

**Business and Regulatory Impact Assessment**

**The South of Scotland  
Enterprise (Transfer of  
Property and Liabilities)  
(Scotland) Regulations 2020**

May 2020



Scottish Government  
Riaghaltas na h-Alba  
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## Business and Regulatory Impact Assessment

### 1. Title of Proposal

The South of Scotland Enterprise (Transfer of Property and Liabilities) (Scotland) Regulations 2020.

### 2. Purpose and Intended Effect

#### Background

In May 2016 the First Minister announced an end-to-end review to ensure that public agencies were delivering the enterprise and skills support needed to increase sustainable economic growth across Scotland. Phase 1 of the review recommended the creation of a new vehicle to meet the enterprise and skills needs in the south of Scotland. Phase 2 of the review concluded that the best way to do this was to create a new public body.

#### Objective

The Scottish Government set out its ambition for the future of the south of Scotland. That being to ensure that the area has:

- Businesses with increased productivity, ambitious for the future, investing in innovation and offering good conditions of employment paying higher wages,
- A skilled workforce with both the skills needed now, and the ability to develop the skills needed for the future,
- Communities better equipped to play a greater role in the economic, social and environmental success of their area, and
- A clear commitment to inclusive growth, taking a holistic look at the barriers that are getting in the way and taking action to address them.

The South of Scotland Enterprise Bill was introduced to Parliament in October 2018. A full BRIA was undertaken in relation to the Bill (<https://www.gov.scot/publications/business-regulatory-impact-assessment-south-scotland-enterprise-bill/>). The South of Scotland Enterprise Act 2019 (“the Act”) received Royal Assent on 12 July 2019. It establishes a new public body, South of Scotland Enterprise (SOSE), making a range of provisions including for SOSE’s aims and powers; operational matters; accountability and transfers from Scottish Enterprise.

The establishment of SOSE aims to help drive economic growth, increase competitiveness and tackle inequality in the south of Scotland. Delivering a tailored approach and recognising the distinctiveness of the region, its overarching aims are to:

- Maximise the area’s contribution to Scotland’s inclusive growth, supporting a diverse and resilient economy,
- Sustain and grow communities, building and strengthening them through joined up economic and community support,
- Harness the potential of people and resources – developing skills, promoting assets and resources, and maximising the impact of investment in the area.

These objectives align with the Scottish Government's policy for growing the economy, which aim to achieve economic growth that combines increased prosperity with greater equality, creating opportunities for all, and distributing the benefits of increased prosperity fairly.

The Act was commenced by The South of Scotland Enterprise Act 2019 (Commencement and Transitional Provision) Regulations 2019 in three stages. Certain provisions came into force on 16 October 2019, including section 20(2), and all other provisions came into force on 1 April 2020, except for Section 20(1), which comes into force on 1 June.

Section 20 provides for the transfer of properties and liabilities from Scottish Enterprise to South of Scotland Enterprise. Section 20(1) provides that on the day it comes into force, the transferring property and liabilities of Scottish Enterprise will be transferred to South of Scotland Enterprise. Section 20(2), is the subject of this proposal and provides that Scottish Ministers are to identify the transferring properties and liabilities by regulations.

### **Rationale for Government Intervention**

As already outlined these regulations are a requirement of the Act. As section 20(1) comes into force on 1 June 2020 the regulations must come into force in advance of 1 June. They will contribute towards ensuring that practical arrangements required by the Act for the operation of SOSE are in place.

More broadly effective operation of SOSE will address the specific and unique challenges faced in the south of Scotland, including those related to demographics, rurality and connectivity, the business base, and wider economic performance. Addressing these will help contribute to the following national outcomes:

- we have thriving and innovative businesses, with quality jobs and fair work for everyone,
- we have a globally competitive, entrepreneurial, inclusive and sustainable economy,
- we are well educated, skilled and able to contribute to society,
- we live in communities that are inclusive, empowered, resilient and safe,
- we are open, connected and make a positive contribution internationally,
- we tackle poverty by sharing opportunities, wealth and power more equally.

### **3. Consultation**

There was wide ranging consultation on all aspects of the Bill in advance of and during its passage through the Scottish Parliament. This included consultation within Scottish Government, consultation with other public bodies, and public consultation with stakeholders and businesses in particular. The public consultation 'Consultation on a new Enterprise Agency for the South of Scotland' invited views on the shape and role of the new Enterprise Agency, to prepare for the legislation. During this 12 week consultation a series of 26 engagement events were held at locations across the south of Scotland aimed at helping local communities feed into the consultation process.

In respect of Section 20 and these regulations specifically, officials on behalf of Ministers, have consulted with both Scottish Enterprise and South of Scotland Enterprise in defining the properties and liabilities to be transferred. The resultant agreement is met by the terms of these regulations. That is that all properties in the south of Scotland currently vested in Scottish Enterprise will be transferred to South of Scotland Enterprise and all liabilities in the south of Scotland, with the exception of liabilities relating to national purposes, will be transferred to South of Scotland Enterprise.

#### **4. Options**

The proposal is a Scottish Statutory Instrument. This kind of subordinate legislation can be used to bring parts of primary legislation into force in practice. Details and practicalities of primary legislation, for example timing or implementation, are often dealt with by subordinate legislation.

The proposal considered in this assessment makes provisions to meet the requirements of section 20 (2) of the Act. This means that it defines in regulations the properties and liabilities that will be subject to transfer from Scottish Enterprise to SOSE on 1 June 2020, under section 20(1) of the Act.

Given the nature of the proposal, and the requirements of the Act, no other option to enact the primary legislation is available.

#### **Sectors and Groups Affected**

Given the nature of the regulations there are no sectors or groups that will be affected by these regulations defining the properties and liabilities that will transfer.

#### **Benefits**

The regulations are required in order to meet with the requirements of Section 20(2) of the Act. If section 20(2) does not come into force the requirements of Section 20(1) cannot be met.

#### **Costs**

The only cost associated with these regulations arises from printing of the SSI itself (£185.00).

#### **5. Scottish Firms Impact Test**

As already noted the public consultation 'Consultation on a new Enterprise Agency for the South of Scotland' process sought a range of views on the proposals, including issues, questions, needs and priorities areas. 25% of responses to the consultation were from businesses (16%) or local business organisations (9%). Some responses from national organisations also represented business interests. Business representatives also attended many of the public engagement events previously referred to, ranging from representatives of larger businesses to self-employed individuals and representing approximately 26% of attendees. This provided an opportunity for these businesses to feed in their views on the shape and role of the new body. The engagements in particular also generated valuable

discussion on the impact the creation of a new enterprise body may have on business in the area and other related issues.

These consultation exercises confirmed that businesses in the south of Scotland were supportive of the creation of a new enterprise body, to bring a fresh approach to economic development and regeneration in the region. There was recognition of the potential benefits for the area, its businesses and communities, and of the opportunity to focus on the specific challenges and needs in the south of Scotland.

With specific reference to this proposal, it is not anticipated that defining the properties and liabilities which will transfer from Scottish Enterprise to SOSE will have any material impact on businesses.

## **6. Competition Assessment**

The operational aim of SOSE is to deliver a positive impact, helping the south of Scotland to thrive by supporting business and communities and increase competitiveness. It will complement and harness existing activity in the region, working closely with other national and local organisations in the area and forge productive relationships with them to align activities.

There is no discernible reason that this proposal would limit competition. The Regulations will simply identify the properties and liabilities that will transfer under section 20(1) of the Act.

## **7. Consumer Assessment**

It is not anticipated that this proposal would have any impact on consumers. The Regulations will simply identify the properties and liabilities that will transfer.

## **8. Test Run of Business Forms**

No new forms for business will be introduced by these regulations. As already stated they will simply identify properties and liabilities that will transfer from Scottish Enterprise to SOSE.

## **9. Digital Impact Test**

As this proposal is limited to defining in regulations properties and liabilities that will transfer, there will be no digital impact arising from the Regulations.

## **10. Legal Aid Impact Test**

Given the specific function of the Regulations, it is not envisaged that there will be any demands placed on the legal system as result of them. Further, it is not considered that a person's right of access to justice through the availability of legal aid will be impacted by the Regulations, nor that there would be any effect on expenditure from the legal aid fund.

## **11. Enforcement, Sanctions and Monitoring**

In general terms SOSE will be held to account for performance against agreed measures by the Enterprise and Skills Strategic Board. SOSE has a framework of governance and accountability, providing transparency and public accountability. Full accounting records will be prepared, and annual reports and accounts will be produced when required.

In terms of these regulations specifically, there is no requirement to enforce or monitor them as they simply set out a definition in regulations. It is the commencement of the section 20(1) of the Act which provides for the actual transfer.

## **12. Implementation, Delivery Plan and Post Implementation Review**

The proposals will be implemented through subordinate legislation introduced to the Scottish Parliament in May 2020. This constitutes part of the delivery plan for the establishment of SOSE, which assumed operations on 1 April 2020. When implemented, and the property and assets which will transfer will be defined in regulations, the regulations themselves will not enact ongoing activity.

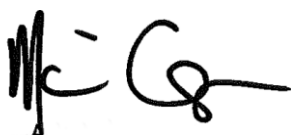
## **13. Summary and Recommendation**

Given the statutory nature of the proposal, it is the sole method for bringing section 20(2) of the Act into force. Doing so will formally define the property and liabilities that will transfer.

## **14. Declaration and Publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date: 13 May 2020

**Minister's Name: MAIRI GOUGEON**

**Ministers' Title: Minister for Rural Affairs and the Natural Environment**

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