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Clerk to the Delegated Powers
and Law Reform Committee

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Dear Andrew

South of Scotland Enterprise Bill at Stage 1

Thank you for your letter of 27 November to James Hynd, Head of Cabinet, Parliament and Governance Division in the Scottish Government, regarding stage 1 of the South of Scotland Enterprise Bill.

The Delegated Powers and Law Reform Committee has sought clarification on the section 5(3) power to amend the aims of SoSE and the section 15 power to issue directions to SoSE.

Section 5(3) – Power to amend the aims of SoSE

(a) Please explain why, in this bill, a different approach is being taken to the powers that apply to altering the aims of SoSE from those taken in the 1990 Act that apply to confer or impose certain limited functions on SE and HIE.

(b) Please provide further detail of the sorts of amendments that may need to be made to the already widely expressed aims of SoSE in section 5 of the Bill.

(c) Please also consider whether the power in section 5(3) of the Bill could be expressed more narrowly.

The terms of Part 1 of the 1990 Act have been extremely useful in informing the approach we have taken in preparing this Bill, but that Act is about the powers and duties of Scottish Enterprise (SE) and Highlands and Islands Enterprise (HIE) and reflects the approach of the time to legislating for public bodies, as well as the needs and objectives of government at that time. Drafting approaches have changed considerably since then.

The policy behind the SoSE bill seeks to provide the new body with the maximum flexibility to decide what it needs to do and exercise functions to achieve those outcomes. An



example of this flexibility, in relation to powers of the body, is that section 7 of the Bill is very different from the list of powers in section 8 of the 1990 Act.

In relation to flexibility of aims, we believe it is prudent to provide Scottish Ministers with a power to amend the aims of the body, and for similar reasons it was not felt appropriate to limit the ability of Ministers to adjust the aims of the new body in the way set out in the 1990 Act. The power in section 5(3) provides Ministers with flexibility to adapt the focus of the body to any changes in the circumstances (of Scotland or the south of Scotland) over the coming years and to allow such changes to be responded to effectively and nimbly.

There is no intention by Ministers at this stage to use this power and it is not easy to identify at present a specific example of when a change in the section 5 aims would be appropriate. However, Ministers want this body to operate for the long term and it is conceivable that exceptional events or changes of focus could arise which could mean that the aims should be altered.

The lesson of a catastrophic event like the 2001 Foot & Mouth crisis serves to show the impact which such an event can have on the whole community of an area, far beyond the farming sector directly affected. If an event like that were to happen in the south of Scotland in the future it might be appropriate to adjust the aims of the new body to reflect the change in economic circumstances of the area and to ensure it had all the powers it needed to respond effectively to such a crisis

For reasons outlined above, we do not think there is any merit in narrowing the power in section 5(3). Reducing the flexibility of the power (for example, by limiting its exercise only to specific aims or only in specific circumstances) would reduce the ability of Ministers to deal, without unnecessary delay, with whatever circumstances, currently unforeseen, might arise.

Section 15 – Power to issue direction to SoSE

Please consider whether there should be requirements on the face of the Bill to consult SoSE before giving it a direction under section 15 and to provide reasons in the published direction for making the direction.

We have noted your comments on section 15. A similar point was raised by the Rural Economy and Connectivity Committee (RECC) when Scottish Government officials gave evidence on 28 November. We explained to RECC that we would expect Scottish Ministers to only use the power in exceptional circumstances. Indeed, the similar power in relation to SE and HIE has never been used in the 28 years of operation of the 1990 Act. While not included on the face of the Bill, we would expect Scottish Ministers to consult closely with affected interested parties, including the body itself, before issuing such a direction and be clear about the reason for the direction.

I trust that this provides sufficient clarity in relation to the Committee's queries.

Yours sincerely

KAREN JACKSON