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PRIME MINISTER

COMMUNITY CHARGE CAPPING IN SCOTLAND

You will wish to see the attached exchanges on the possibility of selective community charge capping in Scotland.

John Major (Flag A) initiated the correspondence. He pointed to the disappointingly high level of budgeted spending in Scotland this year and pressed Malcolm Rifkind to consider community charge capping for perhaps six of the worst offending authorities. He rested his case both on the need to give the right signals in Scotland and the possible danger that, if Scottish local authorities were seen to get away with large over-spending, it might be more difficult to impose caps in 1990-91 in England and Wales.

Nicholas Ridley (Flag B) shares John Major's concerns about the position that has emerged in Scotland where he believes "the case for capping is strong". But he does not believe that there would be much read-across between the Scottish and English positions.

Malcolm Rifkind (Flag C) has now responded. He argues (at some length) that on balance the considerations point to not undertaking any charge capping this year. But he suggests taking an early opportunity to stress that this should not be taken as a precedent for the future.

Andrew Dunlop (Flag D) supports Malcolm Rifkind's line and suggests that the benefits of selective action would not outweigh the cost of the resultant political controversy.

(i) do you want to support Malcolm Rifkind's line as recommended by Andrew Dunlop?

OR

(ii) do you want to leave this to colleagues to sort out?

(PAUL GRAY)

19 May 1989

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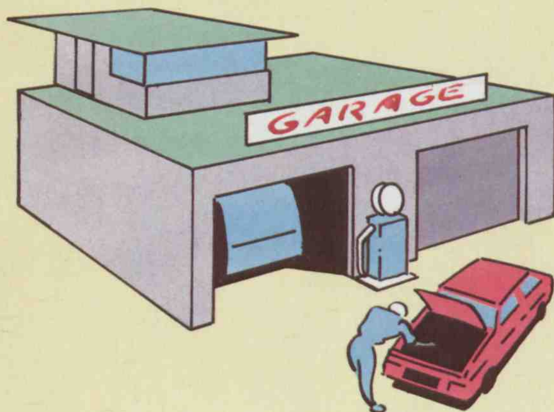
file

Andy Bearpark.

TIME FOR A CHANGE: APRIL 1990

The new Business Rate

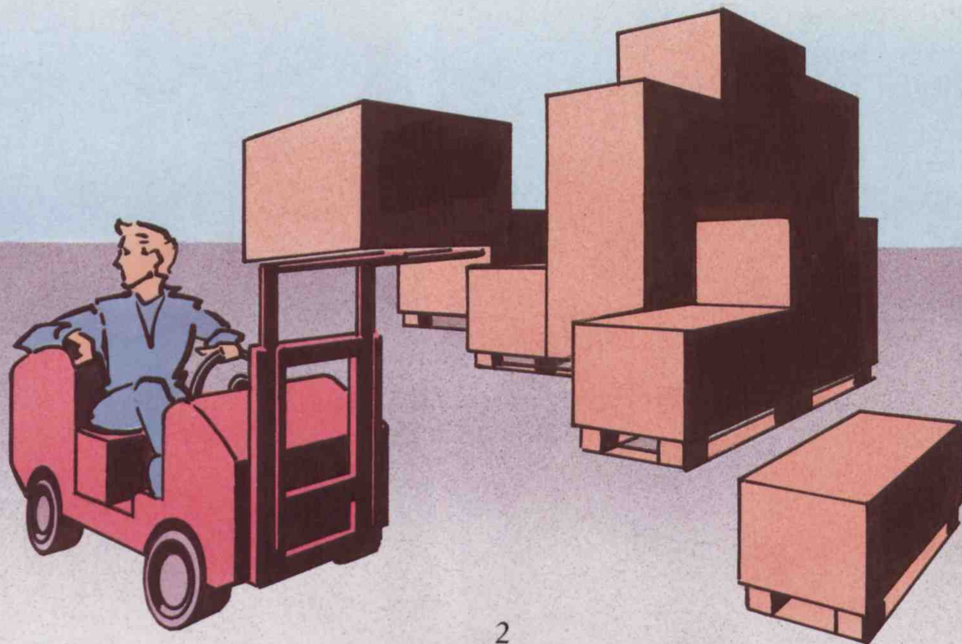


DEPARTMENT OF THE ENVIRONMENT

The Business Rate: A Brief Guide

Introduction

On 1 April 1990 a new system is to be introduced in England to pay for the services which local councils provide. The new system will involve, among other things, changes in the rates paid by businesses. This booklet explains those changes and how business rates fit into the new system of local government finance.



Paying for Local Services

All businesses benefit from the services that local authorities provide. Some of these services are of direct value to business, for instance roads, rubbish collection, the police and the fire brigade. Others, such as education and housing, are of indirect but nevertheless real value to business in that most businesses depend on employees who are properly educated and housed.

All these services have to be paid for. Councils are responsible for one quarter of all public spending. In 1987/88 English councils spent in the region of £45 thousand million. This is paid for in different ways.

Some £15 thousand million comes from receipts and charges – for example receipts from the sale of council houses or land, council house rents and charges paid by the users of council services such as swimming pools. That leaves nearly £30 thousand million to be found from national or local taxes. About half of this sum is provided by the national taxpayer by way of grants from central government, just over a quarter comes from business ratepayers and something under a quarter from domestic ratepayers.

The New System of Local Government Finance

The reform of local government finance which takes effect on 1 April 1990 has three main elements:

- **A national business rate.**
- **The community charge.**
- **A simpler system of government grants.**

The national business rate will replace locally set rates and will be set at a uniform poundage across the whole of England. It will be accompanied by a revaluation of business property. These changes and the arrangements for phasing them in are explained in more detail later in this booklet.

The community charge will replace domestic rates. It is a charge paid by almost all adults and will share the cost of paying for local council services more widely than domestic rating does. The charge will vary from area to area according to how much the council spends.

The largest contribution to local government expenditure will still come from government grants. But these will be distributed under a simpler and more predictable system than in the past which will ensure that every efficient local council can provide the same standard level of services while still setting the same community charge.

The new system means that additional costs incurred by inefficient councils, or by councils providing services beyond the standard level, will be met by community charge payers to whom councils are accountable through the ballot box, not by business ratepayers.

From Local Business Rates to the National Business Rate

Why reform business rates?

Rates can be a significant business cost. At the moment each district or borough council sets its own business rate at whatever level it chooses. So businesses have no control over the amounts they have to pay.

This system has four major faults:

1. It distorts business competition. Business rates can vary enormously, with rate poundages in some areas three times higher than in others. Yet the different rate levels may bear little or no relation to the quality or level of services that businesses receive. This imposes an uncontrollable, and sometimes arbitrary, cost.

2. It undermines full accountability of a council to people in its area. Because the duty to pay business rates does not give any effective control over how much money is raised or how it is spent, local authorities can be encouraged to increase spending on services to residents, knowing that business will typically meet more than half the extra cost.

3. Rates can rise steeply, and with little warning, from one year to the next. This unpredictability makes it difficult for firms to plan, even in the short-term.

4. Rateable values are out of date. They should reflect the relative benefits of different types of property in different locations and the relative prosperity of companies as reflected in rent levels. But values were last reassessed in 1973 and firms in areas and economic sectors which have since prospered are effectively being subsidised by those which have done less well. This particularly harms those places which need a successful business community if they are to flourish again.

How will the new national business rate work?

There are two key elements:

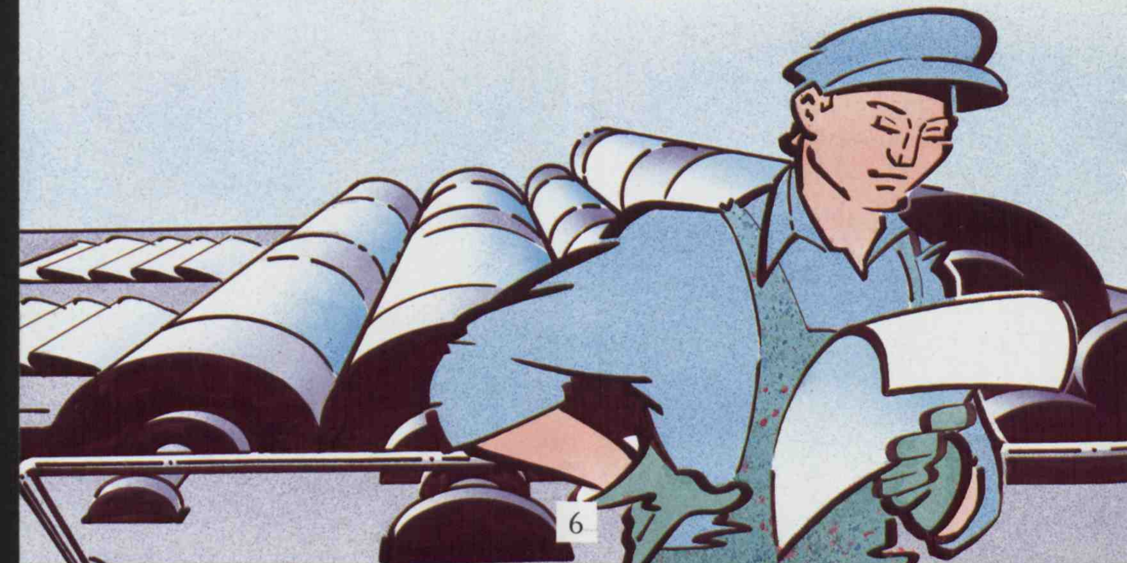
- **updated rateable values**
- **a single national rate poundage.**

The new arrangements will help businesses to plan ahead with confidence. They will end the distortions of competition that the current system produces. And they will stop less prosperous areas subsidising more prosperous areas and more profitable businesses subsidising less profitable ones.

So what does this mean in practice?

There will be a revaluation of all non-domestic properties to provide a fair and up-to-date base for the change to the new system on 1 April 1990. On average it is expected that rateable values across the country will rise by about 7½ times, though there is likely to be quite a wide spread around this average.

The new business rate will be set at a uniform poundage (called a 'multiplier' in the legislation) across England. This poundage will be set at a level in 1990 that ensures that, in real terms, the amount taken from the business sector overall in 1990/91 broadly matches the figure for 1989/90, the last year of the current system. Thus, if average rateable values increase by 7½ times then there will be a corresponding reduction in the poundage set (compared with the average of locally-set poundages under the current system).



What about future years?

Subsequent annual increases in the business rate will be linked to the Retail Price Index. This means that the business rate cannot and will not rise by more than the rate of inflation. This key guarantee is written into the legislation concerned, the Local Government Finance Act 1988. The Act also gives the Chancellor of the Exchequer power to specify a rise *lower* than the inflation rate. Business rates have risen much faster than inflation in recent years, so this will provide firms with new stability.

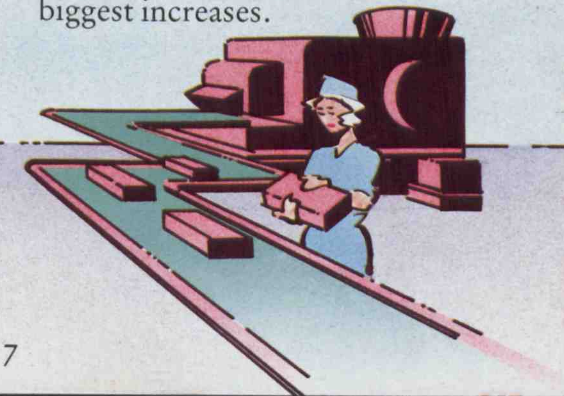
How will the change to the new system affect individual firms?

Some businesses will pay less than at present and some, inevitably, more.

How an individual firm will be affected will depend on the combined effect of the revaluation and the switch to the national poundage.

Revaluation will benefit firms whose rents have increased by less than the average since the last revaluation in 1973 and who are, therefore, currently paying too much. Firms whose rents have risen by more than the average, and whose properties are now undervalued, can expect above average increases in rateable value. The change to a uniform poundage may enhance any increase or reduction resulting from revaluation, or may have a contrary effect, depending on whether the locally-set poundage payable in the firm's area under the current system is above or below the national average.

Most gainers from the new arrangements will be in areas where unemployment is highest and the need to promote investment is greatest. The North and the Midlands stand to gain around £850m from the combined effects of the revaluation and the uniform poundage, with manufacturing industry in particular benefiting. On the other hand, some retailers in the South and some other properties in currently low-rated inner London boroughs will face the biggest increases.



Will there be any help for firms facing substantial rises?

Yes. Individual firms will not be expected to meet the full cost of substantial rate increases overnight. So where any significant increases do occur, a ceiling will be set on rate bill rises in any one year. The very largest increases will be phased in over five years, and possibly longer. This will mean that no one should have to face intolerable annual increases.

And, of course, under the new system any subsequent annual rises will be limited because of the link with the RPI and the Chancellor's power to set rises *lower* than the inflation rate.

How will the ceiling on increases work?

It is proposed that no rate bill should rise by more than 20 per cent in real terms over the previous year's bill. And a lower ceiling of 15 per cent is proposed for properties with a rateable value in the new rating list of less than £7,500 in London and £5,000 elsewhere – properties mainly occupied by small businesses which could have particular problems with large rate increases. Any increase in rate bills resulting from the uprating of the poundage each year by the rise in the Retail Price Index will feed through on top of these limits. The limits will apply each year during the transitional period until the full new rate bill is reached.

What about reductions in rate bills?

The Government must ensure that the amount of rates raised from businesses as a whole is broadly the same after allowing for inflation as in each previous year during the transitional period. This is written into the Local Government Finance Act. So the ceilings on increases will be balanced by an annual limit on reductions. No final decision has yet been taken on this limit, but it is likely to be in the region of 10 per cent before allowance for inflation, and 15 per cent for small properties – those with a rateable value in the new list of £7,500 or less in London and £5,000 or less elsewhere.

What about new buildings?

The phasing arrangements for rate increases and reductions described above will apply only to properties first occupied on or before 31 March 1990. It is proposed that for buildings occupied after that date, the new rate bill will be payable straightaway.

What about property in Enterprise Zones?

The phasing arrangements will not apply to property in Enterprise Zones. As these come to an end the new rate bills will be payable in full.

What will I pay if, for instance, I live over the shop?

You will pay the business rate in respect of the commercial part of the premises only. You will of course also pay the personal community charge to your local council because of council services that you, as a private individual, have access to.

Can I appeal against my new valuation?

Businesses will be able to propose a change in their rateable value in the new list within six months of the list coming into force on 1 April 1990. If the Valuation Officer does not accept the proposal and cannot agree some other figure with the ratepayer, the ratepayer's proposal becomes an appeal to the local Valuation and Community Charge Tribunal.

Once the initial period of six months has ended, proposals and appeals will only be possible in limited conditions, for instance where there has been a physical change in the property.

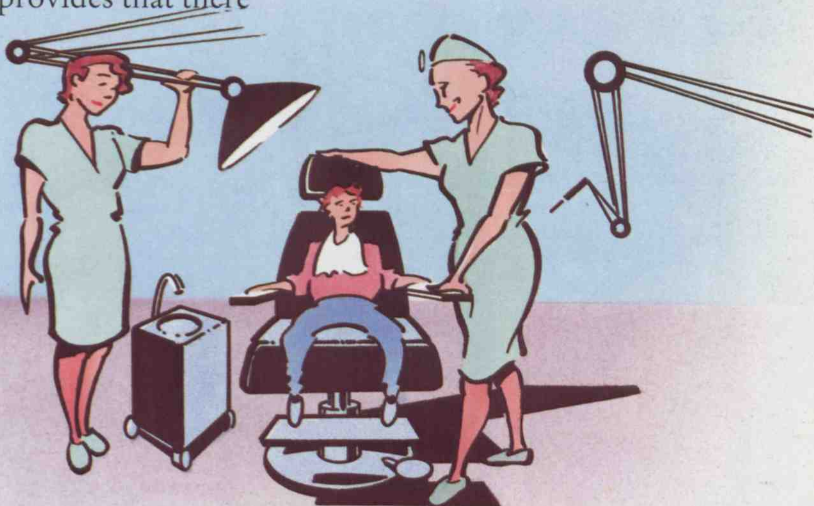
What about future revaluations?

The Local Government Finance Act 1988 provides that there must be revaluations of non-domestic property at five-year intervals after 1990.

Will councils still be required to consult businesses?

Yes. Although councils will no longer set the business rate, they will still be required to consult local businesses on their spending plans. A more broadly based dialogue between businesses and their local authorities is needed. Councils and businesses will no longer have to dispute the precise level of the rate.

Instead, and more positively, they will jointly consider the broader issues of how a council can help to promote a prosperous local economy, and what services are needed by local firms.



Further Information

If you require any further information, please write to Rm N6/20, Department of the Environment, 2 Marsham Street, London SW1P 3EB.

If you want more copies of this booklet, please write to
The Business Rate,
PO Box 1989,
Burgess Hill,
RH15 8QY.

If you would like information on the personal community charge, you can get a free general booklet, *You and the Community Charge: Your Step-by-Step Guide,* from
Community Charge Leaflets,
PO Box 622,
BRISTOL,
BS99 1TR.

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Prime Minister (4) AT 1915

Contents of the poll tax leaflet not reviewable

LAW REPORT

Wednesday 17 May 1989

Regina v Secretary of State for the Environment, Ex parte Greenwich London Borough Council.
Queen's Bench Divisional Court (Lord Justice Woolf and Mr Justice Ian Kennedy).
16 May 1989.

The court would only restrain distribution of an information leaflet issued by a government department if it misstated the law or was manifestly inaccurate or misleading. If the document was not literally inaccurate but might be said to be misleading by omission, the court would not interfere if the department reasonably decided as a matter of judgment to omit certain information.

The Divisional Court dismissed the council's application for judicial review relating to the Secretary of State's decision to distribute to every household in Englad a leaflet entitled *The Community Charge (the so-called Poll Tax) How it will work for you*.

At a press meeting to launch the leaflet, the Secretary of State said that the leaflet provided essential information on the community charge, gave the facts and told people what their rights and obligations were.

It was a short document, consisting of 23 relatively short questions and answers. The council alleged that the leaflet was misleading, because it omitted all reference to the joint liability of spouses and cohabiting couples for each other's poll tax, and did not accord with the Government's own conventions and standards for publications of this sort.

The Department of the Environment contended that the omission did not undermine the leaflet because the reader was invited to obtain further information from other leaflets.

It had considered whether to include reference to the liability of cohabiting couples, but took the view that at the present stage of registration and initial payment the liability of cohabiting couples was not relevant since the question of joint and several liability only arose as part of the enforcement process.

Stephen Sedley QC and *Robin Allen (Borough Solicitor)* for the council; *John Laws and Christopher Katkowski (Treasury Solicitor)* for the Secretary of State.

LORD JUSTICE WOOLF said that the Local Government Finance Act 1988 governed the levying of the community charge. Liability to pay the personal community charge arose on the person's name being entered in the community charge's register. The compiling of the register was, therefore, important to the levying of the community charge.

It was in the interests of those liable to pay community charges that the register should record as completely as possible the names of those liable to the charge, since those who were on the register would otherwise pay a higher community charge than they should.

Normally, while each person was severally liable for his own community charge, he was not under any liability for the community charge of anyone else who was living in the same premises.

However, section 16 provided that people over 18 who were married to each other and were members of the same household or who were not married but were living together as husband and wife were jointly and severally liable for the community charge.

Whether or not the leaflet was inaccurate or misleading or any way contrary to the policy laid down for publications of this sort was very much a matter of judgment based on an examination of the leaflet as a whole.

Looking at the leaflet as a whole and putting aside the criticisms made, it gave the impression of being authoritative and balanced.

However, that assessment was not necessarily an answer to the council's criticisms. Anyone who had spent time in the courts knew that what appeared to be fair and moderate advocacy was often the most powerful, and if a misleading message was dressed up in moderate and rational language it remained misleading and its impact was the greater because its misleading nature was disguised.

Furthermore, the public would place much greater reliance on a document if it was issued by a government department.

Vigorous standards had been set by the Government, which was in the most powerful position to influence public opinion fairly or unfairly. For some time there had been well-recognised government conventions that set strict guidelines designed to distinguish between the proper and necessary dissemination of information in the public interest to forbid the use of government power and public money for the distribution of propaganda, in the sense of the propogation of misinformation and half-truths. The line between what was acceptable and what was not acceptable could be extremely narrow and could be very much a matter of opinion and there would always be a grey area on which judgments could differ, although there could be little room for argument about the obvious case.

Government departments, unlike local authorities, did not rely on specific statutory authority to advertise. In the absence of legislation, it was not the task of the courts to act as a critic or censor of information published by the Government or anyone else.

The courts only had a power to intervene in exceptional cases where it could be shown that guidance or advice given by a government department misstated the law or if a publication was manifestly inaccurate or misleading.

In practice, that would prove to be very much an exceptional power which should not be exercised where a publication fell within the grey area referred.

In relation to central government, the primary safeguard should be provided by the Government's accountability to Parliament, and the courts must be scrupulous not to usurp what should be the proper role of Parliament.

The Government's "conventions" were observed because of the political difficulties which arose if they were not, not because they had the force of law.

That did not mean the conventions were of no relevance. The court in exercising its role of judicial review could regard the conventions as providing guidance as to what were the proper standards.

If it could be shown that it was the intention of the author of the document to mislead, his Lordship would accept that it must be a misuse of ministerial power to use the authority of a public office and the disbursement of public funds to issue a leaflet which purported to give millions of citizens information of great importance but which mislead them.

However, the council did not allege bad faith. In the absence of bad faith, the position was different. The court could only intervene on the conventional Wednesbury grounds, which subsumed such principles as the need to recognise expectations which the public might legitimately have.

To succeed on Wednesbury principles it must be shown that the decision to issue the document in the form in which it was published was fatally flawed; for example, because it amounted to such a distortion of what purported to be the objects in publishing the document that it was clear that no proper consideration was given to issuing the document in that form or some irrelevant consideration was taken into account or it was issued for some collateral purpose or discretion was being exercised perversely.

There was no obvious ulterior purpose to be served by concealing a particular feature of the legislation in section 16. The leaflet was only one of a series of methods by which dissemination of information about the effect of the legislation was to be achieved.

Whether his Lordship considered there should have been reference to cohabiting persons was not the test.

What was important was whether it was a case where the court was entitled to intervene. It was clear that the leaflet did not fall within that category.

The leaflet was not literally inaccurate. The worst that could be said about it was that it was misleading by omission. However, there had to be a selection and a selection was made.

As a matter of law, it could not be said that the department was not entitled to exercise its judgment in the way indicated.

The application would be dismissed.

MR JUSTICE IAN KENNEDY gave a concurring judgment.

Ying Hui Tan, Barrister

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