

C O N F I D E N T I A L



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*Dear Tim,*

**BNO C PRIVATISATION: OPPOSITION THREATS**

My Secretary of State has asked for the attached material to be prepared for Monday afternoon's meeting between the Prime Minister, the Chancellor of the Exchequer and himself. The papers deal with the warnings from Dr David Owen about the risks of companies' challenge to the participation agreements and of EEC challenge to our North Sea policies generally.

The Foreign Secretary's minute of 5th March 1980 to the Prime Minister mentions a private letter from Dr. Owen in which he refers to the risk that the "new arrangements for BNO C might direct attention to aspects of our North Sea arrangements which are vulnerable in terms of Community Law", and warns that the Opposition would be "bound to raise the legal issues when opposing legislation in Parliament". A copy of the minute is attached at Annex A. The risks of EEC challenge were fairly exhaustively considered by Ministers in relation to the Secretary of State's original proposal. Annex B is a note which was agreed with the Attorney General and attached to the E Committee paper which was considered last November. There was a subsequent letter from the Lord Privy Seal of 3rd December (Annex C) and the Attorney's response of 7th December (Annex D). At that time the risks were perceived as arising from the separation of the Trading arm, the setting up of the participation agreement between BNO C and BNO C (Operating), and the general spotlighting of the participation arrangements as a whole which would result from a major change in BNO C's structure. While the Attorney's letter of 7th December does accept that the saleback agreements in particular ~~we~~ were anyway "liable to successful challenge", there was no suggestion that the changes would make the participation agreements inherently more vulnerable.





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Dr. Owen made a point on two occasions in the debates last Tuesday to warn that the introduction of equity capital into BNOC would undermine the legal validity of the participation agreements. Copies of extracts from this debate are attached at Annex E. The Minister of State for Energy made clear that we had no intention of varying the agreements and that we had consulted the Law Officers.

The point Dr. Owen appears to have in mind is that if private sector shareholders were introduced into BNOC as a whole then the nature of BNOC as party to the agreements would have changed and the agreements thus invalidated. However this argument does not apply to any of the schemes considered by the Secretary of State, since none of them contemplate any change in the 100% Government control and ownership of the trading side and the BNOC interests in the participation agreements. Our legal advice is that none of the schemes A to G in the paper attached to the Secretary of State's note to the Prime Minister would heighten the risk of successful challenge of the participation agreements whether from the EEC or the companies. The advice is attached at Annex F.

I am copying this letter and its enclosures to John Wiggins in the Chancellor's office.

Yours ever,

J D West  
Private Secretary