The Scottish Court Service (SCS) is grateful for the opportunity to comment on the principles of the Public Records (Scotland) Bill, in particular as Part 2 relates to the handling of court records. This submission reflects the responsibilities of the SCS in managing and maintaining its own administrative records and, as part of its functions, for holding and preserving court records on behalf of the Court of Session, High Court of Justiciary, Sheriff Courts and Justice of the Peace Courts, which it administers.

In general, the SCS appreciates there may be need to provide structure and guidance for the public bodies listed in the Schedule to the Bill in relation to the records handled and maintained by them. The service provided by an authority will undoubtedly be enhanced by its ability to access and provide information from records which have been accurately and securely maintained. This principle is already enshrined in freedom of information and data protection guidance and practice.

The requirement upon the Keeper to provide draft plans and guidance will undoubtedly be of considerable assistance to all public bodies, particularly during the early stages of commencement.

We also note the proposal that, with the approval of the Keeper, there is scope for a common records management plan to be considered, notwithstanding that the SCS and the various courts are defined individually within the Schedule to the Bill.

The provisions usefully clarify what falls within “management” of records. By necessity, this is to include a degree of archiving. In the broadest sense there is likely to be an element of “archiving” at a local level associated with the long term storage of records in court buildings, and this in itself can present a resource implication for court staff and managers.

The SCS, on behalf of the courts, also has the responsibility for the transmission of documents to the Keeper. In the case of the Sheriff Courts, relevant court records are transmitted following application by the Keeper. The Keeper specifies the type of court records that should be transmitted by the Sheriff Courts. Once transmitted, final decisions on which individual records merit retention as being of historical significance or interest are taken by the Keeper’s staff. We would not consider it to be appropriate, within the principles of the Bill, to seek the transfer of this final decision taking responsibility for all court records to local Sheriff Court staff, ahead of transmission to the Keeper.

Wider issues about the management and preservation of court records have been considered by a working group established by the Lord President, on which both the Keeper and SCS are represented.
8. The Financial Memorandum envisages “It will be for bodies themselves to make the necessary adjustments to implement records management action and prioritise their administrative functions to ensure that resources are available”. As the Committee will recognise, within the current financial environment for public bodies, including the SCS, there will be challenges associated with taking on any additional responsibilities, and in funding a specialised post or posts required for the purposes of this Bill, at a time when front line services are being constricted. We would ask that this is taken into account in the arrangements and timescales for commencement.

9. The Committee has also sought responses to the following questions—

How helpful do you find the policy memorandum and financial memorandum accompanying the Bill?

10. The policy memorandum is useful insofar as it sets the background and highlights the drivers behind the proposed legislative change. It is also useful to see how this sits alongside other provisions already in force and what other alternative approaches have been considered along the way. Some support is also included in the form of a useful summary of the consultation findings.

Do you have any comments on the consultation the Scottish Government carried out prior to the introduction of the Bill?

11. We have no comments on the consultation process.

Neil Rennick
Executive Director Policy and Strategy
30 November 2010