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20 March 1985

TRADE UNION ACT 1984

Thank you for copying to me your letter of 19 March to Tom King. I would wish to draw colleagues' attention to some legal considerations on the possible use of the 1984 Act against Civil Service Unions.

First, we have never admitted publicly that there is a contract of employment between the Crown and individual civil servants. To seek an interdict, or in England an injunction, against a Civil Service Union would necessarily involve such an admission. It may even be that one of the Civil Service Unions could attempt to provoke such an admission by deliberately ignoring the terms of the Act.

Second, if the Crown were to admit that there is such a contract for the purpose of obtaining an interdict or an injunction, it would not be possible for us to maintain in any subsequent action that no such contract exists. We must be consistent in our approach to the Courts. On the other hand, a union could properly maintain that there was no such contract, in response to our claim for an interdict or an injunction, and thereafter maintain that there was such a contract in another context, such as an attempt by us to alter terms and conditions of service.

Third, it is by no means certain that we would be successful in obtaining an interim interdict before a Scottish Court if we were to seek one. The law on this matter is not clear, and the Court might well refuse an interdict pending a full hearing on the legal issues. If that were to happen we should have shown our hand for no immediate advantage, and we might well be drawn into detailed submissions before we have ourselves reached a concluded view on the matter.

At the end of the day this is a question of policy, but colleagues should be aware of the legal implications of any decision to raise an action now.

I am copying this letter to the Prime Minister, all Cabinet Members, Michael Havers and Sir Robert Armstrong.

CAMERON OF LOCHBROOM

Civil Service - Ind. Action in DHSS: SEPT 79

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