

SOUTH OF SCOTLAND ENTERPRISE BILL

REVISED DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This revised Memorandum has been prepared by the Scottish Government in accordance with Rule 9.10 of the Parliament's Standing Orders, in relation to the South of Scotland Enterprise Bill as amended at Stage 2. It describes the purpose of each of the subordinate legislation provisions, and direction-making provisions, in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the revised Explanatory Notes and the Policy Memorandum for the Bill. Text has been added to, or deleted from, this Memorandum as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the margin.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill creates a new body to be called South of Scotland Enterprise. The aims of the new body, set out in section 5 of the Bill, are to further the economic and social development of the South of Scotland and to improve the amenity and environment of the area.

RATIONALE FOR SUBORDINATE LEGISLATION

4. The delegated powers in this Bill are limited in nature, reflecting the fact that the key aspects of the creation of the new body are not delegated but set out on the face of the Bill. The three instances of delegated powers, described further below, are sought for diverse reasons.

DELEGATED POWERS

Section 5(3) – Aims

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative

Provision

5. Section 5(3) enables Scottish Ministers by regulations to amend the aims of South of Scotland Enterprise which are set in section 5(1) and (2).

Reason for taking power

6. The power to amend the aims of the new body are sought in order to provide Scottish Ministers with as much flexibility as possible, should the need arise in the future, to expand or amend the aims to reflect changing circumstances or challenges not yet known. For example, to address a change in economic performance which requires a different focus to ensure that the body can continue to effectively contribute to delivering the Government's central purpose.

Choice of procedure

7. The choice of affirmative procedure, and the level of scrutiny that this procedure provides to the Parliament, reflects the significance of any proposed changes to the aims of South of Scotland Enterprise.

Section 15 – Direction

Power conferred on: the Scottish Ministers
Power exercisable by: direction made by the Scottish Ministers
Parliamentary procedure: no procedure

Provision

8. Section 15 provides Scottish Ministers with the power to issue a direction to South of Scotland Enterprise. In accordance with subsection (2A) Scottish Ministers must consult the body before issuing a direction. The direction, once published, and the reasons for making it, must be published by Scottish Ministers.

Reason for taking power

9. The direction making power which exists for the two other enterprise agencies is regarded as a last-resort power for Ministers to direct those bodies. A similar power is appropriate for the new enterprise agency to ensure all the agencies are on the same footing. The duties to consult and publish are the same too.

Choice of procedure

10. As with the two existing enterprise agencies, Scottish Ministers consider that publishing the direction once made, and the reasons for making it, provide sufficient opportunity for scrutiny by the public and Scottish Parliament.

Section 17 – Transfer of property and liabilities

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: laid, no procedure

Provision

11. Section 17(2) requires Scottish Ministers to identify in regulations the property and liabilities of Scottish Enterprise which are to be transferred to South of Scotland Enterprise. The

transfer takes place on the day that section 17 comes into force (which is subject to commencement provision in an order under section 21).

Reason for taking power

12. Scottish Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990, operates across the whole of Scotland. On the creation of South of Scotland Enterprise it is expected that some property and liabilities of Scottish Enterprise in the South of Scotland area will transfer to the new body. The details of what will be transferred will be agreed by Scottish Ministers and Scottish Enterprise and set out in regulations made under this section.

Choice of procedure

13. As is consistent with transfers of property and liabilities in other primary legislation, the regulations setting out the property and liabilities to be transferred will be laid before the Parliament. This ensures the Parliament is fully informed of the details of the transfer. No procedure is considered appropriate because the transfer is practical and administrative in nature and will not raise any issues of policy or politics which would otherwise merit Parliamentary procedure.

Section 19 – Ancillary provision

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative (in certain circumstances), otherwise negative

Provision

14. Section 19 provides Scottish Ministers with powers to make any ancillary provisions which are appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.

Reason for taking power

15. The ancillary provision may be needed in a variety of circumstances. These could include making transitional provision about the creation of this new South of Scotland Enterprise body, making further amendments to other primary legislation (beyond that already dealt with in schedule 2) to ensure it applies to the new body, or to give full effect to any change made in the future to the body's aims by regulations under section 5.

Choice of procedure

16. The choice of affirmative procedure where amendments are made to primary legislation reflects the significance of any amendments. Further, any change to the aims of the new body would be achieved by regulations under section 5 which are themselves subject to affirmative procedure. Therefore, if ancillary powers were used at the same time as any such changes, ancillary provisions would form part of instrument subject to affirmative procedure.

17. In other circumstances, the use of ancillary provision would be subject to negative procedure. The most likely scenario in which this could arise is the use of transitional or transitory provisions as part of setting up the new South of Scotland Enterprise body.

This document relates to the South of Scotland Enterprise Bill as amended at Stage 2 (SP Bill 41A)

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