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Public Records (Scotland) Act 2011

2011 asp 12

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th March 2011 and received Royal Assent on 20th April 2011

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 the transmission of court records to the Keeper of the Records of Scotland; and for connected purposes.

VALID FROM 24/02/2012

PART 1 S

RECORDS MANAGEMENT PLANS

1 Records management plans S

(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 agreement, and

(c) ensure that its public records are managed in accordance with the plan as agreed with 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,

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(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) An authority's records management plan may make different provision for the management of different kinds of public records (taking account, for example, of the different levels of risk associated with the management of different kinds of records).

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

(5) The Keeper may issue different guidance under subsection (4) in relation to different authorities.

(6) Before issuing guidance under subsection (4), the Keeper must—

(a) consult the following on a draft of the guidance, namely—

(i) such authorities as the Keeper considers will be affected by the guidance, and

(ii) such other persons (if any) as the Keeper considers appropriate, and

(b) have regard to any views expressed in response to the consultation.

(7) Authorities must have regard to the guidance issued by the Keeper in preparing their records management plans for agreement with the Keeper.

(8) An authority—

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

(b) may, with the Keeper's agreement,

have separate records management plans for public records relating to separate functions of the authority.

(9) 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.

2 Authorities to which Part 1 applies S

(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

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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, or

(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.

(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" S

(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.

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VALID FROM 01/01/2013

4 Agreement of plans S

(1) An authority must submit its proposed records management plan to the Keeper for agreement 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) agree it, or
- (b) if the Keeper considers that it does not set out proper arrangements for the management of the authority's public records, return it.

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

(5) In deciding whether to agree or return the proposed plan, the Keeper must have regard to—
- (a) the guidance issued by the Keeper under section 1(4),
- (b) the model records management plan published under section 8,
- (c) the nature of the authority and its public records, and
- (d) any representations made by the authority.

(6) Where the Keeper is considering returning the proposed plan, before deciding whether to do so, the Keeper must—
- (a) notify the authority—
  - (i) that the Keeper is considering returning the proposed plan, and
  - (ii) of the reasons for doing so,
- (b) give the authority an opportunity to make representations, and
- (c) have regard to any representations made by the authority.

(7) If the Keeper returns the proposed plan—
- (a) the Keeper—
  - (i) must state reasons for the return, and
  - (ii) may propose modifications to the proposed plan, and
- (b) the authority must submit a revised plan to the Keeper for agreement by such date as the Keeper may determine.

(8) Subsections (2) to (7) apply to a revised plan submitted under subsection (7)(b) as they apply to a proposed records management plan submitted under subsection (1).

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

VALID FROM 01/01/2013

5 Review of plans S

(1) An authority must—

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

(b) if the Keeper so requires (whether at the time of agreement of the plan or otherwise), carry out a review of the plan by such date (the "review date") as the Keeper may determine in accordance with subsections (2) to (4).

(2) The Keeper must not determine a review date under subsection (1)(b) which is earlier than five years after the date on which the authority's records management plan was last agreed.

(3) In subsection (2), reference to the plan being agreed includes—

(a) agreement of the plan under section 4,

(b) if the authority has been required to carry out a review of the plan under subsection (1)(b) of this section or section 6(3)(b), agreement of the revised or, as the case may be, resubmitted plan, and

(c) if the authority has submitted a revised plan under subsection (6) of this section, agreement of the revised plan.

(4) If—

(a) the Keeper has determined a review date under subsection (1)(b) in relation to a plan, and

(b) before that date, the Keeper agrees—

(i) a revised plan submitted by the authority under subsection (6), or

(ii) if the authority has been required to carry out a review of the plan under section 6(3)(b), a revised or, as the case may be, resubmitted plan,

the Keeper must determine a new review date and inform the authority of the new review date.

(5) 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 agreement, or

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

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

(7) Subsections (2) to (9) of section 4 apply, as they apply to a proposed records management plan submitted for agreement under that section, to—

(a) a revised records management plan submitted to the Keeper for agreement under subsection (5)(a) or (6) of this section, and

(b) a records management plan resubmitted to the Keeper for agreement under subsection (5)(b) of this section.

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

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VALID FROM 01/01/2013

6 Records management reviews S

(1) The Keeper may carry out a review (a "records management 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 records management review in relation to the authority.

(3) Following a records management 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(5) 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 records management review in relation to—
- (a) a particular authority, or
- (b) a group of authorities.

VALID FROM 01/01/2013

7 Action notices S

(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 (an "action notice")—
- (a) specifying the details of the alleged failure, and
- (b) requiring the authority to take specified action by a specified date.

(3) Where the Keeper is considering issuing an action notice to an authority, before deciding whether to do so, the Keeper must—
- (a) notify the authority—
  - (i) that the Keeper is considering issuing an action notice, and
  - (ii) of the reasons for doing so,
- (b) give the authority an opportunity to make representations, and
- (c) have regard to any representations made by the authority.

(4) In subsection (2)(b), "specified" means specified in the action notice.

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

8 Model records management plan S

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

(2) Before publishing the model records management plan under subsection (1), the Keeper must—
- (a) consult the following on a draft of the plan, namely—
  - (i) each authority, and
  - (ii) such other persons (if any) as the Keeper considers appropriate, and
- (b) have regard to any views expressed in response to the consultation.

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

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

(5) Before publishing a revised model plan under subsection (4), the Keeper must—
- (a) consult the following on a draft of the plan, namely—
  - (i) such authorities as the Keeper considers will be affected by the revisals to the plan, and
  - (ii) such other persons (if any) as the Keeper considers appropriate, and
- (b) have regard to any views expressed in response to the consultation.

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

VALID FROM 01/01/2013

9 Guidance S

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

(2) The Keeper may issue different guidance under subsection (1) in relation to different authorities.

(3) Before issuing guidance under subsection (1), the Keeper must—
- (a) consult the following on a draft of the guidance, namely—
  - (i) such authorities as the Keeper considers will be affected by the guidance, and
  - (ii) such other persons (if any) as the Keeper considers appropriate, and
- (b) have regard to any views expressed in response to the consultation.

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

VALID FROM 01/01/2013

10 Application of Part 1 in relation to sheriff court records and JP court records S

(1) This section applies in relation to the public records of a sheriff court or a justice of the peace court.

(2) The Sheriff Principal of the sheriffdom in which the court is located is responsible for carrying out the authority's functions under this Part in relation to such public records.

(3) Accordingly, in relation to such public records, a reference in this Part to an authority (other than in section 3) is to be read as a reference to the Sheriff Principal.

VALID FROM 01/01/2013

11 No right of action for failures to comply S

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.

VALID FROM 01/01/2013

12 Annual report S

(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—

(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 agreed with the Keeper during the year,

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(b) information about any records management reviews carried out by the Keeper during the year,

(c) details of any action 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 an action 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.

13 Interpretation of Part 1 S

(1) In this Part—

"action notice" means a notice issued under section 7,

"authority" means an authority to which this Part applies (see section 2),

"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),

"records management review" means a review carried out under section 6.

(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.

VALID FROM 01/01/2013

14 Repeals S

The following are repealed—

(a) sections 2(3) and 2A(4) of the Public Records (Scotland) Act 1937 (c.43) (care and preservation of sheriff court and JP court records),

(b) section 53(1) to (3) of the Local Government etc. (Scotland) Act 1994 (c.39) (preservation and management of records of local authorities),

(c) section 30(1)(b) to (d) of the Environment Act 1995 (c.25) (preservation and management of records of SEPA),

(d) section 27(2) to (4) of the National Parks (Scotland) Act 2000 (asp 10) (preservation and management of records of National Park authorities), and

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(e) section 58(2) to (4) of the Water Industry (Scotland) Act 2002 (asp 3) (preservation and management of records of Scottish Water).

VALID FROM 01/01/2013

PART 2 S

TRANSMISSION OF COURT RECORDS

15 Transmission of court records S

(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 (4), for "subsections (1) and (3)" substitute " subsection (1) ".

(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.

PART 3 S

GENERAL

16 Commencement S

(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.

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17 Short title S

This Act may be cited as the Public Records (Scotland) Act 2011.

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VALID FROM 24/02/2012

SCHEDULE S

(introduced by section 2(1))

AUTHORITIES TO WHICH PART 1 APPLIES

. . . . . .

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