

NATIONAL LIBRARY OF SCOTLAND ACT 2012

EXPLANATORY NOTES

THE ACT

Legal publications

Section 5 – Legal publications

38. **Section 5(1)** continues the requirement, first expressed in section 5(2) of the 1925 Act, that print legal publications delivered to NLS by way of legal deposit are sent to the Faculty of Advocates for the purposes of its Law Library¹. When such publications are accepted by the Faculty they become the property of the Faculty. Subsection (2) requires NLS to claim under the 2003 Act any print legal publications that the Faculty wishes to receive.
39. If UK regulations under the 2003 Act provide for the delivery of “off line publications” (such as CD-ROM and microform publications) to NLS, then legal publications in those formats will be covered by section 5(1) of the Act. Off line publications differ from conventional print publications in that they require the intervention of an electronic retrieval system, such as a computer or specialist reader, to access them.
40. Subsection (3) provides that subsection (1) does not apply to on line electronic publications. Subsection (2) does not apply to on line electronic publications because section 5 of the 2003 Act, as referred to in subsection (2), only applies to print publications. “On line electronic publications” has the same meaning as in the 2003 Act (see section 9) and means publications made available by means of the internet, such as websites and e-books. On line electronic publications differ from off line publications in that they are not recorded in any physical form. Subsection (4) provides that any on line electronic publications delivered under regulations made under the 2003 Act are not to be sent by NLS to the Faculty, but instead are to be made available by NLS to the Faculty. See also section 6(1)(e) and (f), under which NLS and the Faculty must make certain arrangements as to electronic publications.
41. Subsection (5) provides that it is for NLS and the Faculty to agree what constitutes a legal publication for the purposes of sections 5 or 6 or the predecessor of section 5 under the 1925 Act. In the event of any dispute as to that matter, the dispute is to be referred to arbitration under the [Arbitration \(Scotland\) Act 2010 \(asp 1\)](#). This provision is required because there is continuing scope for uncertainty as to whether particular publications received by way of legal deposit are or are not legal publications. Arbitrations under the Arbitration (Scotland) Act 2010 engage the Scottish Arbitration Rules, a modern code for non-judicial dispute resolution.

¹ The Faculty Law Library is adjacent to the main National Library of Scotland building but is independently owned and governed. The National Library of Scotland was founded on the gift by the Faculty of its non-legal collections.