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Prime Minister

This is the advice you

asked for from the Lord Advocate

(we await the Attorney General's)

MUS 24/11

Prime Minister

LOCAL GOVERNMENT FINANCE BILL

LOCAL GOVERNMENT AND PLANNING (SCOTLAND) BILL AND LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) (SCOTLAND) ACT 1981

The question has been raised as to the appropriateness of adopting for England the Scottish provisions relating to the reduction of rate support grant contained in the Local Government (Scotland) Act 1966 as amended by the 1981 Act and as it is proposed to extend them to the reduction in the rate determined by a local authority.

\* to you personally, and not copied to members

The Secretary of State for Scotland has to be satisfied that the estimated expenses are excessive and unreasonable, regard being had to the financial and other relevant circumstances (including the expenditure or estimated expenses of other comparable local authorities, to general and economic conditions and to such other financial, economic, demographic, geographical and like criteria as he thinks fit). This decision cannot be acted upon until approved by the House of Commons. I consider that a Scottish court would not lightly set aside a decision of the Secretary of State which has been approved by the House of Commons. While a challenge in court cannot be ruled out, the chance of a successful challenge is in my view sufficiently remote to be taken. This view I expressed last year when these provisions were introduced.

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After the Secretary of State's exercise of those powers no affected local authority challenged his actings in court, although it is relevant that at least one local authority took the advice of Senior Counsel as to the possibility of doing so. In the exercise of his powers the Secretary of State took full legal advice and took care to ensure that all consultation and considerations of representations necessary took place right up until the last possible minute.

I think it also relevant in considering the Scottish position to draw attention to the fact that the Scottish Office has a long standing and well established process of consultation with the local authorities, something which is practicable given that there are less than 60 local authorities in all. The small number of local authorities also means that I and my Department have the opportunity of considering each proposed exercise of the Secretary of State's power and to give advice on it.



Insofar as reducing the rate determined by a local authority is concerned, this can only be done in relation to a case where the Secretary of State is satisfied that the estimated expenses are excessive and unreasonable and in my view the conclusions which I have stated in relation to reduction of rate support grant would obtain in this case.

I conclude, therefore, that the system currently operating, and proposed for, Scotland is satisfactory and workable without an unacceptable risk of its being successfully challenged in court, but that the scale of the operation in England and Wales might lead to a different conclusion.

*MJC*

Mackay of Clashfern  
24th November 1981