

Aspects of the Coal Industry

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At privatisation the Government sold British Coal leaving itself with limited powers to control the industry. This paper sets out Government policy in some areas still under its auspices: competition from subsidised European markets; clean coal technology; and the review of planning policy guidance on opencast mining.

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Summary

Following the Coal Industry Act in 1994 British Coal was privatised and sold, piecemeal, to the private sector. This, coupled with privatisations in other energy industries, has left the Government with limited powers to intervene and control the industry.

There are, however, some aspects that are still under Government auspices. This paper sets out the position on three of these that have recently been of interest to MPs: competition from subsidised European producers particularly Germany, Spain and Poland; the Government review of clean coal technology, the technological answer to the environmental challenges posed by coal; and the Government review of planning policy guidance on opencast mining.

I Introduction

Following the Coal Industry Act 1994 the industry was privatised. British Coal's five regional coal companies and seven care and maintenance deep mines were sold. Sixteen deep mines were bought by RJB Mining. Mining (Scotland) Ltd bought the Scottish mines. In South Wales Celtic Energy Ltd bought the business, while Tower colliery, a care and maintenance mine in Mid-Glamorgan was sold to its former employees. Coal Investments plc bought six mines but went out of business in 1996. Two of these remained open and were sold to Midlands Mining Ltd. The industry has undergone what has been described¹ as a draconian restructuring programme during which concentration exclusively on profitable deposits has resulted in production costs almost as low as those charged in the world market. This has left 27 deep mines, with approximately 12,500 associated jobs, and 91 opencast sites operating at the end of 1996.

The fortunes of the UK's major mining company, RJB Mining, have featured widely in the press² as expectations of support from the new Labour Government failed to materialise. The main problems faced by RJB at present are:

- The re-negotiation of the coal supply contracts with the major electricity generators by 31 March 1998. The old contracts brokered by the previous administration before privatisation were on favourable terms. The chief executive, Richard Budge, is currently negotiating with the generators in an open market. It appears that the Government will not intervene³. Mr Battle is reported to have said⁴ "I have no say at the table and I don't know why Mr Budge thinks I might have. Any direct subsidy would be grossly unfair to other companies who are negotiating contracts." RJB is recently reported⁵ to have secured a contract with the largest generator, National Power, for 18 million tonnes over 3 years. This follows an agreement with Eastern, and leaves only negotiation with PowerGen to complete. Despite the contracts secured, it is reported⁶ that RJB may announce up to 5,000 job losses before Christmas.
- The "dash for gas". The Government has given approval for gas-fired combined heat and power (CHP) plants⁷. This was planned by the previous administration but has been endorsed by Labour who have been criticised for not placing a moratorium on new gas-fired power stations. There are 27 similar applications for CHP stations that could be given the go-ahead. This would inevitably displace coal-fired generating capacity. John Battle has said⁸ that, although he does not consider a moratorium to be the answer, there will be no automatic approval and each application will be

¹ Commission Report COM (96)575

² Financial Times 22 October 1997

³ Times 22 October 1997

⁴ Independent 22 October 1997

⁵ Times 27 November 1997

⁶ *ibid*

⁷ Independent 23 October 1997

⁸ HC Deb 26 November 1997 c930

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considered on its merits. He has, however, asked⁹ the Gas Regulator to investigate urgently long-term take-or-pay contracts with early gas-fired stations that may have prohibited the stations from reselling gas into the market if more profitable than using it. Such a position would lead to distortion of competition to the detriment of coal which Mr Battle is keen to avoid.

The Government's energy policy is to ensure that there are secure, sustainable and diverse supplies of energy, including coal. Its powers are, however, limited by the Conservative privatisation of the energy industries which as John Battle has stated¹⁰ leaves "no levers behind for us to intervene" in what are now privately owned businesses.

With the aim of ensuring a successful future for the UK coal industry the Government has recently set out the policies it is pursuing^{11,12}. It:

- is taking action to block subsidies to German and Spanish coal producers that create barriers to 1998 sales of UK steam coal, anthracite and manufactured smokeless fuels in the European Coal and Steel Community;
- has recently set up a review of the Electricity Pool - the buying mechanism through which electricity is sold - to ensure a level playing field;
- is encouraging generators to offer unwanted coal-powered stations to RJB Mining;
- is encouraging the electricity regulator to prevent generators from passing on excessive costs under the early take-or-pay gas contracts to ensure that there is no uneven playing field;
- has introduced the Fossil Fuel Levy Bill to remove the advantages that nuclear and imported electricity from France enjoy so as to ensure that other fuel, including coal, enjoy a level playing field; and
- is conducting a review of clean coal technology with the aim of finding ways to support it. The environmental challenges presented by coal could be met by technological solutions to ensure a long-term future for coal.

Finally the Government is also conducting a review of the planning policy guidance governing opencast mining with a view to tightening it.

The remainder of this paper elaborates on those issues that have been of interest to Members of Parliament recently: competition from subsidised European coal; clean coal technology; and planning policy for opencast mining.

⁹ DTI press Notice P/97/772, 26 November 1997

¹⁰ HC Deb 5 November 1997 c364

¹¹ HC Deb 5 November 1997 c345

¹² HC Deb 17 November 1997 c 49w

II Competition from Subsidised European Imports

A. Background

The Treaty of Paris set up the European Coal and Steel Community (ECSC) in 1952. This governs coal production in Europe for a 50 year period until 2002. Article 2 in the Treaty requires the Community to:

- progressively bring about the conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity;

Article 4 prohibits:

- measures or practices which discriminate between producers, between purchasers or between consumers, especially in prices and delivery terms or transport rates and conditions;

and:

- subsidies or aids granted by States in any form whatsoever.

During the 1960s the last prohibition was relaxed so that Member states were allowed to pay state aid to coal mining operations on an exceptional and temporary basis. In time, however, the number of such cases increased. In 1993 the Community rules for state aid to the coal industry were revised by a new Commission Decision ¹³. This tightened the previous framework that it replaced ¹⁴.

The revised rules also require an annual report by the Commission on state aid to the coal industry. The first of these ¹⁵ examined state aid in France, Germany, Poland, Spain and the UK in 1994. It commented that despite a rationalisation and restructuring of the industry the average production cost in the Community during 1994 was 190 ECU/tce (tonne of coal equivalent), compared with the price of approximately 43 ECU/tce for imported coal¹⁶. In addition the aid per tonne has risen from 32 ECU per tonne in 1993 to 45 ECU per tonne in 1994. The Commission report concludes ¹⁷:

¹³ Commission Decision 3632/93/ECSC

¹⁴ Commission Decision 2064/86/ECSC

¹⁵ Commission Report COM(96)575

¹⁶ Note: These figures not only reflect the subsidy regime but also the physical constraints on imports.

¹⁷ *ibid*

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That while state aid rules have indisputably given rise to far-reaching restructuring in the coal sector, the survival of a large part of the European coal industry will remain dependent on the granting of large amounts of aid. It suggests that it is too soon to tell whether the tighter framework of the new Decision - 3632/93/ECSC - will actually set the least loss-making part of the EU coal industry on the road to economic viability or merely assist the further decline of a large part of that industry.

In the meantime it is the manner in which the state aid is applied in different countries which has led to the UK considering that it faces unfair competition from some European competitors, notably Germany. This is evident in the report from the Select Committee on European Legislation¹⁸ that examined the Commission's report. It concluded that:

Whilst the current Decision is intended to provide a tighter framework than the one¹⁹ which preceded it, there is no doubt that the 1993 Decision on state aid for coal is much less rigorous than the 1991 steel aid code. In particular, it permits production aid to be given, in defined circumstances, to bridge the gap between market prices and production costs. The report reveals that in 1994 the Commission authorised operating aid in Germany totalling 14.7 billion DM (£6 billion approximately), an increase of 71% over the aid granted in 1993. This situation, which appears to stem largely from statutory protection in Germany for coal intended for electricity generation, compares starkly with the situation in the United Kingdom where the amount of aid linked to current production actually paid in 1994 amounted to only £15.6 million.

It further concluded that the report "reveals no improper state aids" and that it hoped its "successor Committee will examine the report for 1995 closely" and:

If it reveals that the trend in aid remains upward, or that the British Coal industry is being disadvantaged by the distortion of the market caused by the aid being paid in other Member States, the Government should perhaps be asked whether it is satisfied that the Decision is having the effect which was intended for it, and if not, what it proposes to do about it.

Their concern about the negative effect upon the UK industry is well founded, the Commission report²⁰ itself noted:

¹⁸ HC 36 , session1996/7

¹⁹ Commission Decision 2064/86/ECSC

²⁰ Commission Report COM(96)575

"It is somewhat paradoxical though to note that British mines whose production costs were lower than those in other Member States and which were only slightly subsidised have had to be closed for lack of a market while high cost mines are still being worked elsewhere in Europe - a situation which has helped push up the amount of aid per tonne in the Community very considerably."

B. Germany

The largest producer of anthracite in South Wales, Celtic Energy, complained to the Department of Trade and Industry (DTI) about the low price of imported anthracite from the German mines Sophia Jakoba and Ibbenburen. It appeared that state aid granted by the German Government for anthracite intended for the German power station industry²¹ was siphoned-off to subsidise anthracite exported to the UK. This substantially undercut Celtic Energy's prices and inflicted serious financial damage on it and other, small, producers of anthracite in South Wales in 1995 and 1996.

The two German mines are reported to have captured up to a quarter of the UK's annual market of 400,000 tonnes of anthracite²². This appears to have only been possible because of state aid. This aid is partly designed as a social measure to ease the run-down of the industry which currently employs about 85,000 miners²³. Earlier this year the federal government proposed big cuts in the subsidies reducing them to zero by 2005. This would have led to the loss of 60,000 of the 85,000 jobs. After furious demonstrations in Bonn Chancellor Kohl agreed to a compromise that would remove the threat of compulsory redundancies and provide more aid for the ailing industry up to 2005. Thus, although Germany is gradually reducing its subsidies this has been slowed by social pressure.

The current position about Celtic Energy's complaint was fully set out by the Minister, John Battle, during a recent adjournment debate²⁴:

The UK Government conveyed Celtic Energy's complaint to the Commission and, in August this year, the Commission sent a formal notice to the German Government asking them to justify that prima facie abuse. The notice was published in the Official Journal on 23 August. I emphasise that that is an important document, which

sets out the Commission's interpretation of the 1993 aid decision. In the notice, the Commission concluded that the complaint lodged by Celtic and the subsequent investigation gave reason to believe that irregularities could have occurred in connection with the coal sales on the Community market by the two German companies.

²¹ HC Deb 29 October 1997 c1005

²² Economist 17 June 1997

²³ Financial Times 17 March 1997

²⁴ HC Deb 29 October 1997 c1004-6

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The irregularities noted were, first, that the normal function of the market and of competition had been disrupted by the infringement of competition rules; secondly, that state aid had been used directly or indirectly for purposes that were distorting competition between Community producers; and, thirdly, that Germany had failed in its obligation to ensure compliance with the Commission's decisions and recommendations.

The Commission then invited other interested parties to comment. In September, my Department responded to that invitation in full. We endorsed the Commission's preliminary conclusion that the aid given in that case undermined the stability of the coal market in the Community. We agreed with the Commission that the two companies' behaviour could be considered to be unfair competitive practice.

In March 1997, Sophia Jakoba colliery closed. Celtic Energy was then able to secure a contract for the supply of Welsh anthracite to meet German markets previously supplied by that company. However, Ibbenburen continues to market its domestic anthracite aggressively, both in Britain and elsewhere in north-west Europe, in direct competition with UK producers.

At the beginning of 1997, Celtic Energy bid to supply the power station at Ibbenburen in Germany at prices that were less than half the production cost of the adjacent Ibbenburen mine. The offer was rejected. In the light of that,

the Department of Trade and Industry lodged a further formal complaint to the Commission that state aid to Ibbenburen distorts competition. We drew the Commission's attention to the proposed merger of Ibbenburen with the dominant German producer, Ruhrkohle, and expressed concern that that would increase the possibility of continued abuse of state aid.

In the light of the damage to the south Wales producers caused by Ibbenburen over the past two years, the Department of Trade and Industry then invited the Commission to impose punitive financial penalties on the company. More importantly, we urged the Commission to require repayment of the state aid granted to Ibbenburen last year and the denial of any further state aid in 1997.

The current position on Celtic's complaint is, I understand, that the German Government have now replied to the Commission's formal notice and the Commission is considering its next step.

In addition the UK Government is preparing a report about Ruhrkohle which receives the country's largest share of state aid²⁵. The UK's concerns are:

²⁵ Energy Report, DTI, 1997

- state aid to Ruhrkohle appears to distort competition;
- aid is being given as part of a long-term plan up to the year 2005 which is inconsistent with the "exceptional and temporary" nature of aid allowed in the Treaty; and
- aid for high-cost mines is contrary to the Treaty requirement that the Commission should ensure a "rational distribution of production."

C. Spain

The UK has also recently lodged complaints with the Commission about Spanish coal²⁶. The substance of these are:

- Discrimination against imports of foreign coal appears to be occurring because Spanish power stations are allowed to use Spanish coal with a sulphur content up to 6% whereas imported coal for this purpose must not exceed 1% , and
- Spain is granting long-term aid to mines that have no hope of economic viability.

D. Poland

The position in Poland is significant because, although Poland is not a member of the European Community, it is intending to join. The UK Government is in the process²⁷ of considering the extent to which subsidised Polish coal is being imported to the UK and undercutting indigenous production. During 1997 the UK is expected to import about 500.000 tonnes of Polish coal for power stations, industry and domestic use.

The UK Government has made its position clear. John Battle has stated²⁸ "It is not our policy to allow subsidies in Germany, Spain and Poland or elsewhere to adversely affect the UK coal industry". In answer to a parliamentary question he set out his aim²⁹:

"I mean to press for the elimination of all coal subsidies throughout the European coal and steel community by the time the ECSC is wound up in 2002, and I will support the Commission vigorously in ensuring progressive reduction in state aid paid to the European coal industry over this period."

²⁶ HC Deb 29 October 1997 c1006

²⁷ HC Deb 29 October 1997 c1006-7

²⁸ HC Deb 29 October 1997 c1007

²⁹ HC Deb 10 June 1997 c420w

III Clean Coal Technology

A. The Technology

The composition and quality of coal varies greatly, but essentially it consists of combustible carbon along with other elements, for example nitrogen and sulphur. These elements, when combined with oxygen at combustion, produce the greenhouse gas carbon dioxide and the gaseous oxides of nitrogen (NO_x) and sulphur (SO_x) that combine with water in the environment to form acid rain. To minimise environmental pollution technological methods for reducing these emissions are essential since burning of coal to provide energy will continue worldwide, particularly in China and India where it will be heavily used.

Clean Coal Technology (CCT) is a term used to encompass a wide range of technologies designed to enhance both the efficiency and the environmental acceptability of coal extraction, preparation and use. These technologies increase the energy gained per unit weight of coal and reduce emissions and waste. Most CCTs are in the field of power generation and there is already an array of technologies that are commercially viable with the expectation that others will be available soon. The main types are^{30,31}:

- Pulverised Fuel (PF) combustion in which coal is ground to a fine powder and blown as a cloud into a boiler with air. The powder, having a large surface area, burns well. The heat generated is used to produce superheated steam that drives turbines to produce electricity. PF is particularly significant since the majority of the world's coal-fired electricity is produced by this method. New plants are able to achieve an average net thermal efficiency of up to 40%.
- Fluidised Bed Combustion (FBC) in which coal is burnt in a bed of heated particles suspended in a gas flow. The coal is fed continuously into the bed that acts as a fluid when the gas flow rate is sufficient. This allows rapid mixing which encourages complete combustion and a uniform temperature in the combustion zone. The main advantages of FBC are that a wide range of fuels may be used, and it produces a reduced amount of nitrogen and sulphur oxides. Efficiency depends on the type of fluidised bed used. For most plants this is similar to that for conventional plant at about 35%, but pressurised systems have demonstrated efficiencies up to 46%.
- Gasification and Integrated Coal Gasification Combined Cycle (IGCC) systems. Gasification is an alternative to combustion used in the previous two systems. The coal is converted to a combustible gas that is cleaned. This is used to power gas turbines that produce electricity. For power generation IGCC systems have been developed that increase efficiency by using waste heat to produce steam to drive a

³⁰ Coal Power for Progress, World Coal Institute September 1996

³¹ Clean Coal Technology: Options for the future, DTI 1993

steam turbine in addition to the gas turbine. Demonstration gas turbines have achieved efficiencies of 45% and are expected to reach 50%. Other advantages of IGCC are that they produce less solid waste and lower emissions of the gaseous pollutants, carbon, sulphur and nitrogen oxides.

In addition there are hybrid systems that combine the best features of combustion and gasification technologies.

Recently the Coal Industry Advisory Board of the International Energy Agency has published a study of the barriers delaying the widespread adoption of new CCTs that have been successfully demonstrated or are in limited commercial use³². The Board has assessed the new technologies against nine key criteria comprising commercial, technical and operational considerations that would be of importance to a utility when deciding its policy on future coal-fired plant. This essentially compares the strengths and weaknesses of different technologies. It concludes "that no single technology performs best within all nine categories. PF plant is the most mature technology and the most efficient plant currently operating is a supercritical PF power station. In terms of flexibility, FBC plant leads, but efficiency and environmental performance are inferior to IGCC, which is the cleanest of all the coal technologies."

B. UK Achievements and Policy

Over the past ten to fifteen years UK investment in R&D has led to a number of measurable achievements which include³³:

- the British Gas/Lurgi coal gasification technology, selected to be included as a demonstration project in the US DOE's £4.5 billion Clean Coal Technology Demonstration Program;
- low NO_x (oxides of nitrogen) burner technology and components now being fitted to UK and overseas power stations;
- knowledge, equipment and components which have contributed to both improved safety and efficiency in UK coal mines;
- knowledge, equipment and components which have contributed to both reducing emissions and improved efficiency of UK coal-fired power stations and industrial plant; and

³² Factors affecting the take-up of clean coal technologies: Overview report, IEA 1996.

³³ Clean Coal Technologies: A Strategy for the Coal R&D Programme, Energy Paper 63, DTI, December 1994

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- a world class technical consultancy activity covering both mining and utilisation technologies.

Under the previous administration Government policy on CCT operated for several years according to the ideals set out in a strategy paper of 1994³⁴. This recognised (a) the potential export market, particularly to Asia, the Pacific Rim and Eastern European, where coal-fired plant represents the principal option to achieve large-scale increases in electricity generation that will be necessary to support these developing economies, and (b) the role CCTs could play in the UK in the use of indigenous coal for steel-making and other industrial uses. It stated:

The present programme and that envisaged for the next few years is focused on the development of clean coal technologies for both power generation and industrial markets. In the former case there is substantial scope to develop clean coal technology components and expertise for the growing overseas market. In the latter case there are considerable opportunities, if the R&D is successful, to increase the use of UK coals for home use, particularly for steel making.

The Labour government has set out its R&D programme and announced a review of CCT policy, reflecting similar themes to those above:³⁵

Mr. Matthew Taylor: To ask the President of the Board of Trade if she will list her Department's current programmes for Research into clean coal technology; and if she will make a statement.

Mr. Battle: My Department's research on clean coal technology is being undertaken in seven programme areas: Coal Exploration and Extraction, Coal Preparation, Coal Handling and Supply, Coal Combustion in Conventional Utility Power Generation, Advanced Power Generation, Other Coal Conversion and Utilisation Processes, and Technology Transfer and Commercialisation. Projects covering the seven programme areas are undertaken in collaboration with industry, universities and a number of overseas organisations. The results are disseminated via published project summaries and technical reports, including seminars, workshops and conferences. An annual report and newsletter is also published on developments in all the programme areas. The present phase of the programme is due to be completed in 1998. A mid-term evaluation of the programme by an international panel of experts was undertaken in 1996 and a report of the evaluation published in July 1996. Industry provided evidence to the international panel which indicated that the programme benefits are a mixture of gross and net effects ranging from firm export orders and potential future sales of components, innovative mechanisms to reduce NOx emissions, techniques to use more UK coals in steel making, etc., they do show

³⁴ *ibid*

³⁵ HC Deb 6 June 1997 c276w

the programme has been of significant value to UK industry. We are examining what other options there may be to support clean coal technology.

And³⁶

Mr. Tipping: To ask the President of the Board of Trade what new steps she intends to take to promote clean coal technology.

Mr. Battle: Over the next few months we will be conducting a detailed review of the UK's future clean coal technology requirements. As a key part of this review we have recently agreed to contribute some £50,000 to an industry led study as part of the Foresight exercise. The current plans will be included in the Comprehensive Spending Review announced by the Chief Secretary to the Treasury on 1 June 1997. We are working closely with industry to promote UK expertise in clean coal technology for the substantial world export market that exists for these technologies. Already the Department has led one clean coal technology trade mission to India and an inward mission from China will take place in the autumn. Further outward and inward missions are planned for 1998. We are also working closely with the International Energy Agency to promote the development of clean coal technologies in developing countries, which are expected to be the main market for these technologies over the next decade, and beyond.

The possibility of using the Fossil Fuel Levy Bill as a vehicle for raising funds to support CCT R&D was considered during its passage through the Lords. The Bill was, however, considered unsuitable³⁷ as it stands because its purpose is revenue raising and not expenditure. The Government is continuing to consider ways to support CCT and expects the report of its review to be published in the New Year³⁸:

It is clear that there is an enormous market in developing countries for clean coal technology, and that it will have major benefits in reducing SO₂ and CO₂ emissions compared with the primitive coal-burning methods in use in India and China. It is less clear that it will be the salvation of the UK coal industry. That is because it is at least four years from now before a clean coal station in the UK could be fully commissioned.

³⁶ HC Deb 3 July 1997 c263-4w

³⁷ HC Deb 5 November 1997 c347-8

³⁸ DTI Press Notice PN/97/772, 26 November 1997

IV Planning Policy Guidance for Opencast Mining

This section updates a previous Library Research Paper RP 95/56: *Opencast Mining and Quarrying*.

A. Introduction and History

There are both advantages and disadvantages to opencast coal mining operations. In evidence to the Trade and Industry Select Committee (TISC)³⁹ the local authorities associations of England and Wales emphasised the disadvantages mentioning specifically environmental damage and nuisance due to dust, noise, vibration from blasting, traffic and water pollution. Similarly, in evidence to the TISC⁴⁰, the Council for the Protection of Rural England described opencast coal mining as "one of the most environmentally destructive activities being carried out in the UK", causing "permanent damage to the land and the landscape."

The advantages include:

- low and predictable cost of operations;
- environmental benefits where derelict sites are reclaimed after mining;
- provision of a particular quality of coal such as that with a low chlorine content to mix with deep-mine coal to 'sweeten' it and thereby meet the chlorine content limits imposed by generators to prevent damage to their boilers;
- availability of types of coal not mined in sufficient quantity from deep mines, especially anthracite.

At the time of the TISC Report the Department of the Environment (DoE) was reviewing planning guidance for opencast mines set out in *Minerals Planning Guidance Note 3* (MPG3) of 1988. This contained a presumption in favour of maximising production from opencast mines which had been severely criticised. TISC recommended "that planning guidance be changed to restrict consents to sites where there are clear benefits, either locally in terms of reclaiming land or to the nation through making available particular qualities of coal and thus helping to sustain the coal industry." The Committee also recommended "that the [Coal Authority] use their control over licences to bring about a reduction in opencast output."

³⁹ p73 British Energy Policy and the Market for Coal, TISC, HC 237, 1992-3

⁴⁰ *ibid*

The TISC also expressed concern that opencast would expand to replace deep-mined coal production. This was compounded at privatisation by the sale of areas with opencast potential that led to widespread fears of an upsurge in opencasting. However, it did not materialise.

A monitoring exercise in 1992 led to a decision to revise the 1988 MPG3 to reflect environmental concerns and the development led system. In July 1994 the revised MPG3 for England and Wales was issued. This contains no presumption either for or against opencast coal mining and appeared to set tougher environmental standards⁴¹, although it is almost impossible to judge in advance how tough an environmental regime will be:

The key policy is at paragraph 11 which states that "**where the development can be carried out in an environmentally acceptable way and consistent with the principles of sustainable development, there is no case in land use planning terms for placing more restrictions on coal extraction and colliery spoil disposal than are necessary to ensure full and proper protection of the environment**". Paragraphs 22 and 23 also advise that policies in development plans should look favourably on extraction which is necessary to avoid sterilisation of coal reserves by other forms of development, including major road constructions, within a reasonable timescale and in an environmentally acceptable way, and that priority should be given to proposals which will bring about environmental improvements, for example by the restoration of derelict land.

Figures for England and Wales for the first full year of operation of the revised MPG3 (1995/6) compared with the last full year of operation of the 1988 version (1992/3) show that, although the proportion of applications that were successful remains constant, there has been a considerable reduction (by a factor of three) in approvals for opencast operations when judged by weight of coal mined or land area excavated to recover it⁴²:

In 1995/96, the first full year of operation of the revised MPG3, opencast coal production accounted for about 25% (11 million tonnes) of total coal production in England and Wales (44.6 mt). During the same year 32 applications covering 679 and 3.8 mt of coal were approved by mineral planning authorities ("MPAs"). 18 applications covering 1214 hectares and 9.3 mt were refused. There were 6 appeals, none of which were allowed. By comparison, in 1992/93, before the new policy was introduced, opencast coal production was around 15% (10.4 mt) of total coal production in England and Wales (69 mt). That year, 44 applications (out of 66) covering 1551 hectares and 8.2 mt were approved by MPAs. 9 appeals (out of 16) were allowed covering a further 769 hectares and 3.8 mt. In other words 12 mt of coal and 2320 hectares of land were approved for opencasting in 1992/93 compared to 32 applications involving just under 4 mt and 679 hectares in 1995/96. There has therefore been a significant reduction in the amount of tonnage and land approved for opencasting since MPG3 was revised.

⁴¹ Dep 5252 (3s)

⁴² *ibid*

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This has led to a fall in *total* output of opencast coal mined in the UK by about 10% over the same period, as shown by the following table⁴³:

Year	Opencast Production (1000 tonnes)
1992	18,187
1993	17,006
1994	16,804
1995	16,369
1996	16,315

B. Labour's Pre-election 10-point Plan

In December 1996, towards the end of Labour's time in Opposition, Frank Dobson, the then Shadow Environment Secretary, published a policy paper about opencast coal⁴⁴ which criticised the 1994 version of MPG3 and spelt out Labour's position:

Labour believes that opencast mining is one of the most environmentally destructive activities in the UK and that its growth has been at the expense of the deep mining industry. Although the Government claim that the revised MPG3 has ended the presumption in favour of opencasting, this has yet to be fully tested in practice. In any case the privatisation of the coal industry will promote more opencasting and lower standards of operation and restoration.

Labour will implement a presumption against the development of new opencast coalmines and give greater emphasis to environmental considerations. We acknowledge, however, that in some circumstances opencasting may be welcome locally, particularly if it involves the clearance of dereliction or contaminated land.

The critique culminated in a 10-point plan that gave specific commitments about Labour policy if elected. This was essentially reiterated⁴⁵, but with the points in a different order, in the Government's Consultation Paper published later:

Labour in Government will:

1. permit opencast working only where it is of benefit to the local community and local environment -eg by clearing up an area of dereliction.

⁴³ *Digest of UK Energy Statistics 1997*, DTI

⁴⁴ *Opencast Coal Mining-To High a Price to Pay*, Labour Party, December 1996

⁴⁵ Annex A, Dep 5252 (3s)

2. require future planning consents for opencast workings to set more strict and enforceable environmental standards.
3. apply environmental assessment procedures to existing as well as future opencast workings.
4. allow the rejection of planning applications for opencasting where they may prejudice efforts to attract other investment in the locality.
5. set strict and short time limits whether for starting preparatory work or ending coal extraction.
6. restrict repeated applications for extensions of existing workings of the same or broadly similar sites.
7. treat applications for extensions of existing workings as entirely new applications.
8. tighten the rules to secure prompt and full restoration of sites and ensure that funds to do this are available from the operators.
9. subject proposed and existing opencast workings in areas covered by Interim Development Orders to normal planning and environmental controls.
10. reduce the reliance on opencast coal as part of overall energy policy.

C. Post-election Policy

Following the Election, the portfolio passed to the Minister for the Regions, Regeneration and Planning, Richard Caborn. He announced⁴⁶ his intention to review urgently the current MPG3 and to consider whether short and long-term changes were necessary in the light of Labour's pre-election policy formulated as the 10-point plan. Soon after he announced⁴⁷ the publication of a consultation document on the review for England⁴⁸. This was followed by parallel documents of similar content for Wales⁴⁹ and Scotland⁵⁰. The consultation document essentially seeks views, point by point, on the 10-point plan. In it the Government has made comments and proposals on each of the above points:

⁴⁶ HC Deb 19 May 1997 c480-8

⁴⁷ HC Deb 30 July 1997 c403w

⁴⁸ Dep 5252 (3s)

⁴⁹ Opencast Coal Review of Planning Policy, Welsh Office, September 1997

⁵⁰ Opencast Coal Review of Planning Policy, Scottish Office, August 1997

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1. Government Comments in the Consultation Paper⁵¹

1. This would not require legislation to implement. Mineral Planning Authorities (MPAs) can take these matters into account as material considerations. MPG3 already advises that priority should be given to derelict sites but the guidance could be made tighter.
2. MPAs already have powers to attach tough and enforceable environmental conditions to planning consents. They are only constrained by what the Courts would consider relevant and reasonable. Research into the environmental effects of dust from surface mineral working has recently been published, and the results of research into the environmental effects of blasting and of traffic are due to be published later this year.
3. Environmental Assessment ("EA") is a procedure which enables the environmental effects of certain types of project to be taken into account by the competent authority (in this case the MPA) before deciding whether to give consent. A change in the law would be necessary to apply EA to existing consents. A mechanism would be needed to extinguish existing consents and require replacement planning applications to be subject to EA. MPAs would be liable to pay compensation for any loss of value resulting from a restriction of permitted working rights. Moreover, but the time any new legislation was enacted (by well into 1999 at the earliest) existing projects would either be completed or so far advanced that EA would be unlikely to serve any useful purpose. EA is already required by law for new opencast coal mines (and modifications to existing mines) whenever they are likely to have significant environmental effects. Current planning guidance suggests that sites over 50 hectares may well require EA, and that significantly smaller sites could require EA if they are in a sensitive area or if they would involve particularly intrusive operations.

An EC Directive amending the existing environmental assessment Directive must be implemented by 14 March 1999. Under the amending Directive, EA will be mandatory for new opencast coal sites over 25 hectares. Below this threshold new sites, and modifications to existing sites, will still require EA if they are likely to have significant environment effects.

4. This would require a change in the law. However, where there is clear evidence that opencasting would prejudice other inward investment bringing jobs to an area, this is already a material consideration which MPAs may take into account in deciding applications
5. When **granting** planning consents, MPAs already have powers to attach conditions specifying the date by which developments must be begun (or the planning permission will lapse) and specifying dates for the completion of coal extraction, restoration and aftercare. However, the current definition of the commencement of minerals development excludes preparatory works because otherwise fairly minor works would be sufficient to keep a

⁵¹ Dep 5252 (3s)

permission alive. There is also a complex relationship with an MPA's ability to take enforcement action. Advice on this was given in the Department's circular letter of 23 February 1996 on the Town and Country Planning (Minerals) Regulations 1995 but MPAs could be reminded of this. Altering the terms of **existing** consents would involve the payment of compensation for loss or damage if working rights (including the duration of the permission) were restricted.

6. MPAs already have powers to decline to determine a planning application if it is made within two years of the Secretary of State refusing a similar application, either on call-in or appeal, and there has been no material change in circumstances since that decision. To go further would require legislation which would have implications for the planning system as a whole.
7. **Lateral** extensions to existing workings already require a new grant of planning permission and are generally treated as entirely new applications. Applications to extend the **depth** of existing consented workings may simply involve an application to vary the conditions attached to an existing planning consent. However, in considering such an application the MPA must take into account all material considerations such as the effect that varying the condition would have on the environment and local amenity. To preclude operators from applying for a variation of conditions would require new legislation and would have implications for the planning system as a whole.
8. MPAs already have wide powers to impose and enforce conditions requiring the restoration and aftercare of sites and to carry out the works themselves and reclaim costs either from the last mineral operator or the landowner. Requiring applicants to provide a financial guarantee up front would require a change in the law. Research carried out for the Department by Arup Economics and Planning ("Review of the Effectiveness of Restoration Conditions for Mineral Workings and the Need for Bonds", 1993, HMSO) found that failure to restore mineral sites very rarely resulted from financial failure on the part of the operator. MPG7 ("The Reclamation of Mineral Workings"), published by HMSO in November 1996, gives advice on financial arrangements to secure effective restoration of mineral workings. A review of this policy, with its major financial and legal implications would require extensive consultation and would have implications for minerals planning policy as a whole. It is important to distinguish between "restoration" conditions, which require the site to be restored to a soft end use - ie agriculture, forestry or amenity, and conditions which require the site to be made fit for a hard end use - eg housing, industry or other built development. In the latter case, the mineral developer's obligations are discharged when the site is made fit for that use: the built development would have to the subject of a separate planning permission.
9. Permissions granted under Interim Development Orders (between 1943 and 1948) are the earliest form of extant planning permission. These "IDO" permissions did not extend to any form of coal working but, because they were very loosely drafted, there may have been one or two isolated cases of

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opencast coal mining taking place under the permissions which were intended for the extraction of other minerals. The Planning and Compensation Act 1991 requires all such permissions to be reviewed and modern conditions to be attached without compensation. MPAs also have powers to revoke permissions but would have to pay compensation.

The comment on point 10 is arguably the most interesting since it sets the scene for the Government's opencast coal policy in the context of overall energy policy:

10. The Government's energy policy is to ensure that the country's energy supplies are secure, diverse, environmentally sustainable and at competitive prices.

and

the Government believes that its objectives are best achieved through open and competitive markets and by providing a level playing field between fuels and within each fuel sector.

Despite the pre-election policy to "reduce the reliance on opencast coal as part of overall energy policy" the comment concludes:

The Government does not have a target level for opencast production. Opencast production nevertheless contributes towards energy policy objectives in a number of ways.

2. Government Proposals in the Consultation Paper⁵²

On points 6,8&9 the Government does not intend to make any changes to present provisions.

Subject to the views of consultees the Government is minded to issue interim planning guidance advising Mineral Planning Authorities (MPAs) of their existing powers or strengthening them slightly on points 1,2,3,4,5 and 7. Additionally, on point 3, the requirements of the amending EC Directive must be considered before 14 March 1999 when it is due to be implemented. The Directive requires Environmental Assessments (EAs) to be carried out on new opencast sites of more than 25 hectares. For new sites of smaller area, and changes to existing sites, an EA will still be required if they are likely to have significant impact on the environment.

⁵² Dep 5252 (3s)

Again, the proposal on point 10 proves to be most revealing in the light of the pre-election policy to "reduce reliance on opencast coal as part of overall energy policy". While acknowledging that proposed strengthening of planning guidance will tend to reduce opencast production over time, the Government thinks that where planning and environmental controls have been met opencast should be allowed to proceed and states:

The Government does not at present intend to make any specific provision for opencast coal's contribution to its energy policy.

3. Conclusion

Thus, although some tightening of opencast policy by the Labour Government seems inevitable, proposals for doing so appear to be less stringent than promised in Frank Dobson's bold 10-point pre-election plan. It has been voiced repeatedly in the press that the strengthening of policy is unlikely to be as great as many would like, or were led to expect, from Labour in Opposition. Following an adjournment debate⁵³ it was reported that⁵⁴:

The speech by Mr Caborn was not exactly what the campaigners wanted to hear. Many activists and groups were concerned that the promises made by Frank Dobson would be dramatically watered down. These fears were expressed in a large number of letters posted to Mr Caborn and to local MPs.

And, subsequently, following the publication of the Consultation Document, Harry Barnes, Labour MP for Derbyshire North East is reported to have⁵⁵:

...written to Richard Caborn....complaining that Labour's election pledges are being "diluted to the point of near impotence." Mr Barnes described the (Consultation) paper as "pathetically tepid and timid"

And⁵⁶:

Protestors demonstrated outside the Welsh Office yesterday accusing the Government of breaking its promise to presume against opencast mining in new planning guidance.

⁵³ HC Deb 19 May 1997 c480-8

⁵⁴ Energy Utilities July 1997 p27

⁵⁵ Independent 22 September 1997

⁵⁶ Western Daily Mail 30 October 1997

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The deadline for comments on the Consultation Document was 31 October 1997. After consideration of the responses the Government will decide what policy guidance should be implemented as interim planning guidance to be issued as soon as practicable, and which issues require further consideration in a full review of MPG3 (planned for 1998) and whether any legislative changes are desirable in the long-term. The Minister intends this to be a short but thorough review designed to remove any uncertainty.

Energy

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94/008	The Coal Industry 27.04.93	17.01.94
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