



The Scottish Parliament
Pàrlamaid na h-Alba

Passage of the
**National Library of Scotland
Bill 2011**

SPPB 172



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Pàrlamaid na h-Alba

Passage of the
National Library of Scotland Bill 2011
SP Bill 2 (Session 4), subsequently 2012 asp 3
SPPB 172

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Contents

	Page
Foreword	
<i>Introduction of the Bill</i>	
Bill (As Introduced) (SP Bill 2)	1
Explanatory Notes (and other accompanying documents) (SP Bill 2-EN)	17
Policy Memorandum (SP Bill 2-PM)	32
Delegated Powers Memorandum (SP Bill 2-DPM)	44
<i>Stage 1</i>	
Stage 1 Report, Education and Culture Committee	49
Annexes to the Stage 1 Report	67
Extract from the Minutes of the Parliament, 15 March 2012	123
Official Report, Meeting of the Parliament, 15 March 2012	124
Scottish Government Response to the Education and Culture Committee's Report, 27 March 2012	142
<i>Stage 2</i>	
Marshalled List of Amendments for Stage 2 (SP Bill 2-ML)	148
Groupings of Amendments for Stage 2 (SP Bill 2-G)	150
Extract from the Minutes, Education and Culture Committee, 24 April 2012	151
Official Report, Education and Culture Committee, 24 April 2012	152
Bill (As Amended at Stage 2) (SP Bill 2A)	161
Revised Explanatory Notes (SP Bill 2A-EN)	177
<i>Stage 3</i>	
Marshalled List of Amendments selected for Stage 3 (SP Bill 2A-ML)	188
Groupings of Amendments for Stage 3 (SP Bill 2A-G)	190
Extract from the Minutes of the Parliament, 16 May 2012	191
Official Report, Meeting of the Parliament, 16 May 2012	192
Bill (As Passed) (SP Bill 2B)	211

Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;

- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the *Guidance on Public Bills* published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament's website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament's Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The annexes to the Education and Culture Committee's Stage 1 Report were published on the web only. They are reproduced in full in this volume after the Stage 1 Report. These annexes include the report of the Subordinate Legislation Committee on the delegated powers contained in the Bill As Introduced. They also include all the oral evidence taken, and written evidence and supplementary correspondence received, by the Education and Culture Committee and relevant extracts from the Committee's minutes.

The Finance Committee did not report to the Education and Culture Committee on the Financial Memorandum at Stage 1. Written submissions received by the Finance Committee in response to its standard questionnaire are included in the annexes to the Stage 1 Report.

National Library of Scotland Bill

[AS INTRODUCED]

CONTENTS

Section

The National Library of Scotland

- 1 The National Library of Scotland

Functions of NLS

- 2 Functions of NLS

Acquisitions, deposits, disposal and loan of objects

- 3 Acquisitions, deposits and disposal of objects
4 Borrowing and lending of objects

Legal publications

- 5 Legal publications

Joint arrangements etc. between NLS and the Faculty

- 6 NLS and the Faculty: joint arrangements etc.

Grants and loans

- 7 Grants and loans

Directions and guidance

- 8 Directions and guidance

General

- 9 Interpretation
10 Consequential modification of enactments and repeals
11 Subordinate legislation
12 Commencement
13 Short title

Schedule 1—NLS

Schedule 2—Modifications of enactments

Schedule 3—Repeals

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 2-EN. A Policy Memorandum is printed separately as SP Bill 2-PM.

National Library of Scotland Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make further provision about the name, functions and governance of the National Library of Scotland; and for connected purposes.

*The National Library of Scotland***1 The National Library of Scotland**

- (1) The body corporate known as The Trustees of the National Library of Scotland, established by section 1(1) of the 1925 Act, continues in existence and is renamed the National Library of Scotland (“NLS”).
- (2) Schedule 1, which makes further provision about NLS, has effect.

*Functions of NLS***2 Functions of NLS**

- (1) NLS has the general function of managing the library established by section 1(1) of the 1925 Act as a national resource for reference, study, research and bibliography, having particular regard to Scotland.
- (2) NLS has the particular functions of—
- (a) preserving, conserving and developing its collections,
 - (b) making the collections accessible to the public and to persons wishing to carry out study and research,
 - (c) exhibiting and interpreting objects in the collections, and
 - (d) promoting collaboration between, and the adoption and sharing of good practice by, other persons providing library and information services.
- (3) NLS is to exercise its functions with a view to—
- (a) encouraging education and research,
 - (b) promoting understanding and enjoyment of the collections,
 - (c) promoting the diversity of persons accessing the collections, and
 - (d) contributing to understanding of Scotland’s national culture.
- (4) NLS—

- (a) must, when required to do so by the Scottish Ministers, and
- (b) may, at any other time,

provide the Scottish Ministers with advice, information and assistance on any matter relating to NLS's functions.

- 5 (5) Any advice, information or assistance under subsection (4)(a) must be provided in such manner as the Scottish Ministers may determine.

Acquisitions, deposits, disposal and loan of objects

3 Acquisitions, deposits and disposal of objects

- (1) NLS may—

- 10 (a) acquire (by purchase, exchange or gift),
 (b) accept on deposit,
 any object which it considers it is desirable to add to its collections.

- (2) NLS may dispose of any object from its collections if—

- 15 (a) the object is a duplicate of, or similar to, another object in the collections,
 (b) NLS considers that the object is not required for the purposes of the collections,
 (c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
 (d) the object is hazardous,
 (e) in any other case, the Scottish Ministers agree to the disposal.

- 20 (3) Disposal under subsection (2) may be by sale, exchange, gift, return or destruction.

- (4) The power in subsection (2) is in addition to any other powers of disposal, in particular those conferred by—

- (a) section 6 of the Museums and Galleries Act 1992 (c.44), and
- (b) section 2 of the Holocaust (Return of Cultural Objects) Act 2009 (c.16).

- 25 (5) The power in subsection (2) does not apply in relation to an object which is relevant material within the meaning of section 7 of the 2003 Act.

- (6) Where an object is subject to a prohibition or restriction on disposal, NLS may dispose of the object under subsection (2) in a manner inconsistent with the prohibition or restriction only—

- 30 (a) with the consent of the person having the right to enforce the prohibition or restriction, or
 (b) in the circumstances mentioned in subsection (2)(c) or (d).

4 Borrowing and lending of objects

- 35 (1) NLS may borrow or accept loans of objects for the purposes of exhibition, study or research.

- (2) NLS may lend any object from its collections.

- (3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), NLS is to have regard to—

- (a) the interests of users of the collections,
- (b) the suitability of the prospective borrower,
- (c) the purpose of the loan,
- (d) the physical condition and degree of rarity of the object,
- (e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

- (4) The power in subsection (2) is in addition to any other power of lending.
- (5) The power in subsection (2) does not apply in relation to an object which is relevant material within the meaning of section 7 of the 2003 Act.

- (6) Where an object is subject to a prohibition or restriction on lending, NLS may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only—

- (a) with the consent of the person having the right to enforce the prohibition or restriction, or

- (b) where, despite taking all reasonable steps, NLS is unable to ascertain the name and contact details of any person having that right.

Legal publications

5 Legal publications

- (1) Copies of legal publications delivered to NLS under section 1 of the 2003 Act—
 - (a) are to be sent by NLS to the Faculty for the purposes of its Law Library, and
 - (b) when accepted by the Faculty, become the property of the Faculty.
- (2) NLS must include in a request under section 5 of the 2003 Act such legal publications as the Faculty may require it to include.
- (3) Subsections (1) and (2) do not apply to legal publications which are on line electronic publications.
- (4) Copies of legal publications which are on line electronic publications are to be made available by NLS to the Faculty.
- (5) Any question as to what constitutes a legal publication for the purposes of—
 - (a) this section, or
 - (b) section 5 of the 1925 Act (as it had effect immediately before its repeal by section 10(5) and schedule 3),

is to be resolved by agreement between NLS and the Faculty or, if they cannot agree, by arbitration.

Joint arrangements etc. between NLS and the Faculty

6 NLS and the Faculty: joint arrangements etc.

- (1) NLS and the Faculty must enter into arrangements about—
 - (a) co-operation between NLS and the Faculty in relation to their respective collections,

- (b) the consultation of objects in NLS's collections by members of the Faculty,
- (c) the consultation of objects in the Faculty's collections by users of NLS's collections,
- (d) the preservation and conservation by the Faculty of legal publications sent to it under section 5, and
- (e) how legal publications which are on line electronic publications are to be made available by NLS to the Faculty.

- (2) Arrangements under subsection (1) may contain provision about charging.
- (3) Any question as to what are law books, legal manuscripts and papers, pictures or articles of furniture belonging to the Faculty for the purposes of section 3(1) of the 1925 Act is to continue to be determined by the Keeper of the Advocates' Library despite the repeal of that section by section 10(5) and schedule 3.

Grants and loans

7 Grants and loans

- (1) The Scottish Ministers may make grants to NLS.
- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to NLS for particular purposes.
- (3) A grant under subsection (1) or (2) is subject to such terms and conditions (including conditions as to repayment) as the Scottish Ministers may determine.
- (4) NLS may make grants and loans to such persons as it considers appropriate—
 - (a) for the purposes of, or in connection with, the exercise of its functions,
 - (b) where it appears to be conducive to the exercise of its functions.
- (5) A grant or loan under subsection (4) is subject to such terms and conditions (including conditions as to repayment) as NLS may determine.

Directions and guidance

8 Directions and guidance

- (1) The Scottish Ministers may give NLS directions (of a general or specific nature) as to the exercise of its functions.
- (2) But the Scottish Ministers may not give NLS directions so far as relating to—
 - (a) NLS's functions under section 2(2)(a) to (c) or (3)(a), (b) or (d) or sections 3 to 7,
 - (b) NLS's functions under or by virtue of the 2003 Act.
- (3) NLS must—
 - (a) comply with any directions given to it by the Scottish Ministers under this section,
 - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.
- (4) A direction under this section is to be given in writing.
- (5) The Scottish Ministers may vary or revoke any direction given under this section.

*General***9 Interpretation**

In this Act—

“the 1925 Act” means the National Library of Scotland Act 1925 (c.73),

“the 2003 Act” means the Legal Deposit Libraries Act 2003 (c.28),

“the Faculty” means the Faculty of Advocates,

“NLS” has the meaning given by section 1(1),

“object” includes a thing in electronic form,

“on line electronic publication” has the same meaning as in section 14 of the 2003 Act.

10 Consequential modification of enactments and repeals

- (1) Schedule 2, which contains modifications of enactments, has effect.
- (2) The Scottish Ministers may by order make such incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (3) An order under subsection (2) may modify any enactment (including this Act).
- (4) An order under subsection (2) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.
- (5) The enactments mentioned in the first column of schedule 3 are repealed to the extent specified in the second column of that schedule.

11 Subordinate legislation

Orders under this Act (except orders referred to in section 10(4) and orders under section 12(2)) are subject to the negative procedure.

12 Commencement

- (1) Sections 11 and 13 and this section come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

13 Short title

The short title of this Act is the National Library of Scotland Act 2012.

SCHEDULE 1
(introduced by section 1(2))

NLS

Status

- 5 1 (1) NLS is a body corporate.
- (2) NLS—
- (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status or immunity of the Crown.
- (3) NLS's property is not property of, or property held on behalf of, the Crown.
- 10 (4) NLS's members and employees are not to be regarded as civil servants.

Membership

- 2 (1) NLS is to consist of—
- (a) a person appointed by the Scottish Ministers to chair NLS, and
- (b) no fewer than 6 and no more than 13 other members appointed by the Scottish Ministers.
- 15 (2) One of the members is to be selected from persons nominated by the Dean of the Faculty (who may include the Dean).
- (3) The Scottish Ministers may by order amend sub-paragraph (1)(b) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.
- 20 (4) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers.
- (5) A member may resign office by giving notice in writing to the Scottish Ministers.
- 25 (6) The Scottish Ministers may reappoint as a member a person who has ceased to be a member.

Persons disqualified from membership of NLS

- 3 A person is disqualified from appointment (and from holding office) as a member of NLS if the person is (or becomes)—
- (a) a member of the House of Commons,
- 30 (b) a member of the Scottish Parliament, or
- (c) a member of the European Parliament.

Removal of members

- 4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a member if—
- (a) the member becomes insolvent,
- 35 (b) the member has been absent from 3 consecutive meetings without the permission of NLS,

(c) the member is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.

(2) For the purposes of sub-paragraph (1)(a), a member becomes insolvent when—

(a) the member's estate is sequestrated,

(b) the member grants a trust deed for creditors or enters into a composition contract,

(c) a voluntary arrangement proposed by the member is approved, or

(d) the member is adjudged bankrupt.

Remuneration, allowances and expenses of members

NLS must pay to each member—

(a) such remuneration, and

(b) such allowances and expenses,

as the Scottish Ministers may determine.

Chief executive and other staff

(1) NLS is to employ a chief executive.

(2) The chief executive may not be a member of NLS.

(3) The first chief executive is to be the person who, immediately before this paragraph comes into force, is the librarian appointed under section 2(f) of the 1925 Act.

(4) That person is employed as chief executive on the same terms and conditions as apply to the appointment of that person as the librarian.

(5) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed on terms and conditions determined by NLS and approved by the Scottish Ministers.

(6) NLS may employ any other staff necessary for the carrying out of NLS's functions.

(7) Those staff are to be employed on terms and conditions determined by NLS and approved by the Scottish Ministers.

(8) NLS may, with the approval of the Scottish Ministers—

(a) pay (or make arrangements for the payment of),

(b) make payments or contributions towards the provision of,

(c) provide and maintain schemes (whether contributory or not) for the payment of,

such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee, as NLS may determine.

(9) The reference in sub-paragraph (8) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

Committees

(1) NLS may establish committees for any purpose relating to its functions.

- (2) NLS is to determine the composition of its committees.
- (3) NLS may appoint persons who are not members of NLS to be members of a committee, but those persons are not entitled to vote at meetings of the committee.
- (4) A committee is to comply with any directions given to it by NLS.

5 *Procedure and meetings*

- 8 (1) NLS may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The following persons may attend and take part in a meeting of NLS (or any of its committees)—
- 10 (a) members of the Scottish Executive,
- (b) persons authorised by the Scottish Ministers,
- (c) the Dean of the Faculty or a person authorised by the Dean of the Faculty.
- (3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

Delegation of functions

- 15 9 (1) NLS may authorise—
- (a) the chief executive,
- (b) any other employee,
- (c) any of its committees,
- to exercise such of its functions (and to such extent) as it may determine.
- 20 (2) NLS may not authorise either of the following functions to be exercised by any other person—
- (a) the approval of annual reports and accounts,
- (b) the approval of any budget or other financial plan.
- 25 (3) Sub-paragraph (1) does not affect the responsibility of NLS for the exercise of its functions.

Validity of proceedings and actions

- 10 The validity of proceedings or actions of NLS (including proceedings or actions of any of its committees) is not affected by—
- (a) any vacancy in the membership of NLS or any of its committees,
- 30 (b) any defect in the appointment of a member of NLS or any of its committees, or
- (c) the disqualification of a person as a member after appointment.

General powers

- 11 (1) NLS may do anything which appears to it—
- (a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions,
- 35

(b) to be conducive to the exercise of its functions.

(2) In particular, NLS may—

(a) enter into contracts,

(b) with the approval of the Scottish Ministers, acquire and dispose of land,

(c) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,

(d) enter into any business or undertaking,

(e) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),

(f) enter into joint ventures with others,

(g) undertake or execute any charitable trust,

(h) invest sums not immediately required in relation to the exercise of its functions,

(i) accept gifts of money and other property,

(j) obtain advice or assistance from any person who, in NLS's opinion, is qualified to give it,

(k) carry out or commission research,

(l) issue publications,

(m) make charges for access to the collections,

(n) make other charges in connection with the exercise of its functions (including charges for the provision of goods and services).

(3) For the purposes of sub-paragraph (2)(g), a trust is a charitable trust if all its purposes are within section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Accounts

12 (1) NLS must—

(a) keep proper accounts and accounting records,

(b) prepare in respect of each financial year a statement of accounts, and

(c) send a copy of the statement to the Scottish Ministers.

(2) NLS must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).

(3) NLS must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

13 (1) As soon as practicable after the end of each financial year, NLS must prepare a report which is—

(a) to provide information on the exercise of its functions during that year, and

(b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.

(2) NLS must—

(a) send a copy of the report to the Scottish Ministers, and

(b) publish the report.

(3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(4) NLS may publish such other reports and information on matters relevant to its functions as it considers appropriate.

SCHEDULE 2

(introduced by section 10(1))

MODIFICATIONS OF ENACTMENTS

National Heritage (Scotland) Act 1985 (c.16)

1 In section 22(2) of the National Heritage (Scotland) Act 1985 (finance)—

(a) for “Edinburgh,” substitute “Edinburgh and”, and

(b) the words from “, and the” to the end are repealed.

Museums and Galleries Act 1992 (c.44)

2 In the Museums and Galleries Act 1992—

(a) in Part 1 of Schedule 5 (transfers to and from certain collections), for “The Board of Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and

(b) in Schedule 6 (bodies to whom land may be transferred)—

(i) after “The National Library of Scotland” insert “, established by section 1(1) of the National Library of Scotland Act 1925 (c.73)”, and

(ii) for “The Board of Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

3 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), for the entry relating to The Trustees of the National Library of Scotland substitute “The National Library of Scotland”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

4 In the Scottish Public Services Ombudsman Act 2002, in paragraph 30 of Part 2 of schedule 2 (listed authorities), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 5 In the Freedom of Information (Scotland) Act 2002, in paragraph 105 of Part 7 of schedule 1 (Scottish public authorities), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

5 *Legal Deposit Libraries Act 2003 (c.28)*

- 6 In the Legal Deposit Libraries Act 2003—

- (a) in section 12 (regulations: Scotland and Wales)—

- (i) in subsection (1)(a), the words “the authority controlling” are repealed,
 (ii) in subsection (1)(b), for “that authority” substitute “the National Library of Scotland”,
10 (iii) in subsection (2)(b), the words “the authority controlling” are repealed, and
 (iv) in subsection (3), the words “the authority controlling” are repealed, and

- (b) in section 14 (interpretation), in the definition of “deposit library”—

- (i) after “Board” insert “, the National Library of Scotland”, and
15 (ii) paragraph (a) is repealed.

Holocaust (Return of Cultural Objects) Act 2009 (c.16)

- 7 In the Holocaust (Return of Cultural Objects) Act 2009—

- (a) in section 1 (bodies to which this Act applies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and
20 (b) in section 2(5) (power to return victims’ property), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Public Services Reform (Scotland) Act 2010 (asp 8)

- 8 In the Public Services Reform (Scotland) Act 2010—

- (a) in schedule 5 (improvement of public functions: listed bodies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and
25 (b) in schedule 8 (information on exercise of public functions: listed public bodies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

30 *Public Records (Scotland) Act 2011 (asp 12)*

- 9 In the schedule to the Public Records (Scotland) Act 2011, for “Trustees of the National Library of Scotland” substitute “National Library of Scotland”.

SCHEDULE 3
(introduced by section 10(5))

REPEALS

	<i>Enactment</i>	<i>Extent of repeal</i>
5	National Library of Scotland Act 1925 (c.73)	The whole Act.
	National Heritage (Scotland) Act 1985 (c.16)	Section 18.
10	Public Finance and Accountability (Scotland) Act 2000 (asp 1)	In schedule 4, paragraph 2.
	Legal Deposit Libraries Act 2003 (c. 28)	Section 15(2) to (5).

National Library of Scotland Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make further provision about the name, functions and governance of the National Library of Scotland; and for connected purposes.

Introduced by: Fiona Hyslop
On: 26 October 2011
Supported by: Brian Adam
Bill type: Executive Bill

NATIONAL LIBRARY OF SCOTLAND BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the National Library of Scotland Bill introduced in the Scottish Parliament on 26 October 2011:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 2–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill modernises the governing legislation for the National Library of Scotland, which was established by virtue of the National Library of Scotland Act 1925 (c.73). The Bill defines the functions of the governing body and updates its powers to bring them in line with those of modern public bodies. The 1925 Act did not specifically provide for the governing body's functions, which have evolved over time.

5. The Bill will also reduce the size of the board of the governing body, remove reserved places and ensure all appointments are made by Scottish Ministers based on merit and selection. This will bring the provisions for the board into line with current public appointments practice under the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).

6. A public consultation on the role and governance of the National Library of Scotland was carried out between March and June 2010, <http://www.scotland.gov.uk/Publications/2010/03/31102621/1>. A Scottish Government response was published in March 2011 <http://www.scotland.gov.uk/Publications/2011/03/Publications>.

7. In these Explanatory Notes and the Bill, the “1925 Act” means the National Library of Scotland Act 1925, which the Bill will replace, and the “2003 Act” means the Legal Deposit Libraries Act 2003 (c.28), which the Bill does not substantively amend.

THE BILL

The National Library of Scotland

Section 1 – The National Library of Scotland

8. This section renames the body corporate called “The Trustees of the National Library of Scotland” as simply “The National Library of Scotland”. “NLS” is used in these Explanatory Notes and in the Bill as short-hand for the National Library of Scotland. These provisions reflect the fact that the body corporate has for some time operated with the corporate identities “The National Library of Scotland” and “NLS”. Schedule 1 makes detailed provision about the governance of NLS.

Functions of NLS

Section 2 – Functions of NLS

9. This section continues as the general function of NLS the function of managing the library known as the National Library of Scotland. This function was first established in section 1(1) of the 1925 Act. The National Library of Scotland is a reference and research library, as distinct from a lending library, acting as a national resource for amongst other things bibliography (the study of books). The reference to particular regard to Scotland reflects that the National Library of Scotland is an international centre for the study of Scotland and the Scots and a resource for Scotland's research community.

10. Subsection (2) lists specific functions of NLS to expand on the general function.

11. Subsection (2)(a) gives NLS the function of preserving, conserving and developing its collections. The collections are the sum-total of objects held by NLS. NLS acquires objects through the means referred to in section 3 and also by means of legal deposit under the 2003 Act. NLS might, for example, exercise these functions by engaging specialist conservator-restorers to maintain or bring objects in the collections to a good condition, and by maintaining a collecting strategy for the future development of the collections.

12. Subsection (2)(b) gives NLS the function of making the collections accessible to the public, and also to students and researchers for their special interests. NLS might, for example, exercise these functions by making reading rooms available so that objects in the collections can be brought to persons wishing to consult them¹. Accessibility is not restricted to physical access and includes making the collections available on line to users.

13. Subsection (2)(c) gives NLS the function of exhibiting and interpreting objects in the collections. NLS might, for example, exercise these functions by organising a public display of objects on a particular theme or topic, and developing audio, visual or audiovisual aids to support those wishing to understand the context and cultural significance of an exhibition. NLS might seek the loan of objects in another body's collections to support a particular exhibition (see section 4). This function may also be delivered through on line means.

14. Subsection (2)(d) gives NLS the function of promoting collaboration between and good practice amongst other persons providing library and information services. NLS might, for example, exercise these functions by offering advice on the conservation of delicate objects.

15. Subsection (3) lists objectives that NLS must seek to achieve in exercising its general and specific functions.

16. Subsection (3)(a) gives NLS the objective of encouraging education and research. In pursuit of this objective NLS might, for example, make arrangements with universities and colleges so that students are aware of the unique resources within NLS's collections.

¹ The National Library of Scotland is generally "closed-stack", which means that objects must be requested from NLS staff and taken by those staff from secure storage areas.

17. Subsection (3)(b) gives NLS the objective of promoting understanding and enjoyment of the collections. An example of this might be using on line services as a way to inform new audiences about the range of its collections and, through display and interpretation, promoting greater engagement with the public.

18. Subsection (3)(c) gives NLS the objective of promoting the diversity of persons accessing the collections, for example, by digitising paper resources so that they can be accessed outwith NLS's properties.

19. Subsection (3)(d) gives NLS the objective of contributing to understanding of Scotland's national culture. Scotland's national culture in this paragraph means Scotland's distinctive way of life as a whole, and not only artistic and cultural output. NLS might, for example, hold public lectures and promote new publications on specific aspects of Scottish culture.

20. NLS also exercises functions separately to the Bill. NLS claims and receives publications under the 2003 Act, receives copies of registers of electors and makes them available for inspection² and receives print copies of Scottish Statutory Instruments³.

21. Subsections (4) and (5) require NLS to provide the Scottish Ministers with any advice, information and assistance they require (and in the manner they require it) in relation to NLS's functions. NLS may at any other time provide such advice as it considers appropriate.

Acquisitions, deposits, disposal and loan of objects

Section 3 – Acquisitions, deposits and disposal of objects

22. Subsection (1) empowers NLS to acquire objects and accept objects on deposit to develop the collections (see section 2(2)(a)) and sets out the means by which objects come to be added to or "accessioned" into the collections, namely purchase, exchange, gift and deposit. Deposit is an arrangement where the depositor charges NLS with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between NLS and the depositor.

23. The other means by which objects are accessioned into the collections is legal deposit under the 2003 Act. Acquisitions under the 2003 Act are separate to the ordinary acquisitions and deposits referred to in subsection (1) and are not referred to in that subsection. The 2003 Act positions NLS as a legal deposit library and provides for the delivery of print and, subject to provision made in UK regulations, non-print publications to NLS⁴. Legal deposit libraries are sometimes referred to as "copyright" libraries.

² Under the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497 (S. 2) as amended by S.I. 2006/834 (S. 9)) and the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341 as amended by S.I. 2006/752).

³ Under the Scottish Statutory Instrument Regulations 2011 (S.S.I. 2011/195).

⁴ At the time of writing these Explanatory Notes no such regulations are in place but the UK Department for Media, Culture and Sport has consulted on draft regulations <http://www.culture.gov.uk/consultations/7449.aspx>.

24. As mentioned, NLS has the function of preserving and conserving the collections (see section 2(2)(a)). Subsection (2) sets out the circumstances in which NLS may dispose of or “de-accession” an object or objects in the collections.

25. The case for disposal in subsection (2)(a) is that an object is a duplicate of, or similar to, another object in the collections. NLS might, for example, have duplicate objects of those acquired by virtue of legal deposit under the 2003 Act.

26. The case for disposal in subsection (2)(b) is that an object is not required for the purposes of the collections. NLS might, for example, review its collecting strategy and consider that an object is better held elsewhere, for example by a local authority or university library because of the nature of the material.

27. The case for disposal in subsection (2)(c) is that an object has become useless on account of damage, deterioration or infestation by destructive organisms. In such a case, NLS might take the view that the object cannot be usefully conserved and should be deaccessioned.

28. The case for disposal in subsection (2)(d) is that an object is hazardous. In such a case, NLS might take the view that the benefit of keeping the object is outweighed by the risk to persons accessing the collections.

29. Subsection (2)(e) allows compelling, unforeseen cases for disposal to be accommodated. The safeguard of the agreement of the Scottish Ministers is included. This case for disposal might, for example, arise if a “moral claim” is made for repatriation of an object that NLS has title to and it would be desirable to keep in the collections, but that claim is considered to be compelling.

30. Subsection (3) sets out the means of disposal, namely sale, exchange, gift, return or destruction. It is implicit that selling, exchanging or gifting an object is only possible where NLS holds the object as owner. As mentioned, the owner of an object on deposit is the depositor.

31. Subsection (4) clarifies that the disposal power in subsection (2) is an additional power. NLS has statutory powers of disposal in the Museums and Galleries Act 1992 (c.44) and the Holocaust (Return of Cultural Objects) Act 2009 (c.16)⁵ and may in future have power to dispose of non-print legal deposit publications under regulations under the 2003 Act. Implied powers of disposal at common law are also preserved, such as the implied power of NLS to settle a legal claim if it transpires that title to an object is held by another person (see *Attorney-General for England and Wales v Trustees of the British Museum* [2005] EWHC 1089 (Ch)).

32. Subsection (5) provides that NLS’s disposal power in subsection (2) does not apply to non-print publications that might be received by virtue of regulations under the 2003 Act, thus protecting the restriction on disposal of such publications in section 7(2)(f) of that Act.

⁵ The Holocaust (Return of Cultural Objects) Act 2009 expires in 2019, by virtue of the sunset provision in section 4(7) of that Act.

33. Subsection (6) protects restrictions or prohibitions on disposal that donors have attached to objects in the collections and is intended to serve as a reminder to NLS to check for any such prohibitions or restrictions when considering making any disposal under subsection (2). For example, a condition imposed by Ministers under the acceptance in lieu of tax regime operated under sections 8 and 9 of the National Heritage Act 1980 (c.17) may require that an object does not leave Scotland or the United Kingdom. Prohibitions or restrictions on disposal may only be overridden with the consent of the person having the right to enforce the condition or in cases where the object is damaged and useless (subsection (2)(c)) or hazardous (subsection (2)(d)).

Section 4 – Borrowing and lending of objects

34. Subsection (1) empowers NLS to borrow and accept loans of objects for the purposes of exhibition, study or research.

35. Subsection (2) empowers NLS to lend objects in the collections.

36. Subsection (3) sets out special considerations which NLS must have regard to in deciding whether or not to lend an object, and in determining the period for which and conditions on which the object is to be lent. These include any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified, for example under the Government Indemnity Scheme operated under sections 16 and 16A of the National Heritage Act 1980.

37. Subsection (4) clarifies that the lending power in subsection (2) is an additional power. NLS may in future have power to lend non-print legal deposit publications under regulations under the 2003 Act. Subsection (5) provides that NLS's lending power in subsection (2) does not apply to non-print publications that might be received by virtue of regulations under the 2003 Act, thus protecting the restriction on lending of such publications in section 7(2)(d) of that Act.

38. Subsection (6) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to NLS to check for any such conditions when considering lending objects under subsection (2). For example, a condition may provide that an object may not be loaned for more than one month in any calendar year. Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite NLS taking all reasonable steps to ascertain them.

Legal publications

Section 5 – Legal publications

39. Section 5(1) continues the requirement, first expressed in section 5(2) of the 1925 Act, that print legal publications delivered to NLS by way of legal deposit are sent to the Faculty of Advocates for the purposes of its Law Library⁶. When such publications are accepted by the

⁶ The Faculty Law Library is adjacent to the main National Library of Scotland building but is independently owned and governed. The National Library of Scotland was founded on the gift by the Faculty of its non-legal collections.

Faculty they become the property of the Faculty. Subsection (2) requires NLS to claim under the 2003 Act any print legal publications that the Faculty wishes to receive.

40. If UK regulations under the 2003 Act provide for the delivery of “off line publications” (such as CD-ROM and microform publications) to NLS, then legal publications in those formats will be covered by section 5(1) of the Bill. Off line publications differ from conventional print publications in that they require the intervention of an electronic retrieval system, such as a computer or specialist reader, to access them.

41. Subsection (3) provides that subsections (1) and (2) do not apply to on line electronic publications. “On line electronic publications” has the same meaning as in the 2003 Act (see section 9) and means publications made available by means of the internet, such as websites and e-books. On line electronic publications differ from off line publications in that they are not recorded in any physical form. Subsection (4) provides that any on line electronic publications delivered under regulations made under the 2003 Act are not to be sent by NLS to the Faculty, but instead are to be made available by NLS to the Faculty. See also section 6, under which NLS and the Faculty must make arrangements as to certain legal deposit matters.

42. Subsection (5) provides that it is for NLS and the Faculty to agree what constitutes a legal publication for the purposes of section 5 and its predecessor section under the 1925 Act. In the event of any dispute as to that matter, the dispute is to be referred to arbitration under the Arbitration (Scotland) Act 2010 (asp 1). This provision is required because there is continuing scope for uncertainty as to whether particular publications received by way of legal deposit are or are not legal publications. Arbitrations under the Arbitration (Scotland) Act 2010 engage the Scottish Arbitration Rules, a modern code for non-judicial dispute resolution.

Joint arrangements etc. between NLS and the Faculty

Section 6 – NLS and the Faculty: joint arrangements etc.

43. This section requires NLS and the Faculty to continue maintaining arrangements for the management and interaction of their libraries and collections. Subsection (1) replaces section 6 of the 1925 Act.

44. Subsection (1)(a) requires there to be arrangements as to co-operation in relation to NLS and the Faculty’s respective collections. These might include provisions for the rejection by the Faculty of legal publications sent to it that it does not wish to hold. These might also include provisions for the depositing of Faculty-owned objects in NLS storage areas.

45. Subsection (1)(b) requires there to be arrangements as to the consultation of objects in NLS’s collections by members of the Faculty. These might include allowing Faculty members to access NLS objects in the Faculty Library instead of in NLS’s reading rooms.

46. Subsection (1)(c) requires there to be arrangements as to the consultation of objects in the Faculty’s collections by users of NLS’s collections. Arrangements might include allowing users of NLS to access Faculty objects in NLS’s reading rooms.

47. Subsection (1)(d) requires there to be arrangements as to the conservation and preservation by the Faculty of legal publications received by way of legal deposit. Arrangements might include regular meetings between NLS and the Faculty to ensure that legal publications are stored in a similar manner to objects held by NLS.

48. Subsection (1)(e) requires there to be arrangements for the making available to the Faculty of on line electronic legal publications delivered to NLS under regulations made under the 2003 Act. Such arrangements would have to be compatible with the 2003 Act regulations and copyright law.

49. Subsection (2) provides that arrangements entered into between NLS and the Faculty may contain provision about charging. It is implicit that such provision may only be included if NLS and the Faculty both agree to it.

50. Subsection (3) preserves the special dispute resolution mechanism in section 3(4) of the 1925 Act if there are any disputes as to which objects transferred from the Faculty to NLS on 26 October 1925, the date on which the 1925 Act came into force. This provision is required because there is continuing scope for uncertainty as to which particular objects did and did not transfer to NLS in 1925. This mechanism is not relevant to any dispute concerning publications received subsequently to 26 October 1925 by way of legal deposit (any such dispute being settled instead in accordance with section 5(5)).

Grants and loans

Section 7 – Grants and loans

51. Subsections (1) to (3) allow the Scottish Ministers to make grants to NLS, for example grant-in-aid and grants for particular purposes, subject to such terms and conditions as the Scottish Ministers think fit.

52. Subsections (4) and (5) allow NLS to make grants and loans in furtherance of its functions, subject to such terms and conditions as it thinks fit.

Directions and guidance

Section 8 – Directions and guidance

53. This section gives the Scottish Ministers power to give written directions to NLS as to the exercise of its functions. Directions may not be given as regards NLS's specific functions in section 2(2)(a) to (c), NLS's objectives in section 2(3)(a), (b) or (d) or as regards acquisitions, deposits, disposal, borrowing or lending (of objects), legal deposit or grants and loans (of money). Subsection (4) requires any directions to be given in writing, while subsection (5) provides that directions may be varied or revoked by the Scottish Ministers.

54. Subsection (3) requires NLS to comply with any directions given to it by the Scottish Ministers under section 8 and to have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

General

Section 9 – Interpretation

55. This section defines terms that are used frequently in the Bill. The definition of “object” clarifies that NLS may hold electronic objects.

Section 10 – Consequential modification of enactments and repeals

56. Subsections (1) and (5) introduce schedule 2 (modifications of enactments) and schedule 3 (repeals).

57. Subsections (2) to (4) empower the Scottish Ministers to make incidental or consequential provision by order and provide that such an order is subject to the affirmative procedure if it modifies primary legislation (an Act of Parliament or Act of the Scottish Parliament)⁷.

Section 11 – Subordinate legislation

58. This section provides that orders made by the Scottish Ministers under the Bill are subject to the negative procedure, except in the case referred to in section 10(4) – where the affirmative procedure applies – and the case referred to in section 12(2) – where only the default laying requirement applies⁸.

Section 12 – Commencement

59. Subsections (1) and (2) have effect that the Bill is to come into force on such day or days as the Scottish Ministers may by order appoint, except sections 11, 12 and 13 which come into force on the day after Royal Assent. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 13 – Short title

60. This section sets out the short title of the Bill.

Schedule 1 – NLS

Paragraph 1 – Status

61. NLS is a body corporate but is not a Crown body. NLS therefore does not have any of the special privileges of the Crown.

⁷ For the meaning of “affirmative procedure” see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

⁸ For the meaning of “negative procedure” see sections 28 of the Interpretation and Legislative Reform (Scotland) Act 2010. “Default laying requirement” means the requirement in section 30 of that Act.

Paragraph 2 – Membership

62. The board of NLS is to consist of a chairing member and not fewer than 6 nor more than 13 other members. All board members are to be appointed by the Scottish Ministers, and one of those members is to be selected from persons nominated by the Dean of the Faculty of Advocates.

63. Sub-paragraph (3) gives the Scottish Ministers power to substitute by order different minimum or maximum numbers of members in sub-paragraph (1)(b).

Paragraph 3 – Persons disqualified from membership of NLS

64. Members of the House of Commons (MPs), Members of the Scottish Parliament (MSPs) and Members of the European Parliament (MEPs) are disqualified from appointment and from holding office as members of NLS.

Paragraph 4 – Removal of members

65. The Scottish Ministers have the power to remove a member of NLS from office if they are satisfied that the member is insolvent (see sub-paragraph (2)), has been absent from 3 consecutive meetings without permission or is otherwise unfit or unable to discharge the functions of being a member. Whilst NLS has charitable status, a member of NLS who becomes disqualified from being a charity trustee within the meaning of section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) would be unfit to discharge the functions of being a member of NLS.

Paragraph 5 – Remuneration, allowances and expenses of members

66. NLS is to pay to its members any remuneration, allowances and expenses determined by the Scottish Ministers.

Paragraph 6 – Chief executive and other staff

67. The most senior member of staff of NLS under the 1925 Act is the National Librarian. This post is to be known as chief executive and the first chief executive is to be the Librarian in post immediately before paragraph 6 comes into force (see subparagraphs (1) to (4)). Subsequent chief executives are to be employed, with the approval of the Scottish Ministers, on terms and conditions determined by NLS and approved by Ministers (see sub-paragraph (5)). The chief executive may not be a member of NLS (see sub-paragraph (2)).

68. NLS may appoint employees on terms and conditions determined by NLS and approved by the Scottish Ministers (see sub-paragraphs (6) and (7)). The existing staff of NLS will continue in post under their existing terms and conditions.

69. Sub-paragraphs (8) and (9) give NLS power to arrange, with the approval of the Scottish Ministers, for pensions, allowances or gratuities for its staff.

Paragraph 7 – Committees

70. NLS may establish committees for any purpose relating to its functions and determine the composition of such committees. NLS may appoint persons who are not members of NLS to be non-voting members of a committee. A committee of NLS must comply with any directions of NLS.

Paragraph 8 – Procedure and meetings

71. NLS determines its own procedure and the procedure of its committees. Sub-paragraph (2) allows for attendance at NLS and committee meetings by non-voting representatives, namely members of the Scottish Executive, persons authorised by the Scottish Ministers or the Dean of the Faculty of Advocates (or a person authorised by the Dean)⁹.

Paragraph 9 – Delegation of functions

72. NLS may delegate its functions to the chief executive, any other employee or any of its committees. Sub-paragraph (2) provides that the power of delegation does not apply to certain functions relating to reports and financial matters.

Paragraph 10 – Validity of proceedings and actions

73. The validity of any proceedings or actions of NLS or its committees is not affected by any irregularity in the membership of NLS or its committees.

Paragraph 11 – General powers

74. Sub-paragraph (1) gives NLS wide power to do anything related to the exercise of its functions and sub-paragraph (2) sets out specific powers of NLS. NLS's powers to acquire and dispose of interests in land and to borrow money from persons other than the Scottish Ministers are subject to the approval of the Scottish Ministers. See also paragraph 13(4) which empowers NLS to publish reports and information on matters relevant to its functions as it considers appropriate.

Paragraph 12 – Accounts

75. NLS must manage its financial accounting and comply with any accounts directions given by the Scottish Ministers. NLS must send its annual statement of accounts to the Auditor General for Scotland for auditing.

Paragraph 13 – Reports

76. NLS is to prepare and publish an annual report which is to include a copy of NLS's audited statement of accounts. A copy must be sent to the Scottish Ministers, who must lay it before the Scottish Parliament.

⁹ The Scottish Ministers is the collective name for the members of the Scottish Executive under section 44(2) of the Scotland Act 1998 (c.46).

Schedule 2 – Modifications of enactments

77. Schedule 2 modifies specified enactments in consequence of the Bill.

78. Principally, these modifications reflect the renaming of the body corporate in section 1(1) but the modification in paragraph 1 is to reflect that grant-in-aid will be paid to NLS through the mechanism in section 7 of the Bill and not through section 22 of the National Heritage (Scotland) Act 1985 (c.16).

Schedule 3 – Repeals

79. Schedule 3 repeals specified enactments in consequence of the Bill. The 1925 Act is repealed in full, subject to the savings provisions in sections 5(5)(b) and 6(3).

FINANCIAL MEMORANDUM

INTRODUCTION

80. This document relates to the National Library of Scotland Bill introduced in the Scottish Parliament on 26 October 2011. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

81. The Bill will define the functions of NLS and update its powers in line with those of modern public bodies. The National Library of Scotland Act 1925 did not specifically provide for the board's functions, which have evolved over time.

82. The functions will reflect the role of NLS in relation to:

- Preserving, conserving and developing its collections
- Making the collections accessible to the public and to persons wishing to carry out study and research
- Exhibiting and interpreting objects in the collections
- Promoting collaboration and shared practice amongst the library community.

83. The size of the NLS board will be reduced. At present there are 32 members, largely as a result of the places reserved under statute for various office holders and organisations. Current board arrangements were established by virtue of the National Library of Scotland Act 1925 and need to be brought in line with modern public appointments practices which are regulated under the Public Appointments and Public Bodies etc. (Scotland) Act 2003. This Bill will reduce the size of the NLS board from 32 members (only 5 of whom are appointed by Scottish Ministers) to

between 7 and 14 members (including the Chair), all of whom will be appointed by Scottish Ministers.

COSTS ON THE SCOTTISH ADMINISTRATION

84. At present Scottish Government core grant-in-aid for NLS totals £13.275m in the financial year 2011-12 and will remain at that level in the financial year 2012-13. None of the provisions in relation to the functions and powers of NLS, or in relation to legal publications, impose any new or additional costs on NLS. NLS's plans for use of Scottish Government grant-in-aid, and its objectives and targets for continuing to fulfil its functions, are agreed annually with Scottish Ministers through the corporate planning process. The process for agreeing future plans includes a clearly established mechanism to decide relative priorities, within delegated budgets, thus the incorporation of the functions in the Bill will be within set and controlled budget allocations. No additional funding will, therefore, be required from the Scottish Government to enable NLS to implement the updated functions and powers in the Bill.

85. NLS members, under paragraph 2 of schedule 1 of the Bill, will all be appointed by Scottish Ministers in accordance with modern public appointments practices. Currently only the 5 Crown appointments to the board are required to be made in accordance with the Public Appointments Code of Practice process, and on an infrequent basis as they are appointed for indefinite terms. The impact of the Bill on appointments will be that an appointment round will be run every 2-3 years, with additional appointment activity potentially required should an unexpected vacancy arise. The costs of this, which will fall to the Scottish Government, will be for advertising the appointments to ensure a wide range of applicants from diverse backgrounds and for the implementation of the process for selecting the appointees. It is anticipated that any such costs would be a maximum of £10,000 over a 3 year period. There will be additional costs in the first year as the Scottish Ministers appoint a chair and members and therefore it is estimated that costs in that year could be between £10,000 to £12,000. All of these costs will be absorbed within existing budgets.

86. Under paragraph 5 of schedule 1, NLS must pay remuneration, allowances and expenses to each board member of NLS, as determined by Scottish Ministers. Board members will continue to receive expenses. Current Scottish Government policy is that NLS board members do not receive remuneration. The Bill has been drafted to allow remuneration if Scottish Ministers wish to change this policy at some point in the future; the estimated costs of introducing remuneration, based on current expected levels of board activity, would be between £22,000 and £45,000 per year for the whole board. With the number of board members reduced by the Bill from 32 to between 7 and 14, there are likely to be savings to the amount of expenses claimed. There will also be savings to NLS in the administrative costs associated with servicing a large board in terms of stationery, postage and phone bills. It is estimated that total savings, from expenses and administrative costs, will be around £1,300 per annum or 30% of the current costs.

COSTS ON LOCAL AUTHORITIES

87. There will be no new or additional costs for local authorities as a consequence of the Bill. There may be marginal indirect savings in that the Bill will remove the current requirement for

the NLS board to contain representatives of four Scottish cities as well as two appointees from the Convention of Scottish Local Authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

88. The Bill does not impose new or additional costs on other bodies, individuals and businesses. There may be marginal indirect savings in that the Bill will remove the current requirement for the NLS board to contain 4 representatives of the universities of Scotland.

89. As with any public body, the NLS can seek to maximise income from other sources provided that this is consistent with its main functions and its corporate plan as agreed by the Scottish Ministers. Any proposals for new sources of income or methods of fundraising must be cleared with the Scottish Government sponsor Directorate.

90. Sections 5 and 6 of the Bill continue the current arrangements for the transfer of legal publications received by NLS through the legal deposit system to the Faculty of Advocates and require arrangements between the two organisations to be made. The Bill will repeal the existing legislation from 1925 which was primarily concerned with the original transfer of the Faculty's non-legal books to establish NLS. The provisions in the Bill are not designed to change the operational relationship or practice between the two bodies but continue the duty originally set out in the 1925 Act for the organisations to set out and review, as required, mutual operational arrangements. Section 6 provides for NLS and the Faculty of Advocates, as part of the joint arrangements, to provide for meeting the costs of one or other party, but only by mutual agreement.

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

91. On 26 October 2011, the Cabinet Secretary for Culture and External Affairs (Fiona Hyslop MSP) made the following statement:

“In my view, the provisions of the National Library of Scotland Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

92. On 26 October 2011, the Presiding Officer (Tricia Marwick MSP) made the following statement:

These documents relate to the National Library of Scotland Bill (SP Bill 2) as introduced in the Scottish Parliament on 26 October 2011

“In my view, the provisions of the National Library of Scotland Bill would be within the legislative competence of the Scottish Parliament.”

NATIONAL LIBRARY OF SCOTLAND BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the National Library of Scotland Bill introduced in the Scottish Parliament on 26 October 2011. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 2–EN.

BACKGROUND

2. The National Library of Scotland (NLS) is Scotland's national resource for reference, study, research and bibliography, and is a statutory Non-Departmental Public Body (NDPB) and a registered Scottish charity. As it continues to evolve in the twenty-first century, its early twentieth century governance arrangements are increasingly out of date. This Bill will:

- Bring NLS's governance arrangements, enacted in 1925, into line with those of many other public bodies. The governance provisions set out for the National Galleries of Scotland and the National Museums of Scotland in the National Heritage (Scotland) Act 1985 and for Creative Scotland, in the Public Services Reform (Scotland) Act 2010, have been the starting point for many of the provisions in this Bill.
- Provide the basis to enable NLS to continue to evolve and realise its ambitions as a modern organisation.
- Provide clarity as to the functions of NLS; update arrangements for the relationship with the Faculty of Advocates and its Library; set out the powers available to the NLS and in particular how it manages its collections through acquisitions, deposits, disposals and loans.
- Recognise the importance of NLS and the national collections it holds on behalf of the people of Scotland.

POLICY AIMS

3. The Scottish Government believes in a creative Scotland which enriches our lives, enhances our learning and strengthens our economy and our society. To enable NLS to play its full part in this creative Scotland, the current constraints to NLS developing, as contained in its founding legislation from 1925, need to be stripped away. The Bill is also designed to provide sufficient scope for the further evolution of NLS and to cover future developments in Scottish Government policy.

4. The National Library of Scotland Act 1925 (“the 1925 Act”) was concerned with the original establishment of NLS and the transfer of non-legal books and legal deposit privileges from the Faculty of Advocates. Some 90 years on, much of the 1925 Act is redundant. The NLS board is out of step with modern public bodies; NLS’s functions have evolved and operational arrangements are in place to ensure clear relationships between NLS and the Faculty.

5. More broadly this legislation supports the Scottish Government’s simplification agenda and reform of the public services landscape. The Scottish Government’s core purpose is to create a more successful Scotland with opportunities for all through increasing sustainable economic growth. The Scottish Government wants to ensure that public services of the highest quality are delivered to people in Scotland, as efficiently, effectively and transparently as possible for the people who use them.

6. NLS’s operations align with the Scottish Government’s National Outcomes and NLS recognises the key role it plays in supporting education, research and innovation; in supporting business; in contributing to Scottish identity and by ensuring the public service it offers is continually improving and high quality.¹

The importance of the National Library of Scotland

7. NLS aids the continuous development of society whilst promoting our culture and heritage globally. NLS is Scotland’s only legal deposit library and can claim copies of anything published in print in the UK and Ireland. NLS is not a lending library and users request items they wish to view. NLS is a national resource which exists to advance universal access to knowledge about Scotland and in Scotland. Users from Scotland and beyond have free access to collections of over 14 million items. NLS is Scotland’s largest library and a major international centre for the study of Scotland and the Scots and a key resource for Scotland’s research community.

8. NLS’s collections span the centuries from early times to the digital age and cover virtually every subject. Every week, some 5,000 new items are added to its collections which cumulatively chart the global and historical influence of Scots at home and abroad, while also recording and reflecting the ideas and culture of the world. NLS holds over 7 million manuscripts, around two million maps and 25,000 newspaper and magazine titles. Material is held in over 490 languages. There are 70,000 visits per year to the reading room and around 2.5 million calls on the digital library. Users of NLS include researchers, cultural tourists, businesses, creative industries, libraries and the general public. NLS’s customers may be in Scotland, the rest of the UK or international.

9. Amongst the rare and valuable items held are the last letter written by Mary Queen of Scots hours before her execution and the only known copy of Blind Harry’s 15th century epic, *The Wallace*. A copy of the first printed book, the Gutenberg Bible of 1455 is preserved as are some of the earliest works printed in Scotland. The John Murray Archive contains some 250,000

¹ NLS’s Corporate Plan for 2011-12 demonstrates its alignment with the Scottish Government’s National Outcomes <http://www.nls.uk/media/961969/2011-2012-corporate-plan.pdf>

items from some of the greatest writers, politicians, explorers and scientists of the past including, amongst others, Sir Walter Scott, David Livingstone, Jane Austen and Charles Darwin.

10. NLS brings Scotland's history and culture to life in the modern context. For example when the Mary Queen of Scots letter was displayed in September 2009 NLS received 12,000 visitors in two weeks. Recent exhibitions such as A Swing through Time told the history of golf, drawing on historical items to help tell why the game took off in Scotland. The exhibition coincided with the 150th anniversary of the Open Championship. NLS has also brought the John Murray Archive to life with the creation of an app for mobile phones.

11. NLS is an ambitious organisation and its current strategy, Connecting Knowledge,² commits it to demonstrating the wider impact of the Library and the difference that it makes. NLS is responding to the changing needs of its users. Traditional means of production and use of knowledge have shifted from print and paper to electronic formats. NLS has undertaken a significant programme of digitising its collections. More than 1.5 million manuscripts, letters, books, newspapers and market research reports can be accessed remotely. Key parts of the collections that have been digitised include Post Office directories, early Gaelic books and maps of Scotland dating from between 1560-1928. This shift presents challenges and opportunities to NLS as it considers collecting and preserving more electronic publications and ensuring that its wide range of customers can access resources online where and when it suits them. It is therefore vital that NLS has clear functions and governance structures which are fit for purpose and support both its existing and new ways of working.

Links between the Faculty of Advocates and the National Library of Scotland

12. The Faculty of Advocates is an incorporation of independent lawyers that has run and funded the Advocates Library since 1689. Legal deposit was introduced in Scotland in 1709 and between 1842 and 1925 the Advocates Library held sole right of legal deposit for Scotland. (For more information on legal deposit see paragraphs 33-36). The Faculty gifted its collection of non-legal books to the nation in 1925, with the introduction of the National Library of Scotland Act in that year, to provide the foundation of the NLS.

13. The 1925 Act, alongside establishing the NLS, also ensured that NLS held the right of legal deposit for Scotland for both legal and non-legal publications (in addition to taking receipt of the Faculty's non-legal books). However, NLS is required under the provisions of the 1925 Act to pass all legal publications to the Advocates Library. The Faculty also owns part of the land on which the NLS is situated.

14. Given both the historical and continuing partnership working between the NLS and the Faculty of Advocates, the Government recognises that it is important that this Bill will maintain and enhance this relationship. The Advocates Library is Scotland's pre-eminent working law library and the Faculty's collections include rare manuscripts and many of the earliest Scottish law books. The Faculty Library's stock of legal deposit books is made available to the public, students and researchers through NLS and the public further benefits from the Faculty's collections of legal publications through the provision by advocates of qualified and independent advice on the law of Scotland.

² Connecting Knowledge: <http://www.nls.uk/about-us/corporate-documents/2011-2014-strategy>

POLICY OBJECTIVES OF THE BILL

Functions

15. To allow NLS to develop as a modern organisation there needs to be a clear purpose to what it does and can do for Scotland. The current legislation, the 1925 Act, does not specify the functions of the NLS other than that the board manages the library. The overarching function of NLS will be as a national resource for reference, study, research and bibliography.

16. Rather than just stipulating a list of the particular functions that NLS has developed over the years the Government has taken the opportunity to consider functions that are outward and outcome focused. The functions provide the opportunity to express the importance, ambitions and benefits of NLS and the national collections. NLS and its collections offer enormous value to the economic, social and educational life of Scotland and attract audiences at local, national and international levels.

17. NLS will have the following particular functions:

- Preserving, conserving and developing its collections
- Making the collections accessible to the public and to persons wishing to carry out study and research
- Exhibiting and interpreting objects in the collections
- Promoting collaboration between, and the adoption and sharing of good practice by, other persons providing library and information services.

18. NLS is to exercise its functions with a view to the objectives of:

- Encouraging education and research
- Promoting understanding and enjoyment of the collections
- Promoting the diversity of persons who access the collections
- Contributing to understanding of Scotland's national culture.

19. The functions are designed to emphasise the 4 key areas that are vital to NLS's role:

- Collections: which recognises that the collections need to be maintained, developed and relevant to users. NLS collects the published record for the future, as well as current generations: adding to the collections is essential to ensure their currency, relevance and comprehensiveness. The collections will be exhibited and interpreted to aid understanding and enjoyment of Scotland's national record. NLS's collections will contribute to our understanding of Scotland's national culture.
- Access: which recognises the duty NLS has to make the collections available and accessible to all users whether this is by physical or on-line access. Access is ensured in a number of ways. Users can physically visit NLS sites or use NLS's on-line technology to access catalogues of items held or view works that have been digitised. The use of NLS on-line materials increased by 35% from the previous year in 2010-11. The new visitor centre that was opened in 2009 promotes public access

with three exhibition spaces, events space and PC terminals along with a shop and café. Exhibitions offer the opportunity to showcase key items from the collections. NLS will promote the diversity of those who access the collections and make its collections as accessible and relevant as possible to all users. NLS supports a number of education initiatives and works closely with universities. In addition to visits by school groups, NLS recently launched the Learning Zone website to teachers and pupils which offers bespoke learning resources to support the Curriculum for Excellence. NLS is also part of Glow, the national intranet for education which allow practitioners and schools to interact, using familiar social networking tools.

- **Research:** The Scottish Government recognises that NLS is a major research library for students and lifelong learners that has built up a strong reputation over many years. The Government is keen that this continues and enshrining this feature in legislation will ensure that this happens. Research is vital to the continued improvement of our society and helps us to understand our historical, social and political contexts. Research supports improvements in social and intellectual capital, community identity, learning skills, technological evolution and the quality of life of the nation. Indeed in terms of research impacts Scotland is ranked second in the world³.
- **Collaboration:** NLS has a key role in sharing good practice and expertise amongst library communities. NLS has partnerships with the Scottish library community which facilitate how NLS can share its expertise and knowledge with public libraries. NLS shares best practice and innovation in areas such as collections development, preservation and conservation and it promotes collaboration between Scottish libraries, UK bodies and the international library community. NLS also collaborates with and supports the work of Scottish universities, the education sector and business. NLS's Scottish Business Information Service is one of the largest collections of company and market data in the UK and is a key resource for the Scottish business community.

Governance changes

20. The governance reforms will ensure that NLS has the appropriate structures in place to further develop its corporate strategy and fulfil its functions. A more modern board structure will allow for input by those who meet the required skills and will allow flexibility to revisit the skills required as NLS moves its business ambitions forward.

21. The Bill will provide for a modern board structure. The 1925 Act allows for a board of 32 members which is too big and unwieldy when compared to the size of more modern public bodies. The Bill requires a board of between 7 and 14 members, including a chair.

22. There will be a fair and transparent process of selection based on merit. The NLS board will be appointed by Scottish Ministers and comply with public appointments procedures as regulated by the Public Appointments Commissioner for Scotland. Currently Scottish Ministers

³ From the website of the Scottish Funding Council. See <http://www.sfc.ac.uk/research/research.aspx>

are only involved in the process for appointing the Chair and 4 other members. Scottish Ministers nominate these members for approval by Her Majesty the Queen.

23. The Bill will remove the ex-officio and reserved places provided for in NLS's founding legislation. Such appointments are not made on open and transparent methods and this goes against modern public appointment procedures. The current NLS board contains 11 ex-officio members (for example the Lord President of the Court of Session, the Dean of the Faculty of Advocates, the Lord Provosts of Edinburgh, Glasgow, Dundee and Aberdeen and the MSP for Edinburgh Central). Places are also reserved on the NLS board for particular organisations and people. At present the following groups are able to appoint members to the NLS board: the Faculty of Advocates (5), Scottish universities (4) and local authorities (4).

24. The Scottish Government recognises the historical and current operational links between NLS and the Faculty of Advocates. The Faculty will be able to put forward nominations to Scottish Ministers for selection. Multiple nominees, who meet the selection specification as part of the selection process, must be put forward to allow choice. Faculty nominees will be subject to selection by short listing and interview. One Faculty nominee will be selected for appointment to the NLS board. Separately, the Government recognises that it is sensible to allow for a representative from the Faculty to attend relevant NLS meetings to speak on behalf of the Faculty on operational library matters, whilst distinguishing this role from that of the Faculty's board member. This Faculty representative would not be a member of the NLS board and would have no voting rights.

25. The Bill provides that Scottish Ministers will determine the terms and conditions of board members. This will include the period of appointment. At present there is no time limit set for NLS Crown appointees. This revision will ensure that the Library board is refreshed on a regular basis and contains members with the skills required to meet its business needs. A specified term is also a feature of the Code of Practice from the Public Appointments Commissioner for Scotland.

26. Generally, the Government expects that NLS will be led by a diverse group of people who between them have a broad knowledge of the areas in which the NLS operates – for example, local authorities and universities who also operate library and information services – as well as others who use the NLS, in addition to the wider mix of skills required for a public body such as corporate governance, business and finance. The Bill does not itself, however, set out these skills, in order that Scottish Ministers and NLS can consider the range and balance of skills required for the board as a whole at each recruitment round and as NLS continues to evolve over time.

Acquisitions, deposits, disposals and loans

27. This legislation will provide clarity about the legal powers NLS has in relation to acquisitions, deposits, disposals and loans of objects. NLS has the discretion to add objects to its collections whether this is by purchase, exchange, gift or deposit. NLS is able to loan items from its collections to bodies within the UK or beyond and the legislation requires that NLS have regard to various factors when determining whether to loan an item or not.

28. It should be noted that deposits are not treated in the same way as ordinary acquisitions for the purposes of loans and disposal. Deposit is an arrangement where the depositor charges NLS with the safe-keeping of an object or collection for a fixed or indefinite period of time. Ownership of an object on deposit rests with the depositor. The Bill provides protection to those who transfer or deposit objects which are subject to trusts or conditions. NLS will only be able to dispose or loan such objects contrary to a prohibition or restriction on disposal or lending in very narrow circumstances. For instance disposal is only permitted if NLS obtains the consent of the donor or depositor to do so or if the object is damaged, has deteriorated, is infested or is hazardous. On every occasion that NLS proposes to loan an object NLS must either obtain the consent of the depositor (where a name and contact details exist) or failing this take all reasonable steps to ascertain the name and contact details of the depositor prior to the loan.

29. The Bill sets out in more detail NLS's general powers of disposal. The Scottish Government's aim is to provide a framework within which the board can continue to develop its collections efficiently, and effectively.

30. The Bill's provisions allow NLS to dispose of items in the collections by sale, exchange, gift, return or destruction if:

- The item is a duplicate of (or similar to) another item held
- The item is not required
- The object is damaged/has deteriorated and is no longer of use
- The object is hazardous
- Scottish Ministers provide approval for disposal in any other circumstances. This could allow approaches in cases of moral claims.

31. The exercise of these powers will need to be considered by NLS at all times against its function to preserve, conserve and develop the collections and the duty of board members as charity trustees to act in the best interests of the charity. The Scottish Ministers already have a role in consenting to disposals under the Holocaust (Return of Cultural Objects) Act 2009.

32. In keeping with the curatorial independence afforded to NLS, it will be for NLS to determine how it deploys the proceeds of any sales realised.

Legal publications received through legal deposit

33. Provisions are included for the arrangements that have evolved since the transfer of non-legal books from the Faculty of Advocates to NLS. There is no alteration to how legal deposit or the transfer of legal material to the Faculty will operate although the Government has updated the provisions contained in the 1925 Act.

34. The Legal Deposit Libraries Act 2003 governs legal deposit arrangements across the UK. Publishers must deliver any print publication to NLS on request, without charge. NLS ensures that all legal publications are passed to the Faculty of Advocates' Law Library and this will continue. The Bill reflects the pre-existing statutory position and the operational procedure that has developed between NLS and the Faculty over many years.

35. The Bill commits NLS and the Faculty to enter into co-operative arrangements around access by the public to their respective collections and care of items held. Both organisations are in the process of finalising formal operational agreements to recognise existing and future practice in support of the Bill's provisions.

36. The UK Government has consulted on draft regulations⁴ governing the arrangements for legal deposit in relation to non-print works⁵. The Bill cannot anticipate the outcome of the final regulations. Under the Bill, NLS will continue to be required to deliver off line non-print publications to the Faculty of Advocates and must also make available on line non-print material to the Faculty. There will be joint arrangements to support that.

General powers

37. The Bill will ensure that NLS has the powers associated with a modern public body. Measures are also provided for future development and maximum flexibility.

38. It will be for NLS to determine if it wishes to use the powers provided in the Bill. The powers largely relate to how NLS could manage its business operations. The Bill also sets criteria for powers relating to managing the collections. NLS will, for instance be permitted to enter into contracts, create and own companies, make monetary loans and grants, charge for the provision of goods and services and borrow money from Ministers (and from other persons with Ministerial consent). This gives NLS scope to enhance its business operations and consider measures that will ensure that it is as efficient and financially viable as possible. Similar powers feature in the Public Services Reform (Scotland) Act 2010 in relation to Creative Scotland.

39. The list of powers is designed to give maximum flexibility to NLS should it wish to use these and allows too for any shifts in current finance policy. For instance the Government has provided a power to borrow money with Ministers' consent. Current finance policy does not allow for loans to public bodies although generally the potential for converting grants to loans has been looked at in the spending review. The Bill allows for NLS to borrow from Scottish Ministers at some point in the future if the policy changes.

Power of direction

40. An express statutory power for Ministers to issue public bodies with directions of a general or specific nature is a standard feature of modern public body enabling legislation. Together with the existing non-statutory requirement for Ministers to approve corporate and business plans, and levels of funding, this is a key part of the accountability and governance framework and the terms of engagement between Ministers and public bodies.

⁴ [DCMS consultation on the Draft Legal Deposit Libraries \(Non-print Publications\) Regulations 2011](#)

⁵ [The Legal Deposit Libraries Act 2003](#) created a framework that makes it possible for secondary legislation to be introduced to allow for e-deposit. Non-print works relates to off-line publications (work which is not accessed or delivered by means of the internet and is recorded in a physical form such as a CD Rom, DVD or microform (film and fiche)) and on-line publications (non-print works which are accessed or delivered by means of the internet).

41. The Bill includes a qualified Ministerial power of direction. The power is essentially restricted in order to respect NLS's curatorial and cultural judgement. Scottish Ministers will be unable to give directions on NLS's particular functions of preserving and developing its collections; making the collections accessible and exhibiting and interpreting objects. Furthermore, no directions may be given as regards the acquisition, disposal or lending of objects, legal deposit or in relation to NLS's exercise of its powers to make grants and loans. This restricted power of direction will not interfere with the cultural and curatorial functions of NLS.

42. NLS has charitable status. One element of the charity test set out in the Charities and Trustee Investment (Scotland) Act 2005 is a requirement that a body's constitution is not directed or controlled by Scottish Ministers. In the case of NLS and the other National Collections this requirement was disapplied by the Charity Test (Specified Bodies) (Scotland) Order 2006. This recognises the unique role played by these bodies and the importance of Scottish Ministers retaining a degree of control over the collections they hold. Thus, the inclusion of a power of direction is compatible with charitable status. NLS board members will be able to comply with directions without breaching their duties as charity trustees.

43. The Government has deliberately restricted the power of direction to prevent any interference with the cultural and curatorial functions of NLS which are the unique features of NLS's charitable constitution and where Ministerial direction is not appropriate. This clear and specific approach is intended to provide reassurance to NLS and donors that NLS will continue to enjoy significant cultural and curatorial judgement as befitting a charitable body and to provide sufficient safeguards to respect the important general principle that charities be free from Ministerial interference.

44. The Bill's provisions do not compromise the other elements of the charity test. NLS's functions express the organisation's charitable purposes (namely the advancement of education and the advancement of arts, heritage, culture or science) and NLS is expected to continue to provide public benefit.

ALTERNATIVE APPROACHES

45. One option the Scottish Government considered would be to maintain the status quo and do nothing. Without legislative change the NLS board would be able to continue as it does at present. However, the current appointment arrangements are considerably out of date and, with the exception of the 5 members appointed by Her Majesty the Queen, go against modern practices which ensure independent regulation. Under the Bill NLS will have a board which is refreshed on a regular basis with the skills required to meet the business needs of the organisation. NLS will have a clear set of functions which will provide focus for the appointment process and will underpin the ambitions that NLS has for its future development. The Bill will provide a greater statement of NLS's powers in a number of areas of its operations.

46. Another option would be to make changes to NLS under Part 2 of the Public Services Reform (Scotland) Act 2010. Scottish Ministers have powers under that Act, by order, to improve the functions of, or remove burdens from, bodies such as the National Library of Scotland. Although scrutinised by Parliament, the order-making power would avoid the need for

primary legislation and may be a quicker means of achieving changes. The Scottish Government nevertheless concluded that the wholesale updating of NLS's governance, including its powers and the introduction of a new Ministerial power of direction, should be subject to the full scrutiny that primary legislation allows and for this reason the option of the order-making power has been rejected.

CONSULTATION

47. In developing the policy aims for this Bill the Scottish Government considered carefully the response to consultation on a draft Culture Bill, published in December 2006 which included reform of the National Collections bodies, including the National Library of Scotland⁶.

48. The Scottish Government published a consultation paper on governance reforms to NLS on 31 March 2010 and sought comments from interested parties. Copies of the consultation were made available on request and the document was published on the Scottish Government's website at <http://www.scotland.gov.uk/Publications/2010/03/31102621/4>

49. The consultation period ran for 12 weeks, closing on 23 June 2010. In total 31 responses were received.⁷ A factual report of the responses to the consultation is available on the Scottish Government's website at <http://www.scotland.gov.uk/Publications/2011/03/Publications>

50. There was broad support for the Scottish Government's proposals around reducing the size of the NLS board, the removal of ex-officio and reserved membership of the board and the proposal to specify the term of appointment for board members. Within that general support some issues were raised. The main concern was about proposals to provide Scottish Ministers with a power of direction over NLS. There were fears that power could interfere with NLS's independence from Scottish Ministers and might discourage potential donors if the "arms length" principle from Scottish Ministers was at risk. While a Ministerial power of direction over public bodies is a common feature of governance arrangements and accountability to the Scottish Government, Ministers accept that it is essential that NLS enjoys cultural and curatorial independence in carrying out its functions. Accordingly section 8 of the Bill will have the effect of preventing Ministers from giving directions relating to NLS's particular functions and powers requiring curatorial or cultural judgement.

51. There was concern about whether a Ministerial power of direction was compatible with NLS's charitable status. Scottish Ministers have given careful consideration to this point and the fundamental aim is not to introduce a power of direction that would mean that NLS fail the charity test. Such a power would also be consistent with the policy intention behind the 2006 order exempting NLS from aspects of the "charity test" provided for in the Charities and Trustee Investment (Scotland) Act 2005, on the basis that it was important for Ministers to retain certain powers over the National Collections. The Government believes that the charitable status of NLS

⁶ The Scottish Executive published a draft Culture (Scotland) Bill for consultation on 14 December 2006, seeking comments from interested parties. In addition to a wide distribution, copies of the consultation documents were made available on request and the consultation paper was published on the Scottish Executive's website: <http://scotland.gov.uk/Publications/2006/12/14095224/0>.

⁷ There were 8 responses from library bodies, 9 responses from Scottish local authorities and 2 individuals. Other responses came from stakeholders such as the Faculty of Advocates and Scottish public bodies.

is not compromised by the provisions in the Bill. The proposed functions will enable NLS to retain its charitable purposes as these support the advancement of education and advancement of the arts, heritage and culture⁸. The inclusion of a power of direction does not affect charitable status by virtue of the disapplication of the independence requirement by the 2006 order. The Office of the Scottish Charity Regulator (OSCR) has confirmed that this is the case and that were the Bill to be passed these provisions would not prevent NLS from continuing to have charitable status.

52. There were calls for the Bill to ensure that the Faculty of Advocates were represented on the NLS board. The Bill will indeed recognise the on-going links between these two organisations.

53. There were suggestions made in relation to NLS's functions. One of the suggestions advocated the need to improve the scope and operation of current Legal Deposit legislation, particularly around the need to capture non-print publications, for example e-books. Regulations are being drafted by the Department for Culture, Media and Sport which will allow for non-print publications to be delivered to or deposited electronically with NLS. This Bill does not anticipate the final shape of these regulations. The provisions seek to ensure that there is consistent policy in relation to legal deposit across the UK in this respect.

54. It was suggested that there was potential for NLS to strengthen its links and partnerships with other public resource libraries in Scotland. Comments pointed out that NLS should have a role in widening access to national and local collections. Furthermore the functions should be more strategic, reflect the wider social contribution made by NLS and its contribution to lifelong learning. The Government has reflected on these comments and is satisfied that the functions stated in the Bill recognise the collaborative role of NLS and its remit in relation to library and information services.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

55. The Government considers that the Bill does not have an adverse impact on the basis of age, gender, race, disability, marital or civil partnership status, religion or belief or sexual orientation. On the contrary, the Bill creates new opportunities for those with the relevant skills and experience to be appointed to the NLS board.

56. The Government has recently completed an Equality Impact Assessment for this Bill which considers the users of NLS and the board profile against the likely impact of the functions and governance changes proposed. The Government anticipates that the Bill will have a positive effect on equalities particularly in relation to the make-up of board members. The proposals will help to address the current gender imbalance and increase opportunities for younger, qualified persons to be appointed to the new board on merit. In relation to its functions, NLS

⁸ The charity test requires that bodies must have only charitable purposes, as set out in the 2005 Act. NLS's functions can be reasonably linked to the advancement of education (section 7(2)(b)) and the advancement of the arts, heritage, culture or science (section 7(2)(g)).

must have regard to promoting the diversity of its users which, amongst other things, supports equalities.

57. NLS offers free access to its collections for those living, working and visiting Scotland as well as broader communities through its online resources. It will continue to work with those in cultural and academic communities and other interested bodies.

Human rights

58. The Bill does not give rise to any issues under the European Convention on Human Rights.

Island communities

59. The functions of NLS in relation to access will encompass the island communities. NLS's modernisation and digitisation agenda will allow increased remote access to the collections.

Local government

60. The Bill does not impose any new burdens or responsibilities on local authorities. There is recognition of the collaborative role NLS will continue to play in relation to other libraries, including local authority libraries.

Sustainable development

61. NLS will continue to contribute positive social and educational impacts and is committed to minimising adverse environmental impacts.

62. A pre-screening report has been completed and was published on the Scottish Government website for comment on 8 September 2011.⁹ In the absence of any comments the proposals are deemed to be exempt from strategic environmental assessment under section 7(1) of the Environmental Assessment (Scotland) Act 2005.

⁹ The pre-screening report can be found at: www.scotland.gov.uk/seag/seagDocs/PRE-00375/11296.pdf

NATIONAL LIBRARY OF SCOTLAND BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the National Library of Scotland Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Bill modernises the governing legislation for the National Library of Scotland, which was established by virtue of the National Library of Scotland Act 1925 (c.73). The Bill defines the functions of NLS and updates its powers to bring them into line with those of modern public bodies. The 1925 Act did not specifically provide for the Board's functions, which have evolved over time.
4. The Bill will also reduce the size of the Board, remove reserved places and ensure all appointments are made by Scottish Ministers based on merit and selection. This will bring NLS into line with current public appointments practice under the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).
5. A public consultation on the role and governance of the National Library of Scotland was carried out between March and June 2010, <http://www.scotland.gov.uk/Publications/2010/03/31102621/1>. A Scottish Government response was published in March 2011 <http://www.scotland.gov.uk/Publications/2011/03/Publications>.

APPROACH TO USE OF DELEGATED POWERS

6. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make proper use of valuable Parliamentary time; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

7. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate. All delegated powers are order making powers.

DELEGATED POWERS

Section 10(2) – Power to make ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure/Affirmative procedure

Provision

8. This provision enables the Scottish Ministers to make such incidental and consequential provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of the Bill.

Reason for taking power

9. To enable the Scottish Ministers to adequately give effect to the provisions of the Bill. It is anticipated that this power will be used to modify a number of statutory instruments in consequence of section 1(1) (renaming of “The Trustees of the National Library of Scotland” as “The National Library of Scotland”). The power will also enable unforeseen situations to be addressed when the Bill is in force, for example there may come to light old local Acts or instruments that it transpires require to be amended. It would not be an effective use of either the Parliament’s or the Government’s resources to deal with such technical or minor matters through subsequent primary legislation.

Choice of procedure

10. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. These procedures are typical for ancillary powers.

Section 12(2) – Power to commence provisions

Power conferred on: The Scottish Ministers

Power exercisable by: **Order**
Parliamentary procedure: **Default laying requirement**

Provision

11. This provision enables the Scottish Ministers to appoint a day or days on which the provisions of the Bill come into force (other than sections 11, 12 and 13 which come into force on the day after Royal Assent). The Scottish Ministers may make such transitional, transitory or saving provision in the commencement order as might be required (see section 12(3)).

Reason for taking power

12. To enable the Scottish Ministers to appropriately commence the provisions of the Bill. It is desirable for the Scottish Ministers to be able to control commencement in case it is necessary to bring forward or delay the commencement of the Bill. The Bill will entirely replace NLS' current constitution in the National Library of Scotland Act 1925, so it is desirable that the transition between statutory regimes be supported by transitional, transitory and saving powers to enable any unforeseen transitional issues to be addressed.

Choice of procedure

13. The power is subject only to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). This is typical for commencement orders.

Paragraph 2(3) of schedule 1 – Power to vary the number of members of NLS

Power conferred on: **The Scottish Ministers**
Power exercisable by: **Order**
Parliamentary procedure: **Negative procedure**

Provision

14. This provision enables the Scottish Ministers to vary the minimum or maximum number of members of NLS set out in paragraph 2(1)(b) of schedule 1.

Reason for taking power

15. This provision gives flexibility to vary the size of the NLS board should the situation arise where the work of NLS would benefit from increasing or decreasing the board's size. The size of the board under the National Library of Scotland Act 1925 – 32 members - is unwieldy and at present it is felt that a membership of between 6 and 13 members, plus a chair, would be appropriate to enable NLS to discharge its business effectively. However, circumstances could change.

Choice of procedure

16. Negative procedure has been chosen in this case as the power only allows for alteration of the number of NLS members without changing the structure or functions of NLS, as agreed by

This document relates to the National Library of Scotland Bill (SP Bill 2) as introduced in the Scottish Parliament on 26 October 2011

the Parliament, in any way. It is felt that this matter is of a character which requires a flexible approach without using up Parliamentary time unnecessarily.



The Scottish Parliament
Pàrlamaid na h-Alba

Education and Culture Committee

4th Report, 2012 (Session 4)

Stage 1 Report on the National Library of Scotland Bill

Published by the Scottish Parliament on 8 March 2012



The Scottish Parliament
Pàrlamaid na h-Alba

Education and Culture Committee

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CONTENTS

Remit and membership

Main Report	1
Introduction	1
Governance arrangements	2
The appointments process	2
Board size	3
The functions of the NLS	5
The power of direction	5
Charging for services	8
Charitable status and measuring success	10
Relationship with the Faculty of Advocates	10
Other issues	11
Legal deposit of digital material	11
Policy Memorandum and subordinate legislation	12
Conclusions	12
Annexes	13



The Scottish Parliament
Pàrlamaid na h-Alba

Education and Culture Committee

Remit and membership

Remit:

The remit of the Committee is to consider and report on further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture and External Affairs.

Membership:

Clare Adamson
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Joan McAlpine
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Jonas Rae



The Scottish Parliament
Pàrlamaid na h-Alba

Education and Culture Committee

4th Report, 2012 (Session 4)

Stage 1 Report on the National Library of Scotland Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The National Library of Scotland Bill (“the Bill”) was introduced to the Scottish Parliament on 26 October 2011.¹
2. The accompanying Policy Memorandum states that the Bill will—
 - “Bring the National Library of Scotland’s governance arrangements, enacted in 1925, into line with those of many other public bodies ...
 - Provide the basis to enable the National Library of Scotland to continue to evolve and realise its ambitions as a modern organisation.
 - Provide clarity as to the functions of the National Library of Scotland; update arrangements for the relationship with the Faculty of Advocates and its Library; set out the powers available to the National Library of Scotland and in particular how it manages its collections through acquisitions, deposits, disposals and loans.
 - Recognise the importance of the National Library of Scotland and the national collections it holds on behalf of the people of Scotland.”²
3. The Bill can be seen as having two primary aims: to modernise the NLS’s governance arrangements and to set out its functions in statute.
4. From the outset, the Committee wishes to make clear that it is content with the general principles of the Bill and considers that it should proceed to Stage 2 of the parliamentary scrutiny process. In particular, the Committee believes that the

¹ Throughout this report the National Library of Scotland is referred to as the “NLS” or “the Library”.

² National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 2. Available at:

http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

legislation provides a long-overdue overhaul of the NLS's existing governance arrangements, which are unwieldy for a modern day organisation. The Committee also considers that setting out the NLS's functions in statute provides a useful public statement of the main aims of one of Scotland's key cultural institutions. That said, the Committee does have a number of specific concerns about these two areas, which are set out in detail in the following sections and which will inform the Stage 1 chamber debate on the Bill. The report also discusses some other issues considered by the Committee at Stage 1, including the Library's relationship with the Faculty of Advocates.

5. The Committee would like to thank all those organisations and individuals who provided written and oral evidence. Six written submissions were received, while the Committee took oral evidence from the Scottish Government Bill Team, the Faculty of Advocates, the Scottish Library and Information Council, and the National Library of Scotland³ on Tuesday 7 February 2012, and from the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, on 21 February 2012.
6. In addition, the Committee would like to thank the NLS for organising a private visit by members to the Library, and SPICe for preparing a briefing on the Bill.

GOVERNANCE ARRANGEMENTS

7. Currently, under the National Library of Scotland Act 1925, the NLS board can have as many as 32 members. The Policy Memorandum states that this arrangement is "too big and unwieldy when compared to the size of more modern public bodies"⁴ and proposes a new board of between 7 and 14 members, including a chair.
8. The Bill also seeks to remove the ex-officio and reserved places provided for in the 1925 Act. For example, the current NLS board contains 11 ex-officio members, while places are also reserved for particular organisations and people; the Faculty of Advocates, Scottish universities and local authorities are all able to appoint a number of members.
9. The Scottish Government considers that the proposed reforms to the board will enable the NLS "to further develop its corporate strategy and fulfil its functions".⁵

The appointments process

10. While the Bill does not set out the precise skills that new board members would be required to have, the Policy Memorandum states—

³ The Committee took evidence from both the National Librarian/ Chief Executive and the current Chairman of the Board of Trustees ("the chair").
Scotland.

⁴ National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 21. Available at:
http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

⁵ National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 20. Available at:
http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

“The Government expects that NLS will be led by a diverse group of people who between them have a broad knowledge of the areas in which the NLS operates – for example, local authorities and universities who also operate library and information services – as well as others who use the NLS, in addition to the wider mix of skills required for a public body such as corporate governance, business and finance.”⁶

11. Scottish Ministers will appoint the NLS board, in compliance with public appointments procedures regulated by the Public Appointments Commissioner for Scotland. Scottish Ministers will also determine the terms and conditions of board members, including the period of appointment.

Board size

12. In taking oral evidence, the Committee concentrated on the proposed size of the new board.

13. There was unanimous agreement amongst the organisations that provided oral evidence that the proposed lower limit for the board was too small. For example, the current chair of the NLS board considered that seven members would not be sufficient to cover the range of skills and stakeholder interests required for an effective board, given the Library’s diversity. He also pointed out that while additional skills could be brought in through committees, this would be more difficult with a smaller board. In conclusion, he considered that the ideal board size would be 12 or 13 members⁷. The NLS’s chief executive, meanwhile, stressed the need for continuity during the process of transition to the new board to ensure that the Library was able to continue to deliver its functions effectively.⁸

14. The Committee questioned Scottish Government officials and the Cabinet Secretary as to why the board size could be as low as seven people. Scottish Government officials pointed out that the Bill provides for flexibility in increasing by order the minimum number of seven members, and that experts who are not members of the NLS could be co-opted on to committees. They also made clear that the size of the body is actively being considered by the Scottish Government.⁹

15. The Cabinet Secretary reiterated in oral evidence that, in response to stakeholders’ concerns, she was open-minded about increasing the minimum size of the board, from seven to nine. Ms Hyslop reassured the Committee that “the size of most boards is rarely at the low end” and pointed out that—

“The current structural shift in the boards of cultural bodies has been more towards governance, accountability and leadership. We do not necessarily want people protecting and promoting their own area of expertise at the expense of

⁶ National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 26. Available at: http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

⁷ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 700.

⁸ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 703.

⁹ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 691.

everything else ... That is why we are increasingly seeing fewer designated places for particular representative groups on boards of management.”¹⁰

16. While the Cabinet Secretary was open-minded about the issue of the minimum board size, she was reluctant to see a similar increase in the maximum board size, pointing out that larger boards could become “less focused”. She also made the general point that the Scottish Government “is not in favour of large boards”.¹¹
17. In terms of the transition to the new arrangements, Scottish Government officials considered that a small number (about four) of existing trustees might be able to form the nucleus of the new body.¹²
18. **The Committee agrees with the concerns expressed by the NLS and other relevant organisations with expertise in this area, that a board comprising seven members would be too small. The Committee is not in a position to state what the optimum board size would be, however, it seeks an assurance from the Scottish Government that it will fully consult all relevant parties, particularly the NLS, before agreeing on a final number. The Committee also notes the Scottish Government’s presumption against large boards, but considers that the salient factor in determining the final size of the NLS’s board should be ensuring that the Library has the people it requires in order to function most effectively.**

Cost of appointing the board

19. The Committee is required to report on the Financial Memorandum (FM) that accompanies the Bill. As the only significant financial issue relates to the costs of appointing the board, it is helpful to present the Committee’s views on the FM in this section.
20. According to the FM the costs associated with the Bill are minimal. No additional Scottish Government funding is required to enable NLS to implement the functions set out in the Bill, while costs associated with the recruitment process to the new board (a maximum of £22,000 over a three year period) can be absorbed within existing Scottish Government budgets. Further, the Scottish Government’s current policy is not to remunerate NLS board members.¹³
21. The Finance Committee has a defined role to play in scrutinising the costs associated with all bills and has established a hierarchy of scrutiny according to how great such costs are. In this case, the Finance Committee adopted the most basic level of scrutiny, which involves inviting relevant organisations’ views on the FM and then forwarding these to the lead committee.
22. The Finance Committee received written evidence from the Public Appointments Commissioner in Scotland and the NLS. The Commissioner’s response stated

¹⁰ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 733.

¹¹ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 734.

¹² Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 703.

¹³ National Library of Scotland Bill. Explanatory Notes (and other accompanying documents) (SP Bill 2-PM, Session 4 (2012)). Available at:

http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

that, contrary to the Financial Memorandum, it would incur some costs as a result of the Bill. These costs relate to its scrutiny of the new board recruitment process and would amount to approximately £3,500 for the first set of appointments.¹⁴ The NLS submission similarly makes clear that it will face costs that are not discussed in the FM, namely the costs of recruiting a new Chair and other members of the revised Board. The NLS's submission states that this will "present some challenges" but that the costs can be absorbed.¹⁵

23. The Committee understands that there will inevitably be costs associated with the transition to the new board and appreciates the fact that these appear to have been kept to a minimum. That said, the Committee is concerned that some costs associated with the Bill, albeit that they are minimal, were not fully set out in what should have been a comparatively straightforward FM to produce.

THE FUNCTIONS OF THE NLS

24. Section 2 of the Bill sets out the NLS's general and particular functions, and the objectives it must seek to achieve in exercising these functions. The chair of the NLS board made the point that defining the functions in statute would not make much difference "because we do these things already"¹⁶. The Policy Memorandum notes that the Government "has taken the opportunity to consider functions that are outward and outcome focused".¹⁷

The power of direction

25. In taking evidence on the NLS's functions, the main issue pursued by the Committee concerned the Scottish Ministers' powers to give NLS directions as to the exercise of certain of its functions.

26. The Scottish Government launched a consultation on the role and governance of the National Library of Scotland in March 2010, in which various respondents expressed concern about the power of direction as originally envisaged. The Policy Memorandum explains that the Bill now contains a "qualified Ministerial power of direction" and stresses that this is designed to respect NLS's curatorial and cultural judgement. It goes on to discuss the areas where Ministers will be unable to give direction but does not actually set out the areas where the power could be used, an issue that the Committee explored in some depth.

27. The ministerial power of direction in the Bill extends to the following NLS functions—

¹⁴ Office of the Commissioner for Public Appointments in Scotland. Written submission to the Finance Committee.

¹⁵ National Library of Scotland. Written submission to the Finance Committee.

¹⁶ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 711.

¹⁷ National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 16. Available at:

http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

- “promoting collaboration between, and the adoption and sharing of good practice by, other persons providing library and information services” (section 2(2)(d)); and
- “promoting the diversity of persons accessing the collections” (section 2(3)(c)).

28. In oral evidence, the NLS chief executive made clear his opposition to the principle of ministerial direction over the Library but also acknowledged that the settlement arrived at in the Bill was acceptable—

“Given the organisation’s responsibilities as a charity, the responsibilities of its board of trustees, my responsibilities as chief executive and accountable officer to the Scottish Government and our responsibility to report to the Scottish Parliament, we took the view that, with our very strong monitoring of the public resources that the library receives, we would not require additional direction. The fact that a very strong framework is already in place adds to our regret about the power of direction but, taking a pragmatic view, we think that, if there is to be such a power, the provision in the bill strikes a reasonable balance.”¹⁸

29. He added that “we think that the protections covering the National Library’s functions and what it exists to do are protected from ministerial direction”.¹⁹

30. The Committee asked the chief executive for his views on the specific areas where the Scottish Ministers could intervene i.e. promoting collaboration and promoting diversity. In response, he said that he did not “know fully” why there was an exemption in these areas. He added that he was “comfortable” about the provision relating to promoting diversity, as it effectively duplicated existing equalities obligations, but could not immediately think of an area in which the promoting collaboration direction would apply.²⁰

Using the power of direction

31. In oral evidence, the Cabinet Secretary explained the general underlying principle behind the need for a ministerial power of direction—

“When an institution is funded from taxpayers’ money, it must be accountable to the taxpayer for ensuring that that money is spent wisely, and for its management and governance of the institution. That must be balanced with the institution’s artistic or—as in this case—curatorial responsibility and its freedom to ensure that it looks after our great cultural assets for the nation.”²¹

32. Scottish Government officials explained in general terms when Ministers may seek to use a power of direction—

“In essence, the statutory power of direction in relation to public bodies is very much a last resort. The thinking behind it is that it is to allow ministers to step in if they consider it appropriate to do so in the event of serious operational or

¹⁸ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 705.

¹⁹ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 705.

²⁰ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 706.

²¹ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 736.

organisational failure: in other words, when something has gone seriously wrong and all other attempts to resolve the matter without use of the statutory power have been unsuccessful.”²²

33. Officials went on to provide a hypothetical example of where the power could be used in relation to the NLS—

“The Government has, for example, a policy of no compulsory redundancies across the public sector, including public bodies for which the Government is responsible. It is entirely hypothetical to say that the power over the National Library could be used in relation to that policy, although it is the sort of general Government policy that applies to a group of public bodies.”²³

34. In her oral evidence, the Cabinet Secretary went on to state that the power of direction “can be used only in relation to overall management of the organisation”, a point that is not obvious from the Bill.²⁴

Promoting collaboration

35. On the specific issue of promoting collaboration, an area where ministerial direction is expressly permitted, the Committee questioned whether this power could have a knock-on impact on those NLS functions that are not captured by the power of direction. The Cabinet Secretary confirmed that such a situation would not arise—

“Section 8(2)(a) stipulates matters on which I am not allowed to provide ministerial direction. It is clear that anything that would compromise curatorial functions is not allowed; so if we want to promote collaboration or the sharing of good practice, we can do that, but if that were to compromise exhibitions, interpretations and so on, my decisions could go to review and they could be deemed to have been illegal. There is a counterbalance for both sides, which is what we sought to achieve.”²⁵

36. The Cabinet Secretary also went on to imply that she would, in any case, be unlikely to issue the power of direction relating to collaboration—

“We are well on the way with the collaboration agenda ... However, I do not necessarily see that agenda as being a matter for ministerial direction ... I do not think that using it [ministerial direction] would be a very wise thing to do, because it is a backstop as opposed to an action to make things happen proactively.”²⁶

37. The Cabinet Secretary said she could not recall having used her ministerial power of direction for any bodies for which she had had responsibility. Scottish

²² Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 693.

²³ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 693.

²⁴ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 737.

²⁵ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 739.

²⁶ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 741.

Government officials subsequently confirmed in supplementary written evidence that no ministerial power of direction had been given to a cultural public body.²⁷

38. **The Committee considers that the use of the ministerial power of direction is one of the more contentious issues in the Bill and has therefore explored this matter in some depth. Having done so, the Committee is of the opinion that the precise nature of the powers, when they could be used and how they would inter-relate with other functions over which ministers have no power, should have been far more clearly explained in the Bill's accompanying Policy Memorandum. There is no explanation of why promoting collaboration and diversity have been exempted, or of the type of action that could be carried out under these headings. Given the NLS's general reservation about the power of direction, it is also of some concern that the chief executive of the NLS did not know why there were exemptions in terms of collaboration and diversity.**
39. **The Committee understands why it might be helpful to the Cabinet Secretary to retain a power of direction in the event of any future unforeseen circumstance. However, the Committee notes both the NLS's view that it is difficult to envisage when the power relating to collaboration would be used and the Cabinet Secretary's suggestion that she would be unlikely to use it.**
40. **While the Bill sets out the specific areas in which the ministerial power of direction could be used – with regard to promoting collaboration and diversity – the Scottish Government's oral evidence discussed much broader areas, such as the overall management of the NLS. The Committee considers that the Scottish Government must provide, in advance of Stage 2, clearer justification for including the ministerial power of direction in the Bill, and an explanation as to how the Bill could more accurately state how and when the power of direction could be used. Given the NLS's concerns, the Cabinet Secretary should also confirm that she or her officials have held discussions with the NLS to provide clarity about the nature and extent of the powers of direction, particularly on collaboration.**

Charging for services

41. In oral evidence, the Cabinet Secretary restated the Scottish Government's commitment to the principle of free access to the NLS. However, the Committee discussed this issue at length, as the Bill states that the NLS may make charges for access to its collections, which caused some concern in oral evidence. For example, the Scottish Library and Information Council cautioned that—

“We must be absolutely clear that proper procedures are in place to ensure, for example, that charging for access to the library to access a book or collection is not taken as a given. The library might need to charge for some things, but we must ensure that it does not charge for that basic provision.”²⁸

²⁷ Scottish Government. Supplementary written submission.

²⁸ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 704.

42. The Library's chief executive echoed the Cabinet Secretary's commitment to free access to the NLS, although he did go on to say that while exhibitions were free at the moment "it may be appropriate at certain points to charge for them".²⁹
43. Scottish Government officials reassured the Committee that the NLS's proposed power to make charges (as set out in paragraph 11 of schedule one) would effectively be constrained by the over-arching functions set out for the Library in section two of the Bill. To clarify, the NLS's particular function of making its collections accessible to the public could not be jeopardised by the separate power it has to make charges for accessing the collections.
44. Officials did confirm that the Library may legitimately seek to charge for an "added-value service" where there was an extra cost involved in providing a particular item, for example, charging users for "digitisation on demand" when content had not been made electronic or for the production of high resolution maps if these were not available as part of the NLS's existing collections³⁰. Even in such circumstances, however, officials stated that, under the Scottish public finance manual, if new charges were proposed, they would have to be agreed by the relevant Scottish Government directorate and by ministers³¹. A further check on the Library's power to charge is that, under relevant charity legislation, it must fulfil its charity tests, which include providing a public benefit.
45. The issue of charging, and the NLS's powers more generally, also overlaps with the discussion on the ministerial power of direction set out above. Schedule one, paragraph 11 sets out the NLS's general powers and states, to paraphrase, that these are to be used in connection with the exercise of its functions.
46. The Committee asked the Cabinet Secretary to clarify the relationship between the ministerial power of direction and the NLS's general powers. Ms Hyslop responded as follows—
- "NLS must have regard to its functions when exercising any of its powers in schedule 1, paragraph 11 (1) and (2). The powers can in principle be directed on by Scottish Ministers, subject to the restrictions in section 8(2). A power of direction would only be used after careful consideration and as a means of last resort. Scottish Ministers would need to be satisfied that all other requirements and controls, as set out in the SPFM [Scottish Public Finance Manual] and the Memorandum to Accountable Officers, had been exhausted."³²
- 47. The Committee welcomes the Cabinet Secretary's restated commitment to the principle of free access to the national library. The Committee accepts that there may be occasions where the NLS can legitimately charge for added value functions, and welcomes the fact that there are safeguards provided on this power.**

²⁹ Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 708.

³⁰ Scottish Government. Supplementary written submission.

³¹ The Scottish Government confirmed in supplementary written evidence that the Scottish Public Finance Manual (SPFM) has the legal status of "applicable guidance" issued by the Scottish Ministers, as referred to in the Public Finance and Accountability (Scotland) Act 2000.

³² Scottish Government. Supplementary written submission.

48. **The Committee notes the Scottish Government's comments about the relationship between the ministerial power of direction and the NLS's powers. The comments that the Committee has made above in relation to the power of direction generally apply equally here.**

Charitable status and measuring success

49. There are two related points on the NLS's functions that the Committee wishes to discuss briefly in this section.
50. Some respondents to the Scottish Government's earlier consultation on the NLS (see paragraph 26) expressed concern that the power of direction may jeopardise the NLS's charitable status. This was due to the fact that, under the Charities and Trustee Investment (Scotland) Act 2005, there is a "charity test" that requires a body's constitution not to be directed or controlled by Scottish Ministers.
51. The Policy Memorandum makes clear that this requirement was disapplied by the Charity Test (Specified Bodies) (Scotland) Order 2006 and that the Bill's inclusion of a power of direction is therefore compatible with charitable status. **The Committee discussed this issue with Scottish Government officials and other witnesses, and is satisfied with the assurance that the powers of direction contained in the Bill will not jeopardise the Library's charitable status.**

Measuring success

52. As the Bill sets out for the first time in statute the functions of the Library, the Committee questioned how its success in achieving these functions would be measured. The Cabinet Secretary explained that the NLS will produce a corporate plan that will set out what it is trying to do and how it will measure its success.
53. **The Committee welcomes the Bill's statement of the NLS's functions. This provides clarity on the roles that the NLS is expected to undertake and helps to encourage a degree of public accountability in ensuring that these functions are delivered.**

Relationship with the Faculty of Advocates

54. The NLS has a close and long-standing relationship with the Faculty of Advocates ("the Faculty"). Indeed, between 1842 and 1925 the Advocates Library held sole right of legal deposit for Scotland, and effectively gifted its collection of non-legal books to the NLS in 1925. While the 1925 Act ensured that the NLS held the right of legal deposit for Scotland for both legal and non-legal publications, the Act required the NLS to pass all legal publications to the Advocates Library.
55. The Bill does not seek to alter these arrangements. However, there is an issue involving the NLS and the Faculty, concerning electronic legal deposit, that was discussed in oral evidence and on which the Cabinet Secretary said she may return with possible amendments at Stage 2. In brief, the Faculty and the NLS discussed the most appropriate means of establishing a process by which the NLS would be able to furnish the Faculty with the electronic legal publications it required. **The Committee notes and appreciates that the two organisations**

are attempting to resolve this issue in an amicable manner and, more broadly, that neither institution considers that there would be any merit in including in the Bill more detailed provisions as to how they are to work together.

OTHER ISSUES

56. Having considered the issues of governance, the NLS's functions and its relationship with the Faculty of Advocates, this section of the report looks at two other issues related to the Bill: legal deposit of digital material and the Policy Memorandum.

Legal deposit of digital material

57. Paragraph 3 of the Policy Memorandum says that the Bill has been designed to “provide sufficient scope for the further evolution of NLS and to cover future developments in Scottish Government policy.”

58. One of the most significant issues facing the Library – and libraries in general – concerns what the NLS described in its written evidence as the “digital information revolution”. The Library’s written evidence set out the challenges it faces in this area—

“As information, knowledge and creativity of all kinds – film, music etc. as well as books and journals – are increasingly produced electronically (‘born digital’), new, challenging questions emerge which NLS is actively addressing: How do we collect this material? How do we preserve it for future generations? How can people find what they need and use it?”³³

59. The NLS and other witnesses expressed concern that the relevant UK legislation on collecting digital material, the 2003 Legal Deposit Act, has not been implemented.

60. The Policy Memorandum notes that regulations are being drafted by the Department for Culture, Media and Sport (DCMS) which will allow for non-print publications to be delivered to or deposited electronically with NLS. In oral evidence, the Committee questioned the reserved-devolved split in this policy area. Scottish Government officials described the area as “semi-devolved”; the power to request that publications be placed on legal deposit in the NLS is devolved, but other relevant issues, such as copyright, are reserved. The Cabinet Secretary confirmed that she would prefer to wait for comprehensive regulations from the DCMS, rather than take action on one particular area.³⁴ In the course of the Committee’s Stage 1 scrutiny, DCMS launched a consultation on the regulations.

61. The Committee appreciates that the issue of electronic legal deposit is long-standing, complex and one on which the Bill does not contain specific provisions. Consequently, the Committee’s evidence-taking in this area was limited. However, the fundamental importance of the issue to the NLS and

³³ The National Library of Scotland. Written submission.

³⁴ Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 750.

the fact that the Bill aims to be “future proof” together mean that the issue cannot be ignored in this report. The Committee welcomes the Cabinet Secretary’s ongoing discussions with the DCMS and looks forward to this issue being resolved as quickly as possible.

Policy Memorandum and subordinate legislation

62. The Education and Culture Committee is required to report on the Bill’s Policy Memorandum in its Stage 1 report. The Committee’s substantive comments about the PM, concerning the lack of detail on the ministerial powers of direction, have already been discussed in paragraph 38. Other than this point, the Committee considers that the Policy Memorandum effectively meets the requirements set out in the Standing Orders.³⁵

Equalities

63. The Committee particularly welcomes the Scottish Government’s expectation that moving to a modern governance structure is likely to have a beneficial impact on equal opportunities; the Policy Memorandum states that “The proposals will help to address the current gender imbalance and increase opportunities for younger, qualified persons to be appointed to the new board on merit.”³⁶

64. The Committee also welcomes the provision requiring the NLS to have regard to promoting the diversity of its users. The Committee expects that this will help the Library to make further progress in addressing some of the inequalities set out in the Equality Impact Assessment (EIA) that was carried out for the Bill by the Scottish Government. The EIA noted for example, that 6 per cent of NLS users declared themselves to be disabled, whereas 20 per cent of the general population were classified as disabled.

65. Finally, the Committee notes that the Subordinate Legislation Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in the Bill.

CONCLUSIONS

66. The Committee recommends to the Parliament that its general principles be agreed to. The Committee has made various suggestions in the report as to how the Bill can be further improved during its passage and looks forward to the Cabinet Secretary’s response.

³⁵ A Policy Memorandum should set out—

(i) the policy objectives of the Bill;
(ii) whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Bill was adopted;
(iii) the consultation, if any, which was undertaken on those objectives and the ways of meeting them or on the detail of the Bill and a summary of the outcome of that consultation; and
(iv) an assessment of the effects, if any, of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and any other matter which the Scottish Ministers consider relevant.

³⁶ National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 56. Available at:

http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf.

ANNEXES TO THE EDUCATION AND CULTURE COMMITTEE'S 4TH REPORT 2012, STAGE 1 REPORT ON THE NATIONAL LIBRARY OF SCOTLAND BILL

ANNEXE A: EXTRACT FROM MINUTES OF THE EDUCATION AND CULTURE COMMITTEE

11th Meeting, 2011 (Session 4), Tuesday 15 November 2011

National Library of Scotland Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1. A draft call for written evidence was agreed to and the Committee agreed to invite various organisations to provide oral evidence.

5th Meeting, 2012 (Session 4), Tuesday 7 February 2012

National Library of Scotland Bill: The Committee took evidence on the Bill at Stage 1 from—

Colin Miller, Head of Public Bodies Policy Unit, Carole Robinson, Bill Team Leader, and David Seers, Head of Cultural Excellence, Scottish Government; Greig Walker, Solicitor, Economy and Transport Division, Scottish Government Legal Directorate;

And then from—

Andrea Longson, Senior Librarian, and Mungo Bovey QC, Keeper of the Library, Faculty of Advocates; Elaine Fulton, Director, Scottish Library and Information Council; Martyn Wade, National Librarian and Chief Executive, and Professor Michael Anderson, Chairman of the Board of Trustees, National Library of Scotland.

6th Meeting, 2012 (Session 4), Tuesday 21 February 2012

National Library of Scotland Bill: The Committee took evidence on the Bill at Stage 1 from—

Fiona Hyslop MSP, Cabinet Secretary for Culture and External Affairs; Carole Robinson, Bill Team Leader, and David Seers, Head of Cultural Excellence, Scottish Government; Greig Walker, Solicitor, Economy and Transport Division, Scottish Government Legal Directorate.

7th Meeting, 2012 (Session 4), Tuesday 28 February 2012

National Library of Scotland Bill (in private): The Committee considered a Stage 1 draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its next meeting.

ANNEXE B: EXTRACT FROM SUBORDINATE LEGISLATION COMMITTEE REPORT

The Committee reports to the Parliament as follows—

INTRODUCTION

At its meetings on 22 November and 13 December 2011, the Subordinate Legislation Committee considered the delegated powers provisions in the National Library of Scotland Bill at Stage 1. The Committee submits this report to the Education and Culture Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

1. The National Library of Scotland Bill was introduced in the Parliament on 26 October 2011. It is an Executive Bill.
2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).
3. In the consideration of the memorandum at its meeting on 22 November, the Committee agreed to write to the Scottish Government to raise questions on the power at section 12(2).
4. This correspondence is reproduced in the Annexe.
5. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in section 8 (directions and guidance), section 10(2) (incidental or consequential provision), or schedule 1, paragraph 2(3) (variation of number of members of the National Library of Scotland).

Delegated powers provision:

Section 12(2) – Power to commence provisions (including transitional, transitory or saving provisions)

Power conferred on: The Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Default laying requirement

6. This power enables the Scottish Parliament to appoint a day or days when the provisions of the new Act are to come into force. An order which does so can also include transitional, transitory or saving provision.
7. An order made under section 12(2), whether simply commencing provisions, or whether also making transitional, transitory or saving provision, is subject only to the basic laying requirement as provided for under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”).
8. The Committee contrasted the difference in procedural treatment under section 10(2) and section 12(2). An order to make incidental or consequential provision set out at section 10(2) would be subject to the negative procedure (or affirmative where amending the text of an Act). No indication was given in the DPM of circumstances in which this power might be

used, whether that could potentially be significant, or why it should be subject simply to the laid only procedural requirement.

9. The Committee asked the Scottish Government why an order made under the section 12(2) power, where it includes transitional, transitory or saving provision, should be subject simply to the default “laid only” procedural requirement. Clarification was sought as to what sort of provision could be necessary in this case and for justification why exercise of this power need not attract parliamentary scrutiny.

10. The Committee notes from the reply that the Scottish Government considers the approach taken within section 12(2) to be appropriate. The Committee notes that the Bill makes major changes to the size and makeup of the board of trustees, and that the power might be required to deal with unforeseen transitional issues.

11. It is also noted that this is a Bill of narrow scope, and that it is stated by the Scottish Government that any provision is not likely to be lengthy or complex, or to affect the legal rights of the public at large. The Committee further observes that the power cannot be used to modify enactments.

12. The Committee takes the view that while, along with clarity of provision, these are important considerations, the attraction of covering transitional, transitory or saving provisions within a commencement order for those reasons requires to be balanced with an assessment of whether an appropriate level of Parliamentary input is given to such an order.

13. In this particular instance, having regard to the content of this Bill, its narrow scope, and the restricted nature of the power, the Committee is satisfied with the response provided, and the provision made.

14. The Committee, having heard further from the Scottish Government, is content with the order making power under section 12(2), relating to commencement, which may include transitional, transitory or saving provision, and furthermore, is content that an order under this power is not to be subject to Parliamentary procedure beyond the default laying requirement.

Annexe

Correspondence with the Scottish Government

Section 12(2) – Power to commence provisions (including transitional, transitory or saving provisions)

The Committee asks the Scottish Government why an order made under section 12(2), where it includes transitional, transitory or saving provision, should be subject simply to the default “laid only” procedural requirement (in contrast to an order which makes incidental or consequential provision under section 10(2), which would be subject to (at minimum) the negative procedure)?

The Committee further asks the Scottish Government to explain, with reference to this power, what sort of provision might be necessary, and for justification why exercise of the power need not attract Parliamentary scrutiny?

Scottish Government Response

Thank you for your letter of 22 November 2011 seeking an explanation on the power to commence provision at Section 12 (2) of the National Library of Scotland Bill.

As a general policy, the Scottish Government does not consider that commencement orders should be subject to Parliamentary procedure and sees no reason why transitional, transitory or saving provisions should not be included in such orders. It is clearer for the users of the legislation to be able to see any transitional, transitory or saving provisions in the commencement order(s).

The type of provision which might be necessary for the National Library of Scotland Bill might relate to the transition from the current board of trustees of 32 members, of whom only 5 are appointed on the recommendation of the Scottish Ministers, to a board of between 7 and 14 members appointed directly by the Scottish Ministers. As stated in the Delegated Powers Memorandum, the power is to deal with any unforeseen transitional issues. Given the narrow scope of the Bill it can be anticipated that any provision is not likely to be lengthy or complex or affect the legal rights of the public at large. The power cannot be used to modify enactments. Accordingly, it is felt that any transitional, transitory or saving provisions need not be subject to Parliamentary procedure beyond the default laying requirement.

ANNEXE C: FINANCE COMMITTEE CONSIDERATION OF THE FINANCIAL MEMORANDUM

The following call for evidence was issued by the Finance Committee on the 11 January 2012.

To—

National Library of Scotland

Faculty of Advocates

Scottish Library and Information Council

Chartered Institute of Library and Information Professionals in Scotland

Society of Antiquaries in Scotland

COSLA

Scottish Confederation of University and Research Libraries

Public Appointments Commissioner for Scotland

11 January 2012

Dear Sir/Madam,

NATIONAL LIBRARY OF SCOTLAND BILL: FINANCIAL MEMORANDUM

The above Bill was introduced in the Parliament by the Scottish Government on 26 October 2011.

The Bill defines the functions of the National Library of Scotland (NLS) and updates its powers in line with those of modern public bodies. The National Library of Scotland Act 1925 did not specifically provide for the board's functions, which have evolved over time. The functions will reflect the role of the NLS in relation to—

- preserving, conserving and developing its collections;
- making the collections accessible to the public and to persons wishing to carry out study and research;
- exhibiting and interpreting objects in the collections; and
- promoting collaborations and shared practice amongst the library community.

Financial considerations

This Bill is accompanied by a Financial Memorandum, the purpose of which is to set out estimates of the expected costs of the Bill to the Scottish Administration (i.e. the Scottish Government, in the broad sense of Ministers, departments and agencies), to local authorities and other bodies, individuals and businesses.

The Bill's FM shows, at present the Scottish Government's core grant-in-aid for NLS totals £13.275m. The FM indicates that none of the provisions in relation to the functions and powers of NLS, or in relation to legal publications, impose any new or additional costs on it, therefore no further funding will be required from the Scottish Government to enable NLS to implement the functions and powers of the Bill.

The Bill sets out to reduce the size of the NLS board from 32 members to between 7 and 14 members, all of whom will be appointed by Scottish Ministers. It also sets a definitive period of appointments in which each round will be run every two to three years. The FM states—

“The costs of this, which will fall to the Scottish Government, will be for advertising the appointments to ensure a wide range of applicants from diverse backgrounds and for the implementation of the process for selecting the appointees. It is anticipated that any such cost would be a maximum of £10,000 over a three year period. There will be additional costs in the first year as the Scottish Ministers appoint a chair and members and therefore it is estimated that costs in that year could be between £10,000 to £12,000. All of these costs will be absorbed within existing budgets.”

Under current Scottish Government policy NLS members do not receive remuneration. However, the Bill has been drafted to allow remuneration if Scottish Ministers wish to change this policy. The FM indicates the estimated costs for the introduction of remuneration would be between £22,000 and £45,000 per year for the whole board (based on current expected levels of board activity).

The FM suggests there are likely to be savings to the amount of expenses claimed and administrative costs due to the Bill reducing the number of board members. The FM states—

“It is estimated that total savings, from expenses and administrative costs, will be around £1,300 per annum or 30% of the current costs.”

The FM indicates there will be no additional costs on local authorities or any other bodies, individuals and businesses.

Purpose

The Finance Committee has responsibility, within the parliamentary scrutiny process, *to examine the cost implications of Bills*. The Committee, at its meeting today, agreed to issue a call for evidence to the organisations identified above seeking a response to the specific questions attached to this letter. The written responses received will also be forward to the Education and Culture Committee which is the lead committee *examining the policy aspects of the Bill*.

To facilitate the parliamentary timetabling of the Bill, the **Finance Committee invites you to respond to the attached questions by 8 February 2012**. All responses should be sent electronically **in MS Word** (no confirmatory hard copy required) to finance@scottish.parliament.uk. Written responses will be handled in accordance with the Parliament's [policy for handling written evidence received in response to calls for evidence](#).

Please do not hesitate to contact me should you have any questions about this letter.

Response from the Office of the Commissioner for Public Appointments in Scotland

Consultation

1. Did you take part in the consultation exercise for the Bill and, if so, did you comment on the financial assumptions made?

No. Although the Office of the Commissioner for Public Appointments in Scotland appears on the list of bodies consulted during the consultation exercise on the Bill, we have no record of receipt of the consultation papers.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not applicable

3. Did you have sufficient time to contribute to the consultation exercise?

Not applicable

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Financial Memorandum advises that there will be no financial implications for our organisation. This is not accurate.

We assign Public Appointments Assessors to provide scrutiny of regulated appointment activity. We have assigned assessors to oversee appointment rounds for this body three times since the establishment of our office. Assignments were made in 2004, 2006 and 2009. On each occasion the appointment activity was cancelled by the Scottish Ministers before any appointment was made and the costs of providing scrutiny of appointments to this body were therefore relatively low. The 2004 round had a nil cost and the 2006 and 2009 rounds cost our organisation £250 and £1,092 respectively. The Bill and FM indicate that a raft of initial new appointments will have to be made. Whilst we cannot predict the cost of providing scrutiny of this activity precisely, we anticipate that it will cost us approximately £3,500 for the first set of appointments and approximately £1,000 for each new appointment round thereafter.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

We are unable to offer an opinion on this.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comment

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We do not anticipate any additional costs arising for our organisation over and above those we have identified and set out in response to question 4.

We are unable to offer an opinion on costs that may arise for other parties as a consequence of developed guidance or subordinate legislation.

Response from the National Library of Scotland

Consultation

1 Did you take part in the consultation exercise for the Bill and, if so, did you comment on the financial assumptions made?

NLS has been fully involved in the consultation and preparation of the Bill.

2 Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes

3 Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4 If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes

5 Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

NLS will need to meet the costs of recruiting a new Chair and other members of the revised Board; at a time of restricted funding, this presents some challenges, but the costs can be taken account of in our draft budget for 2012-13. The Bill and its consequences require considerable investment of time from Trustees and senior management, but NLS agrees that this investment is worthwhile to provide a clear statutory basis for the functions of the Library and to improve governance.

6 Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes

Wider Issues

7 If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not applicable.

8 Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

No

ANNEXE D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

5th Meeting, 2012 (Session 4), Tuesday 7 February 2012

ORAL EVIDENCE

Colin Miller, Head of Public Bodies Policy Unit, Carole Robinson, Bill Team Leader, and David Seers, Head of Cultural Excellence, Scottish Government; Greig Walker, Solicitor, Economy and Transport Division, Scottish Government Legal Directorate;

Andrea Longson, Senior Librarian, and Mungo Bovey QC, Keeper of the Library, Faculty of Advocates; Elaine Fulton, Director, Scottish Library and Information Council; Martyn Wade, National Librarian and Chief Executive, and Professor Michael Anderson, Chairman of the Board of Trustees, National Library of Scotland.

6th Meeting, 2012 (Session 4), Tuesday 21 February 2012

ORAL EVIDENCE

Fiona Hyslop MSP, Cabinet Secretary for Culture and External Affairs; Carole Robinson, Bill Team Leader, and David Seers, Head of Cultural Excellence, Scottish Government; Greig Walker, Solicitor, Economy and Transport Division, Scottish Government Legal Directorate.

ASSOCIATED WRITTEN EVIDENCE

Submission from the Faculty of Advocates

The Faculty of Advocates welcomes the following recognition of its historic and continuing involvement with the National Library of Scotland in the Policy Memorandum for the Bill:

“Links between the Faculty of Advocates and the National Library of Scotland

12. The Faculty of Advocates is an incorporation of independent lawyers that has run and funded the Advocates Library since 1689. Legal deposit was introduced in Scotland in 1709 and between 1842 and 1925 the Advocates Library held sole right of legal deposit for Scotland. The Faculty gifted its collection of non-legal books to the nation in 1925, with the introduction of the National Library of Scotland Act in that year, to provide the foundation of the NLS.

13. The 1925 Act, alongside establishing the NLS, also ensured that NLS held the right of legal deposit for Scotland for both legal and non-legal publications (in addition to taking receipt of the Faculty’s non-legal books). However, NLS is required under the provisions of the 1925 Act to pass all legal publications to the Advocates Library. The Faculty also owns part of the land on which the NLS is situated.

14. Given both the historical and continuing partnership working between the NLS and the Faculty of Advocates, the Government recognises that it is important that this Bill will maintain and enhance this relationship. The Advocates Library is Scotland’s pre-eminent working law library and the Faculty’s collections include rare manuscripts and many of the earliest Scottish law books. The Faculty Library’s stock of legal deposit books is made available to the public, students and researchers through NLS and the public further benefits

from the Faculty's collections of legal publications through the provision by advocates of qualified and independent advice on the law of Scotland."

The Faculty appreciates the extensive consultation by the Minister and civil servants responsible for the Bill. The key points we have made in this exercise are:

1. It should be noted that while the Faculty of Advocates does hold legal publications which have been made available pursuant to section 5 of the 2003 Act and earlier copyright legislation, it also holds substantial other collections which were not acquired by legal deposit. These, for example, would include collections of art works as well as a wide variety of manuscripts and printed material. Although the Faculty does often grant access to these collections, they are not (and never have been) available as of right to members of the public. It is therefore important that the Bill should distinguish between the material which the Faculty of Advocates holds by reason of legal deposit and other parts of the Faculty collections. A Memorandum of Agreement recently signed by the Faculty and the NLS indicates the Faculty's willingness to lend other literary materials as freely as possible. We do not, however, consider it appropriate for the Bill to impose on the Faculty an obligation to enter into agreement with the NLS in relation to its non-legal deposit collections. In this regard, we consider the drafting of clause 6(1)(a) and (c) to be unduly wide where they refer to "collections".

At clause 6(1)(c), we would suggest that the words "objects in the Faculty collections" be deleted and substituted therefore with "legal publications sent to the Faculty under section 5 and earlier legal deposit legislation."

2. At clause 3(6)(b), there is permission to dispose of an object in the circumstances mentioned in section 3(2)(c) or (d), without the consent of the owner. The Faculty would not wish its property to be disposed of in these circumstances without its consent, except by being returned to the Faculty. We would be content with the Bill team's suggestion of "words of comfort" in Ministerial statements in this regard.

3. With respect to clause 5, the Faculty would wish to ensure that NLS collect such legal publications which are online publications as it considers necessary, even if such publications do not become the property of the Faculty. The Faculty Library staff has the expertise appropriate to determining which legal publications should form part of the national collections.

In view of the foregoing we would propose the following amendments to clause 5(3):

- i. Delete "subsections (1) and (2) do" and substitute therefore "subsection (1) does."
- ii. Add a new sentence at the end to the effect that "NLS must include in a request made under the 2003 Act in relation to online electronic publications such legal publications as the Faculty may require it to include."
- iii. We also suggest that clause 6(1)(e) be widened to recognise the Faculty's influence in requesting on-line material.

It is not clear why clause 5(3) excludes subsection 2 when section 5 of the 2003 Act only applies to printed publications in any event.

4. Finally, with respect to schedule 1 paragraph 6, the Faculty regrets the proposal to dispense with the post of "Librarian" at the head of the NLS.

Submission from the National Library of Scotland

1. Introduction

The National Library of Scotland (NLS) welcomes this opportunity to provide written evidence to the Committee on the National Library of Scotland Bill. NLS also looks forward to presenting evidence to the Committee in person on 7 February 2012.

2. What we do

In order to set the scene, we would like to describe briefly the work of the Library. Our purpose is to advance universal knowledge about Scotland and in Scotland. We play a key role in supporting education, research, business and innovation and in enhancing the reputation of Scotland as a country with a rich cultural heritage and a vibrant future. We act as a national resource for research, education, enterprise and culture, specifically by collecting material, preserving it for the future and providing access to it. The Library is one of Europe's major research libraries, with over 14 million printed items spanning internationally-renowned historic 'treasures' as well as the very latest publications. A theme running through all our work is collaboration. It is no longer possible (if it ever were in the past) for a library to collect, preserve and give access to its collections by acting alone and NLS works in partnership with other organisations at the global, European, UK, Scottish and local levels.

The Library is Scotland's only Legal Deposit library, entitled to claim a copy of all printed UK and Irish publications. Through this route we add some 4,000 new items *every week* to the Library's collections, requiring three kilometres of new shelving each year. NLS also buys a significant amount of material to meet the needs of users, where we cannot obtain it through legal deposit (typically, because it is published abroad, or is in electronic form).

Access to this material continues to be provided through our reading rooms, principally at George IV Bridge, Edinburgh (as a reference library, printed material is consulted onsite). Increasingly access can also be provided through online services, allowing material to be consulted remotely in schools, homes or workplaces. NLS handles thousands of enquiries from across the world each year and has a full programme of events and exhibitions. We have a small education team that works directly with schools and teachers, and increasingly contributes material to electronic learning resources. NLS users can be anyone - family researchers, students, professional and business users, tourists or the general public. Our users come from all parts of the world.

3. Our Successes

Over the past decade or so, NLS has undertaken a concerted and sustained transformation to ensure that it is a library for all. The old notion of a 'library of last resort' (a place you could go only if you could not find the resources anywhere else) is a thing of the past. This is demonstrated by some figures on our usage and public awareness from 2004/5 to 2009/10:

- public awareness of NLS among Scottish public increased from 20% to 49%;
- reader visits increased from 58,000 to 79,000;
- the value of NLS media coverage increased from £0.922 million to £1.487 million.

Notable recent additions to the NLS collections are the John Murray Archive, purchased in 2006 for £32 million with support from the Heritage Lottery Fund, the Scottish Government and many private individuals and trusts. The merger of the Scottish Screen Archive with NLS in 2007 added more valuable material to complement NLS collections. Other achievements

include the opening of the Visitor Centre at George IV Bridge, with visitor numbers exceeding our initial 'footfall' target of 1.5 million in the first year. The introduction of online reader registration in June 2010 has already attracted 9,500 additional users from over 100 countries by March 2011. NLS has pioneered the negotiation of free remote access (ie in the home, school or office) to many important and valuable research resources¹ for people living in Scotland. Increasingly, the Library is in close collaboration with the National Galleries of Scotland on shared administrative services.

4. Opportunities for the Future

Many of the opportunities (and challenges) currently facing the Library relate to the digital information revolution. On one level, this needs no explanation as it touches every level of modern life and is clearly continuing at pace; however, its importance for an organisation such as the National Library of Scotland cannot be over-stated. As information, knowledge and creativity of all kinds - film, music etc. as well as books and journals - are increasingly produced electronically ('born digital'), new, challenging questions emerge which NLS is actively addressing: How do we collect this material? How do we preserve it for future generations? How can people find what they need and use it?

In order to collect digital material the key issue at present is electronic Legal Deposit. There is an urgent need to implement the 2003 Legal Deposit Act which permits NLS and other UK Legal Deposit Libraries to collect a copy of everything published electronically, just as the Library and its predecessor have been able to do for printed publications since 1710. The Department of Culture, Media and Sport is currently working on this at a UK level but it remains a concern that draft Regulations have yet to be published nine years after the Act was passed. Meantime, we have been working with the British Library and the National Library of Wales so that, collaboratively, we will all be ready to collect material when the appropriate regulations are approved.

Techniques to preserve digital media are much less well understood and developed than those for paper. As a result, while libraries like NLS contain millions of pages of paper dating back centuries, Scotland has already lost forever much valuable digital information (examples include websites from the 2005 Edinburgh congestion charging referendum and the first websites of the Scottish Parliament itself). The solution to this issue, which NLS is working to resolve, lies in collaboration at various levels - especially internationally.

NLS has a vision that all the published cultural and information resources of Scotland should be available to all who can benefit from them - subject of course to the essential protection of the rights of copyright holders. NLS sees the scope for developing a national digitisation strategy for our cultural heritage. Much, but by no means all of this published heritage is held in national institutions such as NLS and the National Records of Scotland, while local archives, libraries and museums as well as universities, professional and private collections also hold valuable and unique materials. A national strategy to digitise all this material (again subject to copyright) would put Scotland in the forefront of international best practice, providing a resource for the public and researchers in Scotland and across the world showcasing Scotland's rich cultural heritage.

NLS also has ambitions to develop a Sound Archive for Scotland which Scotland still lacks (the UK Sound Archive is managed by the British Library in London). A major consultation document into sound preservation identified that NLS should lead the development of a Scottish Sound Archive which has the scope to ensure that Scottish content (for example, Gaelic material) is collected comprehensively, and NLS is working with partners to develop this proposal into a viable project. As with other media, digital has become the principal

format for the storage and dissemination of sound (music, speech, radio etc) and we must anticipate the need to collect new formats in the future as technology continues to develop.

5. Comments on the Bill

Turning then to the NLS Bill itself, these opportunities demonstrate why the functions outlined in the Bill are so important to the Library. Our work will increasingly involve participating in networks, collaborating to develop best practice and ensuring that this is made available throughout Scotland (for example, on digital preservation); a legal basis for NLS to provide leadership and promote collaboration in Scotland is vital for NLS to maximise its contribution to Scottish society in the long run. We are therefore pleased with the drafting of the functions of the National Library in such broad terms in Section 2 of the Bill, which should provide a sound statutory basis for NLS to play its full part in the educational, economic, intellectual and cultural life of Scotland in the future.

The inclusion of a statutory Ministerial power of direction has attracted some attention, both within NLS and by other educational and cultural bodies. We note that it is unusual for such a power to apply to a registered Scottish Charity. Like other national collections institutions, NLS has a mandate that spans decades and centuries and in an ideal world, NLS would have preferred to avoid the introduction of such a power in law. Nevertheless, NLS recognises that the Bill includes substantial restrictions on the Ministerial power of direction which have been extensively discussed with the Trustees of the Library. We therefore do not seek the removal of provisions relating to this power. We recognise that in any case, the Scottish Government inevitably has great influence over the Library through its provision of Grant-in-Aid; like all NDPBs and other public bodies, it is entirely reasonable that the Scottish Government expects NLS to take full account of its priorities. We are also reassured by the Office of the Scottish Charity Regulator that this power does not jeopardise NLS's charitable status (through the Charity **Test (Specified Bodies)** (Scotland) Order **2006**). It is essential that this status continues and that the Trustees of the reformed board continue to meet the requirements of charity law through their independent stewardship of the Library.

We also welcome the reform of the governance arrangements that were enshrined in the 1925 Act and agree that it is timely to modernise the legal basis of the Board. Both the size of the current Board (32 members) and the prescription of ex-officio places are now anomalous and NLS agrees that a smaller Board, appointed on merit and with fixed terms, would improve governance.

We have some concerns, however, that the modernised Board should not be *too* small. Paragraph 2(1) of schedule 1 to the Bill allows for between 7 and 14 members of the Board (including the Chair). Our current Trustees have expressed concern that the smaller end of this scale would not allow the breadth of expertise required to be represented on the Board, nor would ensure that the reformed Board maintains the appropriate level of engagement with and credibility among the full range of stakeholders. NLS would therefore like to see this provision amended to specify a larger minimum size for the Board.

6. Conclusion

To sum up, NLS therefore welcomes the Bill and the provisions contained in it, other than the minimum size of the Board as stipulated in paragraph 2(1)(b) of schedule 1. Our Trustees fully accept that the time is right for changes to the Library's governance and that the functions of the Library are set out appropriately in the Bill.

Submission from the Scottish Library and Information Council

The Scottish Library and Information Council (SLIC) is the advisory body to the Scottish Government and Scottish Ministers on library and information matters. The Council was established in 1991 to create an organisation to support and lead strategic development for all library and information services in Scotland. SLIC members include local authority, higher education, further education organisations, NHS Trust library services as well as other specialist library and information organisations, including the National Library of Scotland.

SLIC welcomes the opportunity to comment on the Bill. As advisory body for all libraries in Scotland, SLIC is pleased that revision of the 1925 legislation is before Parliament to bring the governance standards of the National Library of Scotland into line with those other NDPBs. This legislation should ensure that NLS is fit for the future.

SLIC will be happy to work with Scottish Government and the National Library of Scotland to assist them deliver their functions. It is crucial that NLS is able to add value to the library sector in Scotland, without confusion to the library community and the general public or through duplication of effort with other bodies.

Overall SLIC feels the Bill provides a platform to deliver, but take this opportunity to comment on a few minor aspects of the Bill and its possible implementation.

Section 2

2 (d) Promotion between, and the adoption and sharing of good practice by other persons providing library and information service.

SLIC is clear that the NLS has a leading partnership role in collaboration in relation to its collections and making access to them should be a priority. Scotland has a good track record of collaboration, in particular through the work of SLIC and others. For example NLS, SCURL (Scottish Confederation of University and Research Libraries) and SLIC worked together to develop the Scottish Collections Policy which provides a framework for collaborative retention of Scottish Material in the NLS, university and public libraries. NLS are also partners in the Digital Access Scotland strategy and memorandum.

SLIC is the advisory and library development body and we would advocate that NLS should work with SLIC to ensure that there is not duplication of effort. NLS should support libraries in other sectors through easier access to resources and the significant expertise it has in preservation, and its knowledge base including the international showcasing of its Scottish Collections. In the context of the wider library community – it is a relatively small but fundamental part of the landscape. NLS attracted 70000 visits to reading room which is a welcome and significant improvement in recent years. In comparison, university libraries attracted over 12m visits and public libraries attracted 28m physical visits, with 11.6m virtual visits and 27.7million issues. NLS should ensure that in its implementation of any subsequent act, it recognises this and works in partnership with others in the sector. NLS should continue to work with SLIC to encourage collaboration, which to deliver joint outcomes is an important part of the Public Service Reform agenda.

Section 6 – Faculty

SLIC supports the reduction in the number of trustees as a whole and those representing the Faculty of Advocates and bringing it more into line with modern governance practice. In particular, the clarity between operational matters in relation to the Faculty of Advocates and their representation on NLS Board as a trustee.

We welcome the operational agreement intended for this relationship, but not having seen it would recommend that it should include clear focus on functions in relation to bill, arbitration and dispute resolution, timescale and review process.

There may in future be issues around digital licensing which mean that agreements are acceptable now but may not for the future. It is crucial that NLS controls acquisition and its format, licensing and disposal. The agreement with the Faculty should focus on access collections. It should not be based print on which this historic agreement is based.

Section 8 – Direction

There is a delicate balance between accountability, independence and the core neutrality and ethical functions of a library. Libraries should be without political control in their main functions to provide free access to information. SLIC is pleased that this current Bill has taken this on board. SLIC would advise that the power of direction would only be used if there was a compelling operational matter requiring Ministerial attention and where all other levers of influence had been exhausted and that it would be seen as a measure of last resort to ensure that public bodies act effectively and efficiently on an operational level.

Schedule

Membership of NLS

Lowering the number of trustees is in line with good practice.

From our experience as independent advisory body, which currently has 13 trustee and a maximum of 15 who can serve for a maximum of 2 sequential three year terms, including the Chair. This does work well works well but a smaller number of trustees can lead to difficulties in being quorate and potential issues of transparency and knowledge.

Therefore SLIC is of the view that the lower number suggested is too low and 9 trustees might be a better number given the range of NLS stakeholders.

It is also necessary to ensure that trustee recruitment strikes a balance between experience and a balance of skills.

Committees

The Bill recognises that good governance of NLS will require the involvement of a range of partners and stakeholders. Implementation of the legislation should ensure that there is no duplication from wider library community.

SLIC is the most effective way of ensuring that the functions of the NLS reach the wider library community in local government and higher and further education, and to widen access.

Procedures

SLIC is pleased that trusteeship of the NLS appointment of board members by advertisement and "fair and transparent process of selection based on merit" is welcomed and that it will be agreed by Government.

NLS have an automatic place on the Board of SLIC since its establishment. Reciprocation has not been possible due to 1925 governance structure. SLIC believes that greater collaboration and co-operation would be enabled through a reciprocal agreement for SLIC on the NLS Board, should this not happen by due process.

Charges for access to collections

SLIC has concerns about the potential impact of any charges on the ability of NLS to deliver its core functions. SLIC advises that any proposals for charging need to demonstrate that they do not conflict with NLS' function of making the collections accessible to the public and to researchers (section 2). The introduction of any new charging regimes should be agreed with the Scottish Government. Scottish Ministers should continue to implement a policy of general free access to the national collections.

Digital Legal Deposit

Whilst the intent of this Bill does not cover legal deposit, SLIC remains concerned that the 2003 Act has not been implemented and digital legal deposit giving real cause for concern for future collection of Scotland's culture and heritage, not least given the current licensing and copyright challenges which all libraries are facing. It may be that at some point in the future consideration may need to be given to this aspect of the libraries functions as it relates to UK legislation.

Summary

The introduction of the Bill is a huge step forward for the NLS, providing focus on function and form and whilst a procedural Bill, is important for the library. SLIC looks forward to working with Scottish Government and NLS on its implementation.

Scottish Parliament

Education and Culture Committee

Tuesday 7 February 2012

[The Convener opened the meeting at 10:04]

National Library of Scotland Bill: Stage 1

The Convener (Stewart Maxwell): Good morning, and welcome to the fifth meeting of the Education and Culture Committee in 2012. I remind members and those in the public gallery that all mobile phones and other electronic devices should be switched off at all times and not just be switched to silent, because they interfere with the sound system.

We have received apologies from Joan McAlpine, but I am glad to welcome George Adam as the Scottish National Party committee substitute.

The first item on our agenda is to begin scrutiny of the National Library of Scotland Bill, which was introduced on 26 October last year. The Education and Culture Committee has been designated as lead committee for the bill and will report on its general principles by early March.

The committee will take evidence from two panels of witnesses today. First, I welcome from the Scottish Government Colin Miller, head of the public bodies policy unit; Carole Robinson, the bill team leader; David Seers, head of cultural excellence; and Greig Walker, of the legal directorate.

Before we begin taking evidence, Marco Biagi has a declaration of interest.

Marco Biagi (Edinburgh Central) (SNP): I am a member of the board of the National Library of Scotland under the current governance arrangements, which is a registrable interest.

The Convener: Thank you for that, Marco.

I invite Carole Robinson to give us a brief opening statement.

Carole Robinson (Scottish Government): The main aim of the bill is to modernise the governance arrangements of the National Library of Scotland, which date from when the library was established in 1925. Stakeholders have expressed broad support for the need to reform the arrangements, which are out of line with those that are expected of modern public bodies.

The NLS is one of Europe's major research and reference libraries, offering world-class collections and a range of modern library services. It plays a vital role in bringing Scotland's history and culture to life not just for Scottish but for international audiences.

The way in which the NLS operates is rapidly evolving, and the bill is designed to help the NLS to realise its ambitions as a modern organisation that can meet the changing needs of users. There are 2.5 million calls on the NLS's digital library every year and its users view online and free of charge electronic versions of over 1.5 million items from the collections. Users can also access the physical collections by visiting the reading rooms; around 70,000 people do so every year. Committee members who visited the NLS last week will appreciate the strengths and reach of the NLS's collections and the great work that is done to enable access.

The NLS's founding legislation does not set out the library's functions, which have evolved over time. The functions that are set out in the bill reflect and clarify the role that the NLS plays in relation to its collections, access, research and collaboration. The Scottish Government recognises that it is important that the legislation allow the NLS to keep pace with the requirement to preserve and develop our national collections for generations to come. The bill was therefore designed to be sufficiently flexible to allow for future changes in how the library will operate and how the collections will develop.

The bill also recognises the importance of the Faculty of Advocates's law library and the on-going relationship between the faculty and the NLS. The faculty gifted its non-legal material to the nation in 1925, which essentially allowed for the establishment of the NLS. The faculty has an on-going role in managing Scotland's legal publications and the bill seeks to reflect and enhance the relationship between the NLS and the faculty, especially in relation to the operational arrangements for legal deposit.

Changes to the governance arrangements for the NLS will support the overall modernisation process. The bill proposes to reduce the size of the board, to remove the current system of reserved places and to ensure that all members are appointed by Scottish ministers based on merit and selection. Those measures will bring the NLS into line with current public appointment practice following the Nolan principles.

We will be pleased to answer questions.

The Convener: Thank you for that, Carole. It was very helpful. I remind members to indicate whether they have supplementary questions on any areas.

Neil Bibby (West Scotland) (Lab): The first question is on membership of the proposed new body corporate. I note that it is proposed that there will be between six and 13 members. A written submission from the Society of Antiquaries of Scotland has said:

“A recent report for OSCR indicated that charities with low numbers of trustees are the most likely to fail, and that those with 9 or more members performed best.”

What are your thoughts on the number of members that should be on the board?

Carole Robinson: It might be helpful to explain how we decided on having six to 13 members plus a chair. A board of 32 members, which the National Library of Scotland has at present, has been considered by many, including the the NLS itself, to be very unwieldy; many of the 32 members do not attend the board meetings. We considered the relative sizes of other boards of cultural bodies, including National Museums Scotland, which has between nine and 15 members, including its chair, and National Galleries of Scotland, which has between seven and 12 members, again with a chair. It is important that Scottish ministers reflect on the fact that they do not want to hinder the operations of the board, but similarly there needs to be balance in terms of its size. The bill provides for flexibility in increasing by order the minimum number of seven members. We are considering the matter further and will happily reflect on it at stage 2.

Neil Bibby: You said that membership of the board will be based on merit. How do you envisage members' skills and expertise being scrutinised? How will equal opportunities be considered in appointments to the new body corporate?

Carole Robinson: On scrutiny, the bill proposes that appointments be made by Scottish ministers and that the appointments will be regulated by the code of conduct that has been set out by the Public Appointments Commissioner for Scotland, which contains very rigorous rules and regulations about the appointment process. The code covers aspects such as diversity and equal opportunities, and we are confident that that will be captured because of the oversight and regulation of the process that we will follow.

We have given careful thought to the skills mix. We have worked extensively with the chair of the NLS board, Professor Anderson, and we have been consulting our public appointments team in thinking about the blend of skills that we would like members to have, which needs to reflect how the NLS will deliver its functions. We have been developing a so-called skills matrix, which is part of the code of the Commissioner for Public Appointments. We have specifically highlighted skills and knowledge in a culture environment, in

the library sector, in research, in education and in digital technology. That approach will enable access to a diverse range of audiences, which is in line with the library's functions.

Neil Findlay (Lothian) (Lab): How will you attract ordinary Joe Public library users, who may not necessarily have the skills that you mentioned but who will be very representative of the person in the street who uses the library for whatever reason?

Carole Robinson: As part of the appointments process, due regard is given not only to specific knowledge and specialist areas but to a full blend of skills. Over the past few years, the Public Appointments Commissioner has made great inroads in trying to appoint to boards from among a range of people in society—not only from among those who have professional expertise. For instance, we would expect board members to have a number of generic skills that anyone can have in terms of their involvement in the decision-making process and strategic planning of the library, such as experience in corporate governance in relation to board membership and the ability to be part of a team, which is a basic requirement.

The Convener: The Scottish Library and Information Council and others have expressed concern in their submissions that the bill does not set out in detail the skills that will be necessary to be a member of the board. If that is not in the bill, how can you ensure that experts from the library and information sector will be interested in being appointed?

10:15

David Seers (Scottish Government): The important point that Scottish ministers will have to bear in mind is that appointments that they make to the board should allow the library to deliver its functions. As Carole Robinson said, appointees will have a range of expertise, including expertise in library services. A general position that the Scottish Government is taking is that it wants to give maximum flexibility to recruit the people that the library needs, given that it might be 80 years before an opportunity arises to amend the legislation again.

We have the comfort of the functions in the bill. Everything comes back to the functions and to delivering them. The board needs to include a range of skills that will enable it to deliver those functions.

The Convener: I return to Neil Bibby's original question. The minimum number of members will be seven, including the chair. Do you really believe that such a small board—even the other boards that Carole Robinson mentioned have a

slightly bigger minimum size—could cover the necessary range of skills to run the National Library properly?

David Seers: The bill provides for additional expertise to be brought into the board's operation through the ability to co-opt people who are not board members on to committees.

The Convener: I am sure that we will return to that.

Liam McArthur (Orkney Islands) (LD): Neil Bibby mentioned the view of the Office of the Scottish Charity Regulator about the most viable board structures. What the bill proposes still falls two or three members short of the comparators that Carole Robinson mentioned. Is there an argument for saying that OSCR's figure should be the baseline, although ministers would still want the flexibility to add or co-opt people as necessary? I struggle to see why you have gone as low as you have, albeit that flexibility is available to have additional board members or to co-opt people.

David Seers: As Carole Robinson said, we took care to look at comparators from among similar organisations.

Liam McArthur: You have chosen, however, a number that is lower than even the lowest comparator.

David Seers: When the chair is included, I am not sure that that is the case.

Liam McArthur: The National Museums Scotland board has seven members plus a chair.

David Seers: We hear the arguments that are being made. As Carole Robinson said, we are reflecting further and will come back to the issue at stage 2.

The Convener: Before we move off the subject, I will ask a question that has not been raised so far. How do you envisage planning the transition from the old board of 32 to the new board, whose number of members is yet to be determined but will certainly be a lot smaller? What transitional plans are in place?

Carole Robinson: We have explored that carefully with the NLS's chair. Scottish ministers are keen for business continuity not to be disrupted and for the arrangements to minimise disruption as much as possible. We are considering the matter with the NLS and our public appointments team, which is why we have drawn up a skills matrix early in the process. The idea is that a small number of existing trustees who have the skills and meet the requirements that are set out, which depend on delivering the functions, might be able to form the nucleus of the board under the arrangements that are set out in the bill.

The Convener: You refer to "a small number". Will you be more precise about the number that you are thinking of? A small number could be one, but other small numbers are three and four.

Carole Robinson: We are still considering the number with the NLS's chair, but the number could be about four.

The Convener: I am just trying to get a handle on how the transitional arrangements will work.

David Seers: It is worth adding that we must bear in mind the wishes of the individuals concerned and discuss whether they wish to continue as members.

The Convener: I understand that. I am not looking for names; I am just asking about the process.

David Seers: Such discussions might have an impact on numbers, too.

The Convener: I am sure that we will return to the subject.

Liz Smith (Mid Scotland and Fife) (Con): Initially, there were a few concerns about charitable status, as there have been in relation to other bodies. What concerns did you ask to be addressed before you were comfortable that there are no issues with the library having charitable status?

Carole Robinson: Do you mean in relation to the power of direction?

Liz Smith: Yes.

Carole Robinson: I wanted to be clear about that.

We gave careful thought to the issue early in the process. Prior to the consultation, we met OSCR, our charity law policy team and various legal officials to consider the approach fully. Although we understand that it is legally possible to have the power of direction and that it is compatible with the charitable status that the library enjoys, we were aware that various stakeholders were likely to raise concerns. The proposal in the consultation was along the lines of having a power of direction that would be restricted in relation to various areas of curatorial judgment. After we published the consultation, we did an awful lot of thinking about how that should be carved out on the face of the bill. To address those concerns, much consultation has taken place—both internally and externally.

Liz Smith: If I am not mistaken, one of the criteria that must be met in order to guarantee charitable status is about the constitution of the body. If there is specific mention of a Government minister's involvement, there is a problem. Can you give us an assurance that that is definitely not a problem in this case?

Carole Robinson: That is not a problem. The Charity Test (Specified Bodies) (Scotland) Order 2006 exempts the National Library and the other national collection bodies from the usual requirement in the Scottish charity test to which you refer: that a body's constitution must be free from reference to ministerial direction. As I say, we consulted long and hard with lawyers and OSCR, which has welcomed the special protection that we have provided in the bill to safeguard the aspects of the NLS's work that are special to running a national library.

Liz Smith: I have one final question. You seem to be fairly comfortable that ministers would be very much at arm's length and that the power to interfere would be used only as a final resort. Can you give a scenario in which ministers would have to interfere?

Carole Robinson: I ask Colin Miller to say a bit about that.

Colin Miller (Scottish Government): In essence, the statutory power of direction in relation to public bodies is very much a last resort. The thinking behind it is that it is to allow ministers to step in if they consider it appropriate to do so in the event of serious operational or organisational failure: in other words, when something has gone seriously wrong and all other attempts to resolve the matter without use of the statutory power have been unsuccessful. The bill makes it expressly clear that the power of direction over the National Library cannot be used in relation to cultural or curatorial matters. That is the same approach as was taken to Creative Scotland in 2010. The power would be used in the event of serious operational or organisational failure or if, for some reason, a particular body was not prepared to comply with an aspect of general Government policy that applied across the public sector.

Liz Smith: I am sorry to be a nuisance. You have been specific about two categories of issues on which ministers would not interfere and you have suggested three categories of issues on which it is possible: administrative, operational and general. What might fall into that "general" category?

Colin Miller: The Government has, for example, a policy of no compulsory redundancies across the public sector, including public bodies for which the Government is responsible. It is entirely hypothetical to say that the power over the National Library could be used in relation to that policy, although it is the sort of general Government policy that applies to a group of public bodies.

I would not for one moment suggest that there is any suggestion that the power of direction will be used for that reason. Liz Smith asked about the

sort of area in which it might be used. If a body refused, without good reason, to comply with some general aspect of public policy that the Government had applied across the public sector, ministers would be allowed to use the power as a last resort.

Liam McArthur: You have provided some reassurances on charitable status and the views of OSCR, which is helpful. We will have an opportunity to tease that out with the next panel.

You talked about the comparators that you used. One of those that you used with regard to membership of the board was National Museums of Scotland but, in its submission to the Government's consultation, NMS raised a number of concerns about the power of direction. It said:

"As far as we can ascertain, there is no National Collections body in Scotland or the UK that has a provision regarding Ministerial Powers of Direction in their founding legislation."

Therefore, regardless of the reasons for including such a provision and of the fact that you say that it would be used only in extremis, there will be a question about whether its inclusion is appropriate. The National Library of Wales has intimated that an annual remit letter and regular monitoring mechanisms might suffice to deal with the sort of issues that Colin Miller has touched on. In the light of such concerns, why was it still felt necessary to include a power of direction in the bill?

David Seers: I do not want to detract from your question in any way, but I point out that the responses that you referred to from the National Museums of Scotland and the National Library of Wales were made before the bill was published, so they do not take account of the significant safeguards that have been built into it.

Liam McArthur: That is fine, but NMS questioned the need for a power of direction at all, so regardless of how you have restricted it, for that organisation it is an issue of principle.

David Seers: It is an issue of principle. The principle is that, with a public body that is financed primarily by the taxpayer and which is accountable to the Scottish ministers and the Parliament, the Government believes that there should be a power of last resort. Such a power has been applied in very many cases in which public body governance has been set up. Colin Miller can say a bit more about that.

We tried to find the right balance in the accountability mechanism by putting in safeguards for the library's curatorial, creative and cultural independence. In doing so, we followed the same principles that were adopted in the provisions on Creative Scotland and in certain ministerial order-making powers in the Public Services Reform

(Scotland) Act 2010. Would you like to say a bit more about that, Colin?

Colin Miller: Yes. The national collections, including the National Library, were established as non-departmental public bodies, of which there are 33 or so in Scotland. Most of them were established, or were put on, a statutory basis in comparatively modern times, whereas the founding legislation for all the national collections is relatively old. With the great majority of NDPBs that have been established as statutory bodies since 1990, the practice has been to provide specific statutory powers of direction for ministers. Since 1990, such powers have been provided in relation to 17 of 21 bodies that have been established as statutory bodies. Since devolution, the figure is 11 out of 14.

There are exceptions, which include bodies such as the Scottish Criminal Cases Review Commission, the Scottish Legal Complaints Commission and the Police Complaints Commissioner for Scotland, in relation to all of which there are obvious reasons for ministers not to have such powers. The norm, certainly since 1990, has been for the relevant legislation to include powers of direction, along with appropriate safeguards—if they are needed—to reflect the fact that NDPBs operate within an accountability and governance framework that is set by ministers. Ministers are ultimately accountable to the Parliament for the services that NDPBs provide and for their stewardship of public funds.

10:30

As one or two people have said in written submissions and today, ministers have a variety of levers. The power of direction is one lever, and it is very much a last resort, when all else has failed and ministers think that they have a need and duty to step in.

Liam McArthur: Have such reassurances allayed the fears that National Museums of Scotland expressed?

Colin Miller: I think that there have been six responses to the committee's call for evidence. The three respondents who mentioned the power of direction, including the National Library of Scotland itself, acknowledged the way in which the power has been qualified and the fact that it would not apply to the NLS's curatorial functions. National Museums of Scotland did not respond to the call for evidence, so I hope that the concerns that it raised in response to the original consultation have been allayed, at least in part.

Liam McArthur: There remains concern about how the restrictions will apply, so there is still a job of work to do to provide clarity. We might return to the issue at stage 2.

Clare Adamson (Central Scotland) (SNP): The witnesses talked about curatorial and cultural independence. What about financial independence, in relation to the likelihood of the NLS using its powers to make charges?

David Seers: Are you referring to the general power to make charges, in schedule 1?

Clare Adamson: Yes.

David Seers: One of the functions of the library—I apologise for sounding like a broken record when I keep coming back to the functions, but the principle is important—is to make the collections accessible to the public. In setting any charges, the library would therefore have to demonstrate that it was still fulfilling that function.

It might be legitimate for the library to levy a charge for an added-value service. For example, the collection includes a large number of maps, many of which have been digitised. Additional work might be required to produce a high-resolution copy or to make a map available in response to a specific request. It would be legitimate for the library to recoup some of the costs of providing added-value services such as that.

On the library's independence in making such decisions, under the Scottish public finance manual, which covers all public bodies, if new charges are proposed, they must be agreed by the Scottish Government directorate and by ministers.

As we said, the library is both a public body and a charity. As part of fulfilling its charity tests—not the tests that have been disapplied by legislation, which we talked about—it must provide public benefit. That is a further check on what the library can do.

Clare Adamson: Do you envisage a charging mechanism being used that is similar to the approach that National Records of Scotland takes to the Scotland's people and Scotland's places websites?

David Seers: The example that I gave was about one-off, specific requests, outside a general scheme. If the library was proposing to make a web service generally available and charge for it, it would have to go through the process of gaining agreement that I described.

Marco Biagi: The functions of the library will be set out in statute for the first time. Some of the objectives that the NLS will be given seem diffuse. For example, they include

"promoting understanding and enjoyment of the collections ... promoting the diversity of persons accessing the collections",

and "sharing of good practice". How are those functions conceptualised? More important, how

will the Government measure the library's success or failure in fulfilling them in the coming years?

Carole Robinson: It is perhaps important to note that the changes build on what the National Library already does. Although, as you rightly said, the functions are not stipulated in the National Library of Scotland Act 1925, they have evolved over many decades and collaboration and the sharing of good practice are commonplace in the library today. The bill gives a statutory basis to and recognition of those functions and allows them to be measured on behalf of Government. There are a number of mechanisms that we can use to evaluate how well that is being addressed, such as regular meetings between Scottish Government officials and the library, and the library's corporate plan, and we would be looking to have an annual report on how the library is delivering its functions.

Marco Biagi: Would we expect the Government to attempt to set benchmarks or encourage the library to reach certain targets?

Carole Robinson: I do not know about benchmarks as such, but I think that we need to recognise that the operational decisions that the library is engaged in are very much for it to decide. We acknowledge that it has the expertise that is required to enable it to run itself, including dealing with the specific functions that you referred to. However, the annual report that I mentioned will give us an opportunity to highlight any areas of concern.

Clare Adamson: With regard to the changes in the landscape due to digital media and the fact that the regulations on arrangements for legal deposit have not been finalised, do you believe that the bill future proofs the library against possible changes that might arise?

Carole Robinson: Essentially, the bill addresses the arrangements for the legal deposit of printed material. As you rightly say, there are movements to collect a number of works, including works that would be covered by legal deposit arrangements, by electronic means, mainly online.

The bill needs to be read in association with the Legal Deposit Libraries Act 2003, which governs the arrangements for the delivery and receipt of printed materials. It allows for the passing of regulations at a UK level with regard to electronic delivery. The bill does not wish to pre-empt those regulations, although it allows for that regime to take effect.

The Convener: When we visited the library last week, we briefly discussed some of the issues and problems that are associated with material in digital format, including issues to do with e-publishing. How do you envisage e-publishing being dealt with by the National Library? People self-publishing on various formats is a new but

growing phenomenon. Some of those books are, effectively, international bestsellers, yet there is no hard copy.

David Seers: That might be a question that is better addressed to the library, if you want a detailed answer. However, the general purpose of the bill is to give maximum flexibility over the formats in which material can be collected. For example, we refer to "objects", not "books".

The Convener: So the word "objects" would cover books that were self-published in an electronic format.

David Seers: My legal adviser informs me that section 9 defines "object" as including

"a thing in electronic form".

The Convener: It does indeed. I apologise. I have not seen that form of words before. Is "thing" a legal term?

Greig Walker (Scottish Government): It is the broadest word that we could use in that context. It is a plain word to capture any thing.

Jean Urquhart (Highlands and Islands) (SNP): I thoroughly enjoyed our visit last week. I recognise the change to the National Library collections over the years and think that it is fantastic that the public have access to the collections. The figure that you gave is evidence that that has been a good thing and that people are taking up the opportunity.

Could there be more public access to the Faculty of Advocates collections? Could that be included in the legislation rather than in a memorandum of agreement?

David Seers: The faculty library is a hybrid—it is a private, historic collection that is paid for by the members of the faculty. It has certain rights to request and claim material under legal deposit and therefore, as a fundamental principle, reflected in the memorandum of agreement, it will make items that have been collected under legal deposit available to the public. That is an important principle that the faculty has articulated and set out.

The bill is designed to provide for the governance of the National Library. That is its principal concern, but section 6 also allows for more detailed arrangements to be made. The committee has seen the latest memoranda; there is a further one in development to do with deposit arrangements.

The principle of the bill is to set out the governance of the National Library and tie in its relationship with the faculty.

Jean Urquhart: In effect it would not be within our gift to legislate in any case. Is that right?

Greig Walker: We are into issues of scope there, which I believe are for the parliamentary authorities. Essentially, what section 6 is doing is picking up from the 1925 act, which indicates that there will be joint regulations on a limited access to some of the faculty's collections. That will now be picked up under the joint arrangements under section 6 of the bill.

The Convener: I know that I am looking slightly further forward here, to stage 2, but I turn to evidence that we have received in relation to possible amendments. For example, the faculty suggested amendments to section 5(3). Even at this early stage has the Government considered some of the evidence that has been received and decided not to take forward amendments suggested by others?

David Seers: We are keeping an open mind on the proposed amendments and we are discussing with the National Library and the faculty the issues that have been raised. I would not want to go further at this stage, particularly in the absence of the cabinet secretary, and say which ones we have said yes or no to. I hope that the committee will bear with me on that.

The Convener: That is entirely reasonable. I wanted to see whether there are any areas that have been ruled out for amendment, but you met my expectation that you have an open mind.

I thank the witnesses for coming.

10:43

Meeting suspended.

10:46

On resuming—

The Convener: We move on to this morning's second panel. I welcome Andrea Longson, who is senior librarian, and Mungo Bovey QC, who is keeper of the library, both from the Faculty of Advocates; Elaine Fulton, who is director of the Scottish Library and Information Council; and Martyn Wade, who is national librarian and chief executive, and Professor Michael Anderson, who is chairman of the board of trustees, both from the National Library of Scotland.

Some of the panel heard some of the earlier evidence. We will go over much of the same ground in our questions to this panel. If no one has any opening remarks, we will go straight to questions.

Neil Bibby: My question is about membership of the new body corporate, as proposed in the bill. The National Library of Scotland and the Scottish Library and Information Council are among a number of bodies that have suggested that the

number of members that has been proposed for the body corporate is not large enough. Would the NLS and SLIC expand on that? Does the Faculty of Advocates have a view on the number of members of the new body corporate?

Professor Michael Anderson (National Library of Scotland): My trustees took the view that seven members would not be enough to cover the range of skills and stakeholder interests that they believe should be present in an effective board, given the diversity of what the National Library does and the need for people who can help the library with good governance. When one draws up even the beginnings of a draft skills matrix it is difficult to see how everything that is required could be covered by seven members. Although it may be that we could bring in some skills through committees, a small board should not have too many committees or it will end up in a difficult situation. When we considered the range of skills that we think are necessary, our view was that ideally the board would, as a norm, have 12 or 13 members, allowing for the fact that at times there may be vacancies.

Mungo Bovey QC (Faculty of Advocates): The Faculty of Advocates agrees with that. A range of abilities and experience are necessary. However, although I recognise that it is useful to have non-trustees on the board, according to paragraph 7(3) of schedule 1 of the bill those people will not be entitled to vote at meetings. To be frank, if you want good people to come along and take an active part in committees, it is a little insulting to say, "You can come and give us your words of wisdom, but you can't vote". That would be a mistake: it would be disrespectful and it would reduce the quality of people who would be willing to serve in committee posts.

Elaine Fulton (Scottish Library and Information Council): SLIC agrees for exactly the same reasons. In order to ensure that the library can meet its objectives as a charity and as a non-departmental public body, we must enable the maximum number of trustees to participate in meetings. If there are too few, governance becomes very difficult.

Neil Bibby: We have dealt with the number of members on the body corporate. With regard to the skills and expertise of members, I note that the bill does not specifically state what the criteria should be. What are your views on that? How should equal opportunities be considered with regard to membership of the body corporate?

Professor Anderson: Like Carole Robinson, I am not worried about issues such as equal opportunities in relation to the new board because the Public Appointments Commissioner's procedures should adequately ensure that appropriate measures will be put in place. I have

been in close contact with the commissioner for a number of years; I respect her views and believe that she is pushing public bodies very much in the right direction.

With regard to the range of skills, and the variety of things that the NLS does, strong feelings have emerged in the evidence that there should be adequate representation—or at least a presence—of people with library skills. One clearly needs people who know not only about the librarian's view of how a library and modern materials should be used, but about the views of the people who would use those things, which may not necessarily be the same. We also have film and digital materials.

Inevitably, the board will need some people who have a really good understanding of risk and auditors, and who can grill investment advisers appropriately on the library's investments. It will also need people who are in touch with local authorities, and people who are involved with education more generally. Such a range of skills would be very difficult to fit in a board of seven, particularly given that one of the members will be nominated from a list to be provided by the dean of the Faculty of Advocates.

The Convener: Does anybody else want to comment on that question?

Elaine Fulton: As an advisory body, SLIC would like—and expect—there to be a balance of library skills and professional management skills on the board. As Michael Anderson said, that would be almost impossible in a board of seven.

The Convener: Does Neil Findlay want to come in?

Neil Findlay: I do not really want to make a point: we discussed last week with Mr Anderson and Mr Wade the issue of widening out representation to users, so you can happily move on, convener.

The Convener: Thank you. Liam McArthur will go next.

Liam McArthur: A number of the witnesses were present for the first evidence session. One comparator that was mentioned with regard to how the number of board members would be arrived at was National Museums of Scotland, where the minimum number is seven plus a chair. Can we draw any lessons from that about the skills reach and diversity that are needed, with regard to the number of people who have been on that board at any given time in the past few years? Does it indicate that we may need to consider a figure of around 12 or 13 for governance to be managed and for the board to cover the range of skills that we have identified?

Martyn Wade (National Library of Scotland):

Each of the national collections—although we are grouped together—has a very distinctive role and purpose, and faces different issues.

Like all libraries, the National Library of Scotland is going through an important period of change. The digital agenda is changing fundamentally the basis on which libraries exist.

Direct comparisons can be general; reflecting an institution's needs is perhaps more significant. The scale of changes, the scale of the challenges and the opportunities that lie ahead for the National Library reinforce the need for broader representation on the board. Digital collecting is hugely important for the library and is more significant for us than it is for the other national collections. There are important similarities, but the differences are perhaps more significant.

Liam McArthur: The range that we have been given for the board's size goes up to the figure of 12 or 13 that Professor Anderson suggested would be ideal. What is the risk of having the minimum as low as it is? Is it that the temptation will be to sit at or around that level rather than to exploit the opportunity to go up to the maximum?

Professor Anderson: It will be for ministers to determine the number of members to be appointed within the range. My trustees' view is that the bottom of the range does not allow for an adequate number of members to bring appropriate skills and stakeholder interests to bear in the board.

It is important that the library has the confidence—as it does at the moment—of a number of bodies, including the universities, the library sector, people who are interested in the screen and the media—because we have the screen archive as well—and people in local authorities. To an extent, that confidence is intimately linked to those people's feelings about board members. The issue is not just expertise, but is about a feeling that people who can speak for—that is the wrong term; that is not what the board is for—or, rather, are aware of stakeholder groups' interests are on the board.

Liam McArthur: The convener probed the previous panel on minimising the disruption in the transition period. It is perhaps difficult for you to speak on behalf of each trustee, but are the concerns that have been raised likely to influence individuals' decisions on whether to remain on board through the transition to provide continuity and the range of skills?

Professor Anderson: Ultimately, it will not be for me to determine the matter, but my discussions with a number of board members suggest that they will be willing for at least one further year to bring their skills and experience to the board. In

one sense, the board will not be new; it will simply be a reconstitution of the board. The kind of people who would be willing and able to bring their skills and experience gives me confidence that the problem of transition would not cause me particular concern.

Martyn Wade: As the chief executive, I think that continuity is crucial. The issues in which the library is involved at the moment, such as electronic legal deposit and changes in how the library works and provides its services digitally, are moving at a swift pace. It is important to have continuity on the board to support such work and to enable informed decision making to take place. I do not want to put figures on this, but the balance of skills among the membership and continuity are important. A completely new board, with its induction and information-sharing requirements, would have a significant impact on the library. Making the transition with continuity will be important.

11:00

Mungo Bovey: As a trustee of the library, I certainly endorse Professor Anderson's points about the fact that people on the board come from particular backgrounds. That works both ways, in that they bring expertise and convey an impression to their bodies and to the outside world of confidence in the NLS. I do not have concerns that there will be transitional problems, given the points that have been made about some trustees continuing to be involved and to bring their experience to the board.

The Convener: We will move on to the ministerial powers of direction, which we discussed with the first panel.

Liz Smith: In response to Mr Bibby, Elaine Fulton rightly mentioned that one of the criteria for maintenance of charitable status is that a body must provide sufficient public benefit. Is it your concern that, with a small number of people on the board, it might be difficult to ensure that the public benefit is as widespread as it would be if more people were involved?

Elaine Fulton: The National Library must be relevant to the maximum possible number of people across Scotland, whether in universities, schools, public libraries, communities or health services. We believe that we need more trustees in order to ensure that the National Library is relevant.

If a charging mechanism or function is included in the bill, we must be clear that we are not enabling the National Library to set charges for what should be the core provision in its function. We are concerned about that. As I understand it, the bill is about future proofing the National

Library. We must be absolutely clear that proper procedures are in place to ensure, for example, that charging for access to the library to access a book or collection is not taken as a given. The library might need to charge for some things, but we must ensure that it does not charge for that basic provision.

Liz Smith: Is it therefore your advice that we re-examine some of the charitable status issues before we proceed?

Elaine Fulton: The current provisions on charitable status are sufficient. NDPBs can already have charitable status. That is not the concern; the concern is about charging members of the public. The problem is not necessarily about the board of trustees or the provisions relating to NDPBs, but about the specific issue of charging for services, which does not necessarily relate to charitable status. The public good must be part of the considerations.

The Convener: I want to press you a little on that. Are you content with the bill's provisions on the issue, or does the bill lack clarity?

Elaine Fulton: The bill is a little lacking in clarity on ministerial direction. Would you want the people of Scotland to be charged for access to the National Library? We must ensure that the bill does not allow that and that libraries of all kinds continue to have access to the heritage of Scotland, because that is what they are there to do in the widest possible way. We must ensure that a charging mechanism does not kick in.

The Convener: So you are not—

Elaine Fulton: I am not discontent with the bill, but it needs clarity. The bill is good in relation to what it exists to do, which is to set out the functions of the National Library. That is done in section 2. The concern is about implementation and how various other elements of the bill might be applied. That needs a little more clarity.

Liam McArthur: To follow up on that, you will have heard our earlier exchanges with the bill team and other Government officials on concerns about charitable status. Following publication of the bill, the NLS said that, "in an ideal world", it would have

"preferred to avoid the introduction of such a power in law"

and that

"it is unusual for such a power to apply to a registered Scottish Charity."

One official made a point about the direction of travel for ministers in the current Administration and in previous ones. We heard that powers of direction have been provided in 17 out of 20 or so cases in the past few years. However, there are specific circumstances with the National Library

that lead to concerns. NMS obviously has an issue in principle about the introduction of a power of direction. Are you able to give a little more detail on your own remaining concerns in that respect?

Martyn Wade: The main point is the fundamental principle that libraries are, by their nature, bodies that are trusted to provide unrestricted access to knowledge, information and learning, so I regret the implication that they would not be free to carry out that function without direction. The National Library of Scotland's aim to collect the entire published record and to make it available without taking a view on the content, or questioning people's use of it, is part of access to knowledge in a democratic society. That is a fundamental principle of the National Library as part of the library network in Scotland, so, as a matter of principle, anything that suggests Government influence on its operation is to be regretted.

On the other hand, we are a pragmatic organisation and, as you have suggested, we are aware of the direction of travel. As a result, we have been very careful to examine the issue and to think about what the limits on any power of direction should be in legislation. After very careful consideration of the evidence by my colleagues in the National Library and the board of trustees, we feel comfortable that there are very strong and effective restraints on that power. Naturally we know that legislation can be changed in the future so we are looking at the bill as it stands today; when we balanced the functions and the exemptions on ministerial direction, we found that ministers are able to direct only in a very small number of areas. Moreover, reversing that, we think that the protections covering the National Library's functions and what it exists to do are protected from ministerial direction. What we regret is making a principle of the ability to direct the National Library.

Given the organisation's responsibilities as a charity, the responsibilities of its board of trustees, my responsibilities as chief executive and accountable officer to the Scottish Government and our responsibility to report to the Scottish Parliament, we took the view that, with our very strong monitoring of the public resources that the library receives, we would not require additional direction. The fact that a very strong framework is already in place adds to our regret about the power of direction but, taking a pragmatic view, we think that, if there is to be such a power, the provision in the bill strikes a reasonable balance.

Liam McArthur: That was helpful. It has been pointed out that Government directs a not inconsiderable amount of public money into the NLS. Do you share the view of the National Library of Wales that safeguards that you have already

referred to, such as the annual remit letter and mechanisms for regular monitoring, should be sufficient to secure the outcomes and provide the safeguards and reassurances that ministers and the wider public are looking for without needing to go down the route of a power of direction?

Martyn Wade: That would depend on your definition of the power of direction. For example, the annual letter itself could be defined as a power of direction; indeed, in certain circumstances, its contents can be very directive. What is important is the principle of having power, not the mechanism that is used to direct. It might be regarded as important if the legislation were not silent on this and actually made it clear that the minister could not direct. That would remove the opportunity for direction in certain areas through the annual letter. I do not necessarily agree with the National Library of Wales that there is no need for a power of direction because there is an annual letter that accompanies the grant in aid, because that letter can direct in itself.

Professor Anderson: Indeed, at times, the annual letter does direct. In some ways, the bill offers protection against things that might otherwise be put in the annual condition of grant, because if we were to see such things as being directions—as I potentially would—the core cultural functions of the library would be protected.

Liam McArthur: So, in a sense, you are saying that the functions as set out in the bill are sufficient. However we choose to measure them, they are sufficient, along with the other mechanisms that you have identified.

Professor Anderson: Yes. That is why the trustees, in the end, are content. They are not delighted, but I think that they are content with the wording in the bill.

Elaine Fulton: In general terms, political direction of any library is not something that people support, because the independence and neutrality of library services are important, and the National Library is trying to ensure that it retains them. The important element to retain is that there is no direction of what the library procures on behalf of the nation.

The Convener: I have another question on direction. Section 8(2)(a) lists the exemptions, which include

"NLS's functions under section 2(2)(a) to (c) or (3)(a), (b) or (d)".

Will you clarify why the functions under sections 2(2)(d) and 2(3)(c) are not included as exemptions? Do you know why that is the case?

Martyn Wade: I do not know fully. On section 2(2)(d), the library has had active, specific roles in encouraging collaboration. For example, there is a

project involving a shared computer system in Scotland—Elaine Fulton might be able to say more about that—and the library has a track record in sharing good practice. However, I cannot immediately think of areas in which specific direction would apply.

We are comfortable about section 2(3)(c), because in a way it duplicates the equalities legislation to which we are subject anyway, which places on us a responsibility to ensure diversity and equality of access to use of the library.

The Convener: In a sense, that leaves the question exactly where I asked it. Why should it be an exemption?

Martyn Wade: That is, perhaps, a question for the drafters of the bill.

The Convener: It may well be, and I regret not asking it when they were here. I am sure that we will take the matter up with them.

Martyn Wade: I repeat the chairman's comment that we looked at the bill in the context of its impact on the library, and we did not envisage that the exemptions would have an adverse impact, because of the recognition of the roles that we have.

Clare Adamson: Will you say a little more about charging, which is covered in paragraph 11 of schedule 1 to the bill? To some extent, charging is a Pandora's box in that, once it has been opened, we do not know where it will end. Will you give me an idea of where the trustees are on the issue? Perhaps you could contextualise it by commenting on the library's involvement in the plans for Kelvin hall and whether that will have an impact.

Martyn Wade: As the bill team said, the library already charges in a number of areas, essentially for added-value services. The principle behind the National Library of Scotland, which is similar to the principle that applies in public libraries, is that access is free. We operate that policy in whichever way is appropriate and we try to do it in ways that meet the needs and preferred options of library users.

When we add value through providing copies or reproductions to take away, we make a charge. For example, our digitised maps can be seen free of charge in low resolution on our website, but they are inadequate for people to print out to use in, say, school projects. For a charge, we provide high-quality images that can be framed and put on a wall.

11:15

We do a range of things, as other libraries do. Our exhibitions are free at the moment, but it may

be appropriate at certain points to charge for them. We are comfortable with the bill's phrasing on charging because, as I think has been said before, we need to balance the ability to charge with the library's functions. It is unclear how the digitisation aspect will go or when charging will be appropriate, but we are clear that our functions require us to preserve, conserve and develop the collections and make them accessible.

Speaking in my present role, I believe that it would be difficult for the NLS to make a significant charge to access the reading room, for example, while having a function of making the collections accessible. Paragraph 11's separate provisions for charging to access collections and charging for other functions will enable the library to levy a charge when appropriate, particularly when it has added value for the user, while maintaining the functions that emphasise what the core services are.

As members may know, we are part of the redevelopment of Kelvin hall, which will provide a new home for the Scottish screen archive. In essence, it will enable the archive to do better what it does now. It will accommodate all the archive's obligations, including having better digitisation facilities, and will enable us to provide services such as streaming video films and provide core access free of charge. In fact, it will enable us to improve that by providing a study facility so that the archive becomes a moving image research centre rather than simply an operation with a small cupboard, which is all that we have at the moment for the public to use by appointment.

That will enable us to do what we do better and there may well then be opportunities to charge where appropriate. As a public body, we have a responsibility to bring in income to support the library where appropriate—for example, when people want to take DVD copies home with them. We will continue to provide free access, but there may be other ways of marketing the collections—for example, having more collections available digitally, which could make some available to programme makers and commercial providers. One of the largest groups of users is programme producers who use the content of clips as part of their filming.

Professor Anderson: We would charge for that.

Martyn Wade: Yes, we charge for that at the moment, but the more that is available digitally, the more there is for them to use.

Kelvin hall will provide a way of enabling us to do better what we do now for the public, but it will not change the principle of charging for added value while core access remains free.

We are putting a lot of effort into extending free access by trying to make as much content available digitally as we can so that it is accessible throughout Scotland and not just by people who visit the library. A big effort is going on to extend that access. More people use our collections online now than could ever visit the library.

Professor Anderson: We have an absolute principle that we do not charge people in, for example, the Western Isles for something that they could come into the library for if they lived in Edinburgh.

The Convener: That is helpful. You will understand why we are taking a little bit of time on this point, because it involves an important principle. Paragraph 11(2)(m) of schedule 1 makes the rather bold statement that the NLS may “make charges for access to the collections,”

which is obviously quite an open phrase. The statement in paragraph 11(2)(n) is more understandable, as it deals with

“the provision of goods and services”,

which seems to be the added-value aspect that you are talking about. However, the statement,

“make charges for access to the collections”,

in paragraph 11(2)(m) is very wide. I seek an assurance that that will not start off fairly narrowly and broaden over a period of time.

Martyn Wade: With regard to future proofing the legislation and ensuring its longevity, we looked at the issues from the library’s perspective and noted that visiting an exhibition could be regarded as accessing the collections, and that holding exhibitions is a way of making the collections accessible. For a lot of people in Scotland, visiting the exhibitions and reading the interpretation at them or coming to library events to see the original materials that are on display will be one of the main ways in which they access the collections, so we have placed a strong emphasis on that.

As I said, at times, it might be appropriate to charge for exhibitions or events. We were concerned that the legislation did not constrain our ability to charge for such things where it is appropriate to do so. When we were considering the issue, we mapped it against the functions of the library and our responsibilities to promote access. We looked at that side of things.

Because the definition of access is broad and will probably broaden in the future, we were concerned about the dangers around listing the times when a charge could be made, as circumstances will change. Five years ago, we probably would not have actively considered

charging for a digital copy of a map, but now we charge. That has changed quite rapidly.

It is an issue of balance. There is the core principle of access, which is in the functions of the library. We cannot charge for that and would rightly be challenged if we did.

Marco Biagi: You have already cited a hypothetical situation in which two of the aspects that the bill sets out in statute for the first time—the power to charge and the access function—might come into conflict. How do you anticipate measuring the success, achievement and fulfilment of those functions? Do you perceive the relationship with the Government, for instance through the grant-in-aid letter, having any influence in that regard?

Martyn Wade: We already measure the use of the library in those terms. We are interested in how many people are aware of the library, how many people actively use it, the ways in which they use it and the impact that it has in various areas. Those are issues that are important for the library in ensuring that we are effective in meeting our functions.

With regard to the grant-in-aid letter, we understand and expect that we would be asked to reflect certain Government policies where they coincide with the functions of the NLS. With regard to supporting education and learning, we currently work well with the glow network to ensure that content can be used by schools. We realise that the Government might have a specific interest in knowing how much we have done in that area.

We expect the Government to indicate how we can measure our success in ways that help it understand what we are doing and how what we are doing can support its policies. That is done in the context of ministerial direction and the other constraints that apply. In past years, we have worked successfully in that regard, and we hope to continue that dialogue in the future.

Professor Anderson: In the last resort, it is the trustees—the members of the board—who are responsible for meeting the requirements under the legislation, so they will wish to set up appropriate ways of monitoring those aspects to ensure that that is being done. Monitoring is not something that has to be done because the Government wants it; the legislation says that that is what the board does, so the board already creates appropriate monitoring and risk-management processes in a number of areas that are important to it.

Marco Biagi: The bill will put in statute the library’s functions, which have developed organically and in an ad hoc way. Do you foresee a tangible, material effect on the library’s operation

from the move from an ad hoc list to functions that are set out in statute?

Professor Anderson: I think that the approach will be helpful to us. As you know, the 1925 act simply says:

“There shall be ... the National Library of Scotland”.

It will be helpful to have legislation that lays out a list of things that the board is required to do, although in practice I do not think that it will make much difference, because we do those things already—although the library might want to do rather more of certain things in the future.

Marco Biagi: A proposed function that drew my eye is “promoting the diversity” of users of the library. How do you understand that function? What will you do in the area?

Martyn Wade: We understand it in its broadest terms. I mentioned our responsibilities under equalities legislation, about which we are clear. We acknowledge that Scotland’s make-up is very diverse and we are considering how to ensure that when we collect comprehensively we include the informal publishing that can take place in communities, which reflects issues such as the number of speakers of Asian languages in the west of Scotland. We are clear on our responsibilities to collect Gaelic material and we have a strong Gaelic plan.

If I may give a personal view, I will say that it comes back to what a national library should aim to do. We are a library for, by and about Scotland, so we must reflect the make-up of everyone in Scotland and the fact that everyone in Scotland is a potential user. The inclusion of the provision that you quoted is a helpful reminder that, if we are to reflect the nation, we must not just be a passive collector but proactively ensure that we collect and make services accessible with that in mind. The provision takes us beyond the formal equalities legislation.

Marco Biagi: Do you understand your responsibilities under the provision to include, for example, the issue that you mentioned to do with ensuring access for people in the Western Isles, rather than just people who can make it to Edinburgh easily of an afternoon?

Martyn Wade: We absolutely do. As I said, work that has been going on during the past few years reflects our prioritisation of the issue. We have a mass-digitisation programme—I was about to say, “a small mass-digitisation programme”. We digitise a large number of out-of-copyright books each year, to ensure that they are accessible. The year before last, we digitised 3,000 books that were either in Gaelic or of Gaelic interest. A principal reason for that is that the largest

audience for those books is precisely the people who find it hardest to get to Edinburgh.

We visited Sabhal Mòr Ostaig a couple of weeks ago and talked to its librarian, with a view to working more closely with the college. The resource that we are making available is enormously helpful for the college and its students and we have agreed to digitise items that they will find most useful.

Elaine Fulton: On access, the National Library of Scotland has been actively involved with the national entitlement card. SLIC is working with the Improvement Service to ensure that the card is a smart card for all libraries in Scotland, including NLS. That is another way in which the library is part of the landscape of encouraging access for all.

Mungo Bovey: Of course, the internet presents Scotland to the world, too. There is representation beyond even the Western Isles.

The Convener: There is something beyond the Western Isles, is there?

Let us move on to the relationship between the National Library and the Faculty of Advocates, which I invite Jean Urquhart to ask questions about.

11:30

Jean Urquhart: I have another question to ask as well, if that is okay.

I think that the witnesses were in the room earlier when I asked about the relationship and the Faculty of Advocates collection. How do you feel about that? I asked whether there was a need for legislating rather than a memorandum of agreement.

I am particularly interested in the last statement in the submission that the Faculty of Advocates circulated to us, on

“the proposal to dispense with the post of ‘Librarian’ at the head of the NLS.”

Possibly all of you have a view on that.

Professor Anderson: I will express what I think the intention is. The title “chief executive” is in lower case. That is not the only title that can be given to the job. Indeed, the trustees have already taken the view that there is no reason why the chief executive should not go on being called the “National Librarian”, with a capital “N” and a capital “L”. The bill does not preclude that. For public accounting reasons, it merely names the chief executive as part of the transitional arrangements and puts the title in lower case. I understand that the lower case is deliberate.

Jean Urquhart: Is the Faculty of Advocates satisfied with that response?

Mungo Bovey: We do not have any concrete interest in the matter. To be frank, what you quoted was an observation of mine, and I hold by it, notwithstanding the ingenious explanation that Professor Anderson has offered.

Elaine Fulton: The issue takes us back to our discussion at the start about the trustees and the balance of skills that they require. The mirror of that is within the staffing establishment in the National Library, in which we would want to see the same balance of expertise and the senior management team having a high level of knowledge of library and digital skills. We would want those skills to be mirrored.

Jean Urquhart: My other question was about the relationship with the Faculty of Advocates and its collection in particular.

Mungo Bovey: In general, we have good relations with the National Library, which are underpinned, it is fair to say, by the statutory basis that was set in place when we founded the National Library by donating the non-legal collection and retaining the legal collections. We value the continuing right to nominate trustees. I do not think that we unduly flatter ourselves by suggesting that the board benefits from having the dean of faculty or other distinguished lawyers present on it. Their skills are part of the mix of skills to which reference has already been made.

We appreciate the proposal that the faculty will be able to send people to committees not with a vote, but simply to participate, as we share a collection that is increasing every day by virtue of the legal deposit legislation. In particular, we are continuing to have discussions on the digital deposit and how it will work if it ever comes to pass. It sometimes seems to be always just over the hill. The arrangements in the bill are appropriate to represent our continuing involvement with the National Library.

Elaine Fulton: I will make an observation on the memorandum. The whole purpose of the bill is to future proof the National Library and define its functions. If something such as an operational agreement, albeit a long-standing one, is set in statute, we could be back here in five years' time trying to alter the legislation. It is much better for the matter to be sorted out by arbitration with the organisations, if that is required, rather than setting it in statute.

Mungo Bovey: We have never had to go to arbitration with the National Library. We have had and continue to have our differences with it, but we are able to meet in a civil way and agree what will happen. That is not to say that the situation could not get worse, but it is not bad and, given

that the arrangement has been going since 1925, it has a reasonable track record. In my time, the arrangement has certainly been entirely satisfactory.

The Convener: Is there a balance of power between the National Library of Scotland and the Faculty of Advocates in the legal advice that they have at their disposal?

Mungo Bovey: It is useful to have a lawyer at the meeting, but the National Library does not rely on us for its formal legal advice; it has solicitors whose advice it takes.

The observations of a legally-qualified person at a meeting are not the same as the considered opinion of counsel, which is written down once all matters have been considered. We think that the situation is beneficial and that it is not imbalanced.

The Convener: In your written evidence to the committee, you suggest amendments to section 5(3). Can you explain why you have made those suggestions and what their effect would be?

Mungo Bovey: Yes. The principal aim of the amendments relates to the digital deposit. The heart of the proposal is in paragraph 3(ii) of our submission, in which we suggest the addition of a sentence

"to the effect that 'NLS must include in a request made under the 2003 Act in relation to online electronic publications such legal publications as the Faculty may require it to include.'"

Under the 1925 act, when law books come in they belong to the Faculty of Advocates. There is a requirement that if the faculty wants a particular book, the National Library must ask for it. That is replicated in the bill.

The digital deposit material—even the legal stuff—will not belong to the faculty in the same way. The purpose of our suggestion is that, although such material will not belong to us, our staff—who are the staff of the legal library and the legal aspect of the National Library—have the expertise to know what we should be looking for. We propose the amendment in order to keep the legal collection, which is of course part of the national collections, in the way that it should be kept.

I had a useful meeting about the issue with Martyn Wade. He was concerned that our proposal would impose a possibly burdensome obligation on the National Library, because of the nature of digital material, which differs from hard copy. I do not think that we would use our power but, if we did, we would ask for a specified book. We would not ask for all the books that are being published on the law of divorce; we would ask for Professor X's new book on divorce law in Scotland.

The concern was that, given that digital requests can be daily and wide, the provision that we proposed would be unduly burdensome. In that light, I invite the committee to consider the proposal, but with the words “So far as reasonably practicable” at the beginning, so that it reads “So far as reasonably practicable, the NLS must include ...”. That way, we will recognise the practical difference between the digital deposit and the non-digital deposit. We suggest that that is a way forward.

The memorandum of agreement that is in place deals with the issue only to the extent that it agrees that there will be a joint collection policy. It says:

“The Faculty will prepare and agree with NLS a selection policy to assist the selection of appropriate Legal Deposit law material for transmission to the Faculty.”

That could be expanded to cover digital material, but it would still only be a policy; it would not require the acquisition of digital material. We think that that is an important long stop for the status of the acquisition of legal materials, which we would say has served Scotland well over the years, not simply since 1925.

The Convener: Thank you very much for that explanation. I ask Martin Wade to give us the NLS’s view.

Martyn Wade: Mungo Bovey summarised the issue very eloquently, but I emphasise that it would be fair to say that we need to discuss it further, as we did not necessarily agree the solution.

I will enlarge on the concerns that I expressed on behalf of the National Library. Mungo Bovey is right about the nature of online publishing. From time to time, we are asked to claim print publications and we quite happily do that. The print publishing world is fairly clearly defined. In law terms, the number of items that could be claimed is fairly small. We claim the items that we identify, as well as the additional items that are identified to us. A printed publication is a fairly definable universal entity.

Online publishing is very different. Although electronic journals and electronic books that are direct replacements for print are defined as clearly as print publications, in many cases the frequency of publication will increase. Whereas it can be several years between printed editions of a book, the electronic book can be updated easily and quickly. Electronic journals are likely to move away from having a monthly edition, with, say, 10 articles, to a rolling publication programme. All that will add to the complexity of what the library does in identifying an item and bringing it in electronically in collaboration with the British Library and the National Library of Wales, where

we have a common system. We also have to identify the cataloguing metadata and how people find that. All that is likely to involve more work, but we have planned for that.

An issue that concerns us, which we hope will be dealt with in the regulations, is the potential number of websites involved. The proposal among the libraries is to do an entire web domain harvest once or perhaps twice a year. Harvesting every website in the UK is a very big operation, as you can imagine.

11:45

We will then selectively harvest certain titles in more detail. That is a manual operation that involves identifying a website and harvesting it more extensively and frequently, which will be done for particular areas of interest. Looking ahead—I agree with Mungo Bovey that the regulations always seem to be over the horizon—such areas include the referendum, the Commonwealth games, and the year of homecoming in 2014. Placing a measure in the bill to that effect creates a potentially open-ended commitment given the number of websites and the frequency with which they change. The average life of a website has been described as being about the same as that of a fruit fly. I think that on average there are about 40 days between updates on a website, but some change much more frequently. We are concerned that an open-ended commitment in that direction could have a serious impact on the library’s abilities.

The Convener: Did the caveat that Mungo Bovey provided at the end of his comments give you some comfort?

Martyn Wade: Under my proposed approach of proceeding through the memorandum of agreement, part of the policy is that we agree matters in advance instead of trying to sort them out later. Given the uncertainty of what lies ahead with electronic publishing, and given that the memorandum of agreement refers to working together positively, agreeing in advance what we will collect and allowing us to plan for that with a regular review is a more manageable and realistic approach. As Mungo Bovey said, the NLS claims legal publications that, although they are used by the Faculty of Advocates, are part of the national collection.

This is not about limiting the collection but about identifying a balance in terms of the library’s ability to manage the use of resources. We can do that in two ways: first, through the memorandum, whereby we agree in advance what we do; or secondly, by taking the approach of the Faculty of Advocates, which says that we have to define where there is a problem and deal with it

retrospectively. The more positive way of handling the issue is to do it through the memorandum by agreement, in advance, on a regular-review basis.

The Convener: So, to sum up, you do not support the amendments suggested by the faculty?

Martyn Wade: That is right. My preference at the moment is that we handle it through the memorandum of agreement.

The Convener: Thank you. I wanted to make it clear that that is your view.

Professor Anderson: I think that we are all agreed that we need to have further discussions on this, and we will reflect those back to the committee.

Elaine Fulton: I want to make a general observation. We have talked a lot about the digital age, but, to make a historical comparison, we are probably in the prehistoric age in that regard. There are so many unknowns out there that I am not sure it would be a good idea to tie things to legislation at this stage. We need to work through a range of issues, from the harvesting that Martyn Wade talked about to copyright and licensing issues. The marketplace is quite uncertain at this time, and tying things down to statute is not necessarily the right thing to do.

The Convener: That is the end of our formal questions. Does anyone have any further points that they have not had the opportunity to make?

Mungo Bovey: No, but thank you very much for the opportunity to address you.

The Convener: Thank you very much for coming along. I also thank the National Library for hosting us last week; that was very kind.

11:49

Meeting suspended.

SUPPLEMENTARY WRITTEN EVIDENCE

Letter from Fiona Hyslop, Cabinet Secretary for Culture and External Affairs

I am writing to update the Committee on developments around the National Library of Scotland (NLS) Bill.

Two Memoranda of Agreement (MoA) between the National Library of Scotland and the Faculty of Advocates have been agreed and were signed on 22 December 2011. The signing of the two MoA re-enforces the close working relationship between the two organisations. The MoA complement provisions in section 6 of the draft Bill which requires NLS and the Faculty to make joint arrangements for the management and interaction of their libraries and collections.

The first MoA (**Annex A**) outlines how both organisations will work together to maintain, preserve and provide access to the published record of the UK and Scotland, especially those items received under legal deposit.

The second MoA (**Annex B**) supplements the NLS Act 1925, the Legal Deposits Libraries Act 2003 and previous agreements on the allocation of books and manuscripts between the bodies. The agreement recognises items which are held by NLS but are the property of the Faculty; sets out arrangements for future claims of ownership; the procedure should there be a disagreement about an item in a party's possession and requirements for the bodies to draw up a deposit agreement for items held.

I have not included the appendix for this MOA due to the size (98 pages). This appendix lists Faculty owned law books which NLS hold. The appendix can be viewed on the NLS website at: <http://www.nls.uk/collections/british/historical>.

I hope that this update is useful to the Committee at this stage.

Fiona Hyslop

19 January 2012

General Memorandum of Agreement

between

The Trustees of the National Library of Scotland

and

The Faculty of Advocates

Introduction

The Trustees of the National Library of Scotland ('NLS') and the Faculty of Advocates ('the Faculty') seek to work together with the common aim of maintaining, preserving and providing access to the published record of the UK and Scotland, especially through their rights and privileges under Legal Deposit. In particular, the parties recognise that, although owned by them respectively, the legal deposit materials held pursuant to Acts of Parliament form part of a single national resource.

General

1. In connection with matters arising out of this Memorandum, NLS and the Faculty agree:
 - a) To consult each other on matters of common or shared interest.
 - b) To formulate such operational procedures as may be necessary.
 - c) To provide such information to each other as may reasonably be requested.
 - d) To hold an annual meeting to review the operation of this Memorandum.
 - e) To act in good faith.

Access to Collections

2. The Faculty agrees to make law material (in whatever format) received by it under Legal Deposit available for public consultation at NLS.

3. The Faculty may make other collections of the Advocates Library available for public consultation at NLS. This is subject to exceptions in respect of certain court papers and purchased conference proceedings.
4. So far as reasonably practicable, material held by the Faculty will be made available to NLS customers in accordance with NLS customer service standards.
5. So far as reasonably practicable, NLS will make its collections available to readers in the Advocates Library in accordance with NLS customer service standards. This excludes maps, manuscripts, rare printed material, newspapers, open access reference materials and licensed digital content, where the terms of the license do not permit such access. Members of Faculty will be entitled to consult such excluded material in accordance with normal NLS rules within the appropriate NLS Reading Room.
6. Material forming part of the Library at Abbotsford to which those responsible for its management grant access to members of the public will be made available to those members of the public under supervised access at NLS.

Collection Management

7. The Faculty will prepare and agree with NLS a selection policy to assist the selection of appropriate Legal Deposit law material for transmission to the Faculty.
8. The Faculty will provide reasonable standards of storage, handling and treatment for all legal deposit material (in whatever format), transmitted by NLS to the Faculty.
9. NLS and the Faculty will agree arrangements for the storage, preservation of and access to electronic law material, to which the Faculty is entitled.

22 December 2011

Signed.

Richard S Keen QC, Dean of Faculty, on behalf of the Faculty of Advocates

Signed.

Martyn Wade, National Librarian and Chief Executive of the National Library of Scotland, on behalf of the Trustees of the National Library of Scotland

Memorandum of Agreement

between

The Faculty of Advocates

and

The Trustees of the National Library of Scotland

on the Ownership of Items

1. This Memorandum of Agreement is made between the Faculty of Advocates ('the Faculty') and the Trustees of the National Library of Scotland ('NLS'). It supplements the terms of the following:
 - (a) the National Library of Scotland Act 1925 ('the 1925 Act');
 - (b) the Agreement entitled Allocation of Books and Manuscripts between the National Library and the Advocates' Library 1931 ('the 1931 Agreement'), with the 1831 Catalogue of Law Books, the 1839 supplement to the 1831 Catalogue of Law Books and any other catalogues which the 1931 Agreement refers to; and
 - (c) the Legal Deposit Libraries Act 2003 ('the 2003 Act').
2. (a) This Memorandum seeks to clarify the ownership of items currently known to be in the possession of NLS upon which the Faculty has a claim of ownership. It covers law books and legal publications, Faculty Records, and manuscripts.
- (b) This Memorandum seeks to establish the basis for action should any future claims of ownership arise on either side.
- (c) This Memorandum also makes provision for a deposit agreement to be drawn up for all items owned by the Faculty but in the possession of NLS.

Current holdings

3. NLS acknowledges that the following items at present in its possession are the property of the Faculty:
 - (a) copies of editions described in the 1831 Catalogue of Law Books and the 1839 supplement (Appendix A), where there is no reasonable doubt that these are the copies that were in the Advocates Library at the time of writing of the catalogue entry;
 - (b) those items listed in the Volume II (Law) of the General Catalogue of Manuscripts (FR185)(Appendix B);

- (c) those items (other than library catalogues) listed in Volume XIII (Faculty and Library Records) of the General Catalogue of Manuscripts (FR195a)(listed in Appendix D);
- (d) Volumes II and XIII of the General Catalogue of Manuscripts; and
- (e) those manuscripts, printed books and Faculty Records accessioned by the Advocates Library after 26 October 1925 and listed in Appendices C and D respectively.

Future claims

- 4. In the event that any items are subsequently identified, which are in one party's possession but are claimed by the other, NLS and the Faculty undertake to hold constructive discussions to resolve the issue. Such discussions shall be between the Keeper of the Advocates Library and the National Librarian and Chief Executive of the National Library of Scotland, or their representatives.
- 5. If parties fail to settle any such dispute, they agree to submit to arbitration in terms of the Scottish Arbitration Code 2010 or its successor. The arbitrator shall be mutually agreed, failing which, shall be appointed by the Scottish Branch of the Chartered Institute of Arbitrators.

Deposit agreement

- 6. NLS and the Faculty will draw up a deposit agreement for all items owned by the Faculty but in the possession of NLS. NLS will make mutually satisfactory arrangements for the day-to-day management of the deposits.
- 7. The deposit agreement will also make provision (a) for adding items which are identified as owned by the Faculty but which are in the possession of NLS; and (b) for dealing with items which the Faculty deposits with NLS, subsequent to the making of this agreement.

22 December 2011

Signed.

Richard S Keen QC, Dean of Faculty, on behalf of the Faculty of Advocates

Signed.

Martyn Wade, National Librarian and Chief Executive of the National Library of Scotland, on behalf of the Trustees of the National Library of Scotland

Appendix A – List of Faculty owned law books in possession of NLS

This is a list of law books owned by the Faculty and in the possession of NLS at the time of signing. It was compiled after a check by Faculty staff of the 1831-9 Catalogue of Law Books in the Advocates Library and of a list compiled in 1966 by Harry Brashaw, Librarian of the Advocates Library at that time, of books he believed were owned by the Faculty and in the possession of NLS. It is not fully understood why these law books are in the possession of NLS as decisions do not seem to have been recorded. Staff at the Faculty and NLS have checked locations in order to be as sure as possible that the books listed as in the possession of NLS are the copies owned by the Faculty.

Letter from Bill Manager, Cultural Excellence, Culture Directorate

During the stakeholder evidence session on 7 February the Convener stated that he regretted not asking officials for further information about why the Bill proposes Ministers have a power of direction over some of the National Library's particular functions and objectives in section 2. I am writing to follow up this point.

The intention behind section 8 is to restrict Ministers' powers of direction to prevent any interference with the cultural and curatorial functions and powers of the National Library. These restrictions are listed in section 8(2) and are wide ranging.

The NLS function of promoting collaboration between, and the adoption and sharing of good practice by, other persons providing library and information services gives NLS a place in a broader landscape of public services in Scotland. The function thus reaches beyond the National Library's particular curatorial and cultural functions. The Bill therefore does not exempt section 2(2)(d) from Ministers' power of direction in section 8.

The Scottish Government considers that the objective of promoting the diversity of people having access to NLS is a matter of public policy and is not confined to being a cultural and curatorial matter for NLS. As with all public bodies, the National Library is also subject to equalities and anti-discrimination legislation, but the diversity function in the Bill could also encompass other factors such as geographical diversity in the Library's work. The Bill does not, therefore, exempt section 2(3)(c) from Ministers' power of direction in section 8. This is similar to the approach to diversity taken in relation to Ministers' power of direction for Creative Scotland – see section 37(2) and section 40(2) of the Public Services Reform (Scotland) Act 2010.

15 February 2012

Scottish Parliament

Education and Culture Committee

Tuesday 21 February 2012

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): Good morning. I welcome members to the sixth meeting of the Education and Culture Committee in 2012. I remind members and people in the public gallery to ensure that all mobile phones and other electronic devices are switched off at all times. I have received no apologies this morning—we have a full turnout for the meeting.

The first item on our agenda is to decide whether to take in private item 5 and our consideration of a draft report on the National Library of Scotland Bill at a future meeting. Is that agreed?

Members *indicated agreement.*

National Library of Scotland Bill: Stage 1

10:00

The Convener: Item 2 is the conclusion of our stage 1 evidence-taking on the National Library of Scotland Bill. I welcome Fiona Hyslop MSP, the Cabinet Secretary for Culture and External Affairs, and her Government team, who are Carole Robinson, the bill team leader; David Seers, the head of cultural excellence; and Greig Walker, who is a solicitor. I invite Fiona Hyslop to make an opening statement.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): The Scottish Government is ambitious for culture in Scotland. The bill recognises the importance of the National Library of Scotland to our nation and will enable the library to develop and prosper in the years to come by modernising its functions and governance arrangements for the 21st century. The National Library of Scotland is a key resource as Scotland's only legal deposit library. As a centre for cultural research on Scotland and the Scots, it is a national and international asset, and it provides free access to more than 14 million items in more than 490 languages. It is important that the legislation keep pace with the requirement to preserve and develop our national collections for generations to come.

The bill is forward-looking and sets out a broad framework of governance including, for the first time in the library's history, a range of clear and outward-looking functions. In the bill, I have sought to give the National Library of Scotland the flexibility to respond to the technological changes of the future in supporting the work of bringing the nation's history and culture to life. I pay tribute to the National Library of Scotland for what it has already achieved in the strategic approach that it has taken to digitisation. Crucially, it has made the collections and resources available online, thereby ensuring that the library is accessible to people beyond Edinburgh and Scotland.

The bill recognises the close working relationship that exists between the National Library of Scotland and the Faculty of Advocates. The faculty's library is important to Scotland both as the historical foundation of the National Library of Scotland and as a working library of publications on Scots law. I welcome the recent signing of the two memoranda of agreement between those two organisations, which I sent to the committee on 19 January. Those are not merely important housekeeping documents; they underline the vital principle of public access to items in both libraries.

It may be helpful if I mention to the committee at this stage the Government's response to some of the points that were raised in the evidence from the Faculty of Advocates. I agree in principle with the faculty on the scope of its collections and that the reference in sections 6(1)(a) and 6(1)(c) needs to be narrowed. We will produce an amendment at stage 2 to do that. I also accept the proposed technical amendment to section 5(3) and will lodge such an amendment at stage 2.

On the question of the faculty's role in selecting material for collection under online legal deposit, the committee heard the views of both the faculty and the National Library in evidence on 7 February. The Government wants the bill to recognise the faculty's experience and expertise in selecting legal publications, but I do not want the National Library of Scotland to be subject to inflexible and potentially burdensome statutory requirements. I am conscious of the fact that—as was discussed at the committee's previous evidence-taking meeting—technology is likely to develop in ways that we do not as yet understand. With all that in mind, we will reflect further on sections 5 and 6, in discussion with the National Library of Scotland and the Faculty of Advocates, and will return with possible amendments at stage 2.

I hope that the committee accepts that there is broad support for the principles and provisions of the bill, and I look forward to further debate on any points that the committee wishes to explore in more detail.

The Convener: Thank you for your opening statement, cabinet secretary. Liz Smith will begin our questioning.

Liz Smith (Mid Scotland and Fife) (Con): Two weeks ago, witnesses expressed to us a slight concern that the new body corporate might be too small which might, therefore, exclude the expertise that will be required during the period of considerable technological change to which you have referred. Will you comment on that?

Fiona Hyslop: I have discussed that very issue with the board of trustees and acknowledge the points that have been made. In drafting the provisions, we considered the sizes of other boards. As everyone will acknowledge, the inherited board structure is too big and far too unwieldy; I point out that the National Galleries of Scotland board comprises between seven and 12 members and the National Museums Scotland board between nine and 15 members. I certainly do not want to hinder the proposed board's operation; I appreciate the comments that have been made and I recognise the range of skills that will be required, but I should say that the feedback that we have received suggests that a more tightly

drawn board can be more functional with regard to decision making.

Of the boards of bodies that were established under the Public Services Reform (Scotland) Act 2010—in other words, the most recent bodies to be established—the Creative Scotland board comprises between eight and 14 members, the Social Care and Social Work Improvement Scotland board between nine and 12, the Health Improvement Scotland board between 10 and 12 and the board of Bòrd na Gàidhlig between six and 12. It is unlikely that the number of board members will be at the smaller end of the scale. I am fairly open to persuasion as to whether the size of the board should be increased, but I am reluctant to say that its membership should always be at the top end. The decision making, focus, vision and other things that we really need and expect from boards are often best delivered by smaller boards. The bill reflects, for example, the National Galleries of Scotland's current set-up.

Liz Smith: You say that you are flexible and open to negotiation on the issue. Do you intend to consult the people who have raised the issue to discuss whether it might be possible to extend the board slightly to encompass the extra expertise that they have suggested is required?

Fiona Hyslop: Yes. I am very open-minded on the issue and am prepared to consider it for stage 2. I will be interested to see what the committee says in its report—you will obviously want to consider the matter.

I point out, though, that it is not unusual to have a spectrum with regard to the number of people on a board. That said, boards themselves do not always provide expertise and carry out functions; quite often, sub-committees do that work. At the moment, the National Library of Scotland draws in expertise for particular areas and specialisms—and will still need to do so. However, as I have said, I am fairly open-minded about increasing the minimum size of the board from seven to nine.

Liz Smith: We all understand the need for the bill and the fact that it will make things more efficient. However, the National Library of Scotland is a very substantial asset and given the considerable technological and technical changes that are taking place and the fact that—as you have acknowledged—things are changing fairly quickly, the stakeholders who have expressed concern really feel that it would be helpful for that extra expertise to be permanent rather than on a consultancy basis. I am pleased to hear that you will definitely consider the matter. What is your timescale for that consultation?

Fiona Hyslop: Having looked at the evidence that has been given and having had on-going discussions in preparation for the bill and

subsequently, I am quite aware of the points that have been raised. Part of the process will, of course, include hearing the committee's assessment of, and views on, the matter. I think that I am being fairly straightforward in saying that I am open-minded about the size of the board and about seeing whether the low end of the scale should be higher.

Members should, however, bear it in mind that the size of most boards is rarely at the low end. After all, there is a reasonable risk that because of non-attendance, illness and so on board attendance might slip below the required level. In any recruitment round, the aim is to ensure that we do not leave a management board at risk of not meeting its quorum, and the matter has to be managed very carefully. I have certainly listened to what has been said on the subject.

That said, I must emphasise that the board's role relates to governance and leadership. With regard to specialisms, staff on sub-committees will certainly provide advice on particular projects and areas. The current structural shift in the boards of cultural bodies has been more towards governance, accountability and leadership. We do not necessarily want people protecting and promoting their own area of expertise at the expense of everything else. The board must have a common sense of purpose. That is why we are increasingly seeing fewer designated places for particular representative groups on boards of management.

Liz Smith: Do you accept, however, that even within management structures, a wide base of expertise on the issues that need to be discussed at this time of change is needed?

Fiona Hyslop: Yes—that is why we want to see a transition. We have taken the same approach with other organisations. There can be a period in which we can consider whether any current board members could or would be willing to serve on the new board. We are working on the skills and knowledge base—the matrix of exactly what is required. Different experiences are needed. The research library will definitely need people with experience. We are working with the universities, for example, and the interests of research students will need to be promoted. That relates to the skills matrix. Similarly, an understanding is needed of the national reach of libraries in working with our network of libraries across the country. Local government interests are another area that we will look at in relation to the skills matrix. The skills matrix must be considered in making up the board.

We have made appointments to many boards over the past five years. In looking at the size of the board, it must be ensured that there are the right skills in it. An individual might bring two

strengths, but if individuals do not have multiple strengths, it will be more likely that a bigger board would be needed to ensure that it has all the required strengths.

I have heard evidence and we have kept in close contact with people; the committee heard in evidence that a stakeholder group gave recently that we have kept in close contact with it, and we want to ensure that what comes out of the process is what is needed. I look forward to seeing what the committee recommends in its report and am open minded on making changes to the minimum size of the board.

The Convener: You say that you are open minded about the minimum size of the board. Obviously, the minimum is just one end of the spectrum. The bill says that the board would have between six and 13 members, plus the chair. Are you open minded on the six, but not on the 13?

Fiona Hyslop: Yes. There is an issue about the maximum size of boards. Ministers in this Administration and in previous Administrations have been under great pressure to deal with the wide range of public bodies that exist and the numbers of board members. Some board members are paid and some are not—in this instance, they are not—but there is an issue about the maximum sizes of boards.

I return to a point that I have made. From my experience as a minister and the feedback that I have received from people who have worked on boards, I know that, if a board of governance is too big, it will become less focused and the trustees' leadership role will become less focused. Smaller boards can be more effective than larger ones. In general, the Government is not in favour of large boards. I am therefore open to considering the first number, but not the second.

The Convener: I have no problem with trying to make boards more focused, which is an admirable aim, but you mentioned other boards that have a maximum of 14 and 15 members. Why are you so fixed on a maximum of 13 members rather than, say, a maximum of 14 or 15 members?

Fiona Hyslop: The number of board members will be 14: 13 members plus the chair. The number for the British Library is 14. It is 15 for the National Museums Scotland, 12 for the National Galleries of Scotland and there is a maximum of nine for the Royal Botanic Garden Edinburgh. Their sizes are determined by pre-1995 legislation. The more recent maximum numbers were established under the Public Services Reform (Scotland) Act 2010. The maximum number of board members for Creative Scotland is 14, the maximum for Social Care and Social Work Improvement Scotland is 12, the maximum for Healthcare Improvement

Scotland is 13, and the maximum for Bòrd na Gàidhlig, which was established in 2005, is 12.

The Convener: Do those numbers include the chairpersons?

Fiona Hyslop: Yes they do, so we are in the right realm.

The Convener: The older boards have the higher numbers.

Fiona Hyslop: Yes. The older ones have higher maximum numbers.

The Convener: That is helpful.

You touched on an issue that was raised in evidence two weeks ago. If the board is too small and is down at the lower end of the scale rather than towards its higher end, it will be difficult to form the sub-committees that it must inevitably form to progress particular bits of work. However, you have covered that by saying that you expect the board to be not too small.

10:15

Fiona Hyslop: Yes, but not all sub-committees will be formed from the membership of the board of trustees because specialists can be brought in. Despite the size of the board under the current legislation, NLS can still do that. People might want to go in and out of certain projects, particularly on technological changes, which Liz Smith mentioned. We would expect people who have specialisms to be brought in for specific projects.

Neil Findlay (Lothian) (Lab): The submission from the Office of the Commissioner for Public Appointments in Scotland says that it did not receive the consultation document, but that is another issue. It also states, contrary to what the financial memorandum says, that costs are associated with appointments. Will you confirm that? Are any other costs associated with the bill?

Fiona Hyslop: That is one of the arguments for not having too many board members; there is a certain administrative cost to advertising and making appointments. The Government has tried to restrict advertising costs, although we obviously still want to ensure that the adverts are accessible and that people see them.

If we are thinking about use of public resources, smaller boards also mean not only that advertising costs are smaller, but that the resource base that is needed to service the function is smaller. That resource base is quite considerable. This year, the Government has to administer quite a large number of appointments. The range includes board members for Creative Scotland and appointment of a chair of the board of the National Museums of Scotland, which has just been

advertised. The cost of those appointments will be met from existing budgets.

The bill concerns governance as opposed to creating more costs. We do not anticipate additional costs, but it is fair to say that there are costs of advertising all board appointments. However, that is a necessary cost of accountability.

We sent the consultation to OCPAS and will continue to work with it and the Office of the Scottish Charity Regulator, which are key bodies for ensuring that we put in place the governance and other measures that are necessary to implement the provisions on the National Library's trustees.

Jean Urquhart (Highlands and Islands) (SNP): There seems to be concern about ministerial powers of direction in the bill, but it is partly allayed by the fact that the powers will be fairly restricted and concern only a couple of areas. Will you explain that?

The witnesses from the National Library said:

"What we regret is making a principle of the ability to direct the National Library."—[*Official Report*, Education and Culture Committee, 7 February 2012; c 705.]

There is always slight edginess about so-called Government interference in any of our cultural organisations, so how can we allay the concerns of those witnesses?

Fiona Hyslop: There must be a balance. When an institution is funded from taxpayers' money, it must be accountable to the taxpayer for ensuring that that money is spent wisely, and for its management and governance of the institution. That must be balanced with the institution's artistic or—as in this case—curatorial responsibility and its freedom to ensure that it looks after our great cultural assets for the nation.

There is a history to the balance that we have struck, which goes back to the Charities and Trustee Investment (Scotland) Act 2005. Because of the need for public accountability, particularly in financing of organisations, an exemption was made under that act to permit national collections to continue to be charities while allowing a limited power of ministerial direction over them. I have already referred to the Public Services Reform (Scotland) Act 2010, which is the foundation for a number of bills that are likely to be introduced subsequently.

When Creative Scotland was established, one area of debate in Parliament was the degree of ministerial direction that could be allowed. There was debate not only with people who were involved in the then Scottish Arts Council, but also with the national institutions about what it would mean for them. It was generally recognised that if

we could limit ministerial direction to matters of governance, management and accountability—in particular on financial aspects—and leave out any power of direction on curatorial or artistic matters, the provisions would be satisfactory.

Members will notice that section 8(1) of the bill, on page 4, says:

“The Scottish Ministers may give NLS directions ... as to the exercise of its functions”,

but that section 8(2)—this is the really important point, given that you are asking what reassurance we can give that there will not be overbearing interference—says:

“But the Scottish Ministers may not give NLS directions so far as relating to—”

paragraphs (a) and (b). Paragraphs (a) and (b) refer to NLS’s functions, which are covered in section 2. Those functions include

“preserving, conserving and developing its collections”.

I cannot give the NLS ministerial direction on that, on “making the collections accessible” or on

“exhibiting and interpreting objects in the collections”.

That indicates where the balance lies.

I am accountable to Parliament and, at themed question time, I frequently get asked to tell Creative Scotland to invest in a particular project. That is quite frustrating because, under the Public Services Reform (Scotland) Act 2010, I cannot do that. Could I direct the NLS to have an exhibition on X, Y or Z? Under the bill, I could not. That is the balance that we need to strike. We must have faith and confidence in the professionals, their curatorial decisions and how they promote

“understanding and enjoyment of the collections”,

which is one of their functions.

We have struck a balance, although it is sometimes quite frustrating. We want to ensure that we give the professionals their curatorial independence but we must, at the end of the day, ensure that public money is spent accountably. That is why there is the restriction that the power of direction can be used only in relation to overall management of the organisation. We have a responsibility in relation to the corporate plan, the accounts and so on, and in ensuring that the organisation is well and efficiently run.

If you want me to have more ministerial powers of direction, I remind the committee that an attempt was made to do that in the previous session of Parliament and there was real resistance from the cultural collections to the proposal to give ministers overriding powers.

I know that that was quite a long answer, but I hope that it has set the scene on where we have

got to and why we want to have a limited ministerial power of direction. The power of direction that the bill will provide is very limited.

Jean Urquhart: I make it clear that I was not suggesting that you should be given more powers.

Marco Biagi (Edinburgh Central) (SNP): I declare an interest as a member of the board of NLS under the current legislation.

Where might the ministerial power of direction be used?

Fiona Hyslop: I cannot recall having used the power, in my five years as a minister, for any of the bodies for which I have had responsibility. However, we do not know what might happen in the future. The power is a safety net for accountability for use of resources.

The power means that we will be able to provide guidance. For example, collaboration is extremely important, particularly when resources are tight, so it will be helpful to be able to encourage collaboration—although I have not needed to direct the collections to collaborate and would not necessarily seek to do so.

If it became clear that the board of trustees was not properly holding its chief executive and the national librarian to account for how money was being spent, a direction might be issued. The power of direction would be used if there was any difficulty with the management functions. The same would be true of any similar organisation. Such powers are not used very often, even in other areas. If, for example, a new chairperson was not functioning effectively, that would, in the first instance, be for the board to address.

Our experience of going through the recruitment process has been very good, and I would like to put on record my thanks to Professor Anderson for the role that he has played and for his patience in waiting for the bill, which I promised some time ago. However, there is always an element of risk—human failure can happen in any organisation. That is why the power of direction would tend to be used in relation to management functions.

Does either of my officials want to comment?

Carole Robinson (Scottish Government): As Colin Miller explained when officials gave evidence, the power of direction could be used if the library had failed to comply with general public interest policies around, for example, no compulsory redundancies, procurement, transparency or pay policy. Those are other areas related to the management of the library.

Marco Biagi: Can you undertake to write to us after checking whether the ministerial power of direction has ever been used in the cultural

sector? If it has not been used, that would be very reassuring.

Fiona Hyslop: We do not think that it has been used in the cultural sector, but we will write to confirm that, in case it was used prior to this Administration.

Liam McArthur (Orkney Islands) (LD): I appreciate your comment that we are almost trying to anticipate the unknowable. You are seeking a limited backstop power.

Nevertheless, one can see how a power of direction on promoting collaboration might bleed into operational issues around the curatorial role in that if you were to force NLS down a particular pathway with a limited budget, that would have a knock-on impact on what it is able to do in other areas. Is there therefore a risk that action on the part of the ministers, within the constraints of the bill, could have a knock-on impact on areas that are not included under the powers of direction in the bill?

Fiona Hyslop: No. The powers of direction are quite specific. The example that I gave on collaboration was more about my guidance on what I am trying to do currently without using the ministerial power of direction. That is the sort of thing that you can do to try to get best value for the public purse, but I am not doing that by ministerial direction and I would not necessarily see that as an area in which ministerial direction would be used.

If I were to use the ministerial power of direction in respect of collaboration, but that impinged on the National Library's ability to make decisions about preserving, conserving and developing its collection—its curatorial role—I could be challenged on the ground that I was acting illegally. I would not do that however, because I think it best to do that through encouragement and other approaches. The public purse has a backstop in that there is always a point of intervention in terms of management and finances, but there is almost a backstop for the National Library, in that if I or any minister were to overstep the mark and compromise its ability to do certain things, there would be a difficulty.

Section 8(2)(a) stipulates matters on which I am not allowed to provide ministerial direction. It is clear that anything that would compromise curatorial functions is not allowed; so if we want to promote collaboration or the sharing of good practice, we can do that, but if that were to compromise exhibitions, interpretations and so on, my decisions could go to review and they could be deemed to have been illegal. There is a counterbalance for both sides, which is what we sought to achieve.

Liam McArthur: That is helpful.

The Convener: Cabinet secretary, you helpfully wrote to the committee to clarify points about ministerial direction in relation to sections 2(2)(d) and 2(3)(c). I would like briefly to discuss the matter, particularly in relation to section 2(2)(d), on promoting collaboration. Your explanation in response to Liam McArthur was very helpful, but I want to be clear about where the boundaries of ministerial powers of direction lie in relation to collaboration.

I do not want to get into obscure hypothetical examples, but reducing the number of public bodies has been an aim of the Government over a number of years. There are other collections and other library services in Scotland. Where are the boundaries that would prevent a minister in a future Administration from pushing through collaboration between the National Library of Scotland and other library services?

Fiona Hyslop: If legislation was required, obviously a bill would have to be introduced in Parliament and parliamentary authority would be required.

10:30

The Convener: Could section 2(2)(d) of the bill be used?

Fiona Hyslop: To promote—

The Convener: I suppose that my question goes beyond collaboration or a particular interpretation of collaboration.

Fiona Hyslop: I think that that would be a politically unwise use of ministerial direction, which is more of a defensive thing rather than something that would necessarily be used to try to bring about public service reform. If you want to undertake such reform, you do it proactively and make a proposal, you discuss it in Parliament and you seek advice from the committee. That is what we have done in other areas. You do not necessarily need the power of ministerial direction to do it.

I will give you an example of what Government ministers can do. We brought together Skills Development Scotland from four different organisations, so the skills and training agenda was quite disparate. That was done without legislation but with co-operation because bringing those organisations together was seen as being in the best interests of delivering better skills and training. That was quite a major change. A lot of things can be done as a result of effective policies. In relation to my actions, I am accountable to this committee and to Parliament, and that provides checks and balances when steps are taken to make improvements or changes.

On the collaboration agenda, I am pleased that a lot of the back-end services of the National Library and the National Galleries of Scotland are working together, which can help to release resources and to spend as much of them as possible on front-line services and the visitor or researcher experience, which is what everybody wants.

We are well on the way with the collaboration agenda. The trend is towards what can and should be done. People have to be quite creative in the new environment. However, I do not necessarily see that agenda as being a matter for ministerial direction. I will confirm this later, but the indication is that to date ministerial discretion has not been used in the cultural sector. I do not think that using it would be a very wise thing to do, because it is a backstop as opposed to an action to make things happen proactively. If you want to make things happen proactively and change a policy, there are better ways to do that.

The Convener: That is very helpful. Thank you.

Joan McAlpine (South Scotland) (SNP): Would ministerial powers of direction extend to charging for access to the collections? You are probably aware that the national librarian made it clear in his evidence that free access was a key principle. However, he also said:

“Our exhibitions are free at the moment, but it may be appropriate at certain points to charge for them.”—[*Official Report, Education and Culture Committee*, 7 February 2012; c 707.]

Is that the kind of issue that you might get involved in discussing?

Fiona Hyslop: I reiterate that the Scottish Government is committed to ensuring free access to our collections, although there are checks and balances within that. The charging aspect is part of the future proofing of the bill, given that there will be technologies of which we are not aware at present. For example, we can provide international access to digital work, but perhaps we will be able to do so more extensively in the future. There is no reason why the National Library might choose to charge for such services, but that does not mean that charging will never happen. However, such charges would be for quite specific areas.

I could not use a ministerial direction to do anything on charging even if I wanted to—which I do not; likewise, a minister in a future Administration could not use that to introduce charging because the function of the National Library to ensure that its collections are accessible to the public for study and research cannot be compromised by ministerial direction. Therefore, even if a future Government wanted to introduce charging, the legislative limits on ministerial direction would restrict it. I think that there are

similar limits in other areas, such as disposals. Ministers would need to revert back to get agreement to use a ministerial power in relation to the disposal of certain assets. That is a check and a balance the other way in terms of how assets are used in relation to charging or disposal.

We have been conscious of the limits that there would be on ministers who wanted to introduce charging, and we think that the protection for the institution—for the collections—is the fact that the power of ministerial direction cannot be used if it compromises access, preservation, conservation, study, research, exhibiting or interpreting. In that regard, such a step could be challenged.

Joan McAlpine: There are obviously some problems with definition, as the bill says that it might be legitimate for the library to levy a charge for an added-value service. You said that we do not know how technology will develop, and something that might seem an added-value service at the moment could become an essential service in the future. It seems to me that there may be a problem with the definition of an added-value service. How can such services be distinguished from a service to which access is regarded as a basic right?

Fiona Hyslop: Again, that would come down to accountability. At any point in time, the National Library of Scotland could be called to account for its corporate plan, which will set out its policy regarding what is threshold and what is incremental. You are absolutely right to say that things will change—possibly in five or 10 years' time. However, we cannot put a definition in the bill that would constrain things in the future. The definition must allow flexibility in the future. There will always be the opportunity to hold me or the National Library to account on that definition and whether it compromises the library's functions. It would be wrong to close off future opportunities, especially given the fact that charges already exist in some areas such as digital activity. That activity may be specialised at the moment, but it might not be in the future. We are also not in a position to give guarantees about what might happen to the budgets that Governments give to organisations, so we must give the National Library some flexibility to allow for charging. Nevertheless, the Government is committed to maintaining the principle of free access and we think that the preservation of the functions of the National Library of Scotland would prevent any ministerial direction from requiring it to charge for things.

Joan McAlpine: Let me outline another hypothetical situation. If the management of the library decided, at some point, that it wanted to charge but the ministers disagreed with that because they were committed to the principle of free access, would the cabinet secretary intervene

and use powers of direction to say, “No, you can’t charge”?

Fiona Hyslop: It would not be necessary to use ministerial powers of direction. Ministers could point to the functions of the National Library and say that it was not providing access. The library would be subject to the restrictions on its functions. It is not just ministerial powers of direction that are restricted by the functions; the National Library is restricted by its own functions. My officials may want to add to that.

David Seers (Scottish Government): As we touched on when we were before the committee previously, proposals for new charges must be agreed administratively under the terms of the public finance manual that applies to all public bodies. So, there is an administrative route to be followed. In addition, as the cabinet secretary said, any proposal has to demonstrate that it is not inconsistent with or inconducive—if that is a word—to the function of making the collections accessible to the public. There are two checks: an administrative one and a legal one.

The Convener: I know that it can be difficult to specify exactly how the bill will work, but there is at least curiosity about the difference between the powers in section 2 and the provisions in paragraphs 11(1) and 11(2) of schedule 1. Paragraph 11(2)(m) states that the National Library of Scotland may

“make charges for access to the collections”,

and paragraph 11(2)(n) states that it may

“make other charges in connection with the exercise of its functions (including charges for the provision of goods and services).”

There is a slight concern about where the line is drawn in paragraph 11(2)(n), which enables the library to

“make charges for access to the collections”,

given the point that has been made about the library’s functions under section 2, one of which, in section 2(2)(b), is

“making the collections accessible to the public”.

Where is the line drawn?

Fiona Hyslop: That comes back to the fact that the majority of funding for the National Library of Scotland comes from Government. Parties of different political persuasions will make statements in their manifestos about charging for entry to museums. Indeed, as you will recall, museums used to charge for entry, but the previous Administration stopped that and this Administration will maintain its commitment to free access.

It all comes down to politics. If people want to vote for parties that want museums to charge for entry, that is up to them. That is the democratic process. We believe in free access, as do a number of other parties; indeed, I am asked about the issue frequently in the chamber. Our letter of grant sets out what we expect from the use of public finances—for example, compliance with public pay policy and the policy of no compulsory redundancies. That does not need ministerial direction, but the fact is that a Government is elected on a certain mandate and must properly finance museums to carry out their functions.

Of course, all of that forms part of our general discussions with the National Library of Scotland about what can be achieved from the resources that we provide. Given the difficult financial circumstances, those resources can be very tight, and my officials have worked very hard to ensure that we can deliver all these things with the reduced budget that we are getting from Westminster. At the end of the day, however, it will always be up to a future Government to decide what it wants to do. The aspect that you highlight simply reflects the previous situation in which museums were allowed to charge for access. However, compared with previous legislation, the bill sets out the constraints on the setting of such charges. Charges cannot be introduced if they damage the functions set out in section 2 with regard to public access and curatorial matters.

The Convener: I am trying to understand the relationship between the powers of ministerial direction and, in particular, the general powers of the library as set out in schedule 1. Where is the balance between those two sets of powers? How does the approach operate?

Fiona Hyslop: Your question raises issues about how much should be set out in legislation. You must remember that the bill is about governance and management, not about individual decisions. Although it is always open to us to say in legislation that access to museums will always be free, I suspect that such a move would be unwise. For example, it is not unreasonable to charge for certain highly specialised digital work that is currently done; otherwise, anyone could ask for anything and expect to get it for free because the legislation says so.

I must reiterate that we have absolutely no intention of introducing charges. We are committed to free access but the bill must be future-proofed to stand the test of time. As I have just pointed out, museums can already make charges for certain services, and we think that that position should be maintained. As for our policy position, we have not had to put in legislation our commitment to free access to the museums and national collections, including the National Library

of Scotland; we expect that to be met from the resources that we provide. As I have said, that is already part and parcel of our discussions.

We are simply trying to work out what in the general administration of the National Library of Scotland and the relationship between it and the Government does not require to be set out in the bill. The aspect that you highlight does not require to be set out in the bill because it is subject to the general administration of NLS and the relationship between it and Government with regard to our expectations of what will be provided for the grant that we provide.

The Convener: Thank you for that, but I am still trying to understand the relationship between section 2(2)(b), which relates to

“making the collections accessible to the public”,

and paragraphs 11(2)(m) and (n) in schedule 1. On the face of it, they seem to contradict each other. On the one hand, the bill says that the collections must be

“accessible to the public and to persons wishing to carry out study and research”,

while on the other it says that NLS has the ability to

“make charges for access to the collections”.

Fiona Hyslop: That is the current situation. The bill provides flexibility, but the main function is in section 2—at the beginning of the bill—which is the key legislative driver. Perhaps some legal advice might help. NLS may be able to do other things, but it cannot do them if they would compromise its main function.

10:45

The Convener: I was trying to get to that point. In non-legal language, does section 2(2)(b) trump paragraph 11(2)(m) of schedule 1?

Fiona Hyslop: Run that by me again.

The Convener: Is it the case that section 2(2)(b) cannot be superseded by paragraph 11(2)(m) of schedule 1?

Fiona Hyslop: Section 2(2)(b) cannot be overly compromised, because it is a main function. As is currently the case, there will be flexibility for things to happen incrementally, but that cannot compromise the main functions.

David Seers: Paragraph 11 of schedule 1 starts with subparagraph (1), which says:

“NLS may do anything which appears to it ... to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions”

or

“to be conducive to the exercise of its functions.”

That puts the functions first. Subparagraph (2) just says, “In particular”, and gives examples of what NLS can do. Paragraph 11(1) is the connecting point between paragraph 11(2) and section 2.

Marco Biagi: David Seers said that any new charges would have to be approved at ministerial level, because of the public finance manual. Is that underpinned by, or does it stem from, any primary legislation?

David Seers: I am not sure—we will write to you about that.

Fiona Hyslop: Any charges will be minimal and in relation to incremental or additional matters—that is the case now. It might help the committee to ask NLS to give an example of what it charges for.

The Convener: If you write to us about the other point, I am sure that your letter could cover both issues.

Jean Urquhart: I think that I am understanding all this. I will use an example not from the National Library but from the Kelvingrove art gallery. We declare the national collections to be free and available, but the Glasgow boys exhibition was charged for, because it brought to this country Glasgow boys paintings from other European countries’ national collections. That exhibition contained items from our collection, private collections and collections around the world. Charging for it did not negate our basic principle that the national collections are available to the public. That example shows that, if something exceptional is concerned, there will be a charge, which I presume covers the extra costs that are involved.

Fiona Hyslop: That has been the case in recent years for different institutions. It would be great if a benefactor was found or if the public purse could make all such things free to access but, to get some of the best international collections on loan, charging happens in galleries and museums.

Clare Adamson (Central Scotland) (SNP): I will examine legal deposit issues. In your opening statement, you commended the library for its strategic approach and its work on new media and digital media. However, legal deposit legislation provides no guidance on what to do with that. I understand that the United Kingdom Government made a commitment in April 2011 to produce guidelines that would fit with the current regulations, which are under Westminster’s control. Have you made any representations to the UK Government about when those guidelines are likely to come through? Does the bill give the library the confidence to continue on the lines that it has followed in relation to new media and digital media?

Fiona Hyslop: That is an important question. The bill is an enabling measure that will allow future proofing for e-deposit. However, there are frustrations that there have been delays in introducing UK regulations. I have urged the Department for Culture, Media and Sport to proceed swiftly with regulations, as our records would be weakened by delays in implementation. We have tried to future proof the bill so that it covers existing arrangements for print material and arrangements for making electronic content available when it is received. However, you are right that the legislative competence on copyright exemptions and on other aspects that enable the use of copyright material when it is received is still reserved to Westminster. The bill ensures that, when such information is received, the operations of the library can be conducive to future proofing in relation to digital work.

There is an outstanding issue. It would be helpful to us, and timely, if the DCMS proceeded with the regulations. My understanding is that the UK Government's general approach is to limit the number of additional regulations to try to limit what I suppose it sees as burdens on organisations. However, that is compromising our approach, as we need the guidelines.

We have made representations to the DCMS, but it is open to the committee to make further representations to it. The issue is more pertinent to Scotland, as we are considering a piece of proposed legislation, but it is as relevant to UK institutions as it is to Scottish ones. It would be helpful if we had the guidelines before the bill is passed, but I am not prepared to hold up the bill to wait for them. We have made representations, but it would be helpful if the committee also considered doing that.

Marco Biagi: I want to move away from the point about the firmer relationship of ministerial direction and on to the softer relationship between the Government and NLS. The bill will set out in statute—for the first time, I believe—a great many functions that NLS will be asked to perform. How do you envisage the Government measuring success in performance? How will you handle that more informal aspect of the relationship in the years after the bill is passed?

Fiona Hyslop: That takes us to the relationship aspects in the administration of the organisation. For NLS and for other organisations, a corporate plan is important, as it sets out what an organisation seeks to achieve. We have dialogue with bodies on the preparation of corporate plans. The NLS corporate plan will set out what the body is trying to do and how it will measure its success. At a time of change and transition from the use of print media to the technological age, evidence will be needed on how the NLS is managing that.

Those changes provide fantastic opportunities for the National Library to be truly national, because people will not have to get to Edinburgh to access information, as access will be available throughout Scotland. That is an interesting issue.

We will set out our expectations and what we want the NLS to achieve, and we will measure it against that. That will be done publicly. The corporate plan will set out what the NLS expects to achieve, so it can be measured on that basis. I would not put that in legislation, because the situation will change. In five years, what the NLS seeks to achieve could vary from what it seeks to do now. There is a difference between what we put in legislation and what we expect from the general corporate plan. A primary aim and purpose of Parliament is to pass legislation to provide the basis of administration, but much of the accountability does not come through the legislation; instead, it comes from the opportunities that the committee has to hold me and the institution to account.

Neil Bibby (West Scotland) (Lab): The cabinet secretary will be aware that we are required to consider the impact that the bill will have on equal opportunities. I understand that an equalities impact assessment was carried out in relation to three areas: the board, users and collections. How has the equality impact assessment process ensured that we will have better equal opportunity outcomes as a result of the bill?

Fiona Hyslop: Part of the process is to ensure that all legislation abides by the impact assessment in what it provides. With the bill, the primary issue is appointments to the board of trustees and governance arrangements. The Public Appointments Commissioner for Scotland will ensure that equality impacts are taken into account in the appointment processes that are applied.

With the bill that the committee is scrutinising, the board and the governance arrangements are the main subjects of the equality impact assessment. As far as the other aspects are concerned, when it comes to the organisation and its general day-to-day running, it must abide by equality legislation and the more general duty in that regard. What is interesting is that, as libraries become more accessible online, there is an issue about digital accessibility. There is a general issue about digital participation, the digital divide and how people can access materials electronically but, in one sense, online availability provides better and more equal access to the country as a whole, because people do not have to go to the library to access its collections. In a sense, the bill will enable a situation in which better and more equal access to services can be provided.

However, the primary driver as far as the equality impact assessment is concerned will be the appointment system for the board. That is driven by the public appointments system, which is governed by general principles. There is probably some way to go to ensure that that process is as good as it should be in terms of equal access.

Neil Bibby: I have a follow-up. It was reported that 6 per cent of NLS users declared themselves to be disabled, whereas 20 per cent of the general population are classified as disabled. Does the bill contain any specific provisions that you think will improve the usage rate by people who have a disability?

Fiona Hyslop: I think that it will have more of an indirect effect. It will future proof the organisation so that it can provide more material online, which will ensure better access geographically. The National Library faces the challenge of being located on a number of sites. Disabled access is always constrained in old buildings. The bill is enabling legislation in the sense that it will future proof the library for new technologies, the use of which should provide more access for people with disabilities.

We should remember that the library's current functions are such that it is primarily a research library. The figure for access to the reading room may reflect how many disabled students there are in the general university population. There would probably be a better correlation between the proportion of postgraduate researchers who are registered as disabled and the figure for usage of the library by disabled people. If the proportion of disabled postgraduate researchers is a bigger number, that might lead one to believe that fewer disabled researchers use the library. If it is the same number, the disabled usage figure simply reflects the population that tends to use the library.

The Convener: I have a final question about the legal deposit issue, which was raised earlier. You mentioned that, in April 2011, the DCMS committed to bring forward regulations on the matter but that no regulations have so far appeared. Can you confirm that legal deposit is a devolved matter? Through a Sewel motion in 2003, the Scottish Parliament allowed the UK Government to pass an act on its behalf. If, as is my understanding, it is a devolved area, why are we waiting for the DCMS to act?

Fiona Hyslop: Our understanding is that, as of now, that function is exercised by the Westminster Government—it has the responsibility and the powers on that. I am less familiar with the situation prior to 2007, but perhaps colleagues can help.

David Seers: I would call it a semi-devolved area. The power to request that publications be placed on legal deposit in the National Library of

Scotland is devolved, but there are other provisions in the enabling legislation and in the regulations to do with issues such as copyright and protection from defamation that relate to reserved areas. It is half and half.

Fiona Hyslop: The bill will enable us to act on the first aspect, but the second—the copyright aspect—is an area in which Westminster has responsibility.

Greig Walker (Scottish Government): I would like to follow up on my colleague's point by saying that the law of defamation is devolved, but copyright falls within intellectual property and is therefore reserved.

The Convener: I suspect that the answer is that you are waiting for the draft regulations because it is better that they cover all such areas, rather than us taking action on one aspect of them.

Fiona Hyslop: Yes.

The Convener: As there are no further questions, I thank the minister for her attendance, which has been very helpful.

10:59

Meeting suspended.

Letter from Fiona Hyslop, Cabinet Secretary for Culture and External Affairs

During my evidence session on 21 February I undertook to address some of the points made by members of the Committee in writing.

The Scottish Public Finance Manual (SPFM) has the legal status of "applicable guidance" issued by the Scottish Ministers as referred to in the Public Finance and Accountability (Scotland) Act 2000 (specifically section 22(1)(c)). The SPFM sets out the public sector accountability standards required by the Accountable Officer of each public body, including NLS. More information about the legislative background of the SPFM can be found at—

<http://www.scotland.gov.uk/Topics/Government/Finance/spfm/Intro>

Members asked for more information about the charges that NLS currently applies. There are instances when NLS provide a charge to meet any additional "added value" costs it might incur. For instance whilst NLS provide most digitised material free of charge on its website they charge users for "digitisation on demand" when content has not been made electronic. Members of the public are charged for the production of high resolution maps if this is not available as part of NLS's existing collections. This charge covers the cost of digitising. The charges applied for digital images are published on the NLS website at

<http://www.nls.uk/using-the-library/copying-services/digital-imaging>

As I made clear during my evidence session the essential point is that the Scottish Government is committed to free access.

Following the evidence session my officials were asked to clarify the relationship between section 8(2)(a) and (b), and schedule 1, paragraph 11(1) and (2). I understand that members would find it useful to understand whether the Ministerial power of direction could be extended to some of NLS's general powers in some circumstances.

NLS must have regard to its functions when exercising any of its powers in schedule 1, paragraph 11 (1) and (2). The powers can in principle be directed on by Scottish Ministers, subject to the restrictions in section 8(2). A power of direction would only be used after careful consideration and as a means of last resort. Scottish Ministers would need to be satisfied that all other requirements and controls, as set out in the SPFM and the Memorandum to Accountable Officers, had been exhausted.

I can confirm that there has to date been no Ministerial power of direction given to a cultural public body.

Fiona Hyslop

23 February 2012

ANNEXE E – OTHER WRITTEN EVIDENCE

Submission from Aberdeen City Council

We welcome the National Library of Scotland Bill as a much needed modernisation of the 1925 legislation. The National Library of Scotland governance arrangements will now be aligned with similar public bodies such as that for the National Galleries of Scotland and National Museums of Scotland.

Issues we may have had regarding the collection and of lending of non-print materials have also been dealt with by the Bill even although UK regulations are not yet in place. However the UK Department for Media, Culture and Sport has consulted on draft regulations.

We are happy to note that whilst there is to be a reduction in the number of Board members from the current 32 trustees a minimum of 6 and a maximum of 13 has been stipulated. We would argue that the minimum is on the low side to accurately reflect the National Library of Scotland's broad remit and range of stakeholders.

The Bill reflects comments submitted from the 2010 consultation relating to the balance between Ministers' responsibilities and the powers of National Library of Scotland trustees. In particular we are pleased to note that the Bill covers areas where ministerial direction is precluded such as collecting, preservation, care and access to the Library's collections.

One area of concern is the omission from the Bill of any mention of the National Library's role in advocacy across Scotland in particular in promoting use of libraries, facilitating best practice and co-operation both with the NLS and the wider library & information sector. We believe that the National Library plays a key role in library advocacy and that this should be explicitly reflected in the Bill.

Submission from the Chartered Institute of Library and Information Professionals in Scotland

Background

The Chartered Institute of Library and Information Professionals in Scotland (CILIPS) is the professional body for librarians and information managers and represents personal members from all sectors - public, school and academic libraries, and libraries from both the voluntary and commercial sectors.

The Chartered Institute of Library and Information Professionals in Scotland welcome the opportunity to provide evidence to the Scottish Parliament on the National Library of Scotland Bill 2011. CILIPS is pleased that revision of the 1925 legislation is placed before the Scottish Parliament to bring the governance standards of the National Library of Scotland into line with modern governance.

Section 2

2 (d) Promotion and collaboration

CILIPS has a concern regarding the wording of the NLS function (Bill ref. 2(2)(d)) "promoting collaboration **between**, and the adoption and sharing of good practice by, other persons providing library and information services".

NLS is a part of a larger library community which services a large number of people in Scotland. The legislation for NLS should ensure that its functions enhance the library sector in Scotland and does not cause duplication or confusion to the library community and the general public.

CILIPS as a professional body has a significant amount of intellectual capital and also has a key role in providing advice to NLS, government and others, and that the intention of any powers and functions of the NLS should not be at the exclusion of bodies such as CILIPS, SCURL (Scottish Confederation of University and Research Libraries) or SLIC (Scottish Library and Information Council) as advisory body.

Suggested amendment.

We suggest that the wording of the bill be changed to reflect this should be "promoting collaboration and the adoption and sharing of good practice **with and between** others providing library and information services".

Section 6 – Faculty

CILIPS supports the reduction in the number of trustees which reflects modern governance practice. The differentiation between operational matters in relation to the Faculty of Advocates and their representation on NLS Board as a trustee is an important and necessary change.

We welcome the operational agreement intended for this relationship.

Section 8 – Direction

There is a delicate balance between accountability for public bodies, independence and the core neutrality and ethical functions of a library. CILIPS is pleased that the Bill and associated documents appears to put in place safeguards. It would be useful to have greater clarity how any future direction might be applied. We suggest that the power of direction would only be used if there was a compelling operational matter requiring Ministerial attention and NLS not delivering on its functions.

Schedule

Membership of NLS

The lower number of trustees is in line with good practice. There will be a need during implementation of the Bill to ensure that the term of trusteeship, strikes a balance between experience and a balance of skills. Appointment of board members by advertisement and "fair and transparent process of selection based on merit" is welcomed. We request that the process be based on a job description and person

specification identifying appropriate skills, knowledge, experience, and will library skills, knowledge and experience be essential criteria for a significant proportion of aspiring Board members.

As a charity itself, CILIPS believes that there are times when ex-officio membership or an extended membership can be useful by nature of who/what they represent or the knowledge base and information they can bring to a Board or in a particular time.

Remuneration of members

This may give some cause for concern although costs of implementation are low in the overall NLS budget. There needs to be clarity why an NDPB might offer remuneration and transparency over how they might be set.

Committees

Good governance requires the involvement of a range of partners and stakeholders, implementation of the legislation should ensure that there is no duplication from wider library community.

Charging

There are occasional mentions in the Bill in relation to charging CILIPS has concerns about the potential impact of any charges on the ability of NLS to deliver its core functions. Freedom of Access to information is an underpinning human right and should mean free access to thoughts, ideas and inspiration. Charging is socially divisive. We urge Scottish Ministers to continue to implement a policy of general free access to the national collections and ensure that this is a core element of the NLS Business plan.

Digital Legal Deposit

Digital matters will be extremely important. Whilst the intent of this Bill does not cover legal deposit, CILIPS remains concerned that the 2003 Act has not been implemented and digital legal deposit giving real cause for concern for future collection of Scotland's culture and heritage, not least given the current licensing and copyright challenges which all libraries and librarians are facing.

Staffing

CILIPS is concerned about the appointment of senior staff in the future. The Bill seems to infer that NLS may at some time in the future there the CEO and /or senior team could be appointed without significant professional library experience. Whilst we recognise that this is not a matter for the Bill, we believe that NLS should ensure that procedures and processes for appointment of the senior management team must ensure that the job description and person specification requires appropriate management skills, knowledge, experience, and that professional library skills, knowledge and experience be essential criteria for appointment.

Submission from the Law Society of Scotland

The Council of the Law Society of Scotland has had the opportunity to consider this Bill and agrees with the general purpose that the law relating to the National Library of Scotland (NLS) should be improved and modernised.

Nevertheless, the Council has the following comments to make in relation to the Bill:-

Section 2

Section 2(3) provides that NLS is to exercise its functions with a view to *inter alia* “promoting, understanding and enjoyment of the collections”. This is a difficult objective to comply with as “understanding and enjoyment” are very subjective. It would be much simpler to require NLS to exercise its functions with a view to *inter alia* promoting the “use” of the collections. Those who use the collections will derive some understanding and/or enjoyment from that use and the use of the collections is a more identifiable objective.

Section 2(5)

Section 2(5) requires that any advice, information or assistance under sub-section (4) must be provided in such a manner as the Scottish Ministers may determine. This provision could undermine the independence which NLS has in the provision of advice, information or assistance to Ministers. It is suggested that there should be a provision in the Bill, reinforcing the independence of NLS in fulfilling its obligations under the statute.

Section 3 – Acquisitions, deposits and disposal of objects

Section 3(1) provides that NLS may “

- a) acquire (by purchase, exchange or gift)
- b) accept on deposit

Any object which it considers it is desirable to add to its collections”

Provisions regarding the borrowing and lending of objects are to be found in Section 4 which implies that the reference to acceptance on deposit in Section 3(1)(b) refers to the real contract of deposit.

Deposit is a form of contract where the owner of corporeal movables delivers them to another for custody on his or her account; the depository undertaking gratuitously to keep them safe and restore them on demand. The contract is perfected by delivery of the subject deposited and may be proved by parole evidence.

A depository is under a duty of care to take reasonable care of the thing deposited, such as a person of reasonable prudence generally exercises about his or her own property and not use it unless such use is permitted by the owner.

A depository must restore the thing on demand or as otherwise agreed with any fruits or accessories.

Section 3(2) allows NLS to dispose of an object from its collections under Section 3(1) for various reasons including:-

- duplication of the object;
- that the object is not required for the purpose of the collections;
- that the object has been damaged or is hazardous; or
- in any other case the Scottish Ministers agree to the disposal.

A disposal may, in terms of Section 3(3) be:-

- by sale;
- exchange gift; return; or
- destruction.

In relation to those items which are accepted on deposit, the provisions of sale, exchange, gift or destruction should not apply and NLS should be under an obligation to restore to the original owner the item accepted on deposit.

Schedule 1

Schedule 1(11)(2) provides that NLS may enter into contracts and, with the approval of Scottish Ministers, acquire and dispose of land. This paragraph also provides that NLS may form (alone or with others) companies within the meaning of the Companies Act 2006 and undertake or execute any charitable trust. The provision is unclear as to whether or not a limited company or a charitable trust, established by NLS may acquire and dispose of land without the approval of Scottish Ministers and this matter should be addressed in the Bill.

EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 1, No. 60 Session 4

Meeting of the Parliament

Thursday 15 March 2012

Note: (DT) signifies a decision taken at Decision Time.

Stage 1 Debate: National Library of Scotland Bill: The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop) moved S4M-02332—That the Parliament agrees to the general principles of the National Library of Scotland Bill.

After debate, the motion was agreed to (DT).

National Library of Scotland Bill: Stage 1

The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-02332, in the name of Fiona Hyslop, on the National Library of Scotland Bill.

14:55

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I am pleased to open the debate on the general principles of the National Library of Scotland Bill. I thank the people who gave evidence and I thank the convener and members of the Education and Culture Committee for their scrutiny of the bill at stage 1. I welcome the committee's support for the general principles of the bill and appreciate the opportunity to address some of the key issues that it highlighted.

The bill is long overdue. The National Library of Scotland is a 21st century organisation, the governance of which is, increasingly, out of date. The National Library of Scotland Act 1925 set up the board of trustees with the sole function of managing the library. The 1925 act was also concerned with transfer of non-legal material and legal deposit privileges from the Faculty of Advocates' law library.

The people who created the National Library in 1925 were in inspiring company. It was a pivotal year, which saw the publication of great literature—F Scott Fitzgerald's "The Great Gatsby" and Virginia Woolf's "Mrs Dalloway". The first surrealist exhibition was held in Paris and, closer to home, John Logie Baird created the first television transmitter. Two years later, the world's first long-distance television pictures were transmitted by Logie Baird to Glasgow's Grand Central hotel. Of course, Logie Baird's achievements have had an enduring impact on the development of modern culture and society.

The National Library continues, in its own way, to reflect the past while being ever relevant to the future. In its recent history, it has assumed responsibility for the Scottish screen archive, which preserves and gives public access to our TV and film heritage. We are supporting the library through the bill and in other ways, and I am delighted to confirm that the Scottish Government is providing £250,000 to support the library's planned relocation of the screen archive to Glasgow city centre, as part of the exciting project with Glasgow City Council and the University of Glasgow on the revamped Kelvin hall, to develop a progressive research centre for our great collection of moving images.

It is interesting that during the passage of the 1925 act through Parliament, the then member for Edinburgh Central, Mr William Graham, referred to the National Library's establishment as being quite a radical political statement of its time. He said:

"what the Secretary for Scotland is proposing this afternoon is in my judgement the highest form of Socialism in this or any other country, because he is bringing the means of learning directly to the ownership of the Scottish people under a representative board. That is quite a remarkable departure in the case of a Conservative Government".—[*Official Report, House of Commons*, 24 July 1925; Vol 186, c 2628.]

The proposals that are in front of us could not be described in such radical terms, but I am happy to say that the Scottish Government is proud to carry on funding the National Library as a resource for learning and research for all Scotland. The bill is small, but it will make a big difference to the National Library and its stakeholders. It delivers on a commitment that I made to the National Library before the election, in the event of the Scottish National Party's being returned to government.

The National Library has achieved much over the past 87 years and the bill will ensure that it has the necessary governance arrangements to realise its ambition for decades to come. The bill sets out clear statutory functions, which reinforce the importance of what the National Library does and can do for Scotland. Its main purpose is to maintain and develop the collections and to make them as relevant and accessible as possible to users. The functions emphasise the library's role as a major research library and its role in sharing good practice and expertise.

The governance reforms will ensure that the library's board structure is comparable with that of other modern public bodies. The bill will reduce the size of the board, which can consist of 32 members under the current arrangements—I will come back to the number of board members. The bill will also remove reserved places and ensure that all appointments are based on merit and selection. I am grateful to the current chair, Professor Michael Anderson, and to board members for their service to the board.

The National Library is part of our rich cultural heritage. As Scotland's only legal deposit library, it can request a copy of all printed items that are published in the United Kingdom and Ireland. Some 5,000 items are added every week under legal deposit arrangements. With 14 million items in its collections, the National Library is Scotland's largest library and is a major reference centre for the study of Scotland and the Scots. More than 70,000 people visit the library's reading rooms each year, and online hits of around 2.25 million show the demand for, and relevance of, its collections.

The National Library received a record number of visitors in 2009, when it displayed the last letter of Mary Queen of Scots, with 12,000 visitors in one week. The library also holds the wonderful John Murray archive, which contains a quarter of a million items from great writers, politicians, explorers and scientists of the past.

The National Library ensures that our national record is made accessible and relevant for generations to come through the growing use of electronic formats: the library is to be congratulated on its already significant work to digitise more than 1.5 million items, which extends its national and international reach. Its website is viewed by visitors from 188 countries. The bill is forward looking and has been drafted so that the legislation will keep pace with future technological developments, including the advent of United Kingdom regulations for electronic legal deposit.

I want to ensure that the bill works to support the National Library and to enable it to continue its working relationship with the Faculty of Advocates' law library. The relationship between the National Library and the Faculty of Advocates is important to the future of Scotland's legal library collection. The Faculty of Advocates' library has been run and funded by the Faculty of Advocates since 1689. Between 1842 and 1925, the faculty held the sole right of legal deposit for Scotland. In 1925, it passed that right to the National Library. The significance of the gift of non-legal material and legal deposit privileges was not underestimated in its day. At the time of the parliamentary passage of the 1925 act, the advocates' library was described in the House of Lords as

"a great Scottish national possession ... which has grown ... with the development of modern Scotland".—[*Official Report, House of Lords*, 2 July 1925; Vol 61, c 961.]

The National Library was the fruit of the generosity of the Faculty of Advocates, and there is great history to be found in that continuing relationship. The bill complements that good relationship by ensuring that the National Library and the Faculty of Advocates can enter into co-operative agreements on public access to their collections and on the care of items that they hold. That process has already begun, with both organisations signing a memorandum of agreement that outlines how they will work together.

I am pleased that the Education and Culture Committee has accepted the general principles of the bill. The committee expressed concerns that the proposed size of the NLS's board is too low, given the range of skills and expertise that is required. I want to be constructive on this issue. There is a danger that, if a board is too large, it can become less focused on strategic direction

and leadership. I certainly do not want to hinder the board's operation and I am content to raise the minimum number of NLS board members, so I will lodge an amendment at stage 2 that will allow the membership range to be between nine and 14. Early indications are that the NLS, the Scottish Library and Information Council and the Faculty of Advocates support that proposal.

The committee questioned the need for and the scope of a ministerial power of direction. The inclusion of such a power provides accountability. Around 86 per cent of the NLS's funding is provided by the taxpayer so ministers need to ensure the money is spent wisely. A ministerial power of direction is a standard feature of modern public bodies. The great majority of non-departmental public bodies that have been established as statutory bodies since 1990 have powers of direction—17 out of 21 bodies. Eleven of the 14 NDPBs that have been established since devolution have statutory powers of direction.

The power of direction that is proposed in relation to the NLS has been carefully crafted to maintain the curatorial freedom of the NLS. That is why I cannot direct the NLS on the delivery of key functions such as preserving, conserving and developing its collections, exhibiting and interpreting objects in the collections and making the collections accessible to the public and to people who are carrying out study and research. The NLS supports that drafting approach and pointed to the protection that it offers in relation to its independence from ministers. A similar arm's-length guarantee in relation to Creative Scotland is contained in the Public Services Reform (Scotland) Act 2010.

The committee has asked for more explanation of the power of direction, so I will write to the committee on how and when the power of direction can be used, so that my intentions are on the record before stage 2. For the purposes of today's debate, it may help if I outline that a direction could be justified in the event, for example, that the NLS failed to comply with public sector policies, such as those on no compulsory redundancies or on pay. Those examples refer to overall management of the library; ministers can direct the overarching function that the NLS has in relation to managing the library, as expressed in section 2(1) of the bill.

Ministers can also direct in relation to collaboration and diversity because those areas extend beyond the NLS's particular curatorial and cultural functions. Action might be taken if there were efficiencies to be realised from greater collaboration and shared services, but the NLS was not complying with public sector duties in that regard.

The National Library of Scotland currently works with local authorities, universities and a range of other information service providers. The general intention is to future proof legislation sufficiently to allow for any significant changes in public sector policies or operational practices. I confirm that my officials have been discussing the nature and extent of the power of direction with the NLS, including in relation to collaboration.

On the powers on charging in schedule 1, I am pleased that the committee welcomed my restated commitment to the principle of free access to the National Library. The committee sought to ensure that the bill will allow the NLS to collect material electronically under the legal deposit arrangements. Since I gave evidence, the United Kingdom Government has published updated draft regulations on that, including new provisions that directly address the position of the NLS and the Faculty of Advocates. The bill has been drafted with the UK developments firmly in mind and is sufficiently future proofed to ensure compatibility with proposed and future regulations. As part of my on-going exchanges, I have forwarded a copy of the committee's report to the Department for Culture, Media and Sport, and have highlighted the relevant paragraphs relating to electronic deposit.

I acknowledge that the committee accepts that the bill as a whole will be beneficial to the National Library of Scotland, its users and stakeholders. I am grateful for the help and input from the NLS, the Faculty of Advocates and SLIC in drafting the bill. I welcome the opportunity to respond to and reflect on points that have been raised by members and to address some of the issues in the committee's report.

I move,

That the Parliament agrees to the general principles of the National Library of Scotland Bill.

15:07

Stewart Maxwell (West Scotland) (SNP): On behalf of the Education and Culture Committee, I make clear from the outset our unanimous support for the general principles of the National Library of Scotland Bill. In our stage 1 report, the committee welcomed the fact that the library's governance arrangements are being updated and that its functions are being clearly set out in legislation.

However, although we recommended that the bill progress to stage 2, the committee's report also set out members' concerns, in particular in relation to the ministerial power of direction. I will discuss that in more detail later.

I agree with the cabinet secretary that the overhaul of the library's governance arrangements is long overdue; the current provisions have been

in place for almost 90 years and allow—in theory, at least—the NLS board to have as many as 32 members. The present arrangements also allow for a considerable number of ex officio appointments to the board, including the committee's very own Marco Biagi, who is MSP for Edinburgh Central.

Although there was support for the Scottish Government's proposals to modernise the library's governance arrangements, there was also concern about the specifics of the Government's approach; there was unanimous agreement among the organisations that provided oral evidence that the proposed lower limit for the board—seven members, including a chair—is too small. The current chair of the NLS considered that seven members would not be sufficient to cover the range of skills and stakeholder interests that are needed for an effective board.

The committee was persuaded by such concerns and, although we were not in a position to state what the optimum board size is, we sought an assurance from the Scottish Government that it would fully consult all relevant parties, in particular the NLS, before agreeing on a final number. I welcome the cabinet secretary's willingness to raise the lower limit for the board, and the full discussions that will take place with the NLS.

I turn to the ministerial power of direction, which was the issue that caused the committee the greatest concern in the course of its scrutiny. In essence, the bill allows Scottish ministers to give the NLS directions on the exercise of certain of its functions. Those functions can be summarised as promoting collaboration between library and information services, and promoting diversity in the people who are accessing the collections. The bill's policy memorandum helpfully sets out the areas in which the Government will not seek to direct the library, but it says very little about why a power of direction is to be retained in those two areas.

The committee therefore explored the issue in some depth. We were told by Scottish Government officials that, generally speaking, a ministerial power of direction in relation to public bodies is

"very much a last resort."—[*Official Report, Education and Culture Committee*, 7 February 2012; c 693.]

For example, officials said that it would allow a minister to intervene in the event of serious operational or organisational failure. Although we can debate the merits of such an approach, the committee's bugbear is that it is not obvious from the bill that the Government would be able to intervene in the manner that is described.

The cabinet secretary made the point—again, in general terms—that taxpayer-funded institutions

must be accountable to the taxpayer for spending money wisely. However, she stressed clearly that any interventions in the NLS must not infringe the library's curatorial responsibility and freedom. The cabinet secretary further explained that the power of direction could be used only in relation to the overall management of the NLS—another point that is not obvious from reading the bill.

To be fair, the committee acknowledged that it may be helpful to the cabinet secretary if she could retain the power of direction in the event of any future unforeseen circumstance. In reality, the power is unlikely to be used. However, given the questions around the issue, we sought a more detailed explanation as to why the Scottish Government justified the retention of the power of direction with reference to such broad issues when the bill focuses narrowly on promoting collaboration and diversity. The committee also asked how the bill could more accurately state how and when the power of direction could be used, which is where clarity and certainty are required. I therefore thank the cabinet secretary for her comments on the power of direction. I look forward to receiving her letter prior to stage 2 in order that we can get clarification and certainty to ensure that the committee is content with the proposals in the bill.

I am sure all members would agree that the National Library of Scotland is one of the country's most important cultural resources. I am also sure that there would be unanimous support for maintaining free public access to its collections. There was nothing in the committee's stage 1 scrutiny to suggest that that principle is under threat—indeed, both the Government and the NLS stressed their commitment to maintaining free public access. However, schedule 1 provides the NLS with a range of powers, including the power to make charges for access to its collections. That caused some disquiet at stage 1. For example, the Scottish Library and Information Council warned that proper procedures had to be put in place to ensure that charging for access will not be taken as a given.

While recognising those worries, the committee was comforted by the Scottish Government's reassurance that the power to charge is subject to the library's overarching function of making its collections publicly accessible. In other words, the power to charge could not jeopardise that function. The committee accepts that there are situations in which the NLS can legitimately seek payment for certain added-value services—for example, when there is an extra cost involved in providing a particular item. Some practical examples of that were given to the committee in evidence. Officials made it clear that, even in such circumstances, various safeguards would be in place to ensure

that the library could not simply use the power unilaterally.

My final point relates to charging and overlaps with my earlier comments about the ministerial power of direction. The NLS's power to charge, which is one of a number of powers that will be granted to it by the bill, can be used only in connection with the exercise of its functions. We therefore asked the cabinet secretary to clarify the relationship between the ministerial power of direction and the NLS's general powers. The cabinet secretary confirmed that the library's powers could, in principle, also be directed by Scottish ministers, albeit that that would be subject to restrictions. The Government stressed that a power of direction would be used only

“as a means of last resort”.

Again, however, the committee considered that the Government should provide clearer justification for its approach. I hope that the letter that is coming to the committee will do that.

The committee felt that greater clarity is required from the Government on how the various functions and powers that will be bestowed by the bill will mesh together and, in particular, how they will fit with the ministerial power of direction. I very much welcome the comments in the cabinet secretary's opening speech, which provide additional reassurance on the scope and the practical impact of those powers. However, as I have said, I look forward to further clarification before stage 2.

The bill is a welcome and overdue reform of one of Scotland's great national treasures. The committee therefore considers that Parliament should agree to the bill's general principles. Assuming that it progresses to stage 2, we look forward to considering how the bill can be further improved to ensure that the library continues to flourish for decades to come.

15:14

Neil Findlay (Lothian) (Lab): I was going to whisper at the start of my speech, but that would have been a cheap and obvious libraries joke, and I would never indulge in such a thing.

It is fair to say that, in the current climate of economic turmoil, rising unemployment and constitutional niceties, libraries are not the most high-profile subject. Nevertheless, we should not underestimate the importance of ensuring effective running and retention of our public libraries as a vital cog in the social fabric.

Historically, libraries have played a major role in the self-improvement of many of our citizens. I welcome the bill and the fact that it does not threaten to close down library provision. It seeks to give the National Library of Scotland governance

arrangements that are necessary for it to meet the needs and demands that are being placed upon it.

Sadly, I am afraid that many communities across the UK are seeing libraries being closed or threatened with closure as cuts to local government and austerity policies bite ever harder. I know that we are here today to consider the National Library of Scotland and the proposed changes to its governance, but before doing so, I will expand briefly on the importance of libraries in general because they are vital tools in helping people to achieve and learn. The self-education of many working-class people has been facilitated through libraries, and reading promotes and encourages self-development. Libraries allow people, irrespective of their income, to borrow the same books and read the same material, and that is genuine equality of access.

I was delighted to hear the cabinet secretary herself mention socialism. Libraries are, of course, an expression of municipal socialism in practice. The labour movement has always promoted education as being one of the greatest tools to foster social, economic, and personal change, and libraries have a key role to play in that. At this time of forced austerity and the on-going attack on public services, we must be ever vigilant and we must guard against the threat of library closures. Libraries are often seen as easy targets and are wrongly categorised as being somehow superfluous. Of course, they are not; they are an essential part of the community and part of a group of cherished public services that are a civilising force in our society.

Of course, in this day and age, libraries are about more than just books; modern libraries are about exhibitions, displays, digital and film archives, web development, service collaboration, archiving and genealogy, as well as being a traditional source of reference and reading materials. Libraries can provide many of our young people with a sanctuary in which to study in quiet and with space, which might not be available in their family homes.

The National Library of Scotland is one of Scotland's most important and valued public resources. The cabinet secretary mentioned that it was established in 1925. It is right that we now consider its management and governance, and look for ways to ensure that it continues as an effective and respected Scottish institution.

Past and present boards and trustees appear to have done a very good job, which is evident as soon as we walk through the doors of the National Library. When the committee visited, we were able to see the work that goes on there and to experience and taste the unique atmosphere of the place. However, the governance of the NLS is in need of reform—a point that was made in 2006

by the Labour-led Scottish Executive. To my mind, there is a compelling case for the NLS to streamline its governance. I have sat on many a board and committee in my time, so I can see how a board of 32 people might be somewhat unwieldy and could result in a logjam in the decision-making process, but I was surprised to hear the cabinet secretary say that there might be a change to the number of board members. At the committee, she expressed a preference for seven or possibly nine members. We are now being told that the number could be as high as 19.

Fiona Hyslop: In my opening remarks, I indicated that I would be willing to move the bottom end from seven up to nine. The range of board membership will be very similar to other public bodies, at between nine and 14 members.

Neil Findlay: That is helpful.

Reform is also about meeting challenges and embracing wider societal and technological change, and it is clear that the NLS has been proactive in that regard. The “Thriving or surviving? National Library of Scotland in 2030” report and the subsequent “Connecting Knowledge” report have sought to devise new ways to embrace digitisation and to broaden learning through the use of technology. That proactive approach is very welcome. I also welcome the cabinet secretary's announcement about the screen archive going to Glasgow. However, any change must be managed and any future changes should be made while protecting the NLS's independence and unique status. Research projects or decisions related to the collections, or any decisions about them, must be completely free of political interference. The principle of curatorial independence, like that of academic freedom, is one that we should protect at all costs.

That is why I have some concerns about the plans for ministerial direction. It is proposed that Scottish ministers may be given the power to give directions

“of a general or specific nature”.

The cabinet secretary addressed that issue in committee, but I hope that she will expand on it in her summing-up speech. I am sure that she does not want to micromanage the NLS—I do not think that she intends to stamp books and hand them out—but there are reservations about the proposals representing another yard down the road to centralisation of power. I am not saying that that is inevitable, but if a less reasonable person than the current cabinet secretary takes over her position in the future, that danger could become a reality. I acknowledge the cabinet secretary's comment that the library's independence will be respected, but it would be

helpful if we could be given more clarity about the proposed ministerial direction. That would allow us to determine whether we need ministerial direction at all.

One of the library's key roles is to preserve and promote our national culture and heritage, as well as to promote cultural policy. I hope that it will continue to be an embracing and diverse cultural policy that respects and reflects all the influences on our great country, wherever they come from, and that we do not become overly parochial. There is a danger that the Government could seek to use its position in order to use cultural policy as a vehicle to promote its wider political agenda, rather than to serve the national interest.

I would raise my concerns about the potential centralisation of control no matter who was in power, because, used wrongly, the proposals could represent a danger to the library that would dissuade donors, or even raise questions about its charitable status. Again, clarity on that would be helpful.

We have questions about other parts of the bill. As I have mentioned, the value of libraries lies in their universal character and their status as a public good that is, and always should be, available for all. They are not and should never become commercial entities, so we want more information on the suggestions that the NLS could charge

“for the provision of goods and services”

and that it could raise and borrow money with ministerial approval. Will the cabinet secretary expand on what that means? Which services might be charged for? How will moneys be raised or borrowed, and how would that affect the services? After all, we know that loans have to be paid back. I wonder whether it is a coincidence that the Scottish Government has given the library the right to borrow at the same time as it is reducing its budget by 11 per cent.

I am curious about the principle for allowing the library to create and own companies. We need clarity on what sorts of companies they would be and why they are needed. I hope that the proposal will not lead to the creeping commercialisation of the library. Any such move would call into question the broad principle and ethos that libraries, and the NLS in particular, are open and accessible to all people, no matter their means.

Fiona Hyslop: With regard to a number of points that Neil Findlay has raised, it is important to look again at the functions of the NLS. If it did anything to jeopardise access to its collections for the public and researchers, it could be challenged legally. The functions themselves are an important protection in relation to Neil Findlay's concerns.

The Deputy Presiding Officer (Elaine Smith): You must come to a close.

Neil Findlay: Parts of the bill are to be welcomed, but others raise questions about the role of libraries in general and the specific nature of the NLS. I raise those issues in a genuine spirit of co-operation and in the hope that we can collectively improve the bill and help to develop a national institution that is fit for the times.

15:23

Liz Smith (Mid Scotland and Fife) (Con): I apologise on behalf of my colleague Annabel Goldie, who is, sadly, not well today, and thank my colleague Alex Johnstone, who has come into the hot seat at short notice.

We are fully supportive of the need to modernise the legislative process so that we can both maintain and enhance the NLS. As the cabinet secretary said, it is a remarkable asset and we pay tribute, as other members have done, to all who are involved in its work, and to the large numbers of the public who are increasingly enthusiastic supporters of it. In the past, some have called the NLS the library of last resort—to be used only when people have unsuccessfully searched sources elsewhere—but that is no longer an applicable definition. That is very good news, but it obviously brings challenges.

We fully recognise the need in a world of fast-changing technology to put in place structures that will help to create not only more efficient administration, but a better system of access to the library's archive, and better coherence and collaboration with the other national archives. To allow things to remain as they are is simply not an option, so we support the Scottish Government and the other parties in their overall endeavours on the bill.

Throughout the committee's evidence taking we were struck by the professionalism, dedication and expertise of all those who are involved with the NLS, and by the careful thought that they had given to the future working of the institution and its role in modern Scotland. That expertise is in many cases unique, and brings degrees of specialism that are not seen elsewhere. It was good to hear that the cabinet secretary will lodge an amendment at stage 2 to reflect that, because there is no doubt that the committee and the witnesses who came to it were overwhelmingly of the opinion that the smaller end of the proposed new NLS board numbers was, indeed, too small. I heard what the cabinet secretary said when she came to the committee about the possibility of co-options on to the board. It is, of course, correct to do that and that option will remain. However, I was struck by just how desirable an aim it is to have a

wide range of experience on the board, so it is good that the cabinet secretary has confirmed that she is looking at that again.

I note, too, that the cabinet secretary has stated that the Scottish Government is keen on the principle that the governance of major institutions be considerably streamlined and be represented by smaller boards. Indeed, I think that the cabinet secretary said at committee that the Scottish Government is not in favour of large boards. I suggest that what is more appropriate is not so much a generalisation about the size of boards, but what works to the best advantage of the institution and the public that it serves. I fully understand that the current size of the board makes it unwieldy, but we should not go to the other extreme.

Before leaving the issue of the board, I urge the cabinet secretary to heed the advice of several stakeholders who are anxious for a smooth transition from the existing board to the new board, which will be very important if we are to carry with us the trust of all those involved.

A second major concern, which I think will continue as we debate the bill is—as the committee convener said—the intended extent of the powers of ministerial direction. There was a lack of detail and clarity in the policy memorandum about the precise nature of the intended ministerial power and about whether the power could conflict with areas of NLS management where ministers have no powers. There appear to be inconsistencies in some of the proposed changes. In fact, the chief executive was a little uncertain about how the promotion of greater collaboration and diversity would work when there seemed to be little comment in the policy memorandum about the detail of the proposed new powers.

The rest of the education, lifelong learning and culture brief shows that the Government has a record of wanting to increase ministerial power. College and university governance is just one example of that. I can understand that there are some reasons why that might lead to better governance, but I am not entirely comfortable with its being a general principle. We need a cast-iron guarantee that the moves in the bill are not simply about increasing ministerial powers but about greater efficiency for the institution.

Fiona Hyslop: I remind the member that for the Public Service Reform (Scotland) Bill the Conservatives lodged an amendment that would have given ministers greater power to enforce collaboration and direction for Creative Scotland, which I resisted because I was concerned about the mission creep of ministerial direction. It is important that for all such issues for public bodies we take a proportionate approach, which is what we are trying to do with the bill.

The Deputy Presiding Officer: You are in your last minute, Ms Smith.

Liz Smith: Thank you, Presiding Officer.

I accept what the cabinet secretary said. Others were also a bit concerned about the issue. Ministerial power should be about better governance. However, as things stand now, I do not think that the general principle has been spelled out.

The bill provides an opportunity for a better service from, and wider access to, the splendid archive that is the National Library of Scotland, and it will deliver exciting developments, especially on the technological front, in collaboration with the other national treasures.

With the provisos regarding the size of the board and the remit of the Scottish Government's powers, the Scottish Conservatives are happy to support the bill's principles.

15:30

Clare Adamson (Central Scotland) (SNP): I am a proud Lanarkshire lass who was born in Motherwell, which is one of the burghs that were blessed with the gift of a Carnegie library. I spent much of my early childhood in that library—indeed, one of my earliest pre-school memories is of sitting in the children's area of the library with the coloured glass panes at the back.

In trying to encapsulate why the bill is so important, I will quote from Andrew Carnegie, who said:

“the best means of benefiting the community is to place within its reach the ladders upon which the aspiring can rise—free libraries, parks, and means of recreation, by which men are helped in body and mind; works of art, certain to give pleasure and improve the public taste; and public institutions of various kinds, which will improve the general condition of the people; in this manner returning their surplus wealth to the mass of their fellows in the forms best calculated to do them lasting good.”

That quote encompasses many of the issues that have been discussed in relation to the bill. For example, it mentions free libraries. The issue of pricing has been discussed, as has the important principle of maintaining free access to the collections, with charging being used in exceptional circumstances for added value. The quote also mentions public institutions. The National Library of Scotland is one of Scotland's precious public institutions that should be preserved.

Carnegie says that it is important that institutions, whether they are galleries, museums or, as we are discussing today, libraries, deliver the “forms best calculated” to do people good. That encompasses much of what the National Library has done in moving forward and

embracing 21st century technology through the delivery of its website. However, that is happening in a vacuum, as the library's governance arrangements do not give it comfort in relation to the work that it is doing so well.

In this year of creative Scotland, it is right and proper that the Scottish Government should seek to bring the governance of the National Library, which was established in the 1920s, into the 21st century and up to an appropriate and measured level that will allow it to function in this technological era and meet the demands of this century. The changes will facilitate the National Library's work to meet its ambition to expand and to achieve its goals on improving its service to Scotland and the world.

As the Education and Culture Committee convener said, it is widely accepted that the current board of 32 representatives is too large and unwieldy. The board is not comparable with boards of other organisations, as the cabinet secretary set out in evidence at the committee meeting of 21 February. Ms Hyslop specifically mentioned National Museums Scotland, the National Galleries of Scotland and Creative Scotland. The current National Library board includes the First Minister—I hope that he will not be too disappointed if he loses his job at the end of the bill process.

The bill was introduced following rigorous consultation that ran from March to June 2010. There is broad consensus on the proposals, which is reflected in the committee's unanimous support for the general principles of the bill. We should not forget that the National Library is one of Europe's major research and reference libraries. It offers world-class collections and a range of modern library services, exhibitions and resources. It plays a vital role in bringing Scotland's history and culture to life for not just Scottish but international audiences. What better resource could they have than the National Library?

The library reaches out to the Scottish diaspora by supporting genealogy projects and investigations. It stores plays and literature that resonate throughout Scotland. In a current project on the most important Scottish plays of the past 20 years, students and pupils from all over Scotland can access "The Cheviot, the Stag and the Black, Black Oil", the uncompromising and thrilling "Black Watch" and "The Steamie", which I note is to be revived at the Citizens theatre later this year—I will certainly be there to see that. The resources are all in one place and they are accessible through the National Library's doors or through its website. That is a fantastic opportunity for teachers who are developing curriculum for excellence work streams, and for pupils.

The committee convener described the committee's concerns about ministerial direction in the areas of promoting collaboration between libraries and information services and promoting the diversity of the people who access the collections. However, we must remember that the way in which we deliver library services across the nation has changed and is changing. They were once the domain of local government, but many library services and functions are now delivered—or are planned to be delivered—through trusts. That fundamentally changes the relationship between the National Library and the front-line delivery of what we might call traditional library services in our towns and cities. Although local authorities still have a statutory duty to secure the provision of adequate library facilities for all persons in their areas, the trusts are now an additional step, and an additional complication, in that relationship.

I thank the National Library board for the fantastic opportunity that it gave the committee to tour the library, for the knowledge that it imparted about its collections and especially for the information about the wonderful plans to create a home for the film archive at Glasgow's Kelvin hall, which will be a great advantage for the city.

15:36

Mark Griffin (Central Scotland) (Lab): The National Library of Scotland is an extremely important resource for the people of Scotland, so any changes to its structure and operating procedures must be given careful consideration.

Originally set up in the 1680s as the library of the Faculty of Advocates, it was formed as the National Library of Scotland when the contents of the faculty's library were presented to the nation, together with an endowment of £100,000 from Sir Alexander Grant of Forres, because the upkeep of the collection had become too much for a private body. Officially established as the National Library of Scotland by the National Library of Scotland Act 1925, it is Scotland's only legal deposit library, which means that it is entitled to receive a copy of all printed items that are published in the UK and the Republic of Ireland.

As well as the collections that it has received via legal deposit, the National Library has acquired books, maps, music and manuscripts through gift, loan or purchase, and it has a wide collection of important items that relate to the history of Scotland, the Scots and our culture. It has a collection of more than 7 million books, 14 million printed items and more than 2 million maps. It also holds many ancient family manuscripts, including those of clan Sinclair, which date back as far as 1488.

The library holds the last letter written by Mary, Queen of Scots, which was shown publicly to mark the opening of the new library visitor centre in September 2009. It holds a copy of the Gutenberg Bible, which was the first major book to be produced on a printing press; the letter that Charles Darwin submitted with the manuscript of “On the Origin of Species”; the Chepman and Myllar prints, which are the only known copies of nine of the earliest books to be printed in Scotland, and which were produced on Scotland’s first printing press in approximately 1508; the first pictorial survey of Scotland, which was published in 1693 by John Slezer; and, perhaps most important, copies of the first two “Oor Wullie” annuals, which were published in 1940 and 1942. They date back far beyond my collection, which grows every two years thanks to Christmas presents from my mum.

The library is now a non-departmental public body that is funded by the Scottish Government, and it is also a registered Scottish charity. It is responsible for a budget of just under £15 million for the current financial year. The library employs approximately 300 staff, and it attracts thousands of people to the library and to the outreach programmes that are held across Scotland, including roadshows and support for local book festivals.

On the changes that are proposed to the library, one of the key recommendations is a reduction in the size of its board. I know from the cabinet secretary’s evidence to the committee and her comments today that she is not in favour of larger boards, but I am pleased that she has committed to increasing the minimum number of board members from seven. A recent report for the Office of the Scottish Charity Regulator indicated that charities with a low number of trustees are the most likely to fail and that those with nine members or more perform best. I am in a similar position to that of the committee in that I do not feel able to make a recommendation on what the optimum number of board members would be, but I am content that the Government has taken note of the report for OSCR, which supports having a board that has a minimum of nine members and the right number of people to cover the range of skills and experience that it feels are required.

At the same time, I welcome the Government’s expectation that the board should represent broader society and the opportunity that there will be for the board to gender balance its membership and to increase opportunities for younger people to join it, to help drive forward a future digital participation strategy.

Another proposed change is the provision for a ministerial power of direction, which has proved to be relatively contentious. I understand why the

cabinet secretary favours such a power, as it will allow for proper audit and accountability to Government. The library is funded by taxpayers’ money, so it is beneficial to have a direct line of ministerial accountability.

Regardless of that, the proposal has still proved to be relatively contentious. National Museums Scotland, the National Library of Wales, the British Library and the National Library of Scotland, among others, have all expressed concern about a power of ministerial direction and its implications for the board and the charitable status of the library, although I note that the Government took advice from OSCR, which confirmed that the library is exempt from certain aspects of the charity test. That means that the power of direction is compatible with the library’s charitable status.

Fiona Hyslop: I will come back to the issue of charitable status in my closing remarks, but I ask the member to acknowledge that some of the comments that he referred to were made before the bill was published. The concern of the bodies involved perhaps reflected concern about previous proposals by a previous Government for a more general power of direction. In the bill as published, the power of direction is highly restricted.

Mark Griffin: I take that on board, and I appreciate that OSCR has confirmed that the power of direction would not impede the library having charitable status.

However, the British Library cautioned against the overshortening of the arm’s-length principle, which it said might have the effect of discouraging potential donors. Neil Findlay made that point.

Before I conclude, I want to touch briefly on the digitisation of future deposits. Books, journals, music and films are now produced electronically. As the committee report said, they are “born digital”—that phrase was new to me. One of the biggest challenges that the library faces will relate to how that new digital material is stored and accessed. If the library is to continue to be able to adapt to modern society, I should be able to access that material online at my fingertips, probably through a smartphone or a tablet PC—although I will not be using either of those in the chamber today.

The Deputy Presiding Officer: I am glad to hear it. I need to ask you to finish.

Mark Griffin: That issue should be at the forefront of any changes to the library, and I hope that the cabinet secretary and the new board will give it due consideration.

15:42

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I begin by making two declarations of

interest: as many members know, I am a member of the Chartered Institute of Library and Information Professionals; and, since November, I have been proud to be the chair of the Scottish Library and Information Council. In that role, I am delighted to say that SLIC welcomes the bill overall and feels that it provides a platform to deliver a National Library of Scotland that is fit for the 21st century.

There are three aspects of the bill that I would like to comment on but, before I do so, as a librarian I cannot possibly give up the opportunity to say thank you to the many members who have extolled the delights and virtues not just of the National Library but of libraries in general.

Neil Findlay talked about the fact that libraries are cherished, and I am delighted that he realises that. I point out to him that, in 21st century libraries, we do not say, “Wheesht!”—we just chuck you out. In the last year, it has been demonstrated that libraries really are cherished, because borrowing figures and visits to libraries have increased. Libraries are powerful at all times, but especially in times such as these, when people are feeling financially pressed.

I cannot move on without saying to Mark Griffin that of course the National Library of Scotland holds our treasures, and “Oor Wullie” is definitely one of them.

I want to comment on three aspects of the bill. Although they have largely been dealt with, I want to welcome some of the responses. I want to talk about the size of the board, ministerial direction and charging. If I have time, I would like to pick up on electronic legal deposit, as other members have done, although that issue is not covered in the bill.

I am delighted that the cabinet secretary has announced that the board will have a minimum of nine members. That is hugely welcome, and that was SLIC’s recommendation. The reason for that is that we must ensure that those on the board have a mix of skills and that there can be sectoral representation on the board. With a very small board, people can have trouble in covering absences—members have not covered that point—and there can be a worry with governance if a small board makes decisions when some people are absent. I am therefore delighted by the cabinet secretary’s announcement, but I ask her to clarify whether the minimum number of nine means eight plus the chair or nine plus the chair. It will be interesting to hear the answer to that question.

On ministerial direction, I am sure that many members will know that librarians are proud and fierce defenders of the independence of their libraries. That is because our core function is the

collection and dissemination of information. Our core function is to collect and disseminate everything for everyone without direction, fear or favour. As a librarian, I had a long, hard look at section 8(1), which says:

“The Scottish Ministers may give NLS directions”.

I am happy that that is tempered by section 8(2)(a), which focuses that ministerial direction on section 2(2)(d), which is on collaboration between libraries, and section 2(3)(c), which is on the promotion of diversity. I am pleased that the cabinet secretary said that a letter will go to the committee to give much more of an outline especially of what is meant by section 2(2)(d) and the promotion of collaboration between libraries. I know that that letter will be eagerly awaited far beyond the committee, including in the library profession. I thank the cabinet secretary for her extra clarification.

A shiver goes up a librarian’s back when charging is mentioned, but I was reminded of the reality. My first job in a library was in 1975, when our collection was thought to be free and accessible for everybody to borrow, but it was not. In those days, we had the add-on of big clunky videos, which we charged for. It seemed appropriate to do that, as the service was an add-on to our core service. When computers went into libraries 20 years later, we initially charged for access to the internet, as that was a cost for libraries. The Parliament and successive Governments have to be thanked for our having free internet access in every public library in Scotland now.

I am pleased with the cabinet secretary’s commitment, which she reiterated in the committee and today in Parliament. The Scottish Government is committed to ensuring free access to our collections. She has also said today that that free access cannot be interfered with by any ministerial guidance under section 2(1), which is on the general functions of the National Library, and section 2(2)(b), which refers to “making the collections accessible”. Statutory weight has been given to that commitment, and I thank the cabinet secretary for that.

On electronic legal deposit, there is the UK Legal Deposit Libraries Act 2003 but, nine years on, the librarian profession is still waiting for regulations. Libraries and librarians need those to allow us to do our jobs properly. I hope that the UK Department for Culture, Media and Sport will heed the cabinet secretary’s approaches and give the committee report due respect.

I welcome the bill.

The Deputy Presiding Officer: We are slightly tight for time, so I ask members to stick to their six minutes, please, if they can.

15:49

Margaret McCulloch (Central Scotland) (Lab): As I worked in libraries for many years, I start by putting on record my appreciation for the good work of libraries across Scotland and for the National Library of Scotland. In a previous life, I worked at the Mitchell library, as well as Stirling, Whiteinch and Parkhead libraries.

My experience is that, from recreation and learning in the community to academic study and scholarship, libraries provide an invaluable service to the Scottish public. They are a unique place where we can access and enjoy literature and information, regardless of our background, and they are a portal to knowledge, understanding and culture. In that respect, the National Library is no different from any other library but, when we look at the size of its collection and the scale of its work, it quickly becomes clear that it is no ordinary library.

The consensus in the chamber and among those who take an interest in the subject is that the National Library of Scotland Act 1925 should be replaced. Since its inception, the National Library has evolved and modernised. Today, it is more than a library or a collection of materials—however significant those materials might be.

The library is one of the most respected institutions and one of the greatest resources in the United Kingdom. It has become a world-leading centre for the study of Scotland and the home to events and exhibitions to celebrate Scottish history, writing, language and ingenuity. It has embraced technology and modern communications to improve access to its vast and expanding digital collection.

Through the decades, the library has amassed more than 15 million items, as well as 100,000 manuscripts and 2 million maps. It receives 320,000 new items for its collections each year.

The library has built and maintained a strong international reputation. Since launching its new online registration system, it has received 10,000 registrations from 100 countries. Its visitor centre has helped to turn the library building into a tourist attraction in the centre of Edinburgh.

Given that sustained growth and the on-going changes, it stands to reason that we should take the opportunity as a Parliament to revisit the 1925 act and pass our own legislation to modernise the National Library and secure its future for decades to come. I am happy to support the bill, which clearly defines the library's purpose and functions and which makes the library's governance fairer and more accountable.

I am also happy to support legislation to widen access to the library. For example, I welcome the

digitisation of collections and the promotion of the library's position in Scottish cultural life—management should always try to promote access to their collection. However, I will—like other members—draw the Parliament's attention to a number of points from the Education and Culture Committee's report on the bill.

The National Library is one of only six legal deposit libraries across the UK and Ireland. In common with the other legal deposit libraries, it can legally request a copy of any publication for its collection. It has held that right since 1925—long before the rise of the internet and the digital revolution—when publications generally came in a printed format. Libraries are now presented with challenges in how they collate, record and store publications, which are increasingly being produced in new and different formats. They also have to consider the status and importance that they attach to online content.

I realise that it is not the Government's intention to address all those points in one bill and that it intends to prepare the National Library for the future, when technology will surely become more advanced and more sophisticated. We need to know where such changes will leave our legal deposit libraries. I hope that the Scottish and UK Governments can resolve those points soon.

Section 8(3) requires the National Library to comply with directions and guidance that the Scottish ministers issue, provided that they do not conflict with the library's functions and purposes, as set out in an earlier section. Some of the initial concerns about the extent of the ministers' power of direction appear to have been resolved, but that is still a grey area. I echo some of the concerns, which were expressed in the committee's report and in the committee's evidence sessions.

Let me be clear: I do not suggest that the cabinet secretary would ever choose to interfere with the day-to-day work of such an institution. However, it is important to seek assurances as part of the bill process that the National Library's curatorial independence and responsibilities as a charity will be respected.

I associate myself with the comments that my Labour colleagues have made. I hope that the cabinet secretary will consider the points that have been raised as the bill progresses through Parliament.

15:54

Marco Biagi (Edinburgh Central) (SNP): I declare an interest, which has already been alluded to. As the MSP for Edinburgh Central, I am one of the ex officio members of the board of the National Library of Scotland under the 1925 act as amended. However, I will be happy to play the role

of a turkey voting for Christmas when I press my voting button to send that interest into oblivion at 5 o'clock. Sadly, that will also put an end to any forlorn hope that I might follow in the footsteps of Guido Biagi, who was the librarian of the Biblioteca Nazionale in Florence in the late 19th century and with whom I share a common but, I admit, rather distant ancestry.

As a member of the NLS board, I am in very good company. Membership is also held by the Lord Advocate, the Lord President of the Court of Session, the dean of the Faculty of Advocates, the minister of St Giles, the lords provost of four cities, five further representatives of the Faculty of Advocates, four representatives of the universities, two representatives of the Convention of Scottish Local Authorities and the Queen's and Lord Treasurer's Remembrancer. I admit that I do not know who or even what that is, but it sounds very important. That is by no means the entire list. It is, therefore, no wonder that an overhaul of the governance of the NLS is needed, because it is a 21st century organisation that faces all the challenges of a modern NDPB.

In my brief hello as a member of the board, which has since given way to a long goodbye, I was introduced to the NLS's organisational to-do list. It is a familiar story to anyone who administers a public body in Scotland. It includes balancing budgets, managing limited staff resources, dealing with the ever-present question of public sector pensions and pursuing shared services, on which the NLS is powering ahead by merging departments with the National Galleries of Scotland, with the NLS taking the lead where it is more established and the National Galleries doing so where it has something to offer.

The National Library is more than just a technical or a regulatory NDPB. As Scotland's only copyright library, it is a national institution. It offers a first-class service that is unrivalled anywhere. One of my first visits coincided with a study visit by a friend of mine who is a PhD student in Birmingham and who was consulting some of the primary sources that are held uniquely at the NLS. Cross-border movement in such research is common, as researchers go where the books are. I note with interest that the UK Legal Deposit Libraries Act 2003 confers continued rights on the library of Trinity College Dublin to receive UK published books and that that is reciprocated by the Republic of Ireland's Copyright and Related Rights Act, 2000, which confers the same rights on UK libraries to receive Irish public books. Books are not separated by national borders, nor should they be.

As Scotland's central library, the National Library has undergone a remarkable transformation in the past decade, in particular.

Gone, for anybody who was familiar with the library 10 years ago, are the security barrier and the unwelcoming entrance with a security guard who asked for credentials. Those used to be the first things that users of the library saw. Instead, there is a visitor area with a cafe and exhibitions. The NLS is realising its role not only as a library of last resort but as an inclusive and important part of central Edinburgh's cultural life.

For example, last year I enjoyed the banned books exhibition, where a publication that had incurred a fair amount of ire from Sarah Palin in Wasilla, Alaska sat alongside "The Love That Dares To Speak Its Name", which was the last victim of the UK's blasphemy laws in 1976, and even one of the Harry Potter novels, which I understand has been accused of turning the world's children to witchcraft. That is news to me.

We can all appreciate that growing openness. It is not everyone who has to consult a copyright library, but everyone can find something there of interest.

As somebody who has been in a few copyright libraries in my time, I think that the NLS ranks high for atmosphere. I always found the British Library unwelcoming—not to mention ugly and full of bricks—and, to be honest, I found it harder to look at the Bodleian in Oxford after I learned that part of it was the architectural inspiration for the temple of the dark lord in the works of that former Oxford professor J R R Tolkien. I always rather liked the Radcliffe camera myself, but clearly he had a less positive experience than many people have had with the NLS and other libraries since then.

Such is the openness of the NLS that it is now actively working across Scotland, and one of its priorities is to expand its reach through local libraries and the innovative use of information technology. By doing that, it will become a truly national institution and be part of the cultural life of not just Edinburgh but the entire country from Stranraer to Shetland. That sort of public involvement and promotion of books and learning in the wider sense is not in the 1925 act—very little is. Section 1(1) of the act states:

"There shall be established and founded in Scotland a library with the name of the National Library of Scotland".

That is similar to the oft-quoted first line of the Scotland Act 1998. That act goes on in considerable detail, which the 1925 act does not, although it does go into such detail as to set out the librarian's pension. Given that the 1925 act has worked in some respects for 90 years, they clearly do not make legislation like they used to.

The bill sets out not just the powers of the NLS, as the 1925 act did, but its purposes, and that has been particularly welcomed by the chair of the board and the national librarian. It provides a

clear, updated and usable governance framework for the institution, which can only help the NLS to continue to grow and to develop its first-class provision for Scotland and beyond.

16:01

Liam McArthur (Orkney Islands) (LD): I congratulate the cabinet secretary on the tone and content of her speech, much of which anticipated comments that I was going to make, and I welcome the announcement on the film archive.

The convener of the Education and Culture Committee, Stewart Maxwell, has ably set out the committee's views and concerns, and he has emphasised the support across the committee for the general principles of the bill. The debate has been useful in setting out the wider role that libraries play. Margaret McCulloch talked about her experience, I am indebted to Clare Adamson for her Carnegie quote, and Fiona McLeod was once again the redoubtable advocate for libraries and their role in our communities.

The legislation is much needed. Updating the library's governance is perhaps long overdue and, as Marco Biagi says, the bill importantly clarifies the library's functions. It was dubbed the getting-Biagi-off-the-board bill by some but, given the self-sacrifice that he has shown throughout, I was beginning to wonder why it was taking Government legislation to progress this change until he read out the list of other people who are about to lose their jobs, including the First Minister.

I thank the witnesses, the clerks and my committee colleagues for their efforts at stage 1. There is widespread agreement on the bill but, as I think every speaker has indicated, there are two or three areas of concern, which we will need to explore further at stage 2.

I acknowledge the importance of the National Library of Scotland and pay tribute to all those associated with its work. I was unfortunately unable to join committee colleagues when they visited the library but, like Marco Biagi, I had the pleasure of attending the banned books exhibition, which I found absolutely fascinating. However, I will perhaps disappoint Mark Griffin by suggesting that there was no "Oor Wullie" annual there, so they are clearly not edgy enough.

The visit provided confirmation for me of a statement in the Government's policy memorandum about the importance of the NLS:

"NLS is a national resource which exists to advance universal access to knowledge about Scotland and in Scotland ... NLS brings Scotland's history and culture to live in the modern context."

That encapsulates what the NLS provides.

Marco Biagi also made a pertinent comment about the changes in the physical accessibility and the presentation of the NLS. I well remember scuttling by the front door as an undergraduate at the University of Edinburgh. There was never a terribly welcoming atmosphere, but that has changed beyond all measure, which reflects the changing demands that we place on the library and our expectations of it.

In that context, the legislation is necessary and welcome. It sets out the library's functions regarding how collections are maintained, developed and kept relevant, and regarding access—acknowledging the demands for physical and, importantly, online access. The bill deals with the research function, which is a vital component of the NLS's work, and with collaboration, recognising its role in sharing expertise and knowledge with the wider library community.

Collaboration is one aspect on which the ministerial powers of direction are focused. I accept the minister's points about it being a power of last resort, and I am grateful for the efforts that have been made to restrict it as much as possible in response to the committee's early concern about the NLS's charitable status, which now appears to have been dealt with.

Some other concerns have also been allayed. The NLS has stated:

"we feel comfortable that there are very strong and effective restraints on"

the power of direction. However, it has also stated:

"What we regret is making a principle of the ability to direct the National Library."—[*Official Report, Education and Culture Committee*, 7 February 2012; c 705.]

There are still misgivings, and I look forward to reading the cabinet secretary's letter ahead of stage 2, which I and my colleagues will scrutinise.

Although I would not suggest that the cabinet secretary's approach falls into this category, other aspects of what the Government is trying to do appear to be about gathering further control in the hands of ministers. That is the backdrop, notwithstanding the fact that Fiona McLeod has made it absolutely clear that she and many of her colleagues will be a force to be reckoned with if anyone seeks to mess with the independence—curatorial or otherwise—of librarians. Given the evidence that we have taken from the cabinet secretary and others, there are concerns that it is difficult to see how the power that we are putting in the text of the bill will be used. It is a dangerous road to go down.

The cabinet secretary has certainly allayed my fears about the size of the board. The range from nine to 14 seems entirely appropriate. Liz Smith made a sensible point about the smooth transition

to the new board, and we will probably wish to look at the issue again at stage 2.

The National Library of Scotland is a national treasure. The demands that we place on it have changed over the years and undoubtedly will change in the future, probably in ways that we are unable to predict now. I hope that the bill can help to ensure that the NLS continues to meet the needs of the ever-growing number of people. I look forward to the stage 2 scrutiny.

16:07

Alex Johnstone (North East Scotland) (Con):

Little did I think when I got up this morning that I would find myself speaking in a debate on the National Library of Scotland. Nevertheless, to my surprise, it has been an exciting and diverse debate in which we have discussed the great principles of socialism and capitalism. I specifically mention that because Neil Findlay told us that libraries are the embodiment of the spirit of socialism. However, I did not have to interrupt him, because no sooner had he said that than Clare Adamson pointed out that Andrew Carnegie and the spirit of philanthropic, benevolent capitalism was what really delivered for the library system in Scotland.

We heard Mark Griffin take the debate into the area of "Oor Wullie". It is an issue that has been raised several times and one that is close to my own heart, because for some 30 years-plus I have been married to a woman who is an expert on "Oor Wullie". Perhaps it is necessary for us to employ the services of the National Library of Scotland to find out the answer to a question that she has delivered to me many times without any possibility of reply: what happened to Oor Wullie's sister, who went out to play in 1943 and has never been seen or heard of again? Perhaps, if she is buried under the patio, "Oor Wullie" might yet find itself on the list of banned books.

I will go back to the subject that we are here to discuss. One of the interesting features that struck me in reading the committee report is that the existing board and governance structure have endured for more than 80 years. On the one hand, that suggests that it is necessary to update the arrangements given all the time that has passed, but on the other hand it confirms that there is a rich repository of experience. We should not be too quick to dismiss what we can learn from.

It is interesting to consider the bill's two main aims, which are to modernise the National Library of Scotland's governance arrangements and to set out its functions in statute. I do not think that anyone seriously disagrees that we need to do that, but I ask the minister to bear the two aims in mind when she responds to the debate.

On governance, the current structure is unwieldy. It is not suitable if we want an institution of the significance of the National Library to address all the challenges of the 21st century. A board of 32 members is indeed clunky. I think that all members, from our experience of sitting on external committees or boards of trustees, recognise the need for certain criteria to be met in relation to boards.

First, board members should bring genuine experience from a cross-section of backgrounds. The test should be whether each member is worth listening to because he or she adds to the knowledge and experience of the board. Secondly, board members should not be there to tick a particular sectoral box. Such an approach inevitably leads to limited individual vision and a lack of coherent strategic vision. Finally, the board must be large enough to cope with absences for reasons of illness or holidays, which are simply a fact of life. If it is not, meetings might not be quorate or, if they are quorate, the small number of members who are present might not be able to have a meaningful discussion. At worst, meetings have to be postponed.

In the original proposals there was a mismatch of principles. We welcome the spirit in which the cabinet secretary said that she will lodge amendments at stage 2. A board membership of as few as seven seems unsafe. The operation of the National Library of Scotland needs more stability than such an approach would afford. The weaknesses are obvious and seem to have been recognised after the cabinet secretary appeared before the committee. However, the unexpected inclusion in the bill of ministerial powers of direction accentuates the risk. I will talk about that in more detail shortly; suffice it to say for now that conferring such powers while allowing the board to be too small seems to be a highly undesirable combination.

We all agree that there is no magic or perfect number of board members. What has the experience of running the library for more than 80 years taught us? The evidence that the committee heard was helpful. The committee said in its report:

"There was unanimous agreement amongst the organisations that provided oral evidence that the proposed lower limit for the board was too small."

It went on to say:

"the current chair of the NLS board ... considered that the ideal board size would be 12 or 13 members."

I think that he is right.

When Scottish Government officials gave evidence, they said that the board could be bulked out by co-option. I do not agree but, if the cabinet secretary agrees, the National Library will have the

Achilles' heel of a board that is too small for its purposes. The ability to co-opt gives a board the important flexibility to bring to the table a person who has particular experience or skill that will assist it in addressing whatever is confronting it at a particular time; it is not a way to make up numbers. I urge the cabinet secretary to listen to the evidence.

The Deputy Presiding Officer: Can you come to a conclusion, please?

Alex Johnstone: Indeed. Much more could be said on the subject, but given my lack of expertise it would make good sense for me to thank the cabinet secretary for her concession and to say that I look forward to supporting the bill at 5 o'clock.

The Deputy Presiding Officer: Given the lack of time, I am grateful to you.

16:13

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): This has been a consensual debate, which has reflected the consensual nature of the committee's discussions. I welcome Alex Johnstone to the world of culture and hope that he will be a regular visitor from now on.

I have a feeling of *déjà vu*, because I suggested reform measures for the National Library in the draft culture (Scotland) bill, which was consulted on when Labour was in government. I do not know why the Scottish National Party decided to remove those provisions from what became the Creative Scotland Bill, but that is water under the bridge. In today's debate we must focus on the bill that is in front of us.

Many members have put on record their high regard for the National Library of Scotland and libraries in general, and I share that view. Since 1925, as we heard, the National Library has been Scotland's only legal deposit library, but it is so much more than that. Indeed, the National Library is an important guardian of our history and culture and part of our family of national collections.

I remember the great excitement when the library was able, with help from the Heritage Lottery Fund and the generosity of the Murray family, to purchase the Murray archive, which contains the private papers, manuscripts and records of luminaries of literature such as Jane Austen and Sir Walter Scott and important figures such as David Livingstone.

The library was kind enough to give the President of Malawi a gift of a copy of a drawing that was sketched by David Livingstone in the margin of the diaries that he wrote during his travels in Malawi. I know that the president treasured it. As an admirer of the poetry of Byron, I

remember my reaction to being given a draft printed copy of the poem "Childe Harold", with handwritten corrections by the poet, to hold and to look at. I am sure that the minister will agree that the post that she occupies is one that comes with challenges but also with great opportunities.

I was delighted to hear the minister's announcement about the film archive moving to Glasgow. The city will make a good home for the archive and the Kelvin hall is a splendid place for it to be located, as it is close to the Kelvingrove museum. I look forward to seeing the archive there.

Scottish Labour agrees with the Government that the time has come to modernise the governance arrangements for the National Library of Scotland. However, as Neil Findlay has pointed out, we still have questions that we hope that the minister will address.

I was glad that the minister took on board the issue of the size of the board. We look forward to hearing a little more about how she sees that fleshing out and developing, although I think that it is heading in the right direction. However, I have to say that Clare Adamson tempted me to suggest a further restriction to the size of the board when she spoke about the First Minister potentially losing his job. In that vein, I very much hope that Marco Biagi has not taken the minister's decision about the board of the National Library too personally—I am sure that the decision was not intended in that way.

We are concerned about ministerial powers of direction and the shape and form that those powers might take. I caution against anything that would call into question the curatorial independence of the library or its ability to decide on its own research or exhibitions or on its acquisitions policy.

I mentioned earlier the draft culture (Scotland) bill. Some members may recall that, in the consultation on that bill, I floated the idea of there being ministerial powers of direction in respect of what is now Creative Scotland—I am sure that Mr Maxwell remembers those debates well. Having considered the responses to that consultation, I decided that we would not pursue that power in relation to Creative Scotland as its use would have been so limited as to render it unnecessary. I believe that that is even truer of the bill we are discussing today. Indeed, the further restriction of the opportunities that ministerial direction would give, which the minister outlined today, makes the case against ministerial direction even stronger. However, I look forward to hearing more about that issue as we go forward.

Ministers will have the power to make appointments to the board, and the chief executive

officer is an accountable officer to the Scottish Executive, so a strong framework will already be in place. I think that anything additional to that would be questionable in terms of proportionality and might compromise the National Library's ability to raise money from donations.

We understand that the library might want to capitalise on its ability to raise money from merchandising, particularly around a popular exhibition. However, as Neil Findlay has indicated, we are concerned about those aspects of the bill that suggest that the library might charge for certain services or for the provision of goods. Similarly, what mechanism does the minister see the National Library adopting to allow it to borrow money and, more importantly, to pay it back, and to what purpose would it do so?

Like colleagues, I am intrigued by the idea that the library might want to set up new companies. Perhaps the minister might clarify how they would operate and to what purpose they would be put.

I was interested in Mark Griffin's remarks concerning "Oor Wullie", and I bow to Mr Johnstone's family expertise in that area. However, I simply say to Mr Griffin that there are other families that have the tradition that his seems to have. I also point out that you know that you have received one too many "Oor Wullie" books when you notice that the stories are being recycled—an experience that my brother and I have discussed on more than one occasion.

We all want the National Library to be able to grow and flourish and to be able to move with emerging technologies. So far, it has been remarkably good at doing so, and nothing that we put in place now should stifle that ability.

Scottish Labour is happy to support the principles of the bill and looks forward to hearing more from the minister about some of the specific points that we have raised in the debate. We also look forward to the discussions that we will have as the bill progresses.

16:20

Fiona Hyslop: I thank the members who have spoken in the debate, and I would say that Alex Johnstone is living testament to the fact that libraries broaden the mind. I am pleased that, in this stage 1 debate on the National Library of Scotland Bill, the Parliament has had the opportunity to educate Mr Johnstone in areas with which he was perhaps unfamiliar.

We have had a useful and constructive discussion, and I will keep in mind the points that members have raised—as well as the points raised by all the people who have commented on the bill so far—as we steer the legislation through

its remaining stages. I have been delighted to hear such warm words about the National Library and the importance of the reform of its governance. Back in 1925, all sides at Westminster backed the proposal to establish a national library of Scotland, and members pointed out the universal support in Scotland, with one stating:

"I do not think that any right hon. Member would grudge anything from public funds for this very important object in Scotland".—[*Official Report, House of Commons*, 24 July 1925; Vol 186, c 2628.]

In the same way, this Government is proud to support the National Library of Scotland. We recognise the great benefits that the nation enjoys from the library.

As we have heard, the National Library holds tremendous collections on behalf of the people of Scotland—including Oor Wullie. The collections span the centuries, and include items such as the only known copy of blind Harry's 15th-century epic, "Wallace", and a copy of the first printed book, the Gutenberg Bible of 1455.

The National Library ensures that the past is brought to life in a modern context. Its exhibitions and events remind visitors of the enduring relevance of the collections. The current exhibition, "Beyond Macbeth", uses material held by the library and by the University of Edinburgh to illustrate the importance of Shakespeare to Scotland. The fabulous John Murray archive boasts material from Sir Walter Scott, David Livingstone, Jane Austen and, as we have heard, Charles Darwin. The material has been given a modern relevance by the library; those tremendous figures from our past are brought to life using technology. The National Library has created an app for mobile phones, and there are interactive pods at the entrance so that users can explore in a fun and informative way.

As we have heard, the National Library has operated under the existing legislation for 87 years, and it has done a remarkable job of maintaining and developing the national record. However, it is now time to build on those strong foundations and equip the library with the necessary functions. That is important, because many of the concerns that people have raised will be dealt with by the functions that are set out in the bill. The 1925 act does not set out the functions. A great deal of legal protection will be given in relation to some of the issues that members have raised. The bill also covers powers and governance arrangements that will allow the library to achieve even more.

As well as what it can achieve internally, the library can contribute to a modern and dynamic Scotland. As one of Europe's major research and reference libraries, it offers world-class collections. The bill will modernise the functions and

governance of the library for the 21st century. It is essential that we take this opportunity to strengthen the library's role in safeguarding and sharing its collections, and to strengthen its work in bringing the nation's history and culture to life. The bill is drafted to keep pace with requirements so as to preserve and develop our national collections for generations to come.

This afternoon's debate has given me a further opportunity to reflect on points that were raised in the committee's report. As I have said, I am content to increase the minimum number of board members from six to eight, with the chair being the ninth member, which I think addresses a point that Fiona McLeod raised. That increase makes sense when we consider the range of skills that are required to support and enhance the strategic operation of the library. However, I would not expect the library to operate at the lower end of that board membership. Similarly, I will strive to ensure that the boards of National Museums Scotland and the National Galleries of Scotland exceed the minimum quota.

Liz Smith made an important point about the need for a smooth transition, and we are already in discussions on how that can be achieved, with the skills of the current board members progressing into the new arrangements. We have done similar things with other organisations for which there have been mergers or changes.

Members have rightly scrutinised the inclusion of a ministerial power of direction, to ensure that we have the right balance between accountability and curatorial freedom. I am sure that Patricia Ferguson will remember the consultation on the 2005 bill, in which the ministerial power of direction was very general. Changes have been made since then to restrict the power of direction. I refer those who have not looked at it to section 8, which sets out the limitations of the Scottish ministers' power of direction. It completely restricts any directions that would affect the curatorial aspect that Patricia Ferguson mentioned.

Patricia Ferguson: I accept that the minister does not intend to interfere with curatorial independence. However, I suggest that she reflect on the fact that the ministerial power now seems to be drawn so narrowly that it does nothing to allow any problems to be dealt with for which there is not already scope in the framework of governance. Perhaps the power is just not needed.

Fiona Hyslop: I will come on to some other important points on the power of direction, but we are damned if we do and damned if we don't in terms of how far the direction might go. The bill provides necessary safeguards, but I confirm that my officials have held—and will continue to hold—discussions with the National Library of Scotland

to provide clarity about the nature and use of the power of direction. As requested, I will write to the committee on the matter before stage 2.

I am pleased that the committee is satisfied with the assurance that the inclusion of a power of direction will not jeopardise the library's charitable status—a point that was raised by members today. If there were an overt use of the ministerial power of direction, that could compromise the library's charitable status. It is important that we do not jeopardise that, and I am pleased that the committee agrees with our approach. However, 86 per cent of the funding that is provided to the library comes from taxpayers, and I know that, if something goes awry and a ministerial power of direction is required, members of this Parliament will be the first to leap to their feet and call for ministers to get involved, take leadership and so on. The bill needs to be future proofed, and we are concerned to get the balance correct.

The issue of the ministerial power of direction was raised by Stewart Maxwell, Liz Smith and Neil Findlay, and I refer members to the restrictions in section 8(2). We have moved a long way in our discussions and it is important that we get the balance right.

As well as amending the minimum size of the board, I intend to lodge amendments at stage 2 to address some of the points that were raised in the written evidence from the Faculty of Advocates. I agree in principle that the bill should be clearer about the scope of the faculty's collections, which are wonderful. I will also lodge a technical amendment to tidy up the provisions about legal publications. My officials will discuss those amendments to sections 5 and 6 with the Faculty of Advocates and the National Library of Scotland shortly.

I think that everybody recognises the Government's position on fee charging. I wrote to the committee on 23 February to explain that, where provisions for charging exist, the National Library of Scotland is providing additional material free of charge; however, it can charge users for digitisation on demand. Fiona McLeod made a good point when she said that, in the past, there has been charging for things that have subsequently become normal provision. We must future-proof the bill to allow progress in areas where technology may overtake us in the future.

In terms of companies, it is a standard provision for NDPBs to charge and mirrors provisions for Creative Scotland. Neil Findlay asked about charging for services. That will be restricted because of the functions in the bill and the need to make collections accessible to the public. However, in relation to catering and hospitality, for example, there needs to be a provision to allow the library to charge for goods and services.


This has been a good stage 1 debate. The committee has taken its responsibilities seriously and the debate has been an opportunity to showcase what Liam McArthur described as a national treasure. It is important that, as we have legislative responsibility for the National Library of Scotland, we take the opportunity to celebrate what is there, recognising not only its role in the past but its role into the future. It is heartening to hear that members and stakeholders are passionate that there should be no charges for access to the library. Free access to our collections is something that I treasure and I am committed to maintaining it.

I am pleased to have the Parliament's support for the bill and will seek to work constructively with the committee as the bill proceeds to stage 2.

Fiona Hyslop MSP/BPA

Stewart Maxwell MSP
Convener
Education and Culture Committee
Scottish Parliament
EDINBURGH
EH99 1SP

27 March 2012



I am writing in response to the Education and Culture Committee's Stage 1 Report on the National Library of Scotland Bill. I would like to thank the Committee for its careful consideration of the Bill.

I am very pleased that the Committee recognises the need to reform the governance arrangements of the National Library of Scotland (NLS) and that the Committee finds it useful to have NLS's functions set out in statute. I welcome the fact that the Committee recommended that the general principles of the Bill should be agreed to by Parliament and that there was unanimous support by members for its principles following the Stage 1 debate.

I would like to respond in more detail to the specific issues raised by Committee members and the recommendations contained in the Report. I am also taking the opportunity to respond to the points raised by members in the stage 1 debate and to give some advance notice of government amendments which will be lodged shortly. My comments below follow the main headings in the report.

Governance arrangements

○ Board size

The Report notes at paragraph 18 that the Committee, NLS and other relevant stakeholders were concerned that a board comprising of seven members would be too small given the range of skills and expertise required. As I indicated during the stage one debate I do not want to hinder the operation of the board. Similarly, as the Committee have recognised, I do not favour a large board given the need for strategic focus. Having considered the arguments and further discussion with NLS, the Faculty of Advocates and the Scottish Library Information Council, I will bring forward an amendment at stage 2 to increase the minimum size of the board from 6 to 8. This means that the NLS board will have between 9 and 14 members, including the Chair.

- **Cost of appointing the board**

The Committee refer at paragraph 22 to the written evidence that the Finance Committee received from the Public Appointments Commissioner for Scotland (PACS). I accept that PACS will incur costs associated with the scrutiny of the first set of public appointments and this should have been included in the Financial Memorandum. My officials understood that PACS were copied into the distribution list for the consultation report and I regret that PACS were unable to comment at this point.

I should point out a slight inaccuracy. The report claims that in the NLS written evidence to the Finance Committee NLS state it will face costs that are not provided in the Financial Memorandum. This is incorrect as NLS's submission states that NLS has seen the Financial Memorandum and agreed that the costs for the appointment rounds will be met from their existing budgets.

The Functions of the NLS

- **Power of direction**

There are a number of points raised by the Committee about the use and scope of a Ministerial power of direction. I wish to take the opportunity to record my intentions in relation to such a measure.

Reasons for inclusion

As I stated during my evidence session there must be balance which allows public bodies to be accountable to the taxpayer. 86% of NLS funding comes from a public grant and Ministers therefore have a duty to ensure that NLS is operating effectively.

A Ministerial power of direction is a standard feature of modern public bodies. The great majority of NDPBs that have been established as statutory bodies since 1990 have powers of direction: 17 out of 21 bodies. Since devolution 11 out of 14 NDPBs established have statutory powers of directions. The 4 statutory bodies established since 1990 in respect of which there is no general power of direction for Ministers are: Scottish Criminal Cases Review Commission; Police Complaints Commission for Scotland; Scottish Legal Complaints Commission (which although constituted as an NDPB is funded by a levy on the legal profession); and Quality Meat Scotland (which is entirely funded by an industry levy and receives no public funds).

The starting point for consideration of the interaction between NLS' functions, powers and the power of direction is NLS's general function of managing the library. This function is set out in section 2(1) of the Bill and, as is mentioned in the Explanatory Notes, is a continuation of the management function provided by section 1(1) of the National Library of Scotland Act 1925. Any direction would affect management of the library in some way, so it is right that section 2(1) is not excluded from the power of direction in section 8. I cannot agree with the Committee's conclusion in paragraph 34 of the report that this point is not clear from the Bill; section 8(2) being the relevant section.

I recognise of course that an unrestricted power to give directions as to the management of the library would be far too wide. It is equally right that NLS have the curatorial responsibility and freedom to look after the collections on behalf of the people of Scotland. That is why section 8 (2) of the Bill has been carefully drafted to prohibit Ministers from giving NLS directions in areas where NLS is best placed to make curatorial and professional decisions

about the collections. Whilst I accept that the National Library regret the principle of Ministerial direction the report has acknowledged that NLS consider the power, as drafted, provides a “reasonable balance”. Indeed, as the Committee point out in the report, NLS appreciate that the power of direction, as drafted, preserves their independence: “we think that the protections covering the National Library’ functions and what it exists to do are protected from Ministerial direction”.

Examples of potential use

The Government is not contemplating having to give directions to NLS and indeed I wrote to the Committee on 23 February to confirm that a power of direction has never been applied to cultural public bodies. The examples of potential use given below are purely to meet the Committee’s request for clarity about the circumstances in which a power might legally be used.

The statutory power of direction is very much a means of last resort. It would only be applied if all other requirements and controls, as set out in the Scottish Public Finance Manual and the Memorandum to Accountable Officers had been exhausted. As a Scottish Minister I am ultimately accountable to the Scottish Parliament for the services that the National Library provides and its stewardship of public funds. Similarly I would be accountable to the Parliament for any use of a power of direction. During the stage 1 debate Patricia Ferguson, MSP, suggested the power of direction should be removed from the Bill because she considered the restrictions set out in section 8 precluded use. I do not agree with this argument because Ministers retain the power to direct on the overall management of the National Library, as a last resort.

A direction could be given if NLS was not operating effectively or efficiently. For example if NLS failed to comply with public sector policies for instance no compulsory redundancies or in relation to pay policy.

The Committee’s report, at paragraph 38, regrets that the Policy Memorandum did not explain the interaction between the powers and functions over which Ministers can not direct. I accept this point and that is why I wrote to the Committee on 23 February to clarify this matter. To re-iterate, NLS must have regard to its functions when exercising any of its powers in schedule 1, paragraph 11 (1) and (2). The powers can in principle be directed on by Scottish Ministers, subject to the restrictions in section 8(2).

Exemptions

The Committee has expressed concerns at paragraphs 38-40 about the particular functions that Ministers would be able to direct on. Ministers would be able to direct NLS in relation to promoting collaboration between and the adoption and sharing of good practice by, other persons providing library and information services (section 2(2)(d)) and in relation to promoting the diversity of persons accessing the collections (section 2(3)(c)). I regret that the Policy Memorandum did not explain the reasons for these exemptions. My officials wrote to the Committee on 15 February to explain the intention behind these exemptions.

To address the points raised in paragraph 38 of the report a power of direction could be applied in relation to public service efficiencies and shared services. Ministers could not however give directions as regards collaboration which also affected the Library’s curatorial functions, which are not in the scope of the power of direction. The promotion of the diversity of the Library’s users is a matter of public policy going beyond its curatorial

independence. As a public body NLS is subject to equalities duties, but the function can go beyond those duties such as geographical diversity.

There is a conclusion within the report that I can not agree with. Paragraph 40 asks the Scottish Government to provide an “explanation as to how the Bill could more accurately state how and when the power of direction could be used”. While it is helpful to illustrate in evidence and debate how the power might be used, it would be unwise to prescribe its use on the face of the Bill. It would not be possible to foresee all the circumstances where a direction might be appropriate. What is important is that the power has been suitably restricted so as not to interfere with NLS’s independent curatorial judgement and those areas of NLS’s functions will not alter. That balance has been accepted by NLS who agree that the Bill should be protective of the curatorial areas that are exempt from direction rather than prescriptive of precisely when there can be directions. My officials have discussed the power of direction proposals with NLS following the publication of the report and I can assure the Committee that there is clear understanding on these measures.

Discussions with NLS

In paragraphs 38-40 of the report the Committee has highlighted that it was concerned that the National Librarian did not know why there were exemptions to the power of direction in relation to collaboration and diversity. My officials discussed all the proposals on the power of direction with NLS before the Bill was introduced and, as NLS indicated to the Committee, they feel that the right balance has been struck in the restrictions on the powers. I accept that more focus was perhaps given to those areas that Ministers can not direct on. My officials have had further discussions with NLS since the Committee stage 1 report was published and have discussed the reasons for these exemptions and possible usage. I should make it clear that NLS has a good record in relation to collaboration and diversity. These measures are subject to a Ministerial power of direction as part of the general intention of the Bill to make the legislation sufficiently future-proofed to allow for any significant alterations in the future. As the Committee have heard during its evidence sessions NLS are subject to ever-changing technological developments and it is therefore vital that the Bill keeps pace with such change.

○ Charging for services

I note the Committee’s conclusion at paragraph 47 which welcomes my restated commitment to the principle of free access to NLS. The Committee accepts that there are and will continue to be, instances when NLS charges for its services. Fiona McLeod, MSP, illustrated during the stage 1 debate how important it is that there is flexibility around charging to cope with changes to modern technology. She referred to charges that were introduced in her library for video usage and access to the internet when these were modern phenomena that posed an additional cost for libraries.

During the stage 1 debate Neil Findlay, MSP and Patricia Ferguson, MSP, asked for examples of charges NLS might apply for goods and services. As I explained charges could be applied for catering and hospitality.

The Committee has recognised that there are safeguards in place to ensure that any NLS charges do not jeopardise its functions including that the collections are accessible. Given its charitable status NLS must ensure that any charges fulfil the requirements of the charity test which includes providing public benefit.

Furthermore NLS must submit any proposals for new charges to the Scottish Government, as required by the terms of the Scottish Public Finance Manual.

- **Charitable status and measuring success**

It is important that the Committee has recognised that the power of direction will not jeopardise the National Library's status. Throughout the drafting process my intention has always been that NLS's charitable status remains intact. I am aware that during stakeholder discussions and the consultation process some stakeholders expressed concerns about the legal implications of the inclusion of a power of direction. The Committee's recognition complements the indications my officials received from OSCR on this matter.

I am pleased that the evidence sessions have reassured the Committee that there are mechanisms in place to measure the success of NLS's functions, as noted at paragraph 53. As several members noted during the stage 1 debate the functions provide a clear statement of NLS's role and emphasise the importance of this cultural collection.

- **Relationship with the Faculty of Advocates**

I am pleased the Committee agree that the joint arrangements provided in section 6 of the Bill provide a good framework for how NLS and the Faculty of Advocates will work together. As the report notes at paragraph 55 there would be no merit in the Bill setting out detailed provisions that may become out of date if practices change. The joint arrangements are designed to be flexible and allow NLS and the Faculty to agree how they will work together in the short and longer term.

As I pointed out to the Committee, during my evidence session and during the stage 1 debate, I intend to lodge amendments in relation to sections 5 and 6 of the Bill which will address some of the points raised in the Faculty of Advocates written evidence. I agree in principle that the Bill should be clearer about the scope of the Faculty's collections and I will make a technical amendment to tidy up provisions around legal publications. My officials will be discussing these amendments with the Faculty and the National Library of Scotland shortly.

Other issues

- **Legal deposit of digital material**

As the Committee notes the UK Government has now published its regulations which will allow for non-print material to be deposited electronically with NLS¹. I have sent a copy of the Committee's report to the Department of Culture, Media and Sport and will continue to have discussions with the UK on this important matter. It is vital that these regulations are implemented swiftly to avoid any detriment to the electronic record for Scotland.

Conclusion

The Stage 1 debate on 15 March raised a few points that were not included in the Committee's report which it may be useful if I formally address. Neil Findlay, MSP and

¹ <http://www.culture.gov.uk/consultations/8878.aspx>

Patricia Ferguson, MSP, asked about the powers NLS would have to borrow and loan money and the power to form companies.

As I explained during the debate these are standard provisions for modern public bodies and are included in the founding legislation for Creative Scotland, the Public Services Reform (Scotland) Act 2010. These measures are part of the future-proofing of this Bill. To be clear, there is no push towards greater commercialisation; indeed the National Galleries and National Museums already have the power to form companies. Liz Smith, MSP and Liam McArthur, MSP, also raised the issue of transitional arrangements for the NLS Board before the Chamber. I wish to reassure the Committee that I propose that five members of the existing board carry on serving the reconstituted Board, subject of course to the successful passage of the Bill. My officials are in liaison with the NLS Chair and the Office of the Public Appointments Commissioner for Scotland to ensure that these arrangements are satisfactory, they meet the skills requirements and they will minimise any business disruption to NLS. Arrangements are still to be firmly agreed but I would be happy to advise the Committee on progress.

I hope that these remarks address the issues raised by the Committee's report and are helpful in your further consideration of the Bill. I appreciate that the main area of concern is around the power of direction. I hope that my comments address any outstanding issues that the Committee has. I welcome the cross-party support for the principles of the Bill and will bring forward amendments very shortly for your consideration.

I am copying this letter to the Clerk of the Education and Culture Committee.

Kind regards
Fiona

FIONA HYSLOP

National Library of Scotland Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1
Sections 2 to 10
Sections 11 to 13

Schedule 1
Schedules 2 and 3
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Fiona Hyslop

- 1 In section 1, page 1, line 7, after <Scotland> insert <or Leabharlann Nàiseanta na h-Alba>

Schedule 1

Fiona Hyslop

- 2 In schedule 1, page 6, line 14, leave out <6> and insert <8>

Section 2

Fiona Hyslop

- 3 In section 2, page 1, line 19, leave out from <between> to end of line 20 and insert <and the sharing of good practice with and between other persons providing library and information services, and the adoption of good practice by those persons.>

Section 3

Fiona Hyslop

- 4 In section 3, page 2, line 12, at end insert—
<() The power in subsection (1)(a) is in addition to any other power or means of acquisition.>

Section 4

Fiona Hyslop

- 5 In section 4, page 3, line 7, leave out from first <power> to <of> and insert <powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or>

Section 5

Fiona Hyslop

- 6 In section 5, page 3, line 24, leave out <Subsections (1) and (2) do> and insert <Subsection (1) does>

Section 6

Fiona Hyslop

- 7 In section 6, page 3, line 37, leave out from <their> to end of line 38 and insert—
 <() NLS's collections,
 () the Faculty's collections of legal publications,>

Fiona Hyslop

- 8 In section 6, page 4, line 2, after <collections> insert <of legal publications>

Fiona Hyslop

- 9 In section 6, page 4, line 4, leave out from <by> to <5> in line 5 and insert <of legal publications>

Fiona Hyslop

- 10 In section 6, page 4, line 5, after <5,> insert—
 <() the legal publications which are electronic publications which NLS is to request,>

Section 8

Liam McArthur

- 11 In section 8, page 4, line 30, leave out <2(2)(a) to (c)> and insert <2(2)>

Liam McArthur

- 12 In section 8, page 4, line 30, leave out <(3)(a), (b) or (d)> and insert <(3)>

National Library of Scotland Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

The National Library of Scotland (“NLS”): Gaelic name

1

Membership of NLS

2

Functions of NLS relating to collaboration and good practice

3

Powers of acquisition, borrowing, etc.

4, 5

NLS and the Faculty: legal publications and joint arrangements

6, 7, 8, 9, 10

Scottish Ministers’ power of direction

11, 12

EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

12th Meeting, 2012 (Session 4)

Tuesday 24 April 2012

Present:

Clare Adamson
Neil Bibby
Stewart Maxwell (Convener)
Liam McArthur
Jean Urquhart

Marco Biagi
Neil Findlay (Deputy Convener)
Joan McAlpine
Liz Smith

Also present: Fiona Hyslop, Cabinet Secretary for Culture and External Affairs.

National Library of Scotland Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

Amendment 11 was disagreed to (by division: For 2, Against 7, Abstentions 0).

Amendment 12 was not moved.

Sections 7, 8, 9 and 10, schedules 2 and 3, sections 11, 12 and 13 and the long title were agreed to without amendment.

Section 1, schedule 1 and sections 2, 3, 4, 5 and 6 were agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.

Scottish Parliament

Education and Culture Committee

Tuesday 24 April 2012

[The Convener *opened the meeting at 10:01*]

National Library of Scotland Bill: Stage 2

The Convener (Stewart Maxwell): Good morning. I welcome members to the 12th meeting of the Education and Culture Committee in 2012 and remind members and the people in the public gallery to ensure that all mobile phones and other electronic devices are switched off at all times.

No apologies have been received—we have a full turnout of committee members.

Our first item of business is to consider the National Library of Scotland Bill at stage 2. We are joined by the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, and her officials. Members should note that all questions should be directed to the cabinet secretary, because officials cannot speak at stage 2. I welcome to the meeting the cabinet secretary and David Seers, who is the head of cultural excellence in the Scottish Government; Carole Robinson, who is the bill team leader; Greig Walker of the directorate for legal services; and Max McGill from the office of the Scottish parliamentary counsel.

Members have the marshalled list of amendments and the groupings of amendments. We will take in turn the amendments on the marshalled list.

Section 1—The National Library of Scotland

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Amendment 1 will give equal legal status to the Gaelic name for the National Library of Scotland, which is Leabharlann Nàiseanta na h-Alba. It will insert the Gaelic name directly after the English name in section 1. The amendment acknowledges the importance of the Gaelic language and Gaelic culture, and is in accordance with the Government's principle of according the Gaelic and English languages equal legal respect. It will allow the National Library to use its Gaelic name when it enters legal contracts.

I move amendment 1.

Jean Urquhart (Highlands and Islands) (SNP): I am happy to welcome amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Schedule 1—NLS

The Convener: Amendment 2, in the name of the minister, is in a group on its own.

Fiona Hyslop: Following the constructive debate on the minimum board size of the National Library during stage 1, and to address concerns that were raised by the National Library, the Faculty of Advocates and the Scottish Library and Information Council, I gave a commitment during the stage 1 debate to lodge an amendment to increase from six to eight the minimum number of board members in order to give the National Library board a range of between nine and 14 members, including the chair. The committee's stage 1 report looked for assurances that the Scottish Government would consult all relevant parties in respect of that matter. I give my assurance that the National Library, the Faculty of Advocates and the Scottish Library and Information Council have been consulted on the number and that all the organisations—most important of which is the National Library—are content with the increase in the minimum number of board members from six to eight.

I move amendment 2.

Liam McArthur (Orkney Islands) (LD): I welcome the approach that the cabinet secretary has taken throughout stage 1, which has culminated in amendment 2, which I hope will be helpful in the longer term. I am conscious of the cabinet secretary's undertakings on managing a smooth transition.

Liz Smith (Mid Scotland and Fife) (Con): I, too, welcome amendment 2. We were all struck at stage 1 by the professionalism and expertise of many members of staff of the National Library of Scotland, particularly people who are on the board. At a time when we have agreed that there will be a huge amount of change in the National Library of Scotland, it is important that we garner that expertise and ensure that it drives us forward.

We debated whether that could happen through co-options on to the committee; to some extent it can, but wider scope will allow for the greater expertise that is the hallmark of the National Library of Scotland, and I am grateful to the cabinet secretary for working on that.

The Convener: I, too, welcome amendment 2. All committee members supported the change when we discussed the stage 1 report, and we got a strong feeling from members of the current NLS board about the necessity for such a change, so I

am grateful to the Government for lodging amendment 2.

Fiona Hyslop: I welcome the comments from members; Liz Smith and Liam McArthur raised the same point at stage 1. In the letter that I wrote to the convener on 27 March, I explained that we were proposing that five members of the existing board carry on as members, which will address some of the transition issues that the committee raised.

Amendment 2 agreed to.

Schedule 1, as amended, agreed to.

Section 2—Functions of NLS

The Convener: Amendment 3, in the name of the minister, is in a group on its own.

Fiona Hyslop: Amendment 3 has been lodged to clarify the National Library of Scotland's function in promoting collaboration and the adoption of good practice. It takes up a point that was raised in the response from the Chartered Institute of Library and Information Professionals in Scotland to the committee's call for evidence and in feedback from the committee.

Amendment 3 will revise the wording of section 2(2)(d) to clarify that the National Library's function is to promote collaboration with other organisations that provide library and professional services, as well as between other organisations. NLS currently undertakes that function with a variety of local authorities, national bodies and educational institutions. Library staff are members of different forums and use their experience to share good practices throughout the sector. The bill's current wording could be interpreted solely as enabling NLS to act as a facilitator rather than to be actively involved. Amendment 3 provides clarity, as other organisations such as CILIPS, the Scottish Library and Information Council and the Scottish Confederation of University and Research Libraries also play important roles in sharing good practices with the library community.

I move amendment 3.

Amendment 3 agreed to.

Section 2, as amended, agreed to.

Section 3—Acquisitions, deposits and disposal of objects

The Convener: Amendment 4, in the name of the minister, is grouped with amendment 5.

Fiona Hyslop: Amendments 4 and 5 are technical. Amendment 4 amplifies the point that is made in the explanatory notes that, as well as acquiring items by purchase, exchange, gift or on deposit, as referred to in section 3(1) of the bill,

the National Library may receive acquisitions by virtue of other legislation. As one of six legal deposit libraries in the United Kingdom and Ireland, the National Library of Scotland receives around 90 per cent of its acquisitions through the system that was established under the Legal Deposit Libraries Act 2003.

Amendment 5 complements amendment 4 in clarifying that, as well as borrowing objects for exhibition, study or research and lending objects from its collections under section 4(1) and (2) of the bill, the National Library may also borrow and lend objects by virtue of other legislation. The amendment has particular relevance for the borrowing or accepting of electronic publications under the draft Legal Deposit Libraries (Non-print works) Regulations 2013 for non-print material, on which the Department for Culture, Media and Sport is consulting. The amendment is broad enough to accommodate any future legislative developments that might apply to the National Library.

I move amendment 4.

Clare Adamson (Central Scotland) (SNP): It is good that we are future proofing the bill, because electronic media are changing so fast that we do not know where we might be in a few years. I welcome the inclusion of the provision.

Amendment 4 agreed to.

Section 3, as amended, agreed to.

Section 4—Borrowing and lending of objects

Amendment 5 moved—[Fiona Hyslop]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Legal publications

The Convener: Amendment 6, in the name of the minister, is grouped with amendments 7 to 10.

Fiona Hyslop: I hope that the committee will bear with me as I explain the amendments, which are largely technical.

Amendment 6 will tidy up section 5(3) by removing the reference to subsection (2), which is not required. The amendment was suggested by the Faculty of Advocates in its stage 1 written evidence.

Section 5(1) sets out that legal publications that are delivered to the library under the Legal Deposit Libraries Act 2003 in print or offline electronic format—for example, CD-ROM—must be sent to the faculty and, once they are accepted by the faculty, will become its property. Section 5(3) provides that that rule will not apply to online publications. The National Library and the faculty

accept that separate delivery rules are required for online electronic publications, such as websites and e-books. Those are in sections 5(4) and 6(1)(e).

Section 5(2) of the bill requires the library to make a claim for any conventional print legal publications that the faculty wishes to receive under section 5 of the 2003 act. The section continues a requirement from the National Library of Scotland Act 1925. Section 5(3) currently states that section 5(2) of the bill does not apply to online electronic publications but, as section 5 of the 2003 act—which members will note is referred in section 5(2) of the bill—applies only to conventional print material, there is no requirement for that reference and, therefore, it can be removed from section 5(3). That is the explanation for amendment 6.

Amendment 7 has also been lodged to address concerns that the Faculty of Advocates raised in its response to the committee's call for evidence. When I gave evidence at stage 1 on 21 February, I indicated to the committee that I would lodge the amendment, which has been seen by, and discussed with, the faculty. Amendment 7 is designed to narrow the scope of the items that the joint arrangements between the faculty and the National Library have to cover. The current provision refers to "their respective collections" and is therefore wide enough to include the faculty's non-library collections, which include coins and artwork. Those collections have never been brought within the joint arrangements with the library, although the faculty can provide public access directly on request. By narrowing references in section 6 to

"the faculty's collections of legal publications",

amendment 7 makes it clear that the National Library and the faculty should agree joint arrangements with regard to the library's collections—which are, of course, library collections—and the faculty's collections of legal publications. That is consistent with the 1925 act.

As I confirmed when I gave evidence at stage 1, the National Library and the faculty signed two memoranda of agreement on 22 December 2011. One of them sets out guidelines for how both bodies will work together on access to the National Library's collections and the faculty's collections of legal publications. It is open to the NLS and the faculty to agree exceptions to the general principle of access, as they have done in their memoranda of agreement.

Amendment 8 has been lodged for the same reason as amendment 7: to narrow the reference to the faculty's collections to make it clear that only legal publications are within the scope of the joint arrangements. Once again, that is consistent with

the scope of the 1925 act and has been discussed with the faculty.

Amendment 9 will extend and simplify the current wording of section 6(1)(d). At present, the provision refers to the "preservation and conservation" of print and offline legal publications that are sent to the faculty, but the amendment will ensure that the joint arrangements for preservation and conservation relate to all material that is exchanged between the National Library and the faculty. It will also allow the library and the faculty to agree how to share duties of preservation and conservation, where that is appropriate.

The wording of amendment 9 remains neutral on the format of legal publications in order to future proof the provision in relation to new publication formats that may develop in years to come. That is consistent with the memoranda of agreement between the National Library and the faculty that were signed on 22 December 2011, which contain provisions about the storage, handling and treatment of legal deposit material in all formats.

10:15

With regard to amendment 10, the committee will recall from stage 1 the debate between the NLS and the Faculty of Advocates over who should be required to specify which items are to be requested under electronic legal deposit. Amendment 10 will insert a new paragraph that will enable those organisations to enter into joint agreements about requests for electronic legal material in online and offline form, and will place a duty on both to reach an agreement on operational details. The provision is intended to be flexible and future proofed in order to ensure, for example, compatibility with regulations that the DCMS is introducing under the Legal Deposit Libraries Act 2003. The amendment has been agreed by the NLS and the Faculty of Advocates.

I move amendment 6 and urge members to support it and the other amendments in the group.

Joan McAlpine (South Scotland) (SNP): I welcome the fact that the concerns of the Faculty of Advocates have been addressed and I think that this move will ensure joint collaborative working in the future.

Amendment 6 agreed to.

Section 5, as amended, agreed to.

Section 6—NLS and the Faculty: joint arrangements etc

Amendments 7 to 10 moved—[Fiona Hyslop]—and agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

Section 8—Directions and guidance

The Convener: Amendment 11, in the name of Liam McArthur, is grouped with amendment 12.

Liam McArthur: I am sorry to have to break the harmony that we have had so far, convener.

Amendments 11 and 12 seek to deal with the issue of ministerial powers of direction. They go to the heart of the relationship that ministers have—or should have—with a body such as the NLS and reflect a commitment that I gave at stage 1 to reflect further on the extent and nature of the powers ministers were seeking and to return to the issue if necessary. I certainly think that further consideration of what the Government is seeking to do is justified.

First of all, however, I reiterate my belief that overall the cabinet secretary deserves credit for the way in which she has engaged with the committee on the bill. I acknowledge her willingness to listen and to respond constructively in a number of areas—notably in relation to the size of the board. The number of amendments and the way that we have rattled through them are testament to that.

That said, I remain concerned by the powers that are being sought under the bill and do not accept that, with regard to the functions over which they are being sought, they are a necessary power of last resort. In its evidence, the NLS said that it regretted the principle of ministerial direction and although it went on to recognise the steps that have been taken to restrict that power and to achieve a balance, we should not lose sight of that principle in respect of the NLS's functions, if not its general powers.

Moreover, in her response to the committee, Ms Hyslop accepted that

"a power of direction has never been applied to cultural public bodies".

Indeed, in her oral evidence, the cabinet secretary struggled to identify circumstances in which it might be appropriate for such a power to be used or where it could be used safely without impinging on the curatorial, cultural or professional functions of the National Library and its staff.

That reticence might well stem from Ms Hyslop's genuine desire to respect the boundaries between the Government's role as principal funder and the NLS's role in managing the library as a national resource. Nevertheless, when we are asked to include in a bill powers that have never been used and for which no compelling case can be mounted as to why, when and where they might be needed, I have grave concerns. Either we are making a rod for our own back with regard to future legislation or

we are providing a rod for ministers to use whenever the fancy takes them—or, perhaps, both.

History is littered with examples of Governments taking powers that were meant to deal with specific circumstances or perceived problems, but which have been used in all manner of different and less appropriate situations. Indeed, I am on record as opposing very strongly some of the ways in which this Government has concentrated power more and more in the centre, including in policing, fire and rescue, economic development and areas that are covered by the committee. Too often in the current Administration—particularly so in the case of Ms Hyslop's colleague and successor as Cabinet Secretary for Education and Lifelong Learning—there has been intolerance of those who hold different views, and there has been a tendency among ministers to believe that they know best. Neither of those characteristics is healthy.

I am not saying that any power of direction would be unjustified. The powers of direction that relate to the general powers of the NLS, which are set out in schedule 1, seem to be more straightforward and are unlikely to cut across areas of the NLS's functions that require to be independent. However, it is difficult to see how a power of direction that covers the promotion of collaboration and/or diversity could be used in a way that would not fall foul of the restrictions that ministers have rightly accepted. In fact, it is difficult to see why ministers would want to go down such a route, rather than make use of the other significant powers of persuasion that they have at their disposal.

There are many things that would make the lives of ministers easier or the functioning of Government smoother, not all of which—possibly very few of which—can be said to be desirable. That is certainly not reason enough to enshrine something in law; it is not good enough to say that the powers in section 8 are for a "just in case" scenario. I look forward to hearing what the cabinet secretary and committee colleagues have to say, before I decide whether to press amendment 11 to a vote.

I move amendment 11.

Liz Smith: I thank Liam McArthur for lodging amendments 11 and 12, which he is right to say go to the heart of the relationship that ministers have—or should have—with a body such as the National Library of Scotland. There is perhaps an issue in that regard that goes beyond the scope of the bill, which we must debate. There is a need for a cast-iron guarantee that the provisions in the bill are very much about increasing the efficiency and accountability of a public institution, rather than increasing ministerial power.

Mr McArthur expressed concern about the powers that are sought in the bill. They might be powers of last resort, but we cannot be satisfied with the efforts that have been made to modify the extent of ministerial direction, given the considerable concern that stakeholders expressed at the consultation stage.

It is clear that there is a strong argument about the balance that must be struck between ministerial powers, in the context of legitimate concern about how public money is spent—the cabinet secretary has talked about that—and the professional judgment and expertise of trustees and librarians. That is a difficult balance to strike. However, at stake is an important principle, which is the public interest.

Like Mr McArthur, I am not entirely convinced by the examples of circumstances in which it might be appropriate for the powers in section 8 to be used, especially in the event that the board disagreed with the Scottish Government. To empower ministers with such authority is a departure from the norm. Before we consider whether to support amendment 11, I would welcome far more evidence on why conferring such power on ministers will better serve the public interest.

There is a wider argument about the extent of ministerial power. Mr McArthur gave examples of the Government's record of wanting to take more power. Sometimes there have been good reasons for doing so; at other times there have been serious questions about why that happened. It is worth opening up the issue to further debate.

Joan McAlpine: It is clear that the powers of direction will not cover curatorial matters, so librarians will continue to have 100 per cent academic freedom to act. The powers cover access, and it is important that we ensure that there is access to the collections for all sorts of people, throughout society. It is not beyond the powers of imagination to envisage librarians suggesting in the future that they must charge for access, which would restrict people's ability to see the collections, on the basis of wealth. We need to guard against that. I hope that ministers will never use the powers, but I think that if they do use them they will do so for the good, to ensure that all people in Scotland have access to the collections.

Clare Adamson: We are considering the bill, rather than the Government as a whole. The powers of direction are limited to two specific areas, which shows restraint on the part of the Government.

The NLS is a Government-funded body that gets a significant amount of public money, so it is right that the bill provide some form of ministerial direction. If the Government were attempting to

control things, the power of ministerial direction would relate to all areas of the bill rather than just to two specific areas.

Neil Findlay (Lothian) (Lab): I share the concerns of Liz Smith and Liam McArthur about the Government's centralising tendency but, in the context of the bill, we face a dilemma. The bill will give ministers the power to step in to act in the public interest in circumstances in which the board has done something that is clearly contrary to the public interest but, at the same time, there is a danger that the power could be used for other more questionable reasons. Therefore, I think that we need a bit more clarity from the cabinet secretary when she sums up.

Jean Urquhart: I am sure that the cabinet secretary will defend the part of the bill that we are talking about, which I reiterate is about specific areas of governance. It is unfortunate that comparison has been made with the governance arrangements for the police. Sadly, that diminishes Liam McArthur's argument about areas in which he thinks clarification is required. It has not helped the debate.

Marco Biagi (Edinburgh Central) (SNP): As ever, I record my membership of the board of the National Library of Scotland under the current governance arrangements, as the MSP for Edinburgh Central.

Other amendments are about future proofing the bill against unforeseen circumstances. It strikes me that a ministerial power of last resort is part of that. There are very strong safeguards, but if we are to cover all eventualities and prepare for what we cannot necessarily foresee, we need such a power of last resort. I am quite content that, regardless of its political colour, any Government would consider a power such as the one that is proposed, which relates to a major artistic institution, to be a power of last resort.

The Convener: I have a few comments of my own. I ask the minister to clarify the Government's intention with regard to the elements of the bill that are in question—in particular, sections 2(2)(d) and 2(3)(c). I hope that she will respond to the comments of Liam McArthur and others on the legitimate concerns that have been raised about the ministerial power of direction, but I point out to members that ministerial powers of direction are not unusual—such a power was included in the bill to set up Creative Scotland—and that they were introduced by the previous Administration. I remember objecting most strongly to the inclusion of powers of direction in bills of the previous Administration. The Labour ministers at the time rewrote some of those powers to create balance because they felt that, initially, they had gone too far. That said, ministerial powers of direction

remained in the bills in question, which is probably to the good.

I acknowledge the concerns of members and others on the matter, but I expect that the cabinet secretary will be able to provide us with evidence and reasoning for the Government's position on amendments 11 and 12.

Fiona Hyslop: The debate has to be about balance and accountability; those are the two watchwords when it comes to assessing what is proposed. In addition, we need to view the issue in context; this is not a debate about powers of ministerial direction in general. As the convener quite rightly indicated, powers of direction exist in relation to 17 of the 21 bodies that have been established as statutory bodies since 1990.

We need to focus specifically on the amendments. Amendments 11 and 12 would remove the Government's ability to direct the NLS on two of its functions. It is important to differentiate between the two aspects—as, I hope, Liam McArthur will acknowledge when he sums up. The first function, under section 2(2)(d), is the promotion of

“collaboration ... and ... sharing of good practice”

with and between

“other persons providing library and information services.”

The second, under section 2(3)(c), is the promotion of

“diversity of persons accessing the collections”.

By agreeing to amendment 3, the committee has already revised the function in section 2(2)(d) so that it is about the NLS promoting collaboration with other bodies.

10:30

From previous debate, I can appreciate why Liam McArthur has lodged amendments 11 and 12. It is important that we discuss the intention and effect of section 8, and I accept that any ministerial power of direction should be carefully constructed to ensure that ministers do not interfere with the curatorial independence of the National Library. Compared to the draft culture bill in 2006, which had a wide-ranging ministerial power of direction, we have deliberately ensured that we are respecting the importance of there being no ministerial direction over curatorial independence. It can be difficult, though: for example, on Thursday, Liam McArthur's colleague Tavish Scott asked for ministerial direction on another of our collections. That is an example of the stresses and strains of getting the balance right.

However, we want to protect curatorial independence, and section 8 will ensure that that independence is preserved while allowing

ministers to direct the National Library on matters that are separate from its curatorial and cultural functions. In reflecting on Elizabeth Smith's point, I say that it also supports the efficient running of the National Library. That is why I cannot support Liam McArthur's amendments.

On amendment 11, I emphasise that section 2(2)(d) concerns the promotion of

“collaboration ... and ... sharing of good practice”.

It is important to make that distinction. The function does not mean that the National Library could be directed to enforce collaboration or the sharing of good practice by others. I think that we have got the balance correct there.

I want to make it clear why I believe that Scottish ministers should have a power of direction. The National Library and other libraries operate in a rapidly changing technological age. I want the bill to be sufficiently future proofed to cope with such demands and uncertainties. The National Library will have a duty to promote

“collaboration ... and ... sharing of good practice”.

which will, therefore support public sector performance—bearing in mind that 86 per cent of the funding of the National Library comes from taxpayers. It will also support efficiencies, which will be increasingly important, and shared services. For example, in current digitisation work, I am sure that we all agree that services should be shared wherever that is practical in order to avoid duplication and unnecessary additional costs. Our public bodies should be working together on that wherever possible. I agree that a great deal of collaboration already takes place; the issue is how we prepare for what might happen in future organisations and with future boards.

Overall, the ability of ministers to direct in respect of promoting collaboration and good practice is in the interests of the public purse and public efficiency. It is a mechanism for influencing, if needs be, the broader public duty that will be placed on the National Library by section 2(2)(d), as distinct from the functions that are related to its curatorial independence.

On amendment 12, it is important that the Scottish ministers have the ability to direct in relation to section 2(3)(c). The Government is committed to the equality and diversity agenda. I believe that the issue of the National Library's promotion of the diversity of people accessing its collection is a matter of public-policy interest rather than being purely a matter for the Library's curatorial independence. The function at section 2(3)(c) is a duty to promote diversity. It places a wider responsibility on the National Library than current equalities legislation, since it could encompass, for example, linguistic, geographical

and socioeconomic diversity. In representing his constituency, Liam McArthur, will recognise that.

The importance of diversity and equality of access was raised by Labour members during the stage 1 debate. It is important that if, in the future, the National Library does not carry out its responsibility on equality of access, we should be capable of ministerial direction.

Equality of access is consistent with the founding legislation for Creative Scotland, and with other areas; the public policy arguments in relation to the National Library are the same in that regard. Ministers should be able to direct the NLS if at some point in the future it fails in that area. Overall, we must have balance. It is important that ministers use ministerial direction wisely, if at all—it is preferable that they use it not at all. Liam McArthur said that he does not think powers of direction are justified “just in case” we might need to use them, but that is exactly why we might need to use them.

I do not want either me or anyone else round the table who might be a minister in the future, in having to account to Parliament for that 86 per cent public investment in NLS, to face the criticism that they failed to take action when they needed to do so. In the interest of future proofing the legislation, that is an important area to consider.

Should the power be used as a last resort? Yes—that is exactly when it should be used. The fact that it has not been used does not mean that it will not need to be used at some point in the future. We need to strike the right balance. I appreciate Liam McArthur’s arguments, but we have worked hard to get the right balance in the bill, and I am pleased with the support that we have had from the National Library of Scotland, which recognises that.

The Convener: I call on Liam McArthur to wind up and press or seek to withdraw amendment 11.

Liam McArthur: I thank the cabinet secretary for her detailed and constructive response. We have had a useful debate, which has progressed the discussions that we had throughout stage 1. I also thank Liz Smith for her comments and her support for my amendments, and Neil Findlay for his supportive comments.

I fully accept that the powers do not cover the curatorial role. However, Joan McAlpine was perhaps in danger of suggesting that the board would not necessarily be able to act in the public interest and that only ministers would have that at the forefront of their minds. I do not think that that argument could be sustained.

Clare Adamson and Jean Urquhart rightly drew attention to the restraint that has been shown in the limited number of areas that are covered by

the bill, and I fully acknowledge that. Nevertheless, in response to Jean Urquhart’s suggestion, I do not believe that I was diminishing the arguments by setting them in a wider context, nor do I accept that that is an illegitimate thing to do. The vast bulk of what I said in moving amendment 11 was focused on the powers in the bill.

Marco Biagi was right on the need to future proof the bill, and Clare Adamson acknowledged that in relation to earlier amendments. However, I still have concerns about use of the power as a last resort. The convener was right to draw attention to the principles that previous Administrations accepted, and to the fact that he fought the good fight in trying to either restrict or remove such powers on previous occasions.

I turn to the cabinet secretary’s remarks. It is absolutely the case that there needs to be a balance and accountability. She is also right—it is probably an error that I made in speaking to my amendments—that I did not draw enough of a distinction between the two. I would have to go back through the previous evidence to be sure, but I think that I previously expressed greater concern about the power over collaboration than about the power over access. That remains my concern. I am far more interested in seeing where we might be able to progress in relation to amendment 11 than in relation to amendment 12. The minister’s point about the importance of linguistic and geographic access as well as financial access is valid.

The extent to which the NLS relies on funding from the Scottish Government is a clue to how it is that ministers already have considerable influence over the actions that the board will take, but at some point it needs to be entrusted to take decisions. To hark back to one of the earliest amendments that we discussed this morning, I note that we are expressing our confidence in its ability so to do. Although every member has said that the power is simply a power of last resort, at some stage there might be a clash between the board and ministers about the expression of the public interest. The way in which that is arbitrated and the way in which we would weight that contest between different approaches is an issue of legitimate concern about the bill.

I am minded to press amendment 11, but on the basis of the legitimate points that the cabinet secretary and one or two others made about access, I will not move amendment 12.

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adamson, Clare (Central Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 11 disagreed to.

Amendment 12 not moved.

Section 8 agreed to.

Sections 9 and 10, schedules 2 and 3 and sections 11 to 13 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and her officials for their attendance.

National Library of Scotland Bill

[AS AMENDED AT STAGE 2]

CONTENTS

Section

The National Library of Scotland

- 1 The National Library of Scotland

Functions of NLS

- 2 Functions of NLS

Acquisitions, deposits, disposal and loan of objects

- 3 Acquisitions, deposits and disposal of objects

- 4 Borrowing and lending of objects

Legal publications

- 5 Legal publications

Joint arrangements etc. between NLS and the Faculty

- 6 NLS and the Faculty: joint arrangements etc.

Grants and loans

- 7 Grants and loans

Directions and guidance

- 8 Directions and guidance

General

- 9 Interpretation

- 10 Consequential modification of enactments and repeals

- 11 Subordinate legislation

- 12 Commencement

- 13 Short title

Schedule 1—NLS

Schedule 2—Modifications of enactments

Schedule 3—Repeals

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

National Library of Scotland Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make further provision about the name, functions and governance of the National Library of Scotland; and for connected purposes.

The National Library of Scotland

1 The National Library of Scotland

- 5 (1) The body corporate known as The Trustees of the National Library of Scotland, established by section 1(1) of the 1925 Act, continues in existence and is renamed the National Library of Scotland or Leabharlann Nàiseanta na h-Alba (“NLS”).
- (2) Schedule 1, which makes further provision about NLS, has effect.

Functions of NLS

2 Functions of NLS

- 10 (1) NLS has the general function of managing the library established by section 1(1) of the 1925 Act as a national resource for reference, study, research and bibliography, having particular regard to Scotland.
- (2) NLS has the particular functions of—
- 15 (a) preserving, conserving and developing its collections,
- (b) making the collections accessible to the public and to persons wishing to carry out study and research,
- (c) exhibiting and interpreting objects in the collections, and
- 20 (d) promoting collaboration and the sharing of good practice with and between other persons providing library and information services, and the adoption of good practice by those persons.
- (3) NLS is to exercise its functions with a view to—
- (a) encouraging education and research,
- (b) promoting understanding and enjoyment of the collections,
- 25 (c) promoting the diversity of persons accessing the collections, and
- (d) contributing to understanding of Scotland’s national culture.

(4) NLS—

- (a) must, when required to do so by the Scottish Ministers, and
- (b) may, at any other time,

provide the Scottish Ministers with advice, information and assistance on any matter relating to NLS's functions.

- (5) Any advice, information or assistance under subsection (4)(a) must be provided in such manner as the Scottish Ministers may determine.

Acquisitions, deposits, disposal and loan of objects

3 Acquisitions, deposits and disposal of objects

(1) NLS may—

- (a) acquire (by purchase, exchange or gift),
- (b) accept on deposit,

any object which it considers it is desirable to add to its collections.

- (1A) The power in subsection (1)(a) is in addition to any other power or means of acquisition.

(2) NLS may dispose of any object from its collections if—

- (a) the object is a duplicate of, or similar to, another object in the collections,
- (b) NLS considers that the object is not required for the purposes of the collections,
- (c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
- (d) the object is hazardous,
- (e) in any other case, the Scottish Ministers agree to the disposal.

- (3) Disposal under subsection (2) may be by sale, exchange, gift, return or destruction.

- (4) The power in subsection (2) is in addition to any other powers of disposal, in particular those conferred by—

- (a) section 6 of the Museums and Galleries Act 1992 (c.44), and
- (b) section 2 of the Holocaust (Return of Cultural Objects) Act 2009 (c.16).

- (5) The power in subsection (2) does not apply in relation to an object which is relevant material within the meaning of section 7 of the 2003 Act.

- (6) Where an object is subject to a prohibition or restriction on disposal, NLS may dispose of the object under subsection (2) in a manner inconsistent with the prohibition or restriction only—

- (a) with the consent of the person having the right to enforce the prohibition or restriction, or
- (b) in the circumstances mentioned in subsection (2)(c) or (d).

4 Borrowing and lending of objects

- (1) NLS may borrow or accept loans of objects for the purposes of exhibition, study or research.

- (2) NLS may lend any object from its collections.
- (3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), NLS is to have regard to—
- (a) the interests of users of the collections,
 - (b) the suitability of the prospective borrower,
 - (c) the purpose of the loan,
 - (d) the physical condition and degree of rarity of the object,
 - (e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.
- (4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending.
- (5) The power in subsection (2) does not apply in relation to an object which is relevant material within the meaning of section 7 of the 2003 Act.
- (6) Where an object is subject to a prohibition or restriction on lending, NLS may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only—
- (a) with the consent of the person having the right to enforce the prohibition or restriction, or
 - (b) where, despite taking all reasonable steps, NLS is unable to ascertain the name and contact details of any person having that right.

Legal publications

5 Legal publications

- (1) Copies of legal publications delivered to NLS under section 1 of the 2003 Act—
- (a) are to be sent by NLS to the Faculty for the purposes of its Law Library, and
 - (b) when accepted by the Faculty, become the property of the Faculty.
- (2) NLS must include in a request under section 5 of the 2003 Act such legal publications as the Faculty may require it to include.
- (3) Subsection (1) does not apply to legal publications which are on line electronic publications.
- (4) Copies of legal publications which are on line electronic publications are to be made available by NLS to the Faculty.
- (5) Any question as to what constitutes a legal publication for the purposes of—
- (a) this section, or
 - (b) section 5 of the 1925 Act (as it had effect immediately before its repeal by section 10(5) and schedule 3),
- is to be resolved by agreement between NLS and the Faculty or, if they cannot agree, by arbitration.

*Joint arrangements etc. between NLS and the Faculty***6 NLS and the Faculty: joint arrangements etc.**

- (1) NLS and the Faculty must enter into arrangements about—
- (a) co-operation between NLS and the Faculty in relation to—
 - (i) NLS's collections,
 - (ii) the Faculty's collections of legal publications,
 - (b) the consultation of objects in NLS's collections by members of the Faculty,
 - (c) the consultation of objects in the Faculty's collections of legal publications by users of NLS's collections,
 - (d) the preservation and conservation of legal publications,
 - (da) the legal publications which are electronic publications which NLS is to request, and
 - (e) how legal publications which are on line electronic publications are to be made available by NLS to the Faculty.
- (2) Arrangements under subsection (1) may contain provision about charging.
- (3) Any question as to what are law books, legal manuscripts and papers, pictures or articles of furniture belonging to the Faculty for the purposes of section 3(1) of the 1925 Act is to continue to be determined by the Keeper of the Advocates' Library despite the repeal of that section by section 10(5) and schedule 3.

*Grants and loans***7 Grants and loans**

- (1) The Scottish Ministers may make grants to NLS.
- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to NLS for particular purposes.
- (3) A grant under subsection (1) or (2) is subject to such terms and conditions (including conditions as to repayment) as the Scottish Ministers may determine.
- (4) NLS may make grants and loans to such persons as it considers appropriate—
- (a) for the purposes of, or in connection with, the exercise of its functions,
 - (b) where it appears to be conducive to the exercise of its functions.
- (5) A grant or loan under subsection (4) is subject to such terms and conditions (including conditions as to repayment) as NLS may determine.

*Directions and guidance***8 Directions and guidance**

- (1) The Scottish Ministers may give NLS directions (of a general or specific nature) as to the exercise of its functions.
- (2) But the Scottish Ministers may not give NLS directions so far as relating to—
- (a) NLS's functions under section 2(2)(a) to (c) or (3)(a), (b) or (d) or sections 3 to 7,
 - (b) NLS's functions under or by virtue of the 2003 Act.

- (3) NLS must—
- (a) comply with any directions given to it by the Scottish Ministers under this section,
 - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.
- 5 (4) A direction under this section is to be given in writing.
- (5) The Scottish Ministers may vary or revoke any direction given under this section.

General

9 Interpretation

In this Act—

- 10 “the 1925 Act” means the National Library of Scotland Act 1925 (c.73),
“the 2003 Act” means the Legal Deposit Libraries Act 2003 (c.28),
“the Faculty” means the Faculty of Advocates,
“NLS” has the meaning given by section 1(1),
“object” includes a thing in electronic form,
15 “on line electronic publication” has the same meaning as in section 14 of the 2003 Act.

10 Consequential modification of enactments and repeals

- (1) Schedule 2, which contains modifications of enactments, has effect.
- 20 (2) The Scottish Ministers may by order make such incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (3) An order under subsection (2) may modify any enactment (including this Act).
- (4) An order under subsection (2) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.
- 25 (5) The enactments mentioned in the first column of schedule 3 are repealed to the extent specified in the second column of that schedule.

11 Subordinate legislation

Orders under this Act (except orders referred to in section 10(4) and orders under section 12(2)) are subject to the negative procedure.

12 Commencement

- 30 (1) Sections 11 and 13 and this section come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

13 Short title

The short title of this Act is the National Library of Scotland Act 2012.

SCHEDULE 1
(introduced by section 1(2))

NLS

Status

- 5 1 (1) NLS is a body corporate.
- (2) NLS—
- (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status or immunity of the Crown.
- (3) NLS's property is not property of, or property held on behalf of, the Crown.
- 10 (4) NLS's members and employees are not to be regarded as civil servants.

Membership

- 2 (1) NLS is to consist of—
- (a) a person appointed by the Scottish Ministers to chair NLS, and
- 15 (b) no fewer than 8 and no more than 13 other members appointed by the Scottish Ministers.
- (2) One of the members is to be selected from persons nominated by the Dean of the Faculty (who may include the Dean).
- (3) The Scottish Ministers may by order amend sub-paragraph (1)(b) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.
- 20 (4) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers.
- (5) A member may resign office by giving notice in writing to the Scottish Ministers.
- 25 (6) The Scottish Ministers may reappoint as a member a person who has ceased to be a member.

Persons disqualified from membership of NLS

- 3 A person is disqualified from appointment (and from holding office) as a member of NLS if the person is (or becomes)—
- (a) a member of the House of Commons,
- 30 (b) a member of the Scottish Parliament, or
- (c) a member of the European Parliament.

Removal of members

- 4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a member if—
- (a) the member becomes insolvent,
- 35 (b) the member has been absent from 3 consecutive meetings without the permission of NLS,

(c) the member is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.

(2) For the purposes of sub-paragraph (1)(a), a member becomes insolvent when—

- (a) the member's estate is sequestrated,
- (b) the member grants a trust deed for creditors or enters into a composition contract,
- (c) a voluntary arrangement proposed by the member is approved, or
- (d) the member is adjudged bankrupt.

Remuneration, allowances and expenses of members

5 NLS must pay to each member—

- (a) such remuneration, and
 - (b) such allowances and expenses,
- as the Scottish Ministers may determine.

Chief executive and other staff

6 (1) NLS is to employ a chief executive.

(2) The chief executive may not be a member of NLS.

(3) The first chief executive is to be the person who, immediately before this paragraph comes into force, is the librarian appointed under section 2(f) of the 1925 Act.

(4) That person is employed as chief executive on the same terms and conditions as apply to the appointment of that person as the librarian.

(5) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed on terms and conditions determined by NLS and approved by the Scottish Ministers.

(6) NLS may employ any other staff necessary for the carrying out of NLS's functions.

(7) Those staff are to be employed on terms and conditions determined by NLS and approved by the Scottish Ministers.

(8) NLS may, with the approval of the Scottish Ministers—

- (a) pay (or make arrangements for the payment of),
- (b) make payments or contributions towards the provision of,
- (c) provide and maintain schemes (whether contributory or not) for the payment of,

such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee, as NLS may determine.

(9) The reference in sub-paragraph (8) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

Committees

7 (1) NLS may establish committees for any purpose relating to its functions.

- (2) NLS is to determine the composition of its committees.
- (3) NLS may appoint persons who are not members of NLS to be members of a committee, but those persons are not entitled to vote at meetings of the committee.
- (4) A committee is to comply with any directions given to it by NLS.

5 *Procedure and meetings*

- 8 (1) NLS may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The following persons may attend and take part in a meeting of NLS (or any of its committees)—
- 10 (a) members of the Scottish Executive,
- (b) persons authorised by the Scottish Ministers,
- (c) the Dean of the Faculty or a person authorised by the Dean of the Faculty.
- (3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

Delegation of functions

- 15 9 (1) NLS may authorise—
- (a) the chief executive,
- (b) any other employee,
- (c) any of its committees,
- to exercise such of its functions (and to such extent) as it may determine.
- 20 (2) NLS may not authorise either of the following functions to be exercised by any other person—
- (a) the approval of annual reports and accounts,
- (b) the approval of any budget or other financial plan.
- 25 (3) Sub-paragraph (1) does not affect the responsibility of NLS for the exercise of its functions.

Validity of proceedings and actions

- 10 The validity of proceedings or actions of NLS (including proceedings or actions of any of its committees) is not affected by—
- (a) any vacancy in the membership of NLS or any of its committees,
- 30 (b) any defect in the appointment of a member of NLS or any of its committees, or
- (c) the disqualification of a person as a member after appointment.

General powers

- 11 (1) NLS may do anything which appears to it—
- (a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions,
- 35

(b) to be conducive to the exercise of its functions.

(2) In particular, NLS may—

- (a) enter into contracts,
 - (b) with the approval of the Scottish Ministers, acquire and dispose of land,
 - 5 (c) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,
 - (d) enter into any business or undertaking,
 - (e) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),
 - 10 (f) enter into joint ventures with others,
 - (g) undertake or execute any charitable trust,
 - (h) invest sums not immediately required in relation to the exercise of its functions,
 - (i) accept gifts of money and other property,
 - 15 (j) obtain advice or assistance from any person who, in NLS's opinion, is qualified to give it,
 - (k) carry out or commission research,
 - (l) issue publications,
 - (m) make charges for access to the collections,
 - 20 (n) make other charges in connection with the exercise of its functions (including charges for the provision of goods and services).
- (3) For the purposes of sub-paragraph (2)(g), a trust is a charitable trust if all its purposes are within section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Accounts

25 12 (1) NLS must—

- (a) keep proper accounts and accounting records,
- (b) prepare in respect of each financial year a statement of accounts, and
- (c) send a copy of the statement to the Scottish Ministers.

30 (2) NLS must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).

(3) NLS must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

35 13 (1) As soon as practicable after the end of each financial year, NLS must prepare a report which is—

- (a) to provide information on the exercise of its functions during that year, and

(b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.

(2) NLS must—

(a) send a copy of the report to the Scottish Ministers, and

(b) publish the report.

(3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.

(4) NLS may publish such other reports and information on matters relevant to its functions as it considers appropriate.

SCHEDULE 2

(introduced by section 10(1))

MODIFICATIONS OF ENACTMENTS

National Heritage (Scotland) Act 1985 (c.16)

1 In section 22(2) of the National Heritage (Scotland) Act 1985 (finance)—

(a) for “Edinburgh,” substitute “Edinburgh and”, and

(b) the words from “, and the” to the end are repealed.

Museums and Galleries Act 1992 (c.44)

2 In the Museums and Galleries Act 1992—

(a) in Part 1 of Schedule 5 (transfers to and from certain collections), for “The Board of Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and

(b) in Schedule 6 (bodies to whom land may be transferred)—

(i) after “The National Library of Scotland” insert “, established by section 1(1) of the National Library of Scotland Act 1925 (c.73)”, and

(ii) for “The Board of Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

3 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), for the entry relating to The Trustees of the National Library of Scotland substitute “The National Library of Scotland”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

4 In the Scottish Public Services Ombudsman Act 2002, in paragraph 30 of Part 2 of schedule 2 (listed authorities), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 5 In the Freedom of Information (Scotland) Act 2002, in paragraph 105 of Part 7 of schedule 1 (Scottish public authorities), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Legal Deposit Libraries Act 2003 (c.28)

- 6 In the Legal Deposit Libraries Act 2003—

- (a) in section 12 (regulations: Scotland and Wales)—

- (i) in subsection (1)(a), the words “the authority controlling” are repealed,
 (ii) in subsection (1)(b), for “that authority” substitute “the National Library of Scotland”,
 (iii) in subsection (2)(b), the words “the authority controlling” are repealed, and
 (iv) in subsection (3), the words “the authority controlling” are repealed, and

- (b) in section 14 (interpretation), in the definition of “deposit library”—

- (i) after “Board” insert “, the National Library of Scotland”, and
 (ii) paragraph (a) is repealed.

Holocaust (Return of Cultural Objects) Act 2009 (c.16)

- 7 In the Holocaust (Return of Cultural Objects) Act 2009—

- (a) in section 1 (bodies to which this Act applies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and
 (b) in section 2(5) (power to return victims’ property), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Public Services Reform (Scotland) Act 2010 (asp 8)

- 8 In the Public Services Reform (Scotland) Act 2010—

- (a) in schedule 5 (improvement of public functions: listed bodies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and
 (b) in schedule 8 (information on exercise of public functions: listed public bodies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Public Records (Scotland) Act 2011 (asp 12)

- 9 In the schedule to the Public Records (Scotland) Act 2011, for “Trustees of the National Library of Scotland” substitute “National Library of Scotland”.

SCHEDULE 3
(introduced by section 10(5))

REPEALS

	<i>Enactment</i>	<i>Extent of repeal</i>
5	National Library of Scotland Act 1925 (c.73)	The whole Act.
	National Heritage (Scotland) Act 1985 (c.16)	Section 18.
10	Public Finance and Accountability (Scotland) Act 2000 (asp 1)	In schedule 4, paragraph 2.
	Legal Deposit Libraries Act 2003 (c. 28)	Section 15(2) to (5).

National Library of Scotland Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make further provision about the name, functions and governance of the National Library of Scotland; and for connected purposes.

Introduced by: Fiona Hyslop
On: 26 October 2011
Supported by: Brian Adam
Bill type: Executive Bill

NATIONAL LIBRARY OF SCOTLAND BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the National Library of Scotland Bill (introduced in the Scottish Parliament on 26 October 2011) as amended at Stage 2. Text has been added or deleted as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill modernises the governing legislation for the National Library of Scotland, which was established by virtue of the National Library of Scotland Act 1925 (c.73). The Bill defines the functions of the governing body and updates its powers to bring them in line with those of modern public bodies. The 1925 Act did not specifically provide for the governing body's functions, which have evolved over time.

5. The Bill will also reduce the size of the board of the governing body, remove reserved places and ensure all appointments are made by Scottish Ministers based on merit and selection. This will bring the provisions for the board into line with current public appointments practice under the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).

6. A public consultation on the role and governance of the National Library of Scotland was carried out between March and June 2010, <http://www.scotland.gov.uk/Publications/2010/03/31102621/1>. A Scottish Government response was published in March 2011 <http://www.scotland.gov.uk/Publications/2011/03/Publications>.

7. In these Explanatory Notes and the Bill, the “1925 Act” means the National Library of Scotland Act 1925, which the Bill will replace, and the “2003 Act” means the Legal Deposit Libraries Act 2003 (c.28), which the Bill does not substantively amend.

THE BILL

The National Library of Scotland

Section 1 – The National Library of Scotland

8. This section renames the body corporate called “The Trustees of the National Library of Scotland” as “The National Library of Scotland”, in English, and Leabharlann Nàiseanta na h-Alba, in Gaelic. “NLS” is used in these Explanatory Notes and in the Bill as short-hand for the National Library of Scotland. These provisions reflect the fact that the body corporate has for some time operated with the corporate identities “The National Library of Scotland” and “NLS”. Schedule 1 makes detailed provision about the governance of NLS.

Functions of NLS

Section 2 – Functions of NLS

9. This section continues as the general function of NLS the function of managing the library known as the National Library of Scotland. This function was first established in section 1(1) of the 1925 Act. The National Library of Scotland is a reference and research library, as distinct from a lending library, acting as a national resource for amongst other things bibliography (the study of books). The reference to particular regard to Scotland reflects that the National Library of Scotland is an international centre for the study of Scotland and the Scots and a resource for Scotland’s research community.

10. Subsection (2) lists specific functions of NLS to expand on the general function.

11. Subsection (2)(a) gives NLS the function of preserving, conserving and developing its collections. The collections are the sum-total of objects held by NLS. NLS acquires objects through the means referred to in section 3 and also by means of legal deposit under the 2003 Act. NLS might, for example, exercise these functions by engaging specialist conservator-restorers to maintain or bring objects in the collections to a good condition, and by maintaining a collecting strategy for the future development of the collections.

12. Subsection (2)(b) gives NLS the function of making the collections accessible to the public, and also to students and researchers for their special interests. NLS might, for example, exercise these functions by making reading rooms available so that objects in the collections can be brought to persons wishing to consult them¹. Accessibility is not restricted to physical access and includes making the collections available on line to users.

13. Subsection (2)(c) gives NLS the function of exhibiting and interpreting objects in the collections. NLS might, for example, exercise these functions by organising a public display of objects on a particular theme or topic, and developing audio, visual or audiovisual aids to support

¹ The National Library of Scotland is generally “closed-stack”, which means that objects must be requested from NLS staff and taken by those staff from secure storage areas.

those wishing to understand the context and cultural significance of an exhibition. NLS might seek the loan of objects in another body's collections to support a particular exhibition (see section 4). This function may also be delivered through on line means.

14. Subsection (2)(d) gives NLS the function of promoting collaboration and the sharing of good practice with and between other persons providing library and information services, such as local authorities. NLS must also promote the adoption of good practice by those persons. NLS might, for example, exercise these functions by offering advice on the conservation of delicate objects.

15. Subsection (3) lists objectives that NLS must seek to achieve in exercising its general and specific functions.

16. Subsection (3)(a) gives NLS the objective of encouraging education and research. In pursuit of this objective NLS might, for example, make arrangements with universities and colleges so that students are aware of the unique resources within NLS's collections.

17. Subsection (3)(b) gives NLS the objective of promoting understanding and enjoyment of the collections. An example of this might be using on line services as a way to inform new audiences about the range of its collections and, through display and interpretation, promoting greater engagement with the public.

18. Subsection (3)(c) gives NLS the objective of promoting the diversity of persons accessing the collections, for example, by digitising paper resources so that they can be accessed outwith NLS's properties.

19. Subsection (3)(d) gives NLS the objective of contributing to understanding of Scotland's national culture. Scotland's national culture in this paragraph means Scotland's distinctive way of life as a whole, and not only artistic and cultural output. NLS might, for example, hold public lectures and promote new publications on specific aspects of Scottish culture.

20. NLS also exercises functions separately to the Bill. NLS claims and receives publications under the 2003 Act, receives copies of registers of electors and makes them available for inspection² and receives print copies of Scottish Statutory Instruments³.

21. Subsections (4) and (5) require NLS to provide the Scottish Ministers with any advice, information and assistance they require (and in the manner they require it) in relation to NLS's functions. NLS may at any other time provide such advice as it considers appropriate.

² Under the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497 (S. 2) as amended by S.I. 2006/834 (S. 9)) and the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341 as amended by S.I. 2006/752).

³ Under the Scottish Statutory Instrument Regulations 2011 (S.S.I. 2011/195).

Acquisitions, deposits, disposal and loan of objects

Section 3 – Acquisitions, deposits and disposal of objects

22. Subsection (1) empowers NLS to acquire objects and accept objects on deposit to develop the collections (see section 2(2)(a)) and sets out the means by which objects come to be added to or “accessioned” into the collections, namely purchase, exchange, gift and deposit. Deposit is an arrangement where the depositor charges NLS with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between NLS and the depositor.

23. Subsection (1A) clarifies that the power in subsection (1) is an additional power, without prejudice to other legislation or rules of law. One means by which objects are accessioned into the collections is legal deposit under the 2003 Act. Acquisitions under the 2003 Act are separate to the ordinary acquisitions and deposits referred to in subsection (1) and are not referred to in that subsection. The 2003 Act positions NLS as a legal deposit library and provides for the delivery of print and, subject to provision made in UK regulations, non-print publications to NLS⁴. Legal deposit libraries are sometimes referred to as “copyright” libraries.

24. As mentioned, NLS has the function of preserving and conserving the collections (see section 2(2)(a)). Subsection (2) sets out the circumstances in which NLS may dispose of or “de-accession” an object or objects in the collections.

25. The case for disposal in subsection (2)(a) is that an object is a duplicate of, or similar to, another object in the collections. NLS might, for example, have duplicate objects of those acquired by virtue of legal deposit under the 2003 Act.

26. The case for disposal in subsection (2)(b) is that an object is not required for the purposes of the collections. NLS might, for example, review its collecting strategy and consider that an object is better held elsewhere, for example by a local authority or university library because of the nature of the material.

27. The case for disposal in subsection (2)(c) is that an object has become useless on account of damage, deterioration or infestation by destructive organisms. In such a case, NLS might take the view that the object cannot be usefully conserved and should be deaccessioned.

28. The case for disposal in subsection (2)(d) is that an object is hazardous. In such a case, NLS might take the view that the benefit of keeping the object is outweighed by the risk to persons accessing the collections.

29. Subsection (2)(e) allows compelling, unforeseen cases for disposal to be accommodated. The safeguard of the agreement of the Scottish Ministers is included. This case for disposal might, for example, arise if a “moral claim” is made for repatriation of an object that NLS has title to and it would be desirable to keep in the collections, but that claim is considered to be compelling.

⁴ At the time of writing these Explanatory Notes no such regulations are in place but the UK Department for Media, Culture and Sport has consulted on updated draft regulations <http://www.culture.gov.uk/consultations/8878.aspx>.

30. Subsection (3) sets out the means of disposal, namely sale, exchange, gift, return or destruction. It is implicit that selling, exchanging or gifting an object is only possible where NLS holds the object as owner. As mentioned, the owner of an object on deposit is the depositor.

31. Subsection (4) clarifies that the disposal power in subsection (2) is an additional power. NLS has statutory powers of disposal in the Museums and Galleries Act 1992 (c.44) and the Holocaust (Return of Cultural Objects) Act 2009 (c.16)⁵ and may in future have power to dispose of non-print legal deposit publications under regulations under the 2003 Act. Implied powers of disposal at common law are also preserved, such as the implied power of NLS to settle a legal claim if it transpires that title to an object is held by another person (see *Attorney-General for England and Wales v Trustees of the British Museum* [2005] EWHC 1089 (Ch)).

32. Subsection (5) provides that NLS's disposal power in subsection (2) does not apply to non-print publications that might be received by virtue of regulations under the 2003 Act, thus protecting the restriction on disposal of such publications in section 7(2)(f) of that Act.

33. Subsection (6) protects restrictions or prohibitions on disposal that donors have attached to objects in the collections and is intended to serve as a reminder to NLS to check for any such prohibitions or restrictions when considering making any disposal under subsection (2). For example, a condition imposed by Ministers under the acceptance in lieu of tax regime operated under sections 8 and 9 of the National Heritage Act 1980 (c.17) may require that an object does not leave Scotland or the United Kingdom. Prohibitions or restrictions on disposal may only be overridden with the consent of the person having the right to enforce the condition or in cases where the object is damaged and useless (subsection (2)(c)) or hazardous (subsection (2)(d)).

Section 4 – Borrowing and lending of objects

34. Subsection (1) empowers NLS to borrow and accept loans of objects for the purposes of exhibition, study or research.

35. Subsection (2) empowers NLS to lend objects in the collections.

36. Subsection (3) sets out special considerations which NLS must have regard to in deciding whether or not to lend an object, and in determining the period for which and conditions on which the object is to be lent. These include any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified, for example under the Government Indemnity Scheme operated under sections 16 and 16A of the National Heritage Act 1980.

37. Subsection (4) clarifies that the borrowing and lending powers in subsections (1) and (2) are additional powers. NLS may in future have power to borrow and lend non-print legal deposit publications under regulations under the 2003 Act. Subsection (5) provides that NLS's lending power in subsection (2) does not apply to non-print publications that might be received by virtue

⁵ The Holocaust (Return of Cultural Objects) Act 2009 expires in 2019, by virtue of the sunset provision in section 4(7) of that Act.

of regulations under the 2003 Act, thus protecting the restriction on lending of such publications in section 7(2)(d) of that Act.

38. Subsection (6) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to NLS to check for any such conditions when considering lending objects under subsection (2). For example, a condition may provide that an object may not be loaned for more than one month in any calendar year. Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite NLS taking all reasonable steps to ascertain them.

Legal publications

Section 5 – Legal publications

39. Section 5(1) continues the requirement, first expressed in section 5(2) of the 1925 Act, that print legal publications delivered to NLS by way of legal deposit are sent to the Faculty of Advocates for the purposes of its Law Library⁶. When such publications are accepted by the Faculty they become the property of the Faculty. Subsection (2) requires NLS to claim under the 2003 Act any print legal publications that the Faculty wishes to receive.

40. If UK regulations under the 2003 Act provide for the delivery of “off line publications” (such as CD-ROM and microform publications) to NLS, then legal publications in those formats will be covered by section 5(1) of the Bill. Off line publications differ from conventional print publications in that they require the intervention of an electronic retrieval system, such as a computer or specialist reader, to access them.

41. Subsection (3) provides that subsection (1) does not apply to on line electronic publications. Subsection (2) does not apply to on line electronic publications because section 5 of the 2003 Act, as referred to in subsection (2), only applies to print publications. “On line electronic publications” has the same meaning as in the 2003 Act (see section 9) and means publications made available by means of the internet, such as websites and e-books. On line electronic publications differ from off line publications in that they are not recorded in any physical form. Subsection (4) provides that any on line electronic publications delivered under regulations made under the 2003 Act are not to be sent by NLS to the Faculty, but instead are to be made available by NLS to the Faculty. See also section 6(1)(da) and (e), under which NLS and the Faculty must make certain arrangements as to electronic publications.

42. Subsection (5) provides that it is for NLS and the Faculty to agree what constitutes a legal publication for the purposes of section 5 and its predecessor section under the 1925 Act. In the event of any dispute as to that matter, the dispute is to be referred to arbitration under the Arbitration (Scotland) Act 2010 (asp 1). This provision is required because there is continuing scope for uncertainty as to whether particular publications received by way of legal deposit are or are not legal publications. Arbitrations under the Arbitration (Scotland) Act 2010 engage the Scottish Arbitration Rules, a modern code for non-judicial dispute resolution.

⁶ The Faculty Law Library is adjacent to the main National Library of Scotland building but is independently owned and governed. The National Library of Scotland was founded on the gift by the Faculty of its non-legal collections.

Joint arrangements etc. between NLS and the Faculty

Section 6 – NLS and the Faculty: joint arrangements etc.

43. This section requires NLS and the Faculty to continue maintaining arrangements for the management and interaction of their libraries and collections of publications⁷. The detail of these arrangements is to be agreed between NLS and the Faculty. It is open to the parties to agree exceptions to access. Subsection (1) replaces section 6 of the 1925 Act, in which the Faculty's collections of legal publications are referred to as "books contained in the Faculty's Law Library".

44. Subsection (1)(a) requires there to be arrangements as to co-operation in relation to NLS' collections and the Faculty's collections of legal publications. These might include provisions for the rejection by the Faculty of legal publications sent to it that it does not wish to hold. These might also include provisions for the depositing of Faculty-owned publications in NLS storage areas.

45. Subsection (1)(b) requires there to be arrangements as to the consultation of objects in NLS's collections by members of the Faculty. These might include allowing Faculty members to access NLS objects in the Faculty Library instead of in NLS's reading rooms.

46. Subsection (1)(c) requires there to be arrangements as to the consultation of objects in the Faculty's collections of legal publications by users of NLS's collections. Arrangements might include allowing users of NLS to access Faculty publications in NLS's reading rooms.

47. Subsection (1)(d) requires there to be arrangements as to the conservation and preservation of legal publications. Arrangements might include regular meetings concerning best practice in the storing of legal publications in print and non-print format.

48. Subsection (1)(da) requires there to be arrangements as to the legal publications which are electronic publications which NLS is to request under regulations made under the 2003 Act. Electronic publications in this subsection includes both on line and off line electronic publications. Arrangements might include a collecting policy for acquiring legal websites and blogs through harvesting.

49. Subsection (1)(e) requires there to be arrangements for the making available to the Faculty of on line electronic legal publications delivered to NLS under regulations made under the 2003 Act. Such arrangements would have to be compatible with the 2003 Act regulations and copyright law. The sending of off line electronic publications to the Faculty is provided for in section 5(1).

50. Subsection (2) provides that arrangements entered into between NLS and the Faculty may contain provision about charging. It is implicit that such provision may only be included if NLS and the Faculty both agree to it.

⁷ Memoranda of Agreement between NLS and the Faculty were entered into on 22 December 2001 and are published at <http://www.nls.uk/collections/british/historical>.

51. Subsection (3) preserves the special dispute resolution mechanism in section 3(4) of the 1925 Act if there are any disputes as to which objects transferred from the Faculty to NLS on 26 October 1925, the date on which the 1925 Act came into force. This provision is required because there is continuing scope for uncertainty as to which particular objects did and did not transfer to NLS in 1925. This mechanism is not relevant to any dispute concerning publications received subsequently to 26 October 1925 by way of legal deposit (any such dispute being settled instead in accordance with section 5(5)).

Grants and loans

Section 7 – Grants and loans

52. Subsections (1) to (3) allow the Scottish Ministers to make grants to NLS, for example grant-in-aid and grants for particular purposes, subject to such terms and conditions as the Scottish Ministers think fit.

53. Subsections (4) and (5) allow NLS to make grants and loans in furtherance of its functions, subject to such terms and conditions as it thinks fit.

Directions and guidance

Section 8 – Directions and guidance

54. This section gives the Scottish Ministers power to give written directions to NLS as to the exercise of its functions. Directions may not be given as regards NLS's specific functions in section 2(2)(a) to (c), NLS's objectives in section 2(3)(a), (b) or (d) or as regards acquisitions, deposits, disposal, borrowing or lending (of objects), legal deposit or grants and loans (of money). Subsection (4) requires any directions to be given in writing, while subsection (5) provides that directions may be varied or revoked by the Scottish Ministers.

55. Subsection (3) requires NLS to comply with any directions given to it by the Scottish Ministers under section 8 and to have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

General

Section 9 – Interpretation

56. This section defines terms that are used frequently in the Bill. The definition of "object" clarifies that NLS may hold electronic objects.

Section 10 – Consequential modification of enactments and repeals

57. Subsections (1) and (5) introduce schedule 2 (modifications of enactments) and schedule 3 (repeals).

58. Subsections (2) to (4) empower the Scottish Ministers to make incidental or consequential provision by order and provide that such an order is subject to the affirmative

procedure if it modifies primary legislation (an Act of Parliament or Act of the Scottish Parliament)⁸.

Section 11 – Subordinate legislation

59. This section provides that orders made by the Scottish Ministers under the Bill are subject to the negative procedure, except in the case referred to in section 10(4) – where the affirmative procedure applies – and the case referred to in section 12(2) – where only the default laying requirement applies⁹.

Section 12 – Commencement

60. Subsections (1) and (2) have effect that the Bill is to come into force on such day or days as the Scottish Ministers may by order appoint, except sections 11, 12 and 13 which come into force on the day after Royal Assent. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 13 – Short title

61. This section sets out the short title of the Bill.

Schedule 1 – NLS

Paragraph 1 – Status

62. NLS is a body corporate but is not a Crown body. NLS therefore does not have any of the special privileges of the Crown.

Paragraph 2 – Membership

63. The board of NLS is to consist of a chairing member and not fewer than 8 nor more than 13 other members. All board members are to be appointed by the Scottish Ministers, and one of those members is to be selected from persons nominated by the Dean of the Faculty of Advocates.

64. Sub-paragraph (3) gives the Scottish Ministers power to substitute by order different minimum or maximum numbers of members in sub-paragraph (1)(b).

Paragraph 3 – Persons disqualified from membership of NLS

65. Members of the House of Commons (MPs), Members of the Scottish Parliament (MSPs) and Members of the European Parliament (MEPs) are disqualified from appointment and from holding office as members of NLS.

⁸ For the meaning of “affirmative procedure” see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

⁹ For the meaning of “negative procedure” see sections 28 of the Interpretation and Legislative Reform (Scotland) Act 2010. “Default laying requirement” means the requirement in section 30 of that Act.

Paragraph 4 – Removal of members

66. The Scottish Ministers have the power to remove a member of NLS from office if they are satisfied that the member is insolvent (see sub-paragraph (2)), has been absent from 3 consecutive meetings without permission or is otherwise unfit or unable to discharge the functions of being a member. Whilst NLS has charitable status, a member of NLS who becomes disqualified from being a charity trustee within the meaning of section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) would be unfit to discharge the functions of being a member of NLS.

Paragraph 5 – Remuneration, allowances and expenses of members

67. NLS is to pay to its members any remuneration, allowances and expenses determined by the Scottish Ministers.

Paragraph 6 – Chief executive and other staff

68. The most senior member of staff of NLS under the 1925 Act is the National Librarian. This post is to be known as chief executive and the first chief executive is to be the Librarian in post immediately before paragraph 6 comes into force (see subparagraphs (1) to (4)). Subsequent chief executives are to be employed, with the approval of the Scottish Ministers, on terms and conditions determined by NLS and approved by Ministers (see sub-paragraph (5)). The chief executive may not be a member of NLS (see sub-paragraph (2)).

69. NLS may appoint employees on terms and conditions determined by NLS and approved by the Scottish Ministers (see sub-paragraphs (6) and (7)). The existing staff of NLS will continue in post under their existing terms and conditions.

70. Sub-paragraphs (8) and (9) give NLS power to arrange, with the approval of the Scottish Ministers, for pensions, allowances or gratuities for its staff.

Paragraph 7 – Committees

71. NLS may establish committees for any purpose relating to its functions and determine the composition of such committees. NLS may appoint persons who are not members of NLS to be non-voting members of a committee. A committee of NLS must comply with any directions of NLS.

Paragraph 8 – Procedure and meetings

72. NLS determines its own procedure and the procedure of its committees. Sub-paragraph (2) allows for attendance at NLS and committee meetings by non-voting representatives, namely members of the Scottish Executive, persons authorised by the Scottish Ministers or the Dean of the Faculty of Advocates (or a person authorised by the Dean)¹⁰.

¹⁰ The Scottish Ministers is the collective name for the members of the Scottish Executive under section 44(2) of the Scotland Act 1998 (c.46).

Paragraph 9 – Delegation of functions

73. NLS may delegate its functions to the chief executive, any other employee or any of its committees. Sub-paragraph (2) provides that the power of delegation does not apply to certain functions relating to reports and financial matters.

Paragraph 10 – Validity of proceedings and actions

74. The validity of any proceedings or actions of NLS or its committees is not affected by any irregularity in the membership of NLS or its committees.

Paragraph 11 – General powers

75. Sub-paragraph (1) gives NLS wide power to do anything related to the exercise of its functions and sub-paragraph (2) sets out specific powers of NLS. NLS's powers to acquire and dispose of interests in land and to borrow money from persons other than the Scottish Ministers are subject to the approval of the Scottish Ministers. See also paragraph 13(4) which empowers NLS to publish reports and information on matters relevant to its functions as it considers appropriate.

Paragraph 12 – Accounts

76. NLS must manage its financial accounting and comply with any accounts directions given by the Scottish Ministers. NLS must send its annual statement of accounts to the Auditor General for Scotland for auditing.

Paragraph 13 – Reports

77. NLS is to prepare and publish an annual report which is to include a copy of NLS's audited statement of accounts. A copy must be sent to the Scottish Ministers, who must lay it before the Scottish Parliament.

Schedule 2 – Modifications of enactments

78. Schedule 2 modifies specified enactments in consequence of the Bill.

79. Principally, these modifications reflect the renaming of the body corporate in section 1(1) but the modification in paragraph 1 is to reflect that grant-in-aid will be paid to NLS through the mechanism in section 7 of the Bill and not through section 22 of the National Heritage (Scotland) Act 1985 (c.16).

Schedule 3 – Repeals

80. Schedule 3 repeals specified enactments in consequence of the Bill. The 1925 Act is repealed in full, subject to the savings provisions in sections 5(5)(b) and 6(3).

National Library of Scotland Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 13
Long Title

Schedules 1 to 3

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 3

Fiona Hyslop

- 1 In section 3, page 2, line 14, leave out <power in subsection (1)(a) is> and insert <powers in subsection (1) are>

Fiona Hyslop

- 2 In section 3, page 2, line 14, leave out <power or means of acquisition> and insert <powers or means of acquisition or acceptance on deposit>

Section 5

Fiona Hyslop

- 3 In section 5, page 3, line 33, after <section> insert <or section 6>

Section 8

Liam McArthur

- 4 In section 8, page 4, line 37, leave out <2(2)(a) to (c)> and insert <2(2)>

Liam McArthur

- 5 In section 8, page 4, line 37, leave out <(3)(a), (b) or (d)> and insert <(3)>

Section 12

Fiona Hyslop

- 6 In section 12, page 5, line 31, at end insert—
 <() Paragraph A1 of schedule 2 (and section 10(1) in so far as it introduces that paragraph) come into force at the end of the period of 2 months beginning with the day of Royal Assent.>

Schedule 1

Fiona Hyslop

7 In schedule 1, page 7, line 20, at end insert—

<() A person who, immediately before this sub-paragraph comes into force, is a member of The Trustees of the National Library of Scotland ceases to be such a member on the date this sub-paragraph comes into force.>

Schedule 2

Fiona Hyslop

8 In schedule 2, page 11, line 11, at end insert—

<**PART**

TRANSITORY MODIFICATION OF ENACTMENTS

A1 Until its repeal by section 10(5) and schedule 3, paragraph 2 of the Schedule to the 1925 Act has effect as if for the words from “pleasure,” to “Board”, in the second place where it appears, there were substituted “pleasure. The Scottish Ministers are to appoint a person as chairman of the Board”.>

National Library of Scotland Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Note: The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Means of acceptance on deposit

1, 2

Group 2: Legal publications

3

Group 3: Scottish Ministers' power of direction

4, 5

Group 4: NLS: transitional arrangements

6, 7, 8

Debate to end no later than 30 minutes after proceedings begin

EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 2, No. 1 Session 4

Meeting of the Parliament

Wednesday 16 May 2012

Note: (DT) signifies a decision taken at Decision Time.

National Library of Scotland Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to without division: 1, 2, 3, 6, 7 and 8

The following amendments were disagreed to (by division)—

4 (For 52, Against 62, Abstentions 0)

5 (For 52, Against 62, Abstentions 0)

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(a).

National Library of Scotland Bill - Stage 3: The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop) moved S4M-02878—That the Parliament agrees that the National Library of Scotland Bill be passed.

After debate, the motion was agreed to (DT).

National Library of Scotland Bill: Stage 3

15:26

The Deputy Presiding Officer (Elaine Smith):

The next item of business is stage 3 proceedings on the National Library of Scotland Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings to which I have agreed. Those documents—SP bill 2A, SP bill 2A-ML and SP bill 2A-G, respectively—should be available at the back of the chamber.

If there is a division, the division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who want to speak in the debate on a group of amendments should press their request-to-speak buttons as soon as possible after I call the lead amendment in the relevant group.

Members should refer to the marshalled list of amendments.

Section 3—Acquisitions, deposits and disposal of objects

The Deputy Presiding Officer: Group 1 is on means of acceptance on deposit. Amendment 1, in the name of the Cabinet Secretary for Culture and External Affairs, is grouped with amendment 2.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): At stage 2, I lodged an amendment that added new subsection (1A) to section 3, to recognise that the National Library of Scotland may receive acquisitions by virtue of legislation other than the bill. For example, as one of six legal deposit libraries in the United Kingdom and Ireland, the National Library receives 90 per cent of its acquisitions through the system that was established under the Legal Deposit Libraries Act 2003. The 2003 act is not directly referred to in the bill as a means through which the National Library can acquire items, so the amendment captured all relevant legislation under which the library can acquire items.

Amendments 1 and 2 are purely technical and will extend section 3(1A) so that it applies to deposits as well as to acquisitions. Therefore the same principle is applied: the National Library can accept deposits by virtue of legislation or rules of law other than the bill.

The approach in amendments 1 and 2 is consistent with the drafting approach that is taken

throughout the bill. Rather than provide a list of all relevant legislation that applies to the National Library, the amendments provide flexibility to accommodate future legislative developments, as was the case with the amendment at stage 2.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Fiona Hyslop]—and agreed to.

Section 5—Legal publications

15:30

The Deputy Presiding Officer: Group 2 is on legal publications. Amendment 3, in the name of the cabinet secretary, is the only amendment in the group.

Fiona Hyslop: Amendment 3 is a technical amendment that is concerned with dispute resolution between the National Library and the Faculty of Advocates. It might be helpful to members if I put the amendment in context.

On 22 December 2011, the national librarian and the dean of the Faculty of Advocates signed two memoranda of agreement to reinforce their operational relationship. The first memorandum contains guidelines on how both bodies will work together to manage and maintain access to their respective collections. The second memorandum deals with the ownership of items that are currently held by the National Library which are the property of the faculty. It also sets out the dispute mechanism for any ownership claims and requires that both parties draw up deposit arrangements for current and future items owned by the faculty but in the possession of the National Library.

Amendment 3 extends the application of the dispute resolution provision that is set out in section 5(5) to cover section 6. As it stands, section 5(5) deals with the handling of disputes about what constitutes a legal publication for the purposes of section 5, which deals with legal publications that are made available between the National Library and the faculty. The amendment ensures that disputes about what constitutes a legal publication for the purposes of section 6, which is on the joint arrangements, are handled in the same way.

I expect any disputes between the National Library and the faculty to be resolved amicably, in line with their close and long-standing working arrangements. That is why any disputes are to be resolved by agreement by both parties in the first instance and, failing that, by arbitration. Those arrangements are acceptable to the National Library of Scotland and the faculty and are in line

with the dispute resolution in the memoranda of agreement between both bodies.

I move amendment 3.

Amendment 3 agreed to.

Section 8—Directions and guidance

The Deputy Presiding Officer: Group 3 is on Scottish ministers' power of direction. Amendment 4, in the name of Liam McArthur, is grouped with amendment 5.

Liam McArthur (Orkney Islands) (LD): Committee colleagues will recognise the amendments from stage 2; some may even be wondering why they are being asked to strike them down again. Leaving aside my fading hope of inspiring a rebellion on the Government's back benches, I thought that it was important to allow members to consider the issues inherent in both amendments.

Amendments 4 and 5 deal with ministerial powers of direction, raise questions about the relationship that ministers have or should have with bodies such as the National Library of Scotland, and reflect wider concerns about the extent and nature of the powers that ministers are seeking more generally.

I acknowledge that, following the publication of the initial bill, Fiona Hyslop has sought to define the powers more tightly, but in resisting the amendments at stage 2, she argued that her objectives are to future proof the legislation, safeguard the efficient running of the NLS, and achieve balance and accountability. That position is not unreasonable, but we are passing a bill that sets out the statutory functions and duties of the National Library, which relies on central Government for 86 per cent of its funding and will operate under a new, streamlined board structure. We are also approving ministerial direction in relation to general powers that are set out in schedule 1. They will be significant in achieving the cabinet secretary's objectives, and I simply do not accept that a persuasive case has been made for loading the dice further in favour of ministers, even as a last resort.

In its evidence, the NLS said that it regretted the principle of ministerial direction, but Ms Hyslop accepted that

"a power of direction has never been applied to cultural public bodies".

Again at stage 2, the cabinet secretary struggled to identify circumstances in which it might be appropriate for such a power to be used or where that could safely be done without impinging on the curatorial, cultural or professional functions of the library, its board and its staff. Therefore, when we are being asked to put in a bill powers that have

never been used and for which no compelling case can be mounted as to why, when and where they might be needed, other than for general future proofing, I have grave concerns.

That is all the more the case against the backdrop of a Government that seems all too eager to exercise control from the centre. Ms Hyslop's colleagues the Cabinet Secretary for Education and Lifelong Learning and the Cabinet Secretary for Justice are perhaps most noteworthy as serial offenders in that respect. On each occasion that ministers seek more powers and control, we are told that that will increase efficiency, improve accountability in how public funds are spent and safeguard the public interest, but that rarely, if ever, stands up to scrutiny.

As I said at stage 2, there are many things that would make the lives of ministers easier or the functioning of Government smoother, but not all of them—possibly even very few of them—can be said to be desirable, and those reasons are certainly not reason enough to enshrine them in law.

Fiona Hyslop deserves considerable credit for the way in which she has handled the bill, and for her willingness to respond to almost all the concerns that have been raised with her. Amendments 4 and 5 represent the exception. I urge her, with that praise ringing in her ears, to relent, even at this late stage.

I move amendment 4.

The Deputy Presiding Officer: A number of members have indicated that they wish to contribute, so I limit members to up to two minutes.

Stewart Maxwell (West Scotland) (SNP): I recognise the content of Liam McArthur's contributions today and at stage 2, and his sincerely held views on the difficult balance that must be struck in these areas.

Liam McArthur quoted the NLS's view on these particular ministerial powers, but the NLS went on to say that it recognises that the Government has included substantial restrictions on the powers of direction, which have been extensively discussed with the present board of trustees. That is a slightly more balanced account of what the NLS said about the powers.

I point out to Liam McArthur that the powers that are being discussed today are in line with powers that have been included in previous acts. In fact, I have a list of previous acts that have been passed by the Scottish Parliament and for which, on all occasions, the lead minister was a Liberal Democrat. On all occasions, very similar—or almost the same—powers of direction were included in the bills. I will not embarrass Liam

McArthur by reading out the titles of the bills, some of which he may recognise from his previous employment.

The committee took written and oral evidence on this particular aspect of the bill. We examined it carefully and in some depth, and at stage 2 we debated both of the amendments and rejected them on a cross-party basis by quite a margin. I ask members to reject amendments 4 and 5, and to leave what are tightly drawn powers in the bill.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Colleagues who took part in the stage 1 debate will recall that Scottish Labour raised its concerns about this particular area at that time. We are grateful to the cabinet secretary for listening to that debate, and for seeking ways in which the powers can be limited.

However, we believe that—as Liam McArthur has outlined—the powers that Scottish ministers already have in connection with the National Library of Scotland are more than sufficient to allow them the type of control that is commensurate with their role in that regard. To have any more powers is really just to be excessive.

We do not believe that there is a persuasive or compelling case for those powers to be described as they are, nor do we view them as having a place in the text of the bill. We allowed the cabinet secretary the opportunity to consider and to listen to the stage 2 debate, but we are not persuaded that she has come quite far enough as yet to allow us to be satisfied with the Government's current position.

Stewart Maxwell has indicated that he has a list of bills in which Liberal Democrat ministers have signed off similar powers of intervention. I remind Mr Maxwell that history has a habit of contradicting itself, and I remember him being vehemently opposed to ministerial powers of direction in a similar area not that long ago.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I hope that my declaration of interests does not take up my whole two minutes, so I will abbreviate. I am a member of the Chartered Institute of Library and Information Professionals and chair of the Scottish Library and Information Council.

Liam McArthur was asking for a rebellion. Here is a rebellious librarian who can see sense and argue about what is before us, rather than about flights of fantasy and conspiracy theories as elaborated by Labour, which accepted the cabinet secretary's comments at stage 2 and in fact voted down the two amendments at stage 2.

At stage 1, I said that I was a proud and fierce defender of the independence of libraries. I

maintain that I am, and that the two ministerial powers of direction in no way interfere with that independence. Section 2(3)(c) is about ensuring that there is always accessibility to libraries and their collections—any librarian would go to the wall to ensure that—and that the National Library will continue that tradition.

Section 2(2)(d) is about collaboration and good practice. Why do members think that I accepted the post of chair of the Scottish Library and Information Council? I did not do so so that I could tell librarians what to do or what to stock; I did so so that I could be part of the library community and could go on the shared journey to excellence. As a profession and a public service, we achieve most when we learn from each other and when we work together within and across the library sectors.

The bill is about our National Library. I want to be sure that the National Library will fulfil a leadership role, when appropriate. With the proposed power of ministerial direction, I am sure that it will continue to do that, so I urge members to reject amendments 4 and 5.

Liz Smith (Mid Scotland and Fife) (Con): I am grateful to Liam McArthur for lodging his amendments. We believe that the overriding need is to enshrine in the provisions of the bill and the subsequent legislation the facility to increase the efficiency and accountability of the National Library and, given the institution's structure, to ensure that there is a correct balance between the powers of ministers and those of the board.

In her evidence to the Education and Culture Committee on 24 April, the cabinet secretary acknowledged that the two key principles were balance and accountability. However, she went on to say that it was not a debate about "ministerial direction in general". It might not be in one respect, if we look at the technicalities of section 2(2)(d) and 2(3)(c), but I do not think that they can be separated from the wider issue of ministerial responsibility.

Some members of the committee were exercised about the fact that the cabinet secretary appeared to be hesitant when she was asked to identify the circumstances in which it might be appropriate for such a power to be used and how she intended to put in place safeguards to protect the independence of professional staff and the board when it came to the making of key decisions by the National Library. That vagueness, combined with the very strong concerns that many stakeholders voiced about the extent of ministerial powers, became the subject of the central debate in the committee, and rightly so.

I suggest that the cabinet secretary was much more comfortable about defining the circumstances in which she or any of her

successors would not interfere than she was about defining those in which ministers might interfere. At a time when technology is changing particularly quickly, that served only to accentuate the concerns. Those concerns remain, which is why we are happy to support Liam McArthur's amendments 4 and 5.

Fiona Hyslop: Amendments the same as amendments 4 and 5 were lodged by Liam McArthur at stage 2, when they were defeated by seven votes to two. I point out that we have reached stage 3 and that stage 3 consideration should be about the specifics, rather than the wider agenda of ministerial direction, which Liam McArthur and Liz Smith have raised.

Between 1999 and 2007, the passage of four out of the eight acts that included a ministerial power of direction was led by Lib Dem ministers. Of those four, the one that Liam McArthur will be most familiar with is the Further and Higher Education (Scotland) Act 2005, which contains a power of direction in relation to the Scottish Further and Higher Education Funding Council. Its passage was led by Jim Wallace, who was ably supported by his then special adviser, one Liam McArthur.

We are making law, so let us home in on the specific area that we are talking about. The debate about the power of direction is all about balance and accountability. As the convener pointed out during stage 2, a power of direction is a standard feature of modern public bodies. Of the 20 bodies in Scotland that have been established as statutory bodies since 1990, a power of direction is associated with 17 of them. Eighty-six per cent of the National Library's funding comes from Scottish Government grant, and it is correct that the National Library is accountable to taxpayers for how that money is used. At the same time, it is equally right that ministers should respect the National Library's curatorial responsibility and freedom to look after the collections on behalf of the people of Scotland. Section 8 of the bill provides that balance.

I want to take some time to explain the approach that we have taken in drafting the power of direction. To address Liz Smith's point, section 8 is deliberately drafted in such a way as to put beyond doubt those areas in which Scottish ministers cannot direct the National Library rather than to prescribe those areas in which the Scottish Government can exert an influence. Quite rightly, I cannot direct the National Library in relation to access or how it exhibits or interprets the collections. I cannot direct the National Library on how it encourages education and research or how it contributes to an understanding of our national culture. I cannot direct on acquisitions, deposits, disposals, borrowing or lending. Those are all

matters of curatorial judgment for the National Library. Furthermore, I cannot direct on matters relating to legal publications or the joint arrangements between the National Library and the Faculty of Advocates, nor can I direct on grants and loans. That approach of setting out clearly the areas in which ministerial powers of direction do not apply deliberately and explicitly supports and, indeed, underpins the arm's-length principle that applies to the relationship between Scottish ministers and our publicly funded bodies.

15:45

The committee's stage 1 report appreciated that the power of direction as drafted preserves the independence of the National Library. Furthermore the National Library recognises the limits of the power of direction. Indeed, the national librarian, Martyn Wade, stated during a stage 1 evidence-taking session that when he and the board considered the provision, they found that

"ministers are able to direct only in a very small number of areas".—[*Official Report, Education and Culture Committee*, 7 February 2012; c 707.]

The limited power of direction is very much a measure of last resort and would be applied only if all other requirements or financial controls had been exhausted. Members could ask why, if a power of direction is not intended for use, it should be included at all. I am ultimately accountable to the Scottish Parliament for the services that the National Library provides. I say to Liam McArthur that it is impossible to predict what might happen in the future, which is why I have chosen the ability to direct in relation to particular functions of the National Library.

Liam McArthur's amendments would remove the Government's ability to direct the National Library in relation to two of its functions: promoting collaboration and the sharing of good practice.

With regard to amendment 4, I emphasise that section 2(2)(d) concerns the promotion of collaboration and the sharing of good practice. It is important to emphasise that distinction. That function does not mean that the National Library could be directed to enforce collaboration or the sharing of good practice by others.

I want to make it clear why I believe that Scottish ministers should have a power of direction in relation to section 2(2)(d). The National Library and other libraries operate in a rapidly changing technological age and I want the bill to be sufficiently future proofed to enable it to cope with associated demands and uncertainties. Members have appreciated that at all stages of the bill. The National Library will have a duty to promote collaboration and the sharing of good practice, which thus supports public sector

performance, efficiencies and shared services—that is part of the accountability to the Parliament and to the taxpayers. That is relevant with regard to, for example, current digitisation work. I am sure that we all agree that services in that area should be shared wherever practical in order to avoid duplication and unnecessary additional costs. Our public bodies should be working together on that wherever possible. I cannot believe that the Conservatives would be happy to let the efficiency agenda slip on this issue.

Overall, the ability of ministers to direct in respect of promoting collaboration and good practice is in the interests of the public purse and public efficiency.

With regard to amendment 5, it is important that Scottish ministers have the ability to direct in relation to section 2(3)(c). The Government is committed to the equalities and diversity agenda. I believe that the question of the National Library promoting the diversity of people accessing its collection is a matter of public policy interest rather than purely a matter for the library's curatorial independence. By voting for Liam McArthur's amendment, members would be voting against Government's ability to ensure that linguistic, geographic and socioeconomic diversity is represented. I cannot believe that the Labour Party is seriously thinking of voting against diversity by supporting amendment 5.

A power of direction in respect of the promotion of diversity is consistent with the founding legislation for Creative Scotland and was accepted by the committee at stage 2—indeed, Liam McArthur did not move an amendment on the issue at that point.

For those reasons, I cannot support the amendments. I ask Liam McArthur to withdraw amendment 4 and not to move amendment 5.

Liam McArthur: I am grateful to all those who have contributed to the debate. Stewart Maxwell was fairly gracious in his acceptance of the fact that the committee had concerns about this issue from the outset. Those concerns melted away for some colleagues, but some of us held on to them for rather longer.

Stewart Maxwell quoted the NLS. I recall that the NLS told the committee that

"there are very strong and effective restraints on"

the power of direction. However, it also stated:

"What we regret is making a principle of the ability to direct the National Library."—[*Official Report, Education and Culture Committee*, 7 February 2012; c 705.]

Stewart Maxwell made clear during stage 2 deliberations that, in previous times, he had been fighting the glorious fight with regard to ministerial

powers of direction. I suspect that that is what Patricia Ferguson was alluding to.

Stewart Maxwell: My opposition to the ministerial power of direction under the previous Liberal Democrat-Labour Government was to do with powers that would have interfered in the creative and cultural side of things, not the powers of direction that we are talking about today.

Liam McArthur: I accept the basis on which Stewart Maxwell was making those complaints. Nevertheless, I cannot see—and the cabinet secretary has yet to explain sufficiently—how the ministerial powers that are being sought in this instance will not bleed into curatorial and professional areas, and other aspects that are supposed to be safeguarded by the bill.

Fiona Hyslop: The bill, if passed by Parliament, will prevent by statutory force any interference in curatorial responsibilities. There is no risk whatever of that happening, and Mr McArthur's remarks belie the fact that his argument is really not strong enough.

Liam McArthur: I do not accept that at all. In this instance, it is assumed that the guardians of the public interest are only the ministers, not the board. As a result, the Government is seeking to load the dice unfairly in favour of ministers if any disagreements arise between them and the board.

To Fiona McLeod, a rebellious librarian who I would certainly think twice about taking on, I have to say that her claim that this is simply a conspiracy theory does not stack up. The cabinet secretary does not know how the powers will be used and I suspect that, as a fierce defender of libraries, Ms McLeod might well find herself on the barricades if my amendments are not agreed to.

I am grateful for Liz Smith's continued support on this matter and agree that it is a matter of concern that the bill defines where the powers cannot be used instead of setting out the areas in which the cabinet secretary envisages that they would be used.

The cabinet secretary repeated many of the arguments that she used at stage 2. She questioned why, having seen the amendments defeated at stage 2, I had brought them back at stage 3. I point out that I made an approach to the cabinet secretary after stage 2 to find out whether there were any areas of compromise but unfortunately there was a deafening silence, which was rather out of keeping with her approach to the bill up to that point. Nevertheless, I think that it is important for the whole chamber to take a view on the issue and will therefore press amendment 4.

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As it is the first division of the afternoon, I suspend the meeting for five minutes.

15:52

Meeting suspended.

15:57

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 4.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Park, John (Mid Scotland and Fife) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)

Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 52, Against 62, Abstentions 0.

Amendment 4 disagreed to.

Amendment 5 moved—[Liam McArthur].

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Davidson, Ruth (Glasgow) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Renfrewshire South) (Lab)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McArthur, Liam (Orkney Islands) (LD)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McLetchie, David (Lothian) (Con)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Park, John (Mid Scotland and Fife) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 52, Against 62, Abstentions 0.

Amendment 5 disagreed to.

The Deputy Presiding Officer: As we are nearing the agreed time limit, I consider it necessary to allow, under rule 9.8.4A, the debate on the next group to continue beyond the limit, to allow members with the right to speak on the amendments in the group to do so. In this case, that is the cabinet secretary.

Section 12—Commencement

16:00

The Deputy Presiding Officer: Group 4 is entitled “NLS: transitional arrangements”. Amendment 6, in the name of the cabinet secretary, is grouped with amendments 7 and 8.

Fiona Hyslop: Amendments 6 to 8 are about the transition from the old board of the National Library to the new one. Should the Parliament agree to pass the bill, I propose to commence it as a whole in the early part of 2013, by which time we hope to have completed the process of advertising, interviewing, selecting and appointing members of the reconstituted board. Professor Anderson, the current chair of the board of trustees, has indicated that he wishes to stand down after serving as chair of the National Library for 12 years.

The transitory provision in amendment 8 would modify the National Library of Scotland Act 1925, as a short-term measure until that act is repealed, to allow the new chair to hold office before full commencement of the bill. That will allow Professor Anderson to stand down after chairing his final meeting in October 2012. The new chair will then be appointed under the 1925 act to chair his or her first board meeting in December 2012, before the appointment of the reconstituted board under the bill, which will meet for the first time in the early part of 2013. It is essential that the new chair is in post in good time to take part in the selection of the new board and to benefit from a handover by Professor Anderson. My officials hope to advertise the post later this month, with a view to an appointment being made by October.

Amendment 6, which supports amendment 8, brings the transitory provision into force automatically two months after royal assent. It has the advantage of automatically commencing the transitory provision that will be introduced by amendment 8 and avoids the requirement for an initial commencement order for the appointment of the new chair. Amendment 6 also respects the convention that acts of the Scottish Parliament are not brought into force until two months after royal assent.

Amendment 7 provides that the existing trustees of the National Library of Scotland cease to hold office when the bill comes into force. As members will be aware, I want to maintain business continuity for the National Library. The point about the need for that was well made by members of the Education and Culture Committee at stages 1 and 2. That is why I have proposed that a small number of existing trustees will form part of the reconstituted board. That will be achieved through the appointment of those members under

paragraph 2(1)(b) of schedule 1 immediately after their appointment under the 1925 act ceases.

We seek to encourage applicants who have a wide range of skills and who can assist with the strategic development that continues to take the library forward. New members should have an enthusiasm for libraries and their contribution to Scotland's national culture in this increasingly digital age. The board will also require specialised knowledge and skills, including knowledge of the world of education and research; an understanding of public library services in local areas; and general skills in governance, audit, financial management, fundraising and income generation. The recruitment process for board members will begin once the new chair is in place. It is anticipated that appointments will be made in the early part of 2013.

I take this opportunity to thank the current chair, Michael Anderson, for his commitment to the National Library during his 12 years as chair. His legacy will undoubtedly be the promotion of access to the collections. Record numbers of people now benefit from the new visitor centre, the increased size of the reading rooms and the availability of online material. Under his stewardship, the National Library secured for the nation the permanent acquisition of more than 200 years of publishing history from the John Murray Publishers archive.

I also thank the trustees of the National Library for their sterling work and for their support for the governance reforms that are proposed in the bill. The trustees have helped to ensure that the National Library of Scotland responds to the changing requirements of libraries in the modern age. The board has embraced the advancement of new technology to make the collections more readily available online, not only for those in Scotland, but for the enjoyment of a worldwide audience.

I move amendment 6.

Amendment 6 agreed to.

Schedule 1—NLS

Amendment 7 moved—[Fiona Hyslop]—and agreed to.

Schedule 2—Modifications of Enactments

Amendment 8 moved—[Fiona Hyslop]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

National Library of Scotland Bill

The Deputy Presiding Officer (Elaine Smith):

The next item of business is a debate on motion S4M-02878, in the name of Fiona Hyslop, on the National Library of Scotland Bill.

16:05

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): I thank members of the Education and Culture Committee for their scrutiny of the National Library of Scotland Bill. Throughout the process, members have provided constructive comments on the bill. I thank the convener, the clerks to the committee and, of course, the Scottish Government's ever-responsive bill team for all their hard work. I also recognise the input of the external stakeholders who have informed our thinking and have helped us to shape the bill.

My particular thanks must go to the National Library of Scotland for its support and for helping my officials and me to understand more fully the true nature of its work and what it hopes to achieve as a result of the reforms.

I also value the contributions of all those who took the time to share their views and knowledge during the consultation period, including the Faculty of Advocates, to whom I will return later in my speech, and the Scottish Library and Information Council. I have listened to a variety of views and believe that the bill that we have in front of us is the product of those reflections.

I am confident that all those who have worked on the bill will agree when I say that collaboration across party lines, and with stakeholders, has been central to the successful development of the bill and the general consensus on it, despite the previous debate.

Throughout the bill process there has been strong agreement across the Parliament that the current National Library of Scotland Act 1925, which governs the National Library of Scotland, is out of date and out of step with its vision, both now and for the future. The bill will therefore support the development of the National Library by modernising the governance arrangements for the 21st century.

What will that mean in practice for the National Library and its users? First, the entire board of the library will be made up, for the first time, from those who have chosen to be appointed. Board membership will no longer be determined by the office that someone holds. Indefinite terms of appointment will also come to an end. Instead, the National Library will benefit from recruiting members with the skills and experience expressly

required by an ambitious organisation. There will be a regular refresh of board membership and an opportunity to review the skill set required each time appointments are made.

The National Library and the general public will benefit from the clear functions that are set out for the first time in the library's history. The National Library will have a specific objective of ensuring that the collections are accessible to the public. One of the ways in which the National Library will continue to make its collections accessible to all is through its exhibition programme.

The bill will safeguard the collections by placing a statutory duty on the National Library to maintain and develop the collections for generations to come. It also recognises that the National Library has a duty to ensure that researchers, students and learners continue to have access to the collections. The National Library's collections will need to be relevant to enable the research community to continue to produce high-quality work to maintain Scotland's place on the academic map.

To support the National Library's function of conserving and preserving its collections in a physical sense, I announced earlier this week that the Scottish Government has committed more than £2 million towards the transformation of the library's Causewayside building in Edinburgh. That will secure the conservation of the collections for years to come by rectifying long-term problems with the external fabric of the building. An additional advantage is that the transformation project will significantly reduce energy consumption.

I should at this point mention the library's strong record in carbon management. As one of 47 Scottish organisations selected in 2009 to take part in an ambitious programme with the Carbon Trust to realise vast carbon and cost savings, the library committed itself to a target of reducing CO₂ by 30 per cent by 2014-15. The library's carbon management plan involves potential financial savings of around £620,000 over the course of the project and £160,000 annual recurring savings thereafter. Aiming for a 5 per cent CO₂ reduction in 2010, the NLS exceeded that first target as it achieved 15 per cent reductions through the involvement and creativity of staff, contractors and unions. Progress has been maintained, and a cumulative 28 per cent reduction in CO₂ was achieved by the end of 2011-12. Thanks to investment in new plant, with support from the Scottish Government, the library is likely to exceed its CO₂ reduction target.

I turn to the content of the National Library's collections. One of the library's great strengths is the John Murray Publishers archive, to which I referred earlier. The library recently received the

final set of papers to complete the archive, which will be permanently housed in the library. The archive provides a remarkable insight into British life over three centuries. The final items that were received include unpublished material from Sir Arthur Conan Doyle and “The Memoirs of Sherlock Holmes: The Field Bazaar”, which appeared in an unnamed charity magazine in 1896 and has never been published since.

During the bill's parliamentary passage, members have heard about the National Library's involvement in great advances in digitisation and the use of modern technology. That is why the bill was drafted with future developments in mind. The bill is as flexible and future proofed as possible, to allow the National Library to respond to technological advances.

The bill has given the Parliament and the National Library the opportunity to raise awareness of how the library already champions cutting-edge technology to enable greater access to its collections, not only for those of us who are in Scotland but for the world, through the wide and ever-expanding availability of items that are displayed online.

A particularly imaginative use of new technology is the travel application called “Great Escapes: Moray”, which the library helped to develop earlier this year. The library collaborated on that with schools in Elgin and Lossiemouth, with community volunteers and with local authority libraries, and it had the assistance of a hotel chain. The app highlights 20 points of interest in Moray that have natural, industrial and cultural heritage. The library provided a range of archive films, images, maps and documents that the young people in Moray helped to bring to life through developing the app.

I will reflect briefly on the amendments to the bill, including those that we discussed a few moments ago. The bill and the National Library will be strengthened by the amendment to increase the minimum number of board members from six to eight, as was argued for at stage 1, and by the transitional arrangements that will be put in place for a new chair. The procedure for implementing the bill will allow a core group of current board members to be carried forward into the reconstituted board—members across the parties made a point about that at stage 1. The bill process has allowed us to think through and strengthen the mechanisms for giving the library continuity in the transition to its new modernised governance arrangements.

I do not want to prolong the debate that we had about the ministerial power of direction in relation to Liam McArthur's amendments, but I repeat my general view that the debate has been useful. In the end, we have struck the right balance between the library's curatorial independence, in which I

passionately believe, and its accountability as a heavily subsidised public body.

I will touch on the amendments that were made in response to suggestions from the Faculty of Advocates. The relationship between the National Library and the faculty was discussed briefly this afternoon and more extensively in committee. That relationship is historical and continuing and it prospers to this day, so recognising it appropriately in the bill was important.

The amendments to sections 5 and 6 replicate and modernise requirements on both parties that were set out when the relationship was first enshrined in the National Library of Scotland Act 1925 in relation to the organisation of and access to the collections. The bill as amended will ensure that there is no misunderstanding about what is meant by the faculty's collections, which are the books that are contained in the faculty's law library. The joint arrangements that section 6 provides allow the faculty and the National Library to agree the practicalities of their operational relationship in particular areas. That approach is consistent with the memoranda of understanding that both parties signed in December 2011.

It is right that the bill should set the overall principles for an effective continuing relationship between the faculty and the National Library. I make it clear that I am not imposing inflexible statutory requirements on either body. It is for the faculty and the National Library to agree and update arrangements as technology and library users' requirements evolve. I am grateful to the National Library and the faculty for their careful consideration of those aspects of the bill and I confirm that they are content with the amended bill.

We have an opportunity today to pass legislation that will modernise the National Library's governance and functions. Together, we have crafted a well considered bill that meets the library's needs and meets what Scotland expects of its National Library today and in the future. I invite the Parliament to agree to pass the National Library of Scotland Bill.

I move,

That the Parliament agrees that the National Library of Scotland Bill be passed.

The Deputy Presiding Officer (John Scott): I call Neil Findlay. You have up to seven minutes. Any time that you can save will be gratefully received.

16:15

Neil Findlay (Lothian) (Lab): In this era of huge change in information technology, with digital books, online resources, web-based learning,

audio books and digital film, the role of modern libraries is rapidly changing. I apologise to any librarians among us, but the genteel and somewhat staid image is a thing of the past. Libraries are now vibrant hubs providing a range of services.

In my local authority area, we have developed a model of service provision in which the library and library staff are key to local service delivery. That partnership approach brings together health, police, sporting, council, advice and library services under one roof, increasing the skills of the staff and providing one contact point for all public services. The library hosts storytelling sessions, computer classes, genealogy courses, homework clubs and much more, as well as hosting local resources in book and online formats.

As libraries change, the arrangements needed to manage and govern them must also change. The bill recognises that. The National Library of Scotland is an important public resource. It is obvious, when we walk through the door, that past and present trustees have carried out their duties well and in the best spirit of public service. It has been well managed and developed, hosting not only extensive book and paper collections but digital and film archives, websites and other new media materials. That area of its work is one that can and will develop further over time.

The Education and Culture Committee's visit to the National Library was an interesting and rewarding experience. We could sense the unique atmosphere of the place and the pride that the trustees and employees have in it. It is an example of a public service that our taxes pay for—a public service that could never be delivered by the market and one that we have to support, protect and adequately fund.

Labour accepts that the governance of the National Library is in need of reform. We accept the insertion of the technical amendments proposed by the cabinet secretary and the insertion of the Gaelic name for legal, contractual reasons. We also accept that a governing body of 32—including, among others, Professor Anderson OBE MA PhD FBA FRSE, the Lord President of the Court of Session, the Lord Advocate, the First Minister, the dean of the Faculty of Advocates, the minister of the high kirk of St Giles in Edinburgh, the Crown Agent, the Lord Provosts of Aberdeen, Dundee, Edinburgh and Glasgow, and Marco Biagi—requires some reform, as it is rather unwieldy.

We welcome section 2 of the bill, which clarifies the functions of the National Library and makes it clear that the library is a national reference and research library and a resource for Scotland's research community. We welcome also that section 2 puts in statute that collections must be

accessible to the public. That is the main function of any public library.

We welcome sections 3 and 4, which cover acquisition, disposal, borrowing and lending, and sections 5 and 6, which relate to legal deposits and the role of the Faculty of Advocates. Those sections have made progress without any major contention, as has section 7 on grants and loans.

On the other sections of the bill, largely relating to technicalities, we have no major concerns. The cabinet secretary has generally listened to the views expressed about the size of board and the need to reflect diversity in its appointments. That is welcome. Overall, the bill has gone through its parliamentary process fairly easily and without any great division. I put on record our thanks to the committee convener and the clerks, who have ably assisted us.

We listened to the debate about section 8, on the ministerial power of direction, at stage 1, in the committee evidence sessions, and at stage 2. We were willing to give the cabinet secretary more time to come back with further changes and we regret that that has not happened. The minister accepted that a ministerial power of direction has never been applied to cultural bodies. When probed on that by Liam McArthur and others, the minister could not come up with any concrete examples of when a ministerial power of direction could be used. She also accepted that curatorial independence should not be compromised. It must be asked, therefore, why we would want to include a power that no one has ever used and for which the minister responsible sees no discernible use. There is undoubtedly a trend of centralisation in this Government, particularly in the way in which it deals with education and local government. Section 8 would appear to be another—albeit small—step in that direction.

The bill is to be welcomed. It puts the governance of our National Library on a sound footing. Parties throughout the Parliament have actively co-operated on the bill and worked to improve it. I hope that, collectively, we have developed a valued national institution, making it more able to meet the demands of a modern service environment. Scottish Labour will support the bill when it comes to the vote tonight.

16:20

Liz Smith (Mid Scotland and Fife) (Con): I add my thanks to those of Neil Findlay to Stewart Maxwell and the clerks. Stewart Maxwell has convened the committee with his normal sense of humour, and with good stewardship through a quiet authority, which is valued.

The Conservatives are of the opinion that the legislation needs to be modernised so that we can

maintain and enhance the National Library of Scotland. The National Library is a remarkable national asset. Like others in the chamber, I pay tribute to everyone who is involved in its work, and to the large numbers of the public who are increasingly enthusiastic supporters.

I mentioned during the stage 1 debate the move away from the National Library being what some people call the library of last resort that is used only when people have searched unsuccessfully for sources elsewhere. That is no longer an applicable definition. That is good news, but the changes clearly bring different challenges and that is why the bill is necessary.

The Scottish Government has set out its proposals for change. We fully support it in its recognition that, in a fast-changing world of technology, we must put in place structures that will help to create not only more efficient administration, but a better system of access to the National Library's archive, and better coherency and collaboration with the other national archives. It is simply not an option to allow things to remain as they are, and that was made clear to the committee throughout the process by the cabinet secretary and by the witnesses.

Throughout the committee's evidence taking, I was continually struck by the professionalism, the dedication and the expertise of all those involved, and by the careful thought given to the future working of the institution and its role in modern Scotland. That expertise is, in many cases, unique: it brings with it degrees of specialisms that are not seen elsewhere.

It is on that point that we had some initial concerns about the original stance of the Scottish Government, and it is the reason why we believe that the size of the National Library's board should reflect those who can represent the wider range of the specialist knowledge. I am grateful to the cabinet secretary for listening carefully to the views expressed at both stage 1 and stage 2, many of which were of genuine concern among the key stakeholders and MSPs about the minimum size of the board. The original suggestion from the Scottish Government that the concerns could be addressed by co-options to the board, when and where appropriate, did not address the more substantial concerns about the need for permanent access to a wide range of expertise.

Similarly, to argue that the Scottish Government is, in general,

"not in favour of large boards"

is not really a satisfactory way of persuading people that the appropriate size of a board is directly linked to the best advantage of the institution and the public that it serves.

A second major concern—and one that we have debated this afternoon—is the intended extent of ministerial direction. The policy memorandum lacks detail and clarity about the precise nature of the intended ministerial powers, which could conflict with other areas of the NLS's management in which ministers have no power. Some guarantees have been given about the promotion of greater collaboration and diversity, but my Conservative colleagues and I remain unpersuaded that the provisions in the bill are not simply about increasing ministerial power for the sake of having a little more control, but at the expense of greater efficiency in the institution.

I listened carefully to what the cabinet secretary said about that. I accept her argument in relation to some technical issues, but there is an important general principle to be considered. As I mentioned earlier, the difficulty for the committee was that the Scottish Government chose to reassure us by stipulating situations in which the cabinet secretary or her successors would not interfere. This afternoon, she again defined the issue by stating what she could not or would not do. I accept that, but there is still an important point about the powers that she could have as cabinet secretary. That approach sometimes took us into the realm of the theoretical rather than the practical, which made things less clear when it came to justifying the enhancement of public benefit.

Nobody doubts that there is a sensitive balance to be struck when it comes to the legitimate concerns about how public money is spent and the professional judgment of the trustees and the professional judgment and expertise of the librarians—some of whom are in the chamber this afternoon.

This bill brings opportunities for the delivery of a better service, for wider access to the splendid archive that is the National Library of Scotland, and for the exciting developments that the cabinet secretary outlined. On that basis, the Conservatives are happy to support the bill.

The Deputy Presiding Officer: We now move to the open debate. I regret to tell members that we are short of time, so if they can confine themselves to three-minute speeches, it would be much appreciated.

16:25

Stewart Maxwell (West Scotland) (SNP): I thank members for their kind comments about my convenership of the Education and Culture Committee throughout the bill's passage. I thank in particular the committee clerks for their support, because without their hard work, our work would not have been possible. I thank the Scottish Parliament information centre for its support of the

committee and I appreciate the dedication of the committee members in scrutinising the bill. I also thank the witnesses who provided oral and written evidence to the committee as it was extremely helpful in our deliberations.

As the cabinet secretary and other members—Neil Findlay, in particular—did, I also thank the National Library of Scotland for hosting us on our useful visit to the national library building on George IV Bridge. The visit helped us to identify some of the hotspots in the bill, and the issues and pressures that are faced by the National Library in its day-to-day work.

Obviously, the National Library of Scotland Act 1925 was passed some time ago. There is no doubt that it was time for change. I will cover some of the issues in my brief remarks.

Minimum board size was one of the things that particularly concerned the committee. We are pleased that the cabinet secretary agreed at stage 2 to increase the minimum board size from 6 to 8 people. That was a welcome change by the Government. I agree with Liz Smith that the original arguments did not really stack up in terms of how the board would operate at the smaller size, so I am delighted that the size was changed.

I want to pay particular attention to the relationship between the National Library of Scotland and the Faculty of Advocates, which is an important and practical relationship that we must protect. Given the history of the two organisations, it was absolutely critical that we got it right in the bill. I am delighted that the Government agreed to make amendments at stage 2 to ensure that the relationship between the two organisations will continue. That relationship benefits the organisations and it benefits all of us.

I will touch briefly on the ministerial power of direction, on which there has been a lot of discussion at stage 2 and today. For me, one of the cruxes of that issue—rather than the detail—was the idea of future proofing the bill. We must make sure that the bill will allow the NLS to carry out its activities into the future, so we have to look at the limited powers of direction that are provided for in the bill in that context. The purpose of future proofing is to ensure that, in a rapidly changing world, certain principles are protected through legislation. Promoting diversity of access and collaboration fall into the category of things that should be included in the bill, so I am delighted that they have been maintained.

It could be said that the bill is perhaps overdue. The National Library currently operates under legislation from a different time; it is not just decades old, but is from before the age of digitisation and the modern era. Future proofing the bill is essential because the National Library of

Scotland has a crucial role in Scotland's cultural life: conservation and preservation of our national treasures in print, film and digital formats are essential.

I am delighted to support the bill.

16:28

Mary Fee (West Scotland) (Lab): Over the past couple of centuries, libraries have evolved to become important institutions at the heart of communities across Scotland and the United Kingdom. Libraries' importance can never be underestimated and they should not be evaluated as being costly or ineffective. They have provided the working class with the tools to self-educate, enhance its knowledge and improve opportunities for gainful employment.

In my area, where child poverty is at 27 per cent, the previous Renfrewshire administration closed Gallowhill community library despite a wall of opposition. The administration brandished the closure as being cost effective, but at what cost was that to the children in the area who needed the tools and opportunities that would give them hope in the future? The closure of the library has also been a great loss to the area's older residents, many of whom have been avid readers and users of library services all their lives. However, we know that in times of austerity libraries are often the first things to be axed.

The bill is welcome in respect of reform of the National Library of Scotland, but what is unwelcome—as has been said—is the centralisation of powers to the relevant Scottish minister. With the previous bill being almost 90 years old, it was right to produce a new bill to repeal the National Library of Scotland Act 1925. After almost a century of social and economic advances, the new bill should enable the NLS to adapt to modern times, as it has been doing over the past few years with the use of new technologies and digital resources.

The reduction in the size of the NLS board of trustees is a must and was even backed by the NLS in its response to the consultation. The idea of reforming its governance was raised by the last Labour Executive in 2006, so I am glad to see that it has finally come to fruition. Yet, that reduction cannot be effective when the power of ministerial direction is implemented, no matter how general or specific that power is. The independence of the NLS board must not be compromised by the interference of a Scottish minister.

As the NLS stated in its consultation response, it is appropriate for ministers to indicate how public funding is used, especially during austerity, as long as a minister does not impede curatorial independence. As Neil Findlay has pointed out,

curatorial independence must be maintained at all times, especially given the record of the current Scottish Government. However, like my colleagues on the Labour benches, I am concerned by centralisation—irrespective of who is in power. The NLS has a prominent role in promoting and preserving our national culture and heritage, but I fear that if powers are given to Scottish ministers in the present Government, they will be tested to promote the nationalistic views of the First Minister and his bandwagon.

We cannot stress enough the importance of libraries, whether local or national, nor can we allow their freedom and independence to be damaged by Government interference.

16:32

Clare Adamson (Central Scotland) (SNP):

The bill that is being passed today marks a new era for the National Library of Scotland, bringing its governance into the 21st century and freeing it to continue to be

“the world’s leading centre for the study of Scotland and the Scots.”

That is a quotation from its own website. The bill will also allow the library to remain a major European research library and, as the cabinet secretary has mentioned, to continue to hold its important world-class collections. The bill will strengthen the role of the NLS in safeguarding and sharing knowledge for current and future generations. On the launch of the consultation on the bill, Martyn Wade, the library’s chief executive, said:

“The Library has changed immeasurably since the previous legislation was passed in 1925. The Bill recognises and reflects our role in the 21st century and is very welcome.”

In the past, I have mentioned that I grew up in Motherwell, where we had a Carnegie library. The Carnegie UK Trust has just published “A New Chapter—public library services in the 21st century”, which sets out the findings of the research that it has carried out over the past six months. It provides clear evidence about the current use of public libraries and public attitudes to libraries. The Scottish data are very interesting and show that 76 per cent of those who were surveyed indicated that libraries are “very important” or “essential” for communities.

Service improvement was welcomed by the people who were surveyed: they were interested in online reservation and cataloguing and in building a community facility, including other attractions such as cafes. Many of our communities already benefit from such facilities and from innovations such as e-reader books—which have recently been introduced by North

Lanarkshire Council—and information technology provision within libraries.

There is no doubt that the Scottish people and our communities value library services and are comfortable with those services evolving to meet the needs of the 21st century. The innovation and leadership of the National Library of Scotland will be integral to evolving library services for the future. I pay tribute to the e-learning zone on the library’s website, which supports literature and language, creativity, science and technology, history, politics and society, and geography and exploration, thereby supporting education in our communities.

This is an exciting time for the National Library of Scotland. In March, the Scottish Government announced a contribution of £250,000 to the relocation of the NLS’s Scottish screen archive to Glasgow, as part of the planned redevelopment of the Kelvin hall, and the cabinet secretary has mentioned the £2 million that is being provided for refurbishment of the library’s store.

16:35

Annabel Goldie (West Scotland) (Con): When I read the bill as introduced, I had genuine doubt as to the status in law of the proposed new entity. The existing governance was clear: there was a statutory board of trustees, with obligations that were defined by trust law. The successor body’s status was more vague, so I am glad that an attempt has been made to clarify it.

However, a slight paradox remains. Section 1 says explicitly:

“The body corporate known as The Trustees of the National Library of Scotland, established by section 1(1) of the 1925 Act, continues in existence and is renamed the National Library of Scotland”.

Section 1 therefore reaffirms the existence of a body of trustees. That is good, because trustees have independent duties and obligations and operate under a well-developed framework of law—they know what their responsibilities are. Is it not then inconsistent of the bill never again to refer to trustees? Schedule 1, which deals with the entity that is the NLS, talks about “members”, not trustees. To guide us in the interpretation of the bill, it is confirmed that “the 1925 act” means the National Library of Scotland Act 1925, which schedule 3 to the bill will abolish. Will the minister clarify whether the NLS is to be run by trustees, as defined by the 1925 act? If that is the case, would it be wise to retain section 1(1) of the 1925 act, rather than to abolish it? I understand that that could be done by adding to the relevant provision in schedule 3 the words, “with the exception of section 1(1)”, and that that could be effected by a holograph amendment.

My other profound concern is the provision for ministerial intervention. I am vexed that the Scottish Government could not support Mr McArthur's amendments. If the minister desires to retain ultimate power of last resort to intervene in the event of gross incompetence, malfunction or dishonesty, the intervention power should be appropriately qualified. Otherwise, the potential for conflicts of governance and unreasonable intrusion by Government is manifest. The cabinet secretary should be more explicit about how the power could be used. If she is not explicit, what she is saying to us is analogous to saying, "I won't run you down in my motor car and I won't boil you in oil, but I might put arsenic in your tea or shove you off a cliff." That is not reassuring.

It is also relevant to observe that ministerial powers of intervention are less forbidding if the devolved Administration is a coalition or a minority Government, as was always thought would be likely in the Scottish Parliament. In the case of an Administration that has an overall majority, the opportunity for checks and balances is greatly diminished.

As Liz Smith said, we support the bill. It is necessary, and it is timely that we take account of circumstances that are vastly different from those that prevailed in 1925. However, I would like the minister to address my observations about the legal status of the new entity and I await her expanding on how she thinks the ministerial powers will be used.

16:38

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I welcome the Government's acceptance of an increase in the minimum board size, on which I commented at stage 1.

I do not understand the positions of the other parties—especially Labour, given its change between stages 2 and 3—on the powers of ministerial direction. I will use my three minutes to say that the ministerial power of direction is limited to two areas. Ministers will be able to give directions in relation to section 2(3)(c), on

"promoting the diversity of persons accessing the collections".

I would have thought that all members would want to ensure that the National Library's collections are always open and accessible to everybody, wherever and whoever they are, and that the minister can always guarantee that our national collection can fulfil that obligation.

Ministers will also be able to give directions in relation to section 2(2)(d), on promoting collaboration. I am a library professional and, as I said during the debate on amendments at stage 3, when professionals collaborate they produce their

best work. I do not understand why members would not want the Scottish Government ministers to be able to ensure that the National Library provides such leadership for the library profession in Scotland. For me, that is very important, as libraries are very important to the people of Scotland.

We heard Clare Adamson's figures, which show how valued libraries are in Scotland. In difficult times such as we are in, libraries can offer much more for people. As a professional, I have to say that there are many different ways in which libraries can provide a vital public service nowadays. It is about access to information. It is not necessarily the buildings that are so important; it is about what we do with information and it is about making it as accessible as possible to people of all hues and abilities.

We have heard about rebellious librarians and eco-librarians. I want to end on a positive note. As a librarian, I am delighted to hear that the public's affection for libraries is reflected across the chamber. Long may our MSPs' and the Government's commitment continue for our library services.

16:41

Liam McArthur (Orkney Islands) (LD): I endorse Fiona McLeod's concluding comments.

We have finally managed to get Marco Biagi off the NLS board in order that he can spend more time with his family and his constituents.

I thank the National Library of Scotland, the witnesses, committee colleagues, the clerks and particularly the convener of the Education and Culture Committee, who was almost in danger of losing his much-famed calmness when he was told that he had only three minutes in which to deliver his speech.

I am indebted to Clare Adamson for furnishing me with a comment from Carnegie in the stage 1 debate. Carnegie said that

"the best means of benefiting the community is to place within its reach the ladders upon which the aspiring can rise",

which included free libraries. Clare Adamson talked about spending a lot of time in the library in Motherwell during her childhood. I did much the same in the Carnegie library in Kirkwall. Sometimes that was to avail myself of the books and research facilities there, but it was often to escape from the howling winds and driving rain. I continue to do that regularly in the new library building.

As many have said, the bill is welcome; perhaps it is overdue. It certainly succeeds in bringing the governance structures for the National Library into

the 21st century, and it begins to address the changing demands that we have placed on that library while still enshrining the strengths that we all very much admire.

As other members have indicated, there were a few areas of concern during the passage of the bill. The cabinet secretary responded constructively to the points that were raised about the size of the board and effecting as smooth a transition as possible to the new arrangement, but concerns remained to the end about the powers of direction. I will not try to reopen the arguments, but on the points that our ferocious librarian made, if we look at the NLS's other functions, ministers would want to be assured that the board was "encouraging education and research" and

"promoting understanding and enjoyment of the collections".

Ministers would want to be assured that all those functions are being delivered, but they are not seeking powers of direction over them. The cabinet secretary has made clear her position on that. Overall, she has adopted a very constructive approach in meeting the concerns that have been expressed, and I think that the concerns that have been expressed by other members today and previously are now a matter of record.

I acknowledge that the National Library of Scotland is a national treasure. The demands that we have placed on it have changed over the years, and we can undoubtedly expect them to change further in ways that we cannot predict at this stage. I hope that the bill will help to ensure that it continues to meet the needs of an ever-growing number of people.

In conclusion, I draw members' attention to the Orkney library and archive. Following its success in the golden twits for its contribution to social media, it is up for the library of the year award later this month. I hope that members wish it well in that regard.

The Deputy Presiding Officer: I offer my congratulations to Orkney library and archive, too.

16:44

Liz Smith: The debate has been largely consensual, out of a need to ensure that we maintain and enhance one of Scotland's great national treasures for exactly the reasons that Fiona McLeod put on record.

I thank all the witnesses at committee and all those who have sent us exceptionally helpful briefing papers for their considered opinions and expert advice, without which—as the cabinet secretary acknowledged—many of us would have been ill-prepared to work through the bill.

The cabinet secretary outlined a great number of exciting developments that are taking place, such as carbon and digital advances and the work involving the John Murray archive. It is an extremely exciting time for the National Library, which means so much in terms of Scotland's place in world heritage.

I thank the cabinet secretary for her willingness to listen to concerns. Although we will undoubtedly remain divided on one important element in the bill—the extent of the ministerial powers—I acknowledge the work that she put in, which involved some complex technicalities. Although those technicalities may not capture the headlines, they are nonetheless an important part of our having confidence in the legislation.

It was good to see the cabinet secretary's willingness to move on the minimum size of the board and on ensuring that there will be as smooth a transition as possible when the current board ends its office to be replaced by the new one. That was helpful, and I am sure that it was appreciated by the stakeholders who had similar concerns at the initial stages.

Like all other members in the chamber, the Conservatives recognise the need to make changes to the National Library so that it can maintain its first-class reputation, its considerable professional expertise and its ability to be flexible and adaptable in the future, when technological change will bring a great many new challenges—just as it will to many other institutions with which the NLS will collaborate. That is precisely the reason why we wanted—and would still welcome—more clarity on the extent of ministerial direction. My colleague Annabel Goldie raised an important point. Aside from the two technical points—I accept what Fiona McLeod said about those—there is a fundamental principle at stake. If members read some of the statements in the bill, it is clear that there are potentially wider powers, and I hope that the cabinet secretary will address that in summing up.

Although we have, through the democratic process, not won that argument today, I hope that ministers will be mindful of the fact that there was—and remains—genuine and considerable concern among the Opposition parties, and that ministers will be held to account as those powers come into operation in the years ahead.

I wish the National Library well in the years ahead, and once again pay tribute to the outstanding professionalism of its staff. We will support the National Library of Scotland Bill at decision time.

16:47

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Scottish Labour, too, welcomes the bill and recognises that reform of the structures that support our National Library is necessary. The fact that the existing legislation has served for 87 years is testament to it, and I very much hope that the legislation that is before us today will prove to be equally durable.

We have been happy to be involved in the discussions on the form that the reforms should take, and we are largely pleased with the outcome. I know that Parliament as a whole recognises the need for change. I congratulate the Education and Culture Committee and its convener and clerks on their work in scrutinising the bill, and the cabinet secretary on being amenable to discussion with the committee about the way forward.

I congratulate the staff and the current board of the National Library—especially its outgoing chair—on their hard work and on the care that they take of one of our most precious assets on a daily basis. The Faculty of Advocates should also be praised for its co-operation, both at this time of change and in the past.

In the stage 1 debate, many members expressed reservations about specific elements of the bill, and many of those have been addressed. The size of the board exercised members, and I am pleased that the cabinet secretary has taken steps to allay those concerns and to ensure that the board is small enough to avoid being cumbersome and slow to act, but big enough to reflect the wide range of interests and expertise that we need if the National Library is to continue to be well managed.

I am pleased that some of the existing members will remain on the board to aid the process of transition. That is a sensible move, which will allow the transition period to be as smooth as possible.

At stage 2, the minister sought to clarify the issue of collaboration. It is right that the bill, as it is now amended, reflects the National Library's role as an active collaborator rather than just as a facilitator of collaboration by others.

The National Library is also often an exemplar of good practice and works with the other national collections, as well as with libraries and librarians, but a ministerial power is not necessary to make that happen—that is the core of the National Library's work. I think that it is going a step too far to include such a provision.

As I mentioned, the act that underpins the structure of the NLS is 87 years old. Although it has served us well in the past, the future is likely to see changes in the ways in which information

and data are exchanged and stored. As we probably cannot yet envisage the nature of those changes or the rate at which they will happen, it is good that consideration has been given to how the bill can be future proofed to accommodate such changes, as well as advances that we can anticipate, such as the imminent regulations for legal deposit libraries.

At stage 1, Scottish Labour made it clear that we would like the cabinet secretary to reconsider the ministerial power of direction. We are pleased that she has done so to some extent, but we had hoped that, following the completion of stage 2, she might have gone a little further and lodged a stage 3 amendment that would have prevented the chamber from dividing on the matter. Unfortunately, that did not happen and we felt compelled to back Liam McArthur's stage 3 amendments. I am genuinely sorry that the Scottish Government could not see its way clear to making such a concession and that we had to divide on an issue on which the cabinet secretary knew well the views of many members and stakeholders.

As a matter of record, I say to Stewart Maxwell that the previous Administration did not seek any kind of intervention into artistic matters. In any case, we would have removed the relevant provision entirely, because we took the consultation that we did on our proposed culture legislation very seriously and we would not have pursued that element. However, we are where we are.

I have rehearsed on previous occasions my real interest in the work of the National Library of Scotland and the impact that I know that it has on Scotland's culture. I look forward greatly to watching it grow under its new governance arrangements, and to continuing to be surprised, educated and enthralled by its collections and its exhibitions for years to come. I wish it well in its new format.

16:52

Fiona Hyslop: I welcome the tone of the debate and the genuine respect that members across the chamber have expressed for the work of the National Library of Scotland.

In relation to Annabel Goldie's legal point, section 1(1) modernises and updates the legal name of the governing body. The members of the NLS board can continue to call themselves trustees if they so wish.

The debates on the bill have focused on the National Library's role as a national centre of research and as a preserver and curator of one of Scotland's major national collections. That role is distinct from the particular functions of public

lending libraries that local authorities fulfil but, as Patricia Ferguson said, the bill gives the National Library a new function of actively promoting collaboration and the sharing of good practice between such services.

I appreciate the comments that members such as Neil Findlay have made on the importance of local authority public library services and the challenges that they face. However, the situation in Scotland is quite different from that in England—in Scotland, there have been fewer than a handful of closures over the past two years.

The recently published Carnegie Trust report on public library services, which Clare Adamson mentioned, raises questions that are being considered by local authorities across Scotland, as the statutory providers of library services, and by library professionals. It is appropriate to acknowledge that the City of Edinburgh Council's library and information service won the library of the year accolade at Monday's bookseller industry awards in London. I remain committed to continuing to help to facilitate library improvements by maintaining the provision of annual funding of £0.5 million through the Scottish Library and Information Council.

At earlier points in the bill's progress, members have raised points about the regime for electronic legal deposit. I agree that, nearly 10 years after the passing of the enabling legislation in Westminster, progress with finalising the regulations must continue as speedily as possible. Draft regulations were published by the UK Government in February this year, and public consultation on them is due to close at the end of this week. I understand that further work still needs to be done to find the right balance between the need, in our highly digital age, to preserve the national record and the legitimate rights of publishers, particularly as regards microbusinesses.

I hope that those issues can be resolved productively and speedily, as all members will be anxious to ensure that the regulations are in place to enable Scotland to preserve a record of significant events such as the Commonwealth games.

Members have commented this afternoon on the technological advances in libraries and collections that have occurred or are still to come. It is interesting to reflect that, even 10 years ago, the concept of the National Library taking on a film archive would have been novel. However, the National Library now keeps the Scottish screen archive and, as I announced at stage 1, plans to move it into the redeveloped Kelvin hall in Glasgow, a proposal that the Scottish Government has supported with a £250,000 grant.

Looking ahead to the future unknowns is, of course, more difficult. One seemingly unlikely clue may be found in the recent announcement that the late Freddie Mercury is due to make a return to stage as a hologram in a special 10th anniversary performance of Queen's popular hit show, "We Will Rock You". Who knows—data storage by hologram may be one of the future formats that any comprehensive collection such as our National Library will need to adapt to in the coming years.

The Presiding Officer (Tricia Marwick): There is far too much noise in the chamber. I ask members to settle down.

Fiona Hyslop: When I met other culture ministers in Brussels last week, I heard some fascinating insights from Professor Nigel Shadbolt of the University of Southampton about the potential for collaboration between online communities through new web-based methods such as cloud computing, which in turn could revolutionise concepts of access to public data. Those sorts of future developments are the reason why we have been at pains to future proof the terms of the bill.

With regard to forthcoming NLS projects, we can look forward to a major summer exhibition, "Going to the Pictures: Scotland at the Cinema", which will open on 20 June. It looks at films that have been made in or about Scotland from the early days of cinema up to the present day and will be opened by the actor and filmmaker Richard Jobson. The exhibition tells the story of Scotland at the movies, from the romantic world of photogenic landscapes, brave heroes, and eccentric locals that can be seen in "Highlander", "Braveheart", "Rob Roy" and "Local Hero" to more recent depictions of urban life in the likes of "Trainspotting", "Ae Fond Kiss" and "Hallam Foe".

US independence day will be celebrated at the National Library with the opening of a treasures display that will highlight the strong links between Scotland and the US founding fathers.

The library is supporting the Borders book festival in June by sponsoring an event with Sir David Frost and is taking part in the Ullapool and Boswell book festivals.

The library is working on a project that will allow smartphone users to call up historical maps, photographs and records of any location in Scotland, which is being developed in partnership with the Royal Commission on the Ancient and Historical Monuments of Scotland and the National Records of Scotland.

The library has also established a partnership with Wilbourn Associates, a leading firm of chartered environmental surveyors, to provide

online access to historical maps of Scotland from Victorian times up to the 1950s.

National libraries have been rather technocratically described as

“specifically established to store a country’s database ... to host the legal deposit and the bibliographic control centre of a nation”.

However, like Clare Adamson, I prefer the National Library’s description of itself, which is that it exists

“to advance universal access to knowledge about Scotland and in Scotland.”

It is part of our nation’s collective memory. It is a resource for the people of Scotland to learn about themselves and to challenge their own ideas about Scotland. It is, equally, a window for the world to learn more about Scots and our country.

By setting out simply what the National Library of Scotland should do and also who benefits from it and how, the bill addresses those prosaic and poetic descriptions of why we have a national library.

The bill has been designed to stand the test of time. I am confident that it is sufficiently well crafted to enable it to cope with the technological advances that the National Library will continue to embrace.

With the bill, we have the opportunity today to reform the National Library by setting out clear functions in legislation and to bring in a new modern board structure that will take this great institution forward in the years to come.

We should reflect our thanks to the current chair and previous chairs for their stewardship of the institution, and to all the trustees who have guided the National Library of Scotland.

With the purpose of looking forward, I ask members to endorse the National Library of Scotland Bill at decision time today.

National Library of Scotland Bill

[AS PASSED]

CONTENTS

Section

The National Library of Scotland

- 1 The National Library of Scotland

Functions of NLS

- 2 Functions of NLS

Acquisitions, deposits, disposal and loan of objects

- 3 Acquisitions, deposits and disposal of objects
4 Borrowing and lending of objects

Legal publications

- 5 Legal publications

Joint arrangements etc. between NLS and the Faculty

- 6 NLS and the Faculty: joint arrangements etc.

Grants and loans

- 7 Grants and loans

Directions and guidance

- 8 Directions and guidance

General

- 9 Interpretation
10 Consequential modification of enactments and repeals
11 Subordinate legislation
12 Commencement
13 Short title

Schedule 1—NLS

Schedule 2—Modifications of enactments

Schedule 3—Repeals

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

National Library of Scotland Bill

[AS PASSED]

An Act of the Scottish Parliament to make further provision about the name, functions and governance of the National Library of Scotland; and for connected purposes.

The National Library of Scotland

1 The National Library of Scotland

- 5 (1) The body corporate known as The Trustees of the National Library of Scotland, established by section 1(1) of the 1925 Act, continues in existence and is renamed the National Library of Scotland or Leabharlann Nàiseanta na h-Alba (“NLS”).
- (2) Schedule 1, which makes further provision about NLS, has effect.

Functions of NLS

2 Functions of NLS

- 10 (1) NLS has the general function of managing the library established by section 1(1) of the 1925 Act as a national resource for reference, study, research and bibliography, having particular regard to Scotland.
- (2) NLS has the particular functions of—
- 15 (a) preserving, conserving and developing its collections,
- (b) making the collections accessible to the public and to persons wishing to carry out study and research,
- (c) exhibiting and interpreting objects in the collections, and
- 20 (d) promoting collaboration and the sharing of good practice with and between other persons providing library and information services, and the adoption of good practice by those persons.
- (3) NLS is to exercise its functions with a view to—
- (a) encouraging education and research,
- (b) promoting understanding and enjoyment of the collections,
- 25 (c) promoting the diversity of persons accessing the collections, and
- (d) contributing to understanding of Scotland’s national culture.

(4) NLS—

- (a) must, when required to do so by the Scottish Ministers, and
- (b) may, at any other time,

provide the Scottish Ministers with advice, information and assistance on any matter relating to NLS's functions.

- (5) Any advice, information or assistance under subsection (4)(a) must be provided in such manner as the Scottish Ministers may determine.

Acquisitions, deposits, disposal and loan of objects

3 Acquisitions, deposits and disposal of objects

(1) NLS may—

- (a) acquire (by purchase, exchange or gift),
- (b) accept on deposit,

any object which it considers it is desirable to add to its collections.

- (1A) The powers in subsection (1) are in addition to any other powers or means of acquisition or acceptance on deposit.

(2) NLS may dispose of any object from its collections if—

- (a) the object is a duplicate of, or similar to, another object in the collections,
- (b) NLS considers that the object is not required for the purposes of the collections,
- (c) because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections,
- (d) the object is hazardous,
- (e) in any other case, the Scottish Ministers agree to the disposal.

- (3) Disposal under subsection (2) may be by sale, exchange, gift, return or destruction.

- (4) The power in subsection (2) is in addition to any other powers of disposal, in particular those conferred by—

- (a) section 6 of the Museums and Galleries Act 1992 (c.44), and
- (b) section 2 of the Holocaust (Return of Cultural Objects) Act 2009 (c.16).

- (5) The power in subsection (2) does not apply in relation to an object which is relevant material within the meaning of section 7 of the 2003 Act.

- (6) Where an object is subject to a prohibition or restriction on disposal, NLS may dispose of the object under subsection (2) in a manner inconsistent with the prohibition or restriction only—

- (a) with the consent of the person having the right to enforce the prohibition or restriction, or
- (b) in the circumstances mentioned in subsection (2)(c) or (d).

4 Borrowing and lending of objects

- (1) NLS may borrow or accept loans of objects for the purposes of exhibition, study or research.

- (2) NLS may lend any object from its collections.
- (3) In deciding whether or not to lend an object (and in determining the period for which and the conditions on which the object is to be lent), NLS is to have regard to—
- (a) the interests of users of the collections,
 - (b) the suitability of the prospective borrower,
 - (c) the purpose of the loan,
 - (d) the physical condition and degree of rarity of the object,
 - (e) any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.
- (4) The powers in subsections (1) and (2) are in addition to any other powers of borrowing, accepting loans or lending.
- (5) The power in subsection (2) does not apply in relation to an object which is relevant material within the meaning of section 7 of the 2003 Act.
- (6) Where an object is subject to a prohibition or restriction on lending, NLS may lend the object under subsection (2) in a manner inconsistent with the prohibition or restriction only—
- (a) with the consent of the person having the right to enforce the prohibition or restriction, or
 - (b) where, despite taking all reasonable steps, NLS is unable to ascertain the name and contact details of any person having that right.

Legal publications

5 Legal publications

- (1) Copies of legal publications delivered to NLS under section 1 of the 2003 Act—
- (a) are to be sent by NLS to the Faculty for the purposes of its Law Library, and
 - (b) when accepted by the Faculty, become the property of the Faculty.
- (2) NLS must include in a request under section 5 of the 2003 Act such legal publications as the Faculty may require it to include.
- (3) Subsection (1) does not apply to legal publications which are on line electronic publications.
- (4) Copies of legal publications which are on line electronic publications are to be made available by NLS to the Faculty.
- (5) Any question as to what constitutes a legal publication for the purposes of—
- (a) this section or section 6, or
 - (b) section 5 of the 1925 Act (as it had effect immediately before its repeal by section 10(5) and schedule 3),
- is to be resolved by agreement between NLS and the Faculty or, if they cannot agree, by arbitration.

*Joint arrangements etc. between NLS and the Faculty***6 NLS and the Faculty: joint arrangements etc.**

- (1) NLS and the Faculty must enter into arrangements about—
- (a) co-operation between NLS and the Faculty in relation to—
 - (i) NLS's collections,
 - (ii) the Faculty's collections of legal publications,
 - (b) the consultation of objects in NLS's collections by members of the Faculty,
 - (c) the consultation of objects in the Faculty's collections of legal publications by users of NLS's collections,
 - (d) the preservation and conservation of legal publications,
 - (da) the legal publications which are electronic publications which NLS is to request, and
 - (e) how legal publications which are on line electronic publications are to be made available by NLS to the Faculty.
- (2) Arrangements under subsection (1) may contain provision about charging.
- (3) Any question as to what are law books, legal manuscripts and papers, pictures or articles of furniture belonging to the Faculty for the purposes of section 3(1) of the 1925 Act is to continue to be determined by the Keeper of the Advocates' Library despite the repeal of that section by section 10(5) and schedule 3.

*Grants and loans***7 Grants and loans**

- (1) The Scottish Ministers may make grants to NLS.
- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to NLS for particular purposes.
- (3) A grant under subsection (1) or (2) is subject to such terms and conditions (including conditions as to repayment) as the Scottish Ministers may determine.
- (4) NLS may make grants and loans to such persons as it considers appropriate—
- (a) for the purposes of, or in connection with, the exercise of its functions,
 - (b) where it appears to be conducive to the exercise of its functions.
- (5) A grant or loan under subsection (4) is subject to such terms and conditions (including conditions as to repayment) as NLS may determine.

*Directions and guidance***8 Directions and guidance**

- (1) The Scottish Ministers may give NLS directions (of a general or specific nature) as to the exercise of its functions.
- (2) But the Scottish Ministers may not give NLS directions so far as relating to—
- (a) NLS's functions under section 2(2)(a) to (c) or (3)(a), (b) or (d) or sections 3 to 7,
 - (b) NLS's functions under or by virtue of the 2003 Act.

- (3) NLS must—
- (a) comply with any directions given to it by the Scottish Ministers under this section,
 - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.
- 5 (4) A direction under this section is to be given in writing.
- (5) The Scottish Ministers may vary or revoke any direction given under this section.

General

9 Interpretation

In this Act—

- 10 “the 1925 Act” means the National Library of Scotland Act 1925 (c.73),
- “the 2003 Act” means the Legal Deposit Libraries Act 2003 (c.28),
- “the Faculty” means the Faculty of Advocates,
- “NLS” has the meaning given by section 1(1),
- “object” includes a thing in electronic form,
- 15 “on line electronic publication” has the same meaning as in section 14 of the 2003 Act.

10 Consequential modification of enactments and repeals

- (1) Schedule 2, which contains modifications of enactments, has effect.
- 20 (2) The Scottish Ministers may by order make such incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (3) An order under subsection (2) may modify any enactment (including this Act).
- (4) An order under subsection (2) which adds to, replaces or omits any part of the text of an Act is subject to the affirmative procedure.
- 25 (5) The enactments mentioned in the first column of schedule 3 are repealed to the extent specified in the second column of that schedule.

11 Subordinate legislation

Orders under this Act (except orders referred to in section 10(4) and orders under section 12(2)) are subject to the negative procedure.

12 Commencement

- 30 (1) Sections 11 and 13 and this section come into force on the day after Royal Assent.
- (1A) Paragraph A1 of schedule 2 (and section 10(1) in so far as it introduces that paragraph) come into force at the end of the period of 2 months beginning with the day of Royal Assent.
- 35 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

- (3) An order under subsection (2) may include transitional, transitory or saving provision.

13 Short title

The short title of this Act is the National Library of Scotland Act 2012.

SCHEDULE 1
(introduced by section 1(2))

NLS

Status

- 5 1 (1) NLS is a body corporate.
- (2) NLS—
- (a) is not a servant or agent of the Crown, and
- (b) does not enjoy any status or immunity of the Crown.
- (3) NLS's property is not property of, or property held on behalf of, the Crown.
- 10 (4) NLS's members and employees are not to be regarded as civil servants.

Membership

- 2 (1) NLS is to consist of—
- (a) a person appointed by the Scottish Ministers to chair NLS, and
- 15 (b) no fewer than 8 and no more than 13 other members appointed by the Scottish Ministers.
- (2) One of the members is to be selected from persons nominated by the Dean of the Faculty (who may include the Dean).
- (3) The Scottish Ministers may by order amend sub-paragraph (1)(b) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.
- 20 (3A) A person who, immediately before this sub-paragraph comes into force, is a member of The Trustees of the National Library of Scotland ceases to be such a member on the date this sub-paragraph comes into force.
- (4) A member holds and vacates office in accordance with terms and conditions determined by the Scottish Ministers.
- 25 (5) A member may resign office by giving notice in writing to the Scottish Ministers.
- (6) The Scottish Ministers may reappoint as a member a person who has ceased to be a member.

Persons disqualified from membership of NLS

- 30 3 A person is disqualified from appointment (and from holding office) as a member of NLS if the person is (or becomes)—
- (a) a member of the House of Commons,
- (b) a member of the Scottish Parliament, or
- (c) a member of the European Parliament.

35 *Removal of members*

- 4 (1) The Scottish Ministers may, by written notice, revoke the appointment of a member if—

- (a) the member becomes insolvent,
- (b) the member has been absent from 3 consecutive meetings without the permission of NLS,
- (c) the member is otherwise unfit to be a member or unable for any reason to discharge the functions of a member.

(2) For the purposes of sub-paragraph (1)(a), a member becomes insolvent when—

- (a) the member's estate is sequestrated,
- (b) the member grants a trust deed for creditors or enters into a composition contract,
- (c) a voluntary arrangement proposed by the member is approved, or
- (d) the member is adjudged bankrupt.

Remuneration, allowances and expenses of members

NLS must pay to each member—

- (a) such remuneration, and
- (b) such allowances and expenses,

as the Scottish Ministers may determine.

Chief executive and other staff

(1) NLS is to employ a chief executive.

(2) The chief executive may not be a member of NLS.

(3) The first chief executive is to be the person who, immediately before this paragraph comes into force, is the librarian appointed under section 2(f) of the 1925 Act.

(4) That person is employed as chief executive on the same terms and conditions as apply to the appointment of that person as the librarian.

(5) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed on terms and conditions determined by NLS and approved by the Scottish Ministers.

(6) NLS may employ any other staff necessary for the carrying out of NLS's functions.

(7) Those staff are to be employed on terms and conditions determined by NLS and approved by the Scottish Ministers.

(8) NLS may, with the approval of the Scottish Ministers—

- (a) pay (or make arrangements for the payment of),
- (b) make payments or contributions towards the provision of,
- (c) provide and maintain schemes (whether contributory or not) for the payment of, such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee, as NLS may determine.

(9) The reference in sub-paragraph (8) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of office.

Committees

- 7 (1) NLS may establish committees for any purpose relating to its functions.
- (2) NLS is to determine the composition of its committees.
- 5 (3) NLS may appoint persons who are not members of NLS to be members of a committee, but those persons are not entitled to vote at meetings of the committee.
- (4) A committee is to comply with any directions given to it by NLS.

Procedure and meetings

- 8 (1) NLS may determine its own procedure and that of its committees, including a quorum for meetings.
- 10 (2) The following persons may attend and take part in a meeting of NLS (or any of its committees)—
- (a) members of the Scottish Executive,
- (b) persons authorised by the Scottish Ministers,
- (c) the Dean of the Faculty or a person authorised by the Dean of the Faculty.
- 15 (3) The persons mentioned in sub-paragraph (2) are not entitled to vote at such meetings.

Delegation of functions

- 9 (1) NLS may authorise—
- (a) the chief executive,
- (b) any other employee,
- 20 (c) any of its committees,
- to exercise such of its functions (and to such extent) as it may determine.
- (2) NLS may not authorise either of the following functions to be exercised by any other person—
- (a) the approval of annual reports and accounts,
- 25 (b) the approval of any budget or other financial plan.
- (3) Sub-paragraph (1) does not affect the responsibility of NLS for the exercise of its functions.

Validity of proceedings and actions

- 10 The validity of proceedings or actions of NLS (including proceedings or actions of any
- 30 of its committees) is not affected by—
- (a) any vacancy in the membership of NLS or any of its committees,
- (b) any defect in the appointment of a member of NLS or any of its committees, or
- (c) the disqualification of a person as a member after appointment.

General powers

11 (1) NLS may do anything which appears to it—

(a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions,

(b) to be conducive to the exercise of its functions.

(2) In particular, NLS may—

(a) enter into contracts,

(b) with the approval of the Scottish Ministers, acquire and dispose of land,

(c) borrow money from the Scottish Ministers or, with the approval of the Scottish Ministers, from other persons,

(d) enter into any business or undertaking,

(e) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c.46)),

(f) enter into joint ventures with others,

(g) undertake or execute any charitable trust,

(h) invest sums not immediately required in relation to the exercise of its functions,

(i) accept gifts of money and other property,

(j) obtain advice or assistance from any person who, in NLS's opinion, is qualified to give it,

(k) carry out or commission research,

(l) issue publications,

(m) make charges for access to the collections,

(n) make other charges in connection with the exercise of its functions (including charges for the provision of goods and services).

(3) For the purposes of sub-paragraph (2)(g), a trust is a charitable trust if all its purposes are within section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Accounts

12 (1) NLS must—

(a) keep proper accounts and accounting records,

(b) prepare in respect of each financial year a statement of accounts, and

(c) send a copy of the statement to the Scottish Ministers.

(2) NLS must comply with any directions which the Scottish Ministers give it in relation to the matters mentioned in sub-paragraph (1).

(3) NLS must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

- 13 (1) As soon as practicable after the end of each financial year, NLS must prepare a report which is—
- (a) to provide information on the exercise of its functions during that year, and
 - (b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.
- (2) NLS must—
- (a) send a copy of the report to the Scottish Ministers, and
 - (b) publish the report.
- (3) The Scottish Ministers must lay a copy of the report before the Scottish Parliament.
- (4) NLS may publish such other reports and information on matters relevant to its functions as it considers appropriate.

SCHEDULE 2 (introduced by section 10(1))

MODIFICATIONS OF ENACTMENTS

PART 1

TRANSITORY MODIFICATION OF ENACTMENTS

- A1 Until its repeal by section 10(5) and schedule 3, paragraph 2 of the Schedule to the 1925 Act has effect as if for the words from “pleasure,” to “Board”, in the second place where it appears, there were substituted “pleasure. The Scottish Ministers are to appoint a person as chairman of the Board”.

PART 2

CONSEQUENTIAL MODIFICATIONS OF ENACTMENTS

National Heritage (Scotland) Act 1985 (c.16)

- 1 In section 22(2) of the National Heritage (Scotland) Act 1985 (finance)—
- (a) for “Edinburgh,” substitute “Edinburgh and”, and
 - (b) the words from “, and the” to the end are repealed.

Museums and Galleries Act 1992 (c.44)

- 2 In the Museums and Galleries Act 1992—
- (a) in Part 1 of Schedule 5 (transfers to and from certain collections), for “The Board of Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and
 - (b) in Schedule 6 (bodies to whom land may be transferred)—
 - (i) after “The National Library of Scotland” insert “, established by section 1(1) of the National Library of Scotland Act 1925 (c.73)”, and

- (ii) for “The Board of Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 3 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved
 5 public bodies), for the entry relating to The Trustees of the National Library of Scotland
 substitute “The National Library of Scotland”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 4 In the Scottish Public Services Ombudsman Act 2002, in paragraph 30 of Part 2 of
 10 schedule 2 (listed authorities), for “The Trustees of the National Library of Scotland”
 substitute “The National Library of Scotland”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 5 In the Freedom of Information (Scotland) Act 2002, in paragraph 105 of Part 7 of
 schedule 1 (Scottish public authorities), for “The Trustees of the National Library of
 Scotland” substitute “The National Library of Scotland”.

Legal Deposit Libraries Act 2003 (c.28)

- 6 In the Legal Deposit Libraries Act 2003—
 (a) in section 12 (regulations: Scotland and Wales)—
 (i) in subsection (1)(a), the words “the authority controlling” are repealed,
 (ii) in subsection (1)(b), for “that authority” substitute “the National Library of
 20 Scotland”,
 (iii) in subsection (2)(b), the words “the authority controlling” are repealed, and
 (iv) in subsection (3), the words “the authority controlling” are repealed, and
 (b) in section 14 (interpretation), in the definition of “deposit library”—
 (i) after “Board” insert “, the National Library of Scotland”, and
 25 (ii) paragraph (a) is repealed.

Holocaust (Return of Cultural Objects) Act 2009 (c.16)

- 7 In the Holocaust (Return of Cultural Objects) Act 2009—
 (a) in section 1 (bodies to which this Act applies), for “The Trustees of the National
 Library of Scotland” substitute “The National Library of Scotland”, and
 30 (b) in section 2(5) (power to return victims’ property), for “The Trustees of the
 National Library of Scotland” substitute “The National Library of Scotland”.

Public Services Reform (Scotland) Act 2010 (asp 8)

- 8 In the Public Services Reform (Scotland) Act 2010—

- 5 (a) in schedule 5 (improvement of public functions: listed bodies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”, and
- (b) in schedule 8 (information on exercise of public functions: listed public bodies), for “The Trustees of the National Library of Scotland” substitute “The National Library of Scotland”.

Public Records (Scotland) Act 2011 (asp 12)

- 9 In the schedule to the Public Records (Scotland) Act 2011, for “Trustees of the National Library of Scotland” substitute “National Library of Scotland”.

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SCHEDULE 3
(introduced by section 10(5))

REPEALS

	<i>Enactment</i>	<i>Extent of repeal</i>
15	National Library of Scotland Act 1925 (c.73)	The whole Act.
	National Heritage (Scotland) Act 1985 (c.16)	Section 18.
	Public Finance and Accountability (Scotland) Act 2000 (asp 1)	In schedule 4, paragraph 2.
20	Legal Deposit Libraries Act 2003 (c. 28)	Section 15(2) to (5).

National Library of Scotland Bill

[AS PASSED]

An Act of the Scottish Parliament to make further provision about the name, functions and governance of the National Library of Scotland; and for connected purposes.

Introduced by: Fiona Hyslop
On: 26 October 2011
Supported by: Brian Adam
Bill type: Executive Bill