

# Scottish National Investment Bank Bill

[AS AMENDED AT STAGE 2]

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# Scottish National Investment Bank Bill

## [AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to require the establishment of the Scottish National Investment Bank and to make further provision in connection with that body.

### PART 1

#### ESTABLISHMENT OF THE BANK

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#### CHAPTER 1

##### SCOTTISH MINISTERS' DUTY TO ESTABLISH THE BANK

#### 1 Duty to establish the Bank

The Scottish Ministers must establish a public company limited by shares that—

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- (a) is named the Scottish National Investment Bank p.l.c.,
- (b) has its registered office in Scotland,
- (c) has the Scottish Ministers as its only member, and
- (d) has articles of association framed in accordance with Chapter 2.

#### CHAPTER 2

##### THE BANK'S ARTICLES OF ASSOCIATION ON ESTABLISHMENT

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#### 1A The Bank's vision

The articles of association must state that the Bank's vision is to provide finance and act to catalyse private investment to achieve a step change in growth for the Scottish economy by powering innovation and accelerating the move to a low carbon, high-tech, connected, globally-competitive and inclusive economy.

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#### 2 The Bank's objects

- (1) The articles of association must state that the Bank's main object is giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment in Scotland.

- (2) The articles of association must state that the Bank has the following ancillary objects—
- (a) investing in inclusive and sustainable economic growth,
  - (aa) investing to promote social wellbeing,
  - (ab) investing to—
    - (i) promote environmental wellbeing, and
    - (ii) in particular, support the transitions required to meet the net-zero emissions target (as defined in section A1 of the Climate Change (Scotland) Act 2009) and circular economy initiatives under section 35(13) of that Act,
  - (ac) promoting the just transition principles (as defined in section 35C of the Climate Change (Scotland) Act 2009),
  - (b) promoting and developing the activities of enterprises, where lack of financial investment is holding back economically viable commercial activity,
  - (c) promoting and developing the activities of small and medium-sized enterprises,
  - (d) creating and shaping markets through the provision of patient capital,
  - (e) contributing to the achievement of the Scottish Government’s economic, social and environmental policy objectives,
  - (f) promoting the advancement of equality and non-discrimination.

## **2A Balanced scorecard**

- (1) The articles of association must provide that the Bank must prepare and update a document (to be known as a “balanced scorecard”) to assist its preparation of reports under this Act.
- (2) The articles of association must provide that, in preparing and updating a document under subsection (1), the Bank is to have regard to—
- (a) the economic impact of the performance of its investments over time,
  - (b) the social impact of the performance of its investments over time,
  - (c) the environmental impact of the performance of its investments over time,
  - (d) any other impact (financial or non-financial) of the performance of its investments over time as the articles may provide.

## **3 General powers**

- (1) The articles of association must provide that the Bank may do anything for the purpose of its objects and specifically mention—
- (a) giving financial assistance—
    - (i) on any terms and conditions, and
    - (ii) by any description of investment, lending or guarantee, and
  - (b) forming and acting through subsidiaries.

- (2) The articles of association must also mention the following as examples of the form which financial assistance given by the Bank may take—
- (a) investment by the Bank (alone or with others) through the acquisition of loan or share capital in any company,
  - 5 (b) investment by the Bank (alone or with others) through the acquisition of any—
    - (i) undertaking, or
    - (ii) assets,
  - (c) a loan (secured or unsecured, and with or without interest),
  - 10 (d) insurance or a guarantee to meet any contingency (including default on payment of a loan or any other failure to fulfil a contractual obligation).

#### **4 Borrowing powers**

The articles of association must include a prohibition on the Bank borrowing from anyone other than the Scottish Ministers.

#### **5 Ownership**

15 The articles of association must preclude—

- (a) shares in the Bank from being allotted to anyone other than the Scottish Ministers,
- (b) the Scottish Ministers from transferring their shares in the Bank.

#### **6 Directors: appointment**

(1) The articles of association must provide that—

- 20 (a) the Bank is to have between 9 and 13 directors,
- (b) there must be at least 2 executive directors (one of whom must be designated in the articles as chief executive and the other as chief financial officer),
- (c) there may not be more than 4 executive directors,
- (d) at least two thirds of the directors must be non-executive directors.

25 (2) The articles of association must provide that all of the Bank’s directors are to be appointed by the Scottish Ministers.

(3) The articles of association must provide that the chair of the Bank’s board is to be one of the non-executive directors appointed to the office of chair by the Scottish Ministers.

30 (4) In appointing non-executive directors, the Scottish Ministers must have regard to the desirability of ensuring that non-executive directors (as a whole) have experience or knowledge of the issues facing workers and businesses in Scotland.

(5) In considering, for the purpose of subsection (4), the particular experience or knowledge that non-executive directors (as a whole) should have, the Scottish Ministers must consult—

- 35 (a) persons appearing to them to represent trade unions operating in Scotland,
- (b) persons appearing to them to represent businesses operating in Scotland.

## **7 Directors: tenure**

- (1) The articles of association must provide that—
- (a) the period of a non-executive director’s appointment is to be a period, not exceeding 5 years, specified by the Scottish Ministers when making the appointment,
  - (b) a person may be appointed to the office of non-executive director more than once,
  - (c) no person may hold the office of non-executive director for a cumulative period exceeding 8 years.
- (2) The articles of association must provide that a person ceases to hold the office of director as soon as—
- (a) the person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law,
  - (b) the person becomes insolvent, meaning—
    - (i) the person’s estate has been sequestrated,
    - (ii) the person has granted a trust deed for, or entered into a composition contract with, creditors,
    - (iii) the person has been adjudged bankrupt,
    - (iv) a voluntary arrangement proposed by the person has been approved,
    - (v) the person’s application for a debt payment programme has been approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,
    - (vi) the person has become subject to any order or arrangement analogous to any of those described in sub-paragraphs (i) to (v) anywhere in the world,
  - (c) a registered medical practitioner who is treating the person gives a written opinion to the Bank stating that the person has become physically or mentally incapable of acting as a director and may remain so for more than 3 months,
  - (d) notification is received by the Bank from the person that the person is resigning from office, and such resignation has taken effect in accordance with its terms.

## **8 Remuneration**

The articles of association must provide that the remuneration of the Bank’s directors and staff is to be determined by the directors, subject to any direction from the Scottish Ministers.

## **9 Committees**

- (1) The articles of association must enable the Bank’s directors to set up, and delegate functions to, committees and sub-committees.
- (2) The articles of association must require—
- (a) that the Bank have—
    - (i) an audit committee, and
    - (ii) a risk committee, and

(b) that each of those committees is chaired by a non-executive director.

(3) The articles of association must state that—

(a) the audit committee has the function of providing independent review and oversight of the company's financial reporting processes, internal controls and independent auditors,

(b) the risk committee has the function of reviewing the Bank's risk-management systems.

### 9A Advisory group

(1) The Scottish Ministers must appoint an advisory group to provide them with advice on the Bank's objectives, conduct and performance.

(2) The advisory group is to—

(a) be provided with sufficient resources by the Scottish Ministers to carry out its functions under this section,

(b) include at least 1 member appointed to represent the interests of trade unions (within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992).

### 10 Entrenched provisions

The articles of association must provide that those provisions of the articles which are framed in accordance with this Chapter may be amended or repealed only in accordance with section 20.

## PART 2

### OPERATIONAL MATTERS

#### *Strategic missions*

### 11 Setting missions

(1) The Scottish Ministers are to set strategic missions for the Bank.

(2) The Scottish Ministers set the Bank strategic missions by sending it—

(a) a statement outlining how the Scottish Ministers consider the strategic missions will contribute to each of the Bank's objectives listed in section 2, and

(b) a document describing the socio-economic challenges that the Bank is to seek to address.

(3) The Scottish Ministers may send the Bank a document modifying the document by which the strategic missions were set so as to—

(a) set a new strategic mission for the Bank,

(b) modify a strategic mission, or

(c) bring a strategic mission to an end.

- (3A) Before sending the Bank a document under this section to set, modify or bring to an end a strategic mission, the Scottish Ministers must consult publicly on their proposal to do so.
- 5 (3B) A consultation under subsection (3A) must be carried out over a period of at least 40 days beginning with the day that the Ministers lay before the Scottish Parliament a statement describing their proposal.
- (3C) In calculating the period of 40 days mentioned in subsection (3B), no account is to be taken of any time during which the Parliament is—
- 10 (a) dissolved, or
- (b) in recess for more than 4 days.
- (4) After sending the Bank a document under this section, the Scottish Ministers must—
- (a) lay before the Scottish Parliament—
- 15 (i) a copy of the document, and
- (ii) a statement describing how the consultation responses affected the terms of the document sent to the Bank, and
- (b) make a copy of both the document and the statement publicly available.
- (5) The Bank's board may submit proposals to the Scottish Ministers to—
- (a) set a new strategic mission for the Bank,
- (b) modify a strategic mission,
- 20 (c) bring to an end a strategic mission.
- (6) Proposals submitted under subsection (5) must—
- (a) be in writing,
- (b) give reasons for the proposal being submitted.
- (7) No later than 28 days after the day on which the Scottish Ministers receive a proposal under subsection (5), they must write to the chair of the Bank's board setting out—
- 25 (a) whether the Scottish Ministers will set, modify or (as the case may be) bring to an end a strategic mission proposed by the board under subsection (5),
- (b) the Scottish Ministers reasons for their position on the matter.

## 12 Reporting on missions

- 30 (1) The Bank must send a mission report to the Scottish Ministers—
- (a) within 3 months of receiving a document sent under section 11 (subject to subsection (3)), and
- (b) on the first day of each financial year (subject to subsection (4)).
- (2) A mission report is a report explaining how the Bank intends to respond to the strategic missions that the Scottish Ministers have set for it.
- 35 (3) The Bank need not send a mission report to the Scottish Ministers under subsection (1)(a) in consequence of receiving a document under section 11(3) if the document's only effect is to bring a strategic mission to an end.



- (4) The Bank need not send a mission report to the Scottish Ministers on the first day of a financial year if, on that day—
- (a) it has been less than 3 months since the Bank last sent the Ministers a mission report, or
  - (b) the Bank is due to send the Ministers a mission report under subsection (1)(a) within the next 3 months.
- (5) A mission report may be in any form that the Bank considers appropriate and (in particular) may be part of another document.

#### *Accountability*

### **13 Report on investment performance**

- (1) The Bank must, at the end of each financial year, report to the Scottish Ministers on the performance of its investments.
- (2) In addition, the Bank must report to the Scottish Ministers on the performance of its investments at any other time that the Scottish Ministers direct it to do so.
- (3) The Scottish Ministers may require the Bank to—
- (a) include particular information relating to the performance of the Bank’s investments when reporting under this section,
  - (b) report under this section in a particular manner or format.
- (4) A report under this section may be in any form that the Bank considers appropriate and (in particular) may be part of another document; provided that any requirement under subsection (3) is complied with.
- (5) In this section, references to the Bank’s investments include any loans it has made.
- (6) In this section, “performance” includes non-financial performance.

### **14 Review of performance**

- (1) The Scottish Ministers must, at least once every 5 years, appoint a person to carry out a review of the performance of the Bank and (if it has any) its subsidiaries during the review period.
- (2) A person appointed under subsection (1) must, on completion of the review—
- (a) prepare a report of the review, and
  - (b) send the report to the Scottish Ministers.
- (3) The Scottish Ministers must—
- (a) lay a copy of the report before the Scottish Parliament, and
  - (b) make the report publicly available.
- (4) For the purposes of subsection (1)—
- (a) performance includes—
    - (i) in the case of the Bank, performance in relation to—
      - (A) the Bank’s objects as set out in its articles of association,
      - (B) the Bank’s mission statement,

(C) any national performance framework the Scottish Ministers prepare and publish,

(ii) in the case of a subsidiary, performance in relation to the subsidiary's objects as set out in its articles of association,

5 (b) the review period means—

(i) in relation to the first review, the period beginning with the day on which the Bank is established and ending with the day on which a person is appointed under subsection (1) to carry out the review,

10 (ii) in relation to each subsequent review, the period beginning with the day after the day of expiry of the previous review period and ending with the day on which a person is appointed under subsection (1) to carry out the review.

#### **14A Fair work direction**

(1) The Bank must comply with the direction issued to it under this section.

15 (2) The Scottish Ministers must issue a direction to the Bank about fair work within 1 year of this section coming into force.

(3) The direction—

(a) must—

20 (i) stipulate that the Bank is to seek to promote fair work in exercising its functions,

(ii) set out what fair work means for the purpose 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 the Bank.

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

25 (a) the Bank,

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

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

30 (5) Having issued the direction, the Scottish Ministers must publish it.

#### *Scottish Government financing of the Bank*

#### **15 Power to capitalise**

(1) The Scottish Ministers may capitalise the Bank in such manner, and to such extent, as they consider appropriate.

35 (2) For the purposes of subsection (1), capitalising the Bank means—

(a) taking and paying up shares in the Bank, and

(b) giving it loans.

(3) The Scottish Ministers may attach conditions (including conditions as to repayment or the payment of interest) in respect of any finance provided under this section.

**16 Requirement to get State aid approval before significant capitalisation**

- (1) The Scottish Ministers may not spend more than the sterling amount of the authorised minimum on capitalising the Bank unless they have obtained any approval which, under State aid rules, they are required to obtain before doing so.
- 5 (2) For the purposes of subsection (1), no account is to be taken of administration costs.
- (3) In subsection (1)—
- “authorised minimum” has the meaning given in section 763 of the Companies Act 2006,
- “capitalising the Bank” has the meaning given in section 15(2).

**17 Power to finance**

- 10 (1) The Scottish Ministers may provide such finance as they consider appropriate to—
- (a) the Bank, and
- (b) any relevant subsidiary.
- (2) Finance under this section may be provided—
- 15 (a) to the Bank in the form of grants, loans and guarantees,
- (b) to a relevant subsidiary in the form of loans only.
- (3) The Scottish Ministers may attach conditions (including conditions as to repayment or the payment of interest) in respect of any finance provided under this section.
- (4) In this section, relevant subsidiary means a body that—
- 20 (a) is a subsidiary of the Bank, and
- (b) provides services on a commercial basis only.

**18 Requirement to get State aid approval for financing**

The Scottish Ministers may not provide finance to the Bank unless they have obtained any approval which, under State aid rules, they are required to obtain before doing so.

**19 Meaning of State aid rules**

25 In sections 16 and 18, State aid rules means (subject to paragraphs 1 and 2 of schedule 8 of the European Union (Withdrawal) Act 2018)—

- (a) Articles 107 and 108 of the Treaty on the Functioning of the European Union, and
- (b) any regulation made under Article 109 of that Treaty.

*Modification of entrenched articles of association*

**20 Procedure for modifying entrenched provisions**

If the Bank’s articles of association provide that a provision of the articles may be amended or repealed only in accordance with this section, the provision may be amended or repealed—

- 35 (a) only by a special resolution of the Bank’s members, and

- (b) only if a draft of the special resolution has been laid before, and approved by resolution of, the Scottish Parliament.

### PART 3

#### FINAL PROVISIONS

5     **21     Application of public bodies legislation**

The schedule amends other Acts so that their provisions apply to the Bank.

**22     Meaning of references to the Bank and subsidiaries**

In this Act—

- 10     (a) references to the Bank are to the company established (or to be established) by the Scottish Ministers in fulfilment of their duty under section 1,
- (b) references to a subsidiary are to be read in accordance with section 1159 of the Companies Act 2006.

**23     Ancillary provision**

- 15     (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, or in connection with, or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may make different provision for different purposes.
- (3) Regulations under subsection (1)—
- 20     (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) This section and sections 23 and 25 come into force on the day after Royal Assent.
- 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 subsection (2) may make different provision for different purposes.

**25     Short title**

The short title of this Act is the Scottish National Investment Bank Act 2019.

SCHEDULE  
(introduced by section 21)

APPLICATION OF PUBLIC BODIES LEGISLATION

*Ethical Standards in Public Life etc. (Scotland) Act 2000*

- 5 1 (1) The Ethical Standards in Public Life etc. (Scotland) Act 2000 is amended as follows.
- (2) In section 28(1), before the definition of members' code insert—
- ““member”, in relation to the Scottish National Investment Bank p.l.c., means that company's directors (and “membership” is to be construed accordingly);”.
- 10 (3) In schedule 3, after the entry relating to the Scottish Legal Complaints Commission insert—
- “The Scottish National Investment Bank p.l.c.”.

*Freedom of Information (Scotland) Act 2002*

- 15 2 In schedule 1 of the Freedom of Information (Scotland) Act 2002, after paragraph 92B insert—
- “92C The Scottish National Investment Bank p.l.c.”.

*Public Appointments and Public Bodies (Scotland) Act 2003*

- 3 In schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the entry relating to Scottish Futures Trust Ltd insert—
- 20 “Scottish National Investment Bank p.l.c.”.

*Public Services Reform (Scotland) Act 2010*

- 4 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.
- (2) In schedule 5, after the entry relating to Scottish Local Authorities Remuneration Committee insert—
- 25 “Scottish National Investment Bank p.l.c.”.
- (3) In schedule 8, after the entry relating to Scottish Local Authorities Remuneration Committee insert—
- “Scottish National Investment Bank p.l.c.”.

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

- 30 5 In schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018, after the entry relating to Scottish Legal Complaints Commission insert—
- “Scottish National Investment Bank p.l.c. | ”.

# **Scottish National Investment Bank Bill**

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to require the establishment of the Scottish National Investment Bank and to make further provision in connection with that body.

Introduced by: Derek Mackay  
On: 27 February 2019  
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