The Public Records (Scotland) Act 2011

Scottish Public Services Ombudsman

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

1st December 2023

Contents

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 Scottish Public Services Ombudsman. The outcome of the assessment and relevant feedback can be found under sections 6 – 8.

4. Authority Background

The SPSO was set up by the Scottish Public Services Ombudsman Act 2002. They handle complaints about public services in Scotland including councils, the National Health Service, housing associations and cooperatives, universities and colleges, most water and sewage providers, prisons, the Scottish Government and its agencies and departments, and most other Scottish authorities.
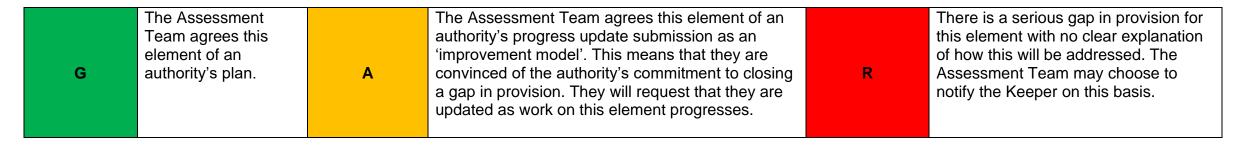
http://www.spso.org.uk/

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.

6. Progress Update Review (PUR) Template: Scottish Public Services Ombudsman

Element	Status under agreed Plan 23FEB16	Progress review status 16SEP22	Progress review status 01DEC23	Keeper's Report Comments on Authority's Plan 23FEB16	Self-assessment Update 31MAY22	Progress Review Comment 16SEP22	Self-assessment Update as submitted by the Authority since 16SEP22	Progress Review Comment 01DEC23
1. Senior Officer	G	G	G	Update required on any change.	No change.	Update required on any change.	No change.	Update required on any change.
2. Records Manager	G	G	G	Update required on any change.	No change.	Update required on any change.	No change.	Update required on any change.
3. Policy	G	G	G	Update required on any change.	No change to Records Management Policy Statement.	Update required on any change.	IMSOs added to policy under roles and responsibilities.	Thank you for this update on Records Management Policy review; this has been noted.
4. Business Classification	G	G	G	Update required on any change.	Entering third year on the Scottish Government eRDM system.\n\neRDM naming convention training delivered in January 2022, and covered in new start inductions.\n\nDocument naming guidance for our case management system (CMS) also circulated in January 2022.	The Assessment Team thanks you for this update on ongoing eRDM use. It is good to hear that relevant training has also been rolled out in terms of naming guidance (see Element 12).\n\nUpdate required on any future change.	Updated regarding applying access restrictions within case management application.	The Assessment Team thanks SPSO for this update on Business Classification Scheme and access restriction rules to be applied within its case management system.\n\nUpdate required on any future change.
5. Retention Schedule	G	G	G	Update required on any change.	No change.	Update required on any change.	Migration of all Outlook mailboxes to Exchange Online in June 2023. EXO moves emails that are six months old to a new archive mailbox, where they are deleted after 2.5 years.	Thank you for this update on organisational email retention, including a change of email management platform to the cloud-based Exchange Online (EXO). The automated retention and destruction of emails is also noted with thanks.
6. Destruction Arrangements	G	G	G	Update required on any change.	The Infected Blood Inquiry required us to retain casefile records from March 2019–September 2021.\n\nA further fault was found in the casework application that manages the destruction procedures. This particularly affected a discreet batch of old cases that had been retained for the Inquiry. The fault was remedied in April 2022, and a catch-up destruction exercise is programmed for May/June 2022.\n\nResponsibility for managing destruction arrangements has moved to the	The Assessment Team thanks you for this update on destruction arrangements with reference to the Infected Blood Inquiry, and the changes in the overall responsibility of managing destruction arrangements.\n\nIt is positive to hear that any faults in the process are spotted and remedied promptly.\n\nThe Assessment Team is confident that SPSO continues to ensure that robust destruction	We continue to extend the standard case retention times for cases which relate or could relate to the subject matter being considered by four ongoing public inquiries.\n\nCase file location audit completed and signed off. Next audit scheduled for Q2 2023-24.\n\nFile destruction recommenced (catch up exercise completed in June 2022).\n\neRDM file management carried out by	Thank you for this update on records retention arrangements. It is very appropriate to extend retention periods for records that may be required by ongoing or future public inquiries. Some of these records may also meet the threshold for permanent preservation.\n\nThank you for letting the Assessment Team know that a regular case file location audit has recently been completed;

					Corporate Information Governance Officer, and is implemented by the Team Assistant – Information Governance.	arrangements are in place, and that these continue to operate as intended.	IMSOs (replacements folders of those set to expire end 2022).	this is noted. It is also reassuring to know that eDRM file management tasks continue by IMSOs as usual.
7. Archiving and Transfer	G	G	G	Update required on any change.	No changes since MoU with NRS agreed.	Update required on any change.	No change.	Update required on any change.
8. Information Security	G	G	G	Update required on any change.	Induction and regular data protection, records management and information security reminders, updates, training and bulletins are provided for staff. Cyber essentials accreditation maintained. Greater focus applied to Cyber Security from lockdown 2020, following the move to more extensive electronic working. SPSO also continued to run a programme of cyber security training using the NCSC's Exercise in a Box training exercises. SPSO's CMS provider strengthened their cyber security arrangements to include 24/7 scanning for potential attacks and unusual activity as well as improving their disaster recovery provision for SPSO data. Due to the implementation of working from home during lockdown, the annual facilities security audit of cabinets and storage facilities has not taken place. Individual filing facilities have been removed from desks, following the move to more electronic casework. Common filing cabinets, maintained by Team Assistants have been implemented for those cases requiring paperwork. Case file management guidance is currently being updated. We actively encourage organisations to securely send us information electronically and clearly structured (casework letter templates updated). Records Management and Security Guidance updated with references added to mobile devices, and to confidential handwritten notes and secure disposal. In 2022, SPSO will retire its local 'H'	Thank you for this detailed update on Information Security arrangements within the authority. See Element 12 for comments on training. Thank you for confirming that SPSO has maintained its Cyber Essentials accreditation, and is continuing to focus on cyber security throughout the organisation. It is also great to hear that this is highlighted in the annual Business plan. The move to digital ways of working, largely from home during the pandemic, has had an impact in SPSO's usual business operations. This is not exceptional, and it is good to see that it has resulted in review of guidance documents in case file management, records management and remote information security. Thank you also for letting us know that SPSO's H drive will be retired this year. This will hopefully assist in limiting the saving of public records locally. Based on this update, the Assessment Team is confident that SPSO continues to ensure that robust information security are in place, and that these continue to operate as intended.	New working from home data security checklist created for staff. Case file management guidance updated. Case file location audit completed and signed off. Procedures strengthened for sending/receiving documents (Records management and security guidance), with improved private and confidential labelling. Ongoing preparations for closure of disc usb drives (secure email or file sharing services such as eRDM Connect used instead). Cyber Incident Response Plans and Playbooks approved in Q2. Achieved Cyber Essentials re-accreditation in Q3, meeting the new requirements for MFA being enabled for cloud admin accounts. Simulated phishing exercises continued in Q4 as part of the think before you click campaign. Cyber security training session for staff on how to spot phishing emails. Cyber resilience and business continuity sessions attended by key staff. Key staff attended 'exercise in a box' session on digital supply chain attacks. Online safety and password session for staff.	The Team appreciates this update on the various information security arrangements within SPSO. The development of new working-from-home guidance for staff, and review and update of other information management guidance, is noted with thanks. It is also good to hear that removable USB drives and H: drives are in the process of being retired. Phishing, online safety, and cyber resilience training is noted with thanks. That SPSO continues to hold Cyber Essentials reaccreditation is noted with thanks. The Assessment Team is confident that SPSO continues to ensure that robust information security are in place, and that these continue to operate as intended. See also Element 9.

Element								
					drive to reduce the number of areas that staff can save information locally.

Records management and information governance compliance monitoring highlighted in this year's Business Plan. | | Completion of phase 1 of drive management change programme, which involved the removal of documents from the H:drive. | |
| 9. Data Protection | G | G | G | Update required on any change. | This year's Business Plan highlights key data protection activities (for e.g. monitoring compliance; DPIAs, ROPA, policies and guidance; training; privacy notices; rights; retention and disposal etc.).

Induction and regular data protection, records management and information security reminders, updates, training and bulletins are provided for staff.

New compulsory breach training provided to all staff Dec 2021, and added to induction programme. | Thank you for sharing SPSO's upcoming data protection activities with the Keeper's Assessment Team.

Staff induction and data breach training will further enhance SPSO's ability to address any issues (see also Element 12). | Development of new Data Protection and Information Governance hub on the new SPSO learning platform.

Cyber-security e-learning added to new SPSO Learning Hub.

ICO training rolled out to all staff as compulsory (and as part of new staff inductions).

Data Protection and Information Governance All Staff Update and follow up Bulletin circulated in Q1 2023-24.

Learning also continues to be fed back to teams via our internal data protection group.

Case Assessment Seminar held for key staff covering Data Protection and case work.

New 'Appropriate Policy Document' produced in line with the DPA 2018.

Ongoing review of privacy information (updates to signatures and footers, leaflets and templates, process information, forms, and notices, along with additions regarding remote working and security). | Thank you for this update on Data Protection capabilities of SPSO. Especially the training, also noted under Elements 8 and 12, is noted with thanks.

Thank you also for letting us know that an ongoing review of privacy information is currently underway.

The Assessment Team has no particular concerns over this Element. |
| 10. Business Continuity and Vital Records | G | G | G | Update required on any change. | No change. | Update required on any change. | Cyber resilience and business continuity sessions attended by key staff.

Exercise in a Box event covering a ransomware attack for the Incident Response Team. | Thank you for this update on specific staff training on business continuity and cyber resilience. The 'Exercise in a Box' event also sounds like a great way to build resilience in the light of an unexpected event. |
| 11. Audit Trail | G | G | G | Update required on any change. | Due to the implementation of working from home during lockdown, the annual file location audit for hardcopy casework files has not been undertaken, due to the added burden already placed on staff. | Thank you for letting us know about the rescheduling of the annual file location audit for hard copy casework files. This is understandable and not a concern to the Assessment Team. | File location audit completed and signed off.

Additional check for returning documentation added to the SPSO leavers checklist. | The completion of the file location audit is noted with thanks. |

					The casework file location audit will be undertaken following the resumption of the casework destruction process in May/June 2022. New hardcopy casework files have reduced following the move to more electronic casework.	The move to increasingly digital business operations is in line with the Scottish public sector in general. Based on this update. SPSO continues to demonstrate dedication to compliance in this Element.		
12. Competency Framework	G	G	G	There is a commitment in the *Records Management Policy* (page 4) (see element 3) that states "The identification of records management as a distinct stream within the organisation's training portfolio, with dedicated training provided to all staff". The Keeper commends this commitment and request that any training material relevant to this RMP should be sent to him when available.	Additional training and guidance is provided to eRDM Connect workspace administrators / eRDM IMSOs (Information Management Support Officers).	Thank you for this update on staff competency framework with regard to additional training to IMSOs on eRDM Connect. Training provision updates on new and existing arrangements reported under Elements 4, 8 and 9 are also noted with thanks.	Corporate Information Governance Officer (CIGO) completed 'Assessing and managing risk for data protection' and 'Auditing data protection compliance' training.	Thank you for updating the Assessment Team on the recent data protection training completed by the Corporate Information Governance Officer. Update required on any future change.
13. Assessment and Review	G	G	G	Update required on any change.	PUR submission (June 2022).	SPSO is to be commended for its continuing regular participation in the PUR process.	Full annual review of the SPSO Information Governance Handbook, which incorporates our RMP, completed and signed off.	The Assessment Team thanks you for this update on the regular Records Management Plan review and formal update as part of the SPSO Information Government Handbook. SPSO is also commended for its continuing regular participation in the PUR process.
14. Shared Information	N/A	G	G	Update required on any change.	No change.	Update required on any change.	No change.	Update required on any change.

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

<u>Version</u>

The progress update submission which has been assessed is the one received by the Assessment Team on 30th May 2023. The progress update was submitted by Helen Littlemore, Corporate Information Governance Officer.

The progress update submission makes it clear that it is a submission for **Scottish Public Services Ombudsman**.

The Assessment Team has reviewed Scottish Public Services Ombudsman'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.

<u>General Comments</u>

Scottish Public Services Ombudsman continues to take its records management obligations seriously and is working to maintain all elements in 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 Scottish Public Services Ombudsman continues 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

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