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Scottish National Investment Bank Bill: consideration prior to Stage 3

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This briefing looks at parliamentary consideration of the Scottish National Investment Bank Bill prior to Stage 3. The aim of the Bill is to require Scottish Ministers to establish the Bank, and gives them powers to capitalise it. It also makes provision for the purpose, objects, ownership and governance of the Bank. The Bill is an enabling bill with much of the detail left to other supporting documents.

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Executive Summary

This Scottish National Investment Bank Bill was introduced in the Scottish Parliament on 27 February 2019. The Parliament's [Economy, Energy and Fair Work Committee](#) was designated as lead committee for parliamentary consideration of the Bill.

The Bill describes the relevant powers of the Bank in broad terms but leaves a lot of the detail to the [Articles of Association](#) (that is to say the constitution of the Bank as a PLC). The Bill does not confer any powers in itself, rather it sets out what the Bank's [Articles of Association](#) will have to say about its powers. The Bill is very much enabling legislation. What the Bill does do is place a duty on Scottish Ministers to establish the Scottish National Investment Bank, as a public limited company, and gives the necessary powers to Scottish Ministers to capitalise the Bank. Scottish Ministers will also be given the power to set the strategic direction of the Bank by the setting of Missions.

At Stage 1 the Economy, Energy, and Fair Work Committee recommended that the general principles of the Bill be agreed. During the Stage 1 debate there was unanimous support for the Bill from across the chamber. However, there was a general sentiment from Members that there was more work to do to get the correct balance of detail in the Bill. The tension in striking the right balance stems from ensuring the intentions of the Bank's Implementation Plan are reflected but at the same time providing enabling legislation that doesn't get caught up in restricting detail.

Stage 2 proceedings took place on 19 November 2019. There were [65 amendments lodged](#) at Stage 2 and 18 of these amendments were agreed. During Stage 2 consideration the Scottish Government offered further discussions, on a number of amendments that were not moved or moved and not agreed, prior to Stage 3. Some of the topics covered in these amendments are likely to return in Stage 3:

- equalities and gender
- board's role in missions
- role of an ethics committee and ethical standards
- financial assistance to a third sector body.

Since Stage 2 proceedings, the Scottish Government has provided additional information and updates on a number of issues. These have included:

- appointment of Chair-designate
- further financial modelling
- arrangements and relationship with Scottish Enterprise
- ethical investments
- minimum ethical standards.

About this Bill

The Bill's introduction and key dates

The [Scottish National Investment Bank Bill](#) ¹ was introduced in the Scottish Parliament on 27 February 2019. It is a Bill for an Act of the Scottish Parliament to require the establishment of the Scottish National Investment Bank and to make further provision in connection with that body. The Parliament's [Economy, Energy and Fair Work Committee](#) was designated as lead committee for parliamentary consideration of the Bill.

The [Bill as introduced and related documents](#) are available from the relevant [Bill page](#) on the Scottish Parliament's website.

The [SPICe briefing on the Bill](#) ² as introduced provides extensive information on the characteristics of – along with the rationale for – a national investment bank, the detail of what the Bill does, and financial implications. It also has a glossary explaining key terminology such as Financial Transactions, Multicriteria Analysis and Patient Capital.

Key dates in the Parliament's consideration of the Bill are set out below:

- Bill introduced - 27 February 2019
- Stage 1 Economy, Energy, and Fair Work Committee [evidence sessions](#) - 7, 14, 21, 28 May; and 4, 11 June 2019
- Stage 1: Economy, Energy, and Fair Work Committee [report published](#) - 4 July 2019
- Stage 1: Cabinet Secretary for Finance, Economy and Fair Work [response to Stage 1 report](#) - 26 August 2019
- Stage 1: [plenary debate](#) - 26 September 2019
- Stage 2: [Economy, Energy, and Fair Work Committee](#) - 19 November 2019
- Stage 2: publication of [Bill as amended](#) ³ - 20 November 2019.

Stage 3 proceedings (final consideration) are scheduled to take place on 21 January 2020.

What the Bill does

The Scottish National Investment Bank Bill, as amended, will require Scottish Ministers to establish the Bank, and gives them powers to capitalise it. It also makes provision for the **purpose, objects, ownership and governance** of the Bank.

The Bill describes the relevant powers of the Bank in broad terms but leaves a lot of the detail to the [Articles of Association](#) (that is to say the constitution of the Bank as a PLC). The Bill does not confer any powers in itself, rather it sets out what the Bank's [Articles of Association](#) will have to say about its powers. The Bill is very much enabling legislation.

What the Bill does do is place a duty on Scottish Ministers to establish the Scottish National Investment Bank, as a public limited company, and gives the necessary powers to Scottish Ministers to capitalise the Bank. Scottish Ministers will also be given the power to set the strategic direction of the Bank by the setting of Missions.

The Bill places a duty on the Scottish Ministers to provide the Bank with its Articles of Association. It also mandates what is to be in the Articles and the circumstances in which certain provisions can be modified. The Bill also makes provision for:

- the annual **reporting and performance review** (every five years) of the Bank
- the Articles of Association to provide that the Bank must prepare and update a **balanced scorecard document**
- the Articles of Association to provide direction for the **appointment and tenure of directors**
- Scottish Ministers to **appoint an advisory group** to provide them with advice on the Bank's objectives, conduct and performance
- **a fair work direction** with which the Bank must comply
- **powers to capitalise and finance.**

The Schedule of the Bill makes provision for the application of public bodies legislation to the Bank.

Section 11 of the Bill gives the Scottish Ministers the power to set the direction of the Bank by the **setting of strategic missions**. These will be set by the sending of a document to the Bank by the Scottish Ministers setting out the socio-economic challenges that the Bank is to seek to address and how the missions will contribute to the Bank's objectives. Scottish Ministers may set, modify and bring missions to an end by the sending of such a document. The proposed document must be consulted publicly for at least 40 days before sending and be laid before the Scottish Parliament. However, there is no further parliamentary procedure attached to this requirement, such as a parliamentary vote to approve the document.

It should be noted that if the Bank were legally challenged, it would be the Articles of Association that would be interpreted in a court of law and not the principles of primary legislation.

Consideration at Stage 1

Committee consideration

The [Delegated Powers and Law Reform Committee](#) considered the delegated powers in the Bill and concluded that there was no need to draw the Scottish Parliament's attention to any of the Bill's provisions ⁴.

The Economy, Energy, and Fair Work Committee was responsible for Stage 1 scrutiny of the Bill. It held six oral evidence sessions:

- [7 May 2019](#) - with members of the advisory group on the Implementation Plan ⁵ for the Bank, including Strategic Advisor Benny Higgins
- [14 May 2019](#) - with Professor Mariana Mazzucato and Laurie Macfarlane, both from the Institute for Innovation and Public Purpose at University College London,
- [21 May 2019](#) - with representatives for Scottish enterprises and workers (Women's Enterprise Scotland, Scottish Enterprise, Mydex CIC, Scottish Council for Development and Industry, Confederation of British Industry; and Scottish Trades Union Congress)
- [28 May 2019](#) - with senior leaders from Scotland's banking and finance sectors
- [4 June 2019](#) - with the Development Bank of Wales and the Scottish Investment Bank
- [11 June 2019](#) - with the Cabinet Secretary for Finance, Economy and Fair Work, Derek Mackay MSP.

Committee recommendations

The [Economy Committee's stage 1 report](#) ⁶ recommended that the general principles of the Bill be agreed to. However, the Committee highlighted a number of areas where they would like further consideration from the Scottish Government. These included:

- consideration of how the importance of non-financial returns can be anchored in the Bill
- better indication of how the Bank's financial and non-financial returns are to be evaluated and whether and how the balanced scorecard will feature
- reflection on the wording used for the objects of the Bank as set out in section 2 of the Bill and how that matches with the vision set out in the Implementation Plan and elsewhere
- consideration of how the Parliament should be consulted on and able to meaningfully inform the process by which the Bank's missions are formulated and refined – and the mechanism by which that might be achieved

- consideration of how the Advisory Group could be reflected in the Bill and clarification that its role is to advise Scottish Ministers as the sole shareholder of the Bank
- clarification of the approach to stimulating demand and how this is to be resourced
- consideration of whether there is a case for including the Bank's ethics committee on the face of the Bill
- specifying what action it will take to work in collaboration with local authorities in the interests of SNIB serving the whole country.

The Scottish Government's [written response](#)⁷ to the Committee's stage 1 report set out responses to each each of the Economy Committee's recommendations.

Stage 1 debate

The Stage 1 debate took place on [26 September 2019](#)⁸. There was **general support for the Bill from all parties across the chamber**. However, there was a general sentiment from Members that there was more work to do to get the correct balance of detail in the Bill. The tension in striking the right balance stems from ensuring the intentions of the [Bank's Implementation Plan](#)⁵ are reflected but at the same time providing enabling legislation that doesn't get caught up in restricting detail.

Members highlighted several areas of the Bill as needing further consideration. At a cross-party level common themes included:

- ethics and equalities
- implementation of missions and the input of parliament to these
- budget, including set-up and running costs.

Consideration at Stage 2

Amendments

Stage 2 proceedings took place on 19 November 2019. Documents detailing the amendments can be [accessed on the Bill web page](#). There were [65 amendments lodged](#) at Stage 2.

- 15 were agreed to without division
- 3 were agreed to by division
- 19 were disagreed to by division
- 4 were moved and, no member having objected, withdrawn
- 24 amendments were not moved.

The above consideration was followed by publication of the [Bill as amended at stage 2](#).⁵

Changes from Stage 1 to Stage 2

This briefing does not attempt to deal with all of the amendments lodged. Instead, it discusses the main issues associated with the Bill, and how they have progressed through Stage 1 and Stage 2 consideration.

Proposed **amendments that were agreed** included:

- the Bank's vision, as detailed in the [Implementation Plan](#), must now be included in the articles of association (*amendment 16*)
- inclusion of ancillary objects on: social wellbeing (*amendment 3*); environmental wellbeing and the transition required to meet the net-zero emissions target (*amendment 4*); and promoting the just transition principles (*amendment 26*). Ancillary objects advance the main object further and allow for aspects to be clearly stated in order to avoid any ambiguity
- for reporting and review the articles of association must provide that the Bank must prepare a balanced scorecard (*amendment 32*). A balanced scorecard approach reports on the financial performance as well as on economic impact over time, including social, environmental and ethical returns.
- in appointing non-executive directors, ensuring that non-executive directors (as a whole) have experience or knowledge of issues facing workers and businesses in Scotland. In considering this experience or knowledge, Scottish Ministers should consult with trade unions and businesses in Scotland (*amendment 65*)
- Scottish Ministers must appoint an advisory group to advise the Scottish Government on the Bank's objectives, conduct and performance (*amendment 67*)
- around strategic missions (setting and modification)
 - the need for a statement outlining how strategic missions will contribute to the Bank's objectives (*amendment 9*)
 - before sending the Bank a document to set, modify, or end missions Scottish Ministers must consult publicly on their proposals (*amendment 10*)
 - Scottish Ministers must lay before the Parliament a statement describing how consultation responses affected the terms of the document sent to the Bank (*amendment 11*)
 - the Bank's board may submit proposals to set, modify, or end strategic missions (*amendment 43*)
- performance aspects are now more reflective of non-financial performance and any national performance framework (*amendments 68 and 45*)
- a need to issue direction around Fair Work with which the Bank must comply. In developing direction Scottish Ministers must consult with the Bank and those that represent employers and workers in Scotland (*amendment 47*).

Issues outstanding

During Stage 2 consideration the Scottish Government offered further discussions, on a number of amendments that were not moved or moved and not agreed, prior to Stage 3. Some of the topics covered in these amendments are likely to return in Stage 3.

Equalities and gender

Amendments 12 and 44, lodged by Jackie Baillie MSP, were both disagreed to. She stated that she was willing to work with the Cabinet Secretary to find consensus on these areas for Stage 3.

- 12 - the Bank must prepare an equality strategy. This should set-out how investments impact men and women differently. And show how the Bank will ensure gender equal outcomes and investments, advance a more gender equal Scotland throughout the Bank's missions, and advance gender equality through staffing and recruitment.
- 44 - review of performance should include performance against the Bank's equality strategy.

Amendment 46 about equalities was disagreed to but the Scottish Government offered further discussions with Jackie Baillie MSP on this prior to Stage 3. This amendment stipulated that the Bank must collect information, disaggregated by gender, in relation to the Bank's performance. It also provided that gender information should be evaluated by protected characteristic.

Board's role in missions

The Cabinet Secretary expressed that he was willing to work with Dean Lockhart MSP on amendment 41 (not moved). This amendment stipulated that before modifying the strategic missions document, the Scottish Ministers must consult, and reach agreement with, the Bank's board.

The Bank's objectives and strategic missions

While amendment 9 - on the need for a statement outlining how strategic missions will contribute to the Bank's objectives - was agreed, the Cabinet Secretary expressed that he would like to work on the wording of this amendment for Stage 3 .

Role of an ethics committee and ethical standards

Andy Wightman MSP brought amendment 20, which was disagreed to. This provided that the articles of association must require the Bank to have an investment and ethics committee. A similar amendment (38) was also introduced in the name of Rhoda Grant (not moved). It is likely that the role of an ethics committee will be revisited in Stage 3.

Amendment 33, introduced in the name of Rhoda Grant, would require the bank to prepare a minimum ethical standards document. This amendment was moved and, no member objecting, withdrawn. The Cabinet Secretary in response to this amendment stated that

“ The Government will want to give a clear steer to the bank on what it feels should inform that ethical statement; to that end we have commissioned the Ethical Finance Hub to prepare advice based on best industry practice. ”

Economy, Energy and Fair Work Committee 19 November 2019 [Draft], Derek Mackay, contrib. 83⁹

Tax avoidance and evasion

Amendment 34 introduced in the name of Neil Findlay MSP, was disagreed to. This sought to ensure that the articles of association must provide that the Bank may not give financial assistance to a company which enters into tax avoidance or evasion. Neil Findlay MSP stated that he was open to discussions with the Cabinet Secretary to progress this issue or otherwise he would lodge similar amendments in Stage 3.

Financial assistance to a third sector body

Amendment 36, introduced by Jackie Baillie, about working with the third sector, was not moved. However, the Cabinet Secretary indicated that he was willing to work with her on the wording of this for Stage 3. This amendment sought to clarify for the avoidance of doubt that the articles of association may provide that the Bank may give financial assistance to social enterprises and those registered under the Co-operative and Community Benefit Societies Act 2014.

Additional information

Since Stage 2 proceedings, the Scottish Government has provided additional information and updates on aspects related to the Bank via the Parliament's [Economy, Energy and Fair Work Committee](#). These updates and additional information are explored below.

Appointment of Chair-designate

A [letter from the Cabinet Secretary](#) ¹⁰ on the 8 January 2020 confirmed that:

“ the process for the recent appointment of Willie Watt as Chair-designate of the Scottish National Investment Bank followed the Ethical Standards Commissioner’s Code of Practice for Ministerial and Public Appointments in Scotland as outlined in my letter of 16 May. I can also confirm that, as part of that process, the required ‘Fit and Proper Person’ tests were completed satisfactorily for all candidates.”

Further financial modelling

A [letter from the Cabinet Secretary on the 10 January 2020](#)¹¹ provided an update on further financial modelling conducted since the Financial Memorandum was published in February 2019 and reflects subsequent progress made in operational planning for the Bank. In particular it takes into account an anticipated profile of returns on investments which will transfer into the Bank once established, including the precursor Building Scotland Fund. The financial modelling examines a 50 year period.

The key findings of the 50 year profile model, based on assumed forecasts, are that:

- The Bank is projected to make cumulative investments of £17.5 billion. This is investment made directly by the Bank and does not account for investment leveraged from other sources.
- As a result, the initial £2 billion capitalisation would be recycled across the Bank's portfolio over 8 times across the 50 year period, including the initial investment.
- The Bank is projected to make a total profit after tax of £2.8 billion over the fifty years. The latest version of the financial modelling also projects a total required Scottish Government contribution to the Bank's operating costs of around £17 million.

Arrangements and relationship with Scottish Enterprise

The [letter from the Cabinet Secretary on the 10 January 2020](#)¹¹ stated that the Scottish Government and Scottish Enterprise have been working together to co-design a transition framework for the transfer of relevant assets, business and people from SE's Scottish Investment Bank to the Bank. It is not clear what the final timetable for the transitional period will be, apart from the fact that it will be agreed together by the Bank, Scottish Enterprise and the Scottish Government.

The [letter](#)¹¹ highlights that the initial transition stage will see the new Bank maximise its impact on delivering transformational large scale and mission-led investment activities, with SE providing specialist skills around early stage capital. Subsequent stages will see wider relevant investment activity transition to the Scottish National Investment Bank from Scottish Enterprise. By the end of this period, all relevant business will have transitioned from Scottish Enterprise to the new Bank.

Committees/ethical investments

In his [letter](#)¹¹, the Cabinet Secretary re-emphasises his points from Stage 2 that he did not think providing for an ethics committee in legislation was desirable on grounds of both effectiveness and flexibility. However, that he was sympathetic to the intention behind the amendments and would therefore bring forward amendments for consideration at Stage 3 which provide for a remit for the Bank's Board, but not prescribe a structure for the Bank with the attendant effectiveness and flexibility issues.

Minimum ethical standards

The [Cabinet Secretary's letter](#)¹¹ sets out planning for the development of the Bank's 'minimum ethical standards', including the role of Ministers. And notes that the Scottish Government would expect the Bank to make its minimum ethical standards publicly available.

To allow flexibility and for the Bank to have ownership the Scottish Government does not support the setting out of minimum ethical standards in primary legislation or otherwise in a document which requires parliamentary approval for any changes to it. The Cabinet Secretary states:

“ The Bank will use its minimum ethical standards when making investment decisions. Investment managers will recommend investments in line with the standards. Recommendations for investment in 'restricted' activities or sectors will be considered by the investment decision-making body (such as an investment committee) which will, in turn, be able to escalate an investment decision should it require additional oversight. Ultimately the Board will have responsibility for ensuring that the Bank's investment decision-making is in line with its minimum ethical standards (and other requirements) and that these remain fit for purpose. ”

The Shareholder Framework document will set out Scottish Ministers' expectations in respect of the Bank's minimum ethical standards.

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