

**Public Records (Scotland) Act 2011**

**Her Majesty's Chief Inspector of Prosecution in Scotland  
Assessment Report**

**The Keeper of the Records of Scotland**

**13<sup>th</sup> June 2016**

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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 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 **Her Majesty's Chief Inspector of Prosecution in Scotland** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 17th June 2015.

The assessment considered whether the RMP of Her Majesty's Chief Inspector of Prosecution in Scotland 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 Her Majesty's Chief Inspector of Prosecution in Scotland complies with the Act can be found under section 7 of this report with relevant recommendations.

## 3. Authority Background

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 provides for the appointment by the Lord Advocate of an officer known as 'Her Majesty's Chief Inspector of Prosecution in Scotland'. The statute requires the Inspector to secure the inspection of the operation of the Crown Office and Procurator Fiscal Service. The Lord Advocate may also require the Inspector to submit a report on any particular matter connected with the operation of the Service which the Lord Advocate refers to the Inspector. An annual report must be submitted to the Lord Advocate on the exercise of the Inspector's functions.

The Inspectorate of Prosecution in Scotland (IPS) is the independent inspectorate of the Crown Office and Procurator Fiscal Service, the sole prosecuting authority in Scotland and also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

The IPS makes recommendations that it feels will result in clear and measurable improvements in the Crown Office and Procurator Fiscal Service (COPFS) service delivery, making COPFS more accountable and enhancing public confidence.

The principal functions of the IPS are:

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To inspect or arrange for the inspection of the operation of COPFS

To report to the Lord Advocate on any matter connected with the operation of COPFS

<http://www.gov.scot/about/public-bodies/ipis/about-us>

<http://www.gov.scot/Publications/2014/07/8876/1>

## 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 Her Majesty’s Chief Inspector of Prosecution in Scotland’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:**

<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

### Her Majesty's Chief Inspector of Prosecution in Scotland (For simplicity abbreviated to HMCIPS in the assessment below)

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>Michelle MacLeod, Her Majesty's Chief Inspector of Prosecution in Scotland, has identified that responsibility for records management in the Inspectorate lies with herself.</p> <p>This is confirmed by the <i>Covering Statement</i> which introduces the <i>Plan</i> (pages 5 and 6) and by a letter from the Chief Inspector to the Keeper dated 5<sup>th</sup> May 2015 (Annex 1). The Keeper has been provided with an extract from Ms. MacLeod's annual objectives. This also confirms responsibility.</p> <p>Ms. MacLeod prepared the <i>Plan</i> for submission and is individually identified as the 'Responsible Officer' against each element.</p> <p>Ms MacLeod is responsible for business continuity/disaster recovery procedures <b>(see element 10)</b>.</p> <p>The Keeper agrees that HMCIPS has identified an appropriate individual to this role as required by the Act.</p>
2. Records	<b>G</b>	<b>G</b>	HMCIPS has identified Kate Neill, the IPS Business Inspector, as the individual with

<p>Manager <i>Compulsory element</i></p>			<p>day-to-day responsibility for implementing the <i>Plan</i>.</p> <p>This is confirmed by a letter from the Chief Inspector (<b>see element 1</b>) to the Keeper dated 5<sup>th</sup> May 2015 (Annex 1).</p> <p>Ms Neill's responsibility for the <i>Records Management Plan</i> is shown in her annual objectives (Annex 17).</p> <p>The Keeper agrees that HMCIPS have identified an appropriate individual to this role as required by the Act.</p>
<p>3. Policy <i>Compulsory element</i></p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>HMCIPS have a <i>Records Management Policy Statement</i> (Version 1, dated April 2015). This has been supplied to the Keeper as Annex 2 of the <i>Plan</i>.</p> <p>The Keeper agrees that the submitted <i>Plan</i> is consistent with the <i>Policy</i>.</p> <p>The <i>Policy</i> specifically mentions the Public Records (Scotland) Act 2011.</p> <p>The <i>Policy</i> is made available to staff in their induction pack and its aims feature in the <i>Staff Handbook</i>. HMCIPS have provided their staff handbook in evidence. This is the version dated August 2015. Records management appears in section 7 of this handbook. A copy of the Induction Checklist is attached at Annex 18, this shows the <i>Records Management Plan</i> and <i>Policy</i> are made available to staff at induction.</p> <p>The Keeper agrees that HMCIPS has a current Records Management Policy Statement, available to staff, as required by the Act.</p>
<p>4. Business Classification</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>HMCIPS' <i>Records Management Policy</i> (<b>see element 3</b>) states that good records management relies on the capture of records in record keeping systems.</p> <p>To this end HMCIPS has a <i>Business Classification Scheme</i> which has been provided to the Keeper as Annex 3 of the <i>Plan</i>.</p>

			<p>This is a high-level classification suitable for a small organisation (4 staff).</p> <p>The <i>Business Classification Scheme</i> demonstrates the activities of the authority and the record types created while undertaking these activities.</p> <p>HMCIPS operate a hybrid system with records held in four 'locations':  Hard-Copy records - held securely in the IPS Offices (current records).  Hard-Copy records – held in Dumbarton Procurator Fiscal Office (those no longer current).  Electronic records on an shared drive hosted by the Crown Office and Procurator Fiscal Service system (Records created directly as part of the HMCIPS' functions).  Electronic records hosted on the SG Scots system (IPS administrative records).</p> <p>The Keeper agrees that HMCIPS has a business classification scheme that covers all the activities that the authority undertakes when carrying out its functions.</p>
5. Retention schedule	<b>G</b>	<b>G</b>	<p>HMCIPS' <i>Records Management Policy (see element 3)</i> states that good records management relies on the controlled retention of information (RMP Annex 2).</p> <p>To this end HMCIPS has a <i>Retention Schedule</i> which has been supplied to the Keeper as Annex 4 of the <i>Plan</i>.</p> <p>All the activities described in the <i>Business Classification Scheme (see element 4)</i> feature in the retention schedule.</p> <p>The Keeper agrees that HMCIPS has a retention schedule that allocates retention decisions to the record types described in the business classification scheme.</p>
6. Destruction Arrangements Compulsory	<b>G</b>	<b>G</b>	<p>HMCIPS' <i>Records Management Policy (see element 3)</i> states that good records management relies on "the controlled destruction of information".</p>

<p><i>element</i></p>			<p>To this end, HMCIPS have a <i>Records Disposal Policy</i> which has been provided to the Keeper as Annex 5 of the <i>Plan</i>.</p> <p>Paper: HMCIPS employ a third party commercial shredding company to destroy their hard-copy records. A Certificate of destruction, guidance and invoice have all been provided as evidence that this arrangement is operational (annex 7 to the <i>Plan</i>).</p> <p>Electronic: Electronic records are held in systems operated by third parties (The Scottish Government and the Crown Office and Procurator Fiscal Service). Instructions for deleting electronic records are contained in the <i>Records Disposal Policy</i>.</p> <p>E-mails: E-mails are deleted according to the COPFS policies and this is explained in the <i>Records Disposal Policy</i>.</p> <p>Hardware: Records are irretrievably destroyed from hardware before it is recycled. This is done by either the COPFS or SG dependant on the nature of the record (<b>see element 4</b>). Both organisations have provided a description of how this is carried out (annex 8 and 9 of the <i>Plan</i>).</p> <p>Back-Ups: The <i>Business Continuity Plan</i> (<b>see element 10</b>) requires regular back-ups of records as part of its recovery processes. The <i>Continuity Plan</i> explains the back-up schedule of both the COPFS system and that of the SG (page 4). This arrangement is also explained in the <i>Records Disposal Policy</i>.</p> <p>A record of material destroyed is held in a disposal log. HMCIPS have provided the Keeper with their disposal log which is arranged mirroring the Business Classification Scheme (<b>see element 4</b>)</p> <p>The Keeper agrees that HMCIPS has arrangements in place that allows the irretrievable destruction of records, in any format, when appropriate as required by</p>
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			the Act.
7. Archiving and Transfer <i>Compulsory element</i>	<b>A</b>	<b>G</b>	<p>HMCIPS have identified the National Records of Scotland (NRS) as the appropriate repository for records identified as suitable for permanent preservation.</p> <p>A Memorandum of Understanding regarding the transfer of records from HMCIPS to NRS is being negotiated at the time of this assessment. This is confirmed by the NRS Client Management Team.</p> <p><b>The Keeper agrees this element of HMCIPS' Records Management Plan under 'improvement model' terms. This means that he acknowledges that the authority has identified a gap in provision [there is no formal transfer agreement with the archive] and have put processes in place to close that gap. The Keeper's agreement is conditional on his PRSA Assessment Team being provided with a copy of the signed MOU when available.</b></p>
8. Information Security <i>Compulsory element</i>	<b>G</b>	<b>G</b>	<p>Physical security for paper records has been explained in the Plan (page 16). Electronic record security is managed by the 'host' authorities COPFS and SG (<b>see element 4</b>).</p> <p>Statements and guidance on the operation of these other authorities information security as it impacts on HMCIPS records have been provided (annex 8 – 14).</p> <p>The Business Continuity Plan (<b>see element 10</b>) requires "all sensitive assets/material stored securely".</p> <p>IT security policies are promoted to staff in the induction manual. A copy of the Induction Checklist is attached at Annex 18, this shows the authority's policy on Information Security is explained to staff at induction.</p> <p>The Keeper agrees that HMCIPS properly considers the security of the information it holds in any media as required by the Act.</p>

<p>9. Data Protection</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>HMCIPS follows the Data Protection principles of COPFS and SG (who maintain their IT systems). Guidance on DP issued by these two organisations has been provided to the Keeper as annex 14 to the <i>Plan</i>.</p> <p>HMCIPS is registered with the Information Commissioner under Scottish Ministers: Z4857137. This registration is current.</p> <p>Staff have to complete data protection e-learning. A screen shot from the e-learning package has been supplied in evidence (SG <i>Saltire</i> Intranet).</p> <p>The Keeper agrees that HMCIPS properly considers its responsibilities under the Data Protection Act 1998.</p>
<p>10. Business Continuity and Vital Records</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>HMCIPS have a <i>Business Continuity Plan</i> which has been provided to the Keeper in the evidence pack. This is version 1 dated October 2014. It contains a separate section on IT recovery (appendix 3).</p> <p>The business continuity procedures are initiated by HM Chief Inspector of Prosecution (<b>see element 1</b>).</p> <p>The <i>Continuity Plan</i> requires regular back-ups of electronic records as part of its recovery processes and that hard-copy records “assets” are stored securely (page 4).</p> <p>The <i>Continuity Plan</i> explains the recovery procedures for electronic records held on the Scottish Government systems (page 12).</p> <p>The <i>Continuity Plan</i> considers ‘essential records’ (page 4).</p> <p>Business continuity training is a requirement of the <i>Continuity Plan</i> (page 3).</p>

			<p>Distribution of the <i>Continuity Plan</i> is explained (page 7).</p> <p>The Keeper agrees that HMCIPS have a suitable continuity/recovery plan and that it considers the recovery of records. Furthermore, this plan specifically considers 'vital' records.</p>
<p>11. Audit trail</p>			<p>Electronic records held on systems hosted by COPFS and SG (<b>see element 4</b>) can be tracked using the built-in functionality of the systems. For efficient operation of this process HMCIPS staff are required to follow naming convention and version control guidance. This has been provided to the Keeper as annex 16 of the <i>Plan</i>.</p> <p>Other than transferring hard copy papers to Dumbarton PF office in accordance with the retention policy, no hard copy papers are removed from the IPS office. A statement to this effect appears at Element 11 and at Annex 16.</p> <p>The tracking of records when they are moved to long-term store in Dumbarton is accomplished using a transfer log. A sample of this log has been provided to the Keeper as part of the evidence package.</p> <p>The Keeper agrees that HMCIPS has arrangements in place to appropriately, locate and identify records.</p>
<p>12. Competency Framework for records management staff</p>	<p><b>G</b></p>	<p><b>G</b></p>	<p>HMCIPS have provided the Keeper with an extract from the business objective of the individual identified at element 2. This clearly shows that she has responsibilities relating to records management and the <i>Records Management Plan</i> is specifically mentioned.</p> <p>Staff training for disaster recovery is a requirement of the <i>Business Continuity Plan</i> (<b>see element 10</b>).</p> <p>Staff have to complete data protection e-learning (<b>see element 9</b>).</p>

			The Keeper agrees that the individual identified under element 2 above has the relevant authority to carry out the role and that HMCIP has considered appropriate information governance training for her staff.
13. Assessment and Review	<b>G</b>	<b>G</b>	<p>The Act requires authorities to “keep its records management plan under review” (<i>Act Part 1 5.1.a</i>).</p> <p>HMCIPS have allocated a review date of June 2016 (and thereafter annually) to their <i>Plan</i> (page 2 and 23). A formal review both of the records management plan and the arrangements for review and assessment will be conducted annually by the Records Manager (<b>see Element 2</b>). The Records Manager will report to the Senior Responsible Officer (<b>see Element 1</b>).</p> <p>The Covering Letter accompanying the <i>Plan</i> commits HMCIPS to alert the Keeper to any changes that are made. The Keeper welcomes this.</p> <p>HMCIPS also regularly reviews the policies and procedures supporting the <i>Plan</i> on an informal basis.</p>
14. Shared Information	<b>N/A</b>	<b>N/A</b>	HMCIPS do not routinely share information in pursuance of their functions. However, they confirm that should they require to do so in the future they will do so under the provisions of a formal memorandum. A draft memorandum for data sharing is attached at Plan Annex 21. This draft template includes information governance and information assurance and security.

## **Her Majesty's Chief Inspector of Prosecution in Scotland (For simplicity abbreviated to HMCIPS in the assessment below)**

### Version

This assessment is on the *Records Management Plan* of the Inspectorate of Prosecution in Scotland. This is version 1 (Final) prepared by Michelle MacLeod (**see element 1**), dated October 2015. The footer of each page is marked 'Version 1 Last updated 15/10/15)

It should be noted that the scheduled authority is "Her Majesty's Chief Inspector of Prosecution in Scotland" and the Keeper's agreement must be to the *Plan* of that authority. This is a technicality; this assessment is on the *Plan* submitted from the Chief Inspector's office (the Inspectorate).

The *Plan* is introduced by a Covering Statement from the Chief Inspector (**see element 1**) formally approving it. The Covering Statement also commits HMCIPS to alert the Keeper to any changes that are made to the *Plan*. The Keeper welcomes this commitment.

The *Plan* also contains as Annex 1 a letter from the Chief Inspector to the Keeper dated 5<sup>th</sup> May 2015. In this letter Ms. MacLeod appoints Kate Neill as the individual with 'operational responsibility' for implementing the *Plan*.

The RMP is based on the Keeper's, 14 element Model Plan <http://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/resources/model-records-management-plan>.

### Third Parties

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The Act requires public authorities to ensure that records management provision in third parties, who are carrying out functions of those authorities, is robust enough to match that explained in the authority's *Records Management Plan*.

It is not thought that any function of HMCIPS is currently carried out by a third party.

## 6. Keeper's Summary

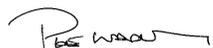
Elements **1 - 14** that the Keeper considers should be in a public authority records management plan have been properly considered by Her Majesty's Chief Inspector of Prosecution in Scotland. Policies and governance structures are in place to implement the actions required by the plan.

## 7. Keeper's Determination

Based on the assessment process detailed above, the Keeper returns the RMP of Her Majesty's Chief Inspector of Prosecution in Scotland.

- The Keeper recommends that Her Majesty's Chief Inspector of Prosecution in Scotland address the issues raised in section 6 'Keeper's Summary' listed above and resubmits their revised RMP by [date subject to negotiation].

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 the Keeper requires that the RMP as submitted must be returned to Her Majesty's Chief Inspector of Prosecution in Scotland to address identified weaknesses and be resubmitted for agreement.



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