



NATIONAL ARCHIVES ADVISORY COUNCIL

Annual Report 2020

1. Introduction

Section 21 of the National Archives Act, 1986, requires the NAAC to submit its report to the Minister who must then lay it before each House of the Oireachtas. This report covers the period of 2020. The current Council was appointed in July 2017, and held its first meeting 25 October 2017, with 2019 representing its third full year in operation. This report notes the continued challenges facing the National Archives of Ireland (National Archives) regarding its statutory obligations. 2020 has been a particularly challenging year for the National Archives.

On top of the usual operating constraints of funding, headcount, and capacity, the National Archives also had to cope with unique challenges brought on by the constant interruptions of the COVID-19 pandemic.

We welcome the appointment of the new Director and look forward to supporting her planned strategy for the National Archives.

The work of the Council has been informed by a number of presentations from National Archives staff in various fields of expertise, and this has greatly assisted our work. In noting the many positive initiatives undertaken by the National Archives, the Council remains concerned around issues of staffing and retention of staff, as well as the impact of underfunding. As recent public concern around the Retention of Records Act 2020 and access to personal information have shown, appropriate training in the application of European General Data Protection Regulation (GDPR), a comprehensive records management programme, and fit-for-purpose digital records preservation are of critical importance in retaining public confidence and meeting legal obligations.

The Council is also concerned to ensure that all state records are covered by the National Archives Act, including those created or assigned to recently created state bodies.

1.1 Membership

All members of the NAAC serve *pro bono*. The historians, archivists, specialists and users on the Council give of their time and expertise in the hope of improving the situation of the National Archives and that of archives generally in Ireland. The members are listed below and were appointed on 19 July 2017.

The Hon Mr. Justice John Hedigan (Chairman)

Dr Ciara Breathnach (Irish Manuscripts Commission nominee)

John Grenham

Dr Natalie Harrower

Kieran Hoare

Stephen Mac Eoin

Brian McGee

Dr Hiram Morgan (Irish Manuscripts Commission nominee)

Catriona Mulcahy

Dr Elizabeth Mullins

Michael Nolan

Professor Deirdre Raftery

Secretary to the Council, Mr Brian Bermingham, National Archives

2. Meetings

The NAAC met on four occasions in 2020: Monday 3 February; Monday 21 September, Monday 19 October; Monday 23 November.

The last three meetings were held remotely to comply with public health restrictions due to the COVID-19 pandemic.

To better inform the nature of discussion, and understand the challenges faced by the National Archives, the NAAC decided that each meeting should begin with staff presentations, followed by a questions and answers session.

Over the course of 2020 the NAAC had presentations from Conservation, Storage and Preservation and the Government Services Division, which guided its discussions about staffing, the necessity for a rethinking of the 1986 Act, and the future of the National Archives in a digital age.

Further, and in addition to the work of the meetings, the NAAC organised itself into working groups with focus on areas and actions it could advise upon or undertake. These working groups are: Advocacy, GDPR and Digitisation.

2.1 Advocacy

It has been a difficult year for the National Archives and for our council. Nonetheless, we have managed to continue our meetings and activities. As a part of our role in advocating for the National Archives, we have continued the programme of information on its activities and challenges by having senior members of the staff of the National Archives attend at our meetings and explain their role and the challenges they face.

At the February meeting of the NAAC, Ms Zoe Reid, Head Conservator, attended and addressed us. She explained that, as she was currently the only professional conservator working in the National Archives, the decade of centenaries posed considerable difficulty due to the increased volume of work. She also stated that due to her having no staff working with her in the

conservation unit, she did not have the opportunity of passing on the knowledge and experience she has gained in her highly specialized field. Contract staff hired for a period of time receive the benefit of training from her but then reach end of contract and must move on, which means the institutional knowledge base does not grow. The NAAC considers this a poor return on investment and recommends increased potential for staff retention. We are greatly concerned at the risk this lack of permanent staff poses to the conservation requirements of the National Archives. The loss of skills unique to the requirements of the National Archives is to be deplored. We were informed that the grade of preservation assistant has never been incorporated into the civil service staffing structure. Ms Reid subsequently furnished us with a note of other difficulties that were faced by the conservation section.

The meeting that followed was informed by the presentation and the Fórsa Report, which was published in December 2019 and outlined the difficulties facing the National Archives notably in relation to the coming 20-year rule. We had hoped to participate in the launch of this report, but this was not possible due to the COVID-19 restrictions.

In accordance with government guidelines the September meeting was conducted remotely, we were addressed by Ms Hazel Menton, Head of the Archive Storage and Preservation Unit. Staff shortages and staff turnover were identified by her as a serious challenge. The introduction of a technical grade in the area of digitisation might allow for longer staff retention, retaining important technical competencies within the National Archives.

At our next formally scheduled meeting in November, we were addressed by Senior Archivists Ms Niamh McDonnell and Ms Mary Mackey of Archives and Government Services Division on their role in safeguarding the public record. We were informed that just four government departments are up to date in their transfers: Departments of the Taoiseach, Foreign Affairs, Attorney General and the office of the President. It was noted that each of these bodies had a central

registry in place. It was also noted that, were half the government departments to comply with their transfer obligations, the National Archives would be overwhelmed.

Mr Conor Falvey, Assistant Secretary of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media joined for a portion the November meeting. Mr Falvey addressed the problems surrounding the transition in forms of record keeping in the future. An example was that of records stored on computer disks that are now jeopardised due to defunct hardware. He noted that the new director was coordinating a strategic review of the National Archives and stated that the minister would be very supportive of proposals outlined therein. He felt that the National Archives had for too long been regarded as somewhat peripheral. It was now important for it to move centre stage. It was important for the National Archives to get all the support it needed for it to do so. There was discussion about our concerns in relation to the Retention of Records Act. This is discussed further below but it was emphasized by us that a victims/survivors centred approach should be followed. The chair thanked him for his attendance and Mr Falvey noted that this was the first time he had met with the NAAC. It was agreed that a more formal and regular channel of communication to the department should be developed.

In mid-October public concern arose in relation to the archives of the Commission of Investigation into Mother and Baby Homes. We also had grave concerns in connection to the preservation, protection and accessibility of the records of the Commission, so the chair called a special meeting of the Council. This was held remotely on 19 October. Various concerns were addressed at length, including the role of the council in respect of the draft bill, the transfer of the commission's database to Tusla, and its digital preservation. It was decided to establish a sub-committee to meet with Mr James Gibbs of the Department of Children and Youth Affairs Mother and Baby Homes Investigation Unit to discuss some of these issues. This meeting occurred remotely the following day. Following this meeting, it was decided that the Chair would write to our

minister expressing our concerns. This was done by letter dated 27 October. In this letter we explained that, as the ultimate home of the Commission's archive would be the National Archives, the matter fell within the minister's brief and, as her adviser in relation to archives, it was to her we should write. We acknowledged the decision of the Minister for Children and Youth Affairs that a complete archive of the commission would be retained in the Department of Children and Youth Affairs (DCYA) with a copy of the database being given to Tusla. We stated that this was in our view the appropriate decision archivally. It protects the evidential value of the records and allows the database to be considered in the context of the archive as a whole. We noted that there must be care taken to ensure that when the archive is transferred to the National Archives in 2050 it will remain accessible. This will require immediate digital preservation actions, as well as digital preservation as a continual process. We strongly urged the appointment of a professional recordkeeper in the DCYA and engagement with the National Archives to ensure preservation of and accessibility to the archive. In relation to the copy of the database to be transferred to Tusla, we noted the need for Tusla's records to also come under the remit of the National Archives so a record of its use of the database is also preserved. We advised that as Tusla is not a scheduled body under the 1986 Act this would require an amendment to the act.

On a broader issue, we strongly indicated support that every effort be made to find ways of providing information to former residents of Mother and Baby Homes and their relatives. We noted there are international models that adopt a survivor-centred approach to providing access to records of human rights abuse.

We referred to previous representations that we have made to the former minister where we urged a full-scale review of the National Archives Act 1986, which, due to the extraordinary advances made in technology is now very much out of date. We urged a comprehensive review of the role and positioning in

government of the National Archives in order to catch up with our comparator countries in ensuring the preservation of the records of the state.

2.2 GDPR

As in 2019 the subject of data protection and particularly compliance with the general data protection regulation (GDPR) which came into law in May 2018 was a topical subject at meetings.

The constraints of the pandemic have highlighted the importance of reliable digital communication and access to digital records on a scale that has not been dealt with previously. We continued learning about the workings of the National Archives and staff members were invited to give presentations to the council on the work of their division. These have been documented elsewhere in this report, so this section concentrates on the presentations that are most relevant to GDPR.

Two National Archives staff members from the Archives and Government Division of the National Archives – Mary Mackey and Niamh McDonnell -- outlined the services that this division provides for government departments. Niamh outlined how many government departments send their records to off-site storage. Very often this is due to space constraints in the departments but that often is without giving the files end dates – dates when the records should be disposed of or transferred to the National Archives. It is estimated that many of the records in commercial off-site storage are not GDPR-compliant as very often there are no detailed lists of the files created, and they can be selected for offsite storage because of storage capacity locally.

Part of the discussion that ensued related to the use of GDPR as an excuse to dispose of records. Training in relation to GDPR is often difficult – the National Archives provides generic training to government departments, but very often departmental Data Protection Officers only receive a short 5-day training course

and are then expected to implement DP/GDPR across a complex department without the assistance of additional resources. Records Management is often an additional duty for a person with no specific training on the subject. The National Archives has received a lot more queries relating to records retention since the introduction of GDPR especially in relation to disposal. It was also noted that up until recently departments very often printed out e-mails for storing on paper files – this relates overall to digital records creation and preservation which is a very prescient issue, not only for government departments.

Later in the year the council became aware of the proposed Retention of Records Bill arising from the work of the Commission of Investigation into Mother and Baby Homes, particularly the preservation of the records of the commission. Again, this is discussed in detail elsewhere in this report, so this section is confined to the issue of data protection and privacy. In relation to data protection, council members expressed concern in several areas such as:

- The privacy of those who contributed to the commission and their ability to access their own personal records
- The integrity of electronic records to be preserved by Tusla long term
- Access to these records when the retention period has passed – particularly the electronic records in the absence of general government guidance in relation to the preservation of digital records
- How the integrity of the original record is to be preserved over a long period of time to prevent deterioration of the original
- Concern about redaction of the original record
- The need to protect digital information so that the records remain useable, accessible, free from tampering or corruption and can be kept beyond the limits of media failure

The council held an additional meeting to discuss this important topic and it was decided that the Chair would write to the Minister outlining the concerns. Details of this meeting and its outcomes can be found elsewhere in this report.

It was noted from our discussions that the area of digital preservation needs to be considered by government in general and it was welcomed that this area is covered in the forthcoming National Archives Strategic Plan 2021-2025 – Shaping our Future in the Information Age, which was welcomed by the Council.

2.3 Digitisation

It is no surprise that the various difficulties mentioned so far in this report have not helped matters and particularly in the area of developing fit-for-purpose digitisation capabilities.

In our 2019 report, we broke out the digitisation challenges into its two primary areas: (1) Digitisation of traditional record formats and (2) Born-digital records management. Both of these present different problems and will require a concerted effort over an extended number of years to develop the skills, tools and processes needed. Scaling this capability to efficiently discharge the obligations of the state under the 1986 act is part of that challenge. The longer that meaningful action is delayed, the more urgent the situation becomes. It is possibly already too late in the case of some of the state's born-digital records. In the relatively recent past, the world has suffered a financial crisis which had an enormous and long-lasting effect in Ireland. In 2020, we find ourselves again embroiled in a global crisis likely to have similar enduring consequences. The records of the state document our response to both of these events and as such constitute a potentially priceless body of knowledge for our future citizens who were too young or perhaps not even born when these events happened. When the next global health, environmental or financial crisis comes, will the digital records of state today be available to the next generations so that they can learn from our mistakes and have a better outcome? At the moment, it looks highly unlikely.

It cannot be stated clearly enough that born-digital records are highly ephemeral and, like paper records, must be consciously preserved over time. Without continual stewardship, the pace of technology advancement in software and hardware can render such records inaccessible in under 8-10 years. Beyond that point, the skills required to resurrect and interpret data from obsolete hardware, operating systems and software applications approaches those of digital forensics. This is a highly specialised and expensive field. Most data may be deemed not worth the effort. This invisible digital best-before date is a highly important constraint that was not understood when the archives act was drafted in 1986. The original 30-year rule provided a context for developing the mechanics and processes in the departments of state and within the National Archives for handling traditional record formats. The more recent 20-year release protocol for certain records of state applied more pressure on the National Archives to release documents on a shorter timeline but again this was largely anticipated to re-use and optimise the existing machinery between the National Archives and the bodies covered by the 1986 act. In the intervening 20 to 30-year period before records are required to be handed over to the National Archives, it remains the responsibility of the owning departments to properly maintain their records.

The departments of state and the bodies covered under the act maintain a large degree of autonomy when it comes to their internal operations. Budgets are allocated and projects are funded within each department based on their individual priorities, often informed by government and public policies. The investment in technology in all of these bodies has gained pace. We have become so dependent on increasing productivity through technology innovation in the workplace, that it is probably very difficult for many employees to imagine how they might carry out their duties efficiently without it. In addition, the degree of autonomy which departments have makes the task of agreeing a consensus and implementing policies, processes, and tools all the more daunting. Even with the best will in the world, the individual efforts of many passionate and

skilled professionals scattered throughout these various departments are not sufficient on their own to allay the problem.

In the case of our born-digital records, these factors constitute a perfect storm which is already difficult to weather. However, there is hope and it is never too late to begin this process in earnest. The appointment of a new Director presents an opportunity to energise, renew and refocus the resources of the National Archives and there is every reason to be confident that such an effort can make a significant impact in the coming 5-10 years. With appropriate supports and funding, a lot could be achieved. In particular, the last several years have seen advancements in many relevant fields which could be taken advantage of to accelerate the plans for addressing this challenge. The tools and processes exist for robust digital preservation and are being adopted by a growing community of memory institutions across the world who are facing identical challenges to the National Archives.

The Open Archival Information System (OAIS) is an ISO reference model which anyone working in this field will be familiar with. It has helped inspire the development of a large suite of digital tools in the last decade. Similarly, certification methods for deeming digital repositories trustworthy have evolved and are being adopted. The increasing maturity of these tools is an excellent opportunity for all of us to commit to a sustained, long-term program to preserve our digital records of state which form an important part of Ireland's digital heritage.

Toward this goal, the Council outlines the follow considerations:

- *Engaging the global digital preservation community*

The National Archives is already a natural focal point for Ireland's memory institutions and libraries and is highly connected to this community. Many of these organisations are active members of a larger global digital preservation community which helps advance the state-of-the-art in this field. Additionally, the National Archives has occasionally surveyed the national archive bodies of

similarly sized countries throughout the EU and has contact formally or informally with some of these. It appears promising that a concerted effort with a clear policy focus over a period of time could help accelerate and sustain the construction of capabilities and dissemination of know-how on this topic which we need in all of the bodies covered under the 1986 act.

- *Digital tools and processes*

Many people working in the field of digitisation of traditional record formats are familiar with long existing tools such as OCR (optical character recognition) and their associated limitations. There is an increasing number of such tools whose capabilities have been slowly but steadily improving in recent years.

A review of these tools seems a very promising avenue to pursue to reduce the manual effort required in digitising traditional paper-based records. A typical digitisation project could extract many types of pre-defined (project specific) context fields of interest from images. Traditional OCR can only extract text from images which still leaves much manual work to build bespoke tools to insert that text into appropriate fields into, in many cases, an online database so improved, or new tools are still needed to fill this gap.

- *Legislative/governance encumbrances*

The challenges here fall into the categories of management, good practices, standardisation, and governance. The NAAC has had focus on these activities through its Advocacy and GDPR workgroups, but the task is a daunting one. Many members of Ireland's digital preservation community are highly concerned, and well aware of the technical challenges. However, if technical uncertainty was the only barrier, the challenge would not be so intractable. Unfortunately, the 1986 act itself has become an instrument which is damaging the ability of these parties to rise to the challenge in a coordinated and effective way. The act, as drafted, has afforded some of the more recently enacted bodies of state to claim with legitimacy, from their perspective at least, that their records should not be subject to the act and therefore can use the wording and

not the spirit of the act as a means to save expending any of their limited resources on the matter. The 30-year, and even the 20-year rule, give organisations a very strong incentive to continually delay any serious or widely concerted response to tackling the problem. With those time periods it is hardly surprising that those in charge of budgets in our state bodies find good reasons year after year to push a difficult challenge, which receives very little public attention, further down the road. After all, they have many pressing and more immediate concerns and thus it appears to many decision makers that there is ample time to address this as the records do not have to be handed over for decades.

We should not allow ourselves to go blindly down this dangerous road. There are alternatives to this *status quo*. For example, the National Archives is also well positioned to lead a taskforce with cross-department representation to develop the policies we need, find practical solutions and make a joint recommendation backed by stakeholders on how we can start to improve the situation. The NAAC believes that the confidentiality and ownership of records for the 20 to 30-year periods as envisioned in the act can be preserved in such a process. We can take action in the source departments well in advance of this period and we do not have to wait until the 20 or 30-year rule is on the immediate horizon to begin to preserve born-digital records at source.

3. Recommendations

Funding is obviously an essential element that underpins all aspects of the operations of the National Archives. The current model is that the National Archives, like every other body, receives annual funding and must do its best with what it has at its disposal. The only way to improve the situation seems to be to gradually convince the budget makers to put more and more resources into the National Archives. An alternative approach is surely within our

capabilities. Many of the bodies covered under the act have larger budgets. With support at government policy level, a percentage of those budgets could be put toward funding small teams of preservation experts (including digital preservation) under the role of the returning officer. If our collective resources were then marshalled under the direction of the National Archives, we could create an effective model to make real change happen in an affordable way where no one department of state has to carry the full burden. This network of people across our departments should be highly connected, meeting regularly, should collectively plug into the global preservation community, and should be working with one vision and one goal in mind.

4. Conclusion

Despite the challenges which the pandemic posed to regular working patterns, the Council was able to move discussions and actions forward in the its own identified priority areas of advocacy, GDPR, and digital records management and preservation.

Presentations from National Archives staff informed the Council of achievements and challenges faced by different functions at the Archives, and for another year, highlighted the significant constraints placed on progress brought about by underfunding.

These constraints were noted across areas, and they need to be addressed fully and seriously before the National Archives will be able to keep apace of new legislations and increasing volumes and formats for accession.

The need for a robust, interconnected digital preservation solution was also again highlighted, as the gap between our now almost fully born-digital world of records and the records accessioned to the National Archives narrows rapidly.

4.1 Assent

The members of the National Archives Advisory Council hereby, on 12 March 2021, assent in the annual report of 2020.

The Hon. Mr Justice John Hedigan (Chairman)

Dr Ciara Breathnach (Irish Manuscripts Commission nominee)

Dr Hiram Morgan (Irish Manuscripts Commission nominee)

John Grenham

Dr Natalie Harrower

Kieran Hoare

Stephen Mac Eoin

Brian McGee

Catriona Mulcahy

Dr Elizabeth Mullins

Michael Nolan

Professor Deirdre Raftery

Appendix

Function and Remit of the National Archives Advisory Council (NAAC)

The NAAC was first established in January 1987, its principal function being to advise the Taoiseach, now the relevant Minister (currently Minister Catherine Martin, Department of Media, Tourism, Arts, Culture, Sport and the Gaeltacht) in the exercise of her powers under the National Archives Act, 1986 and as amended by the National Archives (Amendment) Act of 2018. It also advises on all matters affecting archives and their use by the public. Under the Local Government Act of 1994 and the Harbours Act of 1996, the Council may also advise the Minister for the Environment, Community and Local Government and the Minister for Agriculture, Food and the Marine on any matters affecting local archives and harbour board archives respectively.

In particular, the Council advises on issues of policy relating to management, staffing and accommodation of the National Archives, the disposal of records by government departments and other public bodies, the transfer of departmental records to the National Archives for preservation as archives, the acquisition of archives from other sources, the availability of archives for public inspection, the preservation of archives and the services provided by the National Archives to members of the public.

The core function of the National Archives is the conservation and preservation of the records of government and the provision of access to those archives. The function is legislated for in the National Archives Act, 1986, and as amended under the National Archives (Amendment) Act, 2018. The main provisions of the Act regarding departmental records are summarised as follows:

- All departmental records must be preserved, unless their destruction is authorised in writing by the Director of the National Archives or another officer of the National Archives designated by the Director for the purpose (Section 6 of the Regulations, 1989).

- In general, all Departmental records which are more than 30 years old must be transferred to the National Archives Act, 1986. Those records deemed appropriate by the Minister and relevant government minister, which are more than 20 years old, under the provisions of the National Archives (Amendment) Act, 2018 will also be transferred. Particular records may be retained by Departments and/or be withheld from public inspection only if they are covered by certificates stating either:
 - That they are in regular use in a Department or are required in connection with its administration, or
 - That making them available for inspection by the public would/might:
 - Be contrary to the public interest, or
 - Constitute a breach of statutory duty, or a breach of good faith on the ground that they contain information supplied in confidence, or
 - Cause distress or danger to living persons on the grounds that they contain information about individuals or would or might be likely to lead to an action for damages for defamation.