

National Records of Scotland Policy for Selecting Court and Legal Records

1. This policy has been approved by the Keeper of the Records of Scotland. It supports that part of the National Records of Scotland's (NRS) mission statement which says that "We collect, preserve and produce information about Scotland's people and history and make it available to inform present and future generations."
2. 'Record' means anything in which information is recorded in any form and so covers electronic records, records in microform and other types of specialised media, as well as paper and parchment records.
3. The court records, public registers and Crown Office records are retained and preserved in NRS because of their vital importance in guaranteeing property and personal rights in Scotland, in underpinning the proper working of the civil and criminal judicial systems, and for their uses in historical and other research. NRS recognises the importance of maintaining an unbroken record of these functions. The constant increase in the quantity of court and legal records produced requires the NRS to maintain a stringent selection policy. The stringency of this policy and its rigorous application will ensure the selection of a representative archive of the records of the Scottish courts and legal administration, but it will also mean that NRS can operate within reasonable resource limits for storage and preservation.
4. Since the 1930s, The National Records of Scotland (NRS) has taken records from the central and local courts in Scotland. These are accepted under the provisions of the Public Records (Scotland) Act, 1937, ss. 1-3 as amended, and the Public Record Records Scotland Act, 2011 (PRSA, 2011).
5. The NRS has agreed with the Scottish Courts and Tribunals Service (SCTS) which records it will take from each of the four categories of courts: the Court of Session, the High Court of Justiciary, the Sheriff Courts and the Justice of the Peace Courts. These courts and their records are set out in annexes 1 to 4 of this policy. It is a guiding principle of the selection process that at least some evidence will be kept to show the outcome of every process or action, whether that means preserving all the records created by a judicial process or, in the case of minor actions, simply retaining a register that records the judgements or sentences handed out.
6. In practice, NRS takes all the civil processes created by the Court of Session and all the criminal processes created by the High Court, together with the associated registers and indexes from both courts. NRS receives all civil processes created by the sheriff courts but employs trained weeders to identify those processes reckoned to be of legal or historical importance for permanent preservation. The rest are destroyed.

7. The NRS and its predecessors have been archiving public registers recording heritable rights and deeds since 1617. These registers are currently maintained by Registers of Scotland (ROS) and most are transferred to NRS at stated intervals. These registers are detailed in annex 5 of this policy.
8. The NRS and its predecessors archive the historic records of the Crown Office. These are currently identified and selected by Crown Office staff in accordance with Crown Office Circular 29 of 2001.
9. The initial determination as to the legal or administrative importance of a public register, court or Crown Office record is normally made by the staffs of the organisations involved, applying agreed records retention schedules. They are also expected to make decisions on historical importance, although it is understood that NRS staff will provide advice in this area, most importantly at the stage when any Record Management Plan is formulated.
10. There is no separately defined NRS Collection Development Policy governing future acquisition of records from SCTS, ROS or the Crown Office. The public registers automatically reflect the changing legal system in Scotland. They will also automatically provide accurate, dynamic evidence of the economic condition of the country and most particularly of the property market. The processes arising from individual criminal and civil actions constitute the overwhelming bulk of records taken from the courts. Consequently as Scotland's economy, society and the lives of its citizens change and evolve, so it is expected that these changes will be naturally reflected in the records themselves.
11. Where a new record stream is identified in the court or legal system that involves significant quantities of records, where there is debate about historical importance, or where changing social attitudes or developments in archival theory suggest a review is needed of current selection practice, advice can be sought from the NRS Records and Archives Board. It will also be open to NRS, with appropriate safeguards in the case of confidential records, to take advice from third parties (e.g. academics, experienced researchers) as to the significance of particular types of records.
12. This policy will be reviewed as necessary and at least every three years.

Laura M Mitchell
Deputy Keeper of the Records of Scotland
10 October 2017

Annex 1: Records Taken By NRS from the Court of Session

Type of record	Originating Department	Format	Legal Basis for Record
Commercial Actions Registered (Case details)	General	Electronic	Implied by Rule of Court 3.2 (3), the Court of Session Act 1988, s.(6)(i) and the Administration of Justice Act 1933 s.24(2) and (3)
Ordinary Actions Registered (Case details)	General	Electronic	Implied by Rule of Court 3.2 (3), the Court of Session Act 1988, s.(6)(i) and the Administration of Justice Act 1933 s.24(2) and (3)
Family Actions Registered (Case details)	General	Electronic	Implied by Rule of Court 3.2 (3), the Court of Session Act 1988, s.(6)(i) and the Administration of Justice Act 1933 s.24(2) and (3)
Personal Injury Actions Registered (Case details)	General	Electronic	Rules of Court Chapter 43 refers
Petitions Registered (Case details)	Petitions	Electronic	There is no specific authority for keeping a register but the annotation 3.3.2 to the Rules of Court refers
Appeals, Registered (Case details)	Inner House and Extracts	Electronic	For a record of cases Rule of Court 3.2 (2) (b) 3.2 (3) and Court of Session Act 1988, S6 (1) imply a register
Simplified Divorce Register (Case details)	Inner House and Extracts	Electronic	For a record of cases Rule of Court 3.2 (2) (b) 3.2 (3) and Court of Session Act 1988, S6 (1) imply a register
Paper processes for categories above		Paper	
Adoptions Register	Petitions	Notebook	
Adoptions Processes	Petitions	Paper	

Annex 2: Records Taken By NRS from the High Court of Justiciary

Type of record	Originating Department	Format	Reason for retention/reference
Books of Adjournal	1 st Instance	Paper	The Act of Adjournal (Criminal Procedure Rules) 1996 SI 1996/513 Schedule 2
Indexes	1 st Instance; Solemn Section; Summary Section	Paper and electronic	
IN Indexes	1 st Instance	Paper and electronic	Administrative
Justiciary Appeals Index (Appeal details and copy interlocutors)	Summary Section	Loose leaf file	Record
List of assize	1 st Instance	Paper and bound books	Forms part of the Book of Adjournal (But bound separately and added as separate volumes)
Minute Books	1st Instance (Only used for old cases - information is now on CMS)	Register	Record
Miscellaneous Applications Index	1 st Instance	Paper and electronic	Register
Miscellaneous Applications/Petitions (Including petitions for Live TV Link) (Case papers)	1 st Instance	Paper	Forms part of the Book of Adjournal (But bound separately and added as separate volumes)
Official opinions	Solemn Section; Summary Section	Paper and electronic	Reasons for sentence
Register of First Instance Cases	1 st Instance	Electronic	Register
Register of Solemn Appeals	Solemn Section	Electronic	Act of Adjournal (Criminal Procedure Rules) 1996 15.1 (1)
Register of Summary Appeals	Summary Section	Electronic	Register
Sitting Papers	1 st Instance	Papers	Record
Solemn Appeals (Case Papers)	Solemn section	Papers	Record
Unofficial Opinions	Solemn Section; Summary Section	Paper and electronic	Reasons for sentence

Annex 3: Records Taken By NRS from the Sheriff Courts

NRS receives records from the 39 sheriff courts in Scotland in rotation, normally taking transfers from four or five courts in any one year. The order of transfer is settled by negotiation between NRS and the Scottish Courts and Tribunals Service (SCTS).

The records to be transferred are defined in 'The Schedule of Sheriff Court Records for Preservation and Destruction, 2017' agreed between NRS and SCTS. This schedule is reviewed annually.

On receipt at NRS, the records identified for immediate preservation in the schedule are catalogued and archived. The large numbers of civil processes from these courts are taken in their entirety and are set aside until the Summer of each year when they are examined in detail by a team of law students hired by NRS as part of a weeding exercise. These students use their professional judgement together with a weeding schedule, to identify processes for either: preservation; destruction; or limbo (destruction after 75 years).

The current weeding schedule used for civil processes is dated February 2017.

Annex 4: Records Taken By NRS from the Justice of the Peace Courts

Justice of the Peace (JP) courts had existed in Scotland since at least 1609 but were abolished in 1974, when they were replaced by a system of District Courts. NRS holds many of the records of the JP courts for the years before 1974, in terms of the Public Records (Scotland) Act, 1937.

JP Courts were re-established following the Criminal Proceedings (Reform) (Scotland) Act 2007, sections 59-77. Their records include not only those records created by the new JP Courts but also those inherited from predecessor District Courts in terms of section 66 of the Act.

A records schedule covering the management of the records created by these new courts was agreed between NRS and the SCS in August 2013 and is appended.

JUSTICE OF THE PEACE COURT RECORDS SCHEDULE

INTRODUCTORY NOTES

THE SCHEDULE

The attached schedule concerns the retention and disposal of Justice of the Peace Court (JP Court) records in terms of the Disposal of Court Records (Scotland) Regulations 1990, as amended by the Disposal of Court Records (Scotland) Amendment Regulations 2011, and paragraph 2 of the Schedule to the Criminal Proceedings (Reform) (Scotland) Act 2007.

JP Court records include not only those records created by the JP Courts since their inception but also those inherited from predecessor District Courts in terms of Part 4, Section 66 of the Criminal Proceedings (Reform) (Scotland) Act 2007.

The schedule will be revised as required to take account of new record classes and formats.

DESTRUCTION OF RECORDS

2. Certain records are designated for destruction after specified periods, which are calculated from the date of the last entry in that record. Scottish Courts Service (SCS) staff are responsible for arranging the destruction of these records. It is not necessary to consult the National Records of Scotland (NRS) before destroying these records.

3. We encourage SCS staff to identify and bring to the NRS's attention anything which seems to be of significant historical or legal interest but which is within a category listed for destruction or discretionary destruction. For instance, significant statistical material not reproduced elsewhere could merit permanent preservation.

CARE AND PRESERVATION OF RECORDS

4. It is the duty of every organisation to take proper care of its records, both to enable the efficient running of the organisation and to comply with information legislation, notably the Data Protection Act 1998.

5. Problems arise mainly from neglect of older papers or electronic data which are often relegated to poorer storage and become disorganised because of pressure of current records. This can lead to their temporary or permanent loss, or even accidental destruction. NRS is happy to provide advice about the storage and arrangement of records in either paper or electronic form. Contact details and further help and advice are available in the "recordkeeping" section of the NRS website at www.nrscotland.gov.uk/record-keeping

6. NRS should be informed immediately when records are affected by flooding or other accidents. Please telephone NRS Court & Legal Records Branch – 0131-270-3314 / 3313 / 3312, or NRS Conservation – 0131- 270-3305 / 3308.

TRANSMISSIONS OF RECORDS TO THE KEEPER OF THE RECORDS OF SCOTLAND

7. The NRS takes transmissions from JP Courts of records over 10 years old or in the case of electronic records, over 5 years old, as noted in the schedule. Detailed guidance on transmitting records to the NRS and on preparing records for transmission are available on the NRS website at <http://www.nas.gov.uk/recordKeeping/transmissions.asp>.

8. In selecting material for permanent preservation, the NRS aims to keep some record, however brief, of every case, e.g. in court registers. Changes in forms of record-keeping can significantly affect this aim. We therefore urge the court to contact NRS if any such changes are contemplated.

9. As the records of JP Courts are primarily of local interest, where possible arrangements will be made for the records of a particular court to be held on behalf of the NRS by the nearest suitable local archive

(normally a local authority archive). In such cases, local arrangements will be put in place between the court, the NRS and the relevant local archive to achieve this.

Tim Ellis
Keeper of the Records of Scotland
12 August 2013

DESTROY AFTER 1 YEAR	<ul style="list-style-type: none"> Means court sheets. 	
DESTROY AFTER 2 YEARS	<ul style="list-style-type: none"> Statistics gathered for central government. 	
DESTROY AFTER 10 YEARS	<ul style="list-style-type: none"> Summary complaints. Fixed penalty and fiscal fines. Means Enquiry Court records Court sheets 	
DESTROY AT DISCRETION OF SHERIFF CLERK	<ul style="list-style-type: none"> Cash sheets. Records of fines. Records of transfers in/out. Statistics gathered for local management purposes. General correspondence. Utility warrants 	Where records relate to financial transactions, destruction to be determined in consultation with the Scottish Court Service
TRANSFER TO THE KEEPER OF THE RECORDS OF SCOTLAND AFTER 5 YEARS	<ul style="list-style-type: none"> Electronic case management system. 	Transfer selected data only, as agreed between the NAS and SCS. Format for transfer to be agreed between the NAS and SCS.
TRANSFER TO THE KEEPER OF THE RECORDS OF SCOTLAND AFTER 10 YEARS	<ul style="list-style-type: none"> Registers of cases. Appeals registers 	
TRANSFER TO THE KEEPER OF THE RECORDS OF SCOTLAND AFTER 25 YEARS	<ul style="list-style-type: none"> Signed Justice of the Peace oaths of allegiance Register of signatures to the oath of allegiance 	

Annex 5: Public registers taken By NRS from Registers of Scotland

Record	Ref	covering dates	supposed transmission schedule
General Register of Sasines	RS88-112	1869-Present	?
Sasine minute books (signed abridgements)	RS123-157	1869- various (mainly mid 1990s or early 2000s, but some only to 1980s)	Monthly
Abridgements (unsigned)	RS158-192	Up to 2009	Monthly (bound set sent annually)
Sasine presentment books	RS193-227	1869-2010	Annually
Sasine indexes	-	1869-current	Fortnightly plus annual index
Register of Inhibitions and Adjudications	DI9	1925-2012	Monthly
Minute books to Register of Inhibitions and Adjudications	DI11	1869-2010	Annually
Presentment books to Register of Inhibitions and Adjudications	DI20	1833-1989	Should be a paper volume to c1995, then electronic dbase, as with RD9. Recently since 2010 they have been sending monthly copies form computer print-outs.
Particular registers of Inhibitions and adjudications	DI21- DI109	16 th cent-mid-20 th Cent.	Now defunct but a few volumes will still be due in, typically found in Sheriff Courts.
Register of Deeds and Probative Writs in the Books of Council and Session	RD5	1812-2006	Fortnightly
Presentment book to the Register of Deeds	RD9	1891-1995	Went electronic in 1995; like DI20
Presentment books – sasine preservation writs	RD10	1892-1994	When each bound volume is full.
Warrants of register of deeds	RD15	1812-2010	Fortnightly
Sasine preservation writs	RD16	1868-2009	Fortnightly

Register of English and Irish Judgements	RD23	1868-2008	Annually
Minute books to Register of English and Irish Judgements	RD24	1868-1986	No minute book produced. Series finished.
Warrants (certificates) of judgements	RD25	1868-2009	Annually
Register under the inferior courts judgements extension Act 1882	RD26	Not located at ROS	-
Register of Judgements	-	1982-	May be continuation of RD23
Register of Protests	RD17	1812-1987	Periodically
Minute books to Register of Protests	RD18	1812-1973	Periodically
Warrants of protests	RD19	1812, 1967-1987 (samples only, 1812-1960)	Periodically
Register of Service of Heirs	C28	1847-1996	Every 3-5 years
Warrants of decrees of service	C29	1847-2005	Annually
Register of the Great Seal	C2	1424-1977	Periodically
Great seal warrants	C8	1807-1987	Every 10-12 years
Great Seal (Paper Register)	C3	1608-2008	Periodically
Great seal warrants (paper register)	C9	1807- 2008	Every 3-4 years
Register of Hornings	DI1	1610-1902	Defunct since 1987, older records may trickle in
Minute books to register of hornings	DI2	1661-1905	?
Regiser of Prince's Seal	C16	1620-1819	Virtually defunct. Nothing in it since 1912.
Prince's seal warrants	C17	1717-1874	-
Draft Prince's seal warrants	C18	1739-1819	-
Register of the Quarter Seal	C14	1751-61, 1831-2009	Every 3-4 years
Quarter seal warrants	C15	1662-2009	Every 3-4 years
Register of Sheriffs' Commissions	C38	1748, 1839-1933	Periodically?

Land Register	-	1979 onwards	Not transmitted
Land Register "Archive records"	-	1979 onwards	Not transmitted
Register of Community interests in Land	-	2004 onwards	Not transmitted
Register of Crown Grants	-	Register of deeds relating to Crown property.	Virtually defunct since 1974 – possibly now registered in main RD series.
Register of Sites of Special Scientific Interest	-	2004 onwards	
Register of the Cachet Seal	-	-	Royal warrants and gifts periodically transmitted