

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

**Her Majesty's Chief Inspector of Prosecution in Scotland**

**Progress Update Review (PUR) Final Report by the PRSA Assessment Team**

**26<sup>th</sup> June 2019**

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## 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 Her Majesty's Chief Inspector of Prosecution in Scotland. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

### 4. Authority Background

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 provides for the appointment by the Lord Advocate of an officer known as 'Her Majesty's Chief Inspector of Prosecution in Scotland'. The statute requires the Inspector to secure the inspection of the operation of the Crown Office and Procurator Fiscal Service. The Lord Advocate may also require the Inspector to submit a report on any particular matter connected with the operation of the Service which the Lord Advocate refers to the Inspector. An annual report must be submitted to the Lord Advocate on the exercise of the Inspector's functions.

The Inspectorate of Prosecution in Scotland (IPS) is the independent inspectorate of the Crown Office and Procurator Fiscal Service, the sole prosecuting authority in Scotland and also responsible for investigating sudden deaths and complaints against the police which are of a criminal nature.

The IPS makes recommendations that it feels will result in clear and measurable improvements in the Crown Office and Procurator Fiscal Service (COPFS) service delivery, making COPFS more accountable and enhancing public confidence.

The principal functions of the IPS are:

To inspect or arrange for the inspection of the operation of COPFS

To report to the Lord Advocate on any matter connected with the operation of COPFS

<http://www.gov.scot/about/public-bodies/ipis/about-us>

<http://www.gov.scot/Publications/2014/07/8876/1>

## 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:

G	The Assessment Team agrees this element of an authority's plan.		A	The Assessment Team agrees this element of an authority's progress update submission as an 'improvement model'. This means that they are		R	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The
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				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.			Assessment Team may choose to notify the Keeper on this basis.
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**Progress Update Review (PUR) Template: HM Chief Inspector of Prosecution in Scotland**

<b>Element</b>	<b>Status of elements under agreed Plan, June 2016</b>	<b>Status of evidence under agreed Plan, June 2016</b>	<b>Progress assessment status, 2018</b>	<b>Keeper's Report Comments on Authority's Plan, June 2016</b>	<b>Self-assessment Update as submitted by the Authority since June 2016</b>	<b>Progress Review Comment, 2018</b>
1. Senior Officer	<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.
2. Records Manager	<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.
3. Policy	<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.
4. Business Classification	<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.
5. Retention Schedule	<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.

6. Destruction Arrangements	G	G	G	Update required on any change	No Change	No immediate action required. Update required on any future change.
7. Archiving and Transfer	A	G	A	<p>The Keeper agrees this element of the Plan 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 an 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.</p>	<p>No change to previous position. As confirmed in correspondence to the keeper dated 23/10/2015 and following discussion with the Keeper's Office, we concluded that there were <b>no documents/records that fall within the guidance relating to records requiring permanent preservation.</b></p> <p>All IPS reports are published on the IPS website. It is our understanding that documents on the website do not fall within the criterion for permanent archiving. All documents relating to the establishment of the Inspectorate are on the website and do not</p>	<p>The Keeper acknowledges that negotiations regarding the establishment of a Memorandum of Understanding between HMIPS and NRS are underway.</p> <p>The existence of records appropriate for preservation and how that preservation will be accomplished remains to be fully discussed. It is possible that, in the main, the NRS web-harvesting programme will capture the relevant records. This has not yet been established.</p> <p>To be compliant with the Act, HMIPS will require a formal agreement with a suitable repository even if records transfer is not currently underway. This should be</p>

					fall within the criterion for permanent archiving.	pursued with the Keeper's Client Management Team: <a href="mailto:neil.miller@nrscotland.gov.uk">neil.miller@nrscotland.gov.uk</a>
8. Information Security	<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.
9. Data Protection	<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.
10. Business Continuity and Vital Records	<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.
11. Audit Trail	<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.
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.
13.	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change. The Keeper	No Change	No immediate action required. Update required on

Assessment and Review				welcomes the authority's commitment to undertake annual reviews and to report changes.		any future change.
14. Shared Information	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	Update required on any change	No Change	No immediate action required. Update required on any future change.

## Version

The progress update submission which has been assessed is the one received by the Assessment Team on 16<sup>th</sup> November 2018. The author of the progress update submission is Michelle Macleod, HM Chief Inspector.

The progress update submission makes it clear that it is a submission for Her Majesty's Chief Inspector of Prosecution in Scotland.

## 7. PRSA Assessment Team's Summary

The Assessment Team has reviewed Her Majesty's Chief Inspector of Prosecution in Scotland's Progress Update submission and agrees that the proper record management arrangements outlined by the fourteen 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

Her Majesty's Chief Inspector of Prosecution 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 resubmitted it plan under section (5)(6) of the Act.

Where 'no change' has been recorded under the update on provision by the authority, the Assessment Team is happy to agree that these elements require no further action for the time being.

## 8. PRSA Assessment Team's Evaluation

Based on the progress update assessment the Assessment Team considers that Her Majesty's Chief Inspector of Prosecution 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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Pete Wadley  
Public Records Officer