

Public Records Consultation

Q1 Do you agree that a public record is one that is created or received by a publicly funded authority, or do you think that the 'public' status of a record is determined by the information that it contains?

Children in Scotland believes that the only practicable definition of a public record is that created by a publicly funded body. The alternative of defining a record by content seems impractical because the range of bodies, inclusions and exceptions that could potentially be involved.

Q2 Do you have any comments on the inclusion of those bodies listed in Annex D?

The list of public bodies in Annex D seems exhaustive.

Q3 Do you believe the proposals should cover more or fewer authorities?

We cannot see any obvious omissions, or any that should not be included from our perspective.

Q4 Do you have any further comments on the proposals outlined in this section?

Within the children's sector, most of the problems highlighted with past record keeping have related to the loss of records or their inadequacy in terms of the level of information that they contain. In some cases inappropriate comment and opinion was also included in records in the past. There has, however, been a sea change in practice in respect of looked after children records. In contrast with past practice, nowadays virtually nothing of significance goes unrecorded and all records are kept for specified time periods. While we accept the case for regulation, we think it unlikely that the introduction of new legislation will not add to an increase in the volume of records kept. This may well place further pressure on what are already (and likely to become more so) limited resources for providing services.

Q5 Do you agree that the definition of a public record should focus on the informational content rather than the physical format of the record?

Records of all formats should be included within the scope of this bill, including those

that have been generated digitally.

Q6 Are there other issues that need to be considered in relation to technology and future-proofing?

In recent years the security of digital records has been challenged repeatedly. There have been numerous instances of the loss or theft of digital storage devices containing sensitive data. This is recognised as a real issue to the extent that some Government Departments (e.g. DWP) routinely refuse to share certain categories of information with other public agencies. In the children's sector, problems about information sharing caused by concerns about security remains one of the greatest barriers to the full implementation of GIRFEC. We therefore believe that workable and generally accepted protocols regarding the security of digitally stored data will prove an essential component of this legislation and would go so far as to suggest that it will be unworkable without this.

Q7 Do you agree that when voluntary or private organisations deliver public services, using public money, records relating to carrying out that work should be considered to be public records?

Yes.

Q8 Do you have any further comments relating to records of voluntary and private organisations delivering public services?

We note that Scottish Charities, some of whom provide substantial elements of service within the children's sector, are not included in the list of public bodies. We agree that it would not be appropriate to include such organisations since they encompass a wide range of activities, some of which are not publicly funded. Where this should not apply is where organisations with charitable status act as, in effect, arms-length contractors for local authorities. The example highlighted in the consultation paper of Registered Social Landlords also seems doubtful if they are being excluded on the basis of the range of their activities. Nevertheless, it seems sensible that, as a workable definition is clearly needed, local authorities should carry the responsibility for ensuring that records kept by organisations acting on their behalf, meet the relevant standard. This can be achieved within normal contractual arrangements.

Q9 Do you agree that the Keeper should be responsible for producing and publishing a model records management plan to guide public authorities?

A model records management plan, as a guide for public authorities, could be useful in avoiding expensive and unnecessary duplication. Such a model plan should be 'user friendly', should demonstrate how the increased keeping of unnecessary records can be avoided and should include guidance on the security of digital records (see above).

Q10 Do you agree that public authorities should be required to produce records

management plans, following the Keeper's model and with the Keeper's approval, within a certain time?

Without such a requirement, it is unlikely that the proposal for the production of a records management plan by all public authorities would be fully implemented. It may be argued that, during a time of cuts in essential services, such a measure could not be afforded a high priority.

Q11 Should the proposals allow for the creation of generic records management plans by groups of public authorities rather than separate plans for each authority, where appropriate?

Such consortia arrangements between groups of local authorities, or other public bodies are likely to be important in overcoming the difficulties suggested above (Q.10).

Q12 Do you agree that the existing duty on local authorities to make "proper arrangements" for their records would be adequately covered by the requirement to produce and implement records management plans to be approved by the Keeper under the new proposals? Please give an explanation.

Yes – it seems like a practical way forward and reliance on undefined 'proper arrangements' clearly cannot be allowed to continue, especially in the light of the Kerelaw Report.

Q13 Should public authorities who fail to produce a records management plan within the specified time or to an approved standard, or who fail to provide record keeping arrangements specified in the plan, be subject to civil sanctions? If so, what sanction do you consider would be appropriate?

Q14 Should the Bill allow the Keeper to issue recommendations to achieve compliance to public authorities found to be in breach of the provisions?

Q15 Should the Bill allow the Keeper to publish the names and details of those public authorities found to be in breach of the provisions?

Q16 Do you consider that the Keeper should have an additional role to scrutinise public authorities in the management of their records and archives? If so, what should be the extent of that scrutiny?

Q17 Should the Bill allow the Keeper to recognise or reward public authorities who are seen to adopt particularly successful records management practices? In what way might this be done?

Q18 To what extent would a scrutiny and enforcement role for the Keeper enhance or otherwise change the nature of the relationship between the National Archives of Scotland and the creators and potential depositors of public records?

These questions all concern scrutiny and enforcement and seem to envisage an independent process concerned solely with records. We are not convinced that this is necessary and whether it constitutes a proportionate response to the issues that have been raised. Most if not all public bodies are subject to some form of external scrutiny and there is no reason why record keeping, which is, after all, just one category of good practice, should not fall within the existing scrutiny arrangements.

In the case of looked after children, a regime of inspection by multiple agencies already applies, although a simplified system is due to be implemented, next year. HMIE, The Care Commission and SWIA all currently inspect the records of looked after children services in detail. We see no reason why record-keeping practice should not fall within the scope of the new scrutiny body, along with all other aspects of practice. The guidance provided by an approved records management plan should be sufficient to enhance the consideration given to this aspect of practice. Inspection reports are published and are publicly available. Both good and bad examples of practice are highlighted and the Care Commission employs a scoring system. We do not believe that any other form of sanction for non-compliance or acknowledgement of good practice is necessary. We would not support the creation of another new oversight body under the Control of the Keeper of Records of Scotland, as we do not see this as either necessary or sensible.

Q19 Do you think there is a place for peer assessment, where public authorities are scrutinised by other authorities, either within or across individual sectors?

We have no objection to the principle of peer assessment, but would also argue for a greater role for self-assessment.

Q20 Do you consider that lasting and measurable improvements could be made to existing poor record keeping practice without legislation or sanctions? If so please explain how.

While we are not opposed to legislation, we do believe it should be proportionate. It is indisputable that major improvements in record keeping in the looked after children sector have already been achieved within a relatively short timescale without legislation.

Q21 Do you agree that the proposed legislation should not be retrospective, and if not, are there reasons why it should be?

Clearly, good record keeping practice cannot be imposed retrospectively. But, presumably, the legislation would proscribe the destruction of some categories of existing records which cannot be improved, but should be retained.

Q22 Both Shaw and the Keeper found failings in record keeping across the public sector and considered that new legislation should extend beyond the looked after children sector. Do you agree, or do you consider that this legislation should be

restricted to the looked after children sector?

We agree that the scope of the legislation should be wide rather than narrow. We would, however, wish to make a particular point in respect of looked after children records. While problems, adverse circumstances, failures and difficulties are usually well documented in records on looked after children, **their successes, achievements and positive attributes are less assiduously recorded.** We, therefore, urge that any further legislation, regulation, inspection or guidance about record keeping emphasises the importance of comprehensiveness, balance and fairness in relation to looked after children.

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Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including 90% of Scottish local authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland's largest independent education mediation service.