

Public Records (Scotland) Act 2011

**Scottish Criminal Cases Review Commission
Assessment Report**

The Keeper of the Records of Scotland

30 April 2014

Contents

1. Public Records (Scotland) Act 2011 [3](#)
2. Executive Summary [3](#)
3. Authority Background [4](#)
4. Assessment Process [5](#)
5. Model Plan Elements: Checklist [6](#)
6. Keeper’s Summary [13](#)
7. Keeper’s Determination [14](#)
8. Keeper's Endorsement..... 15

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 Scottish Criminal Cases Review Commission by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 17 February 2014.

The assessment considered whether the RMP of the Scottish Criminal Cases Review Commission 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 Scottish Criminal Cases Review Commission complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Commission was established by Section 25 of the Crime and Punishment (Scotland) Act 1997, which added a new Part to the Criminal Procedure (Scotland) Act 1995, namely Part XA, entitled "Scottish Criminal Cases Review Commission". The role of SCCRC is to review and investigate cases where it is alleged that a miscarriage of justice may have occurred in relation to conviction, sentence or both. They can only review and investigate cases where the conviction and sentence were imposed by a Scottish Court (the High Court, the Sheriff Court or the District Court). They can review and investigate both solemn and summary cases and will conduct a thorough, independent and impartial review and investigation of all cases accepted for review. After the review has been completed, they will decide whether or not the case should be referred to the High Court. If it is decided to refer a case, the case will be heard and determined by the High Court as if it were a normal appeal.

The main aims and objectives of the Commission are:

- To ensure that all cases are dealt with efficiently and effectively.
- To deliver its services in ways appropriate to stakeholders' needs.
- To promote public understanding of the Commission's role.
- To enhance public confidence in the ability of the criminal justice system to cure miscarriages of justice.

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 Scottish Criminal Cases Review Commission's 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:

G	The Keeper agrees this element of an authority's plan.		A	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.		R	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>	G	G	<p>The Records Management Plan (RMP) identifies Mr Gerard Sinclair, Chief Executive and Principal Solicitor of the Scottish Criminal Cases Review Commission (SCCRC), as the senior officer with responsibility for records management within SCCRC.</p> <p>The Keeper agrees that this is an appropriate individual for this role.</p>
2. Records Manager <i>Compulsory element</i>	G	G	<p>The RMP identifies Mr Michael Walker, Senior Legal Officer-Information Governance and Casework, as having operational responsibility for the implementation of the RMP.</p> <p>He is also the officer responsible for dealing with Subject Access Requests and Freedom of Information requests.</p> <p>The Keeper agrees that this is an appropriate individual to undertake this role.</p>
3. Policy <i>Compulsory element</i>	G	G	<p>The Records Management Policy of SCCRC (Appendix 2) has been submitted as evidence for this element. It sets out the roles and responsibilities of SCCRC staff with regards to records management, the legislative framework under which it operates, and definitions (set out in Appendix 1).</p> <p>The policy will be reviewed annually (next review due in August 2014) by the records manager.</p> <p>The records manager is responsible for identifying the training requirements of</p>

			<p>SCCRC staff and addressing these.</p> <p>The SCCRC Board approved the policy on 16 August 2013 showing that it has the support of senior management.</p> <p>The Keeper agrees that the records management policy sets out SCCRC's corporate approach to records management and that it has the support of senior management.</p>
4. Business Classification	G	G	<p>As the SCCRC's primary function is to investigate possible miscarriages of justice its Business Classification Scheme (BCS) (Appendix 3) is correspondingly structured around this. There is a clear distinction between case-related and non-case-related files in the scheme. Case-related records are divided into 7 categories and non-case-related records into 11 categories.</p> <p>As the BCS is based on the main function of SCCRC it should remain relevant even if the structure of SCCRC changes. The BCS is to be commended as it is very straightforward and therefore has the benefit of being easy for staff to follow. This is backed up by Appendices 4 and 5 which are screenshots of the EDRMs used to manage the case-related records.</p> <p>The Keeper therefore agrees that SCCRC has a very robust BCS in place which clearly shows that SCCRC is fully aware of their record creating business activities.</p>
5. Retention schedule	G	G	<p>SCCRC have submitted their Data Retention Policy (Appendix 6) as evidence of compliance with this element. It follows the same structure as the BCS in that it differentiates between case-related records and non-case-related records and also sets out requirements for e-mails.</p> <p>The policy sets out the procedures for dealing with the different types of case-related records, in particular defence papers and records provided by the court</p>

			<p>which are used to assist with SCCRC’s business.</p> <p>SCCRC also maintains a record of those records which are destroyed as part of the retention scheduling process.</p> <p>The policy was approved by the SCCRC Board on 16 August 2014 indicating that it has the support of senior management. It is due for review in August 2014.</p> <p>The Keeper agrees that appropriate measures are in place for allocating retention and destruction mechanisms to the records created by SCCRC.</p>
<p>6. Destruction Arrangements <i>Compulsory element</i></p>	G	G	<p>SCCRC has provided a certificate of destruction (Appendix 7) as evidence that appropriate measures are in place for the secure destruction of paper records.</p> <p>SCCRC’s RMP also states that electronic records are deleted and thereafter only recoverable forensically.</p> <p>SCCRC also contracts the destruction of hardware to a commercial disposal contractor. The most recent receipt for this service was submitted as evidence (Appendix 8).</p> <p>The Keeper agrees that appropriate procedures are in place for the secure destruction of paper and electronic records, as well as hardware.</p>
<p>7. Archiving and Transfer <i>Compulsory element</i></p>	G	A	<p>SCCRC’s RMP states that it has had initial discussions with client managers at National Records of Scotland (NRS) with a view to starting the process of developing a Memorandum of Understanding (MoU) for archiving case-related and non-case-related records that are deemed worthy of permanent preservation. NRS client managers have confirmed that contact has been made by SCCRC’s records manager. SCCRC, however, is prohibited under sections 194J and 194K of its founding legislation, the Criminal Procedure (Scotland) Act 1995, from transferring</p>

			<p>case-related records to NRS. As the board minutes contain reference to case-related information, SCCRC considers that they are also unable to transfer these records to NRS. SCCRC has committed to archiving records deemed worthy of permanent preservation on its own premises.</p> <p>Section 10.1 of the Records Management Policy states that ‘Storage conditions and security measures will ensure that records are protected from unauthorised access, loss or destruction, and from theft and disaster. Records will be stored on media that ensure their usability, reliability, authenticity and preservation for as long as they are needed. Systems for storing electronic records will be designed so that records are accessible, authentic, reliable and useable through any kind of system change for as long as they are required’. The Keeper is content that SCCRC has committed to the long-term preservation of electronic records and that they will take steps to ensure that records identified as archives can be migrated to newer electronic platforms whilst maintaining the ‘integrity’ of the record and its metadata, as and when required. The Key Contact has also provided the Keeper with details of the archive arrangements for paper records which have been identified as being suitable for permanent preservation.</p> <p>The Keeper conditionally agrees this element of SCCRC’s RMP on the basis that SCCRC has regard to the best practice archival guidance on pages 37-39 of the ‘Guidance to the form and content of the Model Records Management Plan’ document which is available on the National Records of Scotland website. This sets out the best practice for archiving both paper and electronic records. This will ensure the long-term preservation of records identified by SCCRC’s Retention Schedule as being worthy of permanent preservation so that in the event that there is a change in legislation which allows access to currently closed records, these records will have been archived using current best practice. Compliance with this aspect of the RMP will be evaluated, as well as the other elements of the RMP, by the Keeper’s Assessment Team five years after agreement of this RMP.</p>
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<p>8. Information Security <i>Compulsory element</i></p>	<p>G</p>	<p>G</p>	<p>SCCRC has within its RMP set out the security arrangements, both in terms of physical security and the security of its IT systems.</p> <p>Physical security is covered up to business impact level 4. Hard copy records are held securely, both on and off-site.</p> <p>IT systems are protected by passwords, firewall, anti-spyware and anti-virus software, and backing up of records.</p> <p>Only Board members and others will have access to case-related records and only employees with a specific business requirement may access certain non-case-related records. All staff are Disclosure Scotland Standard Disclosure certified.</p> <p>The records management policy (Appendix 2) sets out general requirements relating to security. The contract between SCCRC and its IT service provider has also been submitted in evidence (Appendix 9).</p> <p>The Keeper agrees that suitable security measures are in place to protect SCCRC's information assets.</p>
<p>9. Data Protection</p>	<p>G</p>	<p>G</p>	<p>SCCRC has provided its registration number with the Information Commissioner's Office (Z6936115) as evidence. This shows that SCCRC is aware of its responsibilities with regard to the Data Protection Act.</p> <p>As further evidence, SCCRC has submitted its Data Protection Policy (Appendix 10). This was approved by the SCCRC Board on 16 August 2013. It sets out responsibilities and procedures for SCCRC staff with regards to both case-related and non-case-related records.</p> <p>It also sets out the security arrangements in place for protecting personal and sensitive information both created and processed by SCCRC. The policy will be</p>

			<p>reviewed annually by the records manager and the policy also states that SCCRC will provide Data Protection training on an annual basis, which the Keeper commends.</p> <p>The Keeper agrees that SCCRC is aware of its responsibilities under the Data Protection Act and has put in place the appropriate procedures for protecting the data it creates and processes.</p>
10. Business Continuity and Vital Records	G	G	<p>SCCRC has submitted their Business Continuity Plan (Appendix 11) as evidence which sets out how SCCRC will react to restore key business operations in the event of a disaster. The RMP states that Vital Records have been identified and are securely held off site. These include the names and contact details of the Business Continuity Planning Team, Board members, third parties and other documents crucial to the recovery of the business of SCCRC in event of an interruption to their service.</p> <p>The Keeper agrees that appropriate procedures are in place to allow SCCRC to resume its business operations in the event of a disaster.</p>
11. Audit trail	G	A	<p>SCCRC's RMP sets out the procedures for tracking records on its various record keeping systems.</p> <p>The RMP describes the system for tracking paper records and files. It also states that it keeps a central record of the contents of its filing cabinets.</p> <p>SCCRC also uses an EDRMS (SOLCASE) to manage electronic records, mostly case-related records as well as information on subject access requests and Freedom of Information requests. This has audit trail functionality built into it, tracking movement and editing of records.</p> <p>Most of SCCRC's non-case-related records are held on drives using a 'structured</p>

			<p>hierarchical, using appropriately named electronic folders'. SCCRC has submitted screenshots of the drives used to store electronic records which show this structure.</p> <p>SCCRC staff have received training in the consistent naming of documents and files and intends to create a guidance document for naming conventions.</p> <p>The Keeper agrees that appropriate audit trail procedures are in place for paper records and those electronic records managed through SOLCASE. The Keeper requests that once document naming guidance has been created, it is sent to him for inspection.</p>
<p>12. Competency Framework for records management staff</p>	<p>G</p>	<p>G</p>	<p>SCCRC has provided the job description of the records manager (Appendix 12). This sets out his responsibilities with regards to the creation and implementation of SCCRC's RMP, as well as a wider information governance role. There is also a commitment to undertaking necessary training, which the Keeper welcomes.</p> <p>The Keeper agrees that an appropriate competency framework is in place for records management staff.</p>
<p>13. Assessment and Review</p>	<p>G</p>	<p>G</p>	<p>SCCRC's RMP will be reviewed annually to ensure that records management systems comply with the requirements of the RMP. The review will be carried out by the records manager, who will report to SCCRC's Board.</p> <p>SCCRC also supplied a copy of an Internal Audit Report on Corporate Governance and Case Management (Appendix 13) carried out in 2013. This was relevant to the procedures in place relating to the management of cases, which appear to be sound. Presumably this also relates to the management of records relating to cases, although this is not explicitly stated. The Keeper welcomes the inclusion of auditors to assess the internal practices of SCCRC, although wonders whether it would be possible to work compliance with the RMP into their auditing programme. This would not affect the Keeper's agreement of the RMP, but may provide additional</p>

			<p>support for the records manager in implementing and maintaining compliance with the RMP.</p> <p>There is also a commitment to review key policies and procedures which support the RMP.</p> <p>The Keeper agrees that SCCRC’s assessment and review provisions for the RMP are sound.</p>
14. Shared Information	G	G	<p>SCCRC has in place a series of Information Sharing Protocols (ISPs) with other bodies which sets out roles and responsibilities on both sides with regards to the sharing of information. These comply with the Data-Sharing Framework guidance issued by the Information Commissioner’s Office. SCCRC has provided an ISP with one of its stakeholders as evidence of this (Appendix 14).</p> <p>The Keeper agrees that appropriate procedures are in place for the sharing of information with external bodies.</p>

6. Keeper’s Summary

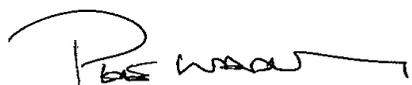
Elements 1-14 that the Keeper considers should be in a public authority records management plan have been properly considered by the Scottish Criminal Cases Review Commission. Policies and governance structures are in place to implement the actions required by the plan.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper agrees the RMP of the Scottish Criminal Cases Review Commission.

The Keeper recommends that the Scottish Criminal Cases Review Commission 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

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 Scottish Criminal Cases Review Commission. In agreeing this RMP, the Keeper expects the Scottish Criminal Cases Review Commission to fully implement the agreed RMP and meet its obligations under the Act.



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Tim Ellis
Keeper of the Records of Scotland