



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE PUBLIC ARCHIVES AND DOCUMENTATION SERVICE ACT

CHAPTER 19

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CHAPTER 19

PUBLIC ARCHIVES AND DOCUMENTATION SERVICE ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Establishment of the Kenya National Archives and Documentation Service
4. Powers of Director
5. Director's powers in respect of public records
- 5A. National documentation and information retrieval service
6. Public access to public archives
7. Destruction of public archives
8. Offences
9. Export of historical records
10. Legal validity of public archives
11. Certified copies of public archives admissible as evidence
12. Official seal of Service
13. Copyright
14. Public Archives Advisory Council
15. Regulations
16. *[Spent]*
17. *[Spent]*

SCHEDULES

PUBLIC RECORDS

CHAPTER 19

PUBLIC ARCHIVES AND DOCUMENTATION SERVICE ACT

[Date of assent: 24th November, 1965.]

[Date of commencement: 25th January, 1966.]

An Act of Parliament to establish the Kenya National Archives and Documentation Service and to provide for the preservation of public archives and public records and for connected purposes

[Act No. 32 of 1965, Legal Notice 16 of 1966, Act No. 9 of 1967, Act No. 2 of 1990, Act No. 31 of 2016, Act No. 18 of 2018, Act No. 25 of 2022.]

1. Short title

This Act may be cited as the Public Archives and Documentation Service Act.

[Act No. 2 of 1990, s. 3.]

2. Interpretation

In this Act, unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to culture and national heritage;

"Director" means the person appointed to that office under section 3;

"national archives" means the place or places wherein are housed or preserved such public records as have been, or are required to be, transferred to the national archives, and such other records as the Director may have acquired or received to form part of the public archives;

"public archives" means all public records and other records which are housed or preserved in the national archives or which are deemed to be part of the public archives;

"public records" means the records specified in the Schedule:

Provided that the Cabinet Secretary may, by order in the *Gazette*, amend the Schedule;

"records" includes not only written records, but records conveying information by any means whatsoever;

"Service" means the Kenya National Archives and Documentation Service established by section 3.

[Act No. 2 of 1990, ss. 4 and 7, Act No. 18 of 2018, Sch.]

3. Establishment of the Kenya National Archives and Documentation Service

(1) There shall be established, constituted and maintained a public department to be known as the Kenya National Archives and Documentation Service for which there shall be appointed a Director and such other staff as may be necessary for the purposes of this Act.

(2) The Director shall be responsible for, and shall have charge of, the Service and of the public archives, and shall take all practicable steps for the proper housing, control and preservation of all public archives and public records.

[Act No. 2 of 1990, ss. 5 and 7.]

4. Powers of Director

(1) Subject to this Act and any subsidiary legislation made thereunder and to any special or general directions which may be given by the Cabinet Secretary, the Director and any officer of the Service authorized by him shall have power to do all such things as may be necessary or expedient for the exercise of his duties and performance of his functions under this Act or any subsidiary legislation made thereunder, and without prejudice to the generality of the foregoing he may—

- (a) examine any public records, and advise on the care, preservation, custody and control thereof;
- (b) require the transfer to his custody of any public records which he considers should be housed in the national archives;
- (c) compile, make available and publish indexes and guides to, and calendars and texts of, all public archives;
- (d) prepare publications concerning the activities of and the facilities provided by the Service;
- (e) regulate the conditions under which members of the public may inspect the public archives or use the facilities provided by the Service;
- (f) provide for the making of, and authentication of, copies of and extracts from the public archives, for use as evidence in legal proceedings or for any other purpose;
- (g) make arrangements for the separate housing of films and other records which require to be kept under special conditions;
- (h) acquire, or accept gifts or testamentary bequests or loans of, any document, book, record, or other material of any description of historical or other value, or any copy or replica thereof which he considers should be added to the public archives;
- (i) take such steps as may be necessary to acquire and have returned to Kenya any public records or records of historical value to Kenya which may have been exported before the commencement of this Act;
- (j) lend, on such conditions as he considers necessary, any public archives for display at commemorative exhibitions or for other special purposes;
- (k) approve any institution, whether private or otherwise, as a place wherein may be deposited, housed or preserved either permanently or temporarily any public archives, records or records which have been declared historical records under section 9.

(2) It shall be the duty of every person responsible for, or having the custody of any public records to afford to the Director or any officer of the Service authorized by him reasonable access to such public records and appropriate facilities for the examination and selection thereof, and to comply without any undue delay with any lawful directions given by the Director or such officer concerning the assemblage, safe keeping and preservation of such public records or of the transfer of any such public records to the national archives to form part of the public archives.

(3) Any public records required by the Director, or any officer of the Service authorized by him, to form part of the public archives, may, with the consent of, and subject to such conditions as to their care, control, and preservation as may be imposed by, the Director, be retained by their office of origin, or may be temporarily returned thereto if required for administrative or special purposes, but

for the purposes of this Act such public records shall be deemed to be and remain part of the public archives.

[Act No. 2 of 1990, s. 7.]

5. Director's powers in respect of public records

(1) Notwithstanding anything contained in this Act or any subsidiary legislation made thereunder, the Director or any officer of the Service authorized by him, shall not have power to examine any public records, access to which is restricted by any written law or otherwise to a person or category of persons which does not include the Director or such officer.

(2) Where there are transferred to the national archives any public records containing information obtained from members of the public or from other sources the disclosure of which is, by or under any written law prohibited or restricted to certain purposes, the Director and all officers of the Service having access to such public records shall take such oath or make such declaration relating to secrecy (with such modifications as the circumstances require) as is required by or under that written law to be taken or made by persons having access to such records, prior to their transfer, and every person who takes such oath or makes such declaration shall, for the purposes of any provision of such written law making punishable any disclosure in contravention of the written law, be deemed to be a person employed in carrying out the provisions of that written law.

[Act No. 2 of 1990, s. 7.]

5A. National documentation and information retrieval service

(1) Every Principal Secretary or head of Government department or chief executive of a state corporation or local authority shall supply to the Director two copies of any published or generally circulated document or report produced by that office whether in hard copy or micro-film; and the creating office may prescribe the period for which the document shall remain restricted from circulation to other public offices or members of the public:

Provided that the restriction from circulation shall only relate to exempt information provided for in section 6.

(2) The Government Printer or his authorized agent shall supply to the service two copies of every publication produced by him.

(3) The Director of the Central Bureau of Statistics shall supply to the Service two copies of every publication produced by him.

(4) The Service shall, every six months, publish and circulate to all the major libraries in the country and in the link centres in the public services an accession list of reports and documents acquired.

(5) Where documentation link centres do not exist in Government ministries, departments and parastatal organizations, the Service shall initiate appropriate measures for the establishment and development of such centres.

(6) The Service shall, through the documentation link centres, coordinate the acquisition and preservation of reports and other generally circulated documents in the public service.

[Act No. 2 of 1990, s. 6, Act No. 31 of 2016, Sch.]

6. Public access to public archives

(1) Subject to any written law prohibiting or restricting the disclosure of information obtained from members of the public and to the provisions of this

section, public archives which have been in existence for a period of not less than thirty years may be made available for public inspection, and it shall be the duty of the Director to provide reasonable facilities at such times, and on the payment of the prescribed fees, for members of the public to inspect or obtain copies of, or extracts from, such public archives.

(2) Deleted by Act No. 31 of 2016, Sch.

(3) Deleted by Act No. 31 of 2016, Sch.

(4) Nothing in this section shall—

- (a) limit any right of inspection of any public archives or any category thereof to which members of the public had access before their transfer to the national archives; or
- (b) preclude the Director from permitting any person authorized by him in writing to have access to any public archives or any category thereof which are specified in such written authorization, save to the extent provided by any such written law as is referred to in subsection (1) and, in the case of public archives obtained otherwise than by transfer under section 5, subject to the terms and conditions on which such public archives were obtained.

[Act No. 2 of 1990, s. 7, Act No. 31 of 2016, Sch.]

7. Destruction of public archives

Where the Director is of the opinion that any public archives or records are duplicated, or that for some other special reason any public archives or records should not be preserved, he may, in consultation with the Commission on Administrative Justice and with the approval of the Cabinet Secretary and of such other person as the Cabinet Secretary considers to be primarily concerned with public archives or records of the category in question, authorize the destruction or other disposal of such public archives or records:

Provided that nothing in this section shall empower the Director to authorize the destruction or other disposal of any public archives or records obtained otherwise than by transfer under section 5 of this Act, contrary to the terms or conditions on which they were obtained, or, if they were obtained by gift, during the lifetime of the donor without his consent.

[Act No. 2 of 1990, s. 7, Act No. 31 of 2016, Sch.]

8. Offences

(1) Subject to section 7, any person who wilfully destroys or otherwise disposes of, defaces, mutilates or damages any public archives shall be guilty of an offence.

(2) Any person who wilfully destroys or otherwise disposes of any public records, except with, and in accordance with the terms and conditions of, the written consent of the Director shall be guilty of an offence.

(3) Any person who exports any public archives or public records except under and in accordance with the terms and conditions of a licence issued by the Director shall be guilty of an offence.

(4) Any person who removes from its place of custody any public archives except with, and in accordance with the terms and conditions of, the written consent of the Director shall be guilty of an offence.

(5) Any person who wilfully obstructs or hinders the Director or any officer of the Service authorized by him in the exercise of their duties or the performance of their functions under this Act or any subsidiary legislation made thereunder, or who wilfully disobeys or contravenes any lawful order or direction of the Director or such officer given in accordance with this Act or any subsidiary legislation made thereunder, shall be guilty of an offence.

(6) A licence or written consent issued under this section shall specify each record to which it relates and may contain such terms and conditions as the Director thinks necessary or desirable.

(7) Any person who is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings or to both.

[Act No. 2 of 1990, s. 7.]

9. Export of historical records

(1) If the Director is satisfied that any record which is in, or was made in, Kenya is of historical value to Kenya, he may, by notice in the *Gazette*, or by writing under his hand served on the person having the custody of such record, declare such record to be an historical record, and prohibit the export thereof except under and in accordance with the terms and conditions of a licence issued by the Director.

(2) A licence issued for the export of an historical record declared as such under this section shall contain a description of the record sufficient to identify it and may contain such terms and conditions as to the custody, use, preservation and return of the record as the Director thinks fit.

(2A) A licence under this subsection shall be applied for and issued electronically.

(3) Any person aggrieved by the declaration of any record as an historical record, or by the refusal of the Director to issue a licence for the export of such record, or by any terms and conditions contained in a licence issued by the Director under this section, may appeal to the Cabinet Secretary whose decision thereon shall be final and shall not be questioned in any court.

(4) Any person who—

- (a) knowing any record to be declared an historical record under this section, exports or attempts to export it without a licence issued by the Director; or
- (b) contravenes or fails to comply with the terms and conditions of any licence issued to him under this section; or
- (c) knowing any record to be declared an historical record under this section, wilfully destroys or otherwise disposes of, defaces, mutilates or damages such record or, if he has custody of such record, fails to take all reasonable steps to preserve and protect it, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings or to both.

[Act No. 2 of 1990, s. 7, Act No. 25 of 2022, Sch.]

10. Legal validity of public archives

When it is a requirement of the validity of any public record that it be kept in or produced from legal custody, the validity of such record shall not be affected by the fact of its transfer to the national archives.

11. Certified copies of public archives admissible as evidence

A copy of or extract from any public archives purporting to be duly certified as a true and authentic copy or extract by the Director, or by an officer of the Service authorized by him in that behalf, and authenticated with the official seal of the Service, shall be admissible in evidence in any proceedings, without further proof, if the original record would have been admissible in evidence in such proceedings.

[Act No. 2 of 1990, s. 7.]

12. Official seal of Service

(1) There shall be an official seal of the Service of a design approved by the Cabinet Secretary, which seal shall be judicially noted.

(2) The seal of the Service shall be kept in the custody of the Director and may be used by him or by an officer of the Service authorized by him in that behalf for the purposes of the Service.

[Act No. 2 of 1990, s. 7.]

13. Copyright

Where any work in which copyright subsists, or a reproduction of such work, is comprised in any public archives which are open to public inspection under this Act, the copyright in such work shall not be deemed to have been infringed by the making or the supplying to any person of any reproduction of the work by or under the direction of the Director:

Provided that, in its application to any public archives obtained otherwise than under section 5 this section shall have effect subject to any express terms or conditions under which the same was obtained.

[Act No. 2 of 1990, s. 7.]

14. Public Archives Advisory Council

(1) The Cabinet Secretary may by regulations made under this Act establish and constitute a Council to be known as the Public Archives Advisory Council, and may, subject to the provisions of this Act provide for matters incidental to and connected with the establishment and constitution of such Council, and the functions thereof.

(2) The functions of the Public Archives Advisory Council shall be to advise the Cabinet Secretary on all matters relating to the location, preservation and use of public archives, access by members of the public to the public archives, and the export under licence of any public archives, public records or historical records.

[Act No. 9 of 1967, Sch.]

15. Regulations

The Cabinet Secretary may make regulations generally for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing may make regulations providing for—

- (a) the admission of the public to the national archives and the inspection by the public of the public archives;
- (b) the transfer of any public records to the national archives;
- (c) the responsibilities of persons having the custody of public records;
- (d) the examination, disposal or destruction of public archives and public records;

- (e) the conditions under which public archives may be reproduced, or published or extracts made therefrom;
- (f) the issuing of licences for the exportation from Kenya of public archives, public records or historical records, or the terms and conditions which may be attached to such licences; and
- (g) the fees to be paid for access to the national archives or the use of the public archives or the facilities or services provided by the Service.

16.

[Spent]

17.

[Spent]

SCHEDULE

[s. 2]

PUBLIC RECORDS

1. The records of any Ministry or Government Department, and of any commission, office, board or other body or establishment under the Government or established by or under an Act of Parliament:

Provided that nothing referred to in this paragraph shall include the records of the Public Trustee or the Registrar-General relating to individual trusts or estates.

2. The records of the High Court and of any other court or tribunal.

3. The records of Parliament and of the Electoral Commission.

4. The records of any local authority or other authority established for local government purposes.
