

CHAPTER 309

THE RECORDS AND ARCHIVES MANAGEMENT ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 309

THE RECORDS AND ARCHIVES MANAGEMENT ACT

An Act to establish the Records and Archives Management Department to provide for the proper administration and better management of public records and archives throughout their life cycle, to repeal the Records (Disposal) Ordinance *, and the National Archives Act *, and for connected matters.

[1st August, 2002]

[G.N. No. 398 of 2002]

Act No. 3 of 2002

WHEREAS it is necessary to improve the arrangements for the life-circle management of the public records and archives of the United Republic of Tanzania as an essential component of effective administration and accountable government;

AND WHEREAS to ensure that public offices create adequate records of their actions and transactions, that those records are properly maintained for so long as there is a continuing need for them;

AND WHEREAS that the disposal of those for which there is not further need is effected in an authorised and timely manner; and to identify and safeguard those records which are of enduring value and which should be preserved as archives and made available for public consultation;

NOW THEREFORE BE IT ENACTED:

PART I

PRELIMINARY PROVISIONS (ss 1-4)

[PCh309s1]1. Short title

This Act may be cited as the Records and Archives Management Act.

[PCh309s2]2. Interpretation

In this Act, unless the context otherwise requires:

"Advisory Board" means the Records and Archives Management Advisory Board;

"archival repository" means a building or part of a building in which archives are preserved and made available for consultation;

"archives" means records of enduring value selected for permanent preservation;

"current records" means records regularly used for the conduct of the current business of an institution or individual;

"Department" means the Records and Archives Management Department established under section 5 of this Act;

"Director" means the Director of the Records and Archives Management Department;

"heads of public offices" means ministers or other persons responsible for directing public offices;

"Minister" means the Minister responsible for the Records and Archives Management;

"National Archives" means the archival repository in which archives of the central institutions of the United Republic of Tanzania are preserved and made available for consultation;

"non-current records" means records no longer needed for current business;

"place of deposit" means a place appointed as such under section 15 of this Act;

"private records" means records other than public records specified in the Schedule to this Act;

"public office" means any institution, body or individual which creates, receives or maintains public records;

"public records" means the records specified in the Schedule to this Act;

"records" means recorded information regardless of form or medium created, received and maintained by any institution or individual in the pursuance of its legal obligations or in the transaction of its business and providing evidence of the performance of those obligations or that business;

"records centre" means a building designated for the low-cost storage, maintenance and communication of semi-current records pending their eventual disposal;

"retention and disposal schedule" means a document describing the recurring records of an institution or an administrative unit thereof, specifying which records should be preserved permanently as having enduring values as archives and authorising on a continuing basis and after the lapse of retention periods or the occurrence of specified actions or events, the disposal by destruction or other means of the remaining records;

"semi-current records" means records required only infrequently for the conduct of current business; for the purposes of this Act files and other assemblies of records on which no action has been recorded for three years shall be regarded as semi-current records.

[PCh309s3]3. Application

This Act shall extend to Tanzania Zanzibar in relation to records of the Government, Parliament and Court of Appeal of the United Republic.

[PCh309s4]4. Reckoning of time

(1) Any period of time specified by this Act shall run from the first day of January in the next year after that in which the records were created.

(2) Where records created on different dates are for administrative purposes kept together on one file or other assembly all the records on that file or assembly shall be treated for the purposes of this Act as having been created when the latest of those records was created.

PART II

RECORDS AND ARCHIVES MANAGEMENT DEPARTMENT (ss 5-8)

[PCh309s5]5. Establishment of Department

(1) There is hereby established a Records and Archives Management Department (hereinafter referred to as "the Department") for the United Republic of Tanzania.

(2) The Records and Archives Management Department shall have an official seal of a design approved by the Minister.

(3) The Seal of the Department shall be kept in the custody of the Director and may be used for the purposes of the Department and for the purposes of any place of deposit for which no separate seal is provided.

(4) The official seal of the Records and Archives Management Department and any seal provided under this Act for the purposes of any place of deposit shall be judicially noticed.

(5) The Department shall be responsible to the Minister, who shall be advised by the Records and Archives Management Advisory Board (hereafter referred to as "the Advisory Board").

[PCh309s6]6. Functions of the Department

(1) The Department shall contribute to the efficiency, effectiveness and economy of the Government of the United Republic by—

- (a) ensuring that public offices follow good record keeping practices;
- (b) establishing and implementing procedures for the timely disposal of public records of no continuing value;
- (c) advising on best practices and established standards in record keeping in the public service; and
- (d) establishing and implementing procedures for the transfer of public records of enduring value for preservation in the National Archives or such other archival repository as may have been established under this Act.

(2) The Department shall preserve and make available for consultation public records selected for preservation in the National Archives or any other archival repository under the control of the Director.

(3) The Department shall occupy and utilise such buildings as may be necessary for the discharge of its functions and these shall include a records centre or centres for the proper keeping of semi-current records. Public offices may set up their own records centre for the proper keeping of semi-current records, subject to the approval of the Director who shall have a right to inspect such centres.

(4) The Department shall be entitled to receive one copy of every publication produced by the Parliament, government and higher courts of the United Republic and of every publication and dissertation produced on the basis of archival research carried out in the United Republic, without making any payment in respect of such publications and dissertations.

[PCh309s7]7. The Records and Archives Management Advisory Board

(1) There is hereby established a Records and Archives Management Advisory Board for the Department referred to in this Act as the Advisory Board.

(2) The Advisory Board shall consist of—

- (a) a Chairman appointed by the President;
- (b) the Director of the Department;
- (c) the Director of the National Archives of Zanzibar;
- (d) one member representing the Ministry responsible for finance;
- (e) one member representing the Ministry responsible for legal affairs;

(f) one member representing the Ministry responsible for education and culture;

(g) not more than five other members including—

(i) one member from Zanzibar appointed by the Minister in consultation with the Minister in Zanzibar responsible for archives;

(ii) two women members, appointed by the Minister who have experience and ability in records management or archival research or such other experience or qualifications as to enable them make a useful contribution to the work of the Advisory Board.

(3) The appointed members of the Advisory Board shall serve for a term of three years and shall be eligible for re-appointment for one further term.

(4) The Advisory Board shall be responsible for—

(a) advising the Minister generally on matters relating to the management of the public records and archives of the United Republic;

(b) advising and supporting the Director of the Records and Archives Management Department;

(c) such other matters as this Act may specifically assign to it or the Minister may direct.

(5) The Advisory Board shall meet as often as it considers necessary, but not less than once a year. The quorum of its meetings shall be seven members.

(6) Members of the Advisory Board shall elect one of its members to be a Vice-Chairman and the Advisory Board shall regulate its own meetings.

(7) Members of the Advisory Board shall be paid such allowance as may be determined by the Minister in consultation with the Minister responsible for finance.

[PCh309s8]8. The Director

(1) There shall be a Director of the Records and Archives Management Department and the office of the Director and of other staff of the Records and Archives Management Department shall be offices in the service of the United Republic.

(2) The Director shall be responsible for—

- (a) implementing the general policy established by the Minister;
- (b) management of the day-to-day activities of the Department;
- (c) such other matters as this Act may specifically assign to him or the Minister may direct.

(3) Within six months after the end of each fiscal year the Director shall submit to the Minister a report on the activities of the Department during that year.

(4) The Director and any person acting on his behalf or under his direction who requires to have access to or custody of public records which are classified as confidential or secret shall satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, person who normally have access to such public records.

PART III

RESPONSIBILITIES FOR PUBLIC RECORDS AND ARCHIVES (ss 9-15)

[PCh309s9]9. Responsibility of heads of public and parastatal offices for records

Heads of public offices shall be responsible for creating and maintaining adequate documentation of the functions and activities of their respective public offices through the establishment of good records keeping practices, including—

- (a) creating and managing current records within appropriate filing systems;
- (b) drafting retention and disposal schedules relating to records specific to each public office, with the assistance of the Director of the Department;
- (c) implementing retention and disposal schedules issued in accordance with paragraphs (d) and (e) of section 11 of this Act;
- (d) transferring semi-current records into the custody of the Director, except in so far as they may remain classified as confidential or secret on grounds of—
 - (i) national security;
 - (ii) maintenance of public order;
 - (iii) safeguarding the revenue; or
 - (iv) protection of personal privacy,and deferment of their transfer for a further specified period has been approved by the Minister by regulation under section 28 of this Act; and
- (e) appointing a qualified officer who shall be a co-ordinator of records management activities in the department or ministry.

[PCh309s10]10. Responsibility of heads of public and parastatal offices for the management of semi-current records

Heads of public offices shall be responsible for co-operation with the Director in the management of semi-current records and in particular for—

(a) maintaining the integrity of all semi-current records returned temporarily under paragraph (b) of section 12 of this Act;

(b) approving access by third parties, other than authorised personnel of the Department and of the public office which created them or its successor in function, or as provided for in subsection (4) of section 6 of this Act;

(c) maintaining semi-current records whose transfer has been deferred under paragraph (d) of section 9 of this Act in conditions comparable to those provided by the Director in records centres under his control;

(d) implementing retention and disposal schedules relating to semi-current records whose transfer has been deferred under paragraph (d) of section 9 of this Act and transferring records of enduring value into the custody of the Director or to such other place of deposit as may have been appointed under section 15 of this Act not later than twenty years from their creation, except in so far as further deferment of transfer for a specified period may have been approved by regulations made in accordance with section 28 of this Act.

[PCh309s11]11. Responsibility of the Director for records and archives

The Director shall be responsible for the co-ordination of record keeping work in public offices, parastatal organisation with powers of inspection, and in particular for—

(a) providing professional assistance, advice and guidance on the establishment and management of filing systems;

(b) establishing and ensuring compliance with standards for the management of public records;

(c) making arrangements for the necessary training of records staff in public offices;

(d) drawing up general retention and disposal schedules for approval and issue by the Minister, which schedules shall be sufficient authority for taking the action specified at the due date;

(e) agreeing with the heads of public offices retention and disposal schedules relating to records specific to each such office for approval and issue by the Minister, which schedules shall be sufficient authority for taking the action specified at the due date;

(f) ensuring that the provisions of retention and disposal schedules are implemented;

(g) authorising the disposal of public records other than as provided for by retention and disposal schedules;

(h) ensuring that retention and disposal schedules are reviewed and amended periodically as may be necessary, the review of each schedule to take place ten years after it was issued or earlier, at the Director's discretion.

[PCh309s12]12. Responsibility of the Director for semi-current records

The Director shall accept custody of semi-current records which have been scheduled for further retention and shall in particular—

(a) maintain such records within a records centre and provide therein—

(i) separate and secure storage accommodation for the maintenance of semi-current records which are classified as confidential or secret;

(ii) facilities for the consultation of semi-current records by duly authorised officers of the public office which created them or its successor in function;

(b) return semi-current records temporarily from his custody to the public office which created them or to its successor in function for the purposes of current administration;

(c) implement retention and disposal schedules in respect of semi-current records in his custody;

(d) appraise and dispose appropriately of semi-current records which are in his custody and are not covered by disposal schedules;

(e) arrange the transfer of records of enduring values into his custody or to such other place of deposit as may have been appointed under section 15 of this Act not later than twenty years from their creation;

(f) inspect and advise the Minister on the suitability of premises in which it is proposed that records whose transfer has been deferred under subsection (9)(d) above should be held.

[PCh309s13]13. Responsibility of the Director for preservation of all public records

(1) The Director shall be responsible for the preservation of all public records of enduring values other than any whose transfer may have been deferred under paragraph (d) of section 10 of this Act or which are held in a place of deposit appointed under section 15 of this Act, and shall in particular—

- (a) take charge of the National Archives;
- (b) provide therein and in any other archival repositories under his control suitable conditions for the preservation and consultation of their holdings;
- (c) arrange and describe those holdings and provide appropriate guides, lists, indexes and other finding aids to facilitate access to them;
- (d) ensure that reasonable facilities are available to the public for inspecting and obtaining copies of public records in the National Archives or any other archival repository under his control, insofar as such records are open to inspection under section 16 of this Act;
- (e) ensure that reasonable facilities are available to duly authorised officers of the public office which created them or its successor in function for inspecting and obtaining copies of public records in the National Archives or any other archival repository under his control.

(2) The Director may do all such things as appear to him necessary or expedient for maintaining the utility of the National Archives and any other archival repository under his control, and may in particular—

- (a) prepare publications, and sell them and other publications or publications or objects related to the public records;
- (b) prescribe rules to be observed by those wishing to consult public records in the National Archives or any other archival repository under his control;

(c) arrange exhibitions and lend public records for exhibitions elsewhere subject to conditions which he may specify, except that loans outside the United Republic may not be made without the assent of the Minister on the advice of the Advisory Board;

(d) dispose of public records in his custody if it seems to him that they are not of enduring value, subject to the agreement of the head of the public office in which they were created or its successor in function or of the Minister on the advice of the Advisory Board;

(e) accept private records for safekeeping and acquire private records by gift, bequest or deposit;

(f) enter into arrangements with other institutions for the joint management of conservation and restoration, reprographic or other technical facilities.

[PCh309s14]14. Records of local authorities

(1) The Director shall establish a network of branch offices of the Department each serving one or more regions of the United Republic.

(2) The head of each such branch office shall be responsible to the Director for implementing the general policy of government in respect of public records of local authorities in the regions which that branch office serves.

(3) In respect of public records created, received and maintained by local authorities the responsibilities set out under sections 9 and 10 of this Act shall be those of the heads of such local authorities and the responsibilities set out under sections 11, 12 and 13 shall be those of the heads of the appropriate branch offices of the Department.

(4) Records centres and archival repositories established in the regions shall be regarded as being under the control of the Director of the Records and Archives Management Department and the public records therein as being in his custody for the purposes of this Act.

(5) Where there is no archival repository within the regions served by a branch office of the Department, the Director may direct the transfer of archives to the National Archives or to any other archival repository under his control until such time as an archival repository to serve those regions may be established.

[PCh309s15]15. Places of deposit

(1) Where it appears to the Minister on the advice of the Advisory Board that a place other than the National Archives or another archival under the control of the Director—

(a) affords suitable facilities for the safekeeping and preservation of public records of permanent value and for their consultation by the public; and

(b) is adequately and independently funded for those purposes,

he may appoint it as a place of deposit for specified public records.

(2) Before the Minister makes such an appointment, and periodically thereafter, the Director shall inspect the proposed place of deposit and report to the Minister and the Advisory Board on its suitability.

(3) The authority responsible for the public records in a place of deposit shall prepare appropriate guides, lists, indexes and other finding aids to those records and submit copies to the Director.

(4) If a place of deposit fails to maintain facilities or to submit copies of its finding aids or ceases to be adequately funded, the Minister on the advice of the Advisory Board may revoke its appointment.

PART IV

ACCESS TO PUBLIC RECORDS (s 16)

[PCh309s16]16. Thirty years rule

(1) Subject to any written law prohibiting or limiting the disclosure of information in any public record, public records in the National Archives, in any other archival repository under the control of the Director or in a place of deposit appointed under section 15 of this Act, shall be available for public inspection after the expiration of a period of thirty years from their creation, calculated as prescribed in subsection (2) of section 4 of this Act, except in so far as a longer or shorter period may have been prescribed by the Minister by regulations made in accordance with section 28 of this Act at the request of the head of the public office which created the records or its successor in function.

(2) At the expiration of the period of thirty years prescribed in subsection (1) above, any records which have been classified as confidential or secret shall cease to be so classified and to be subject to the National Security Act * except in so far as they may fall into the categories specified in subsection (3) and a longer period than thirty years has been prescribed under subsection (1).

(3) A longer period than thirty years may be prescribed under subsection (1) only when there is a continuing need to restrict public access on grounds of—

- (a) national security;
- (b) maintenance of public order;
- (c) safeguarding the revenue; or
- (d) protection of the privacy of living individuals.

(4) Public records to which members of the public had access before transfer into the custody of the Director or to a place of deposit appointed under section 14 of the Act shall continue to be open to public inspection irrespective of their age.

PART V

FINANCIAL PROVISIONS (ss 17-20)

[PCh309s17]17. Funds and resources of the Department

The funds of the Department shall include any sums which may—

- (a) be appropriated by Parliament for the purposes of the Department;
- (b) be payable to the Department by way of donations, gifts or bequests;
- (c) accrue to the Department by way of sales, fees or other payments for

services rendered by the Department.

[PCh309s18]18. Fees

Fees may be charged for the supply of copies, the certification of copies, the consultation of records and the provision of other services by the staff of the Department. Such fees shall be as prescribed by regulations made under section 28 of this Act, under which it may authorise the remission or reduction of the fees in prescribed cases.

[PCh309s19]19. Accounts

(1) The Director shall cause to be kept proper books of accounts and records in respect of the receipt and expenditure of funds accruing to the Department.

(2) The books and accounts of the Department shall be audited each year by the Office of the Controller and Auditor-General.

[PCh309s20]20. Annual estimates

The Director shall, not later than three months before the end of each financial year, prepare and submit to the Minister details estimates of income and expenditure of the Department for the next financial year.

PART VI

OFFENCES AND PENALTIES (ss 21-22)

[PCh309s21]21. Removal, destruction or mutilation

Any person who removes any public record from a public office without proper authorisation or who destroys any public record except as provided for in sections 9 to 13 of this Act who wilfully mutilates any public record in a public office, in the National Archives or any other archival repository under the control of the Director or in a place of deposit appointed under section 15 of this Act, commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both such imprisonment and fine.

[PCh309s22]22. Illegal export

Any person who contravenes the provisions of section 27 of this Act, commits an offence and shall be liable on summary conviction to a fine of five hundred thousand

shillings or to imprisonment for a term not exceeding twelve months or to both such imprisonment and fine and the records or documents shall be put at the disposal of the Director, who may take them into his custody, whereupon the provisions of this Act relating to public records shall have effect on any which are not already public records.

PART VII

LEGAL PROVISIONS (ss 23-24)

[PCh309s23]23. Validity of public records

(1) The legal validity of any public record shall not be affected by its removal under the provisions of this Act, or the National Archives Act *, to the custody of the Director or to a place of deposit appointed under section 15 of this Act.

(2) A copy of or extract from a public record in the custody of the Director examined and certified as a true and authentic copy by an officer authorised by him and bearing the seal of the Department shall be admissible as evidence in any proceedings without any further or other proof thereof if the original record would have been admissible as evidence in those proceedings.

[PCh309s24]24. Copyright

(1) In making available for inspection or providing copies of public records in his custody, the Director shall not be in breach of any private copyright therein.

(2) The provision of copies of public records by the Director does not involve the transfer of any copyrights therein to the recipients.

(3) The public action of facsimile copies, verbatim transcripts or literal translations of public records in the custody of the Director in which copyright of the Government of

the United Republic subsists is prohibited except with the consent of the Director and subject to such conditions as he may require and to the payment of such fees as may be prescribed by regulations made in accordance with section 18 of this Act.

PART VIII

MISCELLANEOUS PROVISIONS (ss 25-31)

[PCh309s25]25. Statutory deposit

(1) Public offices shall deposit in the National Archives two copies of every publication which they issue.

(2) Nothing in this Act shall abrogate any existing right of the Director to receive records under any other provision for statutory deposit.

[PCh309s26]26. Private records

(1) Where it appears to the Minister that any private records, or any part of them, are of national importance, and that it is in the public interest that they be acquired, he may, after consultation with the owner of the private records and subject to the following provisions of this section, acquire them, or any part of them, and declare them to be public records shall have effect.

(2) The United Republic shall, after consultation with the Minister responsible for finance, pay full and fair compensation in respect of the private records so acquired after consultation with the owner.

(3) The amount of compensation shall be payable in such manner and in such instalments as shall be determined by the Minister responsible for finance after consultation with the person entitled to that compensation.

(4) The compensation shall constitute a charge on and be paid out of the Consolidated Fund.

[PCh309s27]27. Export of historical documents

(1) The export from the United Republic of public or private records which relate to Tanzania and are of historical value is prohibited except in accordance with the terms of a licence to export issued by the Director with the approval of the Minister.

(2) A licence issued under the provisions of subsection (1) shall specify each document to which the licence relates and contain such conditions as the Director may prescribe.

(3) For the purposes of sections 26 and 27 of this Act, the Director may establish a register of private records and archives within the United Republic.

[PCh309s28]28. Regulations

(1) The Minister may make regulations providing for the better carrying out of the objects and purposes of this Act.

(2) All regulations made under this Act shall be issued by the Minister on the submission of the Director and on the advice of the Advisory Board.

[PCh309s29]29. Transitional provisions

Records and other materials in the custody of the Director of the National Archives on the day before the coming into operation of this Act are hereby transferred to the custody of the Director of the Records and Archives Management Department subject to any terms and conditions that were applicable to those records and other materials on that day.

[PCh309s30]30. Deferment of transfers

The Director may defer the acceptance of transfers of semi-current records and archives into his custody if accommodation for them is not available or other arrangements for their reception cannot be made.

[PCh309s31]31. Repeals and savings

(1) The Records (Disposal) Ordinance *, and the National Archives Act *, and any Rules and Regulations made thereunder are hereby repealed, saving that any Rules under the Records (Disposal) Ordinance *, in force at the time of coming into operation of this Act shall continue in force until superseded by retention and disposal schedules issued under paragraphs (d) and (e) of section 11 of this Act.

(2) All references in other Acts and Regulations to the National Archives of the United Republic or to the Director of the National Archives shall be construed as applying to the Records and Archives Management Department or to the Director thereof and all references to the Records (Disposal) Ordinance *, the National Archives Act *, shall be construed as referring to this Act.

SCHEDULE

Save for the records of the Public Trustee or of the Administrator-General which relate to individual trusts or estates, the following are public records—

1. The records and archives belonging to the United Republic created, received and maintained:

(a) in the offices of the President and of the Cabinet;

(b) by any ministry, department, commission, committee, office or other body under the Government of the United Republic or by the Minister or any other officer or employee thereof;

(c) by any post representing the Government of the United Republic outside the country or any officer serving in such a post;

(d) by any information or unit of the armed forces of the United Republic or any officer of such a formation or unit;

(e) by the Parliament or Electoral Commission or any committee or officer thereof;

(f) by the Court of Appeal, High Court or any other court or tribunal with jurisdiction within the United Republic or by any Judge, Management or other officer of such a court;

(g) by any local authority or officer thereof;

(h) by any predecessor or successor of any of the institutions, bodies or individuals designated in (a) to (g) above;

(i) by any other body or individual so designated by the Minister by regulations made in accordance with section 28 of this Act.

2. The records created, received and maintained:

(a) by any public corporation or parastatal organisation established by or under any written law other than the Companies or by any official or employee thereof;

(b) by any company or other body corporate established under the Companies Act * in which the Government of the United Republic or a public corporation or a

parastatal organisations owns fifty percent or more of the issued share capital or by any official or employee thereof.

3. All public archives within the meaning of the National Archives Act *, in the custody of the National Archives of the United Republic, including its regional offices, at the time of coming into operation of this Act.

4. Any private records:

(a) taken into custody of the Director under the provisions of section 21(2) of this Act;

(b) acquired under the provisions of section 26 of this Act.