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Your ref:

The Rt Hon Sir Geoffrey Howe QC MP
Lord President of the Council
Privy Council Office
Whitehall
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28 November 1989

Dear Lord President

ENVIRONMENTAL PROTECTION BILL

At our meeting on 16 November you asked me to look again at two provisions which I had proposed to include in the Bill, but which Parliamentary Counsel felt raised problems of scope. Parliamentary Counsel also raised a scope problem in the statutory cover we were seeking for certain Departmental payments and grants, and I have looked at this too. I have subsequently seen the letter from the Prime Minister's Private Secretary of 21 November, about stray dogs and street cleaning.

Litter and highways

Counsel feared that the present proposals for dealing with the highways element in the litter proposals would open the scope of the Bill to highways. He was concerned in particular about the power proposed which would have enabled the Secretary of State for Transport to make regulations to define what fell within the category of maintenance (a duty which will remain with the highway authority) as opposed to cleaning (a duty which will be transferred to the district councils in the shires - the highway authority and the "litter" authority are of course one and the same in London and the Metropolitan areas). In the light of Counsel's fears, the Department of Transport are content to omit this particular element in the provisions. They take the view that the distinction between the two operations is one that in practice can be established by agreement between the two authorities concerned, or if necessary by the Courts. I should add that they consider that the proposed



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amendment to the 1980 Highways Act to impose duties as to barriers and temporary traffic signs where cleaning operations are being carried out (the duty currently only extends to "works") is incidental to the new cleaning duty on the litter authorities and does not extend the scope of the provisions to cover highway maintenance. They take the same view of the provision for regulations designating highways which are not to fall within the cleaning duty of the litter authority (they have in mind here certain high-speed trunk roads).

I should emphasise that this minor change in the proposals does not affect what we wish to achieve - the rationalisation of the division of responsibilities for road cleaning between districts and counties in the shire. Districts will be in charge of road cleaning as we have proposed, and the litter duties remain the same.

Hazardous sites

Counsel also raised doubts about the effect on scope of the hazardous substances provision, on the grounds that this might bring amendments to planning legislation within the scope of the Bill. However the existing hazardous substances provisions, although introduced into planning legislation in 1986, serve a purpose which is quite clearly distinguishable from land use planning controls. They are concerned not with regulating the development of land, but with controlling the presence of hazardous substances which could present major hazards to people in the surrounding area.

We see these provisions as essentially an aspect of environmental protection. Though there may be interactions between issues of planning control and hazardous substances control in a particular area, the two regimes are separate. The hazardous substances provisions were included in planning legislation primarily because it was convenient to model the procedures for obtaining consent on those for obtaining planning permission. The current consolidation of planning legislation will take the provisions relating to hazardous substances into a separate Hazardous Substances Bill. I understand that this is likely to be introduced after Christmas. If all goes well it can then be enacted by the Spring or early Summer. This should enable amendments to be introduced during the passage of the EP Bill which would remove all direct reference to planning legislation from the Bill. Until that stage we could omit any provisions relating to Hazardous Substances. In the light of all this, my view is that we will be proof against amendments on planning legislation generally, and I propose with your agreement to table Government amendments to the Bill to give effect to these provisions when the Hazardous Substances Bill has reached second reading stage in the second House.



Payments to outside bodies

I have looked carefully at the "built environment" element of the grants provisions. I think I can achieve much of what I am looking for without risk to the scope of the Bill, by dropping this reference to the built environment, and relying instead on the general meaning of "environment" within the Bill as a whole. Over half of the domestic environmental grants for which I am seeking statutory cover would be catered for, and most of the international payments.

Dogs

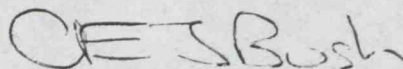
Counsel was particularly concerned about the effect that our proposals on stray dogs (as opposed to dog fouling) would have on the scope of the Bill. His advice was that including them in the Bill would run the risk of turning the Bill effectively into a miscellaneous provisions Bill. The meeting agreed that that was a most unwelcome prospect, which would greatly magnify the problems we already foresee in steering through the House a Bill which is bound to attract amendments across a very wide range of issues.

The contentiousness of the subject of dogs is a further aspect which caused us to consider whether we should not examine alternative options for pursuing our commitments on stray dogs. As you know I feel it inevitable that these proposals would once again attract very strong pressure for a national registration scheme. I am now urgently considering afresh how we might best deal with this pressure, and will be writing to colleagues very shortly with my proposals. I would not wish any concession on the dogs issue to be seen as being wrung out of us during the passage of the Environmental Protection Bill.

The Prime Minister raised the specific question of our response to the series of reported attacks by Rottweilers this summer. Our principal response to that was of course the Dangerous Dogs Act, which has been widely welcomed as a significant strengthening of the existing controls.

I would be grateful to know as soon as possible whether you are content with my proposals.

I am copying to the Prime Minister, members of MISC 141, those present at our meeting, and Sir Robin Butler.



WP CHRIS PATTEN
(approved by the Secretary of
State and signed in his absence)