

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

**Queen's and Lord Treasurer's Remembrancer**

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

**30 October 2019**

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## 1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal Assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor recordkeeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

## 2. Progress Update Review (PUR) Mechanism

Under section 5(1) & (2) of the Act the Keeper may only require a review of an authority's agreed RMP to be undertaken not earlier than five years after the date on which the authority's RMP was last agreed. Regardless of whether an authority has successfully achieved its goals identified in its RMP or continues to work towards them, the minimum period of five years before the Keeper can require a review of a RMP does not allow for continuous progress to be captured and recognised.

The success of the Act to date is attributable to a large degree to meaningful communication between the Keeper, the Assessment Team, and named public authorities. Consultation with Key Contacts has highlighted the desirability of a mechanism to facilitate regular, constructive dialogue between stakeholders and the Assessment Team. Many authorities have themselves recognised that such regular communication is necessary to keep their agreed plans up to date following inevitable organisational change. Following meetings between authorities and the Assessment Team, a reporting mechanism through which progress and local initiatives can be acknowledged and reviewed by the Assessment Team was proposed. Key Contacts have expressed the hope that through submission of regular updates, the momentum generated by the Act can continue to be sustained at all levels within authorities.

The PUR self-assessment review mechanism was developed in collaboration with stakeholders and was formally announced in the Keeper's Annual Report published on 12 August 2016. The completion of the PUR process enables authorities to be credited for the progress they are effecting and to receive constructive advice concerning on-going developments. Engaging with this mechanism will not only maintain the spirit of the Act by encouraging senior management to recognise the need for good records management practices, but will also help authorities comply with their statutory obligation under section 5(1)(a) of the Act to keep their RMP under review.

### 3. Executive Summary

This Report sets out the findings of the Public Records (Scotland) Act 2011 (the Act) Assessment Team's consideration of the Progress Update template submitted for Queen's and Lord Treasurer's Remembrancer. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

### 4. Authority Background

The Queen's and Lord Treasurer's Remembrancer (QLTR) is a non-ministerial office-holder in the Scottish Administration and is the Crown's representative in Scotland for *bona vacantia* (Latin for ownerless property). Since 1981, the post of QLTR has been held by whoever holds the post of Crown Agent. The current QLTR is David Harvie.

The QLTR is supported by the QLTR Office which consists of 2 Solicitors and 2 Administrative staff who are seconded from the Scottish Government and the Crown Office and Procurator Fiscal Service.

For the purposes of the Public Records (Scotland) Act 2011 the scheduled authority is the QLTR himself, not the supporting QLTR Office.

### 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) : Queen's and Lord Treasurer's Remembrancer**

Element	Status of elements under agreed Plan, 10 Jun 2014	Status of evidence under agreed Plan, 10 Jun 2014	Progress assessment status 10 Oct 2019	Keeper's Report Comments on Authority's Plan, 10JUN14	Self-assessment Update as submitted by the Authority since 10 Jun 2014	Progress Review Comment 10 Oct 2019
1. Senior Officer	G	G	G	Update required on any change	Solicitor to QLTR is Robert Sandeman QLTR is David Harvie	This update is noted with thanks. If this were a statutory submission (rather than voluntary), then evidence of this change would be required.
2. Records Manager	G	G	G	Update required on any change	QLTR Administrator is Julia McNamara	This change is noted with thanks. If this were a statutory submission, the authority would need to provide evidence that the post and the post holder continue to comply with the Keeper's requirements.
3. Policy	G	G	G	Update required on any change	No change	Noted with thanks. Update required on any future change

4. Business Classification	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change	No change	Noted with thanks. 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	Noted with thanks. Update required on any future change.
6. Destruction Arrangements	<b>G</b>	<b>G</b>	<b>G</b>	The RMP identifies why records should be disposed in a timely manner. The Keeper commends this clarity but recommends that QLTR also make reference to the need to dispose of records to comply with their requirements under the Data Protection Act 1998.	A review of policies and processes was undertaken at the time of GDPR implementation. We endeavour to hold records no longer than necessary	The Keeper's original comment has, of course, been superseded by changes in legislation. The QLTR has considered the implications of GDPR and the Data Protection Act 2018 in reviewing its policies and processes on the destruction of records. This is good practice. In any subsequent statutory submission the Assessment Team would encourage the QLTR to make reference to this in the Retention Schedule and the Destruction Arrangements.
7. Archiving and Transfer	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change	No change	Noted with thanks. Update required on any future change.
	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any	No change	Noted with thanks. Update



8. Information Security				change		required on any future change.
9. Data Protection	<b>G</b>	<b>G</b>	<b>G</b>	As with all other Scottish public authorities the Queen's and Lord Treasurer's Remembrancer have been required to review and update their data protection procedures in light of the 2018 legislation. Update required on changes including URL to public facing privacy pages.	There are links on our website to our privacy statement and on emails and letters in response to DP procedure changes  ICO certificate renewed	The Assessment Team have had access to the privacy statement and this is clear and easy to follow. Other changes to ensure compliance with GDPR and the Data Protection Act 2018 should be covered by the existing arrangements to follow the Crown Office and Procurator Fiscal Service data protection procedures. The Assessment Team would welcome more detail about changes in this element in future PURs.
10. Business Continuity and Vital Records	<b>G</b>	<b>G</b>	<b>G</b>	QLTR have comprehensive business continuity procedures in place and these arrangements are reviewed annually. The Keeper commends this commitment and would be interested to learn of any changes in policy occurring following these reviews.	No change	Noted with thanks. Update required on any future change.

11. Audit Trail	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change	No change	Noted with thanks. Update required on any future change.
12. Competency Framework	<b>G</b>	<b>G</b>	<b>G</b>	The Keeper would welcome updates on the specific requirements listed as part of the annual performance for the individual named under Element 2 and any on-going relevant training they are receiving.	Performance objectives are kept under continual review and relevant courses to be identified.	The Assessment Team welcome the information that the authority is supporting staff to identify relevant professional development opportunities.
13. Assessment and Review	<b>G</b>	<b>G</b>	<b>G</b>	QLTR are committed to reviewing the RMP annually and to review individual elements as and when changes occur in their recordkeeping arrangements. The Keeper commends this strong commitment to regular self-assessment and would be interested to receive updates concerning these reviews.	Next review May 2020	The Keeper would be interested to see details of this review in due course. This PUR also provides evidence that the QLTR is reviewing the RMP as required by the Public Records (Scotland) Act.
14. Shared Information	<b>G</b>	<b>G</b>	<b>G</b>	Update required on any change	No change	Noted with thanks. Update required on any future change.

## 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 29 August 2019. The progress update was submitted by Julia McNamara, Administrator.

The progress update submission makes it clear that it is a submission for the **Queen's and Lord Treasurer's Remembrancer**.

### PRSA Assessment Team's Summary

The Assessment Team has reviewed the **Queen's and Lord Treasurer's Remembrancer'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 Queen's and Lord Treasurer's Remembrancer continues to take his records management obligations seriously and is working to bring all elements into full compliance. The change of post holders in both Elements 1 and 2 at around the same time can be challenging and the commitment to identify and access appropriate training and development opportunities is positive.

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. If this were a statutory submission, it is likely that the Green status of all these elements would not change. The Assessment Team would draw the authority's attention to the changes in the Keeper's Model Records Management Plan, including the new Element 15 and would encourage the authority to continue to review and update their RMP in line with the Keeper's requirements.

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

Based on the progress update assessment the Assessment Team considers that the **Queen's and Lord Treasurer's Remembrancer** 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,



**Elsbeth Reid**  
Public Records Officer