EXPLANATORY MEMORANDUM TO

THE ASIAN INFRASTRUCTURE INVESTMENT BANK (IMMUNITIES AND PRIVILEGES) ORDER 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

The Asian Infrastructure Investment Bank (Immunities & Privileges) Order 2015 ("the Order") confers the legal capacities of a body corporate on the Asian Infrastructure Investment Bank ("the Bank") and grants immunities and privileges to the Bank and its officers and employees. The Bank is an international organisation established by the Asian Infrastructure Investment Bank Agreement ("the Agreement"), done in Beijing 29th June 2015.

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

The commencement provision provides for two alternative dates on which the Order is to come into force. The Order will come into force on the day after the day on which it is made, unless the United Kingdom has not become a member of the Bank by this date, in which case the Order will come into force on the day on which the United Kingdom becomes a member of the Bank. This is necessary because the date on which the United Kingdom will become a member of the Bank is not yet known. The United Kingdom will become a member of the Bank on the date on which the Agreement enters into force providing it has ratified the Agreement on or before the date of entry into force.

4. Legislative Context

4.1 Section 1 of the International Organisations Act 1968 ("the 1968 Act") allows Her Majesty, by Order in Council, to confer on an international organisation, of which the United Kingdom (and any other sovereign Power) is a member, the legal capacities of a body corporate and to grant certain immunities and privileges to the international organisation and its officers and employees.

4.2 Section 10 (1) of the 1968 Act provides that no recommendation shall be made to Her Majesty in Council to make the Order unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 However, some provisions of the instrument do not extend to, or apply in, Scotland. A separate Scottish Order in Council has been prepared to deal with those provisions within the legislative competence of the Scottish Parliament and has been laid before the Scottish Parliament.

6. European Convention on Human Rights

The Minister of State at the Foreign and Commonwealth Office, Rt Hon Grant Shapps MP has made the following statement regarding Human Rights:

In my view the provisions of The Asian Infrastructure Investment Bank (Immunities and Privileges) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 The Bank is a new multilateral investment bank which will invest in large-scale infrastructure projects across Asia to improve economic development and growth potential in the region. The Bank is being established to address the shortage of infrastructure investment in Asia. The definition of Asia is set out in Article 1 of the Agreement, as the geographical regions and composition classified as Asia and Oceania by the United Nations. It is expected that the Bank will focus largely on investment in infrastructure sectors such as transport, energy and water across members of the bank from that region. The United Kingdom has actively promoted closer political and economic engagement with the Asia region and is forging links between the United Kingdom and fast growing Asian economies. Joining the Bank is a further step in the Government's plan to build a closer political and economic relationship with the Asia region, in order to maximise opportunities for British businesses.

7.2 The Bank will become fully operational when at least ten members, representing not less than 50% of total capital have ratified and the Bank is confident that this will occur by the end of 2015. It is therefore important that the United Kingdom ratifies the Agreement early to become a full member and contribute fully to early discussions. There are 57 prospective founder members; 51 have signed the Agreement and one has already ratified (Myanmar), with Georgia and Singapore close to ratifying.

7.3 The United Kingdom will make a capital contribution of $3.054 billion (around £2 billion) to the Bank. 20% of this contribution will be paid in capital, made in five equal annual instalments of $122 million (around £80 million), with the first due in the financial year 2015-2016; the remaining 80% of the contribution will be in the form of callable capital.

7.4 The conferral of legal capacity and immunities and privileges set out in Chapter IX of the Agreement is necessary to enable to the Bank to function as an international organisation in the United Kingdom. Article 44(2) of the Agreement requires that each member of the Bank shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in Chapter IX and shall inform the Bank of the action which it has taken. This Order is required to ensure that the United Kingdom can fully comply with its obligations under Chapter IX of the Agreement.

7.5 Her Majesty's Treasury has policy responsibility for the Bank. The Agreement is being laid before Parliament in advance of ratification by the United Kingdom under the Constitutional Reform and Governance Act 2010.

7.6 Chapter IX of the Agreement requires that the Bank have legal capacity in order that the Bank can enter into contracts; acquire and dispose of movable and immovable property; institute and respond to legal proceedings; and take such other action as may be necessary or useful for its purposes and activities. It also requires the grant of immunities and privileges to the Bank (including limited immunity from jurisdiction and inviolability) and its officers and employees (including official act immunity from jurisdiction and tax exemption).

7.7 In order for Her Majesty's Government to give effect to the obligations under Chapter IX of the Agreement it is necessary to make this Order alongside the Order of the Scottish Government.

7.8 This Order:

7.8.1 Confers the legal capacities of a body corporate on the Bank;

7.8.2 Provides for immunity from suit and legal process for the Bank and its Governors, Alternative Governors, Directors, Alternate Directors, the President, Vice-Presidents, officers, employees and experts engaged on a mission for the Bank when they are acting on behalf of or in the course of working for the Bank. This immunity may be waived by the Bank. Furthermore, tax may not be levied on the salaries of such persons, unless they are British nationals.

7.8.3 The Bank does not enjoy immunity from suit and legal process in respect of civil actions in connection with the raising or borrowing of funds, guaranteeing obligations or buying, selling or underwriting the sale of securities if it has established an office in the United Kingdom, or if it has issued or guaranteed securities in the United Kingdom or if the Bank has appointed an agent to accept service of process.

7.8.4 Provides that the property and assets of the Bank are immune from suit and legal process in respect of seizure, attachment or execution before final judgment against the Bank; and from search, requisition, confiscation,

expropriation or any other form of taking or foreclosure by the executive or pursuant to legislation.

7.8.5 Provides that the archives and premises of the Bank are inviolable.

7.8.6 Provides that the Bank is exempt from all taxation on its official activities, assets, property, income, operations and transactions.

7.8.7 Provides that Bank has relief from non-domestic rates on its premises.

7.8.8 Provides that the Bank is exempt or has relief from duties on the importation of goods and publications for its official purposes and other prohibitions and restrictions on imports or exports of any goods for official purposes.

7.8.9 Provides that the Bank has relief from:

7.8.9.1 car tax on any vehicle ;

7.8.9.2 value added tax on goods and services supplied or used;

7.8.9.3 duties or value added tax on the importation of hydrocarbon oil; and

7.8.9.4 Insurance Premium Tax,

where such taxes or duties are to be paid in the exercise of, or for items, goods or services used, for official duties.

7.9 These immunities and privileges are based on those previously granted to other development banks, such as the European Bank for Reconstruction and Development and the African Development Bank.

8. Consultation outcome

8.1 No external consultation was undertaken as his Order implements provisions of an international agreement to which the United Kingdom will be obliged to give effect as a matter of international law once the agreement enters into force.

9. Guidance

9.1 No guidance has been produced for this Order.

10. Impact

10.1 There is no impact on business, charities or the voluntary sector in the United Kingdom.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 An Impact Assessment has therefore not been prepared for this Order.

11. Regulating small business

The legislation does not apply to small business in the United Kingdom.

12. Monitoring & review

No provision for review of this Order is made because the Order implements the provisions of an international agreement to which the United Kingdom will be obliged to give effect once the agreement enters into force; and because the Order in part relates to taxation. The administration of the immunities and privileges will be undertaken by the Protocol Directorate of the Foreign and Commonwealth Office.

13. Contact

Philip Dixon at the Foreign and Commonwealth Office, Tel: 020 7008 3055 or email: Philip.Dixon@fco.gov.uk, can answer any queries regarding the instrument.