The Public Records (Scotland) Act 2011

NHS National Services Scotland
The Scottish Advisory Committee on Distinction Awards

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

29 January 2019

Contents

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 Interim 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 NHS National Services Scotland and the Scottish Advisory Committee on Distinction Awards. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

4. Authority Background

NHS National Services Scotland (hereafter NSS) support Scotland's health by delivering shared services and expertise that help NHS Boards and other organisations to work more efficiently and save money. With increased pressure on budgets and the integration of health and social care, this is becoming a greater challenge than ever.

Their services include procurement and logistics, IT consulting and solutions, statistical information and analysis, national payment processing, fraud deterrence and facilities and environmental advice.

The Scottish Advisory Committee on Distinction Awards (hereafter SACDA) acts on behalf of the Scottish Ministers by taking decisions on which NHS consultants will receive awards and reviewing existing awards on a regular (five-yearly) basis, using a system based on peer review with employer and lay input and the evidence submitted by consultants in their curricula vitae.

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 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.	R	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.

Progress Update Review (PUR) Template: NHS National Services Scotland, The Scottish Advisory Committee on Distinction Awards

Element	Status of elements under agreed Plan, November 2013	Status of evidence under agreed Plan, November 2013	Progress assess-ment status, 2018	Keeper's Report Comments on Authority's Plan, November 2013	Self-assessment Update as submitted by the Authority since November 2013	Progress Review Comment, 2018
1. Senior Officer	G	G	G	Update required on any change	Colin Sinclair, Chief Executive of NHS National Services Scotland (NSS). Eilidh McLaughlin, Associate Director of Corporate Affairs & Compliance has senior management responsibility for Corporate Records Management. This is evidenced within the NSS Corporate Records Management Policy (V3.0).	This update is noted with thanks.
2. Records Manager	G	G	G	Update required on any change	Day-to-day operational responsibility is devolved to Roddy Mitchell, the Corporate Records and FOI Organisational Lead for NSS. This is evidenced within the NSS Corporate Records & FOI	This update is noted with thanks. The Public Records (Scotland) Act requires a named person with operational responsibility for records management. The Keeper is assured that the functions and role of the post

	G	G	G			Organisational Lead job description.	have been fully included in the submitted Job Description of the Organisational Lead for Corporate Records and FOI.
3. Policy	G	G	G	Update required on any change	The NSS Corporate Records Management Policy (V3.0) was approved in October 2016 by the NSS Board.	It is positive that the policy has been reviewed. This would be an important item of evidence if the Keeper chooses to invite NSS and SACDA to submit a new Records Management Plan five or more years after the RMP was agreed.
4. Business Classification	A	G	A	The Keeper acknowledges the authority's clear commitment to implementing an organisation-wide Business Classification Scheme (BCS) by December 2015. Updates on this implementation would be gratefully received by the Keeper, who is keen to have the chance to review the new system once operational	NSS has implemented BCS throughout the organisation, except for the Scottish National Blood Transfusion Service (SNBTS).

SNBTS have achieved technical implementation, but full implementation was put on hold due to the Penrose Public Inquiry as well as the consolidation of 3 working sites and the migration of blood, tissues, cells and associated component manufacturing and testing working processes and staff of into the new Jack Copland Centre. | It is understandable that the Penrose Public Inquiry would delay other areas of work.

The timetable of implementation shows an estimated completion date of 1 April 2019. The Assessment Team are assured that work is progressing to meet this timescale and should they receive evidence of full implementation this would be likely to move the estimated RAG status to Green for this element. |

					Work is currently under way to review and update the SNBTS BCS to defined timelines with an implementation deadline of <u>01 APR 2019</u>. The previous submission contained an error in that NSS advised that work would be carried out by 01 APR 2018 when this should have been 01 APR 2019. This is evidenced within the latest SNBTS staff communications relating to the implementation of BCS.	
5. Retention Schedule	G	G	G	Update required on any change. The Keeper would appreciate the opportunity to receive updates and view the retention schedule once it has been linked with the Business Classification Scheme being rolled out throughout the organisation	The NSS Document Storage, Retention & Disposal Policy (V7.3) now links to the NSS business classification scheme. The Policy is currently due for review; however, the key source document (Scottish Government NHS Scotland Records Management Code of Practice) that makes up the vast majority of the Policy is currently under stakeholder review with the Scottish	The Assessment Team are aware of the developments in the NHS records management sector and commend the participation of all NHS bodies in these developments. Working with other stakeholders to contribute to the NHS Scotland Records Management Code of Practice is both positive and practical and the Assessment Team welcome such work.

					Government. The 2nd round of stakeholder reviews is yet to start so there is no timelines in place to update our Policy accordingly.	
6. Destruction Arrangements	G	G	G	Update required on any change	NSS has contracted out the function of secure destruction of confidential waste, who in turn sub-contract out provision to 3rd party suppliers. The main contractor and one of the sub-contractors have been successfully audited by the NSS Corporate Records & FOI Organisational Lead and the SNBTS Audit Manager. NSS also utilises secure confidential destruction processes of retention reached records held off-site though our supplier of off-site storage who sub-contract this function out. Both the supplier for off-site storage and their sub-contractor has been successfully audited by the NSS Corporate Records and FOI Organisational Lead,	NSS and SACDA are continuing to take effective action to keep their arrangements for the destruction of records in full compliance with the Public Records (Scotland) Act and other information legislation and standards. Auditing contractors is best practice and ensures that records are securely destroyed. The requirements of the Penrose Inquiry and the Scottish Child Abuse Inquiry take precedence over routine retention and destruction schedules. It is reassuring to see that this is acknowledged and acted upon.

					SNBTS audit team and subject matter experts from across the organisation. NSS is currently restricted from destroying historical records relating to both the Scottish Child Abuse Inquiry and the UK Infected Blood Inquiry until further notice.	
7. Archiving and Transfer	G	G	G	Update required on any change	NSS currently has a Memorandum of Understanding with the Keeper of the Records of Scotland for the archiving and transfer of records of enduring value. There is no formalised procedure for this activity, however work is underway to finalise a standard operating procedure to instruct staff on how to identify appropriate records for transfer/archive to NRS. NSS has been liaising with Laura Gould (Inspecting Officers at NRS) on this procedure since April 2018. Records deemed suitable for	It is very encouraging to see the development of training and procedures for staff to assist in identifying records of enduring value. It is also encouraging to see that NSS are actively liaising with the NRS Client Management Team to develop archival appraisal of records which may be suitable for permanent preservation.

					permanent preservation with NRS will be identified as such in the next version of the NSS Document Storage, Retention & Disposal Policy.	
8. Information Security	**G**	**G**	**G**	Update required on any change	NSS has implemented and manage multi-layered security infrastructure to meet the NHSScotland Information Security Policy Framework requirements, and is working towards compliance with Cyber Essentials by end October 2018. NSS have implemented operational and technical policies and controls to ensure the confidentiality, integrity and availability of the IT infrastructure, the data services and the data stored, used and transferred across it, or in other formats. NSS have several technical and operational policies which are currently being reviewed to meet our Information Security Management System (ISMS) requirements. NSS has a current Information Security Policy (V1.0) which	There is clear progress in information security as NSS and SACDA work towards compliance with recognised standards. These developments are to be expected in all NHS bodies and NSS and SACDA are to be commended for developing best practice.

	G	G	G	Update required on any change	was approved in 2017 by the NSS Information Governance Group.	
9. Data Protection	G	G	G	Update required on any change	NSS is responsible for large volumes of personal and 'special category' personal data subject to the new General Data Protection Regulation (GDPR) and Data Protection Act 2018. The patient data we hold are also protected by national Caldicott Guidelines including the Caldicott Principles. In common with other NHSScotland organisations NSS have been implementing changes to comply with this year's new data protection laws, including updating our Data Protection Policy, privacy notices and processes for adverse events management and data protection impact assessments. Our staff are obliged to protect confidentiality and we recently re-launched our foundation level information governance training to remind staff of this,	Compliance with the Data Protection Act 2018 and the Caldicott Guidelines is driving higher standards in data protection. NSS is to be commended for the work undertaken to ensure that all staff are appropriately trained and all policies and procedures are reviewed and compliant with the Data Protection Act 2018.

					and their other information-handling obligations. NSS now has a designated Data Protection Officer in line with GDPR and the DPA 2018. NSS have a suite of DP Policies and Procedures in place that have recently been reviewed and updated in line with GDPR and the DPA 2018. Information on Data Protection within NSS can be found at the following URL: https://nhsnss.org/how-nss-works/data-protection/	
10. Business Continuity and Vital Records	G	G	G	Update required on any change	Business continuity and vital records are reviewed on a regular basis. NSS have recently implemented an Information Asset Register where all vital records must be included and will be reviewed on a quarterly basis going forward.	An Information Asset Register is best practice and contributes to compliance with the Data Protection Act 2018. The regular review of this Element is positive and to be commended.
11. Audit Trail	A	G	G	The Keeper would appreciate receiving an up-to-date assessment of the	The tracking of movement and changes to corporate records is undertaken as appropriate	It appears that most of the authority's records are now tracked in one way or

				progress being made on the authority's standardisation of document tracking. The Keeper agrees NSS 'audit trail' element as an improvement model and would appreciate being kept up-to-date with progress when NSS consider it appropriate.	based on assessment of risk, and commensurate with the sensitivity of information which they contain, and its value as evidence. Tracking mechanisms will record key events in the lifecycle of the record which support its reliability, accuracy, authenticity and availability. Wherever they are in use, such mechanisms will themselves be assessable to appropriate staff and will be able to be interrogated as required to support the evidential value of the records to which they relate. The information contained in audit trails is retained only for as long as the records to which it relates. Systems used to access person identifiable information are access restricted to identified users who have business requirement to access this data. These systems have audit trail functionality. Records held in off-site storage	another. It is a reasonable strategy to prioritise higher risk, sensitive records for movement tracking and changes. NSS has provided evidence of its audit trail capabilities and if this was a formal re-submission under Section 5(6) of the Public Records (Scotland) Act 2011 it would likely change the estimated RAG status to Green. It is a reasonable strategy to prioritise higher risk, sensitive records for movement tracking and changes. It is good practice to retain evidence of the destruction of records in accordance with the retention schedules as there is a risk of non-compliance with Freedom of Information legislation if authorities do not know when, why and on whose authority records have been destroyed. The Assessment Team commends the authority for maintaining a Document Disposal Register. It is also

| | | | | | can be tracked via the supplier's online web-based inventory management system which is accessed through the Client Login portal. Boxes and records can be located using both historical and current indexing numbers. The system is fully audit trailed for user access and box/record movements through the system from receipt, movement and also to destruction.

As directed by the NSS Document Storage, Retention & Disposal Policy (V7.3 – page 2) each NSS Strategic Business Unit (SBU) and Directorate are required to compile and submit a Document Disposal Register to the NSS Corporate Records & FOI Organisational Lead on an annual basis.

This is also a requirement of the annual NSS Records Management Improvement Process. | reasonable to retain information in an audit trail only for as long as the records exist. |

					The usage of BCS fileplans for standardised storage of records and associated access restrictions that are all reviewed on a regular basis within each SBU/Directorate. Staff user active directory accounts are logged on domain access (e.g. NSS network); if a user is working offline then a record of their access is recorded on the PC. Where logging into a data service (e.g. CDW, Oracle database, etc) these systems collate user activities and stored with the system.	
12. Competency Framework	G	G	G	Update required on any change	NSS will provide appropriate training and development support to ensure all staff are aware of their records management responsibilities. All records management policies, procedures and guidelines are openly available on the organisation's intranet for all staff.	It is good practice to have policies, procedures and guidelines accessible to all staff. The intention to follow this up with training is sensible and if this were a statutory review the Keeper would expect to see evidence of this being implemented.
13. Assessment and Review	G	G	G	Update required on any change. The Keeper would welcome updates on the	All SBUs and Directorates within NSS carry out an annual self-inspection audit of records	Participation in the PUR process is welcomed and provides an opportunity to

				planned annual internal audit programme for records management practices noted as part of the Improvement Plan	management provision within their areas in the form of a Records Management Improvement Plan. These annual self-inspections inform the overall organisational Records Management Improvement Plan which is used to complete the NRS PUR submission.	demonstrate compliance with the statutory requirement to keep the RMP under review.
14. Shared Information	A	G	A	The Keeper understands that this authority will adopt an incremental transition rather than a wholesale swap to SASPI (as outlined in the Information Action Plan). Updates on the progress of this transition would be welcomed. The Keeper is happy to agree this element of the RMP on 'improvement model' terms.	SASPI (Scottish Accord on the Sharing or Personal Information 2011) has evolved into the Scottish Information Sharing Toolkit. There is no compulsion to use this, but it is considered best practice. Our organisational position on using it is the same as under SASPI, however there is no requirement to sign it. Relevant staff are informed and aware that the SG Information Sharing Toolkit (recently updated for GDPR and published at this link) is the SG recommended approach for information	The Keeper's view in 2013 was that "SASPI properly considers the governance of records and that, if adopted, NSS will have properly considered this element for this aspect of their information sharing". The incremental adoption of the Scottish Information Sharing Toolkit is an appropriate change from SASPI. NSS maintains a flexibility of approach with regards to the use of information sharing agreements and is equally content to utilise templates developed by partners in information sharing provided these meet NSS's legal requirements. The

| | | | | | sharing. It is the starting reference for new information sharing agreements involving health data, and where a pre-existing information sharing agreement comes up for review, its use is also considered. However, in common with other Scottish NHS Boards, if an information sharing partner prefers to use another template that is legally adequate for all parties to the information sharing, then we would not seek to jeopardise necessary information sharing for health and care purposes by imposition of the Toolkit template. | Assessment Team considers this to be an appropriate approach to take, providing the issues of information governance are properly considered in each agreement. If evidence, such as a sample of information sharing agreements, were supplied it is likely that it would be appropriate to change the estimated RAG status to Green. |

Version

The progress update submission which has been assessed is the one received by the Assessment Team on 29 August 2018. The author of the progress update submission is Roddy Mitchell, Corporate Records & FOI Organisational Lead.

The progress update submission makes it clear that it is a submission for **NHS National Services Scotland and the Scottish Advisory Committee on Distinction Awards**.

7. PRSA Assessment Team's Summary

The Assessment Team has reviewed the Progress Update submission of NHS National Services Scotland and the Scottish Advisory Committee on Distinction Awards 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.

<u>General Comments</u>

The Records Management Plan of the NHS National Services Scotland and the Scottish Advisory Committee on Distinction Award was agreed by the Keeper prior to the development of an RAG status. The Keeper cannot change the status of elements formally agreed under a voluntary submission and so this assessment cannot lead to a formal allocation of a RAG status against the agreed RMP, as evidenced in the Keeper's published report. However, the Keeper 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 and, updates provided against current arrangements can demonstrate progress continues to be made under these elements. Such updates would indicate the authority is committed to ongoing assessment of all its arrangements to further improve upon and maintain its records management arrangements.

The Assessment Team commends the continuing development of those Elements which have already achieved the equivalent of a Green RAG status. It is clear that NSS and SACDA continue to take these responsibilities seriously and are committed to maintaining awareness of the records management developments in the NHS sector and implementing these appropriately.

The provision of evidence to support developments in Elements 4 and 14 would be likely to enable the estimated RAG status for these elements to move from Amber to Green. The Assessment Team commends the progress described and would welcome updates on these Elements in future PUR submissions or in any statutory submission that the Keeper may choose to invite.

The Assessment team welcomes the commitment to regular reviews and the participation of the authority in this Progress Update Review mechanism.

8. PRSA Assessment Team's Evaluation

Based on the progress update assessment the Assessment Team considers that **NHS National Services Scotland and the Scottish Advisory Committee on Distinction Awards** 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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Robert Fotheringham
Public Records Officer