

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 should be contacted for any queries regarding the instrument.

Tel: 0207 215 6964 or email: will.holyoak@bis.gsi.gov.uk

ANNEX A

UK GREEN INVESTMENT BANK PLC: SHAREHOLDER RELATIONSHIP FRAMEWORK DOCUMENT

1. INTRODUCTION

This framework document (the “**Framework Document**”) has been drawn up by the UK Green Investment Bank plc (“**GIB**”) and its sole shareholder, the Secretary of State for Business, Innovation and Skills (the “**Shareholder**”). It describes:

- (A) certain parameters within which GIB is expected to operate;
- (B) certain obligations with which GIB is expected to comply; and
- (C) certain aspects of the relationship between the Shareholder and GIB and the manner in which it is expected that the Shareholder (in its capacity as GIB’s sole shareholder) and GIB will interact with each other, including an undertaking from the Shareholder to ensure the operational independence of GIB (Annex 1).

2. GREEN IMPACT

2.1 GIB’s objects are specified in its articles of association (the “**Articles**”). For the purposes of this Framework Document, the impact of the activities GIB undertakes in compliance with these objects is referred to as the “**Green Impact**”.

2.2 In connection with GIB’s delivery of the Green Impact:

- (A) the Operating Principles, as described in Section 0 (Operating Principles) and defined in paragraph 3.2, are to apply to the conduct of GIB’s activities;
- (B) GIB is to operate within, and conduct its activities in accordance with, a Strategic Framework as described in Section 0 (Strategic Framework) and defined in paragraph 4.2; and
- (C) GIB is to conduct its activities in accordance with the Financial Principles, as described and defined in paragraph 5.1 and 5.2.

3. OPERATING PRINCIPLES

3.1 GIB shall:

- (A) *Sound finances*: seek to:
 - (i) deploy its capital and expertise as a responsible investor; and

- (ii) manage risk to deliver positive financial portfolio returns,

in each case in a manner which will preserve and build GIB's capital base as an institution which is intended to have an enduring Green Impact;

- (B) *Additionality*: seek to operate alongside other market participants so as to introduce and mobilise additional investment that contributes to the Green Impact, where GIB considers it appropriate to do so;

- (C) *Strategic alignment with HM Government*: seek to align its activities with HM Government's green policy objectives, by avoiding duplication; and

- (D) *Overcoming Market Failures*:

- (i) seek to overcome market failures and improve market effectiveness, whilst minimising adverse impacts on competition and trading conditions; and
- (ii) operate consistently with the terms of any EU State Aid approvals applicable to GIB from time to time (the "**State Aid Requirements**").

3.2 The principles described in paragraph 0 (as amended, updated or replaced from time to time) are referred to in the remainder of this Framework Document as the "**Operating Principles**".

4. STRATEGIC FRAMEWORK AND PRIORITY SECTORS

4.1 The Shareholder and the board of directors of GIB (the "**Board**") have, in consultation with each other, agreed that:

- (A) GIB is to conduct its activities in a manner which the Board considers will or are likely to deliver the Green Impact;
- (B) each investment of GIB must be made in accordance with responsible investment criteria the Board shall set from time to time in line with best practice and which are to cover areas such as the environmental and social (including safety) and governance standards of investments (such criteria, as amended, updated or replaced from time to time, the "**GIB Investment Criteria**");
- (C) GIB will, in determining whether and how to pursue specific activities or types of activity, give consideration to the quantifiable and unquantifiable benefits aligned to achieving the Green Impact;
- (D) for the period to and including 31 March 2015, in conducting its investment activities, GIB shall prioritise investments in the following sectors:
 - (i) offshore wind power generation;
 - (ii) waste processing and recycling;

- (iii) energy from waste generation, including gasification, pyrolysis and anaerobic digestion for the production of heat and/or power;
- (iv) non-domestic energy efficiency, including onsite renewable energy generation and heat; and
- (v) (subject to confirmation by the Shareholder and, if required, EU State Aid approval) sectors which support the “Green Deal” policy, which encourages the deployment of energy efficiency schemes in households across the UK

(together (i) to (v) being the “**Priority Sectors**”);

- (E) by the end of the period ending 31 March 2015, GIB should seek to have 80% (or more) of funds committed by it allocated to the Priority Sectors (with any other funds committed to other sectors the Board considers will or are likely to deliver the Green Impact); and
- (F) any individual investment or financial commitment by GIB in excess of £300 million shall require the prior written consent of the Shareholder.

4.2 The strategic framework and priorities described in paragraph 0(as amended, updated or replaced from time to time) are referred to in the remainder of this Framework Document as the “**Strategic Framework**”.

5. FINANCIAL PRINCIPLES, PROCUREMENT AND OTHER POLICIES

Rate of return

5.1 GIB should plan to deliver a minimum 3.5% annual nominal return on total investments, after operating costs (excluding set up costs separately funded to GIB) but before tax.

No borrowing

5.2 GIB shall not incur borrowings (or any analogous obligations) without HM Treasury consent but may incur liabilities in connection with normal business activities, including in respect of guarantees, indemnities or other security granted or insurance provided by GIB.

5.3 The principles described in paragraphs 5.1 and 5.2 (as amended, updated or replaced from time to time) are referred to in the remainder of this Framework Document as the “**Financial Principles**”.

Procurement

5.4 Procurement of works, goods and services shall be based on securing the best value for money and in compliance with applicable procurement law.

Other policies

5.5 In addition to any other policies it considers necessary GIB must have, and conduct its activities in accordance with, a tax policy which has been agreed in writing by the Shareholder.

6. THE SHAREHOLDER RELATIONSHIP

Corporate governance

6.1 From the commencement of investment activities, GIB shall operate a corporate governance framework which, so far as practicable and in the light of the other provisions of this Framework Document or as otherwise may be agreed with the Shareholder, accords with best practice corporate governance. In particular (but without limitation), GIB shall comply with the provisions of the United Kingdom's Corporate Governance Code (the "**Corporate Governance Code**") as it applies to small quoted companies (other than in respect of Section E (Relations with Shareholders)) or specify and explain any non-compliance in its annual report.

Board appointments; senior management

- 6.2 The composition of the Board is a critical factor for the Shareholder. The aim is to secure an environment in which the Shareholder and the Chairman of GIB (the "**GIB Chairman**") (or, if different, the Chair of the Nomination Committee) share a common view about the composition of the Board (including the balance of experience and background) and succession. To this end, the following shall apply from the commencement of investment activities:
- (A) the Board is to consist of no fewer than eight directors;
 - (B) the Chairman and independent, non-executive directors (meaning non-executive directors having the character of independence specified in the Corporate Governance Code) are to constitute a majority of the Board;
 - (C) the Shareholder shall appoint the GIB's Chairman and Senior Independent Director and one senior HM Government official as its representative director (the "**Shareholder Representative Director**") and, subject to the prior written consent of the Shareholder in accordance with the Articles, the Board shall appoint the other directors according to the recommendations of the Nominations Committee;
 - (D) the Shareholder shall consult with the Chairman (or, if different, the Chair of the Nomination Committee) about the identity of each proposed Shareholder Representative Director and the Senior Independent Director before nominating him or her for appointment;
 - (E) the Chairman (or, if different, the Chair of the Nomination Committee) and the Shareholder shall discuss the proposals for appointment and succession made by the Nominations Committee; and
 - (F) the Board shall ensure that suitably rigorous appraisals are made of the effectiveness of the Chairman and the members of the Board.

Remuneration and incentives

- 6.3 The Shareholder expects remuneration arrangements for directors and senior management (including any incentive package) and, as far as possible for a wholly-owned company, the design of performance-related remuneration, to be recommended to the Board by the Remuneration Committee and approved by the Board in line with the guidance of the Corporate Governance Code.
- 6.4 The approval of or agreement to (or material variation or amendment of) the remuneration, the terms and conditions on which such remuneration is to be paid or granted or the terms of employment or engagement of any director or the remuneration of any executive officer that is higher than the remuneration of the highest paid director shall require the prior written consent of the Shareholder in accordance with the Articles.
- 6.5 The Shareholder's interest is primarily in ensuring that remuneration levels:
- (A) are sufficient to attract and motivate high calibre individuals to drive the delivery of the activities and objectives described in this Framework Document;
 - (B) are structured to link a significant proportion of executive directors' remuneration to performance, as measured by the Green Impact made in line with the Operating Principles and the Strategic Framework;
 - (C) are aligned with the objectives set out in this Framework Document;
 - (D) deliver value for money; and
 - (E) take account of remuneration levels within comparable public sector institutions.

Monitoring GIB's performance

- 6.6 The Shareholder shall regularly monitor GIB's performance against the objectives described in this Framework Document, by the following means.
- (A) Quarterly shareholder meetings between the Chairman and representatives of the Shareholder shall be held to provide a forum to review GIB's activities and performance against the objectives described in this Framework Document.
 - (B) GIB will provide reports to the Shareholder containing such information as GIB, in consultation with the Shareholder, deems sufficient to enable the Shareholder to monitor the delivery of the Green Impact in accordance with the requirements of this Framework Document.
 - (C) In addition to the regular shareholder meetings, GIB's directors shall meet representatives of the Shareholder to discuss the affairs of GIB at the Shareholder's request.
- 6.7 The Shareholder may on giving reasonable notice to GIB have such access as is reasonably requested to the books and records and the management of GIB.

Accounting requirements

- 6.8 In producing its accounts in accordance with statutory requirements, GIB shall apply IFRS financial reporting regulations.
- 6.9 GIB will provide the Shareholder with such information as is necessary for the Shareholder to produce its own accounts in respect of GIB.

7. CONFIDENTIALITY

- 7.1 The Shareholder Representative Director shall be authorised to pass to the Shareholder information received in his or her capacity as director of GIB.
- 7.2 Where the Shareholder Representative Director receives information other than in his or her capacity as a director of GIB, and where that information is subject to a duty of confidentiality, he or she shall not be obliged to disclose that information to GIB.

8. REVISION OF FRAMEWORK DOCUMENT

- 8.1 Subject to paragraph 8.4 below, any amendment, update or replacement of any provision of this Framework Document:
- (A) shall be effected by the Shareholder giving notice in writing to GIB; and
 - (B) must be consistent with: (i) the Articles (with regard to the delivery by GIB of the Green Impact); (ii) any State Aid Requirements; and (iii) in respect of any proposed amendment, update or replacement to the Strategic Framework or the Financial Principles, the Operating Principles.
- 8.2 By 31 March 2015 and regularly thereafter, the Shareholder will review and, subject to paragraph 8.4 below, may amend, update or replace the Priority Sectors or the Financial Principles in respect of periods following 31 March 2015 as it deems appropriate.
- 8.3 The Board may submit proposals to the Shareholder to amend, update or replace any element of the Strategic Framework, in particular (but without limitation):
- (A) in circumstances in which the Board considers the proposed amendment, update or replacement will materially improve GIB's ability to deliver the Green Impact or contribute to its Green Impact; or
 - (B) as a result of the Board concluding it will not be possible or practicable to comply with any element of the Strategic Framework.
- 8.4 If the Shareholder proposes to amend, update or replace any element of the Strategic Framework, it shall consult, and seek to reach agreement with, the Board before effecting the relevant amendment, update or replacement.

9. PUBLICATION

GIB shall publish any amendments to this Framework Document (including, in particular, but without limitation, any update, amendment or replacement of the Operating Principles or the Strategic Framework) on its website.

10. LOCATION OF HEADQUARTERS

- 10.1 The registered office and headquarters of GIB shall be established in Edinburgh.
- 10.2 The Board shall obtain the prior approval of the Shareholder before any change to the location of GIB's headquarters.

11. STATUS OF FRAMEWORK DOCUMENT

- 11.1 This Framework Document should be interpreted in the light of the Articles and English company law and is without prejudice to the statutory and other rights and obligations of the Shareholder or GIB.
- 11.2 The Operating Principles, Strategic Framework, Financial Principles, and paragraph 6.1, paragraph 6.6(B) and paragraph 10 of this Framework Document are intended to be part of GIB's constitution for the purposes of the Companies Act 2006.

ANNEX 1 (OPERATIONAL INDEPENDENCE UNDERTAKING)

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

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:

interfere in day-to-day operational or commercial matters or decision-making by GIB (including, without limitation, those which pertain to its investment activities);

give any instruction to GIB:

to implement, or prevent GIB from implementing, any specific investment(s) or category of investment(s); or

with respect to the scope or content of GIB's Investment Criteria or investment strategy; or

exercise its rights as shareholder in a manner which is inconsistent with this paragraph 2, or paragraph 0(B) or paragraph 6.2(C) of the Framework Document

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

Exceptions

The Independence Principles shall only apply if and to the extent that the activities of GIB are:

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

compliant with the State Aid Requirements and the other specific requirements imposed upon GIB pursuant to the Framework Document.

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.