



Briefing 07/04

January 2007

TO: ALL CHIEF EXECUTIVES, MAIN CONTACTS AND EMAIL CONTACTS (Scotland)

CC: ALL CHIEF EXECUTIVES, MAIN CONTACTS (England, Wales & Northern Ireland)

Scottish Executive consultation on the Draft Culture (Scotland) Bill

Key issues:

- **The Scottish Executive has issued a detailed consultation on the Draft Culture (Scotland) Bill**
- **The draft legislation will be used to encourage local authorities to develop 'local cultural entitlements' as part of cultural planning, and proposes to establish a new public body, Creative Scotland, to be Scotland's national cultural development body**
- **The deadline for responses to the consultation is 31 March 2007.**

1. Introduction

The Scottish Executive has issued a detailed consultation on the Draft Culture (Scotland) Bill.

The Bill comes in response to the Executive's cultural policy, *Scotland's Culture*, which was announced in January 2006 by the Minister for Tourism, Culture and Sport, Patricia Ferguson MSP, and proposes a number of changes: -

- A reform of the law about local provision of culture, which will be used to encourage local authorities to develop 'local cultural entitlements' as part of cultural planning;
- The establishment of a new public body, Creative Scotland, to be Scotland's national cultural development body; and
- Changes to the governing legislation of the National Collections, updating their functions and making it easier for them to work together.

It also proposes changes to the law in relation to dealing in 'tainted' cultural objects as well as remedying an anomaly in local authorities' powers to broadcast and publish information about their functions.

This briefing paper explains the background to the draft legislation and invites APSE members to express their views on the proposals outlined via the specific set of consultation questions. The Association will then use the feedback received to formulate a collective response on behalf of the membership in Scotland.

All comments should be sent by email to gsimpson@apse.org.uk by **16 March 2007** at the latest, in order for the Association's full formal response to be submitted by the 31 March 2007 closing date.

The full document can be downloaded from www.scotland.gov.uk/consultations

2. The draft Bill

Part One

Part 1 of the draft Bill is about local cultural services and activities; how they are organised by local authorities and how people in their area enjoy and participate in them.

Background

Much of the publicly funded cultural activity across Scotland is paid for by local authorities: - the arts, literature, theatre, local cultural traditions, craft, community facilities, festivals, museums, local heritage, libraries, local archives, cultural enterprise support and a wide range of other services. Authorities offer these services in response to the wishes of local people and to fulfill their existing statutory duty to make adequate provision for cultural activity for the inhabitants of their area.

The Executive have expressed their desire to build on these services and encourage more people from different communities to enjoy and get involved in cultural activities in their area. They also want authorities to encourage participation in culture.

Local cultural entitlements

Under the proposed legislation Ministers will issue guidance to local authorities about what will be known as 'local cultural entitlements'. These will be specific types of cultural activity or services that authorities would seek to make available to each person in their area who wishes to access them. The authority would consult people in their area about what entitlements they would like to see provided, and this process would happen as part of the authority's cultural planning, which would inform the strategic Community Planning process.

A guidance document, published alongside the draft Bill (<http://www.scotland.gov.uk/Publications/2006/12/13092422/0>), explains how Scottish Ministers expect the Culture (Scotland) Bill to work in relation to local authorities. It aims to give local authorities practical working advice, describing the new duties to which they will need to have regard, and explaining how these should be put into practice. While they do not have to follow it exactly, authorities do have to take account of it when deciding how to provide cultural activities in their area.

Cultural planning

According to the Executive, recent research has highlighted instances where cultural activity has been reported to benefit a range of public policy objectives, like crime reduction, improvements in health and improving the confidence and skills of the most disadvantaged children and young people. Because of this evidence, Ministers consider cultural activity as one of the ways to achieve their wider objectives, including those focused on tackling poverty and disadvantage.

The draft Bill will support this by proposing a new power for Ministers to collect information from local authorities about their planning of culture and the ways they consider using cultural activity across their responsibilities, how they use it and what evidence there is about the results achieved. As well as helping to guide authorities, this information is intended to help the Executive observe the wider impact of cultural activity, and inform future policy making.

Consultation Questions

- 1. Do you think that developing local cultural entitlements will help to increase participation in cultural activities?***
- 2. If you believe further or alternative measures are necessary, what are they?***
- 3. How do you think the Scottish Executive and local authorities can best utilise the influence and impact of cultural activity?***
- 4. Do you think the initial draft guidance under this Part of the Culture Bill is clear and helpful? Is there anything else it should contain?***

Part Two

Part 2 of the draft Bill is about the proposed new national cultural development body, Creative Scotland, and what it will do.

Background

At present there are two bodies in Scotland that support culture: The Scottish Arts Council is responsible for funding, developing and promoting all branches of the arts and; Scottish Screen is responsible for developing screen culture and industry. Both are executive Non- Departmental Public Bodies (NDPBs), for which the Scottish Ministers have responsibility.

Creative Scotland

The draft Bill proposes the establishment of a single national cultural development body – ‘Creative Scotland’. The body’s interests will involve all branches of the arts, the screen industries and the creative industries, and it will have a number of main responsibilities:

- It will promote understanding, appreciation and enjoyment of the arts and culture to people in Scotland, and will in particular seek to increase the number and diversity of people accessing and enjoying them;

- It will identify, support and develop talent and excellence in the arts and culture;
- It will seek to realise the benefits of the arts and culture; and,
- It will help to support the success of the creative industries.

The Executive foresee that Creative Scotland will encourage greater access to and enjoyment of the arts and culture and will do this partly by developing advice on a range of topics, for example, advice on the involvement of the voluntary sector and encouraging private sector sponsorship. They believe Creative Scotland will support talent and excellence in the arts and culture by awarding funds to people and organisations, and developing schemes to recognise and celebrate excellence in artists, artisans, filmmakers and creative individuals.

Creative Scotland, it is believed, will play a central role in delivering the Executive's wider cultural policy and as such, will have a close relationship with Ministers. It will play an important role in helping Ministers to guide local authorities in providing local cultural entitlements, and by contributing to the guidance and quality assurance framework that Ministers will give to authorities.

Creative Scotland will consist of members appointed by the Scottish Ministers, one of whom will be appointed as Chair, and there will be a minimum of 8 members and a maximum of 15. It will have a range of powers to pursue its remit, including power to make grants and loans, offer guarantees and publish information and advice. It will work with the National Collections, national performing companies, other national bodies and local authorities. Like its two antecedent bodies, Creative Scotland will distribute National Lottery funds.

Consultation Questions

- 1. Do you agree that there should be a single national cultural development body?***
- 2. Do you agree with the remit proposed for Creative Scotland? Has it the right powers and functions?***
- 3. Do you agree that Creative Scotland should work in concert with the Scottish Executive to implement national cultural policy?***

Part Three

Part 3 of the draft Bill is about updating the governance of the National Collections.

Background

In relation to culture, the 'National Collections' are the National Library of Scotland (NLS), the National Museums of Scotland (NMS), the National Galleries of Scotland (NGS), the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) and the National Archives of Scotland (NAS). Together, these bodies are responsible for collecting, preserving and exhibiting cultural objects of national importance and for holding and managing public records and archive collections for public access.

Proposals for change

The draft legislation proposes to keep the five Collections as independent bodies, with distinctive roles and functions, and also aims to ensure that: -

- Where their functions are defined in legislation, they are up to date and reflect their modern objectives;
- They have the powers they need; and
- They can continue to be led by trustees with the skills and experience necessary to give strategic direction to each of the Collections and to make the best use of the objects in their collections.

The draft Bill proposes a new statutory role for the National Collections to offer advice and assistance to local museums, galleries and libraries. This will encourage the sharing of national expertise and the exhibition of nationally significant objects in different parts of the country. The National Archives already has a statutory role to provide assistance and guidance to local authorities about the maintenance and exhibition of their archives.

For more information on this aspect of the draft Bill visit - <http://www.scotland.gov.uk/Resource/Doc/160710/0043681.pdf>

Consultation Questions

- *Do you agree that the National Collections should remain as constitutionally separate centres of excellence?*
- *Do you think the powers and functions proposed for the Collections in the draft Bill are right? If not, how would you improve them?*
- *Do you agree that the Faculty of Advocates should be able to contribute to the board of the National Library by having at least one representative?*
- *Do you agree that the Collections have the appropriate powers to obtain, loan and dispose of objects for or from their collections? If not, what would you change?*
- *What do you think of the name 'National Record of Scotland'?*

Part Four

Part 4 of the draft Bill is about trading or dealing in 'tainted' cultural objects, like pieces of foreign monuments that have been stolen overseas and smuggled into this country. The draft Bill proposes a specific criminal offence to outlaw these actions in Scotland.

Background

There is already a criminal offence about these activities in the rest of the United Kingdom, which was introduced by the Dealing in Cultural Objects (Offences) Act 2003.

Proposals for change

When the 2003 Act was introduced, Scottish Ministers decided that they wished to consider this matter as part of the proposed wider Cultural Review. The draft Bill therefore proposes a broadly similar offence in Scotland, and provides for penalties for anyone convicted.

Consultation Questions

- ***Do you agree that an offence similar to that in the 2003 Act should be introduced in Scotland?***

Part Five

Section 5 of the draft Bill is about the ways that local authorities provide information to people in their area and, specifically, to give them a general power (but not a specific permission) to use television and radio to do so.

Background

An anomaly was created between local authorities in Scotland and those in England and Wales when the Communications Act 2003 (passed by the UK Parliament) lifted restrictions contained in older legislation that prevented local authorities in England and Wales from holding broadcasting licences. It also gave local authorities in England and Wales a power to broadcast information about services in their area. But the 2003 Act did not extend to Scotland on these matters.

Proposals for change

Legislation about the powers of Scottish local authorities is generally within the competence of the Scottish Parliament. However, broadcasting legislation is by and large reserved to the UK Parliament, and so the Scottish Parliament cannot give local authorities a power apply for broadcasting licences. The UK Government is aware of the draft Bill, which proposes a power for local authorities in Scotland to broadcast information about their services, and, has agreed to propose this change too, once the Scottish Parliament has made the change that it can make. Once both changes are made authorities in Scotland, like those in England and Wales, will be able to broadcast television and radio to provide information to the people in their area about what they are doing to fulfil their responsibilities, should they wish to do so.

Consultation Questions

- ***Do you agree local authorities should have a general power to broadcast information about their activities?***
- ***Do you think it is necessary to give authorities this power in this Bill, or should local authorities be left to rely on 'the power to advance well-being' in section 20 of the Local Government in Scotland Act 2003?***

Summary

The Draft Culture (Scotland) Bill will impact local authorities in Scotland by establishing a legislative framework for the development of cultural services. A reform of the law about local provision of culture will be used to encourage local authorities to develop 'local cultural entitlements' as part of cultural planning. The draft Bill will also remedy an anomaly in local authorities' powers to broadcast, as well as publish, information about their functions.

The Association would appreciate your thoughts on this draft legislation.

All comments should be forwarded by email to gsimpson@apse.org.uk by **16 March 2007 at the latest**. Please note that following feedback, the Association will then formally submit its response in time for consultation closure date of **31 March 2007**.

Should you wish to respond directly to the Scottish Executive, the address you should send it to is: -

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