Finance Committee

Public Services Reform (Scotland) Bill

Submission from National Museums Scotland and the National Galleries Of Scotland

1. Introduction

National Museums Scotland and the National Galleries of Scotland are pleased to have the opportunity to submit evidence on the Public Services Reform (Scotland) Bill to the Scottish Parliament Finance Committee.

As major collecting bodies with a unique role in Scottish society, our organisations are both National Collections Institutions (NCIs) and registered Scottish charities. Our organisations are presently listed in Schedule 3 of the draft Bill and are, therefore, affected by the proposed legislation.

The Boards of Trustees of National Museums Scotland and the National Galleries of Scotland support the broad principles of the Bill and welcome moves to create greater efficiency and effectiveness in public sector bodies. However they are concerned that the wide new powers set out in the draft Bill may remove some independent protections that ensure that the national collections, which have been built up over hundreds of years, will be maintained for future generations. The Boards also have concerns about the impact on the status of National Museums Scotland and the National Galleries of Scotland and the ability of both institutions to continue to attract donations of important objects from private collectors.

This submission is intended to highlight these areas of concern. We imagine that specific issues such as the protection of National Museums Scotland and the National Galleries of Scotland have, as yet, not been considered in the preparation of this proposed legislation. However, the draft Bill, as it currently stands, could have a significant impact on our future.

2. General Feedback

In general terms, National Museums Scotland and the National Galleries of Scotland Boards of Trustees agree with the broad aims of the Bill. It is entirely right that we “improve the exercise of public functions by bodies, having regard to efficiency, effectiveness and economy”, and we can demonstrate our track record in this area and our commitment going forward. However, we wish to highlight our concerns with what we consider are unintended consequences of this Bill for our organisations. As the draft currently stands, it could seriously impact on our future as important Scottish collecting bodies.

3. The Distinctive Role of National Museums Scotland and the National Galleries of Scotland

3.1 Public Benefit

(i) Together, National Museums Scotland and the National Galleries of Scotland are responsible for the procurement, preservation and promotion of a very
substantial part of Scotland’s cultural, historic, and national heritage. For example, National Museums Scotland has in its care over four million objects and its collections have been built up over more than two centuries. They encompass a broad range of subject areas such as archaeology, world cultures, natural sciences, science and technology, decorative and applied arts, and Scottish history and culture. In a similar vein, the National Galleries of Scotland collection comprises around 90,000 objects including national photography collection, paintings, sculpture, prints and drawings. Those objects, in addition to temporary loans, provide a platform for educating the public and promoting this country’s history and cultural heritage.

(ii) The prime purpose of our institutions is to hold the National Collections which we manage in trust for the people of Scotland, in perpetuity, and to enable access to them for as large and as broad an audience as possible. We operate for the public and national benefit, not just for this generation, but for the future generations of Scotland – and for visitors to this country. Our approach to fulfilling our respective remits includes a commitment to social inclusion, access, and education.

(iii) Our collections are vital to the heritage of our nation and are key to understanding our history. And such an appreciation of Scotland’s past is imperative for a clear understanding of its present, and a dynamic and ambitious vision for its future. Strong, well presented National Collections are a vital element in the maintenance and development of a strong national identity.

(iv) Enabling people to learn through our collections is a core responsibility. We offer learning programmes and resources across schools, universities and communities. Both our bodies inspire people to learn more about Scotland and the world through engaging programmes, events and high quality displays. Online access to collections and learning resources reaches audiences beyond our museums and galleries.

(v) In fundraising terms, the sort of philanthropic support which the National Collections attract enables individuals to “give something back”. This can create a sense of community, developing networks of friends and supporters who are able to openly support the National Collections and the beautiful buildings in which they are housed and contribute to our national identity.

(vi) Please see Appendix 1 for information regarding the collections cared for by National Museums Scotland and the National Galleries of Scotland.

3.2 Our Distinctive Role
(i) We would stress to the Committee members our view that our status as major national collecting bodies requires particular and different treatment for National Museums Scotland and the National Galleries of Scotland under this new Bill. This distinction in our role was recognised by the Scottish Parliament and the public, through the debates in the Scottish Parliament on the Charities Bill in 2005 and through subsequent amendments to the Charities and Trustee Investment (Scotland) Act 2005 in terms of The Charity Test (Specified Bodies) (Scotland)
Order 2006. As NDPBs operating at “arms length” from government, we were able to retain our charitable status and therefore protect our fundraising ability.

(ii) Unlike most other public bodies, we are not administrative or policy-making organisations working on behalf of the Scottish Government. We are fundamentally different because we hold very large collections in trust for the benefit of future generations and are building those collections through new acquisitions. It should also be recognised that we are custodians of long term loans, some from private collections, which may eventually pass into our collections. The discharge of these responsibilities requires a stable and sustainable environment.

(iii) What also distinguishes National Museums Scotland and the National Galleries of Scotland from the rest of the public sector is our responsibility to undertake and support research in both the sciences and humanities, which links to universities and related institutions in Scotland and around the world. Our collections cannot be understood or effectively used for the public benefit unless we create the knowledge with which to interpret them. Our contribution to research and education is, therefore, a fundamental aspect of our role.

3.3 The Current Legislation Governing National Museums Scotland and the National Galleries of Scotland

(i) The distinctive role of National Museums Scotland and the National Galleries of Scotland led to us being constituted as Non-Departmental Public Bodies (NDPBs), at “arms length” from Government, with charitable status. We were established under Primary Legislation and are governed by the National Heritage (Scotland) Act 1985 (in the case of National Museums Scotland) and by the National Galleries of Scotland Act 1906 and the 1985 Act (in the case of the National Galleries of Scotland). Under our founding legislation, we have Boards of Trustees who are appointed by Ministers. The 1906 and 1985 Acts granted the Boards wide general functions on the care for, preservation, security and collection of material and on publicity and public education. They also have fairly wide powers of lending, but limited and clearly defined powers of disposal.

(ii) Under the new Bill, it is not clear whether our bodies would remain as NDPBs in the short or long term. As we clearly outlined in our evidence to the Parliamentary Committees in relation to the Charities Bill in 2005, we believe that NDPB status is of fundamental importance to our organisations from a wide range of viewpoints. Loss of independence would have a very severe impact on the ability of our institutions to carry out our role effectively and, more importantly, on the future of our organisations. It could also impact on our status as Scottish charities, which has been recognised by Scottish Ministers as an important feature of our unique position in Scottish society, as stated in the Scottish Executive Development Department’s Explanatory Note to The Charity Test (Specified Bodies) (Scotland) Order 2006 SI/2006/219, published on 16 February 2006.

(iii) While we accept that future Governments may take the view that changes need to be considered in relation to the status of National Museums Scotland and the National Galleries of Scotland as NDPBs, we believe that the impact of such changes would be of such material importance to our role and future that those
changes warrant full and careful treatment when being considered by Parliament. It is in this context that we make the recommendations below in relation to the Bill.

3.4 Funding Sources
(i) Our organisations receive public funding from the Scottish Government to care for and provide public access to the National Collections which we maintain. As NDPBs with charitable status, we are also able to raise very significant non-government funding, often to accompany Scottish Government or lottery support. This non-government funding includes private support from both personal and corporate donors, maintaining a long tradition in Britain of private philanthropic support for the nation’s great cultural treasures.

(ii) This financial assistance is vital to the delivery of our major new developments which maintain the excellence of our services to people within Scotland and to tourists. Our donors give to us because they appreciate the importance of our collections and activities, and they trust our bodies to care for the collections in perpetuity. They perceive us as the independent, “arms length” guardians of Scotland’s cultural heritage. The Bill, if enacted, could lead to a loss of this status.

(iii) In addition, our ability to raise funds from trusts and foundations as charitable bodies is of particular importance and any threat to our independence could destabilise that fundraising ability.

3.5 Public Interest
(i) The general public cares deeply about our National Collections. We are trusted by them to protect their heritage, and to provide an objective and independent interpretation of the collections. Therefore, there is immense interest in what we do - a recent example being the major capital projects currently being undertaken by both National Museums Scotland and the National Galleries of Scotland.

(ii) As independent bodies, the public values the fact that we provide a neutral arena for the exhibition and display of our national and international cultural treasures, and also for debate, education, lifelong learning and research at home and across the world. We nurture the learning potential of culture for people of all ages to grow the appetite for culture in the next generation. It is essential that our “arms length” status remains in order to ensure the creative and artistic freedom which best serves the interests of the public.

4. Consequences of the Bill’s Enactment

We imagine that specific issues such as the protection of National Museums Scotland and the National Galleries of Scotland have, as yet, not been considered in the preparation of this proposed legislation. However, the draft Bill, as it currently stands, could have a significant impact on our future.

4.1 Wide-Ranging Powers
(i) Part 2 of the Bill gives Scottish Ministers the power “by order [to] make any provision which they consider would improve the exercise of public functions” by bodies, having regard to efficiency, effectiveness and economy. Such provisions could include modifying, abolishing, transferring or providing for the delegation of
any function of our institutions or amending our constitutions. The transfer or 
deglegation could be to another body listed in Schedule 3 of the Bill or, for that 
matter, to any other body that Ministers would be empowered to create by virtue of 
subsection 10(3)(c) of the Bill. Crucially, an order under this section may “modify 
any enactment, instrument or other document”.

The impact of these provisions, if enacted, is to enable Scottish Ministers to modify 
a previous statute by Statutory Instrument. It would, therefore, be possible for the 
Scottish Government to use such a Statutory Instrument to modify the content of 
the National Heritage (Scotland) Act 1985 and the National Galleries of Scotland 
Act 1906 – the Primary Legislation which governs National Museums Scotland and 
the National Galleries of Scotland.

(ii) In Section 11 of Part 2 of the Bill, we have also noted subsection (3)(e)(ii) which 
refers to the lists of persons and bodies which Section 10 affects and to additions 
which can be made to the list. We understand the effect of this section of the Bill 
to affect any non-public body to which any part of our functions is effectively out-
sourced, although the extent of Scottish Ministers’ powers in relation to such a 
non-public body is limited to the public function which is being provided. We 
believe that this could have a potential impact on the willingness of contractors to 
enter into arrangements with National Museums Scotland and the National 
Galleries of Scotland for the outsourcing of public functions, although we have not 
considered this in greater depth at the present time.

4.2 Possible Impact of Part 2 of the Bill on National Museums Scotland and the 
National Galleries of Scotland

(i) As it stands, the Bill is so widely drafted it could be used by a subsequent 
administration for purposes which the present government may not actually intend. 
For example, as far as we can see, it would be possible for a future government to 
change or remove the current restrictions against the sale and transfer of 
collections, and then either direct or pressurise the Trustees to consider selling 
some items not currently on display.

This possibility directly undermines the prime purpose of our institutions which is to 
hold the National Collections in trust for the people of Scotland, in perpetuity. The 
effect could be to lose our public role as the guardians of Scotland’s largest 
collections of key historical, cultural and national importance.

(ii) Our Boards of Trustees entirely understand that the Scottish Parliament may 
wish to review our structures from time to time. We also entirely understand and 
respect the role of Parliament, as the nation’s elected representatives, to propose 
and to make such changes. Our concern, however, is that the Bill will permit such 
changes to be made to our organisations, which are established by Primary 
Legislation, through a Statutory Instrument which is by its nature subject to less 
detailed Parliamentary and public scrutiny.

(iii) We are of the view that national bodies of our international importance and 
with our unique role in Scottish society should continue to be governed by Primary 
Legislation. We appreciate that the purpose of the Bill is to simplify government 
and improve efficiency and effectiveness. We entirely support that sentiment, but
we believe that in the case of National Museums Scotland and the National Galleries of Scotland, because of the collections we hold and our unique and important position in Scotland, there is a strong case for ensuring that the present arrangements for review through Primary Legislation in the Scottish Parliament should be preserved.

4.3 Lack of Sufficient Safeguards
(i) We note the order-making power in the Bill is subject to preconditions. These are that the effect of any provision in the order should be “proportionate” to the policy objective, should not remove “necessary protection”, and should be broadly consistent with the general objects or purpose of the body concerned. In our view, this is ill-defined and weak as it currently stands, and does not, in our view, provide adequate safeguards for the National Collections. Again, in our view, it is more appropriate that our bodies remain subject to Primary Legislation.

(ii) While the accompanying explanatory memorandum accompanying the Bill states that any “changes must be proportionate”, our Boards of Trustees are not convinced that this provides sufficient safeguards. There also remains the uncertainty regarding who would decide what would be “proportionate” change and we are keenly aware that any decision would be subjective.

4.4 Impact on Public and Financial Support
(i) The National Collections for which the NCIs care are currently inalienable. The public hold us in high esteem and regard us to be independent, “arms length” organisations. This has been a great strength to date but means that any change to our status or responsibilities is a matter of significant national interest.

(ii) As stated above, our Boards have limited and clearly defined powers of disposal and a major issue is how collections could be used in the future. Many donors have given or lent material to us precisely because they wished their objects to become part of a great public collection, held in trust for posterity. If there was any possibility that collections could be sold or otherwise disposed of in the future, a significant proportion of people could decline to give or loan us objects, paintings or documents and some could elect to sell elsewhere. We also believe that a loss of independence could impact on: future legacies; monetary support from major philanthropists, private donors and sponsors; and future ‘help in kind’. Large capital projects would particularly be at risk.

4.5 Impact on our Artistic and Educational Freedom
The public expects that institutions caring for National Collections have cultural and artistic freedom in exercising their functions, e.g. the content and interpretation of exhibitions and displays. Under the current legislation, we also have independent scholarly research which requires objectivity, intellectual integrity and academic rigour. As stated above, it is essential that our “arms length” status remains and that we remain subject to primary legislation in order to ensure creative and artistic freedom to best serve the interests of the public.

5. Achieving Efficiency and Effectiveness
National Museums Scotland and the National Galleries of Scotland are already committed to improving our effectiveness and to making efficiencies. This has
been clearly demonstrated in recent years in the creation of enhanced public services, significant increases in audiences, the implementation of major capital developments (involving very substantial investment from the private sector) and the achievement of an enhanced reputation for our institutions (both in Scotland and internationally). Examples of our achievements to date are as follows:

5.1 Using Resources Efficiently
Our bodies have a strong track record in gaining funding from non-government sources. We optimise our income through corporates, charitable trusts and private donations. Therefore, we are doing our utmost to reduce our burden on public funding. Under the Efficient Government agenda, we were asked by Government to make savings of Scotland by 31 March 2008 and to redirect these to public services. These targets were achieved and we are working to meet the savings targets for 2009/10 and 2010/11. Using guidance from the Scottish Government, we continue to use the Best Value framework and guidance to improve public services and to achieve economies and efficiencies.

5.2 Increasing Effectiveness and Working Together
(i) In January 2008, the First Minister issued his statement on More Effective Government (MEG). It outlined his vision for simplifying the public sector and delivering a reduction in the number of public sector organisations. National Museums Scotland and the National Galleries of Scotland were identified as being among the bodies requiring “further work to simplify, integrate and share services through closer collaboration”. As a consequence, National Museums Scotland and the National Galleries of Scotland have been working closely, together with the National Library of Scotland (NLS), to progress this agenda and jointly funded a two year Programme and Project Manager post from September 2008. The purpose of the role is to develop and implement a shared services programme for our organisations, with the aim of making best use of resources and working more closely together. Initial research has shown a great deal of evidence of existing joint working amongst the major national collecting bodies in Scotland, and with other cultural and public bodies.

(ii) In spring 2009, we agreed in conjunction with NLS a joint workplan for the next two to three years focusing on five key projects. We will explore the scope for:
   • common systems for the creation and management of digital assets, including resource discovery.
   • shared storage facilities for collections to be based at the Granton site.
   • a common Finance system.
   • a common HR system.
   • a degree of shared procurement.

6. Conclusions
This submission highlights the potential consequences of this Bill, as drafted, for National Museums Scotland and the National Galleries of Scotland. Our conclusions are as follows:

(i) National Museums Scotland and the National Galleries of Scotland are internationally renowned Scottish institutions, with a key role in preserving
Scotland’s historic, cultural and national heritage. We are recognised by Scottish Ministers as having a unique and important role in Scottish society.

(ii) There is a strong case for recognising the special status of National Museums Scotland and the National Galleries of Scotland by ensuring that changes to our constitutional arrangements, structure, administration and governance continue to be made through Primary Legislation in the Scottish Parliament, as at present.

(iii) We believe that by maintaining the requirement for change to be made through Primary Legislation for National Museums Scotland and the National Galleries of Scotland, the right degree of Parliamentary and public scrutiny is preserved. We believe that this is a mechanism which befits institutions of our high national and international standing which hold collections on behalf of future generations.

(iv) Progress will continue to be made by National Museums Scotland and the National Galleries of Scotland, in conjunction with other key collections bodies, in achieving efficiency and effectiveness without the requirement for new legislative measures.

7. Our Proposals

We propose that, in order to give effect to the recommendations which we have submitted, the Public Services Reform (Scotland) Bill should be amended by the insertion of a new subsection 10(9) in the Bill to read as follows:-

“10 (9) This Part shall not apply to the National Museums of Scotland, established by Part I of the National Heritage (Scotland) Act 1985 (c.16) as amended, or to the National Galleries of Scotland, established by the National Galleries of Scotland Act 1906 (c.50) as amended.”

Appendix 1

THE NATIONAL COLLECTIONS

National Museums Scotland

(i) National Museums Scotland is one of the leading museum groups in the UK and Europe. It is a large, complex and vibrant organisation with five museums, four million objects, 470 staff and an annual budget of over £21 million. We attract 1.5 million visitors and over 460,000 web visitors each year.

(ii) Our collections are housed in the following museums:

- National Museum of Scotland (Chambers Street, Edinburgh);
- National War Museum (within Edinburgh Castle);
- National Museum of Flight (East Lothian);
- National Museum of Rural Life (East Kilbride); and
- National Museum of Costume (near Dumfries).
We also house part of the collections in our three storage facilities: National Museum Collections Centre (Granton, Edinburgh); Leith Customs House; and Port Edgar.

The flagship National Museum of Scotland site is the largest museum complex outside of London. The Victorian part of complex (the Royal Museum building) is currently undergoing a £46 million redevelopment. When it re-opens in 2011 it will provide 16 new galleries, increased education facilities and new public spaces.

The National Museum of Flight is a scheduled monument and former WWII airfield covering 40 acres of land. Our National Museum of Rural Life, a museum and working farm, is situated in 170 acres of rural land. The National Museums Collections Centre is located on a 10 acre site and incorporates our purpose-built storage and state-of-the-art conservation facilities.

(iii) The National Museums Scotland collections number some four million items but are very differently constituted. The largest collections consist of natural science specimens and archaeological finds. In descending order, these are within Natural Sciences (2.7 million items including the entomology collection with c2 million specimens, and the geology collection with some 200,000 items) and within Archaeology (c1 million items). The remaining 300,000 are distributed across the cultural, technical and social history collections.

(iv) The collections have been built up over more than two centuries and encompass archaeology, world cultures, natural sciences, science and technology, decorative and applied arts, and Scottish history and culture. The continuity of their history has resulted in an extraordinary range of subject matter. This multi-disciplinary collection is recognised internationally for its scope, quality and depth. While there exist many comparable collections in individual disciplines, the breadth within National Museums Scotland is its major strength.

(v) In particular, the Scottish collections are unrivalled in breadth and depth. While again there exist many comparable collections for individual disciplines in other major institutions, the comprehensiveness of National Museums Scotland coverage, and the way this supports the Scottish collections and the role of Scotland and the Scots in the world, is unique.

**National Galleries of Scotland**

(i) The National Galleries of Scotland (NGS) looks after one of the world’s finest collections of Western art ranging from the Middle Ages to the present day. These holdings include the national collection of Scottish art. It has 90,000 objects, 300 staff and an annual budget of over £12 million. We attract over 1.5 million visitors and over 675,000 web visitors each year.

(ii) Our collections are housed in the following galleries:
- The National Gallery of Scotland (Edinburgh)
- The Royal Scottish Academy Building (Edinburgh)
- The Scottish National Portrait Gallery (Edinburgh);
- Scottish National Gallery of Modern Art (Edinburgh);
• The Dean Gallery (Edinburgh);
• Duff House (Banff) – partner;
• Paxton House Berwickshire – partner;

A proportion of the collection is kept in safe storage in our purpose-built storage facilities at Granton, and in our store at Dalmeny.

(iii) The National Gallery’s collection comprises around 90,000 objects, including paintings, prints and drawings, sculpture and photography. Our largest collection is of works on paper (around 43,000 works), closely followed by photography (around 31,000 works).

The collection ranges in date from the early Renaissance to the end of the nineteenth century. It covers paintings, prints and drawings and sculpture, and includes most of the major figures of Western art such as Raphael, Titian, Velázquez, Vermeer, Watteau, Constable and nearly all of the Impressionists and Post-Impressionists. It also houses the national collection of Scottish art c.1600-c.1900 and the internationally renowned Bridgewater Collection.

(iv) The Scottish National Portrait Gallery closed for major refurbishment in April 2009. It is responsible for collecting portraits of Scotland’s inspirational men and women for the interest of the present generation and for the future and also managing the National Photography Collection. The majority of the collections will be safely stored or displayed in other galleries for the duration of the closure.

(v) The Scottish National Gallery of Modern Art and The Dean Gallery house the national collection of modern Scottish and international art from 1900 to the present day. This includes the world’s most comprehensive collection of modern Scottish art, with fine holdings of the Colourists and the Edinburgh School in addition to the recently acquired Artist Rooms collection.