HOUSE OF LORDS

Library Note

Commonwealth Development Corporation Bill (HL Bill 90 of 2016–17)

The Bill is focused on the work of CDC Group PLC (the CDC), the UK Government's development finance institution. Wholly owned by the Department for International Development (DFID), the CDC invests in private enterprise in a select list of developing countries to support its mission statement of creating jobs, business growth and economic development in some of the world's poorest regions.

The principal focus of the Commonwealth Development Corporation Bill is the amount of financial assistance that the Government can provide to the CDC in support of those aims. The previous Act governing its operation, the Commonwealth Development Corporation Act 1999, imposed a limit on that assistance of £1.5 billion; a limit which has now been reached following government investment of £735 million in the CDC in July 2015. The Bill would raise the investment limit to £6 billion, and allow for the Secretary of State to further increase the limit up to £12 billion without the need for further primary legislation.

Certified by the Speaker of the House of Commons as a money bill, the Commonwealth Development Corporation Bill received cross-party support during its scrutiny by MPs. However, a number of amendments were tabled during the Bill's passage through the House, which fell into three broad categories: those which focused on the amount of funding being provided to the CDC; those which would impose restrictions or reporting requirements on that investment; or those which would impose conditions or restrictions on how the CDC was subsequently able to use those funds. Opposition parties focused particular attention on how the figures within the Bill had been arrived at, on issues such as transparency and the CDC's use of tax havens, and whether there was sufficiently explicit focus on the goal of poverty reduction.

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1. Introduction and Overview of the Bill

This House of Lords Library briefing has been prepared in advance of the second reading of the Commonwealth Development Corporation Bill in the House of Lords on 25 January 2017, following completion of its consideration by the House of Commons on 10 January 2017. It is a government bill, which has been certified by the Speaker of the House of Commons as a money bill.

Only two clauses in length, the Bill is focused on the work of CDC Group PLC (the CDC). Wholly owned by the Department for International Development (DFID), the CDC is the UK's 'development finance institution', and thus is a key vehicle through which the Government provides support to the private sector in developing countries. Its remit is to invest in private enterprises that would typically struggle to attract investment elsewhere, as per its mission statement:

> Our mission is to support the building of businesses throughout Africa and South Asia, to create jobs and make a lasting difference to people's lives in some of the world's poorest places. We aim to invest in countries where we can have the greatest impact. In countries where the private sector is weak and jobs are scarce. We invest in sectors where growth leads to jobs—both directly and indirectly. In sectors such as manufacturing, agribusiness, infrastructure, financial institutions, construction, health and education.[1]

As such, and in line with DFID's statutory requirement to spend development assistance on poverty reduction, the CDC's objectives are to:

- Invest in the creation and growth of viable private businesses in poorer developing countries to contribute to economic growth for the benefit of the poor; and

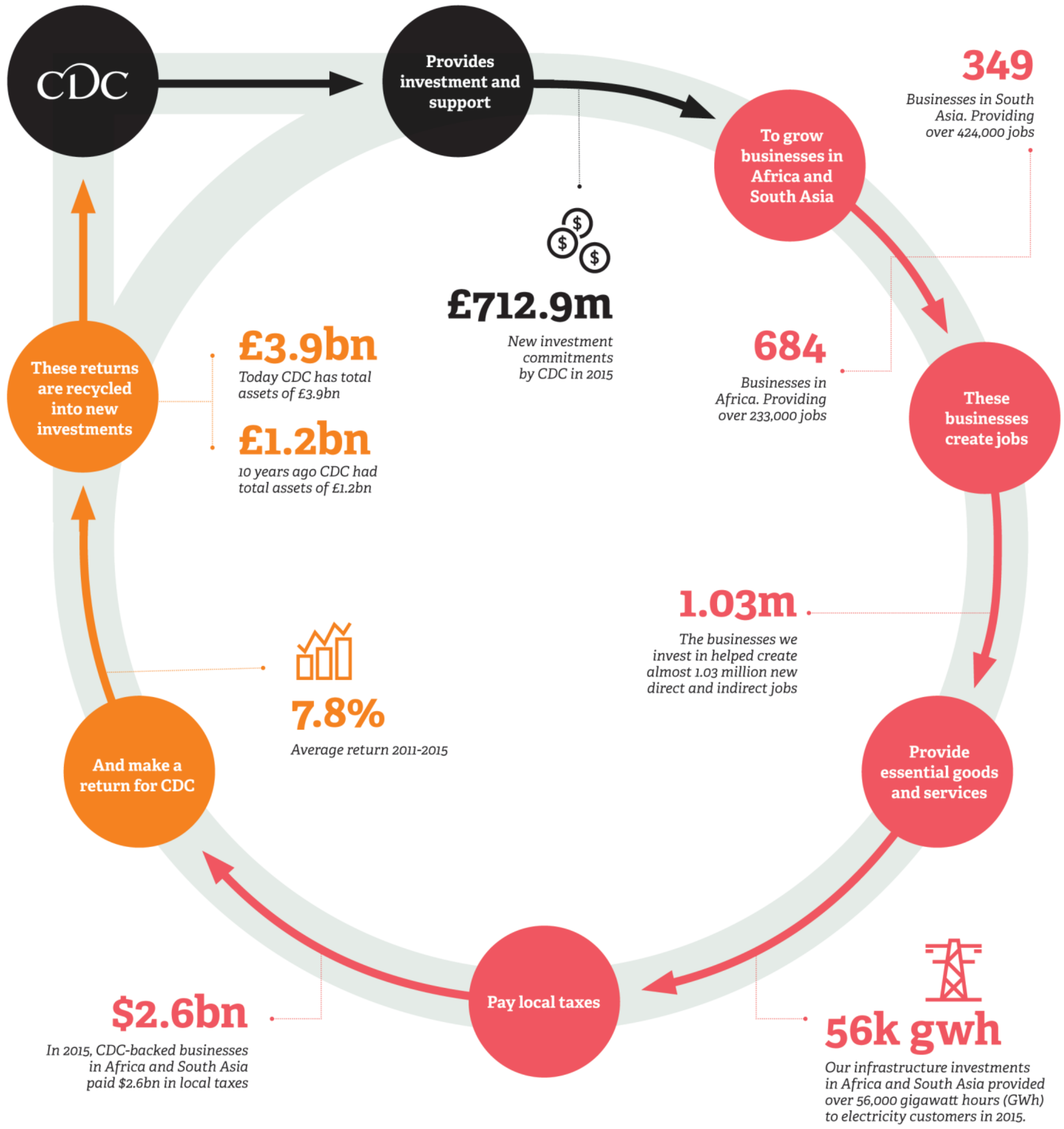
- Mobilise private investment in these markets both directly and by demonstrating profitable investments as part of the mission of DFID to fight world poverty.[2]

How and Where the CDC Invests

Formed in 1948, the CDC is a profit-making company, but 100 percent of its profits are reinvested. Following the creation of a new investment strategy in 2012, the CDC now invests directly in businesses, rather than through fund managers which was its approach prior to this point.[3] As a result of that strategy, the CDC also reduced the number of 'eligible countries' in which it invests, narrowing its focus to African and South Asian countries; all Latin American countries were removed from the eligible countries list.[4]

[1] CDC Group PLC, 'Our Mission', accessed 16 January 2017.
[2] House of Commons Library, *Commonwealth Development Corporation Bill 2016–17*, 25 November 2016, p 3.
[3] CDC Group PLC, *Investment Policy for the period from 1 January 2012 to 31 December 2016*, 2012.
[4] ibid. However, the CDC does retain the right to invest in other countries if the CDC had already committed to the investment before updating its eligible countries list, or where its investment committee considers it necessary to protect an existing economic interest.

A breakdown of the CDC's investment model is provided below:[5]



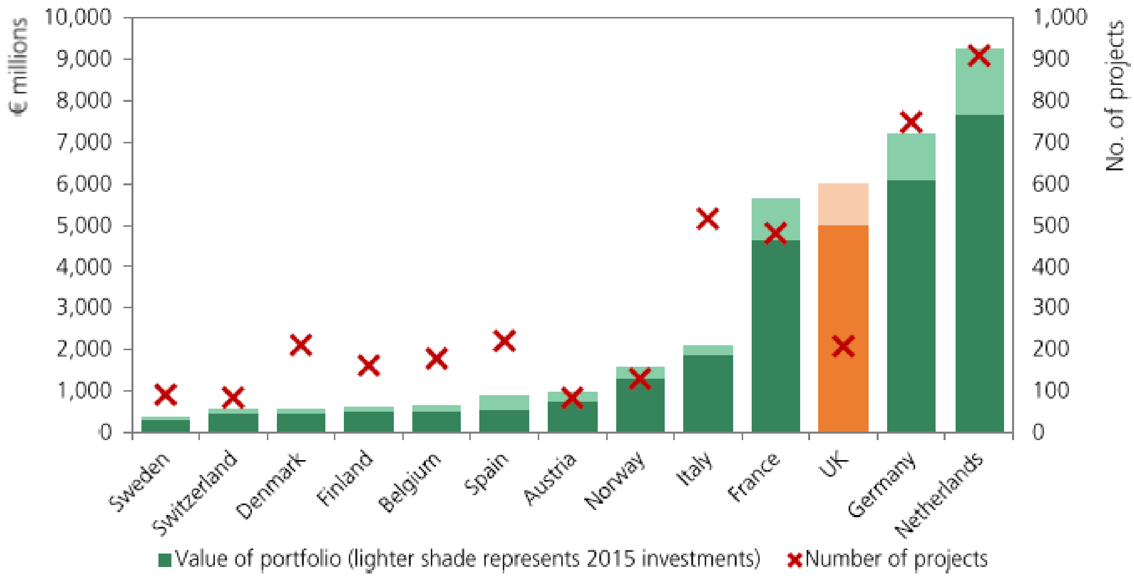
In line with its new investment strategy, the CDC has only made new commitments in Africa and South Asia since 2012. The majority of these investments have been in its seven priority sectors: agribusiness; construction; education; financial institutions; health; infrastructure; and manufacturing. The new strategy has also engendered a focus on the very poorest Least Developed Countries (LDCs), where CDC investments as a percentage of its portfolio have risen from 4 percent (2010) to 12 percent (2013).[6]

The majority of the financial commitments made by the CDC (68 percent between 2012 and 2015) meet the definition of 'official development assistance' (ODA). The remainder is categorised as 'other official flows' (OOF). How the CDC provides assistance, and in particular whether such assistance should be counted as 'stock' or 'flow' and the resultant implications for how overall UK aid is assessed, was an issue discussed at a number of points during consideration of the Bill in the House of Commons. With assets of approximately £6 billion

[5] CDC Group PLC, 'Our Mission', accessed 16 January 2017.
[6] House of Commons Library, *Commonwealth Development Corporation Bill 2016–17*, 25 November 2016, p 5.

(not to be conflated with the level of government assistance provided to the CDC, discussed below) the CDC is the third largest development finance institutions (DFI) in Europe, though it ranks seventh in terms of number of projects. This is illustrated in the table below:[7]

European development finance institutions: value of portfolios and number of projects, 2015



Following some criticism of its previous approach contained in reports by the National Audit Office (NAO) in 2008 and the House of Commons International Development Committee in 2011, the 2012 CDC investment strategy made a commitment not to invest in certain activities (such as the production and trade in arms, for example), and to take steps to minimise opportunities for corruption.[8] At the same time as the Bill received its second reading in the House of Commons, the NAO published a follow-up report to its earlier work.[9] The NAO drew a number of positive conclusions, including that the CDC had successfully adapted its strategy to reflect the findings of its 2008 report by addressing concerns about the CDC's executive remuneration framework and increasing its focus on the poorest countries.[10] However, the NAO also suggested that there were areas for further improvement. It drew particular attention to the "confusion" which might be created by the involvement of DFID and other government departments in its investment decisions; recommended that the CDC should do more to measure the development impact of its investments, and that DFID should review the CDC's financial performance and development targets; and stated that the CDC should continue working on its practices to record allegations of corruption.[11]

As recorded below, minsters stated at a number of points during the Bill's consideration in the House of Commons that a new CDC investment strategy for 2017–21 was imminent, though it has yet to be published at the time of writing.

[7] House of Commons Library, *Commonwealth Development Corporation Bill 2016–17*, 25 November 2016, p 12; and European Development Finance Institutions, *Flagship Report 2016*, July 2016.
[8] House of Commons Library, *Commonwealth Development Corporation Bill 2016–17*, 25 November 2016, p 6; National Audit Office, *Investing for Development: the Department for International Development's Oversight of CDC Group plc*, 2008; and House of Commons International Development Committee, *The Future of CDC*, 3 March 2011, HC 607 of session 2010–12.
[9] National Audit Office, *Department for International Development: Investing through CDC*, 28 November 2016.
[10] ibid, p 6.
[11] ibid, pp 6–7.

Government Assistance to the CDC

The principal focus of the Commonwealth Development Corporation Bill is the amount of financial assistance that the Government can provide to the CDC in support of its work. The previous Act governing its operation, the Commonwealth Development Corporation Act 1999, imposed a limit on that assistance of £1.5 billion.[12] In July 2015, the Government invested £735 million in the CDC, and thus total assistance reached the limit allowed under current legislation.[13]

Clause 1 of the Bill would raise this limit to £6 billion.[14] It would also introduce a power to allow the Secretary of State to further increase the financial limit up to £12 billion through regulations.[15] By raising the limit in this way, this would not constitute an extra £12 billion, but, in effect, allow the Secretary of State to make regulations allowing for a further £6 billion to be invested, so taking the total to £12 billion.

2. Second Reading and Committee Stage

The Bill received cross-party support during its second reading in the House of Commons, with the Labour Party, Scottish National Party and Liberal Democrats all indicating that they agreed with its intent and broadly endorsing the work of the CDC.[16] However, spokespeople for these parties were critical of a number of aspects of the Bill. This criticism centred on the amount by which the Government was seeking to amend the limit and how these totals were calculated; the suggestion that various reporting conditions should be attached to the Secretary of State's ability to further amend the limit by regulation, including scrutiny of the CDC by bodies such as the Independent Commission on Aid Impact (ICAI); whether the CDC was sufficiently focused on poverty-reduction; the routing of CDC investments through tax havens; and the fact that the proposal to increase its funding would precede the publication of the CDC's new investment strategy for 2017–21.

The Bill passed its second reading without a vote.

There were two sittings on the Bill at committee stage, with the opening focus on the initial increase of the investment limit to £6 billion, with amendments to change this either withdrawn or negatived on division.[17] Debate also centred on the provision enabling the Secretary of State to further raise the limit through regulations, whereby a number of new clauses were tabled to impose conditions on this further increase, or explore related issues. These included proposals on new reporting requirements and exploring whether there was sufficient focus in CDC investment decisions on poverty reduction and the Sustainable Development Goals; the lack of the new CDC investment strategy in time for scrutiny of the Bill; potentially imposing restrictions on the sectors and countries in which the CDC was able to invest; and the use of tax havens.

The Bill was not amended at committee stage.

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[12] Commonwealth Development Corporation Act 1999.
[13] House of Commons Library, *Commonwealth Development Corporation Bill 2016–17*, 25 November 2016, p 3.
[14] Explanatory Notes, p 2.
[15] ibid.
[16] HC *Hansard*, 29 November 2016, cols 1424–79.
[17] Public Bill Committee, *Commonwealth Development Corporation Bill*, 6 December 2016, session 2016–17, 1st sitting, cols 1–32; and 2nd sitting, cols 33–94.

3. Report Stage

At report stage a number of amendments were moved by the Labour Party and Scottish National Party, all of which were discussed and debated together. The amendments fell into three broad categories: those which focused on the amount of funding being provided to the CDC; those which would impose restrictions or reporting requirements on that investment; or which would impose conditions or restrictions on how the CDC was able to use those funds.

Opening the debate, Shadow International Development Minister, Kate Osamor, spoke to the amendments tabled by Labour (new clauses 1, 2, 3, 4, 7, 8, 9, 10, and amendments 5, 6, and 1). She began her speech by focusing on new clauses 2, 3 and 9, which would have required the Government to prepare a detailed business case for additional investment and a strategic investment plan before the Secretary of State was able to increase the limit by secondary legislation (new clause 2). Similarly, new clauses 3 and 9 would have required that the Secretary of State could only use such regulation-making powers provided such investment was only deployed in least developed countries (LDCs), or made a "significant impact" on reducing poverty.[18] Moving the amendments, Ms Osamor said that her Party supported the Bill but "remained concerned about the lack of safeguards", and that the Government must be satisfied before implementing any increase that such funding would be used to reduce poverty.

Ms Osamor also moved new clause 4—which would have required an independent assessment by the Independent Commission for Aid Impact (ICAI) before any future funding increase could be proposed by the Secretary of State through regulations—and new clause 8—which would prevent any funds resulting from the Secretary of State's power to increase the threshold from going to any investment vehicle which "seems likely" to use tax havens.[19] Speaking to those amendments, Ms Osamor outlined the importance of a transparent approach to aid investment:

> Transparency should be the driving force behind any shift in the focus of the aid budget […] To that end, it is incumbent on the Government to put in place mechanisms that ensure maximum visibility regarding where aid money is being spent.
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> […]
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> Transparency is something that DFID does very well, [but] it is of the utmost importance that the proportion of the ODA budget that is channelled through CDC be subject to the same checks on outcomes and values to which DFID holds itself.[20]

She added with regard to the use of tax havens:

> The Opposition know the importance of addressing and tackling CDC's use of tax havens cannot be overstated. Although we heard assurances in Committee from Diana Noble, the chief executive of CDC, that using offshore financial centres ensures legal certainty and lessens risk for investors, far more than reassurance is needed to ensure transparency on that point.[21]

This was also the focus of new clause 1, which would have required any proposal to increase the limit by secondary legislation to be accompanied by an analysis of the CDC's use of

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[18] HC *Hansard*, 10 January 2017, cols 194–7.
[19] ibid.
[20] ibid, col 200.
[21] ibid.

separate financial centres, where countries do not have sufficiently robust regulatory environments to allow for direct investment. Outlining the need for "clear legislative safeguards" on that point, Ms Osamor said that Labour intended to push new clause 1 to a vote.[22]

Ms Osamor also spoke in support of new clause 7, tabled by Stephen Doughty (Labour MP for Cardiff South and Penarth), which would have limited the sectors in which the CDC could invest. It would have specifically excluded, for example, the real estate or fossil fuels industries. Finally, Labour amendment 1 proposed the restriction of each increase in the limit possible by secondary legislation to an amount which the Secretary of State deemed necessary to support additional investment over the subsequent three year period only.[23]

Speaking for the Scottish National Party, Patrick Grady, Shadow SNP Spokesperson (International Development), moved amendment 3 (and amendments 2 and 4 which were contingent upon it), and new clause 6, and also offered his support for the Labour Party amendments to which he had added his name. He began by speaking to amendment 3 (and associated amendments), the effect of which would have been to reduce the amount by which the CDC investment limit would be increased, based on a funding formula which took account of CDC investment as a percentage of overall ODA. Mr Grady said it was his hope that, even if the Government were not minded to accept his amendments, it would commit to the recognition that "the £6 billion figure currently stated in the legislation is a maximum", and that any "additional investment they intend to make will ultimately reflect the ebb and flow of overall ODA calculations in any given spending round".[24] Mr Grady then turned to new clause 6, which combined two elements that he had called for in committee: that before implementing any increase in the threshold by regulation, the Secretary of State would be required to make an assessment of how such funding would both reduce poverty and contribute to the achievement of the Sustainable Development Goals.

The chair of the International Development Committee, Stephen Twigg, also rose to support the work of the CDC, and in favour of increasing the limit on the investment from which it benefits. However, Mr Twigg also reiterated the importance of prioritising poverty reduction when deploying that funding, and said that he supported the proposals contained within the Labour Party's amendments for putting it "at the heart" of the CDC's work.[25] He also put it on the record that his preference would have been for the CDC's new investment strategy to have been published in advance of consideration of the Bill, and said he would like to see a greater emphasis on measuring the development impact of the CDC's projects in such a document. Finally, on the issue of transparency, Mr Twigg welcomed the response of the CDC to his Committee's 2011 report and the efforts it had made to address this issue. However, he argued that it should go still further by publishing details of its entire investment portfolio, thus providing the necessary reassurance that such investments are focused "where they need to be: on the goal of poverty reduction".[26]

Responding for the Government, the Minister of State for International Development, Rory Stewart, said that the amendments proposed all raised valid points, but they were ones best addressed through governance mechanisms and the forthcoming investment strategy rather than through primary legislation. Dealing first with those amendments which would have

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[22] HC *Hansard*, 10 January 2017, cols 200–1.
[23] ibid, col 199.
[24] ibid, col 206.
[25] ibid, col 212.
[26] ibid, col 214.

reduced the amount of money that the Government could provide to the CDC, Mr Stewart argued that the purpose of Mr Grady's amendment in particular (amendment 3) was confusing 'stock' with 'flow', and thus did not recognise that the money put into the CDC would be recycled. As a result, Mr Stewart contended that it was not fair to compare what happened in a capital stock used for equity debt investment with the annual expenditure of a department, which he contended amendment 3 risked introducing through the use of the funding formula proposed (which would require a calculation of CDC investment as a percentage of UK ODA). Secondly, Mr Stewart argued there was the question of a demand which was "almost limitless", necessitating a higher ceiling.[27] Finally, Mr Stewart argued that the Bill was enabling legislation which would set a maximum ceiling, not the amount of money the CDC was actually going to receive, and that any review period, such as three years proposed in amendment 1, would not be appropriate because this "simply would not work for investments that are intended to be, on average, 10 years in length".[28]

Mr Stewart turned then to the second group of amendments, which would have restricted or imposed conditionality on the amount of money that the Government could provide to the CDC. Such conditionality was "not appropriate" in his view, given that the CDC precursor Acts in 1948 and 1999 established that it was for Parliament to set a cap on the amount of investment provided, but not to "get involved in the detailed implementation of specialist business cases".[29] However, Mr Stewart assured MPs that "the [investment] strategy that will come forward will reflect very closely the arguments that have been made at the committee stage and on report".[30]

Finally, Mr Stewart addressed the last group of amendments, which would have restricted or imposed conditionality on the sectors, areas or priorities on which the CDC could invest, or how it could do so. Turning first to the usage of tax havens and transparency, Mr Stewart noted that the work of the CDC had been evaluated by the International Development Committee, the National Audit Office and the Public Accounts Committee, and also by ICAI; all scrutiny which he said the Government welcomed. However, Mr Stewart added that it was not for government to impose scrutiny obligations upon them, and particularly not on the independent regulator ICAI (as proposed by new clause 4). Moving onto financial centres, Mr Stewart said that it was important to understand that the CDC did not ever put money in tax havens to avoid tax or conceal its activities. Instead, Mr Stewart maintained that the CDC only ever invested in offshore financial centres that have been approved by the OECD, and for the regulatory concerns raised earlier in the debate. He added, however, that the Government would seek to take on board the concerns raised by MPs, and gave a commitment that the CDC would only invest in such areas for two reasons. Firstly, when investing in countries where those funds could not be guaranteed by using local mechanisms/in local jurisdictions, and secondly to pool money from other investors, thus preventing them from being taxed multiple times (which he argued could be the case if they were held in London instead, for example).[31]

On restricting the countries and sectors in which the CDC could invest, again Mr Stewart argued that was not an appropriate matter for primary legislation, particularly given the need to respond to a "flexible, changing world".[32] Mr Stewart contended that it must be at the

[27] HC *Hansard*, 10 January 2017, col 226.
[28] ibid.
[29] ibid, col 228.
[30] ibid.
[31] ibid, col 229.
[32] ibid.

discretion of the CDC and DFID to decide how best to deploy resources to meet those challenges effectively.

The House divided on two amendments, new clause 1 which was defeated by 293 votes to 246, and amendment 3 which was defeated by 299 votes to 244. No amendments were made to the Bill at report stage.

4. Third Reading

Opening the debate at third reading, Rory Stewart, Minister of State for International Development, welcomed the cross-party support for the Bill, and for the ways in which MPs had engaged in its scrutiny. Mr Stewart said that "at the heart of the Bill is our moral obligation to some of the very poorest and most vulnerable people in the world",[33] and he added with regard to the importance of the CDC:

> CDC investment, combining the rigour of the private sector, the focus on markets and the values of the public sector, reflects the values of the British public who care about poverty and show in their own philanthropic giving how much they care about some of the most vulnerable people in the world. We are showing our respect for the British people by pushing forward with a proven model that will provide the sustainable growth required to address some of the most vulnerable and poorest people in the world.[34]

Responding for the Opposition, the Shadow Minister for International Development, Imran Hussain, reiterated his Party's support for the Bill, but said that Labour had tabled a number of amendments on transparency and accountability, in particular, because of their importance to maintain the CDC's credibility and public confidence in its investment decisions. Mr Hussain drew specific attention to the necessity for robust scrutiny and assessment of the CDC by bodies such as ICAI. Mr Hussain said that he was grateful for the way in which ministers such as Mr Stewart had listened to the concerns raised, and the assurances provided that the CDC's reporting mechanisms would be robust and allow for sufficient further scrutiny.[35]

Finally, speaking for the SNP, Patrick Grady said that his Party also recognised the valuable work being undertaken by the CDC and its staff, and similarly welcomed the commitments that the Government had given with regard to transparency and allowing for appropriate scrutiny of that work. In particular, given the increase in resources proposed by the Bill, Mr Grady stressed the importance of accountability and the standards to which the CDC was held to must be "scaled up" accordingly.[36]

The Bill was given a third reading without division.

[33] HC *Hansard*, 10 January 2017, col 238.
[34] ibid, col 240.
[35] ibid.
[36] ibid, col 243.