

**EXPLANATORY MEMORANDUM TO THE
AFRICAN DEVELOPMENT BANK (TENTH REPLENISHMENT OF THE
AFRICAN DEVELOPMENT FUND) ORDER 2006**

2006 No. [2327]

1. This explanatory memorandum has been prepared by the Department for International Development and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

- 2.1 The proposed Order permits the Secretary of State to make a further contribution of £206,191,098 to the African Development Fund of the African Development Bank pursuant to arrangements that have been made between the African Development Bank and Her Majesty's Government in accordance with Resolution No. ADF/BD/IF/2005/83 of the Bank's Board of Governors dated 4 May 2005
- 2.2 Additionally, the Order permits the Secretary of State to make payment of sums required to redeem any non-interest bearing and non-negotiable notes or other obligations that may be issued or created by him as a result of the arrangements that are to be made by the Government of the United Kingdom and the Bank regarding the payment of the £206,191,098.

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

- 3.1 The draft Order is to be made pursuant to section 11 of the International Development Act 2002. Section 11 applies when the Government becomes bound to make a relevant payment to a multilateral development bank. The section goes on to provide that the Secretary of State can only make the relevant payment to the Bank once the payment has been approved by an order made by him with Treasury approval. But the Secretary of State cannot make such an order until a draft of it has been laid before and approved by the House of Commons.
- 3.2 The purpose of an Order made under section 11 is to allow the Secretary of State to make the relevant payment when the Government is bound to do so. However, the Government will not become bound to make the relevant payment until it has deposited with the African Development Bank an Instrument of Subscription. As section 11 only applies when the Government is bound to make the relevant payment and, at present, it is not so bound, this raises the technical issue of whether the Secretary of State may properly present the draft Order to the House when the Government is not yet bound to make the payment the Order deals with and thus, as yet, has no power to make the Order.

- 3.3 The seeking of Parliamentary approval for the draft Order before the Government is bound is the usual practice in these cases. The Committee has considered this issue previously for example in respect of the draft International Fund for Agricultural Development (Sixth Replenishment) Order 2003 in its Fourth report (HC 126 iv 2002-03) and has concluded that there is no technical reason for the House not to approve the draft order but that it should merely be aware that it is acting, as on occasions in the past, on a Ministerial undertaking that the Order will not be made until the Government is bound. Accordingly the Secretary of State gives his undertaking that no Order will be made in terms of the draft until, on deposit of the Instrument of Subscription, the Government is bound to make the payment. The purpose of the Secretary of State laying the draft Order before the House is to secure the approval of the House before the deposit of the Instrument of Subscription.
- 3.4 The Department respectfully submits that the contents of the draft Order do not require any departure from the Committee's established approach to the exercise of the powers under section 11.

4. Legislative Background

- 4.1 The proposed Order is being made to enable the Secretary of State to contribute further (the UK has contributed funds on ten previous occasions, nine of which are replenishments) to the African Development Fund of the African Development Bank. The purpose of this further contribution, together with contributions pledged by other donors, is to provide the Fund with commitment capacity for its continued lending on highly concessional terms to the poorest countries in the African region over the three-year period, 2005-2007. As stated above, section 11 of the International Development Act 2002 permits the Secretary of State to make relevant payments to multilateral development banks where the Government of the United Kingdom is bound to make such a payment, but that in order to make a payment he must make an order, which has Treasury approval and a draft of which has been approved by the House of Commons.

5. Extent

- 5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 Hilary Benn, the Secretary of State for International Development has made the following statement regarding Human Rights:

In my view the provisions of the African Development Bank (Tenth Replenishment of the African Development Fund) Order 2006 are compatible with the Convention rights.

7. Policy Background

- 7.1 The Department for International Development is responsible for leading the United Kingdom's contribution to promoting development and reducing poverty. The Department's overall objective is the elimination of world poverty. This objective was set out in the 1997 White Paper "Eliminating World Poverty: A Challenge for the 21st Century", and reaffirmed in the 2000 White Paper "Eliminating World Poverty: Making Globalisation Work for the Poor". The Department seeks to further this objective in part through a combination of bilateral programmes and contributions to various international financial institutions such as the African Development Bank.
- 7.2 The African Development Bank is a regional development bank established in 1964. Its purpose is to foster economic growth and co-operation in Africa and to contribute to the acceleration of the process of economic development of its regional members, both collectively and individually. The major regional shareholders are Nigeria, Egypt and South Africa. The major non-regional shareholders are the US, Japan and Germany. The UK is a relatively small shareholder, with a shareholding of 1.68 percent.
- 7.3 The African Development Bank is structured along similar lines to the World Bank, with two main lending windows: the African Development Bank which lends at market rates of interest; and the African Development Fund which lends on highly concessional terms to the less developed members of the Bank. The African Development Fund was established by the African Development Bank in 1972 commencing operations in 1975 and is primarily donor funded. It is replenished usually every three years . Negotiations on the tenth replenishment of the African Development Fund (ADF-X) commenced in February 2004 and were concluded in December 2004 .
- 7.4 Since the creation of the African Development Fund, there have been nine replenishments. The United Kingdom has contributed to these replenishments as follows:
- 1st Replenishment** (1976-1978): £10,000,000
- 2nd Replenishment** (1979-1981): £18,499,554
- 3rd Replenishment** (1982-1984): £24,170,300
- 4th Replenishment** (1985-1987): £30,934,961
- 5th Replenishment** (1988-1990): £57,833,971
- 6th Replenishment** (1991-1993): £71,915,912
- 7th Replenishment** (1996-1998): £70,225,661
- 8th Replenishment** (1999-2001): £98,639,079
- 9th Replenishment** (2002-2004): £121,333,000
- 7.5 As stated above, the purpose of the present Order is to enable the Government to make a contribution to the tenth replenishment of the African Development

Fund of sums totalling £206,191,098. This amount was reached through negotiations with the African Development Bank's Board of Governors.

- 7.6 There are two elements to this £206,191,098 figure – additional contributions of £178,691,098, and an additional incentive contribution of £27,500,000. Under the arrangements in Resolution No. ADF/BG/2005/83 the UK has pledged to make both payments, the second being a contingent contribution on the African Development Bank making progress on harmonisation, transparency and alignment of the Bank's Country Strategy Papers behind regional countries' own Poverty Reduction Strategies. These three areas are covered in the African Development Fund's (ADF X) Action Plan which is annexed to the African Development Fund (ADF X) Donor's Report. A decision on the incentive contribution will be made at the African Development Fund (ADF X) Mid-Term Review scheduled for the autumn of 2006. In accordance with the arrangements both payments are included in the Instrument of Subscription.
- 7.7 The Bank adopted the Tenth Replenishment Resolution (Resolution No. ADF/BG/2005/83) on 4 May 2005. (A copy of Resolution No. ADF/BG/2005/83 has been laid in the House of Commons library together with the ADF-X Donors Report). The United Kingdom's contribution will represent up to 7.5 per cent of the total donor pledges to the Tenth Replenishment of some £2.96 billion. Resolution No. ADF/BG/2005/83 came into effect in September 2005 when Instruments of Subscription reached 30 per cent of the total pledges deposited with the Fund. Although the amount of the United Kingdom's contribution is set out at the end of the resolution, the United Kingdom is not formally bound to make this contribution until the Government has deposited with the African Development Bank an Instrument of Subscription. In accordance with Resolution No. ADF/BG/2005/83 the United Kingdom's contribution will be made in three annual instalments, each in the form of a non-negotiable, non-interest bearing promissory note expressed in pounds sterling and encashable on demand.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

- 9.1 Further information concerning the proposed instrument can be obtained from John Saltford at the Department for International Development via email (j-saltford@dfid.gov.uk) or telephone (020 7023 0145).

Department for International Development
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