

Public Records (Scotland) Act 2011

Lord Advocate and Procurators Fiscal Assessment Report

The Keeper of the Records of Scotland

16 May 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 the Lord Advocate and Procurators Fiscal by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 31 July 2015.

The assessment considered whether the RMP of the Lord Advocate and Procurators Fiscal 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 Lord Advocate and Procurators Fiscal complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Crown Office and Procurator Fiscal Service is the independent public prosecution service for Scotland, and is a Ministerial Department of the Scottish Government. The department is headed by Her Majesty's Lord Advocate, who under the Scottish legal system is responsible for prosecution, along with the area Procurators Fiscal. In Scotland, virtually all prosecution of criminal offences is undertaken by the Crown. Private prosecutions are extremely rare.

The Lord Advocate is assisted by the Solicitor General for Scotland. The day-to-day running of the Service is done by the Crown Agent & Chief Executive and a management board who are based in the department's headquarters in Chambers Street, Edinburgh.

The Service employs both civil servants who carry out administrative and other duties and solicitors and advocates who represent the Crown in Court.

The records created in the exercising of the Lord Advocate's function of reporting to the Scottish Government should be managed in accordance with the policies and procedures of the RMP of the Scottish Government.

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 Lord Advocate and Procurators Fiscal'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>Catriona Dalrymple, Head of Policy, has been nominated in the Records Management Plan (RMP) as the senior manager with strategic responsibility for records management within the Crown Office and Procurators Fiscal Service (COPFS, the organisation responsible for carrying out the functions of the Lord Advocate and Procurators Fiscal. COPFS will be used as an acronym in this assessment to refer to the Lord Advocate and Procurators Fiscal).</p> <p>This appointment is confirmed by the Crown Agent and Chief Executive, Catherine Dyer, in the covering letter that accompanied the RMP.</p> <p>The Records Management Manual, submitted as part of the evidence package, also confirms Ms Dalrymple as the officer with senior responsibility for records management.</p> <p>The RMP states that the Manual is available to all staff through the Intranet (PF Eye) and a screenshot of the relevant page on the Intranet has been submitted as evidence. The Keeper commends this method of disseminating records management guidance.</p> <p>Regular newsletters entitled The Bulletin are sent to staff which highlights new developments. Screenshots of examples of the Bulletin have been submitted as evidence of this method of communication, showing some of the work on records management that is currently being undertaken.</p> <p>The Keeper agrees that an appropriate individual has been identified to take senior</p>

			management responsibility for records management.
2. Records Manager <i>Compulsory element</i>	G	G	<p>Carol McDivitt, Business Manager in the Response and Information Unit, has been identified as the officer with day to day responsibility for records management within COPFS.</p> <p>This appointment is also confirmed by the Crown Agent and Chief Executive, Catherine Dyer, in the covering letter that accompanied the RMP.</p> <p>The Records Management Manual also names Mrs McDivitt as the records manager for COPFS.</p> <p>The Keeper agrees that a suitable individual has been identified to take operational responsibility for records management.</p>
3. Policy <i>Compulsory element</i>	G	G	<p>COPFS has supplied its policy statement. This is included as Chapter 1 of the Records Management Manual.</p> <p>The policy statement outlines the corporate approach to records management and states that all staff are responsible for appropriately managing the records and information they work with. It also includes a statement showing a commitment to information security, which is welcome considering the sensitivity of some of the records created and maintained by COPFS as part of their activities.</p> <p>The Records Management Manual looks like a very useful tool for staff to use. The Manual was approved by the Records Management Board in October 2015. The Board is chaired by the Head of Policy (see Element 1) and also includes the Director of IT, Head of Strategy and Delivery, the Heads of Business Management in two of the Federations and the Business Manager (see Element 2). The Manual was also approved by the Crown Agent and Chief Executive in October 2015. It is due for review in October 2016.</p>

			<p>The Keeper agrees that COPFS has demonstrated its corporate approach to records management.</p>
<p>4. Business Classification</p>	<p>G</p>	<p>G</p>	<p>COPFS has submitted its Senior Organisational Structure which is useful in determining the different business areas within the organisation. COPFS is organised into four Federations-North, East, West and National. The North, East and West Federations carry out the vast majority of the criminal case work which is divided into Initial Case Processing, Summary, Sheriff and Jury and High Court cases. The Records Management Manual (chapter 6) describes the types of records that are routinely included in the files for these types of cases. COPFS therefore seems to be aware of the records it creates and holds when undertaking its casework functions and has set out the retention periods for these records.</p> <p>The National Federation deals with specific types of cases, such as sexual offences and organised crime, and also the general administrative duties, such as HR and Finance. Chapter 6 sets out the types of records that make up the case files and describes the retention periods assigned to them. The combined business classification scheme and retention schedules (a spreadsheet attached as Annex 4 to the Manual) sets out the type of administrative records created by COPFS and sets out their retention periods. The spreadsheet also identifies vital records and the reasons behind the retention decisions. The Keeper commends the consideration of these issues.</p> <p>Also included as evidence is a document entitled 'Shaping the Future plan'. This document states that COPFS is currently reviewing its structure, with the possibility of moving from a Federation structure to one governed by the functions of the organisation. This programme is at an early stage. If any changes to the structure have an impact on the way in which records within the organisation are managed the Keeper requests that he is kept informed of these in order to update the RMP.</p>

			<p>COPFS currently uses a number of case management systems and also shared drives to manage its electronic records. One of the 'Further Developments' mentioned in the RMP is a Records Management Project to investigate the feasibility of developing an Electronic Document and Records Management System (EDRMS) to provide a strategic solution to the management of electronic records in COPFS. The Keeper requests that he is kept informed of the results of this project because if there is a decision to implement an EDRMS this will fundamentally affect the way in which records are managed.</p> <p>Section 1.12 of the Records Management Manual confirms that no 'function' of COPFS is carried out by a third party.</p> <p>The practical steps for managing case records and non-case records are set out in chapters 5, 6 and 7 of the Manual, which is available to staff on the Intranet.</p> <p>The Keeper can agree that COPFS is aware of the breadth of its record creating activities and requests to be kept updated if there are any changes to the structure of the organisation and whether any decision is made to implement an EDRMS.</p>
<p>5. Retention schedule</p>	<p>G</p>	<p>G</p>	<p>COPFS has submitted its joint business classification scheme and retention schedules as a spreadsheet in Annex 4 of the Records Management Manual. This document describes the types of records created as part of the business activities of the organisation, sets out the retention and disposal actions and timescales, the reasons for the retention decisions, whether they are vital records, and the owner of the record series. This document appears to capture the breadth of record-creating activities of the organisation. The Keeper commends this document as a useful business tool which can be used a central point of reference for staff.</p> <p>Chapter 6 of the Manual also describes in detail the retention actions for case-related records. The Manual, and the attached retention schedule, is available to staff on the Intranet.</p>

			<p>The Keeper agrees that retention and disposal actions have been assigned to the record classes that are created in carrying out the organisation's functions.</p>
<p>6. Destruction Arrangements <i>Compulsory element</i></p>	A	A	<p>COPFS has outlined its destruction procedures.</p> <p><u>Paper</u> COPFS contracts out its secure destruction of hard-copy records to MITIE (as part of the Scottish Government contract), who in turn sub-contract this activity to Shred-It. Records earmarked for destruction should be disposed of in confidential waste bins which are then shredded on-site. A sample destruction certificate has been provided as evidence that appropriate procedures are operational.</p> <p>Officers based in Dumbarton are responsible for reviewing, disposing of and weeding paper case files. The Manual (section 7.49) states that non-case related paper files should be reviewed at least annually by the lead officers in that particular area. The Manual states that records will be kept of files that are destroyed.</p> <p><u>Electronic</u> Electronic case records are purged from the system as per the relevant retention schedule. The instructions for undertaking this purge are available in the Records Management Manual (chapter 6, section 69).</p> <p>The Manual (section 7.28) states that non-case related electronic files should be reviewed at least annually by the lead officers in that particular area. The Manual states that records will be kept of files that are destroyed. Information Services Division has responsibility for the deletion of electronic records and that the current procedures are being reviewed as part of the Data Retention Project. The Keeper accepts this and requests that he is informed when the project has finished and the new procedures have been approved and that he is sent a copy of the updated procedures.</p>

			<p>A sample of the records kept of destroyed files has been supplied as evidence (Policy Division Filing Archive Extract). The Keeper commends this approach.</p> <p><u>Back-ups</u> Element 10 of the RMP states that ‘All records and data held on the COPFS electronic network are subject to regular back up and associated recovery procedures.’ An email from the Director of IT accompanying the letter below-mentioned in Element 8 states that COPFS is currently implementing a new backup solution which will change its current backup policies and procedures. The email states that the Director of IT will forward the revised backup policies and procedures once these have been finalised. The Keeper can accept this and looks forward to receiving these documents.</p> <p><u>Hardware</u> COPFS have submitted an approved Secure Disposal Policy. This describes the disposal standards in place for paper records and for electronic records stored on hardware such as hard drives, optical media and SIM cards. This all takes place to HMG’s Information Assurance Standard Number 5 (IAS5).</p> <p><u>Email</u> COPFS has provided evidence (chapter 8 of the manual) that it has procedures in place to ensure that staff are aware that they should save emails in the appropriate places as a corporate record if necessary and are aware of the necessity of deleting emails when they are no longer required. The Keeper commends this approach.</p> <p>The Keeper can agree this Element on an ‘improvement model’ basis. This means that the authority has identified a gap in provision (deletion of electronic records and backups) and has evidenced a commitment to closing this gap. This agreement is conditional upon the Keeper being kept informed</p>
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			of progress as work in this area moves forward.
7. Archiving and Transfer <i>Compulsory element</i>	G	G	<p>COPFS has identified the National Records of Scotland (NRS) as the repository to which it sends records selected for permanent preservation. Case records are transferred on an annual basis (a spreadsheet list of the files transferred has been submitted as evidence).</p> <p>The Records Management Manual (chapter 10) sets out the arrangements for retransmitting records to COPFS in the event that there is a business requirement to do so.</p> <p>Also submitted as evidence are documents detailing the procedures for sending records to, and retrieving records from, the storage facility in Dumbarton. The Keeper commends the creation of these procedures.</p> <p>COPFS have submitted a signed off MoU between themselves and the Keeper's client managers detailing the transfer arrangements for records selected for permanent preservation. Work is underway to develop procedures for the transfer of non-case related records. The Keeper requests sight of these once they have been finalised.</p> <p>The RMP also highlights the need to develop arrangements for the transfer of electronic records to NRS. Work will begin in early 2016 towards developing policies and procedures for transferring electronic records to NRS. The Director of IT is happy to discuss technical and security requirements to enable transfer to take place. The Keeper commends this approach to developing procedures for transferring electronic records and looks forward to receiving updates on the progress of this work.</p> <p>The Keeper agrees that appropriate measures are in place to transfer case records selected for permanent preservation to NRS. There is also evidence to show that</p>

			<p>discussions are underway to develop similar processes for the transfer of non-case related records.</p>
<p>8. Information Security <i>Compulsory element</i></p>	<p>G</p>	<p>G</p>	<p>COPFS has submitted its Security Policy as evidence. This covers physical security topics such as security passes, clear desk policy and working with official information outside of the office.</p> <p>Also submitted as evidence are the COPFS Government Security Classification Handling instructions which guide staff to take the appropriate actions when dealing with information of different security levels. COPFS is currently still using the old system of classification but aims to move to the new one as soon as practically possible.</p> <p>Chapter 9 of the Records Management Manual also describes the security procedures in place. This is supplemented by occasional distributions in The Bulletin, which is a method of communicating with all staff. A sample has been provided as Annex 5 of the Manual showing that security information is disseminated to all staff. The RMP also states that an e-learning package on information security has been developed. COPFS has submitted a screenshot of the e-learning package showing that staff have access to information security training which covers topics such as the Clear Desk Policy, security classifications and the use of social media.</p> <p>COPFS has PSN and CJX accreditation from the Cabinet Office and Home Office respectively. These accreditations require IT security and management policies to be submitted annually and its IT and network systems are subject to annual penetration and health check testing</p> <p>The RMP also states that COPFS' Information Services Division has created several policies relating to information security (Information Classification Policy, Information Risk Management Policy, Acceptable Use Policy, Information Security Policy and</p>

			<p>others which are not named but their existence is mentioned in the RMP) but these have not been submitted along with the RMP. COPFS is understandably concerned about sharing the above-mentioned policies. The Keeper confirms that this is entirely appropriate given the sensitivity of some of the records held and processed by COPFS. The Keeper has received a letter from the Director of IT which provides assurance that COPFS has in place a range of information security policies and procedures. The letter also states that as part of COPFS' abovementioned accreditation these policies need to be reviewed regularly. The Keeper thanks the Director of IT for providing assurance that COPFS has a range of policies in place to protect its information and systems.</p> <p>The Keeper can agree that COPFS has appropriate policies and procedures in place to ensure that the information it creates and manages is securely protected.</p>
9. Data Protection	G	G	<p>COPFS has provided evidence of its registration as a Data Controller with the Information Commissioner's Office (registration number Z6396154).</p> <p>Also submitted as evidence is the COPFS Data Protection Act Guidance Manual. This is a very detailed document which describes COPFS requirements and use of the Data Protection Act. This looks like a useful practical tool for staff as it defines the organisation's requirements under the Act, and also covers Fol, data sharing and staff procedures for dealing with Subject Access Requests. There is also guidance on the COPFS website detailing the procedures for submitting a Request. The Keeper commends this outward facing approach.</p> <p>The RMP states that all staff have a working knowledge of the contents of the Data Protection Act Guidance Manual. All staff are required to sign a Data Protection Undertaking (supplied as part of the response) which explains their obligations with regard to personal data. Additionally, these obligations appear at the log-in stage on staff PCs. This message is also reinforced at team briefings.</p>

			The Keeper agrees that COPFS is aware of its responsibilities under the Data Protection Act 1998.
10. Business Continuity and Vital Records	G	G	<p>The RMP states that COPFS has a number of Business Continuity and disaster recovery plans in place across the organisation. These are currently in the process of being reviewed and updated. A sample plan for the Livingston office has been provided as evidence which sets out the procedures to be followed in the event of an interruption to normal business. Once the review has taken place the Keeper requests that he is sent an updated sample of a Business Continuity Plan to keep the submission up-to-date.</p> <p>The RMP also states that all records and data held on COPFS electronic systems are subject to regular back-up procedures and recovery processes. As mentioned in Element 6, the Keeper will need to see further details about the back-up procedures schedule to ensure that copies of deleted electronic records are permanently disposed of.</p> <p>Vital records have been identified as part of the retention schedules (see Element 5). The Keeper commends this approach.</p> <p>The Keeper agrees that there are appropriate measures in place to ensure that COPFS can resume its business in the event of a disaster.</p>
11. Audit trail	G	G	<p>COPFS has provided details of its audit trail provision. Due to the sensitivity of the records created and maintained by COPFS, there are measures in place to control and monitor access to cases. The RMP also states that retention and disposal information is provided as part of the Case Management Systems used by COPFS. There are special measures in place to restrict access to particularly sensitive cases and COPFS have submitted an example of the audit trail guidance for staff dealing with these. Most of the work undertaken by COPFS is now done electronically and this is intended to be fully electronic by the end of 2015.</p>

			<p>The RMP mentions that the Information Services Division will be upgrading various aspects of the network. The Keeper requests that he is kept updated as this work progresses as it may impact the electronic recordkeeping aspect of the RMP.</p> <p>The RMP states that indexes of paper records are kept and updated when records are destroyed or transferred to NRS. Sections 7.40-7.47 of the Records Management Manual outline that an identified individual is responsible for maintaining the list of files, including when a file is removed by a member of staff for more than 24 hours. The individual will also be responsible for reviewing the files on a monthly basis. Spreadsheets have been provided as evidence showing that named individuals have been allocated responsibility for files and the relevant actions taken as per the retention schedules where appropriate.</p> <p>The Manual also includes guidance on version control and on naming conventions.</p> <p>COPFS is also in the relatively unique position of having to ‘retransmit’ records from NRS when business requires this. A log is kept of files that have been retransmitted, both by COPFS and NRS, and Desk Instructions have been submitted as evidence of the procedures to be followed as part of the retransmission process.</p> <p>The Keeper agrees that appropriate procedures are in place to ensure that COPFS can locate the correct version of records when required.</p>
<p>12. Competency Framework for records management staff</p>	<p>G</p>	<p>G</p>	<p>COPFS has provided its recordkeeping competency framework (chapter 2 of the Records Management Manual). The records manager (see Element 2) and other staff who have records management responsibilities have the relevant competencies inserted into their objectives.</p> <p>The RMP states that regular training in records management will be provided to the relevant staff. A training event for local records management staff was envisaged to</p>

			<p>take place in early 2016 and thereafter annually. Opportunities for identifying records management training will be identified by the new Compliance Group.</p> <p>The Keeper agrees that records management has been included as a competency in the objectives of staff with responsibility for records management and that staff have access to appropriate training.</p>
<p>13. Assessment and Review</p>	<p>A</p>	<p>A</p>	<p>The RMP states that the Head of Policy (see Element 1) is responsible for ‘overseeing’ the RMP. The first review of the RMP will take place in June 2016. It is envisaged that the methodology will be developed by the Compliance Group which will be chaired by the Head of Policy (see Element 1). Membership of the Group is currently still being determined and will be influenced by the on-going Shaping the Future project. The Group will meet quarterly and report to the Records Management Review Group. Submitted as additional evidence is a document which describes the remits and make-up of the Compliance Group and the Records Management Review Group.</p> <p>The RMP also states that it is the Records Manager’s (see Element 2) responsibility to ensure that the documentation supporting the RMP is kept up to date. The RMP will appear as a standing item on the agenda of the quarterly meetings of the Compliance Group.</p> <p>COPFS have produced an Improvement Plan. Some of the improvements that have been identified include the review of the Records Management Manual (annually) and the development of processes (in conjunction with NRS) for the transfer of hard copy non-case related records and also electronic records. Progress with some of the areas requiring improvement has been communicated to all staff and a sample of staff communication (The Bulletin) has been submitted as evidence (see Element 1).</p> <p>The RMP states that COPFS has access to internal audit facilities but at</p>

			<p>present records management doesn't form part of the auditor's work programme. This may change when a new Compliance Group is established. The Keeper commends the intention to involve internal auditors as they can be a useful method of assessing an authority's compliance with its RMP and records management policies.</p> <p>The Keeper can agree this element on an 'improvement plan' basis. This means that a gap in records management provision has been identified (methodology for assessing compliance with the RMP) and a commitment to closing this gap has been evidenced. The Keeper requests that he is kept updated as the work to close this gap continues.</p>
14. Shared Information	G	G	<p>COPFS routinely shares information with other criminal justice bodies and with solicitors as part of its business. It aims to share information in accordance with the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002. COPFS is also signed up to Criminal Justice Secure Mail (CJSM) which allows it to securely communicate and share information with others who have similarly signed up.</p> <p>Also submitted as evidence is a template Scottish Government Data Sharing Agreement which can be tailored to meet specific requirements. Details of formal agreements are available on the staff Intranet.</p> <p>COPFS has also supplied a protocol for the provision of evidence by prosecutors to the Principal Reporter which includes a section on confidentiality.</p> <p>COPFS abides by the Government Security Classification guidelines and has produced guidelines for staff to enable them to comply with their requirements.</p> <p>Sections 5.12-13 of the Records Management Manual describes the password protected Secure Disclosure Website which is used to allow defence solicitors</p>

			<p>access to documents.</p> <p>Also submitted is chapter 17 of the Book of Regulations which covers issues of confidentiality and disclosure across a variety of scenarios and relating to different types of information and its suitability for disclosure.</p> <p>The Keeper agrees that COPFS has procedures in place to allow it to securely share information with other organisations.</p>
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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 Lord Advocate and Procurators Fiscal. Policies and governance structures are in place to implement the actions required by the plan.

Elements that require development by the Lord Advocate and Procurators Fiscal are as follows:

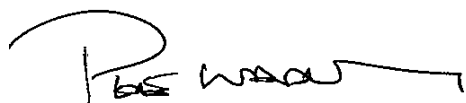
Element 6 – The authority has identified areas for development in the destruction of electronic records and is currently implementing a new solution for backing up its electronic information. The authority has evidenced a commitment to improve in these areas and the Keeper can accept this provided he is kept up-to-date with progress on the work to improve the level of provision in these areas.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper agrees/returns the RMP of the Lord Advocate and Procurators Fiscal.

The Keeper recommends that the Lord Advocate and Procurators Fiscal 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 Lord Advocate and Procurators Fiscal. In agreeing this RMP, the Keeper expects the Lord Advocate and Procurators Fiscal 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