



NBPM
CIS

CPU

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

My ref:

Your ref:

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

24 November 1989

Dear Lord President

will obtain if required

I have seen your letter of 7 November to John Gummer. I am writing to you to set out our our proposals for Crown Immunity under the Environmental Protection Bill.

I accept the Solicitor General's view that Departments of central Government should be expected to meet legislative standards without the threat of criminal prosecution. This, and the technical difficulties involved in prosecuting the Crown, make the case against waiving full Crown immunity. At the same time I agree that there is advantage in allowing enforcement agencies a role regarding the performance of the Crown. This, I feel, is particularly so in the case of environmental matters, where as far as possible Government Departments should be seen to be in the same boat as anyone else.

Generally speaking, therefore, I believe it is essential to ensure in the Environmental Protection Bill that duties and standards should apply to Government Departments as they do to others, even if we stop short of prosecution. However, the Bill covers a wide and diverse range of subjects and situations and we need to adapt the general line I am proposing so as to take account of the individual features of the constituent parts of the Bill. I describe below how we have proposed to deal with Crown immunity in each part.

Integrated Pollution Control/Local Authority Air Pollution Control

We propose that Government Departments should be bound by the provisions dealing with integrated pollution control (IPC) and local authority air pollution control in Part I of the Bill, apart from those on offences and prosecution. However, to avoid difficulties over local authority personnel having access to restricted areas, we intend to take out all Crown premises except NHS premises that would otherwise have come under local authority control and pass them to Her Majesty's Inspectorate of Pollution, who would then deal with them as under IPC. These proposals, will do much to meet public concern about standards of Crown control.



The IPC provisions are built upon the Health and Safety at Work Act 1974. The 1974 Act, however, did not apply to the Crown the serving of notices where a statutory provision has been breached or where a risk of serious personal injury was likely. I propose that notices to be served under this Part of the Bill should apply to the Crown. If the Crown fails to meet the terms of a notice it will not be subject to prosecution. However, the enforcing authorities will be required to maintain registers of information including details of notices they serve (save only for information which is sensitive on the grounds of national security or commercial confidentiality). This will mean that information about inadequate (and indeed satisfactory) Crown standards will be placed in the public domain. I consider that this provision will ensure that Government Departments are seen to be operating as far as possible on the same level as others. It obviates, in my view, the need to allow the enforcing authorities to be able to apply to the courts for a declaration of non-compliance, as is the case with the Food Safety and NHS Reform Bills.

Amendments to RSA 1960

A similar procedure will apply to the amendments we propose to the Radioactive Substances Act 1960. Under the 1960 Act hospitals are exempted from the need to register for the keeping and use of radioactive substances, but are subject to all other provisions of the Act including those on offences. Other Crown premises are exempted from the Act altogether.

We are amending the Act to withdraw these exemptions. Hospitals will no longer be exempted from the requirement to register for the keeping and use of radioactive substances, and other Crown premises (including Government Departments) are to be subject to all provisions of the Act, with the exception of those relating to offences. As with IPC and air pollution controls, notices may be served by the enforcing authority, and details of these will be placed on public registers. The performance of Government Departments will therefore be publicly visible. We are, however, retaining for reasons of national security the existing exemption for premises occupied by the MOD and visiting forces.

Waste Law

We are also reforming waste law. We plan to introduce a duty of care on producers and holders of waste to exercise reasonable care in ensuring its legal disposal or reclamation when consigning it to another person. This is the only aspect of our reforms which we intend to apply to the Crown, and it would apply only in respect of health service hospitals. (Virginia Bottomley, before moving to DH, had been keeping Roger Freeman in touch with our proposals.) Other than that, I have concluded that this section of the Bill should not bind the Crown. The reason for this is that local authorities will operate the waste licensing system we propose under the Bill. As with local authority air pollution control, difficulties of access to restricted areas could arise. However unlike the solution adopted for air pollution (to pass control over Crown premises to HMIP) enforcement in this case cannot be passed to a central authority.

Genetically Modified Organisms

Application to the Crown of our proposals for genetically modified organisms causes me a little more difficulty. MOD is likely to be the only major user of GMOs under the Crown. Given that much of this work will be sensitive, I am not persuaded that encouraging information, either through the use of registers or by enabling a declaration of non-compliance, would be appropriate. Nevertheless, the public will rightly expect full control to be exercised. I propose therefore that these provisions (including offences) should bind the Crown. Information on consents would, however, only be released at my discretion and prosecutions would be taken only with my consent or that of the Director of Public Prosecution. MOD are content with this proposal.

Litter

On litter, I have written separately to H colleagues seeking views on a number of issues, including Crown Immunity, arising out of responses to our July consultation paper. That letter suggested that the provisions of the clauses, except for those on offences, should bind the Crown, again matching the general course I am proposing throughout the Bill. In this case, however, I propose that enforcing authorities should be able to seek a declaration of non-compliance. Without that, information relating to non-compliance by Government Departments with the standards would not be available, because unlike in the case of IPC and the RSA there are to be no public registers.

Information on Existing Chemicals

Our proposals on powers to require information about existing chemicals apply to manufacturers and importers of chemicals. They will not therefore particularly affect the Crown (only MOD is likely to be affected) and I do not propose therefore to bind the Crown.

Other Contents of the Bill

As you know, the Bill also contains a number of other provisions including the restructuring of the countryside agencies and a number of small amendments to existing legislation. Crown Immunity will not be affected by these amendments.

I am copying this letter, as you did, to members of MISC 138, Tom King, David Waddington, Patrick Mayhew, Nicholas Lyell, Richard Luce and to Sir Robin Butler and First Parliamentary Counsel.

CEJ Rush

PP CHRIS PATTEN

(Approved by the Secretary of State
and signed in his absence)

Low Aff - Acid Rain

