



The Rt Hon Alistair Darling MP
Department for Transport
Great Minster House
76 Marsham Street
London
SW1P 4DR

16th October 2006

Dear Mr Darling,

The Sustainable Development Commission welcomes the requirement in clause 173 of the Companies Bill for directors to have regard to the impact on the environment and the community and the interests of the company's employees.

However, we do have concerns about the scope of the directors' duties set out in clause 173 of the Bill, and the absence of any reference guidance as to the carrying out of the duties imposed on directors.

In our view the scope of the directors' duties does not adequately reflect the commitment on corporate social responsibility given in "Securing the Future", the UK Government's sustainable development strategy. We consider that guidance as to the responsibilities of directors would be welcomed by many in industry as assisting directors in how they can reconcile or integrate the different considerations which they will be required to take into account.

It also seems to us that including only publicly listed companies in the scope of this aspect of the Bill will limit its effectiveness and recommend that serious consideration is given to extending this scope in order to cover a wider range of companies.

We apologise for raising these matters so late in the Bill's parliamentary progress but hope there is time before the Report Stage and Third Reading on 17, 18 and 19 October to give consideration to our concerns and suggested amendments.

Directors' Duties

"Securing the Future" (in a box on page 57) words its policy in terms of the Operating and Financial Review. We are not primarily concerned with the issue of whether the OFR proposals were preferable to the Business Review as a mechanism, though we have some comments on the ambit of the reporting requirements which we set out

below. We are concerned that the substantive content of what the Government committed itself to in "Securing the Future" should be reflected in the requirements of the Companies Bill.

This will be achieved only if the provisions of the Bill incorporate a clear requirement for listed companies to "consider sustainable development issues alongside financial information", including "environmental risks and uncertainties" and "social, community and employee issues", and that they should "report on policies and performance to the extent necessary for shareholders to assess the company's strategies and their potential to succeed" (these quotations are from "Securing the Future" page 57).

While the matters that directors must have regard to in carrying out his duties goes some way to achieve these objectives, it falls short in the following respects:

1. It requires regard to be had to the impact of the company's operations on the community and the environment - clause 173(1) (d) - this would be a more effective and targeted provision if rather than merely referring to "the impact" it required regard to be had to "the desirability of minimising any adverse impact".
2. Currently there is no requirement to have regard to the desirability of achieving sustainable development. While the references to environment, community and the interests of the companies employees incorporate some of the strands of sustainable development, we consider that it is important that sustainable development as such is included and could be added to clause 173(1).

Guidance

We recommend that provision is made for the Secretary of State to publish guidance as to the interpretation of the duties imposed on directors by Section 173 "having consulted such persons or bodies as he considers relevant."

Lastly the reporting requirements would need to be slightly amended to take into account the extension of the directors' duties which we deal with in our suggested amendments set out below.

I would be grateful if you could let me know the outcome of your consideration of these issues.

Yours sincerely,

p.p. Tess Gill.
Work and Skills Commissioner
on behalf of the Sustainable Development Commission.

Schedule

The following amendments would in our view achieve the results we recommend in our letter and may be of assistance.

Clause 173, page 79, line 9, after “(d) the” insert –
“desirability of minimising any adverse”

Clause 173, page 79, line 10 at end insert –
“(da) the impact of the company’s operations on the achievement of sustainable development,”

New Clause 173A:

“(1) The Secretary of State shall from time to time publish guidance as to the interpretation of the duties imposed on directors by Section 173.
(2) Before publishing the guidance referred to in subsection (1), the Secretary of State shall consult such persons or bodies as he considers relevant.”

Clause 423, page 197, line 3, after “performance”, insert –
“impacts”.

Clause 423, page 197, line 18, after “performance”, insert –
“impacts”.

Clause 423, page 197, line 25 at end insert –
“(6A) The review must, where it is relevant to do so, outline the company’s performance in relation to the provisions of the Extractive Industries Transparency Initiative.”

New Clause 423A:

“(1) The Secretary of State shall from time to time publish guidance as to the interpretation of the duties imposed on directors by Section 423.
(2) Before publishing the guidance referred to in subsection (1), the Secretary of State shall consult such persons or bodies as he considers relevant.”