

## Summary of second meeting of the Public Records (Scotland) Act 2011 Stakeholder Forum held on 27th October 2011

Parish Hall, George Street, Glasgow

The following organisations were represented:

The Association of Chief Police Officers in Scotland (ACPOS); Audit Scotland; Clackmannanshire Council; the Society of Local Authority Chief Executives (SOLACE); Digital Preservation Coalition; Dumfries and Galloway Council; East Ayrshire Council; Glasgow City Council; Grampian Police; Kibble; Lothian and Borders Police; Midlothian Council; Moray Council; National Museums of Scotland; NHS Education for Scotland; Northern Constabulary; Office of the Scottish Charity Regulator (OSCR); Quarriers; Scottish Council on Archives; Scottish Court Service; Scottish Enterprise; Scottish Environmental Protection Agency (SEPA); Scottish Funding Council; Scottish Government Information Systems and Information Services (ISIS); Scottish Legal Complaints Commission; Scottish Natural Heritage; Scottish Parliament Corporate Body; Scottish Social Services Council; Scottish Women's Aid; South Ayrshire Council; South Lanarkshire Council; Strathclyde Fire Service; Strathclyde Police; West Lothian Council (34 bodies)

Apologies were received from:

Aberlour; Action for Children Scotland; Archivists of Scottish Local Authorities Working Group (ASLAWG); Barnardo's Scotland; Care Inspectorate (SCSWIS); Children 1st; City of Edinburgh Council; Convention of Scottish Local Authorities (COSLA); David MacBrayne Limited; Education Scotland; Highlands and Islands Enterprise; Improvement Service; Information and Records Management Society; Looked After Children and Young People; Mental Health Tribunal for Scotland/Scottish Tribunals Service; National Convenor of Children's Hearings Scotland; NHS Greater Glasgow and Clyde; Queen's Printer in Scotland; Scottish Care; Scottish Disability Equality Forum; Scottish Government Getting It Right for Every Child (GIRFEC); Scottish Government Health and Social Care; Scottish Public Services Ombudsman; SurvivorScotland.

The National Records of Scotland was represented by:

Bruno Longmore, Head of Government Records;  
Hugh Hagan, Senior Public Records Officer;  
Pete Wadley, Public Records Officer;  
Andy Wells, Public Records Assistant

## **1. Welcome and Introduction**

Bruno Longmore, Head of Government Records at the National Records of Scotland (NRS) welcomed Forum members to the meeting including those who were attending for the first time.

Acknowledging new members, Bruno stated that the mechanism of the Forum was established to create positive collaboration and to tap into its member's expertise. The NRS and the Forum were working together to help develop products that will help the Public Records (Scotland) Act make consistent and durable improvements, and secure better record keeping for the future. The underlying theme of the implementation process remained one of engagement, dialogue and co-operation. NRS sought the Forum's input to ensure that what is produced works for public authorities as well as for the Keeper of the Records of Scotland (the Keeper).

Bruno confirmed that the Keeper has specific responsibilities under the Act. He is required to prepare a model Records Management Plan (RMP) and issue guidance on the form and content of that plan. Before doing this, he must consult authorities and other persons about them. These products will assist authorities to develop their own plans which must be submitted and agreed by the Keeper. At the inaugural meeting in June 2011, a draft model plan (with 13 'elements') was issued for discussion with the aim of producing a draft model RMP and supporting guidance for formal consultation by January 2012.

NRS had set up an online Discussion Board for Forum members through the Communities of Practice and established three separate Forum sub-groups. These were set up in response to the inaugural Stakeholder Forum meeting on 30th June 2011 which felt that face to face meetings were essential to help discussion and develop guidance on specific themes.. Exchanges have been positive and lively with over half Forum members joining the discussion board. Bruno asked Forum members to express their views through the discussion board rather than directly with the implementation team.

A brief resume of the themes of the sub-groups was provided - namely 'Shared Information'; 'Functions' and 'Products' - and expanded in a later session.

Delegates were also informed that NRS was creating a Knowledge Base to assist authorities with the specific issues of e-records. This would form part of the non-statutory guidance that the Keeper may produce under the Act.

An outreach strategy to publicise information about our activities was outlined, reflecting activities such as talks and papers given at conferences focusing on the PRSA, and placing regular information updates onto the NRS website. NRS was also developing a more focused Comms strategy targeted at specific sectors, and welcomed Forum views on this.

It was explained that NRS was working closely with colleagues in the records and archives community across the public sector in Scotland.

Bruno provided an overview of the revised implementation timetable. By the end of 2011 NRS anticipates that it would have in place drafts of the model RMP and guidance. These will be submitted for formal public consultation by 2012 and every public authority affected will have an opportunity to comment. The Keeper aims for full commencement of the Act by January 2013.

Bruno concluded by saying that Ministers had indicated that we needed to change the culture of record keeping in Scotland. The positive work of the Forum showed that we were finding ways to do this, by providing products that would make it easier for everyone to secure their records, give confidence to those with less experience, and through the process of continuous engagement, jointly achieve what we all needed to do.

## **2.The Model Plan, the Guidance Document and the Discussion Board:**

Pete Wadley revisited the reasons for setting up the Communities of Practice discussion board. Pete told the forum that there were 43 members currently signed up to the discussion board and that those participating had provided interesting and useful suggestions. He then gave examples of changes that had been made to the original 13 model plan elements that had been presented in June due to discussion board posts.

Pete indicated that post on the discussion board had led to forum members contacting NRS directly and while this was welcomed he emphasised that discussion board posts had the advantages of disseminating ideas more widely.

Pete announced that, over the next few weeks, version two of the Keeper's Model Plan will be issued for discussion. NRS are asking stakeholder members to analyse this critically. He suggested that without feedback the Keeper would have to assume that the text of his model had met with approval.

Pete also explained that each element of the Keeper's Model Plan will have sample documents and links to other guidance attached to it. He thanked forum members who had submitted sample documents.

For the future: Pete stated that there remains a need to build on the samples we have already been given so we can expand the guidance. This may include contacting forum members directly to ask if they can provide further samples from their own authorities. Secondly, the discussion board would become more pro-active with NRS asking particular questions and pressing for more engagement. Thirdly, it has been suggested that the discussion board is opened up to a much wider audience. Pete said that the timing for this was quite good as version two of the model plan is almost ready to be disseminated. However, this proposal would potentially add a large number of new forum members. NRS will ask for the opinion of the current membership before making this major change. Pete stated that the Keeper would not want to stand in the way of wider consultation.

### **3. The work of the Stakeholder Forum and sub-groups**

Hugh Hagan explained that there are 3 Stakeholder sub-groups set up:

- 1 shared information;
- 2 contracting out of public authority functions to private/voluntary organisations;
- 3 reviewing and testing guidance

Sub-group one is considering issues relating to shared information, i.e. information and records created by public authorities and subsequently shared with other bodies or information and records born on a joint service platform involving collaboration between two or more authorities. .

Although some authorities currently don't share information, the sub-group took the view that it's really only a matter of time before they all do, so the issue of shared information is therefore one that we should all be concerned with in the public sector.

The sub-group is currently reviewing accords, protocols and governance documents already in place and of proven value to avoid duplication of effort. Work currently being developed by Scottish Government colleagues in conjunction with the *Getting it Right for Every Child* programme is an example of a current development helping to influencing the work of the sub-group.

Other examples of guidance that the group has been considering include the UK Commissioner's Data Sharing Code of Practice and the Gold Standard.

In terms of outcomes the group is probably a meeting or two away from firm conclusions. However, the group has identified and addressed some of the major issues around the creation, use, security, - including transfer arrangements - ownership/responsibility and long term management of shared information. . And, having identified national guidance and examples of local solutions with Scottish Public authorities, sub-group members feel they are approaching agreement on guidance that will be useful for the Keeper to consider.

The second of the sub-groups is concerned with issues around the common practice of contracting out public authority functions to private or voluntary bodies.

Just as Scottish public authorities must consider the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998 and other relevant sector specific legislation at the beginning of any procurement process, there must now also be appropriate consideration of whether there are Public Records issues to consider in relation to the function to be contracted out.

The Group still has some talking to do, but it has reached general agreement on solutions.

The group is currently considering a standard paragraph to be included in contractual agreements and/or procurement papers to reflect the new obligation to manage records created under certain public sector contracts. The sub-group is

keen to emphasise that the Act is not for example concerned with routine administration such as contracts for the procurement of stationery.

The sub-group further agreed that where a public authority considers there is a public records issue under a proposed procurement process then the standard paragraph on PRSA obligations should be accompanied by guidance to advise contractors on what will be expected of them by the authority.. This would include benchmarking to a minimum standard of records management.

Scottish Council on Archives colleagues have agreed to work with the sub-group to develop a records management framework document that will allow private and voluntary bodies to assess their compliance against a minimum standard.

Sub-group 3 are looking at and assessing available records management documents and guidance already in circulation for possible inclusion in the Keeper's suite of guidance supporting the model RMP. This group collaborates largely using electronic communication, but it had its first face to face meeting this morning before the main Stakeholder Forum – 27 October 2011.

The sub-group agreed that a comprehensive glossary should be compiled to support the model RMP and guidance. The sub-group also discussed how best to link the guidance to the model RMP. It was agreed that there should probably be 3 parts - a statement by the Keeper on why each element is important, linked to generic guidance on the specific records management issue and then further links to examples of existing policy statements volunteered by Forum colleagues. NRS emphasised the need to source more examples to get a good spread of in-house records management guidance and solutions from across a number of different types and sizes of public authorities. .

#### **4. A Framework for Contractors**

Dr Irene O'Brien, Chair of the Scottish Council on Archives (SCA), introduced the proposed contractors framework document.

The SCA is developing guidance for contractors in the form of a minimum standard framework which will be derived from the Archives and Records Management Services framework (ARMS) which is a quality improvement framework helping to define relevant performance indicators for the sector. ARMS aims to support integration and co-operation between archives and records management services and will serve as a vital and practical tool for archive and records management professionals.

The contractors minimum standard framework being derived from ARMS will seek to assist contractors in respect of their relationship with public authorities when creating and managing public records under contract.

The framework will draw down some of the indicators from ARMS to create a minimum standard, which most contractors should be able to comply with in relation to records management. These quality indicators focus on the creation and

management of records; the protection of rights and interests (including compliance with existing regulations); and the requirement to ensure that records are kept as long as they are required.

Sub-group members, which includes representatives from the private and voluntary sectors, agreed that this framework meets all aspects of responsibility under the Act without placing unreasonable burdens on contracted bodies.

## **5. What Happens Now**

NRS will work to develop a more robust communications strategy involving face-to-face meetings, articles to publicise the Act and the ongoing implementation process and wider engagement with other professional bodies.

The Stakeholder Forum and sub-groups are to continue until the end of the year. The online discussion forum will also continue but NRS is considering opening up membership to all authorities scheduled under the Act. The NRS will canvass stakeholder opinion regarding this.

Version two of the Keeper's Model RMP will be issued to all forum members shortly.

The main Forum will meet for the last time in December to consider progress and agree the way forward

The NRS Implementation team will draw together all the information and advice from Forum and sub-group colleagues to draft a version of the model RMP and guidance for formal consultation early the New Year, probably sometime in February 2012.

The Keeper of the Records of Scotland wishes to continue to liaise with colleagues throughout 2012, and will continue to welcome the views of stakeholders in the months leading up to formal implementation in January 2013.

Whilst the NRS continues to encourage everyone to engage with the online discussion forum, there is also the option to discuss issues over the phone or by way of a meeting

## **6. Questions and Matters Raised**

### **How are links to guidance, given by forum members, quality controlled?**

General quality control is undertaken by Group 3 which has been set up to specifically consider generic guidance and examples of working documents supplied by Forum members. Early next year there will be a formal Scottish Government 12 week consultation on the Stakeholder Forum products. This will provide all stakeholders with an opportunity to comment on the draft guidance.

Forum members suggested that NRS should assess the guidance every year to make sure it is still fit for purpose.

NRS agreed that continuous dialogue with stakeholder will be essential beyond implementation to ensure the model RMP and guidance remains fit for purpose.

### **Why is electronic records guidance optional and not statutory under the Act?**

The Act is clear that the Keeper has statutory obligation to publish guidance that will help authorities to compile their own RMPs. This does not preclude any specific kind of guidance. The Act is deliberately neutral on media so as to future proof its aims against technological change, so e-records are considered for the purposes of the Act. It is also true that the Act and the model RMP is silent on EDRMs because Minister's remain keen not to be seen to advocating the procurement of bespoke e-records systems at a time of financial hardship in the public sector. Stakeholders believe however that there needs to be more in the way of clear general guidance on the management of e-records.

The Keeper will invoke the option under section 9 of the Act to publish separate guidance and has asked the NRS E-Records Unit to look at producing this guidance, currently known as the E-Records Knowledge Base. This will seek to provide guidance on the creation and management of various types of e-records from emails to the Cloud.

The aim of the Knowledge Base is to provide a tool that is useful for Public Authorities using guidance that has credibility and is known to work. Members of NRS e-records branch, who were in attendance, asked forum members to post comments on suitable guidance to the Communities of Practice discussion board.

### **How do we engage at a higher level in terms of public authorities?**

The Keeper is currently developing a more comprehensive Comms strategy that will include dialogue with public authority CEOs as an important element.

### **Have cost implications been considered?**

Yes, there was a financial impact assessment done during the bill process which remains available on the NRS website and the website of the Scottish Parliament. The Keeper remains vigilant of the need to ensure that costs to authorities are kept to a minimum.

### **When will authorities be required to submit plans?**

There remains work to be done on the timetable for this. The Keeper will certainly not expect all authorities to be compliant and be in a position to submit a plan immediately upon implementation in January 2013. The Keeper will develop a timetable for the submission of plans and will target sectors in turn, inviting authorities from the sectors to submit their plans over a period of time.

**Is there scope for a minimum requirement acceptable to the Keeper? There is a danger, of course, that some authorities may reach the minimum standard and not aspire further.**

The Keeper is currently looking at the possibility of a minimum requirement, but is conscious that any minimum requirement must also include a mechanism for measurable improvement..

**Stakeholders urged the Keeper to remain realistic about where authorities are in reality, for example, retention schedules and file plans often don't exist across the board in the public sector.**

The Keeper understands the different levels of preparedness of organisations. This is partly why he is currently considering a minimum standard option.

**When contracting out functions under the Act who would legally own the records being created – would it be the authority or the contractor?**

The PRSA does not make any provision about ownership of or access to records. The PRSA defines certain records as “public records” but this means only that those records must be covered by a records management plan.

Records created and held by private or voluntary bodies which relate to functions those bodies carry out on behalf of public authorities are of course covered by the PRSA, but the commissioning public authorities must only ensure these records are managed in accordance with their records management plans. This will not mean that the records become subject to freedom of information legislation, if they were not already subject to it, or to any other new rights of access. Neither does the PRSA change existing confidentiality rules and data protection obligations in relation to the records. If a record is transferred to a public authority – for example for longer term retention – it may become subject to freedom of information legislation because the public authority will be subject to FOISA. However, the PRSA does not require public records created and managed by non-public bodies to be so transferred to and held by public authorities, just that they should be managed in accordance with the records management plans of the commissioning authority.

Many contracts are already set up to take cognisance of the public authority's FOISA obligations since that Act was introduced in 2005. It is not unusual that contracts now routinely require the contractor to provide the public authority with access to relevant information when an FOISA request is received to help the authority meet its statutory responsibilities. The PRSA will not change this arrangement.

## **7. Conclusion**

Bruno concluded the meeting with the emphasis that the Act is about continuous practice improvement. Delegates were thanked for attending.