

THE PUBLIC ARCHIVES ACT, 1965**No. 32 of 1965***Date of Assent: 24th November 1965**Date of Commencement: By Notice*

ARRANGEMENT OF SECTIONS

Section

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An Act of Parliament to establish the Public Archives Service and to provide for the preservation of public archives and public records and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Kenya, as follows:—

Short title and commencement.

1. (1) This Act may be cited as the Public Archives Act, 1965, and subject to the provisions of subsection (2) of this section shall come into operation on such date as the Minister shall, by notice in the Gazette, appoint.

(2) Section 6 of this Act shall not, save to the extent that the Chief Archivist may authorize any person to have access to any public archives or any category thereof in accordance

with section 6 (4) (b), come into operation until the Minister has, by notice in the Gazette, declared the public archives to be open for public inspection.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Chief Archivist” means the person appointed to that office in accordance with the provisions of section 3 of this Act;

“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 Chief Archivist 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 such records as may be prescribed in the Schedule to this Act:

Provided that the Minister may, by order in the Gazette, amend the said Schedule;

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

“Service” means the Public Archives Service established under section 3 of this Act.

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

Establishment
of Public
Archives Service.

(2) The Chief Archivist 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.

4. (1) Subject to this Act and any subsidiary legislation made thereunder and to any special or general directions which may be given by the Minister, the Chief Archivist, or any officer of the Service authorized by him shall have power to do all such things as may be necessary or expedient for the

Powers of
Chief Archivist.

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 indices 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 from Kenya prior to 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 in accordance with the provisions of section 9 of this Act.

(2) It shall be the duty of every person responsible for, or having the custody of any public records to afford to the Chief Archivist 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 Chief Archivist 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 Chief Archivist 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 Chief Archivist, 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.

5. (1) Notwithstanding anything contained in this Act or any subsidiary legislation made thereunder, the Chief Archivist, 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 Chief Archivist or such officer.

Chief Archivist's
powers in
respect of
public records.

(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, in accordance with any written law prohibited or restricted to certain purposes, the Chief Archivist 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 in accordance with the relevant 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.

Public access
to public
archives.

6. (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 Chief Archivist to provide reasonable facilities at such times, and on the payment of such fees as may be prescribed by regulations made under this Act, for members of the public to inspect or obtain copies of, or extracts from, such public archives.

(2) The Chief Archivist may in respect of any public archives or any category thereof certified to him by the person by whom, or in charge of the office from which, the records concerned were transferred to the national archives, that the public archives or category thereof concerned are of a kind which ought to be made available for public inspection, order that the said public archives or category thereof shall be made available for public inspection notwithstanding that they have not been in existence for thirty years.

(3) Notwithstanding the provisions of subsection (1) of this section, the Chief Archivist may, in respect of any public archives or any category thereof certified to him by the person by whom, or in charge of the office from which, the records concerned were transferred to the national archives that the said public archives or category thereof are of a kind which ought not to be made available for public inspection, order that the said public archives or category thereof shall not be available for public inspection notwithstanding that they have been in existence for more than thirty years, or shall not be available for public inspection until the expiration of such further period as may be specified in that or any subsequent order.

(4) Nothing in this section shall be construed—

(a) as limiting 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) as precluding the Chief Archivist, save to the extent provided by any such written law as is referred to in subsection (1) of this section and, in the case of public archives obtained otherwise than by transfer under the provisions of section 5 of this Act subject

to the terms and conditions on which such public archives were obtained, 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.

7. Where the Chief Archivist 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, with the approval of the Minister and of such other person as the Minister 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:

Destruction
of public
archives.

Provided that nothing in this section shall empower the Chief Archivist to authorize the destruction or other disposal of any public archives or records obtained otherwise than by transfer under the provisions of 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.

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

Offences.

(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 Chief Archivist shall be guilty of an offence.

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

(5) Any person who wilfully obstructs or hinders the Chief Archivist 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 Chief Archivist or such officer given in accordance with the provisions of this Act or any subsidiary legislation made thereunder shall be guilty of an offence.

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

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

9. (1) If the Chief Archivist 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 from Kenya except under and in accordance with the terms and conditions of a licence issued by the Chief Archivist.

(2) A licence issued for the export from Kenya of an historical record declared as such under the provisions of this section shall contain a description of such 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 Chief Archivist thinks fit.

(3) Any person aggrieved by the declaration of any record as an historical record, or by the refusal of the Chief Archivist to issue a licence for the export from Kenya of such record, or by any terms and conditions contained in a licence issued by the Chief Archivist in accordance with the provisions of this section, may appeal to the Minister 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 in accordance with the provisions of this section, exports or attempts to export the same from Kenya without a licence issued by the Chief Archivist; or
- (b) contravenes or fails to comply with the terms and conditions of any licence issued to him under the provisions of this section; or

(c) knowing any record to be declared an historical record in accordance with the provisions of 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 shall be liable to imprisonment for a period not exceeding six months or to a fine not exceeding five thousand shillings or to both such imprisonment and such fine.

10. 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.

Legal validity
of public
archives.

11. A copy of or extract from any public archives purporting to be duly certified as a true and authentic copy or extract by the Chief Archivist, 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.

Certified copies
of public
archives
admissible as
evidence.

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

Official seal
of Service.

(2) The seal of the Service shall be kept in the custody of the Chief Archivist 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.

13. 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 in accordance with the provisions of 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 Chief Archivist:

Copyright.

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

Public Archives
Advisory
Council.

14. (1) The Ministry 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 Minister 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.

Regulations.

15. The Minister 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.

Amendment of
Cap. 14.

16. Section 2 of the Records Disposal Act is amended—

- (a) by inserting immediately after the words "Chief Justice" which appear in subsection (1) thereof the words "after consultation with the Chief Archivist, and subject to the provisions of the Public Archives Act, 1965,"; and

(b) by substituting for the words "Minister may" which appear in subsection (2) thereof the words "Attorney-General may, after consultation with the Chief Archivist, and subject to the provisions of the Public Archives Act, 1965,".

32 of 1965.

17. The Records Disposal (Courts) Rules and the Records Disposal (Registrar-General) Rules are hereby revoked.

Revocation
of Cap. 14
Sub. Leg.

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 Provincial Council, local authority or other authority established for local government purposes.