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RESTRICTED

The Rt Hon Lord Mackay of Clashfern
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

8 April 1988

Dear Sir,

COMMUNITY CHARGE: LEGAL AID FOR APPEALS AGAINST CIVIL PENALTIES

flap PTS
My letter of 21 October 1986 to Willie Whitelaw recorded my conclusion that legal aid should not be available for appeals against the imposition of civil penalties by the community charges registration officer, largely on the grounds that the costs for each side might considerably exceed the sums at issue.

During the passage of the Abolition of Domestic Rates Etc (Scotland) Act 1987 there was no reference to the availability of legal aid for such appeals (Michael Ancram confirmed that legal aid would be available for appeals against registration); and there has been no subsequent occasion to announce our intentions.

Further consideration of this matter, in particular in connection with the regulations which would be required to exclude legal aid in such cases, coupled with experience of legal aid cases at Strasbourg, has persuaded me that to adhere to my earlier conclusion would risk breach of the European Convention on Human Rights (ECHR). In appeals to the sheriff, the registration officer will be legally represented. To deny legal aid to those making an appeal - and the Act allows for an appeal on reasonable grounds - and who would otherwise qualify for legal aid, is likely to be regarded by the European Court as being in breach of the principles of fairness embodied in the ECHR, and in particular the "equality of arms" principle. An adverse Strasbourg decision would probably entail revocation of the proposed regulations with consequent adverse publicity, and gratuitous publicity for the availability of legal aid for such appeals.

I am also concerned that the debates in Parliament of the Affirmative Resolutions required for the regulations withholding legal aid

from such appellants would give the Opposition further opportunity and indeed a focus for their hitherto rather diffuse resistance to the community charge.

I have therefore concluded that legal aid should after all be available to those appellants against civil penalties who otherwise qualify for it. This decision requires no announcement and no Parliamentary proceedings.

I am prepared to accept the financial consequences of this revised decision, which are however difficult to assess. The community charges registration officer is required to act reasonably in imposing a civil penalty, and legal aid would only be awarded by the Scottish Legal Aid Board where they were satisfied that the appeal was well founded in law and that it was in all the circumstances reasonable. While we can expect an initial spate of appeals, matters will probably settle down once the courts have determined the first appeals, thereby providing guidelines both for the registration officers in the imposition of penalties and the Scottish Legal Aid Board in examining applications for legal aid. Should existing provision for legal aid prove insufficient, I am prepared to find any necessary offsetting savings from within my overall resources.

As I indicated in my letter of 21 October 1986, I had taken into account the points made in Quintin Hailsham's letter of 19 September 1986, in which he expressed his concern if legal aid were to be available for appeals to the sheriff court, because of the expected pressure for legal aid to be made available for appeals to tribunals in England and Wales. I understand that the question of legal aid for appeals has not been raised during the current Parliamentary proceedings, and I think that, should it arise, it is possible to distinguish the case for legal aid for appeals to the sheriff court from appeals to tribunals, where legal representation is not required. I trust that, for the reasons given, my changed intentions will not cause you concern.

I am sending copies of this letter to the Prime Minister, to the other members of E(LF), the Lord Advocate and the Attorney General, and to Sir Robin Butler.

Yours ever,
Malcolm Rifkind

MALCOLM RIFKIND

Local Govt. Rating. PTA.