



4 August 2010

Summary Response

SCRA welcomes the opportunity to respond to this consultation on records management and public records legislation. SCRA's Information Management Project includes a workstream on the development of a records management policy in preparation for the introduction of Electronic Records and Document Management – ERDM, which means that the issues raised by the consultation are particularly timely.

Specific 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?

SCRA agrees that a public record should be one that is created or received by a public body.

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

We agree with SCRA's inclusion in the list.

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

We have no comment to make here.

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

No.

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?

Yes.

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

SCRA suggests that it needs to be clear that records do not only relate to written records, but should also consider other media used to record/hold information.

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?

We suggest that this adjudication should be in line with the Freedom Of Information (Scotland) Act 2002.

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

No.

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

SCRA agrees with this proposal as it will help to ensure consistency across the public sector.

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?

We agree, providing the timescales adopted are agreed in consultation with those bodies affected. Again, the implementation of the Freedom of Information (Scotland) Act and its associated publication schemes could provide a model.

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?

Yes – there may be circumstances where this would be 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.

We have no comment to make here.

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?

SCRA suggests that sanctions should be similar to those available to the Scottish Information Commissioner.

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

Yes – and again the Scottish Information Commissioner may provide an appropriate model for this process.

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?

Yes.

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?

The Scottish Information Commissioner already has some powers in this area. Clarification is needed on how the Keeper's powers would differ and integrate with those of SIC. There is a danger of excessive scrutiny and burden on public bodies which would not be in line with the recommendations of the Crerar review.

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?

Yes.

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?

We have no comment here.

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?

There may be a place for this to happen on a limited basis, but it would not be appropriate for some organisations e.g. those like SCRA that mainly hold extremely sensitive personal information.

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.

It is difficult to see how this could be achieved across the public sector. Individual agencies may choose to take action – for instance SCRA is currently engaged in a re-examination of our records management

practice – but in the context of forthcoming financial pressures a legislative imperative would assist in ensuring that the issue is given sufficient priority across the public sector.

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

We agree. The alternative does not seem to be feasible or fair.

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?

SCRA agrees that new legislation should be extended beyond the looked after children sector. There is a need for consistency across the public sector and such an extension would help to ensure that is no discrimination in how records are held by age, legal status etc.

Conclusion

SCRA supports the proposal for a Public Records (Scotland) Bill and looks forward to further consultation on the subject.

