

**The Public Records (Scotland) Act 2011**

**Commissioner for Ethical Standards in Public Life in Scotland  
Progress Update Review (PUR) Report by the PRSA Assessment Team**

**9 August 2021**

**Contents**

1. The Public Records (Scotland) Act 2011.....	3
2. Progress Update Review (PUR) Mechanism.....	3
3. Executive Summary.....	4
4. Authority Background.....	4
5. Assessment Process.....	5
6. Records Management Plan Elements Checklist and PUR Assessment.....	6-10
7. The Public Records (Scotland) Act Assessment Team's Summary.....	11
8. The Public Records (Scotland) Act Assessment Team's Evaluation.....	11

## 1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal Assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor recordkeeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

## 2. Progress Update Review (PUR) Mechanism

Under section 5(1) & (2) of the Act the Keeper may only require a review of an authority's agreed RMP to be undertaken not earlier than five years after the date on which the authority's RMP was last agreed. Regardless of whether an authority has successfully achieved its goals identified in its RMP or continues to work towards them, the minimum period of five years before the Keeper can require a review of a RMP does not allow for continuous progress to be captured and recognised.

The success of the Act to date is attributable to a large degree to meaningful communication between the Keeper, the Assessment Team, and named public authorities. Consultation with Key Contacts has highlighted the desirability of a mechanism to facilitate regular, constructive dialogue between stakeholders and the Assessment Team. Many authorities have themselves recognised that such regular communication is necessary to keep their agreed plans up to date following inevitable organisational change. Following meetings between authorities and the Assessment Team, a reporting mechanism through which progress and local initiatives can be acknowledged and reviewed by the Assessment Team was proposed. Key Contacts have expressed the hope that through submission of regular updates, the momentum generated by the Act can continue to be sustained at all levels within authorities.

The PUR self-assessment review mechanism was developed in collaboration with stakeholders and was formally announced in the Keeper's Annual Report published on 12 August 2016. The completion of the PUR process enables authorities to be credited for the progress they are effecting and to receive constructive advice concerning on-going developments. Engaging with this mechanism will not only maintain the spirit of the Act by encouraging senior management to recognise the need for good records management practices, but will also help authorities comply with their statutory obligation under section 5(1)(a) of the Act to keep their RMP under review.

### 3. Executive Summary

This Report sets out the findings of the Public Records (Scotland) Act 2011 (the Act) Assessment Team's consideration of the Progress Update template submitted for Commissioner for Ethical Standards in Public life in Scotland. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

### 4. Authority Background

The Commissioner for Ethical Standards in Public Life in Scotland and his team work in two areas:

1. Public standards: Investigating complaints about the conduct of MSPs, local authority councillors and members of public bodies.
2. Public appointments: Regulating how people are appointed to the boards of public bodies in Scotland.

The Commissioner's functions in relation to public standards are set out in a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Ethical Standards Act), and b) the Scottish Parliamentary Standards Commissioner Act 2002 (the Parliamentary Standards Act). The Commissioner's functions in relation to public appointments are set out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the Public Appointments Act).

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (Scottish Statutory Instrument 2013/197) created the post of Commissioner for Ethical Standards in Public Life in Scotland.

<http://www.ethicalstandards.org.uk/>

## 5. Assessment Process

A PUR submission is evaluated by the Act's Assessment Team. The self-assessment process invites authorities to complete a template and send it to the Assessment Team one year after the date of agreement of its RMP and every year thereafter. The self-assessment template highlights where an authority's plan achieved agreement on an improvement basis and invites updates under those 'Amber' elements. However, it also provides an opportunity for authorities not simply to report on progress against improvements, but to comment on any new initiatives, highlight innovations, or record changes to existing arrangements under those elements that had attracted an initial 'Green' score in their original RMP submission.

The assessment report considers statements made by an authority under the elements of its agreed Plan that included improvement models. It reflects any changes and/or progress made towards achieving full compliance in those areas where agreement under improvement was made in the Keeper's Assessment Report of their RMP. The PUR assessment report also considers statements of further progress made in elements already compliant under the Act.

Engagement with the PUR mechanism for assessment cannot alter the Keeper's Assessment Report of an authority's agreed RMP or any RAG assessment within it. Instead the PUR Final Report records the Assessment Team's evaluation of the submission and its opinion on the progress being made by the authority since agreeing its RMP. The team's assessment provides an informal indication of what marking an authority could expect should it submit a revised RMP to the Keeper under the Act, although such assessment is made without prejudice to the Keeper's right to adopt a different marking at that stage.

### Key:

<b>G</b>	The Assessment Team agrees this element of an authority's plan.	<b>A</b>	The Assessment Team agrees this element of an authority's progress update submission as an 'improvement model'. This means that they are convinced of the authority's commitment to closing a gap in provision. They will request that they are updated as work on this element progresses.	<b>R</b>	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Assessment Team may choose to notify the Keeper on this basis.
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## 6. Progress Update Review (PUR) Template: Commissioner for Ethical Standards in Public Life in Scotland

Element	Status of elements under agreed Plan 31MAR16	Progress assessment status 12SEP18	Progress assessment status 09AUG21	Keeper's Report Comments on Authority's Plan 31MAR16	Self-assessment Update 12JUL18	Progress Review Comment 12SEP18	Self-assessment Update as submitted by the Authority since 12SEP18	Progress Review Comment 09AUG21
1. Senior Officer	G	G	G	Update required on any change.	No change.  NB: The current Commissioner acts as 'Senior Officer'. His term of office ends on 31 March 2019. A new Commissioner will be appointed by the Scottish Parliament and will take on this role.	This future update is noted with thanks. No immediate action required.	The role of 'Senior Officer' falls to whomever is fulfilling the role of Commissioner. A new Commissioner, Caroline Anderson, was appointed on 1 April 2019 for a period of five years and took on this role. As of 20 April 2021, an Acting Commissioner, Ian Bruce, has taken on this role.  External audit has identified some issues with management override of records management systems. These will be addressed as part of our audit response and a review of our Records Management Plan being undertaken in 2021.	Thank you for this update on named senior officer which has been noted.  We also appreciate the update on external audit and the actions resulting from this, including the planned RMP review this year. This is great news, and shows dedication to responsible records management.  As a Records Management Plan review is being undertaken, the PRSA Team would like to encourage the Commissioner to consider voluntary resubmission of this plan for the Keeper's inspection and approval.
2. Records Manager	G	G	G	Update required on any change.	No change.	No immediate action required. Update required on any future change.	The manager who has day-to-day operational responsibility for records management remains Karen Elder. The title of the post has changed from Business Manager to Head of Corporate Services.	The Keeper's Assessment Team thanks you for this update which has been noted.
3. Policy	G	G	G	Update required on any change.	No change.  NB: This policy is due for review every 3 years. The next review date is 31 Dec 2018.	No immediate action required.  The review date is noted with thanks and the Assessment Team would welcome sight of any new policy resulting from the review in future PURs.	No change.  NB: The review of the Records Management Policy and Procedures was delayed following the appointment of a new Commissioner and the impact of COVID-19 restrictions. The policy is scheduled for review in 2021.	Thank you for letting us know there have been no changes to policy arrangements, aside from an unavoidable delay in regular review procedures. We also note that review is scheduled to take place this year.
4. Business Classification	G	G	G	Update required on any change.	No change.  NB: The Commissioner uses a File Plan and Retention Schedule as his Business Classification system. There has been no change to the basic structure, but the content is	The regular review and updating is noted with thanks. This is best practice and the Commissioner is to be commended for	A full review of our File Plan (Business Classification Scheme) was begun in January 2021 as part of an overall review of the Commissioner's RMP. There has been no change to the basic structure as a result of this review (a	Thank you for letting us know that the File Plan (BCS) has been under full review this year, and that an online Case Management System is structured reflecting the file plan.

				reviewed and updated regularly and at least every six months.	keeping this under review and updated.	three-tier hierarchy representing business functions, activities and sub-activities carried out within the function). There have been amendments to the lower levels of the hierarchy to reflect current operational practice. This is allowed for in our records management policies. The revised file plan is currently out for staff consultation.  In August 2019, the Commissioner introduced an online Case Management System (CMS). The filing structure incorporated into the CMS reflects that of our standard file plan. We are incorporating the CMS into our revised File Plan.		
5. Retention Schedule	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change.	No change to basic structure.  NB: Content is reviewed and updated regularly and at least every six months.	The regular review and updating is noted with thanks. This is best practice and the Commissioner is to be commended for keeping this under review and updated.	The Retention Schedule remains incorporated with our File Plan. As described above there has been no change to the basic structure. Retention dates have been reviewed in January 2021. The revised retention schedule is currently out for staff consultation. Retention periods for the new CMS match those for similar records held in our existing systems. These retention periods are built into the CMS and items due for deletion can be identified, flagged and reported on. As the CMS is newly operational, we have yet to undertake any deletions. Staff training in this area will be undertaken in 2021/22.  In May 2019, the new Commissioner suspended the deletion of records. This has since been reinstated and we have reverted to our ongoing records destruction timeframes.	The Assessment Team thanks you for letting us know that there have been no major changes to existing retention arrangements. It is also positive to know that retention within the new CMS is properly taken into account, including staff training. We look forward to being updated on this in consecutive PURs.
6. Destruction Arrangements	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change.	No change.  NB: Secure destruction of hardware added to ICT support contract issued 7 March 2017.	This update is noted with thanks.	No change.  NB: Following with the move to remote working the volume of paper records has fallen even further.  A revised Information Security policy was issued in 2020 to cover remote working as a result of Covid-19 restrictions. This has been further reviewed in May 2021.	Thank you for letting us know there have been no major changes to this element. Thank you also for updating the Assessment Team on the practical changes to destruction arrangements that have resulted from the COVID-19 restrictions in terms of both paper and electronic records. The Team remains confident that the Commissioner has

								appropriate destruction policies and practices in place.
7. Archiving and Transfer	A	A	G	The Keeper agrees this element of CESPLS' <i>Records Management Plan</i> under 'improvement model' terms. This means that he acknowledges that the authority has identified a gap in provision [there is no formal transfer agreement with the archive] and have put processes in place to close that gap. The Keeper's agreement is conditional on his PRSA Assessment Team being provided with a copy of the signed MOU when available.	No change.  NB: In early 2016, the development of an archive agreement with the Keeper was progressing well. It was delayed whilst we sought input from the Scottish Parliament regarding records relating to MSPs. Finalising the archive agreement was then overtaken by the work required to prepare for GDPR. Arranging the archive agreement is a priority action for 2018-19.	It is understandable that priority would be given to meeting GDPR requirements by the May deadline. Arranging for the transfer of digital records to an appropriate archives can be especially complex. However, it is important that digital records are transferred promptly to an appropriate preservation environment as they are at risk of loss and obsolescence even in the short period since the role of the Commissioner was created. The Assessment Team therefore encourages the Commissioner to address the development of a Memorandum of Understanding with the Keeper as soon as practicable.	The project to agree an archiving method was on hold for a number of years, firstly due to GDPR, then after the appointment of a new Commissioner and finally the impact of Covid-19. However, we restarted the project in 2021 and are close to signing an archiving agreement with NRS. We are finalising which material will be transferred to NRS and aim to sign the agreement by the end of July 2021.	Thank you for this update regarding archiving and transfer arrangements. It is encouraging to hear that the Commissioner is close to formalising an agreement with the NRS. Assuming this takes place as planned, the Assessment Team is contented to change this element to Green in the PURs. This means that the Commissioner for Ethical Standards is well-placed to pursue the Keeper's approval of its revised RMP with regard to archiving and transfer arrangements, with the strong likelihood that the gap in arrangements can be considered properly addressed.
8. Information Security	G	G	G	Update required on any change.	The procedures outlined in our RMP still stand. However, a significant amount of additional work has been carried out in this area to prepare for both the GDPR and the Scottish Government's Cyber Security Public Sector Action Plan 2017-18. The Retention Schedule was used as a basis to identify personal data, record the basis for lawful processing and ensure that retention dates were adequate. The office is currently in the process of attaining Cyber Essentials Plus accreditation to ensure the security of its ICT arrangements. Policies and procedures around remote working are being updated as part of this preparation.	The use of the retention schedule to enable appropriate information security is sensible and highlights the benefits of good record keeping practice. The Assessment Team welcome the decision to work towards Cyber Essentials Plus accreditation.	The Commissioner has undertaken a range of activities in this area since the last PUR. This includes having twice successfully achieved Cyber Essentials Plus accreditation; the latest covering our remote-working environment. We have also continued to revise our Information Security policy which was last reviewed in May 2021.	The Assessment Team thanks you for this update which has been noted.- The maintenance of the Cyber Essentials Plus accreditation status is a positive step, as is the regular review of the Information Security Policy.
9. Data Protection	G	G	G	Update required on any change.	The procedures outlined in our RMP still stand. However, a significant amount of additional work has been carried out in this area to prepare for	As noted under Element 8, using the retention schedule as a basis for the	We continue to ensure our data protection processes are up to date. A revised draft of our Data	The Assessment Team appreciates this update on Data Protection Policy review, as well as a note of the

				<p>both the GDPR and the Data Protection Act 2018. The Retention Schedule was used as a basis to identify personal data, record the basis for lawful processing and ensure that retention dates were adequate.</p> <p>The Commissioner has appointed a Data Protection Officer (DPO). The DPO service is provided by the Scottish Parliamentary Corporate Body and shared with other parliamentary office-holders.</p>	<p>information asset register is practical and should ensure that all personal information is appropriately managed. The appointment of a Data Protection Officer using the service provided by another organisation is a very practical and sensible decision for a small organisation.</p>	<p>Protection Policy is being finalised and will be issued for staff consultation in July 2021.</p> <p>The Scottish Parliamentary Corporate Body continues to provide our DPO services. This service is shared with other parliamentary office-holders. Training is also provided through this route.</p> <p>When the revised file plan and retention schedule is finalised, we will use this to underpin a full review of the lawful basis for our holding personal data.</p>	<p>continuing arrangements with the Scottish Parliamentary Corporate Body. The Assessment Team is content that the Ethical Standards Commissioner takes its Data Protection obligations seriously.</p>	
10. Business Continuity and Vital Records	G	G	G	<p>The Keeper requires clarification regarding vital records. Update required on any change.</p>	<p>No change.</p> <p>NB: Our vital records are listed in our Contingency Plan. The plan also includes links to the document locations for ease of reference in an emergency.</p>	<p>This update is noted with thanks. It is good practice to identify vital records in the Contingency Plan (business continuity plan) and it is sensible not to include these links in the redacted version available publicly on the Commissioner's website.</p>	<p>The Commissioner implemented key aspects of its Contingency Plan in March 2020 when moving the whole office to remote-working as a result of Covid-19 restrictions. The Commissioner's office was able to fulfil all its statutory functions remotely. This followed a comprehensive upgrade of IT infrastructure in October 2019 which allowed remote access to all our systems.</p> <p>A review of the Contingency Plan was begun in November 2020, but was suspended due to staff capacity issues. This will be re-visited as part of the wider RMP review currently underway. An update to our identification of vital records forms of a key element of the review.</p>	<p>It is positive to hear that contingency plans have served Commissioner well in this time of rapid change. It is also good to hear these are now under review.</p>
11. Audit Trail	G	G	G	<p>Update required on any change.</p>	<p>No Change.</p>	<p>No immediate action required. Update required on any future change.</p>	<p>There has been no change to how we record changes to our records. Records are managed manually; we do not operate an ERDMS. We have procedures in place to ensure an audit trail exists for the movement of certain records and destruction of all records.</p> <p>We create and hold a manual audit trail for the deletion of records held in our servers.</p> <p>Our new online CMS has procedures for deletion built-in and incorporates an audit trail. We are working to</p>	<p>Thank you for confirming that there have been no major changes to the Commissioner's audit trail arrangements. It will be interesting to hear how the new online CMS has effectively been incorporated into everyday business practices in consecutive PURs.</p>

							incorporate the details into our destruction arrangements as part of our current review of the Records Management Plan.	
12. Competency Framework	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change.	No Change.	No immediate action required. Update required on any future change.	The Commissioner's office has undergone two phases of restructure since 2019. Although the Business Manager's (now Head of Corporate Services') role is unchanged, additional staff members now assist with the records management function to provide cover and continuity. The impact of these changes as well as the training offered by the Commissioner will be reviewed and updated as part of the RMP review being undertaken in 2021.  NB: The review of the Records Management Policy and Procedures was delayed following the appointment of a new Commissioner and the impact of COVID-19 restrictions. The policy is also scheduled for review in 2021.	Thank you for this update on competency framework, and the RMP review. We look forward to hearing about changes to this element in consecutive PURs as a new RMP is formalised, and approved by the Keeper.
13. Assessment and Review	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change.	No Change.	No immediate action required. Update required on any future change.	The Commissioner's Records Management Plan is going through a full review in 2021.	Thank you for this positive update. A full review is a major but commendable undertaking.
14. Shared Information	<b>N/A</b>	<b>N/A</b>	<b>G</b>	Update required on any change.	No Change.  As part of our preparations for the GDPR, the Commissioner reviewed whether shared data with other organisations. We have identified one or two areas where a data sharing agreement may be necessary. We are currently investigating whether to undertake action in these areas.	This information is noted with thanks. The Assessment Team would welcome updates in future PURs and the Commissioner may wish to consider submitting a revised Records Management Plan once there is clarity on this Element.	The Commissioner has now entered into data sharing agreements with two key stakeholders, the Standards Commission for Scotland and the Crown Office and Procurator Fiscal Service. The latest versions are both dated 2021.	Thank you for this update on up-to-date data sharing agreements with key stakeholders. The Commissioner is to be applauded for its initiative in this matter.  As this element is now relevant, we are marking its status as Green to recognise the Commissioner's work in this area.

## 7. The Public Records (Scotland) Act Assessment Team's Summary

### Version

The progress update submission which has been assessed is the one received by the Assessment Team on 29 June 2021. The progress update was submitted by Karen Elder, Head of Corporate Services.

The progress update submission makes it clear that it is a submission for **Commissioner for Ethical Standards in Public Life in Scotland**.

The Assessment Team has reviewed Commissioner for Ethical Standards in Public Life in Scotland's Progress Update submission and agrees that the proper record management arrangements outlined by the various elements in the authority's plan continue to be properly considered. The Assessment Team commends this authority's efforts to keep its Records Management Plan under review.

### General Comments

Commissioner for Ethical Standards in Public Life in Scotland continues to take its records management obligations seriously and is working to bring all elements into full compliance.

Section 5(2) of the Public Records (Scotland) Act 2011 provides the Keeper of the Records of Scotland (the Keeper) with authority to revisit an agreed plan only after five years has elapsed since the date of agreement. Section 5(6) allows authorities to revise their agreed plan at any time and resubmit this for the Keeper's agreement. The Act does not require authorities to provide regular updates against progress. The Keeper, however, encourages such updates.

The Keeper cannot change the status of elements formally agreed under a voluntary submission, but he can use such submissions to indicate how he might now regard this status should the authority choose to resubmit its plan under section (5)(6) of the Act.

## 8. The Public Records (Scotland) Act Assessment Team's Evaluation

Based on the progress update assessment the Assessment Team considers that Commissioner for Ethical Standards in Public Life in Scotland continue to take their statutory obligations seriously and are working hard to bring all the elements of their records management arrangements into full compliance with the Act and fulfil the Keeper's expectations.

The Assessment Team recommends authorities consider publishing PUR assessment reports on their websites as an example of continued good practice both within individual authorities and across the sector.

This report follows the Public Records (Scotland) Act Assessment Team's review carried out by



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