CONFIDENTIAL

VC3AHG.
cc CDL
Lord Chanc.
cc Welsh Office

10 DOWNING STREET

From the Private Secretary

16 September 1985

SHOPS BILL: SUNDAY TRADING

The Prime Minister has seen the correspondence on this matter, and in particular the letter from the Secretary of State for Employment dated 11 September to the Home Secretary.

The Prime Minister has endorsed the points made in the Secretary of State's letter. She has also asked whether the protection provided for existing employees should not be time-limited to, say, three years, and whether smaller retailers should not be exempted. She has stressed, too, the importance she attaches to the Whips being asked to confirm that a package of special concessions of this kind will be necessary to secure the passage of legislation.

I am copying this letter to Hugh Taylor (Home Office) and Leigh Lewis (Department of Employment). +CST.

MARK ADDISON

Miss Joan MacNaughton,
Lord President's Office.

CONFIDENTIAL

D

CONFIDENTIAL

MR ADDISON

12 September 1985

SHOPS BILL: SUNDAY TRADING

Leon Brittan proposed exceptional levels of protection for shop workers against dismissal for refusing to work on Sundays. He believed that it would be necessary to provide certainty of protection in order to get the Bill through.

The Common Law might provide this: an employee threatened with dismissal could bring a case against an employer on the basis that Sunday working constitutes a unilateral variation in his contract of employment. The Home Office and Department of Employment are not sure how successful such an action would be.

We probably need to do something to protect shop workers, and the extra burden that the proposals would impose on employers may in practice be slight in relation to the prize of Sunday trading. But is it necessary to go so far as to propose that all those engaged on the day of the Royal Assent, including all part-time workers and all young workers, to be protected indefinitely?

George Younger has made matters worse by securing agreement to extending protection to Scotland, even though Scottish shop workers have already adapted to Sunday trading. It may now be argued that if Scottish shop workers are to be protected, why not all new recruits too?

David Young is, surprisingly, content provided:

1) the Home Office consults the Whips again on the need for these measures;

2) restrictions on the hours of work of young workers are abandoned.

CONFIDENTIAL

An option which would be less onerous to employers is time-limited protection, eg for three years. Existing shop workers ought eventually to adjust to the changed circumstances of their industry. Why grant them protection for life?

Recommendation

If we are really serious about deregulation, we should attempt to argue such an important measure through without restrictions, which, in Scotland's case, are net additions to the burdens on employers. I would recommend that you consider intervening along the lines that:

1) You look forward to hearing the Whips' latest assessment on how comprehensive the protection need be to secure the Shops Bill;

2) Like David Young, you see no need to retain the restrictions on the hours of young shop workers;

3) In view of the fact that many shop workers will need to adjust to Sunday trading, you wonder whether the protection which is proposed could not be time-limited in some way, for example, for three years? And whether smaller retailers, who would have difficulty coping if staff refused to work on Sundays, could be exempted?

Nicholas Owen

NICHOLAS OWEN

E.R.

PRIME MINISTER

SHOPS BILL: SUNDAY TRADING

Leon Brittan and Tom King (as Home Secretary and Secretary of State for Employment) proposed that the Government's commitment to look sympathetically at ways of protecting established employees from being pressured into working on Sunday could be met by extending the unfair dismissal legislation to cover them (Flag A). They envisaged providing these people with relatively generous levels of compensation, based on those available for employees sacked for refusing to join a closed shop on conscience grounds.

The Secretary of State for Scotland - even though current restrictions on Sunday trading do not apply there - has asked that this protection should be extended to Scotland (Flag B).

Lord Young (Flag C) has suggested that, before this package is accepted:

(i) the Whips should confirm that concessions of this order are necessary to secure passage of the legislation;

(ii) the existing restrictions on hours of work for youngsters should be removed.

Policy Unit advice is at Flag D. Nick Owen suggests that Lord Young's points should be supported, but that we should also question whether the protection provided should not be time-limited (to say three years) and whether smaller retailers should be exempted.

Content that I should reflect those views to the Lord President, the Home Secretary, ~~Lord Young~~ and the Secretary of State for Employment? And to stress as well that you particularly wish to have the Whips confirm the need to extend protection to Scotland, given the absence of a powerful logical case for doing so.

I do not read the Whips' point as referring to Scotland but to the package as a whole. Otherwise the Policy Unit advice is right

Mark Addison

MARK ADDISON

12 September 1985

VC3AHD

C C CC HB

Urgent for NO.

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6460

Switchboard 01-213 3000

The Rt Hon Douglas Hurd CBE MP
Home Office
50 Queen Anne's Gate
London SW1H 9AT

11TH September 1985

Dear Douglas,

SHOPS BILL

I have now had an opportunity to consider the proposals put forward by Tom King and Leon Brittan, and set out in the latter's letter of 1 August to Willie Whitelaw, on certain employment aspects of the Shops Bill. I have also seen Willie's letter of 8 September; and George Younger's letter of 27 August. File with MGA.

I am content with what they proposed by way of protection for existing shopworkers against being compelled to work on Sunday, provided that you are satisfied that the concession remains necessary to carry the Bill through Parliament and confident that further concessions, for example to extend the provisions to new shopworkers, can be avoided. Would it be worthwhile your getting an up to date assessment of the Parliamentary prospects from the Chief Whips and their views as to whether the Bill in this form would carry both Houses? We shall of course need to handle the presentation of this sensitive and controversial aspect of the Bill with great care both in Parliament and the media and perhaps we might have a word about this.

In his letter to Willie Whitelaw of 27 August George Younger proposes that the new protection be extended to Scotland. I accept his judgement of the likely opposition in Scotland to exclusion; and despite the apparent illogicality of covering Scotland, which he does not dispute, and although it may make it a little harder to resist pressure to extend the new protection to new recruits, I am prepared to go along with what he proposes.

I am not however yet convinced that we need to retain, on the face of the Bill when published, the existing restrictions in Part II of the Shops Act on the hours of work of young shopworkers. These are just the kind of outdated and unnecessary restrictions inhibiting employment opportunities that we need to remove; and I can see no case, on merit, for their retention. Nor am I sure that their retention would greatly ease the passage of the Bill. Could we not keep this card up our sleeve and play it only if it becomes absolutely necessary to do so to get the Bill through?

If you are content with the line which I suggest we take on young people, we might jointly put revised proposals to our colleagues on H Committee.

At this stage, I am copying this letter only to the Prime Minister and the Lord President.

Yours,

Norman

Home Affairs: Sunday Trading
NOV 81

NO

check NO

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

8 September 1985

Dear Douglas

SHOPS BILL: SUNDAY TRADING

Leon Brittan wrote to me on 27 August, setting out his proposals as Home Secretary on various aspects of next Session's Shops Bill.

I understand that Tom King, Michael Jopling and John MacGregor are content. You will have seen George Younger's letter of 27 August, arguing that existing shop workers in Scotland should receive substantially the same protection against Sunday employment as their counterparts in England and Wales. David Young is still considering the proposals. Provided he is content, and that you are able to take George Younger's point on board, you may take it that the proposals have policy approval.

I am sending copies of this letter to the Prime Minister, members of H Committee, the Secretary of State for Trade and Industry, the Chancellor of the Duchy of Lancaster, the Minister of Agriculture, Fisheries and Food, and Sir Robert Armstrong.

John Biffen

The Rt Hon Douglas Hurd MP

HOME Aff: Sunday Shopping.

11/81

SO will be chipping in, tonight DIY. Await other contributions. BT
fax 20/8

CF
Pgs please.

MR ADDISON

13 August 1985

SHOPS BILL: SUNDAY TRADING

Leon Brittan has proposed exceptional levels of protection for shop workers against dismissal for refusing to work on Sundays. He believes that it would be necessary to provide certainty of protection in order to get the Bill through. The Home Office and Department of Employment don't believe that the Common Law can provide this. If employees bring a case against an employer on the basis that Sunday working constitutes a unilateral variation in their contract of employment, D/Employment lawyers cannot predict whether the appeal would be upheld or not.

LB is probably right to do something to protect shop workers, and the extra burden on employers of his proposals may in practice be slight in relation to the prize of Sunday trading. But is it necessary to go so far as to propose:

not worth worrying about

- All those engaged on the day of the Royal Assent, including all part-time workers and all young workers, to be protected indefinitely.

- Further compensation for non-compliance with an order for re-employment is to be double the maximum in ordinary dismissal cases (this higher level applies to sex and racial discrimination cases).

Options which would be less onerous to employers include:

- Time-limited protection, eg three years. Existing shop workers ought eventually to adjust to the changed circumstances of their industry. Why grant them protection for life?

- Further compensation to be no higher than in 'ordinary' dismissal cases.

- No protection for young workers.

easier to make the decisive point date of engagement rather than length of work.

- Additional protection for only those part-time workers who have worked for more than two years by the date of the Royal Assent.

Many people work on Sunday, in public services, in the service sector, in continuous process industries. Why should the shop worker be a protected species? I suggest that the Prime Minister:

because of the political sensitivities & commitments given.

1. Acknowledges the need to provide some form of additional protection.

2. Questions whether terms proposed in the annex to Leon Brittan's letter need be quite so comprehensive, remembering that other categories of employee work on Sundays, and that shop workers ought eventually to adjust to changes in their industry's circumstances. neither a three year period of grace. Outside hotels could still be legally in these cases in 4½ years time.

3. Invite David Young to consider the proposals in the context of jobs and deregulation.

NICHOLAS OWEN

A cc NO B

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Mr Jack
Mr Maxwell
Mrs McDivitt
PS/US of S
PS/DS
PS/SHHD
Solicitor
Dir SIO

RESTRICTED

The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

27 August 1985

Dear Lord President

SHOPS BILL: SUNDAY TRADING

Leon Brittan wrote to you on 1 August about the provisions relating to employment which he and Tom King propose should be included in the Shops Bill, particularly those giving protection for shopworkers against being compelled to work on Sundays. I am especially concerned about their suggestion that this protection should not apply to shop workers in Scotland because the current restrictions on Sunday trading do not apply here.

I appreciate that in the absence of such restrictions in Scotland it may appear logical not to give shopworkers here protection, if they have not hitherto been considered in need of it, when the restrictions on Sunday trading in England and Wales are removed. On the other hand, it does not follow that, because there are no general restrictions on Sunday trading here, all existing contracts of employment necessarily include an obligation, express or implied, to work on Sundays. We must also bear in mind the point - made in the Auld Report - that stores in Scotland which form part of a British chain may well be affected by a change of management policy on Sunday trading when the Bill is enacted, so that its effect in Scotland is not likely to be neutral.

According to the proposed provisions set out in the Annex to Leon's letter all employees in shops in England and Wales on the date of Royal Assent will be given certain statutory rights (subject to the proviso, among others, that these rights would be overriden if the employee's contract on that date obliged him to work on Sundays). In my judgement any proposal that shopworkers in Scotland whose present contracts do not oblige them to work on Sundays should not be given the same statutory protection as their counterparts in England and Wales would arouse strong opposition in Scotland, especially from the churches, some of which are against Sunday working in any case. We would find it difficult,

if not impossible, to defend that position in Parliament and elsewhere. For example, during the 1985 General Assembly of the Church of Scotland it was argued that there were no statutory provisions preventing shops opening in Scotland on Sunday because it was thought inconceivable, until recently, that any shops in Scotland would open on the Sabbath.

I am confident that we shall be criticised if the protection proposed for shopworkers is not available in Scotland. I do not discern any practical difficulty in providing this protection on a Great Britain basis. Nor, in my view, is there any argument of principle which would justify the self-inflicted difficulties which to do otherwise would entail. I must therefore ask that the relevant provisions in the Bill should extend to Scotland.

As to the provisions in Part II of the 1950 Act which restrict the hours of work of young people aged 16-18, I for my part see no difficulty in what Leon Brittan and Tom King propose.

I am sending copies of this letter to the Prime Minister, the other members of H Committee, David Young, Michael Jopling, Norman Tebbit and to Sir Robert Armstrong.

Yours sincerely,

Andy Rinning

ANDY RINNING
Private Secretary

Approved by the Secretary of State and signed in his absence.

Home Affairs: Shops Act 11/81

CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SW1H 9AT

1st August 1985

Dear William,

SHOPS BILL: SUNDAY TRADING

In the course of the soundings I took during the period prior to the debate in the House on 20 May I came to the conclusion that to ensure a satisfactory outcome to the debate and, in due course, the safe passage of the Bill, it would be necessary to allay the widespread fears about the effect on shopworkers of the removal of restrictions on Sunday trading and to offer some protection in our Bill to existing shopworkers against being compelled to work on a Sunday. Accordingly, after consulting Tom King, I gave a commitment during the debate that I would "look sympathetically at the best way of ensuring that established shopworkers cannot be compelled to work on Sundays".

Tom King and I have subsequently considered how best to tackle this. We have concluded that the Bill should include the provisions set out in the Annex to this letter. In working out these proposals we have sought to maintain a sensible balance between the needs of shopworkers and shopkeepers. Shopworkers need fair and adequate protection. Shopkeepers need sufficient room for manoeuvre to take proper advantage of the statutory freedom they will be given to trade on Sundays.

In considering the needs of shopworkers we have concluded that all existing employees in shops and not just shop assistants should be protected; that they should be protected not only against dismissal but also against action short of dismissal intended to put pressure on them or to penalise them; that they should not be prevented from complaining to an industrial tribunal because they have been employed only for a short period or work part-time; and that the remedies available to them should be rather more generous than those applicable to most unfair dismissal cases.

On the other hand we consider that it is not necessary to cover those who are subsequently employed, nor employees who change employers, who will enter their new jobs with their eyes open to the possible need for Sunday working; and that protection should not be given to those who already have contractual obligations to work on Sundays or who agree to such obligations in the future.

We also consider, subject to the views of George Younger, that we should not cover workers in Scottish shops as the current restrictions on Sunday trading do not apply to Scotland.

The staffing and financial implications of these proposals for the Civil Service are likely to be minimal. We estimate that one or two extra posts in ACAS, and two or three posts in the offices of the Industrial Tribunals, may be needed in the year following Royal Assent at a cost of up to £120,000. These increases should however be more than offset by the planned reductions in staff, and other costs, resulting from the recent extension of the qualifying period for unfair dismissal claims to two years generally.

The Rt Hon The Viscount Whitelaw, CH, MC

CONFIDENTIAL

Tom King and I have also considered what to do about those provisions in Part II of the Shops Act which restrict the hours of work of young people aged between 16-18. You will recall that the Auld Inquiry (paragraph 286) suggested that when Part II is repealed the protection it provides for young people might be duplicated (in so far as it is not already duplicated) by amending other more general employment legislation. But Tom King and I have concluded that whilst it seems prudent to keep such protection for young shopworkers for the time being, it would be simpler to retain the existing provisions (unamended as far as is technically feasible given the need to disentangle them from the provisions about adults) rather than to reconstruct them by amending other legislation. To retain this protection for young shopworkers will go some way towards helping us defend the loss of protection by Wages Councils to which the Auld Committee attached particular importance.

In the long term Tom King sees advantage in looking at all the legislation governing the hours of work of young people - in which case he would look to the repeal or modification of the present provisions in the Shops Act to take account of changing needs. During the passage of the Bill it may be necessary to announce this as our long term intention in order to ward off criticisms about maintaining the status quo and to pre-empt any premature proposals to update these provisions during passage of the Bill.

Unless you or other colleagues see difficulties, Tom King and I plan to go ahead on the basis I have outlined, (subject, of course, to George Younger's agreement to our proposals that the new protection against being compelled to work on a Sunday should not apply to shops in Scotland). Our considered view is that without these provisions the passage of the important Bill would be seriously hindered.

Copies of this letter go to the Prime Minister, other members of H Committee, David Young, Michael Jopling, Norman Tebbit and to Sir Robert Armstrong.

Yours,

Ian

CC NO

ANNEX

CONFIDENTIAL

1. All employees in shops in England and Wales who are in employment on the date of Royal Assent should, subject to the proviso in para 2 below, be given the following statutory rights:-

(a) not to be dismissed for refusing to work on a Sunday:

(b) to complain to an industrial tribunal if this right is infringed - the dismissal being regarded as automatically unfair if the reason for it (or, if more than one, the principal reason) was that the employee had refused to work on a Sunday;

(c) not to have other action, short of dismissal, taken against them by their employer in order to compel them to work on a Sunday or to penalize them for not working on a Sunday.

2. These rights would be lost if the employee changed his employer; and would be overridden if the employee's contract of employment on the date of Royal Assent obliged him to work on a Sunday or if, after that date, he agreed in writing to a change in his contract which obliged him to work on a Sunday.

3. An employee would not be prevented from complaining to an industrial tribunal by reason of the disqualifications applicable in most unfair dismissal cases to those with insufficient service, to part-time workers, and to those above the normal retirement age.

4. Individual conciliation by ACAS would be available.

5. In respect of action short of dismissal, an industrial tribunal would be empowered to make a declaration that a complaint is well founded; and to award compensation. In respect of unfair dismissal, a tribunal would be empowered to order re-employment or to award compensation up to £12,560 (the current maximum for ordinary unfair dismissal cases); and in addition, when an employer has not complied with an order for re-employment, to award further compensation up to a maximum of £7,904 (compared with the current maximum of £3,952 for ordinary unfair dismissal cases) bringing the total to £20,464.

CONFIDENTIAL