



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND CULTURE COMMITTEE

AGENDA

5th Meeting, 2012 (Session 4)

Tuesday 7 February 2012

The Committee will meet at 10.00 am in Committee Room 2.

1. **National Library of Scotland Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Colin Miller, Head of Public Bodies Policy Unit, Carole Robinson, Bill Team Leader, and David Seers, Head of Cultural Excellence, Scottish Government;

Greig Walker, Solicitor, Economy and Transport Division, Scottish Government Legal Directorate;

and then from—

Andrea Longson, Senior Librarian, and Mungo Bovey QC, Keeper of the Library, Faculty of Advocates;

Elaine Fulton, Director, Scottish Library and Information Council;

Martyn Wade, National Librarian and Chief Executive, and Professor Michael Anderson, Chairman of the Board of Trustees, National Library of Scotland.

2. **Subordinate legislation:** The Committee will take evidence on the Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012 [draft] from—

Dr Alasdair Allan, Minister for Learning, Science and Scotland's Languages, John Gunstone, People and Leadership Unit, and Helen Reid, People and Leadership Unit, Scottish Government.

3. **Subordinate legislation:** Alasdair Allan to move—S4M-01906—That the Education and Culture Committee recommends that the Scottish Public

Services Ombudsman Act 2002 Amendment (No. 2) Order 2012 [draft] be approved.

4. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—

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

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The papers for this meeting are as follows—

Agenda Item 1

Written Evidence

EC/S4/12/5/1

PRIVATE PAPER

EC/S4/12/5/2 (P)

[SPICe Briefing](#)

Agenda Item 2

Note by the Clerk

EC/S4/12/5/3

Education and Culture Committee

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

National Library of Scotland Bill: Written Evidence

The Committee's first oral evidence-taking session on the National Library of Scotland Bill will be on 7 February. The following written submissions were received by those giving oral evidence:

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Faculty of Advocates

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

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

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

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

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

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

1. It should be noted that while the Faculty of Advocates does hold legal publications which have been made available pursuant to section 5 of the 2003 Act and earlier copyright legislation, it also holds substantial other collections which were not acquired by legal deposit. These, for example, would include collections of art works as well as a wide variety of manuscripts and printed material. Although the Faculty does often grant access to these collections, they are not (and never have been) available as of right to members of the public. It is therefore important that the Bill should distinguish between the material which the Faculty of Advocates holds by reason of legal deposit and other parts of the Faculty collections. A Memorandum of

Agreement recently signed by the Faculty and the NLS indicates the Faculty's willingness to lend other literary materials as freely as possible. We do not, however, consider it appropriate for the Bill to impose on the Faculty an obligation to enter into agreement with the NLS in relation to its non-legal deposit collections. In this regard, we consider the drafting of clause 6(1)(a) and (c) to be unduly wide where they refer to "collections".

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

2. At clause 3(6)(b), there is permission to dispose of an object in the circumstances mentioned in section 3(2)(c) or (d), without the consent of the owner. The Faculty would not wish its property to be disposed of in these circumstances without its consent, except by being returned to the Faculty. We would be content with the Bill team's suggestion of "words of comfort" in Ministerial statements in this regard.
3. With respect to clause 5, the Faculty would wish to ensure that NLS collect such legal publications which are online publications as it considers necessary, even if such publications do not become the property of the Faculty. The Faculty Library staff has the expertise appropriate to determining which legal publications should form part of the national collections.

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

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

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

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

National Library of Scotland

1. Introduction

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

2. What we do

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

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

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

3. Our Successes

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

- public awareness of NLS among Scottish public increased from 20% to 49%;
- reader visits increased from 58,000 to 79,000;

- the value of NLS media coverage increased from £0.922 million to £1.487 million.

Notable recent additions to the NLS collections are the John Murray Archive, purchased in 2006 for £32 million with support from the Heritage Lottery Fund, the Scottish Government and many private individuals and trusts. The merger of the Scottish Screen Archive with NLS in 2007 added more valuable material to complement NLS collections. Other achievements include the opening of the Visitor Centre at George IV Bridge, with visitor numbers exceeding our initial 'footfall' target of 1.5 million in the first year. The introduction of online reader registration in June 2010 has already attracted 9,500 additional users from over 100 countries by March 2011. NLS has pioneered the negotiation of free remote access (ie in the home, school or office) to many important and valuable research resources¹ for people living in Scotland. Increasingly, the Library is in close collaboration with the National Galleries of Scotland on shared administrative services.

4. Opportunities for the Future

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

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

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

¹ Examples include the *Scotsman Archive*, a full-text digital archive of every issue of The Scotsman newspaper, from 1817 to 1950, in its original published context; and *Credo reference*, a full-text collection of over 400 high-quality reference books from the world's leading publishers, with over 4 million entries and 1 million images on subjects ranging from art, language, business, and history, to geography, music, literature, science and religion, and biography.

issue, which NLS is working to resolve, lies in collaboration at various levels - especially internationally.

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

NLS also has ambitions to develop a Sound Archive for Scotland which Scotland still lacks (the UK Sound Archive is managed by the British Library in London). A major consultation document into sound preservation identified that NLS should lead the development of a Scottish Sound Archive which has the scope to ensure that Scottish content (for example, Gaelic material) is collected comprehensively, and NLS is working with partners to develop this proposal into a viable project. As with other media, digital has become the principal format for the storage and dissemination of sound (music, speech, radio etc) and we must anticipate the need to collect new formats in the future as technology continues to develop.

5. Comments on the Bill

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

The inclusion of a statutory Ministerial power of direction has attracted some attention, both within NLS and by other educational and cultural bodies. We note that it is unusual for such a power to apply to a registered Scottish Charity. Like other national collections institutions, NLS has a mandate that spans decades and centuries and in an ideal world, NLS would have preferred to avoid the introduction of such a power in law. Nevertheless, NLS recognises that the Bill includes substantial restrictions on the Ministerial power of direction which have been extensively discussed with the Trustees of the Library. We therefore do not seek the removal of provisions relating to this power. We recognise that in any case, the Scottish Government inevitably has great influence over the Library through its provision of Grant-in-Aid; like all NDPBs and other public

bodies, it is entirely reasonable that the Scottish Government expects NLS to take full account of its priorities. We are also reassured by the Office of the Scottish Charity Regulator that this power does not jeopardise NLS's charitable status (through the Charity Test (Specified Bodies) (Scotland) Order 2006). It is essential that this status continues and that the Trustees of the reformed board continue to meet the requirements of charity law through their independent stewardship of the Library.

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

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

6. Conclusion

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

Professor Michael Anderson
Chairman
January 2012

Scottish Library and Information Council

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

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

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

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

Section 2

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

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

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

encourage collaboration, which to deliver joint outcomes is an important part of the Public Service Reform agenda.

Section 6 – Faculty

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

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

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

Section 8 – Direction

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

Schedule

Membership of NLS

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

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

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

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

Committees

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

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

Procedures

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

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

Charges for access to collections

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

Digital Legal Deposit

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

Summary

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

Scottish Library and Information Council
20th January 2011

SPICe

The Information Centre

SPICe Briefing

National Library of Scotland Bill

1 February 2012

12/10

Francesca McGrath



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 Forres.

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.

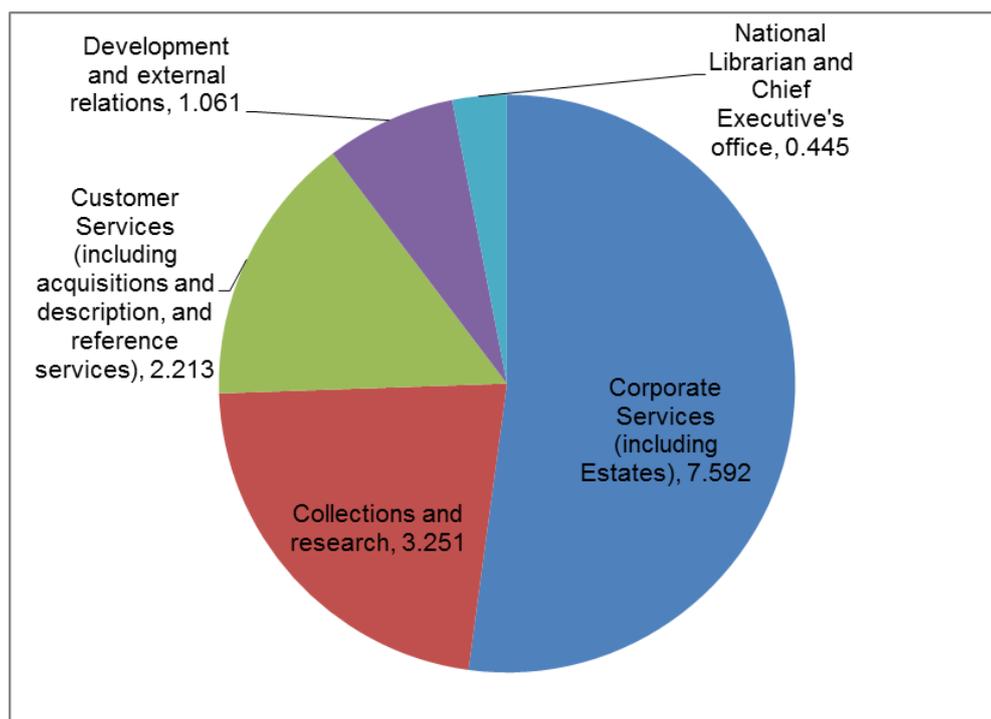
The Library has eight buildings in total. Five are occupied by staff, and the other three are used for storage. The Library's main building is situated on George IV Bridge, Edinburgh, in a building opened by the Queen in 1956. The Library has an additional building on Causewayside in Edinburgh, which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

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

Subordinate legislation

Introduction

1. This paper seeks to inform members' consideration of The Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012. The draft order is annexed to this paper, along with the accompanying executive note.

The Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012

Background

2. The instrument was laid on 22 December 2011 and the Education and Culture Committee was designated as lead committee.

3. The Subordinate Legislation Committee considered the instrument at its meeting on 17 January 2012 and determined that it did not need to draw the attention of the Parliament to the instrument. The Education and Culture Committee must report on the instrument by 24 February 2012.

4. The instrument is made under powers conferred by section 3(2)(b) of the Scottish Public Ombudsman Act 2002(a) and is subject to draft affirmative procedure.

Policy objectives

5. In essence, the policy objective of the instrument is to ensure that the General Teaching Council for Scotland is no longer within the remit of the Scottish Public Services Ombudsman.

Action

6. The Committee will take evidence from the Minister and then consider whether to approve the Order.

**Jonas Rae
Committee Assistant
2 February 2012**

Draft Order in Council laid before the Scottish Parliament under section 24(2) of the Scottish Public Services Ombudsman Act 2002 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

SCOTTISH PUBLIC SERVICES OMBUDSMAN

**The Scottish Public Services Ombudsman Act 2002
Amendment (No. 2) Order 2012**

Made - - - - 2012

Coming into force - - 2nd April 2012

At the Court at Buckingham Palace, the day of 2012

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 3(2)(b) of the Scottish Public Services Ombudsman Act 2002^(a) and all other powers enabling Her Majesty to do so.

In accordance with section 24(2) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and commencement

1. This Order may be cited as the Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012 and comes into force on 2nd April 2012.

^(a) 2002 asp 11. Section 3(2) provides for the power conferred therein to be exercised by Her Majesty by Order in Council. Section 24(2) provides that no recommendation to make an Order in Council under section 3(2) is to be made to Her Majesty in Council unless a draft of the Order has been laid before, and approved by resolution of, the Scottish Parliament. Section 24(2) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Amendment of the Scottish Public Services Ombudsman Act 2002

2. Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (Listed Authorities, Entries Amendable by Order in Council) is amended by omitting the entry relating to the General Teaching Council for Scotland (paragraph 24).

Clerk of the Privy Council

EXPLANATORY NOTE*(This note is not part of the Order)*

This Order amends Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002. Schedule 2 to that Act specifies persons liable to investigation by the Scottish Public Services Ombudsman. The Order removes the General Teaching Council for Scotland from the list of persons specified for this purpose. This is in consequence of the amendments to the functions, constitution and governance arrangements of the General Teaching Council for Scotland made by the Public Services Reform (General Teaching Council for Scotland) Order 2011 (S.S.I. 2011/215).

EXECUTIVE NOTE

**THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002
AMENDMENT (No. 2) ORDER 2012**

SSI 2012/XXX

Powers under which the Instrument is made

1. The Scottish Public Services Ombudsman Act 2002 Amendment (No. 2) Order 2012 (“the Order”) is made in exercise of powers conferred by section 3(2)(b) of the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”) and all other powers enabling Her Majesty to do so.

Parliamentary procedure

2. The Order is subject to the draft affirmative procedure in the Scottish Parliament. After laying in draft, and following approval by resolution of the Parliament, the Order will be made by Her Majesty in Council.

Legislative background

3. Schedule 2 of the 2002 Act lists the persons that are liable to investigation by the Scottish Public Services Ombudsman (“the SPSO”). The General Teaching Council for Scotland (“the GTCS”) is included in Part 2 of Schedule 2 as one of the Scottish public authorities whose entry in the list is amendable by Order in Council.

4. The Scottish Government used legislative powers under the Public Services Reform (Scotland) Act 2010 to establish the GTCS as an independent, profession-led, regulatory body from 2 April 2012. To that end, the Public Services Reform (General Teaching Council for Scotland) Order 2011 (“the 2011 Order”), which was approved by Parliament on 17 March 2011, comes fully into effect on 2 April 2012.

5. By virtue of the 2011 Order, the future functions and governance arrangements of the GTCS will be amended from April 2012 to reflect its new independent status. At the time of the original consultation on the 2011 Order, the SPSO wrote to the Scottish Government suggesting that following its change in status the GTCS should no longer fall within the remit of the SPSO.

Summary of policy objectives

6. The Government concurs with the view that as the independent regulator for the teaching profession in Scotland, it would not be appropriate for the GTCS to remain within the remit of the SPSO on the grounds that any issues relating to teacher professionalism (e.g. decisions taken on awarding teaching standards) should rightly be dealt with by the GTCS without potential recourse to the Ombudsman. Complaints about the behaviour or conduct of a teacher could still be routed to the Ombudsman through the local authority as the teacher's employer and a teacher would retain a right of appeal to the Court of Session against any decision of the GTCS to his or her registration status.

Consultation

7. There is no statutory requirement to consult when using the enabling powers referred to above. However, all relevant organisations were written to by way of informal consultation. The consultation responses either supported the proposal to remove the GTCS from the remit of the SPSO or acknowledged the proposal without comment. One response, however, suggested that the proposal left matters unclear as to whether a complaint about a teacher should be referred to the GTCS or to the SPSO.

8. The Government has written to the stakeholder who raised this matter to clarify the position as set out in paragraph 6 above.

Impact assessments

10. The policy objective underlying the Order is to bring the GTCS into line with other bodies that are independent of Government and therefore do not appear in Schedule 2 of the 2002 Act as public bodies which are liable to be investigated by the SPSO. There is no potential for discrimination or adverse impact on the nine protected characteristics in this policy and it does not lead to different consequences or outcomes for particular groups. There is also no evidence this could discriminate unlawfully directly, or indirectly, against people from particular groups. Therefore an Equality Impact Assessment is not required.

Financial effects

11. The Order will have no financial effects on the Government, local government, business or the GTCS.

Scottish Government
Learning Directorate