 below).

2.3 This policy concerns the selection of case file records for the following six regions for Crown and Combined Courts that operated to 1992.

- 2.3.1
- **Northern** – covering courts located at Bolton (from 1983), Burnley, Carlisle (including Kendal), Liverpool, Manchester (includes Bolton to 1982) and Preston (including Barrow-in-Furness and Lancaster)
 - **Wales & Chester** – covering courts located at Cardiff, Chester (including Caernarfon, Dollegau, Mold, Welshpool and Knutsford), Merthyr Tydfil, Newport (Gwent), Swansea, (includes Carmarthen and Haverfordwest) and Warrington
 - **Western** – covering courts located at Bodmin, Bournemouth (includes Dorchester to 1983), Bristol, Exeter, Gloucester, Newport (Isle of Wight), Portsmouth, Plymouth, Salisbury, Southampton, Swindon (including Devizes), Taunton (includes Barnstaple), Truro, Weymouth (includes Dorchester from 1984) and Winchester
 - **North Eastern** – covering courts located at Beverley, Bradford, Doncaster, Durham, Kingston-upon-Hull, Leeds (includes Wakefield 1981-86 and Huddersfield 1981-84), Newcastle-upon-Tyne, Sheffield, Teesside (includes Middlesbrough), Wakefield (includes Huddersfield to 1980) and York
 - **Midland & Oxford** – covering courts located at Birmingham, Coventry, Derby, Dudley, Great Grimsby, Leicester, Lincoln, Northampton (includes Huntingdon), Nottingham, Oxford, Peterborough (no court until 1980), Shrewsbury, Stafford, Stoke-on-Trent, Warwick, Wolverhampton, and Worcester (includes Hereford)

- **South Eastern** – covering courts located at Acton (June 1980 – July 1991 now at Harrow), Aylesbury, Cambridge, Canterbury, Central Criminal Court, Chelmsford (includes Southend), Chichester, Croydon, Guildford, Harrow, Inner London, Ipswich (includes Bury St Edmunds), Isleworth, Kingston-upon-Thames (including Surbiton), Knightsbridge, Lewes (including Brighton), Luton, Maidstone, Middlesex Guildhall, Norwich (includes Kings Lynn), Reading, St Albans (including Bedford), Snaresbrook, Southwark, Wood Green and Woolwich

2.3.2 To date, these records have been preserved in numerous ‘J’ record series at The National Archives.

2.4 The policy also concerns the case files of the Court of Appeal, Criminal Division currently held in The National Archives record series J 81 and J 82.

2.5 Records created by the Criminal Cases Review Commission will also be referred to in this paper – although they are not the subject of this document. The selection of these records is recorded in OSP21. See 3.2 below.

2.6 This policy does not cover the public records created under the summary jurisdiction of magistrates’ courts that deal with petty criminal convictions. Only records created through proceedings for indictable offences are covered by this policy: those that are heard at Crown Court only.

2.7 Records relating to military law are not the subjects of this paper. The Judge Advocate General’s Department advises the Secretary of State for Defence and the Defence Council on legal matters relating to the administration of military law and reviews proceedings of courts-martial. These records will be covered by a separate OSP on military law at a future date.

2.8 This paper does not cover official records created by official inquiries into alleged criminal acts: e.g. such as the Bloody Sunday Inquiry (the Widgery Tribunal) 1974.

3 Background and functions – Crown Courts, Court of Appeal (Criminal) Office and the Criminal Cases Review Commission

3.1 The function of Crown Courts is to hear and reach verdicts on serious indictable offences such as murder, rape and robbery. A lesser part of its duties is to hear referrals for sentence and appeals

from Magistrates' Courts. A Circuit Judge governs the court and a legally selected jury of 12 people provides the verdict.

The Court of Appeal (Criminal Division) established in 1966, hears appeals from the Crown Courts where there are legal grounds to do so. During the period 1972 to 1992, the Lord Chief Justice presided over the Court of Appeal (Criminal Division) and ranked next to the Lord Chancellor in the legal hierarchy: this has subsequently changed under the Constitutional Reform Act 2005. This Court continues to have the power to quash convictions on the facts (that the court or the jury reached the wrong result) on a point of law on a question of mixed fact of law or any other ground that appears sufficient and to reduce sentences – though this power is also exercisable by the Crown Court when it hears appeals from the Magistrates Court. The Court of Appeal also has the right to order a new trial.

On rare occasions an appeal against a decision made by the Courts of Appeal (Criminal Division) may be lodged and may be heard by the House of Lords presided over by the Lord Chancellor and other Law Lords. Such records are not public records but are records of Parliament and, consequently, do not concern this paper.

3.2 The Criminal Cases Review Commission was created as an independent executive / non-departmental public body on 1 January 1997: after the scope dates for this paper. A Report of the Royal Commission on Criminal Justice in 1993 recommended that a body independent of the Home Office should carry out preliminary investigation for grounds of appeal where miscarriages of justice were alleged / demonstrated. The Commission's powers are derived from the Criminal Appeal Act 1995 which embodied the report recommendations. It took over from the Home Office and Northern Ireland Office the function of reviewing suspected miscarriages of justice in England, Wales and Northern Ireland on 31 March 1997. It decides whether criminal convictions are to be referred to the Court of Criminal Appeal.

3.3 The origins of the Crown Court lies in the *Royal Commission on Assizes and Quarter Sessions*, 1966 – 1969, chaired by Lord Beeching to investigate and propose reforms to the system of Assizes and Quarter Sessions that had remained unchanged for hundreds of years. There were numerous problems with the system of Assizes and Quarter Sessions: ancient assize towns were no longer the main centres of population; the same judges were hearing civil and criminal cases; civil cases would often have to wait for urgent criminal cases to finish creating delays; Assize sittings would

be fixed long before any idea of the case loads could be assessed contributing to chaotic working practices; Judges spent too long travelling between Assize towns and would often be unable to hear other scheduled cases for a particular Assize.

3.3.1 The *Report of the Royal Commission on Assizes and Quarter Sessions* (Cmnd. 4153) was published in 1969. Its main findings were as follows.

1. The abolition of Assizes and Quarter Sessions and their replacement with a higher criminal court known as the Crown Court.

2. Crown Courts were to sit where the whole population of a region was within one day's travelling distance.

3. Impose divisions between civil and criminal proceedings of the Crown Court, whereby civil litigants would not need to wait for the criminal case to conclude to start their own proceedings.

4. Judges would no longer travel long distances and would be in permanent session at a Crown Court.

5. Cases would be divided into different categories according to their gravity and by the level of seniority of the judge required to hear the case.

6. Judges should be able to sit in any Crown Court anywhere in England and Wales. This would allow more flexibility in Judges working practices.

7. County Court judges would be restyled as Circuit Judges, able to sit in the Crown Court to hear criminal cases or in the County Court to hear civil cases.

8. Introduction of the new title of Recorder for part-time judges, eligible to sit in any Crown Court who could be solicitors as well as barristers.

9. There were to be six circuits instead of the previous seven, each managed by two judges and one circuit administrator. This seems to have reverted back to seven circuits after 1992.

10. A unified court administrative service appointed and paid for by the Lord Chancellor should be created.

11. The Lord Chancellor should be the Minister responsible for all the

higher courts and county courts.

- 3.4 The recommendations of the Beeching Commission Report were accepted in full and they heavily influenced the final drafting of the Courts Act 1971.
- 3.5 The Crown Court of the Supreme Court of Judicature was established in 1972 under the Courts Act 1971. It resulted in the replacement of the courts of assize and quarter sessions. The Crown Court was given exclusive jurisdiction in trial on indictment and also took over the appellate jurisdiction of the quarter sessions for magistrates courts. The Courts Act 1971 permitted the court to sit in any location in England and Wales, as directed by the Lord Chancellor. Within each Court circuit, the court could sit at various centres graded into three tiers according to the gravity of the offence: first tier courts hearing the most serious cases. Sometimes, satellite courts were set up away from the main court centre. The Supreme Court of Judicature (High Court) in London was formerly known as the 'Old Bailey' and has now become known as the *Central Criminal Court* as distinct from other regional Crown Courts.

Further, The Court Service was created in 1971 as a unified court administrative service to coordinate government administrative policy across the criminal (and civil) justice system.

4 The division of criminal offences into categories for the appropriate allocation of Court and Judge

- 4.1 The Supreme Court Act 1981, s.75 (1) and (2), categorised criminal offences, for the purpose of trial, into the four categories that follow.

Class 1 offences – the most serious offences tried by a High Court Judge. Offences include treason, murder, hostage taking, torture and espionage and soliciting, incitement, attempt or conspiracy to commit any of these offences. It is estimated that these offences are likely to comprise approximately 1 % of the total cases tried¹. Crimes such as war crimes atrocities and genocide are also classed in this category but have, to date, usually been tried in special European Union War Crimes Tribunals. The few exceptions to the latter relate to war crimes committed by British naturalised subjects during World War 2 (1939 to 1945).

Class 2 offences – these offences include manslaughter, rape, abortion, infanticide, child destruction, unlawful sexual intercourse,

¹ These estimates are taken from *Cases and Materials on the English Legal System* by Michael Zander (7th edition, 1996, Butterworths 'Law in Context' series).

incest, sedition, mutiny, and piracy and include any attempt or conspiracy to commit any of these offences. A High Court Judge tries them unless they are released by, or on the authority of, a presiding judge for trial by a Circuit Judge or Recorder. These are likely to comprise approximately 2 % of the total cases tried.

Class 3 offences – All other offences triable only in a Crown Court upon indictment unless specifically assigned to classes 1, 2 or 4. These are likely to comprise approximately 4 % of the total cases tried.

Class 4 offences – These include offences listed for trial by a Circuit Judge or Recorder. Typically, they include GBH, wounding, robbery, assault with intent to rob, soliciting and conspiracy to commit offences other than those in classes 1, 2 and 3 and ‘Either Way’ offences². These are likely to comprise over 90 % of the total cases tried by the Crown Courts.

5 Early processes involved in the bringing of a defendant before a Crown Court for trial

5.1 ***The Magistrates’ Court.*** Cases come to Crown Courts because the offence is either indictable (can only be tried by a Crown Court) or where an “either way” offence is committed where the accused can choose to be tried by judge and jury at a Crown Court rather than by a panel of magistrates at a Magistrates Court for certain offences. Usually, the accused is likely to be 17 years and older. Sometimes children and juveniles are tried at Crown Court where the offence is deemed to be very serious (e.g. a Class 1 offence).

5.2 ***Committal Proceedings.*** The Magistrates’ Court is the first place to consider whether an offence is to be tried before a Crown Court or by a Panel of Magistrates. Where the offence is considered to be indictable, it will be forwarded to the Crown Court. These are known as **Committal Proceedings**. The Magistrates weed out prosecutions that have no chance of succeeding in the Crown Court and ensure that a *prima facie* case against the defendant is established before it is passed on to the Crown Court. In short, Committal Proceedings do not consider whether the accused is guilty or not: only whether there is a case to answer and to locate an appropriate venue to hold the trial.

² Offences triable ‘either way’ are those where the accused pleads not guilty at the pre-trial stage and is allowed the right to choose to either be tried by a panel of magistrates or before a judge and jury in the Crown Court. It only applies to offences specified under the Magistrates’ Courts Act 1980, Schedule 1.

CURRENT SELECTION PRACTICES FOR RECORDS RELATING TO INDICTABLE OFFENCES

6 Report of the Committee on Legal Records (Cmnd. 3084, August 1966) setting the context for current public records selection practices in the Crown Courts

6.1 Lord Denning chaired the Committee that produced this report when he was Master of the Rolls. It has become known as the “Denning Report”. The report is significant to the history of, and subsequent practices for the selection of court record archives.

6.2 In section 18 of this report Lord Denning summarised the principles to be applied in the selection and disposal of legal records.

“Taking into account the reasonable claims of users, we would apply to legal records principles similar to those which the Grigg Committee made for departmental records (paragraphs 59 and 60) and put the test: Are these records likely to be required in the future for practical purposes, including their use as precedents, or as a guide to possible action in the future, or to throw light on the conditions of the past? If so, they should be kept; but otherwise they should be destroyed.

6.3 **The role of an archive.** The emphasis here that “records likely to be required in the future for practical purposes” may be misconstrued so as to distort the true role of an archive. The role of an archive is to select records of **permanent** archival and historical value. This definition does not necessarily include records that have long periods of business use; e.g. up to 100 years. A selection of the latter records may have enduring archival value in demonstrating how certain courts operated and in demonstrating the practical implementation of policy. However, it is unlikely that all such records will need to be permanently preserved. To summarise, an archive should not be a repository for the totality of records from a series that have continuing long-term business use unless it may be proved the selected records have enduring historical value beyond their business use. For the remainder of these records that are judged not to have enduring historical value, it is appropriate for the creating departments to store these in semi-current records storage facilities until their business use has expired, after which time they may be disposed of according to a formal records disposal schedule / agreement.

7 Records currently preserved at The National Archives – Crown Court Indictments

7.1 Disposal of Crown Court Indictment records – current practice

7.1.1 DCA Records Management Services *Supreme Court of Judicature, Crown Courts Records Schedule* (AMS 4/26/7 published 14 September 2001) indicates that all collections of indictments for Crown Courts are to be preserved permanently at The National Archives. The current coverage of Crown Court indictment records in the custody of The National Archives is given in Appendix 1.

7.1.2 **Indictments.** Indictable criminal offences comprise the most serious crimes that are required to be heard before the Crown Court. The ***Indictment*** is a key document in criminal proceedings. It contains the written charges by which certain offences are brought before the Crown Court on a case for trial. The court record of the indictment was added to as the trial and appeal processes progressed. Upon completion, the indictment formed a concise summary of the significant events and decisions that took place during the trial and also indicates whether defendants followed an appeal process if found guilty. It usually comprises a small sheet (Form 5089) and indicates the following data:

- 7.1.3
- Defendants name
 - Sex of defendant
 - Whether bail or custody granted
 - Date committed [for trial]
 - Conviction date
 - Sentence date
 - Trial dates (From / To) added upon completion of the trial
 - The identity of the firm of shorthand writers
 - Name of the Crown Court to hear the case
 - Judge's name.
 - Defence Counsel names of barristers
 - Defence Counsel names of solicitors
 - Prosecution Counsel names of barristers
 - Prosecution Counsel names of solicitors
 - Offences charged to the defendant listed as separate 'counts'.
 - Defendant's pleas to charges
 - Jury's verdict
 - Sentence or Order
 - Appeal details – date of appeal and whether grounds for appeal granted or refused

7.1.4 The small indictment (Form 5089) is usually attached to a larger '**Statement of Offences**' sheet entitled "*The Queen against*

[Defendant's Name]” that repeats much of the information on the indictment. The latter is also known as the Copy Indictment (Form 5088). However, this larger sheet often includes a list of the witnesses (usually added in long hand) who were called at the trial on its reverse side.

7.1.5 A draft (bill of) indictment only becomes an ‘original’ once it is signed by the Clerk of the Court. It is the ‘original’ indictments or court record indictments that are currently preserved in their entirety in the indictment record series’ in The National Archives. Copies of these indictments are also likely to appear on the Crown Court case records, a selection of which are currently permanently preserved at The National Archives, the future selection of which is considered later in this paper.

7.2 **Difficulties in locating individual indictments.** The majority of indictment records have no nominal surname indexes of defendants for use by researchers. During the business life of these records there existed no departmental requirement for such indexes to be created. For the majority of paper indictments, each court created a number of loose-leaf binders per year to hold the indictments. The indictments were filed in numerical order by year and then by case number as the cases were received into court: e.g. 73-1750 denoting the year 1973 and the 1750 indictment of that year. There is no means of referencing key information contained in the indictments: such as, the type of offences, the names of defendant(s) or the outcome of the case. It is estimated over 80,000 of these indictments were produced every year on average by Crown Courts throughout England and Wales since 1972.

7.2.1 **What information will a researcher need to successfully locate a relevant indictment?** A researcher who wishes to locate a named defendant in the majority of indictment collections will need to know the name of the court, the indictment number and the year of committal for trial. Without this key information it would be very difficult to locate the record. The prospects for searching such a large category of records are likely to deteriorate with future large transfers of indictments to The National Archives.

7.2.2 **Indictments that were indexed.** The following Crown Courts comprise the few that created nominal indexes of defendants for their indictment records: Lewes; Coventry; Stoke; Teesside; Nottingham; Sheffield; Chester; Newport (Gwent); Leicester; Cambridge; Swindon; Northampton; Croydon; Warwick; Chichester; Carlisle; Bristol and the Central Criminal Court, London (in The National Archives series J 336, although those beyond 1980 are currently

missing in department). However, these paper card indexes became obsolete in 1992 with the introduction of the CREST system.

7.3 **Review of current selection and disposal practices for Crown Court Indictment records**

7.3.1 To 1992, as stated above, the majority of Crown Court indictment collections are not indexed, thereby limiting their use to researchers to easily discover the information contained within them. Due to their limited usefulness, this has raised the valid issue of whether these records should continue to be permanently preserved at The National Archives in their entirety or whether only those Courts that had created nominal indexes of defendants for their indictments should be preserved?

7.3.2 The arguments in favour of permanently preserving all Crown Court indictments at The National Archives are usually advanced upon the following grounds:

- Permanent preservation of only those indictments that are indexed may provide an unrepresentative sample of offences across the regions of England and Wales
- Indictments meet the 'particular instance paper' (case file) requirement for selection set by the '*Report of the Committee on Public Records (The Grigg Committee Report, 1954)*' whereby it was necessary "*to determine what papers, if retained, would give the greatest amount of information in the smallest amount of space*" (para. 109, clause c))
- If the un-indexed indictments are destroyed, former defendants appearing in these records could find themselves obliged to declare a conviction for which there is no surviving official record
- It is possible that the totality of indictment records could be used in the future to compile statistics on the business of the Crown Courts or even to create an index

7.3.3 The arguments against the permanent preservation of unindexed indictments are addressed respectively as follows.

- The Crown Courts indictments that are indexed present a fairly representative geographical spread across England and Wales and the Courts comprise an acceptable sample of 1st, 2nd and 3rd tier courts

- The National Archives agrees that indictments do represent a perfect summary of the totality of business that took place within the Crown Courts and that they meet the Grigg Report condition to provide the most information in the smallest space. However, these still represent a large volume of records for the majority of which there are no indexes in existence. This means that the usability for the unindexed indictments of the 90 + Crown Court Centres by public researchers will be severely limited in the coming years
- Alternatives to permanent preservation do not necessarily mean automatic destruction. If The National Archives has made an archival selection from the totality of indictments, Her Majesty's Court Service can retain the remainder under the Public Records Act 1958 s.3(4) beyond 30 years after the creation of the records for as long as they require them to meet their business purposes. This includes the need to keep records for as long as they are legally required to safeguard the rights of living individuals. For example, appeal procedures carried out by the Criminal Cases Review Commission in possible cases of miscarriage of justice. A formal records disposal schedule / agreement can be created which can be used by Her Majesty's Court Service staff for the timely disposal of those records that are not selected
- It is possible that indictments may be used in future to compile statistics on Crown Court business and crime and even that indexes may be created from them retrospectively. However, these possible uses are speculative and may never come to fruition. Attempts in recent times to create indexes for where they did not exist for these records were subsequently rejected by the Lord Chancellor's Department on the grounds of prohibitive costs
- The Home Office *British Crime Survey* (available at the national Digital Archive of Datasets (NDAD) – NDAD reference CRDA/2, The National Archives reference HO 400) already records statistics of offences committed since 1986

8 Records currently preserved at The National Archives – Crown Court Case Files

8.1 Disposal of Crown Court case records – current practice

8.1.1 For Crown Court case records, an agreement has existed to date to

preserve a selection of them permanently at The National Archives, and for the remainder to be disposed of in other ways. The Department for Constitutional Affairs Records Management Services *Supreme Court of Judicature, Crown Courts Records Schedule* (AMS 4/26/7 published 14 September 2001) articulated these disposal actions. Current coverage of these records preserved at The National Archives is given in Appendix 1. The current selection criterion for the permanent preservation of records at The National Archives is as follows.

8.1.2 Selection for permanent preservation of Crown Court Case files has, to date, been determined by the following criteria:

- a) All files where there is a charge of murder, manslaughter, infanticide, and child destruction. (Class 1 offences)
- b) All files where there was a charge under the *Official Secrets Acts*, treason, treachery, and sedition. (Class 1 offences)
- c) Any trial where a life sentence was imposed and cases in which a life licensee committed an offence. (Class 1 offences)
- d) Any trial where a restriction order unlimited in time was imposed and cases in which an offence was committed by a patient on leave of absence or conditional discharge from a special hospital. (Usually class 1 offences)
- e) Trials of persons connected with the Irish Republican Army (IRA) or other terrorist organisations. (Usually Class 1 or 2 offences)
- f) Cases relating to matters of public concern, such as riots. (Can be classes 1,2,3 or 4 offences)
- g) Trials that are of general or historical interest. (Can be classes' 1,2,3 or 4 offences)
- h) Cases that attract great public interest at the time or in which eminent or notorious persons were prominently involved. (Can be classes 1,2,3 or 4 offences)
- i) A representative selection of other case files (no more than 2 to 3 files per category) to show a wide variety of cases. (Likely to be classes 3 and 4 offences)
- j) Files not coming within the above categories but where the sentence is longer than 7 years. (Usually classes 1 and 2 offences)
- k) Courts dealing mainly with Class 4 offences should select one file for each type of case coming before court.
- l) Cases referred to in the Sex Offenders Act 1997, s.2 where the notification period exceeds 5 years.³

³ Where a sex offender must notify the local police of his name and address at least twice a year – in this case where this notification must be complied with for over a 5 year period.

8.2 **Procedures leading to the conviction and sentencing or liberty of defendants in Crown Courts**

8.2.1 **Appendix 2** provides details of these procedures, together with a list of the activities and the products of these activities (records) that are likely to be created during the course of the trial.

8.3 **Review of current selection and disposal practices for Crown Court records**

8.3.1 In an analysis of ten Crown Courts where the records have been transferred to The National Archives covering the year 1972 the selection of records that comply with the criteria set in offences classed in categories 1, 2, 3 and 4 was as follows⁴. Class 1 category offences comprised approximately 30 % of records preserved; Class 2 category offences comprised 20 % of records preserved, and Classes 3 and 4 offences comprised 50 % of the records preserved. The analysis covered a total of 606 records.

8.3.2 This analysis supports the argument that The National Archives is preserving far too many records from classes' 3 and 4 offences: half the total. These offences comprise the majority of indictable crimes that came before the Crown Courts: collectively representing over 90 % of the total crimes. Such records do not comprise records of 'high archival value' and should have only been preserved at The National Archives as a small representative sample of these types of offences to date.

In the *Supreme Court of Judicature, Crown Courts Records Schedule* it was agreed between the Department for Constitutional Affairs and The National Archives that only three files are to be selected per County Court records transfer to The National Archives to provide a representative sample of class 3 and 4 offences. However, it seems many of these records have been preserved under the current selection criteria (**see s.8.1.2.d) and s.8.1.2. j)** where a sentence exceeding seven years was handed down to persistent offenders. This has catalysed an unforeseen increase in the volume of Classes 3 and 4 offences that have been preserved at The National Archives. This paper seeks to radically amend this outcome in the future selection of Crown Court archives.

8.3.3 The analysis also shows that approximately half the Crown Court case records transferred for permanent preservation at The National Archives comprises the Class 1 and 2 offences. This is supposed to

⁴ The Crown Courts analysed were: Leeds; Winchester; Liverpool; St Albans; Maidstone; Coventry; Shrewsbury; Stafford; Preston and Birmingham.

comprise all the offences in these classes that came before the Crown Courts: an agreement to preserve all of these records at The National Archives currently exists. However, it may be argued that there is no continuing practical archival reason to preserve these records in their entirety. Whilst acknowledging that there may be a business use for the government department (Her Majesty's Court Service) that created these records to preserve all of them whilst they are of business use, it may be argued that this does not require the permanent preservation of all of these records as archives.

- 8.3.4 The National Archives' Appraisal Policy states that only "*records of the highest archival value*" should be selected. Therefore, it may be argued that a smaller selection of Crown Court class 1 and 2 case records needs to be permanently preserved to capture notable cases and to record how the courts carried out their business from year to year.

9 Records currently preserved at The National Archives – Court of Appeal (Criminal Division) Registers and Case Files

- 9.1 **Court of Appeal (Criminal) Registers - preservation criteria to date.** All the 'Registers' have been preserved since the inception of the Court of Appeal in 1966. Prior to 1966, there was no court based system of appeal: to appeal against a sentence for a criminal offence, a petition was lodged with the Secretary of State for Home Affairs which could either be upheld or rejected according to the merits of the case. That said, paper registers recording the results of such appeals have been preserved from 1908 to 1990 in The National Archives record series J 81 – *Court of Criminal Appeal and Supreme Court of Judicature, Court of Appeal, Criminal Division: Registers, 1908-1990*.

- 9.1.1 The Court of Criminal Appeal paper registers to 1990 were thought to have had card indexes of named appellants. However, if they did exist at all, these records are currently missing. The National Archives is currently endeavouring to trace these records. Registry entries are arranged by year and then by the next consecutive number issued at the time the appeal was lodged.

- 9.2 **Summary e-Log of Criminal Appeals.** From 1990, a computer database known as CACTUS (Criminal Appeals database) was used to track the business of this court. This replaced the paper system of logging and tracking of criminal appeals that had existed to that date. DCA Records Management Services *Supreme Court of Judicature, Court of Criminal Appeal and Courts-Martial Appeal Court Records Schedule* (AMS:4/26/2, published 16 July 2002) indicates that this

database is to be preserved permanently at The National Archives in record series J 81 – *Court of Criminal Appeal and Supreme Court of Judicature, Court of Appeal, Criminal Division: Registers, 1908 to 1990* continuing and improving on the functionality of the paper registers.

9.3 **Court of Appeal (Criminal Division) Case Files - preservation criteria to date.** To date, these records have been preserved permanently at The National Archives according to the following selection criteria of 'special interest' where:

- a) Life sentences have been imposed
- b) The appellant is 'Detained at Her Majesty's Pleasure'
- c) Home Secretaries References are present
- d) Attorney General's References are present
- e) A Hospital Order without limit of time has been imposed or where Sentences or Orders are for a period in excess of 7 years

To date, a selection of such records have been preserved at The National Archives to 1990 in paper format according to the above criteria.

9.4 **Court of Appeal (Criminal Division) Case File records – disposal of remaining files to date.** To January 2005, the remaining case files that did not meet the preservation selection criteria are to be destroyed by the court according to the current record disposal schedule agreement.

- a) After the sentence or the order has ceased to have effect; or
- b) Where the Sentence or the Orders are for 7 years or less.

PROPOSALS FOR THE FUTURE PRESERVATION OF RECORDS RELATING TO INDICTABLE OFFENCES

10 Crown Court Indictments

10.1 The National Archives proposes to preserve permanently those Crown Court collections of indictments that have corresponding nominal indexes of defendants. These have been identified as the Crown Courts at:

1. Teesside
2. Nottingham
3. Sheffield
4. Chester
5. Newport (Gwent)
6. Leicester
7. Cambridge
8. Swindon
9. Northampton
10. Croydon
11. Warwick
12. Chichester
13. Carlisle
14. Bristol
15. Central Criminal Court (Old Bailey, London)
16. Lewes
17. Coventry
18. Stoke

Ideally, the nominal index for Crown Court indictments will be the first record from the Court to be preserved permanently at The National Archives.

10.2 In addition, The National Archives makes a provisional proposal to preserve permanently all of the unindexed indictments even though they remain difficult to search.

11 Crown Court case files

11.1 The National Archives will preserve permanently only those Crown Court case files that are deemed to be *of high archival value*.

11.2 **Definition of 'high archival value' relating to Crown Court case file records**

11.2.1 Crown Court case files are to be selected for preservation **only** where the trial:

- Attracted national / widespread contemporary public interest
- Was of national historical significance
- Involved eminent or notorious persons
- Was legally significant: e.g. where the case catalysed a change in the law or legal procedures after the trial
- Gave rise to widespread and prolonged public concern (measured by the frequency of parliamentary questions, Ministers cases and media coverage at a national level) and / or were raised as a matter of concern by criminal justice reform organisations

11.3 The above selection principles partially corresponds with the existing Department for Constitutional Affairs selection criteria for case files. The following criterion is to be used in the future selection of case files for permanent preservation.

- a) Case records where there is a charge of murder, manslaughter, infanticide, and child destruction. (Classes 1 & 2 offences). However, selected records **must** conform to the selection principles set out in s.11.2.1
- b) All files where there was a charge under the *Official Secrets Acts*, treason, treachery, and sedition. (Class 1 offences)
- c) Trials of persons connected with the Irish Republican Army (IRA) or other terrorist organisations. (Usually Class 1 or 2 offences)
- d) Cases relating to matters of public concern, such as riots. (Can be classes 1,2,3 or 4 offences). However, selected records **must** conform to the selection principles set out in s.11.2.1
- e) Trials that are of general or historical interest. (Can be classes' 1,2,3 or 4 offences). However, selected records **must** conform to the selection principles set out in s.11.2.1
- f) Cases that attract great public interest at the time or in which eminent or notorious persons were prominently involved. (Can be classes' 1,2,3 or 4 offences)

11.4 In future, case files where the judicial imposition of a life sentence tariff is recorded will not necessarily mean that such records will be preserved permanently at The National Archives. Selection of these files for permanent preservation will depend upon whether the selection criteria above are met (see s.11.2.1 above).

11.5 **Murder files.** Murder case files and conspiracy to commit these

crimes will no longer be selected in their entirety from all Crown Courts. Only files that comply with the new selection criteria will be preserved. For example, whereas the 'Yorkshire Ripper' murder case file(s) will be preserved at The National Archives (as it complies with the s.11.2.1 selection criteria above) the case file for a local murder that was not a national *cause célèbre* will not be preserved as permanent archives in future.

11.6 **Other Class 1 offence case files.** These files will only be preserved at The National Archives if they meet the new selection criteria (see s.11.2.1 and 11.3 above). For example, it is likely that case files relating to treason, genocide, case files of offences committed on mainland England and Wales by the Irish Republican Army and other terrorist groups, some attempted murders (e.g. attempted murder of Princess Anne by Ian Ball (1974), and the implication of Jeremy Thorpe in conspiracy to murder (1979)) would all have been of national contemporary interest. These records are likely to be preserved permanently at The National Archives. Cases files relating to Class 1 offences that do not meet the s.11.2.1 selection criteria will no longer be selected as archives.

11.7 **Disposal of the remaining Class 1 offence case files after The National Archives selection.** Her Majesty's Court Service may retain the remaining records beyond 30 years after the closure of the records under the Public Records Act 1958, s.3(4) until their business use has expired, after which date they may be disposed of according to a formal records disposal schedule agreement.

11.7.1 **Classes 2, 3 and 4 offences case files.** These records will only be preserved at The National Archives if they meet the new selection criteria (see s.11.2.1 above). Further, case records where the imposition of a sentence in excess of 7 years (formerly selected for preservation at TNA) will now only be preserved if they conform to the selection principles set out in s.11.2.1.

11.7.2 **Disposal of the remaining Class 2, 3 and 4 offence case files after The National Archives selection.** Her Majesty's Court Service may retain the remaining records until their business use has expired after which date they may be disposed of according to a formal records disposal schedule agreement.

12 **Court of Appeal (Criminal Division) records 1966 to 1992**

12.1 Records of the Court of Criminal Appeal for the period 1972 to 1992 have already been selected and preserved at The National Archives in paper format. They are to be found in the following National

Archives record series

J 81- Court of Criminal Appeal and Supreme Court of Judicature, Court of Appeal, Criminal Division: Registers, 1908 to 1990.

J 82 – Court of Criminal Appeal and Supreme Court of Judicature, Court of Appeal, Criminal Division: Case Papers, 1945 to 1993.

12.2 J 81 - The National Archives intends to preserve the information products of the CACTUS (Criminal Appeals database) e-system from 1990 as a summary record of all the business of the Court of Appeal (Criminal Division). As a minimum benchmark, the National Archives intends to preserve products that will duplicate the information captured in paper format prior to 1990.

12.3 **Future selection of case files for permanent preservation from the Court of Criminal Appeal**

Original case files from the Court of Appeal Criminal Division will continue to be selected according to the following criteria, where:

- a) Life sentences have been imposed
- b) The appellant is 'Detained at Her Majesty's Pleasure'
- c) Home Secretaries References are present
- d) Attorney General's References are present
- e) A Hospital Order without limit of time has been imposed or where Sentences or Orders are for a period in excess of 7 years

13 **Implementation**

13.1 Implementation of this policy will fall upon Her Majesty's Court Service, the National Archives and the Criminal Cases Review Commission.

13.2 Her Majesty's Court Service is to draft an amended records disposal schedule for the Crown Courts to replace the current schedule and may wish to refer to this document in the Court of Appeal (Criminal Division) records disposal schedule.