



NBPM

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

10 March 1986

John Willie

WILL REQUEST IF REQUIRED

Thank you for your letter of 4 February agreeing to the publication of my consultation documents relating to the implementation of our obligations under the European Community's Environmental Assessment directive. Since then, a number of colleagues have written to express their views.

It is clear that there is some concern about the proposal to enable directions to be made requiring assessments of particular projects or classes of project which do not fall within Annex I to the Directive. I have considered this proposal again in the light of the views expressed by colleagues, but it remains my view that this is the right basis on which to go out to consultation. The Directive requires projects of classes listed in Annex II to be made subject to an assessment where "Member States consider that their characteristics so require" and I can see the force of the doubts which the Commission have already expressed informally about whether it is legally open to us to say that we will never consider that this requirement needs to be met. At best, this is a grey area in legal terms, and we have to remember that the European Court nearly always supports the Commission against individual Member States in disputes of this kind. An even greater and more immediate consideration is that the proper implementation of Environmental Directives by all Member States is likely to be a major environmental theme of the UK Presidency in the second half of this year. It would therefore be a particularly embarrassing time to be in conflict with the Commission on this point.

I would also ask colleagues to bear in mind that the proposals set out in the consultation documents do not represent in principle a new form of control over industry. An industrialist would normally already be required to provide information on environmental effects when seeking planning permission for a major project. Environmental assessment is no more than a formalised procedure for collecting and considering this information. It was the unanimous view of the Working Party that produced the proposals on which the Consultation Document is based, including the members from the industrial side, that the use of this procedure has positive benefits: the early consideration of environmental effects enables problems to be resolved at the design stage, and can often avoid unnecessary delay and frustration at the approval stage. We have seen the usefulness of environmental assessment procedures for projects like the Channel Fixed Link and the proposed Trident base at Faslane. Mineral working is not within Annex I, but I know that the National Coal Board use environmental

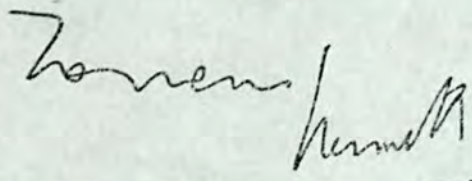
assessment techniques for developing major proposals, and environment assessment of the recent proposals for oil exploration in Dorset was a major factor in the speedy approval of that project. The clear intention is that assessment should be required only for major projects: the consultation document already refers to "projects which are so substantial in their effects that a formal environmental assessment ought to be carried out." I also recognise Michael Jopling's particular concern about agriculture and forestry, but the consultation paper specifically states that the proposals relate only to development which is subject to planning control under the Planning Acts.

These proposals represent a different and more ^fnormalised way of working rather than an additional overall burden for major projects, and I will certainly specifically refer to this point in the consultation paper as Kenneth Clarke requests. I am also pleased to say that agreement has now been reached between officials on the drafting point which was concerning him.

Finally, Paul Channon has expressed concern about the proposal that the local planning authority should have 16 weeks instead of 8 to determine an application for which assessment is mandatory. The need for this proposal stems from the requirement for public consultation in Article 6 of the Directive. The Working Party's proposal was that the developer should be required to initiate such consultations at least 8 weeks before the planning application was submitted. The industry members were unhappy about this proposal, and I have accepted their view that there should be no obligation on a developer to consult before his application and assessment are submitted, even though I am quite certain that developers will be most unwise not to do so. It follows that adequate time must be allowed for public consultation after the application is submitted and, bearing in mind the importance of the schemes to which the Directive will apply, I do not consider that 8 weeks is sufficient. I should perhaps add that the industrialists on the working party said that they would expect local authorities to require more than 8 weeks to consult on and consider projects of this magnitude, and that an extension of the 8 week period in such cases would not be unreasonable.

I am copying this letter to the Prime Minister, Members of H Committee, Kenneth Clarke, Peter Walker, Michael Jopling, Paul Channon, Michael Havers, and Sir Robert Armstrong, and also to Geoffrey Howe in view of the implications for relations with the European Community.

Unless I receive further representations from colleagues I shall propose to issue the consultation paper on Monday 17 March.


KENNETH BAKER

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