National Records of Scotland

Public Records (Scotland) Act 2011

Scottish Commission for Human Rights
Assessment Report

The Keeper of the Records of Scotland

22 December 2015

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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 the **Scottish Commission for Human Rights** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on **31st July 2015**.

The assessment considered whether the RMP of the Scottish Commission for Human Rights 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 Commission for Human Rights complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The European Convention on Human Rights is brought into Scottish law by the Scotland Act 1998 and Human Rights Act 1998.

The Scottish Commission for Human Rights is an independent body established by the Scottish Parliament in 2008 to promote and protect the human rights of everyone in Scotland. The functions of the Commission are set out in the Scottish Commission for Human Rights Act 2006. Under that Act the Commission has a general duty to promote awareness, understanding and respect for all human rights to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights. The Commission fulfils this duty through education, training, guidance, publications, awareness raising and research, as well as by recommending such changes to Scottish law, policy and practice when their work demonstrates a need.

The Commission has several powers:

- to conduct inquiries into the policies and practices of public authorities

- to provide education, training and awareness raising, including publishing research

- recommending changes to Scottish law, policy and practice

- intervening in some civil court cases, where there is relevance to human rights and where there is a public interest

- entering some places of detention, as part of an inquiry

Professor Alan Miller was unanimously elected in 2007 by the Scottish Parliament to become the first Chair of the Scottish Human Rights Commission. In 2013 he was unanimously re-nominated to the role for a further term.

http://www.scottishhumanrights.com/

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 Commission for Human Rights' 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.

5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer *Compulsory element*	**G**	**G**	The Scottish Commission for Human Rights has identified Professor Alan Miller, Chair of the Commission, as the individual with overall responsibility for records management in the authority. Professor Miller has provided a *Covering Statement* which forms page 2 of the *Plan*. The Keeper has also received a separate, signed, version as evidence 1. The Chair's role is confirmed by the *Retention & Disposal Policy* **(see element 5)** and by the *Records Management Policy* **(see element 3)**. The Keeper agrees that the Scottish Commission for Human Rights has identified an appropriate individual to this role as required by the Act.
2. Records Manager *Compulsory element*	**G**	**G**	The Scottish Commission for Human Rights has identified Clare Nicolson, Business Manager, as the individual responsible for the day-to-day implementation of the *Plan*. This is confirmed by the *Plan* itself (responsibility is indicated on each page), by the *Records Management Policy* **(see element 3)** and by the *Business Manager's Job Description* submitted as evidence 3. The Business Manager reports directly to the Chair of the Commission **(see element 1)** and is supported by the Executive Assistant and the Finance Assistant, who she line manages.

			The Business Manager is responsible for the *Plan,* the *Records Management Policy*, the *Retention & Disposal Policy* **(see element 5),** the *Data Protection Policy* **(see element 9)**, the *Business Continuity* Plan and *Risk Management Policy* **(see element 10)**, the *IT Code of Conduct* **(see element 8)** and for investigating data breaches. The above indicates that Ms Nicolson has a detailed knowledge of records management provision in the authority. The Keeper agrees that the Scottish Commission for Human Rights has identified an appropriate individual to this role as required by the Act.
3. Policy *Compulsory element*	**G**	**G**	The Scottish Commission for Human Rights has a *Records Management Policy* which has been provided to the Keeper as evidence 2. This is the version adopted July 2015. The *Policy* provides a good introduction regarding the purpose of records management. The policy is made available to staff on the Commission's shared drive. New staff are additionally provided with an induction pack containing all the key policies of the Commission. The *Policy* recognises records as a business asset for the Commission. The Keeper welcomes this acknowledgement. Responsibility for monitoring the compliance with the *Records Management Policy* rests with the Business Manager **(see element 2)**. The *Policy* specifically refers to compliance with the Public Records (Scotland) Act

			2011 (page 5). The *Records Management Plan*, submitted for the Keeper's agreement, fully supports the objectives of the *Records Management Policy*. The Keeper agrees that the Scottish Commission for Human Rights has an approved and operational records management policy.
4. Business Classification	**A**	**G**	**(see <u>ERM</u> under General Comments at end)** The Scottish Commission for Human Rights have provided the Keeper with a top level *Business Classification Scheme* with a sample of how two of these top levels are further sub-divided. The information asset owners of the top level areas are listed as part of the *Retention & Disposal Policy* **(see element 5)**. A screen shot showing one business area in more detail has been provided as evidence 18. It is acknowledged that this detail is not available for many of the Commission's business areas. However, the *Plan* states (page 6): "The Commission plans to develop a more detailed Business Classification Scheme later in 2015/16 as it moves to a new electronic records management system to replace the current G/Drive folder structure." Initial meetings have been held regarding a long-term electronic records management solution. The Keeper has been provided with an explanation of the steps the Commission are taking to secure a ERM system appropriate to their records. The Keeper agrees that these proposals are reasonable. The *Plan* makes it clear that the core corporate record for the Commission is

			electronic. However, some paper records are kept and are, correctly, referred to with regard to security and destruction. The *Retention & Disposal Policy* specifically mentions paper records, including some finance records that are held in paper form but indexed on the electronic systems. **The Keeper agrees this element of the Scottish Commission for Human Rights' records management plan on 'Improvement Model' terms. This means that he acknowledges that the authority has identified a gap in provision [current shared drive system needs replacing] and has put processes in place to close that gap. His agreement of this element is conditional on being kept appraised of developments.**
5. Retention schedule	**G**	**G**	Under the description of records management in the Commission's *Records Management Policy* **(see element 3)** they correctly point to the application of retention and disposal criteria as a vital records management issue (page 3). With this in mind, the Scottish Commission for Human Rights has a full *Retention Schedule* that makes up part of their *Retention & Disposal Policy* which has been provided as evidence 6. This is the version dated July 2015. The *Records Management Policy* (page 4) places a responsibility on staff to maintain records in line with the *Schedule*. The *Retention Schedule* appears to cover all the activities undertaken by the Commission when pursuing its functions. Retention decisions are adapted from the Scottish Council on Archives' SCARRS tool with which the Keeper is familiar. The *Retention & Disposal Policy* is supported by the Commission's *Records Disposal Procedures* **(see element 6)**.

			The *Retention & Disposal Policy* specifically mentions the Public Records (Scotland) Act. The policy is made available to staff on the Commission's shared drive. New staff are additionally provided with an induction pack containing all the key policies of the Commission. The Keeper agrees that the Scottish Commission for Human Rights have an operational retention schedule that covers all the expected record types.
6. Destruction Arrangements *Compulsory element*	**G**	**G**	Under the description of records management in the Commission's *Records Management Policy* **(see element 3)** they identify confidential destruction as a vital records management issue (page 3). The Commission has therefore installed the following arrangements: Electronic: Records held on the structures drives are destroyed according to retention decisions **(see element 5)** using the procedures explained in *Records Disposal Procedures* document (provided as evidence 7). Records held on unstructured personal drives are automatically destroyed 2 years after the last action. E-mails are deleted according to the Enterprise Vault system explained in the *Plan* and the *Retention & Disposal Policy* (evidence 6). Staff guidance to all of the above is provided in the *Retention & Disposal Policy* document which also includes the Commission's *Retention Schedule*. Paper: Paper records are destroyed using in-house confidential waste cabinets and under contract with a third party. This contract is maintained by the Scottish Public Service Ombudsman (the two authorities share a building) and has already been

			agreed by the Keeper separately. Samples of the disposal 'paperwork' have been provided as evidence 8 and 9. Hardware: Destruction of hardware is controlled through our contract with NVT and the equipment is destroyed by CCL North. The Scottish Government maintain a list of all assets passed for destruction and we received a certificate of destruction detailing all equipment that has been destroyed. Back-ups: The Scottish Government do daily incremental backups and then at the weekend full back ups are taken of the system. The backups are then kept for four weeks and are then destroyed and the information then becomes irretrievable. The Keeper agrees that the Scottish Commission for Human Rights has processes in place that will allow the secure and irretrievable destruction of records when appropriate as required by the Act.
7. Archiving and Transfer *Compulsory element*	**A**	**A**	The Act requires all scheduled authorities to have arrangements in place to transfer records to an appropriate archive for permanent preservation. This ties in with the Introduction to the *Retention & Disposal Policy* (evidence 6) which suggests that the Commission may create records of "long-term historical and research value" and the *Records Management Policy* (evidence 2) that refers to records of "Historical and Cultural Value" (page 3). The Commission has identified the National Records of Scotland (NRS) as the repository for records of permanent value. An MOU with NRS is being negotiated at the time of assessment. This is confirmed by the Keeper's Client Managers.

			The Keeper agrees that the Scottish Commission for Human Rights have identified a suitable repository for the permanent preservation of selected records. He can agree this element under 'Improvement Model' terms. This means that he accepts that the authority has identified a gap in provision (no formal agreement with the archive) and have put processes in place to close that gap. His agreement is dependent on the approved MOU being provided when available.
8. Information Security *Compulsory element*	**G**	**G**	Under the description of records management in the Commission's *Records Management Policy* **(see element 3)** they correctly point to management of security and access classifications as vital records management issues (page 3). The Commission does not have a standalone *Information Security Policy* rather they issue staff with a suite of guidance which has been passed on to the Keeper as evidence 10 – 13. Policies are made available to staff on the Commission's shared drive. New staff are additionally provided with an induction pack containing all the key policies of the Commission. The Commission uses the Scots network with which the Keeper is familiar. They are a Scots V and GSI approved authority. Information security is explained in the *Plan* (page 10) and embedded in the text throughout the rest of the *Plan* and in several of the supporting documents. For example: Sensitive hard-copy records are stored in a lockable cabinet (*Data Protection Policy*). The *Data Protection Policy* also gives a prominent, bullet pointed, introduction on the processes that should be adopted for protecting personal information.

			Business Management is access restricted (*Retention & Disposal Policy)*. Non-Scots laptops should only be used for non-sensitive information, such as presentations (*Personal Use of IT Policy and IT Code of Conduct*). The Keeper agrees that the Scottish Commission for Human Rights has arrangements in place to properly ensure the security of records as required by the Act.
9. Data Protection	**G**	**G**	The *Records Management Policy* **(see element 3)** commits the Scottish Commission for Human Rights to manage records in line with the Data protection Act 1998. The Commission has a Data Protection Policy, supplied to the Keeper as evidence 14. This is the version adopted in July 2015. The Commission is registered with the Information Commissioner: Z1914860 The *Policy* explains the 8 principles of data protection and subject access request requirements. The policy is made available to staff on the Commission's shared drive. New staff are additionally provided with an induction pack containing all the key policies of the Commission. The Commission runs in-house staff training / awareness raising sessions throughout the year on different topics. An awareness raising session on Data Protection is scheduled for January 2016. The Business Manager **(see element 2)** is responsible for investigating Data Breaches.

			The *Records Management Policy* **(see element 3)** specifically mentions compliance with the Data Protection Act 1998. Compliance with the Act is supported by a suite of information security guidance **(see element 8)**. The Keeper agrees that the Scottish Commission for Human Rights have properly considered their responsibilities under the Data Protection Act 1998.
10. Business Continuity and Vital Records	**G**	**G**	The Scottish Commission for Human Rights has a *Business Continuity Plan* that has been submitted to the Keeper as evidence 16. This is the version adopted July 2015 (replacing that of 2010). It has been redacted. The Keeper agrees this redaction as entirely appropriate. The *Continuity Plan* contains an explanation of how staff can access it, normally and in the case of an emergency. The Continuity Plan has a section on the recovery of vital records (section 5.2) **For the destruction of continuity back-ups see element 6 above.** The Commission has a Business Risk Management Group that meets monthly. Both of the individuals identified at elements 1 and 2 of the *Plan* sit on this group. Their *Risk Management Policy and Guidelines* document has been supplied as evidence 17. This is the version adopted in July 2013. The Keeper agrees that the Scottish Commission for Human Rights has an approved and operational business continuity plan and that the *Continuity Plan* considers the recovery of records.

11. Audit trail	**A**	**G**	Under the description of records management in the *Records Management Policy* **(see element 3)** the Commission points to the use of version control, naming conventions and document tracking as vital records management issues (page 3). The *Records Management Policy* (page 4) places a responsibility on staff to maintain records in such a way that they can be 'easily retrieved'. However, in the text for element 11 (*Plan* page 13) the Commission states: "The Commission recognises that there is benefit in seeking a solution that provides better audit trail and management of electronic records". Typically an ERM solution will impose naming conventions and version control on record creation. Therefore proper tracking of records will be closely tied into the decisions relating to the adoption of a new system. **(see <u>ERM</u> under General Comments at end)** Structured tracking is available on the Commission's financial records through the 'SAGE' system. **The Keeper agrees this element of the Scottish Human Rights Commission on 'Improvement Model' terms. This means that he acknowledges that the authority has identified a gap in provision and has put processes in place to close that gap. His agreement is conditional on being kept up to date as the ERM solution is developed.**
12. Competency Framework for records management	**G**	**G**	The *Business Manager's Job Description* (evidence 3) shows that one of Ms. Nicolson's main duties is to oversee the office, data and facilities, and records management systems **(see element 2)**. The *Covering Statement* from the Chair of the Commission **(see element 1)**

staff			commits the Commission to ensure that “all staff maintain, and develop as necessary, their competence in information and records management”. The *Records Management Policy* **(see element 3)** commits the Commission to: “…deliver a targeted training programme to highlight and increase staff awareness of their responsibilities in line with data protection, freedom of information and records management.”(*Policy* page 5). In-house all staff training on the Commission’s Records Management Plan and policies was delivered in October 2015. An awareness raising session on Data Protection is scheduled for January 2016. The Keeper agrees that the Scottish Commission for Human Rights has ensured that the individual identified at element 2 has the appropriate authority and skills to implement the *Plan*. Furthermore, he agrees that the authority has considered records management training for other appropriate staff.
13. Assessment and Review	**G**	**G**	The Public Records Act 2011 requires scheduled public authorities to “keep its records management plan under review” (part 1 5.1 (a)). The *Covering Statement* from the Chair of the Commission **(see element 1)** commits the Commission to “regularly review and develop as necessary our policies, procedures and practices”. To this end, there is an identification on each page of the *Plan* that review is due by July 2017. The Commission maintains a register of policies and related procedures showing the review schedule. All polices are reviewed by the responsible manager, in the

			case of the Records Management Plan the Business Manager **(see element 2)**. Reviews include ensuring all information is accurate and up to date and in line with business needs as well as legal obligations. The review of the RMP will additionally include confirming practice is in line with policy, where appropriate sample systems checking will be undertaken by the responsible manager. The Chair has oversight of policy review work broadly and specifically for the Records Management Plan. Policy reviews are also reported to the Commission and change to policy requires re-approval of policies by the Commission. Where risks are identified as part of review work this would additionally be reported to the Business Risk Management group (BRM). The BRM is an operational level group which maintain a register of risks identified and takes actions to manage risk. The outputs of the BRM are reviewed by the finance risk and audit committee and by the Commission. Some polices related to the Records Management Plan that support its delivery have additional steps, the Risk Management Policy and Business Continuity Plan has review input from the Finance, Risk and Audit Committee as part of its review. The *Records Management Policy* **(see element 3)** and the *Business Continuity Plan* **(see element 10)** are scheduled for review by July 2017. The *Business Manager's Job Description* **(see element 2)** will be reviewed at least annually. The *Retention & Disposal Policy* **(see element 5)** and the *Data Protection Policy* **(see element 9)** are scheduled for review in 2017. The *Risk Management Policy* **(see element 10)** is due for review this year. The Keeper agrees that the Scottish Commission for Human Rights has processes in place to appropriately review their RMP as required by the Act.

14. Shared Information	**N/A**	**N/A**	The Scottish Commission for Human Rights does not routinely share information with third parties as a requirement of carrying out its functions.

General Comments

Version
This assessment is on the *Records Management Plan* of the Scottish Commission for Human Rights adopted July 2015. The *Plan* is the responsibility of the Commission's Business Manager **(see element 2)**.

Each page of the *Plan* identifies a review date of July 2017.

The *Plan* is accompanied by a covering statement from the Chair of the Commission **(see element 1)**

The *Plan* mentions the Act and 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
The Commission states: We confirm that Commission functions are not contracted out to third parties.

ERM
The Commission is actively investigating an electronic records management solution for their business. Currently electronic records are held on a structured shared drive and a schematic of the top level of this drive has been provided as evidence 5. Obviously the adoption of a new management solution will have a fundamental effect on provision in the authority. The Keeper accepts that the *Covering Statement* from the Chair of the Commission **(see element 1)** can be taken as Senior Management approval for developing

a ERM solution. In this case he is willing to agree certain elements of the Commission's plan under 'Improvement Model' terms. This means that his agreement is conditional on:

- An ERM solution being developed
- That the Commission keep the Keeper up-to-date on the project as it progresses.

6. Keeper's Summary

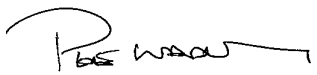
Elements ***1 – 13*** that the Keeper considers should be in a public authority records management plan have been properly considered by the Scottish Commission for Human Rights. Policies and governance structures are in place to implement the actions required by the plan.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper **agrees** the RMP of the **Scottish Commission for Human Rights**.

- The Keeper recommends that the Scottish Commission for Human Rights 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 Commission for Human Rights. In agreeing this RMP, the Keeper expects the Scottish Commission for Human Rights 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