Public Records (Scotland) Act 2011

Office of the Scottish Charity Regulator Assessment Report

The Keeper of the Records of Scotland

02 September 2013

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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 Historic 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 **Office of the Scottish Charity Regulator** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 1st July 2013*.*

The assessment considered whether the RMP of the **Office of the Scottish Charity Regulator** 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 **Office of the Scottish Charity Regulator** complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Office of the Scottish Charity Regulator (OSCR) is the independent regulator and registrar for over 23,000 Scottish charities, including community groups, religious charities, schools, universities, grant-giving charities and major care providers.

It was set up to: Increase public confidence in charities through effective regulation; increase transparency and public accountability of charities; increase charity trustees' compliance with the 2005 Act; establish and maintain OSCR as a trusted, effective and innovative regulator; minimise the burden of regulation on charities wherever possible, with particular emphasis on reducing multiple reporting and to operate effectively and efficiently, demonstrating a commitment to the principles and practice of Best Value.

OSCR became a Non-Ministerial Department and part of the Scottish Administration following commencement of the Charities and Trustee Investment (Scotland) Act 2005.

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 **Office of the Scottish Charity Regulator'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.

5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer *Compulsory element*	✓	✓	David Robb, OSCR's Chief Executive and Accountable Officer takes responsibility for the RMP and formally endorses it in a covering letter to the Keeper.
2. Records Manager *Compulsory element*	✓	✓	David Perkins, OSCR's Information Manager is the responsible records manager. His responsibilities are set out as section 2.2.3 of the RMP. This also provides evidence for element 12.
3. Policy *Compulsory element*	✓	✓	Section 1 of the RMP is the records management policy which sets out the importance the authority places on appropriate records management and explains the risks of poor provision. In fact, the entire RMP could be taken as an extended records management policy. The importance of good record keeping is stressed in the introduction to the business classification scheme document which was also submitted in evidence. The records management policy mentions FOISA and PRSA. The policy explains the regulatory environment that OSCR operates under and is mapped against ISO15489
4. Business Classification	✓	✓	OSCR has submitted a full 61 page business classification scheme covering the entire authority. This scheme includes the retention period allocated to each type of record and is reviewed annually. The business classification is 'functional at a broad level with subject based sub-classes'. The benefits of adopting a functional system are explained in the business classification document. There is a clear explanation of the Function/Activity/Transaction levels of the classification. OSCR uses an EDRMS (currently Objective) for most of its corporate records although some paper files are kept. The resulting hybrid system is adequately dealt with in the business classification scheme supplied. The system is managed so that OSCR staff are only able to add

			documents and records to files at the lowest level. This is a good way of maintaining the integrity of the structure. It is not thought that any of OSCR's **functions** are carried out by a third party.
5. Retention schedule	✓	✓	As well as being an integral part of the business classification OSCR has supplied a separate retention schedule as Annex D to the RMP. For the most part OSCR has adopted the National Archives' retention schedule guidance.
6. Destruction Arrangements *Compulsory element*	✓	✓	There is an explanation of how both electronic and paper records are routinely destroyed. The RMP picks up on the importance of destroying backups and other copies. However there is no detailed explanation of how this is done. Protect and Restricted paper records are destroyed by an outside contractor ShredAll with whom OSCR has a contract. As evidence of this the Keeper has been supplied with a ShredAll destruction certificate.
7. Archiving and Transfer *Compulsory element*	✓	✓	OSCR has a MoU with the NRS for permanent preservation of records. This is confirmed by NRS client managers. Transfer to the NRS Digital Archive has not yet started.
8. Information Security *Compulsory element*	✓	✓	Much of the RMP speaks of the importance of securely processing and storing records (particularly section 3). OSCR has supplied their Information Risk Policy as evidence.
9. Data Protection	✓	✓	OSCR supplied its staff data protection policy in evidence. There is also a published privacy policy http://www.oscr.org.uk/homepage-links/data-protection-and-privacy-policy/ which instructs the public how to make subject access requests. There is similar guidance related to FOISA. OSCR's registration number with the Information Commissioner does not appear to be supplied, but that is not essential.
10. Business Continuity and Vital Records	✓	✓	An explanation of disaster recovery, revolving back-up tapes held off site has been supplied as part of the RMP – section 3.6. In the same section vital records have been listed

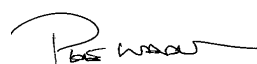|			
			and seem reasonable.
11. Audit trail	✓	✓	Objective provides an audit trail for OSCR's electronic corporate documents provided that staff follow naming convention and version control policies. OSCR has supplied its staff guidance note *How to use Version control in Objective*, *E-mail management policy and enforcement strategy* and *Document naming conventions*. An Audit Trail Settings workflow chart has been included as Annex E. The very small number of paper files held by the authority are referenced in Annex F.
12. Competency Framework for records management staff	✓	✓	The responsibilities of the Information Manager are given in section 2.2.3 of the RMP. Staff training is mentioned, but not detailed.
13. Assessment and Review	✓	✓	The RMP will be reviewed annually. 2.2.3 of the submitted records management plan allocates the following responsibility to the Information Manager (see Element 2): *Co-ordinating annual review of the Records Management Policy and retention schedules.*
14. Shared Information	✓	✓	OSCR publishes data sharing agreements publically on its website. However, inspecting one such at random OSCR/Care Commission, governance of records does not seem to feature as a subject heading. The Keeper has been advised that the OSCR Engagement Team is reviewing MOU's with partner organisations and have been advised that records governance should be considered. The Keeper asks that he be kept up to date in this respect and be given sight of any new MOU (redacted if necessary) to keep OSCR's PRSA record updated.

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 **Office of the Scottish Charity Regulator**. 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 the **Office of the Scottish Charity Regulator**.

- The Keeper recommends that the **Office of the Scottish Charity Regulator** 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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Robert Fotheringham 　　　　　　　　　　 Pete Wadley
Public Records Officer 　　　　　　　　　 Public Records Officer

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

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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 **Office of the Scottish Charity Regulator**. In agreeing this RMP, the Keeper expects the **Office of the Scottish Charity Regulator** 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