

MEMORANDUM OF UNDERSTANDING

between

THE KEEPER OF THE RECORDS OF SCOTLAND

and

THE SCOTTISH INFORMATION COMMISSIONER

In relation to selection and transfer of records

INTERPRETATION

1. In this Memorandum of Understanding, unless the context otherwise requires, the following words and phrases shall have the following meanings:
 - **the SIC** means the Scottish Information Commissioner
 - **DPA 1998** means the Data Protection Act 1998
 - **EI(S) Regulations 2004** means the Environmental Information (Scotland) Regulations 2004
 - **FOISA 2002** means the Freedom of Information (Scotland) Act 2002
 - **the Keeper** means the Keeper of the Records of Scotland
 - **MoU** means this Memorandum of Understanding between the Keeper and the SIC
 - **NRS** means National Records of Scotland
 - **PR Act 1958** means the Public Records Act 1958
 - **PR(S) Act 1937** means the Public Records (Scotland) Act 1937
 - **PR(S) Act 2011** means the Public Records (Scotland) Act 2011

PURPOSE

2. This MoU sets out the understanding between the Keeper and the SIC on how the process of depositing, storing and accessing records of enduring historical, cultural and research value which have been transferred from the SIC to NRS will operate. Deposit in NRS is pursuant to section 5 of the PR(S) Act 1937 and in fulfilment of the SIC's record management obligations under the PR(S) Act 2011.

BACKGROUND

3. The Keeper is responsible to the Scottish Ministers for records transmitted to him under various statutory provisions including the PR(S) Act 1937 and section 3 of the PR Act 1958, as well as for records of the courts and those of independent origin selected for permanent preservation. The Keeper's functions are carried out by NRS, as a Non-Ministerial Department forming part of the Scottish Administration. NRS preserves Scotland's national archives so that they are available for current and future generations; it registers births, marriages, civil partnerships, deaths, divorces and adoptions; it operates the census; it publishes information about Scotland's population and households; it maintains the National Health Service Central Register; and it connects people of Scots ancestry with their past.
4. The SIC was established by FOISA 2002. The SIC is a public official appointed by Her Majesty the Queen on the nomination of the Scottish Parliament. The Commissioner is responsible for enforcing and promoting Scotland's freedom of information laws, namely FOISA 2002, EI(S) Regulations 2004 and the INSPIRE (Scotland) Regulations 2009.

STATUTORY FRAMEWORK

5. Section 5(1) of the PR(S) Act 1937 states that "It shall be lawful for any Government Department, board of trustees, or other body or person having the custody of any records belonging to His Majesty and relating exclusively or mainly to Scotland (other than the documents specified in section four of this Act) to transmit such records to the Keeper."
6. The SIC is listed in the Schedule to the PR(S) Act 2011 as an authority to which Part 1 of the PR(S) Act 2011 applies. The PR(S) Act 2011 obliges the SIC to manage her public records in accordance with a records management plan, agreed with the Keeper, which includes provision for identifying and transferring records of enduring value to an appropriate archive repository.

RECORDS TRANSFERRED TO THE KEEPER, OWNERSHIP AND TERMS OF DEPOSIT

7. The records referred to in this MoU are SIC records of enduring value which are worthy of permanent preservation for their historical, cultural and research value, as determined by the Keeper and in agreement with SIC. The records can be in any format, including paper and electronic.

8. The Keeper agrees to the deposit of SIC records on behalf of the Scottish Ministers under section 5 of the PR(S) Act 1937 as a collection of national importance, and in fulfilment of the SIC's records management obligations under the PR(S) Act 2011.
9. Ownership of the records rests with the SIC.

RESPECTIVE OBLIGATIONS, PUBLIC ACCESS AND FURTHER USE

10. The SIC agrees to provide the Keeper with access to its record stores to facilitate identification, appraisal and selection of records considered worthy of permanent preservation in NRS. This does not include access to information which must not be disclosed by the Commissioner under section 45 of FOISA 2002.
11. The SIC agrees to ensure that records are properly managed to enable appraisal and processing by NRS staff.
12. The SIC agrees to ensure that any classified records selected for transfer to the Keeper have been declassified, with all protective markings removed from documents, prior to transmission to the Keeper.
13. The SIC agrees to inform the Keeper at the time that the records are transmitted to NRS of any restrictions on public access to records enforced under the DPA 1998, FOISA 2002, and the EI(S) Regulations 2004.
14. Where electronic records are deemed worthy of permanent preservation in NRS by the Keeper, the SIC agrees to work with NRS in order to fulfil the requirements of the NRS Deposit Agreement for Electronic Records (2013).
15. The Keeper may refuse to accept for preservation records in any format which: have poor explanatory documentation or metadata; are in poor physical condition or are digitally degraded/contaminated; are disordered or disbound, especially where it is impossible to establish the original order with any certainty; or which are not considered suitable for permanent preservation, e.g. published information, library material and records still considered to be current or semi-current. These will remain in the custody of the SIC.
16. The Keeper will place the catalogue of the SIC's record information onto the NRS online electronic catalogue to permit public access to, and facilitate use of, the records in the collection. The catalogue will comply with DPA 1998.
17. Where possible, NRS will handle general public enquiries about the records transferred to the Keeper. These will form part of the normal NRS search room service. If required, the SIC will supply the Keeper with sufficient advice, information, or training to permit NRS to deal effectively with such general enquiries.
18. Enquiries of a more complex nature may be referred to the SIC. In this context, the temporary return ("retransmission") of specific records under section 5(3) of the PR(S) Act 1937 to the SIC will only be undertaken should it prove impossible for NRS staff to deal adequately with enquiries or for the client to deal with them in an alternative way (eg by NRS providing digital copies).
19. The SIC's records transferred to the Keeper are subject to FOISA 2002. The Keeper will administer requests for information in transferred records which are not open as

stipulated under section 22 of FOISA 2002. The Keeper will refer requests to the SIC who will advise the Keeper of the SIC's decision in accordance with sections 22(2) and 22(3) of FOISA 2002. The Keeper will refer any requirements for review of the SIC's decisions to the SIC who will review the decision and inform the Keeper of the outcome, including a statement of its reasons, in accordance with sections 22(4) and 22(5) of FOISA 2002. The SIC must advise the Keeper of decisions and review outcomes promptly, and in any event within sufficient time to make it practicable for the Keeper to respond within the statutory 30-working-day deadlines as stipulated under sections 10(2) and 21(2) of FOISA 2002.

20. The SIC's records transferred to the Keeper are subject to the EI(S) Regulations 2004. The Keeper will administer requests for access to environmental information contained in transferred records which are not open made under regulation 5(1) of the EI(S) Regulations 2004, and representations for a review made under regulation 16 of the EI(S) Regulations 2004. The Keeper will refer requests and representations for review to the SIC, who will advise the Keeper of the SIC's decision in accordance with regulations 15 and 16 of the EI(S) Regulations 2004. The SIC will advise the Keeper of the decision or review outcome within sufficient time to make it practicable for the Keeper to respond within the statutory 20-working-day deadlines as stipulated under regulations 5(2)(a) and 16 of the EI(S) Regulations 2004. The 20-working-day time period for responding to requests can be extended to 40 working-days where the information requested is complex and voluminous, per regulation 7(1) of the EI(S) Regulations 2004.
21. The SIC remains the data controller (as defined in section 1(1) of the DPA 1998) of all personal data transferred to the Keeper. NRS will be the data processor (as defined in section 1(1) of the DPA 1998) of this data and will administer any subject access requests under section 7 of the DPA 1998 to closed SIC personal data. The Keeper will refer the request to the SIC, who will advise the Keeper of her decision within sufficient time to make it practicable for the Keeper to respond to the request within the statutory 40 day deadline as stipulated under section 7 of the DPA 1998.
22. The Keeper will retransmit records which are necessary for the SIC's business purposes on request, under section 5(3) of the PR(S) Act 1937. Arrangements for collection and return of such records shall be the responsibility of the SIC. The Keeper agrees to make records available for collection by the SIC within 2 working days of receipt of a request for retransmission. Retransmitted records in the custody of the SIC will be handled with care, in accordance with the NRS 'Information and Regulations for Retransmitted Files'. The SIC must return records to the Keeper as soon as they have ceased to be required.
23. Records created by the SIC are subject to private copyright and the copyright holder is the SIC. The SIC must identify any third-party copyright material present in records selected for transfer and, where possible, details of the copyright owner should accompany the transfer of this material. The Keeper will manage the client's transferred records in accordance with UK copyright legislation.
24. With due respect for any third-party copyright material present in the records, the SIC grants the Keeper a non-exclusive licence to use the records for any purpose which he deems suitable in line with NRS strategic aims, and to improve public access to the records. This may include use for any publicity, marketing or educational initiatives, and include the creation of surrogate digital images to answer public enquiries, for use in NRS search rooms and the ScotlandsPeople Family History Centre, or for use on partner websites operated with others including

ScotlandsPeople and ScotlandsPlaces. The Keeper may, in accordance with section 10 of PR(S)A 1937 and any Acts of Sederunt made thereunder, charge for certain types of access, e.g. supply of digital images or copies in paper form.

REVIEW OF MoU

25. Ad hoc amendments to this MoU can be made in writing, with the agreement of both parties at any time, with the provision of 2 months advance notice.
26. Formal review of the MoU should take place every 3 to 5 years.

Signature for the SIC

Signed:

Rosemary Agnew

Name: Rosemary Agnew

Title: Scottish Information Commissioner

Date: 30 Jan 14

Signature for The Keeper

Signed:

Laura Mitchell

Name:

Laura Mitchell

Title:

DEPUTY KEEPER OF THE
RECORDS OF SCOTLAND

Date:

5/2/14