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// February 1986

The Rt Hon Kenneth Baker MP
Secretary of State for the
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Department of the Environment
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EDM

Ken Tennill

EC ENVIRONMENTAL ASSESSMENT DIRECTIVE

I have seen a copy of your letter of 23 January to Willie Whitelaw, seeking colleagues' approval for the issuing of consultation documents on the implementation of this Directive.

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I have also seen Peter Walker's response of 3 February.

I know that the consultation documents are based largely on the advice of a Working Party which included representatives of this Department. While I am broadly content with the proposals, there are two areas in particular where they go further than was recommended by the Working Party, and which cause me some concern.

The first of these relates to the discretionary power you propose to take to require environmental assessments for projects listed in Annex II of the Directive - in effect the majority of new manufacturing and mineral extraction projects. I am advised that the understanding of the Working Party was that the UK would not be under an obligation to require assessments for Annex II projects, and would not do so.

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I share Peter Walker's view that assessments should not be required for Annex II project : the implications for industry in terms of the cost of preparing them and the risk of subsequent delay could well be considerable, not to mention the considerable scope for pressure from interested parties for use of the powers in individual cases. I would therefore strongly prefer that such a discretionary power should not be taken, and support Peter Walker's suggestion that if possible this option be kept open in the consultative document.

If, however - and only if - the balance of legal opinion is that the absence of such a power would place the UK in breach of its obligations under the Directive, I would wish to see the strongest permissible indication in the consultation document that the Government does not expect to make use of the power in practice, whether through the use of high thresholds or other means. I have asked my officials to explore this with yours.

I am also concerned at the proposal that the local planning authority should have 16 weeks to determine an application. As I understand it this is not required by the Directive, nor is it based on a recommendation of the Working Party. Moreover, it is clearly inconsistent with the Government's proposals in the 'Lifting the Burden' White Paper and elsewhere to simplify and speed up the planning process wherever possible.

As the draft advisory booklet for developers and authorities itself states (paragraph 4) the provision of information in the form of environmental assessments should enable planning authorities to identify more quickly and accurately which environmental issues are material to their decision. I can therefore see no reason in principle why authorities should have more than the normal eight weeks to determine applications to which the assessment requirement applies.

I am copying this letter to the Prime Minister, Willie Whitelaw, other members of H Committee, Peter Walker, Michael Jopling, David Young and Michael Havers.

PAUL CHANNON

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