

Public Records Bodies: Determination and change of status

How to identify a Public Records Body

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Purpose

The purpose of this guidance is to assist an organisation in determining whether it is a body which creates public records under the [Public Records Act 1958](#)¹. In this guidance, a body which creates public records will be referred to as a 'Public Records Body'.

Under Schedule 1, paragraph 2 of the Public Records Act 1958 ('the Act'), records created by government departments and any other office, commission or other body established under Her Majesty's Government are public records. On occasion, it is not immediately clear whether certain bodies are subject to the Act. For a number of reasons, the Act excludes certain bodies (or certain records).

The National Archives needs to be included in the determination process. Under the Public Records Act 1958, the Keeper of Public Records has a responsibility to ensure the preservation of public records². The National Archives will capture decisions on determinations and changes in status.

This guidance includes information on how the public body should check or confirm its status if its status as a Public Records Body is unclear.

This guidance outlines how an organisation can work with The National Archives to determine its status, highlighting the information required and processes involved. It also includes an annotated version of the form required by The National Archives in order to record said status (see page 8).

Send enquiries and forms to: information.management@nationalarchives.gsi.gov.uk.

¹ The definition of public records in the Public Records Act 1958 applies to records of relevant UK and English bodies. For public records in Scotland see the Public Records (Scotland) Act 2011 especially s3; for public records in Northern Ireland see the Public Records Act (Northern Ireland) 1923 and also the Public Records Act 1958 s12; and for public records in Wales see the Government of Wales Act 2006 ss146-148.

² [Public Records Act 1958, Section 2, paragraph 3](#)

Determining of status

Determining the status of a public body can start in one of two ways:

- enquiry from existing body
- creation of a new body

The process for determination can start by one, or a combination, of:

- Hansard (establishment/change to public body announced in House, or in Ministerial Statement)
- Ministry of Justice (establishment/change to public body announced through news feed from Ministry of Justice to CEO's Office)
- newspaper/journal/internet article noting establishment/change to public body

The list of sources is not exhaustive.

In order to inform the determination process, a responsible officer (either within the existing body, the Parent Department, or The National Archives) will need to research and collate information on the organisation, including its functions and purpose.

The officer could use the following sources to help to establish the status of the public body:

- legislation that establishes or changes the status of the public body
- Public Records Act 1958
- [Freedom of Information Act 2000](#)
- [Parliamentary Commissioner Act 1967](#)
- ministerial statements
- annual reports (Public Body and/or parent department)
- establishment documentation (terms of reference, appointment correspondence, royal warrants)
- the [Crown bodies list](#) maintained by The National Archives

Identifying a Public Records Body

If the organisation is:

- a government department or an executive agency of a government department (Schedule 1, paragraph 2(1)(a))
- a court or tribunal (it falls under one of the categories under Schedule 1, paragraph 4)
- an establishment or an office under the Crown (Schedule 1, paragraph 2(1)(b))
- listed in any part of Schedule 1, paragraph 3

then it creates public records and therefore it is a Public Records Body. The Decision Trees at the end of this guidance can assist organisations in determining if it comes under the Public Records Act.

If the organisation is established or owned by HM Government, or has property which is wholly owned by HM Government, then the organisation is a body which creates public records. Note that many but not all public bodies that have Crown status (that is, the documents created by their staff are Crown copyright) are Public Records Bodies. The National Archives has published a [Crown bodies list](#) that may be helpful in determining whether Crown status applies.

Remember that only the definition contained in Schedule 1 to the Public Records Act 1958 is relevant in determining the public records status of records considered in this guidance. The definition of Crown copyright is different but Crown copyright status can often be helpful as an indicator. If the organisation, or specific records of particular organisations, is excluded from the Public Records Act 1958 (by virtue of Schedule 1, paragraph 2(2) and 3(2)) then its (or those) records are not public records.

If it is not covered by any of the above criteria, then the status of the organisation needs to be determined. With information provided by the existing body or the parent department (the form on page 8), a responsible officer within The National Archives will undertake the determination of status.

The responsible officer will examine the functions the organisation discharges, the source of its funding, and any appropriate legislation or other instrument by which the body was established.

Changing the status of a Public Body

If it is determined that the public body should be a Public Records Body, The National Archives will consult with the Parent Department and/or the existing body in following set procedures for creating new Public Record Bodies. These include:

- using powers to make Orders in Council, subject to negative resolution, at paragraph 3A of Schedule 1 to the Act
- for Courts and Tribunals, using Schedule 1, paragraph 4 (1)(o)
- for legacy records, using Schedule 1, paragraph 7(1) (retrospective effect)

When the organisation is added to the list in Schedule 1, paragraph 3, they become a Public Records Body and any records they create from that point on will be public records.

The already existing records can be treated as if they were public records.

If an organisation has been removed from the list in Schedule 1, paragraph 3 then the records that they created/inherited (while they were listed in the paragraph) will remain public records (see s16, paragraphs (1)(b) and (c), Interpretation Act 1978).

New Public Bodies

For new bodies, the legal team which has responsibility for the passage of the relevant legislation should consult with The National Archives, to ensure the team:

- is aware of the requirements of the Act
- includes an appropriate amendment to the Act (Schedule 1, paragraph 3) in the draft bill
- includes a reference to the body's status as a Public Records Body (although this is not a requirement, as inclusion in Schedule 1, paragraph 3 is enough)

Non-public Record Bodies

Non-public Record Bodies still need to consider managing their records appropriately, especially if they need to comply with other legislation, for example

- [Freedom of Information Act 2000](#)
- [Companies Act 2006](#)
- [Data Protection Act 1998](#)

The National Archives has published general guidance on best practice in [information management](#) and [digital continuity](#) which may assist organisations in meeting its own recordkeeping requirements.

The National Archives also recommends that non-public record bodies should consider the desirability of deposit with an appropriate archival repository, in order to ensure long-term preservation and access for research purposes. The National Archives' Archives Sector Development (ASD) area may be able to assist in identifying appropriate organisations.

Email ASD at: asd@nationalarchives.gov.uk



Request for determination of status of records under the Public Records Act 1958

Department.....

Body.....

- (1) By what method was the body established, for example by statute, Royal charter, Royal warrant or administrative action:**

- (2) What are its terms of reference?**

- (3) How is it financed, for example by departmental vote, grant in aid, statutory levy or other method?**

- (4) Who appoints the members?**

- (5) Is the chairperson a Minister?**

- (6) How is it staffed, for example by civil servants, seconded civil servants or persons recruited by the body itself?**

- (7) Is it subject to ministerial direction?**

- (8) Does it report to a Minister?**

- (9) Are its accounts audited by the Comptroller and Auditor General?**

- (10) Is it subject to scrutiny by the Parliamentary Commissioner for Administration?**

- (11) Is it a Body Corporate or registered under the Companies Acts?**

- (12) Does it have a statutory power to own property?**

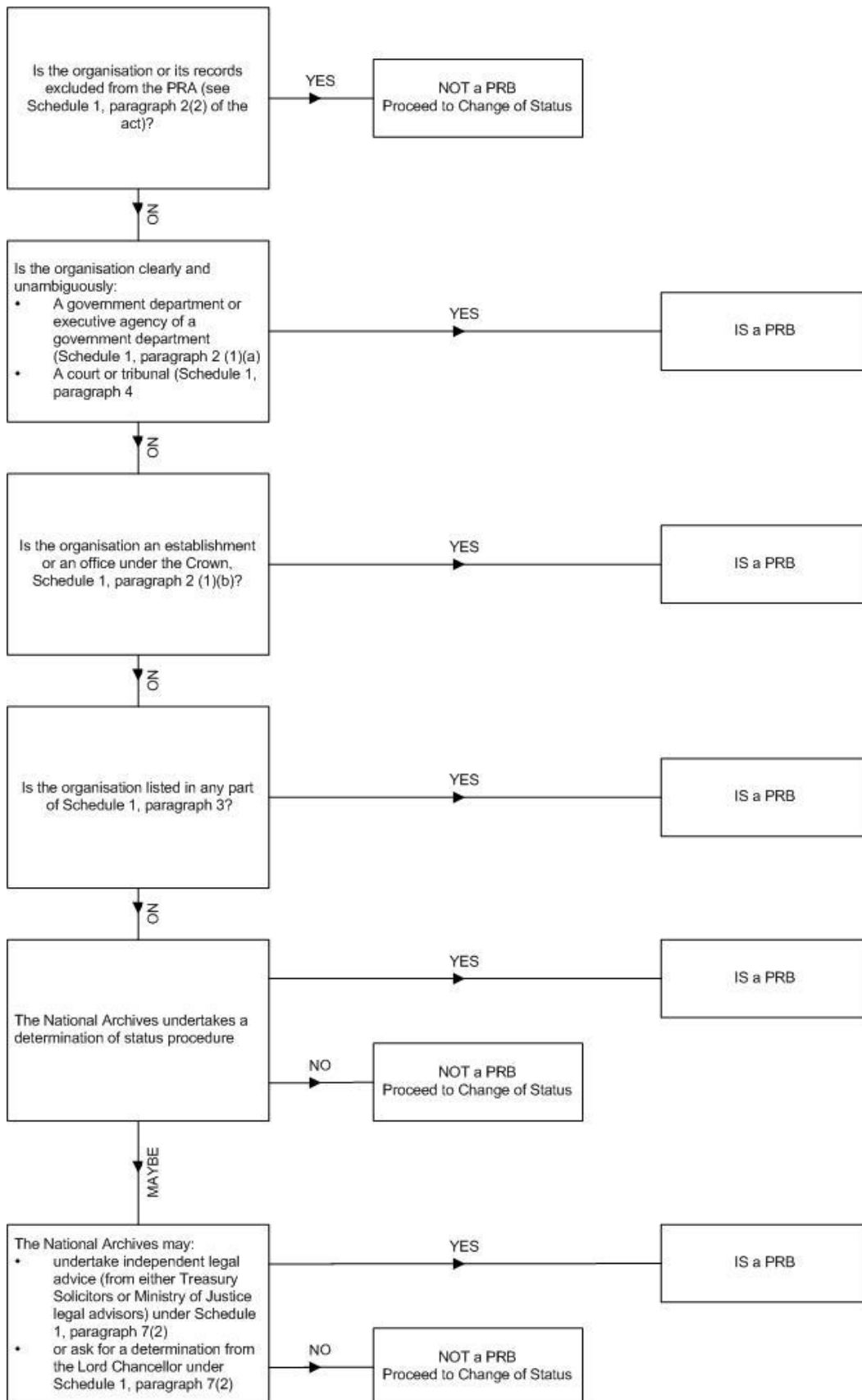
When completed, this form should be sent to:

..... **using the following email:**

information.management@nationalarchives.gsi.gov.uk

Organisations will need to request this form for completion from the address listed above.

Decision tree: Determination of status



Decision tree: Change of status

