

Skeletons in the e-Cupboard: How Census Law is Changing with the Impact of Digitisation and the Freedom of Information Act 2000

Abstract: This article by David Ogden addresses the census collection of Great Britain. The 100 year rule regarding the public release of information is examined and explained, as is the Census Act 1920, as amended in 2000. It also considers the impact of the Freedom of Information Act 2000 in respect of the release of records by repositories. The 30 year standard closure on official papers is considered.

Keywords: census, National Archives; freedom of information

Introduction: origins of the census

A Census Bill was first introduced into the House of Commons in 1753 but census collection began in England and Wales back in 1801. We have had one every ten years since with the exception of 1941. Many countries took censuses before Britain. The introduction of a national census of population in the UK was delayed partly due to religious belief. In Biblical times a census of the Israelites, ordered by King David was followed by a plague that killed 70,000.

The administration of the early census returns from 1801–1831 was the responsibility of the Overseers of the Poor and the clergy. Returns for those years were merely a numerical count, but in 1841 a more detailed list of information was obtained by the enumerators. Some 35,000 enumerators covered the 2,193 registration districts in England and Wales. Each enumerator went to between 25 and 200 inhabited houses. In addition to

name, age, sex and occupation, householders were asked which persons were foreigners and who was born in the parish or county where they lived.

The 1851–1901 censuses are more informative, as they include relationships between household members and birthplaces. People who were travelling or living abroad were enumerated at the location where they spent the night on census night. All of the details from the individual forms were later sorted and copied into enumerators' books, which are the records we can view images of today. The census returns for 1841 were the first to be kept and, as far as the general public is concerned,



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the information is released by the National Archives¹ after a hundred years. For example, the public were given access to the 1901 census returns on 2 January 2002.

The National Archives is also the official archive for England, Wales and the central UK government, containing 900 years of history from Domesday Book to the present. Famous records held at the National Archives

include the trial record of Charles I, Captain Bligh's account of the mutiny on the *Bounty*, the SOS telegram sent by the *Titanic* and Edward VIII's letter of abdication.

Census years

1841

The 1841 Census was recorded on the 6th and 7th of June 1841. Population of 15.9m

1851

The 1851 Census was taken on the night of 30 March 1851. Population of 17.9m

1861

The 1861 Census for England was taken on the night of 7 April 1861. Population of 20m

1871

The 1871 Census for England was taken on the night of 2 April 1871. Population of 22.7m

1881

The 1881 Census for England was taken on the night of 3 April 1881. It has been completely transcribed by the Latter-day Saints Church and is available to search online free through their website.² Population of 25.9m

1891

The 1891 Census for England was taken on the night of 5 April 1891. Population of 28.9m

1901

The 1901 Census for England was taken on the night of 31 March 1901. It has been completely transcribed for and on behalf the British Government and is available to search online.³ Population of 35.5m

1911

The 1911 Census for England was taken on the night of 2 April 1911. It has a possible release date of January 2012.

1921

The 1921 Census for England was taken on the night of 19 June 1921. It has a possible release date of January 2022.

1931

The 1931 Census for England was taken on the night of 26 April 1931. It is highly possible the records were destroyed during World War Two.

1939

The 1939 Census for England was taken on the night of 29 September 1939 during a WW2 National Registration.

You may access the 1841, 1851, 1861, 1871, 1881, 1891 and 1901 census records free on site at the National Archives in Kew. Since 1951 the census has been taken every ten years. The 2001 census should be available in 2102 under the current rules.

1911 census

The National Archives will be fast-tracking the process of digitising the census in order to be able to begin releasing an online version, with key sensitive information removed. This was hoped to be available in 2009 (minus some sensitive information), but the project is beset by delays. The details recorded for each person in the 1911 census were:

- Relationship to head of family
- Name and surname
- Age - this was recorded in separate columns for male and female
- Marital condition
- Number of years married (present marriage, question only answered by married women)
- Number of children born to present marriage, number that are still living, number who have died. (Again present marriage, married women only)
- Industry/service with which worker is connected
- Employment status
- Birthplace
- Nationality (if born in a foreign country)
- Infirmity, one of deaf, dumb, blind, lunatic, imbecile or feeble minded. The age at which the "infirmity came on" was also required. This information is considered personally sensitive and will not be available until 2012.

The 1911 census is a huge document - more than twelve times the size of the 1901 census - with over eight million schedules covering our 35 million ancestors: that's 35,000 volumes occupying some 2 kilometres of shelving. They are in good condition and suitable for scanning, with less than 5 per cent requiring more extensive conservation work to be scanned safely. In addition there are also 38,000 volumes of enumerators' summary books

that are in excellent condition and provide valuable supporting information.

Failure to complete the census schedule was an offence, liable to a fine not exceeding five pounds. The Suffragette campaign was in full swing and they planned to disrupt the census by staying out all night and refusing to complete a schedule. One group spent the night at a skating rink in Aldwych, but they were counted there by the police so their action was considered a failure. One lady who partially completed the form wrote "No vote – no census. In view of restrictive legislation... I refuse to give details of my household asked for in this document."

Once the enumerator's tasks were completed, the details were sent to a building in London's Millbank, by the Thames behind the Tate Gallery. This writer's office was by coincidence at 30 Millbank until recently! Twenty-four calculating machines had been hired and installed there in preparation. Details from the census were entered on to punched cards, one set of about 80,000 for dwellings, a second set of about 4 million for married women and a third set of about 36 million for the rest of the population. The cards were punched to contain key information from the schedules and then sorting machines read the cards and sorted them. The Times⁴ reported how the "machines are worked and the division is accomplished by electricity. The cards pass between a wire brush and a brass roller. The wires on the brush press against one column of the card and, passing through the punched aperture in that column, establish electric contact with the roller at a spot opposite the aperture and corresponding to the particular class which the punched mark represents. A corresponding jaw immediately opens, the card slips into it, and is forced into one of 11 boxes representing as many classes".

The release of the census returns after 100 years is determined by long-standing government policy. The 1911 census form included the following emphatic assurance to householders "The contents of the Schedule will be treated as confidential. Strict Care will be taken that no information is disclosed with regard to individual persons."

In 1966 the Lord Chancellor determined that all census returns should be closed for a period of 100 years, on the grounds that they contained personal information supplied by citizens about themselves. Since then successive governments have consistently maintained this position, and from 1981 onwards there has been an explicit assurance on census forms that they will remain closed to the public for 100 years.

Freedom of Information Act 2000

The FOI Act was passed in November 2000 and came fully into effect from 1 January 2005. FOI gives people a

right of access to information held by public bodies. The range of public bodies covered by FOI is very wide, ranging from central government departments to individual schools and parish councils. A full list of the bodies affected - FOI authorities - can be found in Schedule 1 of the Act. A separate Act covers public authorities in Scotland - the Freedom of Information (Scotland) Act 2002. The list includes the National Archives and the rights of access apply both to our own administrative records and to the archives (the records transferred to us from other government departments).

FOI applies to information whatever its age, and whether it is at the National Archives or is still held by the originating government department. The 30-year standard closure period no longer determines access to records; instead, information is assumed to be 'open' right from the start unless one of the exemptions set out in the Act applies. Exemptions are grounds to withhold information. They are clearly defined in the Act, are limited in number and are used where some harm might result if the information were to be released. The Ministry of Justice has produced a guide to the 23 FOI exemptions set out in Part 2 of the Act.⁵ Anyone, anywhere in the world, can send a written request for information (a letter, fax or email) to an FOI authority. The FOI authority must say whether it holds the information and, if it does, provide it. The rights of access are overridden only by the exemptions mentioned above. Those disappointed with the response to their enquiry can complain to the Information Commissioner, the independent regulator of the Act. There is a further right of appeal to an Information Tribunal.

Early release of the 1911 census

Can you request early release of 1911 census information under the Freedom of Information Act (FOI) 2000? The Information Commissioner has decided that the National Archive should individually evaluate requests for specific information from the 1911 census on a case-by-case basis under the FOI Act. On the specific enquiries that the National Archives have received to date, it has not been possible to release the information that has been sought, on the grounds that it is exempt under section 41 of the FOI Act, which relates to information provided in confidence.

You can now obtain information from the 1911 Census of England & Wales provided that: you know the precise address of the household and you are prepared to pay the National Archives a fee of £45. You need to provide the house name or number/building name/vessel name, the county and civil parish. The website has a link to the search enquiry form and there is also some advice based on the experience of others who have already submitted requests. Information requested under the FOI Act must be provided within 20 working days. There is

an explanatory leaflet on the National Archives site.⁶ Information provided under the FOI Act is available not just to the applicant, but also to the general public, and will be available for inspection at Kew in the Reading Room. Statistical information from the 1911 Census (and other censuses) is available at the Vision of Britain site.⁷

1921 census

The 1921 census is not held by the National Archives and remains, like all post 1921 censuses, in the custody of the Office for National Statistics. Government policy is that the 1921 and subsequent censuses should remain closed for 100 years. Unlike the 1911 census the 1921 census was conducted under the Census Act 1920, which is still in force and which contains a statutory prohibition on disclosure. This means that if any FOI requests are received for the 1921 census, the exemption found in s.44 of the FOI Act will be invoked to maintain census confidentiality.

Scotland

The 1861 census was the first census conducted by the office of the Registrar General for Scotland, established under the Registration of Births, Deaths and Marriages (Scotland) Act 1854. The gathering of Scottish census information in 1841 and 1851 had taken place under Home Office jurisdiction, organised in Scotland by the sheriffs and chief magistrates and collected largely by schoolteachers in the various parishes. See <http://www.scotlandspople.gov.uk> for more information on the Scottish census story.

Ireland

Full government censuses were taken of the whole island in 1821, 1831, 1841, 1851, 1861, 1871, 1881, 1891 1901 and 1911. The first four, for 1821, 1831, 1841, and 1851, were largely destroyed in 1922, in the fire at the Public Record Office. Those for 1861, 1871, 1881 and 1891 were completely destroyed earlier, by order of the government. This means that the earliest surviving

comprehensive returns are for 1901 and 1911. Because of this, the normal rule that census returns should not be available to the public for 100 years has been suspended in the Republic of Ireland, and the original returns can be consulted in the National Archives of Ireland. The 1911 Census for Dublin can be searched online at the National Archives of Ireland site.⁸

The 30 year transfer rule

Last year the Prime Minister commissioned an independent review of the 30 year rule, under which most government records are transferred to the National Archives and made available to the public by the time they are 30 years old. The review, chaired by Paul Dacre, working with Professor David Cannadine and Sir Joseph Pilling, is now in progress and will report to the Prime Minister and the Lord Chancellor later this year. The National Archives has a vast national archive of documents from over 1,000 years of British history. At the beginning of each year it publishes government papers which have been kept secret for the past 30 years - under the UK's "30 year rule". But even so, some of the most sensitive documents will remain secret for several more decades - while others may never be fully revealed. If a record is judged too sensitive by a government department then it can apply to "extend closure" until up to a hundred years have passed. This secrecy suggests there could be any number of buried files. Sensational material that has been released recently includes: the bizarre story of a Cuban dancer recruited to spy on American and British troops during World War Two, the tale of how a British traitor at Colditz passed secrets to the Germans and the 1928 intrigue when the Home Office tried to throw silent movie star Tallulah Bankhead out of the country for indulging in "indecent and unnatural practices" with Eton schoolboys. However there was dismay when a crucial box of papers relating to the abdication crisis in 1936 was held back by Oxford's Bodleian Library until 2037. The government can extend closure on records for several reasons, including the judgment that release could harm international relations or national security.

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Biography

David Ogden is currently Head of Central Libraries at the Ministry of Justice. A long time member of BIALL, David is a member of its Legal Information Group. His previous jobs include VSO Librarian at Assiut University, Egypt and a variety of information roles at law firms, including Clifford Chance and CMS Cameron McKenna. His personal interests include genealogy and military history. He is an expert adviser on the Society of Genealogists help desk each year at the BBC Who do you think you are LIVE exhibition at London Olympia. Contact him at portrise@hotmail.com

Footnotes

¹<http://www.nationalarchives.gov.uk>

²<http://www.familysearch.org>

³<http://www.1901censusonline.gov.uk>

⁴Times, 24 January 1911

⁵<http://www.justice.gov.uk/guidance/foi-exemptions-about.htm>

⁶http://www.nationalarchives.gov.uk/documents/access_rights.pdf

⁷<http://www.visionofbritain.org.uk/census/>

⁸<http://www.census.nationalarchives.ie>

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Flexible Working: a Practical Guide

Abstract: This checklist by Ruth Bonino and Gemma Rosenthal of Reed Smith is the latest in our practical checklist series. They explain the meaning of flexible working; who is entitled to request it; the mechanics of requesting and the procedure to follow if the request is denied.

Keywords: terms and conditions of employment; flexible working

Introduction

Employees can approach their employer informally to request to change their work pattern. However, the Employment Rights Act 1996 (“ERA 1996”), and its associated legislation and regulations (together the “right to request legislation”), provides a statutory right for certain employees to request to work flexibly.

This is not a right for certain employees to work flexibly, but instead a right to ask to do so and to have the request properly considered by their employer. The legislation also provides for valid grounds on which an employer may refuse such a request.

This article will examine how a request for flexible working operates in practical terms, including who is entitled to apply and the responsibilities on each party in following the prescribed process. The UK Government is now consulting on its proposal to extend the right to request flexible working to all parents of children under 16 and it is expected that this change in the law will come into force in April 2009.

Flexible working: what does it mean?

A request can be made for a change relating to the hours the employee may be required to work, the times at