

Public Records (Scotland) Act 2011

The Commissioner for Ethical Standards in Public Life in Scotland

The Keeper of the Records of Scotland

2nd March 2023

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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 Commissioner for Ethical Standards in Public Life in Scotland by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on 30 June 2022.

The assessment considered whether the RMP of The Commissioner for Ethical Standards in Public Life in Scotland was developed with proper regard to the 15 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 Commissioner for Ethical Standards in Public Life in Scotland complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Commissioner for Ethical Standards in Public Life in Scotland and his team work in two areas:

1. Public standards: Investigating complaints about the conduct of MSPs, local authority councillors and members of public bodies.
2. Public appointments: Regulating how people are appointed to the boards of public bodies in Scotland.

The Commissioner's functions in relation to public standards are set out in a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Ethical Standards Act), and b) the Scottish Parliamentary Standards Commissioner Act 2002 (the Parliamentary Standards Act). The Commissioner's functions in relation to public appointments are set out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the Public Appointments Act).

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (Scottish Statutory Instrument 2013/197) created the post of Commissioner for Ethical Standards in Public Life in Scotland.

<http://www.ethicalstandards.org.uk/>

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 Commissioner for Ethical Standards in Public Life in 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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5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer	G	G	<p>The Public Records (Scotland) Act 2011 (the Act) requires that an individual senior staff member is identified as holding corporate responsibility for records management in a public authority.</p> <p>The Commissioner for Ethical Standards in Public Life in Scotland (ESC) have identified Ian Bruce, Acting Ethical Standards Commissioner, as the individual with overall strategic responsibility for their public records.</p> <p>The Records Management Plan (<i>RMP</i>) is clear that the role of Responsible Officer is that of the Ethical Standards Commissioner post holder, and any change in personnel will not alter this arrangement.</p> <p>This is supported by a <i>Covering Statement</i>, which forms part of the <i>RMP</i>, from the Acting Ethical Standards Commissioner (dated 31 March 2022), in which he confirms his responsibility and acknowledges the importance of ESC’s records, stating he has “.. established records management as a key corporate function.” He also commits “to ensuring that our policies, procedures and practices are effective, and are regularly reviewed and developed to ensure that they continue to meet our needs and obligations.” The statement also addresses the planned development work outlined in the <i>RMP</i> under elements 5, 6 and 9.</p> <p>ESC have a <i>Records Management Policy and Procedures</i> (version 1.0 dated 10 March 2022) which echoes the commitment made in the <i>Covering Statement</i>. The</p>

			<p>Commissioner’s overarching strategic responsibility is further confirmed in section 7 of this document, ‘Employee responsibilities.’ This document is published on the ESC website and a link has been provided, Records Management Policy and Procedures February 2022 5.pdf (ethicalstandards.org.uk).</p> <p>The Acting Commissioner is part of the Senior Management Team which approved the updated <i>Records Management Policy and Procedures</i> and <i>File Plan and Retention Schedule (SMT Meeting Minutes 27 January 2022)</i>. The <i>File Plan and Retention Schedule</i> (dated February 2022) carries the signature of the Acting Commissioner approving it for use, ESC File Plan and Retention Schedule Ethical Standards Commissioner.</p> <p>The Keeper of the Records of Scotland (the Keeper) agrees that the Commissioner for Ethical Standards in Public Life in Scotland have identified an appropriate individual to this role as required by the Act.</p>
<p>2. Records Manager</p>	<p>G</p>	<p>G</p>	<p>The Act requires that each authority identifies an individual staff member as holding operational responsibility for records management and that this staff member has appropriate corporate responsibility, access to resources and skills.</p> <p>ESC have identified Karen Elder, Head of Corporate Services, as the individual with day-to-day responsibility for implementing the <i>RMP</i>.</p> <p>The <i>RMP</i> is clear that the role of Records Manager is undertaken by the Head of Corporate Services post holder, and any change in personnel will not alter this arrangement. Should there be any change, the Keeper expects to be notified.</p> <p>The Head of Corporate Services’ day-to-day operational responsibility is also confirmed in section 7, ‘Employee responsibilities’, of <i>Records Management Policy and Procedures</i>.</p>

			<p><i>A Head of Corporate Services Role Description</i> has been provided. Section 6 relates specifically to information and records management, noting the post holder is information governance lead, and refers to the Act. The <i>Role Description</i> notes the post holder is a member of the Senior Management Team and reports to the Commissioner (named at element 1).</p> <p>The Head of Corporate Services is the author of <i>Records Management Policy and Procedures</i>; and updated the <i>Information Security Policy</i>.</p> <p>The Head of Corporate Services is a member of the Information and Records Management Society (IRMS) and participates in records management training and networking events (<i>RMP</i> page 5). Training requirements for all ESC staff are identified through the ESC performance management process.</p> <p>The Keeper agrees that the person identified at element 2 is supported in records management training and development opportunities (see element 12).</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life have identified an appropriate individual to this role as required by the Act.</p>
3. Policy	G	G	<p>The Act requires an authority to have an appropriate policy statement on records management.</p> <p>The <i>RMP</i> (page 6) states that “The Commissioner fully recognises the value of records and has established records management as a key corporate function.”</p> <p>ESC have a records management policy statement which is included in the <i>Records Management Policy and Procedures</i>. This document is publicly available on the ECS website (see element 1). The Keeper can therefore agree all staff have access</p>

			<p>to this document.</p> <p>The policy statement is echoed in the <i>Covering Statement</i> from the Acting Commissioner.</p> <p>The <i>Records Management Policy and Procedures</i> (section 1) notes that the policy forms part of the employment contract for all ESC staff and further states (section 3) that “appropriate action will be taken to inform all new and existing employees and others covered by the scope of the existence of the policy and their role in adhering to it.”</p> <p>The <i>Records Management Policy and Procedures</i> was approved by the Senior Management Team (link provided to <i>SMT Meeting Minutes 27 January 2022</i> showing this at section 4 (c)). This meeting was attended by Ian Bruce (named at element 1) and Karen Elder (named at element 2).</p> <p>The Keeper agrees that the <i>RMP</i> supports the objectives of the <i>Records Management Policy</i>.</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have a formal records management policy statement as required by the Act.</p>
4. Business Classification	G	G	<p>The Keeper of the Records of Scotland (the Keeper) expects that the public records of an authority are known and are identified within a structure.</p> <p>ESC have a file plan in place which is implemented across all records storage systems and all formats. It determines the structure of the two systems in which ECS public records are stored, shared drives on the main server and a cloud-based</p>

			<p>Case Management System (CMS). It also includes records shared in the online KnowledgeHub platform.</p> <p>The <i>Records Management Policy and Procedures</i> (page 3) explains that ESC do not use an electronic and document records management system (EDRMS) and acknowledge the risks this may pose. It states that to address this ESC “manage our records using a defined file plan and records management procedures. These are designed to ensure that records are stored in a consistent manner, thereby making it easy for staff to quickly retrieve information, work effectively and efficiently and meet our statutory obligations.”</p> <p>The <i>File Plan</i> is combined with a <i>Records Retention Schedule</i> and is arranged by function and activity. The Keeper agrees a functional system is best practice and that a combined business classification scheme and retention schedule provides a comprehensive business tool.</p> <p>The combined <i>File Plan and Retention Schedule</i> was updated and approved by the ESC Senior Management Team in January 2022 (see element 1). It carries the signature of the Acting Commissioner approving it for use and is published on the ESC website, ESC File Plan and Retention Schedule Ethical Standards Commissioner. It outlines the locations where records are stored and provides the job title of the manager responsible, for example “Records stored in the o:drive Manager responsible: Head of Corporate Services”.</p> <p>The <i>File Plan and Retention Schedule</i> is reviewed every 6 months to ensure files are being managed appropriately and it continues meets business needs. The <i>Records Management Policy and Procedures</i> also acknowledges the importance of flexibility to ensure records management systems adapt to changing business requirements. It provides guidance to staff (section 7) on how to report concerns or when changes may be needed, for example to an element of the file plan.</p>
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			<p>The <i>RMP</i> (page 16) notes that any changes made to the file plan are recorded in the electronic records destruction logs.</p> <p>The <i>Records Management Policy and Procedures</i> (section 6) explains that all ESC public records are held digitally and are stored in two main locations. It further notes, where there is a requirement to create paper records this is done so solely for working copies which are then securely destroyed when work is completed. Any paper records received are digitised and stored electronically.</p> <p>The <i>Records Management Policy and Procedures</i> (section 6) explains the file plan and location of records.</p> <p><u>Digital: shared drives</u> - ESC create store and manage public records on shared drives on their main server. ESC records and their location are identified in the <i>File Plan and Retention Schedule</i> (s:drive, o:drive and p:drive). The job title of the responsible manager is also shown.</p> <p><u>Digital: line-of-business</u> - ESC create store and manage public records on a cloud-based Case Management System (CMS). The management and records management functionality of the CMS is explained in the <i>Records Management Policy and Procedures</i> (section 6). ESC records stored and managed on the CMS are identified in the <i>File Plan and Retention Schedule</i>. The job title of the responsible manager is also shown.</p> <p>Other systems in use are outlined in the <i>Records Management Policy and Procedures</i> (section 9).</p> <p>ESC share records on the online collaboration platform, KnowledgeHub. The rules</p>
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			<p>governing the management of records on the KnowledgeHub platform are explained in the <i>Records Management Policy and Procedures</i>. ESC records shared on the KnowledgeHub platform are identified in the <i>File Plan and Retention Schedule</i>. The job title of the responsible manager is also shown. Microsoft Teams is in use as a communication tool. Rules of use and retention periods are outlined.</p> <p>Email management is explained in section 10 and appendix 2 of the <i>Records Management Policy and Procedures</i>. This includes guidance on deciding which emails are records and should be captured in main filing structure.</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland retains all its public records in controlled systems which are structured in a clear manner, and which can be used by staff to manage public records where appropriate.</p>
5. Retention schedule	A	G	<p>The Keeper expects an authority to have allocated retention periods to its public records and for those records to be retained and disposed of in accordance with a Retention Schedule.</p> <p>ECS have a <i>Retention Schedule</i> in place. This is combined with their <i>File Plan</i> (see element 4). It applies to all records regardless of location or format. It shows the retention period and trigger. The retention period is either a date period e.g. 7 years or an action e.g. transfer to archive folder and retain permanently. As noted above, it is signed and approved by the individual named at element 1 and is reviewed every 6 months.</p> <p>A sample entry is: "Description of Contents: Appraisal documents, communication and networking event correspondence, general correspondence, records relating to SLA agreements with PAAs</p>

			<p>Retention Period: 5 years Trigger: End of the financial year in which the document created/finalised"</p> <p>The retention periods in the schedule have been “determined by legal, statutory and business requirements.” (<i>RMP</i> page 8) The <i>Records Management Policy and Procedures</i> (section 7) outlines how concerns or suggested changes to the file plan can be highlighted and acknowledges that records management systems should be adaptable to change to ensure business needs continue to be met.</p> <p>ECS have liaised with their chosen archival repository, National Records of Scotland (NRS), in the identification of records to be permanently preserved (see element 7).</p> <p>The <i>Records Management Policy and Procedures</i> (sections 7 and 10) outlines how the allocation of retention periods is reviewed and the procedure for disposal. Staff are responsible for ensuring records they create or receive are stored in the correct location, which will determine their retention period. A review is carried out by designated folder managers every 6 months to “ensure records are stored in line with the file plan and these records management procedures; identify staff training needs; correct any misfiling; ensure that retention and disposal schedules are met.” Folder managers arrange for the disposal of records in line with the <i>Retention Schedule</i> after a final review is carried out. As noted under element 4, the <i>File Plan and Retention Schedule</i> identifies the post holder responsible for records in each of the records management systems in use.</p> <p>The <i>RMP</i> ‘Action Required’ section for this element highlights that the <i>Retention Schedule</i> is currently “not being fully implemented.” The Keeper acknowledges this is an area that requires further work and that ECS have committed to addressing it. The Keeper would like to be updated as a project plan is developed and actioned. The timescale for implementation by 2025 is</p>
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			<p>noted, as is the consideration of resources and staff training required. The Keeper’s Assessment Team can be updated through the annual Progress Update Review (PUR) mechanism, Progress Update Reviews National Records of Scotland (nrscotland.gov.uk). It has been confirmed separately that, “The Commissioner is committed to continue updating the Keeper on the development and progress of the destruction project plan through the PUR mechanism.”</p> <p>Microsoft Teams is in use as a communication tool. Rules of use are included in the <i>Records Management Policy and Procedures</i>. A retention period of one month is in place for Chat messages.</p> <p>The Commissioner for Ethical Standards in Public Life in Scotland have identified a gap in provision (the retention schedule is not being fully implemented) and have committed to closing this gap. As such, the Keeper can agree this element under ‘improvement model’ terms. This agreement is dependent on the Keeper being updated on progress.</p>
6. Destruction Arrangements	G	G	<p>The Act requires that public records are destroyed in a timely, controlled and secure manner.</p> <p>All ESC public records are held digitally. Where there is a requirement to create paper records this is done so solely for working copies which are then securely destroyed when work is completed. Any paper records received are scanned and stored electronically in line with the <i>File Plan</i>.</p> <p>ESC do not use an ERDMS and the management of records is done manually, this includes the destruction of records (<i>RMP</i> page 17).</p> <p>The processes in place for the secure destruction of public records are explained in</p>

			<p><i>Records Management Policy and Procedures</i> (section 10).</p> <p>Where records are identified for destruction, a final review is carried out and, where required, records or folders are deleted manually. This process is recorded through the creation of destruction logs, which are retained permanently. The destruction logs are created by the folder manger by capturing screen shots and saving these along with “a note to the head of the document providing their name, a brief outline of the documents/folders deleted, rationale for deletion and date.” The Keeper has been provided with a copy of <i>Excerpts from Destruction Logs</i> which shows records deleted from shared drives.</p> <p>The destruction of ESC public records held in the CMS is also a manual process. The same process is followed for destruction in the CMS by the responsible folder manager. The CMS records the creation, movement and deletion of records in an audit trail. A destruction log for the records in the CMS is created either through the same process for shared drives or by saving the audit trail.</p> <p>Records shared on the KnowledgeHub platform are included in <i>the File Plan and Retention Schedule</i>. It has been confirmed separately that none of these records have reached the end of their retention period yet and that “the records shared on the KnowledgeHub are to be destroyed in the same manner as other records when it comes time to do so (i.e. manual deletion and creation of a destruction log).”</p> <p>The secure destruction of paper records (working copies and notes) is explained in the <i>RMP</i>. Paper records are returned to the ESC office for destruction. Non-confidential records are recycled. The Scottish Legal Aid Board (SLAB) is ESC’s landlord and their secure destruction processes are used for confidential ESC paper records. In 2021 the Keeper agreed that SLAB have appropriate processes in place for the secure and irretrievable destruction of paper records Scottish Legal Aid Board Assessment Report - February 2021 (nrscotland.gov.uk).</p>
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			<p>A copy of <i>Procedures for Secure Destruction Arrangements (Hardware)</i> has been provided. It also contains a template <i>Receipt for removal of equipment for secure destruction</i>. This explains the secure destruction arrangements in place for hardware including PCs, laptops, servers, telephone handsets, mobile phones and other electronic devices. In-house procedures are in place to remove information from hardware before it is then destroyed by a third-party company. There is also a process in place for the destruction of servers by ESC's IT managed service provider. This process is approved by the Head of Corporate Services (named at element 2). An <i>Extract of a Destruction Certificate</i> for hardware and an <i>IT Equipment Disposal Register</i> from January 2020 have been provided.</p> <p>ESC have explained separately the back-up processes and the processes in place for the secure and irretrievable destruction of back-ups and the retention of these back-ups. A copy of ESC's <i>Business Continuity Plan (BCP)</i> has been provided. Section 2 of the <i>BCP</i> explains the back-up and restore process.</p> <p>Section 6.10 of the <i>Information Security Policy and Procedures</i> document addresses disposing of information securely, both paper and electronic media.</p> <p>The <i>Records Management Training presentation</i>, a copy of which has been provided to the Keeper, covers processes for deletion by folder managers and the saving and signing of screen shots to the destruction log.</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have processes in place to irretrievably destroy their records when appropriate.</p>
7. Archiving and Transfer	G	G	The Act requires that all Scottish public authorities identify a suitable repository for the permanent preservation of any records considered suitable for archiving. A

			<p>formal arrangement for transfer to that repository must be in place.</p> <p>An acknowledgement of the enduring value of ESC public records is included in the <i>Covering Statement from the Acting Commissioner</i>, “Given the importance of our records for our day to day operations, and as the corporate memory of the office, I am committed to ensuring that our policies, procedures and practices are effective, and are regularly reviewed and developed to ensure that they continue to meet our needs and obligations.”</p> <p>ESC have identified National Records of Scotland (NRS) as the proper repository for the small selection of their public records suitable for permanent preservation.</p> <p>NRS is an accredited archive, NRS' Archive Service Accreditation Success National Records of Scotland (nrscotland.gov.uk) and fully adheres to the Keeper's Supplementary Guidance on Proper Arrangements for Archiving Public Records.</p> <p>ESC have a formal agreement in place with NRS that governs the transfer of records. This agreement, signed in May 2022, details the specific records to be transferred including specified websites. A copy of the <i>Agreement for the Transfer of Records</i> has been provided as evidence. The Keeper acknowledges that the gap in provision identified at the time of the last agreement report in 2016 has now been closed.</p> <p>The <i>Records Management Policy and Procedures</i> document, published online, outlines the process for identifying records for permanent preservation (section 10). The identification of records for disposal is carried out by a folder manager at least every six months. Where records are to be transferred to NRS, the Corporate Service Team are notified and make arrangements. Staff are also directed to a <i>Procedures for Archiving Records</i> document (date of last review March 2022). A link to this document, which is published on the ESC website, has been provided. This</p>
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			<p>lists the records to be transferred to NRS and provides a link to guidance for depositors on the NRS website guidance for depositors, Guidance for Depositors National Records of Scotland (nrscotland.gov.uk). It also lists those records which are to be provided to and permanently preserved through the procedures of the Scottish Parliament. The Scottish Parliament have also selected NRS as their archival repository and the Keeper has agreed suitable arrangements are in place.</p> <p>An explanation and supporting evidence have also been provided for information transferred to other repositories. Specifically, publications deposited with the National Library of Scotland; and ESC websites captured by the British Library.</p> <p>The Keeper can agree that the Commissioner for Ethical Standards in Public Life in Scotland have identified a suitable repository for the permanent preservation of any records considered suitable for archiving, and that a formal arrangement for transfer to that repository is in place.</p>
8. Information Security	G	G	<p>The Act requires that public records are held in accordance with information security compliance requirements.</p> <p>The <i>RMP</i> (page 12) states “The Commissioner recognises that information is a valuable asset and that business continuity is dependent on the integrity and continued availability of that asset. Therefore, ESC has taken a number of steps to protect information assets from unauthorised use, modification, disclosure or destruction, whether accidental or intentional.”</p> <p>ESC have an <i>Information Security Policy</i> which forms part of an <i>Information Security Policy and Procedures</i> document (version 2.3.2 date of last review June 2021), a copy of which has been submitted. This document covers the following:</p> <ul style="list-style-type: none"> • acceptable use of IT systems

			<ul style="list-style-type: none"> • using hardware safely • working remotely • using software safely • protecting information • using social media <p>It has been confirmed separately that all ESC staff can access the <i>Information Security Policy</i> in the shared drives and a screenshot has been provided showing this.</p> <p>The <i>Information Security Policies and Procedures</i> is supported by a <i>Data Protection Policy, Data Protection Procedures, Business Continuity Plan, Code of Conduct, Confidentiality Policy, Remote Working Policy, and Extracts from the Contract of Employment</i>. These documents or links to them have been provided to the Keeper. For example, section 10 of the <i>Data Protection Procedures</i> outlines security measures in place to protect personal data in all formats and how to report a breach or data loss. And the <i>Contract of Employment</i>, which specifically references the <i>Information Security Policy</i>.</p> <p>As noted under element 5, ESC occupies offices of the SLAB and as such adhere to certain physical security policies and procedures of their landlord. SLAB's <i>Computer Room Access Policy & Procedures</i> and <i>Building Security Policies</i> have been provided as evidence. In 2021 the Keeper agreed SLAB had appropriate information security measures in place, Scottish Legal Aid Board Assessment Report - February 2021 (nrscotland.gov.uk).</p> <p>All ESC public records are held digitally, however ESC have procedures in place for hardcopy paper records which are created as working copies, including when working remotely. Section 6.8 of <i>Information Security Policies and Procedures</i></p>
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			<p>outlines the clear desk policy in operation and section 4 outlines remote working arrangements.</p> <p>All ESC staff have access to all records on shared drives unless there is a specific reason to restrict access. The top three levels in shared drives are restricted and managed by the Corporate Services Team. ESC have provided a copy of the <i>IT Permissions Register</i>. Access permissions for the CMS and the Knowledge Hub are role dependent.</p> <p>Section 6 of the <i>Information Security Policies and Procedures</i> outlines account management, including password protection, multi-factor authentication and virus protection. Instruction on email use and use of social media is provided.</p> <p>The Head of Corporate Services (named at element 2) <i>Role Description</i>, which has been provided to the Keeper, includes responsibility for ensuring cyber security accreditation is maintained and measures are in place. The post holder is responsible for the IT infrastructure.</p> <p>ESC carry out information security impact assessments as evidenced in several of the policy documents provided. For example, as recorded on page 11 the <i>Records Management Policy and Procedures</i> document.</p> <p>ESC previously achieved Cyber Essentials Plus certification and have supplied a copy of this certificate. Work is currently underway to update this after switching providers. ESC have confirmed separately they have “now begun work on our cyber essentials basic accreditation with a new provider and agreed to continue to work towards cyber essentials plus once this is completed. We will provide the Keeper with our updated cyber essentials certificate as soon as this has been achieved.” The Keeper can be updated on this work through the PUR mechanism.</p>
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			<p>The <i>Information Security Policy and Procedures</i> document provides guidance on reporting various types of information security breaches, for example sections 1.3, 2.1, 6.11 and 11.</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have procedures in place to appropriately ensure the security of their records as required by the Act.</p>
<p>9. Data Protection</p>	<p>G</p>	<p>G</p>	<p>The Keeper expects a Scottish public authority to manage records involving personal data in compliance with data protection law.</p> <p>ESC is registered as a data controller with the Information Commissioner’s Office (ICO): Information Commissioners - Data protection register - entry details (ico.org.uk). A copy of this registration has been submitted.</p> <p>The <i>RMP</i> states “ESC complies with its obligations under the UK General Data Protection Regulation and the Data Protection Act 2018 have a Data Protection Policy.” The Keeper has been provided with a link to this <i>Policy</i> which is version 1.0 and dated October 2021. This is published at: Data Protection Policy Ethical Standards Commissioner.</p> <p>ESC have appointed a Data Protection Officer (DPO). The <i>Data Protection Policy</i>, <i>Data Protection Procedures</i> and ICO data protection register entry confirm the Scottish Parliamentary Corporate Body provides a DPO service to ESC. The Keeper agrees that Scottish Parliamentary Corporate Body have arrangements in place that allow them to properly comply with data protection legislation.</p> <p>The <i>Data Protection Policy</i> confirms that “ESC is committed to ensuring that personal data is managed safely, effectively and in line with the requirements of the GDPR..” (<i>Data Protection Policy</i> section 2). It also confirms that data protection</p>

			<p>matters are reviewed at Senior Management Team meetings (section 13.5).</p> <p>The <i>Data Protection Policy</i> explains the 6 principles of data protection (section 4).</p> <p>ESC also have <i>Data Protection Procedures</i> which support the <i>Data Protection Policy</i>. The Keeper has been provided with a link to this document (dated October 2021). This is published at: Data Protection Procedures Ethical Standards Commissioner. It explains how ESC will comply with data protection legislation, provides staff guidance and directs staff to further information.</p> <p>Section 14 of the <i>Data Protection Policy</i> outlines staff training in place and states the ESC commit to “a. provide training to ensure that all employees have sufficient knowledge of the data protection b. ensure that employees with responsibility for responding to information requests have undertaken appropriate training to ensure that responses meet statutory requirements c. provide appropriate training for employees responsible for providing advice and guidance d. ensure that training is refreshed on a regular basis.”</p> <p>Line managers are responsible for ensuring staff have appropriate knowledge of data protection legislation and processes, and for assessing the requirement for additional training. This assessment is part of annual staff appraisal. (<i>Data Protection Policy</i> section 13.6) A copy ESC’s <i>Freedom of Information Training presentation</i> has been provided, which notes that ESC staff are also required to undertake the Scottish Parliament GDPR training (see element 12).</p> <p>As these policies and procedures are published, the Keeper can agree ESC staff have access to them.</p> <p>ESC have a <i>Privacy Policy</i> and several privacy notices published on their website, Privacy policy Ethical Standards Commissioner. A link to this policy was provided.</p>
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			<p>The Head of Corporate Services (named at element 2) is listed as the point of contact for public queries about the Privacy Policy and the use of personal data.</p> <p>Compliance with data protection legislation is noted as one of the responsibilities of the Head of Corporate Services. (<i>Head of Corporate Services Role Description</i> section 6). The <i>Data Protection Policy</i> (sections 13.3) outlines the Head of Corporate Services responsibilities in relation to data protection.</p> <p>Information on Subject Access Requests (SARs) is included in the <i>Data Protection Procedures</i> (section 3).</p> <p>The <i>RMP</i> (page 15) notes “ESC undertakes audits to identify the personal data it holds and the legal basis for doing so. These audits are based on the file plan and the results are incorporated into retention periods. Personal data audits were last undertaken in 2018.” The <i>Data Protection Procedures</i> (section 1) outlines how these are carried out, what they contain, and where the information is held.</p> <p>ESC carry out data protection impact assessments as evidenced in several of the policy documents provided. For example, as recorded on page 11 the <i>Records Management Policy and Procedures</i> document.</p> <p>The Keeper notes ESC have also provided information around compliance with Freedom of Information legislation.</p> <p>Under the ‘Action Required’ section of this element in the <i>RMP</i> notes, “Review of Freedom of Information policy and procedures, including the Guide to Information. Timescale: 2022/23” and “Personal data audits to be updated. Timescale: 2023/24.” ESC have committed separately to updating the Keeper on this planned and ongoing work through the annual PUR process.</p>
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			<p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have arrangements in place that allow them to properly comply with data protection legislation.</p>
<p>10. Business Continuity and Vital Records</p>	<p>G</p>	<p>G</p>	<p>The Keeper expects that record recovery, prioritising vital records, is an integral part of the authority’s business continuity planning.</p> <p>The <i>RMP</i> explains that ECS maintain a <i>Business Continuity Plan</i> which includes a list of vital records. The <i>BCP</i> will “allow the organisation to recover in the event of loss of accommodation, data and/or staff.” (<i>RMP</i> page 16)</p> <p>The Keeper has been supplied with a link to the publication version of ESC’s <i>BCP</i>, which is publicly available online, ESC Business Continuity Plan Ethical Standards Commissioner. This version is dated March 2021 and will be reviewed every three years, while the Corporate Services Team (CST) will review document locations and contact details as and when required and at least annually. The <i>BCP</i> confirms that key employees are supplied with a copy of the policy including employee and supplier contact details, which are redacted from the published version.</p> <p>The introduction of the <i>BCP</i> notes that the Head of Corporate Service (named at element 2) is responsible for its implementation.</p> <p>The public records of ESC are managed digitally on a main server and cloud-based CMS system accessed through the internet. Sections 1 and 2 of the <i>BCP</i> outline actions in the event of loss of internet access for a prolonged period and if the server is damaged or destroyed or the data stored on the server becomes unusable for any reason. Back-up and restore arrangements are outlined for an onsite server managed locally, and offsite server managed by a third-party provider.</p> <p>Sections 3 and 4 of the <i>BCP</i> outline actions in the event of office accommodation</p>

			<p>becoming unavailable for any reason and the Commissioner and employees becoming unable to carry out the functions of the office. It further explains the role of the Scottish Parliamentary Corporate Body (SPCB) and their role under the Scottish Parliamentary Commissions and Commissioners Act 2010.</p> <p>The <i>BCP</i> (page 7) lists the documents (vital records) required to restore the Commissioner’s functions. ‘Critical documents’ are also identified in the <i>File Plan and Retention Schedule</i>.</p> <p>The responsibility for ensuring the Commissioner has and operates a <i>BCP</i> is noted in section 2 of the <i>Head of Corporate Services Role Description</i>.</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have an approved and operational business continuity process and that information management and records recovery properly feature in the authority’s plans.</p>
11. Audit trail	G	G	<p>The Keeper expects an authority to have processes in place to track public records in such a way that their location is known and changes recorded.</p> <p>ESC public records are managed digitally on shared drives and a CMS. ESC acknowledge “Without an ERMS creating, moving and deleting records can be done without any audit trail. This means records could be misfiled and deleted without trace.” (<i>Records Management Policy and Procedures</i>, page 3) This risk is mitigated by the policies and procedures in place.</p> <p>The <i>RMP</i> notes ESC track location and record changes to records through manual processes and states that processes are in place “to ensure an audit trail exists for the movement of certain records and destruction of all records.”</p>

			<p>The <i>Records Management Policy and Procedures</i> outlines processes in place. Naming convention guidelines are detailed in section 10 and appendix 1, along with guidance on version control and avoiding the duplication of records. As this is a manual process it is reliant on staff following this guidance.</p> <p>A copy of <i>Records Management Training presentation</i> has been provided. This covers naming conventions, version control and where to store records. The Keeper can agree ESC staff have access to training and guidance on audit trail procedures.</p> <p>An audit trail is generated for the creation and movement of records in the CMS, while the identification and deletion of records in the CMS is a manual process. (<i>Records Management Policy and Procedures</i> page 4). The <i>Records Management Training presentation</i> notes that different naming conventions are followed in the CMS and that this training is covered separately. A copy of CMS naming convention guidance has been provided.</p> <p>Folder managers are responsible for checking records are stored in the correct location and named correctly. Reviews are carried out at least every six months. Remedial work is undertaken, and staff training needs are identified. (<i>Records Management Policy and Procedures</i> page 10)</p> <p>The Keeper agrees the Commissioner for Ethical Standards in Public Life have procedures in place that will allow them to locate their records and assure themselves that the located record is the correct version.</p>
<p>12. Competency Framework for records management</p>	<p>G</p>	<p>G</p>	<p>The Keeper expects staff creating, or otherwise processing records, to be appropriately trained and supported.</p> <p>ESC are a relatively small authority and as such there is no separate records manager post. This not uncommon and the Keeper accepts that a dedicated</p>

<p>staff</p>			<p>records manager post is not appropriate for every authority. The <i>Covering Statement</i> from the Acting Commissioner notes “In view of the scale of this office’s operations, individual employees are largely responsible for the proper and effective management of the records they generate and receive.”</p> <p>While operational responsibility for records management lies with the Head of Corporate Services, named at element 2, responsibility for ESC “records belonging to each of the organisation’s three high-level functions” (<i>RMP</i> page 17) is delegated to the relevant manager. These managers are also responsible for assessing and identifying staff training needs as part of a performance management system (see element 9). The <i>Records Management Policy and Procedures</i> also explains this under section 7, ‘Employee Responsibilities’. The Head of Corporate Services will arrange specific training as required.</p> <p>Role descriptions for the three manager roles (Business Officer, Corporate Services Officer and Investigations Paralegal), all which include specific records management duties, have been provided to the Keeper.</p> <p>In-house records management training is delivered in the form of seminars to all ESC staff as part of their induction and is followed by refresher training. A copy of <i>Records Management Training presentation</i> (dated September 2021) has been provided. A copy of <i>Freedom of Information Training presentation</i>, which includes data protection, has also been provided. Training needs for ESC staff are identified through an annual performance management.</p> <p>Data protection training is outlined in the <i>Data Protection Policy</i> (see element 9) and training requirements are identified through staff appraisal.</p> <p>A copy of the <i>Head of Corporate Services Role Description</i> has also been provided. This outlines the post holder’s information and records management responsibilities</p>
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			<p>and specifically mentions compliance with the Act.</p> <p>The Head of Corporate Services is a member of professional information governance networking groups, including the Scottish Information Commissioner’s Part 7 Network Group and IRMS (see element 2). The <i>RMP</i> (page 17) states that any ESC staff with records management responsibilities are given the opportunity to become members of this and other similar records management networking groups. It is also noted that the Head of Corporate Services and other staff attend information governance and training and events.</p> <p>Where work is identified in the <i>RMP</i> under ‘Action Required’, for example element 5, resources and training needs are highlighted as considerations. This is welcomed by the Keeper.</p> <p>The Keeper agrees that the individual identified at element 2 has the appropriate responsibilities, resources and skills to implement the records management plan. Furthermore, the Keeper agrees that Commissioner for Ethical Standards in Public Life in Scotland consider information governance training for staff as required.</p>
<p>13. Assessment and Review</p>	<p>G</p>	<p>G</p>	<p>Section 1(5)(i)(a) of the Act says that an authority must keep its RMP under review.</p> <p>The <i>Records Management Policy and Procedures</i> (section 2) makes the commitment “Given the importance of records for day to day operations, and as the corporate memory of the office, the Commissioner is committed to ensuring that policies, procedures and practices are effective, and are regularly reviewed and developed to ensure that they continue to meet our needs and obligations.” This is echoed in the <i>Covering Statement</i> from the Acting Commissioner.</p> <p>ESC review their <i>RMP</i> annually. This is confirmed in the <i>Policy Register</i>, a copy of which has been submitted. The <i>Register</i> includes the author, frequency and date of</p>

		<p>next review. It has been confirmed separately that the <i>Policy Register</i> is currently being updated and a copy of this working document has been provided.</p> <p>Assigned folder managers have direct responsibility for monitoring and reviewing specific records. These managers undertake a review of the records under their remit every six months and the results are reported at Senior Management Team meetings. The <i>Records Management Policy and Procedures</i> (section 7) explains that these reviews</p> <ul style="list-style-type: none"> • “ensure records are stored in line with the file plan and these records management procedures • identify staff training needs • correct any misfiling • ensure that retention and disposal schedules are met.” <p>A copy the <i>SMT Meeting Minutes 27 January 2022</i> has been provided and shows the approval of the revised <i>Records Management Policy & Procedures</i> and File Plan and Retention Schedule. The minutes of Senior Management Team meetings are published on the ESC website and show information governance, including records management, as a standing item. For example, Minutes - Senior Management Team Meeting - 29 September 2022 Ethical Standards Commissioner</p> <p>The Head of Corporate Services (named at element 2) is part of the Senior Management Team. The Head of Corporate Services <i>Role Description</i> includes the key responsibilities “Ensures the Commissioner complies with the Public Records (Scotland) Act 2011” and “Ensuring the Commissioner has and applies effective Records and Information governance and security, and management systems, policies and procedures”. It has been confirmed separately that “the Head of Corporate Services has responsibility for review and assessment of implementation</p>
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			<p>of the RMP.”</p> <p>The <i>Policy Register</i> notes the <i>Records Management Policy and Procedures</i> will be reviewed every three years. This has also been confirmed separately. In addition, ESC note that “The review period was removed from the policy itself when the policy was last reviewed, following a decision by the SMT to remove review dates from published policies. The SMT are currently reconsidering this decision following a recommendation from our internal auditors. It is our intention to recommence inclusion of policy review dates on all policies once we have additional staff in place and have the capacity to do so. Recruitment is currently underway.”</p> <p>The <i>File Plan</i> will be reviewed every six months (<i>RMP</i> page 7).</p> <p>The <i>Information Security Policy</i> will be reviewed every three years.</p> <p>The <i>Remote Working Policy</i> will be reviewed “at such times as legislation or a change to the ESC policy position requires it.” (<i>Policy</i> page 2).</p> <p>The <i>Data Protection Policy</i>, <i>Confidentiality Policy</i> and <i>Privacy Notices</i> will be reviewed every three years.</p> <p>The <i>Business Continuity Plan</i> will be reviewed every three years and “the Corporate Services Team (CST) will review document locations and contact details as and when required and at least annually.”</p> <p>It has been confirmed separately that there is planned work to review and update the <i>PAA Records Management Statement</i> by the end of March 2023 (see element 15).</p> <p>ESC policy and procedure documents also include the date the policy was first</p>
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			<p>adopted and the date of last review. For example, <i>Archiving Procedures</i>, date policy adopted: 29/10/2014, date of last review: 10/03/2022.</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have made a firm commitment to review their <i>RMP</i> as required by the Act and have explained the methodology for review. Furthermore, the Keeper agrees that supporting policy and guidance documents have appropriate review periods allocated.</p>
14. Shared Information	G	G	<p>The Keeper expects a Scottish public authority to ensure that information sharing, both within the Authority and with other bodies or individuals, is necessary, lawful and controlled.</p> <p>The <i>Records Management Policy and Procedures</i> (section 10) states, “In order to ensure information is shared as effectively and efficiently as possible and records stored in the correct location, ESC allows employees access to all documents unless there is a specific reason to restrict access.” ESC maintain a <i>Permissions Register</i>, a copy of which has been provided. It shows role specific access levels to different systems.</p> <p>ESC state “When the Commissioner shares personal data with suppliers and other authorities they ensure the relevant data protection safeguards are considered and included in the contract.” (<i>RMP</i> page 21)</p> <p>Information sharing agreements are used by ESC. Those with Standards Commission for Scotland and Crown Office and Procurator Fiscal Service (COPFS) are noted. These are in place to “to enable both organisations to pursue their legitimate interests and statutory functions.” (<i>RMP</i> page 20) The Keeper has been provided with a copy of the <i>Protocol between COPFS and ESC</i>, which includes an <i>Information Sharing Agreement</i>, and a link to the <i>Information Sharing Agreement</i></p>

			<p><i>with the Standards Commission for Scotland.</i> Both agreements note they will be reviewed every five years or following any substantive changes.</p> <p>Section 9 of the <i>Records Management Policy and Procedures</i> explains the use of a “secure online cloud-based collaboration tool”, KnowledgeHub, to share information with third parties, specifically consultants (Public Appointments Advisers - PAAs) who regularly work with ESC. There are rules in place which govern the use of KnowledgeHub and, as noted at element 4, public records stored and managed on the KnowledgeHub are done so “in line with our File Plan and Retention Schedule, this policy and its appendices.” Information is shared in a private forum in KnowledgeHub, which is accessible by invitation only. The <i>RMP</i> further explains that PAA’s are contracted to carry out a function of the authority and this is managed through a <i>Service Level Agreement</i> which includes a records management statement (see element 15).</p> <p>The <i>Information Security Policy and Procedures</i> document (section 6.9) explains and provides staff guidance on sharing information securely.</p> <p>The <i>Data Protection Policy, Code of Conduct</i> and <i>Confidentiality Policy</i>, all of which have been shared with the Keeper, outline managing and handling personal information and compliance with data protection legislation.</p> <p>The <i>Freedom of Information Training presentation</i>, submitted to the Keeper, notes that ESC endeavour to publish as much as possible on their website.</p> <p>The Keeper can agree that the Commissioner for Ethical Standards in Public Life in Scotland properly considers records governance when undertaking information sharing programmes.</p>
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<p>15. Public records created or held by third parties</p>	<p>G</p>	<p>G</p>	<p>The Act expects a public authority to ensure that adequate arrangements are in place for the management of records created and held by third parties who carry out any functions of the authority.</p> <p>The Public Records (Scotland) Act 2011 (PRSA) makes it clear that records created by third parties when carrying out the functions of a scheduled authority should be considered 'public records' - PRSA Part 1 3 (1)(b).</p> <p>The <i>RMP</i> (page 22) states, "The Commissioner has a range of statutory functions. The Commissioner may authorise any person, whether or not a member of staff, to carry out any of these functions." It explains that currently ESC contract out one of their functions to a third party, "The Commissioner contracts the services of advisers to undertake statutory functions in relation to public appointments."</p> <p>Public Appointments Advisers (PAAs) carry out this function on behalf of ESC. This arrangement is managed through a tender process and a <i>Service Level Agreement</i> that includes a <i>Records Management Statement</i>. Links to template copies of the <i>Service Level Agreement</i> and <i>Records Management Statement</i> have been provided.</p> <p>It has been confirmed separately that there is planned work to review and update the PAA Records Management Statement by the end of March 2023. It has also been confirmed that "the content is still relevant and up to date but that the statement will be updated to the ESC's latest branding and policy layout by the end of March 2023."</p> <p>The <i>Service Level Agreement</i> (sections 3) sets out the service delivery and service requirements of the PAA's. This includes data protection, information security, and record keeping, retention and inspection (Annex 3 of the SLA).</p>
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			<p>The <i>Records Management Statement</i> outlines “the overarching expectations of the Commissioner for the appropriate management of records by Public Appointments Advisers (PAAs).” These include managing records appropriately and the return or secure destruction of records at the completion of their role. It states “It is expected that PAAs will maintain any other records relating to their role with the Commissioner only for as long as they require them to fulfil that role and in accordance with the Service Level Agreement and Data Protection and Confidentiality policies referred to in that agreement. Guidelines on security and destruction of records are contained in the Data Protection Policy.”</p> <p>The <i>Records Management Policy and Procedures</i> is clear “It will not apply to others carrying out work on behalf of ESC (agency staff, contractors etc) who will be governed by the contract under which they have been employed or contracted.”</p> <p>The Keeper agrees that the Commissioner for Ethical Standards in Public Life in Scotland have properly considered the management of records created by third parties who carry out any functions of the authority.</p>
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The Commissioner for Ethical Standards in Public Life in Scotland

General notes on submission:

Version: This assessment is on the Commissioner for Ethical Standards in Public Life in Scotland’s Records Management Plan (the RMP) submitted to the Keeper for agreement on 30th June 2022. The RMP is dated 31st March 2022. The RMP includes a signed at *Covering Statement* from the Acting Commissioner (named at element 1).

The Keeper originally agreed the Records Management Plan of the Commissioner For Ethical Standards in Public Life in Scotland in 2016: [Commissioner for Ethical Standards in Public Life in Scotland Assessment Report \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/assessments/ethical-standards-in-public-life-in-scotland). The authority submitted

Progress Update Reviews (PURs) in 2018: [nrs-progress-update-review-for-the-commissioner-for-ethical-standards-in-public-life-in-scotland.pdf \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/progress-update-review-for-the-commissioner-for-ethical-standards-in-public-life-in-scotland.pdf) and in 2021: [NRS - Progress Update Review \(PUR\) Final Report by the PRSA Assessment Team for the Commissioner For Ethical Standards in Public Life in Scotland, August 2021 \(nrscotland.gov.uk\)](#).

The Plan is published on the website of the Commissioner For Ethical Standards in Public Life in Scotland, [Microsoft Word - ESC Records Management Plan March 2022 \(ethicalstandards.org.uk\)](#).

The Commissioner for Ethical Standards in Public Life in Scotland has opted to address all 15 elements of the Keeper's Model Plan in its RMP.

The Keeper commends the statement in the *Covering Statement* signed by the Acting Commissioner, "I fully recognise the value of our records and have established records management as a key corporate function."

The *Covering Statement* also commits "to ensuring that our policies, procedures and practices are effective, and are regularly reviewed and developed to ensure that they continue to meet our needs and obligations." The areas in which further development work is planned (elements 5, 6 and 9) are also acknowledged in the *Covering Statement*.

6. Keeper's Summary

Elements **1-15** that the Keeper considers should be in a public authority records management plan have been properly considered by ***The Commissioner for Ethical Standards in Public Life in Scotland***. Policies and governance structures are in place to implement the actions required by the plan.

Elements that require development by ***The Commissioner for Ethical Standards in Public Life in Scotland*** are as follows:

Element 5 - Retention schedule

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper agrees the RMP of The Commissioner for Ethical Standards in Public Life in Scotland.

- The Keeper recommends that The Commissioner for Ethical Standards in Public Life in 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,



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Pete Wadley
Public Records Officer

Liz Course
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 Commissioner for Ethical Standards in Public Life in Scotland* In agreeing this RMP, the Keeper expects *The Commissioner for Ethical Standards in Public Life in Scotland* to fully implement the agreed RMP and meet its obligations under the Act.

A handwritten signature in black ink that reads "Laura Mitchell". The signature is written in a cursive style with a period at the end.

Laura Mitchell
Deputy Keeper of the Records of Scotland
Direct Email: RG-Keeper@nrscotland.gov.uk