

Public Records (Scotland) Act 2011

Scottish Law Commission Assessment Report

The Keeper of the Records of Scotland

17 June 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 Scottish Law Commission by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 18 February 2015.

The assessment considered whether the RMP of Scottish Law Commission was developed with proper regard to the 14 elements of the Keeper's statutory Model Records Management Plan (the Model Plan) under section 8(3) of the Act, and whether in this respect it complies with it and the specific requirements of the Act.

The outcome of the assessment and the Keeper's decision on whether the RMP of Scottish Law Commission complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Scottish Law Commission consists of 5 Commissioners appointed by Scottish Ministers. One of the Commissioners is the Chair who by convention is a Court of Session judge. The other Commissioners are drawn from those holding judicial office, advocates, solicitors or university law teachers. Commissioners are appointed for a maximum term of 5 years with the possibility of re-appointment.

The main work of the Scottish Law Commission is in reforming the law. They also work on consolidation of statutes and on statute law repeals as well as giving advice and information to Government. The advisory role often involves examining whole areas of law and making recommendations to improve them.

In choosing areas of work, the Scottish Law Commission is guided by judges, lawyers, government departments, the Scottish Government, interest groups and the general public who provide information of their experiences in applying a particular area of the law or in obtaining legal remedies.

The Scottish Law Commission has responsibilities in all areas of Scots law including those reserved to the legislative competence of the UK Parliament at Westminster.

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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 **[named public authority's]** RMP was developed with proper regard to the elements of the Model Plan and is compliant with the Act. The assessment also considered whether there was sufficient supporting evidence of such compliance.

Key:

G	The Keeper agrees this element of an authority's plan.		A	The Keeper agrees this element of an authority's plan as an 'improvement model'. This means that he is convinced of the authority's commitment to closing a gap in provision. He will request that he is updated as work on this element progresses.		R	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Keeper may choose to return the RMP on this basis.
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5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	G	G	<p>The Scottish Law Commission has identified its Chief Executive, Malcolm McMillan, as the officer with overall responsibility for records management in the authority.</p> <p>This is confirmed by a covering statement from Mr McMillan, which forms part of the plan; by the Commission's <i>Records Management Policy</i> (see element 3) and by the <i>Statement of Responsibility</i> submitted as evidence 01 which also names the individual identified at element 2.</p> <p>Mr McMillan has also written to the Keeper separately (copy provided as evidence 08) to confirm the Commission's adoption of the plan and to explain the areas where they are actively pursuing an improvement plan (see elements 5, 7 and 10). The Keeper thanks Mr McMillan for this letter and recognises that it represents evidence of a firm commitment from the authority to improve records management provision. He acknowledges the drive for improvement explained in the RMP as being entirely in the spirit of the Act.</p> <p>The Keeper agrees that the Scottish Law Commission has identified an appropriate individual for this role as required by the Act.</p>
2. Records Manager <i>Compulsory element</i>	G	G	<p>As a small public body the Scottish Law Commission does not have a dedicated full-time Records Manager. The role of Records Manager is undertaken by Susan Sutherland, one of the legal staff project managers. The Records Manager is assisted in the role by the Office Manager and by other administrative staff as appropriate.</p>

			<p>This is confirmed by the Commission’s <i>Records Management Policy</i> (see element 3) and by the <i>Statement of Responsibility</i> submitted as evidence 01. The <i>Statement</i> was approved by the Commission’s Chief Executive (see element 1) in January 2015.</p> <p>The Commission has supplied <i>their Competency Framework for Records Management Staff</i> as evidence 25 (see element 12). This shows that Mrs Sutherland has been allocated appropriate responsibility within the organisation to fulfil the role.</p> <p>Mrs Sutherland is responsible for monitoring compliance with the RMP (<i>Records Management Policy</i> section 10).</p> <p>Mrs Sutherland is responsible for training the Commission’s staff in records management.</p> <p>The Keeper agrees that the Scottish Law Commission has identified an appropriate individual for this role as required by the Act.</p>
<p>3. Policy Compulsory element</p>	<p>G</p>	<p>G</p>	<p>The Scottish Law Commission has provided their <i>Records Management Policy</i> as evidence 03.</p> <p>The <i>Policy</i> is version 1.0 approved by the Chief Executive (see element 1) in January 2015.</p> <p>The <i>Policy</i> is made available on the Commission’s Intranet. A screen shot showing this has been provided as evidence 04.</p> <p>The <i>Policy</i> explains the importance of records management to the efficient carrying out of the Commission’s functions.</p>

			<p>The <i>Policy</i> confirms: That the Commission’s Chief Executive (see element 1) has overall records management responsibility. That the Commission’s Records Manager (see element 2) has day to day responsibility for records management.</p> <p>The <i>Policy</i> commits the Commission to operate: A business classification scheme (see element 4) A retention schedule (see element 5) Destruction arrangements (see element 6) Archive arrangements (see element 7) Security arrangements (see element 8) A data protection policy (see element 9) A business continuity plan (see element 10) Training arrangements for appropriate staff (see element 12)</p> <p>The <i>Policy</i> specifically mentions the Public Records (Scotland) Act 2011.</p> <p>The Keeper agrees that the Scottish Law Commission has an approved and operational records management policy and that this policy is available to staff.</p>
<p>4. Business Classification</p>	<p>G</p>	<p>G</p>	<p>The Scottish Law Commission has a full <i>Business Classification Scheme</i> which has been provided to the Keeper as evidence 06.</p> <p>The <i>Scheme</i> is version 1.0 dated January 2015 and approved by the Chief Executive (see element 1). It is due for review in 2016.</p> <p>This shows the principle functions of the Commission, the activities undertaken and the record types created while carrying out these functions.</p>

			<p>The formal corporate record is paper and records created electronically are kept in hard copy for business use. The record store is in the Commission’s premises, which are administered by the main Scottish Government.</p> <p>However, it is clear from the text of element 6 that some public records may be held electronically on a shared drive. These records feature in the <i>Business Classification Scheme</i>.</p> <p>The covering statement provided by the Chief Executive (see element 1) explicitly states that none of the functions of the Commission are contracted out to a third party.</p> <p>The Keeper agrees that the Scottish Law Commission has a business classification scheme that covers the functions of the authority.</p>
5. Retention schedule	A	G	<p>The Scottish Law Commission has a <i>Records Retention Schedule</i> in place for their ‘corporate functions’ but not for the administrative activities supporting those functions. The corporate function retention schedule has been supplied to the Keeper as evidence 07.</p> <p>The <i>Schedule</i> is version 1.0 dated January 2015 and approved by the Chief Executive (see element 1). It is due for review in 2016.</p> <p>Record retention schedules are being created to cover the Commission’s administrative activities. This improvement has been confirmed by a letter sent to the Keeper by the Commission’s Chief Executive (see element 1).</p> <p>The Keeper agrees this element on ‘improvement model’ terms. This means that he is convinced that the Commission has identified a gap in provision (an administrative records retention schedule) and has committed to closing that gap.</p>

<p>6. Destruction Arrangements <i>Compulsory element</i></p>	<p>A</p>	<p>A</p>	<p>The Scottish Law Commission has a <i>Records Disposal Policy</i> which has been provided to the Keeper as evidence 09.</p> <p>This is version 1.0 approved by the Chief Executive (see element 1) on 26th January 2015. It is due for review in 2016.</p> <p>The <i>Policy</i> refers to records held in paper and electronic formats.</p> <p><u>Paper Records (all held internally – no third party storage used)</u> - paper records are destroyed under contract by Changeworks Recycling (paperwork supplied as evidence 11 - 14).</p> <p><u>Electronic records, hardware and back-ups</u> – the Commission has provided evidence that it follows the Scottish Government’s procedures for the destruction of hardware and for the backing up and recovery of electronic records. This is evidenced by a statement from the Scottish Government’s records manager (evidence 15). A certificate of hardware destruction has also been provided (evidence 16).</p> <p>Records stored on the Commission’s H drives will also be dealt with by procedures outlined in a letter from Sarah Davidson, Director-General Communities and also the Scottish Government’s Senior Information Risk Owner (evidence 9A). The procedures are designed to ensure that corporate records saved on the H drives are saved in the appropriate locations before a programme of irretrievable destruction commences.</p> <p>Records stored on the Commission’s G drive are exempt from the Scottish Government policy mentioned above, but are covered by the Commission’s Records Disposal Policy. In addition to this the Commission intends to develop and implement a formal policy for the management of electronic records on the G drive</p>
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			<p>and also for the records of completed projects. The policy will set out how deletion of electronic records is to be initialised and who is responsible for carrying out this work. This work is scheduled for completion by the end of February 2016 and this is confirmed in the covering letter from the Chief Executive. The Keeper welcomes this commitment and looks forward to seeing the policy once it has been implemented.</p> <p><u>E-Mails</u> - are deleted automatically using the Scottish Governments 'Enterprise Vault' system with which the Keeper is familiar.</p> <p>Records destruction forms part of the staff training on records management.</p> <p>The Keeper can agree this element on an 'improvement model' basis. This means that the Commission has identified a gap in provision (in this case, the systematic destruction of electronic records on its G drive) and has shown a firm commitment to closing the gap. This agreement is conditional upon receiving the abovementioned policy for the management of electronic records on the Commission's G drive once it has been developed.</p>
<p>7. Archiving and Transfer <i>Compulsory element</i></p>	<p>A</p>	<p>G</p>	<p>The Scottish Law Commission is currently in negotiation with the Keeper regarding the provision of an archive facility for those records appraised as suitable for permanent preservation. A records survey involving the Keeper's staff will take place.</p> <p>The above has been confirmed by the Keeper's Client Managers and by a letter sent to the Keeper by the Commission's Chief Executive (see element 1).</p> <p>These negotiations should result in a formal MOU being created between the Commission and the Keeper.</p> <p>The Keeper is happy to agree this element of the Scottish Law Commission's plan under 'improvement model' terms. This means that he is confident that</p>

			the authority intends to close a gap in provision but requires to be updated as the process continues.
8. Information Security <i>Compulsory element</i>	G	G	<p>The Scottish Law Commission has a <i>Statement of Information Security</i> which has been provided to the Keeper as evidence 18. This is version 1.0 approved by the Chief Executive (see element 1) on 26th January 2015. It is due for review in 2016.</p> <p>The <i>Policy</i> confirms that the Commission adheres to Scottish Government <i>IT Code of Conduct</i> (evidence 20). The RMP makes it clear that the Commission’s security is principally based on standards laid down by the Scottish Government as they use a Scottish Government building to store their paper records and the Scottish Government provides IT services.</p> <p>The Commission’s <i>Statement of Information Security</i> is saved on the ‘G’ Drive and is therefore accessible to staff. The Commission has provided the Keeper with a screenshot (evidence 18a) which evidences this. The Commission has committed to providing staff with training in Information Security as part of wider records management training over the coming months. They will also send annual emails to staff reminding them to follow the requirements of the <i>Statement of Information Security</i>.</p> <p>The Keeper agrees that the Scottish Law Commission has properly considered issues of information security and have measures in place to ensure the protection of its information.</p>
9. Data Protection	G	G	<p>The Scottish Law Commission has provided their <i>Data Protection Policy</i> as evidence 22. The <i>Policy</i> is version 1.0 approved by the Chief Executive (see element 1) in January 2015.</p> <p>The Commission is registered with the Information Commissioner: Z349167X The Keeper notes that this was due for renewal shortly after submission. The</p>

			<p>Commission has provided the updated registration information. The Keeper welcomes this.</p> <p>The Commission intends to develop information and guidance about making subject access requests and to make this available on their website. They intend to complete this work by the end of June 2015 and this is confirmed by a statement in the covering letter provided by the Chief Executive (see element 1). The Keeper commends this approach and looks forward to being informed of the completion of this work.</p> <p>The <i>Records Management Policy</i> (see element 3) specifically mentions the Data Protection Act 2011.</p> <p>The Keeper agrees that the Scottish Law Commission has properly considered its responsibilities under the Data Protection Act 1998.</p>
<p>10. Business Continuity and Vital Records</p>	<p>A</p>	<p>G</p>	<p>The Scottish Law Commission is covered by the business continuity arrangements of the Scottish Government whose premises they share and whose electronic systems they use.</p> <p>Under element 6 the Commission states “The Scottish Government’s procedures for backing up, recovery and destruction of electronic records applies to the Commission’s electronic records.” (RMP page 11). The Commission has supplied a statement from the Scottish Government explaining how electronic record recovery is carried out (evidence 15).</p> <p>However, the Commission intends to review and update its own risk register and produce a bespoke business continuity plan including vital records. This project is timed to be completed by the end of February 2016. The Keeper requests sight of this new plan (redacted if necessary) once it is operational.</p>

			<p>The project to create a Scottish Law Commission <i>Business Continuity Plan</i> has been confirmed by a letter sent to the Keeper by the Commission’s Chief Executive (see element 1).</p> <p>The Keeper can agree this element on ‘improvement model’ terms. This means that he is convinced that the Commission has identified a gap in provision (a business continuity plan specific to the authority) and has committed to closing that gap.</p>
11. Audit trail	G	A	<p>The Scottish Law Commission’s corporate record is paper. However, as well as the physical files a file tracking system is in operation using databases. This means that records can be tracked electronically no matter what media.</p> <p>As evidence, the Commission has supplied screen shots of sample pages of these databases. The Keeper thanks the commission for this inclusion.</p> <p>At present different practices are used within the Commission with regards to the version control of documents and the Commission has recognised that this is an area in which a consistent approach is required. They have committed to developing a formal policy on version control which will help to standardise practice in this area. They intend to develop this by February 2016 and this commitment is supported by a statement in the covering letter from the Chief Executive. The Keeper requests that he is sent a copy of the policy once operational.</p> <p>The Keeper agrees that the Scottish Law Commission has procedures in place that allow them to locate records and verify that they can identify the correct version of a record and that there is a commitment to standardising practice in this area.</p>
12. Competency	G	G	<p>The Commission has supplied <i>their Competency Framework for Records Management Staff</i> as evidence 25. This shows that the records manager has been</p>

<p>Framework for records management staff</p>			<p>allocated appropriate responsibility within the organisation to fulfil the role. This framework (version 1.0) was approved by the Chief Executive (see element 1) in January 2015.</p> <p>The records manager (see element 2) is responsible for internal records management training.</p> <p>The RMP notes that if either of the individuals identified at element 1 and 2 are replaced training in the respective records management roles will be required and commits the Commission to provide this. The Keeper commends the inclusion of this statement.</p> <p>Records destruction forms part of the staff training on records management.</p> <p>The Keeper agrees that the individual identified in element 2 has the authority required to implement the RMP in the Commission and that the authority clearly recognises that records management is a separate responsibility for this individual.</p>
<p>13. Assessment and Review</p>	<p>A</p>	<p>G</p>	<p>In his covering statement (RMP page 2) the Scottish Law Commission’s Chief Executive (see element 1) emphasises the importance of continuous review of records management policies and procedures.</p> <p>The Commission will develop a methodology for reviewing the RMP and share this with the Keeper when operational. It is possible, but not assured that the Commission might utilise their internal auditors to carry out this work. The Keeper would commend that approach, but the use of internal auditors must remain a business decision for the Commission.</p> <p><i>The Records Management Policy, the Data Protection Policy, the Business Classification Scheme, the Records Disposal Policy, the Information Security Policy and the Competency Framework for Records Management Staff have a review date</i></p>

			<p>of February 2016.</p> <p>The Keeper agrees this element on ‘improvement model’ terms. This means that he is convinced that the Commission has identified a gap in provision (a formal process for revision) and has committed to closing that gap.</p>
14. Shared Information	G	G	<p>The Scottish Law Commission has provided the Keeper with its <i>Statement on Information Sharing</i> document approved by the Chief Executive (see element 1) in January 2015.</p> <p>It is clear from this statement that the Commission does not undertake information sharing of the type implied by element 14 of the Keeper’s <i>Model Plan</i>: Element 14 is most likely to apply when, in order to carry out one of its functions, an authority must routinely share information with other parties (An example of this would be an NHS Board sharing information about vulnerable patient discharge with Local Government Social Work). Alternatively element 14 would apply when an authority is likely to be engaged in joint projects with another party (or parties) that will create records that might fall outside the usual business classification scheme .</p> <p>The Keeper acknowledges that the Scottish Law Commission commits to complying with data protection principles when passing information to other bodies, such as for HR services.</p>

6. Keeper’s Summary

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

Elements that require development by Scottish Law Commission are as follows:

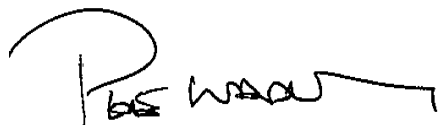
Element 6 - Scottish Law Commission has committed to developing a policy which will standardise the procedures for the destruction of electronic records at the end of their life-cycle. This policy will be developed by the end of February 2016. The Keeper's agreement of the Scottish Law Commission's RMP is conditional upon receiving this policy.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper agrees the RMP of Scottish Law Commission.

The Keeper recommends that Scottish Law Commission should publish its agreed RMP as an example of good practice within the authority and the sector.

This report follows the Keeper's assessment carried out by,



.....
Pete Wadley
Public Records Officer



.....
Robert Fotheringham
Public Records Officer

8. Endorsement of Report by the Keeper of the Records of Scotland

The report has been examined and is endorsed under the signature of the Keeper of the Records of Scotland as proof of compliance under section 1 of the Public Records (Scotland) Act 2011, and confirms formal agreement by the Keeper of the RMP as submitted by Scottish Law Commission. In agreeing this RMP, the Keeper expects Scottish Law Commission to fully implement the agreed RMP and meet its obligations under the Act.



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