

CHAPTER 59:04
NATIONAL ARCHIVES AND RECORDS SERVICES
ARRANGEMENT OF SECTIONS

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An Act to provide for the establishment of the National Archives and Records Services of Botswana; to make provision for the preservation, custody, control and disposal of public archives including public records of Botswana; and for matters incidental thereto or connected therewith.

[Date of Commencement: 29th December 1978]

PART I

Introduction and Interpretation (ss 1-2)

1. Citation

This Act may be cited as the National Archives and Records Services Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"authorized officer" means an officer of the National Archives and Records Services authorized by the Director to do anything in accordance with the provisions of this Act;

"Council" means the National Archives and Records Services Advisory Council established under section 20;

"Director" means the Director of National Archives and Records Services appointed under section 5;

"historical records" means any records, other than public and judicial records, which are declared as such under section 15;

"judicial records" means any records constituting the official records of any proceedings before a court, commission or board of inquiry, other judicial or quasi-judicial body or person, which-

(a) are in the custody of-

(i) such court, commission, board, body or person;

(ii) any Ministry, Department, other agency of the Government or a prescribed body;
or

(iii) any person lawfully committed with such custody; or

(b) have been transferred to the National Archives and Records Services or place of deposit under the provisions of this Act;

"National Archives and Records Services" means the National Archives and Records Services of Botswana established under section 3;

"place of deposit" means a place of deposit declared as such under section 4;

"prescribed body" means any public body, corporation, society, association, institution, organization or any body of persons, whether incorporated or not, declared to be such by the Minister;

"private archive" means a record created or received by a private individual or body other than an agency of the Government.

"public archives" means-

(a) all public records which-

(i) are specified by the Director as being of enduring or historical value; and

(ii) have been transferred to the National Archives and Records Services or place of deposit under the provisions of this Act; and

(b) any records, documents or other material acquired for the National Archives and Records Services in terms of section 5(4)(h);

"public records" means-

(a) any records of the Government which-

(i) are in the custody of the Government; or

- (ii) have been transferred to the National Archives and Records Services or place of deposit under section 10;
- (b) any records of a prescribed body which are in the custody of such body or have been transferred to the National Archives and Records Services under section 10; or
- (c) any judicial records;

"**records**" includes any electronic records, manuscript, newspaper, picture, painting, document, register, printed material, book, map, plan, drawing, photograph, negative and positive pictures, photocopy, microfilm, cinematograph film, video tape, magnetic tape, gramophone record or other transcription of language, picture or music, recorded by any means capable of reproduction and regardless of physical form and characteristics.

PART II

National Archives and Records Services and Places of Deposit (ss 3-4)

3. Establishment

There is hereby established the National Archives and Records Services of Botswana for the storage and preservation of public archives other than those which are to be kept in some other place of deposit.

3A. Functions of the National Archives and Records Services

The functions of the National Archives and Records Services shall be-

- (a) to provide records and information management service to government agencies; and
- (b) to collect, preserve and access the nation's documentary heritage.

4. Other places of deposit

(1) If it appears to the Minister that facilities exist for the safekeeping and preservation of public records and their inspection by the public in some place other than the National Archives and Records Services and that convenience so requires, he may, with the agreement of the authority or person responsible for that place, declare that place to be a place of deposit for public records of any category.

(2) Where the Minister declares any place to be a place of deposit for any category of public records, such public records which are selected for preservation shall be transferred to and preserved in that place of deposit in lieu of the National Archives and Records Services and the provisions of this Act shall have effect accordingly.

PART III

Director of National Archives and Records Services and Custodians of Places of Deposit (ss 5-9)

5. Director of National Archives

(1) There shall be a Director of the National Archives and Records Services who shall be a public officer.

(2) The Director shall, subject to such directions as may be given by the Minister from time to time, be the principal administrative officer in charge of the National Archives and Records Services and shall be the custodian of the public archives.

(3) Where a Director has not been appointed in terms of subsection (1), any officer of the National Archives and Records Services may be designated to discharge the functions of a Director conferred by the provisions of this Act, and any references to "the Director" in this Act shall be construed as a reference to such public officer.

(4) Without prejudice to the generality of subsection (2), and subject to such directions as may be given by the Minister, the Director-

- (a) shall direct, manage and control the National Archives and Records Services;
- (b) shall preserve, describe and arrange all public archives;
- (c) shall accept and store any public records which are transferred to the National Archives and Records Services;
- (d) may, if in his opinion it is necessary for their better preservation, bind or repair any public archives;

- (e) shall examine any public records in the custody of any Ministry, Department, or other agency of the Government and any judicial records and advise the custodian thereof as to the care, preservation, custody and control of such public records;
- (f) shall examine any public records of a prescribed body and advise it as to the care, preservation, custody and control of such public records;
- (g) may reproduce or publish such public archives as he may deem fit:
 Provided that, in the case of public archives falling within paragraph (b) of the definition of "public archives", no such reproduction or publication shall take place without the consent of the person from whom such archives were acquired;
- (h) may, on behalf of the Government, acquire by purchase, donation, bequest or otherwise any private archive which in the opinion of the Director is or is likely to be of enduring or historical value;
- (i) may compile, make available and publish indices and guides to public archives in the National Archives and Records Services;
- (j) may require to be transferred to his custody or the custodian at a place of deposit any public records which he considers should be housed in the National Archives and Records Services or a place of deposit;
- (k) may devise procedures relating to the listing, scheduling and destruction of public records and their transfer to, or withdrawal from, the National Archives and Records Services or place of deposit;
- (l) may prepare publications concerning the activities of, and the facilities provided by, the National Archives and Records Services or any place of deposit;
- (m) may regulate the conditions under which members of the public may inspect public archives in, or use the facilities of the National Archives and Records Services or any place of deposit;
- (n) may provide for the making and authentication of copies of, and extracts from, public archives required as evidence in legal proceedings or for any other purpose approved by the Minister;
- (o) may lend, with the consent of the Minister or the owner thereof if the document is not owned by the Government, any record from the National Archives and Records Services or place of deposit for display at commemorative, trade, art or international exhibition or for any other special purpose approved by the Minister, subject to such conditions as the Minister or the owner thereof may impose with respect to such loan;
- (p) may perform such other functions as are necessary for the purpose of the direction, management and control of the National Archives and Records Services; and
- (q) may, subject to the provisions of this Act, delegate any of his powers and duties under this Act.

6. Custodians of places of deposit

(1) The Minister shall, where he declares any place to be a place of deposit under section 4, make arrangements with the authority responsible for that place for the appointment, as occasion may require, of a suitable person as custodian of the public archives kept therein.

(2) A person appointed custodian of the public archives in any place of deposit shall, subject to the direction of the Minister and to the supervision and instructions of the Director, have the charge of, and be responsible for the preservation of, the public archives therein.

(3) The Director shall have access to every place of deposit, and may exercise, in relation to any place of deposit and to the public archives therein, the functions and powers conferred on him by this Act in relation to the National Archives and Records Services and the public archives therein, and may delegate to the custodian of the public archives in any such place any of such functions and powers other than the power of affixing the seal of the National Archives and Records Services.

7. Prescribed bodies

The Minister may, by order published in the *Gazette*, declare any public body, corporation, society, association, institution, organization or any body of persons, whether incorporated or not, to be a prescribed body for the purposes of this Act and the documents of such body shall be public records.

8. Seals

(1) There shall be an official seal of the National Archives and Records Services of a design approved by the Minister.

(2) The seal of the National Archives and Records Services shall be kept in the custody of the Director and may be used for the purposes of the National Archives and Records Services and for the purposes of any place of deposit for which no separate seal is provided.

(3) The Minister may approve an official seal for the purposes of any place of deposit and any such seal shall be kept in the custody of the custodian of the public archives in such place.

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

9. Secrecy

(1) Every person appointed under or employed in carrying out the provisions of this Act shall regard and deal with all public records which are secret or confidential or to which access may be restricted as secret.

(2) Every person who is appointed under or employed in carrying out the provisions of this Act shall make an oath of declaration of secrecy in such manner and form as may be prescribed.

(3) Any person appointed under or employed in carrying out the provisions of this Act who, in contravention of the oath or declaration of secrecy made by him under subsection (2), discloses to any unauthorized person any information contained in public records referred to in subsection (1) or permits any unauthorized person to have access to such records shall be guilty of an offence.

PART IV

Selection of and Access to Public Archives (ss 10-13)

10. Selection, preservation and transfer of public records to National Archives and Records Services

(1) The Director or any authorized officer may examine public records which have not been transferred to the National Archives and Records Services or place of deposit and select those which ought to be preserved and transferred to the National Archives and Records Services or place of deposit.

(2) The Director or any authorized officer may inspect any public records notwithstanding that such records are classified as secret or confidential.

(3) Every person responsible for or having the custody of public records which have not been transferred to the National Archives and Records Services or place of deposit shall-

- (a) afford the Director and any authorized officer appropriate facilities for examination and selection in terms of subsection (1); and
- (b) provide for the assemblage and safe keeping, in accordance with any regulations made under this Act or the directions of the Director, of such public records as are selected for deposit and preservation in the National Archives and Records Services or place of deposit under subsection (1) pending their transfer to and deposit in the said National Archives and Records Services or place of deposit.

(4) Public records selected by the Director shall be transferred to the National Archives and Records Services or a place of deposit as the Director shall direct:

Provided that, subject to the approval of the Minister, the transfer of any such records to the National Archives and Records Services or place of deposit may be withheld for the time being if, in the opinion of the person having the custody thereof, the said records are required

for administrative purposes or ought to be retained for any other special reason and appropriate provision will be made for the preservation of such records.

11. Destruction of archives and public records

(1) Subject to subsection (2), no person shall destroy or otherwise dispose of, or authorize the destruction or other disposal of, any public records of any kind which are in his possession or control except with the written consent of the Director given under this section, and the Director may consult with any person whom he considers qualified to advise him as to the worth of such public records for permanent preservation before authorizing the destruction thereof.

(2) If it appears to the Director that any public archives in the National Archives and Records Services or public records selected for, but not transferred to, the National Archives and Records Services or a place of deposit are duplicated or that there is some other special reason why the archives or records should not be preserved, the Director shall, with the approval of the Minister and of such other Minister or other person, if any, who appears to the Minister to be primarily concerned with public archives or records of the category in question, authorize the destruction of such archives or records or, with such approval, their disposal in any other way:

Provided that nothing in this section shall authorize or empower the Director to authorize the destruction or disposal of any public archives obtained otherwise than by transfer under section 10 contrary to terms or conditions on which they were obtained or, if they were obtained by gift, during the life time of the donor without his consent.

(3) The Director may authorize the immediate destruction, or the destruction after the expiration of such specified period as may be agreed upon by the Director and the administrative head of the Ministry, Department, other agency of the Government or a prescribed body concerned of any specified public records that-

- (a) by reason of their number, kind or routine nature do not in his opinion possess any enduring value for preservation as public archives; and
- (b) are not required for reference after action is completed or after the expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Director and the administrative head.

(4) Any person who destroys or otherwise disposes of any public records or authorizes the disposal or destruction of such records other than in accordance with this section shall be guilty of an offence.

12. Access to public archives

(1) Subject to any written law prohibiting or limiting 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 20 years may be made available for public inspection, and the Director or custodian of a place of deposit shall provide reasonable facilities at such times, and on the payment of such fees as may be prescribed, for the public to inspect or obtain copies or extracts from public archives in the National Archives and Records Services or place of deposit:

Provided that a donor of public archives, other than public records, may specify appropriate conditions for access to such archives.

(2) Notwithstanding the provisions of subsection (1), the Minister 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 and Records Services, direct in writing that-

- (a) such public archives or category thereof shall not be made available for public inspection until the expiration of such further period as may be specified in that or any subsequent directive; or
- (b) such public archives or category thereof may be made available for public inspection

notwithstanding that such public archives have not been in existence for at least 20 years.

(3) The Minister may delegate to the Director his powers under subsection (2) to afford, restrict or withhold access to public archives.

(4) Nothing in this section shall be construed-

- (a) as limiting any right of inspection of any records to which members of the public had access before their transfer to the National Archives and Records Services or place of deposit; or
- (b) subject to the extent provided for by any such written law as is referred to in subsection (1), as precluding the Minister from permitting any person authorized by him to have access to any public archives or category thereof.

13. Inspection of public archives

(1) No person who is not an officer of the National Archives and Records Services shall without the written authority of the Director inspect any public archives which-

- (a) have been transferred to the National Archives and Records Services; and
- (b) (i) have been the subject of a directive made by the Minister under section 12(2)(a); or
- (ii) have not been in existence for at least 20 years, unless they are the subject of a directive made by the Minister under section 12(2)(b).

(2) Any person may inspect any public archives subject to-

- (a) the provisions of subsection (1); and
- (b) any condition or restriction imposed by the Director or the person from whom they were acquired.

(3) Subject to the provisions of subsections (1) and (2), the National Archives and Records Services shall be open to the public for the inspection of public archives during such hours as may be determined by the Director.

PART V

Exportation and Removal of Archives and other Documents (ss 14-15)

14. Restriction of exportation of or unauthorized removal of public archives and public records

(1) No person shall export from Botswana any public archives except under and in accordance with the terms of a permit issued by the Director under this section.

(2) No person shall remove-

- (a) any public archives from the National Archives and Records Services or a place of deposit without the written permission of the Director; or
- (b) any public record selected for, but not transferred to, the National Archives and Records Services or place of deposit from its place of custody without the written permission of the Director or the person in whose custody such record is kept.

(3) A permit granted under this section shall specify each record to which the permit relates and may contain such conditions as to the custody, use, preservation and return of the record as the Director or other person granting the same deems fit.

(4) Any person who contravenes the provisions of subsection (1) or (2) or fails to comply with the conditions of any permit granted to him under this section shall be guilty of an offence and shall be liable to a fine not exceeding P7,500 or to imprisonment for a term not exceeding five years, or to both.

(5) Nothing in this section shall apply to the removal from its place of custody of a public record selected for, but not transferred to, the National Archives and Records Services or place of deposit by any person in the service of the Government or otherwise employed in the office in which the same is kept in the course of his duties.

15. Declaration of historical records

(1) If the Director is satisfied that any record which is in, and was made in, Botswana is

of historical value to Botswana, he may, by order published in the *Gazette* and by writing under his hand served on the person having the custody of such record, declare the record to be a historical record and such record shall not be exported from Botswana except under and in accordance with the terms of a permit issued by the Director under this section.

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

(3) Any person who-

(a) exports or attempts to export a historical record from Botswana without a permit of the Director; or

(b) fails to comply with the conditions of any permit issued to him under this section, shall be guilty of an offence and shall be liable to a fine not exceeding P7,500 or to imprisonment for a term not exceeding five years, or to both.

(4) Any person aggrieved by the declaration of any record as a historical record under this section may appeal to the Minister and the decision of the Minister on any such appeal shall be final, and if the Minister allows the appeal under this section the Director shall forthwith revoke the declaration.

PART VI

Validity, Evidence and Copyright (ss 16-19)

16. Legal validity of public records

Where it is a requirement of the validity of any public record that it should be kept in or produced from legal custody, the validity of such record shall not be affected by its transfer from the appropriate office to the National Archives and Records Services or place of deposit.

17. Authentication of copies

A copy of or extract from any record in the National Archives and Records Services or place of deposit purporting to be duly certified as true and authentic by the Director, or by any authorized officer or by the custodian of the public archives in any place of deposit where such record is kept, and authenticated by having impressed thereon the official seal of the National Archives and Records Services or of the place of deposit, shall be admissible in evidence if the original record would have been admissible in evidence in any proceedings.

18. Copyright

Where any work in which copyright subsists or a reproduction of such work is comprised in any public archives which are open for public inspection in accordance with the provisions of this Act, the copyright in the work is not 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 archive obtained otherwise than by transfer to the National Archives and Records Services in accordance with section 10, the foregoing provisions of this section shall have effect subject to any express terms or conditions under which such archive was obtained.

19. Reproduction of public archives

(1) Subject to the provisions of subsection (2), no person shall publish or reproduce the whole or any part of the contents of any public archives or records which have been transferred to the National Archives and Records Services except-

(a) in the case of public archives mentioned in paragraph (a) of the definition of "public archives" in section 2 with the written permission of the Director and in accordance with such conditions as the Director may impose; and

(b) in the case of the public archives mentioned in paragraph (b) of the definition of "public archives" in section 2 with the written authority of the person from whom such archives were acquired.

(2) The provisions of subsection (1) shall not apply in relation to judicial records.

(3) Any person who contravenes the provisions of subsection (1) or fails to comply with any conditions imposed by the Director or any authorized officer shall be guilty of an offence and shall be liable to a fine not exceeding P7,500 or to imprisonment for a term not exceeding five years, or to both.

(4) Nothing in this section shall be construed as affecting or extending the law relating to copyright.

PART VII

Miscellaneous (ss 20-24)

20. National Archives and Records Services Advisory Council

(1) There is hereby established a Council to be called the National Archives and Records Services Advisory Council.

(1A) The Council shall consist of a Chairperson and not more than 10 members appointed by the Minister from persons who possess knowledge or who have an interest in matters relating to archives.

(1B) The Chairperson shall be appointed from among persons who are not members of staff or otherwise employed by the National Archives and Records Services.

(2) A member of the Council shall hold office for such period as the Minister may determine.

(3) The functions of the Council shall be to advise the Minister on all matters relating to the retention or destruction of public records, transfer of public records to the National Archives and Records Services or places of deposit, access by members of the public to the public archives and the services of the National Archives and Records Services or places of deposit, and on such other matters relating to the public archives and to historical records as the Minister may refer to the Council.

(4) Three members of the Council shall form a quorum at a meeting of the Council.

(5) The Council may regulate its own procedure.

21. Delivery of public records by Government Printer

The Government Printer or any person in charge of the Government press shall deliver two copies of any public record which is produced by the Government press on behalf of any Ministry, Department, other agency of the Government or a prescribed body to the Director, except that if such record is classified as secret or confidential or is restricted for any purpose it shall not be delivered without the written consent of the Ministry, Department, other agency of the Government or a prescribed body, which consent may be withheld or be granted with or without conditions.

22. Regulations

The Minister may make regulations for the better carrying into effect of this Act and in particular and without prejudice to the generality of the foregoing may provide for the following matters or purposes-

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) the admission of the public to the National Archives and Records Services and the inspection by the public of the public archives;
- (c) the transfer of any public records to the National Archives and Records Services;
- (d) responsibilities of public officers for the custody of public records;
- (e) the conditions under which documents in the National Archives and Records Services may be reproduced or published or extracts made therefrom;
- (f) the fees to be paid for the use of facilities of the National Archives and Records Services and for any services provided by the Director; and
- (g) the preservation, destruction and protection of public archives.

23. Penalties

Any person guilty of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding P3,500 or to imprisonment for a term not exceeding one year, or to

both.

24. Act to bind Government

This Act shall bind the Government.