

Public Records (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Public Records (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the management of records by certain authorities; to amend the Public Records (Scotland) Act 1937 (c.43) in relation to the transmission of court records to the Keeper of the Records of Scotland; and for connected purposes.

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PART 1

RECORDS MANAGEMENT PLANS

1 Records management plans

(1) Every authority to which this Part applies must—

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- (a) prepare a plan (a “records management plan”) setting out proper arrangements for the management of the authority’s public records,
- (b) submit the plan to the Keeper for agreement, and
- (c) ensure that its public records are managed in accordance with the plan as agreed with the Keeper.

(2) An authority’s records management plan must—

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- (a) identify—
 - (i) the individual who is responsible for management of the authority’s public records, and
 - (ii) (if different) the individual who is responsible for ensuring compliance with the plan, and
- (b) include, in particular, provision about—
 - (i) the procedures to be followed in managing the authority’s public records,
 - (ii) maintaining the security of information contained in the authority’s public records, and
 - (iii) the archiving and destruction or other disposal of the authority’s public records.

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(2A) An authority’s records management plan may make different provision for the management of different kinds of public records (taking account, for example, of the different levels of risk associated with the management of different kinds of records).

- (3) The Keeper must issue guidance to authorities about the form and content of records management plans.
- (3A) The Keeper may issue different guidance under subsection (3) in relation to different authorities.
- 5 (3B) Before issuing guidance under subsection (3), the Keeper must—
- (a) consult the following on a draft of the guidance, namely—
- (i) such authorities as the Keeper considers will be affected by the guidance, and
- (ii) such other persons (if any) as the Keeper considers appropriate, and
- 10 (b) have regard to any views expressed in response to the consultation.
- (4) Authorities must have regard to the guidance issued by the Keeper in preparing their records management plans for agreement with the Keeper.
- (5) An authority—
- (a) must, if the Keeper so requires, or
- 15 (b) may, with the Keeper's approval,
- have separate records management plans for public records relating to separate functions of the authority.
- (6) A group of two or more authorities—
- (a) must, if the Keeper so requires, or
- 20 (b) may, with the Keeper's approval,
- have a common records management plan for both or, as the case may be, all of the authorities in the group.

2 Authorities to which Part 1 applies

- 25 (1) The authorities to which this Part applies are the bodies, office-holders and other persons listed, or of a description listed, in the schedule.
- (2) The Scottish Ministers may by order made by statutory instrument amend the schedule by—
- (a) adding—
- (i) a body, office-holder or other person, or
- 30 (ii) a description of bodies, office-holders or other persons,
- (b) removing an entry listed in it, or
- (c) modifying an entry listed in it.
- (3) An order under subsection (2)(a) may add a body, office-holder or other person, or a description of bodies, office-holders or other persons, only if the body, office-holder or person, or (as the case may be) each of the bodies, office-holders or persons within the
- 35 description, is—
- (a) a part of the Scottish Administration,
- (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 (c.46)), or

(c) a publicly owned company.

(4) In subsection (3)(c), “publicly owned company” means a company that is wholly owned by—

(a) the Scottish Ministers, or

(b) another authority.

(5) For that purpose, a company is wholly owned—

(a) by the Scottish Ministers if it has no members other than—

(i) the Scottish Ministers or other companies that are wholly owned by the Scottish Ministers, or

(ii) persons acting on behalf of the Scottish Ministers or of such other companies,

(b) by another authority if it has no members other than—

(i) the authority or other companies that are wholly owned by the authority, or

(ii) persons acting on behalf of the authority or of such other companies.

(6) In this section, “company” includes any body corporate.

(7) An order under subsection (2) may—

(a) include consequential, supplementary, incidental, transitional, transitory or saving provision,

(b) modify any enactment.

(8) An order under subsection (2) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

3 Meaning of “public records”

(1) In this Act, “public records”, in relation to an authority, means—

(a) records created by or on behalf of the authority in carrying out its functions,

(b) records created by or on behalf of a contractor in carrying out the authority’s functions,

(c) records created by any other person that have come into the possession of the authority or a contractor in carrying out the authority’s functions.

(2) In subsection (1) “contractor”, in relation to an authority, means a person to whom functions of the authority are delegated (whether under a contract or otherwise) by the authority.

4 Agreement of plans

(1) An authority must submit its proposed records management plan to the Keeper for approval by such date as the Keeper may determine.

(2) The proposed plan is to be submitted in such form and manner as the Keeper may determine.

(3) On receiving the proposed plan, the Keeper must—

- (a) agree it, or
 - (b) if the Keeper considers that it does not set out proper arrangements for the management of the authority's public records, return it.
- (4) What constitutes "proper arrangements" in any case is for the Keeper to determine.
- 5 (5) In deciding whether to agree or return the proposed plan, the Keeper must have regard to—
- (a) the guidance issued by the Keeper under section 1(3),
 - (b) the model records management plan published under section 8,
 - (c) the nature of the authority and its public records, and
 - 10 (d) any representations made by the authority.
- (5A) Where the Keeper is considering returning the proposed plan, before deciding whether to do so, the Keeper must—
- (a) notify the authority—
 - 15 (i) that the Keeper is considering returning the proposed plan, and
 - (ii) of the reasons for doing so,
 - (b) give the authority an opportunity to make representations, and
 - (c) have regard to any representations made by the authority.
- (6) If the Keeper returns the proposed plan—
- (a) the Keeper—
 - 20 (i) must state reasons for the return, and
 - (ii) may propose modifications to the proposed plan, and
 - (b) the authority must submit a revised plan to the Keeper for agreement by such date as the Keeper may determine.
- (7) Subsections (2) to (6) apply to a revised plan submitted under subsection (6)(b) as they apply to a proposed records management plan submitted under subsection (1).
- 25 (8) The Keeper may make different determinations under this section for different authorities or different descriptions of authorities.

5 **Review of plans**

- (1) An authority must—
- 30 (a) keep its records management plan under review, and
 - (b) if the Keeper so requires (whether at the time of agreement of the plan or otherwise), carry out a review of the plan by such date (the "review date") as the Keeper may determine in accordance with subsections (1A) to (1C).

(1A) The Keeper must not determine a review date under subsection (1)(b) which is earlier than five years after the date on which the authority's records management plan was last agreed.

(1B) In subsection (1A), reference to the plan being approved includes—

- (a) agreement of the plan under section 4,
- (b) if the authority has been required to carry out a review of the plan under subsection (1)(b) of this section or section 6(3)(b), agreement of the revised or, as the case may be, resubmitted plan, and
- (c) if the authority has submitted a revised plan under subsection (3) of this section, agreement of the revised plan.

(1C) If—

- (a) the Keeper has determined a review date under subsection (1)(b) in relation to a plan, and
- (b) before that date, the Keeper agrees—
 - (i) a revised plan submitted by the authority under subsection (3), or
 - (ii) if the authority has been required to carry out a review of the plan under section 6(3)(b), a revised or, as the case may be, resubmitted plan,

the Keeper must determine a new review date and inform the authority of the new review date.

(2) After carrying out a review of its plan in accordance with subsection (1)(b), the authority must, by the review date, either—

- (a) revise its plan and submit the revised plan to the Keeper for agreement, or
- (b) if the authority decides not to revise its plan, resubmit its current plan to the Keeper for agreement.

(3) An authority may at any time revise its records management plan and submit the revised plan to the Keeper for agreement.

(4) Subsections (2) to (8) of section 4 apply, as they apply to a proposed records management plan submitted for agreement under that section, to—

- (a) a revised records management plan submitted to the Keeper for agreement under subsection (2)(a) or (3) of this section, and
- (b) a records management plan resubmitted to the Keeper for agreement under subsection (2)(b) of this section.

(5) The Keeper may make different determinations under this section for different authorities or different descriptions of authorities.

6 Records management reviews

(1) The Keeper may carry out a review (a “records management review”) of whether an authority is complying with its records management plan.

(2) An authority must provide the Keeper with such assistance as the Keeper may require for the purpose of carrying out a records management review in relation to the authority.

(3) Following a records management review, the Keeper may—

(a) make recommendations to the authority about how it complies with its records management plan, and

(b) require the authority to carry out a review of its plan by such date as the Keeper may determine.

5 (4) Section 5(2) applies to a review of a plan carried out under subsection (3)(b) of this section as it applies to a review of a plan carried out under section 5, but as if the reference to the review date were a reference to the date determined under subsection (3)(b) of this section.

(5) Subsection (3) does not affect the Keeper's powers under section 7.

10 (6) The Keeper may carry out a records management review in relation to—

(a) a particular authority, or

(b) a group of authorities.

7 **Action notices**

(1) This section applies where the Keeper considers that an authority—

15 (a) has failed or is failing to comply with its records management plan, or

(b) otherwise has failed or is failing to comply with any duty imposed on the authority by or under this Part.

(2) The Keeper may issue to the authority a notice (an “action notice”)—

(a) specifying the details of the alleged failure, and

20 (b) requiring the authority to take specified action by a specified date.

(2A) Where the Keeper is considering issuing an action notice to an authority, before deciding whether to do so, the Keeper must—

(a) notify the authority—

(i) that the Keeper is considering issuing an action notice, and

25 (ii) of the reasons for doing so,

(b) give the authority an opportunity to make representations, and

(c) have regard to any representations made by the authority.

(3) In subsection (2)(b), “specified” means specified in the action notice.

30 (4) If the authority fails to comply with any of the requirements of the action notice, the Keeper may take such steps as the Keeper considers appropriate to publicise the failure.

8 **Model records management plan**

(1) The Keeper must prepare and publish a model records management plan.

(1A) Before publishing the model records management plan under subsection (1), the Keeper must—

35 (a) consult the following on a draft of the plan, namely—

(i) each authority, and

(ii) such other persons (if any) as the Keeper considers appropriate, and

(b) have regard to any views expressed in response to the consultation.

(2) Authorities must, in preparing and revising their records management plans for the Keeper's agreement, have regard to the model records management plan published under this section.

5 (3) The Keeper must keep the model records management plan under review and may revise it and publish the revised model plan.

(3A) Before publishing a revised model plan under subsection (3), the Keeper must—

(a) consult the following on a draft of the plan, namely—

10 (i) such authorities as the Keeper considers will be affected by the revisions to the plan, and

(ii) such other persons (if any) as the Keeper considers appropriate, and

(b) have regard to any views expressed in response to the consultation.

(4) References in this Part to the model records management plan include references to a revised model records management plan.

15 **9 Guidance**

(1) The Keeper may issue guidance to authorities about their duties under this Part.

(1A) The Keeper may issue different guidance under subsection (1) in relation to different authorities.

(1B) Before issuing guidance under subsection (1), the Keeper must—

20 (a) consult the following on a draft of the guidance, namely—

(i) such authorities as the Keeper considers will be affected by the guidance, and

(ii) such other persons (if any) as the Keeper considers appropriate, and

(b) have regard to any views expressed in response to the consultation.

25 (2) Authorities must have regard to any guidance issued by the Keeper under subsection (1).

9A Application of Part 1 in relation to sheriff court records and JP court records

(1) This section applies in relation to the public records of a sheriff court or a justice of the peace court.

30 (2) The Sheriff Principal of the sheriffdom in which the court is located is responsible for carrying out the authority's functions under this Part in relation to such public records.

(3) Accordingly, in relation to such public records, a reference in this Part to an authority (other than in section 3) is to be read as a reference to the Sheriff Principal.

10 No right of action for failures to comply

35 This Part does not confer any right of action in civil proceedings in respect of any failure by an authority—

(a) to comply with its records management plan, or

(b) otherwise to comply with any duty imposed on the authority by or under this Part.

11 Annual report

- (1) The Keeper must, after the end of each financial year—
- (a) prepare a report on the carrying out of the Keeper’s functions under this Part during the year, and
 - (b) submit the report to the Scottish Ministers.
- (2) The report must—
- (a) be prepared in such form as the Scottish Ministers may direct,
 - (b) contain the information specified in subsection (3) and such other information as the Scottish Ministers may direct, and
 - (c) be submitted by such date as the Scottish Ministers may direct.
- (3) The information referred to in subsection (2)(b) is—
- (a) information about records management plans and revised records management plans agreed with the Keeper during the year,
 - (b) information about any records management reviews carried out by the Keeper during the year,
 - (c) details of any action notices issued by the Keeper during the year,
 - (d) the names of any authorities that have failed to comply with any of the requirements of an action notice together with details of the alleged failures.
- (4) The Keeper may include in the report such other information as the Keeper considers appropriate.
- (5) The Scottish Ministers must lay the report before the Scottish Parliament.
- (6) The Keeper must, as soon as practicable after the report has been laid before the Parliament, publish the report in such manner as the Keeper considers appropriate.

12 Interpretation of Part 1

- (1) In this Part—
- “authority” means an authority to which this Part applies (see section 2),
 - “records management review” means a review carried out under section 6,
 - “the Keeper” means the Keeper of the Records of Scotland,
 - “management”, in relation to public records, includes keeping, storage, securing, archiving, preservation, destruction or other disposal (and “manage” and other related expressions are to be construed accordingly),
 - “public records”, in relation to an authority, has the meaning given by section 3(1),
 - “record” means anything in which information is recorded in any form,
 - “records management plan”, in relation to an authority, means the plan referred to in section 1(1),
 - “action notice” means a notice issued under section 7.

- (2) Except where the context requires otherwise, references in this Part to an authority's records management plan include references to the plan as revised from time to time.

13 Repeals

The following are repealed—

- 5 (za) sections 2(3) and 2A(4) of the Public Records (Scotland) Act 1937 (c.43) (care and preservation of sheriff court and JP court records),
- (a) section 53(1) to (3) of the Local Government etc. (Scotland) Act 1994 (c.39) (preservation and management of records of local authorities),
- 10 (b) section 30(1)(b) to (d) of the Environment Act 1995 (c.25) (preservation and management of records of SEPA),
- (c) section 27(2) to (4) of the National Parks (Scotland) Act 2000 (asp 10) (preservation and management of records of National Park authorities), and
- (d) section 58(2) to (4) of the Water Industry (Scotland) Act 2002 (asp 3) (preservation and management of records of Scottish Water).

PART 2

TRANSMISSION OF COURT RECORDS

14 Transmission of court records

- (1) The Public Records (Scotland) Act 1937 (c.43) is amended as follows.
- (2) In section 1 (High Court and Court of Session records), after subsection (2) add—
- 20 “(3) Before making an Act of Adjournal or an Act of Sederunt under subsection (1), the High Court of Justiciary or, as the case may be, the Court of Session must consult the Keeper.”.
- (3) In section 2 (sheriff court records)—
- (a) for subsection (1) substitute—
- 25 “(1) A sheriff principal may, with the agreement of the Keeper, transmit any of the sheriff court records of the sheriff principal's sheriffdom to the Keeper.”,
- (ba) in subsection (4), for “subsections (1) and (3)” substitute “subsection (1)”.
- (4) In section 2A (JP court records)—
- (a) for subsection (1) substitute—
- 30 “(1) A sheriff principal may, with the agreement of the Keeper, transmit any of the JP court records of the sheriff principal's sheriffdom to the Keeper.”,
- (b) subsection (2) is repealed.

PART 3

GENERAL

15 Commencement

- 5 (1) Parts 1 and 2 come into force on such day as the Scottish Ministers may appoint by order made by statutory instrument.
- (2) This Part comes into force at the beginning of the day following the day on which the Bill for this Act receives Royal Assent.
- (3) An order under subsection (1) may include transitional, transitory or saving provision.

16 Short title

10 This Act may be cited as the Public Records (Scotland) Act 2010.

SCHEDULE
(introduced by section 2(1))

AUTHORITIES TO WHICH PART 1 APPLIES

Parliament

- 5 Scottish Parliament
 Scottish Parliamentary Corporate Body

Scottish Administration

- Scottish Ministers
 Lord Advocate
10 Accountant in Bankruptcy
 Chief Dental Officer of the Scottish Administration
 Chief Medical Officer of the Scottish Administration
 Drinking Water Quality Regulator for Scotland
15 Her Majesty's Chief Inspector of Constabulary and Her Majesty's Inspectors of
 Constabulary (appointed under section 33 of the Police (Scotland) Act 1967 (c.77))
 Her Majesty's Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspectors
 of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities
 (appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5))
 Her Majesty's Chief Inspector of Prisons for Scotland
20 Her Majesty's Inspector of Anatomy for Scotland
 Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed
 by Her Majesty on the recommendation of the Scottish Ministers under the Education
 (Scotland) Act 1980 (c.44))
 Keeper of the Records of Scotland
25 Keeper of the Registers of Scotland
 Office of the Scottish Charity Regulator
 Procurators fiscal
 Queen's and Lord Treasurer's Remembrancer
 Queen's Printer for Scotland
30 Registrar General of Births, Deaths and Marriages for Scotland
 Scottish Court Service
 Scottish Housing Regulator

Others

- Accounts Commission for Scotland
35 Additional Support Needs Tribunals for Scotland
 Architecture and Design Scotland
 Audit Scotland

Auditor General for Scotland

Board of Trustees for the National Galleries of Scotland

Board of Trustees of the National Museums of Scotland

Board of Trustees of the Royal Botanic Garden, Edinburgh

5 Bòrd na Gàidhlig

Caledonian Maritime Assets Ltd (registered number SC001854)

Chief constables of police forces in Scotland

Children's Hearings Scotland

Children's Panel

10 Commission for Ethical Standards in Public Life in Scotland

Commissioner for Children and Young People in Scotland

Common Services Agency for the Scottish Health Service

Court of the Lord Lyon

Court of Session

15 Creative Scotland

Crofting Commission

David MacBrayne Ltd (registered number SC015304)

General Teaching Council for Scotland

20 Health Boards (constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29))

Healthcare Improvement Scotland

Her Majesty's Chief Inspector of Prosecution in Scotland

High Court of Justiciary

Highlands and Islands Airports Ltd (registered number SC097647)

25 Highlands and Islands Enterprise

Joint boards (established under section 62A(1) or 62B(1) of the Local Government (Scotland) Act 1973 (c.65))

Joint police boards (constituted by virtue of section 19(2)(b) of the Police (Scotland) Act 1967 (c.77))

30 Judicial Appointments Board for Scotland

Justice of the peace courts

Justices of the peace advisory committees

Lands Tribunal for Scotland

Learning and Teaching Scotland

35 Licensing Boards (continued in existence or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16))

Local authorities

- Local Government Boundary Commission for Scotland
- Mental Health Tribunal for Scotland
- Mental Welfare Commission for Scotland
- Mobility and Access Committee for Scotland
- 5 National Convener of Children’s Hearings Scotland
- National Park authorities (established by virtue of designation orders under section 6 of the National Parks (Scotland) Act 2000 (asp 10))
- Parole Board for Scotland
- Police Advisory Board for Scotland
- 10 Police Complaints Commissioner for Scotland
- Principal Reporter
- Private rented housing panel
- Public Appointments Commissioner for Scotland (appointed under section 1(4) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11))
- 15 Public Standards Commissioner for Scotland (appointed under section 1(3) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11))
- Public Transport Users’ Committee for Scotland
- Quality Meat Scotland
- Risk Management Authority
- 20 Royal Commission on the Ancient and Historical Monuments of Scotland
- Safeguarders Panels (that is to say, panels established under section 30(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1))
- Scottish Advisory Committee on Distinction Awards
- Scottish Agricultural Wages Board
- 25 Scottish Charity Appeals Panel
- Scottish Children’s Reporter Administration
- Scottish Commission for Human Rights
- Scottish Commission for Public Audit
- Scottish Crime and Drug Enforcement Agency
- 30 Scottish Criminal Cases Review Commission
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Further and Higher Education Funding Council
- Scottish Futures Trust Ltd (registered number SC348382)
- 35 Scottish Health Council
- Scottish Information Commissioner
- Scottish Land Court

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| | Scottish Law Commission |
| | Scottish Legal Aid Board |
| | Scottish Legal Complaints Commission |
| | Scottish Local Authorities Remuneration Committee |
| 5 | Scottish Natural Heritage |
| | Scottish Police Services Authority |
| | Scottish Public Services Ombudsman |
| | Scottish Qualifications Authority |
| | Scottish Road Works Commissioner |
| 10 | Scottish Social Services Council |
| | Scottish Sports Council |
| | Scottish Water |
| | Sheriff courts |
| | Skills Development Scotland Co. Ltd (registered number SC202659) |
| 15 | Social Care and Social Work Improvement Scotland |
| | Special Health Boards (constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978 (c.29)) |
| | Standards Commission for Scotland |
| | Transport Partnerships |
| 20 | Trustees of the National Library of Scotland |
| | Visiting committees (appointed under section 19(3) of the Prisons (Scotland) Act 1989 (c.45) or constituted by rules made under section 39 (as read with section 8(1)) of that Act) |
| | VisitScotland |
| 25 | Water Industry Commission for Scotland |

Public Records (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the management of records by certain authorities; to amend the Public Records (Scotland) Act 1937 (c.43) in relation to the transmission of court records to the Keeper of the Records of Scotland; and for connected purposes.

Introduced by: Fiona Hyslop
On: 7 October 2010
Supported by: Bruce Crawford
Bill type: Executive Bill

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