



01-405 7641 Extn 3201

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PRIME MINISTER
The Attorney strongly in favour
ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL
of Clause 17 as it stands
4 July 1980

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Sir John Stebbings
President of the Law Society
The Law Society's Hall
Chancery Lane WC2A 4PL

Dear John.

CLAUSE 17 OF EMPLOYMENT BILL

I have seen your letter of 18 June to the Prime Minister and her reply. Peter Taylor has copied to me his letter of 25 June to the Prime Minister, which is to a similar effect.

I endorse what the Prime Minister has said in her letter to you, which I understand has been copied to Peter Taylor.

In particular, although the instincts of both of us as lawyers is to favour a clause drafted in straightforward a manner as possible, as in the case of all legislation, I have to tell you that - given the policy of HMG which I support - I think clause 17 is the best that can be devised.

I am aware that the clause is very complex but that is an unavoidable result of giving clear expression to the policy, which cannot be done in simple terms. I have been closely in touch with the draftsman of the clause and you should know that we have tried to simplify it; but in each case it has become clear that there would be side effects which are inconsistent with the intent; and this has led us to conclude that the work of the draftsman cannot be improved upon within the limits set by the policy.

Having said this I accept that the clause will not yield a clear and predictable conclusion on every set of facts. The circumstances which arise in trade disputes are many and varied and there are bound to be the odd marginal cases where it will not be obvious whether or not there is immunity. There may be litigation and appeals on difficult points but that is not a justifiable criticism of the clause; it will be the result of the interaction of a necessarily complex clause with complex facts. I am satisfied that there is no way of avoiding this within the terms of the policy.

I understand from Jim Prior that he is very worried lest adverse comment by some members of the legal profession may cause reluctance on the part of employers to make full use of the protection which the clause, once enacted, will afford them.

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I share his concern and can well see that such adverse comment could result in legal practitioners being more cautious in their advice to employers who may seek to rely on the clause than is actually justified by its wording.

I recognise that the decision on whether or not to resort to the clause in particular cases will be a matter for employers alone after they have taken legal advice, but it would be very unfortunate if their decisions were to be influenced, directly or indirectly, by this kind of criticism.

While I respect the reasons which caused you and Peter Taylor to write to the Prime Minister, I believe that the difficulties have been overstated and I hope this letter (with that of the Prime Minister) will allay your fears. It would be most helpful if each of you could now do something to meet Jim Prior's concerns by reporting my views in this letter to your colleagues on the two sides of the profession.

I have copied this to the Prime Minister, the Lord Chancellor, and Jim Prior and Peter Taylor.

Yours etc,
Michael.

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