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## SPICe Briefing

# National Library of Scotland Bill

1 February 2012

12/10

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The National Library of Scotland Bill was introduced by the Scottish Government on 26 October 2011. The Bill is designed to replace the 1925 National of Scotland Act, which established the Library, providing the Library with a new body corporate and a set of statutory functions.

This briefing gives an overview of the present Board of Trustees and the current functions carried out the National Library. It also looks at some of the concerns raised during the Government's consultation on its proposed changes to the governance and powers of the Library, including a Ministerial power of direction.



The Scottish Parliament  
Pàrlamaid na h-Alba

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## EXECUTIVE SUMMARY

The National Library of Scotland was formally established by the [National Library of Scotland Act 1925 c. 73](#). Since then there has been no substantial changes to the legislation governing the national library collection.

Following a consultation on the future governance of the Library the Scottish Government prepared a Bill which it believes will improve the governance of the Library, providing it with a modern replacement for its present Board of Trustees, and providing the Library with statutory functions which reflect its present role and which, the Government states, should help it develop its role in a constantly changing future.

The most controversial aspect of the Bill has proved to be the proposed Ministerial power of the direction. In its response to the consultation proposals on this power the National Museums Scotland described them as:

“highly unusual, contentious and a radical departure from the current statutory arrangements for such [cultural] bodies”.

The size of the proposed new body corporate, the National Library of Scotland, was also the subject of comment, in both the consultation stage and in the responses to the call for evidence put out by lead committee, the Education and Culture Committee.

# NATIONAL LIBRARIES

According to the IFLA (International Federation of Library Associations and Institutions)'s [website](#):

“National libraries have special responsibilities, often defined in law, within a nation's library and information system”.

The responsibilities vary from country to country but are likely to include:

- collection via legal deposit of the national imprint (both print and electronic)
- cataloguing and preservation of the national imprint
- provision of central services (e.g., reference, bibliography, preservation, lending) to users both directly and through other library and information centres
- preservation and promotion of the national cultural heritage
- acquisition of at least a representative collection of foreign publications
- promotion of national cultural policy.

National libraries may also:

- have a close relationship with national governments
- be concerned with the development of national information policies
- act as a conduit for the views of other sectors of the profession.

As will be shown below Scotland has a Library which does perform a number of the responsibilities which distinguish it as a national library.

## NATIONAL LIBRARY OF SCOTLAND

### HISTORY AND BUILDINGS

The National Library of Scotland (NLS) was initially formed when the contents of the Faculty of Advocates' library were presented to the nation, together with an endowment of £100,000 provided by Sir Alexander Grant of Forbes.

The Library of the Faculty of Advocates had been set up in the 1680s and was formally established in 1689. Under the 1710 Copyright Act it was given the legal right to claim a copy of every book published in Britain.

The NLS itself was formally established by the [National Library of Scotland Act 1925 c. 73](#). It is an NDPB (Non-Departmental Public Body), funded by the Scottish Government, as a cultural collection under the Cultural and External Relations portfolio. It is also a Registered Scottish Charity (Scottish Charity No. SC011086). The Library's annual report and accounts are laid

before the Scottish Parliament under section 22(5) of the Public Finance and Accountability (Scotland) Act 2000, but they are not subject to any parliamentary procedure.

The NLS is Scotland's only legal deposit library entitled – under the terms of the Legal Deposit Libraries Act 2003 – to request a copy of all printed items published in the United Kingdom, and in the Republic of Ireland.

Under the terms of the 1925 Act the Faculty of Advocates still receives the copies of those law books received under legal deposit. In the 2003 Act the framework was set out for this right to be extended, by regulations, to cover non-print legal publications. This secondary legislation has yet to be made by the UK Government.

In addition to the collections received via legal deposit the Library also acquires, mainly by purchase, but also by gift and deposit, books, maps, music, modern foreign publications and manuscripts. For example, in 2005 the Library purchased the archive of the publishers John Murray, which includes private letters, manuscripts and other correspondence from Jane Austen, Lord Byron, Sir Walter Scott, David Livingstone, Sir Arthur Conan Doyle and Edith Wharton.

In April 2007 the Glasgow based Scottish Screen Archive, which was set up in 1976 to find, protect and provide access to Scotland's moving image heritage, became part of the NLS's Collections Department.

In March 2009 a new Agency for the Legal Deposit Libraries came into operation. The Agency, which relocated from London, became a Scottish charity owned and managed by NLS, in partnership with other legal deposit libraries, whilst also being a wholly independent body with its own directors. The agency acts on behalf of five of the six legal deposit libraries in the UK and Ireland to request and distribute material from publishers.

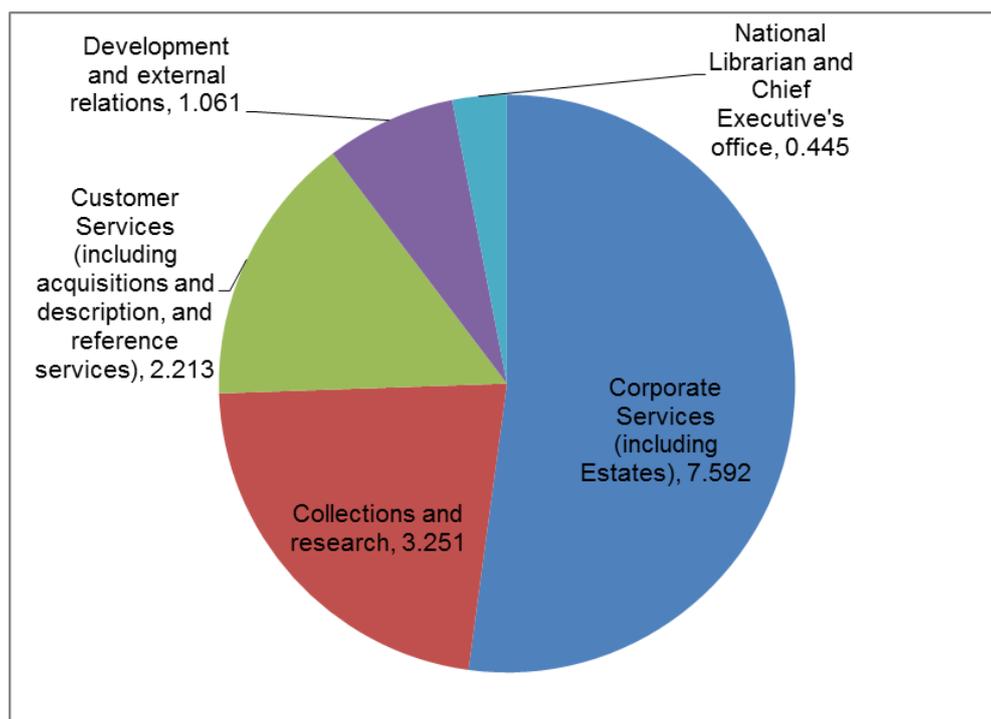
The Library has eight buildings in total. Five are occupied by staff, and the other three are used for storage. The Library's main building is situated on George IV Bridge, Edinburgh, in a building opened by the Queen in 1956. The Library has an additional building on Causewayside in Edinburgh, which was opened in two phases in 1989 and 1995.

The Library formally opened its Visitor Centre in the George IV Bridge Building in September 2009. The Centre includes a café and shop, which provided for the first time an informal drop-in experience for visitors to the Library.

## **FINANCE**

The NLS receives income, and plans to spend, just under £15m in 2011-12 (National Library of Scotland 2011b). The majority of NLS income comes in the form of 'grant-in-aid' from the Scottish Government. The Financial Memorandum, part of the *Explanatory Notes (and other accompanying documents)* published with the *National Library of Scotland Bill* indicates that the core grant-in-aid for NLS totals £13.275m in 2011-12 and 2012-13. However NLS indicates in its 2011-12 Corporate Plan, that compared to the previous year when reduced allocations to budgets such as the Purchase Fund are included, "taken together the reduction in Grant-in-Aid from 2010-11 levels is around 11%". The main areas of spend in the NLS budget for 2011-12 is set out in Figure 1 below

**Figure 1: National Library of Scotland Budget 2011-12 (£m)**



In the Government's Spending Review 2011 (Scottish Government 2011), funding to support NLS up to 2014-15 is set out under the broader 'Cultural Collections' budget heading (table 12.04). Planned funding for Cultural Collections is expected to reduce by £12.6m in real terms to 2014-15 (a fall of 16.4%), as indicated in Table 1 below (Scottish Parliament Financial Scrutiny Unit 2011):

**Table 1: Funding for Cultural Collections 2011-12 to 2014-15**

	2011-12 Budget	2012-13 Draft Budget	2013-14 Plans	2014-15 Plans	2012-13 change on 2011-12	2012-13 change on 2011-12	2014-15 change on 2011-12	2014-15 change on 2011-12
	£m	£m	£m	£m	£m	%	£m	%
Cultural Collections (cash terms)	77.0	73.4	69.5	69.6	-3.6	-4.7%	-7.4	-9.6%
Cultural Collections (real terms - 2011-12 prices)	77.0	71.6	66.0	64.4	-5.4	-7.0%	-12.6	-16.4%

## CURRENT FUNCTIONS

The National Library of Scotland's current strategy states that it exists to advance universal access to knowledge about Scotland and in Scotland (National Library of Scotland 2010 p. 2).

### Collections: print and digital

The NLS, which employs approximately 300 people, is a reference library, which means that if a member of the public wishes to consult any of its collection, of over 14 million printed items, they have to go to one of the Library's reading rooms. However if an item is available online it can be used outwith those reading rooms. The legal deposit legislation allows the Library to claim and receive a copy of any printed material published in the United Kingdom and Ireland. In

particular, it focuses on maintaining and developing the collections of material published in Scotland or about Scotland or the Scots.

Some of the highlights of the Library's collections include:

- [The last letter of Mary, Queen of Scotland](#)
- A copy of the [Guttenberg Bible](#), one of only 20 complete copies of the first book printed with moveable type to have survived
- '[The Chepman & Myllar Prints](#)', The only known copies of nine of the earliest books printed in Scotland which were produced in or about 1508 on Scotland's first printing press, established in Edinburgh.
- '[Early Gaelic Book Collections](#)', including the Hew Morrison Collection: a selection of items from a collection of 320 volumes and 30 pamphlets of literary and religious works in Scottish Gaelic. The collection came from the personal library of Hew Morrison, the first City Librarian of Edinburgh.
- The [first pictorial survey of Scotland](#) published in 1693 by military engineer John Slezer.
- Copies of the first two editions Oor Wullie annuals, published in 1940 and 1942, bought at auction in 2010.
- Free access, for registered users, to the [OneSource Global Business database](#), providing information on more than 17 million companies worldwide.

In February 2010 the Library published *Thriving or surviving? National Library of Scotland in 2030* (Hunter and Brown 2010). This report looked at the challenges and opportunities proffered to the Library by the changing nature of publishing, information and researchers in the twenty first century and aimed to inform the Library's strategy.

The Library's strategy for 2011-2014, *Connecting knowledge* (National Library of Scotland 2010) was then published in November 2010. The strategy identifies the central challenge of developing and investing in digital services while maintaining necessary 'traditional' services. The Library believes that this will require considerable organisation change (National Library of Scotland 2011 p.7).

The Library had already embarked on a number of digitisation projects and some of its collections are now accessible electronically. One of the key performance indicators which the Library uses is the number of digital objects created through its digitisation programme. For example, the Library's website includes a page entitled [Scotland's Pages](#). The page allows access to 1,000 years of Scotland's history via the National Library of Scotland's interactive timeline. Digital facsimiles of some of the most important documents in the Library's collections are included to help to illustrate the story of the shaping of the Scottish nation.

## Visitors, outreach and education

In recent years the Library has moved away from being a 'library of last resort' (with people only using it when they had exhausted the resources of all other libraries at their disposal) and with the opening of the Visitors Centre the Library extended its permanent programme of exhibitions and events aimed at increasing visitor numbers. For example the exhibition on golf, A Swing through time, proved so popular in 2010 that its run, from June until November, was extended for a further four months. In total it attracted almost 60,000 visitors.

As well as exhibiting its collections in-house the Library also lends works to other exhibitions in Scotland and further afield. For example, at the request of the Scottish Government, items were displayed at a multi-faith event at Edinburgh Castle and in the summer of 2010 a Byron manuscript, 'English Bards and Scotch Reviewers' was lent to Harvard University for an exhibition of the same name (National Library of Scotland 2011 p.11).

The Library has also run various outreach activities. In 2010-11 these activities included two roadshows to Inverness and Dunfermline, and support for the Ullapool, Borders and Lennoxlove Book Festivals.

The Library's on-going programme of events has included the annual Donald Dewar Memorial Lecture, the annual Muriel Spark lecture and various other talks. And in August 2010, for the first time, the Library was used as a venue for an Edinburgh Festival Fringe show, ['The Moira Monologues'](#).

With regard to education the Library's work has included the development of an online educational resource: [The Learning Zone](#). This is a dedicated hub for NLS held information and resources, aimed at teachers, learning providers and self-led learners. For example on the page dedicated to Scottish writer and artist [Alasdair Gray](#), users can learn about the creative processes used by Mr Gray. It includes examples from the sources in the Gray archive, which is held in the Library's manuscript collections, and includes original artwork for *Lanark*, *Unlikely Stories*, *Mostly*, *1982*, *Janine* and *Lean Tales*.

The Library, through the Scottish Screen Archive, has also worked with Education Scotland and Creative Scotland to produce a separate educational website, [Scotland on Screen](#). This website provides free access to films from the Scottish Screen with accompanying learning resources and Feature Resources for use in the classroom by students and teachers. The materials can also be used by a range of educational institutions/providers and by the general public for research and enjoyment. The films available document over a century of Scottish lives on film, with particular reference to social, economic and environmental change.

## **NLS: CURRENT GOVERNANCE: BOARD OF TRUSTEES**

Section 1 of the 1925 Act states

“for the purpose of managing the Library and for the other purposes of this Act there shall be constituted a Board of Trustees (in this Act referred to as “the Board”), which shall be a body corporate by the name of “The Trustees of the National Library of Scotland,” with perpetual succession and a common seal, and power to sue and be sued, and to acquire and hold property for the purposes of the Library and of this Act. Service on the Board of all legal processes and notices shall be effected by service on their secretary.”

The Schedule to the Act, which sets out of the membership of the Board, was subject to minor amendments by section 18 of the National Heritage (Scotland) Act 1985 c. 16. The original number of Board members then went down from 34 to 32. The number of ex-officio was reduced from 12 to 11 with the Lord Provost of Perth being removed and the number of appointed persons was reduced from 7 to 6, with the representatives from the Convention of Royal Burghs, the Association of County Councils in Scotland, and the Association of Education Authorities in Scotland being replaced by 2 representatives from Convention of Scottish Local Authorities (COSLA).

Five of the current Trustees (including the Chair) are nominated by Scottish Ministers, after the vacancies are advertised in the national press, and are then appointed by the Crown.

## CONSULTATION

In 2006, during Session 2 of the Parliament, the Scottish Executive had launched a consultation on a Draft Culture (Scotland) Bill, which had included proposals to update the governance of all the national cultural collections, including the NLS. Those proposals were not included in the legislation which the new Scottish Government initially introduced in 2007 to establish Creative Scotland and the governance of the NLS was not raised again until later in Session 3 of the Parliament.

On 31 March 2010 the Scottish Government launched a [consultation](#) on the role and governance of the National Library of Scotland, which ran until 23 June 2010. The consultation proposed modernising the NLS's founding legislation, including its powers, functions and governance arrangements.

### **Proposed changes: Board of Trustees**

In its consultation the Scottish Government proposed that the ex-officio and reserved members of the Board of Trustees should be removed, but it also recognised that it was important to consider how the Faculty of Advocates could be involved with any future National Library Board. It consequently offered two potential options: by either requiring membership of the Faculty by one of the members of the Board; or by allowing the Dean of the Faculty to nominate Advocates, who meet the criteria necessary for any candidate, to Scottish Ministers for consideration.

Through its proposals the Government sought to ensure the NLS continued to be led by Trustees with the skills and experience required to give strategic direction to the Library, while making best use of its collections. The Government also included proposals that Ministers should have the power to specify the length of term of appointment of Trustees, thus enabling a periodic turnover of members. The Government stated this would benefit the Board by allowing it flexibility to review the skills required for a balanced Board at regular intervals and to recruit members according to specific business needs.

### **Proposed changes: functions and powers of the Library**

The consultation proposed that, if the NLS was to continue its existing role and functions, but more efficiently and effectively, then, in order to reflect the NLS's 'modern' objectives, those functions needed to be brought up to date and defined in legislation.

The Government stated that it saw the NLS's purpose was to:

“collect, preserve and provide access to the recorded knowledge and culture of Scotland, and to provide a national resource to meet the needs of Scottish researchers.”

(Scottish Government 2010 p. 10)

The consultation asked for comments on the Government's proposals to be set out in legislation regarding the Library's present ability to:

- act as Scotland's national resource for reference, study, bibliography and research
- support education and research throughout Scotland and preserve, promote and widen access to its collections
- encourage links with other organisations to promote collaboration and understanding

- provide Scottish Ministers with advice
- act as a legal deposit library, continue to collect publications as it sees fit, including the provision of legal publications for the Library of the Faculty of Advocates.

In addition the Government went on to propose providing the NLS with powers associated with a modern corporate body, including the powers to:

- enter into contracts, acquire, purchase, hold and dispose of heritable property (the NLS would require to seek the approval of Ministers before acquiring or disposing of heritable property)
- accept trusts and gifts, acquire by loan, contract, purchase, and hold moveable property, commission research related to its objects and publish information and advice
- lend objects in its collection (taking into account any risks, the physical condition and rarity of an object and the interest in the object by students and visitors to the collection)
- create and own companies under the Companies Act 2006
- make grants and loans
- charge for the provision of goods and services and raise and borrow money with Ministerial approval
- do anything which is conducive or incidental to the exercise of its functions.

### **Proposed changes: power of direction**

In addition to the modernising proposals the Government also consulted on providing Scottish Ministers with the power to give directions of a general or specific nature, to NLS as to the exercise of its functions. The Government argued that such Ministerial powers of direction are a standard feature of modern public body legislation, and are an important part of the accountability and governance framework which runs from public bodies to Ministers and ultimately the Parliament.

The Government stated that any such power would be accompanied by “appropriate safeguards” in relation to NLS’s functions, promising that the power would be restricted to ensure that NLS’s cultural, artistic and curatorial judgement be protected alongside its duties to preserve its collections on behalf of the nation and to make them accessible to the public.

The Government argued that its proposals were consistent with other recent legislation, including the Order-making powers to improve the exercise of public functions to be found in Part 2 (Sections 14-30) of the Public Services Reform (Scotland) Act asp 8 2010 and the restrictions on the Ministerial power of direction over Creative Scotland in Part 4 (Section 36-43) of the same Act.

## **CONSULTATION RESPONSES**

The Government received 31 responses to its consultation. Four of the responses were not made public, thus 27 responses are listed on the Scottish Government’s website, with 26 of them available for viewing. The respondents included 9 local authorities and COSLA, 7

libraries/library organisations, including the NLS and the Scottish Library and Information Council (SLIC), and other stakeholders including the Faculty of Advocates and two individuals.

## **Ministerial direction**

The consultation had asked the respondents if they agreed:

“that proposed qualified power of direction strikes the right balance between Ministers' responsibilities for public bodies and the proposed powers and duties of the NLS Trustees”

Of those who responded 14 agreed; 6 partly agreed; 5 disagreed and 6 made no comment.

Most of the concerns raised in the responses which did not fully agree with the statement (from SCURL (Scottish Confederation of University and Research Libraries), Scottish Arts Council, Robert Burns Birthplace Museum, CILIPS, SLIC, COSLA/VOCAL (the Voice of Chief Officers of Cultural and Leisure Services in Scotland) and the NLS) focused around the proposals to make the NLS subject to 'Ministerial direction'. For example according to the evidence provided by the National Museums Scotland (NMS):

“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. We have also been unable to identify a Charitable public body in another sphere of activity where there are Ministerial Powers of Direction.”

The response goes on to “take issue with the statement that Ministerial Powers of Direction are a “standard feature” of modern public body legislation” and argued that the “proposal is highly unusual, contentious and a radical departure from the current statutory arrangements for such bodies”.

The National Library of Wales asked if it was necessary to legislate to give the Minister a right to direct. From their own experience they noted that the

“relationship between a Minister and a national library (which is not an agent of government) is a sensitive one. A balance needs to be struck between the Minister's legitimate concern that government's money should be spent in ways that are consistent with government policies and the professional judgement of the Trustees. From the Minister's point of view a general provision via an annual remit letter and regular monitoring mechanisms may be sufficient, leaving the Trustees and Librarian to decide how resources are allocated within the overall purposes of the Library. Furthermore the Library is a charity and its Trustees are required to act at all times in the interests of the charity: they could find themselves in a difficult position were specific direct instructions to be imposed by government.”

In its response the British Library goes further and cautions

“against an over-shortening of the arms' length principle. This may have the effect of discouraging potential donors and of challenging the independence of the Trustees. In the British Library's view, the NLS Trustees are best placed to manage the NLS's assets for the nation in the long term”.

For Shetland Islands Council it was important that

“Power of direction should be restricted to avoid short-term political “whim” being translated into loss of important functions and actions”.

South Lanarkshire Council found it difficult to give a definitive response to the question without knowing what the restrictions on the powers of direction would be. But it did state that

“The restrictions would need to be robust and clearly stated to avoid differences of interpretation if a Minister and the NLS Board were in disagreement.”

In his response, the Director of the Robert Burns Birthplace Museum, asked for restrictions on the powers not only to protect curatorial judgement but also “more proactively to positively promote a collection free from censorship and prescription”.

This call for restrictions was similar to the SLIC submission which stated that it is

“crucial that any Ministerial direction recognises the ethical role of libraries to give access to information and that the NLS retains its independence under its core function to collect and preserve Scotland’s cultural heritage and support education and research”.

However, in its response East Ayrshire Council stated that

“The NLS receives funding from government and it is therefore reasonable for government to have some justification over the way in which the NLS operates.”

## **Charitable status**

The comments from the National Library of Wales and the NMS also highlighted another concern raised, that the charitable status of the NLS could be affected by the introduction of a power of direction.

For the NMS:

“The introduction of Ministerial powers of direction to NLS (or other Charitable National Collections bodies) would create a position where there was a direct conflict between the independent role and responsibilities of Trustees as Trustees of a Charity, and as Board members of an NDPB [Non-departmental public body] subject to Ministerial Direction.”

In its own submission the NLS wrote that it believes “that it would not be appropriate for NLS to be subject to a general power of ministerial direction.” However it acknowledged that if the Government did include a power of direction then the Library should have the same safeguards given to other public bodies in Section 18 of the Public Services Reform (Scotland) Act asp 8 2010. The Library believed that such protections would prevent Ministerial direction being applied to areas such as collecting, holding, care, preservation and access to the Library’s collections.

## **Membership of the Board of Trustees**

The vast majority of the respondents agreed that the Broad of Trustees should be reduced in size and that the ex-officio and reserved membership should be removed. However on the question of the membership of the Board of Trustees there were a few comments on make-up of the new Board.

The Submission from the Society of Antiquaries of Scotland was the only one to comment on the suggested number of Trustees. They stated that

“A recent report for OSCR [Office of the Scottish Charity Regulator] indicated that charities with low numbers of trustees are the most likely to fail, and that those with 9 or more members perform best”.

East Lothian Council suggested that having SLIC on the Board would provide “more opportunity for leading library, cultural and heritage professionals to be involved in governance”. CILIPS (Chartered Institute of Library and Information Professionals in Scotland) also requested wider library interests be represented on the NLS Board with one third of the Trustees meeting a specific skills set and extensive knowledge of that wider community, giving as example the SLIC Board which has a reserved place for Lifelong Learning UK and the National Library of Scotland.

In their joint submission COSLA and VOCAL stated that they were of the

“view that other organisations, in particular local government, as one of the other key providers of public library services at local level, also has a critical part to play in the future of NLS”.

SLIC also called for representation from the wider library community

Ian Cunningham, a former Keeper of Manuscripts and Director of Special Collections in the NLS, called for a continuation of the close relationship with the higher education sector with a place on the Board being of value. In addition to calling for the retention for a representative from the Faculty on the Board the Advocates he also called for a nomination from the Universities.

In its submission the NLS’s TUS (Trades Unions Side) asked that a representative of the staff of the Library should be appointed in a similar way to the Faculty of Advocates’ representative. They did not ask that the person be a member of staff, but that they would be someone who would represent the views and interests of the staff, as “communication of staff issues and concerns to the Trustees has been difficult under the current governance arrangements”.

With regard to how the interests of the Faculty of Advocates should be represented, in its own submission the NLS stated that it was important for the Faculty to be represented on the Board.

The Society of Antiquaries of Scotland suggested that, as with its own historical link with the NMS providing it with a reserved place on the Board of the Museums, the Faculty should be given one or two reserved places. The British Library also cited the historic links between the Faculty and the Library as being one of the reasons why it should continue to occupy a place on the Board.

However, for CILIPS it was “crucial that the roles, responsibilities and skills set of a trustee come first in the selection process and not just because he/she is a member of the Faculty”.

## **Powers and functions of the NLS**

The majority of respondents agreed with the Government’s proposals with regard to the powers of the NLS. However a number of the responses did raise a few concerns.

Mr Cunningham was also concerned about the power to exchange, sell or dispose of objects in the collection, especially apparent duplicates of books. He especially wanted to raise the points that: duplicates may not in fact be identical; that although a book had not been consulted that a future user may need to consult it; and finally that a lack of space should not be a criteria for disposal of the Library’s collections. The TUS of the NLS was also concerned about the powers of disposal and how it might damage the integrity of the national collection.

The response by the East Lothian Council and the COSLA/VOCAL raised concerns about the power to charge for goods and services and the need to ensure that it did not endanger equal access to the NLS's collections and services.

The Council also wanted to point out there are other collections in Scotland which are of national importance. The COSLA/VOCAL response called for the NLS functions to reflect this fact by encouraging an increased partnership with local library services. In his response the Director of the Robert Burns Birthplace Museum, asked that:

“a core function of the Library should explicitly be defined that sets out its ability (and responsibility) to provide a national information framework for Scotland's distributed collections - print and digital.”

As:

“NLS is ideally based to not only provide the information architecture, data harvesting and preservation facilities to achieve this but also the coherent shared vision.”

The National Library of Wales thought it might be worth strengthening the wording on collaboration and cooperation, as it sees these as being crucial to the work of any national library.

In their response the TUS of the NLS was anxious to raise issues about the Library's current activities. They claimed that for the last five years the NLS has not catalogued the vast majority of paperbacks received. If an item is not in the catalogue then the public will not know that the NLS holds the item and will not be able to use such items.

Museum Galleries Scotland asked that consideration be given to changes which might affect NLS in future and that the legislation should build in as much flexibility as possible.

A number of the respondents (NLS, TUS, CILIPS and SLIC) raised the issue of legal deposit, which although it is not a reserved matter has been dealt with on a UK basis. For example, under the Sewel Convention the Scottish Parliament gave its consent for the UK Parliament to legislate on itself behalf during the passage of the 2003 Legal Deposit Act. In its response to the consultation the NLS highlighted the need to improve the relevant UK legislation to ensure that it was amended to include websites which consist of moving images and audio content and arrangements for the preservation of computer games. This call to avoid a 'digital black hole' (British Library) was also included in the responses from Shetland Islands Council, South Lanarkshire Council and the British Library.

The responses from CILIPS and SLIC also called on the Scottish Government asking it to address how to best support the NLS in its need to improve the scope and operation of the legal deposit legislation.

The TUS was concerned about the Library being given the power to collect publications subject to legal deposit “as it sees fit”, as it believed that this again could compromise the integrity of the national collection.

## **Advice to Ministers**

The proposals on the question of the powers and functions had included the suggestion that the NLS should be able to provide Scottish Ministers with advice. This proposal elicited comments from COSLA/VOCAL, SLIC and CILIPS.

The three respondents highlighted the advisory role which SLIC performs. The Council was established in 1991 as the advisory body to Scottish Government and Ministers on library and information matters and includes the NLS as a member. They were therefore concerned that the NLS's advisory role should be limited to that "considered appropriate to its functions and expertise".

## **Scottish Government response to the consultation**

The Government published its response to the consultation in March 2011. This web document included an analysis of the 31 consultation responses. It concluded that although there were areas of consensus there were also issues which would require further discussion between the NLS, stakeholders and the Scottish Government. These were the points raised about the proposed powers and functions and the Ministerial power of direction. With regard to the power of direction the Government conceded they would need consult on whether it was required, how it would be worded, how would it affect the NLS's charitable status, and what safeguards would need to be included.

## **BOARDS OF TRUSTEES IN OTHER CULTURAL ORGANISATIONS**

For comparison with the Scottish Government proposals details of the governing bodies of some other, similar, cultural organisations in Scotland and the rest of the United Kingdom are provided below.

It should be noted that the appointments to all of the Scottish Boards, including the current NLS Board, are regulated by Public Appointments Commissioner for Scotland. Whilst the Commissioner regulates the process used to make appointments, the process is run by civil servants on behalf of the Scottish Government. Therefore, the responsibility for making these appointments fairly, openly and based on merit lies with the Scottish Government.

So, all of the Boards of the Scottish Bodies detailed below, are appointed by Scottish Ministers through an open appointments system. The appointments are based on merit and selection following the *Code of Practice for Ministerial Appointments to Public Bodies in Scotland* (Commission for Ethical Standards in Public Life in Scotland 2011).

### **National Galleries of Scotland**

The National Galleries of Scotland is governed by a Board of Trustees. There are between 7 and 12 members on the Board at any one time. The Trustees are appointed for a four year term of office in the first instance and may be offered a second term, as set out in Paragraph 3(7) of the Schedule to the National Galleries of Scotland Act 1906.

### **National Museums Scotland**

The National Museums Scotland's Board can have between 9 and 15 members, including a chair. The Trustees are normally appointed for a term of four years, and may serve for a second term. Paragraph 3(4) of Schedule 1 of the National Heritage (Scotland) Act 1985 states that Scottish Ministers shall include amongst the trustees at least one Fellow of the Society of Antiquaries of Scotland, as was pointed by the Society in its consultation response. At present there are 3 Trustees who are also Fellows of the Society.

## **Creative Scotland**

The Creative Scotland Board is accountable to, and appointed by, Scottish Ministers. The Board provides leadership, direction, support and guidance to Creative Scotland as a whole. The legislation establishing Creative Scotland provides that the Board, of between 8 and 14 members and a Chair are appointed by the Scottish Ministers.

## **Royal Commission on the Ancient and Historical Monuments of Scotland**

The appointment of the Chairman and 9 Commissioners is made by the Queen on the advice of Scotland's First Minister.

## **British Library**

The Board consist of between 8 and 13 members and a Chair, who are all appointed by the Secretary of State for Culture, Media and Sport, with the exception of one member who is appointed by the Queen. One member of the Board is appointed after consultation with Scottish Ministers. All Ministerial appointments to the British Library Board are subject to the Code of Practice of the Commissioner for Public Appointments. Members are normally appointed for four-year terms, and appointments are restricted to two terms. Members conform to a Code of Practice for Members of the British Library Board derived from the Cabinet Office model Code.

## **National Library of Wales**

Since the second half of 2006 (and as a result of receiving a new Supplemental Charter from the Queen) the Library has a Board of Trustees. The Board consists of 15 members. Eight of its members are appointed by the Welsh Assembly Government and seven by The National Library of Wales.

The Trustees, including three Board Officers (the President, the Vice-President and the Treasurer), are appointed according to the Statutes. The Library's business is also managed and regulated according to the Statutes and Regulations created by the Board.

# **NATIONAL LIBRARY OF SCOTLAND BILL**

## **MAIN PROVISIONS IN THE BILL**

The Scottish Government introduced the [National Library of Scotland Bill](#) on 26 October 2011. The Bill intends to repeal and replace the 1925 Act thus updating the legislation on the functions and governance of the National Library of Scotland.

## **Board of Trustees**

The provisions in Section 1 and Schedule 1 of the Bill will rename the body corporate, the Board of Trustees, which is responsible for the governance of the NLS, as the National Library of Scotland. The new body would consist of between 6 and 13 members, and a Chair, appointed by Scottish Ministers. Ministers would be able to amend this number of members by means of an order, which, as with all the secondary legislation possible under the Bill's provisions, would be subject to a negative procedure. One of the members will be selected from a nominations

made by the Dean of the Faculty of Advocates, thus maintaining the historic link with the Faculty.

Scottish Ministers will also be responsible for deciding the terms and conditions which would determine when a member would hold or vacate office and for revoking the appointment of a member under certain stated reasons, including absence without permission from 3 consecutive meetings. The Bill does not state what quorum would be required to constitute an NLS meeting, as this would be the responsibility for the Board itself to decide.

## **Powers and functions**

Sections 2 to 4 set out the functions and powers of the NLS. The NLS appears to have been given a new function in Section 2(2)(d) which was not explicitly proposed in the consultation. This function is:

“promoting collaboration between, and the adoption and sharing of good practice by, other persons providing library and information services.”

This is no indication who would be identifying/creating the good practice, although the example in the explanatory notes is of the NLS offering advice on the conservation of delicate objects, which could be seen as one of the areas of expertise to be found in the NLS staff. The NLS has been active in promoting best practice in the care and handling of rare books and maps. However, this function may be seen to overlap with the activities of other bodies, including SCURL and SLIC. For example, SLIC’s present *Strategic Plan 2011-2014* (Scottish Library and Information Council 2010) states that one of its key outcomes is to:

“Demonstrate the value of co-ordination, collaboration and Co-operation”

Which it aims to do via:

“Work with and across sectoral networks to encourage innovation and share good practice.”

It should be noted that NLS is a member of a number of bodies which seek to work collaboratively and cross-sectorally, including SCURL and SLIC.

An area of concern in the consultation responses had been the proposed power for the NLS to exchange, sell or dispose of objects in its collection. The concerns raised by Mr Cunningham that not all duplicates are identical and therefore worthy of retention in the national collections does not appear to have been addressed as one of the criteria for disposal is Section 3(2)(a):

“the object is a duplicate of, or similar to, another object in the collections”.

Section 5 of the Bill deals with the legal publications which are received under legal deposit but which are then passed to the Faculty of Advocates. This is in keeping with the terms of Section 5 of the 1925 Act, and brings the legislation up to date by including the delivery framework to support the regulations, when they are made by the UK Government under the 2003 Act, to deal with on-line electronic legal publications.

The Bill does not appear to allow for any amendments of any of the Library’s functions by Scottish Ministers, which would tend to indicate that the Government believes that the provisions in the Bill have future-proofed the functions of the NLS.

## **Advice to Scottish Ministers**

The Government appears to have acted on the comments received during its consultation and Section 4 of the Bill identifies that the advice the NLS would provide to Ministers would be relating to the NLS's functions.

## **Ministerial direction**

The other issue which raised concern during the consultation was the powers of direction which the Scottish Ministers would be able to exercise over the NLS. Section 8(1) of the Bill states that:

“The Scottish Ministers may give NLS directions (of a general or specific nature) as to the exercise of its functions.”

Section 8(2) goes on to outline which proposed statutory functions Scottish Ministers may not give direction on. So, for example, Ministers would not be able to direct the Library on matters concerning any of its cultural or curatorial functions, for example, disposal or lending of objects or legal deposit.

Beyond this the Government has, however, not provided any further clarification in what circumstances Scottish Ministers would make use of the limited powers of direction with regard to the Library provided for in the Bill.

The Government is confident that the provisions in the Bill would not interfere with the NLS's charitable status, which had also been a cause for concern during the consultation. The Policy Memorandum states that the Office of the Scottish Charity Regulator has confirmed that, as the NLS is exempt 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, then the inclusion of a power of direction is compatible with its charitable status. This exemption for the national collections was set out in the (Charity Test (Specified Bodies) (Scotland) Order 2006).

## **FINANCIAL MEMORANDUM**

The Financial Memorandum of the Bill identifies the main cost areas of the legislation as being:

- The costs of advertising and recruiting for board members (£10,000 over a three year period) and, specifically, additional costs in the first year (£10,000 to £12,000)
- Cost of NLS board members receiving remuneration (between £22,000 and £45,000 per year for the whole board)
- Savings in expenses and administration as number of board members reduce (£1,300 per annum)
- No new or additional costs for local authorities, other bodies, individuals or businesses
- Marginal indirect savings as the bill will remove the requirement of the board to contain 4 representatives of the universities of Scotland.

## **MEMORANDUMS OF AGREEMENT**

In a letter to the Convener of the Scottish Parliament Education and Culture Committee dated 19 January 2012 the Cabinet Secretary of State for Culture and External Affairs, Fiona Hyslop, detailed the two memorandums of agreement between the NLS and the Faculty of Advocates, which had been signed on 22 December 2011.

The first memorandum sets out how the two organisations will work together to maintain, preserve and provide access to the material they hold, especially the material received under the legal deposit legislation.

The second memorandum clearly delineates the material held by the NLS but owned by the Faculty, setting out arrangements for any future claims of ownership, including procedures for dealing any disagreements over ownership.

## **EDUCATION AND CULTURE COMMITTEE CALL FOR EVIDENCE**

### **Call for evidence**

The Education and Culture Committee was designated lead committee for the Bill after it was introduced in the Scottish Parliament . In addition the Subordinate Legislation and Finance Committees have considered the Bill.

The Subordinate Legislation Committee reported on the powers in the Bill on 15 December 2011. After writing to the Scottish Government to raise questions on the power at section 12(2), the Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in the Bill. The Finance Committee have issued a consultation, to relevant bodies (the NLS, the Faculty of Advocates, SLIC, CILIPS, the Society of Antiquaries in Scotland, COSLA, SCURL and the Public Appointments Commissioner for Scotland), on content of the Bill's Financial Memorandum, a consultation which closes on 8 February 2012.

The Education and Culture Committee put out a call for evidence on the Bill on 15 November 2011, which ended on 20 January 2012. The Committee received 6 responses from the NLS, CILIPS, SLIC, the Faculty of Advocates, the Law Society of Scotland and Aberdeen City Council.

## **RESPONSES**

### **Functions and powers**

The Law Society of Scotland raised concerns about whether the NLS could in fact exercise the function in Section 2(3) of “promoting, understanding and enjoyment of the collections”, as it contests “understanding and enjoyment” are very subjective terms. Instead they suggested the function should simply be to promote “use” of the collections.

In its response SLIC again questioned the potential role for the NLS in promoting collaboration in the wider Scottish library and information community, provided for in Section 2(2)(d) of the Bill. SLIC does recognise the role the NLS has to play in relationship to Library's own collections, but, in the context of the wider community, believes that it is quite a small player. It points out that university and public library services attract greater numbers of physical and

virtual visitors than the NLS. Their response is echoed by the CILIPS's comments which suggest that the section be amended to read:

“promoting collaboration and the adoption and sharing of good practice with and between others providing library and information services.”

The Faculty of Advocates welcomed the recognition of its historic links with the NLS. However it was anxious to point out that it hold material which were obtained by methods other than legal deposit and that such material needs to be distinguishable in the Bill, as it would not normally make such items accessible to members of the public. The Faculty suggested that in Section 6 of the Bill, which relates to joint arrangements between the NLS and the Faculty, subsection (1)(c) should be amended to allow statutory access to only those objects in their collection which it received via legal deposit legislation.

This distinction of material was the subject of the second memorandum of agreement between the Faculty and Library signed in December 2011, but it would appear that the Faculty would prefer to have it included in statute.

The response from the Law Society raised related concerns about the NLS's powers to dispose items which have been deposited with the Library. The Society called for a requirement that the Library should be under an obligation, if it decides to remove such items from its collection, to restore said items to the original owner.

In its response the Faculty of Advocates also highlighted Section 5 asking, that even although “on line electronic legal publications” do not become part of their collection, the NLS would still be required to collect such material, and that the Library use the expertise of the Faculty's library staff in order to determine which items to collect. They therefore asked that the Bill be amended so, that as with hardcopy legal publications requested from publishers under Section 5 of the 2003 Act, the Faculty may require the NLS to request such on line electronic publications.

The Faculty also raised a technical issue stating it was not clear why the Bill needs to include subsection 5(3)(2) as it believes that Section 5 of the 2003 Act refers only relates to printed publications.

The importance of implementing the Legal Deposit Libraries Act 2003 with regard to digital legal deposit was also mentioned by CILIPS and SLIC.

The final comment in its submission was that the Faculty regrets that the Bill will dispense with the title of National Librarian in favour of Chief Executive.

## **Ministerial direction**

In its own response the NLS again reiterated its concerns about the Ministerial powers of direction. It noted that “it is unusual for such a power to apply to a registered Scottish Charity” and that “in an ideal world, NLS would have preferred to avoid the introduction of such a power in law”.

However the Library recognised that the Government has included substantial restrictions on the powers of direction which had been extensively discussed with the present Board of Trustees.

## **Board of Trustees**

The NLS's response also raised concerns about the potential small size of the new body corporate, as it which might not allow for the breadth of expertise, level of engagement with and credibility among the widest range of the Library's stakeholders, necessary to be represented on the Board. The Library therefore requested a larger minimum number of members be specified in the Bill.

CILIPS was the only respondent to query that the remuneration of the members of the new body corporate stating:

“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.”

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