



SCOTTISH
COUNCIL ON
ARCHIVES

FACT SHEET:
COPYRIGHT

CONTENTS

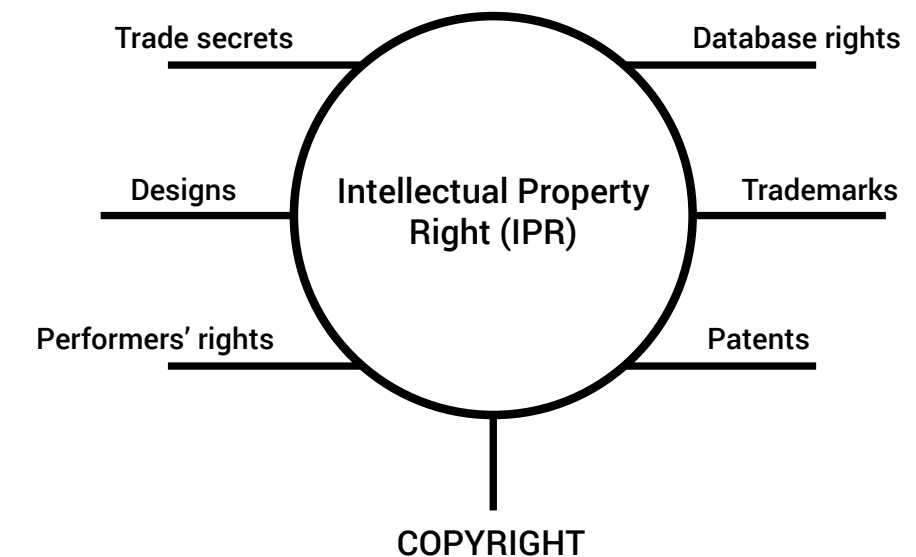
PART 1	INTRODUCTION TO COPYRIGHT A) Copyright overview B) What type of works are copyrighted? C) Copyright terminology	3
PART 2	COPYRIGHT DURATION A) Copyright duration in Literary, dramatic, or musical works B) Copyright duration in artistic works (excluding photographs) C) Sound recordings D) Copyright duration in broadcasts F) Copyright duration in films G) Copyright duration in photographs	6
PART 3	COPYRIGHT EXCEPTIONS FOR ARCHIVES, LIBRARIES, MUSEUMS, AND GALLERIES A) Exception 1: Copying for preservation or replacement B) Exception 2: Copying for non-commercial research or private study	10
PART 4	FREQUENTLY ASKED QUESTIONS AND CASE STUDIES FAQ: What are the copyright restrictions on exhibiting archive material? Case study: Tracing copyright holders for exhibitions at Wac Arts FAQ: How to I trace rights holders? Case study: Trading copyright holders at The National Jazz Archive	12
PART 5	FURTHER READING AND RESOURCES About the author	20

PART 1: INTRODUCTION TO COPYRIGHT



A) COPYRIGHT OVERVIEW

- Copyright is an intellectual property right (IPR). It is the legal right given to the creator or author for a fixed number of years.



- UK copyright is based on several laws. These include: some sections of the 1911 and 1956 Copyright Acts; the 1988 Copyright, Designs and Patents Act (and revisions); 2003 Copyright and Related Rights Regulations; 2014 Various Copyright in Performances Regulations; various EU Directives; case law.
- Copyright can be held by individuals and organisations, and can be transferred
- Copyright ownership is separate from the ownership of an item or object. It is common for heritage organisations to own archive items (eg photographs, letters) without owning the copyright.
- Copyright is automatically assigned for a specific duration of time – often for 70 years after the death of the author (see below)
- Only copyright holders can copy, perform, show, adapt, and license works (unless they are granted permission, or unless copyright law permits this)
- Existing copyright law usually applies in same way to the e-environment, including for copyright duration
- Works online are communicated to public, and are considered commercial activities (even if not for profit)

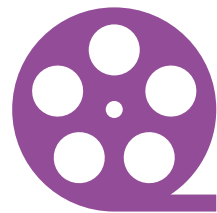
B) WHAT TYPE OF WORKS ARE COPYRIGHTED?

**Literary works**

Include poems, letters, emails, newspaper articles, books, journals.

**Dramatic works**

Include works created for performance, eg plays, operas, ballets, performance art.

**Film recordings**

Include films, film clips, stills, cartoons, videos, DVDs.

**Sound recording**

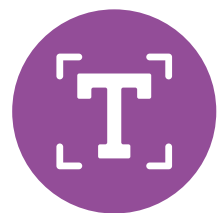
Include oral history, recorded lectures, recordings of literary, dramatic or musical works, sound effects.

**Broadcasts for public dissemination**

Include terrestrial, cable, satellite, web recordings.

**Artistic works**

Include paintings, drawings, architectural plans, plans, engravings, prints, collages, sculptures, crafts, jewellery, (unique) pieces of furniture, graphs, maps, charts, photographic material (eg negatives, slides, contact sheets).

**Typographical arrangements**

The manner in which text is arranged on a page in a published literary, dramatic, or musical work. This includes publication on websites.

C) COPYRIGHT TERMINOLOGY

Author	The person (or people) who creates the work, eg photographer; writer; poet; artist; composer; principal director and film producer in a film; record producer in a sound recording; broadcaster in a broadcast; publisher in a published edition.
Communicated to the public by electronic transmission	Broadcasting the work, or sharing via the internet / social media.
Crown copyright	Material produced by civil servants, ministers, government departments and agencies for the Crown. Documents include ministerial papers, government publications, official war art, Ordnance Survey mapping, certain public records.
Dedicated terminal	Computer terminal onsite which allows public access to electronic or digital collections.
Fair dealing	Legal term used to establish if use of material is lawful, or whether it infringes copyright law. There is no legal definition of 'fair dealing' – it is a matter of fact, degree, and impression. It answers the question 'how would a fair-minded and honest person have dealt with it'?
Licensing	When copyright is transferred from one party to another via a licence. This may be for a specific period of time.
Licensing in	Transferral of copyright from freelancers and suppliers to the heritage organisation when the latter wishes to use the content.
Licensing out	Allows re-use of content created by heritage organisations, freelancers, and suppliers. For example, image licensing, brand licensing, Creative Commons licensing.
Orphan works	Creative works or performances which are still in copyright – for example a film or photograph – but for which one or more of the copyright holders is unknown or untraceable.

PART 2: COPYRIGHT DURATION



- Copyright duration is very complex and should be managed with extreme care. Where possible, organisations should consult a copyright or legal expert.
- When copyright duration expires, the work falls into the public domain and may be used freely from 1 January of the following year.
- Works usually have different categories of copyright embedded within them, eg a book is a literary work (text, cover), an artistic work (cover, photographs), and a typographical arrangement. Certain books even contain musical arrangements.

A) COPYRIGHT DURATION IN LITERARY, DRAMATIC, OR MUSICAL WORKS

Published works (author known)

- Copyright duration = 70 years from end of calendar year in which author died
- 50 years from end of year in which work first made available to public if 1) published before 1 August 1989, AND b) author died more than 20 years before publication

Published works (author unknown)

- 70 years from end of year in which work made available to public

Unpublished works (author known)

- If work created after 1 August 1989, copyright duration = 70 years from end of year in which author died
- If work created before 1 August 1989, copyright expires on 31 December 2039 (if author died before 1 January 1969) (2039 Rule)
- Otherwise copyright expires 70 years from end of year in which author died

Unpublished works (author unknown)

- Work created after 1 August 1989, copyright duration = 70 years from end of year in which work created
- Work created before 1 August 1989, copyright expires 31 December 2039 if work created before 1 January 1969
- Otherwise copyright expires 70 years from end of year in which work created

B) COPYRIGHT DURATION IN ARTISTIC WORKS (EXCLUDING PHOTOGRAPHS)

Published or unpublished (author known)

- Copyright duration = lifetime of artist + 70 years from end of calendar year in which they died

Published (author unknown)

- 70 years from end of year in which work first made available to public

Unpublished (author unknown)

- If created after 1 August 1989, copyright duration 70 years from end of year in which work created
- If created before 1 August 1989, expires 31 December 2039 (if created before 1 January 1969). Otherwise expires 70 years from end of year in which created.

C) SOUND RECORDINGS

Published (author known / unknown)

- Copyright duration = 50 years from end of year in which first published or released or published

Unpublished (author known / unknown)

- If created before 1 June 1957 or after August 1989, copyright duration = 50 years from end of year in which made
- If created between 1 June 1957 and 31 July 1989, copyright expires 31 December 2039

NB Sound recordings are separate from copyright in words and music contained in recording.

D) COPYRIGHT DURATION IN BROADCASTS

- Copyright duration = 50 years from end of year in which first broadcasted or delivered

E) COPYRIGHT DURATION IN TYPOGRAPHICAL ARRANGEMENTS

- Copyright duration = 25 years from when first published

NB It is possible for typographical arrangements to be in copyright even if the work itself is out of copyright.

F) COPYRIGHT DURATION IN FILMS

- There are multiple copyright holders in film, eg script, music, composer, song writer
- Copyright duration = 70 years from death of last of people who made the film: principal director, author of screenplay, author of dialogue, composer of music
- Films made before 1 June 1957 are protected as photographic sequences (not films), so the copyright duration is the same as for photographs

G) COPYRIGHT DURATION IN PHOTOGRAPHS

Photographs of known authorship

Photographs taken on or after 1 January 1996

- Standard term of life of photographer + 70 years

Photographs taken on or after 1 August 1989 and before 31 December 1995

- Standard term of life of photographer + 70 years

Photographs taken between 1 June 1957 and 31 July 1989

- If published before 1 August 1989, the copyright duration will expire 50 years after end of year in which photograph published where photographer died more than 20 years before publication. Otherwise copyright expires standard term of life + 70 years.
- If unpublished at 1 August 1989, copyright duration depends on when author died. If photographer died before 1 January 1969, copyright term will expire on 31 December 2039. Otherwise copyright expires standard term of life + 70 years.

Photographs taken before 1 June 1957

- Originally protected for 50 years from end of calendar year in which taken (published or unpublished)
- If still in copyright at 1 July 1995, copyright period extended to life of photographer + 70 years
- If copyright expired before 1 July 1995, photograph might be 'revived' for new term photographer's life + 70 years

Photographs of unknown authorship

- If created before 1 June 1957, copyright expires 70 years after end of year when made taken or made available
- If created on or after 1 June 1957 and before January 1969, copyright expires 31 December 2039 (must be unpublished before 1 August 1989)
- If created on or after 1 June 1957 and published before 1989, copyright expires date of creation author + 70 years

Crown copyright photographs**Photographs taken before 1 June 1957**

- Copyright duration = 50 years from end of year in which photograph taken (published or unpublished)

Photographs published before 1 August 1989

- If taken after 1 June 1957 and published before 1 August 1989, copyright expires 50 years after publication

Unpublished photographs

- If taken on or after 1 June 1957 and before 1 August 1989, but NOT published before 1 August 1989, copyright expires 31 December 2039

Image (right): MarekPhotoDesign.com, stock.adobe.com



PART 3: COPYRIGHT EXCEPTIONS FOR LIBRARIES, ARCHIVES, MUSEUMS, GALLERIES



There are several copyright exceptions for libraries, archives, museums and galleries. These exceptions allow organisations, to make copies of or digitise works without third-party copyright infringement in specific circumstances.

A) EXCEPTION 1: COPYING FOR PRESERVATION OR REPLACEMENT

- Organisations can create copies of or digitise third-party copyright material for preservation purposes
- For example, an archive service might create digital copies of cassette tapes to mitigate against the threat of obsolescence; or digitise a fragile manuscript so that readers can access the document without causing it further damage
- The works must form part of the organisation's permanent collection
- The digitised (or copied) material can only be accessed by readers on dedicated terminals onsite

B) EXCEPTION 2: COPYING FOR NON-COMMERCIAL RESEARCH OR PRIVATE STUDY

Archivists can make one copy for readers in the following circumstances:

- For non-commercial research and private study
- When supporting users with any type of disability by creating accessible copies

In terms of self-service copying onsite, reading rooms should have prominent notices by terminals and copy stations setting out what readers are permitted to copy.

Exactly what can be copied depends upon whether the material is published or unpublished.

i) Unpublished material

- Organisations can supply one copy of unpublished works to users
- Organisations can make one copy of the entire or part of the unpublished work
- Exceptions include: works which were published before the document was deposited with the organisation; works for which third-party copyright holders have prohibited copying

ii) Published material

There are more restrictions on copying published works. Organisations can make one copy of a reasonable proportion or 'substantial part' of a publication. This falls under fair dealing and includes:

- One copy of an article in a journal or collective work
- One chapter from a book
- Up to 5% of a volume (*NB this could be greater or less than the article or chapter*)
- 5% of a film or sound recording

Managing copied content

- Copies can be supplied to researchers by email attachment, on a memory stick / external hard drive, or via online sharing sites, eg Dropbox
- A written copyright declaration from the user is required (this can be via email)
- The copyright declaration should include:
 - name;
 - description of copied works;
 - statement that the reader has not received copies previously;
 - assertion that the copies are for private and non-commercial research;
 - declaration that the reader will not supply copies to others

PART 4: FREQUENTLY ASKED QUESTIONS AND CASE STUDIES

What are the copyright restrictions on exhibiting archive material?



Exhibitions include temporary or permanent displays onsite (eg in cases), and touring exhibitions. Exhibiting is not considered to be the 'publication' of a work under UK copyright law.

A) LITERARY, DRAMATIC, AND MUSICAL WORKS

- Public exhibition of literary, dramatic and musical works is not an infringement of UK copyright law
- The work should not be reproduced in a catalogue
- BUT communication to the public of the content of literary, dramatic and musical works is restricted by copyright law, eg performance, playing audio-visual recordings

B) ARTISTIC WORKS

- Public exhibition of third-party copyright artistic works does not infringe UK copyright law
- There is a moral right to identify the author if they were alive on or after 1 August 1989, eg using text/captions
- The artistic work should not be reproduced in a catalogue

C) PHOTOGRAPHS

- If photographs were taken on or after 1 August 1989 for private purposes (eg portraits, weddings), there is a moral right for the commissioner to provide permissions when the photographs are used in an exhibition
- Heritage organisations should also consider data protection restrictions when exhibiting photographic (and other) material, and ensure that material is managed according to UK legislation (most recently the Data Protection Act 2018 and the General Data Protection Regulation)

D) SOUND RECORDINGS

- Playing audio-visual footage or recordings in a public exhibition is not permitted if the material is third-party copyright
- For recorded music, a Music Licence from PPL PRS is required
- For non-musical recordings, organisations must seek permissions directly from copyright holders as there is no equivalent licensing body

E) ONLINE EXHIBITIONS AND CONTENT

- Online works are considered communications to the public (unlike physical exhibitions)
- Reproducing works on websites and social media platforms is a restricted act (unless copyright duration has expired, or the content is licensed for online use via the copyright owner)
- Even if the online content is not specifically for profit, it is still considered to be a commercial activity
- Online content is protected by copyright law, and copyright holders have the same rights (UK copyright law usually applies in same way to electronic environment)
- Copyright duration and protection for online material is the same as for physical collections (see above)
- Website content includes literary (text) and artistic copyright (images, photographs). Archive catalogues also include database rights.

NB The risk of copyright infringement is far greater in the electronic environment because audiences and users are far larger and global.

CASE STUDY: TRACING COPYRIGHT HOLDERS FOR EXHIBITIONS AT WAC ARTS



Based at Hampstead Old Town Hall in London, Wac Arts is an educational organisation which offers inclusive arts and media programmes to young people, and empowers them through changing their world. The Wac Arts archive includes photographic, audio-visual and marketing material, correspondence, and documents relating to the arts organisation and Hampstead Old Town Hall.

As part of its National Lottery Heritage Fund 'Connecting Communities' project (2018-19), Wac Arts ran series of community events and exhibitions, including 'Weekender' and 'Open Doors'. The 'Weekender' archive exhibition took the form of an artistic interpretation of the collection by 'Connecting Communities' volunteers and the Wac Arts marketing team. To avoid making copies of third-party copyright work (and thereby infringing UK copyright law), the team used duplicates from the Wac Arts archive, eg flyers and marketing material for which Wac Arts held the copyright. The display of originals is not restricted by copyright in the UK. However, Wac Arts made the decision not to exhibit original archive material because this was high risk in term of the physical environment. The exhibition area lacked space, archive display cases, and security. Digitised audio-visual material and sound recordings from the extensive archive collection were not used to accompany the exhibition because it was deemed too complex, time consuming and high risk in terms of tracing copyright holders and data subjects.

The second Wac Arts 'Connecting Communities' exhibition – the 'Open Doors' event – saw the team produce museum board display panels depicting key individuals and changemakers associated with Hampstead Old Town Hall. Figures included Emmeline Pankhurst, Una Marson (Jamaican feminist, activist and writer), Regina Lawrence (American British lawyer and politician, and first female councillor in London), and David Pitt (Baron Pitt of Hampstead, Labour Party politician, political activist, second peer of African descent to sit in House of Lords, longest serving Black Parliamentarian). The exhibition panels featured Wac Arts archive material, including photographs and correspondence. Third party copyright holders include photographers, film makers, and authors, eg letter writers. Although the 'Connecting Communities' project team undertook 'due diligence' searches for the material they wished to copy for the exhibition panels, copyright holders remained untraceable in most cases. However, the 'Open Doors' exhibition was deemed to be low risk, especially as it was onsite with a limited audience. In terms of data protection considerations, where possible, Wac Arts used photographs where individuals depicted (the data subjects) could not be identified.

Wac Arts Connecting Communities: www.wacarts.co.uk/heritage

Image (right): Andrzej Sowa, stock.adobe.com



HOW DO I TRACE RIGHTS HOLDERS?



In UK archive and heritage collections, there are 100,000s of orphan works with unknown or untraceable authors. The checklist below aims to support organisations seeking to trace rights holders for exhibitions or digitisation projects. The process should be managed using a copyright database or spreadsheet.

A) MANAGING ORPHAN WORKS AND IDENTIFYING UNKNOWN AUTHORS

- Conduct a 'due diligence' search for every rights owner of each orphan work you are seeking to use for your project or exhibition
- Remember to demonstrate how you are tracing of copyright owners. Retain evidence at all stages of the process, eg email chains and letters.
- If a work has one or more rights holder, undertake a 'due diligence' search for all copyright holders

B) TOOLS AND RESOURCES FOR TRACING ORPHAN WORKS AND UNKNOWN COPYRIGHT HOLDERS

- Online search engines and image searches
- Writers, Artists and their Copyright Holders (WATCH) = collects information about copyright holders, including visual artists (living and dead), photographers, sculptors, literary and non-literary authors, celebrities
- Firms out of Business (FOB) = holds information about vanishing publishers, literary agencies, similar businesses
- TinEye Reverse image search = useful for tracing duplicate photographs, modified image copies, image verification
- Contacting licensing agencies, press agencies, image libraries, literary agents
- Contacting professional bodies, eg British Association of Picture Libraries and Agencies (BAPLA); Association of Authors' Agents; Society of Authors
- Consulting the Writers' Handbook
- Consulting the Artists' Papers Registers = provide information about artists held in publicly accessible archives, libraries, galleries and museums in the UK (not specifically about copyright)
- Tracing copyright ownership through wills and probates

C) USING ORPHAN WORKS OR UNKNOWN COPYRIGHT WORKS

- If one or more rights owners are located, seek their permission(s) to use the material for your project or exhibition
- If copyright holder(s) are untraceable or uncontactable, consider using the IPO Orphan Works Licensing Scheme. This provides renewable licences for orphan works for 7 years in UK institutions. *NB This is not a popular solution with heritage organisations because of the fees and other restrictions.*
- If copyright holder(s) are untraceable and the decision is made not to use the IPO Orphan Works Licensing Scheme, carry out a risk assessment to establish whether your organisation will use the work for the project or exhibition. The ultimate decision will depend on how risk adverse your organisation is.
- If you decide to use the work(s), instigate 'take down' procedures within your organisation. A 'take down' notice should be visible on your website.
- Consider using older material from your collection as this may be lower risk
- Make sure your organisation is covered by appropriate indemnity insurance in the unlikely case that a claim is made

CASE STUDY: TRACING COPYRIGHT HOLDERS AT THE NATIONAL JAZZ ARCHIVE



Founded in 1988 by British Jazz cornetist, author and broadcaster Digby Fairweather, the National Jazz Archive (NJA) collects material relating to jazz heritage, facilitates the study of jazz history and culture, and engages with a wide range of communities through collections and events. Located at Loughton Library (Essex) and Birmingham City University, the collection consists of photographs, journals, books, posters, programmes, personal collections, and oral history recordings dating from the 1920s onwards.

Like most archives, the NJA collection contains numerous orphan works. A case in point is *Ballroom and Band*, the leading monthly magazine published in the 1930s. Until 2021, due to copyright restrictions, *Ballroom and Band* was only accessible to readers onsite in the NJA reading room (not online). The NJA spent years undertaking 'due diligence' searches to identify copyright holders for *Ballroom and Band*. They consulted databases such as WATCH, and undertook extensive online searches. Copyright checklists and databases were used to manage the process, and email chains were gathered as evidence. Although the publisher of *Ballroom and Band* – Rolls House Publishing Company – was eventually identified, no trace can be found of the company's current location.

In 2021, the decision was made to publish the older *Ballroom and Band* on the NJA website, despite the possible copyright infringement risk. A risk assessment was undertaken in-house. This indicated that publishing *Ballroom and Band* online would not infringe the intellectual property interests of living people (especially the older material). The risk assessment also suggested that litigation for breach of copyright was a very remote possibility. The NJA Board of Trustees therefore implemented a six-month test period with monitoring, and an in-house takedown procedure.

Similar procedures were implemented for *Tune Times* (1934–35), yet another orphan work from the NJA collection with an untraceable publisher. The NJA made the decision not to fully research third-party copyright holders because of time restraints. In addition, the risk assessment indicated that publishing the material online would not infringe any intellectual property interests of living people. In the case of *Tune Times*, the NJA made the decision not to include a 'take down notice' on the website. This was because 'all reasonable efforts' had not been made to identify the copyright owner. All decisions were endorsed by NJA Board of Trustees.

National Jazz Archive: www.nationaljazzarchive.org.uk

Image (right): *Tune Times*, Vol. 1.6 (Feb. 1934). © National Jazz Archive, all rights reserved.



PART 5: FURTHER READING AND RESOURCES



PUBLICATIONS

- Naomi Korn and Gordon McKenna, Copyright: A Practical Guide (Collections Trust 2017): collectionstrust.org.uk/resource/copyright-a-practical-guide
- Naomi Korn, Charles Oppenheim, Adrienne Muir. *Information Law: Compliance for Librarians, Information Professionals and Knowledge Managers* (Facet Publishing 2020)
- Tim Padfield, *Copyright for Archivists and Records Managers* (Facet Publishing 2019)

KEY ONLINE RESOURCES

- Heritage Digital resources: www.charitydigital.org.uk/heritage-digital
- Naomi Korn Associates resources: www.naomikorn.com/resources
- Naomi Korn, SHARE Museums East: www.sharemuseumseast.org.uk/wp-content/uploads/2018/07/SHARE-FAQs.pdf
- The National Archives and Naomi Korn, Data Protection Toolkit for Archive Services: nationalarchives.gov.uk/information-management/legislation/data-protection

OTHER RELEVANT RESOURCES

- Bodleian Library, University of Oxford: www.bodleian.ox.ac.uk/ask/how-to-guides/copyright#collapse2650076
- Copyright User: www.copyrightuser.org/understand/rights-permissions/creative-commons
- Creative Commons Wiki: wiki.creativecommons.org/wiki
- Creative Commons: www.creativecommons.org
- Firms out of Business (FOB): norman.hrc.utexas.edu/watch
- Intellectual Property Office (IPO): www.gov.uk/guidance/copyright-orphan-works
- PPL PRS Ltd: www.pplprs.co.uk
- The Design and Artists Copyright Society (DACS), Photographs: www.dacs.org.uk/knowledge-base/factsheets/copyright-in-photographs
- The National Archives, Crown Copyright: www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/crown-copyright
- TinEye Reverse image search: www.tineye.com
- Writers, Artists and their Copyright Holders (WATCH): norman.hrc.utexas.edu/watch

ABOUT THE AUTHOR

DR ELLIE PRIDGEON BA MA PHD ARCH DIP FSA
Director, Consultant Archivist Ltd

As an archives consultant, Ellie works with a range of heritage organisations, including museums, universities, charities and community archives. She was also copyright consultant for Naomi Korn Associates. Alongside this guidance, Ellie has delivered training webinars on copyright for the Scottish Council on Archives.

For more information, visit www.scottisharchives.org.uk/copyright



CONTACT DETAILS

For more information, email
contact@scottisharchives.org.uk

Scottish Council on Archives
General Register House
2 Princes Street
Edinburgh EH1 3YY

www.scottisharchives.org.uk
@ScotsArchives
Facebook.com/ScotsArchives