

# **PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Schedule 9 - Creative Scotland: Establishment Etc.***

398. **Schedule 9** is introduced by section 36(2) and makes further provision about the status, constitution, proceedings etc. of Creative Scotland.

#### ***Paragraph 1 – Status***

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

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

400. The membership of Creative Scotland is to consist of a chairing member and no fewer than 8 nor more than 14 other members. All members of Creative Scotland are to be appointed by the Scottish Ministers.
401. Sub-paragraph (2) gives the Scottish Ministers power to substitute, by order made by statutory instrument, different numbers of minimum or maximum members in sub-paragraph (1)(b). A statutory instrument under sub-paragraph (2) is subject to negative resolution procedure.

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

402. Each member of Creative Scotland is to be appointed for such period as the Scottish Ministers think fit. A member of Creative Scotland holds and vacates office in accordance with the terms and conditions of appointment but may resign office as a member by giving written notice (see sub-paragraph (2)).
403. Sub-paragraph (3) provides that once a person ceases to be a member of Creative Scotland they are eligible to be reappointed as a member.

#### ***Paragraph 4 – Removal of members***

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

#### ***Paragraph 5 – Disqualification from membership***

405. Members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as members of Creative Scotland.

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

406. Creative Scotland is to pay to each of its member's remuneration, allowances and expenses determined by the Scottish Ministers.

***Paragraph 7 – Chief executive and other employees***

407. Creative Scotland is to employ a chief executive and sub-paragraph (2) provides that the chief executive of Creative Scotland may not be a member of Creative Scotland. The first chief executive of Creative Scotland is to be the individual employed as the chief executive designate of Creative Scotland 2009 Limited immediately before the coming into force of paragraph 7. If for whatever reason there is no such person, the first chief executive of Creative Scotland is to be appointed by the Scottish Ministers (see sub-paragraphs (3) and (4)). Each subsequent chief executive of Creative Scotland is to be appointed, with the approval of the Scottish Ministers, by Creative Scotland. Creative Scotland will determine, with the approval of the Scottish Ministers, the chief executive's terms and conditions (see sub-paragraph (5)).
408. Creative Scotland may appoint employees other than the chief executive and may determine their terms and conditions of employment (see sub-paragraph (6)). The Scottish Ministers may give directions to Creative Scotland in relation to the appointment of employees and their terms and conditions of employment (see sub-paragraph (7)).
409. Sub-paragraph (8) gives Creative Scotland power to arrange, with the approval of the Scottish Ministers, for pensions, allowances or gratuities in relation to employees of Creative Scotland. The reference in sub-paragraph (8) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment (see sub-paragraph (9)).

***Paragraph 8 – Committees***

410. Creative Scotland may establish committees for any purpose relating to its functions. Creative Scotland may appoint persons who are not members of Creative Scotland to be members of a committee, but such persons are not entitled to vote at meetings of the committee.
411. A committee of Creative Scotland is to comply with any directions given to it by Creative Scotland (see sub-paragraph (4)).

***Paragraph 9 – Procedure and meetings***

412. Creative Scotland determines its own procedure and the procedure of its committees. The validity of any proceedings of Creative Scotland or any of its committees is not affected by any irregularity in the membership of Creative Scotland.
413. Sub-paragraph (3) provides that members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of Creative Scotland or any of its committees, but are not entitled to vote at such meetings.

***Paragraph 10 – General powers***

414. **Paragraph 10** provides for the general legal powers of Creative Scotland.
415. Sub-paragraph (1) gives Creative Scotland wide power to do anything related to the exercise of its functions. Without prejudice to the generality of this power, sub-paragraph (2) sets out particular powers of Creative Scotland.

***Paragraph 11 – Delegation of functions***

- 416. Creative Scotland has power to authorise the chief executive, any other employee or any of its committees to exercise its functions. Sub-paragraph (2) restricts Creative Scotland's power to delegate its functions by providing that Creative Scotland may not authorise any other person to exercise functions relating to financial accounting.
- 417. Any delegation under sub-paragraph (1) does not affect the responsibility of Creative Scotland for the exercise of its functions (see sub-paragraph (3)).

***Paragraph 12 – Location of office***

- 418. [Paragraph 12](#) requires Creative Scotland to obtain the approval of the Scottish Ministers before determining the location of its office premises.

***Paragraph 13 – Accounts***

- 419. Sub-paragraph (1) requires Creative Scotland to manage its financial accounting and requires Creative Scotland to do so in accordance with any directions the Scottish Ministers may give.
- 420. Sub-paragraph (2) requires Creative Scotland to send its annual statement of accounts to the Auditor General for Scotland for auditing.

***Paragraph 14 – Reports***

- 421. Creative Scotland is required to prepare an annual report. Sub-paragraph (2) requires Creative Scotland to publish its annual report, lay a copy before the Scottish Parliament and send a copy to the Scottish Ministers.
- 422. Creative Scotland may publish other reports and information on matters relevant to its functions.