

CAYMAN ISLANDS



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**A BILL FOR A LAW TO MAKE PROVISION WITH RESPECT TO THE
FUNCTIONS OF THE NATIONAL ARCHIVE AND THE
MANAGEMENT OF RECORDS OF PUBLIC AGENCIES; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE NATIONAL ARCHIVE AND PUBLIC RECORDS BILL, 2007

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are –

- (a) to provide for the design and implementation of systems for the creation, management and disposal of the public records of every public agency in a manner that promotes efficiency, accountability and transparency of Government;
- (b) to establish the National Archive as a principal repository for public records of public agencies that are no longer required for current administrative purposes; and
- (c) through the National Archive, to promote –
 - (i) the preservation, for future reference, of records of enduring evidentiary or informational value; and
 - (ii) the propagation of knowledge and appreciation of the heritage of the Islands.

Part I of the Bill contains clauses 1 to 3 which are preliminary provisions.

Clause 1 of the Bill provides the short title.

Clause 2 contains definitions of “public record”, “record”, “public agency” and other significant expressions used in the Bill.

Clause 3 provides that the legislation will bind the Crown and will apply to public records of a public agency whenever created. Certain records held by His Excellency the Governor are excluded from the application of the legislation.

Part II of the Bill contains clauses 4 and 5 which relate to the continuation of the National Archive and the establishment of a Records Advisory Committee.

Clause 4 continues the National Archive as a department of Government and continues the office of National Archivist.

Clause 5 establishes a Records Advisory Committee to advise on matters concerning public records of public agencies.

Part III of the Bill contains clauses 6 to 11, provisions regulating the care and management of public records.

Clause 6 requires every public agency to make and maintain full and accurate public records in relation to its business and affairs, and to ensure that public records in its custody are maintained in good order and condition.

Clause 7 enables the National Archivist to prescribe standards relating to the records management practices of public agencies. Senior officers of all public agencies have a duty to implement them.

Clause 8 requires a public agency, together with the National Archivist, to draw up disposal schedules indicating, in respect of different classes of public records of the public agency concerned, the projected administrative life of those public records.

Clause 9 requires the National Archivist to monitor the records management practices of public agencies and authorises periodical inspections for this purpose.

Clause 10 requires the National Archivist to report to the Chief Secretary and to the responsible chief officer any instances of inadequate record management practices in public agencies.

Clause 11 prohibits a person from intentionally damaging, altering or disposing of public records.

Part IV of the Bill contains clauses 12 and 13 and deals with storage of public records.

Clause 12 requires a public agency to retain control of its public records and to ensure their proper storage.

Clause 13 allows a public agency to deliver any of its public records into the custody of the National Archive for safe keeping.

Part V of the Bill contains clauses 14 to 19, provisions relating to archival records and library collections.

Clause 14 describes archival property and the general duties of the National Archivist in relation to it.

Clause 15 requires a public agency to deliver to the National Archive public records that have been identified as being of potential archival value.

Clause 16 enables the National Archivist to acquire property for archival purposes.

Clause 17 empowers the National Archivist to recover possession of public records of a public agency that have found their way into private hands.

Clause 18 requires local publishers to forward copies of published works to the National Archive by way of legal deposit.

Clause 19 confers various powers and functions on the National Archivist to provide services and engage in promotional and other activities in furtherance of the objects of the National Archive.

Part VI of the Bill contains clauses 20 to 24 and deals with miscellaneous matters.

Clause 20 requires a public agency to ensure that the National Archivist is aware of any legal restriction on disclosure of the contents of public records being delivered by the public agency into his custody.

Clause 21 indemnifies any person who delivers a record into the custody of the National Archive against any criminal liability or liability for defamation or breach of confidence or other civil liability, and indemnifies the National Archivist and his staff against any such liability that may arise from granting access to a record in accordance with the proposed Law.

Clause 22 provides that a public record produced from the National Archive shall have the same evidentiary value as if it were produced by the public agency from which it was obtained, and permits a copy of a document certified by the National Archivist to be admissible in legal proceedings as prima facie proof of the contents of that record.

Clause 23 allows regulations to be made by the Governor in Cabinet in furtherance of the legislation.

Clause 24 repeals the Institute of Cayman Heritage Law, 1991.

THE NATIONAL ARCHIVE AND PUBLIC RECORDS BILL, 2007

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CAYMAN ISLANDS

**A BILL FOR A LAW TO MAKE PROVISION WITH RESPECT TO THE
FUNCTIONS OF THE NATIONAL ARCHIVE AND THE
MANAGEMENT OF RECORDS OF PUBLIC AGENCIES; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART I – PRELIMINARY

1. This Law may be cited as the National Archive and Public Records Law, Short title
2007.

2. (1) In this Law – Interpretation

“Advisory Committee” means the Records Advisory Committee established by
section5;

“chief officer” has the meaning assigned to that expression in the Public (2005 Revision)
Management and Finance Law (2005 Revision);

“disposal”, in relation to a record, means disposal of the record by destruction, by
appropriation by the National Archive or in some other manner determined under
this Law;

“disposal schedule” means a schedule in force under section 8;

“National Archive” means the Director and staff of that division of the public service known as the Cayman Islands National Archive;

“National Archivist” means the Director for the time being of the National Archive;

“public agency” includes-

- (a) the Cabinet;
- (b) the Legislative Assembly;
- (c) a ministry, portfolio or department;
- (d) a statutory body or authority, whether incorporated or not;
- (e) an office established by any Law;
- (f) a court or tribunal;
- (g) a company in which the Government has a controlling interest, or any subsidiary of such a company; or
- (h) a prescribed person or body;

“public record” means information, in any form, created, received, or maintained by a public agency in the course of, or as evidence of, a transaction or activity effected or undertaken in the conduct of its business or affairs;

“record” means information -

- (a) that is inscribed, stored or otherwise maintained on a tangible medium; or
- (b) that is stored in an electronic or other medium and is accessible in a perceivable form,

and “record” includes a public record; and

“records management standard” means a standard in force under section 7.

(2) For the purposes of this Law, the public agency that is responsible for a public record is -

- (a) the public agency by whom it was created or retained;
- (b) if that public agency has ceased to exist, the public agency (if any) that has succeeded to the functions of that former public agency; or
- (c) if that public agency has ceased to exist and no other public agency has succeeded to the functions of that former public agency -
 - (i) the public agency (if any) nominated by the Chief Secretary; or

(ii) in default of such nomination, the National Archive.

3. (1) This Law binds the Crown.

Application

(2) Subject to subsection (3), this Law applies to any record whether created before or after the commencement of this Law.

(3) Nothing in this Law applies to any record relating to the service of the Crown in respect of the Government of the United Kingdom, if the record (whether in an electronic or other medium) is held by the person for the time being holding the position of Governor of the Islands.

PART II – THE NATIONAL ARCHIVE AND THE RECORDS ADVISORY COMMITTEE

4. (1) The National Archive shall continue as an established department of Government maintained by such funds as may from time to time be appropriated for that purpose by the Legislative Assembly.

The National Archive
and the National
Archivist

(2) The National Archive shall continue to consist of a National Archivist and such other public officers as are necessary for the purposes of administering this Law.

(3) The National Archivist shall be responsible for -

- (a) authorising the disposal of public records;
- (b) issuing standards for record keeping in the public sector;
- (c) monitoring, and reporting on, the management of public records;
- (d) assessing records for archival preservation;
- (e) developing policies for managing the National Archive and its library collections, including policies for the acquisition of records, the preservation of records and access to records; and
- (f) such other matters as are prescribed in this or any other Law or any regulations made thereunder.

5. (1) There shall be a Records Advisory Committee, consisting of -

The Records Advisory
Committee

- (a) a person appointed by the Chief Secretary, who shall be the Chairman of the Committee;
- (b) the Secretary to the Cabinet or his nominee;
- (c) the Attorney-General or a legal practitioner employed in his portfolio and nominated by him;
- (d) the Financial Secretary or his nominee;
- (e) the Director of Internal Audit or his nominee;

- (f) the Chief Officer of the Judicial Administration or his nominee;
and
- (g) the Clerk of the Legislative Assembly or his nominee.

(2) The National Archivist or his nominee shall be entitled to attend any meeting of the Committee.

(3) Any other officer or person may, at the request or by leave of the Advisory Committee, attend a meeting of the Committee.

(4) Regulations made under this Law may make provision with respect to the conduct of meetings of the Committee and other matters relating to the conduct of its business.

(5) The Advisory Committee shall -

- (a) review, and make recommendations to the Governor in Cabinet concerning -
 - (i) disposal schedules;
 - (ii) the period for which public access to public records of any class or description should be prohibited or restricted; and
 - (iii) proposals with respect to the disposal of public records;
- (b) advise the Governor in Cabinet concerning any matter referred to it; and
- (c) perform such other functions as the Governor in Cabinet may confer upon it.

PART III – CARE AND MANAGEMENT OF RECORDS

General duties as to
public records

6. (1) Every public agency shall make and maintain full and accurate public records of its business and affairs, and such public records shall be managed and maintained in accordance with this Law.

(2) It shall be the responsibility of the most senior officer in every public agency to ensure that public records of that public agency -

- (a) are maintained in good order and condition; and
- (b) are created, managed and disposed of in accordance with records management standards and disposal schedules drawn up under this Law.

Records management
standards

7. (1) The National Archivist may, with the approval of the Chief Secretary, draw up and issue standards relating to all aspects of records management by public agencies.

(2) Without limiting the generality of subsection (1), such a standard may make provision for or with respect to -

- (a) minimum standards for public record storage facilities;
- (b) the treatment, in a manner that will prevent further deterioration or damage, of records that have been damaged or have deteriorated; and
- (c) disaster preparedness in relation to public records.

(3) A public agency shall create, manage and dispose of its public records in accordance with any prescribed standard.

(4) A standard may from time to time be revoked, amended or replaced by a subsequent standard drawn up by the National Archivist.

(5) The National Archivist shall provide advice to public agencies to assist them in complying with standards under this section.

8. (1) Each public agency shall, in consultation with the National Archivist, draw up a schedule which identifies the projected administrative life of the public records for which it is responsible. Disposal schedules

(2) A schedule drawn up under this section -

- (a) shall be consistent with any prescribed records management standard;
- (b) shall remain in force until amended or replaced by the public agency in consultation with the National Archivist; and
- (c) shall be kept under review by the public agency concerned so as to ensure that every public record of the public agency is included in its coverage.

(3) A schedule in force under this section shall, to the extent and in the manner prescribed, be made available for public inspection.

9. (1) The National Archivist shall monitor the management of public records by public agencies and may from time to time conduct such inspections of the public records and records management practices of public agencies as may be reasonably required for the performance of his functions. Monitoring of records management

(2) A public agency and any of its officers and staff shall afford the National Archivist reasonable co-operation and assistance in the conduct of such monitoring and inspections.

(2005 Revision)	<p>(3) It shall be the duty of an officer exercising or performing any powers and functions on behalf of the Auditor-General for the purposes of the Public Management and Finance Law (2005 Revision) in relation to a public agency to bring to the notice of the National Archivist any inadequacy or irregularity in the observance by the public agency of the provisions of a records management standard or disposal schedule.</p>
Inadequate records management practices	<p>10. If the National Archivist is of the opinion that the records management practices of a public agency are inadequate, he shall report the matter to the Chief Secretary and to the chief officer (if any) of the public agency.</p>
Damaging, etc., of public records	<p>11. (1) A person who, knowing that he does not have proper authority under this Law to do so, intentionally -</p> <ul style="list-style-type: none">(a) damages or alters a public record of a public agency; or(b) disposes of such a public record or removes any public record from official custody, <p>commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of six months, or to both.</p> <p>(2) Where a person's neglect of official duties results in damage to or the destruction of a public record, that neglect shall be grounds for discipline or dismissal of that person.</p> <p>(3) Proceedings referred to in subsection (1) shall not be instituted except by or with the consent of the Attorney-General.</p> <p>(4) It shall be a sufficient defence to a charge under subsection (1) relating to a public record of a public agency, if it shall be made to appear to the court before which the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the damage, alteration, disposal or removal of the public record, was not in contravention of normal administrative practice.</p> <p>(5) A court that convicts a person of an offence under this section may order the convicted person to pay into the public treasury such amount as the court may determine for or towards expenses incurred or to be incurred in restoration of the public record.</p> <p>(6) Nothing in this section abrogates or restricts any other right or power to institute criminal or civil proceedings in respect of any act referred to in this section, but a payment made under subsection (5) is, to the extent of the amount</p>

paid, a defence in any civil proceedings for recovery of damages or compensation in respect of the same act or neglect.

PART IV – STORAGE OF RECORDS

12. (1) A public agency shall take all steps necessary to retain control of the public records for which it is responsible and to ensure their safe keeping.

Storage of public records

(2) A public agency which does not have sufficient and adequate storage facilities for the public records for which it is responsible shall procure such facilities by entering into -

- (a) arrangements with the National Archivist under this Part; or
- (b) such other arrangements as may be approved by the National Archivist.

(3) Arrangements referred to in subsection (2) shall comply with any prescribed records management standard.

(4) The public records for which a public agency is responsible, wherever stored, shall be arranged in such a manner as to facilitate efficient and timely access to them for any purpose necessary to the public agency, including compliance by the public agency with a requirement imposed on it by any Law that affords members of the public a right of access to public records.

13. (1) A public agency may enter into arrangements with the National Archivist for storage of any of its public records in any available storage facilities managed by the National Archive.

Storage of public records by National Archive

(2) Subject to subsection (3), the public agency responsible for a public record in the custody of the National Archive is to have such access to, and may make such use of, the public record as it requires.

(3) Where, in the opinion of the National Archivist, or as identified in a disposal schedule, a public record is of potential archival value, access by the responsible public agency to a public record placed in the custody of the National Archive under this section shall be subject to such reasonable conditions as the National Archivist may impose to ensure the preservation of the public record.

(4) If there is a dispute as to conditions referred to in subsection (3), the Chief Secretary may, on application, determine the matter.

(5) Entry by a public agency into arrangements under this section shall have no effect on the duty of the public agency to comply with a requirement

imposed on it by any Law that affords members of the public a right of access to public records, and for the purposes of any such Law, the public agency shall not, by reason of anything done pursuant to such arrangements, be deemed to have ceased to hold a public record for which it is responsible or to have relinquished custody or control of it.

PART V – ARCHIVAL RECORDS AND LIBRARY COLLECTIONS

Archival property

14. (1) The archival property of the National Archive shall consist of -
- (a) records, publications and items which, immediately before the commencement of this Law, were in the custody of the National Archive for preservation; and
 - (b) records or property acquired or obtained under this Part.
- (2) Archival property shall be arranged, described, indexed, stored and preserved, and made accessible, in accordance with professionally recognised standards of archival supervision.
- (3) Archival property shall be accessible to public agencies, institutions and members of the public in accordance with such conditions as the National Archivist may impose -
- (a) for the preservation of the property concerned;
 - (b) for the protection of any person's privacy; or
 - (c) in order to observe or give effect to any condition or agreement on which the property was acquired by the National Archive.
- (4) Subsection (3) applies whether access is sought in pursuance of a statutory or other right or otherwise.
- (5) Any record or thing that, by the operation of this Law or otherwise, has become archival property but which, in the opinion of the National Archivist, is not or has ceased to be of any archival value may be disposed of in such manner as he may determine.

Acquisition of archival property from public agencies

15. (1) A public record that has been identified in a disposal schedule as a public record of archival value shall, as and when required by that schedule, be delivered to the National Archive by the public agency responsible for it.
- (2) Upon its delivery to the National Archive under subsection (1) -
- (a) a public record shall become archival property, and the National Archive shall be the public agency responsible for the public record; and

- (b) for the purposes of any law affording members of the public a right of access to public records, the National Archive shall be deemed to hold, and to be in possession and custody of, the public record.

16. The National Archivist shall have power to acquire on behalf of the National Archive, by purchase, gift, bequest, lease or otherwise, any record or a copy of any record, and any related property, whether situated within the Islands or elsewhere, for preservation by the National Archive.

Acquisition of archival
property from other
sources

17. (1) Where the National Archivist believes that a person has, otherwise than in an official capacity (and whether or not ownership of the public record has passed to that person), custody or possession of any public record of a public agency that is or may be of archival value, he may, by notice in writing, require the person to deliver the public record into the custody of the National Archive within a period specified in the notice.

Recovery of public
records in private hands

(2) If a person fails to comply with a notice given under subsection (1), a summary court may, on the application of the National Archivist, order the person to deliver the public record into the custody of the National Archive on or before a day specified in the order; and the summary court may make a further order requiring the Chief Secretary to make to the person such payment as the summary court considers reasonable, in compensation for deprivation of the public record.

(3) Nothing in this section limits or restricts a right of any other authority or person to recover any public record or other property of the Government, whether of archival value or not.

18. (1) If the National Archivist determines that an item that has been published in the Islands is of sufficient value to warrant its preservation, he may by a written request require the publisher to provide two copies of the item to the National Archive.

Legal deposit of
published works

(2) Where a person, in the course of business or otherwise, publishes items in the Islands on a regular basis, the National Archivist may request that that person provide to the National Archive, until further notice, two copies of -

- (a) every item which that person may in future publish in the Islands; or
- (b) such of those items as are of a class or description specified in the request.

(3) A request under this section shall be in writing (whether sent by electronic or other means).

(4) A person shall comply with a request made under this section by the National Archivist.

(5) A copy of any published item provided in accordance with such a request under this section -

- (a) shall be in a form and quality that the National Archivist determines is suitable for preservation purposes and specifies in the request; and
- (b) shall, unless the request otherwise specifies, be a copy of the whole item (including illustrations, if any).

(6) When any published item is provided to the National Archive in accordance with this section, the National Archivist shall cause a written receipt for the item to be given to the person who supplied it.

(7) If a person fails to comply with a request made by the National Archivist under this section, a summary court may, on the application of the National Archivist, order the person to comply with the request on or before a day specified in the order.

(8) In this section -

“illustrations” includes drawings, engravings and photographs;

“item” means -

- (a) a book, periodical, newspaper, pamphlet, sheet of letter-press, sheet of music, map, plan, chart, table, or other printed item; or
- (b) a non-print item; and

“non-print item” means anything in or by means of which text, sounds, images or other information is stored and which requires a device or apparatus to use or access its content.

(9) To the extent provided by regulations made under this Law, the provisions of this section shall apply to non-print items, or to any prescribed class or description of non-print items, with such modifications as may be prescribed.

- (a) provide information, consultation and research services or other services for the purpose of facilitating access to the documentary heritage of the Islands;
- (b) establish programs and encourage or organise activities, including exhibitions, publications and performances, to make known and interpret the documentary heritage of the Islands;
- (c) enter into arrangements with other libraries, archives or institutions within or outside the Islands;
- (d) provide professional, technical and financial support to other persons within or outside the Islands who are involved in the preservation and promotion of the documentary heritage of the Islands and in providing access to it; and
- (e) provide other services, and engage in other activities, including the sale of articles, in furtherance of the propagation of knowledge and appreciation of the heritage of the Islands.

PART VI – MISCELLANEOUS

20. When a public record, disclosure of the contents of which is subject to any legal restriction, is delivered by any public agency or person into the custody of the National Archive, the public agency or person concerned shall ensure that the National Archivist is advised of that restriction.

Secrecy of public records

21. (1) Subject to subsection (4), no criminal liability, and no liability for defamation or breach of confidentiality or other civil liability, shall be incurred by the custodian of a record or any other person by reason of the delivery of the record by the custodian or other person, in good faith, into the custody of the National Archive.

Protection in respect of civil actions or criminal proceedings

(2) Subject to subsection (4), no criminal liability, and no liability for defamation or breach of confidentiality or other civil liability, shall be incurred by the National Archivist or any person acting at his direction by reason of the granting of access to a record in the custody of the National Archive, where the person who makes the decision to grant access honestly believes, when making the decision, that it is a proper decision under this Law.

(3) The granting of access to a record under this Law does not constitute, for the purposes of the law relating to defamation or breach of confidentiality, an authorisation or approval of the publication of the record or its contents by the person to whom access is granted.

(4) This Law does not derogate from the provisions of the Confidential Relationships (Preservation) Law (1995 Revision).

Evidentiary provisions	<p>22. (1) A public record of a public agency produced from the National Archive shall have the same evidentiary value as if it were produced by the public agency from which it was obtained.</p> <p>(2) An apparently genuine document purporting to be a copy, or to state the contents, of a record in the custody of the National Archive and to be certified by the National Archivist as an accurate copy, or statement of the contents, of the record shall be admissible in any legal proceedings, in the absence of proof to the contrary, as proof of the contents of that record.</p>
Regulations	<p>23. (1) The Governor in Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law, and in particular -</p> <ul style="list-style-type: none">(a) prescribing persons or bodies that shall be deemed to constitute public agencies within the meaning of this Law;(b) modifying or dispensing with a requirement imposed by or under this Law insofar as it would apply to a prescribed class of records or a prescribed public agency;(c) prescribing fees to be paid in respect of services provided by the National Archivist or the National Archive or in respect of any matter under this Law and providing for the waiver or refund of such fees in prescribed cases or circumstances. <p>(2) Such regulations may prescribe a fine of two thousand dollars for contravention of any provision of the regulations.</p>
Repeal of Law 13 of 1991	<p>24. The Institute of Cayman Heritage Law, 1991 is repealed.</p>

Passed by the Legislative Assembly the day of , 2007.

Speaker.

Clerk of the Legislative Assembly