

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE AND REGULATORY REFORM (DESIGNATION OF THE UK
GREEN INVESTMENT BANK) ORDER 2013

2013 No. [XXXX]

1. This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order designates the UK Green Investment Bank plc so that the provisions of Part 1 of the Enterprise and Regulatory Reform Act 2013 apply to it. This will ensure Parliamentary oversight of the Bank's objects, facilitate the Bank's independence, enable the Bank to receive financial assistance from the Secretary of State under the Act, and impose reporting and publication requirements on the Bank.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 2(1) of the Enterprise and Regulatory Reform Act 2013 ("the Act") gives the Secretary of State the power to make an Order designating the UK Green Investment Bank for the purpose of sections 3 to 6 of the Act. These sections, respectively, ensure Parliamentary oversight of the Bank's objects, enable the Bank to receive financial assistance from the Secretary of State under the Act, and impose reporting and publication requirements on the Bank.

4.2 This order designates the Bank for the purpose of these sections, and confirms that the Secretary of State is satisfied that the three conditions set out by sections 2(2), 2(3) and 2(5) of that Act are met.

4.3 This Order also confirms that the Bank is wholly owned by the Crown, and, in accordance with section 2(5) of the Act, the Secretary of State has laid before Parliament a copy of the operational independence undertaking provided by the Secretary of State to the UK Green Investment Bank. This is available at Annex A of this document.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom.

6. European Convention on Human Rights

The Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Enterprise and Regulatory Reform (Designation of the UK Green Investment Bank) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 The UK Green Investment Bank has been set up by the Government to facilitate the transition to a green economy and to accelerate private sector investment in green infrastructure projects.

7.2 The Bank, which has £3 billion of initial funding from the Government for the period to March 2015, was formed as a public company in May 2012 and has all the usual powers of a Companies Act company.

7.3 The Bank became fully operational in October 2012 on receipt of State Aid approval from the European Commission, and has since committed a total of £635 million to green infrastructure projects.

7.4 The purpose of this designation order is to seek to ensure that the Bank:

- engages only in 'green' activities;
- contributes to a reduction of global greenhouse gas emissions;
- can operate at arm's length from Government.

7.5 Before designating the Bank, the Act requires the Secretary of State to be satisfied, that, in acting consistently with its objects:

- the Bank would engage only in activities that it considers likely to contribute to the achievement of one or more of the green purposes stated in section 1 of the Act:
 - the reduction of greenhouse gas emissions;
 - the advancement of efficiency in the use of natural resources;
 - the protection or enhancement of the natural environment;
 - the protection or enhancement of biodiversity;
 - the promotion of environmental sustainability;
- the Bank's investment activities, taken as a whole, would be such as the Bank considers likely to contribute to a reduction of global greenhouse gas emissions.

This Order confirms that the Secretary of State is satisfied that these conditions are met by the Bank's Green Objective in Article 3 of the company's Articles of Association (enclosed at Annex B).

7.6 Before designating the Bank, the Secretary of State must also have provided the Bank with an operational independence undertaking and laid this before Parliament. The purpose of the operational independence undertaking is to facilitate the Bank's ability to operate independently, so that it can make investments that it considers appropriate in the light of its statement of objects, at arm's length from Government.

7.7 Where the Secretary of State has made a designation order:

- the Secretary of State may give financial assistance to the Bank, with the consent of Treasury (section 4(1) of the Act);
- the Bank shall be treated as a "quoted company" for the purposes of the Companies Act 2006 (section 5(1) of the Act);
- the directors' reports must include an explanation of the steps which the Bank took to ensure that the company's investment activities, taken as a whole, would be likely to contribute to a reduction of global greenhouse gas emissions and a statement of the directors' views on the likely effect of the company's activities on global greenhouse gas emissions (section 5(2) of the Act);
- the Secretary of State must lay a copy of the UK Green Investment Bank's annual accounts and reports before Parliament (section 6(2) of the Act);
- the Secretary of State, if he/she makes a material alteration to, or revokes, the operational independence undertaking given to the Bank, must lay a copy of the amended undertaking before Parliament, or lay a statement before Parliament reporting the revocation, as soon as practicable after the date of alteration or revocation (section 6(4) of the Act).

8. Consultation outcome

8.1 Prior to the set up of the UK Green Investment Bank, there has been active engagement with a wide range of stakeholders to seek their views. The Government has also invited general comment on the design and implementation of the UK Green Investment Bank via a dedicated email address. There has been further consultation on a wide range of matters for the UK Green Investment Bank, including legislation, through the independent Advisory Group to the Secretary of State for Business chaired by Sir Adrian Montague.

9. Guidance

9.1 This statutory instrument applies to a single company – UK Green Investment Bank plc – and no further guidance is needed.

10. Impact

10.1 A full regulatory impact assessment has not been produced for this instrument as its effect is to designate the UK Green Investment Bank and no impact on the private or voluntary sectors is foreseen by the designation. A regulatory impact assessment was produced for Part 1 of the Enterprise and Regulatory Reform Act 2013. A copy of that assessment is available on the gov.uk website (www.gov.uk) and was placed in the Libraries of both Houses of Parliament.

11. Regulating small business

11.1 This Order relates only to UK Green Investment Bank plc and does not directly affect small business.

12. Monitoring and Review

12.1 The Shareholder Executive is tasked with managing the Government's shareholding, and monitoring the Government's interest, in the bank.

13. Contact

Will Holyoak at the Department for Business, Innovation and Skills Tel: 0207 215 6964 or email: will.holyoak@bis.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A
(OPERATIONAL INDEPENDENCE UNDERTAKING)

1. Unless otherwise defined below, capitalised terms used in this Annex shall have the meaning given to such terms in the Framework Document drawn up by GIB and its shareholder (the “**Framework Document**”).

Undertakings

2. In its capacity as the sole shareholder of GIB, the Shareholder is committed to giving the Board freedom to operate GIB so as to maximise the Green Impact. Subject to the exceptions below, the Shareholder shall not:
 - (A) interfere in day-to-day operational or commercial matters or decision-making by GIB (including, without limitation, those which pertain to its investment activities);
 - (B) give any instruction to GIB:
 - (i) to implement, or prevent GIB from implementing, any specific investment(s) or category of investment(s); or
 - (ii) with respect to the scope or content of GIB’s Investment Criteria or investment strategy; or
 - (C) exercise its rights as shareholder in a manner which is inconsistent with this paragraph 2, or paragraph 6.2(B) or paragraph 6.2(C) of the Framework Document

(together, (A), (B) and (C) being the “**Independence Principles**”).

Exceptions

3. The Independence Principles shall only apply if and to the extent that the activities of GIB are:
 - (A) consistent with the Articles (including with respect to the delivery by GIB of the Green Impact), the Operating Principles, the Strategic Framework, the Financial Principles, and paragraph 6.1, paragraph 6.6(B) and paragraph 10 of the Framework Document; and
 - (B) compliant with the State Aid Requirements and the other specific requirements imposed upon GIB pursuant to the Framework Document.
4. Notwithstanding the Independence Principles, in addition to any matters which are expressly stated to be subject to the prior approval of the Shareholder in the Framework Document, any conduct which is inconsistent with the Articles (including with respect to the delivery by GIB of the Green Impact), the Operating Principles, the Strategic Framework, the Financial Principles or paragraph 6.1, paragraph 6.6(B) or paragraph 10 of the Framework Document shall require the prior approval of the Shareholder.

Annex B – UKGIB – Green Objective

3. The Green Objective

The objects of the company are:

- (A) to carry on the business of a company making, facilitating, engaging in and encouraging investments, lending and related activities (including (without limitation) by or with respect to (i) the lending of money, (ii) the grant or provision of credit or other financial accommodation, (iii) the investment of money in investments and other financial assets (including (without limitation) securities (whether debt or equity in character)) and to hold, sell or otherwise deal with such investments or other financial assets, (iv) the grant or provision of guarantees, security or support or (v) the grant or provision of other financial products (in all of the foregoing cases with or without interest, security or consideration)) which the board considers will, or are reasonably likely to, accelerate, advance or result in the completion, deployment, development, emergence, establishment or expansion of any business, enterprise, industry, infrastructure, project or technology which:
- (i) in respect of each of the foregoing, the board considers will or is reasonably likely to contribute in the United Kingdom to one or more of the following:
 - (a) the reduction of greenhouse gas emissions;
 - (b) the advancement of efficiency in the use of natural resources;
 - (c) the protection or enhancement of the natural environment;
 - (d) the protection or enhancement of biodiversity; or
 - (e) the promotion of environmental sustainability; and
 - (ii) in respect of the aggregate of the foregoing for each financial year of the company taken together with all of its previous financial years, the board considers will or are reasonably likely to contribute to a reduction in greenhouse gas emissions in the United Kingdom and globally.
- (B) to do all other things which the board considers ancillary, incidental or conducive to the attainment of the company's foregoing objects,

and the company shall have any and all powers which the board considers ancillary, incidental or conducive to the attainment of the foregoing objects.