

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

**The Commissioner for Ethical Standards in Public Life in Scotland**

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

**12 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 Commissioner for Ethical Standards in Public Life in Scotland. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

### 4. Authority Background

The Commissioner for Ethical Standards in Public Life in Scotland and his team work in two areas:

1. Public standards: Investigating complaints about the conduct of MSPs, local authority councillors and members of public bodies.
2. Public appointments: Regulating how people are appointed to the boards of public bodies in Scotland.

The Commissioner's functions in relation to public standards are set out in a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Ethical Standards Act), and b) the Scottish Parliamentary Standards Commissioner Act 2002 (the Parliamentary Standards Act). The Commissioner's functions in relation to public appointments are set out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the Public Appointments Act).

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (Scottish Statutory Instrument 2013/197) created the post of Commissioner for Ethical Standards in Public Life in Scotland.

The Commissioner for Ethical Standards in Public Life in Scotland is Mr Bill Thomson.

<http://www.ethicalstandards.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: Commissioner for Ethical Standards in Public Life in Scotland**

Element	Status of elements under agreed Plan, Mar 2016	Status of evidence under agreed Plan, Mar 2016	Progress assessment status, June 2018	Keeper's Report Comments on Authority's Plan, Mar 2016	Self-assessment Update as submitted by the Authority since Mar 2016	Progress Review Comment, June 2018
1. Senior Officer	<b>G</b>	<b>G</b>	<b>G</b>	Update Required on Any Change	No change  NB: The current Commissioner acts as 'Senior Officer'. His term of office ends on 31 March 2019. A new Commissioner will be appointed by the Scottish Parliament and will take on this role.	This future update is noted with thanks. No immediate action required.
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	No change  NB: This policy is due for review every 3 years. The next review date is 31 Dec 2018.	No immediate action required. The review date is noted with thanks and the Assessment Team would welcome sight of any new policy resulting from the review in future PURs.

4. Business Classification	<b>G</b>	<b>G</b>	<b>G</b>	Update Required on Any Change	No change  NB: The Commissioner uses a File Plan and Retention Schedule as his Business Classification system. There has been no change to the basic structure, but the content is reviewed and updated regularly and at least every six months.	The regular review and updating is noted with thanks. This is best practice and the Commissioner is to be commended for keeping this under review and updated.
5. Retention Schedule	<b>G</b>	<b>G</b>	<b>G</b>	Update Required on Any Change	No change to basic structure.  NB: Content is reviewed and updated regularly and at least every six months.	The regular review and updating is noted with thanks. This is best practice and the Commissioner is to be commended for keeping this under review and updated
6. Destruction Arrangements	<b>G</b>	<b>G</b>	<b>G</b>	Update Required on Any Change	No change  NB: Secure destruction of hardware added to ICT support contract issued 7 March 2017.	This update is noted with thanks.
7. Archiving and Transfer	<b>A</b>	<b>G</b>	<b>A</b>	The Keeper agrees this element of CESPLS' <i>Records Management Plan</i> under	No change  NB: In early 2016, the	It is understandable that priority would be given to meeting GDPR requirements



				<p>'improvement model' terms. This means that he acknowledges that the authority has identified a gap in provision [there is no formal transfer agreement with the archive] and have put processes in place to close that gap. The Keeper's agreement is conditional on his PRSA Assessment Team being provided with a copy of the signed MOU when available.</p>	<p>development of an archive agreement with the Keeper was progressing well. It was delayed whilst we sought input from the Scottish Parliament regarding records relating to MSPs. Finalising the archive agreement was then overtaken by the work required to prepare for GDPR. Arranging the archive agreement is a priority action for 2018-19.</p>	<p>by the May deadline. Arranging for the transfer of digital records to an appropriate archives can be especially complex. However, it is important that digital records are transferred promptly to an appropriate preservation environment as they are at risk of loss and obsolescence even in the short period since the role of the Commissioner was created. The Assessment Team therefore encourages the Commissioner to address the development of a Memorandum of Understanding with the Keeper as soon as practicable</p>
8. Information Security	G	G	G	Update Required on Any Change	<p>The procedures outlined in our RMP still stand. However, a significant amount of additional work has been carried out in this area to prepare for both the GDPR and the Scottish Government's Cyber Security Public Sector Action Plan 2017-18. The Retention Schedule was</p>	<p>The use of the retention schedule to enable appropriate information security is sensible and highlights the benefits of good record keeping practice. The Assessment Team welcome the decision to work towards Cyber Essentials Plus accreditation.</p>

					used as a basis to identify personal data, record the basis for lawful processing and ensure that retention dates were adequate. The office is currently in the process of attaining Cyber Essentials Plus accreditation to ensure the security of its ICT arrangements. Policies and procedures around remote working are being updated as part of this preparation.	
9. Data Protection	<b>G</b>	<b>G</b>	<b>G</b>	Update Required on Any Change	The procedures outlined in our RMP still stand. However, a significant amount of additional work has been carried out in this area to prepare for both the GDPR and the Data Protection Act 2018. The Retention Schedule was used as a basis to identify personal data, record the basis for lawful processing and ensure that retention dates were adequate. The Commissioner has appointed a Data Protection Officer (DPO). The DPO	As noted under Element 8, using the retention schedule as a basis for the information asset register is practical and should ensure that all personal information is appropriately managed. The appointment of a Data Protection Officer using the service provided by another organisation is an very practical and sensible decision for a small organisation.

					service is provided by the Scottish Parliamentary Corporate Body and shared with other parliamentary office-holders.	
10. Business Continuity and Vital Records	<b>G</b>	<b>G</b>	<b>G</b>	The Keeper requires clarification regarding vital records. Update Required on Any Change	No change.  NB: Our vital records are listed in our Contingency Plan. The plan also includes links to the document locations for ease of reference in an emergency.	This update is noted with thanks. It is good practice to identify vital records in the Contingency Plan (business continuity plan) and it is sensible not to include these links in the redacted version available publicly on the Commissioner's website.
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>	Update Required on Any Change	No Change	No immediate action required. Update required on any future change
14. Shared Information	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	Update Required on Any Change	No Change  As part of our preparations for the GDPR, the Commissioner reviewed	This information is noted with thanks. The Assessment Team would welcome updates in future PURs and the Commissioner may wish

					whether shared data with other organisations. We have identified one or two areas where a data sharing agreement may be necessary. We are currently investigating whether to undertake action in these areas.	to consider submitting a revised Records Management Plan once there is clarity on this Element.
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Version

The progress update submission which has been assessed is the one received by the Assessment Team on 12 July 2018. The author of the progress update submission is Karen Elder, Business Manager.

The progress update submission makes it clear that it is a submission for the **Commissioner for Ethical Standards in Public Life in Scotland**.

7. PRSA Assessment Team's Summary

The Assessment Team has reviewed the **Commissioner for Ethical Standards in Public Life in 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 Commissioner continues to take his records management obligations seriously. There is evidence of continuous review and updating of record keeping practices and the Commissioner is clearly maintaining good standards. The intention to prioritise a Memorandum of Understanding to transfer digital records to the National Records of Scotland is a positive step forward in this area. The Team commends the progress evident in this work and would welcome updates in future PUR submissions.

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 the **Commissioner for Ethical Standards in Public Life in Scotland** continues 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