



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 7 February 2012

Session 4

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CONTENTS

	Col.
NATIONAL LIBRARY OF SCOTLAND BILL: STAGE 1	687
SUBORDINATE LEGISLATION	718
Scottish Public Services Ombudsman Act 2002 Amendment (No 2) Order 2012 [Draft]	718
Children's Hearings (Scotland) Act 2011 (Commencement No 3) Order 2012 (SSI 2012/1)	721

EDUCATION AND CULTURE COMMITTEE

5th Meeting 2012, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Marco Biagi (Edinburgh Central) (SNP)

*Neil Bibby (West Scotland) (Lab)

Joan McAlpine (South Scotland) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Liz Smith (Mid Scotland and Fife) (Con)

*Jean Urquhart (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Paisley) (SNP) (Committee Substitute)

Dr Alasdair Allan (Minister for Learning, Science and Scotland's Languages)

Professor Michael Anderson (National Library of Scotland)

Mungo Bovey QC (Faculty of Advocates)

Elaine Fulton (Scottish Library and Information Council)

John Gunstone (Scottish Government)

Colin Miller (Scottish Government)

Helen Reid (Scottish Government)

Carole Robinson (Scottish Government)

David Seers (Scottish Government)

Martyn Wade (National Library of Scotland)

Greig Walker (Scottish Government)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 2

Scottish Parliament

Education and Culture Committee

Tuesday 7 February 2012

[The Convener *opened the meeting at 10:04*]

National Library of Scotland Bill: Stage 1

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

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

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

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

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

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

The Convener: Thank you for that, Marco.

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

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

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

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

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

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

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

We will be pleased to answer questions.

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

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

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

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

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

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

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

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

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

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

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

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

10:15

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Liz Smith: Yes.

Carole Robinson: I wanted to be clear about that.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:30

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

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

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

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

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

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

Clare Adamson: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"a thing in electronic form".

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

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

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

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

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

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

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

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

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

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

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

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

I thank the witnesses for coming.

10:43

Meeting suspended.

10:46

On resuming—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Convener: Does Neil Findlay want to come in?

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

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

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

Martyn Wade (National Library of Scotland): Each of the national collections—although we are grouped together—has a very distinctive role and purpose, and faces different issues.

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

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

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

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

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

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

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

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

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

11:00

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

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

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

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

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

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

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

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

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

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

The Convener: So you are not—

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

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

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

and that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:15

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

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

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

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

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

Professor Anderson: We would charge for that.

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

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

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

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

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

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

“the provision of goods and services”,

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

“make charges for access to the collections”,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:30

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

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

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

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

Possibly all of you have a view on that.

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

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

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

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

Jean Urquhart: My other question was about the relationship with the Faculty of Advocates and its collection in particular.

Mungo Bovey: In general, we have good relations with the National Library, which are underpinned, it is fair to say, by the statutory basis that was set in place when we founded the National Library by donating the non-legal collection and retaining the legal collections. We value the continuing right to nominate trustees. I do not think that we unduly flatter ourselves by suggesting that the board benefits from having the dean of faculty or other distinguished lawyers present on it. Their skills are part of the mix of skills to which reference has already been made.

We appreciate the proposal that the faculty will be able to send people to committees not with a vote, but simply to participate, as we share a collection that is increasing every day by virtue of the legal deposit legislation. In particular, we are continuing to have discussions on the digital deposit and how it will work if it ever comes to pass. It sometimes seems to be always just over the hill. The arrangements in the bill are appropriate to represent our continuing involvement with the National Library.

Elaine Fulton: I will make an observation on the memorandum. The whole purpose of the bill is to future proof the National Library and define its functions. If something such as an operational agreement, albeit a long-standing one, is set in statute, we could be back here in five years' time trying to alter the legislation. It is much better for the matter to be sorted out by arbitration with the organisations, if that is required, rather than setting it in statute.

Mungo Bovey: We have never had to go to arbitration with the National Library. We have had and continue to have our differences with it, but we are able to meet in a civil way and agree what will happen. That is not to say that the situation could not get worse, but it is not bad and, given

that the arrangement has been going since 1925, it has a reasonable track record. In my time, the arrangement has certainly been entirely satisfactory.

The Convener: Is there a balance of power between the National Library of Scotland and the Faculty of Advocates in the legal advice that they have at their disposal?

Mungo Bovey: It is useful to have a lawyer at the meeting, but the National Library does not rely on us for its formal legal advice; it has solicitors whose advice it takes.

The observations of a legally-qualified person at a meeting are not the same as the considered opinion of counsel, which is written down once all matters have been considered. We think that the situation is beneficial and that it is not imbalanced.

The Convener: In your written evidence to the committee, you suggest amendments to section 5(3). Can you explain why you have made those suggestions and what their effect would be?

Mungo Bovey: Yes. The principal aim of the amendments relates to the digital deposit. The heart of the proposal is in paragraph 3(ii) of our submission, in which we suggest the addition of a sentence

"to the effect that 'NLS must include in a request made under the 2003 Act in relation to online electronic publications such legal publications as the Faculty may require it to include.'"

Under the 1925 act, when law books come in they belong to the Faculty of Advocates. There is a requirement that if the faculty wants a particular book, the National Library must ask for it. That is replicated in the bill.

The digital deposit material—even the legal stuff—will not belong to the faculty in the same way. The purpose of our suggestion is that, although such material will not belong to us, our staff—who are the staff of the legal library and the legal aspect of the National Library—have the expertise to know what we should be looking for. We propose the amendment in order to keep the legal collection, which is of course part of the national collections, in the way that it should be kept.

I had a useful meeting about the issue with Martyn Wade. He was concerned that our proposal would impose a possibly burdensome obligation on the National Library, because of the nature of digital material, which differs from hard copy. I do not think that we would use our power but, if we did, we would ask for a specified book. We would not ask for all the books that are being published on the law of divorce; we would ask for Professor X's new book on divorce law in Scotland.

The concern was that, given that digital requests can be daily and wide, the provision that we proposed would be unduly burdensome. In that light, I invite the committee to consider the proposal, but with the words “So far as reasonably practicable” at the beginning, so that it reads “So far as reasonably practicable, the NLS must include ...”. That way, we will recognise the practical difference between the digital deposit and the non-digital deposit. We suggest that that is a way forward.

The memorandum of agreement that is in place deals with the issue only to the extent that it agrees that there will be a joint collection policy. It says:

“The Faculty will prepare and agree with NLS a selection policy to assist the selection of appropriate Legal Deposit law material for transmission to the Faculty.”

That could be expanded to cover digital material, but it would still only be a policy; it would not require the acquisition of digital material. We think that that is an important long stop for the status of the acquisition of legal materials, which we would say has served Scotland well over the years, not simply since 1925.

The Convener: Thank you very much for that explanation. I ask Martin Wade to give us the NLS’s view.

Martyn Wade: Mungo Bovey summarised the issue very eloquently, but I emphasise that it would be fair to say that we need to discuss it further, as we did not necessarily agree the solution.

I will enlarge on the concerns that I expressed on behalf of the National Library. Mungo Bovey is right about the nature of online publishing. From time to time, we are asked to claim print publications and we quite happily do that. The print publishing world is fairly clearly defined. In law terms, the number of items that could be claimed is fairly small. We claim the items that we identify, as well as the additional items that are identified to us. A printed publication is a fairly definable universal entity.

Online publishing is very different. Although electronic journals and electronic books that are direct replacements for print are defined as clearly as print publications, in many cases the frequency of publication will increase. Whereas it can be several years between printed editions of a book, the electronic book can be updated easily and quickly. Electronic journals are likely to move away from having a monthly edition, with, say, 10 articles, to a rolling publication programme. All that will add to the complexity of what the library does in identifying an item and bringing it in electronically in collaboration with the British Library and the National Library of Wales, where

we have a common system. We also have to identify the cataloguing metadata and how people find that. All that is likely to involve more work, but we have planned for that.

An issue that concerns us, which we hope will be dealt with in the regulations, is the potential number of websites involved. The proposal among the libraries is to do an entire web domain harvest once or perhaps twice a year. Harvesting every website in the UK is a very big operation, as you can imagine.

11:45

We will then selectively harvest certain titles in more detail. That is a manual operation that involves identifying a website and harvesting it more extensively and frequently, which will be done for particular areas of interest. Looking ahead—I agree with Mungo Bovey that the regulations always seem to be over the horizon—such areas include the referendum, the Commonwealth games, and the year of homecoming in 2014. Placing a measure in the bill to that effect creates a potentially open-ended commitment given the number of websites and the frequency with which they change. The average life of a website has been described as being about the same as that of a fruit fly. I think that on average there are about 40 days between updates on a website, but some change much more frequently. We are concerned that an open-ended commitment in that direction could have a serious impact on the library’s abilities.

The Convener: Did the caveat that Mungo Bovey provided at the end of his comments give you some comfort?

Martyn Wade: Under my proposed approach of proceeding through the memorandum of agreement, part of the policy is that we agree matters in advance instead of trying to sort them out later. Given the uncertainty of what lies ahead with electronic publishing, and given that the memorandum of agreement refers to working together positively, agreeing in advance what we will collect and allowing us to plan for that with a regular review is a more manageable and realistic approach. As Mungo Bovey said, the NLS claims legal publications that, although they are used by the Faculty of Advocates, are part of the national collection.

This is not about limiting the collection but about identifying a balance in terms of the library’s ability to manage the use of resources. We can do that in two ways: first, through the memorandum, whereby we agree in advance what we do; or secondly, by taking the approach of the Faculty of Advocates, which says that we have to define where there is a problem and deal with it

retrospectively. The more positive way of handling the issue is to do it through the memorandum by agreement, in advance, on a regular-review basis.

The Convener: So, to sum up, you do not support the amendments suggested by the faculty?

Martyn Wade: That is right. My preference at the moment is that we handle it through the memorandum of agreement.

The Convener: Thank you. I wanted to make it clear that that is your view.

Professor Anderson: I think that we are all agreed that we need to have further discussions on this, and we will reflect those back to the committee.

Elaine Fulton: I want to make a general observation. We have talked a lot about the digital age, but, to make a historical comparison, we are probably in the prehistoric age in that regard. There are so many unknowns out there that I am not sure it would be a good idea to tie things to legislation at this stage. We need to work through a range of issues, from the harvesting that Martyn Wade talked about to copyright and licensing issues. The marketplace is quite uncertain at this time, and tying things down to statute is not necessarily the right thing to do.

The Convener: That is the end of our formal questions. Does anyone have any further points that they have not had the opportunity to make?

Mungo Bovey: No, but thank you very much for the opportunity to address you.

The Convener: Thank you very much for coming along. I also thank the National Library for hosting us last week; that was very kind.

11:49

Meeting suspended.

11:52

On resuming—

Subordinate Legislation

Scottish Public Services Ombudsman Act 2002 Amendment (No 2) Order 2012 [Draft]

The Convener: Agenda item 2 is an evidence-taking session on a draft affirmative instrument. Members have the opportunity to ask technical questions about or seek clarification on the order, after which the committee will be invited to consider a motion to approve the order.

I welcome the Minister for Learning, Science and Scotland's Languages, Alasdair Allan, and his officials, John Gunstone and Helen Reid, both of whom are from the people and leadership unit of the Scottish Government. I invite the minister to make a brief opening statement.

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): Thank you very much, convener. It is nice to be back at the Education and Culture Committee in a different capacity.

I do not want to tempt providence by saying that this is a simple draft order or an instrument that should not raise any questions—I am certainly happy to answer members' questions about it—but I hope that it is clear that it is essentially a tidying-up exercise as a consequence of changes to the General Teaching Council for Scotland, which, as you know, has become fully independent of the Scottish Government. That said, the draft order is important in ensuring that the GTCS is genuinely fully independent of the Scottish Government and is able to operate without recourse to another public body.

As I am sure that members are aware, the Government used legislative powers under the Public Services Reform (Scotland) Act 2010 to establish the GTCS as an independent professional regulatory body from 2 April 2012. Parliament approved the legislation and, in March 2011, approved the Public Services Reform (General Teaching Council for Scotland) Order 2011, which brought in a number of changes to the GTCS's role and operation including amending and updating the council's governance arrangements; slightly expanding its responsibilities; and removing unnecessary restrictions on how it organises its affairs.

When we consulted on that order in April 2009, we elicited a response from the Scottish Public Services Ombudsman, who had a particular interest in the proposals. After all, the GTCS is currently listed as one of the Scottish public authorities that is liable to be investigated by the

SPSO under the powers in the Scottish Public Services Ombudsman Act 2002. Given the GTCS's impending change in status to an independent body, the ombudsman suggested that the Scottish Government consider whether it was still appropriate for the council to remain within his jurisdiction. Having considered the matter, we are clear that the GTCS, as the independent regulatory body for the teaching profession, should have the freedom to exercise its public functions and to be allowed to control any issues relating to complaints or appeals without needing recourse to the ombudsman.

If the public wished to pursue a complaint about teacher conduct, they could still route it to the ombudsman through the local authority as the teachers' employer. On the other hand, teachers who were subject to disciplinary action would still have the right of appeal to the Court of Session.

It might be helpful to point out that this order is being brought forward under section 24 of the 2002 act, which provides that the standard draft affirmative procedure applies. However, the difference is that the order itself has to be made by Her Majesty at a meeting of the Privy Council. We consulted on the draft order in October 2011 and targeted in particular the bodies that nominated members to the GTCS. None of those bodies opposed the proposals and I hope that the committee will recommend that the order be approved.

The Convener: Thank you very much, minister. Do members have any comments or questions?

Liz Smith: First, I declare an interest as a member of the GTCS. Minister, will you confirm that if a member of the public wished to pursue a complaint against a member of staff at an independent school, their access to the ombudsman would not be through the local authority, which, after all, has no control over the independent sector? What would happen in that instance?

Dr Allan: I will have to defer to officials, but I can confirm that my comment about local authorities applied to the state sector. Different arrangements will apply in the private sector. I am going to stick my neck out here but I presume that, in the private sector, the board of the school would be the body to go to.

John Gunstone (Scottish Government): Absolutely—and nothing changes in that respect.

Dr Allan: It would be the governors.

Liz Smith: So the board of governors in an independent school would refer such cases to the ombudsman.

John Gunstone: I am not sure that it would. Are you asking about a complaint brought against a member of staff at that school?

Liz Smith: You said that, in the maintained sector, the local authority would possibly have recourse to the ombudsman. However, given that that course of action would not be available in independent schools, there must be a different process for that sector.

John Gunstone: I am not aware that the independent sector is covered by the Scottish Public Services Ombudsman.

Dr Allan: As I understand it, the Scottish Public Services Ombudsman has no involvement in that sector at the moment, so I do not think that we are taking anything away from the rights of parents in the private sector. There is no change.

Liz Smith: This is not about rights. Am I right in thinking that if a parent feels that the board of governors has not dealt with their complaint satisfactorily they can go to the ombudsman?

Dr Allan: I have to defer to officials.

Liz Smith: I am simply seeking clarification on the matter.

Helen Reid (Scottish Government): I think that we are unclear about that.

John Gunstone: We can come back to the committee very quickly to clear the matter up.

Dr Allan: We will certainly do that.

The Convener: That is not ideal, given that we are being asked to approve the draft order. How quickly can you get back to us?

John Gunstone: We will check with lawyers as soon as we get back to the office. The minister could write to the convener within two days, or by tomorrow.

The Convener: Can you hold on a second while I speak to the clerk?

Dr Allan: If you need a response today, I can get it to you today.

The Convener: Does Liz Smith feel that she needs clarification before we move to the next agenda item?

Liz Smith: It is not major but I think that it is a potential issue that needs to be clarified. I will not vote against the draft order or anything.

The Convener: I understand that.

Liz Smith: I just think that we need to be clear. My understanding is that someone who feels that their complaint has not been dealt with satisfactorily is entitled to ask for advice from the ombudsman. I simply want that to be checked out

because I would not like to think that certain schools in Scotland, albeit few in number, would not be covered by this.

Dr Allan: My understanding is that nothing changes in that respect, but I will confirm that to you today in writing.

The Convener: If we can get that confirmation in writing, that will be fine. Obviously the draft order will come before the full Parliament but we need to have that confirmation in our hands before that happens.

Dr Allan: I will certainly do as you ask.

12:00

Neil Findlay: Like Liz Smith, I declare an interest as a member of the GTCS. I should have mentioned that at the start of the item.

The Convener: Okay. Now that we have had the Scottish Government's briefing and given that members have no other questions or comments, we move to agenda item 3, which is formal consideration of the motion to approve the instrument. I ask the minister to move motion S4M-01906.

Motion moved,

That the Education and Culture Committee recommends that the Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012 [draft] be approved.—[*Dr Alasdair Allan.*]

Motion agreed to.

Children's Hearings (Scotland) Act 2011 (Commencement No 3) Order 2012 (SSI 2012/1)

The Convener: Item 4 is consideration of an instrument that is not subject to any parliamentary procedure. Does the committee agree to make no recommendation to Parliament on the order?

Members *indicated agreement.*

Meeting closed at 12:01.

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