

SOUTH OF SCOTLAND ENTERPRISE ACT 2019

EXPLANATORY NOTES

THE ACT

Operational matters

Section 9 (Headquarters)

27. **Section 9** places the Scottish Ministers under a legal duty to direct South of Scotland Enterprise to have its headquarters somewhere in the South of Scotland (as defined in section 21). It is for the Scottish Ministers to specify in the direction where in the South of Scotland the headquarters must be.
28. As the direction about the location of South of Scotland Enterprise's headquarters will be issued under section 17, South of Scotland Enterprise will be legally required to comply with it and the direction will be published.

Section 10 (Committees)

29. **Section 10** allows South of Scotland Enterprise to set up committees, which can have sub-committees. The members of committees and sub-committees need not be members of South of Scotland Enterprise, which means that setting up committees and sub-committees can be a way for South of Scotland Enterprise to bring in people with expertise or perspectives its members may not have. Section 13 allows South of Scotland Enterprise to delegate functions to its committees and sub-committees, meaning those bodies can have more than an advisory role.
30. Subsection (3) (which is elaborated on by subsections (4) and (5)) allows arrangements to be made for committee and sub-committee members to be paid and receive other financial rewards and have their expenses met. Payments under such arrangements are to be made by South of Scotland Enterprise, but can only be made on a basis determined by the Scottish Ministers.

Section 11 (Workers' interests committees)

31. **Section 11** places South of Scotland Enterprise under a duty to set up a workers' interests committee using its power to set up committees under section 10. The purpose of the workers' interests committee is to advise South of Scotland Enterprise on what it should be doing to advance the interests of workers.
32. Under section 10 it is for South of Scotland Enterprise to decide who to appoint to its committees, but section 11(2) requires that at least one member of the workers' interests committee be nominated by a trade union operating in the South of Scotland (see section 21 for the definition of "South of Scotland").

Section 13 (Authority to perform functions)

33. **Section 13** allows South of Scotland Enterprise to delegate its functions or aspects of them to its members, committees, sub-committees or staff. This means that not

everything that may, or must, be done by South of Scotland Enterprise need be done by collective act of the people who constitute it (i.e. the members and its chief executive, see section 2).

34. Subsection (2) emphasises that South of Scotland Enterprise cannot absolve itself from its legal responsibilities to do certain things by entrusting others to do them on its behalf. It further makes clear that delegating a function does not divest South of Scotland Enterprise of its own powers to carry out the function.

Section 14 (Validity of things done)

35. South of Scotland Enterprise consists of its members and chief executive (see section 2). If, for any length of time, there were to be a problem with its membership (for example if it were to have fewer properly appointed members than section 2 requires), there may be doubts about the legal validity of anything done by South of Scotland Enterprise during that time when it was not properly constituted. Similar concerns may arise in relation to the acts of South of Scotland Enterprise's committees or sub-committees; the rules about the membership of those bodies will be set by South of Scotland Enterprise itself by virtue of section 10.
36. **Section 14** forecloses any doubt there may otherwise have been about the legal validity of things done by South of Scotland Enterprise or any of its committees or sub-committees as a result of:
- there being too few members or no chief executive,
 - a problem with the way a member or the chief executive was appointed, or
 - someone appointed as a member coming to be disqualified from membership (as to which see paragraph 4 of schedule 1).