

Translation

Consolidated Act no. 0

Promulgation of the Danish Archives Act

This is an Act to promulgate the Danish Archives Act No. 1050 of 17 December 2002 with amendments consequential upon section 1 of Act no. 563 of 24 June 2005 and Act no. 532 of 6 June 2007.

Part 1

Scope of the Act

1.-(1) The provisions of this Act on public archives shall apply to all activities carried out by public administrative authorities and the court system.

(2) The Act shall furthermore apply to the keeping of parochial registers by recognised denominations.

(3) The Minister for Culture has power to determine that in certain circumstances the rules of Parts 3-10 of this Act shall apply, in whole or in part, to specified companies, institutions and associations, etc., which may not otherwise be considered part of the public administration. This shall apply, however, only

- 1) if expenses incurred in connection with their activities are mainly financed by resources from the State or municipalities; or
- 2) to the extent powers have been conferred on them under or by virtue of law to make decisions on behalf of the State or a municipality.

(4) The Minister for Culture has power to determine that the rules of Parts 3-10 of this Act shall apply, in whole or in part, to companies or institutions organised under private law, in which the State or municipality takes part as owners, if a preservation of the records of the companies or institutions in question must be considered to be essential taking into account the purposes mentioned in section 4, no. 1) below.

(5) This Act shall furthermore apply to activities of public archives with regard to private records.

Part 2

Public archives

2. The public archives consist of the State Archives and local and regional archives.

3.-(1) The State Archives consist of the National Archives and associated institutions.

(2) The State Archives are managed by the National Archivist. The National Archivist is appointed by the Minister for Culture.

4. The objectives of the State Archives are

- 1) to ensure the preservation of records of historical value or which serve as documentation of matters of essential administrative or legal importance to the citizens and authorities;
- 2) to ensure the possibility of disposal of public records of no preservation value in collaboration with the authorities covered by this Act;
- 3) to make records available to citizens and authorities, for example for research purposes,
- 4) to guide citizens and authorities on how to use records;
- 5) to carry out research and disseminate the knowledge of research results.

5. The State Archives shall deal with matters concerning the use of the national coat of arms and shall advise public authorities in questions relating to public coats of arms, seals and emblems.

6.-(1) The State Archives shall assist the authorities covered by this Act in archival matters. In this connection the State Archives may carry out record studies and archival tasks of a technical nature, etc.

(2) The State Archives may charge remuneration for its assistance, cf. subsection (1) above.

(3) The State Archives may charge remuneration for safe-keeping of records not subject to transfer, which are transferred to the State Archives.

(4) The State Archives may charge fees for making extracts.

7.-(1) The municipalities and the regions may establish archives for the purpose of

- 1) ensuring the preservation of records of historical value or which serve as documentation of matters of essential administrative or legal importance to the public and authorities;
- 2) ensuring the possibility of disposal of public records of no preservation value;
- 3) making records available to citizens and authorities, including for research purposes;
- 4) guiding citizens and authorities on how to use records.

(2) The State Archives shall cooperate with the local and regional archives.

Part 3

Preservation and disposal of public records

8.-(1) The authorities shall ensure safeguarding of considerations with respect to archives, including that records are kept in a satisfactory manner.

(2) The authorities shall ensure that records stored on electronic media be kept in such a manner that they can be transferred to public archives.

(3) When records are transferred to public archives the responsibility for their future preservation shall pass to the said public archives.

9. After having obtained an opinion from the Danish Data Protection Agency, the Minister for Culture may determine to lay down regulations on public archives' safe keeping of material of the nature covered by the Act on Processing of Personal Data.

10.-(1) To safeguard archival interests, the Minister for Culture shall lay down rules concerning the handling, preservation and disposal of the records of State authorities.

(2) To safeguard archival interests, the Minister for Culture shall lay down rules concerning the handling, preservation and disposal of the records of municipalities and regions.

(3) The Minister for Culture is empowered to authorise the National Archivist to lay down more detailed regulations concerning the preservation and disposal of public records.

(4) The State Archives shall supervise the compliance with the rules.

11. According to negotiations with the Minister for Science, Technology and Innovation, the Minister for Culture may determine to lay down rules to the effect that State authorities, which have not within a specified date switched to electronic filing, shall pay for expenses incurred in connection with preservation in the State Archives of records which are drawn up on paper after the said date.

Part 4

Transfer of State records

12.-(1) The State authorities and institutions, the Established Church and recognised denominations shall transfer their records to the State Archives only, cf. section 3 hereof.

(2) The Minister for Culture shall lay down more detailed rules concerning transfers to the State Archives.

13.-(1) The authorities, etc., referred to in section 12(1) above, shall, unless there are opposing considerations to be taken into account, transfer their records to the State Archives before they are 30 years old, cf., however, subsections (2) and (3) below.

(2) The Minister for Culture shall lay down more detailed rules on the time for transfer, including rules on such cases where postponement of the time of transfer may be allowed.

(3) The Minister for Culture may determine to lay down more detailed rules on the time for transfer of records stored on electronic media. In this connection it may be determined that transfer shall take place earlier than fixed under subsection (1) hereof.

14. The Minister for Culture is empowered to authorise the National Archivist to lay down the more detailed regulations on transfer to the State Archives and on the time for transfer.

15. -(1) Any public authority which has received or acquired records originating from former or existing State authorities shall notify the State Archives hereof. Likewise, if the authorities are offered such records or if the existence of the records should otherwise come to their notice, they shall notify the State Archives hereof.

(2) The State Archives are empowered to determine that records mentioned in subsection (1) above shall be transferred to the State Archives.

16. Private individuals, enterprises or institutions holding records originating from former or existing State authorities shall transfer the records to the State Archives.

17. Where attempts are made to sell records belonging to the State at a public auction, the auctioneer shall notify the State Archives hereof.

18. The State's right to records shall not cease by extinctive acquisition or prescription.

Part 5

Transfer of local and regional records

19.-(1) The municipalities and the regions can transfer their records to local and regional archives, cf. section 7(1) hereof.

(2) The municipalities and the regions can transfer their records to the State Archives.

20. The Minister for Culture shall lay down more detailed rules on transfer of local and regional records to the State Archives.

21.-(1) Local and regional records covered by Act on Processing of Personal Data, and which shall be preserved, shall be transferred to public archives. The transfer shall take place not later than at the time when the information in question was otherwise to be deleted by the controlling authority.

(2) After having obtained an opinion from the Danish Data Protection Agency, the Minister for Culture shall lay down more detailed rules on transfer of such local and regional records as mentioned in subsection (1) hereof.

Part 6

Accessibility to public records

22.-(1) Archival units created or provided by the public administration and the courts of law and which have been transferred to public archives, are accessible when the archival units are 20 years old, cf., however, sections 23-25, 27 and 28 below.

(2) The relevant authority shall make a decision in connection with an application for access to records more than 20 years old, but which have not been transferred to public archives. The application shall be complied with, unless there are interests to take into considerations as those referred to in sections 23-25 and 27 below.

23.-(1) Archival units containing information of a private, including financial, nature about private individuals are accessible when they are 75 years old.

(2) The transferring authority may, where warranted by the circumstances, after consultation with the receiving archives, lay down a shorter or longer accessibility time-limit for archival units covered by subsection (1) above. Fixing of an accessibility time-limit shorter than 75 years for material of the type covered by the Act on Processing of Personal Data, may take place, however, only after an opinion has been obtained from the Danish Data Protection Agency, if the material was transferred from authorities within public administration or from the Danish Court Administration, if the material was transferred from the courts.

24. Archival units covering cases subject to criminal law are accessible when they are 20 years old, cf., however, section 23 hereof. In case of archival units younger than 50 years the National Archivist or any person authorised by him shall after having obtained consent from the transferring

authority grant access to records. In cases where it is necessary for the purpose of protecting essential considerations, the transferring authority is empowered make a concrete decision to deny consent to access to records.

25. Archival units containing exchange of correspondence between authorities and experts for the purpose of lawsuits or consideration of whether to institute legal proceedings, are accessible when they are 50 years old, cf. however, section 23 above.

26. [Repealed]

27.-(1) The transferring authority may after consultation with the receiving archives determine to fix a longer accessibility time-limit of 60 years at the most for documents covered by sections 22, 24 and 25 above, where this is deemed necessary to protect the following essential interests

- 1) national security or the defence of the Realm;
- 2) Danish foreign policy or external economic interests, including relations with foreign powers or international organisations;
- 3) protection of witnesses or persons accused or other persons involved in criminal cases or disciplinary proceedings;
- 4) the economic interests of public authorities, including the carrying out of the business activities of public authorities;
- 5) private individuals' or private companies' interests in protecting information on technical devices or processes or on operation or business matters or the like; or
- 6) private or public interests where secrecy is required because of the special nature of the matter.

(2) Where State records are concerned, a time-limit longer than 60 years may be fixed by the relevant minister after negotiation with the Minister for Culture.

(3) Where local and regional records are concerned, a time-limit longer than 60 years may be fixed by the relevant district council or regional council.

(4) Where special reasons, including considerations of resources, so warrant, the extension of the time-limit may be granted for archival units or groups of archival units.

28.-(1) The parochial records kept by the Established Church and the recognised denominations, South Jutland person registers and civil marriage books, which have been transferred to the State Archives, are accessible when they are 50 years old.

(2) Death and burial registers, which are transferred to the State Archives, are accessible when they are 10 years old.

(3) The National Archivist may determine a limitation in the access to records which are younger than 100 years in very special circumstances.

29. The accessibility time-limit for an archival unit, cf. sections 22-25 and section 27(4) above is counted from the year in which the last entry was made in the archival unit concerned. The accessibility time-limit for a document, cf. section 27, nos. (1)-(3) above is counted from the date of the document.

Part 7

Restricted access records

30.-(1) Any person may request permission to use restricted access records, cf. Part 6 above.

(2) In connection with an application for permission under subsection (1) above, the purpose of the intended use of the information for which access is requested shall be notified.

(3) In decisions on applications for use of restricted access records special regards may be paid to whether the applicant is a party in the case or has a special individual interest in the information to which access is requested.

31. The National Archivist or any person authorised by him may in concrete cases grant permission for use of documents, archival units or groups of archival units which have been transferred to the State Archives before the expiry of the accessibility time-limits, cf., however, sections 33-45 below.

32. The district council or the regional council may in concrete cases grant permission for use of documents, archival units or groups of archival units which have been transferred to local or regional archives before the expiry of the accessibility time-limits, cf., however, section 34 below.

33. Permission by virtue of section 31 above requires consent from the transferring authority, if

- 1) for a document or an archival unit a longer accessibility time-limit has been fixed by virtue of section 27 above;
- 2) an archival unit contains material of the type mentioned in section 25 above and the accessibility time-limit by virtue of the said provisions has not expired; or
- 3) an archival unit or a document is younger than 20 years.

34. Permission by virtue of sections 31 and 32 above requires consent from the Danish Data Protection Agency, if the archival unit is transferred by an authority in the public administration and contains information about individual persons' strictly private affairs, and

- 1) earlier processing of the information has been covered by Act on Processing of Personal Data;
or
- 2) the information comes from an electronic data processing register which has been kept for the public administration.

35. Permission by virtue of section 31 above requires consent from the Danish Court Administration, if the archival unit was transferred from the courts and contains information about private individuals strictly private affairs and earlier processing of the information has been covered by Act on Processing of Personal Data.

36. Where an application for use of restricted access record material which has been transferred to public archives is not complied with or is refused within 15 days after it was received, the public archives concerned shall notify the applicant and state the reason for the decision.

37. The authorities mentioned in sections 24 and 33-35 above shall, to the extent possible, within 30 days after questions of compliance with an application for access to records have been submitted to the relevant authority by the public archives in question decide whether consent shall be granted. If a decision is not reached within 30 days the authority shall notify the public archives of the reason for this and give an estimate of the date by which the authority expects such a decision will have been reached. The public archives shall then notify the applicant of this.

38. The relevant authority shall, to the extent possible, reach a decision within 30 days in connection with applications for access to records that are more than 20 years old, but which have not been transferred to public archives. Where a request for access to records has not been complied with or been refused within 30 days after it has been received by the relevant authority, the authority shall notify the applicant of the reason for this and give an estimate of the date by which the authority expects such a decision will have been reached.

39.-(1) The Minister for Culture shall set up a committee to assess the practice of the public archives and authorities in the area of accessibility.

(2) The committee shall consist of a chairman, who shall be a judge, two representatives of the research community, two representatives of the press and three representatives of the public administration.

(3) The committee shall exercise its activity on the basis of an annual report on accessibility practice. The report shall be made by the State Archives who may obtain information about accessibility practice from the authorities covered by this Act.

(4) The Minister for Culture may determine to lay down more detailed rules on the activity of the committee and on submission of information to the committee by the authorities.

Part 8

Use of public records

40. Anyone who is granted access to use records subject to restricted access must not make unauthorized publishing, disclosure or use of confidential information that has thereby come to the notice of the person in question. Information shall be deemed confidential where so defined by law or any other valid provision or where it shall otherwise be necessary hold it in confidence to protect private or public interests.

41.-(1) After having obtained an opinion from the Danish Data Protection Agency, the Minister for Culture shall lay down rules on conditions for using information of the type covered by Act on Processing of Personal Data.

(2) The authorities mentioned in sections 31-35 above may in connection with compliance with applications for access to records determine to lay down special terms for the use of records subject to restricted access.

(3) Terms are laid down on the basis of

- 1) the nature of the information to which access is granted; and
- 2) the purpose indicated for the use, cf. section 30(2) above.

(4) Terms to be stipulated may include the following

- 1) that information about a private, including financial, nature about private individuals is not disclosed;
- 2) that no contact is taken to persons who are mentioned in the material to which access is given, or to their next-of-kin;
- 3) that the documents, etc., are not reported in their entirety; and
- 4) that no copying is made.

(5) Other terms may be prescribed in cases where this is warranted by the nature of the information to which access is given and by the intended purpose.

(6) In cases where special terms are prescribed, cf. subsection (2) above the user shall in a statement confirm compliance with the terms prescribed.

(7) The Minister for Culture may determine to lay down more detailed rules on use of public records.

Part 9

Request for access to data covered by the Act on Processing of Personal Data

42.-(1) Anyone may make a request to public archives for access to personal data covered by the Act on Processing of Personal Data and which have been transferred to be kept in the public archives concerned.

(2) Requests by virtue subsection (1) above shall indicate the authority that originally processed the information in question.

(3) Requests for access shall be forwarded by the archives in question to the relevant authority, which makes a decision in accordance with the provisions contained in Act on Processing of Personal Data.

(4) With regard to requests for access to private records transferred to public archives and which are covered by the Act on Processing of Personal Data, the public archives concerned shall make a decision in accordance with the provisions of the said Act. The request shall mention the controller who originally processed the information in question.

Part 10

Provisions regarding appeal

43. -(1) Decisions made by the National Archivist on accessibility in pursuance of section 31 above may be appealed to the appropriate authority.

(2) The Minister for Culture may determine to lay down rules to the effect no appeals lie to the Minister for Culture of decisions made by the National Archivist by virtue of the provisions of Parts 3 and 4 of this Act.

Part 11

Private records

44. Public archives may collect, receive and preserve private records originating from private individuals, associations, organisations, etc., including records of the type covered by Act on Processing of Personal Data.

45.-(1) The State Archives cooperate with and provide consultancy services to other cultural or research institutions that collect and preserve private records as part of their activities.

(2) The Minister for Culture shall set up a committee to promote the cooperation mentioned in subsection (1) of this section.

46.-(1) Where private records are transferred to public archives, an agreement shall be made between the transferring party and the receiving archives about accessibility.

(2) After having obtained an opinion from the Danish Data Protection Agency, the Minister for Culture may lay down more detailed rules on accessibility of material of the type covered by the Act on Processing of Personal Data.

47. The Minister for Culture may determine to approve that institutions which, without being public archives, collect and preserve private records as part of their activities, may receive records that are covered by the Act on Processing of Personal Data. The approval is on condition that the institution complies with the requirements concerning preservation and accessibility laid down by virtue of section 9 and section 46(2) of this Act.

48. Anyone who owns private records of essential importance to research or culture in general shall, before such records are removed from the country, give the State Archives access to copy the records.

49. Where an estate accruing to the State by inheritance includes records, such records shall be transferred to the State Archives.

50. Bona vacantia consisting of private records shall belong to the State. The finder of such records or anyone who becomes possessed of such records person shall forthwith transfer them to the State Archives.

Part 12

Penal and entry into force provisions

51.-(1) Any person who contravenes section 40 above or the conditions set out in pursuance of section 41 above shall be liable to a fine or imprisonment for a term not exceeding six months.

(2) Any person who contravenes the provisions of sections 16, 17, 48 or 50 above shall be liable to a fine.

(3) In regulations drafted in accordance with the law, a fine may be prescribed for contravention of certain provisions of the regulations.

(4) Companies, etc. (legal persons) may become subject to criminal liability under the rules of Part 5 of the Danish Criminal Code.

52. This Act shall come into force on 1 July 2003. The Act shall apply also to records which have been prepared by an authority or have come into the possession of an authority before the effective date of this Act.

53.-(1) Act on Public Records, etc. cf. consolidated act no. 740 of 17 July 2000 shall be repealed.

(2) Royal Ordinance of 13 March 1750 and Royal Ordinance of 6 January 1764 shall be repealed.

54. In Act on the Danish Primary and Lower Secondary School, cf. consolidated act no. 730 of 21 July 2000 as amended most recently by act no. 412 of 6 June 2002, shall in *section 52, 2nd clause* read as follows:

“The Minister for Education may furthermore determine to lay down rules on school s’ supervision with pupils during school hours.”

55. The following executive orders remain in force until they are repealed or replaced by regulations issued in pursuance of this Act:

- 1) Executive Order No. 152 of 18 April on the Disposal of Records of the City of Copenhagen.
- 2) Executive Order No. 65 of 31 January 1990 on the Disposal of Records of the County Authorities.
- 3) Executive Order No. 554 of 31 May 2001 on public records and activities of public archives.

56. This Act shall not extend to the Faeroe Islands and Greenland. The Act may be brought into force by Royal Decree for matters which have been or are being dealt with by the authorities of the Realm, with such departures as might be required in view of the special circumstances prevailing in the Faeroe Islands and Greenland.

Act No. 563 of 24 June 2005 on An Amendment of a Number of Acts in the Cultural Area, which amends sections 2, 7 and 10, the caption in Part 5, sections 19-21, 27 and 32 contains the following entry into force provision.

Section 10

(1) The Act shall come into force on 1 January 2007. The provisions of subsections 2-6 shall, however, come into force on the day after the promulgation of the Act in the Danish Legal Gazette.

(2) - (6).¹

Section 2

This Act shall enter into force on 1 July 2007.

¹ These provisions have no relevance to the Archives Act.

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