

The Public Records (Scotland) Act 2011

**West Dunbartonshire Council and West Dunbartonshire Licensing Board
Progress Update Review (PUR) Final Report by the PRSA Assessment Team**

19 September 2018

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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 the **West Dunbartonshire Council and West Dunbartonshire Licensing Board**. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

4. Authority Background

West Dunbartonshire Council was formed on 1 April 1996 from part of the former Strathclyde Region, namely the entire district of Clydebank and the Dumbarton district less the Helensburgh area. In the Local Government etc. (Scotland) Act 1994 that created the council area its name was 'Dumbarton and Clydebank'. The council, elected as a shadow authority in 1995, resolved to change the name of the area to West Dunbartonshire. The council is run by 22 councillors elected from 6 wards.

<https://www.west-dunbarton.gov.uk/>

Licensing is the responsibility of licensing boards under powers contained in the Licensing (Scotland) Act 2005. Local licensing boards have wide discretion to determine appropriate licensing arrangements according to local needs and circumstances and their own legal advice. Each local government area must have a licensing board. West Dunbartonshire Licensing Board is titled a Licensing 'Forum'.

<https://www.west-dunbarton.gov.uk/council/west-dunbartonshire-licensing-forum/>

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: West Dunbartonshire Council and West Dunbartonshire Licensing Board

Element	Status of elements under agreed Plan, August 2015	Status of evidence under agreed Plan, August 2015	Progress assessment status, 2018	Keeper's Report Comments on Authority's Plan, August 2015	Self-assessment Update as submitted by the Authority since August 2015	Progress Review Comment, 2018
1. Senior Officer	G	G		Update required on any change	The Senior Officer for the Licensing Board is now Peter Hessem.	This update is noted with thanks.
2. Records Manager	G	G		Update required on any change. The Keeper would welcome any news of the planned directory structure being developed by this individual for all file servers across the Council.	No Change	No immediate action required. Update required on any future change
3. Policy	G	G		Update required on any change See Third Parties under General Comments below	2018 version included as part of response.	The provision of a new version of the Records Management Policy is welcome and the authority is to be commended for reviewing and updating its policy. The authority has also confirmed that contracts now include the contract clauses recommended by SOLAR

						<p>(Society of Local Authority Lawyers and Administrators in Scotland) and that there is on-going work to ensure that all current and future contracts include both Data Protection and Records Management compliance.</p> <p>The Records Management Policy has recently been reviewed and clauses added to ensure that the role of third party contractors is clarified. Additionally there is a commitment to develop the procedures and protocols around the transfer of archives and the role of the archivist in selecting records for permanent preservation has been strengthened.</p>
4. Business Classification	G	G		<p>The 'Future Development' under this element discusses the incorporation of other information asset fields such as 'access rights' within the BCS. The expected time for completion of this work is summer 2017. The Council are committed to providing the</p>	<p>A new Integrated Housing Management system is being introduced within WDC and SCARRS is being used as the business classification scheme. A new Legal Case Management system is also being procured and</p>	<p>The use of SCARRS for the business classification scheme in these new systems is good practice, enabling the retention schedules to be linked to the business classification scheme. The use of SCARRS also encourages</p>

				<p>Keeper with an updated version of the BCS once this work has been implemented.</p> <p>The RMP contains a commitment that the new expanded BCS will be 'signed-off' by individual service heads when appropriate. The Keeper commends the engagement with local services and would welcome updates on this project.</p> <p>See Third Parties under General Comments below</p>	<p>SCARRS will be used as the default classification scheme. Work on the our EDRMS system to business classify our Social Work records is also ongoing.</p>	<p>consistency of naming of records across local authorities.</p> <p>It would be helpful to see evidence of the adoption of the business classification scheme and compliance with retention schedules by third party contractors carrying out a function on behalf of the Council (such as services to Looked After children).</p>
5. Retention Schedule	G	G		Update required on any change	No change - The Council and Licensing Board still adopts SCARRS retention periods for both entities.	No immediate action required. Update required on any future change.
6. Destruction Arrangements	G	G		Update required on any change	No change - Both Greenlight and Shredall are engaged by the Council for the secure destruction of confidential waste with appropriate certificates provided.	No immediate action required. Update required on any future change
7. Archiving	G	G		Update required on any change	No change - The Council still uses our own in-house	No immediate action required. Update required on

and Transfer					archive service.	any future change
8. Information Security	G	G		Update required on any change	The Council still has an Acceptable Use and Security Policy which is current. It will be reviewed sometime in 2018 and an update will be provided to the Keeper. This is still ongoing and is being developed by ICT security Officer.	The Keeper would welcome sight of this new policy once available.
9. Data Protection	G	G		Update required on any change	A new Data Protection Policy: General Data Protection Regulation (GDPR) was issued on 25 May 2018 and a copy of the approved policy provided to the Keeper as evidence.	The Keeper welcomes sight of this new policy once available. Developing a new policy in response to new legislation is essential and the authority is to be commended for having its new policy available in time for the implementation date of GDPR. The policy provided is an interim policy which will be updated in due course.
10. Business Continuity and Vital Records	G	G		Update required on any change	Vital Records are still identified as part of this Councils Business Classification Scheme.	No immediate action required. Update required on any future change

11. Audit Trail	G	G		Update required on any change	There has been a reduction of the Councils building assets and during these periods, records that are now outwith the appropriate retention periods have been confidentially destroyed and file identifiers have been retained to ensure that the Council knows which records have been removed.	Reducing building assets can be a good opportunity for authorities to assess records and ensure that they are appropriately managed and disposed of. Retaining a record of the file identifiers is good practice and provides evidence for FOISA requests and compliance with other information legislation.
12. Competency Framework	G	G		Update required on any change	<p>The Council has an online DPA eLearn course that all relevant staff must complete as a mandatory element of their job role. An online GDPR version has been rolled out to all relevant staff with a target date of end of July 2018 for completion. A GDPR booklet for non-computer staff has been rolled out as well.</p> <p>Records Management guidance is available to appropriate staff.</p>	The authority is to be commended for providing mandatory records management training for relevant staff in addition to the training on data protection and information security.

13. Assessment and Review	G	G		<p>The RMP is scheduled for review in November 2015 with individual policies such as the Records Management Policy, the Archive Policy, and the Business Continuity Plan being reviewed throughout 2015-16. The Keeper commends the Council's commitment to undertake regular self-assessments and looks forward to receiving updates should significant changes in policies or practices have occurred.</p>	<p>The RM Policy has been reviewed in January 2018 and updated to incorporate GDPR legislation. This is included as part of our progress review.</p>	<p>The provision of a new version of the Records Management Policy is welcome and the authority is to be commended for reviewing and updating its policy in the light of the new legislation. The version provided was written in advance of the Data Protection Act 2018 and the Assessment Team would welcome updates when available. The changes in the Records Management Policy regarding archives provision may reflect the review of the Archives Policy and a copy of this would be helpful.</p>
14. Shared Information	G	G		<p>The provisions under this element are to be reviewed at the end of 2015 by the Records Management Officer and partner agencies. The Council has committed to providing the Keeper with any revised documents that result from these reviews in order to keep the Council's submission up-to-date.</p>	<p>No major changes, however, as part of GDPR all information sharing agreements are being reviewed and updated where appropriate.</p> <p>This is ongoing; many agreements have already been updated to reflect GDPR.</p>	<p>The review of agreements is appropriate and the Assessment Team would welcome updates at the next annual progress update review.</p>

The Keeper's General Comments (see Elements 3 & 4 above)

Third Parties

The Council makes the following statement in the RMP (Page 9):

'Where the Council has contracted out a function to a third party the Scheme will not be affected as we will ensure this function remains in the Scheme. If a third party would like to use the Scheme, then the appropriate function, activities, and transactions for that specific function can be provided to the contractor to assist with their records management. Where the Council has functions contracted out at present, we will address the issue and agree that they will use the full Scheme'.

The Keeper is not completely clear as to the meaning of the term 'Scheme' in the second part of this statement and has taken it to equate to the West Dunbartonshire Council *Records Management Plan*. He is concerned that the statement 'If a third party would like to use the scheme...', suggests this element might not be as robust as it should be. Section 3 of the Act makes it clear that records created by a third party when contracted to provide a function of a public authority are 'public records' for the purposes of the Act. An authority must therefore be satisfied when contracting a third party to provide a function that it has appropriate records management arrangements in place and is able to meet the commissioning authority's requirements. The Keeper, therefore, expects proposed RMPs to include evidence, such as procurement documentation and contractual clauses, clearly setting out the detail of the records management requirement to potential contractors. Such evidence makes it clear that a commitment to ensure that third party contractors can comply with the authority's requirements is embedded in the authority's policies and procedures and is accounted for under the *Plan*.

West Dunbartonshire Council have also supplied sample contractual clauses from their standard SLA with third parties. These cover the data protection issues around controller/processor and clearly indicate that any records processed by these third parties remain the records of the Council. In a case when the third party is fulfilling a function of the Council, these clauses correspond to the requirements of PRSA as regards to Data Protection. However, the Keeper will require further submissions that demonstrate how other elements of the plan are imposed on third party contractors.

The Keeper reserves the right to follow up on this statement going forward to ensure that the Council, where appropriate, is imposing adequate records management standards on contractors. In essence, he is agreeing that the Council has considered the issue of third parties carrying out the functions of the Council, and has provisions covering data protection, but will expect additional

evidence to be provided against the authority's obligations under PRSA. This element of the Plan is therefore agreed under Improvement Model (Amber) terms until evidence of contractual clauses (or similar) can be provided.

Version

This progress update submission is dated **23 February 2018** and further updated on **3 August 2018** and **5 September 2018**. The author of the progress update submission is **Michael Butler**, West Dunbartonshire Council, Data / Information Protection Officer.

The progress update submission makes it clear that it is a submission for **West Dunbartonshire Council and West Dunbartonshire Licensing Board**

PRSA Assessment Team Summary:

The Assessment Team agrees that the record management arrangements outlined by the fourteen elements in the authority's plan continue to be properly considered. The Assessment Team commends this authority for keeping its Records Management Plan under review.

The continued use of SCARRS as the basis for the business classification scheme and the retention schedules is best practice. SCARRS was developed through functional analyses of local authority responsibilities and while there will be some local variations, it provides a solid, practical basis for determining retention periods and managing local authority records.

The new Records Management Policy with its recent additional and amended clauses provides a solid basis for on-going development of records management practice within the authority. The role of the archivist in selecting records for permanent preservation has been clarified and this should strengthen the relationship between the records management services and the archives service. This work is to be commended.

It is the responsibility of the authority to assure itself that records generated by third parties who undertake functions on behalf of the authority are properly managed. The authority has adopted the wording provided by SOLAR in its standard contracts and has included reference to third party contractors in its new Records Management Policy. The Assessment Team welcome these developments which should enable the authority to ensure that contractors comply with the authority's records management obligations under the Public Records (Scotland) Act.

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.

PRSA Assessment Team Evaluation:

Based on this progress update assessment the Assessment Team considers that **West Dunbartonshire Council** and **West Dunbartonshire Licensing Board** clearly takes its statutory obligations seriously. The statements in this update report, combined with evidence provided make it clear that this authority is committed to pursuing the benefits of good records and information management.

This voluntary update from **West Dunbartonshire Council** and **West Dunbartonshire Licensing Board** makes it clear that authority continues to work hard to maintain all elements of their records management plan in compliance with the Act.

The PUR mechanism allows authorities to assess current arrangements and consider where a change in the status of certain elements might have taken place as a consequence of organisational change. This is further useful if an authority where considering reviewing and submitting its plan for further formal agreement by the Keeper under section 5(6) of the Act.

The assessment team is pleased to report that the West Dunbartonshire Council and West Dunbartonshire Licensing Board's PUR submission demonstrates that the plan remains in compliance under each element..

- 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



Elspeth Reid
Public Records Officer