



Confidence Services

A UK Legal Perspective

Electronic Communications and Data Storage

1. Email messages are readily admissible and routinely admitted as evidence of their contents; any challenges to authenticity can be dealt with by calling the sender of the message.

2. 'Documents' consisting of digital, machine readable computer files are readily acceptable as evidence in English legal proceedings even where they are copies of original documents created by scanning.

3. Where the content of a document consists of material that has been input to the computer by human agent then such a document (like any other hard copy document) will generally be hearsay as evidence of its contents. Any issues as to authenticity can generally be resolved by producing the original for comparison, or more frequently, by calling a witness (the creator of the document or one of the original parties to it) to prove it.

4. Where it is for example a business record, it will be entitled to one of the well established exceptions to the hearsay rule. Any part of the content that has been added by the computer itself (i.e. without the intervention of a human agent) for example, times and dates, is real evidence and no hearsay evidence arises.

5. Where an electronic document is required to bear a signature, then Section 7 of the Electronic Communications Act 2000 may be relied upon for validity of digital signatures, subject to compliance with the Act. For the full text of Section 7 go to <http://www.legislation.gov.uk/ukpga/2000/7>

6. English courts are also generally ready to accept forms of electronic acknowledgement as tantamount to a signature where such is required to validate a legal document. It should however be noted that where the insertion of a persons email address by an internet service provider after the document has been transmitted, was incidental and not intended as a signature, it will not be considered as a signature unless the person seeking to rely on the signature can prove otherwise. However, if the email address has been added by the sender at the time the message was composed, such proof may be inferred.

7. With regard to the long storage term of records – where such records are required to be kept pursuant to a statute or regulation, then the relevant statute or regulation will generally contemplate records being kept in digital form. (For example, VAT records required to be preserved under the Value Added Tax Act 1994). Both Companies House and HMRC actively encourage the use of digital filing and storage.

Whilst, in the context of this summary, it is not practical to analyse each statute and piece of legislation, the approach of the Courts clearly contemplates modern methods of communication and the presumption, looking forward, will favour electronic signature and storage and it is likely that future legislation will require a specific dis-applying of the approach rather than specifically approving the use of electronic communication and storage.

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UK Data Retention Requirements

1. Each type of data within an organisation should be identified and classified. Once this has been completed and during periodic reviews, it is necessary to define the retention and disposal policy. Business data records should be assessed for the statutory and legal requirements, business and accountability requirements and the risks associated with keeping or disposing of the data records.
2. A records management system or schedule of data retention criteria can be used to document the data records, the requirements and the security controls needed for their identification, storage, protection, retrieval, retention and disposal.
3. There are a large number of statutes, case law and regulations defining how long some data must be kept for before it is destroyed — some of which are outlined on the following pages. A few requirements such as records of wages apply to almost all sectors, but we have listed some specific requirements for the communications, financial and governmental sectors. Other sectors have equally important requirements.
4. The exact minimum retention period varies with the specific data type, and the starting date is often context related e.g. period from an event like an accident, retirement or the advertisement of a product.

This document is based on previous work by InTechnology Ltd & Watson Hall Ltd

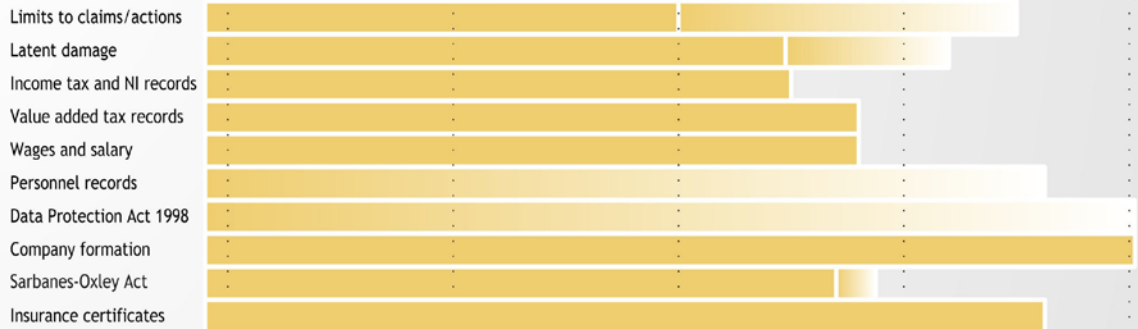
The chart on the next page summarises this data in the subsequent sections.

UK Data Retention Requirements by Business Sector

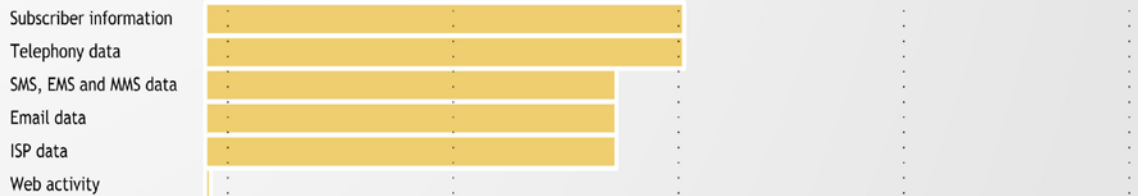
Data Checked January 2009

Sector

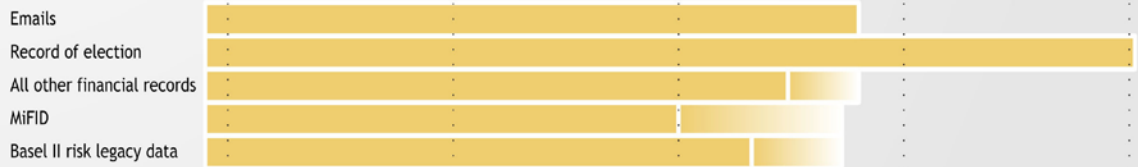
Cross-Sector



Communications



Financial



Governmental



0.01 0.1 1 10 100

Retention Period (years) Logarithmic Scale

Key: Retain Range of disposal timescales

Cross-sector

General data types are:

Type	Period	Reference
Limits to actions/claims	1 – 30 years	C 1 - 4
Latent damage	3 – 15 years	C 5
Income tax and national insurance records	3 years	C 6
Value added tax records	6 years	C 7
Wages and salary	6 years	C 8
Personnel records (pay, accidents, health, retirement benefits)	up to 40 years	C 9 – 10
Data Protection Act 1998	No longer than necessary	C 11
Company formation	Indefinite	C 12
Sarbanes-Oxley Act (cross listed UK cos)	5 – 7 years	C 13
Insurance certificates	40 years	C 14

Some personnel records must be maintained up to an age of 75.

Communications

Some data types and retention periods for the Communications business sector are:

Type	Period	Reference
Subscriber information	1 year	COM 1
Telephony data	1 year	COM 1 - 2
SMS, EMS and MMS data	6 months	COM 1
Email data (log on, email sent/received)	6 months	COM 1
ISP data (log on,0020connection)	6 months	COM 1
Web activity (content and traffic)	4 days	COM 1

Financial

Some data types and retention periods for the Financial sector are:

Type	Period	Reference
Emails	6 years	FIN 1 - 2
Record of election to comply	Indefinite	FIN 1
All other financial records	3 – 6 years	FIN 1
MiFID	1 – 5 years	FIN 3 - 5
Basel II risk legacy data	2 – 5 years	FIN 6
Telephone & electronic communications	6 months	FIN 7

Governmental

For government organisations, there are well defined policies:

Type	Period	Reference
Building records	2 – 40 years	PRO 1
Personnel records	6 months – 50 years	PRO 2
Accounting records	1 – 6 years	PRO 3
Health and safety records	2 – 50 years	PRO 4
Contractual records	1 – 16 years	PRO 5
Project records	1 – 25 years	PRO 6
Complaints records	3 – 10 years	PRO 7
Press and public relations	1 month – 25 years	PRO 8
Information management records	1 – 10 years	PRO 9
Central expenditure records	1 – 12 years	PRO 10
Internal audit records	1 – 6 years	PRO 11
Parliamentary papers in depts & agencies	2 years up to indefinite	PRO 12
Public records in the regions	1 year up to indefinite	PRO 13
Freedom of Information Act records	6 months – 10 years	PRO 14
Security services records	Up to indefinite	PSP 8
Constitutional, parliament, cabinet, ministerial and judicial reviews	Indefinite	PSP 12

Some personnel records must be maintained up to an age of 72 or 100.

Other Operational Selection Policy for specific information types. See Public Records Office for details.

Policies, procedures, standards, guides, manuals and handbooks generally to be retained until superseded.

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FIN 3. Financial Services Authority MiFID Information

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FIN 4: Minimum records

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FIN 5. Markets in Financial Instruments Directive

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_241/l_24120060902en00260058.pdf

FIN 6. Basel II: International Convergence of Capital Measurement and Capital Standards

<http://www.bis.org/publ/bcbs128.pdf>

FIN 7. Financial Services Authority Handbook

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