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INFORMATION REDACTED

-----Original Message-----

From: Gray E (Elizabeth)

Sent: 01 June 2005 19:46

To: Forsyth CC (Colin); Bellingham R (Richard); Stewart NA (Neil)

Cc: Cullen F (Felicity); Haynes RJ (Robin); McNairney J (John); Grant RA (Richard); Popplestone A (Anita);
Campbell K (Kerrie); Hall I (Ian)

Subject: RE: SCOTLAND OFFICE : PQ ORAL Tuesday 7 June : RESERVED & DEVOLVED RESPONSIBILITIES
FOR NEW NUCLEAR PLANT

Colin

We spoke earlier. This is more for ETLLED than us, to whom you copied your email, but planning colleagues in DD, who are copied in on the reply also have an interest. You may also want to look at

the statements in the debate on 14/04 on the Partnership Agreement position on Nuclear power & waste (transcript attached). A summary of our understanding of the key responsibilities are below, but ETLLD and DD may wish to expand on them:

- Planning is devolved: planning permission is dealt with under the Town and Country Planning (Scotland) Act 1997. Scottish Ministers can call in such applications to determine them, rather than the planning authority doing so.
- Radioactive waste management is also devolved and we would expect such a facility to require authorisation for the disposal of radioactive waste by the Scottish Environment Protection Agency under the Radioactive Substances Act 1993. RSA93 also allows the Scottish Ministers to exercise their powers (as exemplified by the Scottish Ministers' recent Direction to SEPA to refuse the UKAEA's application to dispose of Dounreay Low Level Waste to Cumbria).
- Health & Safety Executive's Nuclear Installations Inspectorate would also have a regulatory role under the Nuclear Installations Act 1965: this is a reserved matter.
- Applications for consents for new nuclear energy installations would be made under section 36 of the Electricity Act, responsibility for which has been administratively devolved to Scottish Ministers.

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Elizabeth

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01 June 2005

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From: Forsyth CC (Colin)

Sent: 01 June 2005 14:50

To: Bellingham R (Richard); Stewart NA (Neil); Gray E (Elizabeth)

Cc: Cullen F (Felicity); Haynes RJ (Robin)

Subject: SCOTLAND OFFICE : PQ ORAL Tuesday 7 June : RESERVED & DEVOLVED RESPONSIBILITIES FOR NEW NUCLEAR PLANT

Importance: High

Richard Bellingham ETLLD

Neil Stewart ETLLD

Elizabeth Gray SEERAD

Copy to Felicity Cullen OSAG

Robin Haynes

SCOTLAND OFFICE : PQ ORAL No.1 Tuesday 7 June

MIKE WEIR (SNP)

RESERVED & DEVOLVED RESPONSIBILITIES FOR NEW NUCLEAR PLANT

We have the following PQ for Oral answer by Alistair Darling next Tuesday:

Mr Mike Weir (Angus): To ask the Secretary of State for Scotland, what responsibilities are devolved, and which reserved, in relation to any decision to commission and locate a new nuclear power station in Scotland.

DTI have a (written) PQ from Alistair Carmichael (LD Orkney & Shetland) asking "whether consent from the Scottish Executive is required" for nuclear generation stations to be built or extended in Scotland.

Glad of any lines of comments you wish to offer for Mr Darling's use from the Executive perspective. Grateful in particular for any available briefing lines by lunchtime tomorrow (Thursday) if possible.

Context

The context for this question will be the strong emphasis during the SNP's Election campaign on opposing any new nuclear developments in Scotland, the speculation before and after the Election about Government moving to consider new nuclear build, the emphasis given to new nuclear by the Scottish Affairs Committee Report issued in March. There was an exchange about the issue of who needs to consent to any development in Scotland at First Minister's Questions at Holyrood on 12 May:

Scottish Parliament : 12 May 2005

Christine Grahame (South of Scotland) (SNP): Further to Cathie Craigie's question and to the delicious questioning by Shiona Baird, is it not the case that the First Minister and his Liberal Democrat colleagues have a wee bit of a problem, because energy is a reserved matter, whereas planning is devolved? The solution is simple: designate nuclear power stations as developments of national significance, bypass democracy and then build them. What will the Lib Dems do then?

The First Minister: Mr Wallace says that the Lib Dems will beat the SNP again, which is perhaps appropriate, although I hope that the Lib Dems will remain in second place. I want to be clear about nuclear power stations. We have the powers to stop new nuclear power stations being built in Scotland and we will use those powers until the issues of nuclear waste

Col 16828

have been resolved. That is the clear view that the Liberal Democrat and Labour parties hold and we will stick together on the issue. No attempt to distort the picture or create scares among the people of Scotland will work, because the position remains crystal clear: the powers exist.

It is interesting that although the SNP talks about economic growth, as soon as we scratch the surface we find that it is no longer interested in that. The planning reforms that we will implement will be designed to ensure that communities and local people in Scotland have a better say and a better opportunity to contribute to planning decisions. On the other hand, our reforms will ensure that proper sustainable development comes about efficiently through a modernised planning system. I challenge the SNP to support that system when we make our proposals.

Some relevant aspects

The question of "resolving" conflict between reserved powers in the nuclear area and devolved powers in the planning process has arisen from time to time over the years. For some time a standard line from Scotland Office Ministers has been to stress that "Planning is a devolved matter" where decisions lie with the Scottish Executive.

In addition to planning the Scottish Parliament and Executive also have devolved powers

over radioactive waste.

It is a clear element of the LAB/LDem Partnership Agreement following the 2003 Holyrood Election which underpins the present coalition administration in Edinburgh that there should be no new nuclear development in Scotland until the position on disposal of nuclear waste has been resolved.

In addition to general planning powers devolved to the Scottish Executive and Parliament by the Scotland Act, Scottish Executive Ministers have also been given by executive devolution exercise of the s.36 Electricity Act consent powers in respect of any new power station developments in Scotland.

Issues

My understanding is that as the law stands, any new development of a nuclear generating station in Scotland may require consents from DTI under reserve legislation dealing with nuclear matters, but would certainly require consent from the Scottish Executive under s.36 of the Electricity Act and acceptance under the devolved system of land-use planning. (It may be that a s.36 consent removes the need for more general planning consent ?)

The practical reality is that consent is likely to be needed from a number of authorities to allow any significant new development and as stressed by the First Minister the Executive have the power to veto such a proposal.

There is no very clear reason why it should be supposed that at some point UK Ministers would wish to impose new nuclear plant on an unwilling Scottish Executive. If faced with a proposal to develop a nuclear plant, the Executive would need to consider issues such as overall plant availability, the generation margin and security of electricity supply in the context of Scotland and the capacity of the grid to move power around GB in reaching their decision.

Possible lines to take

As I see it the basics should be:

- o Planning is a devolved matter
- o Executive Ministers exercise the s.36 Electricity Act consent powers in Scotland
- o For the devolved administration to assess their position overall
- o Executive do have the power to prevent development of new nuclear generation in Scotland
- o Restatement of UK Government position on new nuclear – from Energy White Paper ?

I should be glad of any comment you may have on any of this for the Executive's interests.

Given recent publicity on pending release of the Nirex list, I propose to include some of the briefing on that in case supplementaries take us into issues of nuclear waste disposal – a wholly devolved matter.

Colin Forsyth

1 June 2005

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