

NATIONAL LIBRARY OF SCOTLAND ACT 2012

EXPLANATORY NOTES

THE ACT

General

Section 9 – Interpretation

55. This section defines terms that are used frequently in the Act. The definition of “object” clarifies that NLS may hold electronic objects.

Section 10 – Consequential modification of enactments and repeals

56. Subsections (1) and (5) introduce schedule 2 (modifications of enactments) and schedule 3 (repeals).
57. Subsections (2) to (4) empower the Scottish Ministers to make incidental or consequential provision by order and provide that such an order is subject to the affirmative procedure if it modifies primary legislation (an Act of Parliament or Act of the Scottish Parliament)¹.

Section 11 – Subordinate legislation

58. This section provides that orders made by the Scottish Ministers under the Act are subject to the negative procedure, except in the case referred to in section 10(4) – where the affirmative procedure applies – and the case referred to in section 12(3) – where only the default laying requirement applies².

Section 12 – Commencement

59. Subsections (1) and (3) have effect that the Act is to come into force on such day or days as the Scottish Ministers may by order appoint, except sections 11, 12 and 13 which come into force on the day after Royal Assent. Subsection (4) provides that a commencement order may include transitional, transitory or saving provision. Subsection (2) brings the transitory provision in paragraph 1 of schedule 2 into force automatically 2 months from Royal Assent.

Section 13 – Short title

60. This section sets out the short title of the Act.

¹ For the meaning of “affirmative procedure” see section 29 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#) (asp 10).

² For the meaning of “negative procedure” see sections 28 of the Interpretation and Legislative Reform (Scotland) Act 2010. “Default laying requirement” means the requirement in section 30 of that Act.

Schedule 1 – NLS

Paragraph 1 – Status

61. NLS, as governing body of the institution of the National Library of Scotland, is a body corporate. NLS is not a Crown body and therefore does not have any of the special privileges of the Crown.

Paragraph 2 – Membership

62. The board of NLS is to consist of a chairing member and not fewer than 8 nor more than 13 other members. All board members are to be appointed by the Scottish Ministers, and one of those members is to be selected from persons nominated by the Dean of the Faculty of Advocates. Sub-paragraph (4) clarifies that members of The Trustees of the National Library of Scotland under the 1925 Act cease to hold office unless they are appointed under paragraph 2.
63. Sub-paragraph (3) gives the Scottish Ministers power to substitute by order different minimum or maximum numbers of members in sub-paragraph (1)(b).

Paragraph 3 – Persons disqualified from membership of NLS

64. Members of the House of Commons (MPs), Members of the Scottish Parliament (MSPs) and Members of the European Parliament (MEPs) are disqualified from appointment and from holding office as members of NLS.

Paragraph 4 – Removal of members

65. The Scottish Ministers have the power to remove a member of NLS from office if they are satisfied that the member is insolvent (see sub-paragraph (2)), has been absent from 3 consecutive meetings without permission or is otherwise unfit or unable to discharge the functions of being a member. Whilst NLS has charitable status, a member of NLS who becomes disqualified from being a charity trustee within the meaning of section 69 of the [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#) would be unfit to discharge the functions of being a member of NLS.

Paragraph 5 – Remuneration, allowances and expenses of members

66. NLS is to pay to its members any remuneration, allowances and expenses determined by the Scottish Ministers.

Paragraph 6 – Chief executive and other staff

67. The most senior member of staff of NLS under the 1925 Act is the National Librarian. This post is to be known as chief executive and the first chief executive is to be the Librarian in post immediately before paragraph 6 comes into force (see subparagraphs (1) to (4)). Subsequent chief executives are to be employed, with the approval of the Scottish Ministers, on terms and conditions determined by NLS and approved by Ministers (see sub-paragraph (5)). The chief executive may not be a member of NLS (see sub-paragraph (2)).
68. NLS may appoint employees on terms and conditions determined by NLS and approved by the Scottish Ministers (see sub-paragraphs (6) and (7)). The existing staff of NLS will continue in post under their existing terms and conditions.
69. Sub-paragraphs (8) and (9) give NLS power to arrange, with the approval of the Scottish Ministers, for pensions, allowances or gratuities for its staff.

Paragraph 7 – Committees

70. NLS may establish committees for any purpose relating to its functions and determine the composition of such committees. NLS may appoint persons who are not members of NLS to be non-voting members of a committee. A committee of NLS must comply with any directions of NLS.

Paragraph 8 – Procedure and meetings

71. NLS determines its own procedure and the procedure of its committees. Sub-paragraph (2) allows for attendance at NLS and committee meetings by non-voting representatives, namely members of the Scottish Government, persons authorised by the Scottish Ministers³ or the Dean of the Faculty of Advocates (or a person authorised by the Dean).

Paragraph 9 – Delegation of functions

72. NLS may delegate its functions to the chief executive, any other employee or any of its committees. Sub-paragraph (2) provides that the power of delegation does not apply to certain functions relating to reports and financial matters.

Paragraph 10 – Validity of proceedings and actions

73. The validity of any proceedings or actions of NLS or its committees is not affected by any irregularity in the membership of NLS or its committees.

Paragraph 11 – General powers

74. Sub-paragraph (1) gives NLS wide power to do anything related to the exercise of its functions and sub-paragraph (2) sets out specific powers of NLS. NLS's powers to acquire and dispose of interests in land and to borrow money from persons other than the Scottish Ministers are subject to the approval of the Scottish Ministers. See also paragraph 13(4) which empowers NLS to publish reports and information on matters relevant to its functions as it considers appropriate.

Paragraph 12 – Accounts

75. NLS must manage its financial accounting and comply with any accounts directions given by the Scottish Ministers. NLS must send its annual statement of accounts to the Auditor General for Scotland for auditing.

Paragraph 13 – Reports

76. NLS is to prepare and publish an annual report which is to include a copy of NLS's audited statement of accounts. A copy must be sent to the Scottish Ministers, who must lay it before the Scottish Parliament.

Schedule 2 – Modifications of enactments

77. [Schedule 2](#) modifies specified enactments in consequence of the Act.
78. [Part 1](#) provides for the transitory modification of the 1925 Act to allow the Scottish Ministers to appoint a person as the chairman of The Trustees of the National Library of Scotland, pending the repeal of that Act on commencement of schedule 3.
79. The modifications in Part 2 principally reflect the renaming of the governing body in section 1(1) but the modification in paragraph 2 is to reflect that grant-in-aid will be

³ The Scottish Ministers is the collective name for the members of the Scottish Government under section 44(2) of the [Scotland Act 1998 \(c.46\)](#).

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

paid to NLS through the mechanism in section 7 of the Act and not through section 22 of the [National Heritage \(Scotland\) Act 1985 \(c.16\)](#).

Schedule 3 – Repeals

80. [Schedule 3](#) repeals specified enactments in consequence of the Act. The 1925 Act is repealed in full, subject to the savings provisions in sections 5(5)(b) and 6(3).