

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

**Scottish Legal Complaints Commission**

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

**05 July 2022**

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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 the Scottish Legal Complaints Commission. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

#### 4. Authority Background

The SLCC acts as a gateway and point of contact for all complaints against legal practitioners in Scotland. Legal practitioners include qualified conveyancers, solicitors, advocates and commercial attorneys.

The SLCC receives complaints about the service received from a legal practitioner, and decides whether to investigate those complaints. The Legal Profession and Legal Aid (Scotland) Act 2007 encourages practices and practitioners to resolve the grievance themselves. Where this is not possible SLCC aim to provide an easily accessible and effective dispute investigation and resolution service. The Law Society of Scotland, Faculty of Advocates, Association of Commercial Attorneys still deals with matters of professional misconduct or unsatisfactory conduct and the SLCC oversees how these complaints are investigated and prosecuted. SLCC has an important role in influencing the conduct processes, including the powers to audit and recommend changes.

The SLCC aims to be of service to both the public and the profession. SLCC has an additional responsibility to share best practice, monitor trends, and highlight areas of concern. SLCC are committed to the use of mediation to resolve disputes between practitioners and their clients. In the right circumstances, mediation should prove to be a quick and successful method of resolving complaints. The SLCC operates independently of the Scottish Government, Scottish Legal Profession, the Law Society of Scotland, the Faculty of Advocates and Association of Commercial Attorneys. SLCC appreciates their position of independence is valued by their service users by providing a greater sense of impartiality and objectivity to reviewing complaints.

<https://www.scottishlegalcomplaints.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:

<b>G</b>	The Assessment Team agrees this element of an authority's plan.	<b>A</b>	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.	<b>R</b>	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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## 6. Progress Update Review (PUR) Template: Scottish Legal Complaints Commission

Element	Status under agreed Plan 21DEC17	Progress status 22JUN20	Progress status 05JUL22	Keeper's Report Comments on Authority's Plan 21DEC17	Self-assessment Update 21APR20	Progress Review Comment 22JUN20	Self-assessment Update as submitted by the Authority since 22JUN20	Progress Review Comment 05JUL22
1. Senior Officer	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	No change or update on this area.	Update required on any change.
2. Records Manager	G	G	G	Update required on any change.	Louise Burnett, Director of Business Performance now the Records Manager. We no longer have a Finance & Corporate Services Manager role. NRS notified 01.10.19. EVIDENCE NEEDED - such as job description, or annual objectives, or letter of appointment from individual at Element 1) of Louise's appointment to this key role.	The Keeper of the Records of Scotland's PRSA Assessment Team thanks the Scottish Legal Complaints Commission for this update which has been noted.	No change or update on this area.	Update required on any change.
3. Policy	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	No change, next biannual update due May 2022.	Noted with thanks. Update required on any change.
4. Business Classification	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	Review of Document Retention and Destruction policy (December 2021) to ensure business classifications are up to date.	Many thanks for confirming that the Retention and Destruction Policy has been reviewed.
5. Retention Schedule	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	Review of Document Retention and Destruction policy (December 2021) to ensure that processes are up to date and accurately reflect the digital first approach taken since Covid-19.	See Element 4 above. Thank you also for indicating that SLCC is pursuing a post-Covid-19 'digital first' approach.
6. Destruction Arrangements	A	A	A	<b>The Keeper can agree this Element on an 'improvement model' basis. This means that the authority has identified a gap in provision (the full roll-out of the file manager software which will allow SLCC to delete records from the New-Pro case management system) and has identified how it intends to close this gap. As part of this agreement the Keeper will need to be kept updated on the progress of work.</b>	Final testing of the File Manager had been scheduled, however had to be postponed due to the current coronavirus situation and SLCC focusing on getting staff set up to work from home.	It is perfectly understandable that some records management technical improvements have been temporarily postponed during the current Covid19 crisis. The PRSA assessment team recently carried out a survey which, while revealing some positive stories (business continuity arrangements seem to have worked well generally), shows that some 'upgrades' planned for 2020 are currently on hold.  (see also element 10)	Deployment of additional File Manager capabilities to the live site in December 2021. Testing on live site in March 2022. Awaiting contractor action and advice on how to safely proceed with deleting and anonymising historic records without impacting server performance.  Continuing to destroy physical	The Assessment Team thanks you for this update on Records Destruction Arrangements, both physical and electronic.  An authority's Records Management Plan must demonstrate that retention rules are consistently applied across all

						Hopefully SLCC received a copy of the survey results. If not they can be accessed from our Knowledge Hub page: <a href="https://khub.net/group/public-records-scotland-act-discussion-group">https://khub.net/group/public-records-scotland-act-discussion-group</a>	files in line with document retention and destruction policy.	authority's record systems. It is clear that progress has been made. Once the file manager software is fully live, the SLCC is much better-placed to ensure transparent and consistent records destruction processes take place.  This Element will remain at Amber while the work continues.
7. Archiving and Transfer	A	A	G	<p>SLCC is currently in discussion with National Records of Scotland (NRS) Client Management Team with a view to developing a Memorandum of Understanding (MoU) which would govern the transfer of archival records from SLCC to NRS. The Keeper's Assessment Team has confirmed with the Client Management Team that discussions are underway to agree a MoU. The Keeper can accept this as a commitment to developing a formal agreement with an appropriate archive and requests that he is sent a copy of the signed MoU once it has been agreed.</p> <p>The Keeper can agree this Element on an 'Improvement Model' basis. This means that the authority has identified a gap in provision (the lack of a formal transfer agreement with a suitable archive) and has identified how it intends to close this gap. The Keeper will be able to fully agree this Element once he receives the finalised MoU with NRS.</p>	Final agreed MOU has been signed by our CEO and sent to NRS	Thank you for this update. Once the MoU has been signed by NRS this element should be able to achieve a 'Green' RAG status.	MOU was signed by NRS in July 2021.  Transfer of records has yet to begin.	<p>The Assessment Team thanks you for this positive update. It is great to hear that a formalised Memorandum of Understanding is now in place with the National Records of Scotland.</p> <p>Although the transfer of records has not yet begun, this Element has been turned from Amber to Green in the PURs. If this was a formal RMP resubmission, it is likely that the status of this element would be changed as indicated.</p>
8. Information Security	G	G	G	Update required on any change.	Continue to do staff awareness and training in this area.	<p>The Keeper expects to see evidence that Staff creating, or otherwise processing records, are appropriately trained and supported.</p> <p>There seems to be ample evidence that information governance training is appropriately considered in the authority.</p>	<p>Formal staff training was provided in February and March 2022 for all staff to support the used of new technologies, including Teams and Office 365.</p> <p>A naming convention guide for records in our case management system was created and issued to all staff in January 2021, and is attached.</p>	<p>The Assessment Team thanks you for this update on staff training around M365 packaged. It is also reassuring to know that new naming guidance has been issued to staff (a copy of this has been received with thanks). This will aid in the discoverability of records, regardless of the system in use.</p>
9. Data	G	G	G	Update required on any change.	Continue to do staff awareness and	See above.	We continue to run staff training and give updates on this area to	The Assessment Team thank you for this update on

Protection					training in this area.	No action required. Update required on any change.	raise awareness. All staff have to complete an annual data protection e-learning module.	Data Protection training.
10. Business Continuity and Vital Records	G	G	G	Update required on any change.	SLCC recently changed the system used for access to our remote servers and invested in servers so we can now load balance so we have a more dependable remote environment.  We have now also purchased tokens so all staff can work remotely and strength our business continuity. We have also started rolling out laptops so staff have the right equipment for remote working.	The submission of the SLCC PUR coincided with the actual implementation of their business continuity arrangements due to the Covid19 crisis. The Keeper will be pleased to learn that in SLCC the switch to working from home went smoothly. It is particularly noteworthy that remote access functionality had recently been improved in the authority.  The Assessment Team would be interested in feedback on the successes (and failures?) of the move to working from home in the Scottish public sector. This would probably be best done objectively and in hindsight and therefore the PRSA Team is intending to wait and contact our colleagues, including SLCC, later in the year to help us with this.  <b>The Assessment Team notes that as part of their original submission SLCC provided the Keeper with a copy of their Working From Home Guidelines (December 2013). The Assessment Team would be interested to know if there is a more up-to-date version available that they could keep on file.</b>	All staff are working from SLCC devices with full, secure remote access.  The current version of the working from home guidance document is attached.	Thank you for this update. It is positive to hear that staff have the option to work remotely in a secure way.  Thank you also for providing the Assessment Team with a copy of the updated Working from Home Guidance document.
11. Audit Trail	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	No change or update on this area.	Update required on any change.
12. Competency Framework	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	OM017 Competency Framework policy reviewed and updated in December 2021.	Thank you for this update on Competency Framework Policy review.
13. Assessment and Review	G	G	G	Update required on any change.	Review group are currently auditing sections of the current RMP with a view to check the section is still relevant, do we have evidence and any improvements they can suggest to their chosen section.	The Act requires all public authorities to keep their plan under review. There is strong evidence that the Scottish Legal Complaints Commission properly does this.  Thank you for the update regarding the work of the Review Group. It is important that the implementation of the plan is assessed in local business areas and this PUR recognises that.	The review group conducted a full review of the OM006 Document Retention and Destruction policy in December 2021, and made necessary changes.	Thank you for confirming that Document Retention and Destruction Policy is kept under review (see also Elements 5 and 6).  SLCC should also be commended for its continuing participation in PUR process.
14. Shared Information	G	G	G	Update required on any change.	No further update on this area.	No action required. Update required on any change.	No update on this area yet, but it is due to be revisited by SMT in Q4 (April to June 2022).	Thank you for this update which has been noted. Update required on any 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 30<sup>th</sup> March 2022. The progress update was submitted by Laura Clark, Facilities Officer.

The progress update submission makes it clear that it is a submission for the **Scottish Legal Complaints Commission**.

### PRSA Assessment Team's Summary

The Assessment Team has reviewed the Scottish Legal Complaints Commission'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 Scottish Legal Complaints Commission 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 the Scottish Legal Complaints Commission 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



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