Ministry of JUSTICE

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Mr Mark Tami MP
House of Commons
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Your ref: CPMT
Our ref: MC306811

5 October 2011

Dear Mark

RE: EU DIRECTIVE – ENVIRONMENTAL IMPACT ASSESSMENT

Thank you for your letter of 21 June 2011 to the Justice Secretary about the provisions in the EU's Environmental Impact Assessment Directive. A constituent has contacted you regarding the changes required in relation to the section which provides for the public to be able to appeal against projects on the grounds of environmental concerns without excessive expense. I have been asked to reply as the Minister responsible for the policy in this area.

The obligations to which your constituent refers have been inserted into the Environmental Assessments Directive by Directive 2003/35/EC ("the Public Participation Directive" or "PPD"). The PPD also inserts similar amendments into the Industrial Emissions Directive. Both these Directives, as amended, now require Member States to permit members of the public to have access to a court procedure to challenge decisions subject to the public participation procedures and specifies that those court procedures, amongst other things, should not be 'prohibitively expensive.' In the United Kingdom the procedure used for such challenges is judicial review.

Over a number of years the courts have been developing mechanisms known as Protective Costs Orders (PCOs), which are designed to limit the exposure of claimants to defendant's costs. A PCO sets a pre-determined figure, above which a claimant will not be liable for the defendant's costs if they are unsuccessful in the judicial review. Case law has now moved to develop a strong presumption that a PCO will be granted where an environmental case is brought in the public interest.

The Government has accepted for some time that it would be in the interests of applicants in environmental judicial review cases to provide greater clarity about the

level of costs for which they might be liable, through a codification of the rules on PCOs, setting out the circumstances in which a PCO will be granted and the level at which it will be made.

Consequently the Government will very shortly be publishing a public consultation containing detailed proposals to amend rules of court in England and Wales to enable claimants in environmental judicial reviews to apply for protective costs orders. This will be available shortly on the Ministry of Justice website.

I understand that the devolved administrations in Scotland and Northern Ireland are also developing similar proposals for consultation within their own jurisdictions.

I enclose a copy of my reply for you to send to your constituent if you wish.

Yours

JONATHAN DJANOGLY