

Alternative governance regimes for archives

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Introduction

What is the purpose of this guidance?

This is a practical guide for local authorities considering the transfer of their archive service into a Trust or other form of devolved governance.

This guidance applies to England and Wales, save that those authorities seeking to transfer archive services in Wales should consult CyMAL regarding the operation of Section 60 schemes under the Local Government Wales Act 1996.

Part 1 signposts practical guidance relating to devolved governance of cultural and heritage issues. They include:

- overview of different options for devolved governance
- checklists of key issues to consider
- outlines of legal, financial and operational frameworks
- case studies and examples

Part 2 focuses on the specific issues affecting archives and records, to supplement the broader guidance signposted in Part 1.

Together, the guidance should support local authorities to assess the best options for developing sustainable and improving archive services for their communities.

What are the specific issues affecting archives and records?

Local authority archive services come in all shapes and sizes, with different materials in their collections and very different visions for what service they should deliver to their communities. There isn't a single 'right' way of running an archive service, although there are professional and technical standards that need to be applied. When considering devolved governance the legal and operational structure needs to be appropriate for the collections, the user community and the legal environment.

In many cases, local authorities are exploring devolving governance for a group of services along with archives (e.g. libraries, museums and other cultural and heritage services), because most archive services are too small to be viable or efficient in a stand-alone arrangement. Many of the issues affecting decision making will apply equally to all types of cultural and heritage services being considered. However, there are specific issues affecting archives that must be taken into account by local authorities. The local authority must have access to archive and records management expertise when considering devolved governance to ensure that arrangements are suitable – including arrangements for the ongoing management of the council's own records and information.

In relation to archives and records, the local authority has specific legal responsibilities to:

- manage the information appropriately (including compliance with the Freedom of Information and Data Protection Acts and the Environmental Information Regulations)
- care for and provide access to specific classes of archives

These responsibilities remain with the local authority, even if operational management is devolved.

Part 2 of this guide will help local authorities consider these specific issues.

Key recommendations

TNA recommends:

- do not transfer ownership of archive collections, as this could present risks to their integrity, security and long-term preservation
- the constitution, funding and operational systems of any devolved governance arrangement need to provide an adequate level of service and support its ongoing development, including meeting the [Accreditation for Archives scheme](#)
- any new arrangements must ensure that the local authority can still comply with its responsibilities under the Data Protection and Freedom of Information Acts and the Environmental Information Regulations and its responsibilities to manage specific classes of records appropriately. These responsibilities remain with the local authority, even if day-to-day management is transferred or contracted to another body
- consult stakeholders and users to help identify the best options for service delivery

- ensure you have an exit strategy, should the Trust or other form of devolved governance come to an end

How can The National Archives help?

The National Archives' Engagement Team can help with assessing and developing alternative governance options for archives.

Contact: asd@nationalarchives.gsi.gov.uk

Part 1 Background issues

This section signposts practical guidance on developing sustainable and improving services via devolved governance.

The guidance was created for museums, arts and cultural services – rather than archive services. However, it provides very useful support when considering the general issue of devolved governance, as it covers these areas:

- overview of different models for devolved governance, and their applicability in different circumstances
- charitable status of different models and the impact on [taxation and finances](#)
- options appraisal frameworks
- checklists of key risks and issues to consider when establishing devolved governance
- outlines of legal, financial and operational frameworks
- case studies and examples

What are the options for devolved governance?

These two guides provide a useful introduction to different models of devolved governance, and explore their applicability in different circumstances:

- [The opportunity of devolved governance for museums, libraries and archives](#) (Museums Libraries and Archives Council, 2010)
- [Outside In: the benefits and issues in contracting out local authority arts services](#) (NALGO, Feb 2010)

How do I make decisions about devolved governance for my service?

Devolving governance whilst ensuring sustainable service delivery is a complex process.

These guides can help local authorities through the decision making process and flag up key legal, financial and operational issues that should be addressed.

- [An opportunity for change. Exploring the trust option for museum services](#) (Renaissance Yorkshire, 2008)
- Moving to museum trusts (MLA, 2006)
 - [Part 1 strategic overview](#)
 - [Part 2 the process of devolution](#)
- [Pillars of the Community \(English Heritage, 2011\)](#)

Key recommendations

- the model of devolved governance must be appropriate for the vision and mission for the service, funding levels, collections and other local circumstances. If the change is motivated merely by cost cuttings, then it may not work
- it may not be financially or operationally viable to devolve an archive service on its own
- the local authority will need to commit to sustain the core funding for the service, as it is highly unlikely that this will be provided by access to new funding streams
- if an archive service is to be devolved with other services, then the arrangements must meet the specific needs of the archive service and its users and depositors
- the local authority must have access to sufficient archive and records management expertise to ensure it can operate as an intelligent client or commissioner of the devolved service
- ensure you have correctly identified the impacts of taxation on the funding of the Trust or other devolved arrangement. Guidance can be found on the HM Revenue & Customs [website](#)
- recent market testing by local authorities has concluded there is very few (if any) commercial providers of archive services

Part 2 Archives and records: specific issues to consider

What are the additional issues affecting archives and records?

The key additional issues affecting archives and records are the specific legal responsibilities of the local authority to:

- **manage the information appropriately** (including compliance with the Freedom of Information and Data Protection Acts and the Environmental Information Regulations)
- care for and provide access to **specific classes of archives**

These responsibilities remain with the local authority, even if governance or operational management is devolved.

This section of the guide will help local authorities address these issues.

Managing information appropriately

Legislative framework for archives and records in local authority care

The rights and responsibilities of local authorities to look after and provide access to the records they hold are enshrined in a number of pieces of legislation, noted below.

Basically, they give local authorities the right to acquire and preserve archives, and responsibilities to provide access to their own records.

- [The Local Government \(Records\) Act, 1962](#) enables all local authorities to promote adequate use of their own records and empowers county and county borough councils ('principal councils') to acquire other records by purchase, gift or deposit
- [The Local Government Act, 1972](#) section 224 requires local authorities to 'make proper arrangements with respect to any documents that belong to or are in the custody of the council of any of their officers. In 1999 the Department for the Environment, Transport and the Regions (now the Department for Communities and Local Government) issued [guidance on](#)

['proper arrangements'](#) including records with historical value and which should be kept by an established archive service.

- [The Local Government \(Access to Information\) Act, 1985](#) provides for minutes, agendas, reports and background papers of meetings of principal councils that are open to the public to be available for public inspection
- Archives contain evidence and information which can sometimes be used in legal cases or other key decision making processes involving the local authority. The local authority needs to consider the implications of any change in custodial arrangements for its records which may impact on their evidential value.

Information acts

In addition to the general duties of care, noted above, local authorities are also bound by the Data Protection and Freedom of Information Acts and the Environmental Information Regulations. These give strict conditions about the management and protection of, and public access to information held by organisations including local authorities.

Guidance on the implications of these Acts for managing archives and records can be accessed on The National Archives website:

- [Data Protection Act \(DPA\)](#)
- [Freedom of Information Act \(FOI\)](#)
- [Environmental Information Regulations \(EIR\)](#)

Managing information: key points to consider

- What will happen if the local authority cannot demonstrate secure custody of records (including those with specific requirements such as personal data)?
The records may not be accepted as evidence in legal proceedings, which may cause financial and reputational damage for the local authority
- What will happen if the local authority does not meet its legal responsibilities in relation to FOI, DPA and EIR?
The Information Commissioners Office (ICO) can impose penalties including undertakings, enforcement notices and criminal prosecution. For DPA breaches, it can also impose fines up

to £500,000. The ICO publicises breaches on its website, which can cause serious reputational damage to a local authority.

- Do these FOI, DPA and EIR compliance responsibilities still apply to a local authority even if the archive and records service is devolved?

An authority cannot devolve these responsibilities to another body and must ensure that any devolved arrangements ensure compliance with this legislation.

If records containing personal data are transferred to the control of another body, the local authority may need to seek consent from all data subjects.

Recommendations on how to ensure compliance with legislation about managing information

A local authority must ensure that the devolved archive or record service has these things in place and that they are locked down in the contractual and legal agreements:

- clarity over the status of Data Controller and Processor, and the associated responsibilities
- clarity over who is the Public Authority for FOI purposes
- systems and procedures to ensure the adequate management, care, protection and access to records in line with The National Archives' [Guidance on Records Management](#)
- adequate staffing
 - numbers of staff to ensure an adequate service (e.g. timely response to requests for information)
 - expertise in managing information and records, including familiarity with the key Acts. This may be in-house expertise, or access to expertise within the council, or contracting in of freelance expertise as needed
 - investment in staff training and development, to ensure skills and expertise keep up to date, as the legal framework is constantly evolving.
- adequate reserves should fines be applied

Specific classes of records

Many archives contain classes of records that have special status or legal conditions to protect their storage, care and access. These types of archives are referred to as 'controlled records' by

The National Archives, and the statutory requirements will still apply even if their management is moved to a devolved service.

Public Records

➤ What are Public Records?

Certain types of records are classed as 'Public Records' and protected by the [Public Records Act of 1958](#).

Many local authority archives contain Public Records, deposited from central government bodies and their local branch organisations. Your archive staff should know which these are.

The most common types of Public Records in local authority archives are:

Lower Court records, including:

- Magistrates
- County
- Coroners
- Quarter Sessions
- Tribunals

National Health Service (typically hospital records)

Prisons

➤ What responsibility does a local authority have to Public Records in its care?

Public Records can be looked after outside The National Archives, as long as their repository has been appointed as a 'Place of Deposit' by the Lord Chancellor. They are held on loan and are not owned by the local authority.

The National Archives is responsible for inspecting Places of Deposit to ensure the facilities are adequate for storage and safe-keeping and that public access is provided in accordance with relevant information legislation.

The National Archives expects Places of Deposit to comply with its [Standards for Record Repositories](#), which covers constitution, staffing, access, storage and preservation.

Please note, Public Records are subject to the Data Protection and Freedom of Information Acts and Environmental Information Regulations, as well as the Public Records Act. These responsibilities will still apply to the records, even if they are in the care of an organisation which is not an FOI body.

- Can a local authority transfer its Public Records and its responsibilities as a Place of Deposit?

No. A local authority cannot transfer its obligations as a Place of Deposit, and remains responsible for ensuring the Public Records are looked after properly. However, it can place their management in the hands of another organisation providing it first consults The National Archives about the changes to operational management, and that it supervises the new body to ensure they meet the requirements of The National Archives. The National Archives would need to reconsider the status of the place of deposit with the local authority if the new arrangements were subsequently found to be unsuitable

Diocesan Records

- What are Diocesan Records?

These are records created by the Church of England, including parish registers recording christenings, marriages and burials – so an essential resource for family historians and other researchers.

- How are they protected?

The care of Diocesan Records is enshrined in the [Parochial Registers and Records Measure, 1978](#).

This states that the bishop designates a suitable place as the Diocesan Record Office. Usually, this is a local authority archive.

The Diocesan Record Office's chief officer is responsible for the 'safe-keeping, care and preservation' of the records. It doesn't give exact specifications for the standard of care, but in

practice Diocesan Record Offices are presumed to meet the National Archives [Standards for Record Repositories](#).

The National Archives and the Diocese must be consulted at an early stage when alternative governance arrangements are being considered.

Tithe documents

➤ What are Tithe documents?

They are documents relating to the commutation of a tax (tithe) due to the church. They give a unique insight into local life, including land values and ownership. Tithe maps are often the earliest large scale maps available of a parish, so are widely consulted for legal and evidential purposes.

There are three copies of each tithe document:

- one held at The National Archives
- one with the Diocesan Records (usually in the local record office)
- one was held locally, and are often with the parish records (which may be in the local record office)

Therefore, a local record office may hold two copies of each tithe record.

➤ How are they protected?

They are protected by The Tithe Act 1936, which placed them under the responsibility of the Master of the Rolls, who can transfer them to an approved Place of Deposit. In practice, the Master of the Rolls' responsibility is delegated to The National Archives.

➤ Can a Local authority transfer the ownership or responsibility for Tithe documents?

No. The records are not owned by the local authority. They could be transferred into custody of another record office, but only with the approval of the bishop and The National Archives.

Manorial documents

➤ What are Manorial Documents?

They are the historic records of the Manorial Courts, relating to interest in land and accompanying rights. They are used for evidence and information, as well as historical research.

➤ How are they protected?

Manorial documents are protected by the [Manorial Document Rules, 1959, 1963 and 1967](#).

These state that they must :

- be kept and used under conditions suitable for their safe and proper preservation
- not be removed from England and Wales without the permission of the Master of the Rolls. In practice this is never granted
- be included in the Manorial Documents Register, maintained by The National Archives. Any change in ownership or location of manorial records must be notified to and approved by The National Archives on behalf of the Master of the Rolls.

If the National Archives is dissatisfied with the conditions in which manorial documents are being stored, the Master of the Rolls may direct that they be moved to a safer place (usually an approved local record office).

For more detailed guidance see The National Archives' [website](#)

➤ Can a Local authority transfer the ownership or responsibility for Manorial documents?

Manorial documents are often not owned by the local authority, so the owners may need to be consulted over any changes in responsibility for their care.

In all cases The National Archives must be satisfied that the arrangements for preservation and storage are acceptable.

Acceptance in Lieu

➤ What is Acceptance in Lieu?

[The Acceptance in Lieu](#) (AIL) scheme enables taxpayers to transfer works of art and important heritage objects (including archives) into public ownership in lieu of inheritance tax.

The items are allocated to a suitable public institution.

Archives can be part of the AIL scheme, and be allocated to a suitable local authority for care in their record office. Please note: these archives become the property of the repository, but they own them in trust for the nation And therefore are not free to dispose of them.

➤ How are they protected?

For a record office to be suitable for Acceptance in Lieu, it must meet the [Standards for Record Repositories](#).

Additional conditions may be attached as part of the allocation agreement with the Local authority.

➤ What will happen if the archives are not adequately cared for, or the repository no longer meets the Standard?

They may be removed to a more suitable record office, causing reputational harm to the local authority.

➤ Can a local authority transfer the ownership or responsibility for these records?

No. It cannot transfer ownership or responsibility without the agreement of HM Government.

The local authority holds these archives under specific conditions set by the appropriate Government department, so cannot transfer ownership. They are allocated to the local authority, to be held for the public benefit.

The local authority cannot transfer responsibility other than in the most exceptional circumstances and with the prior agreement of the relevant Minister. A precondition would be an assurance that that the standard of care given by the devolved service fully meet the requirements of the original allocation.

Archives benefiting from Heritage Lottery Fund or other grants and funding

Record offices and their archive collections may have benefited from funding from the Heritage Lottery Fund, other public and charitable funds, private benefaction or commercial sponsorship.

The funding may have paid for: capital development, acquisition of collections, conservation, accommodation, cataloguing, research and community and learning programmes.

The funding may have come with specific terms and conditions restricting the transfer of ownership or responsibility, or specifying conditions for their use and management.

In some cases, funders may request return of their funding if the agreed terms and conditions are no longer met.

Recommendations on how to ensure compliance with responsibilities for specific types of records

- To ensure an adequate standard of care for archives, including their professional management, storage and preservation and access, archive services should meet The National Archives [Standard for Record Repositories](#).

This should be enshrined in the documentation to establish a devolved archive service, and sustained through ongoing Service Level Agreements and inspection by the local authority.

- Consult The National Archives of any changes to the management of or responsibility for controlled classes of records (including Public Records, Diocesan Records, Manorial Documents, Tithe Records and Acceptance in Lieu archives and documents)
- Inform funders or sponsors of your plans, to ensure that your revised arrangements will still meet the terms and conditions of their funding.

These additional responsibilities apply to specific classes of records:

- Public Records

- the place of deposit must consult The National Archives at an early stage of any plans to move to a devolved service, as The National Archives will need to review the new arrangements to ensure they are adequate for a place of deposit
 - ensure that the documentation confirms that the local authority retains the Place of Deposit status and responsibilities and identifies the responsible officer – usually a senior officer ensuring compliance with the funding contract or service level agreement. ensure that the arrangements for the devolved service meet the [Standard for Record Repositories](#) and that a system is in place for the local authority to ensure it continues to meet this standard
 - communicate with the depositors of the records (for example, courts, hospitals) to ensure they understand the continued responsibilities of the local authority under the new arrangement, and any changes to operational systems (such as records transfer or retrieval)
- Diocesan Records
 - consult with the bishop to ensure he agrees to the change of terms and conditions to the Diocesan Record Office management, and that any changes to operational procedures (such as transfer or retrieval) are acceptable
 - ensure that the documentation confirms that the Diocesan Record Office responsibilities are retained by the local authority
 - ensure that the devolved archive service will meet the conditions of care for Diocesan Records (equivalent to the Standard for Record Repositories)
 - Acceptance in Lieu
 - check the allocation requirements to clarify if any additional or specific requirements apply and will be met by the arrangements for the devolved service. Ministerial clearance will be needed for the transfer of AIL archives in advance of any contract or agreement to transfer responsibility between the current and future authority.

Ownership

When planning a devolved archive service, it is imperative that the collections are safeguarded in perpetuity.

The National Archives recommends that **ownership of archives owned by or in the care of the local authority is not transferred to the trust or other devolved body**. The existing pattern of ownership should be maintained:

- local authority retains ownership of any archives it already owns
- archives held on loan or deposit cannot be transferred

Transferring ownership to a devolved service puts the collections at risk.

➤ What are the risks in transferring ownership of the archives and records?

Risks include:

- the local authority has weakened control over the arrangements for the archives management, care and access, and could suffer reputational damage
- the new service would be free to sell or disperse the collections as it wished
- the service could transfer the collections to another party, (e.g. other Trust), without specifying any conditions of management, care and access
- if the service got into financial difficulties, then the collections would be treated as an asset and could be sold by the insolvency practitioner

➤ What about new acquisitions? Should these be owned by the local authority or the devolved service?

Local authority ownership provides more security for the archives, and will ensure all the archives are owned as a coherent collection. This is especially important in the case of accruals to existing collections in the archives. The terms and conditions of acquisition and deposit should be revised and the contractual agreements should be made with the local authority.

Recommendations about ownership

- The National Archive recommends that the local authority retains ownership of the records and archives it currently owns to protect their integrity and status as a publicly owned asset.
- All new acquisitions should be owned by the local authority, not the devolved service. This is essential in the case of accruals to existing collections in the archives that are owned by the local authority.
- Consult all owners and depositors of the proposed change to the management arrangements to secure their agreement and continued support of the new service.

Intellectual property

Archive collections are made accessible and enriched by knowledge about them including:

- Catalogues
- Finding aids
- Research
- Learning materials

In some cases, cataloguing, research etc is funded by external bodies, who may attach conditions to the funding about the ownership and protection of any intellectual property thereby created.

Recommendations relating to management of intellectual property

- consideration must be given to the local authority's ability to use and reuse catalogues, research and other intellectual property, and their safeguarding as a core asset attached to the archive collections.

Part 4 Checklist of recommendations

This checklist brings together all the recommendations listed throughout the document.

Key recommendations

TNA recommends:

- do not transfer ownership of archive collections, as this could present risks to their integrity, security and long-term preservation
- the constitution, funding and operational systems of any devolved governance arrangement need to provide an adequate level of service and support its ongoing development, including meeting the [Accreditation for Archives scheme](#)
- any new arrangements must ensure that the local authority can still comply with its responsibilities under the Data Protection and Freedom of Information Acts and the Environmental Information Regulations and its responsibilities to manage specific classes of records appropriately. These responsibilities remain with the local authority, even if day-to-day management is transferred or contracted to another body
- consult stakeholders and users to help identify the best options for service delivery
- ensure you have an exit strategy, should the Trust or other form of devolved governance come to an end

Choice of alternative governance model

- the model of devolved governance must be appropriate for the vision and mission for the service, funding levels, collections and other local circumstances. If the change is motivated merely by cost cuttings, then it may not work
- it may not be financially or operationally viable to devolve an archive service on its own
- if an archive service is to be devolved with other services, then the arrangements must meet the specific needs of the archive service and its users and depositors
- the local authority must have access to sufficient archive and records management expertise to ensure it can operate as an intelligent client or commissioner of the devolved service

- ensure you have correctly identified the impacts of taxation on the funding of the Trust or other devolved arrangement. Guidance can be found on the HM Revenue & Customs [website](#)
- recent market testing by local authorities has concluded there is not a mature market for providers of archive services, which limits the options available.

Compliance with legislation about managing information

A local authority must ensure that the devolved archive or record service has these things in place and that they are locked down in the contractual and legal agreements:

- clarity over the status of Data Controller and Processor, and the associated responsibilities
- clarity over who is the Public Authority for FOI purposes
- systems and procedures to ensure the adequate management, care, protection and access to records in line with The National Archives' [Guidance on Records Management](#)
- adequate staffing
 - numbers of staff to ensure an adequate service (e.g. timely response to requests for information)
 - expertise in managing information and records, including familiarity with the key Acts. This may be in-house expertise, or access to expertise within the council, or contracting in of freelance expertise as needed
 - investment in staff training and development, to ensure skills and expertise keep up to date, as the legal framework is constantly evolving.
- adequate reserves should fines be applied

Responsibilities for specific types of records

- To ensure an adequate standard of care for archives, including their professional management, storage and preservation and access, archive services should meet The National Archives [Standard for Record Repositories](#).

This should be enshrined in the documentation to establish a devolved archive service, and sustained through ongoing Service Level Agreements and inspection by the local authority.

- Consult The National Archives of any changes to the management of or responsibility for controlled classes of records (including Public Records, Diocesan Records, Manorial Documents, Tithe Records and Acceptance in Lieu archives and documents)
- Inform funders or sponsors of your plans, to ensure that your revised arrangements will still meet the terms and conditions of their funding.

These additional responsibilities apply to specific classes of records:

- Public Records
 - the place of deposit must consult The National Archives at an early stage of any plans to move to a devolved service, as The National Archives will need to review the new arrangements to ensure they are adequate for a place of deposit
 - ensure that the documentation confirms that the local authority retains the Place of Deposit status and responsibilities and identifies the responsible officer – usually a senior officer ensuring compliance with the funding contract or service level agreement
 - ensure that the arrangements for the devolved service meet the [Standard for Record Repositories](#) and that a system is in place for the local authority to ensure it continues to meet this standard
 - communicate with the depositors of the records (for example, courts, hospitals) to ensure they understand the continued responsibilities of the local authority under the new arrangement, and any changes to operational systems (such as records transfer or retrieval)
- Diocesan Records
 - consult with the bishop to ensure he agrees to the change of terms and conditions to the Diocesan Record Office management, and that any changes to operational procedures (such as transfer or retrieval) are acceptable
 - ensure that the documentation confirms that the Diocesan Record Office responsibilities are retained by the local authority

- ensure that the devolved archive service will meet the conditions of care for Diocesan Records (equivalent to the Standard for Record Repositories)
- Acceptance in Lieu
 - check the allocation requirements to clarify if any additional or specific requirements apply and will be met by the arrangements for the devolved service. Ministerial clearance will be needed for the transfer of AIL archives in advance of any contract or agreement to transfer responsibility between the current and future authority.

Ensuring secure ownership of collections

- The National Archive recommends that the local authority retains ownership of the records and archives it currently owns to protect their integrity and status as a publicly owned asset.
- All new acquisitions should be owned by the local authority, not the devolved service. This is essential in the case of accruals to existing collections in the archives that are owned by the local authority.
- Consult all owners and depositors of the proposed change to the management arrangements to secure their agreement and continued support of the new service.

Recommendations relating to management of intellectual property

- consideration must be given to the local authority's ability to use and reuse catalogues, research and other intellectual property, and their safeguarding as a core asset attached to the archive collections