

## NATIONAL ARCHIVES AND RECORD SERVICE OF SOUTH AFRICA ACT NO. 43 OF 1996

[\[View Regulation\]](#)

[ASSENTED TO 27 SEPTEMBER, 1996]  
[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

*(Afrikaans text signed by the President)*

This Act has been updated to *Government Gazette* 30935 dated 1 April, 2008.

### as amended by

Cultural Laws Amendment Act, [No. 36 of 2001](#)  
[with effect from 18 February, 2002]

Public Service Amendment Act, [No. 30 of 2007](#)  
[with effect from 1 April, 2008]

### ACT

**To provide for a National Archives and Record Service; the proper management and care of the records of governmental bodies; and the preservation and use of a national archival heritage; and to provide for matters connected therewith.**

[Long title substituted by [s. 20](#) of [Act No. 36 of 2001](#).]

### ARRANGEMENT OF SECTIONS

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

**"appraisal"** means the archival function of determining the eventual disposal of records;

**"archives"** means records in the custody of an archives repository;

**"archives repository"** means any archives repository contemplated in [section 11](#);

**"Council"** means the National Archives Advisory Council contemplated in [section 6](#);

[Definition of "Commission" substituted by the definition of "Council" by [s. 7 \(a\)](#) of [Act No. 36 of 2001](#).]

#### Wording of Sections

**"custody"** means the control of records based upon their physical possession;

**"disposal authority"** means a written authority issued in terms of [section 13 \(2\) \(a\)](#) specifying records to be transferred into the custody of the National Archives or specifying records to be otherwise disposed of;

**"electronic records system"** means any records system in which information is generated electronically and stored by means of computer technology;

**"governmental body"** means any legislative, executive, judicial or administrative organ of state (including a statutory body) at the national level of government;

**"head of a governmental body"** means the chief executive officer of a governmental body or the person who is acting as such;

**"Minister"** means the Minister responsible for the administration of this Act;

**"National Archives"** means the National Archives and Records Service of South Africa established by [section 2](#);

[Definition of "National Archives" substituted by [s. 7 \(b\)](#) of [Act No. 36 of 2001](#).]

#### Wording of Sections

**"non-public record"** means a record created or received by a private individual or a body other than one defined as a governmental body in terms of this Act or a provincial law pertaining to records or archives;

**"prescribe"** means prescribe by regulation;

**"public record"** means a record created or received by a governmental body in pursuance of its activities;

**"record"** means recorded information regardless of form or medium;

**"recording"** means anything on which sounds or images or both are fixed or from which sounds or images or both are capable of being reproduced, regardless of form;

**"records classification system"** means a classification plan for the identification, arrangement, storage and retrieval of records;

**"regulation"** means any regulation made under this Act;

**"this Act"** includes the regulations.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 2. Establishment of National Archives and Records Service of South Africa.-There is hereby established a branch of the public service of the Republic to be known as the National Archives and Records Service of South Africa.**

**2. Establishment of National Archives and Records Service of South Africa.-**There is hereby established a branch of the public service of the Republic to be known as the National Archives and Records Service of South Africa.

[[S. 2](#) substituted by [s. 8](#) of [Act No. 36 of 2001](#).]

#### Wording of Sections

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 3. Objects and functions of National Archives.-The objects and functions of the National Archives shall be to-**

**3. Objects and functions of National Archives.-**The objects and functions of the National Archives shall be to-

- (a) preserve public and non-public records with enduring value for use by the public and the State;
- (b) make such records accessible and promote their use by the public;
- (c) ensure the proper management and care of all public records;
- (d) collect non-public records with enduring value of national significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the nation's experience neglected by archives repositories in the past;
- (e) maintain a national automated archival information retrieval system, in which all provincial archives services shall participate;

- (f) maintain national registers of non-public records with enduring value, and promote co-operation and co-ordination between institutions having custody of such records;
- (g) assist, support, set standards for and provide professional guidelines to provincial archives services;
- (h) promote an awareness of archives and records management, and encourage archival and records management activities;
- (i) generally promote the preservation and use of a national archival heritage.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 4. National Archivist and staff.-(1) (a) The Minister shall, after consultation with the Minister for the Public Service and Administration, appoint an experienced and qualified person as National Archivist in terms of the Public Service Act, 1994 (Pr**

**4. National Archivist and staff.**-(1) (a) The Minister shall, after consultation with the Minister for the Public Service and Administration, appoint an experienced and qualified person as National Archivist in terms of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), on such grade as the Minister may determine.

(b) The National Archivist shall manage the National Archives under the direction of the Director-General: Arts, Culture, Science and Technology.

[[Sub-s. \(1\)](#) substituted by [s. 9](#) of [Act No. 36 of 2001](#) and amended by [s. 43](#) of [Act No. 30 of 2007](#).]

Wording of Sections

(2) The National Archivist shall in the performance of his or her functions be assisted by officers and employees appointed in terms of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)).

(3) (a) The National Archivist may, subject to any conditions, delegate a power or assign a duty to a member of the staff and may at any time cancel such delegation or assignment.

(b) A delegation or assignment shall not divest the National Archivist of the power delegated or duty assigned and he or she may at any time amend or set aside any decision made thereunder, or exercise the power or perform the duty concerned.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 5. Powers and duties of National Archivist.-(1) The National Archivist shall-**

**5. Powers and duties of National Archivist.**-(1) The National Archivist shall-

- (a) take such measures as are necessary to arrange, describe and retrieve records;
- (b) provide information, consultation, research and other services related to records;
- (c) with special emphasis on activities designed to reach out to less privileged sectors of society, make known information concerning records by means such as publications, exhibitions and the lending of records;
- (d) require of a person who has made use of records in the custody of the National Archives while researching a publication or dissertation to furnish a copy of the publication or dissertation to the National Archives;
- (e) generally, take such other steps and perform such other acts as may be necessary for or conducive to the achievement of the objects of the National Archives.

(2) The National Archivist may-

- (a) provide training in archival techniques and the management of records;
- (b) co-operate with organisations interested in archival matters or the management of records;
- (c) provide professional and technical support in aid of archival activities and the archival community;
- (d) on the advice of the Council and with the concurrence of the Minister exempt a governmental body from any provision of this Act; and

[[Para. \(d\)](#) substituted by [s. 10 \(a\)](#) of [Act No. 36 of 2001](#). (Editorial Note: In terms of section 10 (a) of [Act No. 36 of 2001](#), [subsection \(1\) \(d\)](#) must be substituted. It is suggested that [subsection \(2\) \(d\)](#) was in fact meant.)]

Wording of Sections

(e) publish the appraisal policy and lists of records that may be destroyed.

[[Para. \(e\)](#) added by [s. 10 \(b\)](#) of [Act No. 36 of 2001](#). (Editorial Note: In terms of section 10 (b) of [Act No. 36 of 2001](#), [subsection \(1\) \(e\)](#) must be added. It is suggested that [subsection \(2\) \(e\)](#) was in fact meant.)]

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 6. Establishment, constitution and functions of National Archives Advisory Council.-(1) The Minister shall by notice in the Gazette establish a council to be known as the National Archives Advisory Council.**

**6. Establishment, constitution and functions of National Archives Advisory Council.**-(1) The Minister shall by notice in the *Gazette* establish a council to be known as the National Archives Advisory Council.

(2) The Council shall consist of-

- (a) not more than six members appointed by the Minister from among persons who are knowledgeable of or have an interest in archival matters; and
- (b) every chairperson of the various provincial councils advising on archives or, in the absence of such a provincial council, a representative for the province in question elected through a public and transparent process which shall be determined and overseen by the responsible member of the Executive Council of that province.

(3) The procedures and other conditions for appointment as a member of the Council shall be as prescribed.

(3A) The Minister may dissolve the Council on any reasonable grounds.

(4) The functions of the Council shall be to-

- (a) advise the Minister and the Director-General: Arts, Culture, Science and Technology on any matter related to the operation of this Act;
- (b) advise the National Archivist on furthering the objects and functions of the National Archives;
- (c) advise and consult with the South African Heritage Resources Agency on the protection of records forming part of the National Estate;
- (d) consult with the Public Protector on investigations into the unauthorised destruction of records otherwise protected under this Act; and
- (e)

[Editorial Note: Numbering correct according to original *Government Gazette*.]

- (f) annually submit a business plan to the Minister for approval.

(5) The Council may appoint committees from amongst its members and may assign to any committee so appointed such of its functions as it may deem fit: Provided that the Council shall not be divested of any function which it has so assigned and may amend or revoke a decision of such a committee.

(6) The procedure at meetings of the Council and of a committee shall be as prescribed.

(7) The Council or any committee may, subject to the approval of the Minister, co-opt any person to serve on the Council or on a committee, as the case may be, in an advisory capacity, but such a co-opted member shall not have any voting rights.

(8) (a) Subject to [paragraph \(b\)](#), a member of the Council who is not in the full-time service of the State, may receive in respect of his or her functions as a member of the Council such allowances as the Minister may determine with the concurrence of the Minister of Finance.

(b) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of allowances contemplated in [paragraph \(a\)](#).

[[S. 6](#) substituted by [s. 11](#) of [Act No. 36 of 2001](#).]

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 7. Secretary and staff of Council.-The administrative and secretarial functions of the Council must be performed by a section established by the Director-General in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).**

**7. Secretary and staff of Council.**-The administrative and secretarial functions of the Council must be performed by a section established by the Director-General in terms of the Public Service Act, 1994 ([Proclamation 103 of 1994](#)).

[[S. 7](#) substituted by [s. 12](#) of [Act No. 36 of 2001](#).]

8. . . . .

[S. 8 repealed by s. 13 of Act No. 36 of 2001.]

Wording of Sections

9. . . . .

[S. 9 repealed by s. 13 of Act No. 36 of 2001.]

Wording of Sections

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 10. Annual reports.-**(1) As soon as practicable after the end of each financial year the National Archivist shall compile a report on all the activities of the National Archives during that financial year, and the Council shall compile a report on all t

**10. Annual reports.-**(1) As soon as practicable after the end of each financial year the National Archivist shall compile a report on all the activities of the National Archives during that financial year, and the Council shall compile a report on all the activities of the Council during that financial year.

(2) The report of the National Archivist shall include-

- (a) details of income and expenditure;
- (b) a complete list of disposal authorities issued;
- (c) an account of all cases of unauthorised disposal of public records investigated by the National Archives; and
- (d) an account of all governmental bodies which have failed to comply with this Act.

(3) The report of the National Archivist and of the Council, together with the audited annual financial statements pertaining to the funds of the Council, shall be submitted to the Minister, and the Minister shall table them in Parliament within 14 days after receipt thereof if Parliament is then sitting, or if Parliament is not then sitting, within 14 days of the commencement of the next sitting of Parliament.

(4) Within five months after the reports have been tabled, a delegation consisting of the National Archivist and at least two members of the Council must brief the Portfolio Committee on Arts, Culture, Science and Technology on the reports.

[S. 10 substituted by s. 14 of Act No. 36 of 2001.]

Wording of Sections

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 11. Custody and preservation of records.-**(1) The Minister may from time to time establish archives repositories under the control of the National Archivist for the custody of records.

**11. Custody and preservation of records.-**(1) The Minister may from time to time establish archives repositories under the control of the National Archivist for the custody of records.

(2) Public records identified in a disposal authority as having enduring value shall be transferred to an archives repository when they have been in existence for 20 years: Provided that-

- (a) no other Act of Parliament requires such records to be kept in the custody of a particular governmental body or person;
- (b) the National Archivist may, after consultation with the head of a governmental body, identify such records which-
  - (i) should remain in the custody of a governmental body; or
  - (ii) should be transferred to an archives repository before they have been in existence for 20 years;
- (c) the National Archivist may defer the transfer of any public records; and
- (d) the National Archivist may grant permission for any public records to be transferred to an archives

repository before they have been in existence for 20 years.

(3) The Minister may prescribe terms and conditions governing the transfer of records under [subsection \(2\)](#).

(4) The National Archivist shall take such measures as are necessary to preserve and restore records.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 12. Access and use.-(1) Subject to any other Act of Parliament which deals with access to public records-**

**12. Access and use.**-(1) Subject to any other Act of Parliament which deals with access to public records-

- (a) a public record in the custody of the National Archives shall be available for public access if a period of 20 years has elapsed since the end of the year in which the record came into existence;
- (b) access to a public record in respect of which a period of less than 20 years has elapsed since the end of the year in which the record came into existence may be given by the National Archivist upon request.

(2) A non-public record in the custody of the National Archives shall be available for public access subject to any conditions agreed upon at its acquisition in terms of [section 14 \(1\)](#) of this Act.

(3) Notwithstanding [subsections \(1\)](#) and [\(2\)](#), the National Archivist may refuse access to a record on the grounds of its fragile condition, provided that there shall be a right of appeal to the Director-General against the refusal.

[[Sub-s. \(3\)](#) substituted by [s. 15](#) of [Act No. 36 of 2001](#).]

**Wording of Sections**

(4) The Minister may make regulations as to the admission of the public to archives repositories, the making available of records for public access, and the use of equipment for the making of copies of or extracts from records in the custody of the National Archives.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 13. Management of public records.-(1) Subject to the provisions of this Act, the National Archivist shall be charged with the proper management and care of public records in the custody of governmental bodies.**

**13. Management of public records.**-(1) Subject to the provisions of this Act, the National Archivist shall be charged with the proper management and care of public records in the custody of governmental bodies.

(2) Without limiting the generality of [subsection \(1\)](#)-

- (a) no public record under the control of a governmental body shall be transferred to an archives repository, destroyed, erased or otherwise disposed of without the written authorisation of the National Archivist, issued subject to-
  - (i) [section 6 \(4\) \(e\)](#) of this Act; and
  - (ii) a final ruling by the Minister when unresolvable differences arise between the National Archivist and the Council;

[[Sub-para. \(ii\)](#) substituted by [s. 16](#) of [Act No. 36 of 2001](#).]

**Wording of Sections**

(b) the National Archivist shall-

- (i) determine records classification systems to be applied by governmental bodies;
  - (ii) determine the conditions subject to which records may be microfilmed or electronically reproduced; and
  - (iii) determine the conditions subject to which electronic records systems should be managed;
- (c) the National Archivist shall inspect public records in so far as such inspection may be necessary for the performance of his or her functions under this Act: Provided that the inspection of public records which contain information the disclosure of which is restricted by any other Act of Parliament shall be done only with the consent of the head of the governmental body concerned.

(3) The Minister may make regulations as to the management and care of public records in the custody of governmental bodies.

(4) The National Archivist may from time to time issue directives and instructions, which shall not be inconsistent with the regulations, as to the management and care of public records in the custody of governmental bodies.

(5) (a) The head of a governmental body shall, subject to any law governing the employment of personnel of

the governmental body concerned and such requirements as may be prescribed, designate an official of the body to be the records manager of the body.

(b) The records manager shall be responsible to see to it that the governmental body complies with the requirements of this Act.

(c) Additional powers and functions may be prescribed to a records manager.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 14. Acquisition and management of non-public records.-(1) The National Archivist may on behalf of the State acquire by purchase or donation or on loan for a temporary period or in perpetuity, either unconditionally or subject to such conditions as may**

**14. Acquisition and management of non-public records.**-(1) The National Archivist may on behalf of the State 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 agreed upon, non-public records which, in his or her opinion, have enduring value of national significance and which cannot be more appropriately preserved by another institution.

(2) Subject to any conditions as may be applicable, non-public records acquired under [subsection \(1\)](#) shall be deposited in the archives repository determined by the National Archivist.

(3) The producer or distributor of a recording which is a non-public record in terms of this Act shall, within six months after a request in writing is made by the National Archivist, provide the National Archivist with a copy of the recording in such form as may be specified in the request.

(4) [Subsection \(3\)](#) shall not apply in respect of a recording that is required to be deposited in a legal deposit library, defined in [section 1](#) of the Legal Deposit of Publications Act, 1982 ([Act No. 17 of 1982](#)), or that has not been broadcast or made public in South Africa.

(5) The National Archivist shall maintain national registers of non-public records in South Africa which, in his or her opinion, have enduring value, in consultation with the institutions having custody of such records.

(6) . . . . .

[[Sub-s. \(6\)](#) deleted by [s. 17](#) of [Act No. 36 of 2001](#).]

[Wording of Sections](#)

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 15. Limitation of liability.-No person, including the State, shall be liable in respect of anything done under this Act in good faith and without negligence.**

**15. Limitation of liability.**-No person, including the State, shall be liable in respect of anything done under this Act in good faith and without negligence.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 16. Offences and penalties.-(1) Any person who-**

**16. Offences and penalties.**-(1) Any person who-

- (a) wilfully damages any public or non-public record in the control of a governmental body; or
- (b) otherwise than in accordance with this Act or any other law, removes, destroys or erases such record,

shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years or both such fine and imprisonment.

(2) Any person who fails to comply with-

- (a) a request mentioned in [section 14 \(3\)](#); or
- (b) . . . . .

[[Para. \(b\)](#) deleted by [s. 18](#) of [Act No. 36 of 2001](#).]

[Wording of Sections](#)

shall be guilty of an offence and liable on conviction-

- (i) in the case of an offence contemplated in [paragraph \(a\)](#) of this subsection, to a fine not exceeding R5 000;
- (ii) in the case of an offence contemplated in [paragraph \(b\)](#) of this subsection, to a fine not exceeding R10 000.

(3) The National Archivist may refuse to allow any person convicted of an offence in terms of [subsection \(1\)](#) access to an archives repository for such period as he or she may deem fit, subject to an appeal to the Minister.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 17. Transitional provisions.-**(1) The person who, immediately prior to the commencement of this Act, performed the functions of the director of archives under the Archives Act, 1962 (Act No. 6 of 1962), shall continue in office as the National Archivist

**17. Transitional provisions.-**(1) The person who, immediately prior to the commencement of this Act, performed the functions of the director of archives under the Archives Act, 1962 ([Act No. 6 of 1962](#)), shall continue in office as the National Archivist.

(2) Every public servant who, immediately prior to the commencement of this Act, performed functions as a member of the staff of the said director, shall be deemed to be a member of staff of the National Archives.

(3) Any records in the custody of the said director on the day immediately prior to the commencement of this Act are hereby transferred to the National Archivist subject to any terms and conditions that were applicable to such records on that day.

(4) Until such time as a provincial legislator promulgates provincial legislation in terms of which a provincial archives service is established for that province, every provision of this Act shall apply in that province, and-

- (a) wherever the expression "governmental body" occurs it shall mean a legislative, executive, judicial or administrative organ of state (including a statutory body) in such province at the national, provincial or local level of government; and
- (b) wherever the expression "public record" occurs it shall mean a record created or received by any institution contemplated in [paragraph \(a\)](#) in pursuance of its activities.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 18. Regulations.-**The Minister may make regulations as to any matter which in terms of this Act is required or permitted to be prescribed or done by regulation, and, generally, with reference to any matter which is necessary or expedient to be prescribed

**18. Regulations.-**The Minister may make regulations as to any matter which in terms of this Act is required or permitted to be prescribed or done by regulation, and, generally, with reference to any matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 19. Repeal of laws.-**The following laws are hereby repealed:

**19. Repeal of laws.-**The following laws are hereby repealed:

- (a) The Archives Act, 1962 ([Act No. 6 of 1962](#));
- (b) the Archives Amendment Act, 1964 ([Act No. 12 of 1964](#));
- (c) the Archives Amendment Act, 1969 ([Act No. 63 of 1969](#));
- (d) the Archives Amendment Act, 1977 ([Act No. 54 of 1977](#)); and
- (e) the Archives Amendment Act, 1979 ([Act No. 32 of 1979](#)).

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ The Act/ 20. Short title and commencement.-**This Act shall be called the National Archives and Record Service of South Africa Act, 1996, and shall come into operation on a date to be fixed by the President by proclamation in the Gazette.

**20. Short title and commencement.-**This Act shall be called the National Archives and Record Service of South Africa Act, 1996, and shall come into operation on a date to be fixed by the President by proclamation in the Gazette.

[[S. 20](#) substituted by [s. 19](#) of [Act No. 36 of 2001](#).]

[Wording of Sections](#)

GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations

DEPARTMENT OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY

ARRANGEMENT OF REGULATIONS

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The Minister of Arts, Culture, Science and Technology, under [section 18](#) read with [sections 6 \(3\), 6 \(6\), 11 \(3\), 12 \(4\), 13 \(3\)](#) and [13 \(5\)](#) of the National Archives and Record Service of South Africa Act, 1996 (Act [No. 43 of 1996](#)),-

- (a) has made the regulations in [the Schedule](#);
- (b) hereby repeals the Regulations published by Government Notice No. 126 of 24 January 1997.

**SCHEDULE**

PART I  
DEFINITIONS

**1.**

In these regulations any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates-

**"chairperson"** means the chairperson of the Council;

**"committee"** means a committee of the Council appointed in terms of [section 6\(5\)](#) of the Act;

**"head of an archives repository"** means the chief executive officer of an archives repository or the person who is acting as such;

**"strongroom"** means a room or place in an archives repository where records are stored; and;

**"the Act"** means the National Archives and Record Service of South Africa Act, 1996 (Act [No. 43 of 1996](#)).

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 2.**

**2.**

(1) The Minister shall appoint members of the Council through a process of public nomination.

(2) (a) The Minister shall, by notice in the gazette and at least two newspapers circulating throughout the Republic, request nominations of suitably qualified persons.

(b) The notice referred to in [paragraph \(a\)](#) shall specify the qualifying requirements for the appointment, as well as the manner, place and time within which the nomination must be submitted.

(3) In appointing a member of the Council from the nominees, the Minister shall ensure that-

- (a) the member has the necessary experience and that stakeholder interests are taken into account; and
- (b) the Council reflects to a reasonable degree the demographic and gender realities of the Republic of South Africa.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 3.**

**3.**

(1) A term of office of a member of the Council shall be a period of three years.

(2) Any person whose term of office as a member of the Council has expired may be reappointed for one additional term.

(3) A person appointed in the place of a member who has vacated office, shall hold office for the unexpired term of office of the member in whose place he/she is appointed.

(4) The term of office contemplated in [subregulation \(3\)](#) shall not be considered as a term of office for the purposes of re-appointment under [subregulation \(2\)](#).

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 4.**

**4.**

The Minister may remove a member of the Council from office if-

- (1) the member is absent from two consecutive ordinary meetings of the Council without leave of such absence having been granted by the Council;
- (2) such removal is requested by at least two thirds of the other members of the Council;
- (3) the member is found to be of unsound mind by a competent court; or
- (4) the member is found guilty of misconduct.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 5.**

**5.**

(1) The Minister shall appoint the chairperson and the Council shall elect from among its members a deputy chairperson.

(2) The deputy chairperson shall perform all the functions of the chairperson in the absence of the

chairperson.

(3) Whenever both the chairperson and the deputy chairperson are not available, the members must, from among themselves, elect a member to act as chairperson.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 6.**

**6.**

(1) Ordinary meetings of the Council shall be held at least twice a year.

(2) Special meetings of the Council shall be held-

(a) by order of the Minister; or

(b) on a written request signed by at least half of the members of the Council.

(3) The chairperson shall determine the venue, date and time of ordinary and special meetings.

(4) The secretary shall dispatch the agenda of an ordinary meeting of the Council at least six weeks prior to the date of the meeting to all members of the Council.

(5) The secretary shall dispatch the agenda of a special meeting of the Council at least two weeks prior to the date of such meeting.

(6) A quorum for a meeting of the Council shall be the majority of its members.

(7) If there is no quorum at a meeting the meeting must be postponed for at least two weeks. The members at the second meeting shall form a quorum for that meeting.

(8) A decision of the majority of the members present at any meeting constitutes a decision of the Council and, in the event of an equality of votes, the presiding member shall have a casting vote in addition to his or her deliberative vote.

(9) No decision of Council shall be invalid merely by reason of a casual vacancy in the Council.

(10) The secretary shall record the minutes of every meeting of the Council, and shall circulate the draft minutes among members.

(11) Minutes of the proceedings of each meeting shall be submitted at the next meeting of the Council and, if passed as correct, shall be confirmed by the signatures of the chairperson and the secretary.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 7.**

**7.**

(1) A committee of the Council shall elect a chairperson and, if necessary, a secretary for that committee from among its members.

(2) The chairperson of a committee shall-

(a) determine the venue, date and time of a meeting of that committee;

(b) table minutes of any meeting held by that committee since the last meeting of the Council at the next ordinary meeting of the Council; and

(c) provide a written report of the activities of the committee at the Council meeting.

PART III  
TRANSFER OF PUBLIC RECORDS

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 8.**

**8.**

(1) The transfer of public records may take place on the initiative of either the National Archivist or the head of the governmental body under whose control those records fall.

(2) The National Archivist may enter into an agreement with the head of a governmental body for the planned and systematic transfer of public records.

(3) When a governmental body wishes to transfer public records, the head of such a body shall submit a written request to do so to the head of the archives repository concerned, subject to the following conditions:

- (a) Where such records are covered by a disposal authority, the request must include-
  - (i) a duplicate transfer list of such records in which each item is identified by reference number, description and opening and closing dates; and
  - (ii) an indication of the extent of such records in linear metres; and
- (b) Where such records are not covered by a disposal authority, the request must include-
  - (i) a summarised identification of such records by type, period and office of origin;
  - (ii) an indication of the nature of the records classification system, whether such system has been approved by the National Archivist, and whether such system is still in use; and
  - (iii) an indication of the extent of such records in linear metres.

(4) Subject to [section 13 \(2\) \(a\)](#) of the Act a governmental body may transfer public records to an archives repository after receiving written authorization to do so from the head of such repository.

(5) In addition to any special condition that may apply to any transfer-

- (a) the public records concerned shall be deposited in the archives repository determined by the National Archivist;
- (b) the public records concerned shall be ordered precisely in accordance with the transfer list contemplated in subregulation 3 (a) (i);
- (c) containers or packages used for the transfer must be clearly labeled in the sequence determined by the transfer list; and
- (d) receipt of the transfer shall be acknowledged by the dispatch to the governmental body concerned of an endorsed copy of the transfer list.

(6) Subject to such conditions as the head of an archives repository may determine, public records in the custody of the National Archives may be returned temporarily to the governmental body which transferred them to the National Archives, or to such body's legal successor: Provided that those records shall be returned to the archives repository concerned within 60 days of receipt, unless the head of that repository has authorised an extended period in writing.

(7) All costs relating to the transfer and temporary return of public records as provided for in this regulation shall be borne by the governmental body transferring the records to or borrowing the records from the National Archives.

#### PART IV ACCESS AND USE

### **National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 9.**

#### **9.**

(1) Consultation of records in an archives repository shall take place in the reading rooms of that repository.

(2) A member of the public may be admitted to the strongrooms of an archives repository with the approval of the head of such repository and subject to the conditions laid down by such head.

(3) A member of the public admitted to a strongroom or other place in an archives repository where records are stored or processed shall not eat, drink, smoke, strike a match or use a lighter in the strongroom or such place, and shall not carry any bag, receptacle or any other container into the strongroom or such place.

(4) The head of an archives repository may require a member of the public to-

- (a) present his or her identity document or passport;
- (b) record in the repository register referred to in subregulation 7 (a)-
  - (i) the subject of his or her research;
  - (ii) the purpose of the research;
  - (iii) his or her permanent residential address;
  - (iv) such other information as the head of the archives repository may require;

(c) notify the head of any subsequent changes to the information contemplated in [paragraph \(b\)](#).

(5) (a) The head of an archives repository may deny a member of public access to a reading room if such person does not comply with these regulations or persists with improper conduct.

(b) A denial of access referred to in [paragraph \(a\)](#) shall, as soon as possible, be reported in writing to the National Archivist.

(6) Reading rooms of archives repositories shall be open to the public at such times as the National Archivist may determine.

(7) (a) A member of public shall write and sign his/her name in a register provided for the purpose every day on which records are consulted.

(b) A member of public shall request the delivery of records to a reading room for consultation in writing using a form, following a procedure, and at times determined by the National Archivist.

(c) The head of an archives repository shall determine the number of records which may be consulted simultaneously by a member of public.

(d) When consulting records a member of public shall observe all instructions pertaining to the handling of records laid down by the head of an archives repository, including but not limited to the following:

(i) The greatest care in handling records shall at all times be exercised;

(ii) the order of records shall not be disturbed;

(iii) any damage to a record or disturbance in the order of records caused or discovered by a member of public shall be reported to the reading room supervisor;

(iv) writing or making of any mark on any record is prohibited;

(v) the use of fountain pens is prohibited; and

(vi) no bags, receptacles or containers of any kind may be retained in a reading room.

(8) (a) The head of an archives repository may prohibit the copying of a record if such copying might damage the record.

(b) The head of an archives repository may-

(i) limit the length of time for which a member of public may utilize a copying machine, computer terminal or other facility provided by that repository; and

(ii) provide members of the public with copies of records, provided that the head may impose a limit on the number of copies.

(c) Members of the public shall pay for any copies of records made in an archives repository according to the tariffs determined by the National Archivist.

#### PART IV ACCESS AND USE

### **National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 10.**

#### **10.**

(1) The head of a governmental body shall be responsible for ensuring that all records of such body-

(a) receive appropriate physical care;

(b) are protected by appropriate security measures; and

(c) are managed in terms of standing orders of that body and other relevant legislation.

(2) The head of a governmental body shall supply the National Archivist with such information related to the management of records under his/her control as the National Archivist may require.

(3) The head of a governmental body shall comply with all directives and instructions issued by the National Archivist and pertaining to the management and care of public records.

(4) The appraisal of the records of a governmental body may take place on the initiative of either the National Archivist or the head of the governmental body concerned.

(5) The transfer to an archives repository, destruction or other disposal of such records shall be effected in terms of a disposal authority.

(6) Procedures for the issuing of a disposal authority shall be as determined by the National Archivist in directives and instructions.

(7) The preparation of records for destruction in terms of a disposal authority shall be done under the supervision of the records manager of the governmental body concerned.

(8) Whenever records are destroyed in terms of a disposal authority, the head of a governmental body shall submit to the National Archivist a certificate of destruction as prescribed by the National Archivist unless an exemption from this obligation has been received from the National Archivist.

(9) The head of a governmental body shall report to the National Archivist without delay all cases of serious damage, loss or unauthorized destruction of that body's records.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 11.**

**11.**

(1) No governmental body shall use a records classification system unless it has been approved by the National Archivist.

(2) Any application for the approval of a records classification system shall follow procedures determined by the National Archivist.

(3) Any revision of and additions to an approved records classification system shall be submitted to the National Archivist for approval in accordance with procedures set out by the National Archivist.

(4) The head of a governmental body shall report to the National Archivist such body's intention to microfilm records or to introduce an electronic records system and such notification shall follow procedures set out by the National Archivist.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 12.**

**12.**

The official designated as the records manager of a governmental body in terms of [section 13 \(5\)](#) of the Act shall-

- (a) be in possession of an appropriate university or technikon qualification, and/or have appropriate professional experience;
- (b) have successfully completed the National Archives' Records Management Course;
- (c) possess a thorough knowledge of the body's organizational structure, functions and records system; and
- (d) be responsible for promoting the effective, efficient and accountable management of the body's records and ensuring, by inspections and other means, the body's compliance with the Act and all other relevant legislation.

PART V  
TITLE

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Rules and Regulations/ Regulations/ GNR.1458 of 20 November 2002: National Archives and Record Service of South Africa Regulations/ 13.**

**13.**

These regulations shall be called the National Archives and Record Service of South Africa Regulations, 2002.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections**

**NATIONAL ARCHIVES OF SOUTH AFRICA ACT,  
NO. 43 OF 1996**

**(Prior to amendment by [Act No. 30 of 2007](#))**

**Section 4 (1)**

**4. National Archivist and staff.**-(1) (a) The Minister shall, after consultation with the Public Service Commission contemplated in section 196 of the Constitution, appoint an experienced and qualified person as National Archivist in terms of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), on such grade as the Minister may determine.

(b) The National Archivist shall manage the National Archives under the direction of the Director-General: Arts, Culture, Science and Technology.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)**

**(Prior to amendment by [Act No. 36 of 2001](#))**

**Long title**

**To provide for a National Archives; the proper management and care of the records of governmental bodies; and the preservation and use of a national archival heritage; and to provide for matters connected therewith.**

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 1, definitions-"Commission", "National Archives"**

**Section 1, definitions-"Commission", "National Archives"**

"**Commission**" means the National Archives Commission contemplated in [section 6](#);

"**National Archives**" means the National Archives of South Africa established by [section 2](#);

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 2**

**Section 2**

**2. Establishment of National Archives of South Africa.**-There is hereby established a branch of the public service of the Republic to be known as the National Archives of South Africa.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 4 (1)**

**Section 4 (1)**

(1) The National Archives shall be managed by a National Archivist appointed by the Minister on the basis of relevant professional experience and an appropriate archival qualification.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 5 (2) (d)**

**Section 5 (2) (d)**

- (d) with the concurrence of the Minister and the Commission exempt a governmental body from any provision of this Act.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 6**

**Section 6**

**6. Establishment, constitution and functions of National Archives Commission.**-(1) The Minister shall by notice in the *Gazette* establish a commission to be known as the National Archives Commission.

(2) The Commission shall consist of the National Archivist and not more than nine other members appointed by the Minister from among persons who are knowledgeable of or have an interest in archival matters.

(3) The procedures and other conditions for appointment as a member of the Commission shall be as prescribed.

(4) The functions of the Commission shall be to-

- (a) advise the Minister on any matter related to the operation of this Act;
- (b) advise and assist the National Archivist in carrying out the objects and functions of the National Archives;
- (c) promote the co-ordination of archival policy formulation and planning at national and provincial levels;
- (d) exercise the powers contemplated in [sections 5 \(2\) \(d\)](#) and [12 \(3\)](#) of this Act;
- (e) approve the appraisal policy of the National Archives and monitor its implementation;
- (f) maintain a national list of non-public records in South Africa which, in the opinion of the Commission, have enduring value.

(5) The Commission may appoint committees from amongst its members and may assign to any committee so appointed such of its functions as it may deem fit: Provided that the Commission shall not be divested of any function which it has so assigned and may amend or revoke a decision of such a committee.

(6) The procedure at meetings of the Commission and of a committee shall be as prescribed.

(7) The Commission or any committee may co-opt any person to serve on the Commission or on a committee, as the case may be, in an advisory capacity, but such a co-opted member shall not have any voting rights.

(8) An ordinary member, or a co-opted member referred to in [subsection \(7\)](#), who is not in the full-time service of the State shall be paid from the funds of the Commission such travel and other expenses incurred by him or her in connection with the activities of the Commission as the Minister may determine with the concurrence of the Minister of Finance.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 7**

**Section 7**

**7. Secretary and staff of Commission.**-(1) The work incidental to the performance of the functions of the Commission shall, subject to the directions of the Commission, be performed by a secretary appointed by the Commission on such conditions of service and at such remuneration and service benefits as the Minister, with the concurrence of the Minister of Finance, may determine.

(2) The Secretary shall be assisted in the performance of his or her functions by persons appointed by the Commission on such conditions of service and at such remuneration and subject to such service benefits as the Commission may, with the approval of the Minister, granted with the concurrence of the Minister of Finance, determine.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 8**

**Section 8**

**8. Funds of Commission.**-(1) The funds of the Commission shall consist of-

- (a) money appropriated by Parliament;
- (b) money accruing to the Commission from any other source.

(2) The Secretary of the Commission shall open an account in the name of the Commission with an institution registered as a bank in terms of the Banks Act, 1990 ([Act No. 94 of 1990](#)), and shall deposit in that account all money received in terms of this section.

(3) The Commission shall utilise its funds for the defrayment of expenses incurred in the performance of its functions under this Act.

(4) The Commission shall in each financial year, at a time determined by the Minister, submit a statement of the Commission's estimated income and expenditure during the following financial year to the Minister for approval, granted with the concurrence of the Minister of Finance.

(5) The expenses of the Commission in a given financial year shall not exceed the total amount approved under subsection (4).

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 9**

**Section 9**

**9. Accountability.**-(1) The Secretary of the Commission shall be the accounting officer of the Commission and shall be charged with the accountability in respect of all money received and payments made by the Commission.

(2) The accounting officer shall-

- (a) keep full and correct record of all money received or spent by the Commission, and of the assets and liabilities of the Commission;
- (b) as soon as possible after the end of the financial year of the Commission, draw up annual financial statements which shall, with appropriate details, show money received by the Commission and expenditure incurred by the Commission and its assets and liabilities at the end of the financial year concerned.

(3) The financial year of the Commission shall end on 31 March in each year.

(4) The records and annual financial statements mentioned in subsection (2), shall be audited by the Auditor-General.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 10**

**Section 10**

**10. Annual reports.**-(1) As soon as practicable after the end of each financial year the National Archivist shall compile a report on all the activities of the National Archives during that financial year, and the Commission shall compile a report on all the activities of the Commission during that financial year.

(2) The report of the National Archivist shall include-

- (a) details of income and expenditure;
- (b) a complete list of disposal authorities issued;
- (c) an account of all cases of unauthorised disposal of public records investigated by the National Archives; and
- (d) an account of all governmental bodies which have failed to comply with this Act.

(3) The report of the National Archivist and of the Commission, together with the audited annual financial statements pertaining to the funds of the Commission, shall be submitted to the Minister, and the Minister shall lay them upon the Table in Parliament within 14 days after receipt thereof if Parliament is then in session, or if Parliament is not then in session, within 14 days of the commencement of the next session.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 12 (3)**

**Section 12 (3)**

(3) Notwithstanding [subsections \(1\)](#) and [\(2\)](#), the National Archivist may refuse access to a record on the grounds of its fragile condition, provided that there shall be a right of appeal to the Commission against the refusal.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 13 (2) (a) (ii)**

**Section 13 (2) (a) (ii)**

- (ii) a final ruling by the Minister when unresolvable differences arise between the National Archivist and the Commission;

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 14 (6)**

**Section 14 (6)**

(6) No person or institution having non-public records in their custody which are recorded on the national list contemplated in [section 6 \(4\) \(f\)](#) shall destroy, export from South Africa or otherwise dispose of such records without-

- (a) reporting to the Commission their intention to so dispose of such records at least 90 days in advance of such action; and
- (b) securing the approval of the Commission for such action.

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 16 (2) (b)**

**Section 16 (2) (b)**

- (b) [section 14 \(6\)](#),

**National Legislation/ Principal Acts and Regulations/ N/ National Archives and Record Service of South Africa Act, No. 43 of 1996/ Wording of Sections/ (Prior to amendment by Act No. 36 of 2001)/ Section 20**

**Section 20**

**20. Short title and commencement.**-This Act shall be called the National Archives of South Africa Act, 1996, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.