

# The Public Records (Scotland) Act 2011

## Frequently Asked Questions

### **1 Will the Keeper publish a template or sample records management plan (RMP) as an alternative to the current Model Plan in the style of a list of key elements?**

The spirit of the Public Records (Scotland) Act 2011 (the Act) and the process of achieving compliance is not in favour of the Keeper prescribing exactly what a records management plan should look like for each named authority. The Keeper will therefore not be publishing template plans for the following reasons:

- A single sample plan would not be suitable for a sufficient number of authorities for it to be viable. Whilst many public authorities create similar records, their procedures for doing so, and for managing them over time, will in many instances be quite different. It is also the case that there are areas of the Scottish public sector where record types created are significantly different. Any sample plan would therefore only be of use to a small number of similar organisations. The make-up of the Scottish public sector is also in a constant state of flux. Existing bodies change, merge, disappear and new bodies are created on a regular basis, thus requiring any sample plan to be continually amended or new samples to be created. This would not be a reasonable use of the Keeper's time and resources.
- A blank template for authorities to fill in might threaten to defeat the aim of the Act by turning the process into a bureaucratic hoop to be jumped through and then forgotten. The aim of the Act is to install an ethos that appreciates the value of records management across the Scottish public sector. A box-ticking exercise would not achieve this.
- It is also important that authorities are not left trying to shoehorn their records management system into a prescribed template. Many authorities are and have been working towards a records management plan of their own for some time. The Keeper does not wish to encourage the idea that authorities should abandon established or emerging plans because of a published template. The Act will be significantly more successful if authorities develop plans that reflect their own business structures.

By retaining the ability to agree plans that are already in place or are currently under construction, the Keeper will meet the wishes of Ministers that the process of compliance does not overburden authorities.

It is important to note that section 1(9) of the Act says,

*“A group of two or more authorities—*

*(a) must, if the Keeper so requires, or*

*(b) may, with the Keeper’s agreement,*

*have a common records management plan for both or, as the case may be, all of the authorities in the group.*

The Act therefore makes provision for common plans to be developed by authorities where appropriate.

## **2 How does the Keeper propose to support best practice with regard to electronic/digital records?**

The Act says that a record is anything in which information is recorded in any form. It is therefore not media specific and is unambiguous in its reference to public records in all and any format.

The Keeper is keen to ensure that he is supporting the Act adequately and he remains very aware of the issues around e-records. The Act permits the Keeper to issue guidance other than that which he is statutorily obliged to publish relating to the form and content of the Model Plan. To this end, he will publish and maintain guidance on best practice for the creation, management, storage and preservation of digital or electronic records. The Keeper is confident that this guidance will contribute significantly towards alleviating concerns of stakeholders on this issue.

The current version of the Guidance is available on the NRS website (<http://www.nas.gov.uk/recordKeeping/ERGuidance/default.asp>)

## **3 Why does the Keeper’s Model Plan refer to data protection when the Information Commissioner already regulates this under the terms of the Data Protection Act 1998?**

The initial draft of the Model Plan included data protection as an element from the outset and was accepted by stakeholders as a credible inclusion.

The Data Protection Act is UK-wide legislation and was introduced in 1998. It relates to the security of information and the rights of the individual to access information held about them. Therefore, it has major implications for public authority records management. Since April 2010 and the introduction of the Information Commissioner’s new powers to fine organisations up to £500,000 as a penalty for serious breaches of the Data Protection Act, managing personal sensitive information appropriately has never been more critical. It is nevertheless the case that breaches of the Act continue to occur in the public sector and it is therefore correct that the Act includes reference to our data protection obligations. The Act does not require an authority to do anything new in relation to how it handles personal sensitive information on living individuals; it simply requires that the authority confirm its provisions to the Keeper as part of its RMP.

#### **4 Why does the Model Plan consider data sharing when the Data Protection Act is clear about what an authority's statutory obligations are when sharing sensitive personal data?**

The draft Model Plan was amended at an early stage, at the express wish of stakeholders, to include information sharing as an element of the proposed plan.

It was agreed by stakeholders that the sharing of sensitive information can cover more than those issues covered by data protection obligations, as does the responsibility for records created on a shared platform, perhaps as part of a short term project. Corporate records may not routinely include personal sensitive information, but they might still be considered commercially sensitive and therefore need particular attention when being shared. The Keeper therefore wishes to be assured that the sharing of public records is adequately accommodated under the Model Plan and Guidance.

#### **5 Does the Keeper consider there to be too many links and sample documents under the Guidance Document?**

Respondents to the Keeper's consultation on the Model Plan and Guidance considered there to be sufficient links and samples under the Guidance. Only a handful of respondents took the view that the product lacked in this respect. And, it is interesting to note that the respondents who took this view were split fairly evenly among the 'too many' and 'not enough' camps. The Keeper therefore holds the view that the number of links and samples is sufficient.

He does however accept that keeping the document to a manageable size will be critical to its success over time. The Guidance is a living document and will evolve to include new best practice links and samples where and when appropriate. The Keeper is committed however to ensuring that the document remains reasonable in size and complexity.

#### **6 Will the Keeper publish advice on the most suitable self assessment mechanism for public authorities?**

The Keeper recognises that authorities are all at different stages of compliance and he is very much of the opinion that improvement over time is central to achieving the aims of the Act. The Act is about installing an ethos that appreciates the value of good records management across the Scottish public sector. It is critically important therefore that the Act does not become a box-ticking exercise.

The Keeper considers self assessment as crucial to helping authorities gauge where they currently stand with regard to compliance and therefore assist in developing strategies going forward. He is keen to emphasise the need for all named authorities to use the opportunity provided by the Act to self assess current provisions, identify weaknesses and plan for improvement.

In an effort to ensure the Act remains 'light touch' the Keeper must not be prescriptive in what tools he might expect an authority to use when developing their Records

Management Plan (RMP). Guidance must therefore point to different if complimentary pieces of guidance. With regard to self assessment the guidance includes the Scottish Council on Archives' Archives and Records Management Services (ARMS) and other credible tools, such as that developed by JISC infoNet which demonstrates the Keeper's commitment to remaining flexible.

It is important to note that the Keeper conducted a mapping exercise to gauge compatibility between the Model Plan and ARMS. This reflects the fact that ARMS has Scottish origins, having been developed by records professionals working in Scotland in an effort to deliver a tool aimed specifically at Scottish records and information issues. The exercise revealed a high level of compatibility and the Keeper subsequently endorsed ARMS. He has further indicated to SCA colleagues that where appropriate he will seek to use it as part of his own assessment methodology when appraising an authority's records management compliance.

## **7 Will the Keeper develop and publish sample evidence under each of the elements of the Model Plan?**

An overwhelming majority of respondents to the Keeper's consultation on the Model Plan and Guidance asked the Keeper to consider providing more evidence under each element of the Model Plan. It's important to note however that there was no unanimity over this issue. In fact, some advised against evidence being suggested because they feared it would lead to the plan becoming prescriptive. And, many of the comments accompanying responses seeking more sample evidence also said the plan must not become prescriptive as a consequence.

Ministers remain very keen to ensure that Government is not seen to be prescribing change or dictating the systems to be used in working towards compliance. They are however determined that the Act should facilitate continuous improvement driven by Scottish public authorities developing solutions that are reflective of their individual needs.

The Keeper is therefore keen to emphasise that initially, and permanently in respect of some elements of the model plan, the key evidence will be the Chief Executive Officer (CEO) sign off. The Keeper will view the signature of the CEO as good evidence that there is a commitment to implement the provisions of the plan as submitted to him for agreement.

CEO sign-off will remain crucial when evidence can not be supplied in support of a RMP for security reasons. If for example an authority is genuinely not able to pass their business continuity plan to the Keeper as evidence because the information contained within it is sensitive and restricted, a statement from the CEO explaining that this is the case would be perfectly acceptable to the Keeper under the spirit of the Act.

The Keeper understands colleagues' desire to have his view on the types of evidence he may consider appropriate in support of a RMP. He is however keen to remain true to the spirit of the Act and allow authorities to supply evidence developed by them in support of their business requirements and which they consider of most value. He further believes this is an area that with respect to best practice will develop as RMPs continue to mature and improve over time.

The Keeper has, however, responded to stakeholders' concerns and has added brief additional explanations under each element of the Model Plan to further assist authorities.

## **8 Does the Keeper agree the language of the Model Plan and Guidance is overly technical and the presentational style of the documents is lacking?**

Respondents to the Keeper's consultation on the Model Plan and Guidance were very largely content with the language used in the documents. A very few respondents (four in total) raised issues with the language suggesting that it was reliant on technical terminology that might exclude readers, particularly those with little or no records management background. One respondent considered that the text was dated in presentational terms, i.e. it would not maximise the potential readership because it fails to embrace a more modern style of presentation.

The Stakeholder Forum, which drew representation from across the sectors and critically from a variety of colleagues with a range of records and information knowledge from none to extensive, agreed the final text developed from several iterations. The text does use records management terminology where it is essential, but seeks to keep this to a minimum and remain at all times as inclusive as possible. It is after all hoped that the documents will primarily be practical guides to instruct and assist records and information officers appointed from within named public authorities.

The Keeper does not intend to amend the language further at this early stage, but he commits to developing these documents going forward whilst remaining mindful at all times of the language used. The Keeper's implementation team will also consider issues around presentational style and will work closely with colleagues to ensure the Model Plan and Guidance remain accessible over time and will continue to make use of modern media for promotional purposes.

## **9 What advice will the Keeper publish on records created when public functions are contracted out to non-public bodies?**

The Act does not apply to non-public bodies, so the Keeper has no authority to advise them directly on how to manage records created under contract to a named public authority. The Keeper will not therefore develop and publish guidance for non-public bodies. The Act makes clear however that the functions of a public authority contracted out to non-public bodies should be covered by the records management plans of the public authority. Responsibility for adequate guidance on how this will work in practice therefore lies with the public authority. The Keeper did however facilitate a Stakeholder sub-group with voluntary and private body representation to consider the main issues around this new obligation. The group helped develop tools to allay the two principal concerns, that:

- contractors might be faced with different requirements from different authorities concerning the same class of records; for example, child care records.

- it may be difficult, particularly for a small organisation, to determine what a minimum standard of records management provision actually is.

The Forum was able to develop a minimum standard that most non-public bodies should be able to comply with. This was underpinned with a legal statement, endorsed by the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), for public authorities to use when contracting out a function to a non-public authority.

The minimum standard will be maintained over time by the Scottish Council on Archives (SCA). And, to further support the guidance for non-public bodies, the SCA have offered to run training sessions for them.

### **10 Will the Keeper issue guidance on the order in which the elements of the Model Plan should be prioritised?**

The Keeper has no authority to prescribe the order in which an authority should go about compiling their RMP, nor does he hold a view on the possible order in which authorities might do this. Accordingly he will not issue guidance.

As a matter of fact the Model Plan is probably in a sort of unofficial order as it stands, as it emphasises having staff and management issues in place, followed by records management policy, business classification, retention schedules, etc., but this does not constitute guidance from the Keeper on a model order.

Some elements of the Model Plan are compulsory under the Act. However, this may not originally have been as obvious under the Model Plan as it should have been. The Keeper has therefore amended the Model Plan and Guidance to make clear what these elements are.

### **11 Will the Keeper certify the best practice links and sample documents included in the Guidance?**

The Keeper cannot endorse the best practice links or sample documents included under the Guidance Document.

The samples have been supplied to the Keeper by public sector colleagues as examples of solutions that are working for them in relation to different aspects of their records management practice. The Keeper offers these to others as potentially having wider application and in an effort to help prevent duplication of effort. Authorities can also use the links to 'best practice' guidance available online.

It is not for the Keeper to formally certify the quality of documents created by other public authorities or to suggest one best practice system over another. The hope is that the variety of links and samples will help reduce the risk of duplication of effort across the public sector.

While the Keeper cannot certify the samples, it is probably safe to say that an authority adopting a sample document as its own (as long as it is appropriate to that authority's specific business) would go some way to ensuring the Keeper's agreement of a plan.

## **12 Does the Keeper need evidence of version control as an element of audit trail provision?**

The Keeper is keen to emphasise, through the plan, the critical importance of audit and version control provisions. An important element of any robust records management system is the ability to follow record movements (either paper or electronic format) across the organisation. The element seeks to ensure that public authorities have or are developing systems to help them know where records are at any given time, in order to be able to locate them efficiently for business purposes.

Version control is, of course, also an important factor under any robust records management audit provision and the Keeper will expect authorities to be concerned about this aspect of their arrangements. However, he is not concerned, under this element, whether an authority manages logs to record access.

## **13 Will the Keeper regard improvement models as evidence of an authority being compliant?**

The Keeper recognises that authorities are all at different stages of compliance. He does not therefore expect the whole of the public sector in Scotland to be fully compliant with its obligations under the Act by the time of full implementation in January 2013.

He remains very much of the opinion that improvement over time is central to achieving the aims of the Act. The Keeper is free under the Act to agree a reasonable improvement programme if it is submitted as part of an RMP, and he will be emphasising this going forward.

The Act is about installing an ethos that appreciates the value of good records management across the Scottish public sector, and this will take time and will require authorities to be confident about recognising weakness, as well as celebrating excellence in provision. A tick box exercise will not achieve the lasting and continuous improvement needed to make the Act a success.

That's why the Keeper is emphasising the need for authorities to recognise the obvious benefits to be accrued from robust self assessment mechanisms. These will be critical in helping authorities gauge where they currently stand with regard to compliance, and assist in developing improvement strategies. The self assessment tools included in the Guidance Document should help an authority determine where it is now in the matter of records management provision, and where it aspires to be. The honest acknowledgement of this gap and a determination to close it will be good for the business of the authority, and as such will be considered 'good records management practice' by the Keeper.

## **14 What are the Keeper's plans for stakeholder engagement going forward?**

The NRS Implementation Team has a number of initiatives under development and obligations timetabled, including the obligation to comply with Parliamentary obligations to ensure the Act is formally implemented in January 2013.

The Commencement and Amendment Orders allow the Keeper to respectively bring the Act into force and amend the Schedule to the Act to include bodies that are currently missing, and reflect amalgamations or name changes.

To further help with the implementation, the Keeper intends to continue to engage meaningfully with stakeholders. An immediate proposal is to hold a series of PR(S)A 'surgeries' to listen to views from practitioners about the practicalities of making this work. Surgeries are already confirmed for Edinburgh, Dumfries, Glasgow, Perth and Inverness. These will be held in September 2012 and publicity for these events has already been circulated.

Publicity will be important as we approach implementation in January 2013, so a drive to highlight and promote the Act is under development. Some of this has already started, but we will be working closely with our Scottish Government Communications colleagues over the next months to deliver a campaign beginning formerly in November.

The Keeper has agreed with stakeholder wishes to publish an 'Executive Summary' document for records and information managers to present to their Chief Executive Officers (CEOs). Senior management buy-in will be critical to the success of the Act and an executive summary will help explain clearly and concisely the new obligations.

The Keeper has other initiatives under consideration:

- Consideration is being given to sector specific or regional events once the Act goes live in January 2013. This will build on the surgeries planned for September 2012 and will seek to engage with stakeholders more widely in the early stages of implementation. This will give stakeholders the opportunity to discuss in detail issues relevant to implementation in their authority or sector.
- The Keeper hopes that as RMPs are agreed, assuming the permission of the relevant authorities, NRS may use evidence submitted in support of plans to replace current samples in the Guidance. This will help keep the Guidance Document fresh and relevant. The Keeper will publish the NRS plan once it has been submitted and processed.
- NRS is considering the proposal to publicise the names of authorities whose RMPs have been agreed. By providing links to websites supporting agreed plans, the Keeper will be able to publicise good news and direct authorities to tools that might be relevant in helping them to develop their own RMP.
- Looking further forward to 2013 and beyond, the Keeper may consider an annual seminar programme. It's not yet known what shape this might take, but it could be an open event, aimed at practitioners and others. Sessions could include experiences of working with the Act, raising issues that have caused difficulty and celebrating and sharing success.

The Keeper's Implementation Team will continue to engage with the community directly and respond to all feedback as it is received. The NRS role as facilitator has been valuable in bringing together public authorities to discuss records management issues, and we will work to keep the collaborative momentum going. This is the best way to help ensure the Act achieves its aim of promoting continuous practice improvement across Scotland's public sector.