



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Education and Culture Committee**

### **4th Report, 2012 (Session 4)**

### **Stage 1 Report on the National Library of Scotland Bill**

**Published by the Scottish Parliament on 8 March 2012**



The Scottish Parliament  
Pàrlamaid na h-Alba

## Education and Culture Committee

### 4th Report, 2012 (Session 4)

## CONTENTS

### Remit and membership

<b>Main Report</b>	<b>1</b>
Introduction	1
Governance arrangements	2
The appointments process	2
Board size	3
The functions of the NLS	5
The power of direction	5
Charging for services	8
Charitable status and measuring success	10
Relationship with the Faculty of Advocates	10
Other issues	11
Legal deposit of digital material	11
Policy Memorandum and subordinate legislation	12
Conclusions	12
<b>Annexes</b>	<b>13</b>



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Education and Culture Committee**

### **Remit and membership**

#### **Remit:**

The remit of the Committee is to consider and report on further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture and External Affairs.

#### **Membership:**

Clare Adamson  
Marco Biagi  
Neil Bibby  
Neil Findlay (Deputy Convener)  
Stewart Maxwell (Convener)  
Joan McAlpine  
Liam McArthur  
Liz Smith  
Jean Urquhart

#### **Committee Clerking Team:**

##### **Senior Assistant Clerk**

Terry Shevlin

##### **Assistant Clerk**

Neil Stewart

##### **Committee Assistant**

Jonas Rae



The Scottish Parliament  
Pàrlamaid na h-Alba

## Education and Culture Committee

### 4th Report, 2012 (Session 4)

#### Stage 1 Report on the National Library of Scotland Bill

The Committee reports to the Parliament as follows—

#### INTRODUCTION

1. The National Library of Scotland Bill (“the Bill”) was introduced to the Scottish Parliament on 26 October 2011.<sup>1</sup>
2. The accompanying Policy Memorandum states that the Bill will—
  - “Bring the National Library of Scotland’s governance arrangements, enacted in 1925, into line with those of many other public bodies ...
  - Provide the basis to enable the National Library of Scotland to continue to evolve and realise its ambitions as a modern organisation.
  - Provide clarity as to the functions of the National Library of Scotland; update arrangements for the relationship with the Faculty of Advocates and its Library; set out the powers available to the National Library of Scotland and in particular how it manages its collections through acquisitions, deposits, disposals and loans.
  - Recognise the importance of the National Library of Scotland and the national collections it holds on behalf of the people of Scotland.”<sup>2</sup>
3. The Bill can be seen as having two primary aims: to modernise the NLS’s governance arrangements and to set out its functions in statute.
4. From the outset, the Committee wishes to make clear that it is content with the general principles of the Bill and considers that it should proceed to Stage 2 of the parliamentary scrutiny process. In particular, the Committee believes that the

<sup>1</sup> Throughout this report the National Library of Scotland is referred to as the “NLS” or “the Library”.

<sup>2</sup> National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 2. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

legislation provides a long-overdue overhaul of the NLS's existing governance arrangements, which are unwieldy for a modern day organisation. The Committee also considers that setting out the NLS's functions in statute provides a useful public statement of the main aims of one of Scotland's key cultural institutions. That said, the Committee does have a number of specific concerns about these two areas, which are set out in detail in the following sections and which will inform the Stage 1 chamber debate on the Bill. The report also discusses some other issues considered by the Committee at Stage 1, including the Library's relationship with the Faculty of Advocates.

5. The Committee would like to thank all those organisations and individuals who provided written and oral evidence. Six written submissions were received, while the Committee took oral evidence from the Scottish Government Bill Team, the Faculty of Advocates, the Scottish Library and Information Council, and the National Library of Scotland<sup>3</sup> on Tuesday 7 February 2012, and from the Cabinet Secretary for Culture and External Affairs, Fiona Hyslop, on 21 February 2012.
6. In addition, the Committee would like to thank the NLS for organising a private visit by members to the Library, and SPICe for preparing a briefing on the Bill.

#### GOVERNANCE ARRANGEMENTS

7. Currently, under the National Library of Scotland Act 1925, the NLS board can have as many as 32 members. The Policy Memorandum states that this arrangement is "too big and unwieldy when compared to the size of more modern public bodies"<sup>4</sup> and proposes a new board of between 7 and 14 members, including a chair.
8. The Bill also seeks to remove the ex-officio and reserved places provided for in the 1925 Act. For example, the current NLS board contains 11 ex-officio members, while places are also reserved for particular organisations and people; the Faculty of Advocates, Scottish universities and local authorities are all able to appoint a number of members.
9. The Scottish Government considers that the proposed reforms to the board will enable the NLS "to further develop its corporate strategy and fulfil its functions".<sup>5</sup>

#### **The appointments process**

10. While the Bill does not set out the precise skills that new board members would be required to have, the Policy Memorandum states—

---

<sup>3</sup> The Committee took evidence from both the National Librarian/ Chief Executive and the current Chairman of the Board of Trustees ("the chair").  
Scotland.

<sup>4</sup> National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 21. Available at:  
[http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

<sup>5</sup> National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 20. Available at:  
[http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

“The Government expects that NLS will be led by a diverse group of people who between them have a broad knowledge of the areas in which the NLS operates – for example, local authorities and universities who also operate library and information services – as well as others who use the NLS, in addition to the wider mix of skills required for a public body such as corporate governance, business and finance.”<sup>6</sup>

11. Scottish Ministers will appoint the NLS board, in compliance with public appointments procedures regulated by the Public Appointments Commissioner for Scotland. Scottish Ministers will also determine the terms and conditions of board members, including the period of appointment.

### **Board size**

12. In taking oral evidence, the Committee concentrated on the proposed size of the new board.

13. There was unanimous agreement amongst the organisations that provided oral evidence that the proposed lower limit for the board was too small. For example, the current chair of the NLS board considered that seven members would not be sufficient to cover the range of skills and stakeholder interests required for an effective board, given the Library’s diversity. He also pointed out that while additional skills could be brought in through committees, this would be more difficult with a smaller board. In conclusion, he considered that the ideal board size would be 12 or 13 members<sup>7</sup>. The NLS’s chief executive, meanwhile, stressed the need for continuity during the process of transition to the new board to ensure that the Library was able to continue to deliver its functions effectively.<sup>8</sup>

14. The Committee questioned Scottish Government officials and the Cabinet Secretary as to why the board size could be as low as seven people. Scottish Government officials pointed out that the Bill provides for flexibility in increasing by order the minimum number of seven members, and that experts who are not members of the NLS could be co-opted on to committees. They also made clear that the size of the body is actively being considered by the Scottish Government.<sup>9</sup>

15. The Cabinet Secretary reiterated in oral evidence that, in response to stakeholders’ concerns, she was open-minded about increasing the minimum size of the board, from seven to nine. Ms Hyslop reassured the Committee that “the size of most boards is rarely at the low end” and pointed out that—

“The current structural shift in the boards of cultural bodies has been more towards governance, accountability and leadership. We do not necessarily want people protecting and promoting their own area of expertise at the expense of

---

<sup>6</sup> National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 26. Available at: [http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

<sup>7</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 700.

<sup>8</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 703.

<sup>9</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 691.

everything else ... That is why we are increasingly seeing fewer designated places for particular representative groups on boards of management.”<sup>10</sup>

16. While the Cabinet Secretary was open-minded about the issue of the minimum board size, she was reluctant to see a similar increase in the maximum board size, pointing out that larger boards could become “less focused”. She also made the general point that the Scottish Government “is not in favour of large boards”.<sup>11</sup>
17. In terms of the transition to the new arrangements, Scottish Government officials considered that a small number (about four) of existing trustees might be able to form the nucleus of the new body.<sup>12</sup>
18. **The Committee agrees with the concerns expressed by the NLS and other relevant organisations with expertise in this area, that a board comprising seven members would be too small. The Committee is not in a position to state what the optimum board size would be, however, it seeks an assurance from the Scottish Government that it will fully consult all relevant parties, particularly the NLS, before agreeing on a final number. The Committee also notes the Scottish Government’s presumption against large boards, but considers that the salient factor in determining the final size of the NLS’s board should be ensuring that the Library has the people it requires in order to function most effectively.**

*Cost of appointing the board*

19. The Committee is required to report on the Financial Memorandum (FM) that accompanies the Bill. As the only significant financial issue relates to the costs of appointing the board, it is helpful to present the Committee’s views on the FM in this section.
20. According to the FM the costs associated with the Bill are minimal. No additional Scottish Government funding is required to enable NLS to implement the functions set out in the Bill, while costs associated with the recruitment process to the new board (a maximum of £22,000 over a three year period) can be absorbed within existing Scottish Government budgets. Further, the Scottish Government’s current policy is not to remunerate NLS board members.<sup>13</sup>
21. The Finance Committee has a defined role to play in scrutinising the costs associated with all bills and has established a hierarchy of scrutiny according to how great such costs are. In this case, the Finance Committee adopted the most basic level of scrutiny, which involves inviting relevant organisations’ views on the FM and then forwarding these to the lead committee.
22. The Finance Committee received written evidence from the Public Appointments Commissioner in Scotland and the NLS. The Commissioner’s response stated

---

<sup>10</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 733.

<sup>11</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 734.

<sup>12</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 703.

<sup>13</sup> National Library of Scotland Bill. Explanatory Notes (and other accompanying documents) (SP Bill 2-PM, Session 4 (2012)). Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

that, contrary to the Financial Memorandum, it would incur some costs as a result of the Bill. These costs relate to its scrutiny of the new board recruitment process and would amount to approximately £3,500 for the first set of appointments.<sup>14</sup> The NLS submission similarly makes clear that it will face costs that are not discussed in the FM, namely the costs of recruiting a new Chair and other members of the revised Board. The NLS's submission states that this will "present some challenges" but that the costs can be absorbed.<sup>15</sup>

**23. The Committee understands that there will inevitably be costs associated with the transition to the new board and appreciates the fact that these appear to have been kept to a minimum. That said, the Committee is concerned that some costs associated with the Bill, albeit that they are minimal, were not fully set out in what should have been a comparatively straightforward FM to produce.**

#### THE FUNCTIONS OF THE NLS

24. Section 2 of the Bill sets out the NLS's general and particular functions, and the objectives it must seek to achieve in exercising these functions. The chair of the NLS board made the point that defining the functions in statute would not make much difference "because we do these things already"<sup>16</sup>. The Policy Memorandum notes that the Government "has taken the opportunity to consider functions that are outward and outcome focused".<sup>17</sup>

#### **The power of direction**

25. In taking evidence on the NLS's functions, the main issue pursued by the Committee concerned the Scottish Ministers' powers to give NLS directions as to the exercise of certain of its functions.

26. The Scottish Government launched a consultation on the role and governance of the National Library of Scotland in March 2010, in which various respondents expressed concern about the power of direction as originally envisaged. The Policy Memorandum explains that the Bill now contains a "qualified Ministerial power of direction" and stresses that this is designed to respect NLS's curatorial and cultural judgement. It goes on to discuss the areas where Ministers will be unable to give direction but does not actually set out the areas where the power could be used, an issue that the Committee explored in some depth.

27. The ministerial power of direction in the Bill extends to the following NLS functions—

---

<sup>14</sup> Office of the Commissioner for Public Appointments in Scotland. Written submission to the Finance Committee.

<sup>15</sup> National Library of Scotland. Written submission to the Finance Committee.

<sup>16</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 711.

<sup>17</sup> National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 16. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

- “promoting collaboration between, and the adoption and sharing of good practice by, other persons providing library and information services” (section 2(2)(d)); and
- “promoting the diversity of persons accessing the collections” (section 2(3)(c)).

28. In oral evidence, the NLS chief executive made clear his opposition to the principle of ministerial direction over the Library but also acknowledged that the settlement arrived at in the Bill was acceptable—

“Given the organisation’s responsibilities as a charity, the responsibilities of its board of trustees, my responsibilities as chief executive and accountable officer to the Scottish Government and our responsibility to report to the Scottish Parliament, we took the view that, with our very strong monitoring of the public resources that the library receives, we would not require additional direction. The fact that a very strong framework is already in place adds to our regret about the power of direction but, taking a pragmatic view, we think that, if there is to be such a power, the provision in the bill strikes a reasonable balance.”<sup>18</sup>

29. He added that “we think that the protections covering the National Library’s functions and what it exists to do are protected from ministerial direction”.<sup>19</sup>

30. The Committee asked the chief executive for his views on the specific areas where the Scottish Ministers could intervene i.e. promoting collaboration and promoting diversity. In response, he said that he did not “know fully” why there was an exemption in these areas. He added that he was “comfortable” about the provision relating to promoting diversity, as it effectively duplicated existing equalities obligations, but could not immediately think of an area in which the promoting collaboration direction would apply.<sup>20</sup>

#### *Using the power of direction*

31. In oral evidence, the Cabinet Secretary explained the general underlying principle behind the need for a ministerial power of direction—

“When an institution is funded from taxpayers’ money, it must be accountable to the taxpayer for ensuring that that money is spent wisely, and for its management and governance of the institution. That must be balanced with the institution’s artistic or—as in this case—curatorial responsibility and its freedom to ensure that it looks after our great cultural assets for the nation.”<sup>21</sup>

32. Scottish Government officials explained in general terms when Ministers may seek to use a power of direction—

“In essence, the statutory power of direction in relation to public bodies is very much a last resort. The thinking behind it is that it is to allow ministers to step in if they consider it appropriate to do so in the event of serious operational or

---

<sup>18</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 705.

<sup>19</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 705.

<sup>20</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 706.

<sup>21</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 736.

organisational failure: in other words, when something has gone seriously wrong and all other attempts to resolve the matter without use of the statutory power have been unsuccessful.”<sup>22</sup>

33. Officials went on to provide a hypothetical example of where the power could be used in relation to the NLS—

“The Government has, for example, a policy of no compulsory redundancies across the public sector, including public bodies for which the Government is responsible. It is entirely hypothetical to say that the power over the National Library could be used in relation to that policy, although it is the sort of general Government policy that applies to a group of public bodies.”<sup>23</sup>

34. In her oral evidence, the Cabinet Secretary went on to state that the power of direction “can be used only in relation to overall management of the organisation”, a point that is not obvious from the Bill.<sup>24</sup>

#### *Promoting collaboration*

35. On the specific issue of promoting collaboration, an area where ministerial direction is expressly permitted, the Committee questioned whether this power could have a knock-on impact on those NLS functions that are not captured by the power of direction. The Cabinet Secretary confirmed that such a situation would not arise—

“Section 8(2)(a) stipulates matters on which I am not allowed to provide ministerial direction. It is clear that anything that would compromise curatorial functions is not allowed; so if we want to promote collaboration or the sharing of good practice, we can do that, but if that were to compromise exhibitions, interpretations and so on, my decisions could go to review and they could be deemed to have been illegal. There is a counterbalance for both sides, which is what we sought to achieve.”<sup>25</sup>

36. The Cabinet Secretary also went on to imply that she would, in any case, be unlikely to issue the power of direction relating to collaboration—

“We are well on the way with the collaboration agenda ... However, I do not necessarily see that agenda as being a matter for ministerial direction ... I do not think that using it [ministerial direction] would be a very wise thing to do, because it is a backstop as opposed to an action to make things happen proactively.”<sup>26</sup>

37. The Cabinet Secretary said she could not recall having used her ministerial power of direction for any bodies for which she had had responsibility. Scottish

---

<sup>22</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 693.

<sup>23</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 693.

<sup>24</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 737.

<sup>25</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 739.

<sup>26</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 741.

Government officials subsequently confirmed in supplementary written evidence that no ministerial power of direction had been given to a cultural public body.<sup>27</sup>

- 38. The Committee considers that the use of the ministerial power of direction is one of the more contentious issues in the Bill and has therefore explored this matter in some depth. Having done so, the Committee is of the opinion that the precise nature of the powers, when they could be used and how they would inter-relate with other functions over which ministers have no power, should have been far more clearly explained in the Bill's accompanying Policy Memorandum. There is no explanation of why promoting collaboration and diversity have been exempted, or of the type of action that could be carried out under these headings. Given the NLS's general reservation about the power of direction, it is also of some concern that the chief executive of the NLS did not know why there were exemptions in terms of collaboration and diversity.**
- 39. The Committee understands why it might be helpful to the Cabinet Secretary to retain a power of direction in the event of any future unforeseen circumstance. However, the Committee notes both the NLS's view that it is difficult to envisage when the power relating to collaboration would be used and the Cabinet Secretary's suggestion that she would be unlikely to use it.**
- 40. While the Bill sets out the specific areas in which the ministerial power of direction could be used – with regard to promoting collaboration and diversity – the Scottish Government's oral evidence discussed much broader areas, such as the overall management of the NLS. The Committee considers that the Scottish Government must provide, in advance of Stage 2, clearer justification for including the ministerial power of direction in the Bill, and an explanation as to how the Bill could more accurately state how and when the power of direction could be used. Given the NLS's concerns, the Cabinet Secretary should also confirm that she or her officials have held discussions with the NLS to provide clarity about the nature and extent of the powers of direction, particularly on collaboration.**

### **Charging for services**

- 41. In oral evidence, the Cabinet Secretary restated the Scottish Government's commitment to the principle of free access to the NLS. However, the Committee discussed this issue at length, as the Bill states that the NLS may make charges for access to its collections, which caused some concern in oral evidence. For example, the Scottish Library and Information Council cautioned that—**

**“We must be absolutely clear that proper procedures are in place to ensure, for example, that charging for access to the library to access a book or collection is not taken as a given. The library might need to charge for some things, but we must ensure that it does not charge for that basic provision.”<sup>28</sup>**

---

<sup>27</sup> Scottish Government. Supplementary written submission.

<sup>28</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 704.

42. The Library's chief executive echoed the Cabinet Secretary's commitment to free access to the NLS, although he did go on to say that while exhibitions were free at the moment "it may be appropriate at certain points to charge for them".<sup>29</sup>
43. Scottish Government officials reassured the Committee that the NLS's proposed power to make charges (as set out in paragraph 11 of schedule one) would effectively be constrained by the over-arching functions set out for the Library in section two of the Bill. To clarify, the NLS's particular function of making its collections accessible to the public could not be jeopardised by the separate power it has to make charges for accessing the collections.
44. Officials did confirm that the Library may legitimately seek to charge for an "added-value service" where there was an extra cost involved in providing a particular item, for example, charging users for "digitisation on demand" when content had not been made electronic or for the production of high resolution maps if these were not available as part of the NLS's existing collections<sup>30</sup>. Even in such circumstances, however, officials stated that, under the Scottish public finance manual, if new charges were proposed, they would have to be agreed by the relevant Scottish Government directorate and by ministers<sup>31</sup>. A further check on the Library's power to charge is that, under relevant charity legislation, it must fulfil its charity tests, which include providing a public benefit.
45. The issue of charging, and the NLS's powers more generally, also overlaps with the discussion on the ministerial power of direction set out above. Schedule one, paragraph 11 sets out the NLS's general powers and states, to paraphrase, that these are to be used in connection with the exercise of its functions.
46. The Committee asked the Cabinet Secretary to clarify the relationship between the ministerial power of direction and the NLS's general powers. Ms Hyslop responded as follows—
- "NLS must have regard to its functions when exercising any of its powers in schedule 1, paragraph 11 (1) and (2). The powers can in principle be directed on by Scottish Ministers, subject to the restrictions in section 8(2). A power of direction would only be used after careful consideration and as a means of last resort. Scottish Ministers would need to be satisfied that all other requirements and controls, as set out in the SPFM [Scottish Public Finance Manual] and the Memorandum to Accountable Officers, had been exhausted."<sup>32</sup>
- 47. The Committee welcomes the Cabinet Secretary's restated commitment to the principle of free access to the national library. The Committee accepts that there may be occasions where the NLS can legitimately charge for added value functions, and welcomes the fact that there are safeguards provided on this power.**

---

<sup>29</sup> Scottish Parliament Education and Culture Committee. Official Report, 7 February 2012, Col 708.

<sup>30</sup> Scottish Government. Supplementary written submission.

<sup>31</sup> The Scottish Government confirmed in supplementary written evidence that the Scottish Public Finance Manual (SPFM) has the legal status of "applicable guidance" issued by the Scottish Ministers, as referred to in the Public Finance and Accountability (Scotland) Act 2000.

<sup>32</sup> Scottish Government. Supplementary written submission.

**48. The Committee notes the Scottish Government's comments about the relationship between the ministerial power of direction and the NLS's powers. The comments that the Committee has made above in relation to the power of direction generally apply equally here.**

#### **Charitable status and measuring success**

49. There are two related points on the NLS's functions that the Committee wishes to discuss briefly in this section.

50. Some respondents to the Scottish Government's earlier consultation on the NLS (see paragraph 26) expressed concern that the power of direction may jeopardise the NLS's charitable status. This was due to the fact that, under the Charities and Trustee Investment (Scotland) Act 2005, there is a "charity test" that requires a body's constitution not to be directed or controlled by Scottish Ministers.

51. The Policy Memorandum makes clear that this requirement was disapplied by the Charity Test (Specified Bodies) (Scotland) Order 2006 and that the Bill's inclusion of a power of direction is therefore compatible with charitable status. **The Committee discussed this issue with Scottish Government officials and other witnesses, and is satisfied with the assurance that the powers of direction contained in the Bill will not jeopardise the Library's charitable status.**

#### *Measuring success*

52. As the Bill sets out for the first time in statute the functions of the Library, the Committee questioned how its success in achieving these functions would be measured. The Cabinet Secretary explained that the NLS will produce a corporate plan that will set out what it is trying to do and how it will measure its success.

**53. The Committee welcomes the Bill's statement of the NLS's functions. This provides clarity on the roles that the NLS is expected to undertake and helps to encourage a degree of public accountability in ensuring that these functions are delivered.**

#### **Relationship with the Faculty of Advocates**

54. The NLS has a close and long-standing relationship with the Faculty of Advocates ("the Faculty"). Indeed, between 1842 and 1925 the Advocates Library held sole right of legal deposit for Scotland, and effectively gifted its collection of non-legal books to the NLS in 1925. While the 1925 Act ensured that the NLS held the right of legal deposit for Scotland for both legal and non-legal publications, the Act required the NLS to pass all legal publications to the Advocates Library.

55. The Bill does not seek to alter these arrangements. However, there is an issue involving the NLS and the Faculty, concerning electronic legal deposit, that was discussed in oral evidence and on which the Cabinet Secretary said she may return with possible amendments at Stage 2. In brief, the Faculty and the NLS discussed the most appropriate means of establishing a process by which the NLS would be able to furnish the Faculty with the electronic legal publications it required. **The Committee notes and appreciates that the two organisations**

**are attempting to resolve this issue in an amicable manner and, more broadly, that neither institution considers that there would be any merit in including in the Bill more detailed provisions as to how they are to work together.**

#### OTHER ISSUES

56. Having considered the issues of governance, the NLS's functions and its relationship with the Faculty of Advocates, this section of the report looks at two other issues related to the Bill: legal deposit of digital material and the Policy Memorandum.

#### **Legal deposit of digital material**

57. Paragraph 3 of the Policy Memorandum says that the Bill has been designed to “provide sufficient scope for the further evolution of NLS and to cover future developments in Scottish Government policy.”

58. One of the most significant issues facing the Library – and libraries in general – concerns what the NLS described in its written evidence as the “digital information revolution”. The Library's written evidence set out the challenges it faces in this area—

“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?”<sup>33</sup>

59. The NLS and other witnesses expressed concern that the relevant UK legislation on collecting digital material, the 2003 Legal Deposit Act, has not been implemented.

60. The Policy Memorandum notes that regulations are being drafted by the Department for Culture, Media and Sport (DCMS) which will allow for non-print publications to be delivered to or deposited electronically with NLS. In oral evidence, the Committee questioned the reserved-devolved split in this policy area. Scottish Government officials described the area as “semi-devolved”; the power to request that publications be placed on legal deposit in the NLS is devolved, but other relevant issues, such as copyright, are reserved. The Cabinet Secretary confirmed that she would prefer to wait for comprehensive regulations from the DCMS, rather than take action on one particular area.<sup>34</sup> In the course of the Committee's Stage 1 scrutiny, DCMS launched a consultation on the regulations.

**61. The Committee appreciates that the issue of electronic legal deposit is long-standing, complex and one on which the Bill does not contain specific provisions. Consequently, the Committee's evidence-taking in this area was limited. However, the fundamental importance of the issue to the NLS and**

---

<sup>33</sup> The National Library of Scotland. Written submission.

<sup>34</sup> Scottish Parliament Education and Culture Committee. Official Report, 21 February 2012, Col 750.

**the fact that the Bill aims to be “future proof” together mean that the issue cannot be ignored in this report. The Committee welcomes the Cabinet Secretary’s ongoing discussions with the DCMS and looks forward to this issue being resolved as quickly as possible.**

### **Policy Memorandum and subordinate legislation**

62. The Education and Culture Committee is required to report on the Bill’s Policy Memorandum in its Stage 1 report. The Committee’s substantive comments about the PM, concerning the lack of detail on the ministerial powers of direction, have already been discussed in paragraph 38. Other than this point, the Committee considers that the Policy Memorandum effectively meets the requirements set out in the Standing Orders.<sup>35</sup>

### *Equalities*

63. The Committee particularly welcomes the Scottish Government’s expectation that moving to a modern governance structure is likely to have a beneficial impact on equal opportunities; the Policy Memorandum states that “The proposals will help to address the current gender imbalance and increase opportunities for younger, qualified persons to be appointed to the new board on merit.”<sup>36</sup>

64. The Committee also welcomes the provision requiring the NLS to have regard to promoting the diversity of its users. The Committee expects that this will help the Library to make further progress in addressing some of the inequalities set out in the Equality Impact Assessment (EIA) that was carried out for the Bill by the Scottish Government. The EIA noted for example, that 6 per cent of NLS users declared themselves to be disabled, whereas 20 per cent of the general population were classified as disabled.

65. Finally, the Committee notes that the Subordinate Legislation Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in the Bill.

## CONCLUSIONS

**66. The Committee recommends to the Parliament that its general principles be agreed to. The Committee has made various suggestions in the report as to how the Bill can be further improved during its passage and looks forward to the Cabinet Secretary’s response.**

---

<sup>35</sup> A Policy Memorandum should set out—

(i) the policy objectives of the Bill;  
(ii) whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Bill was adopted;  
(iii) the consultation, if any, which was undertaken on those objectives and the ways of meeting them or on the detail of the Bill and a summary of the outcome of that consultation; and  
(iv) an assessment of the effects, if any, of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and any other matter which the Scottish Ministers consider relevant.

<sup>36</sup> National Library of Scotland Bill. Policy Memorandum (SP Bill 2-PM, Session 4 (2012)), paragraph 56. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/National%20Library%20of%20Scotland%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Library%20of%20Scotland%20Bill/Policy_Memo.pdf).

**ANNEXES**

Please note that all annexes to this report are published electronically only, and can be accessed via the Education and Culture Committee's webpages at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29800.aspx>

Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

---

Published in Edinburgh by APS Group Scotland

All documents are available on  
the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

For details of documents available to  
order in hard copy format, please contact:  
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

---

Printed in Scotland by APS Group Scotland

ISBN 978-1-4061-8500-3

---