



**care**  
inspectorate

MEMORANDUM OF UNDERSTANDING

Between

THE KEEPER OF THE RECORDS OF SCOTLAND

and

SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND

('THE CARE INSPECTORATE')

in relation to selection and transfer of records

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## INTERPRETATION

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

**-the Care Inspectorate** means Social Care and Social Work Improvement Scotland

**-"closed Care Inspectorate information"** means any Care Inspectorate record transmitted to the Keeper which the Care Inspectorate has identified as being subject to any restriction on public access which is enforceable under the DPA 1998, FOISA 2002 or EI(S) Regulations 2004 or any other law.

**-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 Care Inspectorate

**-NRS** means the 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. The purpose of this MoU is to set out the understanding between the Keeper and the Care Inspectorate on how the process of depositing, storing and accessing records of enduring historical, cultural and research value which have been transferred from the Care Inspectorate to NRS will operate. Deposit of these types of records with NRS is pursuant to section 5 of the PR(S) Act 1937 and in fulfilment of the Care Inspectorate records 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 Care Inspectorate was established under section 44(1) of the Public Services Reform (Scotland) Act 2010 as an independent body responsible for the scrutiny and improvement of care, social work and child protection services. The role and functions of the Care Inspectorate are set out in the Public Services Reform (Scotland) Act 2010, the Adults with Incapacity (Scotland) Act 2000 (Part 4 only) and the Mental Health (Care and Treatment) (Scotland) Act 2003.

## **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 Care Inspectorate is also listed in the Schedule to the PR(S) Act 2011 as an authority to which Part 1 of that Act applies. The PR(S) Act 2011 obliges the Care Inspectorate 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 Care Inspectorate 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 the Care Inspectorate. The records can be in any format, including paper and electronic.

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

9. Ownership of the records rests with the Care Inspectorate.

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

10. The Care Inspectorate 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.

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

12. The Care Inspectorate 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 Care Inspectorate 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 Care Inspectorate 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 Care Inspectorate.

16. The Keeper will place the catalogue of the Care Inspectorate 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.

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 Care Inspectorate 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 Care Inspectorate. In this context, the temporary return ("retransmission") of specific records under section 5(3) of the PR(S) Act 1937 to the Care Inspectorate will only be undertaken should it prove impossible for NRS staff to deal adequately

with enquiries or for the Care Inspectorate to deal with them in an alternative way (e.g. by NRS providing digital copies).

19. The Care Inspectorate records transferred to the Keeper are subject to FOISA 2002. The Keeper will administer requests for information in transferred records which are not designated by the Care Inspectorate as 'open' as stipulated under section 22 of FOISA 2002. The Keeper will refer requests to the Care Inspectorate who will advise the Keeper of the Care Inspectorate decision in accordance with sections 22(2) and 22(3) of FOISA 2002. The Keeper will refer any requirements for review of the Care Inspectorate decisions to the Care Inspectorate, 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 Care Inspectorate 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.

20. The Care Inspectorate 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 Care Inspectorate, who will advise the Keeper of the Care Inspectorate decision in accordance with regulations 15 and 16 of the EI(S) Regulations 2004. The Care Inspectorate 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-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 EI(S) Regulations 2004.

21. The Care Inspectorate 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 Care Inspectorate personal information. The Keeper will refer the request to the Care Inspectorate, 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.

22. The Keeper will retransmit records which are necessary for the Care Inspectorate business purposes on request, under section 5(3) of the PR(S) Act 1937. Where original records are not required for business purposes, the Keeper reserves the right to supply a surrogate, e.g. a digital image, if possible. Arrangements for collection and return of such records shall be the responsibility of the Care Inspectorate. The Keeper agrees to make records available for collection by the Care Inspectorate within 2 working days of receipt of a request for retransmission. Retransmitted records in the custody of the Care Inspectorate will be handled with care, in accordance with the NRS 'Information and Regulations for Retransmitted Files'. In accordance with section 5(3) of the

PR(S) Act 1937, the Care Inspectorate must return each retransmitted record to the Keeper as soon as may be after it has ceased to be required for the purposes for which it was re-transmitted.

23. Records created by the Care Inspectorate are subject to private copyright and the copyright holder is the Care Inspectorate. The Care Inspectorate 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 Care Inspectorate's transferred records in accordance with UK copyright legislation.

24. To the extent that the Care Inspectorate holds the copyright to the material, the Care Inspectorate 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.

25. Where a dispute occurs between the Keeper and the Care Inspectorate, the staff who have been involved from the respective organisations will make attempts to effect an amicable resolution, involving line management where a resolution has not been found. For ongoing disputes, the organisations' Chief Executives will work together and be jointly responsible for ensuring a mutually satisfactory resolution.

## REVIEW OF MoU

26. 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.

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

Signature for the Care Inspectorate	Signature on behalf of The Keeper
Signed: 	Si 
Name: Karen Reid	Name: Laura Mitchell
Position: Chief Executive	Position: Deputy Keeper of the Records of Scotland
Date: 01/02/16	Date: 11/12/16