

NATIONAL LIBRARY OF SCOTLAND ACT 2012

EXPLANATORY NOTES

THE ACT

Acquisitions, deposits, disposal and loan of objects

Section 3 – Acquisitions, deposits and disposal of objects

21. Subsection (1) empowers NLS to acquire objects and accept objects on deposit to develop the collections (see section 2(2)(a)) and sets out the means by which objects come to be added to or “accessioned” into the collections, namely purchase, exchange, gift and deposit. Deposit is an arrangement where the depositor charges NLS with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between NLS and the depositor.
22. Subsection (2) clarifies that the power in subsection (1) is an additional power, without prejudice to other legislation or rules of law. One means by which objects are accessioned into the collections is legal deposit under the 2003 Act. Acquisitions under the 2003 Act are separate to the ordinary acquisitions and deposits referred to in subsection (1). The 2003 Act positions NLS as a legal deposit library and provides for the delivery of print and, subject to provision made in UK regulations, non-print publications to NLS¹. Legal deposit libraries are sometimes referred to as “copyright” libraries.
23. As mentioned, NLS has the function of preserving and conserving the collections (see section 2(2)(a)). Subsection (3) sets out the circumstances in which NLS may dispose of or “de-accession” an object or objects in the collections.
24. The case for disposal in subsection (3)(a) is that an object is a duplicate of, or similar to, another object in the collections. NLS might, for example, have duplicate objects of those acquired by virtue of legal deposit under the 2003 Act.
25. The case for disposal in subsection (3)(b) is that an object is not required for the purposes of the collections. NLS might, for example, review its collecting strategy and consider that an object is better held elsewhere, for example by a local authority or university library because of the nature of the material.
26. The case for disposal in subsection (3)(c) is that an object has become useless on account of damage, deterioration or infestation by destructive organisms. In such a case, NLS might take the view that the object cannot be usefully conserved and should be deaccessioned.
27. The case for disposal in subsection (3)(d) is that an object is hazardous. In such a case, NLS might take the view that the benefit of keeping the object is outweighed by the risk to persons accessing the collections.

¹ At the time of writing these Explanatory Notes no such regulations are in place but the UK Department for Media, Culture and Sport has consulted on updated draft regulations <http://www.culture.gov.uk/consultations/8878.aspx>.

28. Subsection (3)(e) allows compelling, unforeseen cases for disposal to be accommodated. The safeguard of the agreement of the Scottish Ministers is included. This case for disposal might, for example, arise if a “moral claim” is made for repatriation of an object that NLS has title to and it would be desirable to keep in the collections, but that claim is considered to be compelling.
29. Subsection (4) sets out the means of disposal, namely sale, exchange, gift, return or destruction. It is implicit that selling, exchanging or gifting an object is only possible where NLS holds the object as owner. As mentioned, the owner of an object on deposit is the depositor.
30. Subsection (5) clarifies that the disposal power in subsection (2) is an additional power. NLS has statutory powers of disposal in the [Museums and Galleries Act 1992 \(c.44\)](#) and the [Holocaust \(Return of Cultural Objects\) Act 2009 \(c.16\)](#)² and may in future have power to dispose of non-print legal deposit publications under regulations under the 2003 Act. Implied powers of disposal at common law are also preserved, such as the implied power of NLS to settle a legal claim if it transpires that title to an object is held by another person (see *Attorney-General for England and Wales v Trustees of the British Museum* [2005] EWHC 1089 (Ch)).
31. Subsection (6) provides that NLS’s disposal power in subsection (3) does not apply to non-print publications that might be received by virtue of regulations under the 2003 Act, thus protecting the restriction on disposal of such publications in section 7(2)(f) of that Act.
32. Subsection (7) protects restrictions or prohibitions on disposal that donors have attached to objects in the collections and is intended to serve as a reminder to NLS to check for any such prohibitions or restrictions when considering making any disposal under subsection (3). For example, a condition imposed by Ministers under the acceptance in lieu of tax regime operated under sections 8 and 9 of the [National Heritage Act 1980 \(c.17\)](#) may require that an object does not leave Scotland or the United Kingdom. Prohibitions or restrictions on disposal may only be overridden with the consent of the person having the right to enforce the condition or in cases where the object is damaged and useless (subsection (3)(c)) or hazardous (subsection (3)(d)).

Section 4 – Borrowing and lending of objects

33. Subsection (1) empowers NLS to borrow and accept loans of objects for the purposes of exhibition, study or research.
34. Subsection (2) empowers NLS to lend objects in the collections.
35. Subsection (3) sets out special considerations which NLS must have regard to in deciding whether or not to lend an object, and in determining the period for which and conditions on which the object is to be lent. These include any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified, for example under the Government Indemnity Scheme operated under sections 16 and 16A of the National Heritage Act 1980.
36. Subsection (4) clarifies that the borrowing and lending powers in subsections (1) and (2) are additional powers. NLS may in future have power to borrow and lend non-print legal deposit publications under regulations under the 2003 Act. Subsection (5) provides that NLS’s lending power in subsection (2) does not apply to non-print publications that might be received by virtue of regulations under the 2003 Act, thus protecting the restriction on lending of such publications in section 7(2)(d) of that Act.
37. Subsection (6) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to NLS to check

² The Holocaust (Return of Cultural Objects) Act 2009 expires in 2019, by virtue of the sunset provision in section 4(7) of that Act.

*These notes relate to the National Library of Scotland Act
2012 (asp 3) which received Royal Assent on 21 June 2012*

for any such conditions when considering lending objects under subsection (2). For example, a condition may provide that an object may not be loaned for more than one month in any calendar year. Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite NLS taking all reasonable steps to ascertain them.