

# **NATIONAL LIBRARY OF SCOTLAND BILL**

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## **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 them<sup>1</sup>. 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.

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<sup>1</sup> 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 inspection<sup>2</sup> and receives print copies of Scottish Statutory Instruments<sup>3</sup>.

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 NLS<sup>4</sup>. Legal deposit libraries are sometimes referred to as "copyright" libraries.

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<sup>2</sup> 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).

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

<sup>4</sup> 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)<sup>5</sup> 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.

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<sup>5</sup> 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 Library<sup>6</sup>. When such publications are accepted by the

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<sup>6</sup> 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)<sup>7</sup>.

**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 applies<sup>8</sup>.

**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.

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

<sup>8</sup> 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)<sup>9</sup>.

*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.

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<sup>9</sup> 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).

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# **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.

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## **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.”

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## **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.”

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

# **NATIONAL LIBRARY OF SCOTLAND BILL**

## **EXPLANATORY NOTES**

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