



From the Secretary of State

The Rt Hon Sir Geoffrey Howe, QC MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
London, SW1P 3HE

25 October 1979

Dear Geoffrey.

DIRECTORS' DUTY TO HAVE REGARD TO EMPLOYEES' INTERESTS

My Companies Bill had its Second Reading on 22 October and will shortly go into Committee.

There was pressure in the Lords for the inclusion of a number of provisions from the last Government's 1978 Bill, which fell at the dissolution of Parliament. The Opposition had announced their intention of tabling amendments on these points, and had proposed to divide the House on the Second Reading on the grounds that they were omitted. Both on merits, and because I want to retain the political initiative, I reached the view that we should ourselves propose to widen the Bill to cover some of these points. The Minister of State gave notice of this intention in moving the Second Reading, and it has been widely welcomed.

I wrote to the Employment Secretary, the Industry Secretary and other colleagues last week about one provision where there is a particularly difficult balance to strike. This is the proposal that directors of companies should be put under a new statutory duty to have regard to the interests of employees. In principle, I feel that we must do this - the Employment Secretary and I are on public record to that effect. My main concern has been that legislation should not expose boards of companies to protracted and vexatious litigation. The last Government's proposals were



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strongly criticised on these grounds by the CBI. The Minister of State (Industry) wrote last week to suggest that we should be "completely satisfied" on this point.

I have accordingly sought the advice of the Law Officers on the provision we should propose. The Attorney General's views are set out in his letter of 18 October which I have asked should be made available to you and other recipients of this letter who have not already seen it. If I may venture to summarise, the Attorney General considers that the possibility of litigation could not be completely discounted, especially in the early days while the effect of the new provision was being tested, but that the prospect of successful actions would be small.

My own conclusion is that the risk, thus defined, is acceptable. A provision which offered a water-tight guarantee against any risk of litigation - however remote - is unattainable, unless in so weak a form as to be derisory. We have substantially reduced the risk, by proposing that the directors' new duty should be owed to the company (not - as the last Government proposed - to the employees) and should be enforceable only by the company. My proposal will no doubt be criticised by the TUC as inadequate in this respect, but less so than failure to tackle the matter at all. The Employment Secretary sees it as a positive contribution to his current policies.

Accordingly, Cecil Parkinson announced in the Second Reading debate that the Government hoped it would be possible to bring forward an amendment, that we believed that we had succeeded in drafting a suitable clause and that unless unexpected difficulties appeared we would table this provision in Committee.

Since I do not believe we could completely eliminate the risk of vexatious litigation and I believe we have minimised that risk as



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far as possible, I am therefore writing to inform you of my intention to proceed with this amendment.

I am copying this letter to the Prime Minister, to other Members of E Committee, to the Attorney General and to Sir John Hunt.

*Yours ever
John.*

JOHN NOTT



25 OCT 1973



From the Secretary of State

Martin Hall Esq
Private Secretary
Chancellor of the Exchequer
HM Treasury
Parliament Street
SW1

29 October 1979

Dear Martin

DIRECTORS' DUTY TO HAVE REGARD TO EMPLOYEES' INTERESTS

My Secretary of State wrote to the Chancellor on 25 October on this subject, and mentioned that the Law Officers had been asked to advise on the proposed amendment to the Companies Bill. The letter should therefore have subsequently referred not only to the Attorney General's letter of 18 October but also to the Lord Advocate's letter of the same date. The latter is of course also available to those who have not seen it.

I am sending copies of this letter to the Private Secretaries to the Prime Minister, the members of E Committee, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely

John Symes

J M D SYMES
Private Secretary

29 OCT 1979

