



## Section of National Libraries

# *Guidelines for Legislation for National Library Services*

## **PART II GUIDELINES FOR LEGISLATION**

### **INTRODUCTORY NOTE**

This part forms the centre of gravity of these Guidelines. It consists of sections dealing briefly with various issues and topics that should be addressed in the legislation or that may arise during the drafting and discussion of legislation, grouped broadly in the order in which they can be expected to occur in a statute. For each topic relevant considerations or issues are outlined, and where appropriate examples of relevant legal text are given in italics.

A National Library or National Library Service (referred to below as a NL/NLS) is a key national institution, an expression of national identity and a repository of national heritage. It should therefore be an enduring institution which should not be subject to short term political expediency. Therefore it is stated here as a matter of principle that the NL/NLS should be established not by presidential or ministerial decree or by administrative fiat, but in terms of a statute enacted by the country's highest legislative body.

What follows is intended to be illustrative rather than prescriptive. The presence or absence of various sections, the order in which they appear, and the language used in them will vary from country to country in accordance with its legal system and legislative tradition. It must be borne in mind that the language used reflects decisions that have to be taken following judicious consideration of the needs of the country concerned.

### **PREAMBLE**

According to a country's tradition, a statute may commence with a preamble stating the motivations or considerations of the lawmaker, often in the form of one or more statements commencing with the word "Whereas" or "Considering". If this practice is followed, which considerations should be listed? The following are some examples:

*Whereas the documented record of science, scholarship and the creative imagination reflect the cultural heritage of the nation;*

*Whereas the present generation has a sacred duty to safeguard and preserve the nation's documented record for posterity;*

*Whereas the people of [country] have a right to enjoy and benefit from the nation's recorded*

*heritage;*

*Whereas reading and the use of information is beneficial to the advancement of literacy, education, cultural development, scholarship, economic activity and recreation;*

...

*be it enacted by ... as follows:*

(In some countries the statute may have a "long title" which fulfils an analogous purpose.)

## **SECTION 1: DEFINITIONS**

### **Introduction**

Usually one of the first sections of a statute states a number of definitions that are needed for the correct interpretation of its remaining sections. In the absence of a definition or other indications to the contrary, a term found in a statute will probably be interpreted in its everyday sense, as one would find it in a non-technical dictionary.

### **Categories of terms to be defined**

The definitions may be of various kinds:

(a) An explanation of an abridged form of a proper name that is established elsewhere in the statute. For example:

*"Board" means the National Library Service Board intended in section ...*

This would refer to the section of the statute in which the National Library Services Board is established. Other examples of proper names that would be used in the statute in abridged form are the names of bodies such as boards, councils, advisory committees, panels; the designations of certain categories of functionaries (e.g. Director, Minister); and names of components of the NL/NLS if it is composed of pre-existing institutions, or the names of its divisions.

(b) An explanation of a common term (word or expression) that is used in the statute with a restricted meaning. For example:

*"officer" means any person who is in the full-time employ of the Board on a permanent basis.*

(c) An explanation of a technical term that would not necessarily be understood by lay-persons, for example:

*"process" means to catalogue, classify, inventory or otherwise list for retrieval*

Among the technical terms needing to be defined there would typically be certain terms relating to the functions and activities of the NL/NLS, if these terms could be misunderstood by lay-persons because they are used in a broader or narrower sense in everyday language, for example process, collect, access, distribute, store. Again, terms should not be defined unnecessarily as this can cause additional problems. It is not necessary to define purely

technical terms that would not normally be used in a different sense by lay-persons, or which lay-persons would normally associate with library activities.

(d) An explanation of the scope of a term which is used in a manner other than that in which it would ordinarily be understood by lay-persons. For example:

*"bibliographic services" includes -*

*(a) the compilation and dissemination of bibliographies;*

*(b) the compilation and dissemination of relevant statistics;*

*(c) the exchange, sale or making available of bibliographies or bibliographical records*

In this case the term was defined to extend its meaning to cover certain activities that a lay-person would not normally associate with "bibliographic services". Technical terms commonly used in the language of public administration need not be defined, unless they are to be used in the statute in a restricted or unusual meaning.

### **Definition of terms relating to library material**

In a NL/NLS statute one would also find terms relating to information materials and media, their formats, reproduction and dissemination. This is particularly important if legal deposit is also dealt with in the statute. If it is not, the definitions in the two statutes should as far as possible be harmonised. Examples of relevant terms would be printed, publish, reproduce, copy, book, periodical, newspaper, audiovisual, machine-readable, microfilm, edition, reprint. Generally speaking, there should not be an excessive number of defined terms; rather, generic terms should be chosen in order to make provision for future species (types of material) that are not yet relevant or have not even been invented. The procedure of defining a genus (category) by listing all its component species should for the same reason be avoided; if species have to be listed, it is important to add a generalising phrase to make the term more inclusive. For example: or any other mark, representation or depiction having meaning to any person. This is highly relevant today to leave scope for the inclusion of new audiovisual, optical and electronic media.

Perusal of fairly recent legislation from various countries shows that there is much variation in the choice of a generic term. However, each of the laws cited here attempts in some or other way to ensure that the definition will be sufficiently inclusive of newer formats and media:

*... a document shall denote an information carrier in text, graphic or audiovisual formats*

*... "library and archival materials" means -*

*(a) all forms of written, visual, aural, graphic or machine-readable records; and*

*(b) any other form of recorded information*

*... "Library resources" means any form of written, printed or graphic matter on or in which information is written, recorded, stored, displayed or reproduced, including manuscripts, typescripts, books, newspapers, periodicals, pamphlets, maps, microforms, music sheets, photographs, cinematographic films, phonorecords, video and audio recordings on paper, film*

*or other materials and reproductions thereof*

*... publications: every uttering in writing image or sound or combinations thereof, which have been recorded on materials intended therefor and reproduced for distribution*

A limitation common to all these definitions is that they tend to restrict material to what has been recorded in some physical form. Traditionally libraries collect physical entities. However, modern information technology forces libraries also to provide access to information that is published by being transmitted or broadcast (cf. Rugaas 1990). Note that definitions formulated for legal deposit legislation usually aim to pinpoint categories of materials that are to be deposited. Hence they emphasise the intent to distribute or disseminate, while excluding material (such as manuscripts) that are not subject to legal deposit because they are not produced for general dissemination. In a NL/NLS statute a broader definition of the material the NL/NLS collects is required, since it does not limit itself to published material.

For the purposes of examples used in the rest of these Guidelines, the generic term chosen is "material", which is defined as follows:

*"material" - any medium in which information is recorded or disseminated in written, visual, aural, machine-readable or other intelligible form This should not be regarded as a model to be followed.*

### **Collaboration with legal draftspersons**

The legal draftspersons whose job it is to edit and prepare a bill for submission to the legislative process will usually have a good understanding of which terms should be defined. However, they should be alerted to the specialised use of terms which they normally use in other contexts and with different meanings. And no matter how skilled the legal draftspersons are, the definitions should be considered extremely carefully and critically, as they are likely to determine the interpretation of key sections such as the statements of purpose and functions.

### **SECTION 2: COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS**

In some countries it is the practice to state that the new statute complies with certain requirements of the Constitution, for example:

*This Act, to the extent that it regulates or restricts a right or freedom referred to in Sections ... of the Chapter on Fundamental Rights in the Constitution, namely -*  
*(a) the right to freedom of expression conferred by Section ... of the Constitution; and*  
*(b) the right to academic autonomy conferred by Section ... of the Constitution; and*  
*(c) the right to freedom of information conferred by Section ... of the Constitution, is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.*

This might be particularly relevant in the case of a statute which also deals with legal deposit, in which case a protection of property clause in the Bill of Rights may have to be taken into account, for example by stating that the deposit of publications without compensation to the publisher is in the public interest. An example:

*For the purpose of Section ... (Protection from unjust deprivation of property) of the Constitution, it is hereby declared that the deposit of publications in accordance with Section ... is a public purpose.*

### **SECTION 3: DESIGNATION OF THE NL/NLS**

In this section the institution to be established or, in the case of an existing institution, an institution to be designated as the NL/NLS, is named. For example:

*There is hereby established the National Library Service ...*

In some cases two or more existing institution may be amalgamated to form the NL/NLS, in which case their future status and designations would have to be specified.

*There is established the National Library Service of ... which shall include: ...*

In some countries the NL/NLS statute empowers a cabinet minister to establish the NL/NLS, for example:

*The Minister may, after consultation with the Board, establish such library facilities, to be called the National Library Service, as in his opinion are desirable in order to further the provision of an efficient library service throughout [country].*

However, in principle it is preferable that the NL/NLS be established by a decision of the legislature than that this be left to the discretion of a minister.

### **SECTION 4: AIMS OF THE NL/NLS**

Not every NL/NLS statute has a statement of aims. Many proceed directly to the statement of functions. In other cases the aims may be part of the section dealing with the establishment of the NL/NLS, for example:

*There is hereby established the National Library of [country] with the following purposes and objectives:*

*(a) to make available for the use of present and future generations a national collection of library resources;*

*(b) to facilitate nation-wide access to library resources available within the country and abroad; and*

*(c) to provide leadership on matters pertaining to libraries.*

In this particular statute, the functions of the National Library are spelt out in detail in a later section. Nevertheless, the section cited here already tends toward a statement of functions. The following is an example of a more abstract statement of aims:

*The National Library is a national information and library centre that aims, adhering to the principles of an information society, to collect, store and disseminate the national cultural heritage and information resources thus contributing to the development of [country] as well as of each inhabitant.*

The statement of aims states the purpose, goal or mission of the NL/NLS: for what reason it is established, what it is intended to strive for and achieve. The aims should be very carefully formulated. They are usually referred to elsewhere in the statute, for example in the statement of functions. Decision-makers concerned with the allocation of resources may well refer to this statement as a source of authority when deciding whether a programme or activity for

which funds are requested, is a legitimate activity of the institution.

Therefore the statement of aims should not be too narrow or restrictive, as that could inhibit the future development of the institution. For example, if the statement of purpose refers to books, printed materials and library services, this might constitute a handicap when, in response to technological changes and the needs of the population it serves, the institution wishes to extend its collections to audiovisual and electronic media, or to render information services other than those conventionally associated with libraries.

On the other hand, the statement of aims should not be unrealistically broad. Such a statement, if taken seriously could lead to futile efforts to spread limited resources over too many activities. It could also lead to frustration and discouragement. More seriously, it could lead to the bill (draft statute) being challenged in the legislative process by other stake-holders who may see the statement of purpose as posing a threat of future competition.

The following is an example of a statement of purpose which was adapted following pressure from other interested parties:

*The purpose of the National Library Service is to promote the rendering of library and information services to the people of ... by collecting, preserving and making accessible published and unpublished information material.*

In this case the words "to render library and information services" were replaced with "to promote the rendering of library and information services" because other institutions in the country objected that the national library was planning to move into their territories by providing services to their clients. How seriously such objections and pressure should be taken depends on the political influence of the stakeholders and the general political climate. If, as is currently the case in many countries, there is a strong tendency to privatise government functions, to reduce the numbers and powers of parastatals, and to prevent government departments and parastatals from competing with the private sector, such objections would have to be taken quite seriously.

Nevertheless, the statement of aims should take a very long view. Particular political ideologies or programmes, no matter how influential when the statute is drafted, should not be enshrined in it. The NL/NLS is intended to outlive them all.

## **SECTION 5: STATEMENT OF FUNCTIONS**

The statement of functions indicates, in broad outline, the tasks or activities the NL/NLS is to undertake in pursuit of its purpose as stated in the previous section. The functions should therefore be in line with the institution's aims.

The statement of functions should be developed in the light of an analysis of the environment of the NL/NLS as outlined in Chapter 3, with particular emphasis on the technological environment and the library and information services environment. In a country with a range of well-developed library and information agencies, the NL/NLS should not seek to perform functions which are already carried out successfully by other agencies or which require a technological capacity which is beyond its reach (for example establishing a national

bibliographic network), even if all these functions are enshrined in the well-known lists of national library functions. Grandiose but unrealistic projects and head-on competition with established, better resourced agencies are likely to lead to failure, discouragement and a damaging loss of prestige in the library and information environment. The functions should rather be formulated to focus on niches which the NLS/NL can successfully occupy.

It is suggested that the three primary clusters of functions as identified in Chapter 2 can be used as a point of departure when the functions of the NL/NLS are formulated. These clusters are:

- (a) heritage
- (b) infrastructure (national capacity for library and information services)
- (c) comprehensive national service

The other two clusters, (d) services to end-users, and (e) international cooperation are secondary in that they flow from the primary clusters. On the basis of the environment analysis referred to above and depending on its present and future resources, the NL/NLS should select one or more of clusters (a), (b) or (c) on which it intends to concentrate. This point is illustrated by the following examples:

- In a developing country which has a small book production and where the national archives benefits from legal deposit and already compiles the national bibliography, it may be more appropriate for the NL/NLS to concentrate on cluster (c) or (b) rather than on cluster (a).
- In a country with a developed information infrastructure including a commercial bibliographic network utility, university library cooperative, or library consortia, it may be inappropriate to put the emphasis on cluster (b). This is particularly the case in countries where the university libraries are relatively well-resourced.
- If the country already has an adequate network of metropolitan and provincial public libraries, concentration by the NL/NLS on cluster (c) could lead to unnecessary duplication of effort.

If the NL/NLS is to function as a National Library Service, providing a comprehensive system of library and information services nationwide (cluster c) in addition to serving as the National Library in the more conventional sense (clusters a and b), this should be clearly set out in the statute and equal emphasis should be given to the clusters of functions. This may appear self-evident, but has occurred as a debilitating deficiency in the legislation of some developing countries.

The statement of functions is of crucial importance. The functions should be stated using language that is not limiting or restrictive. Neither should the functions be so inclusive as to generate discouragement internally and fears of competition externally. At the same time it must be borne in mind that the statement of functions is in effect the mandate given by the legislature for the work of the NL/NLS and it is likely to be used as the basis for negotiations with the supervising ministry and the Ministry of Finance (Treasury) for the allocation of resources to the NL/NLS. Hence, in countries lacking a tradition of library and information

services, the functions will need to be stated in more detail than in countries with established NL/NLS.

In the examples that follow, the functions are stated in fairly generalised form. A more detailed formulation, which more fully illustrates their scope, appears in Annex A.

### **Functions relating to heritage**

The functions relating to heritage are stated in generalised form as follows:

*The functions of the National Library/National Library Service are:*

*(1) to build up as complete a collection of material emanating from or relating to [country] as appropriate; (2) to analyse, describe, conserve and make available for use its collection of the material intended in subsection (1); (3) to render bibliographic services and serve as the national bibliographic agency; (4) to serve as the national centre for the conservation and appreciation of its collection of the material intended in subsection (1);*

In these examples the expression "*material*" is used as defined in Section 1 to refer to as wide as possible a range of information carriers. The expression "*emanating from or relating to [country]*" has been formulated to cover information material published in the country, written or created by the country's authors or artists but published or disseminated elsewhere, as well as material about the country or having some other association with the country, that is published or disseminated elsewhere. These categories are sometimes collectively referred to as "*patriotica*".

The functions should be formulated so as to allow the NL/NLS enough scope to undertake new tasks and offer new services in accordance with changing demand. At the same time, the formulation should not imply that the NL/NLS is compelled to carry out the relevant functions to the letter in respect of all categories of material. Two examples illustrate this point:

(1) The NL/NLS should not be compelled to collect and process all broadcast and electronic media if it does not have the technological capability and resources to do so. It may be necessary to phase this in over a period of time. Even under optimal conditions a well-resourced NL/NLS may have to limit itself to collecting and preserving samples of such material.

(2) The NL/NLS should not be compelled to include reprints, ephemera and other inappropriate material in the national bibliography.

The language used in formulating the functions should be chosen to empower, but not (except in carefully considered cases) to compel. Scope must be left for the exercise of discretion by the institution's Board, Director and professional personnel. It is for this that the rider "*as ... appropriate*" was added to subsection (1).

## **Functions relating to infrastructure**

The functions relating to national capacity for library and information services are stated in generalised form as follows:

- (5) to coordinate and supplement the acquisition, exchange, disposal and retention of material by [country's] libraries in order to ensure that an adequate representation of the world's output of such material is accessible to the people;*
- (6) to provide access to its collections of material and to facilitate access to the collections of other libraries in [country] and internationally through the construction and acquisition of catalogues and databases;*
- (7) to facilitate the delivery of material held in [country's] libraries to users and institutions throughout [country];*
- (8) to serve as the national centre for facilitating the international delivery of material;*
- (9) to provide other services, support, training, guidance and advice to libraries and to conduct research in order to promote the delivery of information services to the people of [country];*
- (10) to plan and coordinate the library services of [country] to ensure that library and information resources are optimally developed and utilised;*

The wording used here has been chosen to make it quite clear that the NL/NLS is concerned not only with its own collections, services and users, but that it provides services to other libraries and has a definite responsibility for optimising the organisation and utilisation of the nation's library and information resources. The international dimension of this task is also indicated.

## **Functions relating to a comprehensive national service**

The functions relating to a comprehensive national library and information service are stated in generalised form as follows:

*The functions of the National Library Service are -*

- (11) to establish and maintain library and information services on a nation-wide basis;*
- (12) subject to conditions laid down from time to time by the Minister on the recommendation of the Board, to establish, maintain and control branch libraries, depts and other service points, and if necessary to close such libraries, depts and service points;*
- (13) subject to conditions and criteria laid down from time to time by the Minister on the recommendation of the Board, to enter into agreements with bodies controlling libraries for the affiliation to the Service of their libraries, to provide such affiliated libraries with material, consumables, services, and personnel, to inspect them and if necessary to terminate their affiliation;*

The functions stated above reflect certain assumptions. One of these is that there will be two categories of libraries in the system: libraries established by the NLS and libraries established by other bodies which are affiliated to the NLS. Provision is made for Minister to lay down conditions and criteria on the recommendation of the Board; these would be concerned with determining which category of library is appropriate for a particular user community and

which resources will be provided to them.

Note that the subsections have been formulated in a neutral manner to encompass not only public or community libraries, but also other types of libraries. In some countries the NL/NLS may also be responsible for services to one or more of the following:

- school libraries
- college libraries
- the library of the legislature (library of Parliament)
- government department libraries
- hospital libraries
- prison libraries
- libraries for the blind

Such services are usually rendered through some or other form of partnership with the ministries responsible for the client agencies. For example, in the case of hospital libraries the Ministry of Health would have to provide certain of the required resources, such as accommodation and personnel. It might also have to foot the bill for the purchase and processing of information material and media purchased for the hospital libraries. There may of course be other models for the provision of library services of the above-mentioned types, and provisions of the NL/NLS statute would obviously reflect the model chosen.

#### **SECTION 6: STATUS AND POWERS**

It is important that the status and powers of the NL/NLS be clearly specified in the statute. In particular, it should be stated unambiguously whether it is an integral component of a ministry, a parastatal institution or some other body. Failure to do so can cause much uncertainty and frustration will result from delays caused by confusion as to who is entitled to make given decisions.

In some cases the status of the NL/NLS is indicated in the designation section of the statute (Section 3 above), for example:

*There is established in the Department of Heritage a division to be known as the National Library Service*

This makes it clear that the NLS is an integral part of the government service.

It is thought in many countries that an institution entrusted with the specialised and prestigious tasks of a national library should enjoy some degree of autonomy. Although the institution is largely funded by the government and is ultimately controlled by it, the government's control should, according to this view, be exercised "at arm's length", through a board or council. Such an arrangement, it is thought, makes it possible:

- for representatives of the institution's clients to help shape its policies and programmes
- to muster support and lobbying power through the influence of respected and well-connected board members
- to review priorities and swiftly reallocate resources in response to changes in the

institution's environment

- to make optimal use of the professional expertise of the institution's Director and personnel
- to engage freely in relations with a variety of domestic and foreign institutions and agencies
- to present a less bureaucratic face to the clients and the public generally
- to enjoy a greater degree of institutional prestige domestically and internationally

If the NL/NLS receives some degree of autonomy it is crucial that this should be precisely specified. In some countries definite types of parastatal, statutory or semi-government institutions may be recognised in terms of existing legislation which sets out their powers and their funding, controlling and reporting relationships with the state. In such a case it is advisable to select the most appropriate status which fits into the existing pattern. For example:

*The National Library Service is an autonomous cultural institutions in terms of Section ... of the Parastatal Institutions Act, 19..*

In the absence of such general legislation, it is helpful to select a model from the country's legislation establishing similar bodies such as national archives, museums, science councils or universities. Following an established pattern has the advantage that public servants who have to give effect to the legislation can follow established procedures and that precedents have already been set for many of the decisions that have to be taken in respect of the NL/NLS.

If it is a parastatal institution it is important for the legal and financial powers and limitations of the NL/NLS to be specified. For example:

*(1) The National Library Service is a juristic person which may sue and be sued in its own right and may, subject to the provisions of subsection (2), perform any act which in the opinion of its Board is necessary for or incidental to the exercise of its powers and the performance of its functions.*

*(2) The National Library Service shall not without the prior approval of the Minister -*  
*(a) let, sell, exchange or otherwise alienate its immovable or movable property;*  
*(b) mortgage or otherwise encumber its immovable property;*  
*(c) borrow money.*

Subsection (2) is cited (in abridged form) not as a model to be followed but as an example of actual legal text which poses practical problems. It is understandable that the State is reluctant to give to institutions which it largely funds, powers to dispose of assets which have been acquired at the taxpayer's expense, or to run up debts the interest on which ultimately has to be paid by the taxpayers. However, subsection (2) makes it very difficult and time-consuming for the NL/NLS to dispose of obsolete equipment, to discard obsolete books and journals which do not form part of the country's heritage, or to obtain risk capital in order to introduce innovative products and services. When a statute on the NL/NLS is drafted, the sections dealing with its powers and the limitations thereon, must be scrutinised very carefully.

Whether a NL/NLS should have a degree of autonomy depends on the legal and administrative

tradition and policies of its country. It has been argued that "he who pays the piper calls the tune": ultimately the funder controls the institution, and the greater the proportion of funding that is derived from government, the greater its influence will be on the institution. It has also been argued that a NL/NLS which is an integral part of a ministry can be just as successful as one which enjoys a great deal of autonomy. Finally, it is said that an institution which is too far removed from the centre of power and the source of funding, may too easily be overlooked when resources are allocated.

In each country, local conditions must be taken into account when deciding on an appropriate balance between freedom of action and security of funding. However, for the purposes of the sections that follow, it is assumed that the NL/NLS is a parastatal institution which enjoys a fair degree of autonomy.

## **SECTION 7: GOVERNANCE**

### **Introduction**

No matter how much autonomy an institution has, it cannot exist in an administrative vacuum.

It must have a formal link to the state. In most national library statutes the implementation of the statute is entrusted to a designated ministry or department. This is not universal. If it serves as the library of the legislature, the national library can be a responsibility of the legislature (parliament or congress). It is also possible for the national library to be a direct responsibility of the Office of the President or the Office of the Prime Minister. It may even fall under the jurisdiction of another parastatal body such as a university or a scientific institution. Most commonly, however, the NL/NLS has a formal link with a ministry, which submits the library's budget requirements to the legislature and serves as the conduit for the allocated funds. Such a ministry is referred to here as the supervising ministry.

### **Supervising ministry**

The question now arises as to which is the most appropriate ministry to serve as the supervising ministry of the NL/NLS. The following are among the more common alternatives to be considered:

- Education
- Culture, also Arts or Heritage
- Libraries, also Museums and Libraries, or Libraries and Archives
- Information, or Information and Broadcasting (the ministry responsible for propaganda, radio, television, etc.)
- Communication (as for Information above, but may also be responsible for telecommunications)
- Planning
- Science and Technology
- Community development or local government

Which is the appropriate ministry depends on various considerations. To start with, the

ministry should be one that deals with matters to which libraries are very relevant. This would rule out Forestry or Prisons. Education, Culture or Heritage would be more appropriate. The ministry should also match the cluster of functions emphasised by the NL/NLS. If it emphasises heritage, then Culture or Arts and Heritage would be appropriate. If it emphasises the country's information infrastructure, Science and Technology, or Planning might be appropriate. If the NL/NLS is intended as a comprehensive national service to the general public, Education, Culture or Community Development/Local government could be appropriate choices.

Some argue for a large and powerful ministry with a high priority and a large share of the national budget. Others point out that the NL/NLS is likely to be overlooked in a large department in which libraries do not enjoy a high priority ("a small fish in a big pond"). They would prefer a smaller ministry, where the NL/NLS would be "a large fish in a small pond". The ultimate "small pond" would be a Ministry of Libraries, but these are not common, and one wonders how far back they are in the queue for funding. In developing countries it is thought wise to associate the NL/NLS with a major thrust in national development planning and hence to link it to a ministry with a major developmental responsibility.

Underlying all the considerations is access to decision makers and funding. Ideally the NL/NLS should be the responsibility of a well-funded ministry, headed by a high-ranking and influential cabinet minister, but the NL/NLS should not be so insignificant a part of that ministry that it is overlooked when funds are allocated. Although the designation of a supervising ministry is an important decision, this designation often does not feature prominently on the NL/NLS statute. In one case it is dealt with in the definitions: the statute in various sections refers to "the Minister", but only in the definitions is it specified which minister it is. The choice must be made in the light of the country's circumstances.

## **The NL/NLS Board**

### **Purpose and duties**

If the NL/NLS is an integral part of a ministry, it should have at least an advisory committee to advise it on policy and important decisions concerning the allocation of resources and the exercise of its functions. Such a committee helps to ensure that the NL/NLS is responsive to its environment.

However, this section is concerned with the Board of a parastatal NL/NLS. Such a Board is responsible for ensuring that the NL/NLS is well managed and that it carries out its functions in accordance with its purpose as stated in the statute and in response to the needs of its clients. It is answerable for this to the minister, to whom it normally has to present an annual report. The Board is not merely an advisory body. It has executive powers: it can make decisions which are carried out by the Director and personnel of the institution. Although it is dependent on the amounts allocated to the NL/NLS by the legislature, it approves the institution's budget (i.e. the division of the allocated funds among the various components and activities of the NL/NLS). Specifically, the Board holds the institution's funds and can authorise the Director and personnel to spend them in accordance with the budget; it is not

necessary for such decisions to be taken or ratified by the ministry. It may seem superfluous to state this, but in fact much confusion, delay and frustration is caused if it is not clear who can make the decisions concerning expenditures.

The following example states the purpose and duties of the Board of a NL/NLS:

*There is hereby established a Board to manage and control the Service in accordance with its aims and functions as intended in section ... and section .... The Board shall -*

- (a) appoint the Director and personnel of the Service; (b) hold and dispose of the movable and immovable property of the Service subject to the provisions of ... [reference to limitations on the powers of the Board; cf. par. 4.7];*
- (c) take all measures necessary to safeguard the assets of the Service;*
- (d) ensure that the Service is organised and administered for the efficient exercise of its functions;*
- (e) ensure that the resources required for the effective functioning of the Service are obtained and allocated and to this end annually approve the budget of the Service;*
- (f) control the disbursement of the funds of the Service in accordance with the budget;*
- (g) annually present to the Minister a report on the activities of the Service;*
- (h) annually present to the Minister financial statements, audited by the Auditor-General or his representative, on the operations of the Service.*
- (i) advise the Minister on any matter which he may refer to the Board or on any other matter which it deems in the interest of the Service.*

The last point is significant. Although this is not often formally stated, an important task of the Board is to represent the NL/NLS and lobby on its behalf. It should promote the interests, stature and reputation of the NL/NLS and make representations on its behalf to the Minister and other influential persons and bodies.

Note that the above list of duties reflects certain assumptions about the powers of the Board. For example it is assumed that the Board approves the budget. This would work in a situation where the NL/NLS were funded by its Ministry according to a subsidy formula. The Ministry uses this to determine the annual grant, and the Board draws up its budget based on this figure. In other cases, the Board might have to draft a budget and submit it to the Minister for approval. Obviously, current practice in the country concerned would determine what is feasible there, and this would have to be reflected in this Section.

## **Powers**

In addition to the items listed above the Board may have certain powers which it may exercise at its discretion. Although much of what follows may be taken for granted as following logically from the purpose and functions of the NL/NLS, in some situations it would be useful if the Board were explicitly empowered to cooperate and to undertake collaborative projects with other libraries and institutions and to participate in networks both nationally and internationally. The NL/NLS should also be empowered to consult widely with other libraries and stakeholders in the library and information sector. Provision should also be made for the Board to solicit advice from other bodies and to be represented on such bodies if invited.

Some examples of relevant text follow:

*The Board may, for purposes of pursuing the purpose and exercising the functions of the Service intended in section ... and section ... [references to the statement of purpose and the statement of functions] -*

*(a) establish advisory committees of persons representing libraries and other bodies with an interest in library and information matters to advise it on any matters; (b) enter into agreements and contracts with other libraries and institutions including foreign libraries and institutions for the rendering of library and information services;*  
*(c) make recommendations to bodies and institutions concerned with libraries and information services concerning any matters;*  
*(d) at the request of other bodies, designate any of its members to serve on committees together with members of those bodies; (e) invite representatives of any library or institution to attend its meetings as observers or serve on its subcommittees;*  
*(f) permit the Director and personnel to visit other libraries and institutions including foreign libraries and institutions for purposes of training, sharing of information, consultation and collaboration.*

The statute should make provision for delegation of powers by the Board to the Director and personnel of the NL/NLS. If not done in a separate section, it should be stated here:

*(g) delegate any or all of its powers to the Director, who shall regularly report to the Board on the exercise thereof.*

### **Distinction between Board and NL/NLS**

It may be argued that the duties and powers of the Board as set out above should be allocated to the NL/NLS as such rather than to the Board. Which approach is followed will depend on the degree of autonomy granted to the NL/NLS. If the institution has a significant degree of autonomy it is appropriate to vest the abovementioned powers in the Board. If they are vested in "the National Library" or "the Service" this could be construed as implying that decisions relating to it have to be made or ratified by the ministry. Legislative practice and administrative tradition in the country concerned will also influence the decision.

### **Distinction between Board and national advisory council**

The Board of the NL/NLS should not be confused with a national advisory council on libraries and information services. Such an advisory council delivers advice to the government on library and information services generally. It is usually concerned with policy and may also have responsibilities for overseeing the coordination of the country's library and information services. The NL/NLS Board and the advisory council should be separate bodies. The advisory council is concerned with policies at the national level and it should be in a position to make unbiased recommendations on the allocation of responsibilities and resources; the NL/NLS is only one of many institutions that may be entrusted with carrying out such policy. The Board of the NL/NLS, on the other hand, has a duty to promote its institution and intervene on its behalf. If it were also responsible for policy at the national level there would be a conflict of interests. It might be biased in favour of the NL/NLS and would not enjoy the

trust of other stakeholders.

## **Membership**

The composition of the Board of the NL/NLS requires careful consideration. The statute should state the number of members. In contrast with the advisory council referred to above, the Board is primarily concerned with management. It should therefore not be too large (a manageable size would be seven to nine members).

Should the statute specify any particular criteria that should be satisfied by appointees to the Board? Members of a board concerned primarily with management should be selected on the grounds of their expertise rather than in their capacities as representatives of particular organisations or interest groups. However, such an approach may be challenged on the grounds that it is undemocratic.

Appointees are typically highly regarded persons who have made their mark in the arts, culture, scholarship, commerce, industry and the legal profession. It is not desirable to specify these categories in the statute, since they may change over time as the NLS evolves. For example, in a phase of significant development of information technology it may be useful to have on the Board a person with a background in computer science or information systems; if a new national library building is being planned, an architect or engineer would be useful.

It is sometimes suggested that a substantial proportion or even a majority of the members of the Board should be professional librarians or information workers. This is not supported here. An effective NL/NLS needs a Board that can provide a broad and multidisciplinary understanding of the communities and user groups it must serve. Furthermore advice and representations directed to the Minister by librarians may be perceived as being influenced by self-interest and will therefore not carry as much weight as advice emanating from a group of eminent non-librarians. Professional inputs can be obtained through advisory committees and other bodies. On the Board itself there should not be more than one or two librarians at most.

How should Board members be appointed? In many countries the appointment of members is a prerogative of the Minister to whom the Board is answerable, and members are selected from what has been referred to as "a list of the great and the good" - not a democratic procedure, but acceptable if this is counterbalanced by more democratic and transparent procedures for the selection of members of the advisory council and the NL/NLS's own advisory committees. An exception to the principle that Board members do not represent constituencies could be made in the case of the national advisory council on libraries and information services. It could be specified in the statute that a representative of the advisory council should serve on the Board. (And, for that matter, vice versa.) The Director of the NL/NLS may or may not be a full member of the Board *ex officio*. It is recommended that this be the case, as it enables the Director to contribute his or her professional insights and encourages a relationship of colleagues between Board and Director.

The Chairperson of the Board is usually appointed by the Minister rather than being elected by the Board members. The vice-chairperson is usually elected. The Director should not be

eligible for election to either office.

The following example reflects the recommendations made above:

*The Board shall consist of -*

*(a) a Chairman appointed by the Minister;*

*(b) at least six members appointed by the Minister;*

*(c) the Director of the Service, ex officio;*

*(d) a representative designated by the National Advisory Council on Libraries and Information Services.*

*The members of the Board shall elect one of their number as vice-Chairman, provided that the Director intended in section ... subsection (c) may not be elected as vice-chairman.*

Other matters to be specified in the statute include:

- Term of office (three years is neither too short nor too long)
- Reappointment
- Disqualification and dismissal of members
- Remuneration
- Frequency of meetings
- Procedures at meetings, including quorum, agendas, minutes

Some of the above could be set out in detail in regulations published by the Minister in terms of the Statute. In some countries some of the above topics may be dealt with in a statute dealing with boards and councils generally. As suggested earlier, in the absence of such general legislation, it is helpful to model the Board on boards of similar bodies.

## **SECTION 8: PERSONNEL**

### **General**

The following questions need to be answered in respect of the personnel of the NL/NLS:

- Who determines the personnel establishment?
- Which categories of personnel should there be?
- Who determines their conditions of service, remuneration and benefits?
- Who appoints personnel?
- Whose employees are they?

The Board of the NL/NLS should, within the parameters of the funding made available to it by the state, be empowered to determine the size and composition of its own personnel establishment. This is desirable because it would give the NL/NLS freedom of movement to respond rapidly to changing needs and new challenges and opportunities in its environment. For example, the NL/NLS should be able to abolish two lower paid positions in order to create a senior position (or vice versa), or to divert funds from personnel to collections or technology as the situation may demand. If these decisions have to be made or ratified in the Ministry, much time may be lost before they can be implemented. Various categories of personnel may

be distinguished in the public service of a country.

It may be necessary to use the same categories for the personnel of the NL/NLS. For example, there may be distinctions between professional and other personnel, between permanent and temporary, and full-time and part-time personnel. However, generally speaking, the fewer categories there are the better, as this makes for greater flexibility in appointments and is also more democratic.

In an ideal situation the conditions of service, remuneration and benefits paid to personnel should be determined by the Board as well. It has been argued that the NL/NLS, in order to fulfil its role in caring for the national heritage, providing infrastructural services, and developing library and information services to the country as a whole, requires a more highly skilled and experienced personnel than is commonly found in the public service and that it should therefore be in a position to compete with institutions such as universities and science councils which offer better remuneration than the public service. However, the public service authorities of a country generally do not look kindly on competition for personnel, particularly if the competing agency is itself funded by the state. Hence it is to be expected that some discipline will be imposed on the NL/NLS by its Ministry. This may take two forms: (a) the discipline of limited funding, which may involve the use of formulae and mechanisms to prevent the NL/NLS from paying remuneration exceeding formula-based limits; and (b) limitations on specific categories of personnel benefits such as housing and travel allowances. This will be a matter for negotiation and compromise when the statute is drafted, but an attempt should be made to gain as great a degree of autonomy as possible in respect of staffing.

The personnel of the NLS should be appointed by the Board and should be considered to be its employees and not employees of the supervising Ministry. Although they may be appointed on conditions of service identical or similar to those of the public service, the employees should not be public servants (appointees of the public service authority). In a developing country with a scarcity of qualified personnel, this may have the benefit of enabling the NL/NLS to appoint expatriate employees when necessary.

The following example reflects the recommendations made above and those to follow in par. 4.10.2:

- (1) The Board shall appoint as the Director of the Service a suitably experienced person with appropriate educational qualifications in library or information science or in such other field as the Board may consider appropriate.*
- (2) The Board may appoint such other employees as it may deem necessary to perform the functions of the Service.*
- (3) The salaries, allowances, conditions of service and other benefits of the employees are determined by the Board with the approval of the Minister granted with the concurrence of the Minister of Finance.*

In cases where the personnel of the NL/NLS are public servants and employees of the country's public service authority, the problem may arise that qualifications in library and/or

information science are not recognised for purposes of grading and remuneration. For example, national librarians from certain developing countries in which the NL/NLS is a division of the Ministry of Education have reported that their personnel are graded as clerks (with disastrous consequences for recruitment and retention of qualified staff) because they do not have formal educational qualifications as teachers. If this problem is likely to arise, appropriate text should be added to the section on personnel to ensure the recognition of qualified library staff as professionals.

## **Director**

The Director of the NL/NLS may also be designated Director-General, President, or National Librarian, depending on national tradition, the powers and composition of the Board, and the status of the institution. Here "director" is used as a generic term. The appointment of the Director is an important issue. The Director must serve as a member of the Board and is responsible for executing its decisions, serving as its chief executive officer and its accounting officer for purposes of public audit. It is recommended that, especially in the case of developing countries, this person should be a professional librarian or information worker. If this is not a requirement, the door is opened to political appointments which could put unqualified persons in control.

Although there are many examples in developed countries where persons without professional qualifications or experience in librarianship or information work have served with great distinction as heads of national libraries, the establishment and development of a NL/NLS in a country without a long-established national library calls for professional skills and expertise.

In some countries the appointment of the Director may require the consent of the Minister.

## **Other personnel matters**

Other matters which need to be set out in the statute include:

- disciplinary code and procedure
- discharge of employees
- transfer of employees (particularly if personnel are to be transferred from one or more existing institutions)
- pension fund (which could be the public service pension fund, a pension fund for parastatals, or a commercial fund)
- any other benefits that may be customary

## **SECTION 9: COLLECTIONS AND OTHER ASSETS**

The nature, management and utilisation of the collection of the NL/NLS are largely dealt with in the statement of functions. It is not wise to specify the types of information material and media to be collected, as such stipulations could later be construed restrictively, causing later problems when new audiovisual and electronic media are not covered. (The definition of materials in the definitions section should suffice.) The following are some additional aspects that may need to be dealt with in the statute:

**Transfer of collections or assets** Transfer of collections or other assets from other institutions to the NL/NLS may be necessary if the NL/NLS comes into being through the amalgamation or incorporation of existing institutions or through a process of rationalisation of existing institutions; it may also constitute a means of enriching its collections, as intended in the following example:

*The Minister may in such manner and on such conditions as he thinks fit entrust any movable property or part thereof which has been given or bequeathed to [country] or its inhabitants to the care of the National Library, unless the donor or testator has made any other provision for the care thereof.*

The transfer of collections and assets from the NL/NLS to other institutions may be necessary in the circumstances referred to above, or may be necessary for purposes of future reorganisation or rationalisation. For example it might be decided that audiovisual media are to be collected and preserved by an institution other than the NL/NLS

### **Permanent loans**

The NL/NLS should be empowered to make parts of its collections available to other institutions on permanent loan.

### **Disposal**

The NL/NLS should be empowered to dispose of surplus material from its collections, or to dispose of original materials after their contents have been transcribed or copied to other media. Examples would be disposing of original copies of newspapers (or certain categories of newspapers) after they have been microfilmed, or disposing of original sound recordings after they have been transcribed from obsolete to current media or formats.

In the case of a national library which emphasises the heritage-related functions and in the case of heritage materials generally, it may be advisable to set certain conditions to be met before the originals of heritage materials are disposed of, for example:

- The Minister may have to be satisfied that interested parties have been consulted.
- A schedule of the relevant categories of materials may have to be drawn up for the Minister's prior approval.
- The original material may have to be offered to specified institutions.

There may be special conditions relating to material received in terms of legal deposit legislation. The provisions made concerning this in the NL/NLS statute would have to be harmonised with the relevant provisions of the legal deposit legislation. The important thing is that such materials should be dealt with in categories, not on an item by item basis, which would lead to bottle-necks.

## **SECTION 10: SERVICES**

The services to be provided by the NL/NLS are usually stated or implied in the statement of functions. It is not desirable to list the services in the statute, since the range of services will evolve over time. However, it may be useful if the statute deals with a number of issues such as:

- access to the public
- conditions of access
- charging for services

In some countries every citizen has free access to the national library. In other countries access may be restricted to persons over a certain age or with given educational qualifications or credentials, and users may be required to pay for a reader's ticket. This is usually done in national libraries that emphasise heritage-related functions, in order to protect the collections and to give priority to serious researchers. The services of a comprehensive national library service, on the other hand, should by definition be available to all the people.

The Board of a NL/NLS should be empowered to require that users comply with certain conditions of access, which are mainly aimed at protecting the collections and ensuring that the rights and convenience of fellow-users are respected. The Board should be entitled to deny access to users who do not comply with the conditions of access. Charging for services is an emotive issue. It has been argued that in principle access and the use of all services should be free of charge since the NL/NLS is a national institution funded largely by the tax-payers. On the other hand, there are few countries in which the NL/NLS will claim to be generously or even adequately funded. Certain services incur considerable costs, so that the NL/NLS may simply be unable to afford to make them available free of charge. The Board of the NL/NLS should be empowered to determine charges for various categories of services and to revise them from time to time. The Board should in fact draw up a policy setting out which services are:

- delivered free of charge
- charged for on a full or partial cost recovery basis
- charged for at a rate which yields a profit

The following text, appropriate to a national library emphasising heritage-related functions, illustrates the above points:

*The Board shall from time to time determine the categories of persons who may gain access to its various premises, set conditions subject to which access is granted, and determine which fees and charges, if any, will be charged for the use of its various services and facilities.*

The following text would be more appropriate to a national library service providing a comprehensive nation-wide service:

*(1) The Board shall from time to time determine the conditions of access and use that it deems necessary to maintain order and security in its premises and those of its constituent and affiliated agencies, and to safeguard the assets of the Service and of any of its constituent or affiliated agencies.*

*(2) Subject to the conditions intended in subsection (1) no restrictions shall be placed on*

*access to those parts of its premises or the premises of any of its constituent and affiliated agencies that have been designated for the use of the public.*

*(3) No charges shall be levied by the Service or by any affiliated or constituent agency thereof for the use of services which have been designated as basic services by the Minister on the recommendation of the Board.*

*(4) Notwithstanding anything to the contrary in subsection (2) the Board may from time to time set conditions subject to which access is granted, and determine which fees and charges, if any, will be charged for the use of its various services and facilities other than those designated as basic services.*

*(5) Notwithstanding anything to the contrary in subsection (3), the Board may levy such fines as it may determine from time to time for non-compliance with the conditions of use of its services and facilities*

*(6) Any revenue raised by the Service from charges and fines accrues to the Service.*

## **SECTION 11: FINANCING**

### **Sources of funds**

The following example sets out the sources of funds of the NL/NLS:

*The funds of the Service consist of -*

*(a) money appropriated for it by Parliament;*

*(b) money borrowed by the Service;*

*(c) revenue obtained from interest on investments;*

*(d) fees or royalties paid to the Service;*

*(e) donations or contributions received by the Service;*

*(f) money accruing from charges or fines levied for services rendered by the Service as intended in secti*

**The NL/NLS should have a reliable and predictable source of funds. Hence the lion's share of the funds of the NL/NLS should be derived from money voted specifically for it by the legislature. Ideally it should not be left to the Ministry to decide how much of the money it has received from the legislature is to be allocated to the NL/NLS.**

**Unfortunately, any wording which reduces the degree of control that the supervising Ministry has over the funding of the NL/NLS (as by giving this control to the legislature) is likely to be objected to. It is all the more difficult to write into a NL/NLS statute wording which binds the government to any level of funding. (For example, it has been suggested that the NL/NLS should be granted annually a fixed percentage of the national budget. This is unlikely to be accepted.) The financial responsibility of the government and the Ministry in respect of the NL/NLS should be negotiated with the supervising Ministry when the bill is drawn up, and the wording of this section devised in the light of the compromise reached and in accordance with the country's financial policy.**

**As indicated earlier, borrowing may be subject to ministerial permission. The investments implied by subsection (c) are also likely to be subject to conditions laid down by the Minister and/or the Minister of Finance. Such conditions are mainly intended to ensure that the NL/NLS does not lose money through risky investments.**

## **Expenditure**

The NL/NLS will be required to spend its funds on the performance of its functions as set out in the statute. As already indicated, the Board will be required to draw up an annual budget (more formally known as "a statement of its estimated revenue and expenditure during its next financial year"). All expenditure must be in accordance with its budget. The Board should be empowered to establish and operate reserve funds. The NL/NLS will be required to keep proper accounts of its assets and financial transactions and to have these accounts audited by the national state auditing authority (e.g. the Auditor-General).

## **SECTION 12: ORGANISATION**

It is not advisable for the organisation structure of the NL/NLS to be laid down in its statute. Thus the divisions of the NL/NLS or the designations of their chiefs should not be specified in it. The Board must be empowered to review and adapt the organisational structure from time to time to enable the institution to respond to changes in its environment.

An exception to this principle would have to be made in a case where a number of existing institutions have been combined to form the NL/NLS, and where for political reasons it has been decided that some of the component parts should retain their names or some degree of autonomy, for example in a federal relationship.

Another exception may be made to this principle in the case of an institution combining the functions of a national library emphasising heritage and a comprehensive national library and information service. In such a case it may be advantageous to specify that the National Library is a division of the National Library Service (or vice versa) and to explicitly state the purpose and functions of this division. This recommendation arises from the finding that in some developing countries either the one or the other of the two components (heritage or comprehensive service) tends to be overlooked because it has no clear mandate.

In the case of a comprehensive national library service, attention should be paid to the relationship of the NLS to the local and other authorities which serve as its partners in delivering information services to the people. This should not be dealt with in the statute, but the Minister should be authorised to promulgate, on the recommendation of the Board, regulations dealing with:

- categories of communities or organisations which qualify for library and information services
- criteria which local authorities or governing bodies of organisations must satisfy to qualify for the provision of library and information services by the NLS by means of affiliated or constituent libraries, depts, mobile libraries or other facilities
- consultative and negotiating procedures to be followed
- establishment of library committees and their functions
- affiliation agreement; transfer agreement
- declaration of affiliated or constituent libraries
- financial and other responsibilities of the NLS; categories of materials and services to be provided by the NLS
- financial and other responsibilities of the local authority or governing body
- disaffiliation or termination

## **SECTION 13: REGULATIONS**

In the previous section and several earlier sections mention has been made of regulations that may be made by the Minister. Such regulations are referred to as delegated legislation, since in these cases the legislature delegates to the Minister the authority to promulgate legislation. In some countries it is the

practice to specify all the regulations in a separate section, of which the following is an example:

*(1) The Minister may, in consultation with the Board, make regulations generally for the better carrying out of the purpose of this Act.*

*(2) In particular and without prejudice to the generality of the foregoing, such regulations may provide -*

*(a) for regulating the use of any library under the management of the Board;*

*(b) for protecting any such library and the fittings, furniture and contents thereof from damage;*

*(c) for the giving of a guarantee or security by any person borrowing books from such library;*

*(d) fees or penalties to be paid by any person borrowing books from such library;*

*(e) for the establishment, function and duties of library committees in ...*

A checklist of derived legislation is provided as Annex C.

## SECTION 14: MISCELLANEOUS PROVISIONS

### Transition measures

If the NL/NLS comes into being through the amalgamation or absorption of one or more existing institutions or involves a change of status or governance, various transition measures may need to be enacted to ensure that there is a smooth transition from the old to the new dispensation.

For example, if governing bodies of the old institutions are to be replaced by a new Board, provision might be made for members of the old governing bodies to become members of the new Board.

### Statutes repealed or amended

The NL/NLS statute may necessitate the repeal or amendment of existing legislation, for example as a result of an existing statutory organisation to the control of the new Board.

As indicated earlier, some amendments of the legal deposit legislation may also be required.

### Short title and commencement

In some legal traditions the form in which the statute is to be cited is specified here, as is the date on which the statute is to come into operation. (This can also occur at the beginning of the statute.)

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