Public Records (Scotland) Bill  
[AS INTRODUCED]

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Public Records (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the management of records by certain authorities; to amend the Public Records (Scotland) Act 1937 (c.43) in relation to court records; and for connected purposes.

PART 1

RECORDS MANAGEMENT PLANS

1 Records management plans

(1) Every authority to which this Part applies must—

(a) prepare a plan (a “records management plan”) setting out proper arrangements for
the management of the authority’s public records,

(b) submit the plan to the Keeper for approval, and

(c) ensure that its public records are managed in accordance with the plan as
approved by the Keeper.

(2) An authority’s records management plan must—

(a) identify—

(i) the individual who is responsible for management of the authority’s public
records, and

(ii) (if different) the individual who is responsible for ensuring compliance
with the plan, and

(b) include, in particular, provision about—

(i) the procedures to be followed in managing the authority’s public records,

(ii) maintaining the security of information contained in the authority’s public
records, and

(iii) the archiving and destruction or other disposal of the authority’s public
records.

(3) The Keeper must issue guidance to authorities about the form and content of records
management plans.

(4) Authorities must have regard to the guidance issued by the Keeper in preparing their
records management plans for the Keeper’s approval.
(5) An authority must, if the Keeper so requires, have separate records management plans for public records relating to separate functions of the authority.

(6) A group of two or more authorities—
(a) must, if the Keeper so requires, or
(b) may, with the Keeper’s approval,
have a common records management plan for both or, as the case may be, all of the authorities in the group.

2  Authorities to which Part 1 applies

(1) The authorities to which this Part applies are the bodies, office-holders and other persons listed, or of a description listed, in the schedule.

(2) The Scottish Ministers may by order made by statutory instrument amend the schedule by—
(a) adding—
   (i) a body, office-holder or other person, or
   (ii) a description of bodies, office-holders or other persons,
(b) removing an entry listed in it, or
(c) modifying an entry listed in it.

(3) An order under subsection (2)(a) may add a body, office-holder or other person, or a description of bodies, office-holders or other persons, only if the body, office-holder or person, or (as the case may be) each of the bodies, office-holders or persons within the description, is—
(a) a part of the Scottish Administration,
(b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 (c.46)), or
(c) a publicly owned company.

(4) In subsection (3)(c), “publicly owned company” means a company that is wholly owned by—
(a) the Scottish Ministers, or
(b) another authority.

(5) For that purpose, a company is wholly owned—
(a) by the Scottish Ministers if it has no members other than—
   (i) the Scottish Ministers or other companies that are wholly owned by the Scottish Ministers,
   (ii) persons acting on behalf of the Scottish Ministers or of such other companies,
(b) by another authority if it has no members other than—
   (i) the authority or other companies that are wholly owned by the authority, or
   (ii) persons acting on behalf of the authority or of such other companies.

(6) In this section, “company” includes any body corporate.
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(7) An order under subsection (2) may—
   (a) include consequential, supplementary, incidental, transitional, transitory or saving provision,
   (b) modify any enactment.

(8) An order under subsection (2) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

3 Meaning of “public records”

(1) In this Act, “public records”, in relation to an authority, means—
   (a) records created by or on behalf of the authority in carrying out its functions,
   (b) records created by or on behalf of a contractor in carrying out the authority’s functions,
   (c) records created by any other person that have come into the possession of the authority or a contractor in carrying out the authority’s functions.

(2) In subsection (1) “contractor”, in relation to an authority, means a person to whom functions of the authority are delegated (whether under a contract or otherwise) by the authority.

4 Approval of plans

(1) An authority must submit its proposed records management plan to the Keeper for approval by such date as the Keeper may determine.

(2) The proposed plan is to be submitted in such form and manner as the Keeper may determine.

(3) On receiving the proposed plan, the Keeper must—
   (a) approve it, or
   (b) if the Keeper considers that it does not set out proper arrangements for the management of the authority’s public records, reject it.

(4) What constitutes “proper arrangements” in any case is for the Keeper to determine.

(5) In deciding whether to approve or reject the proposed plan, the Keeper must have regard to—
   (a) the guidance issued by the Keeper under section 1(3), and
   (b) the model records management plan published under section 8.

(6) If the Keeper rejects the proposed plan—
   (a) the Keeper—
      (i) must state reasons for the rejection, and
      (ii) may propose modifications to the proposed plan, and
   (b) the authority must submit a revised plan to the Keeper for approval by such date as the Keeper may determine.

(7) Subsections (2) to (6) apply to a revised plan submitted under subsection (6)(b) as they apply to a proposed records management plan submitted under subsection (1).
(8) The Keeper may make different determinations under this section for different authorities or different descriptions of authorities.

5 Review of plans

(1) An authority must—

(a) keep its records management plan under review, and

(b) if the Keeper so requires (whether at the time of approval of the plan or otherwise), carry out a review of the plan by such date (the “review date”) as the Keeper may determine.

(2) After carrying out a review of its plan in accordance with subsection (1)(b), the authority must, by the review date, either—

(a) revise its plan and submit the revised plan to the Keeper for approval, or

(b) if the authority decides not to revise its plan, resubmit its current plan to the Keeper for approval.

(3) An authority may at any time revise its records management plan and submit the revised plan to the Keeper for approval.

(4) Subsections (2) to (8) of section 4 apply, as they apply to a proposed records management plan submitted for approval under that section, to—

(a) a revised records management plan submitted to the Keeper for approval under subsection (2)(a) or (3) of this section, and

(b) a records management plan resubmitted to the Keeper for approval under subsection (2)(b) of this section.

(5) The Keeper may make different determinations under this section for different authorities or different descriptions of authorities.

6 Compliance reviews

(1) The Keeper may carry out a review (a “compliance review”) of whether an authority is complying with its records management plan.

(2) An authority must provide the Keeper with such assistance as the Keeper may require for the purpose of carrying out a compliance review in relation to the authority.

(3) Following a compliance review, the Keeper may—

(a) make recommendations to the authority about how it complies with its records management plan, and

(b) require the authority to carry out a review of its plan by such date as the Keeper may determine.

(4) Section 5(2) applies to a review of a plan carried out under subsection (3)(b) of this section as it applies to a review of a plan carried out under section 5, but as if the reference to the review date were a reference to the date determined under subsection (3)(b) of this section.

(5) Subsection (3) does not affect the Keeper’s powers under section 7.

(6) The Keeper may carry out a compliance review in relation to—

(a) a particular authority, or
7 Warning notices

(1) This section applies where the Keeper considers that an authority—
   (a) has failed or is failing to comply with its records management plan, or
   (b) otherwise has failed or is failing to comply with any duty imposed on the
       authority by or under this Part.

(2) The Keeper may issue to the authority a notice (a “warning notice”)—
   (a) specifying the details of the alleged failure, and
   (b) requiring the authority to take specified action by a specified date.

(3) In subsection (2)(b), “specified” means specified in the warning notice.

(4) If the authority fails to comply with any of the requirements of the warning notice, the
    Keeper may take such steps as the Keeper considers appropriate to publicise the failure.

8 Model records management plan

(1) The Keeper must prepare and publish a model records management plan.

(2) Authorities must, in preparing and revising their records management plans for the
    Keeper’s approval, have regard to the model records management plan published under
    this section.

(3) The Keeper must keep the model records management plan under review and may
    revise it and publish the revised model plan.

(4) References in this Part to the model records management plan include references to a
    revised model records management plan.

9 Guidance

(1) The Keeper may issue guidance to authorities about their duties under this Part.

(2) Authorities must have regard to any guidance issued by the Keeper under subsection (1).

10 No right of action for failures to comply

This Part does not confer any right of action in civil proceedings in respect of any failure
by an authority—
   (a) to comply with its records management plan, or
   (b) otherwise to comply with any duty imposed on the authority by or under this Part.

11 Annual report

(1) The Keeper must, after the end of each financial year—
   (a) prepare a report on the carrying out of the Keeper’s functions under this Part
       during the year, and
   (b) submit the report to the Scottish Ministers.

(2) The report must—
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(a) be prepared in such form as the Scottish Ministers may direct,
(b) contain the information specified in subsection (3) and such other information as the Scottish Ministers may direct, and
(c) be submitted by such date as the Scottish Ministers may direct.

(3) The information referred to in subsection (2)(b) is—
(a) information about records management plans and revised records management plans approved by the Keeper during the year,
(b) information about any compliance reviews carried out by the Keeper during the year,
(c) details of any warning notices issued by the Keeper during the year,
(d) the names of any authorities that have failed to comply with any of the requirements of a warning notice together with details of the alleged failures.

(4) The Keeper may include in the report such other information as the Keeper considers appropriate.

(5) The Scottish Ministers must lay the report before the Scottish Parliament.

(6) The Keeper must, as soon as practicable after the report has been laid before the Parliament, publish the report in such manner as the Keeper considers appropriate.

12 Interpretation of Part 1

(1) In this Part—
“authority” means an authority to which this Part applies (see section 2),
“compliance review” means a review carried out under section 6,
“the Keeper” means the Keeper of the Records of Scotland,
“management”, in relation to public records, includes keeping, storage, securing, archiving, preservation, destruction or other disposal (and “manage” and other related expressions are to be construed accordingly),
“public records”, in relation to an authority, has the meaning given by section 3(1),
“record” means anything in which information is recorded in any form,
“records management plan”, in relation to an authority, means the plan referred to in section 1(1),
“warning notice” means a notice issued under section 7.

(2) Except where the context requires otherwise, references in this Part to an authority’s records management plan include references to the plan as revised from time to time.

13 Repeals

The following are repealed—
(a) section 53(1) to (3) of the Local Government etc. (Scotland) Act 1994 (c.39) (preservation and management of records of local authorities),
(b) section 30(1)(b) to (d) of the Environment Act 1995 (c.25) (preservation and management of records of SEPA),
(c) section 27(2) to (4) of the National Parks (Scotland) Act 2000 (asp 10) (preservation and management of records of National Park authorities), and
(d) section 58(2) to (4) of the Water Industry (Scotland) Act 2002 (asp 3) (preservation and management of records of Scottish Water).

 PART 2

COURT RECORDS

14 Court records

(1) The Public Records (Scotland) Act 1937 (c.43) is amended as follows.

(2) In section 1 (High Court and Court of Session records), after subsection (2) add—

“(3) Before making an Act of Adjournal or an Act of Sederunt under subsection (1), the High Court of Justiciary or, as the case may be, the Court of Session must consult the Keeper.”.

(3) In section 2 (sheriff court records)—

(a) for subsection (1) substitute—

“(1) A sheriff principal may, with the agreement of the Keeper, transmit any of the sheriff court records of the sheriff principal’s sheriffdom to the Keeper.”,

(b) in subsection (3), for “care and preservation”, in each place it appears, substitute “management”, and

(c) after subsection (4), add—

“(5) In subsection (3) of this section, “management”, in relation to sheriff court records, includes keeping, storage, securing, archiving, preservation, destruction or other disposal.”.

(4) In section 2A (JP court records)—

(a) for subsection (1) substitute—

“(1) A sheriff principal may, with the agreement of the Keeper, transmit any of the JP court records of the sheriff principal’s sheriffdom to the Keeper.”,

(b) subsection (2) is repealed,

(c) in subsection (4), for “care and preservation” in each place it appears, substitute “management”, and

(d) after subsection (4), add—

“(5) In subsection (4), “management”, in relation to JP court records, includes keeping, storage, securing, archiving, preservation, destruction or other disposal.”.
PART 3

GENERAL

15 Commencement

(1) Parts 1 and 2 come into force on such day as the Scottish Ministers may appoint by order made by statutory instrument.

(2) This Part comes into force at the beginning of the day following the day on which the Bill for this Act receives Royal Assent.

(3) An order under subsection (1) may include transitional, transitory or saving provision.

16 Short title

This Act may be cited as the Public Records (Scotland) Act 2010.
SCHEDULE
(introduced by section 2(1))

AUTHORITIES TO WHICH PART 1 APPLIES

Parliament

Scottish Parliament
Scottish Parliamentary Corporate Body

Scottish Administration

Scottish Ministers
Lord Advocate
Accountant in Bankruptcy
Chief Dental Officer of the Scottish Administration
Chief Medical Officer of the Scottish Administration
Drinking Water Quality Regulator for Scotland
Her Majesty’s Chief Inspector of Constabulary and Her Majesty’s Inspectors of Constabulary (appointed under section 33 of the Police (Scotland) Act 1967 (c.77))
Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities (appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5))
Her Majesty’s Chief Inspector of Prisons for Scotland
Her Majesty’s Inspector of Anatomy for Scotland
Her Majesty’s inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty on the recommendation of the Scottish Ministers under the Education (Scotland) Act 1980 (c.44))
Keeper of the Records of Scotland
Keeper of the Registers of Scotland
Office of the Scottish Charity Regulator
Procurators fiscal
Queen’s and Lord Treasurer’s Remembrancer
Queen’s Printer for Scotland
Registrar General of Births, Deaths and Marriages for Scotland
Scottish Court Service
Scottish Housing Regulator

Others

Accounts Commission for Scotland
Additional Support Needs Tribunals for Scotland
Architecture and Design Scotland
Audit Scotland
Auditor General for Scotland
Board of Trustees for the National Galleries of Scotland
Board of Trustees of the National Museums of Scotland
Board of Trustees of the Royal Botanic Garden, Edinburgh
Bòrd na Gàidhlig
Caledonian Maritime Assets Ltd (registered number SC001854)
Chief constables of police forces in Scotland
Children’s Hearings Scotland
Children’s Panel
Commission for Ethical Standards in Public Life in Scotland
Commissioner for Children and Young People in Scotland
Common Services Agency for the Scottish Health Service
Court of the Lord Lyon
Court of Session
Creative Scotland
Crofting Commission
David MacBrayne Ltd (registered number SC015304)
General Teaching Council for Scotland
Health Boards (constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29))
Healthcare Improvement Scotland
Her Majesty’s Chief Inspector of Prosecution in Scotland
High Court of Justiciary
Highlands and Islands Airports Ltd (registered number SC097647)
Highlands and Islands Enterprise
Joint boards (established under section 62A(1) or 62B(1) of the Local Government (Scotland) Act 1973 (c.65))
Joint police boards (constituted by virtue of section 19(2)(b) of the Police (Scotland) Act 1967 (c.77))
Judicial Appointments Board for Scotland
Justice of the peace courts
Justices of the peace advisory committees
Lands Tribunal for Scotland
Learning and Teaching Scotland
Licensing Boards (continued in existence or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16))
Local authorities
Local Government Boundary Commission for Scotland
Mental Health Tribunal for Scotland
Mental Welfare Commission for Scotland
Mobility and Access Committee for Scotland
National Convener of Children’s Hearings Scotland
National Park authorities (established by virtue of designation orders under section 6 of the National Parks (Scotland) Act 2000 (asp 10))
Parole Board for Scotland
Police Advisory Board for Scotland
Police Complaints Commissioner for Scotland
Principal Reporter
Private rented housing panel
Public Appointments Commissioner for Scotland (appointed under section 1(4) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11))
Public Standards Commissioner for Scotland (appointed under section 1(3) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11))
Public Transport Users’ Committee for Scotland
Quality Meat Scotland
Risk Management Authority
Royal Commission on the Ancient and Historical Monuments of Scotland
Safeguarders Panels (that is to say, panels established under section 30(1) of the Children’s Hearings (Scotland) Act 2010 (asp 00))
Scottish Advisory Committee on Distinction Awards
Scottish Agricultural Wages Board
Scottish Charity Appeals Panel
Scottish Children’s Reporter Administration
Scottish Commission for Human Rights
Scottish Commission for Public Audit
Scottish Crime and Drug Enforcement Agency
Scottish Criminal Cases Review Commission
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Further and Higher Education Funding Council
Scottish Futures Trust Ltd (registered number SC348382)
Scottish Health Council
Scottish Information Commissioner
Scottish Land Court
Scottish Law Commission
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish Local Authorities Remuneration Committee
Scottish Natural Heritage
Scottish Police Services Authority
Scottish Public Services Ombudsman
Scottish Qualifications Authority
Scottish Road Works Commissioner
Scottish Social Services Council
Scottish Sports Council
Scottish Water
Sheriff courts
Skills Development Scotland Co. Ltd (registered number SC202659)
Social Care and Social Work Improvement Scotland
Special Health Boards (constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978 (c.29))
Standards Commission for Scotland
Transport Partnerships
Trustees of the National Library of Scotland
Visiting committees (appointed under section 19(3) of the Prisons (Scotland) Act 1989 (c.45) or constituted by rules made under section 39 (as read with section 8(1)) of that Act)
VisitScotland
Water Industry Commission for Scotland
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[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the management of records by certain authorities; to amend the Public Records (Scotland) Act 1937 (c.43) in relation to court records; and for connected purposes.

Introduced by: Fiona Hyslop
On: 7 October 2010
Supported by: Bruce Crawford
Bill type: Executive Bill