

MANAGING PUBLIC  
SECTOR RECORDS

A Training Programme

# A Model Records and Archives Law



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INTERNATIONAL  
COUNCIL ON ARCHIVES



INTERNATIONAL RECORDS  
MANAGEMENT TRUST

A MODEL RECORDS AND ARCHIVES  
LAW

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MANAGING PUBLIC SECTOR RECORDS

A STUDY PROGRAMME

General Editor, Michael Roper; Managing Editor, Laura Millar

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## MANAGING PUBLIC SECTOR RECORDS: A STUDY PROGRAMME

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## **General Editor**

Michael Roper has had a wide range of experience in the management of records and archives. He served for thirty-three years in the Public Record Office of the United Kingdom, from which he retired as Keeper of Public Records in 1992. He has also taught on the archives courses at University College London and the University of British Columbia, Canada. From 1988 to 1992 he was Secretary General of the International Council on Archives and since 1996 he has been Honorary Secretary of the Association of Commonwealth Archivists and Records Managers (ACARM). He has undertaken consultancy missions and participated in the delivery of training programmes in many countries and has written extensively on all aspects of records and archives management.

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# **A Model Records and Archives Law**

**Prepared by Michael Roper**



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# **INTRODUCTION TO *A MODEL RECORDS AND ARCHIVES LAW***

This manual is intended to be used in conjunction with *Regulating Records and Archives Systems*, which is one of a series of three training modules which provide an introduction for managers in the records and archives field to the executive issues affecting records and archives systems and services. However, the manual may also be used on its own by any country which is contemplating new records and archives legislation.

The manual consists of:

- a general introduction to records and archives legislation
- a model law
- a commentary on the model law.

# **INTRODUCTION TO RECORDS AND ARCHIVES LEGISLATION**

## **INFORMATION, RECORDS AND ARCHIVES**

Information is a vital resource for any modern society. Without information, neither the government nor its citizens can function effectively; hence the process of planning, controlling and using information (known as ‘information management’) is an important activity, critical to the success or failure of the organisation. It is often assumed that information management concerns only information and data created by or stored in computers. That is not true; the most effective information management systems manage all the information available to an organisation, regardless of its source or whether or not it has been processed electronically. Records and archives are major sources of information, and it is important that they should be properly managed.

The term ‘records’ includes all the documents, irrespective of medium or format, that governments, other organisations or individuals create or receive in the course of administrative and executive transactions. The records themselves form a part of or provide evidence of such transactions. As evidence, they are subsequently maintained by or on behalf of those responsible for the transactions for their own future use or for the use of their successors or others with an interest in the records. They provide the corporate memory of the state, an audit trail in respect of its financial transactions and evidence of its policies and activities for those to whom it is politically accountable.

The effective management of records throughout their life cycle is a key issue in civil service reform. Unorganised or otherwise poorly managed records mean that government does not have ready access to authoritative sources of administrative, financial and legal information to support sound decision making or the delivery of programmes and services. Nor does it have the means of holding itself accountable for what it has done or of upholding the rights of its citizens.

Many records need to be kept for only a short time, to provide evidence or information for their creators. Other records have a longer-term value to society as a whole, as evidence of or information about the actions or functions of government

over time. Those records worth preserving for their enduring value are called 'archives'. When records become archives they do not necessarily cease to have value for short-term political and financial accountability; they continue to preserve an audit trail of past actions and to document the collective and individual rights of the citizens.

However, the primary reason for the preservation of records is to serve as evidence for long-term social accountability, that is for their enduring historical and cultural value. Accordingly, records are recognised as a basic component of each nation's heritage, part of its collective memory, a testament to its history and an embodiment of its national identity. A programme for the proper management of archives – maintaining their integrity, guaranteeing their safety and thereby providing state, society and citizens with an historical perspective – is the duty of a civilised state.

The National Archives is the permanent home for government records with enduring value, but those records will not reach the National Archives if they are not well managed throughout their life. When they are well managed, the authenticity and security of the records and of the information which they contain is respected, records of no continuing utility are destroyed in a timely but controlled fashion and valuable records are secured and preserved for posterity.

## RECORDS AND ARCHIVES LEGISLATION

The enactment and implementation of comprehensive, up-to-date records and archives legislation is a critical prerequisite for the establishment of an effective, integrated system for managing records and archives throughout their life cycle.

The precise form that legislation takes in a country will be constrained by that country's formal constitution and constitutional conventions (such as the separation of powers between legislature, executive and judicature; the rules or conventions governing collective cabinet and individual ministerial responsibilities and the relationship between ministers and senior civil servants; the balance between centralisation and decentralisation and between the public and the private sectors). The legislation will also be guided by the general political, economic, social, cultural and administrative environment; by existing records and archives legislation; and by the general level of records and archival development. Such constraints will determine the balance within national records and archives legislation between the primary act, subordinate legislation and professional standards, guidelines and procedure manuals.

A records and archives act that provides a detailed prescription for the management of records throughout their life cycle will give a clear mandate for implementation. On the other hand, it is difficult to make changes of practice to take account of changing external circumstances, because such changes require time-consuming amendment of the primary act. A records and archives act that establishes only a general framework, leaving the detail to be added in the form of subordinate

legislation and professional standards, guidelines and procedure manuals, makes for ease of change but may appear to lack the authority of the more prescriptive approach, especially where life-cycle records and archival management systems are not well developed, and may result in patchy and inconsistent provisions if there is insufficient continuing commitment to drive through the necessary initial subordinate legislation, etc., and to maintain it thereafter.

Records and archives legislation already exists in many countries in the form of a National Archives Act, sometimes with later amendments. There may also be in force rules or regulations under that legislation or even under ordinances from the colonial era. In Commonwealth countries, the National Archives Act was often enacted shortly after independence and modelled closely on the UK Public Record Act of 1958. It may provide a framework for the preservation and provision of access to those records of the colonial administration and the successor state that have been selected as archives. However, it is now likely to be considerably out of date, especially if it lacks provision for the life-cycle management of records from their creation to their eventual disposal by destruction or by transfer to the National Archives. Hence, although the relevant provisions of this model law might be used to amend existing legislation, the assumption is that an entirely new act will be preferred as signalling a fresh start in the life-cycle management of records and archives.

In particular, there is likely to be a lack of legislation governing the management of records during the initial stages of their life cycle, that is while they remain as current and semi-current records in the offices of the ministries and other government bodies that created them. The corresponding lack of authoritative and effective procedures for controlling records has led to congestion in the registries. As a consequence, papers of even recent date are difficult to identify and retrieve. Further, valuable office space is wasted in storing records of no further value that cannot be segregated from records with ongoing utility or enduring value.

Because of the urgent need to address for the first time the wider concept of life-cycle management of records and archives, the model law shown here proposes the repeal all the existing records and archives legislation and its replacement with an entirely new, comprehensive National Records and Archives Act. Nevertheless, where they are still relevant, effective provisions of existing archival legislation may be retained, though it may be necessary to update their formulation.

Because it is introducing new concepts, the balance of the model law tends towards detailed prescription, although much detail remains to be added by way of regulations and professional standards, guidelines and procedure manuals. It is important that work in preparing these associated materials should be undertaken as the new National Records and Archives Act progresses through the legislative process so that they can be issued without delay when the legislation comes into force.

## SECTION 2

# A MODEL RECORDS AND ARCHIVES LAW

Following is a model law and commentary. For ease of reference the model law is printed on the left-hand page with the relevant section of the commentary on the right-hand page. Sections where information needs to be added are marked with five asterisks: \*\*\*\*\*.

# **The National Records and Archives Act, \*\*\*\*\* [date]**

An Act to establish the National Records and Archives Institution and to provide for the better management of public records and archives throughout their life cycle, for the repeal of the National Archives Act, \*\*\*\*\* [date], and for incidental or connected matters.

Whereas it is necessary to improve the arrangements for the life-cycle management of the public records and archives of \*\*\*\*\* [name of country] as an essential component of effective administration and accountable government; 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 that the disposal of those for which there is no further need is effected in an controlled 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; it is hereby enacted:

## **Part I**

### **Preliminary Provisions**

#### **Short title and commencement**

1. This Act may be cited as the National Records and Archives Act, \*\*\*\*\* , and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.



## COMMENTARY

*Titles:* To stress the continuity of care throughout their life cycle the words ‘records and archives’ are used together in the title of the Act and in those of the bodies that it sets up to manage them.

## MODEL LAW

### Interpretation

2. In this Act, unless the context otherwise requires:

‘Advisory Board’ means the National Records and Archives 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

‘Director’ means the Director of the National Records and Archives Institution

‘heads of public offices’ means the ministers or other persons responsible for directing public offices

‘Institution’ means the National Records and Archives Institution

‘Minister’ means the Minister responsible for the civil service

‘National Archives’ means the archival repository in which archives of the central institutions of \*\*\*\*\* are preserved and made available for consultation

‘private records’ means records other than public records as specified in the Schedule to this Act

‘public office’ means any institution, body or individual which creates, receives or maintains public records

## COMMENTARY

*Definitions:* The Act defines technical terms (such as *retention and disposal schedule* and *records centre*) in accordance with standard international terminology.

*Archives* are distinguished from the building in which they are preserved and made available for consultation (*archival repository*). *National Archives* is used only in reference to previous legislation or as the title of the archival repository in which archives of the central institutions of the state are preserved and made available for consultation.

*Minister:* In many countries the National Archives is regarded primarily as a cultural institution and has been responsible to the Minister of Culture (or an equivalent). However, the centrality and significance of records work to sound administration and accountability throughout government and the security implications of that work in many sectors should be recognised and changes made to ensure that responsibility for government records and archives throughout their life cycle rests with a single, central authority. The president or the prime minister would be the ideal 'Minister', but this may be an unachievable goal in some countries and another senior minister with a strong cross-governmental role may have to be accepted (eg the minister with responsibility for national development, for the civil service, for justice or for home affairs). Here, 'the Minister' is defined as 'the Minister responsible for the civil service'.

*Public office* is used as a broad generic term to include any public sector agency irrespective of its actual title (e.g. ministry, department, commission, public corporation, local authority).

## MODEL LAW

‘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 of and provision of official access to 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 value 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 five years shall be regarded as semi-current records.

### **Reckoning of Time**

3. (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.

## COMMENTARY

*Public records:* There is in the Schedule to the Act a detailed definition of public records which covers the whole of their life cycle and brings unambiguously within the ambit of the Act all past, present and future *public offices*, including institutions in the para-statal sector and local authorities.

*Records* are defined in a way which incorporates all recorded information regardless of form or medium (that is, audiovisual and electronic records are included as well as paper files) created, received and maintained by any institution or individual in the pursuance of its legal obligations or in the transaction of its business. By stressing their evidential nature records are distinguished from library material or external databases which might be consulted in the process of decision making but which are not records, though information from them might be incorporated in records. The three phases of the life cycle of records (*current records*, *semi-current records* and *archives*) are explained.

There is a danger that the technological difficulties and high costs involved will result in electronic records management being given a low priority. However, it is not possible to guard against this by making specific provision in records and archives legislation for the management of electronic records. Instead it has to be tackled by a programme of education and persuasion, stressing the high value of the information contained in electronic records and the risks inherent in failure to provide for their effective long-term management.

*The particular problems posed by electronic records and ways of dealing with them are discussed in detail in Managing Electronic Records.*

*Reckoning of time:* This section specifies the way in which periods of time specified in the Act (eg the 'thirty-year rule' in section 15) are to be calculated.

(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

### National Records and Archives Institution

#### Establishment of the Institution

4. (1) There is hereby established a National Records and Archives Institution (hereafter referred to as 'the Institution').  
(2) The Institution shall be responsible to the Minister, who shall be advised by the National Records and Archives Advisory Board (hereafter referred to as 'the Advisory Board').  
(3) The Institution shall have an official seal which shall be judicially noticed.

#### Functions of the Institution

5. (1) The Institution shall contribute to the efficiency, effectiveness and economy of the Government of \*\*\*\*\* by:
  - (a) ensuring that public offices follow good record-keeping practices
  - (b) establishing and implementing procedures for the controlled and timely disposal of public records of no continuing value
  - (c) advising on best practices and established standards in record keeping in the public service

## COMMENTARY

*National Records and Archives Institution:* The Act creates a new organisation within the civil service of the country with responsibility for the general oversight of all records and archives work in the public sector and describes its functions.

In this model law the neutral title 'National Records and Archives Institution' is used for this organisation, but local practice may prefer a more specific designation (eg 'Administration', 'Agency', 'Authority', 'Department', 'Service').

## MODEL LAW

(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 Institution 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.

### **The National Records and Archives Advisory Board**

6. (1) The members of the Advisory Board shall be:
- (a) a Chairman appointed by the Minister
  - (b) the Director
  - (c) one member from the Ministry responsible for the civil service
  - (d) one member from the Ministry responsible for finance
  - (e) one member from the Ministry responsible for legal affairs
  - (f) not more than five other members appointed by the Minister who have experience and ability in records management or archival research or such other experience or qualifications to enable them as to make a useful contribution to the work of the Advisory Board.
- (2) The Chairman and 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.



## COMMENTARY

*National Records and Archives Advisory Board:* Any existing National Archives advisory body is replaced in the Act by a new body, called here the National Records and Archives Advisory Board, though Council or Committee may be a more appropriate designation in some countries.

Its membership and powers are defined. Its role is to advise the Minister generally on public records and archives matters, advise and support the Director and undertake such other functions as the Minister may direct. While the Board should be influential in furthering the cause of public records and archives work, its role should be clearly advisory and not executive.

Ideally the number of members of the Board should be kept small and individuals should be selected on grounds of their personal suitability and interest. However, to give the Board the necessary prestige it has been thought necessary to specify in the model law that certain important public offices should be represented *ex officio*. The Director of the National Records and Archives Institution should be one of those *ex officio* members. The number of appointed members proposed is calculated to balance the *ex officio* members. The frequency of meetings is a matter for local decision. If desired a quorum may be specified.

Provision is made for the payment of allowances, where appropriate, to members.

## MODEL LAW

- (3) The Advisory Board shall be responsible for
  - (a) advising the Minister generally on matters relating to the management of the public records of \*\*\*\*\*
  - (b) advising and supporting the Director of the National Records and Archives Institution;
  - (c) such other matters as this Act may specifically assign to it or the Minister may direct.
- (4) The Advisory Board shall meet as often as it considers necessary, but not less than \*\*\* times a year, and shall regulate its own meetings.
- (5) Members of the Advisory Board shall be paid such allowances as may be determined by the Minister in consultation with the Minister responsible for finance.
- (6) The secretariat of the Advisory Board shall be provided by the Institution.

### **The Director**

7. (1) There shall be a Director of the National Records and Archives Institution (hereafter referred to as 'the Director') and the offices of Director and of the other staff of the Institution shall be offices in the civil service of \*\*\*\*\*.
- (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 Institution

## COMMENTARY

*The Director:* This Act provides for an appointment to the new office of Director of the National Records and Archives Institution. He or she and the other staff of the Institution should be officers in the civil service of the country.

The title 'Director' is used in this model law as a generic term for the head of the National Records and Archives Institution. It does not necessarily indicate the specific grade within the civil service which should be assigned to the office. In countries where the use of Director would be taken to indicate a specific grade and that is not intended, either a neutral title (eg 'Head') or a title specifying the appropriate grade or status (eg 'Director General', 'Chief Executive') should be used.

The Act confers on the Director responsibility for implementing general records policy, for the day-to-day management of the Institution and for other matters specified elsewhere in the Act or assigned by the Minister. It requires the publication of an annual report by the Director.

(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 Institution during that year, which shall be published.

(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, persons who normally have access to such public records.

## PART III

### **Responsibilities for Public Records**

#### **Responsibility of Heads of Public Offices for Records**

8. 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 and registry systems
  - (b) drafting with the Director retention and retention and disposal schedules relating to records specific to each public office
  - (c) implementing retention and retention and disposal schedules issued in accordance with subsections 9 (d) and (e) of this Act

## COMMENTARY

*Classified records:* The Act provides appropriate control measures to permit the inspection of confidential and secret records by the Director and his or her staff, in the course of their duties, and the transfer of such records to record centres under the control of the Director. It is essential that confidential and secret records should not be regarded as falling outside the National Records and Archives Act. Safeguards are built in (such as in subsection 11 (a) (i) and section 15) to prevent their premature disclosure to unauthorised persons, but it should not be assumed that there will never come a time when they can safely be made available for public inspection.

*Records class:* As part of a records and archives restructuring programme, a records class or cadre covering registry and records staff in public offices and archivists in the National Archives may be established within the civil service with a common scheme of service. The Director, together with other appropriate bodies and officials, will have a role in its management and especially in its training. However, this is a matter for action within existing arrangements for managing the civil service rather than for this legislation.

*For a more detailed discussion of the records class and its scheme of service see Lesson 4 of Regulating Records and Archives Systems.*

*Responsibilities for public records:* The Act sets out the respective responsibilities of the heads of public offices and of the Director of the National Records and Archives Institution for the management of public records during the first two stages of their life cycle, ie current records, created and maintained within public offices, and semi-current records, normally to be transferred to records centres under the control of the Director. It establishes a partnership which, through goodwill and cooperation, should ensure the wellbeing of records throughout their life cycle.

This part of the Act establishes a new framework for making improvements in registry and records work in public offices.

It stresses that each public office is responsible for the effective management of its own records. In the interests of accountability, public offices should be subject to audit by the central auditing authority on the management of their information resources. The standards established by the National Records and Archives Institution would be the criteria against which that audit would test the effectiveness of procedures for the management of records within public offices.

## MODEL LAW

(d) transferring semi-current records into the custody of the Director, except insofar 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 29 of this Act.

9. 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 subsection 11 (b) of this Act

(b) approving access by third parties, other than authorised personnel of the Institution and of the public office which created them or its successor in function, or as provided for in subsection 15 (4) of this Act, to semi-current records in the custody of the Director

(c) maintaining semi-current records whose transfer has been deferred under subsection 8 (d) of this Act in conditions comparable to those provided by the Director in records centres under his or her control

## COMMENTARY

In the Act the respective responsibilities of the heads of public offices and of the Director are dealt with separately. Here they are described in terms of the life cycle of the records.

*Current records:* Primary responsibility for the adequacy of current records and for the establishment and maintenance of good records keeping practices will rest upon the head of each public office (section 8). This will involve the creation and management of current records within appropriate filing and registry systems; the drafting and implementation of disposal schedules; and the transfer of semi-current records into a records centre (subject to a mechanism for the formal authorisation of deferment of transfer of highly sensitive records while ensuring that such records are maintained in appropriate conditions). To assist heads of public offices in carrying out their responsibilities under this Act it will be necessary to appoint an agency records manager in each public office to manage all its public records while they are still in its custody. This need not be specified in the Act but should be effected by administrative instruction when the Act comes into force.

At this stage the Director will be responsible for the co-ordination of record keeping work within public offices (section 10), with powers of inspection, and in particular for providing professional assistance, advice and guidance on the establishment and management of filing and registry systems; establishing and ensuring compliance with standards for the management of public records; arranging the necessary training of records staff in public offices; drawing up general retention and disposal schedules and agreeing retention and disposal schedules relating to records specific to each public office; ensuring that the provisions of retention and disposal schedules are implemented; and authorising the disposal of public records other than as provided for by retention and disposal schedules.

## MODEL LAW

(d) implementing retention and disposal schedules relating to semi-current records whose transfer has been deferred under subsection 8 (d) 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 14 of this Act not later than twenty years from their creation, except insofar as further deferment of transfer for a specified period may have been approved by regulation made in accordance with section 29 of this Act.

### **Responsibility of the Director for Records and Archives**

10. The Director shall be responsible for the oversight of record-keeping practices within public offices, with powers of inspection, and in particular for
  - (a) providing professional assistance, advice and guidance on the establishment and management of filing and registry 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 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 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



## COMMENTARY

*Retention and disposal schedules:* The mechanism for drawing up retention and disposal schedules should involve consultation with the heads of the public offices concerned and with other senior officers of the government best qualified to advise on the continuing administrative, financial and legal value of the records. Schedules should be issued in such a way as to confer the maximum authority on them. This will normally be that of the Minister. Procedures should not be so rigid and bureaucratic that the issue of schedules is delayed unacceptably.

*Semi-current records:* The primary responsibility for public records will pass to the Director once they have become semi-current and he has accepted custody of those which have been scheduled for further retention within a records centre (section 11). In particular, he will implement retention and disposal schedules in respect of records in the records centres; appraise and dispose appropriately of semi-current records which are in his custody there and are not covered by retention and disposal schedules; and arrange the transfer of records of permanent value to the National Archives or another archival repository or place of deposit not later than twenty years from their creation. There is also provision for him to return semi-current records temporarily from his custody to the public office which created them for the purposes of current administration, subject to safeguards to maintain the integrity of such records when they are out of his custody.

Heads of public offices will continue to be responsible for co-operation with the Director in the management of semi-current records (section 9) and in particular for approving access by third parties to semi-current records in the records centres; maintaining semi-current records whose transfer has been deferred in conditions comparable to those provided by the Director in the records centres; implementing retention and disposal schedules relating to such semi-current records, disposing of those of no further value

## MODEL LAW

- (f) ensuring that the provisions of retention and retention and disposal schedules are implemented
  - (g) authorising the disposal of public records other than as provided for by retention and retention and disposal schedules.
11. 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 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 retention and disposal schedules
  - (e) arrange the transfer of records of enduring value into his custody or to such other place of deposit as may have been appointed under section 14 of this Act not later than twenty years from their creation

## COMMENTARY

and transferring records of permanent value to the National Archives or to another archival repository or place of deposit not later than twenty years from their creation (subject to a formal mechanism for the further deferment of transfer for a specified period of records of continuing sensitivity).

The period of twenty years from creation which is prescribed for transfer to the National Archives has no inherent significance, but it balances the need to undertake a final appraisal of public records (and hence to dispose of those of no archival value) as soon as possible, while allowing sufficient distance from the time of the events to assist dispassionate appraisal. It also provides sufficient time after transfer for the National Archives to arrange and describe the records if they are to become open to public inspection after thirty years (see section 15). Local experience or conditions may suggest that transfer after a shorter period is more appropriate, but a longer period is not recommended.

## MODEL LAW

- (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 8 (d) above should be held.
12. (1) The Director shall be responsible for the preservation of all public records of enduring value other than any whose transfer may have been deferred under subsection 9 (d) of this Act or which are held in a place of deposit appointed under section 14 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 or her 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 or her control, insofar as such records are open to inspection under section 15 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 or her control.

## COMMENTARY

*Archives:* The Director will be responsible for safeguarding and providing access to all public records selected for permanent preservation ('archives') other than any whose transfer may have been deferred or which are held in a place of deposit appointed under section 14 of the Act.

The duties (section 12) fall under two main headings: those which are mandatory and those which are permissive.

*Mandatory duties:* These are to take charge of the National Archives and to provide there and in other archival repositories under his control (ie in the branch offices provided for in section 13) suitable conditions for the preservation of the holdings; to arrange and describe those holdings so as to facilitate access to them; and to arrange for reasonable facilities to be available to the public for inspecting and obtaining copies of public records in the National Archives and other archival repositories under his control (insofar as such records are open to public inspection).

## MODEL LAW

(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 or her control, and may in particular

(a) prepare publications, and sell them and other 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 or her control

(c) arrange exhibitions and lend public records for exhibitions elsewhere subject to conditions which he may specify, except that loans outside \*\*\*\*\* 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 and of the Minister on the advice of the Advisory Board

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

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

## COMMENTARY

*Permissive duties:* The Director's permissive duties include all such things as appear to him necessary or expedient for maintaining the utility of the National Archives and other archival repositories under his control, and in particular the preparation and sale of publications; the issue of rules to be observed by those wishing to consult public records in the National Archives and other archival repositories under his control; the exhibition of public records and their loan for exhibition elsewhere subject to conditions which he may specify (except that loans outside the country may not be made without the assent of the Minister); the disposal of public records in the National Archives or any other archival repository under his control which are not of permanent value (subject to the agreement of the head of the public office in which they were created and of the Minister); the acceptance of private records for safekeeping and the acquisition of private records by gift, purchase, bequest or deposit (purchase is dealt with also in section 27). He should also be permitted to enter into arrangements with other institutions (eg the National Library, National Museum) for the joint management of conservation and restoration, reprographic or other technical facilities.

**Responsibility for Local Government Records**

13. (1) The Director shall establish a network of branch offices of the Institution, each serving one or more regions of \*\*\*\*\*. The head of each such branch office shall be responsible to the Director for implementing the general policy of the Minister in respect of public records in the regions which that branch office serves .
- (2) In respect of public records created, received and maintained in public offices in the regions the responsibilities set out under sections 8 and 11 of this Act shall be those of the heads of such public offices and the responsibilities set out under sections 9, 10 and 12 shall be those of the head of the branch office of the Institution.
- (3) Records centres and archival repositories established in the regions shall be regarded as being under the control of the Director of the National Records and Archives Institution and the public records therein as being in his custody for the purposes of this Act.
- (4) Where there is no archival repository within the regions served by a branch office of the Institution, the Director may direct the transfer of archives to the National Archives or to any other archival repository under his or her control until such time as an archival repository to serve those regions may be established.

**Places of Deposit**

14. (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 repository under the control of the Director:



## COMMENTARY

*Records of local authorities:* The term local authorities is used here in a generic sense. Where it may be taken to apply only to municipal and rural councils, either another term should be used or all the sub-national levels of government will have to be enumerated.

The nature of local authorities will differ from country to country, depending upon such issues as the size of the country, whether it is federal or non-federal and constitutional provisions for decentralisation and local autonomy. Similarly the titles of the highest level of local authorities will vary (such as 'region', 'district', 'municipality'). However, where appropriate, the provisions of the Act should be extended to records of local authorities by assigning the responsibilities for public records of heads of national public offices to heads of local authorities and by establishing a structure of branch offices for the National Records and Archives Institution, including the provision of local records centres and archival repositories.

The funding of such branch offices may be shared between national and local authorities, but such arrangements are better dealt with administratively rather than by legislation.

*Places of deposit:* This Act provides for the appointment of places of deposit outside the control of the Director of the National Records and Archives Institution subject to certain conditions and to inspection by the Director. This is intended to be applied primarily in the para-statal sector (eg the state broadcasting corporation in respect of its audio-visual archives). It is not intended that public offices within the central or local government sectors should operate their own archival repositories.

## MODEL LAW

(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 finding aids to those records and submit copies to the Director.

(4) If a place of deposit fails to maintain suitable 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

#### Thirty-year Rule

15. (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 14 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 section 3 (2) of this Act, except insofar as a longer or

## COMMENTARY

*Thirty-year rule:* A thirty-year rule for public access to public sector records and archives would accord with the informal international norm, but there is no reason why the period should not be reduced if that were felt to be appropriate.

Whatever the access period, provision should be made for a longer or shorter period to be prescribed by regulation under the Act.

When a country already has or is planning freedom of information (or access to information) legislation, a set access period will become irrelevant, but it is important that such legislation, and any privacy legislation that, conversely, restricts access to information, should be compatible with the spirit and letter of records and archives legislation.

## MODEL LAW

shorter period may have been prescribed by the Minister by regulation made in accordance with section 29 of this Act at the request of the minister or other 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) any records selected for permanent preservation which are still classified as restricted, confidential, secret or top secret shall be examined by a competent authority to ascertain whether their continuing classification is necessary and, if it is not, they shall be de-classified and cease to be subject to the *Official Secrets Act* [relevant title to be cited] and shall become open to public inspection under subsection (1) of this section.

(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

- (i) national security
- (ii) maintenance of public order
- (iii) safeguarding the revenue, or
- (iv) 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 above shall continue to be open to public inspection irrespective of their age.

## COMMENTARY

*Declassification:* At thirty years the declassification and opening for public inspection of ‘Confidential’ and ‘Secret’ records should be automatic, except where extended closure under sub-section 15 (3) or retention under subsection 11 (d) have been prescribed. Appropriate periods of extended closure or retention should be determined for categories of sensitive records so that there is consistency in the operation of this aspect of the Act, but this is not a matter for primary legislation. Records subject to extended closure or retention should be re-reviewed for continuing sensitivity at regular intervals with a view to opening them to public inspection as soon as possible.

*Extended closure* or the retention in public offices of records over thirty-years old should be limited to specified categories of records: eg those relating to national security, maintenance of public order, safeguarding the revenue or the private affairs of living individuals. The categories should be consistent with those which are exempt from the operation of freedom of information legislation or protected by privacy legislation.

## PART V

### Financial Provisions

#### Administrative Expenses

16. The administrative expenses of the Institution shall be a charge on the Consolidated Fund.

#### Funds

17. The funds of the Institution shall include
- (a) any sums which may be appropriated by Parliament for the purposes of the Institution
  - (b) any sums which may be payable to the Institution by way of donations, gifts or bequests
  - (c) any sums which may accrue to the Institution by way of sales, fees or other payments for services.

#### Fees

18. Fees may be charged for the supply of copies, the certification of copies and the provision of other services by the staff of the Institution. Such fees shall be prescribed by regulation made in accordance with section 29 of this Act, which regulation may authorise the remission or reduction of the fees in prescribed cases.

#### Accounts

19. (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 Institution.

## COMMENTARY

*Financial provisions:* This part establishes the financial rules under which the National Records and Archives Institution will operate and these should be consistent with national practice. Ideally the Institution should have its own budget and the Director should account for it.

*Fees:* Procedures should be prescribed for the fixing of fees for the provision of services by the Institution (eg the supply of photocopies). One issue which has to be faced on a country by country basis is whether there should be provision for fees to be charged for the consultation of documents. As a general principle public access to public records and archives should be free of charge: otherwise the accountability of the state to its citizens and the pursuit of historical truth are inhibited, while the consequential income is likely to be marginal to the costs of running the Institution. However, if existing archival legislation permits the charging of fees, it may be difficult to abandon that source of income, however minimal.

(2) The books and accounts of the Institution shall be audited each year by the Auditor General's Office.

### **Annual Estimates**

20. Not later than six months before the beginning of each fiscal year the Director shall submit to the Ministry responsible for finance detailed estimates of the revenue and expenditure of the Institution for the next financial year.

## **PART VI**

### **Offences and Penalties**

#### **Unauthorised Removal or Destruction or Wilful Mutilation of Public Records**

21. (1) 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 8 to 12 of this Act or who wilfully mutilates any public record in a public office, in a records centre, in the National Archives or any other archival repository under the control of the Director or in a place of deposit appointed under section 14 of this Act commits an offence and is liable on summary conviction to a fine not exceeding \*\*\* [*amount in local currency*] or to imprisonment for a term not exceeding twelve months or to both.
- (2) Any public record which has been removed without proper authorisation in the past or may be so removed in the future and which remains within the jurisdiction of the courts of \*\*\*\*\* may be reclaimed by the public office in which it was created or by its successor in function or, in respect of public records over thirty years old, by the National Records and Archives Institution.



## COMMENTARY

*Penalties:* It is desirable to prescribe penalties for unauthorised removal or destruction or wilful mutilation of public records and for illegal export of historical documents. It may be desirable also to provide for the recovery of public records which have been removed without authority. The model law does not specify the legal process for the recovery of strayed public records: if it is necessary to do so, it should be in a manner appropriate to the judicial system of the individual country. In some countries it may not be necessary to specify the penalties, as these may be entirely within the discretion of the courts.

*Fines:* The amounts of the several fines should be set in conformity with local practice for equivalent offences. They should be high enough to serve as a serious deterrent. If possible, some mechanism for increasing the fines periodically in line with inflation without the need to amend the primary legislation (eg by regulation) might be included.

### **Denial of Access**

22. Any person who without reasonable cause denies access to public records to an officer duly authorised by the Director commits an offence and is liable on summary conviction to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding six months or to both.

### **Illegal Export of Historical Documents**

23. 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 \*\*\*\* or to imprisonment for a term not exceeding twelve months or to both 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**

#### **Legal Validity**

24. (1) The legal validity of any public record shall not be affected by its removal under the provisions of this Act or of the National Archives Act, \*\*\*\*\*, to the custody of the Director or to a place of deposit appointed under section 14 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 Institution 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.

## COMMENTARY

*Legal validity:* The Act maintains the legal validity of records transferred to the National Archives, branch offices or places of deposit under this or any previous archival legislation and makes certified copies of records legally admissible in place of the originals in order to minimise the need to produce original records in court.

**Copyright**

25. (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 copyrights 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 publication of facsimile copies, verbatim transcripts or literal translations of public records in the custody of the Director in which copyright of the Government of \*\*\*\*\* 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 regulation made in accordance with section 18 of this Act.

**PART VIII**

**Miscellaneous Provisions**

**Statutory Deposits**

26. (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.

## COMMENTARY

*Copyright:* It should not be assumed that copyright in all public records and archives rests with the state. In international law, copyright in a written document belongs to the author of that document, not to its recipient. Hence, copyright in correspondence, etc, received by public offices from private individuals or organisations or from foreign states or international organisations does not belong to the state but to the sender. The international copyright rules in respect of records in other media may be different.

If there is no existing provision within general copyright legislation, opportunity should be taken in this Act to permit the Director (and persons acting under his authority) to make records available for inspection and to provide copies of them without breach of any private copyrights which may subsist in them and confirm the requirement to obtain his consent before publishing facsimiles, transcripts or translations of public records and archives in his custody in which copyright belongs to the state.

*Statutory deposit:* The obligation to make certain statutory deposits of officially published material in the National Archives may need to be stated. If the National Archives also serves more generally as the statutory deposit library for copyright purposes, the Act will need to continue the appropriate provisions of previous legislation.

### **Private Records**

- 27 (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, whereupon the provisions of this Act relating to public records shall have effect.
- (2) The Government of \*\*\*\*\* 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 of the private records acquired.
- (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.

### **Export of Historical Documents**

- 28 (1) The export from \*\*\*\*\* of public records is prohibited.
- (2) The export from \*\*\*\*\* of private records which relate to \*\*\*\*\* and are of historical value is prohibited except in accordance with the terms of a licence to export issued by the Minister on the advice of the Director.
- (3) A licence issued under the provisions of subsection (2) shall specify each document to which the licence relates and contain such conditions as the Minister may prescribe.

## COMMENTARY

*Private records:* Special provision may be made for the purchase of private records, over and above that in section 12(2)(e). The specific formulation here may not be appropriate in all countries.

*Export of historical documents:* If it is not covered by other legislation protecting the wider national cultural heritage, the export of the national archival heritage should be regulated. Provision may also be made for the establishment of a national register of private records and archives.

## MODEL LAW

(4) For the purposes of this section the Director may establish a register of private records and archives within \*\*\*\*\*.

### **Regulations**

29. All regulations prescribed under this Act shall be issued by the Minister on the submission of the Director and on the advice of the Advisory Board.

### **Transitional Provisions for Records in the National Archives**

30. 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 National Records and Archives Institution subject to any terms and conditions that were applicable to those records and other materials on that day.

### **Deferment of Transfer**

31. 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.

### **Repeals and Amendments**

32. (1) The National Archives Act, \*\*\*\*\*, and any rules and regulations made thereunder are hereby repealed.



## COMMENTARY

*Regulations:* Sometimes legislation enumerates the various subjects on which the Minister may make regulations under the Act. In this Act the various regulations are dealt with in the relevant parts of the legislation and in section 29 only the procedures for issuing regulations are prescribed. It is suggested that regulations should be issued by the Minister on the submission of the Director after consultation with the National Records and Archives Advisory Board. Whatever procedure is prescribed, it should not be so rigid and bureaucratic that the revision of regulations in conformity with changing situations is delayed unacceptably.

*Transitional provisions:* It is necessary to introduce certain transitional provisions to ensure legal and administrative continuity between the old and the new records and archives systems.

*Deferment of transfer:* This section will permit the Director to defer acceptance of transfers to records centres and archival repositories until adequate and appropriate accommodation has been provided.

*Repeals, amendments and savings:* The Act repeals existing records and archives legislation, which should be enumerated, and amends other relevant legislation.

(2) All references in other Acts and regulations to the National Archives of \*\*\*\*\* or to the Director of the National Archives shall be construed as applying to the National Records and Archives Institution or to the Director thereof and all references to the National Archives Act, \*\*\*\*\*, shall be construed as referring to this Act.

## SCHEDULE

### (Section 2)

The following are public records:

1. The records and archives of an official nature belonging to \*\*\*\*\* 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 \*\*\*\*\* or minister or any other officer or employee thereof
  - (c) by any post representing the Government of \*\*\*\*\* outside the country or any officer serving in such a post
  - (d) by any formation or unit of the armed forces or police service of \*\*\*\*\* 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 Supreme Court, High Court or any other court or tribunal with jurisdiction within \*\*\*\*\* or by any judge, magistrate or other officer of such a court
  - (g) by any regional, district or municipal authority or officer thereof.

## COMMENTARY

*Public records and archives:* The Schedule to the Act provides a detailed definition of public records and archives which covers the whole of their life cycle and brings unambiguously within the ambit of the Act all past, present and future public offices and any officer (from the President down) of such an office. The definition of public records embraces not only all three branches of government - executive, judicial, and legislative - but also institutions in the para-statal sector and local authorities. All public archives as defined in previous archival legislation and already in the custody of the existing National Archives are also included in the definition and provision is made for the future by giving power to add any other body or individual by regulation under the Act.

## MODEL LAW

- (h) by any predecessor or successor of any of the institutions, bodies or individuals designated in (a) - (g) above
  - (i) by any other body or individual so designated by the Minister by regulation made in accordance with section 29 of this Act.
- 2. The records created, received and maintained by any public corporation or para-statal organisation.
- 3. All public archives within the meaning of the National Archives Act, \*\*\*\*\*, in the custody of the National Archives of \*\*\*\*\*, including its regional offices, at the time of coming into operation of this Act.
- 4. Any private records
  - (a) taken into the custody of the Director under the provisions of section 23 of this Act
  - (b) acquired under the provisions of section 27 of this Act.