

Public Records (Scotland) Act 2011

Scottish Legal Aid Board Assessment Report

The Keeper of the Records of Scotland

05 July 2013

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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 Historic 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 Legal Aid Board** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 14 June 2013.

The assessment considered whether the RMP of the **Scottish Legal Aid Board** 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 Legal Aid Board** complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Scottish Legal Aid Board (SLAB) was set up in 1987 to manage the legal aid system in Scotland. They are a Non-Departmental Public Body responsible to the Scottish Government. SLAB also advises Scottish Ministers on the operation of the legal aid system and makes proposals for ways to develop it. The work of SLAB is overseen by a non-executive board. The executive management is headed by the Chief Executive, who is also the Accountable Officer, and is supported by three directors and a Principal Legal Adviser.

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 Legal Aid Board'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.

5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	✓	✓	Graeme Hill, director of Corporate Services and Accounts accepts overall responsibility for the RMP. Mr Hill is one of three directors who support the board's executive management.
2. Records Manager <i>Compulsory element</i>	✓	✓ The Keeper has been provided with a staff responsibility document signed off by the director of Corporate Services and Accounts.	SLAB has promoted the visibility of their 'records management specialist' through events and through publication of her profile in the in-house <i>Briefly</i> e-magazine. <i>Briefly</i> is used to raise awareness of PRSA and of records management in general.
3. Policy <i>Compulsory element</i>	✓	✓ SLAB has a formal Records Management Policy submitted as evidence E01.01.	
4. Business Classification	✓	✓	The policy document (E01.01) refers to SLAB's <i>Document Storage, Retention and Storage Policy</i> (E05.01) an 80 page document that is, in the absence of a full business classification, the key pillar of the RMP (See further comments below). No functions of SLAB are contracted out to third parties.
5. Retention schedule	✓	✓	See above
6. Destruction Arrangements <i>Compulsory element</i>	✓	✓	<i>How should I dispose of Electronic Records?</i> Highlights the issue of hidden caches of 'deleted' records, and says that

			<p>the 'IS department will arrange the appropriate disposal of the server and back-up media in the appropriate timescales'. However, it is not clear what these timescales are.</p> <p>There is specific guidance around e-mails (03.01) including reminders to regularly empty the deleted items folder.</p>
7. Archiving and Transfer <i>Compulsory element</i>	✓	✓	The place of deposit for the records of SLAB is the National Records of Scotland. A memorandum of understanding is underway. This has been confirmed by NRS client managers.
8. Information Security <i>Compulsory element</i>	✓	✓ 08.01 – 08.04 Information Security Policies	SLAB have also submitted examples of access protocols
9. Data Protection	✓	✓ 09.01 – 9.03	SLAB has supplied their Access to Information document and data protection policy which fulfils element 9. A copy of SLAB's ICO registration entry details, including their registration number is also included in the evidence package.
10. Business Continuity and Vital Records	✓	✓ 10.1 – 10.3	The Board has a disaster recovery/ business continuity plan held on a shared drive and also held in an emergency box at another, distant, location. This is a good idea. The plan is reviewed after a test or after a major incident. The names of the Board's Incident Management Team have been redacted in the version sent to the Keeper as evidence. The Keeper is satisfied that this redaction is appropriate. (See further comments below)
11. Audit trail	✓	✓	SLAB have provided the Keeper with their version

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			control and naming conventions guidance document (E03-02). Naming conventions for web publishing have been included.
12. Competency Framework for records management staff	✓	✓ E02.01 Job Description for Records Management Specialist sets out the skills and competencies possessed by the Specialist.	The SLAB Records Management Policy (E01-01) guarantees 'appropriate records management training' (page 2). SLAB offer online training sessions on their intranet including <i>Protecting Information</i> . This is principally used to train staff in secure handling of personal information, but also emphasises the importance of efficient records management. (See further comments below)
13. Assessment and Review	✓	✓	This Records Management Policy and the Information Governance Policy are reviewed annually. Other elements of the plan are reviewed bi-annually (See further Comments Below)
14. Shared Information	✓	✓ Various – for example: data sharing agreement 14.02	There is evidence provided to suggest that there are Information Sharing Protocols in place regarding information covered by Data Protection Act and otherwise.

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 Legal Aid Board**. Policies and governance structures are in place to implement the actions required by the plan.

Further Comments:

Although the proposed electronic records management solution (SharePoint) has not been rolled out as yet, the licence has been purchased and the RMP makes a clear commitment that: 'The Board **will** be introducing a SharePoint system later this financial year and a business classification scheme **will** be incorporated'. These commitments, signed-off by the director of Corporate Services and Accounts, coupled with the resources already committed by the purchasing of the SharePoint licence convince the Keeper that SLAB will indeed adopt this system. He would ask that when fully implemented SLAB update their RMP and send him a copy.

SLAB constituted a project board to pull together this RMP and have submitted sample minutes of that board as part of the evidence package.

The RMP refers to ensuring that all 'employees, contractors... who have access to any personal data held by the board'. The Records Management Policy (E01-01) uses the phrase '...who have access to any information'. As records management extends beyond the protection of personal data, the Keeper prefers the wording of the policy document rather than that in the submitted RMP.

SLAB's *Document Storage, Retention and Disposal Policy* (E05-01) shows activities, sub-divided again into different types of record. Against each of these record types SLAB have allocated a retention period, the authority for that decision – for example the *Taxes Management Act 1970* - and the responsible office holder. Although under element 4 SLAB states that 'the Board does not currently have a formal business classification scheme'. The *Document Storage, Retention and Disposal Policy* fulfils this role adequately for the Keeper's purposes, in as much as it shows a clear understanding of the records created by SLAB while carrying out its function and it applies across the entire organisation.

Section 3.4 in the 05 - 01 DOCUMENT STORAGE, RETENTION AND DISPOSAL POLICY KF v0.3 refers to Vital Records having been identified and that further information is included in the Business Continuity Plan, although there is no evidence to support this. It is however recognised that the Plan is currently being revised and that being the case the Keeper would recommend that provision for recovering vital records is made in the Business Continuity Plan, and that this is submitted in evidence to him.

SLAB has created a PowerPoint presentation on records management *The Nuts and Bolts of Records Management* stressing the value of records as an

asset and of bad record keeping as a risk. The Keeper has been provided with evidence of a further, in-house, project to create a learning resource to support information governance within SLAB. The Keeper recognises that appropriate training is mandatory for certain staff and available to all.

SLAB have adopted the Maturity Model from JISC infoNet as a self-assessment tool and created an action plan for future developments which they have shared with the Keeper. The action plan submitted as E13-03 is repeated as appendix A of the RMP, making the improvement plan part of the signed-off whole. Although the JISC Maturity Model is designed for further and higher education institutions it is easily adapted to other public bodies. The Keeper points to it in his published guidance document as a tool to self-assess an authority's records management provision.

SLAB has mapped their RMP against *ISO15489-1: 2001 Records Management*.

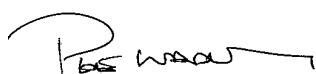
Finally, SLAB has submitted an 80 page *Document Storage, Retention and Disposal Policy* document as part of its evidence package to the Keeper. This represents a considerable piece of work on behalf of the authority and would be an excellent resource for other similar bodies undergoing this process. While the Keeper understands that it may not be deemed appropriate for this document to be published on the Board's public facing website, he wonders if there is some mechanism by which SLAB would allow it to be circulated to other scheduled authorities. This is, of course, a matter for consideration by SLAB only, and the Keeper will not make this document, or any other part of the evidence package available to any party outside the PRSA assessment team staff of NRS without the authority's express permission.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper **AGREES** the RMP of the **Scottish Legal Aid Board**.

- The Keeper recommends that the **Scottish Legal Aid Board** 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,



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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 Legal Aid Board**. In agreeing this RMP, the Keeper expects the **Scottish Legal Aid Board** to fully implement the agreed RMP and meet its obligations under the Act.



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Deputy Keeper of the Records of Scotland, on behalf of:

Tim Ellis
Keeper of the Records of Scotland