

Public Records (Scotland) Act 2011

Commissioner for Ethical Standards in Public Life in Scotland Assessment Report

The Keeper of the Records of Scotland

31st March 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 **Commissioner for Ethical Standards in Public Life in Scotland** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 17th December 2015.

The assessment considered whether the RMP of the Commissioner for Ethical Standards in Public Life 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 the Commissioner for Ethical Standards in Public Life in Scotland complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Commissioner for Ethical Standards in Public Life in Scotland and his team work in two areas:

1. Public standards: Investigating complaints about the conduct of MSPs, local authority councillors and members of public bodies.
2. Public appointments: Regulating how people are appointed to the boards of public bodies in Scotland.

The Commissioner's functions in relation to public standards are set out in a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Ethical Standards Act), and b) the Scottish Parliamentary Standards Commissioner Act 2002 (the Parliamentary Standards Act). The Commissioner's functions in relation to public appointments are set out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the Public Appointments Act).

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (Scottish Statutory Instrument 2013/197) created the post of Commissioner for Ethical Standards in Public Life in Scotland.

The Commissioner for Ethical Standards in Public Life in Scotland is Mr Bill Thomson.

<http://www.ethicalstandards.org.uk/>

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 Commissioner for Ethical Standards in Public Life 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:

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 Commissioner for Ethical Standards in Public Life in Scotland (CESPLS) have identified Bill Thomson, Commissioner, as the individual with overall responsibility for records management in the authority.</p> <p>This is confirmed by a covering statement from Mr Thomson which appears at page 1 of the <i>Records Management Plan</i> (the <i>Plan</i>) and by the <i>Records Management Policy</i> (see element 3) (page 2). The covering statement also endorses the future actions identified at Appendix 1.</p> <p>The Keeper agrees that CESPLS have identified an appropriate individual to this role as required by the Public Records (Scotland) Act 2011 (the Act)</p>
2. Records Manager <i>Compulsory element</i>	G	G	<p>CESPLS have identified Karen Elder, Business Manager, as the individual responsible for the day-to-day implementation of the <i>Plan</i>.</p> <p>This is confirmed by a covering statement from Mr Thomson (see element 1) which appears at page 1 of the <i>Plan</i> and by the <i>Records Management Policy</i> (see element 3) (page 1).</p> <p>CESPLS have provided the Business Manager <i>Job Description</i> this shows that Ms. Elder is responsible for the “records management plan and maintaining the system in line with that plan and legislation”.</p> <p>The Business Manager is a member of the Management Team (see <u>Managers under General Comments below</u>).</p>

			<p>Ms. Elder reports to Mr Thomson (see element 1).</p> <p>Ms. Elder is responsible for the operation of the <i>Contingency Plan</i> (see element 10) in the event of a 'disaster'.</p> <p>The Keeper agrees that CESPLS have identified an appropriate individual to this role as required by the Public Records (Scotland) Act 2011 (the Act)</p>
3. Policy Compulsory element	G	G	<p>CESPLS have a <i>Records Management Policy and Procedures</i> document (the <i>Policy</i>) which has been supplied to the Keeper. This is the version adopted in April 2015 and reviewed in December 2015.</p> <p>The <i>Policy</i> is publically available at: http://www.ethicalstandards.org.uk/site/uploads/publications/a2b05f2c78d690717d42afd231286fab.pdf</p> <p>The <i>Policy</i> contains the procedures for saving records to the records management system (see elements 4 and 11) and a detailed description of e-mail management.</p> <p>The Keeper agrees that the <i>Plan</i> supports the objectives of the <i>Policy</i>.</p> <p>The Keeper agrees that CESPLS have an approved and operational records management policy as required by the Act.</p>
4. Business Classification	G	G	<p>CESPLS have a <i>File Plan</i> which has been submitted to the Keeper. This is the version approved by the Commissioner (see element 1) in March 2015. This document fulfils the 'Business Classification' requirement for this element.</p>

			<p>The <i>File Plan</i> shows records in three levels (function/activity/transaction) and also retention decisions against those records. For example: “Office Operation/Records Management/Annual Folders/Three Years”. The Keeper commends the principle of combining the file plan and retention schedule in a single document as a useful business tool.</p> <p>The Keeper agrees that the <i>File Plan</i> appears to cover all the likely activities of the authority.</p> <p>The <i>File Plan</i> is publically available at: http://www.ethicalstandards.org.uk/publications/publication/734/cespls-file-plan-and-retention-schedule</p> <p>CESPLS public records are held in electronic format.</p> <p>The <i>Policy</i> (see element 3) contains detailed instructions on the management of e-mails including destruction.</p> <p>The Keeper agrees that CESPLS have a <i>File Plan</i> that encompasses all of the functions of the authority.</p>
5. Retention schedule	G	G	<p>CESPLS' <i>File Plan</i> (see element 4) contains retention decisions against all the record types listed.</p> <p>CESPLS have committed to improve the retention section of the <i>File Plan</i> as follows: “The Commissioner will update the Retention Schedule to identify those documents to be transferred to the Keeper of the National Records of Scotland.” (see element 7). The Commissioner (see element 1) has endorsed this improvement in a covering statement which appears at page 1 of the <i>Plan</i>.</p>

			<p>The Keeper agrees that CESPLS have a retention schedule that covers the records described in the 'business classification' <i>File Plan</i> above.</p>
<p>6. Destruction Arrangements <i>Compulsory element</i></p>	<p>G</p>	<p>G</p>	<p><u>Paper</u>: CESPLS public records are held in electronic format.</p> <p><u>Electronic</u>: The destruction of electronic records is explained to staff in the <i>Records Management Policy and Procedures</i> document (see element 3). The <i>Policy</i> also contains detailed instructions on the management of e-mails including destruction. Review and destruction of records is monitored by business area managers (see <u>Managers under General Comments below</u>). Samples of electronic records destruction logs have been supplied to the Keeper as evidence that the procedures outlined in the <i>Policy</i> are followed.</p> <p><u>Hardware</u>: The secure destruction of data held on redundant hardware is explained to staff in their <i>Procedures for the Secure Destruction of Hardware</i> document which has been supplied to the Keeper. This is the version adopted in 2014. The Keeper has been provided with a sample <i>Receipt for Removal of Equipment for Secure Destruction</i> form.</p> <p>CESPLS have committed to improve the destruction of hardware element of their destruction arrangements as follows: "The Commissioner is to tender for IT support services during financial year 2015-16. The Invitation to Tender and contract will specifically reference the arrangements for the secure destruction of hardware." The Commissioner (see element 1) has endorsed this improvement in a covering statement which appears at page 1 of the <i>Plan</i>.</p> <p><u>Back-Ups</u>: A description of the back-up cycle that CESPLS operate for business continuity reasons is provided in the <i>CESPLS Contingency Plan</i> (see element 10). This shows that records are potentially recoverable up to six months after deletion.</p>

			The Keeper agrees that CESPLS have procedures for the secure and irretrievable destruction of records as required by the Act.
7. Archiving and Transfer <i>Compulsory element</i>	A	G	<p>CESPLS 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 CESPLS to NRS is being negotiated at the time of this assessment. This is confirmed by the NRS Client Management Team.</p> <p>CESPLS have made the following statement in the “List of Actions Required” appendix to the <i>Plan</i>: “The Commissioner will establish a Memorandum of Understanding with the Keeper agreeing that records of enduring historical, cultural and research value will be transferred from the Commissioner to the National Records of Scotland.” The Commissioner (see element 1) has endorsed this improvement in a covering statement which appears at page 1 of the <i>Plan</i>.</p> <p>The Keeper agrees this element of CESPLS’ <i>Records Management Plan</i> 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.</p>
8. Information Security <i>Compulsory element</i>	G	G	CESPLS do not have an overarching <i>Information Security Policy</i> however the elements that the Keeper might be expecting to see in such a policy feature in the <i>Data Protection Policy</i> (see element 9) under the section “Data Security”.

			<p>These clauses are supported by a suite of other policies and guidance such as the authority's <i>Policy on the Acceptable use of Information and Communication Technology (ICT) Systems</i> http://www.ethicalstandards.org.uk/publications/publication/737/acceptable-use-of-ict-policy and <i>Confidentiality Policy</i> http://www.ethicalstandards.org.uk/publications/publication/577/confidentiality-policy These, and others, have been supplied to the Keeper in evidence.</p> <p>CESPLS have committed to tighten up the security of records created remotely as follows: "The Commissioner will develop a Remote Working Policy." The Commissioner (see element 1) has endorsed this improvement in a covering statement which appears at page 1 of the <i>Plan</i>.</p> <p>The Keeper agrees that CESPLS have procedures in place to appropriately ensure the security of their records as required by the Act.</p>
9. Data Protection	G	G	<p>CESPLS have a <i>Data Protection Policy</i> which has been supplied to the Keeper. This is the version adopted by the Commissioner in February 2014.</p> <p>The <i>Data Protection Policy</i> is publically available at: http://www.publicappointments.org/privacy-policy/</p> <p>Subject access request guidance is made available through the published policy.</p> <p>CESPLS is registered with the Information Commissioner: ZA031977</p> <p>The <i>Data Protection Policy</i> features the current 8 principles of Data Protection.</p> <p>The Business Manager (see element 2) is responsible for maintaining a register of</p>

			<p>data subject access requests; assist in any data security breaches or data loss incidents; provide advice and assistance on data protection issues.</p> <p>The Keeper agrees that CESPLS have appropriately considered their responsibilities under the Data Protection Act 1998.</p>
<p>10. Business Continuity and Vital Records</p>	<p>G</p>	<p>G</p>	<p>CESPLS have a <i>Contingency Plan</i> which has been provided to the Keeper. This is the version adopted in 2013.</p> <p>The <i>Contingency Plan</i> is publically available at: http://www.ethicalstandards.org.uk/publications/publication/712/cespls-contingency-plan</p> <p>The <i>Contingency Plan</i> considers actions in the case of:</p> <ol style="list-style-type: none"> 1. the Commissioner’s server is damaged or destroyed or the data stored on the server becomes unusable for any reason or 2. the Commissioner’s office accommodation becomes unavailable for any reason or 3. the Commissioner’s and staff are unable to carry out the functions of the office. <p>The Keeper agrees that the <i>Contingency Plan</i> properly considers the recovery of records.</p> <p>The Business Manager (see element 2) is responsible for the operation of the Contingency Plan including liaising with the authority’s ICT support company to recover records.</p> <p>With clarification regarding vital records, the Keeper should be able to agree that CESPLS has procedures in place for the recovery of records in the event of a ‘disaster’.</p>

11. Audit trail	G	G	<p>CESPLS do not operate an EDRM system (see element 4). The <i>Policy</i> (see element 3) acknowledges that this means: “Without an ERMS creating, moving and deleting records can be done without any audit trail. This means records could be misfiled and deleted without trace” (<i>Policy</i> page 2).</p> <p>In response to this risk CESPLS staff must follow the naming conventions and version control instructions that are set out in the <i>Policy</i>. Records must be saved into the structure of the <i>File Plan</i> (see element 4). An explanation of the <i>File Plan</i> also appears in the <i>Policy</i>.</p> <p>The Keeper agrees that CESPLS have procedures in place to locate and identify records when necessary.</p>
12. Competency Framework for records management staff	G	G	<p>CESPLS have provided the Business Manager <i>Job Description</i> (see element 2) this shows that Ms. Elder is responsible for the “records management plan and maintaining the system in line with that plan and legislation”.</p> <p>The Business Manager is a member of Scottish Information Commissioner’s Network and of the Information and Records Management Society.</p> <p>Managers are responsible for identifying any information governance training required by their staff. The Business Manager is responsible for arranging training when appropriate.</p> <p>The Commissioner has committed to provide data protection training for staff (<i>Data Protection Policy</i> page 2).</p>

			<p>The Commissioner runs in-house records management seminars (<i>Plan</i> page 16). A <i>Records Management Presentation</i> has been supplied to the Keeper in evidence.</p> <p>The Keeper agrees that CESPLS have ensured that the individual identified at element 2 has the required authority and skills to implement the <i>Plan</i>. They also consider training opportunities for this staff member and for other members of staff when appropriate.</p>
<p>13. Assessment and Review</p>	<p>G</p>	<p>G</p>	<p>The Act requires a scheduled public authority to “keep its records management plan under review” (part 1 5.1 (a)).</p> <p>CESPLS have submitted their <i>Policy Register</i> to the Keeper. This shows that the <i>Plan</i> is subject to annual review and a review-by date of 31/12/2016 has been allocated.</p> <p>Overall responsibility for review lies with the Business Manager (see element 2). In this she is assisted by local business area managers reviewing the operation of the <i>Records Management Policy and Procedures</i> in their localities. They do this every six months and report their findings to the Management Team. Minutes of a Management Team meeting have been supplied to show that this is done. The Keeper commends this local input into the review of the <i>Plan</i>.</p> <p>Documents at the core of each element of the Plan have separate review dates allocated:</p> <p>The <i>File Plan</i> (see element 4) is reviewed every six months. The <i>Records Management Policy</i> (see element 3) has a review-by date of 2018. The <i>Data Protection Policy</i> (see element 9) has a review-by date of 2017. The <i>Procedures for the Secure Destruction of Hardware</i> document (see element 6) has a review-by date of 2017.</p>

			<p>The <i>Contingency Plan</i> (see element 10) has a review-by date of 2016. The <i>Policy on the Acceptable use of Information and Communication Technology (ICT) Systems</i> (see element 8) has a review-by date of 2016.</p> <p>The Keeper agrees that CESPLS have identified a review date for their <i>Plan</i> and have explained how this review will take place.</p>
14. Shared Information	N/A	N/A	<p>The Commissioner does not currently undertake data sharing exercises with other organisations. The Commissioner is familiar with the Information Commissioner’s Data Sharing Code of Practice and would apply this in relevant circumstances (<i>Plan</i> page 18)</p>

Commissioner for Ethical Standards in Public Life in Scotland
 (For simplicity this authority is described as ‘CESPLS’ in the assessment below)

General Notes on RMP, Including Concerns:

Version: This assessment is on the *Records Management Plan* (the *Plan*) of the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS). The version assessed is that dated 16th December 2015.

The *Plan* contains a covering statement (page 1) from Bill Thomson the Commissioner (**see element 1**) in which he acknowledges the value of records to his organisation and recognises the future developments detailed in Appendix 1(**see elements 5, 6, 7 and 8**).

CESPLS have indicated their intention to publish their *Plan* when agreed. The Keeper welcomes this.

CESPLS have submitted the minutes of the Management Team meeting, attended by the Commissioner (**see element 1**) and the Business Manager (**see element 2**) approving the submission of the *Plan* to the Keeper.

The *Plan* refers to the Public Records (Scotland) Act and follows the 14 element structure of the Keeper's Model Plan <http://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/resources/model-records-management-plan>

Managers

Managers have a responsibility, under the *Plan* and *Policy* (**see element 3**), to ensure that their staff correctly name and store records in the *File Plan* (**see element 11**). They are also responsible for ensuring that the retention schedule and destruction procedures, as explained in the *Policy*, operate in their area and to identify any information governance training required by their staff. The Business Manager (**see element 2**) is a member of the Management Team. It is clear that local managers have a fundamental part to play in the records management procedure in the authority and the Keeper thanks CESPLS for detailing their role.

Third Parties

The scope of the Act includes third parties carrying out the functions of public authorities such as CESPLS. Under schedule 1, section 9(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003, the Commissioner may appoint PAAs to assist him in the exercise of his **functions**. CESPLS currently contract with 13 such PAAs. The PAAs have a service level agreement which includes a Records Management Statement: <http://www.ethicalstandards.org.uk/publications/publication/575/paa-records-management-statement>

6. Keeper's Summary

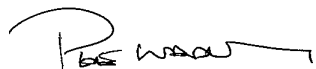
Elements **1 - 14** that the Keeper considers should be in a public authority records management plan have been properly considered by the Commissioner for Ethical Standards in Public Life in Scotland. Policies and governance structures are in place to implement the actions required by the plan.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper **agrees** the RMP of **Commissioner for Ethical Standards in Public Life in Scotland**.

- The Keeper recommends that the Commissioner for Ethical Standards in Public Life in Scotland 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 the Commissioner for Ethical Standards in Public Life in Scotland. In agreeing this RMP, the Keeper expects the Commissioner for Ethical Standards in Public Life in Scotland to fully implement the agreed RMP and meet its obligations under the Act.



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