



Republic of Namibia
Annotated Statutes

Archives Act 12 of 1992

(GG 421)

came into force on date of publication: 18 June 1992

ACT

To provide for the custody and care of and control over archives in Namibia, and for matters incidental thereto.

(Signed by the President on 9 June 1992)

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BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context indicates otherwise -

“accessions” means all documents, not being archives as defined in this Act, that have been acquired in terms of section 7;

“archives” means all documents received or created in the course of conduct of affairs in -

- (a) an office of a previous authority as defined in section 1 of the law repealed by section 17 of this Act;
- (b) an office of any representative authority established in accordance with the provisions of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), the former Government of Rehoboth referred to in the Rehoboth Self-Government Act, 1976 (Act 56 of 1976), or the former administration of the Administrator-General including the legislative and executive authorities established by the National Assembly Proclamation, 1979 (Proclamation AG. 21 of 1979), the Council of Ministers Proclamation, 1980 (Proclamation AG. 19 of 1980) and the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985);
- (c) a government office or an office of a local authority or statutory institution;

and which are not, because of their nature or the provisions of any other law, required to be dealt with in any other way than in accordance with the provisions of this Act;

“archives depot” means an archives depot referred to in section 5;

“directives” means the directives issued by the Head of Archives under this Act;

“documents” means a combination of any medium and the information contained thereon or therein, including on paper, parchment, vellum, charts, plans, working drawings, or in volumes, files, scrolls, or in the form of punched cards, punched tape, magnetic tape, compact disc, photographic negatives and copies, cinematographic film, microfilm, microfiche or gramophone, phonographic or other kind of sound recordings;

“financial year” means the financial year as defined in section 1 of the State Finance Act, 1991 (Act 31 of 1991);

“government office” means an office forming part of or falling under a ministry or public office as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980);

[The Public Service Act 2 of 1980 has been replaced by the Public Service 13 of 1995. Section 38 of Act 13 of 1995 provides that certain expressions relevant to Act 2 of 1980 shall be construed to refer to certain corresponding expressions relevant to Act 13 of 1995, but does not say anything about references to the term “government office”.]

“Head of Archives” means the Head of the National Archives referred to in section 3;

“head of office” means, in the case of a government office, the person who in terms of the Public Service Act, 1980 (Act 2 of 1980), is the chief executive officer of the ministry or public

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office of which such government office forms part and, in the case of a local authority or statutory institution, the chief executive officer thereof;

[The Public Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995. Section 38 of Act 13 of 1995 provides that certain expressions relevant to Act 2 of 1980 shall be construed to refer to certain corresponding expressions relevant to Act 13 of 1995. Section 38 covers references to “head of department” but not “head of office”.]

“intermediate depot” means an intermediate depot referred to in section 5;

“local authority” means -

- (a) the council of any municipality established or constituted, or deemed to have been established or constituted under the Municipal Ordinance, 1963 (Ordinance 13 of 1963);
- (b) any village management board constituted or deemed to have been constituted under the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963); or
- (c) the Peri-Urban Development Board established under the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

[The Local Authorities Act 23 of 1992 repealed the Municipal Ordinance 13 of 1963, the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970.]

“master film material” means original negative, inter-mediate positive, duplicate negative, colour reversal negative, working copies, magnetic tape recordings, final combined magnetic sound-track, final optical sound-track, original negatives of off-cuts and stock shots with regard to motion pictures or videos made in or about Namibia, as well as original negatives and positives of slides and original negatives of microfilm in any format;

“Minister” means the Minister of Education and Culture; and

[Note that the name of the Ministry responsible for education and culture has changed several times since this statute was enacted.]

“statutory institution” means a council or board, fund, body, company, corporation or other organisation instituted or established by or under any law.

Powers and duties of Minister

2. Subject “to the provisions of this Act, the Minister shall exercise control over the custody and care of archives and accessions.

National Archives of Namibia, and powers and duties of Head of Archives

3. (1) (a) There shall be a component in the Ministry of Education and Culture, to be known as the National Archives of Namibia, which shall be responsible for the regulation, execution and administration of matters concerning the custody and care of archives and accessions in accordance with the provisions of this Act.

[Note that the name of the Ministry responsible for education and culture has changed several times since this statute was enacted.]

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- (b) The Head of the National Archives shall be the head of the component referred to in paragraph (a) and shall perform his or her functions in terms of this Act subject to such directions as the Minister may give.
- (2) Subject to the provisions of this Act, the Head of Archives -
- (a) shall be charged with the custody and care of archives and accessions;
 - (b) may inspect or cause to be inspected any archives and accessions in so far as such inspection may be necessary for the performance of his or her functions under this Act;
 - (c) may authorize the destruction of any archives or accessions which, in his or her opinion, do not warrant permanent custody;
 - (d) may advise any person charged with the custody or care of or control over any documents, in respect of which the provisions of this Act are not applicable, in relation to the custody and care of such documents;
 - (e) may duplicate or cause to be duplicated, by publication or other means, or authorize the duplication of, any archives, accessions or original sources, or any thesis or other work based on a study of any archives or accessions;
 - (f) may, with the approval of the Minister, by donation, exchange or otherwise dispose of any archives or accessions in an archives depot or intermediate depot which are redundant or unsuitable for any archives depot, to any library, museum or other institution;
 - (g) may, on application by any person and on payment of the fee determined by the Treasury, do any research for such person in any archives or accessions and make copies of or extracts from them;
 - (h) may cause any archives or accessions to be repaired or bound, or to be otherwise dealt with as the Head of Archives deems necessary for the proper preservation thereof;
 - (i) shall determine the conditions subject to which any archives may be photographed on microfilm or any format;
 - (j) shall inspect the filing system for archives in a government office or an office of a local authority or statutory institution and approve or disapprove thereof;
 - (k) may authorize or condone the non-compliance with a directive, provision or condition issued, made or imposed under this Act; and
 - (l) shall perform such other functions in connection with archives and accessions as the Minister may direct.

Control over archives in government offices, offices of local authorities and statutory institutions

4. (1) The head of office shall be responsible for the custody, care and filing of all archives which have not yet been transferred to an archives depot, and shall in this regard be subject to directives issued by the Head of Archives.

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- (2) The Head of Archives may inspect the custody, care and filing of such archives.

Archives depots and intermediate depots

5. The Minister may from time to time establish archives depots for the custody of archives which have been in existence for a period of 20 years or more and intermediate depots for the temporary custody of archives which have been in existence for a period less than 20 years.

Transfer of archives

6. (1) All archives in a government office or an office of a local authority or statutory institution, which are not master film material and not required in terms of any law to be kept in the custody of a particular person, shall be transferred to an archives depot if they have been in existence for a period of 20 years or more.

- (2) Notwithstanding the provisions of subsection (1), the Head of Archives may -

- (a) grant permission to a head of office that archives referred to in subsection (1) or any part thereof be retained in the office concerned;
- (b) defer the transfer of any such archives to such time as the Head of Archives deems appropriate;
- (c) transfer or cause to be transferred any such archives to an intermediate depot; or
- (d) direct that any such archives for convenience's sake be transferred from one archives depot to any other archives depot determined by the Head of Archives.

(3) The Head of Archives may grant permission to a head of office that any archives which have been in existence for a period less than 20 years, and which are not master film material and not required in terms of any law to be kept in the custody of a particular person, be transferred to an archives depot.

(4) Master film material shall be transferred to an archives depot immediately after completion of the production thereof.

Acquisition of documents for archives depot

7. (1) The Head of Archives may by means of purchase, donation or lease, either on a temporary or permanent basis, and either unconditionally or on the conditions agreed upon, obtain any documents which the Head of Archives believes are or may become of historical value.

(2) Subject to any contrary condition which may have been agreed upon, any documents obtained in terms of subsection (1) shall be placed in such archives depot as the Head of Archives may determine.

Utilization of archives and accessions

8. (1) Whenever a person has used any archives or accessions for the purpose of the production of any written material, such person shall, if such written material is published or duplicated, provide the Head of Archives with a copy of such written material free of charge.

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(2) Any person who with regard to the production of any film material has used any archives or accessions, shall immediately upon completion of such production, make available to the Head of Archives the master film material to enable him or her to make copies thereof if he or she so requires.

(3) Any copy provided in terms of subsection (1) or made in terms of subsection (2) shall be placed in such archives depot as the Head of Archives may determine.

Temporary transfer of archives and accessions from one archives depot to another and lending of archives and accessions to libraries, museums and other institutions

9. (1) The Head of Archives may for any reason which he or she deems fit transfer any archives or accessions temporarily from one archives depot to any other archives depot.

(2) The Head of Archives may, for such period as may be determined by him or her, and for the purposes of exhibition or any other purpose which he or she may deem proper, lend any archives or accessions in an archives depot to a library, museum or other institution which in his or her opinion has taken adequate precautions for the safekeeping of such archives or accessions.

Access to archives

10. (1) Subject to the provisions of this Act and of any other law and any conditions upon which archives or accessions were obtained, no person shall have access to any archives or accessions kept in an archives depot or intermediate depot, except those referred to in paragraphs (a) and (b) of subsection (2).

(2) Subject to the provisions of this Act and any other law and subject to the conditions referred to in subsection (1), every member of the public shall -

- (a) have access to all archives other than film archives, and accessions in archives depots and intermediate depots which have been in existence for a period of 30 years or more on the first day of January of the particular year in which access thereto is sought;
- (b) have immediate access to all film archives in archives depots and intermediate depots.
- (3) Notwithstanding the provisions of subsection (2) -
 - (a) the Minister may direct that access to any archives or accessions referred to in paragraph (a) or (b) of subsection (2) be withheld; and
 - (b) the Head of Archives may refuse access to any such archives or accessions on account of their being in a fragile condition, until such time as they have been catalogued, repaired or otherwise dealt with.

(4) Any person aggrieved by a decision of the Head of Archives under paragraph (b) of subsection (3) may appeal to the Minister against such decision.

- (5) (a) Subject to any condition upon which any archives or accessions were obtained, the Minister may, on application by any person and subject to such conditions as the Minister may impose, authorize such person to have access to any

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archives or accessions in an archives depot or intermediate depot which are not accessible to members of the public.

- (b) The Minister may at any time withdraw an authorization granted under paragraph (a) of this subsection.

(6) Subject to the provisions of any other law, no person shall have access to archives in a government office or an office of a local authority or statutory institution, but the head of office concerned may with the permission of and on the conditions determined by the Head of Archives, and subject to the provisions of this Act, authorize any person to have access to such archives.

(7) Notwithstanding anything to the contrary contained in this Act, access to archives in relation to the Namibia Defence Force kept in an archives depot shall not be authorized without the approval of the Minister.

Annual report by Head of Archives

11. The Head of Archives shall annually, not later than 31 May, submit a report to the Minister concerning his or her activities during the previous financial year.

Directives

12. The Head of Archives may in any manner which he or she deems proper issue directives regarding -

- (a) the access to and the utilization of archives and accessions in archives depots and intermediate depots;
- (b) the custody of and control over archives;
- (c) disposal of archives;
- (d) computer or microfilm projects in respect of archives;
- (e) the approval and maintenance of filing systems;
- (f) the approval and maintenance of lists of archives other than correspondence files;
- (g) the transfer of archives to archives depots and intermediate depots;
- (h) registration procedures;
- (i) the consulting of archives in government offices, and offices of local authorities and statutory institutions; and
- (j) in general, the effective implementation of this Act.

Delegation of powers

13. (1) The Minister may, subject to such conditions as the Minister deems fit to impose, delegate to the Head of Archives any power conferred by section 10(5) or 10(7).

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(2) The Head of Archives may, subject to such conditions as he or she deems fit to impose, delegate or assign to any officer employed in the component referred to in section 3(1)(a) any power, function or duty conferred upon the Head of Archives by this Act.

(3) The Minister or Head of Archives, as the case may be, shall not be divested of any power, function or duty delegated or assigned under subsection (1) and the Minister or Head of Archives, as the case may be, may amend or set aside anything done in the exercise of such power under such delegation or in the performance of such function or the carrying out of such duty under such assignment.

(4) The Minister or Head of Archives, as the case may be, may at any time withdraw the delegation of any power or assignment of any function or duty under subsection (1) or (2).

Offences and penalties

14. (1) Any person who -

- (a) wilfully damages any archives or accessions;
- (b) removes or destroys any archives or accessions otherwise than in accordance with the provisions of this Act or any other law; or
- (c) contravenes or fails to comply with a condition of an authorization granted in terms of section 10(5),

shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 and in default of payment, to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.

(2) The Head of Archives may for such period as he or she deems fit refuse access to any archives and accessions in an archives depot or intermediate depot to any person who has been convicted of an offence under subsection (1).

(3) Any person aggrieved by a decision of the Head of Archives under subsection (2) may appeal to the Minister against such decision.

Restriction of liability

15. No person, including the State, shall be liable in respect of anything done or omitted in good faith and not attributable to negligence in the exercise or performance of a power or duty in terms of this Act.

Prescription of actions

16. Any civil proceedings against the State or any person in respect of anything done or omitted in the exercise or performance of a power or duty in terms of this Act shall be instituted within 6 months after the cause of action has arisen.

Repeal of law and savings

17. (1) Subject to the provisions of subsection (2), the Archives Act, 1987 (Act 4 of 1987), is hereby repealed.

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(2) Anything done in terms of a provision of the Act repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under the provision of this Act.

Short title

18. This Act shall be called the Archives Act, 1992.