

## MEMORANDUM OF UNDERSTANDING

Between

**THE KEEPER OF THE RECORDS OF SCOTLAND**

and

**THE SCOTTISH PUBLIC SERVICES OMBUDSMAN**

### INTERPRETATION

1. In this Memorandum of Understanding, unless the context otherwise requires, the following words and phrases shall have the following meanings:

**-the SPSO** means the Scottish Public Services Ombudsman

**-CLAS** means the Commissioner for Local Administration in Scotland

**-DPA 1998** means the Data Protection Act 1998

**-EIRs 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 SPSO

**-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

**-SPSOA 2002** means the Scottish Public Services Ombudsman Act 2002

## **PURPOSE**

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

## **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 SPSO has the functions set out in SPSOA 2002. These include raising awareness of its service, promoting good administrative practice by Scottish public services and leading the development of simplified and standardised complaints handling procedures across the public sector. They also include investigating and reporting on complaints that maladministration, failure to provide a service or failure in a service by NHS organisations and bodies providing NHS services (including GPs, dentists, pharmacists and opticians) has caused injustice or hardship to a member of the public. The SPSO aims to work in partnership with public services across Scotland to help prevent complaints from arising and to help public services to improve their complaint handling processes. The SPSO can consider complaints from members of the public who claim to have sustained injustice or hardship as a result of maladministration or service failure by an authority within the SPSO's jurisdiction. The matter complained about must also be one that the SPSO is entitled to investigate. Schedule 2 of SPSOA 2002 lists the authorities that come within the jurisdiction of the SPSO (listed authorities'). Complaints to SPSO need to first have been made to the listed authority concerned and have completed their complaints process.

## **STATUTORY FRAMEWORK**

5. Section 5(2) of the PR(S) Act 1937 states that *'it shall be lawful for any local authority or any statutory body corporate in Scotland, with the consent of the Keeper, to transmit such of their records as relate exclusively or mainly to Scotland to the Keeper for custody.'* Section 5(2A) of the PR(S) Act 1937 states that *"For the purposes of this section, 'statutory body corporate' means any body corporate established by or under a statute relating to Scotland*

*other than such bodies, or classes of such bodies, as may be specified by the Secretary of State in an order made by statutory instrument.”*

6. The SPSO is listed in the Schedule to the PR(S) Act 2011 as an authority to which Part 1 of the Act applies. The PR(S) Act 2011 obliges the SPSO to manage its 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 SPSO records and those of its predecessor body the CLAS, considered to be of enduring value and worthy of permanent preservation for their historical, cultural and research value, as determined by the Keeper and in agreement with the SPSO. The records can be in any format, including paper and electronic.

8. The Keeper agrees to the deposit of SPSO 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 SPSO records management obligations under the PR(S) Act 2011.

9. Ownership of the records rests with the SPSO.

## **RESPECTIVE OBLIGATIONS, PUBLIC ACCESS AND FURTHER USE**

10. The SPSO 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 which are not subject to a statutory bar on disclosure under section 19(1) of SPSOA 2002.

11. The SPSO agrees to ensure that records are properly managed to enable appraisal and processing by NRS staff.

12. The SPSO will retain and permanently preserve records of enduring value which are currently subject to a statutory bar on disclosure under section 19(1) of SPSOA 2002 and which consequently cannot be transferred to the Keeper at the present time. The records retained will be identified by SPSO a) according to NRS guidance on selecting records suitable for permanent preservation, and b) when further advice and guidance are required, in discussion with NRS in such a way that does not breach the statutory bar on disclosure.

13. The records retained and permanently preserved by the SPSO under paragraph 12 of this MoU will be mutually agreed in discussion with the Keeper.

14. The SPSO agrees to ensure that any previously classified records selected for transfer to the Keeper have been declassified, with all protective markings removed from documents, prior to transmission to the Keeper.

15. The SPSO 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 EIRs 2004.

16. Where born digital records are deemed worthy of permanent preservation in NRS by the Keeper, the SPSO agrees to work with NRS in line with the current version of the Guidance for Depositors on the Transfer of Born Digital Records.

17. 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 SPSO.

18. The Keeper will place the catalogue of the SPSO 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 the DPA 1998.

19. Where possible, NRS staff 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 SPSO will supply the Keeper with sufficient advice, information, or training to permit NRS to deal effectively with such general enquiries.

20. Enquiries of a more complex nature may be referred to the SPSO. In this context, the temporary return ("retransmission") of specific records under section 5(3) of the PR(S) Act 1937 to the SPSO 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 (e.g. by means of providing digital copies).

21. The SPSO'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 SPSO who will advise the Keeper of the SPSO'S decision in accordance with sections 22(2) and 22(3) of FOISA 2002. The Keeper will refer any requirements for review of the SPSO'S decisions to the SPSO which 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 SPSO 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 the FOISA 2002.

22. The SPSO'S records transferred to the Keeper are subject to the EIRs 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 EIRs 2004, and representations for a review made under regulation 16 of the EIRs 2004. The Keeper will refer requests and representations for review to the SPSO who will advise the Keeper of the SPSO's decision in accordance with regulations 15 and 16 of the EIRs 2004. The SPSO 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 EIRs 2004. The 20-day time period for responding to requests can be extended to 40 days where the information requested is complex and voluminous, per regulation 7 of the EIRs 2004.

23. The SPSO remains the data controller (as defined in section 1(1) of the DPA 1998) of all personal information transferred to the Keeper. NRS will be the data processor (as defined in section 1(1) of the DPA 1998) of this information and administer any subject access requests under section 7 of the DPA 1998 to closed SPSO personal information. The Keeper will refer the request to the SPSO, which will advise the Keeper of its 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.

24. The Keeper will retransmit records which are necessary for the SPSO'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 SPSO. The Keeper agrees to make records available for collection by the SPSO within 2 working days of receipt of a request for retransmission. Retransmitted records in the custody of the SPSO will be handled with care, in accordance with the NRS 'Information and Regulations for Retransmitted Files'. The SPSO must return records to the Keeper as soon as they have ceased to be required.

25. Records created by the SPSO are subject to Crown copyright and managed in accordance with the Office of Public Sector Information guidance. The SPSO must identify any private copyright material present in records selected for transfer and, where possible, details of the copyright owner should accompany the transfer of this material.

26. To the extent that the client holds the copyright to the material, the client grants the Keeper a non-exclusive, world-wide and royalty free licence to use the records for any purpose which the Keeper may deem suitable in line with NRS strategic aims and for improvement of 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.

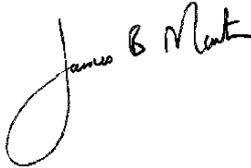
27. Where a dispute occurs between the Keeper and the SPSO, the staff who have been involved from the respective organisations should make attempts to affect a resolution, involving line management where a resolution has not

been found. For ongoing disputes, the organisations' Chief Executives will work together to effect a resolution.

## REVIEW OF MoU

28. 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.

29. Formal review of the MoU should take place every 3 to 5 years.

Signature for the SPSO	Signature on behalf of The Keeper
Signed: 	Signed: 
Name: Jim Martin	Name: Laura Mitchell
Position: Ombudsman	Position: Deputy Keeper of the Records of Scotland
Date: 11 February 2016	Date: