

The Public Records (Scotland) Act 2011

Standards Commission for Scotland

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

15 March 2021

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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 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 Ethical Standards Commissioner (ESC) on the outcome of her investigations and determine whether to direct the ESC 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.
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Progress Update Review (PUR) Template: Standards Commission for Scotland

Element	Status of elements under agreed Plan 15SEP15	Progress status 08FEB19	Progress status 23DEC19	Progress status 15MAR21	Keeper's Report Comments on Authority's Plan 15SEP15	Self-assessment Update 31OCT19	Progress Review Comment 23DEC19	Self-assessment Update as submitted by the Authority since 23DEC19	Progress Review Comment 15MAR21
1. Senior Officer	G	G	G	G	Update required on any change.	No change During 2019 the Job Description was reviewed and the format / presentation of information updated. Changes agreed by Standards Commission., responsibility for records management continues to be stated as one of the duties of the senior officer.	The Assessment Team thanks the Standards Commission for Scotland (the Commission) for the update regarding the updated job specification, which they have noted. Otherwise, no immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
2. Records Manager	G	G	G	G	Update required on any change.	No change During 2019 the Job Description was reviewed and the format / presentation of information updated with the changes agreed by Standards Commission. Responsibility for records management continues to be stated as one of the duties of the business manager.	The Assessment Team thanks the Commission for the update regarding the updated job specification, which they have noted. Otherwise, no immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
3. Policy	G	G	G	G	Update required on any change.	No change	No immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
4. Business Classification	G	G	G	G	Update required on any change.	Minor change to policy to update diagram detailing the file structure	The Assessment Team thanks the diagram explaining the corporate structure. Otherwise, no immediate action required. Update required on any future change.	Minor change, file structure diagram updated.	The Assessment Team thanks the Standards Commission for Scotland (the Commission) for the notification of minor changes to the file structure diagram. No immediate action required. Update required on any future change.

5. Retention Schedule	G	G	G	G	Update required on any change.	Live document. Minor updates are made to the schedule to include changes to the retention period to ensure evolving and developing business and operational needs continue to be met.	In their original submission the Commission committed to keep its information governance policy documents under review and the Assessment Team acknowledge that this is being done. There is a recognition that a retention schedule is a 'living document' and will be subject to continual minor change year on year.	This document continues to be updated as changes are made to the file retention period or a requirement for new folders or documents to be added, for example the requirement for and retention of Covid records This ensures that operational or statutory retention periods align with the Standards Commission's current operational / business requirements	The Assessment Team thanks the Commission for this update. Amendments and additions to the retention schedule will be ongoing as business and operational requirements change and develop. The impact of the Covid-19 pandemic on the types of records created by public authorities and how these are captured and incorporated into existing record keeping practices is a significant issue for authorities to address and manage. The Assessment Team commend the Commission for the early identification and inclusion of such records in their retention schedule.
6. Destruction Arrangements	G	G	G	G	Update required on any change.	Live document. Minor updates are made to the destruction arrangements to ensure evolving and developing business and operational needs continue to be met.	No immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
7. Archiving and Transfer	G	G	G	G	Update required on any change.	No change	No immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
8. Information Security	G	G	G	G	Update required on any change.	No change The procedures identified in our RMP are still current.	No immediate action required. Update required on any future change.	No change.	No immediate action required. Update required on any future change.
9. Data Protection	G	G	G	G	Update required on any change.	No change The Scottish Parliament continues to provide support to all the Parliamentary Ombudsman and Commissioners under Service Level Agreements. The Data Protection Officer holds joint meetings, on a bi-monthly basis, with all members of the group to ensure information and data protection matters are discussed and to provide updates on	As with all other Scottish public authorities the Standards Commission for Scotland have been required to review and update their data protection procedures in light of the 2018 legislation. The Assessment Team also acknowledge that the authority's website has published suitable 'privacy' information https://www.standardscotland.org.uk/uploads/files/1557826466_DataProtectionPolicy2018.pdf	No change The arrangements around the Data Protection Officer service continues to be met through the Service Level Agreement. In addition to the bi-monthly meetings with staff of the Parliamentary Ombudsmen and Commissioners group the DPO also meets with the Executive Director and Members of the Standards Commission on an annually basis.	Notification of annual meetings between the Data Protection Officer, the Executive Director and the Members of the Standards Commission is acknowledged by the Assessment Team. No immediate action required. Update required on any future change.

					current or evolving issues.				
10. Business Continuity and Vital Records	G	G	G	G	Update required on any change.	No change Business Continuity Plan continues to be reviewed an annual basis by the Standards Commission.	In their original submission the Standards Commission committed to keep its information governance policy documents under review and the Assessment Team acknowledge that this is being done.	The Business Continuity plan was reviewed by the Standards Commission on 30 June 2020, minor typographical changes were made to the document.	Regular reviews of the Business Continuity plan demonstrate continued commitment to keeping information governance policies and guidance up to date and relevant.
11. Audit Trail	G	G	G	G	Update required on any change.	No change	No immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
12. Competency Framework	G	G	G	G	Update required on any change.	No change	No immediate action required. Update required on any future change.	No change	No immediate action required. Update required on any future change.
13. Assessment and Review	G	G	G	G	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 The Standards Commission continues to receive an annual report from the Executive Director which provides 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 records management arrangements.	The Act requires that an authority keeps its Records Management Plan under review. The Standards Commission continues to pursue this requirement annually and the PUR makes it clear that records management provision is reported at a high level in the organisation. This is to be commended.	No change The Standards Commission continues to receive an annual update from the Executive Team to provide 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 the meetings of the Standards Commission.	It remains clear that the Commission has systems in place to ensure the Records Management Plan (RMP) is reviewed and reported on annually. This practice, along with review of the retention schedule (element 5), Business Continuity plan (element 10) and, participation in the PUR process in 2018, 2019 and 2020, all demonstrate sustained commitment to assessment and review of information governance policies and guidance.
14. Shared Information	N/A	N/A	N/A	G	Update required on any change.	No change	No immediate action required. Update required on any future change.	Update: The Standards Commission and the Ethical Standards Commissioner share information in the performance of their statutory duties. The formal agreement with the Standards Commission and the new Commissioner	The Assessment Team thanks the Commission for this update on practices and procedures concerning shared information. It welcomes the introduction of a formal Information Sharing agreement, in place as of May 2020, between the Standards Commission for Scotland and the

								<p>about data sharing was introduced in May 2020 to ensure we identify the principles and general procedures for the requirement to share information and to address the issues around storage and management of this information. The Standards Commission has subsequently directed the Commissioner about the submission of case reports with effect from 12 November 2020. This action could potentially impact on the information sharing agreement and the Standards Commission will review the existing agreement to ensure it continues to meet the revised practices and procedures. Link to Agreement provided on the Standards Commission's website https://www.standardscommisionscotland.org.uk/uploads/tinymce/200505%20Information%20sharing%20agreement%20SCS%20&%20ESC.pdf</p>	<p>Commissioner for Ethical Standards in Public Life in Scotland. The inclusion of this document on the Commission's website under its Data Protection Privacy Statement (clause 2.2) is noted.</p> <p>It is understood that further reviews will be carried out in response to recent actions to ensure the agreement remains fit for purpose. Any future changes can be reported in subsequent PURs.</p> <p>It would appear that this element now applies to the RMP of the Commission. It is likely that if this were a formal re-submission of the authority's RMP under section 5 of the PRSA this element would be agreed using the published document as evidence.</p>
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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 26 November 2020. The progress update was submitted by Elaine McLean, Business Manager.

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

The Assessment Team has reviewed Standards Commission for 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

Standards Commission for Scotland continues to take its records management obligations seriously and are working hard to maintain all elements in full compliance. In addition, information has been provided that a further element (element 14) is now applicable to this authority.

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 Standards Commission for Scotland continue to take their statutory obligations seriously and are working hard to maintain all the elements of their records management arrangements in 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