

# **Culture (Scotland) Bill**

## **[CONSULTATION DRAFT]**

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# Culture (Scotland) Bill

## [CONSULTATION DRAFT]

An Act of the Scottish Parliament to make provision about local authority functions in relation to culture; to make provision for the establishment of Creative Scotland and the dissolution of the Scottish Arts Council; to make provision about certain national cultural bodies; to create an offence of dealing in a tainted cultural object; and for connected purposes.

### PART 1

#### LOCAL GOVERNMENT FUNCTIONS

#### **1 Information as to cultural services**

- (1) A local authority are from time to time to publish information as to the cultural services which the authority propose to provide.
- (2) Information published under subsection (1) is to include details of—
  - (a) how persons resident in the area of the local authority may best and most easily make use of the cultural services being provided by the authority, and
  - (b) which cultural services appear to the authority most likely to be of interest—
    - (i) generally to persons so resident, and
    - (ii) to specified groups of persons so resident.

#### **2 Guidance as to provision of cultural services**

- (1) In carrying out their functions, a local authority are to have regard to any guidance which the Scottish Ministers may issue to them as to—
  - (a) how the authority are to plan the provision of cultural services,
  - (b) what cultural services the authority might wish to provide,
  - (c) the persons to be consulted by the authority regarding what cultural services the authority are to provide, and the way in which such consultation is to be carried out,
  - (d) how the authority should provide cultural services and publicise that provision,
  - (e) how the authority should assess their performance in connection with—
    - (i) deciding which cultural services to provide, and

- (ii) the provision of those services, and
  - (f) the manner in which the provision of cultural services may assist the authority in the performance of their functions generally.
- (2) Before issuing guidance under subsection (1), the Scottish Ministers are to consult with such persons as appear to them to be appropriate.

### **3 Provision of information to Scottish Ministers**

A local authority are to provide the Scottish Ministers with such information as those Ministers may request regarding—

- (a) the manner in which the authority have planned the provision of cultural services,
- (b) the consultation undertaken by the authority in carrying out such planning,
- (c) the provision of cultural services by the authority, including how successfully the authority consider that they have provided those services,
- (d) the consideration given by the authority to whether the provision of cultural services will assist the authority in the performance of their functions generally,
- (e) the manner in which the authority have attempted to use the provision of cultural services to assist the performance of their functions generally, and
- (f) any evidence available as to whether the provision of cultural services has assisted the authority in the performance of their functions generally.

### **4 Use of local authority records for cultural purposes**

After subsection (2) of section 53 of the Local Government etc. (Scotland) Act 1994 (c.39) (records held by local authorities), insert—

“(2A) In deciding whether to dispose of any records, a local authority are to have particular regard to the extent to which the records may be used for cultural purposes.”.

### **5 Broadcasting by local authorities**

In section 88 of the Local Government (Scotland) Act 1973 (c.65) (provision of information, etc., relating to matters affecting local government), after subsection (1A) insert—

“(1AA) A local authority may—

- (a) for the purpose of broadcasting or distributing information falling within subsection (1AB), provide an electronic communications network or electronic communications service; or
- (b) arrange with the provider of such a network or service for the broadcasting or distribution of such information by means of the network or service.

(1AB) Information falls within this subsection, in relation to a local authority, if it is one or both of the following—

- (a) information concerning the services within the area of the authority that are provided either by the authority themselves or by other authorities mentioned in subsection (1B);

(b) information relating to the functions of the authority.

(1AC) Nothing in subsection (1AA) entitles a local authority to do anything in contravention of a requirement or restriction imposed by or under—

- (a) the Wireless Telegraphy Act 1949 (c.54);
- (b) the Broadcasting Act 1990 (c.42);
- (c) the Broadcasting Act 1996 (c.55); or
- (d) the Communications Act 2003 (c.21),

and in that subsection “electronic communications network” and “electronic communications service” each has the same meaning as in the Communications Act 2003.”.

## **6 Management of libraries, museums and art galleries**

In section 21 of the Public Libraries Consolidation (Scotland) Act 1887 (c.42) (powers of authorities)—

- (a) the words from “shall manage” to “applies; and” are repealed, and
- (b) for the words “such management” substitute “the management of libraries, museums or arts galleries established under this Act or to which this Act applies”.

## **7 Interpretation of Part 1**

In this Part—

“cultural services” means services of a cultural nature provided in the performance of a local authority’s functions under—

- (a) the Public Libraries Consolidation (Scotland) Act 1887 (c.42),
- (b) section 163(2) of the Local Government (Scotland) Act 1973 (c.65),
- (c) sections 14 to 17 of the Local Government and Planning (Scotland) Act 1982 (c.43),
- (d) sections 53 and 54 of the Local Government etc. (Scotland) Act 1994 (c.39), and
- (e) section 20 of the Local Government in Scotland Act 2003 (asp 1); and

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

## **PART 2**

### **CREATIVE SCOTLAND**

## **8 Constitution and functions of Creative Scotland**

- (1) There is established a body to be known as Creative Scotland.
- (2) Creative Scotland has the general functions—
  - (a) of promoting an understanding, appreciation and enjoyment of the arts and culture,

- (b) of—
    - (i) identifying and developing talent, and
    - (ii) supporting and developing excellence,in the arts and culture,
  - (c) of realising, as far as reasonably practicable to do so, the value and benefits (in particular, the economic value and benefits) of the arts and culture,
  - (d) of supporting activities which involve the application of creative skills to the development of products and processes.
- (3) In exercising the function mentioned in subsection (2)(a), Creative Scotland is to do so with a view to—
- (a) encouraging as many people as possible to,
  - (b) assisting other persons to enable as many people as possible to, and
  - (c) increasing the diversity of people who,
- access and participate in the arts and culture.
- (4) Creative Scotland is to encourage and support such other persons as it considers appropriate in the pursuit of the things mentioned in paragraphs (a) to (d) of subsection (2).
- (5) Schedule 1 (which makes further provision about the status, constitution, proceedings etc. of Creative Scotland) has effect.

## **9 Advisory functions**

- (1) Creative Scotland must provide the Scottish Ministers with such information, advice and assistance relating to—
- (a) the arts and culture,
  - (b) the exercise of any of Creative Scotland's functions,
- as the Scottish Ministers may reasonably require.
- (2) Creative Scotland may provide the Scottish Ministers with such other information and advice in relation to the arts and culture whenever it considers it appropriate to do so.
- (3) Creative Scotland may for the purpose of its general functions provide such other persons, or groups of persons, as it thinks fit, with such information and advice in relation to the arts and culture as it considers appropriate.
- (4) Any information, advice or assistance under subsection (1) or (2) is to be provided in such manner as the Scottish Ministers may determine.

## **10 Dissolution of the Scottish Arts Council**

The Scottish Arts Council is dissolved on such date as the Scottish Ministers may by order made by statutory instrument appoint.

**PART 3**

## NATIONAL CULTURAL BODIES

**11 Board of Trustees of the National Library of Scotland**

- (1) There is to continue to be a library with the name of the National Library of Scotland (“the National Library”).
- (2) The body corporate constituted by section 1(1) of the National Library of Scotland Act 1925 (c.73) is to continue in existence and is to be known as the Board of Trustees of the National Library of Scotland (“the National Library Board”).
- (3) The functions of the National Library Board are—
  - (a) to manage the National Library as a national resource for—
    - (i) reference,
    - (ii) study, and
    - (iii) bibliography and other information services,having particular regard to objects pertaining to Scotland,
  - (b) to care for, preserve and add to the objects in its collection,
  - (c) to ensure that the objects in its collection—
    - (i) are exhibited to the public and interpreted in such manner as the Board considers appropriate, and
    - (ii) are made available to persons seeking to inspect them in connection with study or research,
  - (d) to give such advice and assistance as it considers appropriate to persons providing library and information services in Scotland, and
  - (e) in relation to matters pertaining to the functions of the Board—
    - (i) to provide education, instruction and advice, and
    - (ii) to carry out research.
- (4) The National Library Board is to carry out these functions with a view to—
  - (a) encouraging and enabling as many people as possible to access the objects in its collection, and
  - (b) promoting the public’s enjoyment and understanding of these objects.
- (5) The National Library Board—
  - (a) must, when required to do so by the Scottish Ministers, and
  - (b) may at any other time,provide the Scottish Ministers with advice on any matter pertaining to the functions of the Board.

**12 Legal publications**

- (1) Copies of legal publications delivered for the National Library Board as authority for the National Library under section 1 of the Legal Deposit Libraries Act 2003 (c.28) are to be transmitted by the National Library to the Faculty of Advocates (“the Faculty”).

- (2) The National Library Board is to insert in the requests made for it under section 5 of that Act such legal publications as are named in writing by the Faculty.
- (3) Copies of legal publications transmitted to the Faculty under this section are to vest in the Faculty for the purposes of its Law Library.
- (4) Where the Faculty no longer wishes to hold a copy of any legal publication transmitted to it under this section, it is to transmit the copy to the National Library Board and, on such transmission, the copy vests in that Board.
- (5) Any question arising between the National Library Board and the Faculty as to what are legal publications within the meaning of this section is to be settled—
  - (a) by agreement between the Board's chief executive and the Faculty's librarian, or
  - (b) if they fail to agree, by the Librarian of the Edinburgh University Library.
- (6) In this section, "publication" includes a publication made available to the public by means of an electronic retrieval system.

### **13 Regulations by National Library Board and Faculty**

The National Library Board and the Faculty may jointly make regulations—

- (a) for the purposes of section 12,
- (b) for facilitating the interchange of books and other articles between the National Library and the Law Library of the Faculty,
- (c) for facilitating the consultation and use of—
  - (i) books contained in the National Library by the Judges of the Court of Session and members of the Faculty,
  - (ii) books contained in the Faculty's Law Library by the public, or
- (d) regarding the care and preservation by the Faculty of legal publications transmitted to it by the National Library.

### **14 Board of Trustees of the National Galleries of Scotland**

- (1) There is to continue to be a body corporate known as the Board of Trustees of the National Galleries of Scotland ("the National Galleries Board").
- (2) The functions of the National Galleries Board are—
  - (a) to manage the National Galleries of Scotland as a national resource which collects, preserves and displays visual and fine arts objects, having particular regard to objects pertaining to Scotland,
  - (b) to care for, preserve and add to the objects in its collection,
  - (c) to ensure that the objects in its collection—
    - (i) are exhibited to the public and interpreted in such manner as the Board considers appropriate, and
    - (ii) are made available to persons seeking to inspect them in connection with study or research,
  - (d) to give such advice and assistance as it considers appropriate to persons in charge of art galleries in Scotland, and



- (e) in relation to matters pertaining to the functions of the Board—
    - (i) to provide education, instruction and advice, and
    - (ii) to carry out research.
- (3) The National Galleries Board is to carry out these functions with a view to—
  - (a) encouraging and enabling as many people as possible to access the objects in its collection, and
  - (b) promoting the public's enjoyment and understanding of these objects.
- (4) The National Galleries Board—
  - (a) must, when required to do so by the Scottish Ministers, and
  - (b) may at any other time,provide the Scottish Ministers with advice on any matter pertaining to the functions of the Board.

## **15 Board of Trustees of the National Museums of Scotland**

- (1) There is to continue to be a body corporate known as the Board of Trustees of the National Museums of Scotland ("the National Museums Board").
- (2) The functions of the National Museums Board are—
  - (a) to manage the National Museums of Scotland as a national resource which collects, preserves and displays objects of the past and present and of the natural world, having particular regard to objects pertaining to Scotland,
  - (b) to care for, preserve and add to the objects in its collection,
  - (c) to ensure that the objects in its collection—
    - (i) are exhibited to the public and interpreted in such manner as the Board considers appropriate, and
    - (ii) are made available to persons seeking to inspect them in connection with study or research,
  - (d) to give such advice and assistance as it considers appropriate to persons in charge of museums in Scotland, and
  - (e) in relation to matters pertaining to the functions of the Board—
    - (i) to provide education, instruction and advice, and
    - (ii) to carry out research.
- (3) The National Museums Board is to carry out these functions with a view to—
  - (a) encouraging and enabling as many people as possible to access the objects in its collection, and
  - (b) promoting the public's enjoyment and understanding of these objects.
- (4) The National Museums Board—
  - (a) must, when required to do so by the Scottish Ministers, and
  - (b) may at any other time,provide the Scottish Ministers with advice on any matter pertaining to the functions of the Board.

**16 Board of Trustees of the National Record of Scotland**

- (1) There is established a body corporate to be known as the Board of Trustees of the National Record of Scotland (“the National Record Board”).
- (2) The functions of the National Record Board are—
  - (a) to identify, survey and interpret structures and places which it considers to be of historical, archaeological or architectural interest,
  - (b) to record and retain information obtained in carrying out the function specified in paragraph (a),
  - (c) to establish, care for, preserve and add to a collection of objects of historical, archaeological or architectural interest,
  - (d) to manage as a national resource the information and collection of objects held by it, having particular regard to objects pertaining to Scotland,
  - (e) to ensure that—
    - (i) the objects in its collection are exhibited to the public and interpreted in such manner as the Board considers appropriate, and
    - (ii) the information collected by it is made available to the public and interpreted in such manner as the Board considers appropriate,
  - (f) to ensure that the objects in its collection and the information collected by it are made available to persons seeking to examine them or it in connection with study or research,
  - (g) to give such advice and assistance as it considers appropriate to other persons in relation to compiling, maintaining and improving records of structures and places in Scotland which are of historical, archaeological or architectural interest,
  - (h) to give such guidance as it considers appropriate to other persons in relation to any matter pertaining to the functions of the Board, and
  - (i) to provide education and carry out research in relation to matters pertaining to the functions of the Board.
- (3) The National Record Board is to carry out these functions with a view to—
  - (a) encouraging and enabling as many people as possible to access the information held by it and the objects in its collection, and
  - (b) promoting the public’s enjoyment and understanding of that information and those objects.
- (4) The National Record Board—
  - (a) must, when required to do so by the Scottish Ministers, and
  - (b) may at any other time,provide the Scottish Ministers with advice on any matter pertaining to the functions of the Board.

**17      Dissolution of the Royal Commission on the Ancient and Historical Monuments of Scotland**

- (1) The Royal Commission on the Ancient and Historical Monuments of Scotland is dissolved on such date as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) With effect from the date appointed under subsection (1)—
  - (a) all property (including rights) and liabilities of the Royal Commission on the Ancient and Historical Monuments of Scotland subsisting immediately before that date are transferred to, and vest in, the National Record Board, and
  - (b) any person employed by the Royal Commission on the Ancient and Historical Monuments of Scotland immediately before that date is transferred into the employment of the National Record Board.

**18      General powers of cultural bodies**

- (1) A cultural body may do anything which—
  - (a) appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions, or
  - (b) appears to it to be conducive or incidental to the exercise of its functions.
- (2) Subject to subsection (4), a cultural body may in particular—
  - (a) enter into contracts,
  - (b) acquire or dispose of land,
  - (c) accept gifts and acquire moveable property by loan or purchase,
  - (d) hold property on trust,
  - (e) lend objects from its collection or, subject to section 19, exchange or otherwise dispose of such objects,
  - (f) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 1985 (c.6)),
  - (g) form partnerships with others,
  - (h) require payment for admission,
  - (i) make charges for the provision of other services (including the provision of advice or assistance) or for the provision of goods,
  - (j) allow its property to be used by other persons,
  - (k) borrow money,
  - (l) undertake or execute any charitable trust, and
  - (m) commission research.
- (3) For the purposes of paragraph (1) of subsection (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).
- (4) The consent of the Scottish Ministers is required before a cultural body—
  - (a) enters into any contract for the acquisition or disposal of land (except a contract for a period not exceeding one year), or

- (b) borrows money.
- (5) Schedule 2 (which makes further provision about the status, constitution, proceedings etc. of the cultural bodies) has effect.

## **19 Disposals from collection of cultural body**

A cultural body may dispose of an object from its collection only if—

- (a) the object is a duplicate of another object in that collection and the disposal is by way of exchange, sale or gift,
- (b) the body considers that the object is no longer required and the disposal is by way of exchange, sale or gift,
- (c) owing to damage or other deterioration, the object is no longer of use for the purposes of the collection, or
- (d) the disposal is an exercise of the power conferred by section 6 of the Museums and Galleries Act 1992 (c.44).

## **20 Loans from collection of cultural body**

- (1) In deciding whether to lend to another person an object from its collection, a cultural body is to have particular regard to—
  - (a) whether the loan is for the purposes of an exhibition open to the public,
  - (b) the interests of persons wishing to view the body's collection and in particular of persons wishing to do so in connection with study or research,
  - (c) the suitability of the prospective borrower,
  - (d) the purpose of the loan,
  - (e) the physical condition and degree of rarity of the object, and
  - (f) any risks to which the object is likely to be exposed if lent.
- (2) Where an object is vested in a cultural body subject to a condition, the body may lend the object in a manner inconsistent with the condition if—
  - (a) 25 years have elapsed since the object vested in the body, or
  - (b) the body obtains agreement to the loan from—
    - (i) the person who imposed the condition, or
    - (ii) if that person is dead, that person's executors.

## **21 Exercise of Ministers' functions**

The Scottish Ministers may make arrangements for any of their functions (other than a function of making, confirming or approving subordinate legislation) to be exercised on their behalf by a cultural body, subject to such conditions as may be determined by the Scottish Ministers.

## **22 Interpretation of Part 3**

In this Part—

“cultural body” means—

- (a) the Board of Trustees of the National Galleries of Scotland,
  - (b) the Board of Trustees of the National Library of Scotland,
  - (c) the Board of Trustees of the National Museums of Scotland, or
  - (d) the Board of Trustees of the National Record of Scotland;
- “the Faculty” has the meaning given by section 12(1);
- “the National Galleries Board” has the meaning given by section 14(1);
- “the National Galleries of Scotland” means those galleries and similar establishments which are for the time being owned, controlled or occupied by the National Galleries Board;
- “the National Library” has the meaning given by section 11(1);
- “the National Library Board” has the meaning given by section 11(2);
- “the National Museums Board” has the meaning given by section 15(1);
- “the National Museums of Scotland” means those museums which are for the time being owned, controlled or occupied by the National Museums Board;
- “the National Record Board” has the meaning given by section 16(1);
- “writing” includes electronic communication.

## PART 4

### DEALING IN TAINTED CULTURAL OBJECTS

#### 23 Offence of dealing in tainted cultural objects

- (1) A person is guilty of an offence if the person dishonestly deals in a cultural object that is tainted, knowing or believing that the object is tainted.
- (2) It is immaterial whether the person knows or believes that the object is a cultural object.
- (3) A person guilty of the offence is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).

#### 24 Meaning of “tainted cultural object”

- (1) “Cultural object” means an object of historical, architectural or archaeological interest.
- (2) A cultural object is tainted if, after the commencement of section 23, a person removes the object—
  - (a) from a building or structure of historical, architectural or archaeological interest of which the object forms or has at any time formed part, or
  - (b) from a monument of historical, architectural or archaeological interest,and the removal constitutes an offence.
- (3) A cultural object is also tainted if, after the commencement of that section, a person excavates the object and the excavation constitutes an offence.

- (4) It is immaterial whether—
  - (a) the removal or excavation was done in Scotland or elsewhere,
  - (b) the offence is committed under the law of Scotland or under the law of another part of the United Kingdom or any other country or territory.
- (5) “Monument” means—
  - (a) any work, cave or excavation,
  - (b) any site comprising the remains of any building or structure or of any work, cave or excavation,
  - (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure, or part of any such thing.
- (6) “Remains” includes any trace or sign of the previous existence of the thing in question.
- (7) It is immaterial whether—
  - (a) a building, structure or work is above or below the surface of the land,
  - (b) a site is above or below water.

## **25 Meaning of “deals in”**

- (1) A person deals in an object if (and only if) the person—
  - (a) acquires or disposes of it,
  - (b) agrees with another to do an act mentioned in paragraph (a), or
  - (c) makes arrangements under which another person does such an act or under which another person agrees with a third person to do such an act.
- (2) In subsection (1)—
  - “acquires” means buys, hires, borrows or accepts,
  - “disposes of” means sells, lets on hire, lends or gives.
- (3) In relation to agreeing or arranging to do an act, it is immaterial whether the act is agreed or arranged to take place in Scotland or elsewhere.

## **26 Offences by bodies corporate**

- (1) Where an offence under section 23 committed—
  - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager or secretary of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

- (i) is concerned in the management or control of the association, or
  - (ii) purports to act in the capacity of a person so concerned,
- the individual (as well as the body corporate Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any penalty imposed on a body corporate, Scottish partnership or, as the case may be, unincorporated association on conviction of an offence under this Part is to be recovered by civil diligence in accordance with section 221 of the Criminal Procedure (Scotland) Act 1995 (c.46).

## PART 5

### GENERAL

#### **27 Modification and repeal of enactments**

- (1) Schedule 3 (which contains modifications of enactments) has effect.
- (2) The enactments mentioned in the first column of schedule 4 are repealed to the extent specified in the second column.

#### **28 Supplementary and consequential provision**

- (1) The Scottish Ministers may by order made by statutory instrument make—
  - (a) any supplementary, incidental or consequential provision,
  - (b) any transitory, transitional or saving provision,which they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which can be made under subsection (1) includes provision amending or repealing any enactment (including any enactment comprised in this Act) or any other instrument.
- (3) An order under this section may make different provision for different purposes.
- (4) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Parliament.

#### **29 Short title and commencement**

- (1) This Act may be cited as the Culture (Scotland) Act 2007.
- (2) This section and section 28 come into force on Royal Assent.
- (3) The remaining provisions of this Act come into force in accordance with provision made by the Scottish Ministers by order made by statutory instrument.

SCHEDULE 1  
(introduced by section 8)

CREATIVE SCOTLAND

*Status*

- 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 having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants, nor its property 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
  - (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.
- (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 is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
- (a) may by giving notice in writing to the Scottish Ministers resign office as a member of Creative Scotland,
  - (b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.
- (3) A person is, on ceasing to be a member, eligible for reappointment.

*Removal of members*

- 4 (1) The Scottish Ministers may, by written notice, remove a member from office if they are satisfied as regards any of the following matters—
- (a) that the member has become insolvent,
  - (b) that the member—
    - (i) has been absent from 3 consecutive meetings of Creative Scotland without the permission of Creative Scotland,
    - (ii) is otherwise unfit or unable to discharge the functions of a member.



- (2) For the purpose of sub-paragraph (1)(a) a member becomes insolvent on—
- (a) the approval of a voluntary arrangement proposed by the member,
  - (b) being adjudged bankrupt,
  - (c) the member's estate being sequestrated,
  - (d) entering into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor,
  - (e) granting a trust deed for creditors.

#### *Disqualification from membership*

- 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.

#### *Remuneration and allowances for members*

- 6 (1) Creative Scotland is to pay to its members such remuneration as the Scottish Ministers may in each case determine.
- (2) Creative Scotland is to pay to its members such allowances as the Scottish Ministers may in each case determine.

#### *Chief executive and other employees*

- 7 (1) Creative Scotland is to appoint 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.
- (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 the appointment of employees under sub-paragraph (4) and as regards terms and conditions of their employment.
- (6) Creative Scotland may, with the approval of the Scottish Ministers—
- (a) pay or make arrangements for the payment,
  - (b) make payments towards the provision,
  - (c) provide and maintain schemes (whether contributory or not) for the payment,
- of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as Creative Scotland 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.

#### *Procedure and meetings*

- 8 (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.
- (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of Creative Scotland and any committee established by it, but are not entitled to vote at such meetings.

#### *Committees*

- 9 (1) Creative Scotland may establish committees for any purpose relating to its functions.
- (2) Creative Scotland is to determine the composition of its committees.
- (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.

#### *General powers*

- 10 (1) Creative Scotland may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, or appears to it to be conducive to, the exercise of its 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)),
  - (c) form partnerships with others,
  - (d) enter into contracts,
  - (e) make grants and loans,
  - (f) accept gifts of money and other property,
  - (g) invest sums not immediately required in relation to the exercise of its functions,
  - (h) undertake or execute any charitable trust,
  - (i) obtain advice or assistance from any person who, in Creative Scotland's opinion, is qualified to give it,
  - (j) commission research,
  - (k) with the consent of the Scottish Ministers—
    - (i) borrow money,

- (ii) acquire and dispose of land,
  - (iii) establish or take part in the setting up of organisations having functions similar to the functions 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 (h) 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 of its committees,
  - (c) any other employee,
- 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.

### *Grants*

- 12 The Scottish Ministers may—
- (a) pay grants to Creative Scotland, and
  - (b) make such grants subject to such terms and conditions (including conditions as to repayment) as they may determine.

### *Location of office*

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

### *Accounts*

- 14 (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,
- in accordance with such directions as the Scottish Ministers may give.
- (3) Creative Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

*Reports*

- 15 (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 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.

*Directions as to exercise of functions*

- 16 (1) The Scottish Ministers may—
- (a) give directions of a general or specific character,
  - (b) issue guidance,
- to Creative Scotland as to the exercise of Creative Scotland's functions.
- (2) Creative Scotland must comply with any directions given to it by the Scottish Ministers under this schedule and must have regard to any guidance so issued.

SCHEDULE 2  
(introduced by section 18(5))

THE CULTURAL BODIES

*Status*

- 1 (1) A cultural body is not a servant or agent of the Crown and has no status, immunity or privilege of the Crown.
- (2) The members and employees of a cultural body are not to be regarded as civil servants.
- (3) The property of a cultural body is not property of, or property held on behalf of, the Crown.

*Membership*

- 2 (1) A cultural body is to consist of the following members—
- (a) a person appointed by the Scottish Ministers to chair the body, and
  - (b) no fewer than 7 nor more than 14 other members appointed by the Scottish Ministers.

- (2) The members of a cultural body are to be such persons as appear to the Scottish Ministers to have skills, experience and personal qualities appropriate to the discharge of the body's functions.
- (3) The members of a cultural body may elect a member of that body to be responsible for chairing the body in the absence of the person referred to in sub-paragraph (1)(a).
- (4) 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 and different numbers may be specified in relation to different cultural bodies.
- (5) A statutory instrument containing an order under sub-paragraph (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### *Disqualification from membership*

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

#### *Terms of appointment, etc.*

- 4 (1) Each member of a cultural body—
- (a) is to be appointed for such period as the Scottish Ministers think fit, and
  - (b) holds office on such terms and conditions as they may determine.
- (2) A member may resign by giving notice in writing to the Scottish Ministers.

#### *Removal from office*

- 5 The Scottish Ministers may remove a member of a cultural body from office if satisfied that—
- (a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract,
  - (b) the member has been absent from 3 consecutive meetings of the cultural body without the permission of that body, or
  - (c) the member is otherwise unfit or unable to discharge the duties of a member.

#### *Remuneration and allowances*

- 6 A cultural body is to pay its members such remuneration and allowances (if any) as the Scottish Ministers may in each case determine.

#### *Employees*

- 7 (1) A cultural body is to appoint a chief executive.

- (2) A person may not be appointed by a cultural body under sub-paragraph (1) if that person is a member of that body.
- (3) A cultural body may appoint such other employees as it thinks appropriate.
- (4) All employees of a cultural body are to be appointed on such terms and conditions as may be approved by the Scottish Ministers.
- (5) A cultural body may, with the approval of the Scottish Ministers—
  - (a) pay or make arrangements for the payment of,
  - (b) make payment towards the provision of,
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,such pensions, allowances or gratuities as the body may determine to or in respect of any person who is or has ceased to be an employee of that body.
- (6) The reference in sub-paragraph (5) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

#### *Procedure and meetings*

- 8 (1) A cultural body may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) A person who is not a member of a cultural body may be appointed by that body to be a member of a committee of the body but is not entitled to vote at a meeting of that committee.
- (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of a cultural body or of any its committees, but are not entitled to vote at such meetings.
- (4) The validity of any proceedings of a cultural body, or of any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.

#### *Directions*

- 9 (1) The Scottish Ministers may—
  - (a) give directions of a general or specific character, or
  - (b) issue guidance,to a cultural body as to the exercise of that body's functions.
- (2) A cultural body must comply with any directions given to it by the Scottish Ministers under this schedule and must have regard to any guidance so issued.

#### *Funding*

- 10 The Scottish Ministers may—
  - (a) pay grants to a cultural body, and
  - (b) make such grants subject to such terms and conditions (including conditions as to repayment) as they may determine.

*Accounts*

- 11 (1) A cultural body is to keep accounts in a form specified by the Scottish Ministers and is to keep records in relation to these accounts.
- (2) A cultural body is to send a copy of its annual accounts to the Auditor General for Scotland for auditing.

*Annual reports*

- 12 (1) As soon as practicable after the end of its financial year, a cultural body is to prepare a report on the exercise of its functions during that year.
- (2) A cultural body is to—
  - (a) publish the report, and
  - (b) send a copy of it to the Scottish Ministers.
- (3) On receiving a copy of a report under sub-paragraph (2)(b), the Scottish Ministers are to lay it before the Scottish Parliament.

SCHEDULE 3  
*(introduced by section 27(1))*

MODIFICATIONS OF ENACTMENTS

*The National Heritage (Scotland) Act 1985 (c.16)*

- 1 In section 22 of the National Heritage (Scotland) Act 1985 (finance)—
  - (a) in subsection (1)—
    - (i) for the words “each of the Boards mentioned in subsection (2)” substitute “the Board of Trustees of the Royal Botanic Garden, Edinburgh”, and
    - (ii) for the word “their” substitute “its”, and
  - (b) subsection (2) is repealed.

*The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9)*

- 2 In section 7 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (authorisation of works: listed building consent)—
  - (a) in subsection (2)(b), for the words “Royal Commission” substitute “National Record Board”,
  - (b) in subsection (2)(c)(i), for the word “Commission” substitute “Board”,
  - (c) in subsection (2)(c)(ii)—
    - (i) for the words “the Secretary of the Commission or other officer of theirs” substitute “any officer of the Board”,
    - (ii) for the word “their” where it occurs for the second and third time substitute “its”,
    - (iii) for the words “they have” substitute “it has”, and
    - (iv) for the words “they do” substitute “it does”,

- (d) in subsection (4), for the words from ““the Royal” to the end substitute ““the National Record Board” means the Board of Trustees of the National Record of Scotland”, and
- (e) in subsection (5), for the words “Royal Commission” substitute “National Record Board”.

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

- 3 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies)—
- (a) the entry relating to the Royal Commission on the Ancient and Historical Monuments of Scotland is repealed,
  - (b) after the entry relating to the Common Services Agency for the Scottish Health Service insert—  
“Creative Scotland”,
  - (c) the two entries which follow that relating to the Mental Welfare Commission for Scotland are replaced by the following—  
“The Board of Trustees of the National Galleries of Scotland  
The Board of Trustees of the National Library of Scotland”,
  - (d) after the entry relating to the Board of Trustees of the National Museums of Scotland insert—  
“The Board of Trustees of the National Record of Scotland”, and
  - (e) the entry relating to the Scottish Arts Council is repealed.

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

- 4 In schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities)—
- (a) after the entry numbered 21 insert—  
“21A Creative Scotland.”,
  - (b) in the entry numbered 30, after “The” insert “Board of”,
  - (c) after the entry numbered 31 insert—  
“31A The Board of Trustees of the National Record of Scotland.”, and
  - (d) the entries numbered 34, 36 and 50 are repealed.

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

- 5 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (public authorities subject to requirements to provide information)—
- (a) after the entry numbered 60 insert—  
“60A The Board of Trustees of the National Record of Scotland.”,
  - (b) after the entry numbered 62 insert—  
“62A Creative Scotland.”,



- (c) the entries numbered 76, 78 and 98 are repealed, and
- (d) in the entry numbered 105, after “The” insert “Board of”.

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

- 6 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities)—
- (a) after the entry relating to the Accounts Commission for Scotland insert—  
“Creative Scotland”,
  - (b) after the entry relating to any National Park authority insert—  
“National Record of Scotland”, and
  - (c) the entries relating to—
    - (i) the Royal Commission on the Ancient and Historical Monuments of Scotland,
    - (ii) the Scottish Arts Council, and
    - (iii) Scottish Screen,
 are repealed.

SCHEDULE 4  
(introduced by section 27(2))

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
National Galleries of Scotland Act 1906 (c.50)	The whole Act.
National Library of Scotland Act 1925 (c.73)	The whole Act.
National Galleries of Scotland Act 1959 (c.61)	The whole Act.
National Heritage (Scotland) Act 1985 (c.16)	Sections 1 to 9. Sections 16 to 18. Part I of Schedule 1. In Part I of Schedule 2, paragraph 1.
Museums and Galleries Act 1992 (c.44)	In Schedule 8, paragraphs 6 and 14(1) to (3).
Employment Rights Act 1996 (c.18)	In Schedule 1, paragraph 24(a).

<i>Enactment</i>	<i>Extent of repeal</i>
Public Finance and Accountability (Scotland) Act 2000 (asp 1)	In schedule 4, paragraphs 1, 2 and 5(2).
Legal Deposit Libraries Act 2003 (c.28)	In section 15, subsections (2) to (5).

# **DRAFT CULTURE (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the draft Bill. They do not form part of the draft Bill.
2. The Notes should be read in conjunction with the draft Bill. They are not and are not meant to be, a comprehensive description of the draft Bill. So where a section or schedule, or part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE DRAFT BILL – AN OVERVIEW**

3. The draft Bill has five Parts.
4. Part 1 (sections 1 to 7) is about local government. Sections 1 to 3 are about the provision of cultural activities by local authorities. Section 4 is about the retention of local authority records. Section 5 permits local authorities to broadcast information about their services by means of an electronic communications network or service. Section 6 deals with the management of local authority libraries, museums and art galleries.
5. Part 2 (sections 8 to 10, and schedule 1) establishes a body, Creative Scotland, to promote an understanding, appreciation and enjoyment of the arts and culture; to identify and develop talent and support and develop excellence in the arts and culture; to realise, as far as reasonably practicable to do so, the value and benefits of the arts and culture; and to support activities which involve the application of creative skills.
6. Part 3 (sections 11 to 22, and schedule 2) reconstitutes the functions, powers and procedures of three existing cultural bodies: the National Library of Scotland, the National Galleries of Scotland and the National Museums of Scotland. It also establishes a new body to be called the Board of Trustees of the National Record of Scotland. These bodies all have the function of managing their respective collection as a national resource and making accessible, promoting the enjoyment of, and educating the public about the cultural objects in their collections. The National Record of Scotland has an additional function of identifying, surveying and interpreting structures and places which it considers to be of historical, archaeological or architectural interest.
7. Part 4 (sections 23 to 26) creates a new criminal offence of dealing in ‘tainted’ cultural objects.

8. Part 5 (sections 27 to 29) deals with the modification and repeal of enactments, supplementary and consequential provision, and commencement.

## **THE DRAFT BILL – SECTION BY SECTION**

### **Part 1 – Local Government**

#### *Section 1 – Information as to cultural services*

9. This section requires local authorities to make available information about the cultural services they propose to make available in their area. This information is to include details of how persons in the local authority area may best and most easily access those services. It is also to include details of which services may be of particular interest to certain groups of residents and to the public generally.

#### *Section 2 – Guidance as to provision of cultural services*

10. Section 2 requires local authorities to have regard to guidance issued by the Scottish Ministers about the delivery of cultural services. Before issuing this guidance, Ministers are to consult with any people they think appropriate. Subsection (1) lists the issues which the guidance may cover:

- the way in which an authority should plan to secure cultural services;
- what services an authority should seek to secure;
- which persons an authority is to consult when it is planning its cultural services, and how it should do that;
- how an authority should secure those services, and how it should publicise them;
- how an authority should assess its performance in planning and securing cultural services, and;
- the ways in which the provision of cultural services can assist an authority in the performance of its functions generally.

11. The final bullet in the above list is about what has become known as ‘cross cutting’ benefits of cultural provision. This means using the provision of cultural services to seek to achieve policy aims that are not directly associated with culture. For example, authorities may provide cultural services, which are believed to involve positive experiences for individuals, as a method of diverting young people from anti-social behaviour or crime.

#### *Section 3 – Provision of information to Scottish Ministers*

12. Section 3 requires a local authority to provide information to the Scottish Ministers about:

- the way in which an authority has planned its cultural services;
- the consultation undertaken by the authority;
- what cultural services an authority has secured and the level of success the authority believes it has achieved;

- the ways in which an authority considered using cultural services in the carrying out of its functions generally;
- how an authority has actually attempted to use cultural services in the carrying out of its functions generally; and
- whether there is any evidence that such activity has assisted the authority in the carrying out of its functions.

#### *Section 4 – Use of local authority records for cultural purposes*

13. Section 4 makes an amendment to section 53 of the Local Government etc. (Scotland) Act 1994. This section of the 1994 Act is about the arrangements that local authorities make for the preservation and management of records they hold. Section 53(2) of the 1994 Act allows authorities to dispose of records which they believe are not worthy of preservation.

14. This section of the draft Bill adds a condition to a local authority's power to dispose of records, requiring it to consider whether a record could be used for cultural purposes. Having had regard to that requirement, an authority might decide to retain a record if it included material that it believed was significant to the cultural history or practices of its area.

#### *Section 5 – Broadcasting by local authorities*

15. Section 88 of the Local Government (Scotland) Act 1973 enables local authorities in Scotland to provide information about their services. Specifically it gives them power to publish information, display films, arrange lectures and do other similar things. It does not, however, give them power to broadcast such information via television, radio or other electronic means, and section 5 of the draft Bill addresses that issue.

16. Section 5 amends section 88 of the 1973 Act to give local authorities a power to secure the broadcasting of information about the services within the area of their authority. Specifically, they are to have power to provide that information via what is known as an "electronic communications network" or an "electronic communications service", or to act through a provider of such services. A definition of these things is provided in section 32 of the Communications Act 2003, and includes analogue and digital television, radio, mobile phones and the internet. The information broadcast can be about the services provided by the authority directly or by any other local authority providing services in their area, or those provided by a joint board.

#### *Section 6 – Management of libraries, museums and art galleries*

17. Section 163(2) of the Local Government (Scotland) Act 1973 places a duty on local authorities to make adequate provision of library facilities in their area. Section 21 of the Public Libraries Consolidation (Scotland) Act 1887 places a duty on a local authority to manage that library provision.

18. The effect of section 6 of the draft Bill is to amend section 21 of the 1887 Act to enable a local authority to arrange the operation of its libraries, museums or art galleries through another person, for example through a trust. The purpose of section 6 is to give local authorities the flexibility to manage their library provision which they currently have in relation to museums and art galleries. The duty to make adequate provision of library facilities is unaffected.

### *Section 7 – Interpretation of Part 1*

19. Section 7 provides a meaning, for the purposes of the draft Bill, for the terms ‘cultural services’ and ‘local authority’.

## **Part 2 – Creative Scotland**

### *Section 8 – Constitution and functions of Creative Scotland*

20. Section 8 establishes Creative Scotland with the functions of promoting an understanding, appreciation and enjoyment of the arts and culture; of identifying and developing talent and supporting and developing excellence in the arts and culture; of realising, as far as reasonably practicable, the value and benefits of the arts and culture; and, of supporting activities which involve the application of creative skills.

21. When Creative Scotland is pursuing its function of promoting an understanding, appreciation and enjoyment of the arts and culture, subsection (3) requires it to do so with a view to encouraging, enabling and assisting as many people as possible to access and participate in the arts and culture, and to adding to the diversity of types of people doing so.

22. In pursuing its functions, Creative Scotland may encourage and support other persons by virtue of of subsection (4). Subsection (5) introduces schedule 1 which makes detailed provision about the status, constitution, proceedings and other matters about Creative Scotland.

### *Section 9 – Advisory functions*

23. Section 9 gives Creative Scotland a number of advisory functions. It must give the Scottish Ministers advice, information and assistance about the arts and culture and how Creative Scotland carries out its functions, when Ministers ask for it. Creative Scotland may also volunteer advice and information to Ministers and other persons about the arts and culture.

### *Section 10 – Dissolution of the Scottish Arts Council*

24. Section 10 gives the Scottish Ministers power to abolish the Scottish Arts Council. Abolition will happen on such date as is appointed by statutory instrument. The Scottish Arts Council presently carries out some of the activities that Creative Scotland will do in future.

## **Part 3 – National Cultural Bodies**

### *Section 11 – Board of Trustees of the National Library of Scotland*

25. Section 11 reconstitutes the body corporate currently established by section 1(1) of the National Library of Scotland Act 1925.

26. Subsection (3) specifies that the National Library Board shall manage the National Library of Scotland as a national resource for reference, study and bibliography and other information services. In doing so, it is required to care for, preserve and add to its collection of relevant objects. These objects are to be exhibited to the public in such manner as the National Library Board considers appropriate and made available for research. The National Library Board is to provide education, instruction and advice about matters relating to its functions. It may also

provide such advice and assistance as it consider appropriate to other library and information service providers in Scotland.

27. Subsection (4) requires the National Library Board to discharge its functions with a view to encouraging and enabling as many people as possible to access the objects in its collection, and to promoting the public's enjoyment and understanding of these objects.

28. Subsection (5) requires the National Library Board to give the Scottish Ministers advice about any matters connected with its functions when asked. It may also offer such advice to Ministers.

### *Section 12 – Legal publications*

29. Section 1 of the Legal Deposit Libraries Act 2003 imposes a duty on publishers to deposit any published material with a deposit library that is entitled to receive a copy of that material. In Scotland this entitlement is shared between the National Library Board and the Faculty of Advocates. Section 12 of the draft Bill regulates that shared entitlement.

30. Subsection (1) requires that, where the publication is a legal publication, the National Library Board shall transfer it to the Faculty of Advocates. The National Library Board retains all other publications obtained under legal deposit.

31. Subsection (2) requires the National Library Board, when exercising its right under section 1 of the Legal Deposit Libraries Act 2003 to claim legal deposit publications, to include requests for publications (which are of a legal nature) requested by the Faculty.

32. Subsection (4) specifies that if the Faculty no longer wishes to keep a publication which it has obtained by virtue of subsection (1), it must transfer that publication back to the National Library Board.

33. Subsection (5) makes provision for settling any disputes between the National Library Board and the Faculty about whether the subject matter of a publication obtained under legal deposit is of a legal nature, and consequently which body is entitled to receive it under subsection (1). If the chief executive of the National Library Board and the Faculty librarian cannot together resolve a disagreement which arises, the matter is referred to the Librarian of the Edinburgh University Library to make a determination.

34. Subsection (6) makes clear that the meaning of 'publication' includes electronic materials.

### *Section 13 – Regulations by National Library Board and Faculty*

35. The effect of section 13 is that the National Library Board and the Faculty of Advocates may together make regulations about matters which are of mutual interest. These regulations may relate to:

- the administration of legal deposit matters in section 12;
- the interchange of publications between the two bodies;

- the accessing of publications in the National Library of Scotland by members of the Faculty and by Judges of the Court of Session; and
- the accessing of publications in the Faculty of Advocates Library by members of the public.

*Section 14 – Board of Trustees of the National Galleries of Scotland*

36. Section 14 reconstitutes the body currently established by section 3 of the National Galleries of Scotland Act 1906.

37. Subsection (2) specifies that the National Galleries Board shall manage the National Galleries of Scotland as a national resource which collects, preserves and displays visual and fine arts objects. In doing so, it is required to care for, preserve and add to its collection of relevant objects. These objects are to be exhibited to the public in such manner as the National Galleries Board considers appropriate and made available for research. The National Galleries Board is to provide education, instruction and advice about matters relating to its functions. It may also provide such advice and assistance as it considers appropriate to other art galleries in Scotland.

38. Subsection (3) requires the National Galleries Board to discharge its functions with a view to encouraging and enabling as many people as possible to access the objects in its collection, and to promoting the public's enjoyment and understanding of these objects.

39. Subsection (4) requires the National Galleries Board to give the Scottish Ministers advice about any matters connected with its functions when asked. It may also offer such advice to Ministers.

*Section 15 – Board of Trustees of the National Museums of Scotland*

40. Section 15 reconstitutes the body currently established by section 1 of the National Heritage (Scotland) Act 1985.

41. Subsection (2) specifies that the National Museums Board shall manage the National Museums of Scotland as a national resource which collects, preserves and displays objects of the past and present and of the natural world. In doing so, it is required to care for, preserve and add to its collection of relevant objects. These objects must be exhibited to the public in such manner as the National Museums Board considers appropriate and made available for research. The National Museums Board is to provide education, instruction and advice about matters relating to its functions. It may also provide such advice and assistance as it considers appropriate to other museums in Scotland.

42. Subsection (3) requires the National Museums Board to discharge its functions with a view to encouraging and enabling as many people as possible to access the objects in its collection, and to promoting the public's enjoyment and understanding of these objects.

43. Subsection (4) requires the National Museums Board to give the Scottish Ministers advice about any matters connected with its functions when asked. It may also offer such advice to Ministers.



### *Section 16 – Board of Trustees of the National Record of Scotland*

44. Section 16 establishes a body to be known as the Board of Trustees of the National Record of Scotland.

45. Subsection (2) specifies that the National Record Board shall identify, survey and interpret structures and places which it considers to be of historical, archaeological or architectural interest, and are to record and retain the information obtained. It is also required to care for, preserve and add to a collection of relevant objects. These objects, and the information it has obtained through its survey and evaluation activities, are to be managed as a national resource. They are also to be exhibited and made available to the public in such manner as the National Record Board considers appropriate, and made available for research.

46. The National Record Board may provide such advice and assistance as it considers appropriate to other bodies which record information about structures and places in Scotland which are of historical, archaeological or architectural interest. It is to provide education and carry out research about matters relating to its functions, and may provide such guidance as it considers appropriate about the same matters.

47. Subsection (3) requires the National Record Board to discharge its functions with a view to encouraging and enabling as many people as possible to access the objects in its collection and the information held by it, and to promoting the public's enjoyment and understanding of these objects and that information.

48. Subsection 16(4) requires the National Record Board to give the Scottish Ministers advice about any matters connected with its functions when asked. It may also offer such advice to Ministers.

### *Section 17 – Dissolution of the Royal Commission on the Ancient and Historical Monuments of Scotland*

49. Section 17 gives the Scottish Ministers power to abolish the Royal Commission on the Ancient and Historical Monuments of Scotland. Abolition will happen on such date as is appointed by a statutory instrument. The Royal Commission will be replaced by the Board of Trustees of the National Record of Scotland.

50. Subsection (2) provides that when the Royal Commission is dissolved, its assets and liabilities and employees will transfer to the National Record Board.

### *Section 18 – General powers of cultural bodies*

51. Section 18 explains that a cultural body has wide discretion about what activities it may undertake in pursuit of its main functions, and lists some specific powers which it may utilise.

52. Subsection (5) introduces schedule 2 which makes detailed provision about the status, constitution, proceedings and other matters relating to the cultural bodies in Part 3.

### *Section 19 – Disposals from collection of cultural body*

53. Section 19 specifies the circumstances in which a cultural body may dispose of objects from its collection. A cultural body may dispose of a duplicate object only by exchange, sale or gift. A cultural body may also dispose of an object by exchange, sale or gift if the object is no longer required for the purposes of its collection. A cultural body may dispose of an object by any means, which may include destruction, only if the object has been damaged, or has deteriorated, to the extent that it is no longer of use for the purpose of its collection.

54. In addition, subsection (d) recognises that section 6 of the Museums and Galleries Act 1992 enables the National Library Board, the National Galleries Board and the National Museums Board to transfer an object in their collections to any body (a range of significant UK museums and galleries) listed in Parts I and II of schedule 5 to that 1992 Act.

### *Section 20 – Loans from collection of cultural body*

55. Subsection(1) lists criteria which a cultural body must have particular regard to when deciding whether to loan an object from its collection. These are:

- whether the loan is for the purposes of a public exhibition;
- the interests of the persons wishing to view the body's collection, particularly those wishing to do so for the purposes of study or research;
- the suitability of the prospective borrower;
- the purpose of the loan;
- the physical condition and degree of rarity of the object; and
- any risks to which the loaned object will be exposed.

56. When a cultural body obtains an object for its collection it is sometimes gifted subject to specific conditions of use. Subsection (2) specifies two circumstances in which a cultural body may loan objects from its collection in a manner inconsistent with any such conditions. These are once 25 years have elapsed from the date it obtained the object, or where agreement has been obtained from the person who imposed the condition (or, if the person is no longer living, their executors).

### *Section 21 – Exercise of Ministers' functions*

57. This section allows the Scottish Ministers to make arrangements for a cultural body to exercise functions on their behalf, excluding the functions of making, confirming or approving subordinate legislation.

### *Section 22 – Interpretation*

58. Section 22 defines certain terms used in Part 3.

## **Part 4 – Dealing in tainted cultural objects**

59. The Dealing in Cultural Objects (Offences) Act 2003 created a criminal offence of acquiring, disposing of, importing or exporting tainted cultural objects. It was designed to combat traffic in unlawfully removed cultural objects and, thereby, to assist in maintaining the

integrity of buildings, structures and monuments (including wrecks) worldwide by removing the commercial incentive to those involved in the looting of such objects. The offence in the 2003 Act applied irrespective of the place where the cultural object was illicitly excavated or removed and thus applies equally to objects illegally excavated in the UK and outside it.

60. The 2003 Act did not extend to Scotland. The purpose of this part of the draft Bill is to create a broadly similar offence in Scotland.

### *Section 23 – Offence of dealing in tainted cultural objects*

61. Subsection (1) makes it an offence for a person to dishonestly deal in a cultural object that is ‘tainted’ knowing or believing it to be tainted. Subsection (3) provides the maximum penalty for persons convicted of the offence.

### *Section 24 – Meaning of “tainted cultural object”*

62. Section 24 defines “cultural object” as an object of historical, architectural or archaeological interest. This is a wide definition and may cover a diversity of objects from structural, architectural and ornamental elements to portable artefacts of precious or base metal, ceramic, glass, stone or organic material.

63. Subsections (2) and (3) define three circumstances in which a cultural object will become tainted:

- if it has been removed from a building or structure of historical, architectural or archaeological interest which it forms part of, or once formed part of;
- if it has been removed from a monument; or,
- if it has been excavated.

64. The object only becomes tainted if the removal or excavation constitutes an offence in the jurisdiction where it was done, at the time it was done. It does not matter where the removal or excavation took place or under which state’s laws the offence was committed.

65. Subsections (5) and (6) define “monuments” and “remains”. Subsection (7) makes it clear that objects may come from places that are above or below water and above and below ground.

### *Section 25 – Meaning of “deals in”*

66. Section 25 defines the term “deals in”.

### *Section 26 – Offences by bodies corporate*

67. Where an offence is committed by a company, a Scottish partnership or an unincorporated association, the individuals concerned with its management or control are also guilty of an offence.

## **Part 5 – General**

### *Section 27 – Modification and repeal of enactments*

68. This section introduces schedules 3 and 4 which make provision for modifications and repeals of enactments respectively.

### *Section 28 – Supplementary and consequential provision*

69. This section enables the Scottish Ministers to make, by way of Statutory Instrument, any supplementary, incidental, consequential, transitory, transitional or saving provision which they consider necessary or expedient to give full effect to the provisions in the draft Bill.

### *Section 29 – Short title and commencement*

70. This section provides for the short title of the Bill. It also provides that only sections 28 and 29 come into force on Royal Assent. The remaining provisions of the Act will come into force on a date (or dates) appointed by the Scottish Ministers by means of a commencement order (or orders).

## **Schedule 1 – Creative Scotland**

### *Paragraph 1 - Status*

71. Paragraph 1 makes clear that Creative Scotland is not a crown body.

### *Paragraphs 2-6 – the Board of Creative Scotland*

72. Creative Scotland is to have members, appointed by the Scottish Ministers. It will be made up of a chair, with a minimum of 8 and a maximum of 14 other members. These minima and maxima may be altered by the Scottish Ministers by Statutory Instrument. The period that members hold office is to be decided by Ministers, and they may be re-appointed. Their terms and conditions of appointment are also decided by Ministers, as is any remuneration and allowances.

73. Members of Creative Scotland can resign or can be removed by Ministers if either they have been absent without permission for 3 consecutive meetings, where they have become insolvent or where Ministers are satisfied that they have otherwise become unfit or unable to discharge their functions. Paragraph 4(2) explains what is meant by insolvent.

74. Members may not also be members of the Scottish Parliament, the House of Commons or the European Parliament.

### *Paragraph 7 – Chief Executive and staff of Creative Scotland*

75. Creative Scotland will employ a chief executive, who may not be a member of Creative Scotland. The chief executive's appointment and terms and conditions will be drawn up by Creative Scotland, but this requires to be approved by the Scottish Ministers.

76. Creative Scotland can appoint staff, whose terms and conditions they may decide, subject to any directions from Ministers about numbers of staff and terms and conditions. These terms and conditions can include pensions.

#### *Paragraphs 8-9 - Procedure and committees*

77. Creative Scotland is to have power to set its own procedures and can establish committees. Committees can involve people who are not members of Creative Scotland but these people may not vote. The Scottish Executive, or persons authorised by them, can also attend meetings, but they cannot vote either.

#### *Paragraph 10, 11, 14 and 15 – General powers and delegation of functions, accounts and reports*

78. Paragraph 10 explains that Creative Scotland has a wide discretion about what activities it undertakes in pursuit of its functions, and paragraph 10(2) notes some specific powers. Paragraph 11 explains that Creative Scotland can authorise the chief executive, a committee or an employee to exercise some or all of a particular function, except for functions related to the approval of its annual reports, accounts and its financial plans.

79. Paragraph 14 requires Creative Scotland to keep accounts and also explains who it must send annual accounts to. Paragraph 15 requires Creative Scotland to prepare an annual report about its activities and explains where they must send copies. It also gives them a general power to publish information.

#### *Paragraphs 16 – Directions*

80. The Scottish Ministers are to have power to give Creative Scotland directions and guidance about the exercise of Creative Scotland's functions. Where Ministers give a direction, Creative Scotland must comply with it. Where Ministers give guidance, Creative Scotland must have regard to it. That means that, while they do not have to follow guidance exactly, they must consider and take account of it in their decisions and actions.

### **Schedule 2 – The Cultural Bodies**

#### *Paragraph 1 – Status*

81. Paragraph 1 makes clear that a cultural body is not a crown body.

#### *Paragraphs 2-6 – the Boards of the cultural bodies*

82. The cultural bodies are to each have a board, appointed by the Scottish Ministers. These boards will comprise a chair, with a minimum of 7 and a maximum of 14 other members. These minima and maxima may be altered by the Scottish Ministers by statutory instrument. The period that members hold office is to be decided by Ministers, and they may be re-appointed. Their terms and conditions of appointment are also decided by Ministers, as is any remuneration and allowances. Members of the cultural bodies may not be members of the Scottish Parliament, the House of Commons or the European Parliament.

83. Members of the cultural bodies can resign or be removed by Ministers if they have been absent without permission for 3 consecutive meetings, where they have become insolvent or

where Ministers are satisfied that they have otherwise become unfit or unable to discharge their functions. Paragraph 5(a) explains what is meant by insolvent.

#### *Paragraph 7 – Employees*

84. The cultural bodies shall each have a chief executive, who may not be a member of the respective board. They may also appoint such other employees as they think appropriate. The terms and conditions of employees are to be drawn up by the cultural bodies, but must be approved by the Scottish Ministers. These terms and conditions can include provision for pensions.

#### *Paragraph 8 – Procedure and meetings*

85. The cultural bodies have power to set their own procedures and can establish committees. Committees can involve people who are not members of the respective cultural bodies but these people may not vote. The Scottish Ministers, or persons authorised by them, can also attend meetings, but they cannot vote either.

#### *Paragraph 9 – Directions*

86. The Scottish Ministers may give a cultural body directions and guidance about the exercise of its functions. Where Ministers give a direction, the relevant cultural body must comply with it. Where Ministers give guidance, the relevant cultural body must have regard to it. That means that, while they do not have to follow the guidance exactly, they must consider and take account of it in their decisions and actions.

#### *Paragraphs 10, 11 and 12 – Funding, accounts and reports*

87. Paragraph 10 enables Scottish Ministers to pay grants to a cultural body, and to impose specific terms and conditions on how the grants shall be used. Paragraph 11 requires a cultural body to keep accounts and also explains who the annual accounts must be sent to. Paragraph 12 requires a cultural body to prepare annual reports about its activities and explains where it must send copies.

### **Schedule 3 – Modifications of enactments**

88. This Schedule modifies a number of enactments. For example, references in legislation to the Royal Commission on the Ancient and Historical Monuments of Scotland are replaced with references to its successor body, the Board of Trustees of the National Record of Scotland.

### **Schedule 4 - Repeals**

89. This schedule repeals a number of enactments in consequence of the reconstitution of the National Library Board, the National Galleries Board and the National Museums Board.