



## **Records Management Plan**

*Records Management Arrangements under Section 1 of  
the Public Records (Scotland) Act 2011*

	Page
<a href="#"><u>Foreword</u></a>	2
<a href="#"><u>Definition &amp; Glossary</u></a>	3
<a href="#"><u>An Introduction to the Scottish Courts and Tribunals Service</u></a>	4
<a href="#"><u>Element One: Senior Management Responsibility</u></a>	6
<a href="#"><u>Element Two: Records Management Responsibility</u></a>	9
<a href="#"><u>Element Three: Records Management Policy Statement</u></a>	11
<a href="#"><u>Element Four: Business Classification</u></a>	16
<a href="#"><u>Element Five: Retention Schedules</u></a>	17
<a href="#"><u>Element Six: Destruction Arrangements</u></a>	21
<a href="#"><u>Element Seven: Archiving and Transfer Arrangements</u></a>	25
<a href="#"><u>Element Eight: Information Security</u></a>	27
<a href="#"><u>Element Nine: Data Protection</u></a>	30
<a href="#"><u>Element Ten: Business Continuity and Vital Records</u></a>	32
<a href="#"><u>Element Eleven: Audit Trail</u></a>	33
<a href="#"><u>Elements Twelve and Thirteen: Competency Framework for Records Management Staff and Assessment and Review</u></a>	35
<a href="#"><u>Element Fourteen: Shared Information</u></a>	37
<a href="#"><u>Index of Supporting Documentation</u></a>	39

## Foreword from the Chief Executive

### *Statement on Records Management*

I am delighted to introduce this new Records Management Plan which sets out, for the first time, record keeping arrangements for the Scottish Courts and Tribunals Service (SCTS) following its creation on 1 April 2015.

Sound records management is fundamental to the ability of the SCTS to carry out its key tasks in supporting the judiciary of Scotland's courts and tribunals and the work of the Office of the Public Guardian.

Our records set out what we do, but also, vitally, form the official account of numerous important steps in the lives of individual citizens and document key rulings and legal deliberations, many of which will assist members of the judiciary in future hearings.

Thorough and accurate record keeping allows efficient operation of live SCTS business, allows the rationalisation of storage and guards against accidental loss or destruction. It allows critically important information to be preserved permanently for the nation by National Records of Scotland.

The commitment to record keeping set out in this Plan is a vital step in maintaining the confidence of all those involved with courts and tribunals: members of the judiciary, the public, justice partners and any other organisations or individuals interacting with SCTS.

I, and the SCTS Executive Team, fully endorse, approve and support this Records Management Plan. All staff within the SCTS will have access to the Plan, which will be published on the SCTS intranet. All staff will be notified of the publication of the Plan and Senior Managers will be reminded of their responsibility for its dissemination and implementation locally.

We will continue to work closely with National Records of Scotland in adhering to the standards set out in this Plan, in identifying improved processes and refining further our procedures.

*Eric McQueen, February 2016*

## Definitions and Glossary

AoC	Accountant of Court
CCRC	Criminal Court Rules Council
DPA	Data Protection Act 1998
FOI	Freedom of Information
GDPR	General Data Protection Regulation
JPAC	Justice of the Peace Advisory Committee
PR(S)A 2011	Public Records (Scotland) Act 2011
RMP	Records Management Plan
SCJC	Scottish Civil Justice Council
SCTS	Scottish Courts & Tribunals Service
SIRO	Senior Information Risk Owner
MHTS	Mental Health Tribunal for Scotland
NRS	National Records of Scotland
OPG	Office of the Public Guardian

### Requirements from legislation / standards

To ensure the SCTS meets the following requirements:-

- Public Records (Scotland) Act 1937
- Disposal of Court Records (Scotland) Regulations 1990
- Data Protection Act 1998 (and any successor legislation)
- Freedom of Information (Scotland) Act 2002 (“FOISA”)
- The Environmental Information (Scotland) Regulations 2004
- Public Records (Scotland) Act 2011
- The General Data Protection Regulation ((EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data )

## An Introduction to the Scottish Courts and Tribunals Service

1. The Scottish Courts and Tribunals Service (SCTS) is an independent body corporate established by the [Judiciary and Courts \(Scotland\) Act 2008](#)<sup>1</sup>.
2. Its statutory function is to provide administrative support to the Scottish Courts, devolved tribunals (since 1 April 2015) and the Office of the Public Guardian (OPG). The SCTS also provides administrative support to the Lord President in the carrying out of functions conferred on the Lord President as Head of the Scottish Judiciary, and other non-judicial functions.
3. The SCTS [Board](#) is chaired by the Lord President, the most senior judge in Scotland.
4. The purpose of the SCTS is supporting justice. We fulfil that purpose by providing the people, buildings and services needed to support the judiciary, courts, tribunals and the OPG.

### *The SCTS and Records Management*

5. [The Public Records \(Scotland\) Act 2011](#) (the “PR(S)A”) came into force on 1<sup>st</sup> January 2013. The Act obliges the Scottish Courts and Tribunals Service and other public authorities to prepare and implement a Records Management Plan (RMP). The RMP sets out arrangements for the proper management of records within the organisation. The Plan is agreed by the Keeper of the Records of Scotland and reviewed by the SCTS Records Management Group on a six monthly basis.
6. The SCTS has a diverse, multi-polar structure including individual sections supported by SCTS staff that are entirely or partly independent of SCTS. Some bodies supported by the SCTS have specialised arrangements and the Mental Health Tribunal for Scotland had its own RMP prepared in consultation with NRS

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<sup>1</sup> As amended by the [Courts Reform \(Scotland\) Act 2014](#). Section 130(1) renamed the Scottish Court Service as the Scottish Courts and Tribunals Service

prior to 1 April 2015, the date on which the Scottish Courts Service merged with the Scottish Tribunals Service.

7. This Plan seeks to set the overall framework for records management within SCTS and identify information management resources available for all SCTS staff, whether working directly for SCTS or for an entirely independent body (for example, the Scottish Sentencing Council). Where local arrangements are identified, their content takes priority for the relevant area, but on the understanding that the SCTS resources and standards detailed in this Plan remain available to all staff.

8. Further explanation is detailed below.

9. The SCTS RMP is based on the Keeper's published model records plan (Section 8 of the Act). Both the SCTS and model plan have 14 elements:

1. [Senior management responsibility](#)
2. [Records management responsibility](#)
3. [Records management policy statement](#)
4. [Business classification](#)
5. [Retention schedules](#)
6. [Destruction arrangements](#)
7. [Archiving and transfer arrangements](#)
8. [Information security](#)
9. [Data protection](#)
10. [Business continuity and vital records](#)
11. [Audit trail](#)
12. [Competency framework for records management staff](#)
13. [Assessment and review](#)
14. [Shared information](#)

10. For more information about the PR(S)A 2011 visit the [National Records of Scotland](#) website.

## Element One: Senior Management Responsibility

11. Richard Maconachie, Chief Financial Officer and Senior Information Risk Owner<sup>2</sup> (SIRO) has the overall responsibility for the Records Management Plan within the Scottish Courts and Tribunals Service, including records management support to the courts, JPACs and SCTS Headquarters functions described in Element 3. A statement to that effect is contained in Annex A. He can be contacted via the following address:

Scottish Courts and Tribunals Service  
Spur N1, Saughton House  
Broomhouse Drive  
Edinburgh  
EH11 3XD

Telephone: 0131 444 3352

Email: [pscourtservice@scotcourts.gov.uk](mailto:pscourtservice@scotcourts.gov.uk)

### *Tribunals*

12. The Scottish Courts and Tribunals Service provides administrative support to the [tribunals](#) listed in subparagraphs 1, 2, 5, 6, 7, 10A and 10B of [Schedule 1](#) of the Tribunals (Scotland) Act 2014. Responsibility for records management within each tribunal is as follows:

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<sup>2</sup> Note: the SIRO role was previously performed by the (then SCS) Executive Director of Strategy & Infrastructure.



- 1) [The Mental Health Tribunal for Scotland](#) (MHTS) – Dr Joe Morrow, President (see further Annex I);
- 2) [The Lands Tribunal for Scotland](#) (LTS) - The Hon. Lord Minginish, President

The SCTS also provides administrative support to new tribunals created by the Tribunals (Scotland) Act 2014: the **First-tier Tribunal for Scotland** and the **Upper Tribunal for Scotland**: The Lord President is the head of the Scottish Tribunals and has delegated various functions to the President of Scottish Tribunals, the Rt Hon Lady Smith.

- 3) **The Upper Tribunal for Scotland** hears appeals on decisions of the chambers of the First-tier Tribunal.

The First-tier Tribunal for Scotland is organised into a series of chambers.

- 4) From 1 December 2016, the **Housing and Property Chamber** (President, Mrs Aileen Devanny) was established and took on the functions of the former Home Owner and Housing Panel and the Private Rented Housing Panel.
- 5) From 24 April 2017, the **Tax Chamber** (President, Mrs Anne Scott) was established and took on the functions of the former Tax Tribunals for Scotland.
- 6) From 12 January 2018, the **Health and Education Chamber** (President, Mrs May Dunsmuir) of the First-tier Tribunal for Scotland was established and took on the functions of the former Additional Support Needs Tribunals for Scotland (ASNTS).
- 7) On 12 January 2018, the functions of the Scottish Charity Appeals Panel (SCAP) were transferred to the **General Regulatory Chamber** of the First-tier Tribunal for Scotland.



13. Over 2018, the other tribunals listed above will move into the new First-tier Tribunal for Scotland structure. As each transfers it will cease to be a NDPB with an independent judicial head with SCTS assuming responsibility for records management.

14. The SCTS also provides administrative support to:

- 8) [The Council Tax Reduction Review Panel \(CTRRP\)](#) – Mr Donald Fergusson, Senior Convenor
- 9) [The Pensions Appeal Tribunals Scotland](#) (PATs) – Ms Marion Caldwell QC, President

#### *The Scottish Land Court*

15. This RMP has applied to the [Scottish Land Court](#) from 1 April 2017. The SCTS provides administrative support and staffing to the Scottish Land Court. The Chairman of the Court is the Hon. Lord Minginish.

#### *Accountant of Court and the Office of the Public Guardian*

16. Overall responsibility for records management within the [Accountant of Court](#) and the [Office of the Public Guardian](#) rests with Sandra McDonald, the Public Guardian, The Office of the Public Guardian, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR

#### *Sheriff Appeal Court*

17. The Sheriff Appeal Court (SAC) was established on 22 September 2015 to hear appeals in relation to summary criminal proceedings from both the sheriff and justice of the peace courts and to hear appeals in relation to civil proceedings from the sheriff court.

*The Scottish Sentencing Council*  
*The Scottish Civil Justice Council*  
*The Criminal Court Rules Council*

18. From 31 July 2017, this RMP has applied to record-keeping for the Scottish Sentencing Council, the Scottish Civil Justice Council and the Criminal Court Rules Council (these judicially led, independent advisory bodies were previously not obliged to submit records management plans), except to where different arrangements are set out in a dedicated annex to this plan (see Annex I5 in relation to [the Scottish Sentencing Council – Records Management](#)). The SCTS provides administrative support and staffing to those bodies under the Judiciary and Courts (Scotland) Act 2008, and SCTS records keeping policies, procedures and resources are available to all three bodies.

- The point of contact for the Scottish Sentencing Council is Graham Ackerman, Parliament House, Parliament Square, Edinburgh, EH1 1RQ.
- The point of contact for the Scottish Civil Justice Council is Andrea Campbell, Parliament House, Parliament Square, Edinburgh, EH1 1RQ.
- The point of contact for the Criminal Court Rules Council is Edward McHugh, Parliament House, Parliament Square, Edinburgh, EH1 1RQ.

19. Consideration is being given to record-keeping arrangements for the Advisory Council on Messengers-at-Arms and Sheriff Officers.

## **Element Two: Records Management Responsibility**

20. The point of contact for the operation of records management within the Scottish Courts and Tribunals Service (SCTS) is Leanne Jobling, Head of Information Governance & Correspondence Branch. For enquiries relating to the operational aspects of records management, please contact:

Information Governance & Correspondence Branch

Scottish Courts and Tribunals Service  
Spur N1, Saughton House  
Broomhouse Drive  
Edinburgh  
EH11 3XD

Telephone: 0131 444 3312

Email: [csbenquiries@scotcourts.gov.uk](mailto:csbenquiries@scotcourts.gov.uk)

21. As Head of Information Governance, Leanne Jobling is the principal drafter of this Records Management Plan, the SCTS Data Security Policy (the latter with the assistance of Brodies Solicitors), the SCTS Security Classification Policy and the new SCTS e-learning on information management. She sits on the SCTS Records Management Group, the Information Assurance Group convened to consider information issues in relation to devolved tribunals within SCTS.

## Element Three: Records Management Policy Statement

### *Function*

22. This RMP documents record keeping arrangements for the administrative records of:

- the High Court of Justiciary;
- the Court of Session;
- The Scottish Land Court;
- The Sheriff Appeal Court;
- Sheriff Courts;
- Justice of the Peace Courts;
- Justice of the Peace Advisory Committees (JPACs);
- The tribunals and other bodies (such as, for example, the Scottish Civil Justice Council and the Council Tax Reduction Review Panel) identified in Element One; and
- SCTS Headquarters, which comprises of the administrative support function of the SCTS: Corporate Services, Judicial Office, Chief Executive's Office, Development & Innovation.

23. The Tribunals supported by the SCTS are included within the SCTS Records Management Plan. In 2015 the Mental Health Tribunal for Scotland (“MHTS”) prepared its own specific Records Management Plan, which was then agreed with the Keeper. With the creation of the SCTS, the MHTS is now included within this RMP for the SCTS. The MHTS Plan has been used as a basis for the new “Mental Health Tribunal for Scotland - Records Management” statement attached at Annex I.

24. Record keeping arrangements for the Office of the Public Guardian (OPG) and the Accountant of Court (AoC) are set out in a specially created Data Protection Policy prepared by OPG (attached at Annex H). However, OPG and AoC staff have

access to the full suite of SCTS information management policies, support and training resources, which complement the OPG Data Protection Policy.

25. SCTS provides administrative support to the Lord President in the carrying out of functions conferred on the Lord President as Head of the Scottish Judiciary, and other non-judicial functions.

26. The SCTS also provides paper and electronic storage for the personal judicial notes and materials held by members of the judiciary (for example a judge or tribunal member's notebook), where these are returned at the conclusion of the hearing. Such material is the personal property of the relevant member of the judiciary and is not covered by the SCTS Records Management Plan. In terms of section 3(2)(a)(i) of the Freedom of Information (Scotland) Act 2002, such information is held by the SCTS on behalf of the relevant member of the judiciary. Any queries in relation to material of this nature should be directed to the Judicial Office for Scotland.

### *Commitment*

27. In conducting its business the SCTS is guardian to large amounts of personal data and sensitive information on members of the public (mainly in relation to tribunal hearings and criminal and civil court proceedings) and its own staff (e.g. personnel files, bank details etc.). Protecting that information, and handling it securely and fairly, is of vital importance to members of the SCTS and to the SCTS in its functions. As an organisation the SCTS seeks to consider the value and sensitivity of all the information it processes.

28. The SCTS will ensure that information is handled responsibly, that it will be stored securely, that it will think carefully about the benefits and risks of sharing the information with others and that when the information is no longer required it will dispose of it appropriately and securely.

29. Information Assets are not easily replaceable without cost, skill, time and resources. An "asset" can be anything that is of value to and necessary to the

organisations business such as personal details, debit/credit card details, paper documents, forms, databases, spreadsheets, government policy documents etc.

30. As noted in the foreword, this statement – and all aspects of the Records Management Plan - has been approved and supported, by Eric McQueen, Chief Executive of the SCTS and other senior management (the SCTS Executive Team). All staff within the SCTS will have access to this policy statement and this Plan: following submission, both will be published on the SCTS Intranet, on the SCTS Data Handling Hub. A screenshot of the Hub (prior to submission of this RMP) is attached at Annex B. The Plan existence will also be drawn to the attention of staff via a staff circular (an example is provided at Annex B1). Senior managers will be responsible for its dissemination and implementation locally.

*Legislative, regulatory and best practice framework*

31. As a public body, the SCTS is required by law to manage its “Information Assets” properly. The main legislation and other requirements that impact on SCTS can be listed as, but are not limited to:

- Official Secrets Act 1989
- Data Protection Act 1998
- General Data Protection Regulation
- Freedom of Information (Scotland) Act 2002
- The Public Interest Disclosure Act 1998
- Disposal of Court Records (Scotland) Regulations 1990
- Civil Service Code
- Public Records (Scotland) Act 1937
- Public Records (Scotland) Act 2011

32. The SCTS will take all reasonable precautions to avoid unauthorised access to its records and Information Assets. This will be achieved through measures such as:

- Cultural – steps that each and every member of staff take to make sure information is being protected.
- Physical – restrictions on access to buildings and areas where information is stored
- Technical – protecting information through electronic means

33. One of the SCTS Key behaviours is to “Deliver a Professional Service”, which is described as including the need to “manage information responsibly” by “adhering to our policies and legislation on data handling” This is assessed annually within the SCTS performance appraisal system.

#### *Creation*

34. The vast majority of SCTS records are created from data/metadata submitted to the organisation by either our justice partners or members of the public.

#### *Electronic Records*

35. Sensitive personal information is also stored on SCTS IT systems. Staff members are provided with access to these systems in order to carry out many of their functions. Access restrictions to the various IT systems are password controlled and staff members are instructed that all passwords be chosen carefully and not disclosed to any other person. PCs and laptops are logged out or “locked” when not in use and portable media is suitably encrypted. Internal emails containing information of a sensitive nature will be identified as such with an appropriate protection marking in the subject field. Complex passwords are required for access to SCTS email accounts and Blackberry devices. The SCTS is also PSN (Public Secure Network) accredited.

#### *Destruction Arrangements*

36. All Information Assets which are not subject to a retention schedule and have outlived administrative usefulness will be destroyed in a secure manner. Information

Assets that are protectively marked as PROTECT, RESTRICTED, CONFIDENTIAL<sup>3</sup> or OFFICIAL: SENSITIVE will be disposed of by using the following:

- Cross cut shredder
- Confidential waste bag/sack
- Special arrangements made through Departmental Security (e.g. for non paper assets (CDs, audio tapes etc.).

### *Archiving*

37. All records (including those of an electronic nature) subject to preservation and retention schedules will be stored in conditions conducive to their long term maintenance and preservation until such time as they are required to be made available for transmission to the Keeper of the Records of Scotland. Retention periods and modes of transmission will be subject of periodic review with the Keeper.

### *Reporting Procedures*

38. Any incident which might compromise the confidentiality, integrity or availability of information will be reported internally as soon as discovered and reported by the Information Asset Owner to the Senior Information Risk Officer. An investigation is carried out into the circumstances that allowed the incident to occur and recommendations made to prevent any future recurrence. The SCTS has a dedicated incident reporting tool on its intranet, which leads officials reporting an incident through a number of checklist questions (detailed in Annex N and a screenshot of the tool is attached at Annex N1).

39. Records and information will at all times be processed and handled in accordance with the requirements of the SCTS Records Management Plan (and other applicable legislation and policies) as compiled and maintained in accordance with the provisions of the Public Records (Scotland) Act 2011.

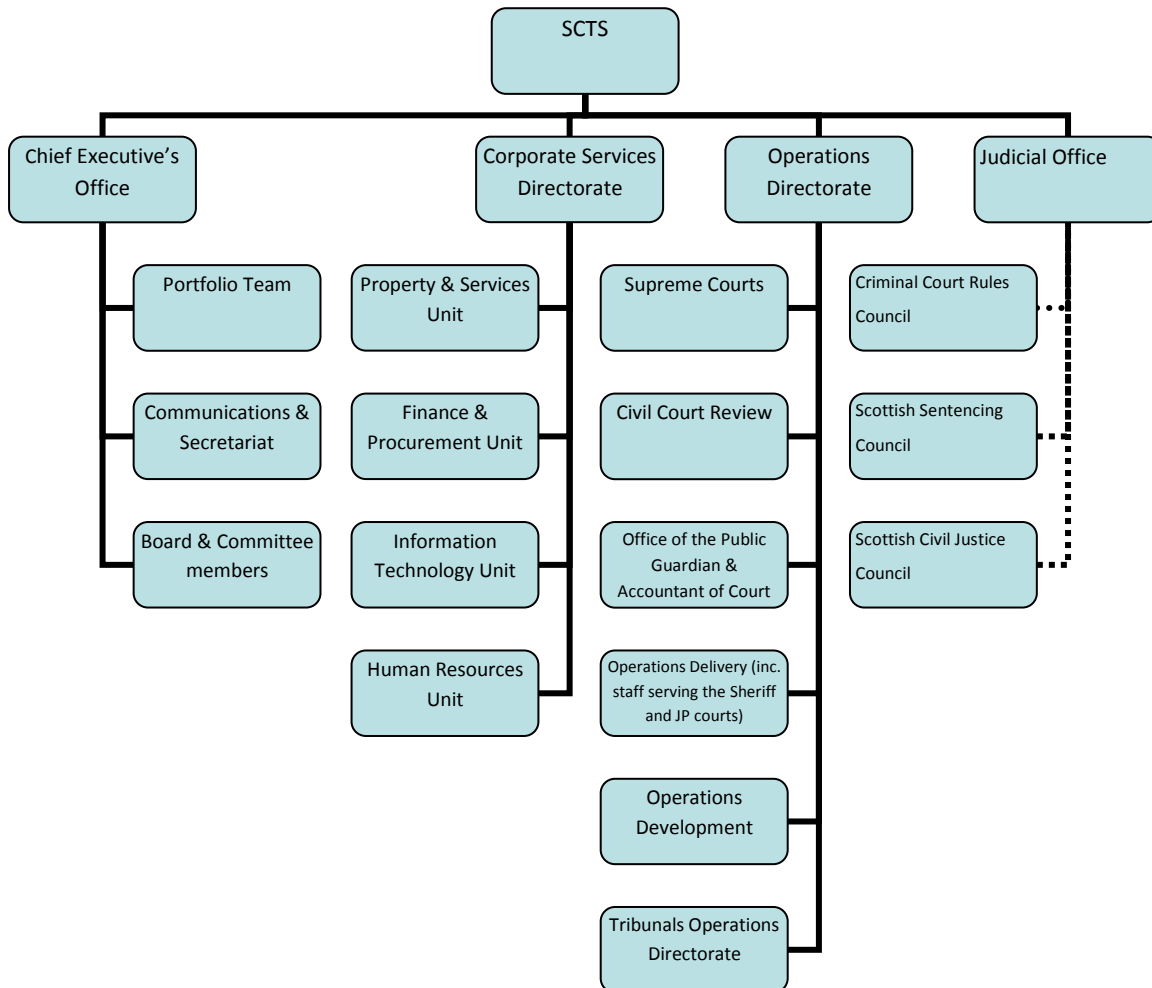
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<sup>3</sup> Although the first 3 markings listed here are no longer in use, they will still be found in historical records.



## Element Four: Business Classification

40. The hierarchy model of business units within SCTS is as follows (this includes independent bodies supported by SCTS):



41. A separate Information Asset Register for each unit details the key records created and maintained and the relevant destruction/retention periods. An example IAR is attached at Annex C and guidance on completing the IAR at Annex C1.

42. For arrangements for MHTS, see Annex I.

## Element Five: Retention Schedules

43. This section outlines the Retention Schedules / Retention Policies currently used by the business units within SCTS.

### *Court Records*

44. In relation to each of the following courts, new schedule templates and guidance have been prepared.

#### High Court of Justiciary

45. All Court records created at the High Court of Justiciary are sent to NRS for permanent preservation. Court records are uplifted on a yearly basis. This record schedule is a living document and the version included at Annex D will be further completed and updated by local staff.

#### Court of Session

46. All Court records created at the Court of Session are sent to NRS for permanent preservation. Court records are uplifted from the Supreme Courts on a yearly basis. This record schedule is a living document and the version included at Annex E will be further completed and updated by local staff.

47. Arrangements for the transfer of records from the Scottish Land Court and the Sheriff Appeal Court are under discussion with NRS.

#### Sheriff Courts

48. The model Sheriff Court retention schedule has been reviewed in close consultation with NRS and the SCTS Records Management Group (featuring a range of SCTS colleagues with court experience) over 2015. The record categories and [retention periods](#) have been reviewed and possible changes to time periods remain under discussion. Each Sheriff Court record schedule is a living document

and the completed example version included at Annex F will be further updated by local staff. Revised NRS Guidance on Sheriff Court records is attached at Annex M.

### Justice of the Peace Courts

49. The Justice of the Peace (JP) [retention schedule](#) is modelled closely upon the Sheriff Court retention schedule and is updated by the official responsible for records at the 'parent' Sheriff Court for each JP Court. This record schedule is a living document and the completed example version included at Annex G will be maintained by local staff.

50. The individual court record schedules also serve as each court's local Information Asset Register ("IAR"). Each court is required to log the location and responsible official for each category of court record held at or on behalf of that court. Adoption of the new schedule is accompanied by new guidance from NRS (Annex M), guidance on completion from SCTS (Annex C1), the SCTS Data Security policy (Annex O – launched on 1 February 2016) and the SCTS e-learning package (Annex P) designed to promote staff awareness of the essentials of good record keeping (launched 1 April 2016). The schedule contains a separate tab for 'non court records' – this tab serves to record all administrative information held at the court.

51. The SCTS welcomes, and will pursue, the offer from the Court, Legal and Private Records Branch (CLPRB) of NRS to conduct good record keeping workshops with relevant court staff (see Annex M1). The Information Governance & Correspondence Team within SCTS will also liaise with CLPRB to ensure compliance with court record destruction and retention practices are monitored and followed.

### Justice of the Peace Advisory Committees

52. Justice of the Peace Advisory Committees (JPAC) are statutory bodies appointed by the Scottish Government, in terms of the Justices of the Peace (Scotland) Order 2007, to keep under review the provision of Justices of the Peace

(JPs) in each Sheriffdom and to make recommendations to Scottish Ministers on the appointment of new Justices of the Peace for that Sheriffdom. The administrative support to each JPAC is carried out by members of SCTS staff. This includes the processing of recruitment, training, expenses and appraisal of each JP.

53. Each JPAC typically 'disbands' at the conclusion of a recruitment process (Justices of the Peace are appointed for a five year term) and is reconstituted when the next recruitment process is required. SCTS Court storage is used to hold the information.

54. JPACs conform to the principles on handling, holding and destroying of Disclosure information provided by Disclosure Scotland under Part V of the Police Act for the purpose of assessing each applicant's suitability for appointment as a Justice of the Peace. Each JPAC conforms to SCTS record keeping and information management procedures and is covered by the terms of this Records Management Plan.

55. The Committee does not keep recruitment information for any longer than is required after a recruitment exercise has been completed and recommendations for appointment made to Scottish Ministers. For those applicants not being recommended for appointment as a result of disclosure issues this is no longer than 90 days. This is to allow for the resolution of any disputes or complaints. Disclosure information will only be retained for longer than this period in exceptional circumstances, and in consultation with Disclosure Scotland.

56. Further information on record keeping by JPACs is set out in Annexes G1 and G2 (using Lothian & Borders as an example).

### *Tribunals*

57. The overall responsibility for tribunal records management falls to the judicial heads specified at paragraphs 12-14. The primary legislation for each tribunal listed provides a mechanism by which the judicial heads can delegate certain functions to

an administrative body, whilst still retaining overall accountability for those functions. The SCTS fulfils those delegated functions, of which records management is one. For arrangements for MHTS, see Annex I.

*Office of the Public Guardian (OPG) and Accountant of Court (AoC)*

58. The retention guidance for records relating to OPG and AoC are covered by the Data Protection Policy created by the Public Guardian and can be accessed at Annex H

59. Records in any media are retained for one year after closure of the case. Records are not disposed of immediately on closure as there is a risk of unforeseen events occurring which may require the case to be reopened with the full case history needing to be made available. Closure of the case is signified by the notification of any matter under the Adults with Incapacity (Scotland) Act 2000 which brings the case to an end.

60. Any records that do not fall within the following two categories below will be destroyed as per local destruction arrangements:

Retention of Basic data for Historical Analysis

- It is necessary to retain basic case information to allow for historical analysis; for example this information could be the number of female v male grantors, local authority area, age spread or ethnic origin if known. The basic information that is retained will be stored within an off line system. Scanned documentation relating to specific cases cannot be retained in the off line system.

Historical Value

- There may be rare occasions where a case in its entirety may be of some special historical interest. In those circumstances, OPG would seek advice

from the Keeper; thereafter, retention/ destruction of the record would be in line with the Keeper's advice and guidance.

### *SCTS Headquarters*

61. SCTS retention/destruction periods are detailed in each area's IAR. Where the retention and disposal of records is not otherwise governed by other retention schedules, legislative provision or this RMP, centrally held records are managed in accordance with Scottish Government records management principles set out in its Record Management Manual, available at:

<http://www.scotland.gov.uk/Publications/2005/08/15152416/24168>

### *Commitment*

62. SCTS is committed to ensuring that its retention schedules are operational and being observed and that all SCTS staff complete the mandatory e-learning module on Protecting Information (see Element 8).

## **Element Six: Destruction Arrangements**

63. There are two approved ways of disposing of Information/ records:

- Appropriate destruction of the records which no longer have value;
- Transferral of the records to the Keeper of the Records of Scotland (NRS) for archiving/long term preservation.

### *Destruction*

64. All information / records generated within the official capacity of SCTS activities are treated as OFFICIAL (a copy of the SCTS Security Classification Policy is provided at Annex K). As a minimum, this means that information/ records must be disposed of in a manner to make reconstruction unlikely. OFFICIAL: SENSITIVE

material (and material that was PROTECT, RESTRICTED or CONFIDENTIAL under the old scheme) shall be disposed of by using a:

- Cross cutting shredder
- Confidential waste bag/ sack
- Special arrangements made through Departmental security (e.g. by negotiating use of a Scottish Government facility).

65. Once paper records have been authorised for destruction (as per retention schedule or information asset register) they are disposed of appropriately. As highlighted above they are shredded or placed within a confidential waste bag/ sack which HIGHLIGHTS to others that the information contained inside is sensitive. The confidential waste bag/ sack is then retained within a secure area until uplift by an approved waste contractor.

SCTS has linked into the Scottish Government for confidential waste collection and destruction. The contract used by courts, OPG and SCTS Headquarters is currently held by Mitie and is operated by their sub-contractor [Shred-It](#). The records will be destroyed on site and a certificate of destruction will be issued by the contractor at the time. Tribunals based in Hamilton and Glasgow use the Shredding Alliance. Tribunals based in Edinburgh use PHS Datashred.

66. Guidance issued to the courts on the collaborative contract and sample destruction certificates can be accessed at Annex L1 and L4 respectively.

67. For all records that fall to be destroyed as per the relevant retention schedule or IAR, the responsibility lies with the Sheriff Clerk, Principal Clerk of Justiciary, Public Guardian and/or Head of Business Unit to ensure that the relevant retention schedule is being complied with and records are being destroyed in the correct manner.

68. It is the responsibility of managers to ensure their team's shared electronic drives (stored in access-controlled Windows folders) are up-to-date, purging defunct files as and when required.

69. Arrangements for the destruction and preservation of electronic records within the civil and criminal case management systems are defined within the records schedules/IARs. A separate IAR exists for all SCTS electronic applications that store information.

70. Court records are retained until transfer and archiving procedures are agreed with colleagues within National Records of Scotland. SCTS and NRS are currently involved in discussions in regards to the content and format of the electronic transfer of records to NRS (Element 7 explains that a Memorandum of Understanding between NRS on court records is under discussion).

#### *Tribunals*

71. The contract for Tribunals Operations' confidential waste collection and destruction is run by Servest and is operated by their sub-contractor PHS Datashred.

72. The Information Assurance Group convened to consider information issues in relation to the tribunals listed in paragraph 12 is currently overseeing work to revise local retention / destruction arrangements in respect of each tribunal. An example of current arrangements is provided in Annex I in respect of the MHTS. The terms of reference for the Information Assurance Group are attached at Annex J.

#### *Office of the Public Guardian (OPG) and Accountant of Court (AoC)*

73. OPG and AoC is a deemed a "paper light" office with the majority of records that are created, maintained and destroyed being electronic.

74. The OPG and AoC Data Protection Policy (Annex H) states that data and documents will not be destroyed without review. In January of each year a destruction process is run that is initiated by the Data Controller. The process will remove the data on relevant cases closed within 12 months prior to the previous January. This means that information on a closed case may be retained in some cases for up to 24 months.



75. To avoid accidental destruction of live data, all data will be backed-up prior to destruction then deleted from back up immediately on completion of a satisfactory destruction run.
76. On the destruction of the case the name of any individuals involved in the case and all historical case specific data will be deleted from OPG's computer software programme.
77. OPG have a four week overwrite on backed-up information but should there remain any backed-up closed data meeting the criteria for destruction this too will be destroyed.
78. Confidential waste is destroyed by either office shredding or via the SCTS confidential waste contractor.

#### *SCTS Headquarters*

79. Where not otherwise governed by procedures set out in its policies, retention schedules (contained within local IARs) and/or legislation, SCTS Headquarters follows the relevant Scottish Government review and destruction procedures in relation to paper files (see the Scottish Government Record Management Manual at: <http://www.scotland.gov.uk/Publications/2005/08/15152416/24168>).
80. Designated members of SCTS staff undertake annual sifts of the centrally held files and circulate to relevant operational teams for review. Files marked for destruction or permanent preservation are subject to further examination by the archive team within National Records of Scotland.
81. Destruction of electronic records – and in particular the deletion of material stored in email inbox folders - is under review.

#### *IT equipment*

82. Where it is necessary to have IT equipment destroyed, SCTS has in place a contract with third party providers to securely dispose of all relevant hardware and data in accordance with industry standards. A copy of the procedure is attached at Annex L1 and sample Destruction Certificates can be accessed at Annexes L4 and L5.

#### *Backup procedures for electronic records*

83. Backup procedures for electronic records held by SCTS are produced by the IT Dept. and can be accessed at Annex U (also see Annex V at 2.5.11).

## **Element Seven: Archiving and Transfer Arrangements**

#### *Sheriff Court (including JP Courts and Stipendiary Magistrate Court) Procedure*

84. National Records of Scotland (NRS) takes transmissions from Sheriff Courts of electronic records over 5 years old, commissary records over 10 years old and other records over 25 years old.

85. The current planned programme (depending on available resources) allows for transmissions from:

Largest Courts: every 3 - 4 years

Medium Sized Courts: every 5 - 8 years

Smallest Courts: every 10 years or so

#### *Supreme Court Procedure*

86. All Court records created at the High Court of Justiciary and the Court of Session are sent to NRS for permanent preservation. Court records are uplifted from the Supreme Courts on a yearly basis.

*Memorandum of Understanding with NRS on Court Records*

87. The SCTS is currently in discussion with NRS to formalise the transfer arrangements of court records through a Memorandum of Understanding. This will document the data controller and data processor relationship and protocols for weeding of records, storage and destruction, including the point at which court records should be made open to the public. It will also involve discussion and agreement on arrangements for disaster preparedness and recovery. Guidance and explanation on court records is available (Annex M). From April 2017 a NRS member of staff will commence a year-long audit of court record storage, with a remit to identify and recommend improvements to court record keeping.

*Tribunals*

88. The Information Assurance Group convened to consider information issues in relation to the tribunals listed in paragraph 12 is currently overseeing work to revise local arrangements in respect of each tribunal. An example of current arrangements is provided in Annex I in respect of the MHTS. The terms of reference for the Information Assurance Group are attached at Annex J. Example Information Asset Registers, setting out retention periods are contained in Annex I1 (the Mental Health Tribunal for Scotland), Annex I2 (The Additional Support Needs Tribunals for Scotland), Annex I3 (the Lands Tribunal for Scotland) and Annex I4 (The Private Rented Housing Panel).

*Office of the Public Guardian/ Accountant of Court Procedure*

89. There is no formal transfer agreement between OPG and NRS, transmission is done on an informal basis with OPG highlighting cases to NRS that may be considered to be of significant historical interest. The majority of records that may be preserved by NRS will be in electronic format.

### *Headquarters*

90. Where not otherwise governed by retention schedules or legislation, SCTS Headquarters follows Scottish Government retention and preservation procedures in respect of paper files (see <http://www.scotland.gov.uk/Publications/2005/08/15152416/24168>). The review and transmission process is carried out in conjunction with members of the archive team within NRS. Scottish Government guidelines provide assistance in relation to the matters which may be considered when reviewing file content for preservation/ destruction.

91. The NRS Guidance on Records for Permanent Preservation is adhered to and attached at Annex M2. NRS Guidance on Transferring Public Records is followed and attached at Annex M3. Further SCTS Guidance on closing and reviewing administrative files, which is based upon the NRS material and Scottish Government practice is being prepared.

### *Electronic Records*

92. Handling arrangements for electronic records are set out in the Data Security Policy at Annex O (the Information Risk Management Policy at Annex O1 applied prior to 1 February 2016). Transfer arrangements for electronic records to NRS are the subject of the discussion around the Memorandum of Understanding referred to earlier in Element Seven.

## **Element Eight: Information Security**

93. SCTS has a robust Data Security Policy (attached at Annex O) in place across the whole estate which covers protective markings, staff responsibilities in regards to information security, sharing and sending information and storage,

retention and disposal of information. This replaced the previous Information Risk Management Policy (copied in Annex O1 for reference) on 1 February 2016. The text builds upon and improves upon previous guidance.

### *Mandatory E-learning*

94. Members of SCTS staff are required to complete and pass mandatory e-learning course(s) regarding information management and security, on an annual basis. Staff working for SCTS are expected to undertake this e-learning where available (access for staff formerly employed by the Scottish Tribunals Service is being arranged).

95. SCTS launched in April 2016 a new e-learning package specifically tailored to the SCTS. Staff have to attain at least 80% in the final assessment to pass the course. See Annex P for an extract of the course content on records management. The e-learning covers the following elements:

- Principles of data protection
- Personal Responsibilities
- Protective document markings
- Accessing Information
- Record keeping
- Test

96. New e-learning for Information Asset Owners is in development and expected to launch in 2018.

### *Storage of Records (Physically and Electronically)*

97. The Keeper has published guidance on transmission and storage of court records at:

<http://www.nrscotland.gov.uk/record-keeping/guidance-for-depositors/courts-and-legal-bodies/transmissions-of-court-and-legal-records>



98. Guidance on the storage of court records is contained within the supporting notes on sheriff court records issued by NRS (see Annex M) schedule. This is available on the SCTS Intranet and information periodically sent to staff (for example, a notice was sent in winter 2014/15 in relation to arrangements in the event of flooding). Where there is risk to paper records due to ingress of water etc. the advice of the Keeper is to be sought immediately. A paper identifying the key records processed by Sheriff Courts is attached at Annex F1 – this paper will be circulated alongside the Note to Sheriff Clerks (Annex M).

99. Scottish Land Court case files are stored in number order divided by year of registration.

100. Section 24 of the Data Security Policy (Annex O) details the steps that members of staff must take on storage, retention and disposal of records.

101. The SCTS Electronic Communications Policy is attached at Annex T.

#### *Clear desk policy*

102. All SCTS staff members have a duty of care to ensure that unauthorised persons cannot inadvertently access sensitive material. In accordance with the clear desk policy staff members, when away from their desks/ workstations are required to ensure that all sensitive or personal material is locked away. At the end of each day, staff members are required to lock away sensitive material in appropriate storage facilities (i.e. locked cabinets or safes). SCTS also places an onus on managers to police this policy and address poor performance. Guidance issued to staff in this regard can be found in Annex O (para. 21) and Annex V (para. 2.5.4). An example of compliance is provided at Annex Q.

103. Paper records relating to closed cases are stored in suitable filing boxes and secured in suitable dry storage rooms or safes for the duration of the appropriate retention periods.

104. The mandatory e-learning package on information management and security includes a module on records management principles (see Annex P), including aspects of records storage. The “10 Golden Rules” on good information management apply and are circulated to all staff in SCTS (a copy is contained within the new Data Security Policy at Annex O).

## Element Nine: Data Protection

105. The SCTS is committed to adhering with the requirements of information law (see [Element Three](#)). It is registered on the Data Protection Register held by the Information Commissioner and its registration details are as follows:

Registration number: Z6928535

Date Registered: 10<sup>th</sup> July 2002      Registration Expires: 9<sup>th</sup> July 2018

106. The main objectives of the SCTS in providing information in respect of court and tribunal proceedings are:

- to ensure that members of the public and all interested agencies – governmental and non-governmental – receive, on request, full information to which they are legitimately entitled;
- to ensure that (where appropriate) confidentiality of parties to all court and tribunal proceedings is properly maintained; and
- to serve the public interest, and act in accordance with its statutory obligations.

### *Data Protection legislation of particular relevance to SCTS*

107. Data protection law (including the Data Protection Act 1998 and the GDPR from 25 May 2018) covers the processing of *Personal Data* about data subjects – that processing includes much data processed by the SCTS.

108. The GDPR specifies particular principles which must be upheld and these include:

- i. Fair and lawful processing
  - a. The definition of the “processing” is very wide. It includes the activities of those who read manual files, send e-mails, destroy unwanted data or store data
  - b. Consent must be fairly obtained. A data controller must adequately communicate to the subject the fact that the data will be kept for processing, the purpose of that processing and the person to whom it will be disclosed.
- ii. Purposes must be specified and lawful and data should not be further processed in any way which is not compatible with said purpose
- iii. Data must be adequate, relevant and not excessive
- iv. Data must be kept accurate and up-to-date
- v. Data must not be kept longer than purposes require
- vi. Data must be processed in accordance with data subject’s rights
- vii. Security measures must be implemented to ensure no unauthorised or unlawful processing of personal data against and against accidental loss or destruction of or damage to personal data
- viii. Transfer of data abroad must be safeguarded by a comparable data protection system in the receiving country

109. Information to customers on their rights of access to their information under data protection law and a style copy of a Subject Access Request (SAR) document can be found on the SCTS website: <http://www.scotcourts.gov.uk/about-the-scottish-court-service/contact-us/data-protection>



110. The SCTS Data Security Policy is available at Annex O.

## **Element Ten: Business Continuity and Vital Records**

111. Business Continuity is the activity performed by the organisation to ensure that critical business functions are available to enable courts, tribunals and business units to function following an incident or emergency.

112. Each Sheriffdom/tribunal/business unit is required by SCTS to prepare, review and maintain a business continuity plan.

113. The business continuity plans are regarded as “living” documents and are reviewed and updated at the very minimum once annually by the Sheriff Clerk/ Principal Depute/ Public Guardian/ Head of Business Unit.

114. The Business Continuity Plan(s) include:

- Contact details for all members of staff based within the building;
- Emergency contact telephone numbers for Justice partners;
- Procedures for loss of building;
- Procedures for loss of power/ water;
- Procedures for loss of IT systems/ telephone; and

115. The discussions referred to under Element Seven between the SCTS and NRS in creating a Memorandum of Understanding on court records include agreeing revised procedures for responding to the loss or damage of vital records and methods of responding to incidents and threats to records. The NRS Guidance on court records (Annex M) sets out advice and requirements in relation to emergency situations.

116. The SCTS guidance on business continuity planning, including a template plan, can be accessed at Annex R. An example plan (for Tayside, Central & Fife) is attached at Annex R1 (names and contact details have been redacted).

117. For arrangements for MHTS, see Annex I.

## Element Eleven: Audit Trail

118. SCTS is responsible for ensuring that there are comprehensive Information Risk Management policies and supportive process in place that comply with the core measures stated to protect information.

119. It is critical that all areas know what their information assets are, determine the extent to which information held is of a sensitive or personal nature and ensure that there is a senior individual (information asset owner) who has responsibility for maintaining the integrity of that information.

### Version control and tracking of physical records

#### *Court records*

120. Version control is not applicable to court records. Live criminal court records are filed under their next calling (hearing) date and closed (finished) criminal court records are filed numerically under the year of registration. Live civil court records are either filed under their next calling date or by type in alphabetical order. Closed civil files are stored in numerical order divided by the type of action and year of registration.

121. Electronic Systems such as the COPII and the Case Management System serve as electronic case management systems for court records progressing through the courts. Local Managers control the level of staff access to the systems. These systems have limited user audit functionality. The [Integrated Case Management](#)

[System](#) (ICMS) adopted in the autumn of 2016 for all civil court business serves as an electronic repository of many civil case papers. These arrangements will be discussed further with NRS in the creation of the new Memorandum of Understanding referred to under Element Seven.

#### *Tribunals*

122. The Information Assurance Group convened to consider information issues in relation to the tribunals listed in paragraph 12 is currently overseeing work to revise local destruction arrangements in respect of each tribunal. An example of current arrangements is provided in Annex I in respect of the MHTS. The terms of reference for the Information Assurance Group are attached at Annex J.

#### *Administrative / Headquarters records*

123. Physical records held at Headquarters are filed in storage folders and housed in a central registry. Staff members within the registry section of HQ have an electronic registration and tracking system that allows files to be registered sequentially and by subject area. It also enables files to be tracked both by date of release and officer receiving. An electronic file index is available to all staff.

124. The Information Sharing Protocol at Annex S provides an example of document version control.

#### *Information Asset Register (IAR)*

125. Information Asset Register (IAR) is the term used within SCTS that lists the nature, ownership and location of information assets; whether electronic or paper-based, held locally that is of value to the organisation. IAR lists these assets and the processes to manage the risk of loss or compromise.

126. SCTS requires all Courts/Tribunals/Units/Departments to develop, review and maintain their own individual IAR. An example Information Asset Register currently used can be found at Annex C. Guidance on completing IARs is contained at Annex C1.

127. The IAR is a “living” document and be reviewed and updated every 3 months by the Information Asset Owner. The IAR provides the basis for audit assurance and evidence of on-going action to improve information management. The IAR process reinforces the importance and significance of protecting the information that SCTS staff handle daily.

### **Elements Twelve and Thirteen: Competency Framework for Records Management Staff and Assessment and Review**

128. The SCTS Records Management Group consists of 17 members of staff. The members of the group are based in different business units across the organisation to allow us to get a wider view of records management procedures.

129. The remit of the group is as follows:

1. To meet at least twice per annum (more often as necessary) in order to monitor operational developments with a bearing on the elements of the Records Management Plan; to consider improvements to record keeping and to communicate any relevant developments or proposed changes to the SIRO.
2. To contribute to effective records management in the SCTS through contributing ideas, reporting issues, problems and suggestions and to assist colleagues with concerns raised in relation to the Records Management Plan, the court record schedules and the Information Asset Register. In particular, to report information management concerns raised by their colleagues and to contribute to the resolution of any problems that arise on records management;
3. To monitor the SCTS Records Management Plan, and any current action plans, and to refer back to the Group any elements of the Plan which have

been, or are likely to be, affected by changes in local or general practice or legislative requirement, reporting as appropriate to the Chief Executive and Senior Information Risk Owner, including providing assurance of compliance with the relevant terms of the Public Records (Scotland) Act 2011.

130. Any amendments identified through the review process will be debated at the Records Management Group, with a consultation exercise to consult and engage affected areas undertaken if deemed necessary. Proposals for change will then be formally submitted to the Senior Information Risk Owner for consideration and approval. Amendments deemed substantial by the SIRO will be submitted to the SCTS Executive Team for consideration and approval. If accepted, a new version of the RMP will be published on the SCTS intranet and changes highlighted to staff through staff notices and direct communication as appropriate.

131. To ensure that a competency framework exists around the Records Management procedure, key areas of responsibility and objectives for the group members have been incorporated into role profiles. A sample competency framework (for the Head of Information Governance as identified in Element 2) can be accessed at Annex W. Further papers related to the Group are set out in Annex W1 (remit), Annex W2 (membership), Annex W3 (example agenda) and Annex W4 (example actions).

132. All SCTS staff are required to complete a mandatory information management e-learning package which includes a module on records management. The yearly completion of mandatory e-learning packages features as an objective in staff role profiles.

133. The SCTS is committed to ensuring that the Head of Information Governance (as identified in Element 2) is adequately supported in his or her role, with appropriate training and continuous personal development opportunities provided. Training opportunities in 2016-17 have included:

- Two custom-made seminars by Brodies LLP for 12 SCTS staff (including the Head of Information Governance) on data protection and the SCTS.
- Attendance by the Information Governance staff at external workshops on the General Data Protection Regulation and ICO webinars
- A work-shadowing / awareness visit by all 4 members of the SCTS Information Governance team to the Court Records Branch of NRS.
- A series of one-day record-keeping/information law training seminars for Sheriff Court staff held jointly by NRS and the Information Governance team.
- Two hour information law seminars run by the Information Governance team for other SCTS teams.

134. For arrangements for MHTS, see Annex I.

## **Element Fourteen: Shared Information**

135. SCTS currently participates in several secure data sharing arrangements principally with Justice partners including Crown Office and Procurator Fiscal Service (COPFS), Police Scotland, Scottish Children's Reporter Administration (SCRA) and Scottish Prison Service (SPS).

136. SCTS is the process of auditing its information sharing arrangements to ensure that these are all properly documented, and maintained on a new, centralised information sharing register. During this process the opportunity will also be taken to ensure that information sharing protocols (ISP) are in proper form and accord with guidance provided by the Information Commissioner. An example Information Sharing Protocol (ISP) - between SCTS and SCRA - can be accessed at Annex S.

A template for Data Sharing Agreements has been prepared and is attached at Annex S1.

137. An annual review of ISPs held in the central register will be undertaken to ensure compliance, appropriate audit controls and relevancy. If the required criteria are not met then the ISP will be subject to further review or termination.

138. For arrangements for MHTS, see Annex I.

## Index of Supporting Documentation (Annexes)

<b>Title</b>	<b>Annex</b>
Statement by the SCS (now SCTS) SIRO on records management	<b>A</b>
Screenshot of SCTS Information Handling Hub	<b>B</b>
Example Staff Circular	<b>B1</b>
SCTS Information Asset Register – non court example	<b>C</b>
Information Asset Register – guidance on completion	<b>C1</b>
High Court of Justiciary records schedule	<b>D</b>
Court of Session records schedule	<b>E</b>
Example of Sheriff Court records schedule	<b>F</b>
List of key Sheriff Court Records	<b>F1</b>
Example of Justice of the Peace Court records schedule & IAR	<b>G</b>
Record keeping in JPACs – Lothian & Borders retention/handling policy	<b>G1</b>
Lothian & Borders JPAC – organisation statement	<b>G2</b>
Office of the Public Guardian Data Protection Policy	<b>H</b>
Mental Health Tribunal for Scotland - Records Management	<b>I</b>
Mental Health Tribunal for Scotland - IAR	<b>I1</b>
Additional Support Needs Tribunals for Scotland - IAR	<b>I2</b>
Lands Tribunal for Scotland – IAR	<b>I3</b>
First-tier Tribunal for Scotland (Housing and Property Chamber) - IAR	<b>I4</b>
<a href="#">Scottish Sentencing Council - Records Management</a>	<b>I5</b>
Information Assurance Group (tribunals) - terms of reference	<b>J</b>
SCTS Security Classification Policy	<b>K</b>
Guidance issued to the courts on the collaborative contract	<b>L</b>
Confidential Waste Procedures	<b>L1</b>
Disposal of IT Equipment	<b>L2</b>
Collaborative Partner Participation Form	<b>L3</b>
Sample destruction certificate – IT equipment	<b>L4</b>
Sample destruction certificate – paper	<b>L5</b>



NRS Guidance on Sheriff Court records	<b>M</b>
Example of interactions between SCTS and NRS on record keeping	<b>M1</b>
NRS guidance on Records suitable for permanent preservation	<b>M2</b>
Transfer of public records to NRS	<b>M3</b>
Data incident reporting checklist	<b>N</b>
Screenshot of the Incident Reporting Tool	<b>N1</b>
SCTS Data Security Policy (in effect from 1 Feb 2016)	<b>O</b>
Information Risk Management Policy (in effect prior to 1 Feb 2016)	<b>O1</b>
Information Management e-learning – extract of course content	<b>P</b>
Clear Desk Policy – example of compliance	<b>Q</b>
Business Continuity Plan Guidance (including template)	<b>R</b>
Business Continuity Plan – Tayside, Central & Fife	<b>R1</b>
Information Sharing Protocol (ISP) between SCTS and SCRA	<b>S</b>
Template Data Sharing Agreement	<b>S1</b>
Electronic Communications Policy	<b>T</b>
Closing and Reviewing Administrative Files	<b>U</b>
Security Policy and Procedures Manual	<b>V</b>
Competency framework for staff on Records Management Group	<b>W</b>
Records Management Group - remit	<b>W1</b>
Records Management Group - membership	<b>W2</b>
Records Management Group – example agenda	<b>W3</b>
Records Management Group – example action points	<b>W4</b>