These documents relate to the Public Records (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 7 October 2010

PUBLIC RECORDS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Public Records (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 56–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY OF THE BILL

3. The Bill is in three parts:
   - Part 1 – Records Management Plans
   - Part 2 – Court Records
   - Part 3 – General

PART 1 – RECORDS MANAGEMENT PLANS

4. Part 1 of the Bill imposes duties on certain public authorities, which are listed in the schedule to the Bill, to produce, implement and review records management plans. A plan must set out the arrangements for the management of records created or held by the authority and records created or held by contractors who carry out any functions of the authority. Each plan must be approved by the Keeper of the Records of Scotland (the Keeper). The Keeper must issue guidance on the form and content of plans and must prepare a model plan. Authorities must have regard to the model plan and the guidance when preparing their own plans.

5. The Bill gives the Keeper the power to review whether authorities are complying with their plans. The Keeper may issue warning notices to authorities who are failing to meet their obligations under the Bill. If an authority fails to comply with a warning notice, the Keeper may publicise the failure. The Keeper must also produce an annual report in relation to the Keeper’s functions under the Bill, including details of any authority which has failed to comply with a warning notice and details of the failure.

Section 1 – Records management plans

6. Subsection (1) requires certain authorities to produce a records management plan in relation to their public records and to submit this to the Keeper for approval. Once the Keeper has approved a plan, the authority must ensure its records are managed in accordance with the plan. Section 2 and the schedule define the public authorities to whom the duty applies. Section 3 defines public records. Section 4 deals with the submission and approval process for plans. Section 12 contains definitions, including the meaning of “management” of public records.
7. Subsection (2) sets basic requirements about what a records management plan must contain. The Keeper must also issue guidance about the form and content of plans and authorities must have regard to that guidance (subsections (3) and (4)).

8. Subsection (5) allows the Keeper to require an authority to produce more than one plan. This could be used to require authorities, such as the Scottish Ministers, who exercise a large number of diverse functions to have different plans in relation to different functions.

9. Subsection (6) allows a group of authorities to have a single common plan where the Keeper requires or agrees that this should happen. This could be used to allow groups of authorities of the same description (e.g. procurators fiscal) or groups of different authorities which exercise related functions to have a common plan.

Section 2 – Authorities to which Part 1 applies

10. Subsection (1) defines the authorities that must comply with the duties in Part 1 of the Bill. The authorities are listed in the schedule. Some bodies are described rather than named individually, such as local authorities, Chief Constables of police forces and National Park authorities.

11. Subsection (2) allows the Scottish Ministers to add or remove authorities from the list in the schedule by order. Subsections (3) to (5) define the types of authorities which can be added to the list. The reference in subsection (3)(b) to an authority with mixed functions or no reserved functions is to be read in accordance with section 126 and paragraph 1 of Part III of Schedule 5 to the Scotland Act 1998. Orders under subsection (2) will be subject to affirmative procedure (see subsection (8)).

12. Subsection (7) allows orders amending the schedule to make consequential and other modifications to other legislation. If a new authority were to be added to the schedule, this power might be used to make consequential changes to any existing general records management duties which already applied to the authority.

Section 3 – Meaning of “public records”

13. This section defines “public records” for the purpose of Part 1 of the Bill. Public records are the records which must be covered by the records management plan for an authority (see section 1).

14. Subsection (1)(b) provides that records which are created by contractors in carrying out functions of an authority are public records of the authority. This means that the records management plan for the authority must set out the arrangements for managing its contractors’ records as well as records created by the authority. “Contractor” is defined in subsection (2). The definition covers persons who carry out functions on behalf of an authority. It does not cover persons who provide goods or services (such as supplying stationery) to an authority but do not deliver functions on its behalf.
These documents relate to the Public Records (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 7 October 2010

15. Subsection (1)(c) provides that records which come into the possession of authorities or contractors in carrying out the authority’s functions are also public records. Examples might include correspondence, reports, evidence or statistics which relate to the functions. The authority must ensure that these records are managed in accordance with its records management plan. This subsection also covers historical records of a predecessor authority (e.g. a former local authority’s archive).

Section 4 – Approval of plans

16. This section sets out the procedures for obtaining the Keeper’s approval for plans. The procedures apply to an authority’s initial submission of a records management plan and to the submission of any revised plans.

17. Subsection (1) obliges public authorities to submit a proposed records management plan by a date set by the Keeper. Subsection (2) allows the Keeper to set requirements as to the form and manner in which a plan must be submitted. The Keeper may set different dates and different requirements for different authorities (subsection (8)).

18. The Keeper must approve a proposed plan or reject if it does not set out “proper arrangements” for managing the authority’s records (subsection (3)). “Proper arrangements” may vary according to the authority concerned and it is for the Keeper to decide if the test is met in each case (subsections (4) and (8)). When deciding whether to approve or reject a plan, subsection (5) also requires the Keeper to have regard to the model records management plan produced under section 8 and to the guidance issued under section 1(3). Subsection (6) makes provision about what is to happen where the Keeper rejects a proposed plan.

Section 5 – Review of plans

19. This section requires authorities to keep their plans under review and to review them when required to do so by the Keeper under subsection (1)(b). Subsection (5) allows the Keeper to set different review dates for different authorities. This could be used to allow the Keeper to consider revised plans on a phased basis.

20. The Keeper may also require an authority to review its plan following a compliance review under section 6.

21. Where the Keeper requires an authority to review its plan, subsection (2) requires the authority to submit any revised plan to the Keeper for approval in accordance with section 4. If an authority decides that it does not need to make any changes to its plan as a result of the review the plan must still be submitted for re-approval by the Keeper in accordance with section 4.

22. Subsection (3) enables authorities to revise their plans and submit revised plans to the Keeper at any time.
Section 6 – Compliance reviews

23. Subsection (1) allows the Keeper to undertake a review of whether an authority is complying with its records management plan. This could be used where the Keeper becomes aware of a possible failure by a particular authority to comply. Alternatively the Keeper may decide to undertake a general review of compliance by a group of authorities (see subsection (6)).

24. Subsection (2) requires authorities to assist the Keeper in carrying out compliance reviews if requested to do so. This might include, for example, providing information or documents.

25. After carrying out a compliance review, the Keeper may make recommendations to the authority and may require the authority to review its plan under section 5 (subsection (3)).

Section 7 – Warning notices

26. This section allows the Keeper to issue a warning notice to an authority which is failing in its obligations under Part 1 of the Bill. A warning notice could be issued in relation to a failure to prepare a records management plan, a failure to comply with a plan, a failure to assist in a review or any other failure under the Bill. Subsection (2) sets out the information which must be included in a warning notice.

27. Where an authority fails to comply with the warning notice, subsection (4) allows the Keeper to publicise the failure.

Section 8 – Model records management plan

28. This section obliges the Keeper to produce and publish a model records management plan and keep the model plan under review (subsections (1) and (3)). Authorities must have regard to the model plan when preparing and revising their own plans (see subsection (2)).

Section 9 – Guidance

29. This section allows the Keeper to provide further guidance to authorities on their obligations under Part 1 of the Bill and requires authorities to have regard to such guidance. Such guidance would be in addition to the guidance about the form and content of records management plans which the Keeper is obliged to issue under section 1(3).

Section 10 – No right of action for failures to comply

30. This section excludes any right of action in civil proceedings where an authority is in breach of Part 1 of the Bill. The Keeper can issue warning notices in respect of failures to comply with the Bill and can publicise any failure to comply with a warning notice under section 7.
Section 11 – Annual report

31. This section requires the Keeper to prepare an annual report and submit it to Scottish Ministers after the end of each financial year. “Financial year” is defined in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 as a year ending with 31 March.

32. Subsections (2) to (4) specify the information which the report must contain. Subsection (2)(a) and (c) allows the Scottish Ministers to set the form and submission date of the report.

33. Once the Scottish Ministers have laid the report before the Parliament under subsection (5) the Keeper must publish it (subsection (6)).

Section 12 – Interpretation of Part 1

34. This section defines the key terms used in Part 1 of the Bill.

Section 13 - Repeals

35. This section repeals certain existing duties which require local authorities, SEPA, National Park authorities and Scottish Water to make arrangements for the preservation and management of their records. The repeals are consequential on the introduction of the duty to prepare and comply with an approved records management plan under section 1 of the Bill.

PART 2 – COURT RECORDS

36. Part 2 of the Bill consists of section 14 which amends sections 1, 2 and 2A of the Public Records (Scotland) Act 1937 (c.43) (“the 1937 Act”). These sections deal with the management of court records and the arrangements for transferring these records to the Keeper.

Section 14 – Court records

37. Subsection (2) inserts a new subsection (3) into section 1 of the 1937 Act. Section 1 of that Act deals with the records of the High Court of Justiciary and the Court of Session. The records of these courts can be transmitted to the Keeper in accordance with Act of Adjournal or Act of Sederunt. The amendment places a new obligation on the High Court of Justiciary and the Court of Session to consult with the Keeper before making an Act of Adjournal or Act of Sederunt in relation to the transmission and retransmission of court records.

38. Subsection (3) amends section 2 of the 1937 Act, which deals with sheriff court records. Subsection (4) amends section 2A of the 1937 Act which deals with Justice of the Peace (JP) court records. Sections 2 and 2A operate in the same way and the effect of the amendments is the same in each case.

39. Subsections (3)(a) and (4)(a) and (b) remove the requirement for an order to be made before sheriff court or JP court records can be transmitted to the Keeper and remove the limit which prevents the transmission of sheriff court records under 25 years old and JP court records under 10 years old. These provisions are replaced with a power for the sheriff principal to transmit records where the Keeper agrees to the transmission.
40. Subsections (3)(b) and (c) and (4)(c) and (d) replace the existing duty on sheriffs principal to care for and preserve sheriff court and JP court records with a duty to manage those records. “Management” is defined in inserted sections 2(5) and 2A(5). The definition is consistent with that in section 12 of the Bill.

PART 3 – GENERAL

Section 15 – Commencement

41. This section makes provision for commencement. Subsection (1) enables the Scottish Ministers to commence Parts 1 and 2 on a date or dates appointed by order. Part 3 of the Bill (sections 15 and 16) comes into force on the day after Royal Assent.

Section 16 – Short title

42. This section provides for the short title of the Bill.

Schedule

43. The schedule lists the authorities which must comply with the records management duties under Part 1 of the Bill. The list of authorities can be amended by order under section 2.

FINANCIAL MEMORANDUM

INTRODUCTION

44. This memorandum sets out the financial implications of the Public Records (Scotland) Bill introduced in the Scottish Parliament on 7 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. This Financial Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

45. The Bill will place an obligation on named public authorities to prepare, submit and implement a Records Management Plan (RMP) approved by the Keeper of the Records of Scotland (the Keeper). The Keeper will publish a model plan as part of a suite of guidance and best practice advice to authorities. The Bill also gives the Keeper authority to scrutinise RMPs and their implementation by authorities. The Keeper will report to Ministers annually on his activities under the legislation and the report, which will be published on the National Archives of Scotland (NAS) website, will name public authorities that fail to meet their obligations and give details of the failures.

46. The Public Records (Scotland) Bill will make minor amendments to the Public Records (Scotland) Act 1937 in relation to records of the Scottish courts.
GENERAL COMMENTS ON FINANCIAL IMPLICATIONS

47. This Bill will make no new demands on the Scottish Consolidated Fund, so there is no net cost to the Scottish Government. The bulk of the cost of implementing the Bill will be borne by the Keeper and will be absorbed within planned resources. It is not possible to identify separately the exact cost to each of the named public authorities as this will depend on the quality and effectiveness of their current records management regimes. However, having adequate staff provision is critical to the success of any records management system and costs associated with this provision are detailed below. For similar reasons it has not been possible to predict costs to bodies in the private or voluntary sector where a named public authority requires them to manage records created under contract in accordance with the records management plan for that authority. Discussions with a representative sample of private and voluntary bodies, as part of the Business Regulatory Impact Assessment (BRIA) and the broader consultation process, established that for those organisations which already have records management provision, widely recognised in the sector as being critical to good business practice, there will be no significant cost (Appendix 1).

48. The ultimate sanction against those who consistently fail to meet their obligations is to be ‘named and shamed’ in the Keeper’s annual report to Scottish Ministers or elsewhere. There will be no additional cost to the Scottish Administration under this sanction mechanism.

COSTS ON THE SCOTTISH ADMINISTRATION

49. The Public Records (Scotland) Bill places new obligations on named public authorities in relation to their record keeping responsibilities. These authorities include the Scottish Ministers and other office-holders in the Scottish Administration but the Bill does not burden Scottish Ministers with responsibility for ensuring compliance by other authorities or with any direct regulatory role. The Bill confers implementation, regulation and advisory functions on the Keeper.

Costs of complying with records management planning duties

50. The cost of complying with the new records management duties for the Scottish Ministers and those named office-holders in the Scottish Administration that have already designated responsibility for their records management will be minimal. Costs will largely consist of administrative time to compile RMPs and submit them to the Keeper for his approval, to ensure that records management provisions are kept under review and to assist with any compliance reviews carried out by the Keeper. For those authorities with existing records management provision, it will be possible to prepare a credible RMP on the basis of existing documentation and policy statements. The cost to those authorities of complying under these circumstances will be restricted to administrative time and resources. It is likely that such costs will be met from within existing budgets.

51. Office-holders in the Scottish Administration that have no designated records management staff and/or procedures in place for proper management of their records would have to do more in order to produce a RMP for approval by the Keeper and to identify an individual who is responsible for management of the authority’s public records and (if different) the individual who is responsible for ensuring compliance with the plan. The costs associated with engaging
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staff and making proper provision to cover such changes are detailed below at “Authorities with no current records manager or archivist provision” (paragraphs 69 and 70).

Self-regulation

52. The Keeper will issue separate guidance about the form and content of RMPs which will include proposals for self-regulation. Internal reporting as a method of self-regulation will permit Scottish Ministers and other office-holders in the Scottish Administration to maintain awareness of their records management responsibilities and ensure compliance with the provisions of the Bill. Records managers who were consulted confirm that they are already required to report regularly to senior managers on key performance indicators governing their obligations under the Freedom of Information (Scotland) Act 2002 (FOISA). There are no additional cost implications under this model.

Costs to the Keeper of carrying out implementation, regulation, advisory and compliance review functions

53. The Bill confers implementation, regulation and advisory functions on the Keeper, who is an office-holder in the Scottish Administration. The Keeper will carry out these functions by allocating staff, from within the present complement of the NAS, to manage the implementation and regulation of the new provisions. This will include developing and publicising the necessary guidance, developing a model RMP for use by public authorities and advising named authorities about their obligations. NAS staff will also assess RMPs submitted to the Keeper by authorities for approval and develop and manage the scrutiny function. The estimated cost to the Keeper is approximately £60,000 per annum.

54. This figure represents the equivalent of two B2 curatorial officers inclusive of salaries, overheads and other peripheral costs to be redeployed from the Keeper’s existing staff complement. Current pay scales for B2 officers are £25,165 - £30,267. This cost will be met from within the Keeper’s existing resources following the NAS strategic review which identified some areas of savings which it is intended to apply to meeting the costs of the additional responsibilities proposed by the Bill. Consequently there will be no additional new costs on NAS, but the scope for NAS to make administrative cost savings generally will be reduced by taking on the new tasks set out above.

55. The Bill gives the Keeper powers to scrutinise and approve RMPs and to carry out a review (a “compliance review”) of whether an authority is complying with its RMP. An authority must provide the Keeper with such assistance as the Keeper may require, and following a compliance review, the Keeper may make recommendations to the authority about how it complies and require the authority to carry out a review of its plans. Compliance reviews will not be used until after an authority has submitted its RMP and a suitable period of time has elapsed to permit the authority to implement its plan. The Keeper will take action to assess compliance only if the Keeper receives complaints about failures to manage records properly or if the Keeper decides to review compliance across a particular sector.

56. The cost to the Keeper of the scrutiny function will include routine administration, assessment of evidence submitted by an authority, conducting face-to-face interviews, reporting on findings and issuing practice recommendations. Where a site visit is necessary there will also be travel and subsistence costs. These costs will all be met from the Keeper’s existing budget.
Based on the costs of practice assessments by the Office of the Scottish Information Commissioner (the OSIC), which assesses public authorities against their access obligations under FOISA, this would be approximately £4,000-£5,000 per compliance review. These costs are included in the figure of £60,000 per annum given above.

COSTS ON LOCAL AUTHORITIES

Costs of preparing and implementing RMPs

57. Opinion was canvassed from a firm of experienced private sector information and records management consultants, which has worked closely with a number of Scottish public authorities. Their view is that almost all local authorities in Scotland operate some form of records management and/or archive service, but that the standard of provision varies greatly. This view was supported by evidence obtained from discussions held with a representative cross section of public sector archive and records managers. (Appendix 2). It is further confirmed by the Keeper’s own experience over many years of working with Scottish local authorities and other public bodies concerning their record keeping practices.

58. The cost of meeting the new proposals for those local authorities that have already designated responsibility for their records management will be minimal. Costs will largely consist of administrative time to compile and submit RMPs to the Keeper for authorisation, ensuring that a local authority’s records management provision is up-to-date and current, and facilitating the Keeper’s scrutiny function. For an authority with such provision, a credible RMP will be sought from existing documentation and policy statements. It is likely that all of these costs can be contained within existing budgets. However this may not be the case where a local authority does not already operate a compliant records management function, or fails to meet certain standards. In such cases, some catching up will be necessary implying some additional costs. We would expect those costs to be managed from within existing budgets, but they may displace other administrative activities that command a lower priority. It will be for the local authorities themselves to make the necessary adjustments to implement records management action and prioritise their administrative functions to ensure that resources are available.

59. The costs associated with engaging staff and making proper provision to cover such changes are detailed below at “Authorities with no current records manager or archivist provision” (paragraphs 69 and 70).

Self-regulation

60. The Keeper will issue separate guidance about the form and content of RMPs which will include proposals for self-regulation. Internal reporting as a method of self-regulation will permit Scottish local authorities to maintain awareness of their records management responsibilities and ensure compliance with the provisions of the Bill. Scottish local authority records managers who were consulted confirm that they are already required to report regularly to senior managers on key performance indicators governing their obligations under FOISA. There are no additional cost implications under this model.
Costs of assisting with compliance reviews

61. The exact cost to a public authority of compliance with the proposed compliance review regime is difficult to assess, as individual public authorities calculate staff and resource costs differently. The Scottish Government anticipates that it will be similar to that experienced by authorities currently complying with the OSIC’s assessment programme. The requirement of an authority will involve responding to the Keeper’s request for information and facilitating meetings. It will be carried out in most cases by the authority’s records manager or responsible officer. It will not therefore involve a redeployment of staff time and incur only routine administrative costs.

62. Two public bodies (Transport Initiatives Edinburgh and Perth & Kinross Council) who were recently assessed under the OSIC’s practice assessment procedures, were consulted to assess their experience of meeting their obligations under the OSIC’s assessment. Both organisations considered it to be a useful and necessary function. In their experience the task was neither onerous nor costly. It required both organisations to facilitate meetings and supply information when requested, amounting to administrative time and resources only.

63. A public authority managing its records in accordance with an approved RMP will be able to readily identify and produce information and records for the purposes of inspection. Incurred costs will be minimal, consisting entirely of administrative time and resources. The OSIC’s experience of conducting practice assessments confirms that the new obligation on both the Keeper and an authority will be manageable and the additional cost burden insignificant and absorbed within existing budgets.

COSTS ON OTHER BODIES

Costs of preparing and implementing RMPs

64. The Bill will impose duties on named public authorities in addition to the Scottish Ministers and office-holders in the Scottish Administration and Scottish Local Authorities. In the opinion of the firm of information and records management consultants who were consulted, most public authorities in Scotland currently support some level of records management provision. Again the standard of provision varies greatly. This view was again supported by evidence obtained from discussions held with a cross section of public sector archive and records managers (Appendix 2). The Keeper’s experience of working with Scottish local authorities and other public bodies about their record keeping over many years further confirms this.

65. As with local authorities, a similar assessment of the cost of meeting the new proposals for those public authorities that have already designated responsibility for their records management can be made. Costs will be minimal and largely consist of administrative time to compile and submit RMPs to the Keeper for authorisation, ensuring that an authority’s records management provision is up-to-date and current, and facilitating the Keeper’s scrutiny function. For an authority with such provision it will be possible to prepare a credible RMP on the basis of existing documentation and policy statements. Again, it is likely that all these costs can be contained within existing budgets. However this may not be the case if a public body does not already operate a compliant records management function or fails to meet certain standards. In such cases, some catching up will be necessary and this will involve some additional costs. We would expect those costs to be managed from within existing budgets but they may displace
other administrative activities that command a lower priority. It will be for the bodies themselves to make the necessary adjustments to implement records management action and prioritise their administrative functions to ensure that resources are available.

66. The costs associated with engaging staff and making proper provision to cover such changes are detailed below at “Authorities with no current records manager or archivist provision” (paragraphs 69 and 70).

67. As with local authorities the exact cost of compliance with the proposed compliance review regime is difficult to assess, as individual public bodies calculate staff and resource costs differently. The Scottish Government expects that it will be similar to that experienced by authorities currently complying with the OSIC’s assessment programme. The requirement of an authority will involve responding to the Keeper’s request for information and facilitating meetings. It will be carried out in most cases by the authority’s records manager or responsible officer. It will not therefore involve a redeployment of staff time and incur only routine administrative costs.

Self-regulation

68. The Keeper will issue separate guidance about the form and content of RMPs which will include proposals for self-regulation. Internal reporting as a method of self-regulation will permit Scottish public authorities to maintain awareness of their records management responsibilities and ensure compliance with the provisions of the Bill. Public sector records managers who were consulted confirm that they are already required to report regularly to senior managers on key performance indicators governing their obligations under FOISA. There are no additional cost implications under this model.

Authorities with no current records manager or archivist provision

69. A public authority that currently has no designated staff and/or procedures in place for proper management of its records would necessarily have to do more in order to fulfil its obligations under the Bill and create a RMP that could be approved by the Keeper.

70. To comply with the provision to designate responsible officer(s) to support good records management, an authority could pursue a number of options. The costs of these are set out below. The options would be to:

- employ a records management professional to undertake the preliminary work and manage the records in the longer term. In a mature organisation there should be no need to incur additional costs in providing the necessary office essentials for the records manager such as office and desk space, PC hardware and consumables and other peripheral and utility costs. These would be met from within existing budgets (Option 1).
- bring in temporary expertise and award the long term responsibility for managing the system to a current member of staff. This could be done by employing a professional records manager on a temporary basis or by hiring a firm of private records management consultants (Option 2).
- allocate responsibility for records management to an existing member of staff considered to have the necessary business knowledge, experience and acumen to learn about modern records management concepts and principles (Option 3).
These documents relate to the Public Records (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 7 October 2010

- redeploy an existing member of staff with or without administrative support, to undertake the whole process. This would be the least expensive option, but an authority without in-house expertise to redeploy would be relying on the judgement and acumen of a non-professional who, with the appropriate training and guidance, would bring the authority into compliance. Additional costs incurred include training and development. Compliance may take considerably longer to achieve under this model (Option 4).

Option 1: Permanent records manager

Cost: approx. £30,000 p/a (future pay movements in line with pay policy. The current salary range for a qualified records management professional is approx. £25,000-£37,000 depending on experience.)

Plus one part time administration support member of staff (A3) @ £15,792-£17,632 (to be engaged only from the implementation stage on a pro-rata basis to include future pay movements in line with pay policy)

Training Courses & CPD: £2,000 based on 8 person days training per year and membership of a professional body.

Option 2: Temporary records manager with longer term in-house ownership

Costs: Professional Records Manager: £37,000 p/a (The current salary range for a qualified records management professional is approx. £25,000-£37,000 depending on experience.)

Part time B3: £32,249 (pro-rata for the duration of the professional records manager contract and then full time for the long term future; pay movements in line with pay policy). Pay range at B3 starts at £32,249 rising to a maximum of £40,173.

Part time A3: £15,792-17,632 (to be engaged only from the implementation stage on a pro-rata basis; to include pay movements in line with pay policy). Pay range at A3 is £15,792-17,632

Training Courses & CPD: £2,000 p/a (as above)

Option 3: As Option 2, but with a Records Management Consultancy to devise and implement the system

Costs: Records Management Consultant: £67,000 - £90,000 (based on 3 month contract to assess the need, develop policies, devise classification and scheduling documentation and oversee implementation. Average consultancy costs are between £750 - £1000 per day)

Part time B3: £32,249 (pro-rata for the duration of the professional records manager contract and then full time for the long term; future pay movements in line with pay policy)
These documents relate to the Public Records (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 7 October 2010

Part time A3: £15,792 - £17,632 (to be engaged only from the implantation stage on a pro-rata basis; to include future pay movements in line with pay policy)

Training Courses & CPD: £2,000 p/a (as above)

Option 4: In-house Solution

Redeployed B3 Officer on existing salary: £32,249 - £40,173
P/t A3 Officer to assist on existing salary: £15,792 – £17,632
Costs: Training and CPD - £4,000 p/a (as above)

COSTS ON PRIVATE AND VOLUNTARY BODIES CARRYING OUT FUNCTIONS ON BEHALF OF PUBLIC AUTHORITIES

71. The Bill places an obligation on authorities contracting private or voluntary bodies to deliver functions on their behalf to ensure that records relating to that function are managed as public records. At the termination of any contract the commissioning authority would be responsible for the long term preservation of any records considered to be of enduring value, or for proper auditable disposal of what is not.

72. Private or voluntary bodies will be affected by the new proposals to the extent that the records they create under contract to a public authority in providing a service must be managed as if they are public records. This means that they will be required by the public authority to comply with the requirements of the public authority’s RMP with respect to those records.

73. If the private or voluntary body has a robust records management regime there will be no additional burden. If they do not, then they may need to put a system in place, but only in relation to the records created under contract to the public authority. This may be as simple as designating a secure space within an existing office area and designating a responsible person, perhaps the office manager, to have responsibility alongside existing duties for the management of the records kept there. Or, to have the relevant administrator permissions for a designated area of the authority’s file plan in the case of electronic records.

74. From discussions with private and voluntary bodies consulted as part of the BRIA and wider consultation, it is clear that the proper and efficient storage of information and records is recognised as a necessary business function in the private and voluntary sector. Those private and voluntary bodies consulted agreed that they had the office infrastructure and staff to adequately manage their records. They regularly transfer information back to the commissioning authority for business purposes and to help satisfy FOISA enquiries received by the commissioning authority. Under these circumstances any additional costs to the contractor under the new obligations would be calculated only in redeployed staff time. All those consulted were comfortable that provided the ‘record’ can be agreed in advance with the commissioning authority, they have the staff and systems in place to meet their obligations under the Bill if enacted without incurring any significant costs.
COSTS SUMMARY

75. The Public Records (Scotland) Bill will have no impact on the Scottish Consolidated Fund.

Scottish Administration (including the Keeper)

76. There will be no new costs or savings to the Scottish Government with the implementation of the compliance review function under the new proposals.

77. Implementation, regulation and advisory functions will be vested in the Keeper. The Keeper will allocate staff and resources from within existing budgets. It is estimated that this will cost in the region of £60,000 per annum, to be absorbed within existing budgets but reducing the scope for NAS to make administration costs savings elsewhere.

78. There will be a compliance review function cost to the Keeper of approximately £4,000 - £5,000 per inspection based on the OSIC’s model. This represents the equivalent cost of two B2 curatorial officers, inclusive of salaries, overheads and other peripheral costs. This will be met from existing budgets.

Local authorities and other public authorities

79. Authorities that have already designated responsibility for their records management will incur minimal additional cost.

80. A public authority with no designated records management staff and/or procedures will have to act to reach compliance. There are different options. Costs would range from £40,000 - £61,805 per year depending on the option or permutation of options chosen. Option 3 would involve an additional one-off payment of approximately £67,000 - £90,000 based on a three month consultancy exercise.

81. The costs associated with the development and implementation of the RMP for those authorities currently without provision would be absorbed within the salary and peripheral costs of employing a records manager or designating a responsible person from within the current staff complement.

82. The upper cost limit of £61,805 would apply only in the case of an authority which currently has no staff or procedures in place for records management, and which would therefore need to put in place proper arrangements for the first time. Based on evidence available, Ministers are of the view that the number of such authorities is very low, and that less than 10 authorities will fall into this category.

83. This view is based on evidence supplied in a 2007 report commissioned by the Scottish Information Commissioner, conducted by the University of St Andrews and Caledonian Business School, after the introduction of FOISA in 2005 (The Freedom of Information (Scotland) Act 2002: New Modes of Information Management in Scottish Public Bodies?). The report showed that 96% of public bodies reported that they had introduced some degree of organisational change to support FOI work and that 85% of respondents had either introduced new systems or adapted existing information management systems. Of those 69% either introduced or adapted existing document handling or records management systems.
84. A further 2008 assessment by the Improvement Service, of Scottish local authority knowledge and information management provision (The Knowledge and Information Management Landscape in Scottish Local Government Scoping Study) found that contact information from representatives across the sector was “consistent with the view that generally local authorities employ one records manager and one archivist within an authority.” It highlighted that between May 2000 and February 2008, 15 councils advertised archivist posts in key professional publications and 17 councils advertised records managers or records officer posts, indicating that around half of all local authorities advertised for archivists and/or records managers during that period. The Improvement Service report listed over 200 other job titles that often carry information management responsibilities. The Keeper understands only one smaller local authority has no designated professional records manager/archivist (although with allocated staff responsibilities and otherwise meeting its obligations under FOISA).

85. Evidence obtained from a cross-section of Scottish public sector records managers and independent consultants, supports the view that staff were allocated records management functions across most authorities, albeit on an ad-hoc basis, and that many of the named authorities in schedule 1 to the Bill are operating with some degree of records management provision. It is Ministers’ intention to phase in the implementation of RMPs over a number of years, giving authorities time to put new arrangements in place, thus keeping any resulting costs low.

86. A further factor reducing overall cost is that smaller authorities will be able, and would be encouraged, to share records management functions with others.

87. The proposals will not have a significant impact on staffing levels across the public sector.

88. The new obligations are achievable for most public authorities under current conditions, with no significant additional cost.

89. There will be a negligible cost to public authorities when assisting the Keeper with compliance reviews. Responsible staff and systems will be in place to assist with the process and costs will therefore arise only from routine administrative tasks.

90. The compliance review function will not apply to private and voluntary bodies.

**COST BENEFITS**

91. There is a great deal of research and information supporting the case for better records management from a business perspective as well as from a public right of access perspective. There are tangible and intangible benefits to be accrued to the organisation and to the wider community. It is not possible to estimate cost savings to be accrued in hard cash terms from the benefits of the new proposals, primarily because impact will be different across individual authorities, but also because the benefits will tend not to be immediate but made over the longer term.

_Tangible benefits_ are those that can be quantified and are generally articulated in terms of measurable improvements or cost savings.
These documents relate to the Public Records (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 7 October 2010

TANGIBLE BENEFITS
- increased efficiency in retrieval of records
- increased efficiency in receipt and fulfilment of customer orders
- reduced storage costs associated with keeping only required records
- reduced storage costs associated with offsite storage
- reduced consumable costs associated with fewer paper-based records
- increased productivity associated with automation of information/record related tasks and use of document templates
- reduced staff costs due to efficient performance of record related tasks

**Intangible benefits** are non-quantifiable improvements to an organisation.

INTANGIBLE BENEFITS
- effective compliance with the 8 data protection principles
- effective compliance with freedom of information and other information-related legislation
- improved decision-making and policy formation supported by reliable information
- increased accountability by providing reliable records of actions and decisions
- improved innovation and creativity through enhanced corporate knowledge management
- efficient collaborative working
- Implementation of proper records management practice will offset future record storage costs by appropriate and auditable disposal of non-current record material either to the authority’s archive service or by destruction. The value of these benefits in cash terms will vary from authority to authority.

SUPPORT FOR IMPLEMENTATION

92. The Keeper will implement the provisions of the Bill by allocating staff from within the current NAS staff complement as detailed above (paragraphs 53 to 56).

Appendix 1

| Private and Voluntary Bodies Consulted (Face-to-Face Meetings) |
|-----------------|-----------------|-----------------|
| 1 | Barnardos | UK Children charity |
| 2 | Children 1st | Scottish child welfare charity |
| 3 | The Rock Trust | Homeless and socially excluded young people (aged 16-25) in the Lothians |
| 4 | “Enjoy” | Charitable trust providing leisure facilities to the people of East Lothian for the Council |
| 5 | Care & Repair Edinburgh Ltd | “Not for profit” agency providing care to the elderly across Edinburgh |
| 6 | Royal Blind | Provides services for visually impaired people from across the UK |
Appendix 2

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<th>Bodies consulted on Local and Public Authority records management provision (Face-to-Face Meetings)</th>
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SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 7 October 2010, the Minister for Culture and External Affairs (Fiona Hyslop MSP) made the following statement:

“In my view, the provisions of the Public Records (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 5 October 2010, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Public Records (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Public Records (Scotland) Bill (SP Bill 56) as introduced in the Scottish Parliament on 7 October 2010.

PUBLIC RECORDS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)


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