

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

ce BG ✓



HOUSE OF LORDS,
LONDON SW1A 0PW

9. March 1987

NBAN

My dear Willie.

COMMUNITY CHARGE : MARRIED AND UNMARRIED COUPLES

I have read with interest Nicholas Ridley's letter of 27th February, and the attached note prepared by officials. Although as a rule I am unhappy to see the law treating unmarried couples as if they were married, I am fully prepared to see an exception to this rule made where otherwise the consequence would be that an unmarried couple would be in a better financial position than if they were married. I understand that my officials are discussing with those of the Department of the Environment the additional expenditure which, as a result of these proposals, would be incurred by the courts, tribunals, and the legal aid fund.

There is however one aspect of these proposals which concerns me, and that is the suggestion in paragraph 30 that the joint and several liability of one spouse for the community charge of the other should be retrospective, and apply to debts incurred before the marriage; and similarly in the case of unmarried couples.

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The Right Honourable
Viscount Whitelaw CH MC
Lord President of the Council
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The paper itself suggests that the proposal may be criticised as harsh; and so in my view it is. But it is also objectionable as retrospective. To take an extreme example, it surely cannot be right for one person to become liable for the debts of another incurred over a number of years, solely on the basis that they have been living together as husband and wife for two or three weeks. But my main objection is one of principle. Joint and several liability of married couples, or couples living together, is acceptable and indeed desirable because almost invariably much of their property is in practice shared, and it would be wrong for property owned by both persons not to be used to satisfy the debts of both of them - but only in the case of debts incurred after the property was shared.

Nicholas Ridley gives in his letter, as his main reason for supporting this proposal, the difficulty which local authorities might otherwise have in determining when cohabitation began. In the case of married couples this can surely be assumed to be the date of marriage; if cohabitation in fact began earlier, it would be for the local authority, like any other creditor, to establish that fact, on the balance of probabilities, and the date on which cohabitation began. In the case of unmarried couples the difficulty could perhaps be avoided by a reversal of the burden of proof; one partner would be jointly and severally responsible for the other's debts, whenever incurred, unless it could be established that some were incurred at a time when they were not living together.

I am sending copies of this letter to the Prime Minister, members of E(LF), and to Sir Robert Armstrong.

Yrs,

From THE RT. HON. LORD HAILSHAM
OF ST. MARVLEBONE. CH. FRS. DCL

LOCAL SAT -

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