



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

8 March 1988

Dear Lord President

PARLIAMENTARY STATEMENT ON ADDIS, CAKEBREAD, AND LEASING

We discussed today the possibility of my making one statement dealing with all three of the topics on which I have recently been in correspondence with colleagues, ie Addis, Cakebread and Leasing. I too think it would be useful to cover all 3 topics at once and would like if possible to do this tomorrow. I attach a draft of the statement and would be grateful to know that you and colleagues are content.

It is important that, on the leasing issue, regulations are laid simultaneously with the statement being made. I am not yet absolutely certain that that can be done tomorrow and my office will keep yours in touch on the point. In any case my officials will be writing to local authorities at the time of the statement as required by the Attorney-General.

Finally, I should be grateful if you would give the necessary authority to have the provisions in these cases drafted for the Local Government Finance Bill.

Copies of this letter go to the Prime Minister, the Chancellor of the Exchequer, the Lord Privy Seal, members of E(LF), to First Parliamentary Counsel and to Sir Robin Butler.

Yours sincerely
R. Ridley

NICHOLAS RIDLEY

R

(approved by the Secretary of State and signed in his absence).



CONFIDENTIAL

DRAFT STATEMENT FOR THE SECRETARY OF STATE LOCAL GOVERNMENT FINANCE BILL

1. Mr Speaker, with permission, I should like to make a statement about ^{some} the issues which will require amendments to be introduced to the Local Government Finance Bill. They concern the law of rating and arrangement for the control of local authority capital expenditure in England and Wales.

Addis v Clement

2. It is central to the rating system that the value of a hereditament should reflect the physical condition of the property and the "state of the locality" at any particular time but otherwise the basis for the valuation should be - the property market conditions - as they were at the date of the last revaluation.

3. For many years now the view has been that the expression "state of locality" related to its physical state and its amenities, and that in order to make a case for a change in rateable value appellants had to show that there had been physical changes to the property or its locality.

4. This view was recently tested in the case of Addis v Clement (VO) which turned on whether a factory on the borders of the Lower Swansea Valley Enterprise Zone could rely on the introduction of the EZ, to seek a reduction in rateable value. The Court of Appeal upheld the traditional view by holding that the establishment of an EZ was not a change affecting the state of the locality. The House of Lords, however, took the opposite view.

5. Following that judgement it appears that ratepayers may obtain changes in rateable value to reflect changes in market conditions since 1973. Many thousands of new proposals may result. In our view changes in economic circumstances should be taken into account at the general revaluation in 1990, and not piecemeal between revaluations.

CONFIDENTIAL

I therefore propose to bring forward amendments to the Local Government Finance Bill so that, with effect from midnight tonight, proposals to amend current rateable values will be determined according to the law as it was understood ^{to be} prior to the decision in the Addis case. This means that changes will be taken into account only in so far as they relate to the physical state of the hereditament and its locality. Changes in economic factors will be taken into account in the 1990 and subsequent revaluations.

7. Proposals already made will be decided, where relevant, in the light of the law as decided by the House of Lords in the Addis case.

Cakebread

8. The second issue affects the rating of water hereditaments. Most such hereditaments are currently rated by statutory formula. Others, particularly sewage treatment works, have, however, always been treated as excluded from the formula and rated conventionally. The Court of Appeal has now held, in the case of Severn Trent Water Authority v Cakebread (VO), that the Water Act of 1973 changed the statutory definition of a water hereditament so that those ^{hereditament} previously excluded from the formula are covered by it, even though the formula did not make allowance for that. This decision would give a continuing windfall benefit to water authorities. We have therefore decided to restore the law to the position previously accepted for many years, also with effect from midnight tonight.

9. These ^{two} decisions will affect the revenue of the local authorities concerned. Rateable values are of course constantly changing as a result of appeals process and net additions to the rateable stock. Ordinarily, and by agreement with the local authority associations, changes in rateable value during and after a year are not reflected in rate support grant for that year or earlier ones. Exceptionally there is provision in section 67 of the Local

CONFIDENTIAL

Government Planning and Land Act 1980 for authorities to be compensated if they suffer a reduction of more than 2% of their rateable value in any year. It is not yet clear whether as a result of these decisions any authority will lose rateable value in excess of that level and, therefore, whether the existing arrangements will be triggered. While I am prepared to listen to representations on this, I cannot give any commitment to extend the existing arrangements for compensation. I intend, by making my proposals ^{effective from} retrospective ~~to~~ today to limit the losses which might otherwise arise.

Continues ---

CONFIDENTIAL

Local authority capital expenditure

10. Thirdly, I have to inform the House that, once again, a minority of local authorities are employing artificial devices to incur capital expenditure and to undertake borrowing over and above the levels permitted to them under the existing capital control system.

11. Only a minority of authorities are involved. But the sums involved are large. Individual deals can represent future expenditure of several hundred million pounds. If all options granted under agreements recently entered into are taken up, the equivalent of several billion pounds of capital expenditure may be incurred. No Government could ignore evasion of its expenditure controls on this scale.

12. A number of different devices are being used. They fall into two classes.

13. First, there are schemes under which local authorities are acquiring capital assets on terms which are outside the letter of existing capital controls, ~~for~~ for instance by the taking of medium term leases or by barter.

14. Secondly, there are schemes under which local authorities are raising money by lease-and-leasebacks or sale and leasebacks of their operational assets. This is borrowing in fact though it may not be borrowing in law. ~~[It is a particular cause for concern because~~ ^{in effect,} money is being borrowed by disposal of capital assets in order to finance deficits on revenue account.]

15. Amendments have been made to the Prescribed Expenditure Regulations. These will take effect from midnight tonight. But the amending regulations will be temporary in the first instance. My Department will consult local government and other interested parties about whether any changes or clarification are required

CONFIDENTIAL

before the amendments are made permanent. I have adopted this procedure to avoid any repetition of the events of 1986-87, when consultation preceded a change in the regulations and when nearly £2bn of deals were rushed through in the interim.

16. The main changes made by the regulations are that acquisition of a leasehold interest in land with a term of more than 3 years will score as prescribed expenditure. The present limit is 20 years. And, regardless of term, prescribed expenditure will be scored on acquisition of a lease of property in which the authority hold a superior interest or which has during the previous 5 years been the subject of a development agreement to which the authority were a party.

17. Some authorities may as a result of the new regulations incur prescribed expenditure as a result of the exercise of options provided for in agreements already entered into. I and my rt hon Friend will consider issuing additional capital allocations where we are satisfied that the agreements were not entered into for the purpose of evading capital expenditure controls.

18. Subject to the approval of Parliament to the necessary provisions, I propose to supplement the changes to the regulations with certain changes to the primary legislation. These changes are as follows:-

19. To clarify that, when a local authority acquire land on terms other than freehold for cash, the amount of prescribed expenditure scored is the value of the interest acquired on the assumption that it was acquired freehold and for cash. That was the intention of the 1980 Act.

CONFIDENTIAL

20. To provide that where a local authority acquire property, or where works are carried out on property which the authority own, and valuable consideration for the acquisition or the works is given but not in money, then prescribed expenditure will be scored.

21. To clarify that, where a local authority acquire an interest in or right over land and the interest or right does not confer a right of occupation, nil prescribed expenditure is only scored if the interest is neither a freehold nor a leasehold.

22. In addition, I intend to widen the statutory definition of prescribed expenditure to include the acquisition of share or loan capital in a body corporate and expenditure incurred in the discharge of obligations under a guarantee or indemnity relating to borrowing by a person other than the local authority.

Conclusion

23. All the legislative changes which I have outlined will be included in the Local Government Finance Bill. They will, however, be ^{effective} retrospective to midnight tonight.

MT,