

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

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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.

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