

# THE ARCHIVES ACT, 1971

*Date of commencement: 17<sup>th</sup> March 1972.*

*Date of assent: 13<sup>th</sup> May 1971.*

*An Act to provide custody, care and control of public archives in Swaziland and for matters incidental thereto*

## *Short title*

1. This Act may be cited as the Archives Act, 1971.

## *Interpretation*

2. In this Act, unless the context otherwise requires –  
“archives” means any document or record received, created or accumulated in a government office or an office of a local authority during the conduct of affairs in that office and which is from its nature or in terms of any other Act not required then to be dealt with otherwise than in accordance with this Act, and any document or record acquired under section 6:

“Director” means the person appointed under section 4:

“Minister” means the Minister for Tourism, Environment and Communication;

“National archives” means the Swaziland National Archives established under section 3;

“record” includes any newspaper, book, document, periodical, pamphlet, poster, or other printed matter or a writing typescript which has any manner been reproduced, or any drawing, picture, illustration, wooden or similar representation, or any plan, negative print, photograph, engraving or lithograph, or any record or other material, contrivance or device by means of which information can be conveyed and words or images reproduced either in sound or light.

## *Establishment of national archives*

2. There shall be established a Swaziland National Archives wherein shall be stored for better preservation such of the archives as are transferred to it or acquired by the Director under this Act.

*Director*

3. (1) There is hereby created the post of Director of the national archives who shall be a public officer.

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(2) The Director shall be charged with one custody, care and control of archives and may, subject to subsection (3), do all things necessary or expedient for maintaining the utility of the national archives, and without affecting the generality of the foregoing, may in particular -

- (a) with the Minister regulate the conditions under which members of the public may inspect archives or use the other facilities of the national archives;
  - (b) with the approval of the Minister lend archives for display at commemorative exhibitions or for other special purposes;
  - (c) advise any person charged with the custody, care or control of any archives in regard to the custody, care and filing thereof;
  - (d) with the approval of the Minister by donation, exchange or otherwise dispose of any archives which are redundant or unsuitable to any library, museum, or other body;
  - (e) on the application of any person and on payment of the prescribed fee, do research into archives and make copies thereof or extracts there from for that person;
  - (f) with the approval of the Minister publish or cause to be published or authorize the publication of any archives or original sources of a thesis or other work based on a study of the archives or those sources.
- (3) The Director shall, in addition, perform such other duties in connection with the archives as the Minister may direct or prescribe.
- (4) Nothing in this section shall be construed as authorizing the Director or any person to do anything which is contrary to law or the conditions under which any activities were acquired.

*Transfer of archives to national archives.*

4. All archives in a government office or any office of a local authority which are older than a prescribed age, and which are not in term of any law required to be kept in the custody of a particular person shall be transferred to the national archives:

Provided that-

- (a) the Ministry may, if he deems fit at the request of any person charged with the custody, care or control of archives, grant permission that such archives or any portion thereof be retained in the office in question; and
- (b) the Director may-
  - (i) defer the transfer of such archives until such time as he deems fit;
  - (ii) grant permission that any archives which are less than the prescribed age be transferred to the national archives.

*Acquisition of documents and records for national archives.*

- 5. (1) The Director may on behalf of the Government acquire by purchase or donation or on loan for a temporary period or in perpetuity, either unconditionally or subject to such conditions as may be granted upon, any document or record which in his opinion has, or may acquire any historical value.
- (2) Subject to any condition which may be applicable any document or record so acquired shall be deposited in the national archives
- (3) A person who has made use of the archives in connection with the production of any written matter shall if that written matter has been published or duplicated, at the request of the Director furnish him with a copy thereof free of charge and that copy shall be deposited in the national archives.

*Disposal of archives.*

- 6. If it appears to the Director that any archives in the national archives are duplicated by other archives which have been selected for permanent preservation or that is some other special reason why they should not be permanently preserved, he may, with the approval of the Minister, authorize the destruction of those archives or, with that approval, their disposal in any other way.

Provided that, at least six weeks before the destruction of any archives, a list of items to be destroyed shall be tabled by the Minister in both Houses of Parliament.

### *Access to archives*

8. (1) Archives, other than those to which members of the public had access immediately before the commencement of this Act, shall not be available for public inspection until they have been in existence for such as the Minister may prescribe in respect of any particular class of archives.

(2) Without prejudice to the subsection 91), if it appears to the Director that any archives selected for permanent under this Act contain information which was obtained from members of the public under such conditions that the opening of those archives to the public after the period determined (1) would or might constitute a breach of good faith on the part of the Government or on the part of the persons who obtained the information, he shall inform the Minister accordingly, and those archives shall not be available for public inspection even after the expiration of the said period, except in such circumstances and subject to such conditions, if any, as the Minister may prescribe.

(3) Subject to subsection (2) and to any other law which disclosure of information obtained from the public except for certain limited purposes; the Director shall arrange that reasonable facilities are available to the public inspecting and obtaining copies of archives in the national archives.

(4) Notwithstanding anything in this Act-

(a) The Minister may on the agenda of national security or defence that access for a specified period to any such archives withheld; and

(b) The Director may refuse to allow access to any archives on the ground of their fragile condition and may refuse to allow access to any archives pending the classification, repair, or other treatment thereof.

### *Regulations*

9. (1) The Minister may, after consultation with the Director, make regulations for carrying into effect the purposes and provisions of this Act as to-

(a) the custody, care, microfilming and filling of archives;

(b) the inspection and destruction under this Act or archives by the Director

(c) the transfer of archives from Government offices or the offices of public authorities to the national archives;

(d) the admission of the Government offices and offices of public authorities in which archives are kept and the use of equipment for the making of copies of, or extracts from extracts from archives;

(e) the tariff of fees payable for supplying copies of, or extracts from the national archives or for research undertaken by the Director at the request of any person, and the manner in which payment of those fees will be made; and

(g) generally, the better carrying out of the objects of this Act.

### *Offences*

10. (1) A person who –

(a) willfully damages any archives;

(b) otherwise than in accordance with this Act or any other law, removes or destroy any archives;

(c) contravenes or falls to comply with any condition of an authority granted under section 8; or

(d) contravenes a regulation issued under section 9;

shall be guilty of an offence and liable on conviction to a fine of two hundred emalangeni or imprisonment for twelve months or both.

(2) The Director may refuse access to the national archives, for such period as he may deem fit to a person convicted of an offence under subsection (1), subject to the right of appeal to the Minister whose decision shall be final.

*Exemption from liability in respect of certain acts and omissions and limitation of action;*

11. (1) No person shall be civilly or criminally liable for any act or omission by him in the performance of his function or what he bona fide believes to be his functions under this Act, provided the act of omission was bona fide to negligence, nor shall the Government be liable for any such act or omission.

(2) If in any legal proceeding a person alleges that such act or omission was not bona fide or was due to negligence, the onus of proving that such was the case shall be on him.

(3) Any civil proceedings against the Government or any respect of any such act or omission shall be commenced within six months after the cause of action has arisen:

Provided that the High Court may, on good cause shown extend such period.