

## **Public Records (Scotland) Act 2011**

### **Queen's and Lord Treasurer's Remembrancer Assessment Report**

**The Keeper of the Records of Scotland**

**10 June 2014**

## Contents

1. Public Records (Scotland) Act 2011 .....	2
2. Executive Summary .....	3
3. Authority Background .....	4
4. Assessment Process .....	4
5. Model Plan Elements: Checklist .....	5
6. Keeper's Summary .....	14
7. Keeper's Determination .....	15
8. Keeper's Endorsement .....	16

## 1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came fully into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor record keeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

## 2. Executive Summary

This report sets out the findings of the Keeper's assessment of the RMP of **the Queen's and Lord Treasurer's Remembrancer** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 14 April 2014.

The assessment considered whether the RMP of the Queen's and Lord Treasurer's Remembrancer was developed with proper regard to the 14 elements of the Keeper's statutory Model Records Management Plan (the Model Plan) under section 8(3) of the Act, and whether in this respect it complies with it and the specific requirements of the Act.

The outcome of the assessment and the Keeper's decision on whether the RMP of the Queen's and Lord Treasurer's Remembrancer complies with the Act can be found under section 7 of this report with relevant recommendations.

### **3. Authority Background**

The Queen's and Lord Treasurer's Remembrancer (QLTR) is a non-ministerial office-holder in the Scottish Administration and is the Crown's representative in Scotland for *bona vacantia* (Latin for ownerless property). Since 1981, the post of QLTR has been held by whoever holds the post of Crown Agent. The current QLTR is Catherine Dyer.

The QLTR is supported by the QLTR Office which consists of 2 Solicitors and 2 Administrative staff who are seconded from the Scottish Government and the Crown Office and Procurator Fiscal Service.

For the purposes of the Public Records (Scotland) Act 2011 the scheduled authority is the QLTR herself, not the supporting QLTR Office.

### **4. Keeper's Assessment Process**

The RMP was assessed by the Public Records (Scotland) Act Assessment Team on behalf of the Keeper. Assessors used the checklist elements listed in section 5, to establish whether the Queen's and Lord Treasurer's Remembrancer RMP was developed with proper regard to the elements of the Model Plan and is compliant with the Act. The assessment also considered whether there was sufficient supporting evidence of such compliance.

**Key:**

<b>G</b>	The Keeper agrees this element of an authority's plan.		<b>A</b>	The Keeper agrees this element of an authority's plan as an 'improvement model'. This means that he is convinced of the authority's commitment to closing a gap in provision. He will request that he is updated as work on this element progresses.		<b>R</b>	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Keeper may choose to return the RMP on this basis.
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**5. Model Plan Elements: Checklist**

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>Andrew Brown, Solicitor to the QLTR is identified as the individual with overall responsibility for the Records Management Plan (RMP). Mr Brown's responsibility for records management in the authority is confirmed by a covering letter from the QLTR dated 11 April 2014 (Annex 1 of the RMP).</p> <p>Mr Brown wrote the QLTR records management policy statement (<b>see element 3</b>). This policy specifically charges him with 'ensuring compliance with this records management policy statement'. He is also responsible for review of the elements of the RMP (see element 13).</p>

			<p>Mr Brown is also the Team Leader of the Crisis Management Team responsible for business continuity and restoration. This is confirmed by the <i>Business Continuity Plan (see element 10)</i></p> <p>The Keeper agrees that the Solicitor to the QLTR is a suitable individual to be identified in this role.</p>
2. Records Manager <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>Catriona Ogg, QLTR Administrator is identified as the individual who has responsibility for the operational implementation of the plan.</p> <p>This appointment is confirmed by a covering letter from Catherine Dyer dated 11 April 2014 (Annex 1 of the RMP). Ms Ogg is also specifically responsible for the retention schedule (<b>see element 5</b>) and the business continuity plan (<b>see element 10</b>).</p> <p>The QLTR Administrator has direct oversight and responsibility for records held on the shared drive (principally corporate admin.). This responsibility is stated in the RMP (page 17)</p> <p>Ms Ogg has a specific objective relating to the implementation of the RMP as part of her annual Performance Appraisal. This objective has been shared with the Keeper and forms part of the RMP itself (page 18).</p> <p>The Keeper agrees that Ms Ogg is a suitable individual to be identified in this role.</p>
3. Policy <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>QLTR does not have a separate corporate Records Management Policy. The RMP is, in itself, a records management policy and a statement has been included that lays out the importance of efficient information management to the business of the</p>

			<p>authority. It also notes the legislation under which QLTR operates her business (such as the Companies Act 2006 and the Public Revenue (Scotland) Act 1833).</p> <p>The records management policy statement specifically states that ‘This records management statement is available to all of the QLTR’s staff and has been prepared and agreed by the Solicitor to the QLTR’ <b>(see element 1)</b>.</p> <p>For ‘small’ organisations (QLTR has 4 staff) the Keeper considers it acceptable that there is no records management policy document separate from the RMP itself. Therefore the Keeper agrees that QLTR has an operational and approved records management policy statement as required by the Act.</p>
4. Business Classification	<b>G</b>	<b>G</b>	<p>The QLTR’s business classification, featuring as Annex 2 in the RMP, is divided into four functions – bona vacantia, ultimis haeres estates, treasure trove and general enquiries. These functions are demonstrated in a clear schematic representation of the authority’s business and an explanation.</p> <p>The QLTR holds records as paper files, structured case files and on a shared drive. The latter is principally used for corporate administration and is supervised by the QLTR Administrator <b>(see element 2)</b>.</p> <p>Financial information relating to cases is held on a structured system (‘Sun’).</p> <p>Part of the treasure trove function is undertaken by staff of the Board of Trustees of the National Museums of Scotland and the QLTR can be satisfied that appropriate records management provision exists in this body as it is also subject to PRSA.</p> <p>The Keeper agrees that QLTR has a business classification scheme covering all the functions of the authority in clear subject headings. The full scheme has been supplied to the Keeper (Annex 2 of the RMP).</p>

<p>5. Retention schedule</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The QLTR has supplied the Keeper with a full retention schedule (Annex 3 of the RMP) that covers all the records created by the activities undertaken while carrying out the functions explained in the business classification scheme (<b>see element 4</b>).</p> <p>A structured retention step removes closed case files from the ‘live’ system and stores them on a separate server. There are clear instructions in the RMP as to when this should happen.</p> <p>The Keeper agrees that QLTR has a functioning retention schedule that appears to cover all the record types created as the authority carries out its functions.</p>
<p>6. Destruction Arrangements <i>Compulsory element</i></p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The QLTR has supplied the Keeper with her records disposal policy (Annex 4 of the RMP). This policy covers:</p> <p>Paper: QLTR use an outside contractor, Shred-It, for disposal of paper records. The contract to carry out this work is arranged through the Crown Office and Procurator Fiscal Service who support QLTR. As evidence QLTR has submitted a sample certificate of destruction from Shred-It.</p> <p>Electronic records: QLTR have provided a records disposal policy as Annex 4 of the RMP which explains the circumstances and procedures for the destruction of electronic records including e-mails which are deleted after 40 days, but are held in back-up store for 6 months before being irretrievably destroyed.</p> <p>Hardware: QLTR has submitted a letter from the Crown Office and Procurator Fiscal Service dated January 2014 (evidence 3) explaining the procedures that ensure records are irretrievably deleted from all hardware when appropriate.</p>

			<p>Continuity back-up: The Crown Office and Procurator Fiscal Service provides back-up system support for QLTR. Records are backed up daily and held for six months for continuity purposes (<b>see element 10</b>) then irretrievably destroyed.</p> <p>The QLTR disposal log is held on the shared drive supervised by the QLTR Administrator (<b>see element 2</b>).</p> <p>The RMP states: ‘Records that are no longer required for business use and have reached the end of their retention period are disposed of in order to reduce unnecessary cost to the organisation (both in relation to the storage of records and staff time spent searching for information). The Keeper commends the clarity of this statement, but would add that a further benefit of timely disposal relates to the QLTR’s responsibilities under the Data Protection Act 1998, where no sensitive information regarding identifiable living individuals may be kept beyond its business use.</p> <p>The Keeper agrees that QLTR properly considers the irretrievable destruction of records.</p>
<p>7. Archiving and Transfer <i>Compulsory element</i></p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The QLTR transfers her records to the National Records of Scotland for permanent preservation. This arrangement is confirmed by NRS client managers.</p> <p>The QLTR has supplied a policy for assessing records against suitability for permanent archiving as Annex 5 of the RMP. PRSA requires an authority to have archiving <u>arrangements</u> in place and, in fact, it is not necessary for the Keeper to be informed of the appraisal mechanism operated by the QLTR. However, he appreciates that the inclusion of this annex makes the RMP a stronger business document for QLTR.</p> <p>The Keeper agrees that the QLTR has arrangements in place to transfer records to</p>

			an appropriate archive.
8. Information Security <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>The QLTR electronic systems are provided by the Crown Office and Procurator Fiscal Service (COPFS) and fall under their Information Security Policy. A copy of the relevant security section of the COPFS <i>Records Management Manual</i> has been provided to the Keeper (evidence 5) as have other separate COPFS policies that relate to the security of electronic records (evidence 6, 7 and 8).</p> <p>An explanation of the security surrounding paper records held in the QLTR office forms part of the RMP (page 13) as does a description of the uses of a fire-proof safe.</p> <p>The Keeper agrees that QLTR operates an appropriate Information Security Policy (that of the COPFS combined with the statement regarding paper records that features in the RMP). He agrees that this policy is available to all QLTR staff.</p>
9. Data Protection	<b>G</b>	<b>G</b>	<p>QLTR follows the Crown Office and Procurator Fiscal Service (COPFS) data protection principles and the COPFS Data Protection Manual has been provided to the Keeper (evidence 8)</p> <p>However, QLTR should be separately registered with the Information Commissioner and the supplied registration number Z325659X is evidence that this has been done.</p> <p>The Keeper agrees that QLTR properly recognises her responsibilities under the Data Protection Act 1998.</p>
10. Business	<b>G</b>	<b>G</b>	The QLTR has supplied the Keeper with a <i>Business Continuity Plan</i> (version 1

<p>Continuity and Vital Records</p>			<p>dated February 2014).</p> <p>The supplied version of the Business Continuity Plan has been redacted. The Keeper agrees that this redaction is appropriate considering the nature of the information.</p> <p>The Crown Office and Procurator Fiscal Service provides back-up system support for QLTR. Records are backed up daily and held for six months for continuity purposes. Similarly, e-mails are deleted after 40 days locally, but are held in back-up store for 6 months before being irretrievably destroyed.</p> <p>Vital electronic records have been identified and are clearly noted in the RMP (page 16).</p> <p>An explanation of the security surrounding paper records held in the QLTR office forms part of the RMP (page 13) as does a description of the uses of a fire-proof safe. 'Principal documents' (vital paper records) are held in this safe.</p> <p>The Solicitor to the QLTR (<b>see element 1</b>) is the Team Leader of the Crisis Management Team responsible for business continuity and restoration. This is confirmed by the <i>Business Continuity Plan</i>.</p> <p>Arrangements for business continuity are reviewed annually by the QLTR administrator (<b>see element 2</b>).</p> <p>The Keeper agrees that QLTR has an operational business continuity plan that properly considers the recovery of records in an emergency. He also agrees that consideration has been given to the security of 'vital records'.</p>
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<p>11. Audit trail</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The case file system is fully searchable for record retrieval. This includes paper records connected to a case.</p> <p>QLTR also operates an electronic finding aid for its paper records ('Cardbox').</p> <p>The QLTR shared drive is principally used for corporate administration and is supervised by the QLTR Administrator (<b>see element 2</b>). This shared drive has a very limited number of users and strict oversight. In these circumstances, the Keeper accepts that a formal document detailing staff instructions for its use may not be necessary.</p> <p>Financial information relating to cases is held on a structured system ('Sun') which is searchable.</p> <p>The Keeper agrees that QLTR has proper arrangements in place for locating the correct version of records held in the various systems in the QLTR Office.</p>
<p>12. Competency Framework for records management staff</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>The specific objectives, part of the annual performance appraisal, of the individual identified under element two above have been provided to the Keeper and form part of the RMP itself (page 18).</p> <p>In the case of a small organisation, it is perfectly acceptable that the individual responsible for the operational implementation of the RMP is not a full time records manager.</p> <p>However, the Keeper notes that training has been provided for this individual including a 'master class' specifically about the requirements of PRSA.</p> <p>The Keeper agrees that the individual identified in element 2 has the skill required to implement the RMP in QLTR and that the authority clearly recognises that records</p>

			management is a separate responsibility for this individual.
13. Assessment and Review	<b>G</b>	<b>G</b>	<p>Each element in the QLTR RMP is to be reviewed ‘whenever there are any changes to record keeping by the QLTR’ and the Solicitor to the QLTR (<b>see element 1</b>) is charged with this review.</p> <p>However, there is a commitment to formally review the QLTR’s RMP annually (commencing Summer 2015) whether changes to record keeping by the QLTR have been identified or not.</p> <p>Arrangements for business continuity are reviewed annually by the QLTR administrator (<b>see element 2</b>).</p> <p>The QLTR Administrator (<b>see element 2</b>) has responsibility for reviewing the case management system in line with the retention schedule.</p> <p>The Keeper agrees that QLTR has arrangements in place to properly review her RMP.</p>
14. Shared Information	<b>G</b>	<b>G</b>	<p>QLTR does not routinely share records with a third party nor is it thought that she creates records with a third party on a shared platform.</p> <p>QLTR’s IT system is provided by the Crown Office and Procurator Fiscal Service and this is governed by a formal data processing agreement, which has been supplied to the Keeper as evidence 9. This arrangement is in place for purposes of business efficiency rather than for carrying out a specific function of the QLTR.</p> <p>The Keeper agrees that QLTR have considered the records management implications of information sharing as is appropriate.</p>

### **General Notes on RMP:**

The QLTR *Records Management Plan* (version 1 approved 19 March 2014) is accompanied by a covering letter from Catherine Dyer who is the QLTR and the scheduled authority. In this letter, dated 11 April 2014, Ms Dyer confirms that the submission has been approved by her and also confirms the individuals responsible for the implementation of the plan (**See elements 1 and 2 above**). This covering letter is also included in the plan itself as Annex 1.

## **6. Keeper's Summary**

Elements 1 - 14 that the Keeper considers should be in a public authority records management plan have been properly considered by the Queen's and Lord Treasurer's Remembrancer. Policies and governance structures are in place to implement the actions required by the plan.

## 7. Keeper's Determination

Based on the assessment process detailed above, the Keeper **agrees** the RMP of the Queen's and Lord Treasurer's Remembrancer.

- The Keeper recommends that the Queen's and Lord Treasurer's Remembrancer should publish its agreed RMP as an example of good practice within the authority and the sector.

This report follows the Keeper's assessment carried out by,



.....  
**Pete Wadley**  
Public Records Officer



.....  
**Robert Fotheringham**  
Public Records Officer

## 8. Endorsement of Report by the Keeper of the Records of Scotland

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The report has been examined and is endorsed under the signature of the Keeper of the Records of Scotland as proof of compliance under section 1 of the Public Records (Scotland) Act 2011, and confirms formal agreement by the Keeper of the RMP as submitted by the Queen's and Lord Treasurer's Remembrancer. In agreeing this RMP, the Keeper expects the Queen's and Lord Treasurer's Remembrancer to fully implement the agreed RMP and meet its obligations under the Act.



.....  
**Tim Ellis**  
Keeper of the Records of Scotland