

NATIONAL LIBRARY OF SCOTLAND ACT 2012

EXPLANATORY NOTES

THE ACT

The National Library of Scotland

Section 1 – The National Library of Scotland

7. This section renames the governing body called “The Trustees of the National Library of Scotland” as “The National Library of Scotland”, in English, and “Leabharlann Nàiseanta na h-Alba”, in Gaelic. “NLS” is used in these Explanatory Notes and in the Act as short-hand for the governing body. This provision reflects the fact that the governing body has for some time operated with the corporate identities “The National Library of Scotland” and “NLS”. Schedule 1 makes detailed provision about the governance of NLS.

Functions of NLS

Section 2 – Functions of NLS

8. This section continues as the general function of NLS the function of managing the library known as the National Library of Scotland. This function was first established in section 1(1) of the 1925 Act. The institution of the National Library of Scotland is a reference and research library, as distinct from a lending library, acting as a national resource for amongst other things bibliography (the study of books). The reference to particular regard to Scotland reflects that the institution of the National Library of Scotland is an international centre for the study of Scotland and the Scots and a resource for Scotland’s research community.
9. Subsection (2) lists specific functions of NLS to expand on the general function.
10. Subsection (2)(a) gives NLS the function of preserving, conserving and developing its collections. The collections are the sum-total of objects held by NLS. NLS acquires objects through the means referred to in section 3 and also by means of legal deposit under the 2003 Act. NLS might, for example, exercise these functions by engaging specialist conservator-restorers to maintain or bring objects in the collections to a good condition, and by maintaining a collecting strategy for the future development of the collections.
11. Subsection (2)(b) gives NLS the function of making the collections accessible to the public, and also to students and researchers for their special interests. NLS might, for example, exercise these functions by making reading rooms available so that objects in the collections can be brought to persons wishing to consult them¹. Accessibility is not restricted to physical access and includes making the collections available on line to users.

¹ The National Library of Scotland is generally “closed-stack”, which means that objects must be requested from staff and taken by those staff from secure storage areas.

12. Subsection (2)(c) gives NLS the function of exhibiting and interpreting objects in the collections. NLS might, for example, exercise these functions by organising a public display of objects on a particular theme or topic, and developing audio, visual or audiovisual aids to support those wishing to understand the context and cultural significance of an exhibition. NLS might seek the loan of objects in another body's collections to support a particular exhibition (see section 4). This function may also be delivered through on line means.
13. Subsection (2)(d) gives NLS the function of promoting collaboration and the sharing of good practice with and between other persons providing library and information services, such as local authorities. NLS must also promote the adoption of good practice by those persons. NLS might, for example, exercise these functions by offering advice on the conservation of delicate objects.
14. Subsection (3) lists objectives that NLS must seek to achieve in exercising its general and specific functions.
15. Subsection (3)(a) gives NLS the objective of encouraging education and research. In pursuit of this objective NLS might, for example, make arrangements with universities and colleges so that students are aware of the unique resources within NLS's collections.
16. Subsection (3)(b) gives NLS the objective of promoting understanding and enjoyment of the collections. An example of this might be using on line services as a way to inform new audiences about the range of its collections and, through display and interpretation, promoting greater engagement with the public.
17. Subsection (3)(c) gives NLS the objective of promoting the diversity of persons accessing the collections, for example, by digitising paper resources so that they can be accessed outwith NLS's properties.
18. Subsection (3)(d) gives NLS the objective of contributing to understanding of Scotland's national culture. Scotland's national culture in this paragraph means Scotland's distinctive way of life as a whole, and not only artistic and cultural output. NLS might, for example, hold public lectures and promote new publications on specific aspects of Scottish culture.
19. NLS also exercises functions separately to the Act. NLS claims and receives publications under the 2003 Act, receives copies of registers of electors and makes them available for inspection² and receives print copies of Scottish Statutory Instruments³.
20. Subsections (4) and (5) require NLS to provide the Scottish Ministers with any advice, information and assistance they require (and in the manner they require it) in relation to NLS's functions. NLS may at any other time provide such advice as it considers appropriate.

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.

² Under the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497 (S. 2) as amended by S.I. 2006/834 (S. 9)) and the Representation of the People (England and Wales) Regulations 2001 (S.I. 2001/341 as amended by S.I. 2006/752).

³ Under the Scottish Statutory Instrument Regulations 2011 (S.S.I. 2011/195).

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

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 NLS⁴. 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.
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 \(c.16\)](#)⁵ 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.

⁴ 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>.

⁵ The Holocaust (Return of Cultural Objects) Act 2009 expires in 2019, by virtue of the sunset provision in section 4(7) 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 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.

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 Library⁶. 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.

⁶ 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.

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.

Joint arrangements etc. between NLS and the Faculty

Section 6 – NLS and the Faculty: joint arrangements etc.

42. This section requires NLS and the Faculty to continue maintaining arrangements for the management and interaction of their libraries and collections of publications⁷. The detail of these arrangements is to be agreed between NLS and the Faculty and it is open to the parties to agree exceptions to access. Subsection (1) replaces section 6 of the 1925 Act, in which the Faculty’s collections of legal publications are referred to as “books contained in the Faculty’s Law Library”.
43. Subsection (1)(a) requires there to be arrangements as to co-operation in relation to NLS’ collections and the Faculty’s collections of legal publications. These might include provisions for the rejection by the Faculty of legal publications sent to it that it does not wish to hold. These might also include provisions for the depositing of Faculty-owned publications in NLS storage areas.
44. Subsection (1)(b) requires there to be arrangements as to the consultation of objects in NLS’s collections by members of the Faculty. These might include allowing Faculty members (advocates) to access NLS objects in the Faculty Library instead of in NLS’s reading rooms.
45. Subsection (1)(c) requires there to be arrangements as to the consultation of objects in the Faculty’s collections of legal publications by users of NLS’s collections. Arrangements might include allowing users of NLS to access Faculty publications in NLS’s reading rooms.
46. Subsection (1)(d) requires there to be arrangements as to the conservation and preservation of legal publications. Arrangements might include regular meetings concerning best practice in the storing of legal publications in print and non-print format.
47. Subsection (1)(e) requires there to be arrangements as to the legal publications which are electronic publications which NLS is to request under regulations made under the 2003 Act. Electronic publications in this paragraph includes both on line and off line

⁷ Memoranda of Agreement between NLS and the Faculty were entered into on 22 December 2011 and are published at <http://www.nls.uk/collections/british/historical>.

electronic publications. Arrangements might include a collecting policy for acquiring legal websites and blogs through harvesting.

48. Subsection (1)(f) requires there to be arrangements for the making available to the Faculty of on line electronic legal publications delivered to NLS under regulations made under the 2003 Act. Such arrangements would have to be compatible with the 2003 Act regulations and copyright law. The sending of conventional publications and off line electronic publications to the Faculty is provided for in section 5(1).
49. Subsection (2) provides that arrangements entered into between NLS and the Faculty may contain provision about charging. It is implicit that such provision may only be included if NLS and the Faculty both agree to it.
50. Subsection (3) preserves the special dispute resolution mechanism in section 3(4) of the 1925 Act if there are any disputes as to which objects transferred from the Faculty to NLS on 26 October 1925, the date on which the 1925 Act came into force. This provision is required because there is continuing scope for uncertainty as to which particular objects did and did not transfer to NLS in 1925. This mechanism is not relevant to any dispute concerning publications received subsequently to 26 October 1925 by way of legal deposit (any such dispute being settled instead in accordance with section 5(5)).

Grants and loans

Section 7 – Grants and loans

51. Subsections (1) to (3) allow the Scottish Ministers to make grants to NLS, for example grant-in-aid and grants for particular purposes, subject to such terms and conditions as the Scottish Ministers think fit.
52. Subsections (4) and (5) allow NLS to make grants and loans in furtherance of its functions, subject to such terms and conditions as it thinks fit.

Directions and guidance

Section 8 – Directions and guidance

53. This section gives the Scottish Ministers power to give written directions to NLS as to the exercise of its functions. Directions may not be given as regards NLS's specific functions in section 2(2)(a) to (c), NLS's objectives in section 2(3)(a), (b) or (d) or as regards acquisitions, deposits, disposal, borrowing or lending (of objects), legal deposit or grants and loans (of money). Subsection (4) requires any directions to be given in writing, while subsection (5) provides that directions may be varied or revoked by the Scottish Ministers.
54. Subsection (3) requires NLS to comply with any directions given to it by the Scottish Ministers under section 8 and to have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

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)⁸.

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 applies⁹.

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.

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

⁸ For the meaning of “affirmative procedure” see section 29 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#).

⁹ 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.

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 Ministers¹⁰ 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

¹⁰ 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*

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 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).