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Justice for the Planet

AMENDMENT TO PART 1 OF THE ENTERPRISE AND REGULATORY REFORM BILL 2012 ESTABLISHING THE GREEN INVESTMENT BANK:

Duty to assess impact on the Climate Change Act 2008

Briefing note:

This briefing contains a recommended amendment to Part 1 of the Enterprise and Regulatory Reform Bill 2012 establishing the Green Investment Bank (the Bill). The Bill does not contain any mechanisms to help ensure that the GIB will always pursue its investment activities in ways that enhance, or do not undermine, the achievement of carbon budgets and targets under the Climate Change Act. This poses significant risks that the GIB could in future pursue an investment profile that that did not align with emission reduction trajectories recommended by the Committee on Climate Change. This risk would be greatly magnified if the Bank is one day wholly or partially privatised. The amendment that follows is therefore partly about 'future proofing' the GIB.

In its current form, clause 1 of the Bill defines the green purposes of the GIB in extremely broad terms and fails to ensure that the Bank's activities will be truly green. One of the statutory purposes is the reduction of greenhouse gas emissions. However, there is nothing to prevent the Bank from funding a project or series of projects that result in a significant volume or intensity of greenhouse gas emissions provided the projects validly fall under one of the other green purposes in clause 1, such as advancement in the efficiency of the use of natural resources.

The GIB is not a policy making institution and there is high value in a legislative amendment to force longer term assessments of the climate impacts of its investment activities, and to help ensure that the projects it supports under all the 5 statutory purposes will, as a whole, enhance the achievement of statutory carbon budgets and reduction targets. The amendment can reduce the risk of the Bank deciding to fund high carbon investments in the future, while increasing the overall ambition of the GIB's investment portfolio.

The reports and advice of the Committee on Climate Change (CCC) contain the best source of advice on emissions projections and trajectories, and in some cases are quite explicit about the role of particular technologies or activities and their emissions profiles. In addition to reports on progress, the GIB should be required to have regard to any other relevant advice the Secretary of State may request from the CCC under section 38 of the Climate Change Act 2008, which could include where the Secretary of State requests the CCC to advise on whether technologies or investments being considered by the GIB are compatible with carbon budgets.

An advantage of requiring recourse to the work of the CCC is that this can assist the GIB to remain in line with the Climate Change Act long into the future. By requiring the Bank's overall investment portfolio to increase the likelihood of carbon budgets and long term reduction targets being met, the amendment enshrines an important level of climate ambition for the Bank that is currently lacking on the face of the Bill. Creating a procedural duty for the Board to have regard to the reports of the CCC can also help the GIB to defend the merits of its decisions. Additionally, the amendment would also help the GIB to consider the long term economic viability of specific technologies in an increasingly carbon constrained world.

The amendment that follows would establish a link with the Climate Change Act 2008 and would help guide the scope of the purposes in clause 1 of the Bill. It is important to stress that, legally, the amendment would in no way prevent the Bank from supporting some green projects that result in GHG emissions, provided that the investment portfolio, taken as a whole, served to reduce emissions. The legal effects of the amendment include:

i) placing a legal duty on the Board to assess the impact of the Bank's investment strategy on the Climate Change Act;

ii) a duty on the Board to have regard to the advice and reports of the Committee on Climate Change in performing this assessment, and

iii) preventing the Board from adopting or amending an investment strategy unless it is itself satisfied that the implementation of the proposed investment portfolio will increase the likelihood of UK carbon budgets and targets being met. The amendment has been constructed with a careful view to ensuring that the non-climate purposes in section 1(b) to (e) remain valid and that the Bank remains free to pursue environmental benefit beyond climate change alone.

So as not to compromise the internal logic of the Bill, we consider that the amendment would best exist as a new clause following clause 1. However, if desired, an alternative would be to initially introduce the amendment in Parliament in the form of additional subsections to the existing clause 1.

ANNEX 1

AMENDMENT: (version 1.3)

After clause (1) ("**The Green Purposes**") insert the following new clause:

"Section 2 - Interpretation of the Green Purposes - Duty to assess impact on the Climate Change Act 2008

(1) In interpreting the purposes in section (1)(1)a) to e), it is the duty of the Board of the UK Green Investment Bank to assess whether the implementation of its investment strategy, or similar document outlining or amending the proposed investment portfolio, will as a whole, increase the likelihood of achieving carbon budgets and greenhouse reduction targets under the Climate Change Act 2008.

(2) In subsection (1), whether or not an investment strategy will increase the likelihood of achieving carbon budgets and greenhouse gas reduction targets shall be assessed compared to a scenario where the identified investments or investment categories did not proceed.

(3) In undertaking the assessment required under subsection (1), it is the duty of the Board of the UK Green Investment Bank to have regard to the advice and reports of the Committee on Climate Change required under sections 34, 36, and 38 of the Climate Change Act 2008.

(4) The Board must not make a decision to adopt or amend its investment strategy or similar document described in subsection (1), unless it is satisfied, as a result of the assessment in subsection (1), that the proposed investment portfolio will, as a whole, increase the likelihood of achieving carbon budgets and greenhouse gas reduction targets under the Climate Change Act 2008.

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