

# **CREATIVE SCOTLAND BILL**

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## **EXPLANATORY NOTES**

### **(AND OTHER ACCOMPANYING DOCUMENTS)**

#### **CONTENTS**

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Creative Scotland Bill introduced in the Scottish Parliament on 12 March 2008:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 7-PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL – AN OVERVIEW**

4. The Bill has 10 sections and 2 schedules.

5. The main measures of the Bill:

- establish a national cultural development body, Creative Scotland;
- provide for the functions of Creative Scotland;
- give the Scottish Ministers a limited power to give directions to Creative Scotland;
- dissolve the Scottish Arts Council, a body established by Royal Charter; and
- provide for the membership of and governance of Creative Scotland.

### **THE BILL – SECTION BY SECTION**

#### **Section 1 – Establishment of Creative Scotland**

6. Section 1 establishes a body corporate called Creative Scotland and introduces schedule 1 which makes detailed provision concerning the status, membership, procedure, etc. of Creative Scotland.

#### **Section 2 – General functions of Creative Scotland**

7. Section 2 sets out the general functions of Creative Scotland.

8. Subsection (1) lists the primary functions of Creative Scotland, which relate to the arts and culture and to the application of creative skills in Scotland.

9. The functions in paragraph (a) of subsection (1) task Creative Scotland with promoting “art for art’s sake”. When Creative Scotland is pursuing these particular functions, it must do so in ways which promote wider access to and participation in the arts and culture. It might do this by giving awards that celebrate the work of individual practitioners, or by encouraging and advising local authorities to make wider provision of cultural facilities in their area.

10. The functions in paragraph (b) of subsection (1) task Creative Scotland with nurturing the highest standards in the arts and culture in Scotland. It might do this by selecting particular individuals or organisations whose practice they believe merits encouragement and advice, or financial support in the form of grants or loans (see also section 4(4)).

11. The functions in paragraph (c), however, go further and task Creative Scotland with making real and bringing to fruition the value and benefits of the arts and culture in Scotland. The value and benefits referred to in the Bill include not only personal enjoyment of aesthetic quality and the enjoyment involved in cultural participation, but also benefits in terms of unlocking creative and entrepreneurial potential and enhancing well-being and community pride. Creative Scotland might do this, for example, by encouraging commercial banks to better understand the economic potential of the arts and culture.

12. Subsection (1)(d) gives Creative Scotland functions in relation to the application of creative skills. This paragraph allows Creative Scotland to support persons engaging in creative enterprise. This could be applicable generally but there is also a grouping of industries referred to often as the creative industries where it may be particularly relevant. These industries include: advertising; architecture; crafts; design; designer fashion; film; interactive leisure software; music; performing arts; publishing; TV and radio; and visual arts.

13. It will be for Creative Scotland to judge how to support activities in these areas where they involve the application of creative skills to the development of products and processes.

14. Creative Scotland may encourage and support other persons who perform functions similar to Creative Scotland (see subsection (3)), for example, a regional arts body may promote the arts and culture in a particular area of Scotland. Similarly, a body involved in a particular form of the arts and culture or creativity such as dance, may encourage a diverse range of people to participate in that medium and Creative Scotland can support the body in that regard.

### **Section 3 – Advisory and other functions**

15. Section 3 gives Creative Scotland a number of advisory functions.

16. Creative Scotland is to provide the Scottish Ministers with advice, information and assistance required by the Scottish Ministers in relation to the arts and culture or Creative Scotland's functions (see subsection (1)). Creative Scotland also has freedom to provide the Scottish Ministers with other such advice and information as it considers appropriate (see subsection (2)). Advice, information or assistance provided to the Scottish Ministers by Creative Scotland must be provided in any particular manner determined by the Scottish Ministers (see subsection (4)).

17. Creative Scotland may also provide persons other than the Scottish Ministers with advice, information and assistance in relation to the arts and culture and the application of creative skills (see subsection (3)). For example, assistance could be given to creative practitioners by way of training or through the temporary secondment of an employee of Creative Scotland. However, section 4(6) has effect that, as in relation to all of Creative Scotland's functions, financial assistance may only be given by Creative Scotland through grants and loans under section 4(4).

#### **Section 4 – Grants and loans**

18. Section 4 concerns the funding of Creative Scotland and the funding of the arts and culture by Creative Scotland.

19. The Scottish Ministers may make grants to Creative Scotland including grants made for particular purposes (see subsections (1) and (2)). Grants to Creative Scotland may be subject to such terms and conditions as the Scottish Ministers think fit (see subsection (3)).

20. Creative Scotland may make grants and loans to creative practitioners and other persons where the grant or loan relates to Creative Scotland's functions (which may be subject to such terms and conditions as Creative Scotland think fit) (see subsections (4) and (5)).

21. Subsection (6) has effect that all financial assistance by Creative Scotland in relation to its functions is channelled through the mechanism of subsection (4).

#### **Section 5 – Directions and guidance**

22. Subsection (1) gives the Scottish Ministers power to give Creative Scotland directions as to the exercise of its functions.

23. However, the power of the Scottish Ministers to give directions to Creative Scotland is restricted (see subsection (2)) by providing that the Scottish Ministers cannot give directions to Creative Scotland in relation to Creative Scotland's functions under section 2(1) (its primary functions relating to the arts and culture and the application of creative skills), section 2(3) (its function to encourage and support persons performing functions similar to Creative Scotland), section 3(3) (its function to provide persons other than the Scottish Ministers with advice, information or assistance) or section 4(4) (its grant and loan making function) insofar as the direction relates to Creative Scotland's artistic or cultural judgement.

24. Creative Scotland is to comply with any directions given to it by the Scottish Ministers under the Bill. It must also have regard to any guidance issued by the Scottish Ministers (see subsection (3)).

#### **Section 6 – Dissolution of the Scottish Arts Council**

25. Section 6 dissolves the Scottish Arts Council and revokes its Royal Charter.

#### **Section 7 – Transfer of Scottish Arts Council staff etc.**

26. Section 7 provides for the employees, property and liabilities of the Scottish Arts Council to transfer to Creative Scotland. This will have effect from the date on which the Scottish Arts Council is dissolved (see subsection (1)).

27. The transfer of Scottish Arts Council employees does not terminate their contracts of employment and has effect as if their contracts of employment were originally made with Creative Scotland. All rights, obligations and acts surrounding a transferred person's contract of

employment transfer to Creative Scotland (see subsections (2) and (3)). For example, an Employment Tribunal claim actionable against the Scottish Arts Council by an employee of the Council would transfer with the employee and become actionable against Creative Scotland (subject to the time limits and other rules for bringing such claims).

28. A transferred person's right to terminate their contract of employment, where there is a substantially detrimental change to the person's contract of employment, is not affected by the provisions of subsections (1) to (3). Further, the mere change of the identity of a person's employer from the Scottish Arts Council to Creative Scotland is not to be treated as a substantially detrimental change to the person's contract of employment (see subsection (4)).

### **Section 8 – Modifications of enactments**

29. Section 8 introduces schedule 2 which modifies various enactments that refer to the Scottish Arts Council and Scottish Screen where a reference to Creative Scotland is now required.

### **Section 9 – Ancillary provision**

30. Section 9 gives the Scottish Ministers power to make provision for ancillary matters and to enable unforeseen circumstances to be addressed which may arise following the enactment of the Bill without having to have recourse to primary legislation.

31. Subsection (1) gives the Scottish Ministers power to make, by order made by statutory instrument, such ancillary provision as they consider necessary or expedient in relation to any of the provisions of the Bill. The scope of the power is restricted; it can only be used to make provisions which are of an incidental, consequential, transitional, transitory or saving nature. An order under subsection (1) may make different provision for different purposes and may modify any enactment (see subsection (2)).

32. A statutory instrument under subsection (1) is generally subject to negative resolution procedure (see subsection (3)). However, subsection (4) provides that affirmative resolution procedure applies to an order under subsection (1) containing provisions which amend the text of an Act of Parliament or an Act of the Scottish Parliament.

### **Section 10 – Short title, commencement and interpretation**

33. Subsection (1) provides for the short title of the Bill when it is enacted. The short title is the name by which an Act is cited.

34. Subsection (2) provides that section 10 comes into force on Royal Assent and subsection (3) gives the Scottish Ministers power to commence, by order made by statutory instrument, the remaining provisions of the Bill. The Scottish Ministers have power to appoint different days under subsection (3) for different purposes (see subsection (4)).

35. Subsection (5) provides that references to "persons" in sections 2(2)(b) and (3) and 3(3) include groups of persons (so that more informal associations or groups can be provided with

advice, information, assistance, encouragement and support by Creative Scotland). The reference in section 4(4) is not included here as money will only be given to persons enjoying a legal personality.

## **Schedule 1 – Creative Scotland**

### *Paragraph 1 – Status*

36. Creative Scotland is a body corporate but is not a Crown body.

### *Paragraph 2 – Membership of Creative Scotland*

37. The membership of Creative Scotland is to consist of a chairing member and not less than 8 nor more than 14 other members. All members of Creative Scotland are to be appointed by the Scottish Ministers.

38. Sub-paragraph (2) gives the Scottish Ministers power to substitute, by order made by statutory instrument, different numbers of minimum or maximum members in sub-paragraph (1)(b). A statutory instrument under sub-paragraph (2) is subject to negative resolution procedure.

### *Paragraph 3 – Terms of appointment etc.*

39. Each member of Creative Scotland is to be appointed for such period as the Scottish Ministers think fit. A member of Creative Scotland holds and vacates office in accordance with the terms and conditions of appointment but may resign office as a member by giving written notice (see sub-paragraph (2)).

40. Sub-paragraph (3) provides that once a person ceases to be a member of Creative Scotland they are eligible to be reappointed as a member for another term.

### *Paragraph 4 – Removal of members*

41. The Scottish Ministers have the power to remove a member of Creative Scotland from office if they are satisfied that the member is insolvent (see sub-paragraphs (a) and (b)), has been absent from meetings without permission, or is otherwise unfit or unable to discharge the functions of a member of Creative Scotland.

### *Paragraph 5 – Disqualification from membership*

42. Paragraph 5 provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as members of Creative Scotland.

### *Paragraph 6 – Remuneration and allowances for members*

43. Creative Scotland is to pay to each of its members remuneration, allowances and expenses determined by the Scottish Ministers.

*Paragraph 7 – Chief executive and other employees*

44. Creative Scotland is to employ a chief executive and sub-paragraph (2) provides that the chief executive of Creative Scotland may not be a member of Creative Scotland. The chief executive of Creative Scotland is to be appointed, with the approval of the Scottish Ministers, by Creative Scotland. Creative Scotland will determine, with the approval of the Scottish Ministers, the chief executive's terms and conditions.

45. Creative Scotland may appoint employees other than the chief executive and can determine their terms and conditions of employment. The Scottish Ministers may give directions to Creative Scotland in relation to the appointment of employees and their terms and conditions of employment (see sub-paragraph (5)).

46. Sub-paragraph (6) gives Creative Scotland power to arrange, with the approval of the Scottish Ministers, for pensions, allowances or gratuities in relation to employees of Creative Scotland. The reference in sub-paragraph (6) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment (see sub-paragraph (7)).

*Paragraph 8 – Committees*

47. Creative Scotland may establish committees for any purpose relating to its functions. Creative Scotland may appoint persons who are not members of Creative Scotland to be members of a committee, but such persons are not entitled to vote at meetings of the committee.

48. A committee of Creative Scotland is to comply with any directions given to it by Creative Scotland (see sub-paragraph (4)).

*Paragraph 9 – Procedure and meetings*

49. Creative Scotland determines its own procedure and the procedure of its committees. The validity of any proceedings of Creative Scotland or any of its committees is not affected by any irregularity in the membership of Creative Scotland.

50. Sub-paragraph (3) provides that members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of Creative Scotland or any of its committees, but are not entitled to vote at such meetings.

*Paragraph 10 – General powers*

51. Paragraph 10 provides for the general legal powers of Creative Scotland.

52. Sub-paragraph (1) gives Creative Scotland wide power to do anything related to the exercise of its functions. Without prejudice to the generality of this power, sub-paragraph (2) sets out particular powers of Creative Scotland.

*Paragraph 11 – Delegation of functions*

53. Creative Scotland has power to authorise the chief executive, any other employee or any of its committees to exercise its functions. Sub-paragraph (2) restricts Creative Scotland's power to delegate its functions by providing that Creative Scotland may not authorise any other person to exercise functions relating to financial accounting.

54. Any delegation under sub-paragraph (1) does not affect the responsibility of Creative Scotland for the exercise of its functions (see sub-paragraph (3)).

*Paragraph 12 – Location of office*

55. Paragraph 12 requires Creative Scotland to obtain the approval of the Scottish Ministers before determining the location of its office premises.

*Paragraph 13 – Accounts*

56. Sub-paragraph (1) requires Creative Scotland to manage its financial accounting and requires Creative Scotland to do so in accordance with any directions the Scottish Ministers may give.

57. Sub-paragraph (2) requires Creative Scotland to send its annual statement of accounts to the Auditor General for Scotland for auditing.

*Paragraph 14 – Reports*

58. Creative Scotland is required to prepare an annual report. Sub-paragraph (2) requires Creative Scotland to publish its annual report, lay a copy before the Scottish Parliament and send a copy to the Scottish Ministers.

59. Creative Scotland may publish other reports and information on matters relevant to its functions.

**Schedule 2 – Modifications of enactments**

60. Schedule 2 modifies specified Acts of the Scottish Parliament to insert new references to Creative Scotland and delete redundant references to the Scottish Arts Council and Scottish Screen (which is being wound up by non-legislative means).

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**FINANCIAL MEMORANDUM**

**INTRODUCTION**

61. This document relates to the Creative Scotland Bill introduced in the Scottish Parliament on 12 March 2008. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the



Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

62. The Bill will establish Creative Scotland. The functions of Creative Scotland will be to promote understanding, appreciation and enjoyment of the arts and culture; identify, support and develop talent and excellence in the arts and culture; realise the value and benefits of the arts and culture; and support activities which involve the application of creative skills to the development of products and processes. Creative Scotland will make grants and provide advice and information in relation to the arts, culture and film and the wider screen industries as currently do the Scottish Arts Council and Scottish Screen.

63. The Creative Scotland Bill does not in itself have cost implications for the Scottish Government, local authorities or the cultural and screen industry sectors. There is however an expectation that the integration of the Scottish Arts Council and Scottish Screen functions will result in some administrative efficiencies, and some one-off transitional costs.

#### **COSTS ON THE SCOTTISH ADMINISTRATION**

64. Funding provided by the Scottish Government to Creative Scotland by way of grant in aid will essentially be the combined grant in aid that would otherwise have been made available to the Scottish Arts Council and Scottish Screen. Over the period 2008-2011 planned amounts are **£50/50.88/48.04m**. Creative Scotland will also distribute the national lottery funding currently distributed by the Scottish Arts Council and Scottish Screen which in the last financial year (2006/07) was approximately **£20m**.

65. There are one off costs that fall on the existing bodies and, potentially, the Scottish Government. Work is under way at present to prepare proposals for the amalgamation of the operations of the two organisations. This work is at an early stage and a detailed estimate of one-off costs is not yet available. It is expected that expenditure will include professional fees, costs associated with harmonising office systems, staff costs connected to developing new ways of working and, possibly, costs connected to the relocation of office premises. This activity is undertaken to better deliver the objectives of the existing organisations, but will also be relevant to the operations of Creative Scotland, once established. Costs associated with amalgamating the Scottish Arts Council and Scottish Screen and the development of new ways of working relevant to Creative Scotland (and the margins of uncertainty in relation to those costs) are therefore hard to predict given the ongoing work mentioned above, but are not presently expected to exceed £700,000 per annum in the coming 2 financial years (2008-09 and 2009-10). These costs will be met from savings from the two organisations' grant in aid which is required by the Scottish Government.

#### **COSTS ON LOCAL AUTHORITIES**

66. The Creative Scotland Bill will not impose any additional costs on local authorities. The Bill gives to Creative Scotland a function to provide persons or groups of persons other than the Scottish Ministers with information and advice in relation to the arts and culture. Local authorities will be among the recipients of such advice, but the Scottish Ministers do not expect such receipt to involve any necessary additional expenditure for local authorities.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

67. The Creative Scotland Bill does not impose costs on other bodies, individuals and businesses. The provisions in the Bill will not give rise to any new resource burden for private or voluntary sector bodies. There will be no additional burden on other Scottish Government agencies, the Scottish Parliament and other public bodies.

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## **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

68. On 12 March 2008, the First Minister (Rt Hon Alex Salmond MSP) made the following statement:

“In my view, the provisions of the Creative Scotland Bill would be within the legislative competence of the Scottish Parliament.”

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## **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

69. On 11 March 2008, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Creative Scotland Bill would be within the legislative competence of the Scottish Parliament.”



*These documents relate to the Creative Scotland Bill (SP Bill 7) as introduced in the Scottish Parliament on 12 March 2008*

# **CREATIVE SCOTLAND BILL**

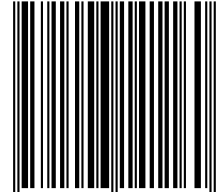
## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

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