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## **POLICY: RETENTION OF RECORDS**

This BPC Policy is based on NALC Legal Topic Note. LOCAL COUNCILS' DOCUMENTS AND RECORDS, AUGUST 2022

### **Introduction**

1. Information about local council documentation is contained in Chapter 11 of Arnold-Baker on Local Council Administration. This Note is intended to update and supplement that information, with reference to the length of time documents should be retained by local councils. Many documents are now only held electronically, so the same arrangements for keeping records and copies should be applied to an electronic document as for a paper document. An electronic document can be signed by the relevant person typing their name on it. Documents that have specific requirements, such as witnesses to a deed, must comply with those requirements when in electronic form.

### **Financial returns and accounts**

2. NALC's Model Financial Regulations (England and Wales) contain information on council audit and accounting requirements – see the members' section of the NALC website.

### **Retention of documents**

3. Documents and records should be retained until they are no longer needed. The Annex to this Note contains a table containing the appropriate minimum retention periods for the most important documents for audit and other purposes such as staff management, tax liabilities, cemetery management and the possibility of legal disputes and legal proceedings. If in doubt, document(s) should be retained until legal advice has been received.

## **Planning papers**

4. Where planning permission is granted the planning application, any plans and the decision letter should normally be retained until the development has been completed. Where planning permission is granted on appeal, a copy of the appeal decision should also be retained. It may sometimes be sensible to retain an appeal decision indefinitely because of wider implications (e.g. the decision may set a precedent for other developments in the locality). Where planning permission is refused, the papers should be retained until the appeal period has expired. If an appeal is made, and dismissed, the decision letter may be worth retaining against further applications relating to the same site.
5. Copies of local plans and similar documents should be retained as long as they are in force. Councils are encouraged to use electronic copies of planning documents, which are widely accessible and available via the planning portal or their local planning authority's website.

## **Insurance policies**

6. All insurance policies should be kept for as long as it is possible for a claim to be made under them. Irrespective of how long policies and correspondence are retained, the recommendation is that councils ensure that they keep a permanent record of insurance company names and policy numbers for all insured risks. The certificate of employers' liability insurance must be prominently displayed throughout the period of cover. Alternatively, councils can make the certificate available electronically to all employees (Regulation 5 of the Employers' Liability (Compulsory Insurance) Regulations 1998).

## **Information from other bodies**

7. Documents such as circulars, etc. from county associations, NALC and other bodies (e.g. principal authorities) should be retained for as long as is useful and relevant.

## **Magazines, journals and other publications**

8. A council may want to keep its own publications (e.g. newsletters) permanently for archive purposes. Journals published by others (e.g. local government news journals and magazines) should be retained as long as they are useful and relevant.
9. The Legal Deposit Libraries Act 2003 (the 2003 Act) and the Legal Deposit Libraries (Non-Print Works) Regulations 2013 (the 2013 Regulations) require anybody who after 1 February 2004 has published works in print or after 6 April 2013 has published electronic works offline, to deliver, at its own expense, a copy of them to the British Library Board (which manages and controls the British Library). (Offline publication includes documents on CD, USB drive, and similar). Electronic works

published online after 6 April 2013 only must be delivered to the British Library if requested. The British Library holds books, periodicals, manuscripts and other publications for reference, study, and information. Printed and electronic works as defined by the 2003 Act include those published by a local council (or a parish or community meeting without a separate parish or community council), including a pamphlet, magazine, newspaper, map, plan, chart or table. Some other deposit libraries are entitled to copies of works if they request them, but it is unlikely that they will request documents from local councils. There is a separate NALC legal briefing L04-10 concerning the 2003 Act and the 2013 Regulations.

### **Correspondence**

10. If related to audit matters, correspondence should be kept for the appropriate period specified in the Annex. In planning matters, correspondence should be retained for the same period as suggested for other planning papers. For other correspondence (unless relating to staff), no firm guidelines can be laid down.

### **Documentation relating to staff**

11. Such documents should be kept securely and in accordance with the data protection principles contained in data protection legislation. The principles provide that personal data in relation to staff should not be kept for longer than is necessary for the purpose it was held. However even after an employment relationship has ended, or in some cases, when there is no employment relationship, a council may need to retain and access records for former staff for the purpose of giving references, payment of tax, national insurance contributions and pensions, and in respect of any related legal claims made against the council. Such claims could be made for example by job applicants, so records of the selection process will need to be retained. The time limits within which a claim (and any appeal) may be lodged against an employer at an employment tribunal are set out in the legislation that contains the employment right in question or failing that by reference to the Limitation Act 1980 (as amended) considered in paragraph 15 below.

### **Local/historical information**

12. The Local Government (Records) Act 1962 provides that parish councils (and parish meetings in parishes without a separate parish council) may acquire records of local interest and accept gifts or records of general and local interest to promote the use of such records (defined as materials in written or other form setting out facts or events or otherwise recording information).

## **Arrangements for the deposit, storage and management of documents**

13. In accordance with section 227 of the Local Government Act 1972 (the 1972 Act), if a parish council requests the district council in which the parish is situated or a community council in Wales requests the county or county borough council in which the community is situated, the relevant principal authority must provide proper depositories for all the specified papers (defined as public books, writings, council papers and all documents directed by law to be kept) belonging to the parish or community for which there is no other provision. (In the case of a parish or community not having a separate parish or community council, the council of the district in which the parish or the county or county borough council in which the community is situated must provide proper depositories for all the specified papers under the control of the parish meeting or belonging to the community but in England only with the consent of the parish meeting). Documents of local and or historical importance, if not retained and stored by a local council, with or without reliance on the provisions of section 227 of the 1972 Act, should be offered first to the county record office if there is one. The county archivist there will always be willing to advise on which records should be permanently preserved.
  
14. Local councils (and parish or community meetings of parishes or communities without a separate council) are advised to implement the system(s) of paper and electronic records management (including those records retained for audit purposes reviewed annually by a council's internal auditor). Such systems should ensure the storage and security of, access to and disposal of both paper and electronic records. It is essential that any such system(s) (and policies) relating to record management include an annual review of the records themselves and also the effectiveness of such systems(s) (and policies).

## **Retention of documents for legal purposes**

15. Most legal proceedings are governed by the Limitation Act 1980 (as amended). The 1980 Act provides that legal claims may not be commenced after a specified period. The specified period varies depending on the type of claim in question. The table below sets out the limitation periods for the different categories of claims. The reference to 'category' in the table refers to claims brought in respect of that category.

Category	Limitation Period
Negligence (and other torts except personal injury)	6 years
Personal injury	3 years
Defamation	1 year
Contract	6 years
Leases	12 years
Sums recoverable by statute	6 years
To recover land	12 years
Rent	6 years
Breach of trust	None

16. Where the limitation periods above are longer than other periods specified in this Note, the documentation should be kept for the longer period specified. Some types of legal proceedings may fall within two or more categories. Rent arrears, for example, could fall within the following three categories (depending on the circumstances):

- a. contract (six years) – because all tenancies and leases are contracts;
- b. leases (12 years) – if the arrears are due under a lease; and
- c. rent (six years) – if the arrears are due under a tenancy (and not a lease).

In these circumstances, NALC advises that the relevant documentation should be kept for the longest of the three limitation periods.

17. The same principles apply in the case of debts. If the debt arises under a simple contract, the limitation period will be six years, but if the debt arises under a lease, the limitation period will be 12 years (unless it relates to rent, in which case the limitation period will be six years). A final complication relates to sums due under leases which are 'reserved as rent'. Sometimes, for example, service charges are expressed to be payable as 'additional rent'. The limitation period for service charges in those circumstances will be six years – even though the sums are due under a lease.

18. As there is no limitation period in respect of trusts, councils should never destroy trust deeds and schemes and other similar documentation.

19. For the sake of completeness, it should be noted that some limitation periods can be extended. Examples include:

- a. where individuals do not become aware of damage until a later date (e.g. in the case of disease);
- b. where damage is hidden (e.g. to a building);
- c. where a person is a child or suffers from a mental incapacity;
- d. where there has been a mistake by both parties or
- e. where one party has defrauded another or concealed facts.

20. In such circumstances, individual councils will need to weigh (i) the costs of storing relevant documents and (ii) the risks of:
- a. claims being made;
  - b. the value of the claims; and
  - c. the inability to defend any claims made should relevant documentation be destroyed.
21. It hardly needs to be said that the higher the value of a contract or the higher the risk or value of a claim being made, the more likely it is that the greater expense/ inconvenience of storing documents for longer periods can be justified. It may be possible to have documents kept electronically to reduce the cost of storage space. Councils should also confirm the precise wording of any insurance policies they have to ensure that they comply with any terms they contain in respect of the retention of documents and information. Advice should be sought from the insurers if there is any doubt.

#### **Data Protection and Freedom of Information Considerations**

22. The Code of Practice on the Management of Records issued under section 46 of the Freedom of Information Act 2000 applies to public authorities and also bodies which are subject to the Public Records Act 1958 (the 1958 Act). Although local councils are not subject to the 1958 Act, they should familiarise themselves with the contents of the Code of Practice so they can formulate their own system of records management. The Code of Practice can be accessed here (<https://www.gov.uk/government/publications/code-of-practice-on-the-management-of-records-issued-under-section-46-the-freedom-of-information-act-2000>).
23. Further information in respect of the Freedom of Information Act 2000 is set out in NALC LTN 37 (Freedom of Information) and in respect of data protection legislation in NALC LTN 38 (Data Protection).

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
22	Disciplinary and grievance arrangements	Sets out arrangements for dealing with employment issues
23	Health and Safety	Sets out need for public liability insurance
28	Basic Charity Law	Sets out duties of custodian trustees to hold title deeds of charity
37	Freedom of Information	Sets out the information councils are obliged to disclose.
38	Data Protection	Sets out the circumstances in which personal data should not be disclosed.
42	Occupiers Liability	Sets out need for public liability insurance.
60	Copies of planning documents	Sets out the right to planning documents and the copyright implications.
68	Negligence	Sets out the need for public liability insurance.

**Annexe to Legal Topic Note 40: Retention of documents required for the audit of parish councils**

<b>Document</b>	<b>Minimum retention period</b>	<b>Reason</b>
Minute books	Indefinite	Archive
Scales of fees and charges	6 years	Management
Receipt and payment account(s)	Indefinite	Archive
Receipt books of all kinds	6 years	VAT
Bank statements, including deposit/savings accounts	Last completed audit year	Audit
Bank paying-in books	Last completed audit year	Audit
Cheque book stubs	Last completed audit year	Audit
Quotations and tenders	6 years	Limitation Act 1980 (as amended)
Paid invoices	6 years	VAT
Paid cheques	6 years	Limitation Act 1980 (as amended)

VAT records	6 years generally but 20 years for VAT on rents	VAT
Petty cash, postage, and telephone books	6 years	Tax, VAT, and Limitation Act 1980 (as amended)
Timesheets	Last completed audit year 3 years	Audit (requirement) and personal injury (best practice)
Wages books	12 years	Superannuation
Insurance policies	As long as it is possible for a claim to be made under it.	Management and legal proceedings
Certificates for Insurance against liability for employees	Indefinitely	Future claims
Investments	Indefinite	Audit and management
Title deeds, leases, agreements, contracts	Indefinite	Audit and management
Members allowances register	6 years	Tax, Limitation Act 1980 (as amended)
<b>For halls, centre, and recreation grounds:</b>		
Application to hire lettings diaries copies of bills to hires record of tickets issued	6 years	VAT
<b>For allotments:</b>		
Register and plans	Indefinite	Audit and management
<b>For burial grounds:</b>		
Register of fees collected, register of burials, register of purchased graves, register/plan of grave spaces, register of	Indefinite	Archives and Local Authorities Cemeteries Order 1977 (SI. 204)

memorials, applications for interment, applications for right to erect memorials, disposal certificates, and copy certificates of grant of exclusive right of burial		
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