The Public Records (Scotland) Act 2011

Scottish Public Services Ombudsman

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

16th September 2022

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 status 27AUG21	Progress status 16SEP22	Keeper's Report Comments on Authority's Plan 23FEB16	Self-assessment Update 31MAY21	Progress Review Comment 27AUG21	Self-assessment Update as submitted by the Authority since 27AUG21	Progress Review Comment 16SEP22
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.	No change to Records Management Policy Statement.	Update required on any change.
4. Business Classification	G	G	G	Update required on any change.	Project to move corporate documentation onto Scottish Government eRDM (Objective) system was completed in March 2020. Associated policies were updated in the Information Governance Handbook, then approved for publication December 2020. The updated business classification scheme is included in the published handbook: SPSOInformationGovernanceDec2020.pdf	The Keeper's Assessment Team is grateful for this positive update. We also acknowledge the receipt of the published Information Governance Handbook with thanks. This appears to have been a major undertaking with implication to all areas of records management within SPSO.	Entering third year on the Scottish Government eRDM system. eRDM naming convention training delivered in January 2022, and covered in new start inductions. Document 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). Update required on any future change.
5. Retention Schedule	G	G	G	Update required on any change.	The review of the retention and disposal policy was completed and the approved policy is included in the published handbook: SPSOInformationGovernanceDec2020.pdf	Thank you for this update on the retention and disposal policy review. Its inclusion to the Information Governance Handbook has also been noted with thanks.	No change.	Update required on any change.
6. Destruction Arrangements	G	G	G	Update required on any change.	Limited casefile destruction was undertaken between Oct 2019 and Nov 2020 due to a major fault with the electronic application; government restrictions during lockdown; and continuing open Inquiry request. The application fault was remedied by November 2020 and a catch-up destruction exercise was undertaken to clear the casework due for destruction. Casework destruction has now resumed on a fortnightly basis in accordance with the policy, retaining those cases required by the Inquiry.	Thank you for informing the Assessment Team about a fault within the application, as well as how this was addressed. While casefile destruction has been temporarily limited, it is reassuring to hear of return to regular scheduled destruction procedures. The Keeper's Assessment Team is confident that SPSO continues to ensure that robust destruction arrangements are in place, and that these are operating as intended.	The Infected Blood Inquiry required us to retain casefile records from March 2019–September 2021. A 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.	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. It is positive to hear that any faults in the process are spotted and remedied promptly.

							Responsibility for managing destruction arrangements has moved to the Corporate Information Governance Officer, and is implemented by the Team Assistant – Information Governance.	The Assessment Team is confident that SPSO continues to ensure that robust destruction arrangements are in place, and that these continue to operate as intended.
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 changes since MoU with NRS agreed.	Update required on any change.
8. Information Security	G	G	G	Update required on any change.	Objective Connect application implemented for use by all staff in September 2020 as a secure way to share electronic information. Alongside the training and guidance provided, a new Information Sharing – eRDM Connect policy has been added to the Information Governance handbook: SPSOInformationGovernanceDec2020.pdf Cyber Essentials Accreditation (November 20): Certificate Number IASME-CE-009821 (attached). SPSO Information and Communication Technology Handbook was updated and published in January 2021, and includes IT Security Policy (attached). Internal Audit of Cyber Resilience was undertaken in September 2020, with an overall conclusion of Substantial, 13 areas of good practice and 7 recommendations of medium and low level (attached).	Thank you for this update on information sharing arrangements through Objective Connect. The sharing policy, part of the Information Governance Handbook, is also noted with thanks. Thank you also for the update on the Information Technology Security Policy. The Assessment Team commends SPSO for maintaining its Cyber Essential Accreditation and acknowledges the receipt of the certificate, as well as the results of the Internal Audit of Cyber Resilience.	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.	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

| | | | | | | | 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' 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. | confident that SPSO continues to ensure that robust information security are in place, and that these continue to operate as intended. |
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| 9. Data Protection | **G** | **G** | **G** | Update required on any change. | Enhanced data breach procedures completed and the approved updated protocol is included in the published handbook:

SPSOInformationGovernanceDec2020.pdf

Objective Connect application implemented for use by all staff in September 2020 as a secure way to share information (see element 8).

Internal Audit of Data Management (GDPR) was undertaken in November 2020, with an overall conclusion of Strong, 17 areas of good practice and no recommendations (attached). | Thank you for this update that data breach protocols have been reviewed and published in the Information Governance Handbook. Thank you also for letting us know that Objective Connect is now used as a secure way to share information.

The SPSO should also be commended for running an Internal Data Management Audit as a way to ensure appropriate legislation is adhered to in a consistent manner across the organisation. | 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). |
| 10. Business Continuity and Vital Records | **G** | **G** | **G** | Update required on any change. | Vital records are clearly identified in the eRDM file plan with their own Corporate, Legal or Historic file type to ensure correct retention periods are maintained.

BCP reviewed, audited and published on website February 2021.

SPSOBusinessContinuityFeb2021.pdf

Internal Audit of Business Continuity (C-19) was undertaken in February 2021, with an overall conclusion of Strong, 24 areas of good practice and no recommendations of medium and low level (attached). | The Keeper's Assessment Team commends SPSO on its continuous commitment to identifying Vital Records. It also acknowledges the scheduled review, auditing and the publication of its Business Continuity arrangements. | No change. | Update required on any change. |

11. Audit Trail	**G**	**G**	**G**	Update required on any change.	The move to eRDM (Objective) and Connect (Objective) applications for storage and sharing of electronic documents has provided enhanced version controls and audit trails.	Thank you for confirming that the move to Objective eRDM has provided enhanced version control functionality with implications for the maintenance of reliable audit trails. The Keeper's Assessment Team has no concerns about this element as the SPSO continues to demonstrate dedication to compliance.	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. 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.	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. 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.	No change.	Thank you for letting the Assessment Team know there has been no major changes to training provision.	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.
13. Assessment and Review	**G**	**G**	**G**	Update required on any change.	PUR submission (May 2021).	The Assessment Team commends SPSO's continuing participation in the PUR process, which demonstrates a commitment to the regular review of its records management processes.	PUR submission (June 2022).	SPSO is to be commended for its continuing regular participation in the PUR process.
14. Shared Information	**N/A**	**G**	**G**	Update required on any change.	The new Information Sharing policy completed (with training provided) and the approved policy is included in the published handbook: SPSOInformationGovernanceDec2020.pdf Link to data sharing agreements that are in place: Working with others to improve service and protect the public | SPSO	The Keeper's Assessment Team thanks you for this update, and acknowledges the receipt of the new Information Sharing Policy as well as the link to Data Sharing Agreements. The Assessment Team is happy to change this element from Amber to Green within the PUR process. Should a formal resubmission take place, based on this PUR, the SPSO is in a very good position to pursue approval for a robust Records Management Plan.	No change.	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 31 May 2022. 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.

General Comments

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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