

# SCOTTISH NATIONAL INVESTMENT BANK ACT 2020

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## EXPLANATORY NOTES

### THE ACT

#### Part 2 – Operational matters

#### Strategic missions

##### *Section 15 (Setting missions)*

20. Section 15 provides that the Scottish Ministers are to set strategic missions for the Bank. When setting these missions Scottish Ministers are required to issue the Bank with documentation detailing the socio-economic challenges that the Bank is to seek to address through its investments. Investments made under the missions should reflect and be aligned with the Bank's object and ancillary objects.

##### *Section 16 (Requirement to consult in relation to missions)*

21. Section 16 requires that, before setting a new mission for the Bank, or modifying or bringing to an end an existing mission, the Scottish Ministers must conduct a public consultation lasting a minimum period of 40 days. This provision is, however, disapplied for the first set of missions to be set for the Bank.

##### *Section 17 (Proposals from the Bank about its missions)*

22. Provision is also made in section 17 to allow the Bank's board to submit proposals to Scottish Ministers to set new missions or modify or end existing missions. A copy of any mission (or modification of any mission under the section) is to be laid before the Scottish Parliament and published.

#### Accountability

##### *Section 18 (Reporting on Missions)*

23. Section 18 provides that within three months of receiving a document from the Scottish Ministers under section 15 (setting missions) the Bank will report to the Scottish Ministers explaining how the Bank intends to respond to the mission. Section 18 also makes provision for similar reporting each financial year.

##### *Section 19 (Report on investment performance)*

24. Section 19 provides that at the end of each financial year the Bank must report to the Scottish Ministers on the performance of its investments. Scottish Ministers may also request performance reports at any other time during the financial year. Performance in this case includes both financial and non-financial performance such as the delivery of social, environmental and wider economic value.

***Section 20 (Report on gender equality strategy)***

25. Section 20 requires the Bank to prepare a report at least every two years on progress in delivering against its gender equality strategy (see section 13). It further provides that this report must then be laid in Parliament.

***Section 21 (Review of performance)***

26. Section 21 provides that a strategic review of the performance of the Bank and any subsidiaries of the Bank must take place at least every five years and that it is for the Scottish Ministers to appoint a person to carry out this review. A copy of the review will be laid before the Scottish Parliament and published. Section 21 requires that the Bank's delivery against its objects, missions and relevant national performance indicators must be considered as part of the strategic review of performance.

***Section 22 (Equal pay review)***

27. Section 22 requires the Bank to periodically carry out an equal pay review and to report the outcomes this review to the Scottish Ministers. It further provides what this report should contain.

**Fair Work**

***Section 23 (Fair work direction)***

28. Section 23 requires the Scottish Ministers to issue a direction about fair work to the Bank and requires the Bank to comply with the direction. The direction is to set out that the Bank must seek to promote fair work. Furthermore, in issuing a direction, the Scottish Ministers are to define what "fair work" is for the purposes of that direction. The Scottish Ministers are required to consult persons who appear to them to represent the interests of workers and employers in Scotland, and the Bank itself, before issuing the direction.

**Scottish Government financing of the Bank**

***Section 24 (Power to capitalise)***

29. Section 24 gives the Scottish Ministers a power to capitalise the Bank by providing equity or loan capital.
30. Section 25 (Requirement to get State aid approval before significant capitalisation)
31. Section 25 provides that the Scottish Ministers may not spend more than the authorised minimum on capitalising the Bank unless any approvals necessary under State aid rules have been obtained. (Section 28 defines State aid rules.)
32. Under section 763 of the Companies Act 2006, the minimum share capital needed to establish a public limited company is £50,000. Section 16 permits sufficient capitalisation to allow the Scottish Ministers to establish the Bank as a public limited company. However, State aid approval is required to capitalise the Bank to the level which would enable it to fulfil its object and ancillary objects. This approach allows for sufficient flexibility to allow the Bank to be established and resourced so that it is able to undertake the entirety of its functions once State aid approval is given.

***Section 26 (Power to finance)***

33. Section 26 provides that the Scottish Ministers may provide such finance to the Bank as they consider necessary and that this includes taking and paying for shares in the Bank as well as the giving of grants, loans and guarantees.

***Section 27 (Requirement to get State approval for financing)***

34. Section 27 provides that the Scottish Ministers may not provide finance to the Bank by means of a grant unless any approvals necessary under State aid rules have been obtained. (Section 28 defines State aid rules.)

***Section 28 (Meaning of State aid rules)***

35. Section 28 makes provision as to the meaning of State aid rules and ensures that these align with domestic State aid rules following the UK's exit from the European Union.

**Miscellaneous provisions**

***Section 29 (Advisory group)***

36. Section 29 provides that the Scottish Ministers must establish an advisory group to provide them with advice on the objectives, conduct and performance of the Bank.

***Section 30 (Exercise of power to appoint non-executive directors)***

37. Section 30 requires Ministers to consider the desirability of non-executive directors, across the Board as a whole, having experience or knowledge of the issues facing both workers and businesses in Scotland.

***Section 31 (Procedure for modifying entrenched provisions)***

38. Section 31 sets out the procedure for modifying entrenched Articles. It provides that those entrenched Articles of Association mentioned in Chapter 2 of Part 1 (the Bank's Articles of Association on establishment) may only be made by a special resolution of the Bank's members (the Scottish Ministers) and only if that special resolution has been laid before and approved by resolution of the Scottish Parliament.