



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 28 November 2018

Session 5



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CONTENTS

| | Col. |
|---|-------------|
| DECISION ON TAKING BUSINESS IN PRIVATE | 1 |
| SOUTH OF SCOTLAND ENTERPRISE BILL: STAGE 1 | 2 |
| SUBORDINATE LEGISLATION | 22 |
| Tuberculosis (Miscellaneous Amendments) (Scotland) (No 2) Order 2018 (SSI 2018/3330) | 22 |
| Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [Draft]..... | 22 |
| PETITION | 27 |
| Parking (Legislation) (PE1616)..... | 27 |

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

31st Meeting 2018, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)
*John Finnie (Highlands and Islands) (Green)
Jamie Greene (West Scotland) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*John Mason (Glasgow Shettleston) (SNP)
Mike Rumbles (North East Scotland) (LD)
*Colin Smyth (South Scotland) (Lab)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Felicity Cullen (Scottish Government)
Fergus Ewing (Cabinet Secretary for the Rural Economy)
Fraser Gough (Scottish Government)
Karen Jackson (Scottish Government)
Sandra Reid (Scottish Government)
John Scott (Ayr) (Con) (Committee Substitute)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Rural Economy and Connectivity
Committee

Wednesday 28 November 2018

[The Convener opened the meeting at 10:01]

Decision on Taking Business in
Private

The Convener (Edward Mountain): Good morning, and welcome to the Rural Economy and Connectivity Committee's 31st meeting in 2018. I ask everyone to ensure that their mobile phones are on silent. Apologies have been received from Mike Rumbles and Jamie Greene. I welcome John Scott, who is Jamie Greene's substitute.

The first item on the agenda is a decision on taking business in private. The committee is asked to consider whether to take in private item 7 and any future review of evidence that we hear on the South of Scotland Enterprise Bill. Do members agree to take those in private?

Members *indicated agreement.*

South of Scotland Enterprise Bill:
Stage 1

10:02

The Convener: We move on to our first evidence session on the South of Scotland Enterprise Bill, in which we will take evidence from the Scottish Government bill team. I welcome from the Scottish Government Karen Jackson, team leader with the south of Scotland economic development team; Sandra Reid, the bill team leader; Felicity Cullen from the legal directorate; and Fraser Gough, the parliamentary counsel to the Scottish Government.

We have a series of questions for you. I am sure that you are well versed in how this works. The microphones will be switched on for you and, if you catch my eye, I will try to bring you in at the relevant time. In this committee, if you look the other way when a question is raised, there is a danger that I will just point to the person who does not look away fast enough.

The first question is from John Finnie.

John Finnie (Highlands and Islands) (Green): Good morning, panel. Will you outline for the committee the extent of the Government consultation on the bill, particularly with regard to businesses, communities, individuals, councils, trade unions and third sector organisations? What were the key messages raised during the consultation process? I am particularly interested in whether the social development element was picked up, because that is what would differentiate the new agency from the existing arrangements.

Karen Jackson (Scottish Government): It is fair to say that engagement, both formal and informal, has been a key part of our work in developing the proposals. The Scottish Government's pre-legislative written consultation ran for 12 weeks between March and June, and we received a really good response, with 268 respondents. There was a good mixture of responses. We got 115 responses from organisations and the rest were from individuals. There was a really good spread of organisational coverage and people who were interested.

We complemented the written consultation with events across the south of Scotland—we ran 26 events in the same period. Also, the national economic forum took place in Dumfries at the end of May, which brought in businesses. The consultation built on previous consultations that we had during the enterprise and skills review. Engagement with stakeholders has been an important part of our work.

I think that you asked about the themes that came out of the consultation.

John Finnie: Yes. It was about the key messages, and particularly whether social development was picked up on.

Karen Jackson: Obviously, we have published the summary of responses, so I will not go through it in too much detail, but people were focused on ensuring that the south is an attractive place to visit and to live and work in, and on how we create better employment opportunities and better-paid jobs. There was a recognition that the south of Scotland has a very different economy and that the business base is different, so the new agency needs to respond to those needs and opportunities.

There was a focus on young people. Many people move away from the south of Scotland, so there were lots of comments about what we need to do to help young people and to create new opportunities.

There was a theme about recognising the strength of communities in the south of Scotland. They are resilient and strong and the new agency can do something to help. We have picked that up in the social element of the new agency's remit—that absolutely is a key point.

The other themes were about the important sectors in the south of Scotland. There is a recognition that the economy in the area is different. There are certain sectors such as forestry, tourism and the creative industries—that is not an exhaustive list—that the agency can pick up on. As you will imagine, there were issues about connectivity, both physical and digital.

John Finnie: I want to push you on the issue of social development. I represent the Highlands and Islands, as does the convener. Historically, the social development element was seen as a hugely important part of the work of the Highlands and Islands Development Board and Highlands and Islands Enterprise. However, the emphasis seems to have changed. The new organisation is not just about the economics; it is about the social. To what extent will that feature in the agency's work?

Karen Jackson: The overarching aims of the new agency will be to promote the social development as well as the economic development of the south. We see those as integrated. We are looking at places, and businesses and communities are equally important in places. The new agency will bring those together.

John Finnie: Looking ahead to the anticipated timetable should the legislation proceed, when will the chair and board be appointed, when will the

action plan be published and where will the headquarters be?

Karen Jackson: Gosh, there is a lot in that.

John Finnie: When will that be decided, then?

Karen Jackson: As you said, this is assuming that Parliament approves the legislation but, on the timetable for the chair, we hope to start the appointment process as soon as the Parliament has approved the principle of the bill, which means when we reach the end of stage 1. That should let the public appointments process run so that, ideally, we have a chair in place towards the end of the summer.

You also asked about decisions on the location.

John Finnie: Yes, and when the plan will be published.

Karen Jackson: The plan will be for the new agency to publish. We would expect that to happen after the new agency comes into being. If Parliament approves the legislation, we expect the new agency to be established on 1 April 2020, so the action plan would be developed and approved after that.

On location, the consultation was clear that people want the agency to be everywhere and to be accessible to all. They thought that having a single headquarters was the wrong way to go. Therefore, we are considering how we deliver that in practice through co-location with other public agencies. Again, we have not set a timetable for that, but that work is progressing.

John Finnie: Were it to proceed, what would be the timeframe within which the board would be appointed? I presume that you will appoint the chair first.

Karen Jackson: We will appoint the chair first and we assume that the chair will have a role in the appointments process after that. Ideally, we would have the members in place before 1 April 2020, ready to start when the agency is established.

The Convener: That is a tight timescale to get everyone in and all the locations sorted.

John Scott (Ayr) (Con): Good morning. Continuing on that theme, why is primary legislation required and what are the benefits of that approach compared to other available options?

The Convener: Who would like to have a go at answering that? This is the dangerous part where you all look away. Sandra Reid, do you want to lead off?

Karen Jackson: I will take it, if that is okay. Sorry—I am just looking for my bit of paper that tells me about legislation.

The bill will implement decisions that came from the enterprise and skills review. Through that review, we looked at various options to establish the structure of a body, including legislation. We looked at whether the body should be a partnership, which would not require primary legislation, but would be supported by a memorandum of understanding. We looked at whether it should be a joint committee under the local government legislation. We looked at whether it should be a company owned by the public sector, or whether one of the existing public agencies in the south of Scotland could deliver it as a separate branch. However, the conclusion was that a new public body was the right way to go. During the enterprise and skills review, a real consensus developed that it was right to do it through primary legislation.

We assessed all those options against different principles, and the agency and legislation option scored best against them all. We decided that that was the most ambitious way to go. It would deliver the transformational change that everybody wanted to see; it would be independent and able to employ its own staff; there would be a clarity around its budget; and, with that wider remit, it could support businesses and communities. The legislation would define a clear remit, and people would be able to engage with it. It would also have the benefit of making the agency part of the national structure of other enterprise agencies. For all those reasons, we thought that legislation was the right way to go.

John Scott: Thank you; that was very clear.

What historic, social, economic or cultural reasons are there for treating the Scottish Borders and Dumfries and Galloway differently from other areas south of the central belt, such as parts of South Lanarkshire and Ayrshire? I declare an interest as a resident of South Ayrshire.

For example, the area south of Girvan—which is not in my constituency—is a natural fit with that south of Scotland area. It was disadvantaged under schemes in the 1990s, when Struan Stevenson tried to get it included for special treatment in that part of the south of Scotland.

Why did you choose to include some areas and perhaps disadvantage other areas?

The Convener: Karen Jackson, everyone else is still looking at you, so it looks as though it is still for you to answer.

Karen Jackson: I am happy to take that question.

We have been exploring the boundary issue for a long time. As part of the enterprise and skills review, we looked at how we might define the south of Scotland, and there were various options. We looked at whether it should mirror the south of Scotland parliamentary region, which would bring in a range of local authorities, or whether it should pick up on the southern Scotland NUTS 2 area—I am happy to write to you with the definition of that—which would bring in different local authorities. There was also a focus on the two council areas.

During that period, a consensus emerged that using the two local authorities—Scottish Borders Council and Dumfries and Galloway Council—to define the area was the right way to go. That reflected the economic challenges faced by those two areas and the opportunities that they have. The agency could offer a real focus on tackling those challenges.

It emerged that defining the area that way would be much clearer for businesses and communities, as they would know exactly which agency to go to. The other definitions would have been much more confusing for the service user. Choosing that definition recognised the work in the local area: the south of Scotland alliance was already a partnership of those two local authorities, so it would build on that local stakeholder engagement. In addition, those two local authorities have come together in the borderlands growth deal to build that partnership. We thought that the focus on those two areas built on the work that was going on locally.

Ayrshire and other parts of Scotland have been interested, but, during the consultation, they supported the boundary that we were developing. Both Ayrshire and South Lanarkshire look to other structures. The Ayrshires are looking at their growth deal structure, and South Lanarkshire is part of the Glasgow city region deal area.

We are not creating an island. The legislation is very clear that the new agency can look across its boundaries to work with other local authority areas here and in England, so that it benefits the people of the south of Scotland and gets that alignment of purpose.

John Scott: Are you saying that the loose definition of the area is the two local authority areas?

Karen Jackson: No. The definition of the geographical area is the two local authority areas: Scottish Borders Council and Dumfries and Galloway Council. The agency will be able to align and co-operate with organisations outside that boundary to benefit the people of the south of Scotland.

10:15

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am familiar with those boundary issues, because my constituency straddles the areas of Highlands and Islands Enterprise and Scottish Enterprise; in other words, I am partly in Moray and partly in Aberdeenshire.

Will Scottish Enterprise, which will retain responsibility for South Ayrshire and other adjacent local authorities, take particular actions to collaborate with the new body for the south of Scotland, to ensure that the neighbouring areas are not disadvantaged? Is it possible to make sure that areas of difficulty that exist at the boundary areas do not become greater?

Sandra Reid (Scottish Government): As Karen Jackson said, the new agency's remit covers the south of Scotland, but we expect it to collaborate with other agencies, including Scottish Enterprise. The new agency will focus on regional economic activity in the south of Scotland. We expect that Scottish Enterprise will remain a national agency, but both agencies will work together to ensure that we achieve our aims.

Stewart Stevenson: Forgive me, but that is what I would expect you to say. However, I want to draw out the specifics. Will Scottish Enterprise take any particular action to support areas that are adjacent to the new agency's area? Differential policies and administrative decisions affecting areas that are within a few hundred meters of each other can create difficulties that come from administrative decisions. Is there going to be a particular focus on making sure that that does not happen in North, South and East Ayrshire and other bordering authorities, given that there are disadvantaged areas north of the new proposed area?

Karen Jackson: Scottish Enterprise has been engaged in the work that we have been doing around rural economic partnerships. I know that in two or three weeks' time you will be hearing from Scottish Enterprise, which will be able to give you more detail on its work on aligning with regional organisations. With its new chief executive, it is looking at its regional approach and how it tailors its responses to other parts of Scotland.

The Convener: That neatly leads on to the next question, which is from Maureen Watt.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): What is Scottish Enterprise currently unable to do in the south of Scotland that the new agency will be able to do?

Sandra Reid: The new agency will have the flexibility to respond to the needs of the south of Scotland and, more specifically, to focus its resources on the circumstances of the area and

on what is needed to help to achieve its aims of supporting businesses, sustaining communities and harnessing the potential of the people in the area. The new agency will have the ability to put a renewed focus on the south of Scotland.

Maureen Watt: Cross-border issues have been talked about a lot recently, including the idea of having the equivalent of a city deal in the area. Can you explain where we are at with that? Will this new agency be able to access funds from the deal and perhaps use them better than might otherwise be the case?

The Convener: Does Karen Jackson want to start and then let Sandra Reid come in?

Karen Jackson: I will start and then Sandra Reid can pick up on the difficult detail. Maureen Watt is right that we are looking at the borderlands growth deal. The borderlands area takes in Dumfries and Galloway Council, Scottish Borders Council and three English local authorities: Carlisle, Cumbria and Northumberland. Those local authorities are coming together to put proposals to both Governments about a growth deal.

You asked where we are. The authorities have submitted proposals to both Governments and we are looking at the detail of the propositions. I think that there are 10 different outline business cases, which focus on various themes that the authorities see as key to driving growth across the area.

As the detail develops, we will look at how those propositions and proposals can be delivered. The new agency absolutely will have a role in delivering some of the projects. For example, if there is a focus on energy, tourism or place, we see the agency getting involved in delivery in that regard. We are working hard to ensure that the projects in the borderlands and the agency's priorities are closely aligned; you would expect the new agency to be absolutely integrated with the borderlands proposition.

Maureen Watt: Are the three council areas south of the border working separately, or do they all come together in some sort of grouping?

Karen Jackson: They come together in the borderlands partnership. The proposals that have been submitted to both Governments have come from the borderlands partnership, so they have come from all five local authorities together.

Colin Smyth (South Scotland) (Lab): Board members will be appointed by the Scottish ministers, as will the chair and first chief executive. Ministers will also decide the location of the new agency, and I see that the agency will be able to change its action plan only with ministers' permission. That gives rise to concerns about local accountability. How will we ensure that decisions

on membership, in particular, are in line with local opinion?

Sandra Reid: South of Scotland enterprise will be a non-departmental public body, as you are aware, so appointments will be made via an open and fair process, which will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland and the “Code of Practice for Ministerial Appointments to Public Bodies in Scotland”.

The policy memorandum, which you might have seen, says that the aim is that

“Members will be chosen to provide a balanced mix of relevant skills and expertise which reflect the business and communities of the south of Scotland”.

We intend to advertise appointments in such a way as to attract a strong and diverse field of suitable candidates, with a particular focus on people in the south of Scotland.

That is standard practice for the existing enterprise agencies—Scottish Enterprise and HIE—the members of which are also appointed through the public appointments process.

As part of that process, we intend to set out a clear description of the skills, knowledge and expertise that are required. In drawing that together, we will reflect on responses to the consultation. The consultation asked about board members, and respondees submitted views on whom they would like to see on the board. Their suggestions included people from the local area, young people and individuals from the private sector. Respondees reinforced the need for the board to be representative of people in the south of Scotland, and we will work hard to ensure that that is the case.

Colin Smyth: The bill does not specify the skills and expertise that are required. You will do that. Will you ensure that there is a mix, so that, for example, young people, trade unions and small business owners are represented?

The local authority is represented in the current south of Scotland economic partnership—the interim partnership. Why will it not be represented in the new agency?

Sandra Reid: We will take account of all the factors that you mentioned in the public appointments process, but the bill does not specify the detail, as you said. Of course, councillors may apply to be members of the board. I am aware that Councillor Stephen Hagan is a member of the VisitScotland board, for example. There is access through that means.

Colin Smyth: But the final decision on membership will be made by ministers.

Sandra Reid: Yes. That is what the bill says.

Colin Smyth: On ministerial direction, I notice in the Highlands and Islands Enterprise legislation that ministers can issue direction only following consultation with Highlands and Islands Enterprise, but the South of Scotland Enterprise Bill does not include such a requirement. Why is that? Will ministers effectively be able to veto the agency’s decisions?

Sandra Reid: You are right to say that the bill does not include that requirement. However, I expect that those powers of direction will be used only in exceptional circumstances, and in consultation with, or following engagement with, the new agency.

Colin Smyth: I am just intrigued about why that requirement is specified in the Highlands and Islands Enterprise legislation but not in this bill.

Sandra Reid: That is something that could be considered, if you think that it should be contained in the bill.

The Convener: For clarity, is it the case that that is not a conscious omission and that it simply has not transferred across? Are you saying that it could be considered at a later date?

Sandra Reid: That is correct. No particular decision has been made in that regard, and I would expect some consultation or engagement to happen before a direction was issued.

Richard Lyle (Uddingston and Bellshill) (SNP): When you create a new organisation, surely you specify who is doing what, who will be responsible and who will be involved in it. Given the importance of the strategic board to the Government’s enterprise and skills reform agenda, why is there no mention of it in either the bill or the policy memorandum?

The Convener: Who would like to answer that? Karen Jackson is wavering.

Karen Jackson: I am looking forward to answering the question.

The strategic board is not defined in legislation; it is a different sort of construct. That is why it is not included in the bill. We would absolutely expect the chair of the new agency to be part of the strategic board process, as are the chairs of other agencies.

Richard Lyle: The fact is, sometimes you create an agency and find that everybody is doing the same thing. That brings me to my second question. The bill specifies a role for the new south of Scotland agency in

“enhancing skills and capacities relevant to employment”.

That is also a core function of Skills Development Scotland. How will the two agencies work together? Will that duplication not cause

confusion and ensure that it is a disaster right from the start? How are you going to sort that?

The Convener: I think that everyone is taken aback at the suggestion that this is going to be a disaster. Karen Jackson is going to convince us that it will not be.

Richard Lyle: We are here to probe.

Karen Jackson: We will avoid disasters.

You are right to suggest that the agency will not be the only agency operating in the south of Scotland after 1 April 2020. Other agencies already operate there, including Skills Development Scotland, VisitScotland and local authorities, and Scottish Enterprise will still have a presence. We would argue that that is absolutely right, because the south of Scotland will benefit from the input of lots of different agencies. However, we want to avoid duplication and ensure that the agencies are complementary rather than duplicatory. That involves the new agency acting as the voice of the south of Scotland. It can have an informed conversation with Skills Development Scotland and identify issues such as the fact that, in the south, sectors such as forestry need different skills. That will ensure that SDS can respond appropriately to the needs of the south of Scotland. I think that that will strengthen the position of people in the south rather than creating any confusion.

Richard Lyle: In case people take my previous comment out of context, I should say that I do not want it to be a disaster; I want to ensure that the organisation can work with other people to deliver a level footing for the future.

Karen Jackson: Absolutely. You started your question with a reference to the strategic board—the alignment happens from the national level down.

Colin Smyth: On that point, the Highlands and Islands Enterprise legislation makes it clear that that agency has the responsibility for many functions that are carried out by Scottish Enterprise elsewhere. However, the South of Scotland Enterprise Bill states that the property and liabilities of Scottish Enterprise will be transferred to the new agency, but it does not clarify which functions, if any, Scottish Enterprise will retain. It is therefore not entirely clear what functions Scottish Enterprise will retain and what specific functions the new agency will have. Does that need to be clarified in the bill or will you set it out elsewhere?

10:30

Sandra Reid: The bill is drafted in a way that is high level and enabling in order to provide the new agency with the flexibility to determine what

activities would be most appropriate to meet the needs and circumstances of the south of Scotland.

As we said, we expect the new body to assume responsibility for regionally specific enterprise activity. As Colin Smyth said, that might involve building on work that has already been done. We expect Scottish Enterprise to remain the national agency; it will continue to have a presence in the south of Scotland through national products such as the Scottish manufacturing advisory service or regional selective assistance. The new body's activities will be developed and determined through our project delivery as we work towards its establishment.

Colin Smyth: You are right that the bill is very high level. It is fair to say that its aims are quite general. The aims of the Highlands and Islands Enterprise legislation, however, are very specific; the list of functions in that act is a lot more detailed. Why is it different in this legislation? I have heard the argument that Highlands and Islands Enterprise has been prevented from doing things because its aims and functions, as set out in legislation, are too specific and detailed. Are there any examples of things that Highlands and Islands Enterprise has been unable to do because of the way in which the legislation that governs it is written?

Karen Jackson: I will start by talking about the aims and then perhaps Fraser Gough can come in on the drafting construct.

The aim of the bill is high level—it is to further the economic and social development and improve the amenity and environment of the south of Scotland. It then illustrates how those aims might be achieved. It is fair to say that that reflects modern drafting practice. That high-level aim and those illustrations mean that the new agency can do what it needs to do to respond to opportunities and needs in the south of Scotland.

Fraser Gough: As Karen Jackson said, the Enterprise and New Towns (Scotland) Act 1990 is very much a product of its time in the way in which it is drafted and structured.

I cannot speak to exactly what problems or restrictions Scottish Enterprise or HIE might have encountered. These days we tend to avoid long exhaustive lists of things, which, in each case in the 1990 act, are given as specific examples under the general power to do anything in pursuance of the bodies' aims. The difficulty with elaborate lists is that they begin to look as though they are constraining. The more words you have on the legislative page, the more opportunities you give lawyers to create arguments—you can infer constraints that were not intended. We therefore tend to eschew that style of drafting these days.

I will give you a simple example. Scottish Enterprise and Highlands and Islands Enterprise are empowered to reclaim land from the sea, but the bill says that south of Scotland enterprise can acquire land and enter into contracts, and those contracts could be with people who are involved in reclaiming land from the sea. We are therefore dealing with the same propositions but at a higher level of abstraction. We do not need to get down to the specifics in the same way.

Colin Smyth: The Highlands and Islands Enterprise legislation specifically mentions compulsory purchase. Are you saying that the south of Scotland enterprise agency will have the power of compulsory purchase as well?

Fraser Gough: No. It is fair to say that a lot of the complexity in the 1990 act surrounds powers that—as a matter of policy—the Government is not proposing to give to south of Scotland enterprise. Those powers include compulsory purchase powers, powers to enter on to land without permission, and powers to require people to give information under penalty of criminal sanction for not providing it. As a matter of policy, those powers are not being pursued for the south of Scotland agency.

Colin Smyth: Let me probe that point further. The Highlands and Islands Enterprise legislation talks in depth about safeguarding the environment, natural beauty and the geography of the region, and it includes provisions on developing the environment and derelict land, whereas the South of Scotland Enterprise Bill refers only to the “amenity and environment” of the region and does not mention natural assets. Are you saying that the bill makes south of Scotland enterprise’s responsibilities in that regard no weaker than those of Highlands and Islands Enterprise? Can you give the committee an absolute guarantee that no power has been given to the Highlands and Islands agency that is not being given to the south of Scotland one?

Fraser Gough: Yes. Your question began from the premise that, because the bill contains less detail on those things, the new agency will be more constrained than the existing agencies. However, aside from the policy exceptions on compulsory purchase and obtaining information, which I have mentioned, we are quite comfortable that, if anything, the bill having less detail and constraint built into it is in broad pursuance of its aims, which are every bit as broad as, if not broader than, those of the 1990 act.

Colin Smyth: I want to be clear on the point about there being no additional powers. You mentioned compulsory purchase. Additional powers appear to have been given to Highlands and Islands Enterprise that are not being given to south of Scotland enterprise. Is that the case?

Fraser Gough: Yes. Those are the specific ones that I have mentioned: the powers for compulsory purchase, for obtaining information from people and for entering on to land without permission.

The Convener: Those are important points, Colin. When representatives from HIE come in, you will get a chance to see how relevant those powers are and whether they have used them. I do not want to cut you off, but I am going to bring in John Finnie. I will be happy to come back to you if you want to develop that point.

John Finnie: I am going to sound like a stuck record and ask about social development again. In layperson’s terms, that was what marked out HIE as being different from Scottish Enterprise. I want to understand whether the somewhat romantic notion that people had about the role of the old Highlands and Islands Development Board, and then its successor organisation, will be a feature of the new agency. That is to say that it would not just be involved—as it appears to be now—in a lot of the high-level strategy stuff about increasing exports for businesses within its portfolio, but there would be meaningful engagement with communities at a very local level. Can you give examples of the social development that you envisage the south of Scotland enterprise agency will undertake? My concern is that that work will drop off and it will concern itself not with communities but solely with the balance sheets of large companies.

Karen Jackson: I will start on that question. The bill gives the agency responsibility for social development. The consultation gave a range of examples of the activities that the agency might be expected to pursue as part of that community element. The focus on developing community capacity—

John Finnie: I am sorry to interrupt, Karen, but, for the record, could you detail some of those activities, please?

Karen Jackson: Absolutely. We explored helping communities to acquire specific assets, looking at how they could use them to generate income.

John Finnie: But without compulsory purchase.

Karen Jackson: I will not be able to answer properly to that level of detail, so perhaps we could come back to it in writing. The community empowerment stuff includes helping communities to develop specific assets, generate income and deliver services. We recognise that social enterprises are very important in the south of Scotland, so the new agency will have a focus on what it can do to grow them. Similarly, community-based businesses are very important in resilient communities and play an important part in the

economy of the south, so we would expect the agency to look at those. There will be a place-based focus, so an agency that focuses on the south of Scotland will be able to understand what makes the place tick. Its focus should be on pursuing both the business and community elements of that. It should ask what the important thing is in a place that makes it vibrant and resilient. That is not necessarily a business; it could be a community facility.

On the question of how the agency can help communities to respond to opportunities that are presented to them, because Highlands and Islands Enterprise works closely with us we understand about best practice there. However, we are working with other agencies, such as the Development Trusts Association Scotland and the Southern Uplands Partnership, to bring in different perspectives.

In the consultation, we got lots of responses from community councils and other community organisations, so there is a wealth of information about practical things that the agency could help to tackle.

Fraser Gough: I want to add something on the point about the absence of compulsory purchase powers and the agency helping communities to acquire assets. You must bear in mind the fact that, since the 1990 act came into force, the Scottish Parliament has conferred the community right to buy and there are compulsory purchase powers in the Town and Country Planning (Scotland) Act 1997 that did not exist in 1990. When comparing the two acts to see what is missing, we must bear in mind that the legislative landscape has moved on, in large measure through the Scottish Parliament's efforts.

Richard Lyle: My question follows on from Colin Smyth's and John Finnie's questions. Will the agency have the same powers as other agencies—yes or no?

The Convener: Who would like to dodge that question? Does Karen Jackson want to try that one?

Richard Lyle: It is a simple question.

Karen Jackson: The overarching aim of the agency is absolutely what you would expect Highlands and Islands Enterprise to do, so it is equivalent in that sense. As Fraser Gough has been explaining, certain elements of the detail are different in order to reflect the different legislative processes and the acts that have subsequently been introduced.

Richard Lyle: I am sorry to press you, but you are saying that the agency will not have the same powers as Highlands and Islands Enterprise.

Karen Jackson: I am saying that the agency will have a clear power to drive forward the economy of the south of Scotland, supporting communities and businesses across the south of Scotland.

The Convener: Richard, I am not going to cut you off, but the cabinet secretary will be in and I am sure that he will look forward to your robust line of questioning.

Richard Lyle: It is a point that we have to clarify. Colin Smyth asked the question, but it has not been answered.

The Convener: I am sure that the cabinet secretary is listening to this meeting and taking cognisance of the fact that you are going to ask him that question.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I will follow Richard Lyle's other line of questioning on the duplication of services. The bill specifies a role for the agency in encouraging business start-ups and entrepreneurship. Is it intended to replace the business gateway or to work alongside the business gateway? How will the agency work with local authorities to encourage new businesses and the growth of existing ones?

Karen Jackson: In advance of the creation of the new agency, we have created the south of Scotland economic partnership, which brings together the seven key public sector agencies that support economic development in the south of Scotland. As Mr Smyth suggested, Scottish Borders Council and Dumfries and Galloway Council are members of that partnership, which is helping to develop alignment across agencies. We are discussing what makes sense to businesses in terms of who delivers what and how we ensure that there is one clear place for businesses to go and get the services that they need, which might be delivered not by the agency but by other organisations, local authorities, the private sector or the third sector. You can therefore see a role for the agency in creating that alignment and in helping businesses to navigate what they sometimes think is quite a complicated landscape.

Gail Ross: Will the business gateway still exist?

Karen Jackson: That decision has not been made. We are talking with local authorities about how those services are best delivered. The business gateway might be the best way in which to do that, but those discussions are still evolving.

Peter Chapman (North East Scotland) (Con): We have strayed into a fair bit of my question, but I will ask it anyway. How will the new agency work with Scottish Enterprise and Highlands and Islands Enterprise, given that Scottish Enterprise will continue to have a presence in the area and

that HIE is the model organisation for the new agency in the south of Scotland?

Karen Jackson: I think that we have covered quite a lot of that ground. It is about alignment, complementarity and finding a way for the agency to bring together what businesses and communities need.

Peter Chapman: Scottish Enterprise's role will obviously diminish when the new agency is up and running, but it will still have a role in the region—is that assumption correct?

Karen Jackson: Absolutely. Scottish Enterprise will still operate as the national economic development agency across Scotland. As Sandra Reid mentioned, Scottish Enterprise delivers various national products such as regional selective assistance grants, the Scottish manufacturing advisory service and some of the Skills Development International services. Those services are all delivered nationally, and we would expect Scottish Enterprise to do that following the creation of the new agency.

There is also expertise in Scottish Enterprise that we would not want the south of Scotland to be cut off from. Energy is a good example. Scottish Enterprise has a depth of information about energy, and we would not want to cut off the south from benefiting from that expertise in the national body. Similarly, the new agency could develop expertise in areas that reflect its economy—in forestry, for example—which would help other agencies such as Scottish Enterprise and HIE. Such alignment and complementarity go all the way through the system.

10:45

Peter Chapman: I understand that. Both Scottish Enterprise and HIE publish annual business plans, which include useful budget information, organisational targets and priorities. Is there anything in the bill that requires the new south of Scotland agency to do likewise?

Sandra Reid: The most direct comparison in the bill is the requirement for the new body to produce an action plan that is to be agreed with ministers. That would set out how the agency should look to achieve its aims. The business plan and corporate plans will be used as the blueprint for how the agency will take forward its activities.

Peter Chapman: I assume that the new board will have a big input into that planning process.

Sandra Reid: Yes, we would expect that.

John Mason (Glasgow Shettleston) (SNP): I am looking at some of the figures in the financial memorandum, a lot of which makes sense—the three parts on set-up costs, running costs and the

on-going budget. I was particularly struck by the estates figure, under the setting-up costs on page 4. I agree with the approach of taking a low and a high figure, but it seems quite extreme that the low figure could be £542,000 and the high figure could be £2.6 million. Can you explain why there is such a big range?

Karen Jackson: Absolutely. In bringing those estimates together, we were looking at all sorts of different possibilities for what the estates and the geographic footprint of the new agency might look like. At the higher end, the costs assume that we would need to fit out a building from scratch; at the lower end, it is much more about co-location.

It was clear from the consultation that people wanted the agency to be accessible everywhere, and we are exploring how we could deliver that through co-locating with other bits of the public sector estate and with bits of private or third sector agencies that offer accommodation. That explains the range. It is obviously more expensive to fit out a new building and less expensive to share premises with others. We hope that co-location will be the way in which the agency operates.

John Mason: So, the figures include all the possibilities—whether there is one main headquarters and a lot of smaller offices or two big headquarters, or whatever the option might be.

Karen Jackson: The policy memorandum explores all those possibilities and gives us the financial estimates for all sorts of different models. One of the options that was consulted on was a hub-and-spoke model, which would have two or three key hubs for the agency and would spread out across the area. The estimates cover the range of options.

John Mason: My other point concerns part 3, on the total budget allocation. On page 10, in paragraph 53, the policy memorandum says:

“It is intended that the allocation given to the new body will be equivalent on a per-capita basis to the allocation for HIE”.

I accept that the figure needs to be higher than what Scottish Enterprise gets, because the south of Scotland is a more urban area, but the HIE area is much more spread out, has a whole lot of islands and faces many more challenges than the south of Scotland. Can you explain why the allocation would be a matching per capita amount?

The Convener: Who would like to answer that question? I am trying to control the committee, because there are a few Highlands and Islands MSPs who might want to jump in on the back of that question.

Karen Jackson: We looked to the Highlands and Islands and saw very similar challenges

around geographic spread and rurality. We listened carefully to what consultees were saying, and they made the case that the new body needs to be funded in a way that is equivalent to how HIE is funded. I am sure that you will want to pick up with the cabinet secretary the issue of how different funding amounts are justified. I can explain where we have got to in the financial memorandum, but I suspect that the committee has got the bigger point.

John Mason: The regions are similarly rural, but there are no islands that I am aware of in the region. That would be an immediate cost. I will take the issue up with the cabinet secretary, so I will not press you on it too far. However, surely the needs are not as great as those in the Highlands and Islands? If you do not want to answer that question, I will let it go.

The Convener: John, you seem to be taking some committee members with you, but some are against you. Let us keep that question for the cabinet secretary.

Colin Smyth: As one of the members that he certainly is not taking with him, I very much welcome the financial memorandum—

The Convener: Now, Colin, we said that we would not do that.

Colin Smyth: I welcome the financial memorandum's commitment, given that the region is the lowest paid in Scotland.

Given that per capita commitment, the budget would be £42 million a year, based on the current HIE budget. However, the financial memorandum proposes only £32 million in the first year and the amount rises gradually until we get to that £42 million. The figure is therefore not per capita in the first two years. Why is that? I can think of many projects in the south of Scotland that would spend that per capita funding very quickly. Why are we not getting that per capita funding until, in effect, year 3?

Karen Jackson: We have been working on the transition planning. Our assumption is that we will build up to the full allocation. In the first year, the agency will not have its full staff or its full capital programme in place. The members of the agency will want to plot out that capital programme and where those resources can be used most effectively. We took the view that the agency would need two or three years to get to that point, but the committee may want to discuss that point more broadly.

The Convener: Maureen Watt has a question.

Maureen Watt: It is not related to the financial memorandum.

When the bill was drafted, we were in a different political situation from the one that we are in now. There will probably be a border down the middle of the Irish Sea, and Dumfries and Galloway will become another kind of borderland. Should anything be put in the bill to strengthen the area and the powers in relation to various issues that had not been foreseen when the bill was drafted? Has that idea been considered?

Sandra Reid: As we have said, the bill has been drafted in a high-level way that makes it an enabling bill that will enable the new agency to be flexible and responsive in its approach. The agency will be able to change what it does, and, as circumstances change over time, it will be able to adapt and respond to those changes. That flexibility is necessary to reflect future situations. We cannot future proof everything, but we can ensure that the agency will be able to respond.

Richard Lyle: In the jobs that I used to do, I was not based in an office—I used to go out on the road a lot. The south of Scotland is wide and varied, so the new board will need time to work out where it wants to have its main hub or hubs and where it wants its staff to be. Is that correct?

Karen Jackson: I think that the answer to that question is yes.

Richard Lyle: I thought that it would be.

Karen Jackson: However, I suspect that I should qualify my answer by saying that some decisions will have to be made for purely practical reasons.

Richard Lyle: So, you are not going to say that the headquarters will be at X and the hubs will be at Y and Z. Are you saying that the board will come in and make those decisions, in consultation, for the benefit of the people of the south of Scotland?

Karen Jackson: There will be flexibility to change, but we expect that decisions on some hubs will need to have been made before 1 April 2020, so the decisions will not all be for the agency to make. We will need to have hubs in place so that there are places from which people can start operating on 1 April.

Richard Lyle: Thank you for clarifying that.

John Scott: I want clarification on the Ayrshire question. Why is it not part of the enterprise region? Did you say that the Ayrshire local authorities did not want to be part of the south of Scotland enterprise region? Is that being driven by there being two separate future funding streams—the borderlands growth deal and the Ayrshire growth deal?

Karen Jackson: The three Ayrshire local authorities have self-identified the Ayrshires as a

growth deal area and have focused on that structure, rather than looking towards the south of Scotland. We recognise that there are real economic links across the council boundaries—economics does not always respect council boundaries. The approach was driven by the Ayrshire councils, which were absolutely focused on getting their own growth deal and considering their own structures across the three councils. The responses from the three Ayrshire councils to the Scottish Government consultation said that they were looking at the structure of their growth deal area, rather than at the south of Scotland, although they made the point that establishing an effective working relationship is key.

Colin Smyth: Why is there no specific reference to equalities in the South of Scotland Enterprise Bill? The act that regulates HIE includes provisions on responsibility for improving opportunities for disabled people, women and ethnic minorities, and for enforcing current legislation. It also states that, within reason, HIE and Scottish Enterprise are required to give preference to disabled former servicemen and servicewomen when they select disabled people for training. However, there is no explicit reference to equalities in the South of Scotland Enterprise Bill. What are the reasons for that?

Felicity Cullen (Scottish Government): There is no such specific reference in the bill, but there is the intention to amend the relevant statutory instruments that will apply the public sector equality duty, and the suite of other equality legislation, to the new body. That will be done as part of preparation for commencement of the body on 1 April 2020. If those amendments are not in place by 1 April 2020, they will be in place very shortly afterwards, and the body will operate as if it were affected by the duties anyway.

The Convener: That completes our questions. Thank you, panel. Karen Jackson answered the majority of the questions, for which I thank her.

Subordinate Legislation

Tuberculosis (Miscellaneous Amendments) (Scotland) (No 2) Order 2018 (SSI 2018/3330)

10:58

The Convener: The next item of business is an instrument on bovine tuberculosis. The instrument is subject to negative procedure. Before we discuss it, I ask members to declare any interests. I declare an interest as a member of a farming partnership.

Peter Chapman: Likewise, I declare an interest as a member of a farming partnership.

John Scott: I, too, declare an interest as a member of a farming partnership.

The Convener: The instrument relates to TB control measures and compensation for bovine animals. The committee considered an earlier version of the instrument on 20 June 2018. That instrument was revoked on 30 June 2018 after we had identified difficulties with the consultation process.

I wrote to the Scottish Government to clarify the compensation arrangements for bovine TB. The response can be found in the committee papers. It confirms that compensation will be different for bovine TB and BSE.

No motions to annul have been lodged in relation to the instrument.

Does the committee agree that it does not wish to make any recommendation on the instrument?

Members indicated agreement.

10:59

Meeting suspended.

11:05

On resuming—

Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [Draft]

The Convener: Item 4 is consideration of an instrument that is subject to affirmative procedure that relates to the Agricultural Holdings (Scotland) Act 1991.

I declare that I am a member of a farming partnership.

Peter Chapman: Likewise, I declare an interest as a member of a farming partnership.

John Scott: I declare an interest as a landowner and a farmer.

The Convener: The committee will take evidence on the order from the Cabinet Secretary for the Rural Economy. The motion that seeks the committee's approval of the order will be considered under agenda item 5. Members should note that the committee has received no representations on the order.

I welcome Fergus Ewing, the Cabinet Secretary for the Rural Economy; Jen Willoughby, the head of the Scottish Government's agricultural holdings team; and Julia Burgham Pearson from the Scottish Government's legal directorate. I invite the cabinet secretary to make a brief opening statement of up to three minutes.

The Cabinet Secretary for the Rural Economy (Fergus Ewing): Good morning, convener, and thank you for inviting me to discuss the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019. I hope that the committee will agree that the order is a good-news story for tenant farmers in Scotland.

Schedule 5 to the Agricultural Holdings (Scotland) Act 1991 sets out a list of improvements to agricultural holdings that may make tenants eligible for compensation when they leave a holding. The list was originally created for the Agriculture (Scotland) Act 1948—some time ago—and has not been updated since, which means that some items that are now readily accepted as being legitimate improvements are not listed therein. Informal arrangements might be in place between landlords and tenants to cover some of those items: they will depend on individual arrangements, so there is no uniformity in practice.

During the widespread consultation that was conducted by the agricultural holdings legislation review group in 2014, there were calls from the sector for the list to be updated to reflect modern farming practice and to eliminate doubt and confusion.

The underlying rationale for the current provisions on waygo is to encourage tenant farmers to invest in the agricultural holding and to keep it in good condition, knowing that they will be adequately compensated. Therefore, updating the schedule will benefit the tenant who makes an investment and the landlord whose property is thereby improved.

To ensure that any update was industry led, we placed a duty on the tenant farming commissioner to make recommendations to modernise the list. After consulting key stakeholders, he delivered his recommendations to me in December last year, and we are now seeking to implement those recommendations. That will mean that, for

improvements that have been begun when the order comes into force in January next year, the updated schedule will apply. I hope that that will lead to greater certainty for both sides

I have been heartened by the positive press reaction since the order was laid.

I hope that the committee will approve the order. My officials and I are happy to answer questions.

The Convener: Thank you, cabinet secretary. Peter Chapman will ask the first question.

Peter Chapman: You said that the order is a good-news story for tenant farmers, and I certainly agree that it is very welcome.

You also said that there had been consultation with the industry, which I accept. Were any particular areas of concern highlighted during the consultation?

Fergus Ewing: We consulted fairly widely with the Scottish Tenant Farmers Association, NFU Scotland, Scottish Land & Estates, the chartered surveyors and the Scottish Agricultural Arbiters and Valuers Association. I think that it is reasonable to say—in as much as it is ever accurate to make such generalisations—that the majority of stakeholders are broadly satisfied with the outcome and, indeed, have in many cases welcomed it.

Of course, it is the way of things that not everyone gets everything that they want. I suppose that we could say the same about Christmas. Government is not well cast in the role of Santa, however desirable that might be. Some stakeholders might be disappointed that we have not been able to take on board, for example, the tenant farming commissioner's recommendation to include

"Permissions, consents, contracts, authorisations and restrictions."

I can explain why we were not able to accept that recommendation—and perhaps will do so later—but other than that I am not aware of any specific areas of disappointment.

Peter Chapman: The only point of detail that I would follow up on is that a catch-all clause seems not to have been included. Why have you chosen not to do so?

Fergus Ewing: The commissioner considered the option of a general catch-all to future proof the schedule. Mr Chapman is correct to say that some stakeholders were in favour of that approach, and I can see its attraction, but we elected not to include that kind of general clause, because it is open to interpretation and might therefore lead to more disputes and disagreements over what is and what is not in scope. The purpose of what we are doing is to provide as much detail and

specification as possible to inform the parties in the negotiations over waygo compensation and to have as little scope as possible for ambiguity and therefore disagreement and disputation.

That said, I agree with the tenant farming commissioner's recommendation that, instead of including a catch-all clause, we commit to reviewing the schedule on a regular basis. I am willing to make that commitment to look at the schedule every five years, say, to see whether it is still fit for purpose. Indeed, if it were shown that a more frequent review was necessary, I would consider that very carefully.

In short, instead of putting in a catch-all, which we felt might give rise to difficulties, we thought that a willingness to update the list more frequently than has been the case might be the better, preferred approach.

Peter Chapman: It is important that we look at the list regularly, and I certainly welcome your promise to do exactly that.

The Convener: John Scott has a brief follow-up question.

John Scott: First, I again declare an interest as a farmer.

Cabinet secretary, I seek a final assurance with regard to compliance with the European convention on human rights. The policy note says that the order will "avoid any unfairness", which I know has been an issue with various parts of the legislation. Indeed, we have been rebuked by Lord Gill and others in the past for our inadequacies in this Parliament.

Fergus Ewing: We have no reason to believe that any significant risk attaches to any claim under the ECHR, which I presume would, like most of these issues, be based on article 1 of the first protocol. However, I entirely agree with the approach advocated by Mr Scott, namely that we have to take great care in this area of legislation, not least because, sadly, previous legislation passed by a former Administration had to be overturned and corrected by us with consequences that I know we all very much regret.

I am not aware of any issue in this respect. Indeed, as far as I am aware and have been advised, SLE did not raise any issues, either.

11:15

Richard Lyle: The order is really good news, and I compliment you and your officials on the work that you have done.

I note that in his report the tenant farming commissioner says:

"there is reasonable certainty that Schedule 5 can be reviewed regularly".

I think that you have partly answered the question already, but how often will you review the schedule to ensure that emerging issues can be included?

Fergus Ewing: I mentioned a period of five years, but that is kind of a long stop. If all parties were to come to me and suggest that there was a pressing need for a swifter review, I would always seek to be as accommodating as possible—assuming, of course, that the issue could be dealt with through secondary legislation. Primary legislation is another kettle of fish, particularly in these times—but I will not mention the B-word, because I do not want to depress anybody this morning.

Richard Lyle: I have always found you very accommodating when I have raised any problems with you.

The tenant farming commissioner has also said:

"there may be a case for ... drawing attention to the fact that improvements that are part of a diversification are subject to different regulation with respect to approval and compensation arrangements."

Such a note appears not to have been included. Why not? Do you have other plans for avoiding possible confusion in this area?

Fergus Ewing: This matter requires a lawyerly answer, which is that the 1991 act permits us only to vary the provisions of the schedule. Clarification of the point raised by the commissioner is a matter for guidance, but my officials will work with him on a code of practice that will clarify such issues. I hope, therefore, that the matter will be dealt with in that fashion rather than through this statutory instrument.

The Convener: Members appear to have no more questions, cabinet secretary. Do you wish to make any brief closing remarks?

Fergus Ewing: No.

The Convener: In that case, we move to agenda item 5, which is formal consideration of motion S5M-14752, in the name of the cabinet secretary.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft] be approved.—[*Fergus Ewing*]

Motion agreed to.

The Convener: I thank the cabinet secretary and his officials for their evidence to the committee. I must ask you to depart quietly, as we are moving straight on to the next item on our agenda.

Petition

Parking (Legislation) (PE1616)

11:18

The Convener: Item 6 is consideration of PE1616, which seeks the Parliament's support to make it an offence to park in front of a dropped kerb. This is the committee's first consideration of the petition, but, as we know, the committee has discussed the matter in our evidence taking on the Transport (Scotland) Bill.

Does anyone have any comments?

Maureen Watt: I have asked witnesses about this particular issue during our consideration of the Transport (Scotland) Bill, which contains proposals on pavement and double parking, but not on parking in front of dropped kerbs. I have a constituent for whom this is a real issue.

We should congratulate Mr Shaw on submitting the petition. I think that the Transport (Scotland) Bill provides an opportunity for us to get movement on and to progress what he seeks. Instead of saying, "That's it," we should keep our options and his options open by looking at how we can incorporate such provisions into the bill.

Richard Lyle: I agree with my colleague. Every day, people in wheelchairs face problems trying to cross roads. We forget that we have the height; because they sit in wheelchairs, they are lower down but they still have to cope with traffic and all the other things that arise in everyday life. We should certainly keep the petition open in recognition that there is a problem that has to be—and hopefully will be—resolved through the Transport (Scotland) Bill.

John Scott: I agree with Maureen Watt and Richard Lyle. People parking unreasonably on pavements and denying those in wheelchairs access to those pavements has certainly been brought to my attention as an issue in my constituency, but the problem is that, given the narrowness of streets in some residential areas, there are times when it is reasonable to park on pavements. If I were a member of the committee considering the Transport (Scotland) Bill—which I am not—I would like to hear evidence on how that might be resolved. I hope that the committee will look closely at the issues, which are all related, because they need to be addressed, given the significant unhappiness among the disabled community about the lack of reasonable access to pavements.

The Convener: As with previous evidence taking on the Transport (Scotland) Bill, there seems to be general consensus that the

committee should continue to raise the issue of dropped kerbs, try to get the Government to consider it as part of the bill and perhaps get together some amendments that will cover the matter. However, there also seems to be general consensus that, as part of the process, it would be useful to keep the petition open to assist us in taking the matter forward with the Government. Is the committee in agreement with that statement?

Members indicated agreement.

The Convener: We will therefore keep the petition open. Thank you very much.

We will now move into private session.

11:21

Meeting continued in private until 11:33.

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