

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

**Standards Commission for Scotland**

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

**8 February 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 Final 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 Standards Commission for Scotland. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

### 4. Authority Background

The Standards Commission for Scotland was established under the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Standards Commission's functions as provided for by the 2000 Act are to:

- Issue guidance to councils and devolved public bodies to assist them in promoting high standards of conduct.
- Receive reports from the Commissioner for Ethical Standards (CES) on the outcome of his investigations and determine whether to direct the CES to carry out further investigations, to hold a Hearing or to take no action.

Where the Standards Commission decides to hold a Hearing, its functions are to:

- Determine whether a councillor or member of a devolved public body has contravened the Councillors' or the Members' Code.
- Determine the sanction to be applied where, following a Hearing, the Panel find that a councillor or member has breached the relevant Code.

The Scottish Parliamentary Commission and Commissioners etc. Act 2010 provided that, with effect from 1 April 2011, the Standards Commission is supported by the Scottish Parliamentary Corporate Body.

The Standards Commission is independent of government when considering alleged contraventions of the codes and in its decisions.

<http://www.standardscommissionscotland.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:**

|   |   |   |   |   |  |
|---|---|---|---|---|--|
| 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: Standards Commission for Scotland**

| <b>Element</b>             | <b>Status of elements under agreed Plan, September 2015</b> | <b>Status of evidence under agreed Plan, September 2015</b> | <b>Progress assessment status, 2018</b> | <b>Keeper's Report Comments on Authority's Plan, September 2015</b> | <b>Self-assessment Update as submitted by the Authority since September 2015</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                                       | Minor change to policy content to include reference to Data Protection Act 2018.                | This update is noted with thanks.   |
| 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<br>NB: As a minimum the content is reviewed on a six-monthly basis to ensure business | This update is noted with thanks. There is continuing good practice in reviewing the retention schedules regularly. |

|                             |          |          |          |                               |  |  |
|-----------------------------|----------|----------|----------|-------------------------------|--|--|
|                             |          |          |          |                               | requirements and legal obligations remain relevant and current.  | The additional information provided under Element 8 demonstrates the positive use of the retention schedules in supporting compliance with data protection issues and information security.  |
| 6. Destruction Arrangements | <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   |
| 7. Archiving and Transfer   | <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   |
| 8. Information Security     | <b>G</b> | <b>G</b> | <b>G</b> | Update required on any change | No change<br>The procedures identified in our RMP are still current as the Standards Commission's IT system continues to be provided by the Scottish Parliamentary Corporate Body (SPCB). In addition the Standards Commission is kept informed of the progress made by the SPCB Business Information Team (BIT) to provide assurance about meeting requirements | Information Security is a key concern and it is encouraging to hear that the Standards Commission are maintaining their existing good practice and ensuring compliance with cyber security initiatives.<br><br>As noted above, the use of the Retention Schedules as a mechanism for compliance with data protection requirements is good practice and demonstrates the value of |

|   |          |          |          |                               |   |   |
|---|----------|----------|----------|-------------------------------|---|---|
|   |          |          |          |                               | <p>relating to the Scottish Government's Cyber Security Public Sector Action Plan 2017-18. The Retention Schedule has been further developed to identify where personal data is processed and record the basis for lawful processing of that information.</p>   | <p>connecting the different elements in the Records Management Plan.</p>  |
| 9. Data Protection                        | <b>G</b> | <b>G</b> | <b>G</b> | Update required on any change | <p>No significant changes to provision. Standards Commission approved the appointment of a shared Data Protection Officer (DPO) who provides support to all the Parliamentary Ombudsman and Commissioners Group. This service is provided to the Standards Commission under a Service Level Agreement with the Scottish Parliamentary Corporate Body.</p> | <p>The appointment of a Data Protection Officer is in compliance with the Data Protection Act 2018. The decision to collaborate with another body is a business decision for the Standards Commission but the Assessment Team welcome this as appropriate and an effective use of shared resources.</p> |
| 10. Business Continuity and Vital Records | <b>G</b> | <b>G</b> | <b>G</b> | Update required on any change | <p>No change.</p> <p>NB: Business Continuity Plan is reviewed as a</p>  | <p>This update is noted with thanks. Reviewing the Business Continuity Plan annually or in the event of</p>   |

|                           |          |          |          |  |  |  |
|---------------------------|----------|----------|----------|--|--|--|
|                           |          |          |          |  | minimum on an annual basis by the Standards Commission   | any change is best practice.   |
| 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. Assessment and Review | <b>G</b> | <b>G</b> | <b>G</b> | The Standards Commission have committed to reviewing their RMP, and supporting documents and policies, on an annual basis through the Executive Director. The Keeper would be pleased to receive updates concerning these reviews, particularly if they have brought about significant changes in the authority's records management arrangements. | No change<br>Standards Commission receives an annual report from the Executive Director to give assurance about the effectiveness of the Records Management Plan. The requirement for this review is shown in the annual workplan developed to inform Members of the Standards Commission about matters which are due to be considered at each meeting of the Standards Commission. At this time no significant changes have been made to the Standards Commission's | The reporting system used by the Standards Commission ensures that there is high level strategic oversight and awareness among the Members of the relevance of records management. This is best practice in record keeping and the Standards Commission is to be commended for this. |

|                        |     |     |     |                               |                                  |  |
|------------------------|-----|-----|-----|-------------------------------|----------------------------------|--|
|                        |     |     |     |                               | records management arrangements. |  |
| 14. Shared Information | N/A | N/A | N/A | 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 23 November 2018. The author of the progress update submission is Elaine McLean, Business Manager.

The progress update submission makes it clear that it is a submission for the **Standards Commission for Scotland**.

### 7. PRSA Assessment Team's Summary

The Assessment Team has reviewed the **Standards Commission for 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

The Standards Commission for Scotland continues to take its records management obligations seriously and continues to demonstrate good practice in keeping all the elements of its Records Management Plan (RMP) in compliance with the Act and fulfilling the Keeper's expectations. The review and reporting system is effective in ensuring that all elements of the RMP are kept up to date and that changes are made when there is a requirement for this.

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.

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 **Standards Commission for 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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**Elspeth Reid**  
Public Records Officer