



BERMUDA

BERMUDA ARCHIVES ACT 1974

1974 : 40

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	SCHEDULE

[preamble and words of enactment omitted]

[References to "Archivist" substituted by "Director" by 2015 : 44 s. 2 effective 11 December 2015. These amendments are not individually noted.]

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Interpretation

1 In this Act—

“accession policy” means the policy established by the Director under section 5(1)(k);

“Archivist” *[deleted]*

“the Bermuda Archives” means the Archives office established under section 2;

“the Council” *[deleted]*

“court” means any court established by law;

“Director” means the Director of the Department of Libraries and Archives under which the Bermuda Archives operates;

“judicial records” means all records of proceedings of a court and all other records, documents or books which

(a) are in the custody of any court or of any officer of any court in his capacity as such; or

(b) have been transferred to the Bermuda Archives;

“the Minister” means the Minister for the time being responsible for the administration of the Bermuda Archives;

“prescribed” means prescribed by regulations under section 15;

“public archives” means—

(a) all public records and judicial records which—

(i) are more than thirty years old; and

(ii) are specified by the Records Committee as being of enduring or historical or cultural value and worthy of permanent preservation; and

(iii) have been transferred to the Bermuda Archives; or

(b) any document, book or other material acquired for the Bermuda Archives by the Director under section 5(i);

“public records” means any records or documents, other than judicial records, drawn up for the purpose of, or used during, the conduct of affairs of any kind of the Government which—

(a) are in the custody of any person or Department; or

(b) have been transferred to the Bermuda Archives;

“record” means any form or medium in which information is recorded, whether printed on paper, tape or film or recorded by electronic or any other means, and includes any map, diagram, photograph, film, microfilm, videotape, sound

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recording, or machine-readable record produced by means of equipment or a computer programme;

“records classification scheme” means a scheme established by the Director under section 5(1)(aa);

“Records Committee” means the Committee established under section 6;

“records schedule” means a schedule established by the Director under section 5(1)(ab).

[Section 1 “Archivist” and “the Council” deleted, “public archives” and “public records” amended and “accession policy”, “Director”, “record”, “records classification scheme” and “records schedule” inserted by 2015 : 44 s. 2 effective 11 December 2015; Section 1 definition “Director” amended by 2018 : 21 s. 2 effective 28 May 2018]

Establishment of the Bermuda Archives

2 (1) There shall be established an archives office which shall be known as the Bermuda Archives wherein shall be preserved public archives, public records and judicial records in accordance with this Act.

(2) Subject to section 3, the Bermuda Archives shall be under the supervision of the Director who shall be responsible for the care and preservation of public archives, public records and judicial records in the custody of the Bermuda Archives.

Archives to be under general control of Minister

3 The Bermuda Archives shall be under the general control and management of the Minister and for the purposes of this section he may give such general or special directions as he may see fit.

Establishment of Archives Advisory Council

4 *[Repealed by 2015 : 44 s. 3]*

[Section 4 repealed by 2015 : 44 s. 3 effective 11 December 2015]

Functions of Director

5 (1) For the purposes of this Act there shall be appointed a Director who, subject to the general or special directions of the Minister—

- (a) shall be responsible for the administration of the Bermuda Archives;
- (aa) shall establish, in consultation with the Records Committee, a records classification scheme for the purposes of—
 - (i) appraising;
 - (ii) organizing, identifying and naming;
 - (iii) providing a guide for the retrieval and disposal of; and
 - (iv) establishing retention periods for,

- public records and judicial records held by the Bermuda Archives;
- (ab) shall establish, in consultation with the Records Committee, a records schedule for the purposes of—
 - (i) determining the time period in which public records and judicial records of any particular description that are included in the records classification scheme must be retained to meet legal, financial, administrative and fiscal requirements;
 - (ii) facilitating the transfer of public records and judicial records to the Bermuda Archives; and
 - (iii) facilitating the destruction of public records and judicial records;
 - (ac) shall review all public records and judicial records received for appraisal and scheduling purposes;
 - (b) shall examine any public records in the custody of any Government Department, or any judicial records in the custody of any court, and shall advise such Department or court on the care and custody thereof;
 - (ba) shall establish standards and procedures for Government departments for the management and maintenance of public records and judicial records for the purposes of this Act;
 - (bb) shall assist Government departments in the—
 - (i) management and maintenance;
 - (ii) preservation, protection and restoration; and
 - (iii) selection for transfer and destruction,
of public records and judicial records in accordance with standards and procedures established by the Director under section 5(1)(ba);
 - (c) shall preserve and arrange all public archives;
 - (d) shall accept and store any public records or judicial records which are transferred to the Bermuda Archives and shall return them at the request of the Department or court from whom they were transferred;
 - (da) shall provide guidance to Government departments with regard to the storage of public records and judicial records and shall make recommendations for the suitable storage of records which are at risk of loss due to negligence, deterioration or theft;
 - (e) shall compile and make available indexes, inventories and guides to the public archives;
 - (f) shall ensure that, subject to this Act, facilities are available to the public for inspecting and obtaining copies of public archives;

- (g) may, if in his opinion it is necessary for their better preservation, bind or repair any public archives and any records and judicial records which have been transferred to the Bermuda Archives;
- (h) may, subject to the terms and conditions, if any, on which they were acquired, reproduce or publish any public archives the reproduction or publication of which the Minister has authorised;
- (i) may acquire by purchase, donation, bequest or otherwise any document, book or other material which in his opinion is likely to be of historical or cultural value;
- (j) may make arrangements with any person for the loan, deposit or exhibition of original records, documents or other material of historical or cultural value;
- (k) shall establish an accession policy for the purposes of—
 - (i) determining;
 - (ii) acquiring;
 - (iii) depositing; and
 - (iv) permanently preserving,

records deemed by the Director to be historically or culturally significant.

(2) For the purpose of assisting the Director in the discharge of his functions under this Act, there may be appointed such other public officers as may be necessary.

[section 5 amended by 1998:20 effective 18 June 1998; subsection (1) amended and subsection (2) repealed and replaced by 2015 : 44 s. 4 effective 11 December 2015]

Establishment of Records Committee

6 (1) The Minister shall appoint a committee to be known as the Records Committee consisting of a Chairman, who shall be the Director, and at least three other public officers.

(2) Subject to this Act, the Records Committee shall make recommendations to the Minister on the following matters—

- (a) the retention or destruction of public records and judicial records;
- (b) the transfer of public records and judicial records to the Bermuda Archives;
- (c) the conditions and restrictions, if any, upon which any public records or public archives may be inspected or published;
- (d) the classification of public records and judicial records for any of the purposes mentioned in paragraph (a) or (b); and
- (e) any other matters which may be prescribed.

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(3) The Records Committee shall signify to the Minister those public records and judicial records which, in the opinion of the Committee, are of enduring or historical or cultural value.

(4) The Minister may give directions for the purpose of giving effect, whether with or without modification, to the recommendations made by the Records Committee under this section.

[Section 6 subsection (3) amended by 2015 : 44 s. 5 effective 11 December 2015]

Establishment of Archives Fund

7 (1) There shall be established an Archives Fund to be used for the purchase of any record, document or other material which in the opinion of the Director is, or is likely to be, of historical or cultural value.

(2) There shall be paid into the Archives Fund such sums as the Legislature may appropriate thereto.

(3) Notwithstanding anything in section 9 of the Public Treasury (Administration and Payments) Act 1969 [*title 14 item 1*], monies appropriated to the Archives Fund under subsection (2) shall not lapse or accrue to the Consolidated Fund if unexpended at the expiration of the financial year in respect of which they are appropriated.

(4) No expenditure shall be charged to the Archives Fund unless the approval of the Minister is given thereto in writing.

[Section 7 subsection (1) amended by 2015 : 44 s. 6 effective 11 December 2015]

Access to records and public archives

8 (1) Public records and judicial records in the Bermuda Archives, other than those to which the members of the public had access before their transfer to the Bermuda Archives, shall not be available for public inspection until they have been in existence for thirty years or such other period, either longer or shorter, as the Minister may for the time being prescribe.

(2) Without prejudice to the generality of subsection (1), if it appears to the person responsible for any public records and judicial records which have been selected under section 11 for permanent preservation that they contain information which was obtained from members of the public under such conditions that the opening of those records to the public after the period determined under subsection (1) would or might constitute a breach of good faith on the part of Government or on the part of the persons who obtained the information, he shall inform the Minister accordingly and those records shall not be available in the Bermuda Archives for public inspection even after the expiration of that said period except in such circumstances as the Minister and that person may approve.

(3) Subsection (1) shall not make it unlawful for the Director to permit a person to inspect any records if he has obtained authority from the Minister under section 9.

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Conditions of inspection of records and public archives

9 (1) No person other than an officer of the Bermuda Archives may inspect any public records or judicial records, other than public archives, which have been transferred to the Bermuda Archives without the written authority of the Minister.

(2) Any person may inspect public archives subject to—

- (a) any conditions or restrictions prescribed by the Minister or imposed by the person from whom they were acquired; and
- (b) such conditions as the Director may consider necessary for their preservation.

(3) The Bermuda Archives shall be open for the inspection of public archives and records during such hours as may be specified by the Minister by notice in the Gazette.

Reproduction of public archives

10 (1) Subject to subsection (2), no person may publish or reproduce the whole or any part of the public archives or public records which have been transferred to the Bermuda Archives except—

- (a) in the case of public archives mentioned in paragraph (a) of the definition of public archives in section 1, with the written authority of the Minister and in accordance with such conditions as the Minister may prescribe; or
- (b) in the case of public archives mentioned in paragraph (b) of the definition of public archives in section 1, in accordance with any conditions imposed by the person from whom the particular archives in question were acquired; or
- (c) in the case of public records transferred to the Bermuda Archives which do not form part of the public archives, with the written authority of the Minister.

(2) Without prejudice to Section 440 of the Criminal Code [*title 8 item 31*], any person who contravenes subsection (1) or fails to comply with any condition imposed thereunder commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$5,000.

(3) Nothing in this section shall affect or extend the law relating to copyright.

Keeping of records

10A Public records and judicial records, which have been transferred to the Bermuda Archives, shall be kept secure in a vault or room which—

- (a) can be easily accessed by staff of the Bermuda Archives authorised by the Director to do so;
- (b) has adequate provision for ventilation; and

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- (c) has adequate protection against fire and spread of fire.

[Section 10A inserted by 2015 : 44 s. 7 effective 11 December 2015]

Records in Government departments

10B Every public officer shall take the necessary steps, in accordance with the standards and procedures established by the Director under section 5, to protect all public records and judicial records in his custody and control from damage, deterioration, loss, or theft.

[Section 10B inserted by 2015 : 44 s. 7 effective 11 December 2015]

Selection and preservation of records

11 (1) Every public officer responsible for public records and judicial records of any description which are not in the Bermuda Archives, shall make arrangements for the selection of those records which ought to be preserved permanently and for their safe-keeping.

(2) Every public officer shall perform his duties under this section under the guidance of the Director who shall be responsible for coordinating and supervising action taken under this section.

(3) All public records and judicial records created up to the end of the year 1900 shall be permanently preserved.

Destruction of records

12 (1) Public records and judicial records rejected as not required for permanent preservation may be destroyed only in accordance with the directions given by the Minister under section 6.

(2) No public record or judicial record may be destroyed except in accordance with a records schedule prepared by the Director under section 5(1)(ab).

[Section 12 renumbered as subsection (1) and subsection (2) inserted by 2015 : 44 s. 8 effective 11 December 2015]

Transfer of records

13 Public records which are in the custody of a Department, and judicial records which are in the custody of a court, and which have been selected for permanent preservation, shall be transferred to the Bermuda Archives—

- (a) when they are thirty years old, or earlier if they are not required for current administration;
- (b) if the Commission, Committee, Board of Inquiry or other body to whose activities they relate, has ceased to exist;
- (c) forthwith if they constitute an original Act, trade or commercial agreement, treaty, important constitutional document or major contract (other than a works contract):

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Provided that any such records may be retained by the person responsible for them if, in his opinion, they are required for administrative purposes or ought to be retained for any other special reason and, where that person is not the Minister, if the Minister has given his approval.

Admissibility of examined or certified copy of records etc. produce Bermuda Archives
14 Without prejudice to section 55 of the Evidence Act 1905, a copy or extract from any record, book or document in the custody of the Bermuda Archives and purporting to be examined and certified as true and authentic by the Director or other officer of the Bermuda Archives and to be sealed or stamped with the seal of the Bermuda Archives shall be admissible as evidence in any proceedings without any further or other proof thereof if the original record, book or document would have been admissible in evidence in those proceedings.

Regulations

15 (1) The Minister may make regulations for any matter which may be prescribed under this Act and generally for the better carrying out of the objects and purposes of this Act.

(2) Without derogation from the generality of the provisions of subsection (1) regulations may—

- (a) provide for the preservation and protection of public archives, records and judicial records in the Bermuda Archives;
- (b) specify the conditions under which any of the records, judicial records or public archives in the custody of the Bermuda Archives may be inspected, examined, copied or reproduced;
- (c) regulate the conduct of persons within the premises occupied by the Bermuda Archives;
- (d) provide for the imposition of penalties not exceeding a fine of one hundred dollars for breach of the regulations.

(3) The negative resolution procedure shall apply to regulations made under this section.

Amendment of Acts set out in Schedule

16 *[omitted]*

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SCHEDULE

[omitted]

[Assent Date: 29 April 1974]

Amended by:

1977 : 35
1983 : 38
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1998 : 20
2015 : 44
2018 : 21]