

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Uk Green Investment Bank Plc

Summary and Background

23. This Part of the Act makes provision relating to the UK Green Investment Bank plc.
24. The UK Green Investment Bank plc is a public company established by the Secretary of State under the Companies Act 2006 (“CA 2006”) to facilitate and develop investment in the green economy.
25. The following sections have two main purposes. The first is to ensure that the UK Green Investment Bank plc engages only in activities that contribute to achieving one or more of the statutory ‘green purposes’ and that its investment activities would, taken as a whole, be likely to contribute to a reduction of global greenhouse gas emissions. The second is to require the Secretary of State to provide an undertaking to the UK Green Investment Bank plc in order to facilitate its operational independence.
26. The sections also permit the Secretary of State to provide funding to the UK Green Investment Bank plc on an ongoing basis, as well as imposing certain enhanced reporting and accounting obligations on the Bank upon designation.

Section 1: The green purposes

27. *Subsection (1)* defines the “green purposes” to which the UK Green Investment Bank plc’s activities should be directed. *Subsection (1)* sets out the following green purposes:
 - 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; and
 - the promotion of environmental sustainability.
28. By way of example, the Board of UK Green Investment Bank plc could consider that making investments in offshore wind will reduce greenhouse gas emissions, and that investments in energy from waste generation will promote environmental sustainability.
29. *Subsection (2)* provides that the term ‘greenhouse gas’ is to have the meaning given by section 92(1) of the Climate Change Act 2008, which definition itself follows that used in the Kyoto Protocol.

Section 2: Designation of the UK Green Investment Bank

30. *Subsection (1)* of section 2 introduces a power for the Secretary of State to designate the UK Green Investment Bank plc by order for the purposes of sections 3 to 6, subject to three conditions being met.
31. *Subsections (2)* and *(3)* set out the first two conditions. These require the Secretary of State to be satisfied that the UK Green Investment Bank plc's statement of objects, in its articles, is drafted in terms that will ensure that this company engages only in activities that contribute to achieving one or more of the statutory 'green purposes' stated in section 1 and that its investment activities would, taken as a whole, be likely to contribute to a reduction of global greenhouse gas emissions.
32. *Subsection (5)* sets out the third condition, which is that the Secretary of State must have provided the UK Green Investment Bank plc with an operational independence undertaking and laid this before Parliament. The purpose of the operational independence undertaking is to facilitate the UK Green Investment Bank plc'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.
33. *Subsection (6)* introduces a limitation on the power to designate contained in subsection (1). The Secretary of State may only exercise this power if the UK Green Investment Bank plc is wholly owned by the Crown. *Subsection (7)* provides that an order under subsection (1) cannot be amended or revoked.
34. *Subsection (8)* provides that the power in subsection (1) is subject to the affirmative resolution of Parliament.

Section 3: Alteration of the objects of the UK Green Investment Bank

35. *Subsection (1)* provides that, where the Secretary of State has made an order designating the UK Green Investment Bank plc under subsection (1) of section 2, the UK Green Investment Bank plc may not alter the statement of objects in its articles of association, subject to two exceptions.
36. The first exception is where a court or other relevant authority having the power to do so orders a change to the UK Green Investment Bank plc's articles of association. The second exception is where the Secretary of State has made an order approving the proposed alteration to the UK Green Investment Bank plc's statement of objects.
37. *Subsection (2)* provides a limitation on the power provided in subsection (1)(b). The Secretary of State may only exercise the power to approve an alteration to the statement of the UK Green Investment Bank plc's objects if the two conditions in *subsections (3) and (4)* are met.
38. *Subsections (3)* and *(4)* set out the two conditions. The first condition is that the Secretary of State is satisfied that the statement of the UK Green Investment Bank plc's objects, as altered, continues to be consistent with the green purposes identified in section 1, so that the UK Green Investment Bank plc will continue to engage only in activities that contribute to achieving one or more of the green purposes. The second condition is that the Secretary of State is satisfied that the objects, as amended, will continue 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.
39. *Subsection (5)* provides that an order under this section approving an amendment to the UK Green Investment Bank plc's objects is subject to affirmative resolution of Parliament.

Section 4: Financial assistance

40. Section 4 makes provision with respect to *vires* for funding for the UK Green Investment Bank plc at a time when the Crown owns more than half of its issued share capital.
41. Subsection (1) provides that, where the Secretary of State has made an order designating the UK Green Investment Bank plc under subsection (1) of section 2, the Secretary of State may give financial assistance to the UK Green Investment Bank plc, with the consent of HM Treasury.
42. Subsection (2) clarifies that the financial assistance may be given to the UK Green Investment Bank plc in any form. Subsection (3) provides examples of the forms which the financial assistance may take.
43. Subsection (4) sets out that any financial assistance provided to the UK Green Investment Bank plc may be subject to terms and conditions that the Secretary of State considers appropriate, with the consent of HM Treasury. For instance, there might be a requirement to repay a grant.
44. Subsection (5) provides that HM Treasury may fund loans to the UK Green Investment Bank plc from the National Loans Fund.
45. Subsection (6) provides that this section does not operate to exclude the provision of financial assistance to the UK Green Investment Bank plc by either the Secretary of State or HM Treasury at a time when the UK Green Investment Bank plc is no longer in majority Crown ownership. This may include, but is not limited to, the provision of financial assistance under the Banking Act 2009.

Section 5: Accounts, reports and payments to directors

46. This section provides for the UK Green Investment Bank plc to be subject to certain enhanced obligations under the CA 2006 and to report each year on the contribution of its investment activities to a reduction of global greenhouse gas emissions.
47. Subsection (1) provides that, once the Secretary of State has made an order designating the UK Green Investment Bank plc under subsection (1) of section 2, the UK Green Investment Bank plc shall be treated as a “quoted company”, as defined by section 385(2) of the CA 2006, for the purposes of Chapters 4 and 4A of Part 10, and Parts 15 and 16 of the CA 2006.
48. The application of Chapters 4 and 4A of Part 10 will require the UK Green Investment Bank to comply with the relevant provisions relating to payments to directors of quoted companies inserted by sections 80 to 82 of this Act.
49. The application of Part 15 of the CA 2006 to the UK Green Investment Bank plc gives rise to enhanced obligations such as providing an enhanced business review under section 417(5) of the CA 2006, producing a directors’ remuneration report under section 420 of that Act, ensuring website publication of annual accounts and reports under section 430 of that Act, and complying with the new obligation on a quoted company to move a resolution approving the directors’ remuneration policy under section 439A of that Act.
50. The application of Part 16 of the CA 2006 to the UK Green Investment Bank plc includes an obligation for the auditor to report on the auditable part of the directors’ remuneration report under section 497 of the CA 2006.
51. Subsection (2) of this section provides that, where an order designating the UK Green Investment Bank plc has been made under section 2, each directors’ report prepared by the company under section 415 of the Companies Act 2006 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 6: Documents to be laid before Parliament

52. This section makes provision in respect of Parliamentary oversight of the activities of the UK Green Investment Bank plc.
53. *Subsection (2)* requires the Secretary of State to lay a copy of the UK Green Investment Bank plc's annual accounts and reports before Parliament as soon as practicable after the directors have laid copies of them before the company in general meeting under section 437 of the CA 2006. Under *subsection (1)*, this requirement applies only if, at the date of the general meeting, the Crown owns at least one share in the UK Green Investment Bank plc.
54. *Subsection (4)* requires the Secretary of State, if he/she makes a material alteration to, or revokes, the operational independence undertaking given to the UK Green Investment Bank plc, to 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. Under *subsection (3)*, this requirement applies only if, at the date of the alteration or revocation, the Crown owns more than half of the issued shares in the UK Green Investment Bank plc.