

CREATIVE SCOTLAND BILL

POLICY MEMORANDUM

INTRODUCTION

1. 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 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 7-EN.

BACKGROUND

2. A draft Culture (Scotland) Bill was published for consultation in December 2006. One of the proposals in the draft Bill was to establish a new cultural development body, Creative Scotland. The consultation responses were generally agreeable to this proposal. The Scottish Government has now considered these responses, and has decided to continue with the proposal to establish Creative Scotland. The resources of the Scottish Arts Council (the national body responsible for the promotion of the arts, and established by Royal Charter) and Scottish Screen (the national body responsible for the promotion of film and the wider screen industries, established as a company limited by guarantee) will be amalgamated to create the body. Creative Scotland, however, is to have new and wider functions than its antecedent bodies.

3. Scottish Ministers will consider introducing legislation for a number of the other policies contained in the draft Culture (Scotland) Bill at a later stage. A statement was made on these matters in the Parliament on 7 November 2007, Official Report column reference 3072.

POLICY OBJECTIVES OF THE BILL

4. This Bill will establish a national cultural development body, Creative Scotland. The body will inherit the resources (including the staff) and general purposes of two existing public bodies, the Scottish Arts Council and Scottish Screen. The Scottish Government believes that these two organisations have achieved considerable and growing success in the pursuit of their objects, and that the arts, film and wider screen and creative industries in Scotland have benefited greatly from their efforts. However, Ministers also believe that an evolution of these organisations' objectives and the establishment of a cultural development body fit for the 21st century is now necessary to realise the ambitions for creativity in Scotland and for the success of creative practitioners and enterprises.

5. The Scottish Government's objectives for Creative Scotland are to inspire and support a culturally ambitious Scotland, where our creative practitioners excel and their enterprises prosper, and one which attracts and retains increasing numbers of gifted people. To do this, the Government seeks to renew the national approach to supporting creativity; so that it is not only about support for the arts or film in its traditional sense, but is also about realising the potential of creativity in each part of society and the economy, and also about projecting to the world at large the excellence and ambition of a contemporary, outward looking nation. Creative Scotland will therefore have a number of functions to pursue these broad objectives. It will:

- promote understanding, appreciation and enjoyment of the arts and culture in all sections of society;
- identify, develop and support talent and excellence in the arts and culture;
- work to make real and bring to fruition 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.

6. In seeking to promote understanding, appreciation and enjoyment of the arts and culture, Creative Scotland must in particular encourage more people, and a greater diversity of people, to access and participate in the arts and culture.

7. The Bill also provides for the dissolution of the Scottish Arts Council, and the transfer of its staff and assets. Scottish Screen will be wound up through non-legislative means, but its staff and assets will also transfer to Creative Scotland.

8. Creative Scotland will continue the work of the Scottish Arts Council and Scottish Screen in providing financial and practical support to artists and creative practitioners of all kinds, including all those that have traditionally attracted support from both bodies. It will be able to offer support to new forms or combinations of creative practice. In these decisions, Creative Scotland will continue to enjoy operational independence from Ministers, as has been the case to date. It will also be asked to develop and disseminate good practice advice on strategic matters to creative individuals, organisations and enterprises (e.g. ways to develop further the voluntary cultural sector).

9. The new body will also have a function to work to realise the benefits of the arts and culture. The body will do this through the direct support described above, and in addition Ministers will also look to Creative Scotland to secure these benefits through its advisory functions, set out in section 3 of the Bill. Creative Scotland will provide advice to the Scottish Ministers. Just as important, Ministers will look to Creative Scotland to "champion" the benefits of creativity across the public sector, to business and to society as a whole. Examples of these benefits could include the potential for cultural activities to aid patient recuperation in hospitals; or, the ways in which creative stimuli can add to the competitiveness of businesses.

10. The measures set out in the Bill therefore recognise the need for Creative Scotland to undertake strategic and leadership functions in the cultural and creative communities.

ALTERNATIVE APPROACHES

11. Historically, the Scottish Arts Council and Scottish Screen have supported their respective areas (i.e. arts and culture and film and the wider screen industries) through funding, guidance and other measures of practical support, and, in the Government's view, have done this well. One alternative approach, therefore, would be to continue with the status quo. The Government considers, however, that such an approach does not take proper account of the ways in which new technology and other influences have brought about change in the creative landscape. The advent of digitisation of creative content has brought increasing convergence between art forms like installations, music and screen. That is just one example of the growing overlap that is taking place across the screen and audio visual industries and the plethora of artistic work being done in Scotland. These trends and changes suggest to Ministers that public cultural development bodies need to evolve too and that therefore the status quo of keeping the Scottish Arts Council and Scottish Screen as they currently are is not desirable. Rather, Ministers believe it makes sense to bring together these bodies to enhance the functions already in place and create new services fit for a developing environment.

12. Another alternative approach would be to establish more than one body to pursue the objectives envisaged for Creative Scotland. One model for doing this was developed by the "Cultural Commission", established during the 2003-07 Parliamentary session, whose report was published in June 2005. <http://www.culturalcommission.org.uk/cultural/files/Final%20Final%20Report%20June%2005.pdf> This report advocated the establishment of a new development agency 'Culture Scotland' to bring together all parts of the cultural sector and act as a strategic planning hub, and also a second body, "Culture Fund", to operate a development fund and foster enterprise within the cultural sector. Such an approach appears to the Government to be feasible, but undesirable. Ministers in general wish to avoid a further proliferation of new public bodies. They also believe that a single body will be well placed to fulfil each of the functions intended for Creative Scotland, and that it would be desirable for these objectives to be pursued in an integrated fashion. Further, they believe that Creative Scotland, with its broad responsibility for the arts and culture in Scotland, will be well placed to act as a focal point for the development of cultural policy and strategy, while recognising – of course – that there are a range of other public, private and voluntary bodies that will also have a role to play in developing thinking and proposals. Ministers therefore propose to task Creative Scotland, as a single body, to carry out all of the functions of a national cultural development body.

13. One further alternative would be to establish Creative Scotland other than through legislation. New public bodies can be created, for example, by establishing a company. Responses to the consultation on the draft Bill, which proposed the statutory route, suggested a relatively wide consensus in favour of establishing a new body. Given this, the Government feels it would be best to establish such a significant body in a way that permits direct Parliamentary scrutiny of its purposes and powers, and so do this through legislation. The Government has therefore rejected non-legislative options in this case.

CONSULTATION

14. The then Scottish Executive published a draft Culture (Scotland) Bill and associated draft guidance for consultation on 14 December 2006, seeking comments from those organisations

which would be affected by the Bill and from any other interested parties. In addition to a wide distribution, copies of the consultation and guidance documents were made available on request and the document was published on the Scottish Executive's website. <http://www.scotland.gov.uk/Publications/2006/12/14095224/0> The consultation period ran for 12 weeks, closing on 30 March 2007. Submissions that were received shortly after the closing date were also accepted. In total 212 responses were received.

15. All responses not marked confidential have been made publicly available online at <http://www.scotland.gov.uk/Publications/2007/05/11154331/0> A factual report of the responses to the consultation was published on 24 August 2007 and is available on the Scottish Government's website at <http://www.scotland.gov.uk/Publications/2007/08/16120452/0>

16. The proposal to establish a national cultural development body in statute, known as Creative Scotland, was generally welcomed. Within that general support there were some issues of concern raised. Many respondents to the consultation were concerned by the proposals in the draft Bill for the Scottish Ministers to have powers of direction over Creative Scotland. The concern was that this power could interfere with the body's "artistic judgement". While a Ministerial power of direction over public bodies is a common element of governance regimes and accountability to the Scottish Government, Ministers accept that it is essential that Creative Scotland enjoys artistic and creative independence in carrying out its main functions, including when deciding which persons or bodies to support. The Scottish Government expects that support for this principle will be shared by all the parties in the Parliament. Accordingly, while the Bill includes a power for Ministers to give the body directions, there is also specific provision that prevents Ministers from giving directions relating to Creative Scotland's artistic or cultural judgement.

17. There was also concern among respondents that Creative Scotland's functions placed too much emphasis on realising the "economic benefits" of arts and culture (in section 8(2)(c) of the draft Culture (Scotland) Bill). The Government has reflected on these concerns. Ministers believe that the arts and culture certainly have many economic benefits for Scotland. They also believe, however, that Creative Scotland should be at liberty to act and give support purely on the basis of its view of creative merit, and – on occasions - without any regard to the "knock-on" benefits (even if it is likely that almost all activity supported will in fact involve other benefits, including economic benefits). It should not be subject to a general responsibility to pursue economic benefits in preference to, for example, "art for art's sake" or wider community benefits. Accordingly, Ministers intend the Bill to give Creative Scotland scope to take a balanced approach to its functions and to the benefits of the arts and culture, and to have discretion in these matters. This policy is reflected in section 2(1)(c) of the Bill.

18. A number of different respondents to the consultation proposed that the board of Creative Scotland include a representative from their creative sector or section of the community. Proposals included recommendations for members to represent various types of creative practitioners, local authorities, persons with a disability and Gaelic speakers. The Scottish Government has considered these representations carefully. It agrees that Creative Scotland should be led by a diverse group of individuals, who between them should certainly have knowledge and experience of creative practices, be alive to the diversity of individuals and organisations that play important roles in the success of Scotland's culture and who in their membership reflect the diversity of Scotland. Ministers believe that the present joint board of

the Scottish Arts Council and Scottish Screen provide a good example, with its mix of experienced practitioners, those with a business background and a number with experience of overseeing significant national organisations. Such a mix is desirable if the board is to fulfil its principal purpose of overseeing the running of the body and to provide a challenge function to the executive team. Ministers consider that the best way to achieve this balance among the members is to give them discretion in the selection of members, rather than reserving places for the many important sectors and sections of the community.

19. On a connected point, a number of responses objected to the description of Creative Scotland, in the consultation document, as *the* national cultural development body. Respondents regarded this wording as an implication that the body would be the only “national” development body in Scotland, whereas it was noted that a number of such bodies would continue to exist and have important roles. These respondents included bodies such as the Scottish Museums Council and the Scottish Library and Information Council. They felt that there was a danger of duplication across their roles and the proposed role of Creative Scotland, and sought clarification that the remit and functions of the reformed body were not intended to supplant their purposes. Ministers understand these concerns and in no way want Creative Scotland to duplicate the work being provided by these existing national advisory bodies, who have expertise in particular areas. On the contrary, Ministers look to Creative Scotland to work in partnership with a wide variety of interested organisations.

20. Within the diversity of public bodies concerned with culture and creativity, the Scottish Government will look to Creative Scotland to play a strategic, leadership role. This does not mean, of course, that it will have any statutory or other authority over other national public bodies, and still less in relation to local authorities and private or membership organisations. But the Government does think there is merit in Creative Scotland acting as a focal point for the development of cultural strategies and policy, and for Creative Scotland to provoke debate on issues of general interest. Indeed, Ministers look to the body – in part through its advisory and information functions – to be provocative in its exploration of new issues, as well as being experimental and bold in its support for existing and new forms of creativity.

21. Ministers consider that this leadership role for Creative Scotland is preferable to the proposal which came from some respondents to the consultation who recommended a “National Cultural Forum” or “Board” led by Ministers or Creative Scotland. Proposals varied, but the most popular involved this body considering and adopting a national cultural strategy or policy which members would sign up to and implement. The Government believes that the Creative Scotland Bill gives the body sufficiently broad responsibilities to enable them to play this role and to offer advice to Scottish Ministers on the impact and development of their cultural policy. It could do this by setting up a ‘think tank’ or other forum to look at a strategy for culture. The Government would, therefore, see it as unnecessary to legislate for a “National Cultural Forum” or “Board”.

22. In the consultation, a number of responses suggested that legislation should incorporate a greater recognition of the importance of artists and/or include a definition of “culture”. While the Government is clearly content to acknowledge and celebrate artists in Scotland, it does not feel that this requires any statutory expression. It would also seem inappropriate to refer to “artists” in the Bill, because Creative Scotland will have priorities and interests in a wide range of cultural forms, some of whose practitioners might well not refer to themselves as “artists”.

That being so, or at least a reasonable possibility, it seems unnecessary for the Bill to be exclusive in any way. It would also set a precedent that may encourage individuals in other sectors to seek similar recognition in statute that seems likely to make legislation unnecessarily cumbersome.

23. Similarly, the Government sees no advantage in a statutory definition of “culture”. Any such definition might end up unnecessarily constraining or confusing the actions of Creative Scotland and possibly other public bodies. It could have the perverse effect of ruling out support for certain types or combinations of creative activity. It also appears to Ministers that a definition would be opposed to the principles of artistic and creative freedom, which demand that funding bodies must be able to evolve their interpretations on the basis of their own views. Indeed, even if it were possible to agree a definition of “culture” in the Parliament, it seems inevitable that it would very quickly become redundant. Ministers therefore consider a statutory definition of the “arts and culture” inappropriate and generally undesirable.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

24. The Government considers that the Bill does not have an adverse impact on the basis of age, gender, race, disability, marital or civil partnership status, religion or belief or sexual orientation. On the contrary, the Bill seeks to create opportunities for Creative Scotland to widen access to the arts and cultural activities through its remit to promote understanding, appreciation and enjoyment of the arts and culture in all sections of society. The Government has recently completed an Equality Impact Assessment about the establishment of Creative Scotland. Creative Scotland will also work with voluntary, business and charities sectors as well as other interested bodies.

Human rights

25. The Bill does not give rise to any issues under the European Convention on Human Rights.

Island communities

26. As with paragraph 24 above, the Bill’s provisions task Creative Scotland to encourage as many people as possible and increase the diversity of people to access and participate in the arts and culture, and this will encompass the island communities.

Local government

27. The Bill’s provisions in making Creative Scotland’s functions and remit wide-ranging encourage the body to work in partnership with local government and other persons and groups as it thinks fit. Creative Scotland will work together with local and central government to discuss and agree implementation and resource issues relating to this policy area. Scottish Ministers will also look to Creative Scotland to undertake a strategic role across the public sector

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which will include working with local government. The Bill does not, however, impose any new burden or responsibility on local authorities.

Sustainable development

28. Creative Scotland will contribute positive social and economic impacts and will seek to minimise adverse environmental impacts.

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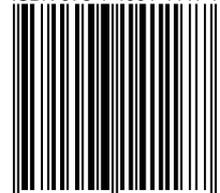
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