LEGISLATIVE CONSENT MEMORANDUM

ENTERPRISE AND REGULATORY REFORM BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Enterprise, Trade and Investment, is:

   "That this Assembly agrees that the provisions in the Enterprise and Regulatory Reform Bill, as amended in Committee in the House of Commons, dealing with the UK Green Investment Bank and payments to directors of quoted companies, should be considered by the United Kingdom parliament."

Background

2. This memorandum has been laid before the Assembly by the Minister of Enterprise, Trade and Investment under Standing Order 42A(2). The Enterprise and Regulatory Reform Bill, was introduced in the House of Commons on 23 May 2012. The latest version of the Bill can be found at:

   http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html

Summary of the Bill and its policy objectives

3. The provisions in the Bill relating to the UK Green Investment Bank have three main purposes:

   - to ensure the Bank engages only in activities that contribute to achieving green purposes;

   - to require the Secretary of State for Business, Innovation and Skills to provide an undertaking to facilitate the Bank's operational independence; and

   - to provide powers for the Secretary of State for Business, Innovation and Skills to fund the company.

4. The Bill will simplify business regulation and includes provisions with the aim of addressing the disconnect between directors' pay and long-term company performance, by giving shareholders of UK quoted companies binding votes on directors' remuneration. The main policy proposals are:

   - an annual binding (rather than advisory) vote on the company's future remuneration policy;

   - an increased level of support for votes on future remuneration policy;

   - an annual advisory vote on how remuneration policy was implemented in the previous financial year; and

   - a binding vote on exit payments above one year's salary.

Provisions which deal with a Devolution Matter

5. The provisions will promote the implementation of environmental policy and change NI company law, which are both transferred matters.

Reasons for making the Provisions

6. If the provisions as outlined are agreed by the Assembly, it will give the UK Green Investment Bank the statutory authority to operate in NI, and mean that Northern Ireland companies will remain on the same legislative footing as companies elsewhere in the UK.

Reasons for utilising the Bill rather than an Act of the Assembly

7. Enacting the provisions in respect of the UK Green Investment Bank and directors' pay by means of UK Bill will ensure that the relevant law is updated in NI at the same time as it is updated elsewhere in the UK, precluding the development of a legislative gap and the administrative and regulatory difficulties that could follow. This legislative consent motion is the most effective legislative vehicle for updating NI law in this respect.

Consultation

8. Prior to the set up of the UK Green Investment Bank, there has been active engagement with a wide range of stakeholders to seek their views. This has taken the shape of face-to-face meetings, roundtable discussions and one-to-one interviews to listen to the green, financial and business communities. The Government has also invited general comment on the design and implementation of the UK Green Investment Bank via a dedicated email address. There has been further consultation on a wide range of matters for the UK Green Investment Bank, including legislation, through the Advisory Group to the BIS Secretary of State chaired by Sir Adrian Montague.

9. Details of the consultation to date on directors' pay are considered in Annex A.

Human Rights and Equality

10. In relation to directors' pay, no Convention rights are engaged and there are no differential impacts as regards equality and good relations. The UK Green Investment Bank is not expected to have an impact on equality and diversity - race, religion or belief, disability, sex, age, gender reassignment, pregnancy and maternity, or sexual orientation - and is compatible with Article 1 of the First Protocol of the European Convention on Human Rights.

Financial Implications

11. There are no financial implications for NI Departments. The UK Green Investment Bank will receive £3 billion of initial funding from the UK Government to 2015.

Summary of Regulatory Impact

12. As regards the changes to directors' pay, the direct costs to NI quoted companies, of which there are few, will be negligible and will result largely from increased engagement with shareholders.

13. The objective of the UK Green Investment Bank provisions is to overcome market failures and barriers in financial markets that deter private sector investors from financing green projects. They do not impose any general obligations on businesses in Great Britain or Northern Ireland.

Engagement to date with the Committee for Enterprise, Trade and Investment

14. The committee were informed of the UK Government's review of corporate governance, which included executive remuneration, in October 2010.

15. A letter providing the committee with information on the legislative consent motion issued on 6 September 2012.

Conclusion

16. The view of the Minister of Enterprise, Trade and Investment is that in the interests of good government, ensuring legislative parity between companies in NI and elsewhere in the UK, and ensuring that NI business sees the benefit of the UK Green Investment Bank, that so far as the provisions of the Bill deal with a devolution matter they should be considered by the UK Parliament.

Department of Enterprise, Trade and Investment
24 September 2012

Annex A

Directors' Remuneration – Consultation

1. The proposed changes to the governance of executive pay form part of a broader review by the UK Government of corporate governance. The first stage of this review took the form of a 2010 consultation on corporate governance ("A Long-Term Focus for Corporate Britain"), in which the Department for Business, Innovation and Skills (BIS) considered the issue of directors' remuneration. The majority of respondents to the 2010 consultation agreed that levels of executive pay had become an issue, and that there was often no obvious correlation with performance.

2. The issue of directors' pay was considered again in September 2011, the Department for Business, Innovation and Skills (BIS) issued a UK-wide discussion paper on executive pay, seeking views on how the link between pay and performance could be strengthened.

3. This was followed by an announcement from the Secretary of State for Business, Innovation and Skills on 23 January 2012, which set out measures to address issues with the corporate framework for executive pay, including: greater transparency on pay; more shareholder powers; increasing the diversity of boards and remuneration committees; and promoting best practice by working with business and investors.

4. In a March 2012 UK-wide consultation, the UK Government then provided details of how it proposed to enhance the voting rights of company shareholders, to enable them to have greater influence over executive pay.

5. Responses to the September 2011 and March 2012 exercises indicated broad support for reform of directors' remuneration, and for increased clarity and shareholder engagement. A substantial number of the business and investor respondents to the March 2012 consultation supported a binding vote on future pay policy, noting that it would promote better engagement between companies and shareholders, and help to make more transparent the link between corporate strategy and pay policy. These exercises were both UK-wide and my officials are advised that there were no specific comments or responses from NI-specific bodies.

6. Having considered responses to the March 2012 consultation, the Secretary of State for Business, Innovation and Skills issued a statement on 20 June 2012 which set out in some detail the UK Government's proposals on empowering shareholders on the issue of directors' pay, and improving transparency.