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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

Thank you for your minute of 21 May (A085/1394) about transfer of responsibility for opencast coal mining consents.

The Prime Minister would like to discuss this matter with the Lord President, the Secretary of State for the Environment, the Secretary of State for Energy, the Secretary of State for Scotland, the Secretary of State for Wales and yourself. If you see no objection to doing so, could your office please distribute copies of your minute to the other Ministers concerned and liaise with Mr. Addison about setting up a meeting.

FEH

24 May 1985

CST

cc No 1
Prime Minister

Ref. A085/1394

MR BUTLER

This looks like a strong case for a meeting with Mr. Jenkin, Mr. Walker, Mr. Younger, Mr. Edwards and Sir Robert Armstrong. It might also be useful to have Lord Whitelaw here. Shall I set one up?

PCRB
21.5

Your minute of 28 March sought advice on the scope for reversing the recent transfer of responsibility for opencast coal mining consents from the Department of Energy. This followed the comment to the Prime Minister by the Chairman of the National Coal Board (NCB) that the transfer was causing difficulty and delay for the Board.

2. Until last year the Secretary of State for Energy was responsible, under the Opencast Coal Act 1958, for authorising NCB opencast coal mining and issuing deemed planning consent at the same time. But the arrangements had been criticised as failing to allow proper consideration to be given to planning and environmental considerations. They were also out of line with the procedures for private sector opencast applications and other mineral working which are dealt with by the local planning authorities. The Ministers concerned decided in April 1983 that the right course would be to bring NCB procedures into line with those covering other mineral operations, and, with the Prime Minister's agreement, the intention to do this was announced in the White Paper 'Coal and the Environment' in May 1983 (Command 7788).

3. Local authorities have now been responsible for dealing with NCB applications since April 1984. But the requirement for separate authorisation by a Secretary of State under the Opencast Coal Act can be removed only by legislation. A short Bill had been planned for the 1984-85 Session, but this was put into cold storage during the miners' strike and, following the addition of the BNOC Abolition Bill to the programme and other developments, the Lord President informed the Secretary of State for Energy that there would not now be room for the Bill this

Session. In the meantime the authoritative powers are being exercised by the Secretaries of State for the Environment, Scotland and Wales, having been transferred to them administratively from the Secretary of State for Energy.

4. The transfer has produced two problems for the National Coal Board:

i. a political element has entered into some local authority decision about opencast sites. During the strike, the use of opencast sites and their stocks, especially in the working areas, made a contribution to endurance. Some Labour Councils looked upon opencast sites as non-NUM competitors to deep mines and tried to use their powers to impede opencast operations. In the year to 1 March 1984 ten sites were authorised by the Department of Energy. In the year to 31 March 1985 18 applications were made by the NCB but only 4 were approved by local authorities. The political element could have expressed itself under the old procedure by way of objections by local authorities leading to public inquiries, but the new procedures both invites obstruction by obliging them to take a view and make obstruction somewhat easier.

ii. until the Opencast Coal Act 1958 is amended the NCB must go first to the local planning authorities and then to the Secretary of State for the Environment (or in Scotland and Wales to the appropriate territorial Secretary of State). This in itself adds to bureaucracy and delay.

5. A return to the old arrangements would remove some of the National Coal Board's problems. But there would be political and presentational difficulties in such a reversal. The decision was announced in a White Paper and repeated in the Manifesto, detailed instructions and guidance were given to local planning authorities in a 1984 circular, which was also

sent to the main environmental groups, and local authorities
have already been operating the new arrangements for a year. To
reverse the decision and go back to the old procedure would
almost certainly provoke a row with the environmental lobby and
with at least some local authorities. Critics could argue that
the Government had itself recognised and acted on the need for
proper controls on opencast coal mining and was now abandoning
them. It is also doubtful whether a return to the old
arrangements would mean quicker decisions, as local authorities
could, by maintaining their objections under the 1958 Act, force
further public inquiries.

6. I understand that the Secretary of State for Energy (who
sent the Prime Minister a personal and confidential minute on
17 April on this subject) does not seek the return of the
planning powers to his Department; but he would like to see the
powers so used as to minimise delay in the issue of consents to
proposals for opencast working.

7. If, against this background, the Prime Minister judges that
her 1983 decision should stand, there are two possible ways of
helping the National Coal Board.

8. The first is to remove the requirement for two separate
consents by introducing the delayed legislation to amend the
Opencast Coal Act 1958. This would remove some delay and
bureaucracy. But it would not deal with the political problem
created by the attitudes of some local authorities.

9. The second would be to apply pressure to the local
authorities to operate the planning procedure reasonably. The
NCB would have to press their applications without inhibition,
lodging appeals without delay where appropriate. The
Secretaries of State for the Environment, Wales and Scotland
might need to issue new guidance to authorities and to use their
powers to call in particular applications.

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10. If the Prime Minister is attracted by either of these courses she might like to raise them with the Secretaries of State for Energy and the Environment in the first instance. The Secretaries of State for Wales and Scotland also have an interest because of their planning responsibilities in the two countries.

RA

ROBERT ARMSTRONG

21 May 1985

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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

The Prime Minister has been told by the Chairman of the National Coal Board that the transfer of planning consents for mining and opencast operations from the Department of Energy to the Department of the Environment is causing considerable difficulty and delay. The Prime Minister mentioned this to the Secretary of State for Energy and he suggested to her that, while the operation has been transferred, no formal transfer of functions order has yet been made.

H/

The Prime Minister has asked whether you could advise her on the present position, and whether there is scope for reversing this transfer of responsibility from the Department of Energy to the Department of the Environment.

FERB

28 March 1985

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