

Partial Business and Regulatory Impact Assessment

Title of Proposal

Public Records (Scotland) Bill

Purpose and intended effect

Objectives

The Scottish Government is committed to providing public services which are high quality, continuously improving, efficient and responsive to people's needs. By fulfilling one of the key recommendations of The Historical Abuse Systemic Review of Residential Schools and Children's Homes in Scotland 1950-1995 (the Shaw Report), the proposals will contribute to improving the life chances for children, young people and families at risk. They will form part of the framework to improve services and safeguard children and young people. They will directly tackle the problems highlighted by Shaw of children leaving care without a proper record of their time there and missing a part of their identity.

The proposals seek to improve record keeping across Scotland by framing general legislation which will allow sectors and individual public authorities to address weaknesses in record keeping such as those identified in the Shaw Report (see Background below). In so doing, we will seek to avoid placing additional burdens on authorities, enabling improvement by best practice. The aim is to achieve consistency of record keeping through a modern framework that will better support public services.

Background

The main legislation governing Scottish public records is the Public Records (Scotland) Act 1937, which provides for the care and custody of certain public records by the Keeper of the Records of Scotland (the Keeper).

The Shaw Report conducted a systemic review of the regulatory framework. It made a number of key recommendations on records, many of which focused on shortcomings in the existing legislation. Shaw found poor record keeping throughout the looked after children sector and identified the difficulties for former residents in tracing records for identity, family or medical reasons. The Report pointed to an urgent need to take action to preserve historical records, and to ensure that residents can get access to records and information about their location.

In February 2008, Scottish Ministers asked the Keeper to conduct a review of public records legislation based on one of the recommendations in the Shaw Report. The review extended beyond the immediate field of child care and examined other legislation affecting record keeping. The Keeper concluded that there was a need for new public records legislation. He found that the record keeping failures uncovered by Shaw did not end with the passing of the Children (Scotland) Act in 1995. He

concluded that existing public records legislation is generally no longer fit for purpose. It cannot be used as the foundation for any effective overarching national solution to address either specific sectoral requirements for child care, or wider public record needs.

Rationale for Government intervention

These proposals will allow public authorities to address weaknesses in record keeping which have been identified within individual sectors. The proposals will affect named public authorities, including local authorities, devolved public bodies and the Scottish Courts, which generate or receive records in the course of their business. The aim is to improve practice by authorities across Scotland, enabling them to create not more but better public records. These records document the actions of authorities on behalf of citizens and the rights of citizens themselves. There are no negative implications for any aspects of the Government's Purpose.

New public records legislation would build upon guidance and best practice already in place, and would improve accountability and transparency, strengthen governance and support the national outcome on better public services.

The high human cost of poor record keeping which the Shaw Report revealed has created a moral imperative to improve standards. These proposals will fulfil a key Shaw recommendation and go some way to meeting the demands of survivors of abuse. They will also complement legislation on freedom of information and data protection, which crucially depend on the quality of records.

Consultation

Within Government

We have to date consulted the Scottish Government's Freedom of Information Unit, Legal Directorate, Looked After Children, Local Governance Team, Public Bodies Policy Team, Healthcare Policy and Strategy Division and Charity Law Team. We are also in consultation with the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives.

Public Consultation

A public consultation will be carried out between June and August 2010. The responses and a summary will be published before the introduction of a draft Bill to the Scottish Parliament at the earliest opportunity.

Options

Sectors and groups affected

The Scottish Government; the Scottish Parliament; named public bodies; local authorities; private and voluntary organisations which provide public services on

behalf of public authorities; the Scottish Courts (as part of the Scottish Courts Service).

Option 1: New focused Scottish public records legislation

Benefits

New public records legislation will support a key recommendation of the Shaw Report that “The Government should commission a review of public records legislation which should lead to new legislation being drafted to meet records and information needs in Scotland”.

It will provide a framework for measurable improvements in record keeping across all sectors, encompassing existing guidance and best practice. It will complement existing data protection and freedom of information legislation.

It will ensure consistency of record keeping across the public sector, particularly at a time when more public services are being carried out by the private and voluntary sectors. It will lead to greater accountability and transparency, helping to protect the rights of vulnerable people.

The proposals rely mainly on self evaluation and inspection, internal scrutiny and reporting by public authorities. They envisage an element of enforcement including a scrutiny role for the Keeper and the imposition of civil sanctions, but these will only be invoked where authorities are seen to be consistently failing in their obligations.

Costs

The main areas of cost relating to the management of records are in staffing, administration and storage. Those authorities whose existing records management practice achieves full compliance with the Freedom of Information (Scotland) Act 2002 will experience zero additional cost.

The Scottish Government: This is estimated at a zero overall cost. Administering the proposals is estimated at approximately £60,000 per annum, which represents the equivalent of two curatorial staff from within the existing staff complement of The National Archives of Scotland (NAS). It will be met from existing NAS running costs and prove cost neutral to SG. It includes overheads and other peripheral costs for support staff to carry out implementation by assessment of action plans and follow-up scrutiny functions. Costs would increase annually in line with inflation.

The resource would be identified following the implementation of the NAS strategic review, a planned centralisation of NAS search room services and reduction of incoming public records. An agreed scheme to rationalise the review of records held by Scottish Government Directorates will further release NAS staff time.

There will be some costs to SG/NAS in communications but we would aim to cover these within existing programmes and budgets.

Public authorities: Costs for individual public authorities will vary from zero to £40,000 staffing costs. These depend on existing levels of compliance with the Freedom of Information (Scotland) Act 2002 (FOISA) and existing records management practice. Zero costs assume full compliance and existing structures having been put in place following the implementation of FOISA in 2005. Costs are only envisaged where an authority has failed to take appropriate action to comply with FOISA obligations. Records that exist will already be incurring storage costs and therefore there will be no additional cost. Implementation of proper records management procedures will offset future record storage costs by ensuring the appropriate destruction of non-current material, or transfer of historical records to existing archive services. Training will be a cost for some authorities, but there are opportunities for sharing to reduce these, and for cascading training through organisations.

Private/voluntary organisations: Costs for private and voluntary organisations will also vary. As with public authorities, current records produced will already be in storage and use of correct records management procedures will see savings. For those bodies who provide contractual services to public authorities, responsibility for the long-term retention of records will fall to the commissioning authorities.

Option 2: Rely on use of existing guidance and best practice without new legislation

Benefits

There is unlikely to be any change to the present situation and therefore no benefits are identified.

Costs

This option could only operate on a voluntary basis. Authorities would be free to allocate resources at their own discretion. Failure to adopt existing guidance and best practice would in the longer term result in increased storage and administration costs as increased numbers of records are built up, lost or destroyed in error.

Scottish Firms Impact Test

The proposed legislation will have some impact on certain bodies, where public services are provided by private or voluntary organisations on behalf of public authorities. In such cases the records which relate to the provision of those services will be covered by the new legislation.

Further work to refine financial information and a full assessment of the impact on private and voluntary organisations is under way. NAS is about to engage with a

number of these bodies on this assessment, and the work will be completed during the public consultation period.

Legal Aid Impact Test

There are no implications for the legal aid fund.

Enforcement, sanctions and monitoring

The proposals oblige public authorities, within a specified time period, to adopt and implement a records management plan. The plan will require authorities to lay out policies and procedures for the management of records and provide a foundation for self-assessment. Each authority will be required to report on record keeping activities to its own governing body on a regular basis.

Self-assessment is the preferred long-term means of enforcement of the proposals, but the Keeper will have the authority to scrutinise and comment on the submitted records management plans and their implementation by public authorities. The Keeper will be empowered to issue compliance recommendations and publish the names and details of those authorities found to be in breach of their obligations. This power would not commence until a suitable period of time had elapsed to allow authorities to implement the proposals. The Keeper would determine a programme for periodic scrutiny of authorities which were seen to be consistently failing to meet good records management practice.

Implementation and delivery plan

The proposed legislation will be implemented and enforced by the Keeper.

The implementation plan will consist of a number of key elements:

- Production and publication of a generic model records management plan by the Keeper to act as a model for adoption by public authorities.
- Production of specific records management plans by individual or groups of authorities.
- Submission of plans to the Keeper for his approval.
- Full implementation of plans by authorities.

The Keeper will specify and publish a timetable for completion of these elements.

Authorities will be expected to report internally on records management processes, and carry out self-assessment. The Keeper may, at his discretion, introduce a programme of scrutiny where authorities are seen to be failing in their obligations.

Post-implementation review

The Keeper will report regularly to Scottish Ministers, assessing the viability and success of the legislation.

Summary and recommendation

Summary costs and benefits table

Option	Costs	Benefits
<p>Option 1: New focused Scottish public records legislation</p>	<p><u>Scottish Government</u> Cost neutral – two curatorial staff from within existing NAS staff complement. Some SG/NAS communications strategy costs covered within existing budgets.</p> <p><u>Public authorities</u> £0-£40,000 staff costs dependent on existing records management compliance. Current records produced will already be in storage, so no new cost envisaged. Costs off-set by savings brought about by appropriate scheduling and destruction of files.</p> <p><u>Private/voluntary bodies</u> Costs will vary according to existing records management practices.</p>	<p>New legislation will support a key Shaw recommendation.</p> <p>It will provide a framework for improvements in record keeping across Scotland.</p> <p>It will complement existing data protection and freedom of information legislation.</p> <p>It will ensure consistency across the public sector.</p> <p>It will lead to greater accountability and transparency in the public sector, helping to protect the rights of vulnerable people.</p> <p>The inclusion of scrutiny and sanctions as a last resort measure will allow an element of enforcement.</p>
<p>Option 2: Rely on use of existing guidance and best practice without new legislation</p>	<p><u>Scottish Government</u> None.</p> <p><u>Public authorities</u> This option could only operate on a voluntary basis, therefore authorities would be free to allocate resources at their own discretion.</p> <p><u>Private/voluntary bodies</u> None.</p>	<p>No likelihood of change, so no benefits.</p>

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