

Malawi

National Archives Act

Chapter 28:01

Legislation as at 31 December 2014

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Malawi

National Archives Act

Chapter 28:01

Commenced on 14 November 1975

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the classification, conservation, custody, control, acquisition and disposal of certain public, judicial, historical and general records; for the establishment of a collection of such records, to be known as the National Archives of Malawi, which shall be the official repository thereof; for the setting up of the National Archives Advisory Council, with power to advise the Minister on certain stated matters of policy and administration; for the repeal of the National Archives Act of the Federation of Rhodesia and Nyasaland in its operation to Malawi; and for matters incidental to or connected with the foregoing

Part I – Preliminary

1. Short title

This Act may be cited as the National Archives Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**Council**" means the National Archives Advisory Council established pursuant to [section 8](#);

"**document**" includes any manuscript, newspaper, picture, painting, record, register, printed material, book, map, plan, drawing, photograph (positive or negative), photocopy, microfilm, cinematograph film, video tape, gramophone record or other transcription of language, picture or music, recorded by any means capable of reproduction;

"**Government Archivist**" means the person designated as such under [section 5](#);

"**historical records**" means any documents (other than public or judicial records) which are declared to be of historical importance pursuant to [section 9](#) (3);

"**judicial records**" means any documents constituting the official records of any proceedings before any court, commission, board of inquiry or other judicial or quasi-judicial body or person, which are in the custody of such court, or of any Ministry, Department or agency of Government, or of any person lawfully committed with such custody or which have been deposited in the National Archives as judicial records;

"**National Archives**" means a place where there is kept the official collection of public archives and public, judicial, historical and general records established pursuant to [section 3](#);

"**prescribed body**" bears the meaning ascribed to that term by [section 7](#) (1);

"**public archives**" means all such public and judicial records and all such historical records as are classified and conserved in the National Archives as public archives pursuant to [sections 14](#) and [15](#), respectively;

"**public records**" means—

- (a) any documents of the Government, or of any Ministry, Department or agency thereof (other than judicial records), which relate to the general or specific functions of the Government, or of the

said Ministry, Department or agency, as the case may be, or to the performance of such functions, and which are in the custody of the said Ministry, Department or agency, or are on deposit in the National Archives as public records;

- (b) any documents of any prescribed body, being public records pursuant to [section 7](#) (2), which are in the custody of such prescribed body, or are on deposit in the National Archives as public records,

but does not include any such records as are classified and conserved in the National Archives as public archives pursuant to this Act;

"Seal" means the seal of the National Archives, as provided for in [section 4](#)(1).

Part II – National Archives administration

3. Establishment of National Archives

- (1) There is hereby established, for the purposes of this Act, an official collection of public archives, and other public, judicial, historical and general records of, or relating to, Malawi; which collection shall be known as the National Archives of Malawi.
- (2) All public archives and all such other public, judicial and historical records as are, at the date of commencement, deposited in the National Archives of Malawi established under section 4 of the National Archives Act of the former Federation of Rhodesia and Nyasaland, shall be transferred to and deposited in the National Archives established under this Act, and shall, upon such transfer, be classified and conserved in such National Archives under the classifications appropriate thereto under this Act.

[4 of 1958 (F)]

- (3) The National Archives shall be kept in such place or places within Malawi, or elsewhere, as the Minister may, from time to time, designate in writing for such purpose. Notice of each such designation shall be published in the *Gazette*.
- (4) The National Archives may, from time to time, in accordance with this Act, be extended by the inclusion therein of further public archives or further public, judicial, historical or general records or may be abridged by the removal therefrom, of any such archives or records.

4. Seal

- (1) There shall be an official seal of the National Archives which shall be an embossed seal of a design approved by the Minister.
- (2) The Seal shall be kept in such custody as the Government Archivist with the approval of the Minister, directs, and shall be used solely for the certification or authentication of copies of, or copy extracts from, the National Archives.
- (3) All courts, Judges and other persons acting judicially shall take judicial notice of the Seal of the National Archives affixed to any document, and shall presume that it was duly affixed.
- (4) The Seal shall be authenticated by the signature of the Government Archivist, or of any officer of the National Archives duly authorized by the Government Archivist in that behalf.

5. Government Archivist

- (1) There shall be a Government Archivist who shall be a public officer designated as such by the Minister.

- (2) The Government Archivist shall be the controlling officer and custodian of the National Archives and shall be assisted by such other public officers as shall be necessary to carry out the provisions of this Act.

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6. Powers and duties of the Government Archivist

The Government Archivist shall, subject to this Act and to the general or special directions of the Minister

-
- (a) direct, manage and control the National Archives;
- (b) preserve, describe and arrange all public archives;
- [4 of 1989]*
- (c) accept and store any public, judicial, historical or general records which are transferred to the National Archives;
- [4 of 1989]*
- (d) on behalf of the Government, acquire by purchase, gift, loan, bequest or otherwise from any person or body of persons, corporate or unincorporate, any document which in his opinion is, or is likely to be, of historical importance;
- (e) cause any of the public archives to be repaired or bound or otherwise physically protected, if he deems such action necessary;
- (f) cause, at the request of any Ministry, Government Department, Government agency or court, any public, judicial, or historical records in the custody of such Ministry, Department, Government agency or court to be examined and, if necessary, advise such Ministry, Department, agency or court on appropriate measures to be taken for the proper care and conservation of such records;
- (g) cause, at the request of any prescribed body, any public or historical records in the custody of such prescribed body to be examined, and, if necessary, to advise such prescribed body on appropriate measures to be taken for the proper care and conservation of such records;
- (h) cause or permit to be reproduced from the National Archives, or published, such public archives, or public, judicial, historical or general records, or such extracts therefrom, as he may deem fit;
- (i) cause to be compiled and published indices and guides to the National Archives;
- (j) cause to be prepared and published brochures and other printed matter relating to the activities of, and the facilities provided by, the National Archives;
- (k) determine the conditions under which members of the public may inspect public archives or use the facilities of the National Archives;
- (l) make provision for the making and certifying of copies of, and of copy extracts from, public archives in the National Archives, whenever required to do so for the purposes of any pending judicial or quasi-judicial proceeding or for any other purpose approved by the Minister;
- (m) lend, with the consent of the Minister, or of the owner thereof if the document is not owned by the Government, any document from the National Archives for display at any commemorative, trade, art, international or other exhibition or for any other special purpose approved by the Minister, subject to such conditions as the Minister or the owner, as the case may be, may impose with respect to such loan;
- (n) perform such other functions as are necessary for the purpose of proper and effective direction, management and control of the National Archives.

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7. Prescribed bodies

- (1) The Minister may, on the recommendation of the Council, from time to time, by Order published in the *Gazette*, declare any body corporate or any society, association or other body of persons to be a prescribed body for the purposes of this Act.
- (2) The documents and records of any prescribed body shall be public records for the purposes of this Act:

Provided that the Minister may, in any Order made declaring a prescribed body pursuant to subsection (1), limit the operation and effect of this subsection to certain specified classes of documents or records of such prescribed body.

Part III – National Archives Advisory Council

8. Establishment of National Archives Advisory Council

- (1) There is hereby established a body of persons to be called the National Archives Advisory Council which shall consist of the Government Archivist, *ex officio*, who shall be Secretary to the Council, and six ordinary members thereof appointed by the Minister, one of whom shall be designated as Chairman in the instrument of his appointment.
- (2) An ordinary member of the Council shall hold office for a period not exceeding two years, but shall be eligible for reappointment.

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- (3) The functions of the Council shall be to advise the Minister on all matters relating to the retention or destruction of public archives, or of public, judicial or historical records, the acquisition or transfer of any such records for deposit in the National Archives, or for their deposit therein as public archives, the right of access by members of the public to the National Archives and on such other matters relating to the National Archives, any public archives or any public, judicial or historical records as the Minister or the Government Archivist may refer to the Council.
- (4) The Council shall meet at such times and places as the Chairman may determine, and shall be convened by the Chairman.
- (5) In the absence of the Chairman from any meeting of the Council the members present, if constituting a quorum, shall elect one of their number to preside at that meeting.
- (6) Five members of the Council shall constitute a quorum.

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- (7) The Council shall determine its own procedure.
- (8) At all meetings of the Council the person presiding shall have a deliberative vote, and, in the event of an equality of votes, shall also have a casting vote.
- (9) Ordinary members of the Council shall not, by virtue only of their respective appointments to the Council, be deemed to be officers in the public service.
- (10) No person shall be appointed to the Council who—
 - (a) is an undischarged bankrupt;
 - (b) has, within three years last past, for an offence against any written law, been sentenced to a term of imprisonment of six months or over, save as an alternative to, or in default of, the payment of a fine;
 - (c) has, within seven years last past, been convicted of an offence involving fraud or dishonesty.

- (11) For the proper discharge of its functions, the Council may co-opt any person as a member of the Council and such member may take part in the deliberations of the meeting but shall not be entitled to vote.

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- (12) A member of the Council other than a member *ex officio*, shall be paid out of the funds of the Government such honorarium and travelling expenses while engaged on the duties of the Council at such rates as the Minister may determine.

- (13) The names of all members of the Council as first constituted, and every change in membership thereof, shall be published in the *Gazette*.

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Part IV – Historical, public and general records

9. Historical records

- (1) Any person who owns, or has exclusive custody of, any document which—
- is an account of, associated with or related to, any past event or transaction which, in some special way, affected or affects the economic, social or political life of Malawi; or
 - is the act of, or relates to, any person involved in, or associated with, the happening of any such event or transaction as described in paragraph (a), or which elucidates some aspect of such person's private life or character relevant to his association with such event or transaction or, generally, with Malawi,
- may submit such document to the Government Archivist for his scrutiny and classification.
- (2) If the Government Archivist has reason to believe that any person in Malawi owns or has possession of any document such as is described in subsection (1), he may, by notice in writing, require such person to submit such document to him for his scrutiny and classification, at a time and place stated in such notice.
- (3) Whenever the Government Archivist classifies any document submitted to him under subsection (1) or (2) as being of historical importance, he shall—
- notify, in writing, the person who submitted such document informing him of such classification thereof;
 - affix or attach to such document, so as not to obscure, disfigure or deface the same, a certificate, in the prescribed form, under the Seal of the National Archives, stating that he has classified the said document as being of historical importance and that the same is an historical record;
 - if necessary, cause copies of the said document to be made and retained in the National Archives, and shall return the said document, so certified in accordance with paragraph (b) to the person who submitted it:

Provided that the owner, or person having exclusive custody, of such document, upon receiving notice pursuant to paragraph (a) of the classification thereof as an historical record, may request the Government Archivist, in writing, to deposit the said document for safe keeping in the National Archives as an historical record. Whereupon, the Government Archivist shall deposit the same, as requested, and send, in the prescribed form, to the owner or person having the right to exclusive custody thereof, as the case may be, a notice of such deposit, together with an acknowledgment of such ownership, or of such right to exclusive custody, as the case may be.

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10. Deposit of historical records and rights of owner thereof

- (1) Notwithstanding the proviso to subsection (3) of [section 9](#), any person who owns, and is in actual possession of, any document which is certified as an historical record may, at any time, deliver such document to the Government Archivist for deposit in the National Archives as an historical record, and the Government Archivist shall deposit the same accordingly and shall, in the forms prescribed, issue a receipt therefor together with acknowledgment of ownership thereof.
- (2) Any historical record deposited in the National Archives pursuant to subsection (1) of this section or to the proviso to subsection (3) of [section 9](#) may be withdrawn from the said National Archives by the current owner of such historical record upon his giving to the Government Archivist one month's notice in writing of his intention so to do and by returning to the Government Archivist the latest acknowledgment of ownership issued in respect of such historical record together with any certified copy of the said historical record in his possession.
- (3) Ownership of any historical record may be transferred by delivery thereof with the intention of transferring such ownership:

Provided that a transfer of ownership of any historical record which is deposited in the National Archives pursuant to subsection (1) of this section or to the proviso to subsection (3) of [section 9](#) may be effected, without the withdrawal of the said historical record from the National Archives for such purpose, by the delivery by the transferor to the transferee of a duly executed instrument of transfer, in the form prescribed, together with the acknowledgment of ownership issued to the transferor by the Government Archivist in respect thereof and any certified copy of such historical record which he may possess. The transferee shall, within one month of the date of the said instrument of transfer, deliver the same, together with the said acknowledgment of ownership and certified copy of such historical record, if any, to the Government Archivist, who shall register such transferee as the current owner of such historical record, shall cancel the acknowledgment of ownership delivered by the transferee and issue an acknowledgment of the transferee's ownership of such historical record and deliver to the transferee such new acknowledgment of ownership and return to him the said certified copy, if any, of such historical record.

[4 of 1989]

11. Selection and conservation of public records

- (1) Subject to [section 19](#) and to subsection (2) of this section, the Government Archivist and any officer of the National Archives duly authorized by him, hereinafter referred to as a "duly authorized officer", shall be entitled to examine any public records which are in the custody of any Ministry, Department or agency of the Government or any prescribed body, and to select therefrom those records which, in his opinion, ought to be deposited and conserved in the National Archives and direct their transfer accordingly.
- (2) Nothing in this section or in [section 6](#) shall be deemed to empower the Government Archivist or any authorized officer to inspect any public records that are classified as secret or confidential, except with the consent of the authority responsible for such classification.
- (3) Subject to subsection (2), it shall be the duty of every person having custody of public records which have not been deposited in the National Archives—
 - (a) to afford the Government Archivist, or any duly authorized officer, appropriate facilities for examination of, and selection from, such public records pursuant to subsection (1);
 - (b) to provide, in accordance with any relevant regulations made under this Act and with any specific directions of the Government Archivist, for the assemblage and safe keeping, of such public records as are selected for deposit and conservation in the National Archives under subsection (1), pending their transfer to and deposit in the said National Archives.

- (4) Subject to the approval of the Minister, the transfer of any such public records to the National Archives for deposit therein, may be withheld for the time being if, in the opinion of the person having custody thereof, the said records are required for administrative purposes, or ought to be retained for any other special reason, and appropriate measures are taken for the conservation and safe keeping of such records.

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12. Destruction of public records

If the Government Archivist is satisfied that any public records, selected for deposit in the National Archives under subsection (1) of [section 11](#) but not yet deposited therein, are duplicated, or that there is some other cogent reason why such records should not be conserved, he may, with the approval of the Minister and of such other Minister or person who appears to the Minister to be primarily concerned therewith, authorize the destruction of such public records, or, with such approval, their disposal in any other way.

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13. General records

- (1) The Government Archivist may, on behalf of the Government acquire, by purchase, gift, bequest, loan or otherwise from any person for deposit in the National Archives any document (other than a public, judicial or historical record) which, in his opinion, is of general interest by reason of its content or of its associations with Malawi, and any such document so acquired shall be classified and deposited in the National Archives as a general record.
- (2) Any person who is entitled to the immediate possession of any general record deposited on loan, in the National Archives may give notice in writing to the Government Archivist of his intention to withdraw the same from such Archives and may do so after the expiry of thirty days from the date of such notice.
- (3) Subject to this section, the terms and conditions under which any document may be deposited on loan in the National Archives shall be determined by the Government Archivist.

[4 of 1989]

Part V – Public archives

14. Public and judicial records declared public archives by Minister

The Minister may, on the advice of the Council, by Order declare—

- (a) any public or judicial records of the Government of Malawi; or
- (b) any public or judicial records of the former Government of the Federation of Rhodesia and Nyasaland, in the possession, or under the control, of the Government of Malawi; or
- (c) any public or judicial records of the former Government of Nyasaland, in the possession, or under the control, of the Government of Malawi,

which have been deposited in the National Archives under this Act, to be records of rare public interest, and, as such, shall thereafter be, and be deemed to be, public archives, and shall be classified and conserved in the National Archives in the manner provided for the classification and conservation therein of the public archives.

15. Historical records declared public archives by Minister

- (1) The Minister may, on the advice of the Council, by Order, declare any historical records, which have been deposited in the National Archives under this Act, to be records of rare public interest, and, as such, shall thereafter be, and be deemed to be, public archives, and shall be classified and conserved in the National Archives in the manner provided for the classification and conservation therein of the public archives.
- (2) Whenever it is intended to make an Order under subsection (1) in respect of any historical record, which is the property of some person other than the Government or any local authority, the Minister shall instruct the Government Archivist to enter into negotiations with the owner of such historical record for the purchase of such record by the Government.
- (3) If the owner of an historical record is unwilling to negotiate with the Government Archivist pursuant to subsection (2), or if, upon negotiation no price can be agreed upon between the Government and the said owner, the Minister may, by Order, compulsorily acquire the said historical record at a valuation to be determined by agreement between one valuer appointed by the Minister, one valuer appointed by the owner and one other valuer appointed by agreement between the two valuers directly appointed by the Minister and the owner:

Provided that if the owner fails or refuses to appoint a valuer within one month after the Minister has notified such owner of the name and address of the valuer appointed by the Minister, the Minister may appoint a second valuer, and such two valuers shall appoint a third valuer for the purposes of such valuation.

[4 of 1989]

16. Publication or reproduction of public archives

- (1) Public archives, other than judicial records, shall not be published or reproduced in any form by any person, unless, prior to such publication or reproduction, such person has obtained from the Government Archivist, in writing, permission so to publish or reproduce the same.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.
- (3) Nothing in this section shall be construed as affecting or amending any law relating to copyright.

[4 of 1989]

Part VI – Inspection, copying and removal of records

17. Inspection and copying of National Archives

- (1) Save with the written permission of the Government Archivist, and subject to subsection (3), and to any Regulations in that behalf prescribed under this Act, no person shall be entitled to inspect, copy, or copy extracts from any public, historical or general records in the National Archives.
- (2) Subject to the provisions of subsections (1) and (3) the National Archives shall be open for inspection during such hours as may be fixed by the Government Archivist.
- (3) Subject to [section 19](#) where there are deposited in the National Archives any public, judicial, historical or general records containing information the disclosure of which is either prohibited, or limited to certain persons or purposes, by or under any written law or order or rule of court, no person, other than the Government Archivist and such officers of the National Archives, as are duly authorized in that behalf under the said [section 19](#), and such other persons as are otherwise thereunto lawfully authorized in that behalf, shall be permitted by the Government Archivist to inspect or copy, or copy extracts from, any such public, judicial, historical or general records:

Provided that the donor of any historical or general records shall be entitled to specify appropriate conditions for access to such records.

[4 of 1989]

18. Restrictions on removal and export of National Archives or historical records

- (1) Any person, not authorized to do so under any written law, who—
 - (a) removes any document, or part of any document, as the case may be, from the National Archives and takes the same outside the immediate custody and control of the Government Archivist; or
 - (b) knowingly receives any document, or part of any document, which has been removed from the National Archives in contravention of paragraph (a),

without prior written permission of the Government Archivist, under his hand, shall be guilty of an offence:

Provided that no person shall be convicted under paragraph (b) if he proves to the satisfaction of the court that he received such document or part of a document, as the case may be, with the intention, and for the sole purpose, of returning the same to the Government Archivist, without undue delay.

- (2) Any person who exports from Malawi any document, or part of a document, removed from the National Archives save in accordance with a licence issued in that behalf by the Minister, shall be guilty of an offence.
- (3) Any person who exports from Malawi any historical record, or any part thereof, save in accordance with a licence issued in that behalf by the Minister, shall be guilty of an offence.
- (4) If the Government Archivist has reason to believe that any person intends to export from Malawi any document, or any part of any document, which in the opinion of the Government Archivist may be of historical importance, he may, by notice in the *Gazette*, prohibit the export of such document, or part of a document, as the case may be, as if such document were an historical record for the purposes of subsection (3).
- (5) Any licence issued, or written permission granted, for the purposes of this section shall specify each document, or part of a document, as the case may be, to which it relates, and may contain such conditions as to the use, custody, conservation and return of such document, or part of a document, as the Minister or Government Archivist, as the case may be, deems fit to impose.

[4 of 1990]

19. Government Archivist's right of access to documents restricted by law, order, etc.

- (1) Where, by virtue of the provisions of any written law or in consequence of any order or rule of court, access to any document is restricted to certain named persons or classes of persons, such written law, or order or rule, as the case may be, shall, unless it therein expressly provides to the contrary, be construed as if the Government Archivist, or any officer of the National Archives duly authorized in writing in that behalf by the Government Archivist, acting in pursuance and for the purposes of this Act, were among the named persons or classes of persons to whom access to such document is so restricted under the provisions of such written law or in consequence of such order or rule of court, and the said Government Archivist or duly authorized officer, as the case may be, shall, in exercising such right of access to such document under this section, be subject to all relevant provisions of the said written law or terms of the said order or rule of court relating to non-disclosure of the contents of such document, as if he were one of the persons or one of the classes of persons named in the said written law or in the said order or rule of court as the case may be.
- (2) Where any document, access to which is restricted in the manner described in subsection (1), is deposited in the National Archives among the public archives or public, judicial, historical or

general records, the restrictions imposed by the relevant written law, or order or rule of court, as the case may be, shall apply thereto, and, notwithstanding any other provision of this Act, access to such document shall be limited to such persons, or classes or persons named in the said written law, order or rule of court and to the Government Archivist or officer duly authorized in accordance with subsection (1).

[4 of 1989]

Part VII – Evidence

20. Authenticated copies

Any copy of, or any copy extract from, any original document deposited in the National Archives, which purports to be duly certified under seal by the Government Archivist, or by any duly authorized officer of the National Archives, shall be admissible in evidence in any judicial or quasi-judicial proceedings as *prima facie* evidence of the contents of the said original document so copied, or of the contents of that part of the said original document so extracted.

[4 of 1990]

Part VIII – Miscellaneous

21. Failure to comply with Notice to produce documents

- (1) Any person who fails or refuses to comply with any Notice requiring him to produce or submit any document to the Government Archivist for the purposes of this Act shall be guilty of an offence.
- (2) In any prosecution under this section the defendant shall be presumed to be, and to have been at all material times, in possession or control of such document unless the contrary is proved.

[4 of 1990]

22. Failure to comply with conditions

Any person who fails or refuses to comply with any term or condition of any permission, authority or licence given under this Act shall be guilty of an offence.

23. Penalty

Any person who commits an offence under this Act shall be liable to a fine of K2,000 or to imprisonment for a term of five years, or to both such fine and such term of imprisonment.

24. Secrecy

- (1) Any person having any official duty or being employed in the administration of this Act, who, in the course of such duty or employment, has access to any documents which are deposited in the National Archives and therein classified as secret or confidential, or to which access is restricted in the manner referred to in [section 19](#), shall regard and deal with such documents and with any information contained therein as secret and confidential.
- (2) Before any person may be assigned to any official duty or employment in the National Archives which shall entail access on the part of such person to any documents referred to in subsection (1) the Government Archivist shall require such person to execute, in writing, in the prescribed form, a

solemn declaration of secrecy, pursuant to section 9 (1) of the Oaths, Affirmations and Declarations Act.

[Cap. 4:07]

[4 of 1989]

25. Regulations

The Minister may, by notice published in the *Gazette*, make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

- (a) any forms to be used for the purpose of this Act;
- (b) the form of any records to be maintained by the Government Archivist under this Act;
- (c) fees to be charged for making and providing copies of, or of any part of, or of any extract from, any document in the National Archives;
- (d) fees to be charged for certifying as a true copy any copy of, or of any part of, or of any extract from, any document in the National Archives;
- (e) fees to be charged for inspecting, or making use of, any document in the National Archives;

[20 of 1987]

- (f) the setting of a suitable period of access to public archives;

[4 of 1989]

- (g) anything to be prescribed under this Act.

[20 of 1987]

[4 of 1989]