



FILE - CS

bc P.U.

10 DOWNING STREET

LONDON SW1A 2AA

24 August 1989

From the Private Secretary

Dear Kate,

NEW POLLUTION CONTROLS: PUBLIC ACCESS TO INFORMATION

Thank you for your letter of 18 August attaching the draft consultation document your Secretary of State would like to publish next week.

The Prime Minister has seen this and is content that he should go ahead with publication.

I am copying this to the private secretaries of the members of EA, to Bob Peirce (Foreign and Commonwealth Office), John Colston (Defence) and Trevor Woolley (Cabinet Office).

*Yours sincerely,
Caroline Slocock*

CAROLINE SLOCOCK

Ms Kate Bush
Department of Environment

KK



Prime Minister!

Prime Minister!

Content to publish? CC PH

Content for DOG to publish this consultation document?

CAS 23/8

2 MARSHAM STREET
LONDON SW1P 3EB
01-276 3000

The Government has already accepted the principle of access. This covers the scope and mechanics of access - and how to deal with sensitive information.

My ref:

Your ref:

Yes not

Private Secretary to be covered in the charges
The Prime Minister to the operators. There will
10 Downing Street be no charge to the public.
LONDON
SW1A 2AA

I do not think you need to read through the document - although I attach it in case you wish to. I am not sure what the significance of paras 26-27 is, but they seem rather "throwaway" for such sensitive areas.

18 August 1989

Dear Caroline

CAS 22/8

NEW POLLUTION CONTROLS: PUBLIC ACCESS TO INFORMATION
PUBLICATION OF CONSULTATION PAPER

I enclose a draft consultation paper on public access to the information which will be held by the pollution control authorities under the new pollution control systems to be introduced by the Environmental Protection Bill. An earlier draft has been circulated around Whitehall at official level, and the enclosed version takes account of the comments that were made. I am circulating it for final clearance to the private offices of E(A) members and other Ministers with an interest.

My Secretary of State intends to publish the consultation paper in the week beginning 28 August, together with the enclosed press notice. It is important to go out to consultation soon, in order to allow a reasonable opportunity for comments before the introduction of the Environmental Protection Bill. I would be grateful, therefore, to hear by the morning of Monday 28 August whether colleagues are content with what is proposed.

Copies go to Private Secretaries to members of E(A), to the Foreign and Home Secretaries, the Secretary of State for Defence and Sir Robin Butler.

Yours

Kate Bush

KATE BUSH
Private Secretary

DRAFT PRESS NOTICE

PUBLIC TO HAVE NEW RIGHTS OF ACCESS TO INFORMATION ABOUT THE ENVIRONMENT

Mr Chris Patten, Secretary of State for the Environment, today announced that members of the public would have important rights of access to information held by the authorities under new pollution control systems.

The new rights of access are described in a consultation paper issued today. It is proposed that the enforcing authorities will maintain public registers setting out information about the operation of the new controls.

Mr Patten said today:

"We are introducing two important new systems of pollution control - a national, integrated system for the most polluting industrial processes, and local authority controls over emissions to the air from less polluting processes. It is essential that the public should have confidence in these controls. The best way to achieve this is to have public access to the information held by the enforcing authorities."

"The authorities will maintain registers setting out all the important information about the operation of the new controls. Members of the public will have a right to inspect the registers free of charge and to take copies."

"I am publishing a consultation paper setting out detailed proposals about the information to be included on the registers. Comments are requested by [two months from date of publication]."

"I hope that we will receive as many comments as possible. It is very important that on issues like this there is a wide and open public discussion."

NOTES FOR EDITORS

1. In 1986 and 1988 the Government issued consultation papers proposing two new pollution control systems: a system of Integrated Pollution Control operated by Her Majesty's Inspectorate of Pollution, controlling emissions to all three environmental media (air, water and land) from the industrial processes which have the greatest polluting potential; and a system of local authority controls over emissions to the air from less polluting processes. The Government has announced that these proposals will be implemented at the earliest legislative opportunity, and certainly during the lifetime of this Parliament.

2. The operators of processes which are scheduled for control will apply for authorisations to the appropriate enforcing authority (HMIP or the local authority). The authority will examine and, where appropriate, authorise the process technology and methods of operation. Conditions will be imposed to ensure that emissions of harmful substances are prevented or minimised and that people and the environment are protected.

3. The consultation paper published today sets out proposals for public registers which will be maintained by the enforcing authorities. Information on the registers will include copies of applications for authorisations: copies of the authorisations that are issued; and details of the record of operators in complying with authorisations, including details of any enforcement action taken by the authorities.

4. Comments are requested by [two months from date of publication], and should be sent to:

Mr M Gardiner
Department of the Environment
Room A302
Romney House
LONDON
SW1P 3PY

INTEGRATED POLLUTION CONTROL AND LOCAL AUTHORITY AIR POLLUTION

CONTROLS: PUBLIC ACCESS TO INFORMATION

CONSULTATION PAPER

Purpose of consultation

1. This consultation paper sets out proposals for establishing and maintaining registers to allow public access to information held by Her Majesty's Inspectorate of Pollution in connection with the new system of Integrated Pollution Control and by local authorities in connection with the new system of air pollution control. The paper seeks views on detailed proposals regarding the scope and content of the registers and measures to safeguard confidential and sensitive information.

Background: the new pollution control systems

2. The Government has announced that it intends to introduce two new pollution control systems in England and Wales: a system of Integrated Pollution Control (IPC) for certain types of industrial processes which have a significant potential for pollution; and a system of control over emissions to air from certain less polluting processes. Consultation papers on these new systems were issued in December 1986 and December 1988 (local authority controls) and July 1988 (IPC). Her Majesty's Inspectorate of Pollution (HMIP) will be the enforcing authority for processes subject to IPC control, while local authorities will have responsibility in respect of the air pollution controls.

3. The processes to be controlled under each system will be prescribed by the Secretary of State. The appropriate enforcing authority will examine and, where appropriate, authorise the process technology and methods of operation to be adopted by the operator of a scheduled process and the levels of discharges to the environment. Authorisations will be subject to whatever conditions are thought necessary to protect people and the environment.

4. Legislation to implement these proposals will be introduced at the earliest available opportunity.

Background: public access to environmental information

5. The Government has demonstrated its commitment to the principle that the public should have a right of access to information held by pollution control authorities. In 1984 it accepted a recommendation by the Royal Commission on Environmental Pollution that "there should be a presumption in favour of unrestricted access for the public to information which the pollution control authorities obtain or receive by virtue of their statutory powers, with provision for secrecy only in those circumstances where a genuine case for it can be substantiated". In 1986 the Department of the Environment published the report of an Interdepartmental Working Party (Pollution Paper No.23) on the measures necessary to implement the Royal Commission's recommendations.

6. The Water Act 1989, replacing similar provisions in the Control of Pollution Act 1974, provides for the maintenance of registers containing information arising from the control of water pollution, details of which are set down in the Control of Pollution (Registers) Regulations 1989 (SI 1989/1160). The 1974 Act also provides for registers of waste disposal licences. The Environment and Safety Information Act 1988 provides for the maintenance of registers giving details of notices served under a number of other Acts, including the Health and Safety at Work Etc Act 1974 and the Food and Environment Protection Act 1985. And SI 1989/318 requires registers to be maintained of all applications for and decisions about air pollution registrations. In each case these registers are available for public inspection free of charge and copies may be obtained on payment of a reasonable fee.

7. Members of the public also have access to HMIP annual reports and to BPM notes - guidance notes on the operation of the existing system of air pollution control. There are also some

75 local liaison committees which are attended by HMIP inspectors for the purpose of explaining their work in controlling specific plants.

8. The Commission of the European Communities has put forward a draft directive which seeks to promote and extend public rights of access to environmental information throughout the Community. Discussions on the draft are, however, at a relatively early stage, and it seems unlikely that they will be concluded before the proposed pollution control legislation is introduced in the UK. The Government considers that the best way to give effect to the principles underpinning the draft directive, in the context of the new pollution control systems, is to build upon the system of registers outlined in paragraph 6 above.

9. The register approach has many advantages. It fulfils in a transparent and administratively practical way the objective of giving the public a right of access to the information supplied to, and decisions taken by, the enforcing authorities. The approach is transparent because members of the public can see clearly and precisely what information is available, and because the information is readily available in a well-presented form. The public are not faced with the difficult task of having to find out what information is available before they can exercise their right of access. The register approach is administratively practical because the burden placed on the enforcing authorities is kept within finite bounds. The task of maintaining registers and making them available to the public represents a known and fixed burden on the authorities, in terms of workload and financial resources. They are not required to respond to ad hoc and possibly ill-defined requests for information which may not be readily available.

Objectives

10. The Government aims to achieve a system of public access to information obtained under the new pollution control systems which:

- a. is clear, so that both the public and the industries concerned know what information is available;
- b. does not discourage the voluntary supply of information by industry to the enforcing authorities;
- c. preserves the confidentiality of information which is commercially sensitive or which could compromise national security;
- d. is administratively practical and as simple as possible to operate;
- e. involves the minimum additional costs and does not represent a bureaucratic burden, either for industry or for the enforcing authorities;
- f. builds upon familiar existing procedures.

Information to be included on the register

11. HMIP (in respect of IPC) and local authorities (in respect of air controls) will be placed under a duty to maintain registers of information relating to the issue, monitoring and enforcement of authorisations for industrial processes. It is proposed that in each case the registers should contain prescribed details of the following information:

- a copy of the application for an authorisation;
- a copy of the authorisation issued in respect of the process, including a brief description of the process, the conditions set by the enforcing authority and any subsequent alterations; information that could be included in an authorisation was set out in Annex 2 to the 1988 IPC Consultation Paper;
- a statement of the general condition which will be included in every authorisation in respect of any aspect of the process not made subject to a specific condition;

this will require the operator to use the best available technology not entailing excessive cost to prevent or minimise the release to the environment of prescribed substances and to ensure that any substance released directly or indirectly into the environment is rendered harmless and inoffensive;

- details of any variation notices served by the enforcing authority on the operator of the process (ie notices requiring improvements or other modifications to the existing conditions of the authorisation);
- summary information resulting from monitoring by the enforcing authority of the operator's compliance with the conditions of the authorisation;
- summary information about any failure by the operator to comply with the conditions of the authorisation; this information would include details of the frequency and the extent of any failures to comply;
- details of any enforcement or prohibition notices served on the operator (ie notices requiring the operator to remedy any breach of the authorisation or to close down any aspect of the process);
- information about any completed action taken in the courts against the operator for breach of the conditions of the authorisation or for failure to comply with a notice served by the pollution control authority;
- an indication, where appropriate, that certain information has been omitted from the register (see paragraph 19 below).

Appeals

12. The legislation giving effect to the new pollution control systems will give the operators of processes rights of appeal to the Secretary of State against failure to grant an authorisation,

the conditions of authorisations and the service of variation, enforcement and prohibition notices. Where an operator exercises a right of appeal, it is for consideration whether information relating to the appeal should be withheld or deleted from the register until the appeal is determined. A similar issue arises where an operator has been taken to court: it is for consideration whether information relating to the case should be withheld or deleted from the register until all the legal processes, including any appeal that may have been made, have been completed.

13. An alternative to withholding or deleting information would be to include the relevant information on the register, but to note on the register that an appeal has been made or that the matter is subject to review by the courts. On balance the Government favours the latter approach, in the interest of greater openness.

The protection of sensitive information

14. The disclosure of certain information might compromise national security or the commercial interests of an operator. It is important to ensure that information in these categories is kept secure. In the case of information, the disclosure of which might compromise national security, the following procedure is proposed. The Secretary of State would be empowered to issue directions to the enforcing authority to omit specified information or categories of information from the register. When making an application for an authorisation, or upon receipt of a variation, enforcement or prohibition notice, the operator of a process would be able to apply to the Secretary of State for such a direction. The Secretary of State would not make a direction unless he was satisfied that the inclusion of information on the register would be contrary to the public interest.

15. A similar procedure could be applied in the case of information, the disclosure of which might compromise the commercial interests of an operator. There might, however, be a large number of applications from operators to the Secretary of State, asking him to exercise his powers of direction in respect

of commercially sensitive information. It might therefore be more efficient administratively to empower the enforcing authorities to omit specified information from the register on the grounds that its inclusion might compromise the commercial interests of an operator. Operators would then apply to the enforcing authority, rather than to the Secretary of State, if they felt that information should be omitted on those grounds. If this alternative procedure were adopted, it would be necessary to give operators a right of appeal to the Secretary of State against decisions by the enforcing authorities.

16. The Department would welcome views on the merits of these alternative procedures, in respect of commercially sensitive information, before reaching a conclusion.

17. There may be circumstances in which it would be in the national interest for information to be included on the register, even though its inclusion might prejudice some private interest. It is proposed, that in those special circumstances, the Secretary of State should be empowered to direct that commercially sensitive information should be included in the register.

18. Where an operator applied for information relating to an application for an authorisation to be omitted from the register, the enforcing authority would not decide the authorisation application until a decision had been reached on the omission of the information from the register.

19. Where information is omitted from the register, it is proposed that this fact should be mentioned in the register, other than in exceptional circumstances where even the mention of this fact could, in the Secretary of State's opinion, compromise national security. An indication that information has been omitted from the register will give members of the public an opportunity to make representations to the Secretary of State (or the enforcing authority) about the omission of the information. It is not proposed, however, that the public should have a formal right of appeal against a decision to omit information from the register.

20. Information which is omitted from the register will nevertheless remain part of the application, authorisation or notice concerned.

Access to the register

21. It is proposed that each local authority should keep copies of all the register entries which relate to processes (including IPC processes) in their area; and that copies of IPC register entries should also be maintained in the relevant district/regional offices of HMIP and at HMIP's head office. Members of the public would have a right to inspect any entry at any reasonable time, to be determined by the local authority or HMIP, as appropriate. This will generally mean that registers may be inspected during the hours during which each office is open for public enquiries. Members of the public would also have a right to obtain a copy of any register entry, on application in person and on payment of a reasonable fee.

22. It is proposed that a central HMIP register and registers held by individual local authorities of processes they control should be held indefinitely, as a permanent record. All other register entries would be removed when they have been wholly superseded by subsequent entries or where the process in question has not been in operation at any time in the previous 3 years.

Information not included on the register

23. It is not considered practicable or necessary to include on the register all of the information supplied to or obtained by the pollution control authorities in the course of operating the new pollution control systems, or to provide for access on demand to information not included on the register. There is however the question of access to the considerable quantity of "raw" sampling data which will be collected by or on behalf of the authorities. Making this data available could impose a considerable burden on the authorities (particularly in view of the need to protect information which is sensitive on grounds of commercial confidentiality or national security) and the benefit

would be limited, given that the registers will already contain the most important information about emissions, namely the emission limits set by the authorities in consent conditions, summary information about the operator's compliance record, including details of any failure to comply with the conditions, and a record of enforcement action taken against operators. The Department would welcome views on this issue before reaching a conclusion.

Resource implications of the proposals

24. It is considered that these proposals should add little to the costs of the firms which are subject to IPC. No information will be disclosed other than that which firms are in any case required to supply to the enforcing authorities, in order to obtain authorisations, or which the authorities may obtain as a result of carrying out their statutory functions.

25. There will be resource implications for the enforcing authorities, arising from the maintenance of registers. These costs will be reflected in the proposed system of charging operators for authorisations. It is not possible, however, to isolate the costs of operating the proposed system for public access to information from the total costs of the new pollution control systems.

Implications for other pollution control regimes

26. The legislation which introduces IPC and the new local authority air pollution controls is also likely to include provisions relating to other pollution control regimes - for example, amendments to the Radioactive Substances Act 1960. It is for consideration how far the proposals in this consultation paper should also apply to these other provisions.

27. From 1 September 1989 the National Rivers Authority (NRA) will continue the operation of registers in respect of discharges to water under the legislation mentioned in paragraph 6 above. Even when HMIP assume responsibility for authorising discharges to water from prescribed processes under the IPC proposals, it is

likely that the NRA will wish to maintain details of all discharges to controlled waters and associated monitoring information on its own registers.

Responses to this consultation paper

28. Respondents are asked to submit their comments no later than [] to the following address:

Mr M Gardiner
Central Unit on the Environment
Department of the Environment
Room A302
Romney House
43 Marsham Street
London SW1P 3PY

Respondents are asked to indicate:

- whether they propose to publish their comments or make them available to the media; and
- whether they agree that the Department may make their comments available to Parliament, and open for public inspection by the placing of copies in the Departmental library.

If the answer to both questions is no, comments will be treated as in confidence to the Government, but may be counted in any numerical survey which does not identify individuals' responses.

