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# How to identify whether a body is subject to the Public Records Act 1958

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# How to identify whether a body is subject to the Public Records Act 1958

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## Purpose of this guidance

This guidance aims to help a public body determine whether its records are public records under the [Public Records Act 1958](#)<sup>1</sup>.

It includes information on how to work with The National Archives to check or confirm status under this Act where it is unclear. It outlines the information needed and the processes involved in identifying the public record responsibilities of existing and newly formed public bodies.

Under the Public Records Act, The National Archives has a responsibility to guide and supervise arrangements made by public bodies for the selection and transfer of records for permanent preservation, and for their safe-keeping<sup>2</sup>. It is important, therefore, that we are included in decisions about a body's public record status in order to offer tailored support and ensure any changes are captured.

You can send any enquiries to:

[GovernmentHelpPoint@nationalarchives.gov.uk](mailto:GovernmentHelpPoint@nationalarchives.gov.uk)

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<sup>1</sup> 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 \(s12\)](#). For Welsh public records see the [Government of Wales Act 2006 \(ss146-148\)](#).

<sup>2</sup> [Public Records Act 1958 \(s3\)](#)

## Who is responsible for public records

The Public Records Act (PRA) does not have a complete list of bodies whose records are public records. It does define public records<sup>3</sup> as:

- administrative and departmental records belonging to His Majesty, whether in the UK or elsewhere, in right of His Majesty's Government in the UK – in particular:
  - records of, or held in, any department of His Majesty's Government in the UK, or
  - records of any office, commission or other body or establishment whatsoever under His Majesty's Government in the UK

***If a body is owned by the Crown or holds property which is wholly owned by the Crown, then it is likely to be subject to the PRA.***

- administrative and departmental records of other bodies if they have been brought within the scope of the PRA by their own legislation or by subsequent Order (these bodies are listed in a [table in Schedule 1 of the PRA](#))
- records of courts or tribunals (as listed in [Schedule 1, paragraph 4 of the PRA](#))
- records of the Chancery of England

The following are **not** public records under the PRA:

- records of bodies working wholly or mainly in Scotland or concerned with Scottish affairs
- Welsh public records<sup>4</sup>
- registers of birth, death, marriage, civil partnership and adoption (known as civil registers)
- records of local authorities, universities and schools and the police (except for the Metropolitan Police Service up to 2003, when it passed to the Mayor of London)
- the permanent collections of museums and galleries that are themselves subject to the PRA
- the records of non-departmental public bodies (NDPBs) that are bodies corporate and have not been brought within the scope of the PRA by their own legislation or by subsequent Order

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<sup>3</sup> [Public Records Act 1958 \(Sch1, para2 and para3\)](#)

<sup>4</sup> As defined in the [Government of Wales Act 2006](#)

## Interpreting whether a body is subject to the Public Records Act

The National Archives website has [more information](#) about the public records system. It covers in more detail how the act defines public records and outlines the duties of public bodies responsible for them.

In addition to the PRA, the following may be useful in identifying whether a body is subject to the PRA, although this is not an exhaustive list:

- legislation that established or makes changes to the public body
- ministerial statements e.g. announcements in Parliament
- annual reports
- official documents related to a body's set up e.g. terms of reference, royal warrants, framework agreements
- list of bodies subject to investigation by the Parliamentary Commissioner for Administration<sup>5</sup>

If a body trying to identify its public record status does not fall within any of the above criteria, The National Archives can help identify public records status.

Often this starts with the body or their sponsoring department collating information about the organisation's predecessors, its formation, functions, purpose and sources of funding. There is a [form](#) to help gather the most relevant information.

On rare occasions when this process does not clearly identify a body's status, the Secretary of State of the Department for Digital, Culture, Media and Sport (DCMS) has a power to determine whether a body's records should be treated as public records. The National Archives manages access to this formal process.

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<sup>5</sup> [Parliamentary Commissioner Act 1967 \(Sch2\)](#)

## Process for new public bodies

When establishing new public bodies, the sponsor department's legal/policy team with responsibility for drafting and passage of the legislation, or the Departmental Records Officer or the Head of Knowledge and Information Management, should consult The National Archives via [GovernmentHelpPoint@nationalarchives.gov.uk](mailto:GovernmentHelpPoint@nationalarchives.gov.uk) to ensure:

- awareness of requirements of the Public Records Act
- if necessary, inclusion of an appropriate amendment to the Public Records Act<sup>6</sup> in draft legislation and reference to the body's status with regards to public records (guidance issued by the Office of the Parliamentary Counsel makes the stipulation that amendments to the PRA should not be made without consulting The National Archives or DCMS lawyers)

## Taking on public record responsibility (for existing public bodies)

If a public body is not subject to the Public Records Act but it has been decided that it should be, The National Archives will consult with the sponsoring department and/or the existing body and follow procedures to formally change its public record status.

These can include:

- an amendment to the Public Records Act to include the public body in the table of bodies in Schedule 1
- using powers to make an Order in Council, subject to negative resolution (under [PRA, paragraph 3A of Schedule 1](#))
- for records of courts and tribunals, using powers of the Lord Chancellor (under [PRA, paragraph 4 of Schedule 1](#))

Once a body is added to the Public Records Act, its new, existing and inherited records become public records.

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<sup>6</sup> [Public Records Act 1958 \(Sch1, para3\)](#)

## Transfer of responsibility for public records

When bodies are dissolved, privatised or brought out of the scope of the Public Records Act their records will remain public records.<sup>7</sup> This includes records the body inherited, created or held while they were subject to the Act.

Public bodies can inherit public record responsibilities and become subject to the Public Records Act when any of the following are transferred to them:

- public records (in any format or medium)
- functions of predecessor bodies
- functions of a government department

The National Archives publishes [guidance](#) on managing public records for bodies being privatised, dissolved or affected by a machinery of government change.

Where there is uncertainty around a transfer of public record responsibilities, the public body or their sponsoring department should contact The National Archives to clarify this via [GovernmentHelpPoint@nationalarchives.gov.uk](mailto:GovernmentHelpPoint@nationalarchives.gov.uk)

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<sup>7</sup> See s16, paragraphs (1)(b) and (c), [Interpretation Act 1978](#)

## Considerations for bodies not subject to the Public Records Act

If a public body is not subject to the Public Records Act it still needs to consider managing its records appropriately. Obligations under other legislation or regulatory requirements could also apply, for example

- [Freedom of Information Act 2000](#)
- [Environmental Information Regulations 2004](#)
- [Data Protection Act 1998](#)
- [UK General Data Protection Regulation \(GDPR\)](#)
- [Companies Act 2006](#)

Public authorities that are not subject to the Public Records Act, but are subject to Freedom of Information legislation should follow the information management good practice set out in the Section 46 [Code of Practice on Records Management](#) issued under the Freedom of Information Act 2000. The National Archives also publishes general guidance on best practice and digital continuity.

It may be appropriate for some bodies which hold records of particular interest or significance to consider depositing them with an archive, in order to ensure long-term preservation and access for research purposes. The Archives Sector Development (ASD) team at The National Archives can advise and, if appropriate, assist in identifying a suitable repository.

You can contact the ASD team at: [asd@nationalarchives.gov.uk](mailto:asd@nationalarchives.gov.uk)

Request for Determination of Status of Records Under the Public Records Act 1958		THE
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<b>Department:</b>	
<b>Body:</b>	

By what method was the body established? For example, by statute, Royal charter, Royal warrant or administrative action	
What are its terms of reference?	
How is it financed? For example, by departmental vote, grant in aid, statutory levy or other method	
Who appoints the members?	
Is the chairman a Minister?	
How is it staffed? For example, by civil servants, seconded civil servants or persons recruited by the body itself:	
Is it subject to ministerial direction?	



Does it report to a Minister?	
Are its accounts audited by the Comptroller and Auditor General?	
Is it subject to scrutiny by the Parliamentary Commissioner for Administration?	
Is it a Body Corporate or registered under the Companies Acts?	
Does it have a statutory power to own property?	