Finance Committee
Public Services Reform (Scotland) Bill
Submission from the Royal Society of Edinburgh (originally submitted to the ELLC Committee, copied to the Finance Committee)

Summary

- We urge the Committee to reconsider the scope of the powers contained in Part 2 of the Bill that would enable the Scottish Ministers to make orders that they consider would improve the exercise of public functions, including those of Creative Scotland. They would permit Ministers to intervene, subject only to limited scrutiny, in the discharge by Creative Scotland of its responsibilities. It is a matter of profound concern and the Committee should seek assurances from the Scottish Government about the use of such powers.

- We are concerned that as Creative Scotland will not be established by Royal Charter that it will not be sufficiently independent of government direction. The Committee should examine the practicalities as well as the costs and benefits associated with Royal Charter status.

- We understand that the provision in s. 7 (5) of the Charities and Trustee Investment (Scotland) Act 2005 could allow Scottish Ministers to make an order that would prevent a body from failing the charity test. We strongly urge the Committee to seek assurances from the Scottish Government that it will explore the application of this provision as a way of ensuring that Creative Scotland benefits from charitable status.

- It is important that consideration is given to the place of capital funding within the proposals and where such funding is to be sought. Lottery funding has been very important to the Scottish Arts Council in supporting the development of the infrastructure for the arts in Scotland. The Committee should seek assurance from the Scottish Government that when Creative Scotland is established it will maintain this key connection with Lottery funding.

- As the expectation is for Creative Scotland to have a key and leading role in developing a thriving creative industries sector, it is essential that funding is in place to enable it to fulfil that function. We urge the Committee to give some priority to this issue, and to seek clarification from the Scottish Government as to whether a coordinating mechanism will be emplaced since there is a range of bodies in this area with overlapping funding responsibilities. The RSE suggests that a joint committee should be established comprising those bodies that have common or complementary goals in promoting and supporting creative industries in Scotland.

- One of the attractions of the establishment of Creative Scotland for the artistic community is the opportunity it could provide to increase funding.
However, there appears to be a mismatch between innovative aspirations and the absence of the financial support that will realistically be required to achieve them. The Committee should raise this issue with the Scottish Government and the Government should consider the importance of increased funding if its ambitions for Creative Scotland are to be realised.

- We are concerned that Creative Scotland will focus more on economic development opportunities rather than the more traditional arts council territory. As it will straddle two different sets of objectives, it is incumbent on Creative Scotland to maintain a balance between the traditional territory of an arts council and the market-driven response of the creative industries. Achieving this balance is crucial.

- The wider remit of Creative Scotland offers an opportunity for the Further and Higher Education sectors to become better integrated into the creative sector. It is important that Creative Scotland establishes close links with HEIs and the Scottish Funding Council to develop mutually supportive partnerships.

- There is a tendency to assume that ‘national culture’ is a single and finite body of cultural material that is somehow waiting to be discovered and understood. It is as much the case that creative endeavours play a significant role in forming the national culture, defining and modifying it on a daily basis. The purpose of Creative Scotland is to help promote a dynamic and fluid view of ‘Scotland’s national culture’. In s.27 (1) (e) we recommend, therefore, that the phrase ‘Scotland’s national culture’ be replaced by ‘cultures of Scotland’.

1. The Royal Society of Edinburgh (RSE), Scotland’s National Academy, welcomes the invitation from the Scottish Parliament’s Education, Lifelong Learning and Culture Committee to provide comments on the general principles of the Public Services Reform (Scotland) Bill (hereinafter referred to as ‘the Bill’), particularly the proposals for the establishment of Creative Scotland. The RSE has previously commented on the Creative Scotland Bill and hopes that the present Bill will hasten the establishment of Creative Scotland as the apparent lack of progress has led to considerable uncertainty in the creative sector in Scotland. While the current proposals address many issues of previous concern, a number of important ones remain, which we address in the following sections. We focus initially on high level issues that arise from the articulation of Creative Scotland within the broader frame of this far reaching Bill. We would be pleased to discuss the issues raised in this response with the Committee.

**Overarching Concerns**

*Relationship between the Scottish Government and public bodies*

2. The RSE and other cultural bodies, including the National Galleries of Scotland, National Museums Scotland and the National Library of Scotland, are deeply concerned by the way in which the relationship between the Scottish Government and those bodies exercising public functions in Scotland could be
fundamentally affected by provisions in the Bill. Part 2 contains provisions that enable the Scottish Ministers to make orders that they consider would improve the exercise of public functions. Specifically, s.10 (3) (a) includes provision for ‘modifying, conferring, abolishing, transferring, or providing for the delegation of, any function’ and (b) ‘amending the constitution of, or abolishing, a person, body or office-holder listed in schedule 3.’ We note that Creative Scotland is included as a public body in this schedule and therefore this section is applicable to it. It is apparent that such provision would have far reaching consequences for Creative Scotland and others exercising public functions in that the Scottish Government would have the power to intervene and amend the functions of cultural bodies by way of a statutory instrument which would not be subject to the same level of Parliamentary scrutiny as primary legislation. This is a matter of profound concern and we strongly urge the Committee to consider the scope of these powers carefully and seek assurances from the Scottish Government about their use.

Status of Creative Scotland
3. The RSE notes with regret the dissolution of the Royal Charter of the Scottish Arts Council and the fact that Creative Scotland will not be established by Royal Charter. A Royal Charter provides a measure of independence. We are concerned that the dissolution of the Royal Charter will mean that Creative Scotland will not be sufficiently independent of government direction, a fear that is reinforced by the provisions referred to in paragraph 2. This also has implications for Creative Scotland’s charitable status as discussed below. We recommend that the Committee examine the practicalities as well as the costs and benefits associated with Royal Charter status.

Charitable status of Creative Scotland
4. Will Creative Scotland have charitable status under the Charities and Trustee Investment (Scotland) Act 2005? We note the estimated financial value of charitable status to the Scottish Arts Council as set out in the Bill’s Financial Memorandum. We understand that the charity test under s.7 of the 2005 Act would not be met if a body’s constitution expressly permits the Scottish Ministers to direct or control its activities. It seems that the present Bill does allow for such Ministerial intervention and therefore if Creative Scotland were to make a formal approach for charitable status, the implication is that it would not be granted, and that Creative Scotland would lose the considerable financial benefits that were enjoyed by the Scottish Arts Council. However, we understand that the provision in s. 7 (5) of the 2005 Act would allow Scottish Ministers to make an order that would prevent a body from failing the charity test. We strongly urge the Committee to seek assurances from the Scottish Government that it will explore the application of this provision with its legal advisers and if it is deemed possible, make such an order to ensure that Creative Scotland benefits from charitable status.

Capital funding support for Creative Scotland
5. It is also important that consideration is given to the place of capital funding within the Bill’s proposals and where such funding is to be sought. We recognise how important Lottery funding has been to the Scottish Arts Council over the years in supporting the development of the infrastructure for the arts in
Scotland. Whilst we understand that there would be no barrier to Creative Scotland, established as a NDPB, disbursing Lottery funding, we are somewhat surprised that there is no reference to Lottery funding within the Bill or its accompanying documents. We hope that the Committee will raise this point with the Scottish Government in order to ensure that when Creative Scotland is established, irrespective of whether it fulfils the charity test or not, it will maintain the key connection with Lottery funding. Otherwise, if Lottery funding is to be administered by another body, it is likely to result in an unnecessary and unfortunate disjunction. We urge the Committee to seek assurance from the Scottish Government on this issue.

**Relationship between Creative Scotland and other creative industry bodies**

6. A key issue is contained in s. 27 (1) (f) relating to Creative Scotland’s function in supporting the development of the creative industries by working in partnership with other bodies. If Creative Scotland is to have a key and leading role, as envisaged, in developing a thriving creative industries sector, then it is essential that funding is in place to enable it to fulfil such a function. Whilst we note the stress upon a partnership approach in the proposals, we urge the Committee to give some priority to this issue, and to seek clarification from the Scottish Government as to whether a coordinating mechanism will be emplaced since there is a range of bodies in this area with overlapping funding responsibilities. The RSE suggests that a joint committee, comprising those bodies that have common or complementary goals in promoting and supporting creative industries in Scotland, should be established. Such a joint committee should include Scottish Enterprise, Highlands and Islands Enterprise, the Scottish Funding Council and COSLA. Furthermore, as support mechanisms for scholarly research in this area are almost exclusively based at the UK level, we also recommend that an observer from the Arts and Humanities Research Council should be invited to meetings of the joint committee.

**Funding Creative Scotland’s aspirations**

7. One of the attractions for the artistic community of the establishment of the new body, Creative Scotland, is the opportunity it could provide to increase funding. The document as it stands appears to reveal a mismatch between innovative aspirations and the absence of the financial support that will realistically be required to achieve them. The Committee should raise this issue with the Scottish Government and the Government should consider the importance of increased funding if its ambitions for Creative Scotland are to be realised. Unless some clear financial benefit, or at least promise of such in the mid-term future, is made evident, the creators and producers of artistic excellence are likely to be disillusioned by, or even resentful of the time and money spent in the transition process.

**Balance between economic development and artistic or creative merit**

8. We are concerned that Creative Scotland will focus more on economic development opportunities rather than the more traditional arts council territory. Although the approach set out in paragraph 162 of the Explanatory Notes goes some way to addressing this concern, it will require Creative Scotland to straddle two quite different sets of objectives. It is incumbent on Creative Scotland therefore to maintain a balance between the more traditional territory
of an arts council and the market-driven response of the creative industries. Achieving this balance is crucial. The censorship of the market over what is difficult and innovative, or intellectually and aesthetically demanding is often stronger than political censorship or repression. An entirely market-driven culture would be the death knell of much creativity in Scotland.

General functions of Creative Scotland

9. We were pleased to see that the current proposals now reflect the RSE’s earlier concern that identifying, supporting and developing quality and excellence in the arts and culture should be the prime function of Creative Scotland (s.27 (1) (a)). Issues related to economic gains, wider access and other incidental benefits will naturally follow.

10. With regard to s.27 (1) (b), whilst we note the comment that Creative Scotland will support wider delivery partners, including education bodies, to promote understanding, appreciation and enjoyment of the arts and culture, we believe that this function would be improved if there were a greater emphasis on education. The benefits of the arts in all areas of society are so profound and diverse, though difficult to quantify, that they should be promoted from cradle to grave. In this respect we commend the Curriculum for Excellence for the attention given to expressive arts as a group of subject areas (both the disciplinary areas of the expressive arts and their associated craft skills) that are now firmly at the heart of the curriculum. However, the RSE has previously expressed concerns about a lack of a coherent architecture in the Curriculum for Excellence proposals¹. We would encourage Creative Scotland and its local authority partners to work together to ensure that the importance of creative work to individuals and to society is embedded within the wider curriculum.

11. The wider remit of Creative Scotland also offers an opportunity for the Further and Higher Education sectors to become better integrated into the creative sector. A link with the Scottish Funding Council’s ‘cultural engagement’ stream of knowledge transfer funding could be a powerful means of stimulating such interactions. This is a potentially exciting development for institutions like the RSAMD, the Art Schools, and relevant University Departments, together with certain further education hubs which produce many of the most imaginative individuals and teams who contribute substantially to the creative industries. They also cross into the area of social enterprise, which is a potentially exportable area of Scottish expertise. As such, the RSE would emphasise the importance of Creative Scotland establishing close links with HEIs and the Funding Council to develop mutually supportive partnerships.

12. Whilst it is good to see reference to international value and benefits in s.27 (1) (d), we believe there is a case for giving the international dimension an even stronger profile. If creative activity in Scotland is to be truly outward looking,

¹ RSE response to Curriculum for Excellence – draft experiences and outcomes for Literacy and English, for Expressive Arts and for Social Studies (June 2008)
there must be an increase in inward investment. Scottish artists and writers have always drawn creatively on other cultures, a habit that has been greatly enhanced in recent years through the immediacy of modern communication. It should be strongly encouraged. The proposals should give greater emphasis to this aspect and should include mechanisms to encourage it, including the provision of appropriate funding and the involvement with Creative Scotland of bodies such as the British Council.

13. With respect to s.27 (1) (d) we also question the use of the phrase, ‘as far as reasonably practicable’, as its inclusion would seem to cast a doubt over Creative Scotland’s commitment to realise the full value and benefits of the arts and culture. We recommend that this phrase should be removed.

14. With respect to s.27 (1) (e) the contribution to Scotland’s national culture is certainly important, but there is a tendency here and elsewhere to assume that this ‘national culture’ is a single and finite body of cultural material that is somehow waiting to be discovered and understood. It is as much the case that creative endeavours play a significant role in forming the national culture, defining and modifying it on a daily basis. The purpose of Creative Scotland is to help promote a much more dynamic and fluid view of Scotland’s national culture (both its strengths and weaknesses) than has often been the case. Paragraph 60 in the Explanatory Notes goes some way towards addressing this, but still implies an ‘essentialist’ view of ‘Scotland’s distinctive way of life’. We recommend, therefore, that the phrase ‘Scotland’s national culture’ be replaced by ‘cultures of Scotland’.

15. Given Scotland’s literary tradition, the appeal and strength of its contemporary authors, and the economic benefits that accrue from them and from major literary showcases, such as the Edinburgh International Book Festival, it is extraordinary and profoundly disappointing that there is no reference to literary work in the list of creative industries in paragraph 61 of the Explanatory Notes. Although we note that the definition and list of creative industries appear to emanate from the Department for Culture Media and Sport (DCMS) (and does include ‘Publishing’), we firmly believe that in a Scottish context ‘fictional, historical and critical writing’ should be included in that list.

16. With regard to s.27 (2), we agree that diversity is a vital issue in contemporary culture and Creative Scotland should play its part. However, there is a question of the sort of ‘diversity’ that is implied by the proposals as ‘diversity of people’ is rather vague. Does this mean social, geographical or ethnocultural diversity or does it simply refer to a general breadth of appeal? We urge the Committee to seek or to suggest clarification of the concept of ‘diversity’ as expressed in the Bill and enquire how it is to be delivered and prioritised in relation to the other functions of Creative Scotland, particularly to its prime function of identifying, supporting and developing quality and excellence.
Advisory and Other Functions

17. We consider s.28 (1) (b) on the provision of information on industries and commercial activity which show ‘the application of creative skills’ to be unnecessarily vague. It would be helpful if this could be clarified.

18. In this same section there is an internal conflict between sub-section (2) and (4) in that Creative Scotland may provide Ministers with other such advice and information it considers appropriate (over and above information explicitly requested by Ministers), but that this must be provided in such a manner as Scottish Ministers may determine. This latter requirement appears to nullify the first. It should be made clear that Creative Scotland will both provide information requested by Ministers and also be free to provide advice on its own initiative in the manner it considers to be most appropriate.

Directions and Guidance

19. With regard to our overarching concern about Ministerial intervention and government control (paragraph 2), we are also concerned about the way in which s.30 (directions and guidance) has been drafted. As previously pointed out by the RSE, s.30 (1) (2) (3) and (4) appear to contain contradictory messages and could be the source of considerable conflict between Ministers and Creative Scotland about the extent of Ministerial intervention. It is essential that these ambiguities or contradictions are removed or clarified. We remain of the view that the proposed powers of Ministers should be qualified to reflect Ministerial policy that any direction or guidance issued to Creative Scotland should be limited to the governance of the organisation, financial and legal good practice and probity.

Governance of Creative Scotland and Terms of Appointment

20. The RSE agrees that Creative Scotland should be led by a broad group of experts in order to fulfil its wide-ranging remit. However, for consistency, the Committee should note that paragraph 492 of the Financial Memorandum states that the Creative Scotland Board should consist of no more than six members and a Chair, while Schedule 5 of the Bill specifies that Creative Scotland is to consist of no fewer than eight members. The Committee should seek clarification from the Scottish Government on the number of members to be appointed to the Creative Scotland Board, and should comment on the appropriate size of the Board.

21. With regard to the terms of appointment, we do not agree with s. 3 (1) of Schedule 5 that members will be appointed for such a period as the Scottish Ministers think fit. Such an approach does nothing to ease the anxieties being expressed about government intervention. In order to ensure confidence and consistency, the terms of appointment should be made more specific. We understand that the customary model used in other NDPBs is that members should serve a term of four years in the first instance, with the option of a second term. This model seems eminently sensible to us and we see no barrier to it being applied to Creative Scotland.
Organisational Structure and Staffing

22. The RSE notes that the Explanatory Notes point to major staff reductions (paragraph 483) and also indicate uncertainty about Creative Scotland’s organisational structure (paragraph 473). We recommend that the Committee seeks further clarification from the Scottish Arts Council, Scottish Screen and Creative Scotland 2009 Ltd to ensure that Creative Scotland does have the structure and staffing complement in place to fulfil its wider functions and be responsive to the needs of the creative sector.

Location of Premises

23. As Creative Scotland will be a new national body, with wider functions, it is in its interest to demonstrate its distinctiveness from its antecedent bodies. However we agree with the approach taken that Creative Scotland should determine the location of its premises.

Additional Information and References

In responding to this consultation the Society would like to draw attention to the following Royal Society of Edinburgh responses which are relevant to this subject:

- The Royal Society of Edinburgh’s submission to the Scottish Executive, Draft Culture (Scotland) Bill (March 2007)
- The Royal Society of Edinburgh’s response on Scotland’s Creative Industries, produced for the Scottish Funding Council (March 2008)
- The Royal Society of Edinburgh’s submission to the Scottish Parliament’s Education, Lifelong Learning and Culture Committee, Creative Scotland Bill (April 2008)
- The Royal Society of Edinburgh’s submission to Learning and Teaching Scotland, Curriculum for Excellence – draft experiences and outcomes for Literacy and English, for Expressive Arts and for Social Studies (June 2008)

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