

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

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 4 – Creative Scotland**

##### ***Section 36 – Establishment of Creative Scotland***

55. Subsection (1) establishes a body corporate known in English as Creative Scotland and in Gaelic as Alba Cruthachail. Subsection (2) gives effect to schedule 9 which makes detailed provision about the status, membership, procedure etc. of Creative Scotland.

##### ***Section 37 – General functions of Creative Scotland***

56. Subsection (1) lists the general functions of Creative Scotland.
57. Subsection (1)(a) gives Creative Scotland the functions of identifying, supporting and developing quality and excellence in the arts and culture from artists and creative practitioners, these being persons engaged in artistic and other creative endeavours. Creative Scotland might, for example, exercise these functions by selecting particular individuals or organisations whose practice they believe merits encouragement and advice, or financial support in the form of grants or loans (see also section 39(4)).
58. Subsection (1)(b) gives Creative Scotland the functions of promoting understanding, appreciation and enjoyment of ‘art for art’s sake’. Creative Scotland might, for example, exercise these functions by giving awards that celebrate the work of individual or groups of practitioners, or by encouraging and advising local authorities to make wider provision of cultural facilities in their area.
59. Subsection (1)(c) gives Creative Scotland the functions of improving access to and participation in the arts and culture. When Creative Scotland is pursuing these particular functions it must do so with regard to increasing the diversity of people who have access to and participate in the arts and culture (see subsection (2)). Creative Scotland might, for example, exercise these functions by supporting projects which give persons from socially deprived areas opportunities to express themselves through the arts and culture that they would not have otherwise.
60. Subsection (1)(d) gives Creative Scotland the functions of making real, and bringing to fruition, the value and benefits of the arts and culture in Scotland. The value and benefits referred to include, in particular, the national and international value and benefits of the arts and culture to Scotland’s national culture. The value and benefits referred to also include personal enjoyment of aesthetic quality and the enjoyment involved in cultural participation, benefits in terms of unlocking creative and entrepreneurial potential, and benefits in terms of enhancing well-being and community pride. Creative Scotland might, for example, exercise these functions by supporting a significant play that will tour around Scotland, providing enjoyment and “food for thought” at home, and thereafter internationally.

61. Subsection (1)(e) gives Creative Scotland the functions of encouraging and supporting artistic and other creative endeavours which contribute to an understanding of Scotland's national culture. Scotland's national culture in this paragraph means Scotland's distinctive way of life as a whole, and not only the artistic and cultural output of the arts and culture. Creative Scotland might, for example, exercise these functions by supporting a film project which depicts and challenges Scottish attitudes to drug and alcohol consumption.
62. Subsection (1)(f) gives Creative Scotland the functions of advocating for and supporting the creative industries. The creative industries are industries and other commercial activities which involve as a distinctive element a primary focus on the application of creative skills. These industries include advertising, architecture, arts and antiques, crafts, design, designer fashion, film, computer and video games, music, performing arts, publishing, television and radio. Creative Scotland might, for example, exercise these functions by leading a research and intelligence programme relating to the sustainable development of the computer and video games industry.
63. Subsection (3) provides that Creative Scotland may encourage and support other persons who perform functions similar to Creative Scotland. This may include, for example, Scottish Enterprise and Highlands and Islands Enterprise who have a significant economic development role as regards the creative industries, and local authorities who support the arts and culture in their areas. Subsection (4) defines "persons" to include groups of persons so that informal associations or groups can be provided with encouragement and support.

### ***Section 38 – Advisory and other functions***

64. Subsections (1) and (4) require Creative Scotland to provide the Scottish Ministers with any advice, information and assistance they require (and in the manner they require it) in relation to the arts and culture, the creative industries or Creative Scotland's functions. Subsection (2) also allows Creative Scotland to provide such other advice and information as it considers appropriate.
65. Subsection (3) allows Creative Scotland to provide other persons with advice, information and assistance in relation to the arts and culture or the creative industries. For example, assistance could be given to persons involved in artistic or other creative endeavours by way of training or through the temporary secondment of an employee of Creative Scotland. Subsection (5) has effect that the forms of assistance provided by Creative Scotland under section 38 do not include financial assistance, which is to be provided through the mechanism of section 39(4). Subsection (6) defines "persons" to include groups of persons so that informal associations or groups can also be provided with advice, information and assistance.

### ***Section 39 – Grants and loans***

66. Subsections (1) to (3) allow the Scottish Ministers to make grants to Creative Scotland including for particular purposes and subject to such terms and conditions as the Scottish Ministers think fit.
67. Subsections (4) and (5) allow Creative Scotland to make grants and loans to persons involved in artistic and other creative endeavours and other persons where the grant or loan relates to Creative Scotland's functions (and subject to such terms and conditions as Creative Scotland think fit). "Persons" in subsection (4) does not include groups of persons because money will only be given to persons enjoying a legal personality (for example, individuals and companies).
68. Creative Scotland has powers to give other forms of financial support and involvement to persons involved in artistic and other creative endeavours by virtue of paragraph 10 of schedule 9.

#### ***Section 40 – Directions and guidance***

69. Subsections (1) and (2) give the Scottish Ministers power to direct Creative Scotland as to the exercise of its functions, except in relation to Creative Scotland's functions under section 37(1) (its primary functions relating to artistic and other creative endeavours), section 37(3) (its function to encourage and support persons performing functions similar to Creative Scotland), section 38(3) (its function to provide persons other than the Scottish Ministers with advice, information or assistance) or section 39(4) (its grant and loan making function) insofar as the direction relates to Creative Scotland's artistic or cultural judgement.
70. The Scottish Ministers may vary or revoke any direction given to Creative Scotland, subject to the requirement that a varied direction cannot affect Creative Scotland's artistic or cultural judgement (see subsection (4)). Subsection (3) requires Creative Scotland to comply with any directions given to it by the Scottish Ministers under Part 4 of the Act and to have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

#### **Miscellaneous and general**

#### ***Section 41 – Dissolution of the Scottish Arts Council***

71. This section dissolves the Scottish Arts Council and revokes its Royal Charter.

#### ***Section 42 – Transfer of staff etc.***

72. Subsection (1) provides for the employees, property and liabilities of the Scottish Arts Council and Scottish Screen to transfer to Creative Scotland from the date on which the Scottish Arts Council is dissolved. Scottish Screen will be dissolved by non-legislative means.
73. Subsection (2) provides that the transfer of Scottish Arts Council and Scottish Screen employees does not terminate their contracts of employment and has effect as if their contracts of employment were originally made with Creative Scotland. Subsection (3) provides that all rights, powers, duties and liabilities surrounding a transferred person's contract of employment transfer to Creative Scotland. For example, an Employment Tribunal claim actionable against the Scottish Arts Council or Scottish Screen by an employee would transfer with the employee and become actionable against Creative Scotland (subject to the time limits and other rules for bringing such claims).
74. Subsection (4) provides that a transferred person's right to terminate their contract of employment, where there is a substantially detrimental change to the person's contract of employment, is not affected by the provisions of subsections (1) to (3). However, a change of the identity of a person's employer from the Scottish Arts Council or Scottish Screen to Creative Scotland is not to be treated as a substantially detrimental change to the person's contract of employment.

#### ***Section 43 – Creative Scotland: Modifications of enactments***

75. This section gives effect to schedule 10, which modifies enactments that refer to the Scottish Arts Council and Scottish Screen and where a reference to Creative Scotland is required.