## Public Records (Scotland) Bill (SP Bill 56)

<table>
<thead>
<tr>
<th>Bill Number:</th>
<th>SP Bill 56</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduced on:</td>
<td>7 October 2010</td>
</tr>
<tr>
<td>Introduced by:</td>
<td>Fiona Hyslop (Executive Bill)</td>
</tr>
<tr>
<td>Passed:</td>
<td>16 March 2011</td>
</tr>
<tr>
<td>Royal Assent:</td>
<td>20 April 2011</td>
</tr>
<tr>
<td></td>
<td>2011 asp 12</td>
</tr>
</tbody>
</table>

### Passage of the Bill

The Public Records (Scotland) Bill (SP Bill 56) was introduced in the Parliament on 7 October 2010. Stage 1 commenced on 27 October 2010 with the Education, Lifelong Learning and Culture Committee (ELLC) as the lead committee. The Bill was also considered by the Subordinate Legislation Committee. The Stage 1 (general principles) debate took place on 10 February 2011 and the Bill was passed following the Stage 3 parliamentary debate on 16 March 2011.

### Purpose and objectives of the Bill

The Public Records (Scotland) Bill was a technical bill which sought to introduce an obligation on named Scottish public authorities to produce and implement a Records Management Plan. The Bill was part of the legacy of the Historic Abuse Systematic Review which uncovered significant failures in records management in residential schools and children’s homes. The Bill also sought to amend the provisions of the Public Records (Scotland) Act 1937 in relation to Scottish Court records.

### Provisions of the Bill

As well as introducing an obligation on named Scottish public authorities to produce and implement a Records Management Plan (RMP), the Bill gives the Keeper of the Records of Scotland (the Keeper) a statutory role to issue
guidance to the authorities on the form and content of the RMPs, and to prepare a model plan.

The Bill also gives the Keeper the power to review whether authorities are complying with their plans, the power to issue warning notices to authorities who are failing to comply with their obligations under the provisions of the Bill, and the power to make it publicly known that such notices have been issued. The Bill also provides the meaning of “public records” and establishes the status of the records of contractors carrying out functions on behalf of a named authority.

The Bill’s provisions also amend the Public Records (Scotland) Act 1937 to deal with the transmission of Scottish court records to the Keeper.

Schedule 1 of the Bill provides a list of the authorities which will be subject to the provisions of the Bill.

Parliamentary consideration

In their Stage 1 report, the ELLC Committee noted concerns were raised by a number of the witnesses, and in the written evidence, that the legislation would mean there would be a statutory requirement to produce RMPs instead of a voluntary scheme. However, the Committee agreed with other witnesses, including the Scottish Information Commissioner, that as the bodies should already have addressed records management in order to comply with the Freedom of Information (Scotland) Act 2002, the new legislation would bring a consistency to records keeping currently lacking across the sector.

Amendments agreed at Stage 2, from both Committee members and the Minister, changed the tone of the Bill so that the language focused on continuing improvement rather than failure. So, for example, warning notices were renamed ‘action notices’. Amendments from the Scottish Government were also agreed to ensure that a ‘one-size-fits-all’ approach will not be taken. Therefore, when the Keeper decides on proposed RMPs he must have regard to the nature of the authority and its public records.

Another amendment from the Minister placed a duty on authorities to ensure that their RMPs should take account of the different levels of risk associated with the management of different kinds of records. The Government believed this addressed concerns raised by the voluntary sector and COSLA that the Bill should focus on records that are considered to be high risk.

The Government also addressed the concerns of the voluntary sector bodies – which provide common services across different authorities – that they might need to work with a multitude of RMPs by moving amendments making it easier for groups of authorities to choose to have common RMPs for separate functions, e.g. child care functions.
Scottish Ministers also moved successful amendments to require the Keeper to consult on guidance and model RPMs with the authorities affected by them. However, other amendments from Committee Members to place a similar requirement with regard to any affected contractors were not moved.

Government amendments were also agreed to to restrict the Keeper’s power to require an authority to review and submit its plan for approval.