

CONFIDENTIAL

cc Q
N.C.
Press
PC



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

Alison Smith
Private Secretary to
The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1A 2AT

9 March 1988

Dear Alison

PARLIAMENTARY STATEMENT ON ADDIS, CAKEBREAD AND LEASING

Further to my Secretary of State's letter last night to the Lord President, I now enclose a final version of the statement which he will be making in the House this afternoon under the title of "Amendments to the Local Government Finance Bill".

Finally, following our conversation earlier this morning, I understand that the Lord President will shortly be writing to my Secretary of State confirming that we have the necessary authority to have the provisions in these cases drafted for the Local Government Finance Bill.

I am copying this letter to Paul Gray at No 10, the private secretaries to members of E(LF), to Mike Eland in the Lord Privy Seal's Office, to First Parliamentary Counsel and to Trevor Woolley in Sir Robin Butler's Office.

Yours sincerely
Roger Bright

R BRIGHT
Private Secretary



STATEMENT BY THE RT HON NICHOLAS RIDLEY, SECRETARY OF STATE FOR
THE ENVIRONMENT, 9 MARCH 1988

AMENDMENTS TO THE LOCAL GOVERNMENT FINANCE BILL

MR SPEAKER, WITH PERMISSION, I SHOULD LIKE TO MAKE A STATEMENT ABOUT THREE ISSUES WHICH WILL REQUIRE AMENDMENTS TO BE INTRODUCED TO THE LOCAL GOVERNMENT FINANCE BILL. TWO RELATE TO RECENT COURT DECISIONS AFFECTING RATING, AND ONE RELATES TO THE CONTROL OF LOCAL AUTHORITY CAPITAL EXPENDITURE IN ENGLAND AND WALES.

FIRST, 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 THE BASIS FOR THE VALUATION SHOULD BE THE PROPERTY MARKET CONDITIONS AS THEY WERE AT THE DATE OF THE LAST REVALUATION.

FOR MANY YEARS NOW THE VIEW HAS BEEN THAT THE EXPRESSION "STATE OF THE 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.

THIS VIEW WAS RECENTLY TESTED IN THE CASE OF ADDIS V CLEMENT 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.

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 MY VIEW CHANGES IN ECONOMIC CIRCUMSTANCES SHOULD BE TAKEN INTO ACCOUNT AT THE GENERAL REVALUATION IN 1990.

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.

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.

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, THAT THE WATER ACT OF 1973 CHANGED THE STATUTORY DEFINITION OF A WATER HEREDITAMENT SO THAT THOSE HEREDITAMENTS 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.

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, RATEABLE VALUES, ONCE SET FOR A YEAR, ARE NOT CHANGED FOR RATE SUPPORT GRANT PURPOSES, FOR THAT YEAR OR EARLIER ONES. EXCEPTIONALLY THERE IS PROVISION IN SECTION 67 OF THE LOCAL GOVERNMENT PLANNING AND LAND ACT 1980 FOR AUTHORITIES TO BE COMPENSATED IF THEY SUFFER A REDUCTION OF MORE THAN A PRESCRIBED PROPORTION OF THEIR RATEABLE VALUE IN ANY YEAR. THIS PROPORTION IS PRESENTLY SET AT 2½%. 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 MY RT HON FRIEND THE SECRETARY OF STATE FOR WALES AND I ARE PREPARED TO LISTEN TO REPRESENTATIONS ON THIS, WE SEE NO NEED TO EXTEND THE EXISTING ARRANGEMENTS FOR COMPENSATION. WE INTEND, BY MAKING OUR PROPOSALS EFFECTIVE FROM TODAY TO LIMIT THE LOSSES WHICH MIGHT OTHERWISE ARISE.

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.

ONLY A MINORITY OF AUTHORITIES ARE INVOLVED. BUT THE SUMS INVOLVED ARE LARGE. INDIVIDUAL DEALS CAN GIVE RISE TO FUTURE EXPENDITURE OF SEVERAL HUNDRED MILLION POUNDS. IF ALL OPTIONS GRANTED UNDER AGREEMENTS RECENTLY ENTERED INTO ARE TAKEN UP, SEVERAL BILLION POUNDS OF CAPITAL EXPENDITURE MAY BE INCURRED. NO GOVERNMENT COULD IGNORE EVASION OF ITS EXPENDITURE CONTROLS ON THIS SCALE.

A NUMBER OF DIFFERENT DEVICES ARE BEING USED. THEY FALL INTO TWO CLASSES.

FIRST, THERE ARE SCHEMES UNDER WHICH LOCAL AUTHORITIES ARE ACQUIRING CAPITAL ASSETS ON TERMS WHICH ARE OUTSIDE THE LETTER OF EXISTING CAPITAL CONTROLS, FOR INSTANCE BY THE TAKING OF MEDIUM TERM LEASES OR BY BARTER.

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. IN EFFECT, MONEY IS BEING BORROWED BY DISPOSAL OF CAPITAL ASSETS IN ORDER TO FINANCE DEFICITS ON REVENUE ACCOUNT.

AMENDMENTS HAVE BEEN MADE TO THE PRESCRIBED EXPENDITURE REGULATIONS FOR ENGLAND AND WALES. THESE WILL TAKE EFFECT FROM MIDNIGHT TONIGHT. BUT THE AMENDING REGULATIONS WILL BE TEMPORARY IN THE FIRST INSTANCE. MY RT HON FRIEND THE SECRETARY OF STATE FOR WALES AND I WILL CONSULT LOCAL GOVERNMENT AND OTHER INTERESTED PARTIES ABOUT WHETHER ANY CHANGES OR CLARIFICATION ARE REQUIRED BEFORE THE AMENDMENTS ARE MADE PERMANENT. WE 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 WORTH OF DEALS WERE RUSHED THROUGH IN THE INTERIM.

THE MAIN CHANGES MADE BY THE REGULATIONS ARE THAT, WITH SOME EXCEPTIONS, ACQUISITION OF A LEASEHOLD INTEREST IN LAND FOR 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. THERE

ARE ALSO SOME CHANGES IN THE PROVISIONS ABOUT CAPITAL RECEIPTS WHERE ACQUISITION OF THE ASSETS CONCERNED DID NOT INVOLVE PRESCRIBED EXPENDITURE.

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 FRIENDS WILL CONSIDER ISSUING ADDITIONAL CAPITAL ALLOCATIONS WHERE WE ARE SATISFIED THAT THE AGREEMENTS WERE NOT ENTERED INTO FOR THE PURPOSE OF EVADING CAPITAL EXPENDITURE OR BORROWING CONTROLS.

SUBJECT TO THE APPROVAL OF PARLIAMENT TO THE NECESSARY PROVISIONS, WE PROPOSE TO SUPPLEMENT THE CHANGES TO THE REGULATIONS WITH CERTAIN CHANGES TO THE PRIMARY LEGISLATION.

THESE CHANGES ARE AS FOLLOWS:-

TO CLARIFY THAT, WHEN A LOCAL AUTHORITY ACQUIRE LAND IN 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.

TO PROVIDE THAT WHERE A LOCAL AUTHORITY ACQUIRE PROPERTY, OR WHERE WORKS ARE CARRIED OUT ON A 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.

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.

IN ADDITION, WE 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

ALL THE LEGISLATIVE CHANGES WHICH I HAVE OUTLINED WILL BE INCLUDED IN THE LOCAL GOVERNMENT FINANCE BILL. THEY WILL, HOWEVER, BE EFFECTIVE FROM MIDNIGHT TONIGHT.



11 880

11 880
FM 88

73