

Issuer:	Riigikogu
Type:	act
In force from:	01.01.2012
In force until:	30.06.2014
Translation published:	30.10.2013

Archives Act

Passed 17.02.2011

§ 1. Scope of application

(1) This Act provides for the appraisal of records, acquisition and preservation of archival records, grant of access thereto, organisation of use thereof, and liability for rendering records and archival records unusable and destruction thereof, establishment of the bases for records management of agencies and persons performing public duties and the bases for the activities of the National Archives and local government archives (hereinafter jointly *public archives*).

(2) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

§ 2. Records and archival records

(1) For the purposes of this Act, a record is information recorded on any medium, which is created or received in the course of the activities of an agency or person, and the content, form and structure of which is sufficient to provide evidence of facts or activities.

(2) Archival records are records to which archival value has been granted by a public archives as the result of an appraisal.

(3) Archival records are part of the national cultural heritage and shall be preserved permanently.

(4) Archival records created or received in the course of performance of public duties shall be transferred to the National Archives, unless otherwise provided by law.

§ 3. National Archives

(1) The National Archives is a governmental authority within the area of government of the Ministry of Education and Research whose main function is to appraise records created or received in the course of performance of public duties by agencies or persons, acquire and preserve archival records, grant access to archival records and organise the use thereof.

(2) The National Archives shall acquire private records of cultural or historical value by agreement with the owner, if possible and public interest therein exists.

(3) The National Archives may provide services related to the use of archival records not arising from this Act, and receive a fee therefor. The provision of fee-charging services shall not hinder the performance of the functions provided for in this Act or fall outside the competence of the National Archives. Upon establishment of rates of fees, it shall be taken into account that fees charged for services shall not exceed the expenses incurred in the provision of the services.

(4) The list of fee-charging services and the rates of fees shall be established by a regulation of the Minister of Education and Research.

(5) The National Archives is engaged in archival research and publication.

(6) The National Archives shall, if possible and public interest therein exists, assist the owners of private records of cultural and historical value in arranging, describing and preserving the records.

(7) The statutes of the National Archives shall be established by the Minister of Education and Research.

§ 4. State Archivist

The National Archives is directed by the State Archivist who is appointed to office by the Minister of Education and Research for five years in accordance with the Public Service Act, after hearing the opinion of the Archives Board.

§ 5. Archives Board

(1) The Archives Board is an advisory body which operates at the Ministry of Education and Research and its function is to review the main directions in the archival development and make proposals for further development.

(2) The Archives Board comprises representatives of agencies performing public duties, including representatives of universities and research institutions, a representative of local government archives, representatives of professional associations, and archival experts. The membership and organisation of work of the Archives Board shall be approved by a directive of the Minister of Education and Research.

§ 6. Management of records and archival records before transfer to National Archives

(1) An agency or person performing public duties shall ensure the preservation and usability of records or archival records created or received in the course of performance of public duties within the period provided by Acts or legislation established on the basis thereof or until transfer to the National Archives.

(2) The Government of the Republic may establish, by a regulation, the principles for the records management of agencies and persons performing public duties.

(3) The National Archives advises and supports agencies and persons performing public duties upon management of records and archival records.

(4) The National Archives may provide guidelines for the management of records and archival records to agencies and persons performing public duties in order to comply with this Act and legislation established on the basis thereof.

(5) The National Archives shall monitor the management of archival records and compliance with archival rules, guidelines of the National Archives and, within its functions, the general requirements for records management by agencies or persons performing public duties, and make proposals for the elimination of deficiencies. If deficiencies are not eliminated, the National Archives shall issue a mandatory order to the agency or person performing public duties for elimination of deficiencies.

§ 7. Appraisal of records

(1) The National Archives shall identify agencies and persons performing public duties whose activities may result in archival records, based on the importance of the agency or person to society and the content of the public duties.

(2) The National Archives shall identify archival records upon appraisal of the records of agencies and persons specified in subsection (1) of this section, taking into account:

- 1) the need to exercise public authority;
- 2) the need to certify the rights and transactions of persons;
- 3) the cultural and historical value of the information.

(3) Agencies and persons specified in subsection (1) of this section shall not destroy their records before the identification of archival records.

(4) The revocation of archival value of archival records shall be decided on by the State Archivist.

§ 8. Transfer of archival records

(1) Agencies and persons performing public duties shall transfer archival records to the National Archives if such archival records are no longer necessary for the performance of their duties, but not later than ten years after the creation or receipt of the records, unless otherwise provided by law.

(2) The State Archivist may, in justified cases, extend the term for transfer of archival records.

(3) The transferor shall bear the expenses related to the transfer of archival records created or received in the course of performance of public duties to the National Archives, including expenses incurred in the arrangement, description and transport of the archival records according to the requirements.

(4) Ownerless records the owners of which cannot be identified and to which the National Archives grants archival value shall be the property of the state and preserved by the National Archives.

§ 9. Preservation and protection of archival records

(1) Archival records shall be kept under proper conditions preventing the unauthorised use of, damage to and destruction of the archival records.

(2) The information contained in archival records may be copied to another medium if the storage of information on another medium is justified.

§ 10. Access to and use of archival records

(1) Access to archival records preserved in the National Archives is unrestricted, unless restrictions established by the Public Information Act, the Personal Data Protection Act, the State Secrets and Classified Information of Foreign States Act or another Act extend thereto.

(2) The National Archives shall allow to examine archival records. The National Archives shall not charge a fee for the on-site examination of archival records in the archives.

(3) The National Archives may restrict access to an archival record if the physical condition of the medium is poor or if using it may damage the archival record, however the National Archives shall ensure access to the information contained in the archival record, if possible.

(4) The National Archives shall issue archival notices in order to certify the rights and transactions of persons.

(5) The conditions for access to private records to be transferred to the National Archives shall be provided for by a contract. Restrictions on access provided for by a contract shall not be applied for more than 50 years as of the transfer of the record.

§ 11. Local government archives

(1) If a local government has established an archives by the time of entry into force of this Act, the local government archives shall appraise records, acquire and preserve archival records created or received as a result of the activities of local government bodies or agencies and grant access to and organise the use of such archival records.

(2) The requirements for the preservation, protection and use of archival records and access thereto provided for in §§ 9 and 10 of this Act and legislation established on the basis of this Act shall extend to local government archives. Subsection 6 (5) of this Act shall not apply to local governments which have established a local government archives.

(3) Upon termination of the activities of a local government archives, the owner shall ensure the transfer of archival records to the National Archives and bear the expenses related thereto.

§ 12. Collection of records of cultural and historical value

(1) The obligation to transfer archival records provided for in subsection 2 (4) of this Act or § 8 of this Act shall not extend to public, state or local government museums and libraries, educational, research and development institutions and foundations, which possess a collection of records or information of cultural or historical value, if so prescribed by law, statutes or articles of association of agencies.

(2) The requirements for the arrangement and preservation of records and grant of access thereto provided for in this Act and archival rules may be extended to the agencies specified in subsection (1) of this section by law or statutes or articles of association of the agency.

§ 13. Archival rules

The Government of the Republic or a minister authorised by the Government of the Republic shall establish, by a regulation, archival rules which regulate and specify the appraisal of records and preservation of archival records at agencies or persons performing public duties until the transfer thereof to the National Archives, procedure for transfer of archival records to the National Archives, preservation and protection of such archival records in the National Archives and organisation of access thereto, including the issue of archival notices by the National Archives.

§ 14. Rendering records and archival records unusable

(1) Violation of the requirements for preservation of records or archival records, if this results in the record or archival record becoming unusable, is punishable by a fine of up to 100 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 1300 euros.

§ 15. Unlawful destruction of records and archival records

- (1) Unlawful destruction of records and archival records is punishable by a fine of up to 150 fine units.
- (2) The same act, if committed by a legal person, is punishable by a fine of up to 1600 euros.

§ 16. Proceedings

- (1) The provisions of the General Part of the Penal Code and the Code of Misdemeanour Procedure apply to misdemeanours provided for in §§ 14 and 15 of this Act.
- (2) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 14 and 15 of this Act shall be conducted by a police authority.

§ 17. Application of subsection 8 (1) of this Act

Subsection 8 (1) of this Act shall be applied to records on paper created or received after the entry of force of this Act to which the National Archives has granted archival value. The transfer term of 20 years shall apply to records on paper of archival value created up to the entry into force of this Act as of the creation of such records.

§ 18. Liquidation of archives register

The archives register shall be liquidated and the information to which archival value has been granted shall be thereafter preserved in the National Archives.

§ 19.–§ 38.[Sections amending other Acts. Omitted from translation.]

§ 39. Repeal of Archives Act

The Archives Act (RT I 1998, 36/37, 552; 2010, 22, 108) is repealed.

§ 40. Entry into force of Act

This Act enters into force on 1 January 2012.