

# Creative Scotland Bill

[AS INTRODUCED]

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**ACCOMPANYING DOCUMENTS**

**Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 7-EN. A Policy Memorandum is printed separately as SP Bill 7-PM.**

# Creative Scotland Bill

## [AS INTRODUCED]

An Act of the Scottish Parliament to establish a body to be known as Creative Scotland and to confer on it functions in relation to the arts and culture and to the application of creative skills; and for connected purposes.

### *Creative Scotland*

- 5     **1       Establishment of Creative Scotland**
- (1) There is established a body to be known as Creative Scotland.
- (2) Schedule 1 (which makes further provision about the status, constitution, proceedings etc. of Creative Scotland) has effect.
- 10    **2       General functions of Creative Scotland**
- (1) Creative Scotland has the general functions of—
- (a) promoting understanding, appreciation and enjoyment of the arts and culture,
- (b) identifying, supporting and developing—
- (i) talent, and
- (ii) excellence,
- 15           in the arts and culture,
- (c) realising, as far as reasonably practicable to do so, the value and benefits of the arts and culture,
- (d) supporting activities which involve the application of creative skills to the development of products and processes.
- 20    (2) In exercising the function mentioned in subsection (1)(a), Creative Scotland must do so with a view to—
- (a) encouraging as many people as possible to access and participate in the arts and culture,
- (b) assisting other persons to enable as many people as possible to access and participate in the arts and culture, and
- 25           (c) increasing the diversity of people who access and participate in the arts and culture.

- (3) Creative Scotland may encourage and support such persons as it considers appropriate in the exercise by those persons of any of the functions mentioned in paragraphs (a) to (d) of subsection (1) (or functions similar to those).

### 3 Advisory and other functions

- (1) Creative Scotland must provide the Scottish Ministers with such advice, information and assistance as they may reasonably require in relation to—
- (a) the arts and culture,
  - (b) the exercise of any of Creative Scotland's functions.
- (2) Creative Scotland may provide the Scottish Ministers with such other advice and information as it considers appropriate in relation to the matters mentioned in subsection (1)(a) and (b).
- (3) Creative Scotland may provide such other persons as it considers appropriate with such advice, information and assistance as it considers appropriate in relation to—
- (a) the arts and culture,
  - (b) the application of creative skills.
- (4) Any advice, information or assistance under subsection (1) or (2) must be provided in such manner as the Scottish Ministers may determine.

### 4 Grants and loans

- (1) The Scottish Ministers may make grants to Creative Scotland.
- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make further grants to Creative Scotland for particular purposes.
- (3) A grant under subsection (1) or (2) is subject to such terms and conditions (including conditions as to repayment) as the Scottish Ministers may determine.
- (4) Creative Scotland may make grants and loans to such persons as it considers appropriate for the purpose of, in connection with, or where it appears conducive to, the exercise of its functions.
- (5) A grant or loan under subsection (4) is subject to such terms and conditions (including conditions as to repayment) as Creative Scotland may determine.
- (6) Financial assistance may be provided by Creative Scotland only under subsection (4).

### 5 Directions and guidance

- (1) The Scottish Ministers may give Creative Scotland directions (of a general or specific nature) as to the exercise of its functions.
- (2) But the Scottish Ministers may not give directions so far as relating to artistic or cultural judgement in respect of the exercise of Creative Scotland's functions under section 2(1) or (3), 3(3) or 4(4).
- (3) Creative Scotland must—
- (a) comply with any directions given to it by the Scottish Ministers under this Act,
  - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

- (4) The Scottish Ministers may vary or revoke any direction given under this Act.

*Miscellaneous and general*

**6 Dissolution of the Scottish Arts Council**

- (1) The Scottish Arts Council is dissolved and the charter constituting that body is revoked.
- 5 (2) In subsection (1), the “charter” is the Royal Charter granted by Her Majesty on 8 February 1994.

**7 Transfer of Scottish Arts Council staff etc.**

- (1) With effect from the date on which section 6 comes into force—
- 10 (a) any person employed by the Scottish Arts Council immediately before that date is transferred into the employment of Creative Scotland,
- (b) all property (including rights) and liabilities of the Scottish Arts Council subsisting immediately before that date are transferred to, and vest in, Creative Scotland.
- (2) The contract of employment of a person transferred by virtue of subsection (1)(a)—
- 15 (a) is not terminated by the transfer, and
- (b) has effect from the date of transfer as if originally made between the person and Creative Scotland.
- (3) Without prejudice to subsection (2), where a person is transferred by virtue of subsection (1)(a)—
- 20 (a) all the rights, powers, duties and liabilities of the Scottish Arts Council under or in connection with the person’s contract of employment are transferred to Creative Scotland on the date of transfer, and
- (b) anything done before that date by or in relation to the Scottish Arts Council in respect of the person or the contract is to be treated from that date as having been
- 25 done by or in relation to Creative Scotland.
- (4) Subsections (1) to (3) do not affect any right of any person so transferred to terminate the person’s contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but any such change is not to be taken to have occurred by reason only that the identity of the person’s employer changes
- 30 by virtue of those subsections.

**8 Modifications of enactments**

Schedule 2 (which contains modifications of enactments) has effect.

**9 Ancillary provision**

- 35 (1) The Scottish Ministers may by order made by statutory instrument make such incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may—
- (a) make different provision for different purposes,

(b) modify any enactment.

(3) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament; except as provided for in subsection (4).

5 (4) No order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

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

10 (1) This Act may be cited as the Creative Scotland Act 2008.

(2) This section comes into force on Royal Assent.

(3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(4) Different days may be appointed under subsection (3) for different purposes.

15 (5) In sections 2(2)(b) and (3) and 3(3), “persons” includes groups of persons.

SCHEDULE 1  
*(introduced by section 1(2))*

CREATIVE SCOTLAND

*Status*

- 5 1 (1) Creative Scotland is a body corporate.
- (2) Creative Scotland is not to be regarded as a servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants.
- 10 (3) Creative Scotland's property is not to be regarded as property of, or held on behalf of, the Crown.

*Membership of Creative Scotland*

- 2 (1) Creative Scotland is to consist of the following members—
- (a) a person appointed by the Scottish Ministers to chair Creative Scotland, and
- 15 (b) no fewer than 8 nor more than 14 other members appointed by the Scottish Ministers.
- (2) The Scottish Ministers may by order made by statutory instrument amend sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.
- 20 (3) A statutory instrument containing an order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

*Terms of appointment etc.*

- 3 (1) Each member of Creative Scotland is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
- 25 (a) holds and vacates office in accordance with the terms and conditions of appointment, but
- (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.

*Removal of members*

- 30 4 The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
- (a) the member—
- (i) has been adjudged bankrupt,
- (ii) has granted a trust deed for creditors or a composition contract,
- 35 (iii) has proposed a voluntary arrangement which has been approved,
- (b) the member's estate has been sequestrated,

- (c) the member has been absent from 3 consecutive meetings of Creative Scotland without the permission of Creative Scotland,
- (d) the member is otherwise unfit or unable to discharge the functions of a member.

*Disqualification from membership*

- 5 5 A person is disqualified from appointment, and from holding office, as a member of Creative Scotland if that person is—
- (a) a member of the Scottish Parliament,
  - (b) a member of the House of Commons,
  - (c) a member of the European Parliament.

10 *Remuneration and allowances for members*

- 6 Creative Scotland must pay to each of its members such—
- (a) remuneration, and
  - (b) allowances and expenses,
- as the Scottish Ministers may determine.

15 *Chief executive and other employees*

- 7 (1) Creative Scotland is to employ a chief executive.
- (2) The chief executive may not be a member of Creative Scotland.
- (3) The chief executive is, with the approval of the Scottish Ministers, to be appointed by Creative Scotland on such terms and conditions as Creative Scotland may, with such approval, determine.
- 20 (4) Creative Scotland may (subject to any directions given under sub-paragraph (5)) appoint such other employees on such terms and conditions as Creative Scotland may determine.
- (5) The Scottish Ministers may give directions to Creative Scotland as regards—
- (a) the appointment of employees under sub-paragraph (4), and
  - (b) the terms and conditions of their employment.
- 25 (6) Creative Scotland may, with the approval of the Scottish Ministers—
- (a) pay or make arrangements for the payment,
  - (b) make payments or contributions towards the provision,
  - (c) provide and maintain schemes (whether contributory or not) for the payment,
- 30 of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of Creative Scotland, as it may determine.
- (7) 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.



*Committees*

- 8 (1) Creative Scotland may establish committees for any purpose relating to its functions.
- (2) Creative Scotland is to determine the composition of its committees.
- 5 (3) 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.
- (4) A committee of Creative Scotland is to comply with any directions given to it by Creative Scotland.

*Procedure and meetings*

- 10 9 (1) Creative Scotland may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The validity of any proceedings of Creative Scotland, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
- 15 (3) 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.

*General powers*

- 10 (1) Creative Scotland may do anything which appears to be necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its
- 20 functions.
- (2) In particular, Creative Scotland may—
- (a) engage in any business or undertaking,
- (b) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 1985 (c.6)),
- 25 (c) form partnerships with others,
- (d) enter into contracts,
- (e) accept gifts of money and other property,
- (f) invest sums not immediately required in relation to the exercise of its functions,
- (g) undertake or execute any charitable trust,
- 30 (h) obtain advice or assistance from any person who, in Creative Scotland's opinion, is qualified to give it,
- (i) commission research,
- (j) with the consent of the Scottish Ministers—
- (i) borrow money,
- 35 (ii) acquire and dispose of land,
- (iii) establish or take part in the setting up of organisations having functions similar to those of Creative Scotland,

(iv) make charges for the provision of goods or advice or other services in such circumstances and of such amounts as Creative Scotland may determine.

- (3) For the purposes of paragraph (g) of sub-paragraph (2), a trust is a charitable trust if all its purposes are within section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

#### *Delegation of functions*

11 (1) Creative Scotland may, subject to sub-paragraphs (2) and (3), authorise—

- (a) the chief executive,  
(b) any other employee,  
(c) any of its committees,

to exercise such of its functions, and to such extent, as it may determine.

- (2) Creative Scotland may not authorise any of the following functions to be exercised by any other person—

- (a) the approval of annual reports and accounts,  
(b) the approval of any budget or other financial plan.

- (3) Sub-paragraph (1) does not affect the responsibility of Creative Scotland for the exercise of its functions.

#### *Location of office*

12 Creative Scotland's determination of the location of its office premises is subject to the approval of the Scottish Ministers.

#### *Accounts*

13 (1) Creative Scotland must—

- (a) keep proper accounts and accounting records,  
(b) prepare in respect of each financial year a statement of accounts, and  
(c) send a copy of the statement to the Scottish Ministers,

and must do so in accordance with any directions the Scottish Ministers may give.

- (2) Creative Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

#### *Reports*

14 (1) As soon as practicable after the end of each financial year, Creative Scotland must prepare a report which is—

- (a) to provide information on the discharge of Creative Scotland's functions during that year, and  
(b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.

- (2) Creative Scotland must—

- (a) publish the report,
  - (b) lay a copy of the report before the Scottish Parliament,
  - (c) send a copy of the report to the Scottish Ministers.
- (3) Creative Scotland may publish such other reports and information on matters relevant to the functions of Creative Scotland as it considers appropriate.

SCHEDULE 2  
*(introduced by section 8)*

MODIFICATIONS OF ENACTMENTS

*Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)*

- 10     1     In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies)—
- (a) after the entry relating to a community justice authority insert—  
“Creative Scotland”,
  - (b) the entry relating to the Scottish Arts Council is repealed.

15     *Scottish Public Services Ombudsman Act 2002 (asp 11)*

- 2     In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities)—
- (a) after paragraph 21B insert—  
“21C     Creative Scotland.”,
  - (b) paragraphs 36 and 50 are repealed.

20     *Freedom of Information (Scotland) Act 2002 (asp 13)*

- 3     In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
- (a) after paragraph 62B insert—  
“62C     Creative Scotland.”,
  - (b) paragraphs 78 and 98 are repealed.

*Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)*

- 4     In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—
- (a) after the entry relating to the Bòrd na Gàidhlig insert—  
“Creative Scotland”,
  - (b) the entries relating to—
    - (i) the Scottish Arts Council, and

(ii) Scottish Screen,  
are repealed.



# **Creative Scotland Bill**

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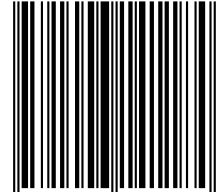
Introduced by: Alex Salmond  
On: 12 March 2008  
Supported by: Linda Fabiani  
Bill type: Executive Bill

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

ISBN 978-1-4061-4118-4



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