

SCOTTISH NATIONAL INVESTMENT BANK ACT 2020

EXPLANATORY NOTES

THE ACT

The Schedule

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

42. Paragraph 1(3) of the schedule adds the Bank to the list of devolved public bodies in [schedule 3 of the Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). This means that the Bank will need to:
- have a code of conduct for its members, whose compliance with the code will be policed by the Standards Commission for Scotland, and
 - maintain a public register of its members' interests.
43. The Ethical Standards in Public Life etc. (Scotland) Act 2000 imposes requirements in respect of a body's members, by which that Act means the body's office holders. Unlike most of the other bodies that the 2000 Act applies to, the Bank will be a public limited company. In company law the members of a limited company are its shareholders, rather than its office holders. Paragraph 1(2) of the schedule therefore amends the 2000 Act to make clear that where that Act's provisions refer to the Bank's members they are to be understood as referring to the Bank's directors (i.e. its office holders) rather than its shareholders.

Freedom of Information (Scotland) Act 2002

44. Paragraph 2 of the schedule adds the Bank to the list of Scottish public authorities in [schedule 1 of the Freedom of Information \(Scotland\) Act 2002](#). This means that the Bank will be subject to the requirements that Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme for the pro-active publication of information it holds.
45. Being a public authority within the meaning of the Freedom of Information Act also makes the Bank a "Scottish public authority" to which [the Environmental Information \(Scotland\) Regulations 2004](#) apply.
46. In addition, as a public authority within the meaning of the Freedom of Information Act, the Bank is a "public authority" or "public body" for the purposes of the General Data Protection Regulation by virtue of [section 7 of the Data Protection Act 2018](#) (subject to the Secretary of State not making regulations under that section to remove its "public authority" status). The General Data Protection Regulation (also commonly referred to by the acronym "GDPR") is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. There are particular rules applied to bodies classified as "public authorities" (over and above those applied

to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.

Public Appointments and Public Bodies (Scotland) Act 2003

47. Paragraph 3 of the schedule adds the office of non-executive director of the Bank to the list of specified offices in [schedule 2 of the Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#). This means that the Scottish Ministers, when appointing non-executive directors to the Bank's Board, will need to comply with the code of practice on public appointments produced by the Commissioner for Ethical Standards in Public Life in Scotland.

Public Services Reform (Scotland) Act 2010

48. Paragraph 4(2) of the schedule adds the Bank to the list of bodies in [schedule 5 of the Public Services Reform \(Scotland\) Act 2010](#). This means that it is a body in relation to which an order can be made under [section 14 of that Act](#). An order under section 14 of the Public Services Reform Act can (subject to restrictions, and only after the Scottish Parliament has approved a draft of the order):
- modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
 - amend the constitution of a public body.
49. Paragraph 4(3) of the schedule adds the Bank to the list of bodies in schedule 8 of the Public Services Reform Act. This means that the Bank will be subject to the duties to report after each financial year on:
- expenditure (see [section 31 of the Public Services Reform Act](#)), and
 - the steps it has taken to promote and increase sustainable growth and improve its efficiency, effectiveness and economy (see [section 32 of the Public Services Reform Act](#)).

Gender Representation on Public Boards (Scotland) Act 2018

50. Paragraph 5 of the schedule adds the Bank to the list of bodies in [schedule 1 of the Gender Representation on Public Boards \(Scotland\) Act 2018](#). This means that in appointing the Bank's non-executive directors, the Scottish Ministers must give preference to a woman if there are equally qualified candidates of either gender and appointing a woman would result in, or be a step towards, 50% of the directors being women (see [section 4 of the Gender Representation Act](#)). In addition, the Gender Representation Act requires that steps be taken to encourage women to apply to be non-executive directors of the Bank (see [section 5](#)), and further steps to be taken to promote gender balance amongst the Bank's directors if the 50% target has not been reached by particular dates (see [section 6](#)).