# South of Scotland Enterprise Act 2019

**2019 asp 9**

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 5th June 2019 and received Royal Assent on 12th July 2019**

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

*Establishment*

### 1 South of Scotland Enterprise

(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—

(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—

(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

(1) Schedule 2 amends other enactments so that their provisions apply to South of Scotland Enterprise.

(2) The amendments made by schedule 2 do not affect any power to make an order or regulations amending or revoking any enactment mentioned in schedule 2.

*Aims and powers*

## 5 Aims

(1) South of Scotland Enterprise's aims are to—

(a) further the sustainable economic and social development of the South of Scotland, and

(b) improve the amenity and environment of the South of Scotland.

(2) Achieving those aims may involve taking action directed towards (amongst other things)—

(a) supporting inclusive and sustainable economic growth,

(b) providing, maintaining and safeguarding employment,

(c) increasing the number of residents in the South of Scotland who are of working age,

(d) enhancing skills and capacities relevant to employment,

(e) encouraging business start-ups and entrepreneurship,

(f) supporting inclusive business models (such as social enterprises and co-operatives of any kind),

(g) promoting commercial and industrial—

(i) efficiency,

(ii) innovativeness, and

(iii) international competitiveness,

(h) promoting digital connectivity,

(i) promoting improved transport services and infrastructure,

(j) supporting communities to help them meet their needs,

(k) supporting community ownership of land and other assets,

(l) maintaining, protecting and enhancing the natural and cultural heritage and environmental quality of the South of Scotland,

(m) promoting the sustainable and efficient use and re-use of resources,

(n) supporting the transitions required to meet the net-zero emissions target (as defined in section A1 of the Climate Change (Scotland) Act 2009),

(o) encouraging and facilitating collaborations between persons that will advance one or more of South of Scotland Enterprise's aims.

(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 Consultation on action plan

(1) South of Scotland Enterprise must—

(a) consult about its action plan before first making it, and

(b) thereafter, begin to consult about its action plan within 5 years of completing the last consultation under this subsection.

(2) Before carrying out a consultation under subsection (1), South of Scotland Enterprise must prepare, and make publicly available, a document describing its strategy for consulting with—

(a) people who live and work in the South of Scotland, and

(b) businesses and public authorities that operate there.

(3) In carrying out a consultation under subsection (1), South of Scotland Enterprise must —

(a) follow its most recently prepared consultation strategy, and

(b) seek views from—

(i) Dumfries and Galloway Council,

(ii) Scottish Borders Council.

(4) Having completed a consultation under subsection (1), South of Scotland Enterprise must—

(a) prepare a report setting out what (if anything) it intends to do in light of the views elicited through the consultation process, and

(b) send a copy of the report to—

(i) the Scottish Ministers, and

(ii) the local authorities mentioned in subsection (3)(b).

(5) The Scottish Ministers are to lay before the Scottish Parliament a copy of each report received by them under subsection (4).

(6) The Scottish Ministers may by regulations change the date by which the next consultation under subsection (1) must begin to a date later than would otherwise be allowed by paragraph (b) of that subsection if, in the Scottish Ministers' opinion, it would be expedient to do so in order to synchronise South of Scotland Enterprise's consultation process with any equivalent consultation process being undertaken by, or on behalf of, Scottish Enterprise or Highlands and Islands Enterprise.

## 8 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,

(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,

(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 19), or

(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*

### 9 Headquarters

(1) The Scottish Ministers must specify in a direction under section 17 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.

### 10 Committees

(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—

(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.

(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 includes allowances and gratuities by way of compensation for loss of office as a member of a committee or sub-committee.

### 11 Workers' interests committee

(1) South of Scotland Enterprise must establish a committee to advise it on what might be done to advance the interests of workers in the South of Scotland.

(2) The committee must include at least one member nominated by a trade union operating in the South of Scotland.

### 12 Regulation of procedure

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

### 13 Authority to perform functions

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

(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—

(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.

### 14 Validity of things done

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*

### 15 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.

### 16 Annual report

(1) 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.

(2) The Scottish Ministers are to lay before the Scottish Parliament a copy of each report received by them under subsection (1).

*Ministerial powers*

### 17 Direction

(1) South of Scotland Enterprise must comply with any direction issued to it by the Scottish Ministers.

(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) Before issuing a direction under this section the Scottish Ministers must consult South of Scotland Enterprise about it.

(4) Having issued a direction under this section, the Scottish Ministers must publish—

(a) the direction, and

(b) their reasons for issuing it.

### 18 Fair work direction

(1) The Scottish Ministers must issue a direction under section 17 to South of Scotland Enterprise about fair work within 1 year of this section coming into force.

(2) The direction—

(a) must—

(i) stipulate that South of Scotland Enterprise is to seek to promote fair work in exercising its functions,

(ii) set out what fair work means for the purposes of the direction, and

(b) may contain any other provision which the Scottish Ministers consider appropriate in relation to the promotion of fair work by South of Scotland Enterprise.

(3) Before issuing the direction, the Scottish Ministers must consult—

(a) persons who appear to the Scottish Ministers to represent the interests of those who work in the South of Scotland, and

(b) persons who appear to the Scottish Ministers to represent the interests of employers in the South of Scotland.

### 19 Financial assistance

(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.

(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*

**20 Transfer of property and liabilities**

(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*

**21 Meaning of South of Scotland**

In this Act, "the South of Scotland" means the areas of—

(a) Dumfries and Galloway Council, and

(b) Scottish Borders Council.

*Final provisions*

**22 Ancillary provision**

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.

**23 Regulation-making powers**

(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 22—

(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.

**24 Commencement**

(1) The following provisions come into force on the day after Royal Assent: this section and sections 22, 23 and 25.

(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.

## 25 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

*Appointment of members*

1 (1) The Scottish Ministers are to appoint—

(a) the chair of South of Scotland Enterprise, and

(b) its other members.

(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) In appointing members, the Scottish Ministers must have regard to the desirability of ensuring that the membership (taken as a whole)—

(a) has experience or knowledge of the whole of the South of Scotland,

(b) has experience or knowledge of the issues facing those who work in the South of Scotland,

(c) otherwise has a broad range of interests, skills, experience and expertise.

(4) In considering, for the purpose of sub-paragraph (3)(b), the particular experience or knowledge the membership should have, the Scottish Ministers must consult—

(a) persons appearing to them to represent trade unions operating in the South of Scotland,

(b) persons appearing to them to represent businesses operating in the South of Scotland.

(5) A person may be appointed more than once.

(6) A person who is disqualified from being a member may not be appointed (see paragraph 4).

*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.

*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.

(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,

(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*

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.

(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.

(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 (5) 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).

*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

*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.

(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*

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.

*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.

(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.

(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

*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*

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*

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".

*Further and Higher Education (Scotland) Act 2005*

5 (1) The Further and Higher Education (Scotland) Act 2005 is amended as follows.

(2) In section 22(5)—

(a) the word "and" immediately preceding paragraph (fa) is repealed,

(b) after paragraph (fa) insert—

"(fb) South of Scotland Enterprise.".

(3) In section 23B—

(a) in subsection (3)(k) after "Scottish Enterprise" insert ", South of Scotland Enterprise",

(b) in subsection (5)(i) after "Scottish Enterprise" insert ", South of Scotland Enterprise".

(4) In section 23M—

(a) in subsection (1)(l) after "Scottish Enterprise" insert ", South of Scotland Enterprise",

(b) in subsection (3)(j) after "Scottish Enterprise" insert ", South of Scotland Enterprise".

*Public Services Reform (Scotland) Act 2010*

6 (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".

(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*

7 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".

*Water Resources (Scotland) Act 2013*

8 In section 3 of the Water Resources (Scotland) Act 2013, at the end of paragraph (f) insert ",

(g) South of Scotland Enterprise".

*Community Empowerment (Scotland) Act 2015*

9 (1) The Community Empowerment (Scotland) Act 2015 is amended as follows.

(2) In section 13(2), after paragraph (f) insert ",

(g) South of Scotland Enterprise where all or part of the area of the local authority is within the South of Scotland as defined by section 21 of the South of Scotland Enterprise Act 2019".

(3) In schedule 1, after the entry relating to the Scottish Sports Council insert—

"South of Scotland Enterprise where all or part of the area of the local authority is within the South of Scotland as defined by section 21 of the South of Scotland Enterprise Act 2019".

(4) In schedule 3, after the entry relating to Scottish Water insert—

"South of Scotland Enterprise".

*Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015*

10 In schedule 1 of the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015 (S.S.I. 2015/347), after the entry relating to Social Care and Social Work Improvement Scotland insert—

"South of Scotland Enterprise".

*Gender Representation on Public Boards (Scotland) Act 2018*

11 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—

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| “South of Scotland Enterprise”. |