

*A consultation paper about proposed public records legislation  
From the Keeper of the Records of Scotland  
on behalf of Scottish Ministers*

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**ANNEX INFORMATION**

Responses to this paper are requested by **Wednesday 4<sup>th</sup> August 2010**.

Please send them by e-mail to

[Business.Management@nas.gov.uk](mailto:Business.Management@nas.gov.uk)

or by post to

**The Keeper of the Records of Scotland**

**HM General Register House**

**2 Princes Street**

**Edinburgh EH1 3YY**

or by fax to

**0131 535 1360**

This consultation paper is available on the NAS website at [www.nas.gov.uk](http://www.nas.gov.uk) or by contacting the Keeper of the Records of Scotland at the address above.

## 1. FOREWORD

1.1 The overarching purpose of the Scottish Government is to focus government and public services on creating a more successful country with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. Better management of public records and the information they contain, supports this purpose by helping to improve public services.

1.2 These proposals will allow public authorities to address weaknesses in record keeping which have been identified within individual sectors. The proposals cover named public authorities, including local authorities, 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.

1.3 Failures in record keeping were starkly revealed by The Historical Abuse Systemic Review of Residential Schools and Children's Homes in Scotland 1950-1995 (the Shaw Report), published in November 2007. The Shaw Report pointed to shortcomings in the regulatory framework for children in care and identified records management problems particularly in relation to the preservation of historical records and access rights. It recommended a review of public records legislation with a view to its renewal. At the request of Scottish Ministers the Keeper of the Records of Scotland undertook this review, and reported in October 2009.

1.4 The Keeper's recommendation was for focused public records legislation to underpin and complement the existing legislative structures. This would build upon guidance and best practice already in place. Scottish Ministers agree that this will improve accountability and transparency, strengthen governance and support the national outcome on better public services.

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

1.6 Records are essential to corporate memory, but we tend to give them a low priority until something goes wrong. The Shaw Report provided clear evidence of what happens when organisations do not pay sufficient attention to records. We now have an opportunity to learn from Shaw and improve record keeping across Scotland while minimising the administrative burden on authorities. Better record keeping will lead to improved efficiency and information retrieval and effective scheduling and destruction of records may also result in reduced storage costs.

1.7 I invite public comment on the proposals set out in this consultation paper and the accompanying Business and Regulatory Impact Assessment.

Subject to the replies we receive, a Bill implementing the proposals will be put before the Scottish Parliament when a legislative opportunity arises. I warmly encourage you to take part in this process, to consider the details, and to let us know what you think.

**Fiona Hyslop**  
**Minister for Culture and External Affairs**  
**22 June 2010**

## **2. CONTEXT FOR LEGISLATION**

### **2.1 Policy**

2.1.1 Our aim is to improve record keeping across Scotland by updating legislation on public records. We will frame general legislation which will allow sectors and individual public authorities to address weaknesses in record keeping such as those identified in the Shaw Report. 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.

### **2.2 Records, Archives and the Legislative background**

2.2.1 The main legislation governing Scottish public records is the Public Records (Scotland) Act 1937 (“the 1937 Act”). All rights and responsibilities are vested in the Keeper of the Records of Scotland (“the Keeper”). A non-ministerial office holder in the Scottish Administration, the Keeper administers the National Archives of Scotland (“the NAS”) on behalf of Scottish Ministers. The NAS ensures the preservation of a historical record of the principal policies and actions of government in Scotland.

2.2.2 The 1937 Act provides for the care and custody of certain public records by the Keeper and allows for the transfer to his custody of court records, and those of government departments, boards of trustees, or other bodies or persons holding records which belong to Her Majesty and relate exclusively or mainly to Scotland. It also prescribes procedures for the disposal of records through secondary legislation. However the legislation is out of date, limited in scope and has little relevance for the majority of today’s public authorities.

2.2.3 The Freedom of Information (Scotland) Act (“the 2002 Act”) drew attention to the importance of records, as it became clear that freedom of information is only as good as the records which contain the information. The Scottish Records Advisory Council (SRAC), set up under the 1937 Act to advise ministers on matters of public records, recognised in the late 1990s that the legislative structure in Scotland was inadequate.

### **2.3 Historical Abuse Systemic Review (The Shaw Report)**

2.3.1 The Shaw investigation derived from a debate in the Scottish Parliament on 1 December 2004. A public petition submitted to the Parliament sought an inquiry into institutional child abuse. The then Minister for Education and Young People, Peter Peacock, announced his intention:

*“to appoint someone with experience to analyse independently the regulatory requirements of the time, the systems that were in place to monitor operation of those requirements, and, in general, to analyse how that monitoring was carried out in practice”.*

2.3.2 The Scottish Parliament appointed Tom Shaw, former Chief Inspector of Education and Training in Northern Ireland, to lead the review. His report was published in November 2007.

2.3.3 The Shaw Report was a systemic review of the regulatory framework. It made a number of key recommendations on records, many of which were about shortcomings in the 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. His Report “pointed to an urgent need to take action to preserve historical records, ensure that residents can get access to records and information about their location”. Recommendation 3 stated that:

*“[t]he 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.”*

2.3.4 In February 2008, Scottish Ministers asked the Keeper to conduct a review of public records legislation based on this recommendation.

## **2.4 The Keeper’s Report to Scottish Ministers**

2.4.1 The Keeper’s review investigated the failures of record keeping legislation highlighted by Shaw within the context of a broader overview of public records. The review extended beyond the immediate field of child care and examined other legislation affecting record keeping.

2.4.2 Evidence was gathered from the experiences of those involved in working with records, as well as those who sought access to information from them. The review also examined current records management practice, existing Scottish legislation and legislation overseas. It sought a broad spectrum of opinion from individuals and representative groups working directly in the fields of social work and child care, central government policy, local authority and private residential care, the police, and the management of public inquiries. The review also covered those involved in freedom of information and data protection and professional record keepers, together with survivors of abuse and former residents of care homes.

2.4.3 The Keeper reported to Scottish Ministers in October 2009 (see [www.nas.gov.uk](http://www.nas.gov.uk)). He found that the record keeping failures uncovered by Shaw did not end with the passing of the Children (Scotland) Act (“the 1995 Act”) in 1995. He also found that existing public records legislation is 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.

2.4.4 The Keeper concluded that there was a need for new public records legislation and, like Shaw, felt that its scope should extend beyond the looked after children sector. Both his own review and the Shaw Report found inconsistencies and failings in record keeping across the public sector. Achieving consistency of record keeping requires a modern framework to

better support services and address issues such as the increased inter-connectedness between public authorities and private organisations or trusts in the provision of public services for Scottish citizens, leading to increased sharing of information and records.

2.4.5 In order to minimise the burden on public authorities the Keeper recommended focused legislation to:

- clarify the role and responsibilities of the Keeper;
- provide a definition of a public record;
- cover records created by voluntary or private bodies when working on behalf of public authorities;
- provide a framework in which to improve and enforce the management of records across the public sector, building on existing guidance and best practice;
- complement the existing legislation on information governance.

2.4.6 The proposals aim to align new legislation with the 2002 Freedom of Information Act and the Data Protection Act 1998 (“the 1998 Act”). This would encourage authorities to use existing best practice and records management tools, such as the Code of Practice on Records Management specified in s.61 of the 2002 Act (the S.61 Code of Practice).

### **3. THE MAIN ELEMENTS OF A PROPOSED BILL**

#### **3.1 The Role and Responsibilities of The Keeper**

3.1.1 The Keeper is responsible to Scottish Ministers for the management, performance and future development of the National Archives of Scotland. The proposals for new legislation provide an opportunity to formalise the existing responsibilities of the Keeper. They also extend the role of the Keeper to providing central direction, guidance and dissemination of best practice across all sectors, as well as targeted scrutiny of the management of records by public authorities.

#### **3.2 A Definition of ‘Public Records’ and their Extent**

3.2.1 Existing public records legislation in Scotland is over 70 years old. The Shaw Report drew attention to the shortcomings of the 1937 Act, stating that:  
*“[it] is very limited in its scope and outdated. [It] doesn’t define ‘public records’, and so it can be difficult to understand the distinction between public and private records. This has serious implications for people responsible for preserving records and for people who [are] entitled to have access to records”.*

3.2.2 The 1937 Act applies only to the courts and to government departments or other bodies holding records “belonging to [Her] Majesty and relating exclusively or mainly to Scotland”. It is not specific about who the creators of such records might be, nor what their responsibilities as record keepers are. Since the Act first passed into law, the shape and composition of the public sector has changed considerably. Many existing public bodies are not covered by its scope. For those bodies which are covered, the Act imposes no obligation to manage their records properly. With the exception of the courts there is no requirement for records to be transferred to archives. There is no provision for developments in information technology and no account is taken of modern record formats.

#### **Public Records: Definition and Extent**

3.2.3 The proposals for legislation include a statutory definition of ‘public records’. This is to ensure that those responsible for managing records know which records fall within the scope of the Bill, and the obligations that this will place upon them. The definition would take account of international standards, including ISO 15489-1:2001 Records Management<sup>1</sup>, and cover all forms of records. In addition, paragraph 3.2.7 below deals with certain records created by private or voluntary organisations.

3.2.4 The proposal is for the Bill to apply to all Scottish public authorities listed in **Annex D**. This includes the Scottish Parliament, Scottish Government, all Scottish local authorities (see section 3.4), the Scottish

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<sup>1</sup> This defines a record as information created, received and maintained as evidence and information by an organisation or person, in pursuance of legal obligations or in the transaction of business

Courts (see section 3.6) and other named public bodies. The Scottish Ministers will have the power to add or remove authorities as required.

3.2.5 The proposals do not aim to create more public records, but to better manage those which authorities already create and receive as part of their routine business. There will be no obligation imposed on public authorities to create additional records. It is likely that in some cases better practice will actually lead to fewer records being kept.

- 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?
- Q2 Do you have any comments on the inclusion of those bodies listed in Annex D?
- Q3 Do you believe the proposals should cover more or fewer authorities?
- Q4 Do you have any further comments on the proposals outlined in this section?

### **Public Records: Formats and Technology-proofing**

3.2.6 The proposals for the definition of a public record (section 3.2.1 above) cover all types of records, regardless of their medium. This would include records which are "born digital" or created electronically, and those that are created on paper and scanned into electronic systems.

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

### **Public Records: Private and Voluntary Bodies**

3.2.7 Some public services, including the care of looked after children, are delivered by private or voluntary organisations. These organisations would not come under the proposed definition of 'public authority' because these are not the only services they provide. There is, however, a public interest in the services that they provide and the records they create where they use public money. It is therefore proposed that records produced by private or voluntary bodies in relation to the provision of a public service on behalf of a public authority should be covered by the new legislation. The proposals will place an obligation on the commissioning public authority to ensure that records relating to these services are managed as public records. It is not proposed that the organisations which provide these services, for example Registered Social Landlords which may provide specific support services on behalf of a local authority, will be defined as public authorities.

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

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

### **3.3 Record Keeping Requirements of Public Authorities**

3.3.1 Out of date public records legislation which lacks a proper definition of public records and has limited coverage is reflected in the low priority given to record keeping in the public sector. The implementation of freedom of information in 2005, and increasing public demands for information, brought new resources and some improvements in records management, but inconsistencies in practice remain. There is now an opportunity to use new legislation to consolidate and build on these improvements and achieve a more standardised way of working.

3.3.2 All public authorities create and maintain records as part of their normal business. Under these proposals, decisions about what records are to be created will remain the responsibility of individual authorities in light of their governing legislation and sectoral guidelines. However, any record generated or received by a public authority in the course of its normal business will be covered by these proposals.

3.3.3 The proposals include an obligation on public authorities to adopt acceptable and consistent records management practices, in order to achieve a minimum standard of record keeping across the public sector. Each authority would be required to have in place systems which permit the accurate identification and maintenance of records in support of their business. These systems would include processes for review and final disposal, resulting in destruction or archiving of records by means of agreed scheduling procedures. It is not intended that they would in any way interfere with established procedures, such as the management of patient records by NHS boards.

3.3.4 The proposed Bill would require each authority to draw up, adopt and maintain a records management plan, based on a generic model plan produced by the Keeper. Detailed record keeping practices will not be prescribed within the legislation itself.

3.3.5 It is not intended that the proposals should define the formats in which records should be retained, nor significantly increase the quantities of records preserved for the long term. The use of agreed retention schedules may in fact result in fewer records being retained. This will improve information retrieval and reduce storage costs.

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

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?

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?

### **3.4 Local Authorities and Proper Arrangements**

3.4.1 The main legislation on records management at a local authority level is the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”). Section 53 of this Act requires local authorities to make “proper arrangements for the preservation and management of [their] records”, including disposal of records not considered worthy of preservation. It also states that local authorities should consult the Keeper before putting into practice or changing materially any such arrangements.

3.4.2 The 1994 Act does not provide a definition of ‘proper arrangements’ and there is no enforcement mechanism for those local authorities which choose not to provide them. While there are several examples of local authorities with excellent records management and archive provision, the Shaw Report found that gaps in provision continue to exist. This was confirmed most recently by the 2009 report of the inquiry into abuse at Kerelaw Residential School and Secure Unit. Important historical records across Scotland, both within the child care sector and other sectors, remain vulnerable.

3.4.3 It is proposed that sections 53 and 54 of the 1994 Act be reviewed. The provisions in these sections, which relate to the management, disposal and preservation of records, will be replaced by the requirement on each local authority to produce, adopt and implement a records management plan under the proposed Bill, as described above.

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.

### **3.5 Enforcement**

3.5.1 Existing guidance and best practice on records management is not followed in a consistent manner across the public sector. The s.61 Code of Practice under the 2002 Act is not compulsory, and there is no formal mechanism for the Keeper to act on failure to comply with s.53 of the 1994 Act. During the Keeper’s review comments were made on several occasions that while new legislation would be welcomed, it would only have real value if there was a workable element of enforcement behind it.

3.5.2 The proposals for the Bill would oblige public authorities, within a specified time period, to adopt and implement a records management plan as described in section 3.3 above. As well as laying out policies and procedures for the management of records, these plans would provide a foundation for

self-assessment. Each authority would be required to report on record keeping activities to their governing body on a regular basis.

3.5.3 Self-assessment is the preferred long-term means of enforcement of the proposed legislation. However, the Keeper would in addition have the authority to scrutinise these plans and their implementation by public authorities and to impose civil sanctions. He would be able to issue compliance recommendations and publish the names and details of those authorities found to be in breach of provisions. 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 are seen to be consistently failing in good records management practice.

- 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?
- 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?
- 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.

3.5.4 It is proposed that the new legislation would not be retrospective. It is not possible to rectify the loss or erroneous destruction of records which have occurred in the past due to bad record keeping practices. The proposals will apply to all records currently held or which will be created in the future, and will provide a framework on which to build a standard of consistent good practice across the public sector in Scotland.

- Q21 Do you agree with this, and if not, are there reasons why the new legislation should be retrospective?

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?

## **3.6 Records of Scottish Courts**

3.6.1 It was not part of the original remit of the Keeper's review to consider records of Scottish courts. However, these are covered by the 1937 Act and are Scottish public records, and in revising legislation it would be wrong to omit them. Circumstances have changed since the 1937 Act was first implemented, in particular the quantities and types of records now produced by Scottish courts. The proposals seek to clarify elements of the 1937 Act concerning court records in order to better reflect current practice. In addition certain substantive changes are proposed to update practice and procedures for transferring court records into the Keeper's custody.

3.6.2 It is proposed that the Bill would:

- clarify which courts are covered by the 1937 Act and transmit selected records to the Keeper;
- clarify the relationship between the Keeper and the Courts;
- simplify the existing procedure for transferring predefined court records to the Keeper;
- insert a provision to allow regulations to be made to permit the disposal by destruction or otherwise of court records not considered worthy of permanent preservation before as well as after their transmission to the Keeper.

#### **4. CONCLUSION**

4.1 Scotland's public records legislation is over 70 years old and no longer fit for purpose. Its failings and those of the wider legislative structure affecting public records were highlighted by the Shaw Report. Scottish Ministers consider that it is now essential to address the issue of public records in order to improve the management of Scottish public affairs and help safeguard the rights of individuals. This paper outlines the changes which Ministers believe are necessary, and they plan to introduce primary legislation in the Scottish Parliament when a suitable opportunity arises. We hope that readers will contribute their thoughts on the proposals to improve the management of public records, either by answering the question throughout Section 3 or writing with comments to one of the addresses at the front of this paper. The deadline for comments is **Wednesday 4<sup>th</sup> August 2010**.

## **Annex A: Responding to this Consultation Paper**

This consultation paper outlines the proposed legislation sought by Scottish Ministers to respond to the inadequacies of the current public records legislation in Scotland. It is intended to initiate debate and canvass comment from across the public sector and among the general public on how best to improve the current situation. Comments received at this stage will be fed into the development of a Bill and we therefore welcome your contribution to the debate.

The Bill will be introduced to the Scottish Parliament at the earliest opportunity, following this consultation and analysis of the responses. In addition, we propose to publish both an overview of responses and those responses for which permission has been given (see "Handling your Response" below).

We are inviting written responses to this consultation paper and the accompanying Business and Regulatory Impact Assessment by **Wednesday 4<sup>th</sup> August 2010**. We would be grateful if you could use the consultation questions provided (throughout the text and repeated in **Annex E**) and clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received. If possible, we would encourage you to submit your responses electronically. It would be helpful if you could refer to particular sections and paragraphs in any detailed discussion.

Please send your response with the completed Respondent Information Form in **Annex B** (see also "Handling your Response" below) to:

[Business.Management@nas.gov.uk](mailto:Business.Management@nas.gov.uk)

or The Keeper of the Records of Scotland  
HM General Register House  
3 Princes Street  
Edinburgh  
EH1 3YY

If you have any queries, please contact the Keeper on 0131 535 1311.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/Consultations/Current>

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces, SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation

activity, and, therefore, be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form at **Annex B** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would, therefore, have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and, after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us finalise the proposed Bill on new public records legislation for Scotland.

### **Comments and complaints**

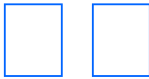
If you have any comments about how this consultation exercise has been conducted, please send them to:

The Keeper of the Records of Scotland  
HM General Register House  
3 Princes Street  
Edinburgh  
EH1 3YY

or email [Business.Management@nas.gov.uk](mailto:Business.Management@nas.gov.uk)

**Annex B: Respondent Information Form**

**Please Note This Form Must Be Returned With Your Response To Ensure That We Handle Your Response Appropriately**



## RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

### 2. Postal Address

Postcode Phone Email

### 3. Permissions

I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  Yes  No

## **Annex C: The Scottish Government Consultation Process**

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same. Typically, Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at,

Library  
GD41, Victoria Quay  
Edinburgh,  
EH6 6QQ,  
(telephone 0131 244 4556).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>). The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals;
- be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation

exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## **Annex D: Proposed Public Authorities**

A: Scottish Parliament

B: Scottish Government

C: Scottish Local Authorities

- Aberdeen City Council
- Aberdeenshire Council
- Angus Council
- Argyll and Bute Council
- Clackmannanshire Council
- Dumfries and Galloway Council
- Dundee City Council
- East Ayrshire Council
- East Dunbartonshire Council
- East Lothian Council
- East Renfrewshire Council
- Edinburgh City Council
- Falkirk Council
- Fife Council
- Glasgow City Council
- Highland Council
- Inverclyde Council
- Midlothian Council
- Moray Council
- North Ayrshire Council
- North Lanarkshire Council
- Orkney Islands Council
- Perth and Kinross Council
- Renfrewshire Council
- Scottish Borders Council
- Shetland Islands Council
- South Ayrshire Council
- South Lanarkshire Council
- Stirling Council
- West Dunbartonshire Council
- West Lothian Council
- Western Isles Council

D: Public Bodies

- Executive NDPBs
  - Accounts Commission for Scotland
  - Architecture and Design Scotland
  - Bòrd Gàidhlig na h-Alba
  - Cairngorms National Park Authority
  - Creative Scotland
  - Crofters' Commission
  - Deer Commission for Scotland
  - Highlands and Islands Enterprise

- Learning and Teaching Scotland
- Loch Lomond and The Trossachs National Park Authority
- National Galleries of Scotland
- National Library of Scotland
- National Museums of Scotland
- Police Complaints Commission for Scotland
- Quality Meat Scotland
- Risk Management Authority
- Royal Botanic Garden, Edinburgh
- Royal Commission on the Ancient and Historical Monuments of Scotland
- Scottish Agricultural Wages Board
- Scottish Arts Council
- Scottish Children's Reporter Administration
- Scottish Commission for the Regulation of Care
- Scottish Criminal Cases Review Commission
- Scottish Enterprise
- Scottish Environment Protection Agency
- Scottish Funding Council
- Scottish Legal Aid Board
- Scottish Legal Complaints Commission
- Scottish Natural Heritage
- Scottish Police Services Authority
- Scottish Qualifications Authority
- Scottish Screen
- Scottish Social Services Council
- Skills Development Scotland
- Sportscotland
- VisitScotland
- Water Industry Commission for Scotland
- Advisory NDPBs
  - Advisory Committee on Sites of Special Scientific Interest
  - Building Standards Advisory Committee
  - Fisheries (Electricity) Committee
  - General Teaching Council for Scotland
  - Historic Environment Advisory Council for Scotland
  - Judicial Appointments Board for Scotland
  - Local Government Boundary Commission for Scotland
  - Mobility and Access Committee for Scotland
  - Public Transport Users Committee for Scotland
  - Scottish Advisory Committee on Distinction Awards
  - Scottish Industrial Development Advisory Board
  - Scottish Law Commission
  - Scottish Local Authorities Remuneration Committee
- Tribunals
  - Additional Support Needs Tribunals for Scotland
  - Children's Panels
  - Lands Tribunal for Scotland
  - Mental Health Tribunal for Scotland
  - Parole Board for Scotland

- Private Rented Housing Panel
  - Scottish Charity Appeals Panel
- Public Corporations
  - Caledonian Maritime Assets Ltd
  - David MacBrayne Ltd
  - Highlands and Islands Airports Ltd
  - Scottish Futures Trust
  - Scottish Water
- NHS Boards and Special Health Boards
  - NHS Ayrshire & Arran
  - NHS Borders
  - NHS Dumfries & Galloway
  - NHS Fife
  - NHS Forth Valley
  - NHS Grampian
  - NHS Greater Glasgow & Clyde
  - NHS Highland
  - NHS Lanarkshire
  - NHS Lothian
  - NHS Orkney
  - NHS Shetland
  - NHS Tayside
  - NHS Western Isles
  - National Waiting Times Centre Board
  - NHS 24
  - NHS Education for Scotland
  - NHS Health Scotland
  - NHS National Services Scotland
  - NHS Quality Improvement Scotland
  - Scottish Ambulance Service
  - State Hospital Board for Scotland
- Executive Agencies
  - Accountant in Bankruptcy
  - Disclosure Scotland
  - Historic Scotland
  - HM Inspectorate of Education
  - National Archives of Scotland
  - Scottish Housing Regulator
  - Scottish Prison Service
  - Scottish Public Pension Agency
  - Social Work Inspection Agency
  - Student Awards Agency for Scotland
  - Transport Scotland
- Non-Ministerial Departments
  - General Register Office for Scotland
  - Registers of Scotland
  - Office of the Charity Regulator
  - Scottish Courts Service
- Commissioners and Ombudsmen
  - Commissioner for Children and Young People in Scotland

- Commissioner for Public Appointments in Scotland
- Parliamentary Standards Commissioner
- Scottish Information Commissioner
- Scottish Public Services Ombudsman
- Human Rights Commission
- Prison Complaints Commission
- Scottish Commission for Public Audit
- Other Significant National Bodies
  - Audit Scotland
  - Court of the Lord Lyon
  - Drinking Water Quality Regulator
  - HM Prison Inspectorate
  - HM Inspector of Constabulary
  - Inspectorate of Prosecution
  - Justices of the Peace Advisory Committees
  - Macaulay Institute
  - Moredun Research Institute
  - Office of the Queens Printer
  - Scottish Agricultural College
  - Standards Commissioner for Scotland
  - Scottish Crop Research Institute
  - Scottish Roadworks Commissioner
  - Scottish Land Court
  - Sustainable Development Commission in Scotland
  - Visiting Committees for Scottish Penal Complaints
  - Waterwatch Scotland

## **Annex E: List of Consultation Questions**

- 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?
- Q2 Do you have any comments on the inclusion of those bodies listed in Annex D?
- Q3 Do you believe the proposals should cover more or fewer authorities?
- Q4 Do you have any further comments on the proposals outlined in this section?
- 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?
- Q6 Are there other issues that need to be considered in relation to technology and future-proofing?
- 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?
- Q8 Do you have any further comments relating to records of voluntary and private organisations delivering public services?
- Q9 Do you agree that the Keeper should be responsible for producing and publishing a model records management plan to guide public authorities?
- 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?
- 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?
- 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.
- 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?
- 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?
- 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.
- Q21 Do you agree that the proposed legislation should not be retrospective, and if not, are there reasons why it should be?
- 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?