
Please find attached the report and appendices in respect of Item 12 on the agenda for the above meeting

12.	South of Scotland Enterprise Bill - Parliamentary Consultation Response (Pages 3 - 32) Consider report by Executive Director. (Copy attached.)	15 mins
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SOUTH OF SCOTLAND ENTERPRISE BILL – PARLIAMENTARY CONSULTATION RESPONSE

Report by Executive Director

SCOTTISH BORDERS COUNCIL

20 December 2018

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this Report is to agree the Council's response to the Scottish Parliament's call for views on the recently introduced South of Scotland Enterprise Bill.**
- 1.2 The South of Scotland Enterprise Bill was introduced in the Scottish Parliament on 24 October 2018 with the aim of ensuring that the new Agency is operational by 1 April 2020, subject to Parliamentary approval. The consultation on the Bill will close on 7 January 2019. Given the importance of the call for views to the Scottish Borders, it is vital that Scottish Borders Council submits a considered and comprehensive response before that deadline.
- 1.3 As part of Stage 1 of the Bill process the Council has been called to give evidence and Cllr Rowley, Executive Member for Business and Economic Development, will give evidence on behalf of the Council at a Parliamentary Committee meeting on 14 January 2019. It is recommended that Appendix 2 is submitted to the Scottish Parliament as the formal response from Scottish Borders Council, subject to final agreement after discussions with South of Scotland Alliance partners.

2 RECOMMENDATIONS

- 2.1 I recommend that Scottish Borders Council:**
 - (a) Notes the significant progress being made in moving towards the establishment of the South of Scotland Enterprise Agency;**
 - (b) Agrees that the draft response set out in Appendix 2 is submitted to the Scottish Parliament as the Council's formal response to the call for views on the South of Scotland Enterprise Bill;**
 - (c) Delegates responsibility for finalising the call for views submission to the Chief Executive, in consultation with the Leader, the Executive Member for Business and Economic Development and the Leader of the Opposition, and subject to further detailed discussions with South of Scotland Alliance partners; and**
 - (d) Delegates responsibility for agreeing the response to the Finance and Constitution Committee's call for views to the Chief Executive, in consultation with the Leader, the Executive Member for Business and Economic Development and the Leader of the Opposition, and subject to further detailed discussions with South of Scotland Alliance partners.**

3 BACKGROUND

- 3.1 In 2016 Scottish Government launched an Enterprise and Skills Review with the aim of ensuring public agencies deliver the joined-up support that young people, universities, colleges, training providers, businesses and the workforce needs across Scotland. As part of the Enterprise and Skills Review, the Scottish Government has committed to creating a new South of Scotland Enterprise Agency covering the Scottish Borders and Dumfries and Galloway.
- 3.2 The new Agency will offer a once in a generation opportunity with the potential to significantly improve the level of investment in economic growth, enterprise, skills and innovation across the South of Scotland. It is intended that this new Agency will operate in a similar way to Highlands and Islands Enterprise and that it will closely align its work with Scottish Enterprise, Skills Development Scotland, Scottish Funding Council and VisitScotland.
- 3.3 The Scottish Government's Programme for Government 2018/19 confirmed that the legislation to establish the South of Scotland Enterprise Agency would be introduced to Parliament this year, and the South of Scotland Enterprise Bill was introduced in the Scottish Parliament on 24 October 2018. A copy of the Bill as introduced is attached at Appendix 1. Whilst subject to the necessary Scottish Parliamentary process, the aim is to ensure that the new Agency is operational by 1 April 2020.

4 PARLIAMENTARY BILL CONSULTATION

- 4.1 The South of Scotland Enterprise Bill is to be scrutinised by the Rural Economy and Connectivity Committee; they will look at the overall principles of the Bill. There are a number of stages in the legislative process for the Bill, with Stage 1 of the Parliamentary process already commenced. During Stage 1, the Committee will take evidence from a range of organisations and other stakeholders. A vote in Parliament will conclude Stage 1 and agree the overall principles. At Stage 2, line by line scrutiny is carried out and it is open to amendments. Stage 3 involves further continued scrutiny, before a final vote is held in the Parliament to pass the Bill.
- 4.2 As part of Stage 1 the Council have been called to give evidence. As agreed by Executive Committee on 6 November 2018, Cllr Rowley, Executive Member for Business and Economic Development, will take the lead role in giving evidence for the Council. The Council representative will give evidence to the Rural Economy and Connectivity Committee on 14 January 2019, at a meeting in Dumfries.
- 4.3 The Rural Economy and Connectivity Committee launched its call for views on the establishment of a new agency in November 2018. This invites responses, by 7 January 2019, on the following questions:
 1. Do you agree that a south of Scotland enterprise agency should be created?
 2. Do you agree with the proposals for the body's constitution, purposes, powers and duties? If you do not agree with the proposals, please set out specifically what you would like to change.
 3. Is there anything else that should be included or excluded from the Bill?

- 4.4 The Bill establishes South of Scotland Enterprise as the new economic development agency for the South of Scotland. It is high level and enabling, setting out general aims and powers. It includes a range of general provisions required to establish a new public body. The Bill has been informed by the consultations undertaken by Scottish Government earlier in 2018.
- 4.5 The Bill has a general provision to further the economic and social development, and improve the amenity and environment of the south of Scotland. It ensures that the new body can promote fair work and inclusive growth in all its endeavours. The three overarching aims that the Bill sets out are welcomed. These aims are:
- Support a diverse and resilient economy
 - Sustain and grow communities
 - Harness the potential of people and resources
- 4.6 The Bill also sets out provisions to establish the new body. This includes considering appointments and staffing; operational matters; accountability and Governance; the definition of South of Scotland; Ministerial powers; and Public Bodies Legislation. A linked Financial Memorandum has also been published as part of the Bill documentation. This sets out the best estimates of costs and timescales; expected one-off and recurring costs; and an approach for overall funding allocation. A draft response to the call for views has been prepared in response to the details set out in the Bill and this is presented in Appendix 2.
- 4.7 It should be noted that there is a developing discussion with Dumfries & Galloway Council, through the South of Scotland Alliance, about the final details of the South of Scotland Alliance response. It is important at this stage in the development of the new Agency that the Council's and the Alliance's responses are closely aligned. There are some details that need further discussion, particularly around the make-up of the Agency's Board; the potential for involvement of Elected Members in the Board; and the most effective way for the Councils to influence the strategic direction of the Agency in the future.
- 4.8 Officers have considered the options for the Council's future relationship with the new Agency and an assessment of the positive and negative aspects of those options is set out in Appendix 3. Officers consider that the strongest and most effective relationship with the new Agency would be based on a strengthened role for the South of Scotland Alliance. It may be possible for the Alliance to take on a form that reflects, but improves upon, the Convention of the Highlands & Islands.
- 4.9 The deadline for responses to the call for views is 7 January 2019. It is recommended that Appendix 2 is submitted to Scottish Government as the formal consultation response from Scottish Borders Council, subject to final agreement after discussions with South of Scotland Alliance partners. It is recommended that the Council delegates responsibility for finalising the submission to the Chief Executive, in consultation with the Leader, the Executive Member for Business and Economic Development and the Leader of the Opposition. It is intended that the South of Scotland Alliance will also make a formal response to the consultation.

- 4.1 The Council also received a call for views from the Finance and Constitution
0 Committee on the Financial Memorandum that accompanies the Bill. As this call for views was only received by the Council on 11 December 2018, it has not been possible to prepare an appropriate draft response. The call for views also comes with a tight deadline of 6 January 2019. Given the exceptionally short timeframe, it is recommended that the Council delegates responsibility for agreeing the response to the Finance and Constitution Committee's call for views to the Chief Executive, in consultation with the Leader, the Executive Member for Business and Economic Development and the Leader of the Opposition, and subject to further detailed discussions with South of Scotland Alliance partners.

5 IMPLICATIONS

5.1 Financial

No costs directly attach to the recommendations contained in this report. The Bill is accompanied by a Financial Memorandum that sets out potential costs as well as the scale of resources required to properly operate the Agency and ensure that it delivers significant economic impacts in the South of Scotland. The scale of resources identified in the Financial Memorandum is based on a similar level of resourcing to that of Highland & Islands Enterprise. If this level of resourcing was secured for the new Agency, it will be able to have a significant positive impact on the economy in the South of Scotland.

5.2 Risk and Mitigations

The Council's response to the call for views ensures that the Council's vision for the new Enterprise Agency is publicly communicated, helping to inform future direction and ensure that the benefits for the Scottish Borders are realised. This mitigates the risk that the direction does not benefit the Scottish Borders as much as it could. Though the exact nature and extent of Council support is yet to be determined, the partnership between the Agency and Council and the alignment of their objectives is expected to fully validate the contributions that the Council will be expected and eager to make to delivery of common objectives.

5.3 Equalities

There is no requirement for an Equalities Impact Assessment as the report relates to a consultation response. However, it should be noted that the express purpose of the Agency to drive inclusive growth means driving economic growth, and creating opportunities for all. The Agency will be expected to develop a robust equalities policy of its own which delivers against the general duty placed on it by the Equality Act 2010.

5.4 Acting Sustainably

The Agency is expected to have positive transformative economic, social and environmental effects on the South of Scotland and the Scottish Borders. It is important that the Agency's approach and operations are governed by principles which support positive community and environmental outcomes. It is expected that the Agency will become a relevant authority under Schedule 3 of the Community Empowerment (Scotland) Act 2015 and under the Fairer Scotland Duty Interim Guidance. The Agency should also be governed by principles of Sustainable Development, such as the UN Sustainable Development Goals.

5.5 Carbon Management

No effects on carbon emissions flow directly from this Report. However, it is expected that the activities of the Agency will have an impact on carbon emissions. Accordingly, it is essential that the Agency's activities and its support of the activities of others are guided by principles of Sustainable Development, as noted above.

5.6 Rural Proofing

The proposed creation of the Agency is an acknowledgement of the challenges in providing equality of access and opportunity in rural areas. It is important that the Agency consistently assesses the effects of its policies and activities on rural areas and inhabitants. This can be achieved by ensuring that rural proofing is embedded within the Agency's own Equality Impact Assessment process.

5.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to the Scheme of Administration or the Scheme of Delegation are required to be made as a result of the proposals in this Report.

6 CONSULTATION

- 6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR and the Clerk to the Council are being consulted and their comments will be reported verbally at the Council meeting.

Approved by

Rob Dickson
Executive Director

Signature

Author(s)

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Background Papers:

Previous Minute Reference: Scottish Borders Council, 31 May 2018

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Douglas Scott can also give information on other language translations as well as providing additional copies.

Contact us at: Douglas Scott dscott@scotborders.gcsx.gov.uk 01835 825155

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South of Scotland Enterprise Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 41-EN), a Financial Memorandum (SP Bill 41-FM), a Policy
Memorandum (SP Bill 41-PM) and statements on legislative competence (SP Bill 41-LC).**

South of Scotland Enterprise Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish South of Scotland Enterprise and to provide for its functions.

Establishment

1 South of Scotland Enterprise

- 5 (1) South of Scotland Enterprise is established.
(2) It is a body corporate.

2 People constituting body and staff

- (1) South of Scotland Enterprise is to consist of—
10 (a) a member to chair it,
(b) at least 5, but not more than 10, other members, and
(c) its chief executive.
(2) Schedule 1 makes provision about South of Scotland Enterprise's members and staff.

3 Exclusion of Crown status

- (1) South of Scotland Enterprise—
15 (a) is not a servant or agent of the Crown, and
(b) does not enjoy any status, immunity or privilege of the Crown.
(2) South of Scotland Enterprise's members and staff are not to be regarded as civil servants.

4 Application of public bodies legislation

- 20 Schedule 2 amends other Acts so that their provisions apply to South of Scotland Enterprise.

*Aims and powers***5 Aims**

- (1) South of Scotland Enterprise's aims are to—
- (a) further the economic and social development of the South of Scotland, and
 - (b) improve the amenity and environment of the South of Scotland.
- (2) Furthering the economic and social development of the South of Scotland includes—
- (a) supporting inclusive economic growth,
 - (b) providing, maintaining and safeguarding employment,
 - (c) enhancing skills and capacities relevant to employment,
 - (d) encouraging business start-ups and entrepreneurship,
 - (e) promoting commercial and industrial—
 - (i) efficiency,
 - (ii) innovativeness, and
 - (iii) international competitiveness,
 - (f) supporting community organisations to help them meet their communities' needs.
- (3) The Scottish Ministers may by regulations alter South of Scotland Enterprise's aims by modifying this section.

6 Action plan

- (1) South of Scotland Enterprise—
- (a) must make a plan of the things it intends to do to achieve its aims ("its action plan"),
 - (b) must keep its action plan under review,
 - (c) may modify its action plan at any time (subject to subsection (2)).
- (2) South of Scotland Enterprise may not make or modify its action plan unless the plan or modification has been approved in draft by the Scottish Ministers.
- (3) Replacing one version of the action plan with another is a modification of the plan for the purposes of this section.

7 General powers

- (1) South of Scotland Enterprise may do anything which appears to it to be—
- (a) either—
 - (i) necessary or expedient for the purposes of, or in connection with, achieving its aims or the performance of any of its other functions, or
 - (ii) otherwise conducive to the performance of its functions, and
 - (b) consistent with its action plan.

- (2) Without prejudice to the generality of subsection (1), South of Scotland Enterprise may—
- (a) enter into contracts,
 - (b) acquire and dispose of land and other property,
 - 5 (c) form or promote (whether alone or with others) subsidiaries within the meaning of section 1159 of the Companies Act 2006,
 - (d) form and register (whether alone or with others) a society under the Co-operative and Community Benefit Societies Act 2014,
 - (e) enter into a partnership,
 - 10 (f) become a member of a consortium,
 - (g) provide grants and loans.
- (3) Despite the generality of subsection (1), South of Scotland Enterprise may not borrow money except from—
- (a) the Scottish Ministers (see section 16), or
 - 15 (b) a person who is, or was at the time the loan was made, one of its subsidiaries within the meaning of section 1159 of the Companies Act 2006.
- (4) South of Scotland Enterprise may charge for providing a service.

Operational matters

8 Headquarters

- 20 (1) The Scottish Ministers must specify in a direction under section 15 the place where South of Scotland Enterprise is to have its headquarters.
- (2) Any place specified in fulfilment of the duty under subsection (1) must be in the South of Scotland.

9 Committees

- 25 (1) South of Scotland Enterprise may establish committees and sub-committees.
- (2) Committees and sub-committees may include people who are not members of South of Scotland Enterprise.
- (3) South of Scotland Enterprise may, in accordance with a determination by the Scottish Ministers—
- 30 (a) pay each member of a committee or sub-committee remuneration and allowances (including expenses), and
- (b) pay, or make arrangements for the payment of, allowances and gratuities to, or in respect of, any person who is or has been a member of a committee or sub-committee.
- 35 (4) The arrangements referred to in subsection (3)(b) may include—
- (a) making payments towards the provision of those allowances and gratuities,
 - (b) providing and maintaining schemes for the payment of those allowances and gratuities to, or in respect of, any person who is or has been a member of a committee or sub-committee.

- (5) The reference in subsection (3) to allowances and gratuities include allowances and gratuities by way of compensation for loss of office as a member of a committee or sub-committee.

10 Regulation of procedure

5 South of Scotland Enterprise may regulate its own procedure (including quorum) and that of its committees and sub-committees.

11 Authority to perform functions

- (1) South of Scotland Enterprise may authorise any of its—

- 10 (a) members,
 (b) committees,
 (c) sub-committees, or
 (d) staff,

to perform such of its functions (and to such extent) as it may determine.

- (2) The giving of authority under subsection (1) does not—

- 15 (a) affect the responsibility of South of Scotland Enterprise for the performance of the function, or
 (b) prevent South of Scotland Enterprise from performing the function itself.

12 Validity of things done

20 The validity of anything done by South of Scotland Enterprise, its committees or sub-committees is not affected by—

- (a) a vacancy in membership or the office of chief executive,
 (b) a defect in the appointment of a member or the chief executive,
 (c) the disqualification of a person as a member after appointment.

Accountability

25 13 Accounts and audit

South of Scotland Enterprise must—

- (a) keep proper accounts and accounting records,
 (b) prepare in respect of each financial year a statement of accounts, and
 (c) send a copy of the statement to the Auditor General for Scotland for auditing.

30 14 Annual report

South of Scotland Enterprise must, after each financial year—

- (a) prepare and publish a report of its activities during the year, and
 (b) send a copy of the report to the Scottish Ministers.

*Ministerial powers***15 Direction**

- (1) South of Scotland Enterprise must comply with any direction issued to it by the Scottish Ministers.
- 5 (2) A direction under this section may—
- (a) be general or relate to a particular function or matter,
 - (b) vary or revoke a direction under this section.
- (3) The Scottish Ministers are to publish any direction under this section.

16 Financial assistance

- 10 (1) The Scottish Ministers may provide such financial assistance to South of Scotland Enterprise as they consider appropriate.
- (2) For the purposes of subsection (1), “financial assistance” includes grants, loans, guarantees and indemnities.
- 15 (3) The Scottish Ministers may attach conditions (including conditions as to repayment and the payment of interest) in respect of any financial assistance provided.

*Transfers from Scottish Enterprise***17 Transfer of property and liabilities**

- 20 (1) On the day this section comes into force, the transferring property (including rights) and liabilities of Scottish Enterprise are transferred to, and vest in, South of Scotland Enterprise.
- (2) The Scottish Ministers are to identify the transferring property and liabilities by regulations.

*Interpretation***18 Meaning of South of Scotland**

- 25 In this Act, “the South of Scotland” means the areas of—
- (a) Dumfries and Galloway Council, and
 - (b) Scottish Borders Council.

*Final provisions***19 Ancillary provision**

30 The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

20 Regulation-making powers

- 35 (1) Regulations under this Act may make different provision for different purposes.

- (2) Regulations under section 5(3) are subject to the affirmative procedure.
- (3) Regulations under section 19—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
 - (b) otherwise are subject to the negative procedure.

21 Commencement

- (1) The following provisions come into force on the day after Royal Assent: this section and sections 19, 20 and 22.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may include transitional, transitory or saving provision.

22 Short title

The short title of this Act is the South of Scotland Enterprise Act 2019.

SCHEDULE 1
(introduced by section 2)

MEMBERS AND STAFF

PART 1

MEMBERS

5

Appointment of members

- 1 (1) The Scottish Ministers are to appoint—
- (a) the chair of South of Scotland Enterprise, and
 - (b) its other members.
- 10 (2) The Scottish Ministers may only appoint a person who they are satisfied has knowledge or experience relevant to the discharge of South of Scotland Enterprise’s functions.
- (3) A person may be appointed more than once.
- (4) A person who is disqualified from being a member may not be appointed (see paragraph 4).

15

Tenure

- 2 (1) A person’s membership continues until the end of the period of appointment (subject to paragraph 3).
- (2) In sub-paragraph (1), “the period of appointment” means the period specified by the Scottish Ministers on appointing the person as a member.

20

Early termination

- 3 (1) A person’s membership ends if—
- (a) the person gives written notice to the Scottish Ministers that the person resigns,
 - (b) the person becomes disqualified from being a member (see paragraph 4),
 - (c) the Scottish Ministers give the person written notice that the person is removed from being a member.
- 25 (2) The Scottish Ministers may remove a member by virtue of sub-paragraph (1)(c) only if—
- (a) the member has been absent, without permission or reasonable excuse, from meetings of South of Scotland Enterprise for more than 3 consecutive months,
 - 30 (b) the member is convicted of an offence,
 - (c) the Ministers consider that the member is—
 - (i) unfit to continue to be a member, or
 - (ii) unable to perform the member’s functions.

Grounds for disqualification from membership

35

- 4 A person is disqualified from being a member if the person is—
- (a) a member of the Scottish Parliament,

- (b) a member of the House of Commons,
- (c) disqualified from being a member by virtue of section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Remuneration, allowances and gratuities

- 5 (1) South of Scotland Enterprise may, in accordance with a determination by the Scottish Ministers—
- (a) pay each member remuneration and allowances (including expenses), and
 - (b) pay, or make arrangements for the payment of, allowances and gratuities to, or in respect of, any person who is or has been a member.
- 10 (2) The arrangements referred to in sub-paragraph (1)(b) may include—
- (a) making payments towards the provision of those allowances and gratuities,
 - (b) providing and maintaining schemes for the payment of those allowances and gratuities to, or in respect of, any person who is or has been a member.
- 15 (3) The reference in sub-paragraph (1) to allowances and gratuities include allowances and gratuities by way of compensation for loss of office as a member.
- (4) South of Scotland Enterprise must, if directed to do so by the Scottish Ministers, pay a person who has ceased to be a member the amount specified by the Ministers in the direction.
- (5) The Scottish Ministers—
- (a) may make a direction under sub-paragraph (4) only in a case where it appears to them to be right that a person should be compensated for losing office as a member,
 - (b) may not make a direction under that sub-paragraph in a case where the loss of office is the result of a period of appointment ending (see paragraph 2).

25 *Other terms and conditions*

- 6 The Scottish Ministers may determine the terms and conditions of membership in relation to matters not covered by this schedule.

PART 2

STAFF

30 *Chief executive*

- 7 (1) South of Scotland Enterprise is to have a chief executive.
- (2) The chief executive is a member of staff of South of Scotland Enterprise.
 - (3) The Scottish Ministers are to appoint the first chief executive.
 - (4) Subsequent chief executives are to be appointed by South of Scotland Enterprise.
 - 35 (5) South of Scotland Enterprise may not appoint a chief executive without the Scottish Ministers' approval.
 - (6) A person may be appointed more than once.

Other staff

8 South of Scotland Enterprise may appoint staff.

Staff terms and conditions

5 9 (1) Staff appointed by South of Scotland Enterprise are appointed on such terms and conditions as South of Scotland Enterprise determines.

(2) South of Scotland Enterprise may not determine staff terms and conditions without the Scottish Ministers' approval.

(3) The first chief executive is appointed on such terms and conditions as the Scottish Ministers determine.

10 *Pensions, allowances and gratuities*

10 (1) South of Scotland Enterprise may, with the approval of the Scottish Ministers, pay or make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, any person who is or has been a member of staff of South of Scotland Enterprise.

15 (2) Those arrangements may include—

(a) making payments towards the provision of those pensions, allowances and gratuities,

(b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.

20 (3) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

SCHEDULE 2
(introduced by section 4)

APPLICATION OF PUBLIC BODIES LEGISLATION

25 *Ethical Standards in Public Life etc. (Scotland) Act 2000*

1 In schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the entry relating to Social Care and Social Work Improvement Scotland insert—

“South of Scotland Enterprise”.

Scottish Public Services Ombudsman Act 2002

30 2 In schedule 2 of the Scottish Public Services Ombudsman Act 2002, after paragraph 52A insert—

“52B South of Scotland Enterprise.”.

Freedom of Information (Scotland) Act 2002

35 3 In schedule 1 of the Freedom of Information (Scotland) Act 2002, after paragraph 102A insert—

“102B South of Scotland Enterprise.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

- 4 In schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the entry relating to Social Care and Social Work Improvement Scotland insert—
 “South of Scotland Enterprise”.

5 *Public Services Reform (Scotland) Act 2010*

- 5 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.
 (2) In schedule 5, after the entry relating to Social Care and Social Work Improvement Scotland insert—
 “South of Scotland Enterprise”.
- 10 (3) In schedule 8, after the entry relating to Social Care and Social Work Improvement Scotland insert—
 “South of Scotland Enterprise”.

Public Records (Scotland) Act 2011

- 15 6 In the schedule of the Public Records (Scotland) Act 2011, after the entry relating to Social Care and Social Work Improvement Scotland insert—
 “South of Scotland Enterprise”.

Community Empowerment (Scotland) Act 2015

- 7 In schedule 1 of the Community Empowerment (Scotland) Act 2015, after the entry relating to the Scottish Sports Council insert—
 20 “South of Scotland Enterprise where the local authority’s area forms part of the South of Scotland as defined by section 18 of the South of Scotland Enterprise Act 2019”.

Gender Representation on Public Boards (Scotland) Act 2018

- 8 In schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018, after the entry relating to Social Care and Social Work Improvement Scotland insert—
 25 “South of Scotland Enterprise |”.

South of Scotland Enterprise Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish South of Scotland Enterprise and to provide for its functions.

Introduced by: Fergus Ewing
On: 24 October 2018
Bill type: Government Bill

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Appendix 2 – Response to call for views

Scottish Borders Council

South of Scotland Enterprise Bill - Evidence to the Rural Economy and Connectivity Committee

1. Do you agree that a South of Scotland Enterprise Agency should be created?

- 1.1. Scottish Borders Council strongly supports the creation of the South of Scotland Enterprise Agency. The Council, together with South of Scotland Alliance, has driven the agenda in order to deliver a new way of supporting the economy in the South of Scotland.
- 1.2. The Local Authorities, Skills Development Scotland and the colleges and universities—all do excellent work in trying to drive economic development and growth. The significance of the new agency is that it connects these efforts, providing structure, focus and momentum, augmenting the efforts of local partners in a way which promises to be truly transformative. Over recent decades, the South of Scotland region has missed the focal point that an agency such as HIE brings. The Bill brings the prospect of the Agency into being, but one, importantly, 'built in and for' the South of Scotland. Additionally, it provides a critical and much needed focus and capacity to work with businesses to understand business needs and provide responsive and tailored support. Similarly, it provides the framework and support to drive inclusive economic growth within the communities of the South of Scotland.
- 1.3. Simply put, Scottish Borders Council believes that the new Agency will be instrumental in fulfilling its ambition for the South of Scotland to be transformed into one of the most vibrant rural economies in Europe. This means a strong, diversified, sustainable economy, built upon cohesive and enterprising communities, rich in economic and social opportunity, where a varied and skilled workforce enjoys pay and conditions commensurate with the best in Scotland. Entrepreneurship and innovation should be commonplace, with young people confidently looking forward to high quality educational, training and employment prospects as stepping stones to realising their full potential in the South of Scotland. The region needs to increase its economic output and the wealth retained within the area; and in looking outward, to maximise the contribution it makes to Scotland's National Ambition for Inclusive Economic Growth.
- 1.4. South of Scotland Enterprise is needed to assist in meeting the significant economic challenges of the South of Scotland which include:

- a) A land area comprising one seventh of Scotland's total land area with, 24 people per km², the most sparsely populated area outside of the Highlands & Islands (2018)¹
- b) Low wealth creation (Gross Value Added (GVA) per head in the South of Scotland is £18,977 equating to 76.5% of the national average (£24,800 for Scotland (ONS - 2016))²
- c) Low Average Weekly Wages – the median weekly wage for all workers in the South of Scotland is roughly £475.2 (£482.8 in SB and £469.7 in D&G – 30th and 32nd respectively amongst Local Authorities across Scotland). This is significantly below the national median of £563.2. (2018)³
- d) Out-migration of young people and shrinking workforce - in 2017 the proportion of people of working age 16-64 was 58% in the South of Scotland compared to 64% for Scotland.⁴
- e) Relatively high proportions of its workforce in :
 - Agriculture and fishing – 9% in the South while its 1.7% nationally
 - Manufacturing – 10.3 % in the South, while its 7.8% nationally (2017)⁵
- f) Relatively low proportions in growth sectors such as:
 - Banking, Finance and Insurance – 12.9% in the South while it is 15.8% nationally (2017)⁶
- g) Significant connectivity issues in relation to transport and digital infrastructure – Scottish Index of Multiple Deprivation (SiMD) data shows that the South of Scotland (SoS) is particularly Access Deprived, with 37% of SoS data zones, in Scotland's 20% most access deprived.⁷

1.5. South of Scotland Enterprise will be critical in providing the relentless emphasis on geography and place needed to provide a step change in the economic development of the South of Scotland. This recognises that inclusive economic growth can only be generated within the towns and rural communities of the South of Scotland through a new approach. The challenges are different here, the economy is different and, as Scottish

¹ National Records of Scotland (2018), Mid-2017 population estimates, <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2017>

² ONS (2017), Regional GVA (balanced approach), <https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalregionalgrossvalueaddedbalancedperheadandincomecomponents>

³ Annual Survey of Hours and Earnings (2018), Gross Weekly Pay – Workplace Analysis, accessed through <http://www.nomisweb.co.uk>

⁴ National Records of Scotland (2018), mid-2017 population estimates

⁵ Annual Population Survey (2017), Industry of Employment, accessed through <http://www.nomisweb.co.uk>

⁶ Ibid

⁷ Scottish Government (2016) SiMD – Access to Services Deprivation, http://www.gov.scot/Topics/Statistics/SiMD?utm_source=website&utm_medium=navigation&utm_campaign=statistics-evaluation-tools

Government's creation of the Agency attests, specific challenges necessitate particular solutions.

2. Do you agree with the proposals for the body's constitution, purposes, powers and duties? If you do not agree with the proposals, please set out specifically what you would like to change.

- 2.1. The proposals for the South of Scotland Enterprise Agency's constitution, purposes, powers and duties accord very closely with Scottish Borders Council's response to the Scottish Government's consultation on the South of Scotland Enterprise Agency, submitted to Scottish Government in June 2018.

Looking at each section of the Bill:

Establishment (Paragraphs 1, 2, 3 and 4)

- 2.2. The Bill establishes the new South of Scotland Enterprise Agency (SOSE) in a manner which is in line with both Scottish Enterprise and Highlands & Islands Enterprise. This is supported by the Council.
- 2.3. The board and its constitution follows best practice for public agencies of its size and composition. Consistent with the approach used for all Government Executive Bodies, we recognise that Board appointments to SOSE will be managed in accordance of the Public Appointments and Public Bodies etc. (Scotland) Act 2003, and the Code of Practice which is produced by the Commissioner for Ethical Standards in Public Life in Scotland. This will ensure that high quality individuals are appointed to the Board in an open and transparent manner.
- 2.4. Out with the legislative framework, Scottish Borders Council asserts there is a need for a strong and effective working relationship between the Agency and the South of Scotland local authorities. It will be crucial that there is joint strategic planning to secure shared economic outcomes. We have continued to develop our thinking as a Council, and as per our original consultation response, we are ever more strongly of the view that the South of Scotland Alliance should be the pivotal interface with the new Agency in future.
- 2.5. The Alliance is considering how to further develop its make-up and remit to create an even stronger voice for the South of Scotland and a body that could act in future, with the requisite additional membership, as a Regional Economic Partnership for the South of Scotland. This might stand in relation to the new Agency as the Highlands & Islands Convention stands in relation to HIE. The Alliance would continue to provide a discussion forum and vehicle for political advocacy in respect of shared challenges and opportunities, while also facilitating dialogue with others, including the Agency.
- 2.6. In order to recognise the importance of the strategic leadership and local democracy roles that Local Authorities fulfil in the South of Scotland, there should also be very strong links between the Leaders and Chief Executives of the Councils with the Chief Executive of the new Agency.

However, the key formal interaction should be with the South of Scotland Alliance, acting as a Convention of the South of Scotland, or similar entity.

Aims and Powers (Paragraphs 5, 6, 7)

- 2.7. The Council welcomes the loose broad definition of the aims in the Draft Bill. We believe that this approach will provide maximum flexibility for SOSE to design and implement interventions in achieving its aims. Over time, and as expertise is established in the new agency, SOSE will be well placed to develop new interventions which will help to deliver the economic and social development of the South of Scotland. In this context we believe that the Draft Bill is suitably empowering.
- 2.8. The Council strongly supports the more specific aims listed in relation to the three intervention areas of the Agency i.e. Drive forward the economy; b) Sustain communities; and c) Capitalise on people and resources.
- 2.9. The Action Plan proposed is in line with the requirements of other Government Agencies and is critical to the forward planning and setting of milestones to drive the ambitions and performance of the Agency.
- 2.10. Finally, the general powers reinforce the necessary flexibility for the Agency to respond to the diverse and particular economic needs of the South of Scotland. The borrowing restriction which is placed on the new Agency is something which the Council believes is valid. It is entirely consistent with the arrangements for both Highlands & Islands Enterprise and Scottish Enterprise, and we believe it is right and proper that the same arrangements be put in place for SOSE. Additionally the Draft Bill makes provision for the new agency to charge for services. Whilst it is absolutely desirable for the majority of its services to be provided free of charge, it is sensible that this provision is made.

Operational Matters (Paragraphs 8,9,10, and 11)

- 2.11. Scottish Borders Council is supportive of the proposals made in relation to Headquarters for the South of Scotland Enterprise Agency. It is important that the organisation is rooted in the South of Scotland and accessible and responsive to every part of the region.
- 2.12. The Council's views on the Headquarters of the Agency are that there will be a need for a registered headquarters for legal purposes, but this issue and the location of offices are operational matters to be determined by those charged with the delivery of the Agency's remit.
- 2.13. Unlike the Highlands & Islands, the South of Scotland has no natural 'capital' acting as a hub for the entire area and there is no obvious candidate for a head office location. Consequently, we believe that the Agency needs to resist the location of a main site in one part of the South of Scotland. This would alienate stakeholders and potentially create tension between the Agency and other parts of the South of Scotland.

- 2.14. Much more important is how the Agency ensures that its presence reaches across and into every part of the South of Scotland and is delivered where, when and how best suits the end user. Staff should be embedded in local communities throughout the region, while fully mobile and ready to respond to the needs of businesses, communities and stakeholders wherever they may be based in the South of Scotland.
- 2.15. Additionally, the Agency's office needs should be delivered in a manner which makes best use of public resources, ensuring that as much of the budget can be spent on delivering the real change which is needed in the South of Scotland. Co-location within existing public sector agencies and local authority premises promises the best way of achieving this. Furthermore, co-location provides an opportunity to ensure maximum alignment with public sector partners, and should ensure a seamless and integrated service is delivered to clients by keeping the majority of services 'under the one roof'. There may also be opportunities for co-location with community facilities and other local bases, and this should form part of the Agency's assessment of location options. This will help to embed the Agency in communities across the South of Scotland and will also provide opportunities to innovate and consider alternative local delivery models.
- 2.16. The proposals for committees, regulation of procedure, authority to perform duties and the validity of getting things done are supported as they will lead to the efficient and effective running of the organisation.

Accountability (Paragraphs 13 and 14)

- 2.17. The proposals for Accounts and Audit and the Annual Report are in line with what would be expected of an Agency of this type.

Ministerial Powers (Paragraphs 15 and 16)

- 2.18. The proposals for Ministerial Powers are in line with what would be expected of an Agency of this kind.

Transfers from Scottish Enterprise (Paragraph 17)

- 2.19. The transfer of properties and liabilities from Scottish Enterprise is a necessary part of establishing the new Agency. It is expected that all of the economic development assets held by Scottish Enterprise are efficiently transferred to the new Agency to enable its transition to full operational capacity. Careful consideration needs to be given to any asset disposal, and the use of associated capital receipts, in the period before the transfer is made. Common understanding and effective operations are required to ensure effective use of Scottish Enterprise assets in the South of Scotland prior to the establishment of the Agency.

Interpretation (Paragraph 18)

- 2.20. Scottish Borders Council strongly agrees that the South of Scotland means the Local Authority areas of Dumfries and Galloway Council and Scottish Borders Council. The two Councils, and the South of Scotland Alliance, have argued strongly for many years that the economic challenges facing this part of southern Scotland are comparable to those facing the Highlands and Islands.
- 2.21. Clarity for partners, communities, businesses and other stakeholders is essential. Moreover, the area defined has a particular combination of shared challenges and history of partnership in responding to economic challenges. There is a concern that to extend the geographic scope more broadly may alter the proposed character and focus of the Agency upon a distinctive rural region, acknowledging that this is the underpinning rationale for the proposed Agency.

Final Provisions (Paragraphs 19, 20, 21 and 22)

- 2.22. Scottish Borders Council is in agreement with Ancillary provision, Regulation-making powers, Commencement and Short Title.

3. Is there anything else that should be included or excluded from the Bill?

- 3.1. As previously noted, the proposals set out within the Bill strongly accord with the core elements of Scottish Borders Council's response to the Scottish Government's consultation paper on the South of Scotland Enterprise Agency.
- 3.2. However, there are some issues which have been highlighted in both the Scottish Government and South of Scotland Economic Partnership consultation exercises, which the Council would wish the new Agency to take forward once it is established. This is not to suggest that they need to be written into the legislation, but the new Agency, Scottish Government and other stakeholders need to be cognisant of them.
- 3.3. The first of these is leadership and advocacy for the South of Scotland within Government. This was highlighted in the assessment of responses to the Scottish Government's consultation as noted below.

"Advocacy for South of Scotland at a national level: The Agency should be a voice for the South of Scotland at a Scottish and UK Government level. It was expressed that the Agency should play a role in negotiating grant provision for the region on a national level."

"Respondents felt that the Agency should advocate for the South of Scotland in Scottish Government decision-making, for example around transport infrastructure."

- 3.4. The Council is of the view that there are issues relating to the South of Scotland where SOSE will need to, and should be expected to, take a

more pro-active role than may have been envisaged previously. The clearest example of this highlighted in the consultation is Transport and Transport Infrastructure. This is a significant challenge in the South, and it will be important for SOSE to work with Transport Scotland to identify specific challenges and to contribute to responses. Furthermore, the transport agenda is precisely the kind of issue upon which SOSE should take a proactive role in promoting the case for the South of Scotland.

- 3.5. Another significant issue highlighted in consultation responses is that of stakeholder engagement and consultation – particularly at regional and local levels. Whilst the South will be influenced by the new Agency, the new Agency also should be influenced by the South. As part of that we would be keen to ensure that SOSE is active in its engagement with local partners, particularly in developing its strategy and action plan. The model of engagement in the Highlands & Islands may provide a starting point in developing a structure which allows this collaborative partnership exercise to take place.
- 3.6. Another important component of this is young people, which was one of the key issues highlighted in the consultation exercise. There is a significant challenge in relation to a brain drain of young people leaving the area, either to pursue educational or career opportunities. This is a challenge that has begun to be tackled in the Highlands & Islands and it is clear that more also needs to be done to provide better opportunities for young people in the South. In order to do that, and have that focus, there will need to be a new process to consult with young people. It was suggested in the consultation documents that having a young person on the board may be appropriate, and while this may be a positive step, we are of the opinion that a wider consultative structure would need to be developed to supplement this.

Scottish Borders Council

20 December 2018

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APPENDIX 3 - South of Scotland Enterprise – Key Links with the Local Authorities - DRAFT

Potential Options	Positives	Negatives
<p>1. Board Membership for Council Member/s</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 31</p>	<ul style="list-style-type: none"> • Senior Member from each Council has direct input and a vote on each decision made by the Agency Board • Member will be able to influence other board members through discussion and debate • Local Elected Members seen to have direct influence in Board decisions 	<ul style="list-style-type: none"> • Appointments to the Board will be subject to the Code of Practice set by the Commissioner for Ethical Standards in Public Life in Scotland as directed by the Public Appointments and Public Bodies Act 2003 – specific board places for local authority members would require specific provision in the SOSE legislation and amendments of the Public Appointments Act 2003, which is counter to existing practice for Enterprise agencies, and would likely be opposed by Scottish Government. • Whilst not precluded from applying to join the board, the Code of Practice cautions against the kinds of conflict of interest which would encumber elected members. • Elected Members will be appointed as individuals and not representatives of the Council, as defined by the Code of Practice • Members, if outvoted, will be tied to the decisions of the Board. • Councils will only have 2 votes out of 11 • Potentially neutralises the political power of Members to disagree with the Agency.
<p>2. Joint Committee</p>	<ul style="list-style-type: none"> • Allows high level dialogue on the direction of the Agency • Gives Councils ability to disagree with new Agency • Provides dual channels for Councils to influence the Agency - indirectly through SG Ministers, and directly through discussion with Agency • Potentially provides vehicle for wider advocacy 	<ul style="list-style-type: none"> • Influence is persuasive rather than direct • Restrictions on Joint Committee membership • Some decisions would need to be referred to full Council for agreement • Restricted in its operation by the Local Government Act 1973 • Potentially bureaucratic

APPENDIX 3 - South of Scotland Enterprise – Key Links with the Local Authorities - DRAFT

Potential Options	Positives	Negatives
<p>3. Convention of Highlands & Islands Model / Expanded and Strengthened South of Scotland Alliance</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 32</p>	<ul style="list-style-type: none"> • Builds on an already established body which is recognised by Scottish Government. • Gives Councils ability to disagree with new Agency • Allows high level dialogue on the direction of the Agency – with Ministers and Board Chair – in public • Flexible template on relationship between Council and Agency, which can be locally adapted and controlled • Includes Scottish Government Cabinet Secretaries and Ministers. • Provides dual channels for Councils to influence the Agency directly through SG Ministers and through discussion with Agency. • Provides vehicle for wider advocacy • Facilitates a broader membership • Enables Scottish Government expertise, thinking and resources to be brought into the process 	<ul style="list-style-type: none"> • Influence is persuasive rather than direct • The Councils would be two of a number of partners involved, so may not always be aligned with all partners •