

Public Records (Scotland) Act 2011

Judicial Appointments Board for Scotland Assessment Report

The Keeper of the Records of Scotland

1st March 2016

Contents

1. Public Records (Scotland) Act 20113
2. Executive Summary4
3. Authority Background.....4
4. Assessment Process.....6
5. Model Plan Elements: Checklist.....7
6. Keeper’s SummaryX
7. Keeper’s Determination.....X
8. Keeper’s Endorsement.....X

1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came fully into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor record keeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

2. Executive Summary

This report sets out the findings of the Keeper's assessment of the RMP of the **Judicial Appointments Board for Scotland** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on **12th June 2015**.

The assessment considered whether the RMP of the Judicial Appointments Board for Scotland was developed with proper regard to the 14 elements of the Keeper's statutory Model Records Management Plan (the Model Plan) under section 8(3) of the Act, and whether in this respect it complies with it and the specific requirements of the Act.

The outcome of the assessment and the Keeper's decision on whether the RMP of the Judicial Appointments Board for Scotland complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Judicial Appointments Board for Scotland has been in existence since 2002. Its role is to recommend to the Scottish Ministers individuals for appointment to judicial offices.

The Board consists of 10 members and is supported by a secretariat of 4 staff members. The Board is responsible for recommending individuals suitable for appointment to the following judicial offices:

- Judge of the Court of Session
- Chair of the Scottish Land Court
- Sheriff Principal
- Sheriff
- Part-time Sheriff
- Summary Sheriff

- Temporary Judge, except in cases where the individual to be appointed already holds or has held one of the following offices:

Judge of the European Court
Judge of the European Court of Human Rights
Chair of the Scottish Land Court
Sheriff Principal
Sheriff

The Scottish Ministers may specify other judicial offices to come within the Board's remit but can only do so by laying a Scottish Statutory Instrument before the Scottish Parliament.

The selection of individuals for recommendation must be made solely on merit and an individual may only be selected for recommendation if he or she is of good character. Only the judicial and legal members of the Board may assess the applicants' knowledge of the law or their skill and competence in the interpretation and application of the law. Decisions about an applicant's suitability to be recommended for appointment are made by the whole Board.

<http://www.judicialappointmentsscotland.org.uk/Home>

4. Keeper’s Assessment Process

The RMP was assessed by the Public Records (Scotland) Act Assessment Team on behalf of the Keeper. Assessors used the checklist elements listed in section 5, to establish whether the Judicial Appointments Board for Scotland’s RMP was developed with proper regard to the elements of the Model Plan and is compliant with the Act. The assessment also considered whether there was sufficient supporting evidence of such compliance.

Key:

G	The Keeper agrees this element of an authority’s plan.		A	The Keeper agrees this element of an authority’s plan as an ‘improvement model’. This means that he is convinced of the authority’s commitment to closing a gap in provision. He will request that he is updated as work on this element progresses.		R	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Keeper may choose to return the RMP on this basis.
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Judicial Appointments Board for Scotland
(for ease of reporting in the assessment the authority will be referred to as JABS)

5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	G	G	<p>The Records Management Plan (RMP) states that Michael Garden, Chief Executive of JABS, takes senior management responsibility for records management.</p> <p>A letter signed by the CEO has been provided, this confirms; the Senior manager responsible for records management, named records manager and the agreed policy statement on JABS records management.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland has identified an appropriate individual to this role as required by the Act.</p>
2. Records Manager <i>Compulsory element</i>	G	G	<p>Dorothy Smith, Policy Officer, has been identified as having operation responsibility for records management within JABS.</p> <p>JABS have supplied the following statement: Competencies included in Policy Officer’s 2015/16 objectives and job description are as follows:</p> <ul style="list-style-type: none"> • Manage the publication scheme, including developing proposals for improvements and overseeing quality assurance processes, so that JABS meets its legal obligations.

			<ul style="list-style-type: none"> • Manage the Records Management Section on the JABS website by acting as editor, so that key information is readily available to its intended audience. • Manage the JABS publication scheme and notification obligations in accordance with the relevant legislation and regulator guidance to ensure that JABS complies with the legislation in a timely and adequate manner. <p>The Keeper agrees that the Judicial Appointments Board for Scotland has identified an appropriate individual to this role as required by the Act.</p>
3. Policy <i>Compulsory element</i>	G	G	<p>JABS have provided a policy statement in the text of the RMP setting out their approach to records management. It shows a commitment to manage records properly from their creation, to store them securely and dispose of them at the right time. It also shows a commitment to providing records management training for all staff, which the Keeper commends.</p> <p>The Board minutes from December 2014 provides the sign off to the RMP including the policy. All staff are aware of policy as they attend the meetings that sign off the policies or QA the documents for the website. The policy is stored on a shared drive and can be accessed by all staff.</p> <p>The Covering Letter from Michael Garden (see element 1) endorses the records management policy statement.</p> <p>The Keeper agrees that the Judicial that the Judicial Appointments Board for Scotland have an approved and operational records management policy statement as required by the Act.</p>
4. Business Classification	G	G	<p>The Judicial Appointments Board for Scotland have a <i>Business Classification Scheme</i> which has been supplied to the Keeper.</p>

			<p>This is the version approved in February 2016.</p> <p>The Board’s classification scheme is informed by the duties placed on it by the Judiciary and Courts (Scotland) Act 2008 as amended by the Tribunals (Scotland) Act 2014 and Courts Reform (Scotland) Act 2014.</p> <p>The <i>Business Classification Scheme</i> shows records in three levels (function/activity/transaction). For example Non- appointment related records/Business Plans and Procedures/Annual Reports.</p> <p>The Keeper agrees that the <i>Business Classification Scheme</i> appears to cover all the likely activities of the authority.</p> <p>The Board operate a hybrid system; their public records are both in electronic and in paper format.</p> <p>The Board operate a <i>Helpful tips on naming files and records</i> Guidance document which contains detailed instructions on the naming of records for tracking purposes (see element 11).</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have a <i>Business Classification Scheme</i> that encompasses all of the functions of the authority.</p>
<p>5. Retention schedule</p>	<p>G</p>	<p>G</p>	<p>In their policy statement (see element 3) the Judicial Appointments Board for Scotland commit to “store [records] securely and dispose of them safely at the right time”.</p> <p>To this end the Board operates a full <i>Retention Schedule</i> which has been supplied to the Keeper.</p>

			<p>This is the version approved in February 2016.</p> <p>The <i>Retention Schedule</i> itemises retention decisions for each of the activities in the <i>Business Classification</i>. For example “business plans and procedures” are closed after 5 years and destroyed after 15.</p> <p>The retention schedule has been adopted from the Scottish Government’s Records Retention Schedule.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have a <i>Retention Schedule</i> that confirms retention decisions for the records indicated in the <i>Business Classification Scheme</i>.</p>
<p>6. Destruction Arrangements <i>Compulsory element</i></p>			<p>JABS has described its procedures for destroying paper records at the end of their retention periods. The Board’s secretariat is responsible for ensuring the destruction takes place. This is done by a combination of in-house shredding to European security standards, by a third-party contractor from a list of approved contractors maintained by the Scottish Government or by Shred-It as part of a contract with the Scottish Legal Aid Board, from whom JABS rents premises. Evidence has been supplied of SLABs guidance on disposal of confidential waste and a sample destruction certificate has also ben provided.</p> <p>The <i>Data Protection Policy</i> states that the electronic copies of applications and references are deleted three years after the relevant recruitment round has ended.</p> <p>JABS hardware is disposed of through the SG via a third party contractor. A sample destruction certificate for obsolete computer equipment has been supplied as evidence that this arrangement is operational.</p>

			<p>Records held electronically are managed through the Scottish Government’s Scots system this includes deletion and the ‘overwriting’ of hardware. ‘Scots’ destruction procedures have been provided in evidence as has the SG terms and supply document confirming this arrangement is in place.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have arrangements in place to ensure the secure and irretrievable destruction of records when appropriate as required by the Act.</p>
7. Archiving and Transfer <i>Compulsory element</i>	A	G	<p>The Judicial Appointments Board for Scotland have identified the National Records of Scotland (NRS) as the appropriate repository for records identified as suitable for permanent preservation.</p> <p>A Memorandum of Understanding regarding the transfer of records from JABS to NRS is being negotiated at the time of this assessment. This is confirmed by the NRS Client Management Team.</p> <p>The Keeper agrees this element of JABS’ <i>Records Management Plan</i> under ‘improvement model’ terms. This means that he acknowledges that the authority has identified a gap in provision [there is no formal transfer agreement with the archive] and have put processes in place to close that gap. The Keeper’s agreement is conditional on his PRSA Assessment Team being provided with a copy of the signed MOU when available.</p>
8. Information Security <i>Compulsory element</i>	G	G	<p>JABS has set out the procedures in place for ensuring that the security of information is properly considered. The <i>Data Protection Policy</i> (published on the JABS website and due for review in November 2016) sets out the physical security arrangements in place for the protection of the information it creates and maintains. JABS shares a building with other authorities in Edinburgh. Doors to offices are locked when no staff are present, all documents containing personal information are</p>

			<p>locked in secure cupboards when not in use and they appear to operate a clear desk policy. As well as the general offices the <i>Policy</i> also sets out the responsibilities on Board Members, including the measures in place for maintaining security working outside the offices.</p> <p>JABS has also detailed the measures in place to protect electronic information. These include passing information between the Secretariat and Board using encrypted USB sticks and sending personal information by email using secure zip facilities.</p> <p>Also submitted as evidence is JABS' Confidentiality Policy which shows a commitment to protect personal information collected in the carrying out of its functions. It is available on the JABS website and is due for review in November 2016.</p> <p>Failure to comply with Data Protection Act and Freedom of Information (Scotland) Act requirements is recognised as a risk in the Business Plan 2015-16 published on website: http://www.judicialappointmentsscotland.org.uk/Publications/Corporate and Business Plans</p> <p>The SG provides the IT hardware for JABS including SCOTS laptops for Board members. The <i>Data Protection Policy</i> (section 6.6) states that all computers and laptops used by JABS have the latest Scottish Government encryption software installed.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have procedures in place to protect information created and maintained in the course of performing its functions.</p>
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<p>9. Data Protection</p>	<p>G</p>	<p>G</p>	<p>JABS has submitted its <i>Data Protection Policy</i> which sets out its commitment to complying with the requirements of the Data Protection Act 1998. It also sets out the practical steps to be taken in order to ensure that personal and sensitive information is adequately protected. Both the Secretariat and Board Members are required to sign the <i>Policy</i> as a way of showing that they have read and understood the content. The Policy is published on its website: http://www.judicialappointmentsscotland.org.uk/Policies/Data_Protection</p> <p>The Keeper commends this external facing commitment to ensuring that its stakeholders are aware of how JABS treats personal information.</p> <p>The Board's Policy Officer (see element 2) deals with subject access requests requests for information. JABS is registered as a data controller. Their registration document has been provided as evidence. Registration reference: ZA158006.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have appropriately considered their responsibilities under the Data Protection Act 1998.</p>
<p>10. Business Continuity and Vital Records</p>	<p>G</p>	<p>G</p>	<p>JABS has provided its Business Continuity Plan which operational from April 2015 and published on website at http://www.judicialappointmentsscotland.org.uk/Publications/Corporate and Business Plans</p> <p>It sets out the actions to be taken in the event of a disruption to the authority's normal business. The first scenario in which business could be interrupted is a loss of IT facilities. It would appear that the Scottish Government has been contracted to provide IT services for JABS. Similarly, in the event of a loss of premises the Business Continuity Plan states that JABS will be able to use Scottish Government premises or suitable laptops to enable work to continue.</p>

			<p>A statement(email) from SG re providing shared office space should JABS not have access to its offices has been supplied to the Keeper.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have an approved and operational Business Continuity Plan that can be accessed by appropriate staff.</p>
11. Audit trail	A	G	<p>Under this element the Judicial Appointments Board for Scotland makes the following statement:</p> <p>“In light of the development of the RMP and JABS moving premises the file register is currently being reviewed, the draft version is provided as evidence also as part of this review guidance has been produced on the naming and version control of JABS documents, also provided as evidence. Currently all records are stored on the G drive, documents are clearly named as draft or final version. All Policy documents have the last date of review. This is work in progress and evidence of improvement to process. The majority of JABS records are electronic with paper back-up for financial records e.g. invoices. The admin officer is responsible for keeping the file register and disposal of records up to date and this is included in the annual performance objectives and job description.”</p> <p>The Keeper acknowledges that he has been provided with The existing file register and the revised (draft) version. Both are Excel spreadsheets. The Keeper recognises that this is evidence of the ‘work in progress’ described above.</p> <p>The Board operate a <i>Helpful tips on naming files and records</i> Guidance document which contains detailed instructions on the naming of records for tracking purposes. The Keeper agrees that this will be an important document going forward.</p> <p>The Keeper agrees this element of the Judicial Appointments Board for</p>

			<p>Scotland’s plan on ‘improvement model’ terms. This means that he acknowledges that the authority has identified a gap in provision [the new file register is ‘draft’] and have put processes in place to close that gap. The Keeper’s agreement is conditional on his PRSA Assessment Team being provided with a finalised and approved version when available.</p>
<p>12. Competency Framework for records management staff</p>	G	G	<p>The Judicial Appointments Board for Scotland have provided the Policy Officer’s <i>Objectives</i> and <i>Job Description</i> (see element 2) this shows that Ms. Smith is responsible for records management functions in the authority.</p> <p>The Board is a very small (in staff number) public authority. The Keeper agrees that it is reasonable, therefore, that records management does not warrant a dedicated member of staff. He is satisfied that Ms. Smith has the requisite responsibility and skills to undertake the role of implementing the agreed plan.</p> <p>The Board have arranged information security training for their secretariat staff via SG training portal, the ‘Protecting info’ training screen-shot provided as evidence.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have ensured that the individual identified at element 2 has the required authority and skills to implement the <i>Plan</i>. They also consider training other members of staff when appropriate.</p>
<p>13. Assessment and Review</p>	G	G	<p>The Act requires a scheduled public authority to “keep its records management plan under review” (part 1 5.1 (a)).</p> <p>The <i>Plan</i> states that the RMP is subject to annual audit by the Audit and Risk Management Committee. This committee’s remit has been supplied and includes the review of the <i>Plan</i>. The Keeper commends the use of an authority’s ‘internal audit’ in the review of their records management plan.</p>

			<p>The Plan has also been added to the Board’s risk register also provided in evidence.</p> <p>The <i>Business Classification Scheme</i> (see element 4) and the <i>Retention Schedule</i> (see element 5) are due for review by February 2017.</p> <p>The Keeper agrees that the Judicial Appointments Board for Scotland have identified a review date for their <i>Plan</i> and have explained how this review will take place.</p>
14. Shared Information	N/A	N/A	The Board does not currently undertake data sharing exercises with other organisations.

6. Keeper's Summary

Elements 1-14 that the Keeper considers should be in a public authority records management plan have been properly considered by the Judicial Appointments Board for Scotland. Policies and governance structures are in place to implement the actions required by the plan.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper **agrees** the RMP of the **Judicial Appointments Board for Scotland**.

- The Keeper recommends that the Judicial Appointments Board for Scotland should publish its agreed RMP as an example of good practice within the authority and the sector.

This report follows the Keeper's assessment carried out by,



.....
Pete Wadley
Public Records Officer



.....
Robert Fotheringham
Public Records Officer

8. Endorsement of Report by the Keeper of the Records of Scotland

The report has been examined and is endorsed under the signature of the Keeper of the Records of Scotland as proof of compliance under section 1 of the Public Records (Scotland) Act 2011, and confirms formal agreement by the Keeper of the RMP as submitted by the Judicial Appointments Board for Scotland. In agreeing this RMP, the Keeper expects the Judicial Appointments Board for Scotland to fully implement the agreed RMP and meet its obligations under the Act.



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Tim Ellis
Keeper of the Records of Scotland