

THE **LAW SOCIETY**
OF NORTHERN IRELAND



GUIDANCE ON THE RETENTION AND DESTRUCTION OF FILES

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Destruction of Files

This guidance note provides general guidance on appropriate minimum retention periods for client files. It is important to remember that the vast majority of the contents of a file will belong to the client. Clients should therefore be made aware of how long a firm intends to retain their information following closure of the file. This should be dealt with in the retainer letter and in correspondence upon file closure. In particular circumstances, it may be necessary for solicitors to retain files beyond the suggested minimum retention periods below; solicitors must determine how long it is necessary to retain files based on their knowledge of the file and the client.

GDPR and the Retention and Destruction of Files

One of the data protection principles under Article 5 GDPR requires that personal data must be retained for “no longer than is necessary for the purposes for which the personal data are processed” (Article 5 (1)(e)). The data minimisation principle requires that personal data is “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed” (Article 5(1)(c)). Recital 39 GDPR states that this requires “ensuring that the period for which the personal data are stored is limited to a strict minimum”, and goes on to state that “in order to ensure that the personal data are not kept for longer than necessary, time limits should be established for the controller for erasure or for a periodic review”. These requirements impact not only on paper files held by solicitors, but personal data held in any format, including electronic files, emails etc.

It is important to remember that in the privacy notice which solicitors must make available to their clients under Article 13 GDPR, there is a requirement to state the “period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period”.

Solicitors are also reminded of the requirements of GDPR in relation to security of processing, and the requirement to ensure that any data processors they engage are GDPR compliant, and subject to appropriate contractual terms dealing with data protection. In practice this means ensuring that storage and destruction arrangements are adequate, and that appropriate contractual arrangements are in place with those providing external storage facilities or document destruction services.

In this guidance note we have set out suggested retention periods for the categories of documents likely to be held by many law firms. The limitation periods referred to are the primary limitation periods as set out in the Limitation (NI) Order 1989. However, it is not intended to be an exhaustive list of all types of files and each firm should ensure that an appropriate retention policy is in place, which reflects the legal and regulatory requirements to retain certain types of data for specified periods.

Solicitors must consider the relevant legislative requirements and regulatory regimes which may include:

Anti-Money Laundering/Counter Terrorist Financing;

Revenue and tax requirements;

Companies Act legislation;

Solicitors Accounts Regulations & Duty of Confidentiality

Suggested Retention Periods:

Note that emails and electronically stored files have the same status as hard copy documents for all material purposes.

Document Type	Suggested Retention Period	Suggested Reason for retention	Statutory Basis
Documents and information obtained to satisfy the customer due diligence requirements under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017	<p>Five years beginning on the date</p> <p>a) The transaction is complete, for records relating to an occasional transaction; or</p> <p>b) That the business relationship has come to an end for records relating i) any transaction which occurs as part of a business relationship, or ii) customer due diligence measures taken in connection with that relationship.</p> <p>The records referred to at b) are not required to be kept for more than 10 years.</p>	Statutory requirement.	Regulation 40 of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
Debt Collection	7 years	In order to protect the solicitor in the event of any negligence claim. Limitation period + 1 year for service of Writ.	Limitation period for actions founded on negligence (excluding PI) – 6 years.
Divorce	7 years (but see note below relating to files concerning children)	In order to protect the solicitor in the event of any negligence claim. Limitation period + 1 year for service of Writ.	Limitation period for actions founded on negligence (excluding PI) – 6 years.
Civil Cases	7 years	In order to protect the solicitor in the event of any negligence claim. Limitation period + 1 year for service of Writ.	Limitation period for actions founded on negligence (excluding PI) – 6 years.

Criminal Cases	7 years (including consideration of any potential rights of appeal)	In order to protect the solicitor in the event of any negligence claim. Limitation period + 1 year for service of Writ.	Limitation period for actions founded on negligence (excluding PI) – 6 years.
Probate and Administration	7 years (taking into consideration the requirement to keep records to deal with any potential future claims)	In order to protect the solicitor in the event of any negligence claim. Limitation period + 1 year for service of Writ.	Limitation period for actions founded on negligence (excluding PI) – 6 years.
Conveyancing Transactions	1) Conveyancing files relating to documents executed under seal- 13 years (12 years +1) 2) Conveyancing files relating to documents not executed under seal- 7 years (6 years +1)	In order to protect the solicitor in the event of any negligence claim and/or to protect the client in the event of any claim arising from a transaction. Limitation period + 1 year for service of a Writ.	Limitation period for actions to recover land under the Limitation (NI) Order 1989 – 12 years.
Trusts involving land	Lifetime of the Trust plus 13 years.	In order to protect the solicitor in the event of any negligence claim and/or to protect the client, trustees and beneficiaries. Limitation period + 1 year for service of a Writ.	Limitation period for actions to recover land under the Limitation (NI) Order 1989 – 12 years.
Trusts not involving land	Lifetime of the Trust plus 13 years	In order to protect the solicitor, client, trustees and beneficiaries. Lifetime of Trust + limitation period + 1 year for service of a Writ. HMRC can investigate up to 12 years after an assessment.	Limitation period for negligence/ breach of trust under the Limitation (NI) Order 1989 – 6 years.
Corporate and Commercial Law	1) Company law documents executed under seal- 13 years 2) Company law documents (not executed under	In order to protect the solicitor in the event of any negligence claim, and the client in case of any claims arising from a transaction.	Limitation period for claims in negligence and contract under Limitation (NI) Order 1989)- 6

	seal) and correspondence files- 7 years	Limitation period + 1 year for service of a Writ in cases of documents executed as deeds	years, time limit for actions founded on instruments under seal etc- 12 years
Other correspondence files	7 years	In order to protect the solicitor in the event of any negligence claim. Limitation period + 1 year for service of a Writ.	Limitation period for actions founded on negligence (excluding PI) – 6 years.

Wills

Wills may not be contested until long after they were originally drafted. In determining an appropriate retention period for wills, solicitors should take into account potential lifetime, and the possibility of a will being contested after the client's death. The Limitation (NI) Order 1989 imposes a limitation period of 12 years in relation to actions in respect of the estates of deceased persons, from the date the right to receive the share or interest accrued. In relation to other file material relevant to the will solicitors may wish to retain this for as long as the will is stored, or to review the file and retain only the most important documents.

Solicitors may also wish to consider the retention of documents relevant to tax issues.

Clients under a disability as defined in the Limitation (NI) Order 1989

In determining the appropriate retention period, solicitors may wish to consider whether there is a potential for a cause of action by someone who is under a disability as defined in the Limitation (NI) Order 1989. Individuals under a disability may bring a claim after the ordinary limitation period has elapsed in accordance with the Limitation (NI) Order 1989.

Minors

In any type of file involving children, when determining the appropriate retention period, solicitors may wish to consider whether there is a potential for a cause of action by someone who is a minor as defined in the Limitation (NI) Order 1989. Solicitors may wish to consider retaining the file for 7 years from the minor reaches the age of majority (6 years plus one year).

Overriding limitation period for actions in tort (not involving personal injuries)

Where a claim in tort does not involve personal injuries, an action may not be brought after the expiration of fifteen years from the date on which the relevant act or omission occurred, even if the Plaintiff did not know of the facts giving rise to the claim unless there has been fraud, concealment or mistake. Solicitors may wish to consider this "long stop" limitation period when determining the appropriate retention period for a file.

Overriding limitation period for actions in tort (involving personal injuries)

Where a claim in tort does involve personal injuries, solicitors may wish to take into consideration their knowledge of the individual circumstances of the file when setting the retention period. This will include factors such as the date of knowledge, date of settlement, lifetime awards or personal injury trusts.

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