

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

**NHS Borders**

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

**6<sup>th</sup> August 2021**

## Contents

1. The Public Records (Scotland) Act 2011.....	3
2. Progress Update Review (PUR) Mechanism.....	4
3. Executive Summary.....	5
4. Authority Background.....	5
5. Assessment Process.....	6
6. Records Management Plan Elements Checklist and PUR Assessment.....	7-16
7. The Public Records (Scotland) Act Assessment Team's Summary.....	17
8. The Public Records (Scotland) Act Assessment Team's Evaluation.....	18

## 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 NHS Borders. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

### 4. Authority Background

NHS Borders is responsible for providing health care services to protect and improve the health of the people of the Borders and plan services for the local population. Other roles include to:

- focus on health outcomes and people's experience of their local NHS system;
- promote integrated health and community planning by working closely with other local organisations; and
- provide a single focus of accountability for the performance of the local NHS system.

Throughout its work, NHS Borders links with partners in care, such as patients, staff, local communities and disadvantaged groups, so that their needs and views are included in the design and delivery of local health services.

Borders NHS Board functions include:

- Strategy development: to develop a single local health plan which addresses health priorities;
- Resource allocation to address local priorities and determining how Borders resources are deployed to meet strategic objectives;
- Implementation of the local health plan;
- Performance management of the NHS Borders health system.

## 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.
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**Progress Update Review (PUR) Template: NHS Borders**

Element	Status of elements under agreed Plan 09SEP16	Status of evidence under agreed Plan 09SEP16	Progress assessment status 06AUG21	Keeper's Report Comments on Authority's Plan 09SEP16	Self-assessment Update as submitted by the Authority since 09SEP16	Progress Review Comment 06AUG21
1. Senior Officer	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change.	There has been no change to the identified Senior Officer, which remains June Smyth; however June's title is now Director of Planning and Performance.	The Assessment Team thanks NHS Borders for this update which has been noted.
2. Records Manager	<b>G</b>	<b>G</b>	<b>G</b>	The <i>Plan</i> states (page 7) that NHS Borders is considering appointing a Corporate Records Manager. The Keeper welcomes this and notes that NHS Borders have committed to inform him if this post is created. Similarly if a Corporate Records Team (page 17) is created, the Keeper should be informed.	<p>Until end 2020 there had been no change to the individual with day-to-day responsibility for implementing the Plan: George Ironside, Senior Health Information Manager. From Jan 2021 this will be Ian Merritt, Information Governance Lead.</p> <p>The Covid pandemic has impacted on our plans for much of 2020.</p> <p>There has been no progress in establishing a Corporate Records manager role. Service reorganisation in 2021 will see this being revisited.</p>	<p>Thank you for notification of this change effective from January 2021 which has been noted.</p> <p>The Assessment Team understand that the impact of the Covid-19 pandemic has affected the progress of planned work for many Scottish public bodies, especially NHS Boards.</p> <p>We look forward to hearing if the planned service reorganisation progresses the creation of a Corporate Records Manager post.</p>


3. Policy	G	G	G	Update required on any change.	<p>The Records Management policy has been revised and updated. Version 2.3 was approved at the September 2020 meeting of the Information Governance Committee. Amendments are minor and mainly relate to the updated national Scottish Government Health and Social Care Code of Practice (Scotland) 2020 and associated retention periods.</p>  <p>Records Management Policy V2.3</p>	<p>The Assessment Team note that an updated Records Management policy, approved by the Information Governance Committee, has been adopted and thank the NHS Borders for supplying a copy. Updates and reviews in response to revised national guidance ensures information is current and policies are fit for purpose.</p> <p>NHS Borders websites provides access to the updated Records Management Policy, <a href="https://scot.nhs.uk/nhsb-records-management-policy.pdf">nhsb records management policy.pdf (scot.nhs.uk)</a>.</p>
4. Business Classification	A	G	A	<p>NHS Borders have agreed to provide the Keeper with a copy of the master Business Classification Spreadsheet as part of the periodic update/progress report.</p> <p>Clearly the <i>Business Classification Scheme</i> is a work in progress. <b>The Keeper accepts that this major piece of work will take some time to complete and asks that he is routinely updated on progress.</b></p> <p><b>The Keeper agrees this element of NHS Borders' Records</b></p>	<p>The NHS Borders Business Classification Scheme is still based on the NHS National Services Scotland template but there has been very little progress on developing it further.</p> <p>This is due in part to lack of resource in the Information Governance team, but also due to awaiting the finalising of the national Business Classification Scheme which is</p>	<p>In the agreed Plan the Keeper acknowledged that this work would take some time to progress. It is noted that development of the NHS Borders Business Classification Scheme (BCS) has been unable to advance significantly. The effect of limited staff resourcing to assist in progress is also noted.</p>





				<p><b>Management Plan on 'improvement model' terms. This means that the Keeper acknowledges that the authority has identified a gap in their records management provision (the Business Classification Scheme is not fully rolled out) and has put processes in place to close that gap. The Keeper's agreement is conditional on his being kept up-to-date with progress.</b></p>	<p>being produced by the national NHS Records Management group in partnership with all NHS Scotland Boards.</p> <p>This document will deliver a "Once for Scotland" approach.</p>	<p>The Assessment Team are aware that NHS Borders is part of the wider national project to migrate all NHS Boards in Scotland to Microsoft 365 (M365) and that work on both this and associated information governance documentation, including the national Business Classification Scheme, is ongoing. We understand this work will be gradual and welcome further updates on progress as the work of the national NHS Records Management Group progresses.</p> <p>This element will remain at Amber.</p>
5. Retention Schedule	G	G	G	Update required on any change.	<p>Guidance has been issued within NHS Borders to maintain records according to the NHS Scotland Code of Practice. This has been updated following publication of the latest version of the national code in June 2020.</p>  <p>Records Management Code of Practice 2020</p>	<p>NHS Borders have adopted the Scottish Government Records Management: Health and Social Care Code of Practice (Scotland) 2020 and provided staff with updated retention guidance accordingly. The Assessment Team thank NHS Borders for providing a copy of this document.</p> <p>The transition to M365 will also impact how retention periods are applied to electronic</p>

						records. Local changes to retention periods, such as email retention within mailboxes reducing to 12 months are being gradually introduced as mailboxes are migrated (noted in Element 5 below).
6. Destruction Arrangements	G	G	G	<p>Update required on any change.</p> <p>The Keeper agrees that staff are given guidance on the management/deletion of electronic records and that this may become an automatic function next year. <b>The Keeper request that he is informed when the new functionality becomes available.</b></p>	<p>The destruction arrangements remain largely unchanged from those in place in 2016. The main change is that use of red bags for confidential papers has been replaced by secure confidential waste cabinets installed in all NHS Borders locations. These are emptied by specialist contractors, Restore, whose operatives shred the contents on site.</p> <p> Disposal of Confidential Waste</p> <p>As NHS Borders migrates each mailbox to the M365 environment the retention period for emails reduces to 12 months. This time period was agreed with the Executive team and has been announced via messages from the M365 project team in advance of the migration.</p> <p>Similarly, national retention</p>	<p>The Assessment Team acknowledge receipt of the Disposal of Confidential Waste procedure which reflects the stated change in practice for the destruction of hardcopy records and thank NHS Borders for providing a copy.</p> <p>The process for the irretrievable destruction of electronic records will be affected by the migration to M365 (see Element 4 above).</p> <p>For retention periods see Element 5 above.</p>

					periods are in place for any data that is migrated into the 365 environment.	
7. Archiving and Transfer	A	G	A	<p><b>The Keeper agrees this element of NHS Borders <i>Records Management Plan</i> under ‘improvement model’ terms. This means that he acknowledges the authority has identified a gap in provision (the Education Centre, although secure, may not be suitable for the <u>permanent</u> preservation of historical records) and has put processes in place to close that gap. The Keeper’s agreement is conditional on a formal agreement being reached between NHS Borders and Live Borders regarding the transfer of historically significant records and him being provided with a copy of that agreement.</b></p>	<p>Initial discussions were held with Live Borders that runs the Heritage Hub, the home of the Scottish Borders Archive and Local History Service. Attempts to progress this in 2020 have been thwarted by Covid as their key personnel have been redeployed to support other services.</p> <p>Initial discussions have also been held in 2020 with the Archive facility at Edinburgh University as an alternative provider of Archive Services. These are at an early stage and the intention is to hold further discussions in 2021</p>	<p>The Assessment Team acknowledge that the impact of the Covid-19 pandemic has resulted in delays to planned work. However, it appears that negotiations have been underway with Live Borders for several years without agreement. In the agreed Plan the Keeper encouraged ‘NHS Borders to pursue such an agreement with urgency’.</p> <p>Notification of discussions with an alternative archive repository, the University of Edinburgh, are welcomed as an indication NHS Borders is working towards securing a suitable place for the permanent preservation of their historical records.</p> <p><b>As preliminary discussions have now taken place with the University of Edinburgh, is it the case that both archive repositories are currently being considered and the most appropriate will be</b></p>

						<p><b>selected? Clarification please.</b></p> <p>The Assessment Team request updates on progress of these discussions.</p> <p>As work is ongoing to finalise a deposit agreement with a suitable archive this element will remain at Amber.</p>
8. Information Security	G	G	G	Update required on any change.	<p>Latest version of the IT Security Policy (v2.3) is embedded. This was approved by the Information Governance Committee in March 2019.</p>  <p>IT Security Policy V2-3</p>	<p>The Assessment Team acknowledge receipt of the updated IT Security Policy approved by the Information Governance Committee and thank NHS Borders for providing a copy. It is noted that this latest version has been updated to include reference to 2018 data protection legislation.</p> <p><b>The IT Security Policy available to view on NHS Borders website appears to be the previous version (V2-2).</b></p>
9. Data	G	G	G	Update required on any change.	The NHS Borders Data Protection policy was	As with all other Scottish public authorities NHS Borders have

Protection					<p>completely overhauled to reflect the General Data Protection Regulation and the Data Protection Act 2018. The current version (v2.0) was approved by the Information Governance Committee in April 2019.</p>  <p>Data Protection Policy</p>	<p>been required to review and update their data protection procedures in light of the 2018 legislation.</p> <p>The Assessment Team acknowledge receipt of the revised and approved Data Protection Policy and thank the Board for providing the most recent version.</p> <p><b>The Data Protection Policy available to view on NHS Borders website appears to be the previous version (V1-4).</b></p>
10. Business Continuity and Vital Records	G	G	G	Update required on any change.	<p>The NHS Borders Resilience Policy has been updated but there has been no material change, with each department continuing to operate their own Business Continuity Plan.</p>  <p>Resilience Policy</p>	<p>The Assessment Team acknowledge receipt of an updated draft Resilience Policy and thank the Board for providing this. It is noted that each department continues to operate individual Business Continuity Plans.</p>

11. Audit Trail	A	G	A	<p>NHS Borders agrees to include the progress of the Naming Convention and Version Control procedures in the periodic reports to the Keeper.</p> <p><b>The Keeper agrees this element of NHS Borders' Records Management Plan under 'improvement model' terms. This means that he acknowledges that the authority has identified a gap in their records management provision (version control and naming convention arrangements are in their infancy) but has established a process to close that gap. The Keeper's agreement is conditional on his receiving updates as this project progresses.</b></p>	<p>Work to progress the requirements of this element has been limited.</p> <p>A naming convention and Version Control guidance document has been updated and is due to be issued.</p> <p>The ongoing migration of the whole of NHS Scotland onto the national M365 environment will necessitate the implementation of a common document classification and management system. This work will be progressing throughout 2021 and beyond.</p>	<p>The Assessment Team acknowledge that work has been limited in this area and a naming convention and Version Control guidance document is yet to be issued.</p> <p>The implementation of M365 will support greater management of version control. Robust naming convention procedures will be required to be put in place in advance of M365 becoming operational.</p> <p>We look forward to further updates as work progresses with the transition to M365. This element will remain at Amber as this work is ongoing.</p>
12. Competency Framework	G	G	G	Update required on any change.	There have been no changes to compliance with this element. George Ironside still has responsibility for Publication of the NHS Borders Records Management	Thank you for this update. Staff should have access to up to date training and guidance material that reflects current legislation and this is clearly the case. The requirement for all

					Plan. The training and Awareness material has been updated in line with the GDPR, and it is still mandatory for all staff to retake the online module and sign the Code of Conduct confidentiality statement every two years.	staff to undertake updated training and confirm adherence to the Code of Conduct at set intervals is noted.
13. Assessment and Review	G	G	G	Update required on any change.	<p>NHS Borders continues to assess and review its relevant policies and processes under this element.</p> <p>Registration with the Information Commissioner has remained in date and is next due for renewal on 20<sup>th</sup> March 2021.</p> <p>The <i>Data Protection Policy</i> (see element 9) is due for review in April 2021.</p> <p>The <i>Hard Disk Destruction Process</i> was updated in 2020 and is due for review by December 2022.</p> <p>The <i>IT Security Policy</i> (see element 8) is due for review by March 2021.</p> <p>The <i>Disposal of Confidential Waste</i> procedure (see element 6) is due for review by November 2021.</p> <p>The <i>Information Governance Code of Conduct</i> (see element 8) is due for review by April 2021.</p> <p>The <i>Records Management</i></p>	<p>It clear that NHS Borders has a robust assessment and review system in place for information governance policies, procedures and supporting documentation. Where reviews are outstanding this is stated and an intention to progress is provided.</p> <p>The Assessment Team welcome further updates in future PUR submissions.</p>

					<p><i>Strategy</i> is due for review and the intention is to progress this during 2021.</p> <p>The <i>Records Management Policy</i> (see element 3) is due for review by September 2022.</p> <p>The <i>Human Resources Policy Use of Social Media</i> was updated in 2020 and is due for review by September 2023.</p> <p>The <i>Resilience Policy</i> (see element 10) review was due by October 2020. An updated draft is pending approval but this has been delayed due to Covid.</p>	
14. Shared Information	G	G	G	Update required on any change.	<p>NHS Borders is still a partner in the Pan Lothian/Borders Data Sharing Group. Updating of the protocol under which data sharing is carried out to reflect the changes with the introduction of GDPR / DPA 2018 is outstanding.</p> <p>NHS Borders has adopted the standards of the Scottish Government Information Sharing toolkit and utilises the template documents produced in partnership with NHS Scotland.</p> <p><a href="https://www.informationgovernance.scot.nhs.uk/">https://www.informationgovernance.scot.nhs.uk/</a></p>	<p>The Assessment Team would welcome notification of the updated Pan Lothian/Borders Data Sharing Group protocol when it is available.</p> <p>Use of best practice toolkits is welcomed by the Assessment Team. The Scottish Government Information Sharing toolkit does reflect the changes with the introduction of DPA 2018.</p>



## 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 23 December 2020. The progress update was submitted by Ian Merritt, Information Governance Lead.

The progress update submission makes it clear that it is a submission for **NHS Borders**.

The Assessment Team has reviewed NHS Borders' 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

NHS Borders 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.

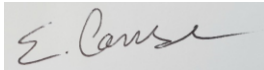
The Keeper cannot change the status of elements formally agreed under a voluntary submission, but he can use such submissions to indicate how he might now regard this status should the authority choose to resubmit its plan under section (5)(6) of the Act.

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

Based on the progress update assessment the Assessment Team considers that NHS Borders 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,



Liz Course  
Public Records Officer