FROM THE MINISTER FOR HOME AFFAIRS AND THE ENVIRONMENT

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The Rt Hon Christopher Patten MP
Secretary of State for the Environment
2 Marsham Street
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26 September 1989

Dear Christopher,

PERSONAL COMMUNITY CHARGE: EXEMPTION FOR THE SEVERELY MENTALLY IMPAIRED

In Malcolm Rifkind's absence from the office on business overseas I am writing to seek your agreement, and that of colleagues, to a proposal to change the extent of the exemption from the personal community charge for people who are severely mentally impaired.

The attached paper describes the proposal which, in brief, involves amending the statutory definition of severe mental impairment by means of regulations and adding Attendance Allowance and Constant Attendance Allowance to the list of "qualifying benefits" for which a person must be entitled if they are to qualify for exemption. The proposal would have the effect of removing the anomaly which is proving increasingly controversial and difficult to justify, whereby people who are severely mentally impaired as a result of a degenerative brain disorder such as Alzheimer's disease do not qualify for exemption. It would also exempt a small group of people who are severely mentally impaired as a result of mental illness.

You will be aware that this issue has caused considerable controversy in Scotland and I understand that it is already giving rise to difficulties in England and Wales. Clearly I can only speak about the Scottish position, but I believe that the solution proposed in the paper would work equally well in England and Wales. Although the result would be an increase in the number of people exempt from the personal community charge, we do not think that this would be significant enough to affect community charge levels.

I am aware of the concerns of the Department of Social Security about the use of Attendance Allowance and Constant Attendance Allowance for this purpose, having seen Gillian Shephard's letter of 18 September to Roger Freeman. However we have looked exhaustively into this issue and can see no other means of extending the exemption without also opening it up much wider than would be appropriate. The proposal in the paper builds on the existing arrangements which rely, inter alia, on eligibility for Severe Disability Allowance which appear to have worked reasonably

well so far without causing particular difficulties for the administration of that benefit. It offers a means of limiting the extension to 2 groups of people who are severely mentally impaired, those with degenerative disorders and the chronically mentally ill who ought to be exempt but who for practical reasons have up to now been required to pay the community charge. The alternative would be to set up separate machinery for assessing people specifically for exemption from the community charge and, apart from the fact that this is unlikely to be feasible in the present state of knowledge, as pointed out in the paper, this would be likely to add considerably to administrative costs. I therefore hope that colleagues can agree to our proposals.

Copies of this letter go to members of E(LG) and to Sir Robin Butler.
I have of course discussed this issue at an earlier stage with David Hunt.

yours ever

James

JAMES DOUGLAS-HAMILTON

PROPOSAL TO EXTEND EXEMPTION FOR THE SEVERELY MENTALLY IMPAIRED

BACKGROUND

1. Under the original proposals for the community charge it was proposed that exemptions should be very limited in scope and there was no provision for exempting people with any form of mental handicap or illness. During the passage of the Abolition of Domestic Rates Etc (Scotland) Act 1987, the Government agreed to provide an exemption for people who were severely mentally impaired, defined as "persons suffering from a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning". This had the effect of exempting those who had been severely mentally impaired from birth, mainly mentally handicapped people.

2. During the passage of the Local Government Finance Act 1988, the Government accepted that this definition should be widened in England, Wales and Scotland to include people who in later life suffer from "an injury to the brain causing severe impairment of intelligence and social functioning which appears to be permanent". At the same time, the exemption procedures were refined so that in order to qualify for this exemption, the person had first of all to be entitled to one of a number of "qualifying" social security benefits as well as being severely mentally impaired, as defined in the legislation and certified as such by a registered medical practitioner.

3. In brief, the present procedure for claiming exemption is that a person must first be entitled to one of the qualifying benefits. This acts as an initial screen. They must also have a certificate from a medical practitioner that states that the person's mental condition is such that they meet the statutory definition of severe mental impairment. Guidance relating to this definition was issued to medical practitioners in Scotland in September 1988 in the form of a "Dear Doctor" letter. It was intended that a similar letter should by now have been issued in England and Wales. However the General Medical Services Committee of the British Medical Association has indicated that it does not agree with the interpretation of the statutory definition in the proposed guidance (even though it is the same as that agreed by the Scottish General Medical Services Committee of the BMA and issued in Scotland), that it will not approve the guidance in its present form, and that if approached by doctors for advice, the BMA will recommend that they should exercise their own clinical judgement in deciding whether a patient should qualify for exemption. The reasons for this standpoint are set out in paragraph 5 below.

4. The final stage of the exemption process is that the Community Charges Registration Officer (CCRO) must decide whether or not to grant an exemption. The procedure has been designed to avoid CCROs having to make medical judgements which they are not qualified to make and in normal circumstances where a CCRO receives evidence of benefit entitlement and a doctor's certificate he would be expected to grant the exemption without question.

CRITICISMS OF THE PRESENT EXEMPTION

5. The major criticism of the existing exemption is that the statutory definition of severe mental impairment was drafted so as to exclude people who become severely mentally impaired as a result of a degenerative brain disorder, such as Alzheimer's disease. This is because such disorders are progressive and only in their later stages would exemption for people who have them be appropriate. The BMA argue that the term "an injury to the brain" in fact includes people impaired as a result of a degenerative disorder and the Government's interpretation of the term may be subject to legal challenge. Setting aside the BMA's view it is nonetheless recognised that the present arrangement produces the anomaly whereby 2 people can be equally severely mentally impaired, one with a brain injury and the other with a degenerative condition, for example Alzheimer's disease, but only the one with a brain injury would be exempt.

6. In responding to criticism it has been pointed out that many of the most severely mentally impaired people will be exempt because they are resident in hospital, residential care or nursing homes, including those with degenerative disorders but the counter argument has been made that the arrangement penalises care in the community in that a person with such a disorder who is cared for in a home or hospital is exempt by virtue of being resident in such a home or hospital, while people who are perhaps more severely handicapped but are in the community are not exempt.

7. A further problem, which has not however attracted critical comment, concerns the benefits screen. The effective parts of the screen are the requirement that a claimant for exemption should be entitled to Invalidity Benefit (IVB), Severe Disablement Allowance (SDA) or a number of analogous benefits. However these benefits are essentially related to employability and are not available for people over pensionable age. To cover this situation, the present statutory arrangements provide that an additional part of the screen is that people may be of pensionable age. This means, in effect, that the question of exemption on the grounds of severe mental impairment for such persons depends entirely upon a doctor's judgement. There is no prejudgement of the severity of a person's condition provided by their eligibility for a particular social security benefit.

PROPOSALS FOR CHANGE

8. Ministers have already made it clear that they would wish to extend the exemption to people who are severely mentally impaired as a result of degenerative brain disorder if a practical means can be found for doing so. Our medical advice is that there is unlikely to be a breakthrough in assessment techniques for such disorders which would produce a workable and consistent means of assessing the point at which a person should become exempt. In these circumstances there appears to be no alternative other than to extend the existing concept of a benefits screen, using tried and tested assessment procedures as a filter for applications for exemption. Detailed consideration has therefore been given to a proposal that the problem might be tackled by an extension of the present benefits screen to include eligibility for Attendance Allowance (AA) or Constant Attendance Allowance (CAA) payable with War Pensions or Industrial Injuries Benefit. These appear to be the only benefits which would be effective as a screen after a person reaches pensionable age,

which is the age group into which most people with degenerative disorders will fall. This proposal would involve adding AA and CAA to the list of qualifying benefits and removing the qualifying condition of being of pensionable age. This would mean that, to qualify for exemption, a person would require to be eligible for SDA, or IVB or the analogous benefits, or AA or CAA. AA is paid at 2 rates, whilst CAA is payable at 4 rates. For practical reasons, eligibility for any rate of AA or CAA would have to form the benefits screen because the rate payable is not determined by the level of impairment.

9. Like, for example, SDA, AA and CAA are payable to people with a wide range of conditions. Only some 10-15% of AA recipients and a smaller proportion of CAA recipients are estimated by DSS to be mentally impaired. It would therefore be necessary to continue to have a system of medical certification along the lines of the present arrangements. Eligibility for AA or CAA would act as an indication of the severity of a person's condition and would thus enable the definition of severe mental impairment to be amended to permit the exemption of people with degenerative disorders. The point at which they became eligible for exemption would, in effect, be the point where they became eligible for AA or CAA. The suggested amendment of the definition of severe mental impairment, which has been put forward by the Department of Health, involves adding 'or disease' to the second part of the existing definition, as follows "an injury or disease to the brain causing severe impairment of intelligence and social function which appears to be permanent". It is possible under these proposals that a person on SDA or IVB could reach pensionable age and not be eligible therefore for AA or CAA. There would therefore need to be provision to ensure that the exemption of such people continued.

EXTENSION OF EXEMPTION TO INCLUDE MENTAL ILLNESS

10. The proposal to change the present arrangements offers the opportunity to extend the exemption also to those on AA or CAA who are severely mentally impaired as a result of mental illness such as chronic schizophrenia. Medical advice suggests that the number of people with such conditions who are in receipt of AA or CAA rather than being cared for in a home or hospital (where they would be exempt anyway) will be very small. To try to continue to restrict the exemption to exclude such people while extending it to those with degenerative disorders could lead to similar criticisms from organisations which represent such people as have already been faced from the Alzheimer's Society etc. It is therefore recommended that the exemption be extended to include severely mentally ill people. The amended definition of severe mental impairment would cover this group.

EFFECTS OF EXTENDING EXEMPTION

11. It is particularly difficult, for a number of reasons, to determine how many additional exemptions would be granted under the new arrangements. On existing DSS statistics a very rough estimate of perhaps 150-200,000 exemptions among AA recipients can be made for Great Britain . The figure for Scotland might be in the order of 15-20,000. A more detailed breakdown of these figures is provided in the Annex to this paper. Under the present arrangements 8-9,000 are exempt in Scotland. In revenue terms, making the extreme assumption that there is little overlap between SDA eligibility and eligibility for AA, this might mean a rise in the total number of exemptions to 20-25,000 in

Scotland, which in terms of further revenue foregone by authorities would amount to some £3.5-£5.5 million (assuming an average personal charge of £300) equivalent in Scotland to around 0.5% of total revenue from the community charge. Additional exemptions for CAA recipients would be negligible since there are only some 7,000 beneficiaries in Great Britain. Only a few hundred will be severely mentally impaired. While local authorities are likely to express concern at the prospect of losing any revenue, the effect of the changes proposed should not be significant enough to affect community charge levels. It has also to be borne in mind that rebate will no longer be payable to those who become exempt so that there would be a reduction in DSS expenditure on community charge benefit.

ADVANTAGES OF THE PROPOSAL

12. The main advantage of this arrangement would be that it would allow those who are severely mentally impaired as the result of a degenerative brain disorder or severe mental illness, and who are not cared for in a home or hospital, to be exempted from the personal community charge without the introduction of a definition of the point at which exemption should be granted and a testing procedure to show when the definition was met. While exact comparison is not possible, it is generally the case that the point at which a person becomes eligible for AA or CAA will be the point at which they would have to go into residential care if they did not have someone in the community to care for them. Thus, broadly, the exemption would be appropriate in terms of fitting in with the present arrangements. The arrangements also meet many of the criticisms of the present system that have been voiced by the BMA and organisations concerned with the welfare of people with degenerative disorders. The Department of Health's judgement is that the BMA would be likely to agree to the implementation of such an arrangement and DOE and Scottish Office officials consider that the proposal would be welcomed by organisations such as the Alzheimer's Society and Alzheimer's Scotland, provided it was presented sensitively.

DISADVANTAGES OF THE PROPOSAL

13. DSS are concerned that the use of AA for this purpose may lead to a significant increase in the number of speculative claims for the benefit itself although it is considered that there is little such risk as far as CAA is concerned. Access to exemption from the community charge would add the equivalent of 20-30% to the value of AA, and when eligibility for AA was made the passport for an additional premium in the calculation of income support a major upsurge in demand took place. There is no evidence, however, that claims for SDA increased in Scotland when that benefit became a qualifying benefit for community charge exemption, although DSS believe that this is because there is more likely to a 100% take up of SDA or of IVB than of AA with less scope for speculative claims. With AA, the DSS concern is partly that a significant increase in claims will overstretch the limited departmental medical resources available to them for assessing claims and also that large number of speculative claims will lead to additional lengthy review procedures which will also have resource consequences.

14. Clearly much will depend upon the actual increase in claims which takes place. These will fall into 2 categories; those from people who may qualify for exemption from the community charge but who had not previously claimed AA; and those who apply speculatively without,

perhaps, a great expectation of success. No estimate of likely additional claimants is possible, although it has to be borne in mind that the total number of people who might consider themselves, or be considered by those caring for them, to be eligible for exemption on the grounds of severe mental impairment will be considerably smaller than those, for example, who might have sought enhanced income support premiums. If there is an increase in claims, this is likely to take the form of an initial surge followed by a much smaller continuing additional caseload.

15. DSS have also made the point that receipt of AA or CAA is a far from perfect test of severity of impairment as entitlement is based on the need for attendance rather than severity of disablement although, as indicated above, entitlement to the benefit would only be used as a screen. A certificate to the effect that the person is severely mentally impaired would still need to be provided by a doctor. There is a risk that people eligible for AA but not suffering from severe mental impairment may be given certificates by medical practitioners unwilling to make what they might regard as an invidious distinction between their patients. Experience with the use of SDA does not however suggest that doctors have undertaken their task without care. Representations continue to be made on behalf of those impaired by degenerative brain disorders which suggests that they are being excluded. There are 25,000 or so recipients of SDA in Scotland and only a proportion of the 8-9,000 exempt from the community charge on grounds of severe mental impairment will be accounted for by the criterion of eligibility for SDA, so that any spillover benefiting those who suffer other disabilities appears to have been negligible.

16. Last, DSS have noted that there is a risk that changes to the present AA eligibility criteria might make it less appropriate as a qualifying benefit in the future. The present qualifying benefits were chosen because they have well-established medical assessment procedures and appeals procedures carried out by DSS staff which are completely separate from community charge exemption. It is understood that although AA and CAA would appear to meet these criteria following the procedures which have evolved since their introduction in 1971, they are, however, included in the present Ministerial review of benefits. It is nevertheless unlikely that the present proposals would be unduly disturbed by a decision, for example, to allow some widening of access to AA since the requirement for a medical certificate will remain and it has to be borne in mind that only some 10% to 15% of all AA cases are related to mental handicap or illness.

CONCLUSION

17. It is considered that the addition of Attendance Allowance and Constant Attendance Allowance to the present benefit screen for community charge exemption on the grounds of severe mental impairment, together with the amendment of the definition of severe mental impairment, would offer a workable means of extending the present exemption to include people who have become severely mentally impaired as the result of a degenerative brain disorder. It is proposed, also, that people who are mentally ill and who are eligible for AA should also be exempted. The effect of the proposal upon claims for AA would, however, require to be closely monitored with, if necessary, additional resources being made available to DSS to ensure that they were able to manage the increased workload.

18. It is therefore proposed that, subject to Ministerial agreement, an early joint announcement should be made of the new proposals by DOE and the Scottish and Welsh Offices. This would be clearly seen, in Scotland at least, as a policy change since Ministers' position so far has been that no practicable means has been identified of defining and testing for severe mental impairment, as defined in the legislation, to apply to those with degenerative brain disorders. It would therefore be necessary to acknowledge that this approach had been abandoned and the use of eligibility for AA adopted as an alternative.

19. The changes do not require primary legislation. Regulations implementing the changes could be made shortly after any announcement, with the change taking effect in Scotland from when the regulations came into force and in England and Wales from 1 April 1990. A revised "Dear Doctor" letter would have to be agreed with the BMA for Scotland together with a similar letter for England and Wales. There is considerable urgency about this in England and Wales as the registration process is already well underway and could be held up if agreement with the medical profession is not reached soon.

ANNEX

ATTENDANCE ALLOWANCE

Age 2-death
Cash benefit payable weekly to persons who need a lot of looking after
Payable to people living alone
Not means tested
Not taxable
No effect on other benefits except constant attendance allowance
(Constant attendance allowance is usually preferred as it is payable at a higher rate)
Inter-relationship between attendance allowance and the other benefits in the legislation would seem helpful

6-month pre-qualifying period
Formal visit by Examining Medical Practitioner from DSS
(Can be GP but usually not)
EMP's report submitted to Designated Medical Practitioner
(Full-time DSS Medical Adviser)
DMP decides on level of allowance and duration of allowance
DMP can, if uncertain, request further evidence
DMP can refer any queries or appeals to the Attendance Allowance Board

ATTENDANCE ALLOWANCE M + F 65 (60) +

		Scotland			All Regions	
	5	3927)		5	51644)	
Higher Rate	6	3115)	14,274	6	39129)	164,856
30/6/89	7	7232)		7	74092)	
	5	3550)		5	46405)	
Lower Rate	6	4002)	16,113	6	44350)	173,236
31/3/89	7	8561)		7	82481)	
		Total	30,387			338,092

Code - Main cause of helplessness

5 Mental disorders

6 Diseases of nervous system and sense organs

7 Diseases of circulatory system

5, 6 and 7 will contain most causes of progressive degenerative brain disorders (including Alzheimer's, multi-infarct dementia and strokes), but they will also contain cases where people would not be severely mentally impaired and would not therefore qualify for exemption. 5 will also contain mentally ill people in this age group.

For purposes of an estimate of potential numbers involved this is as accurate as published statistics will allow. DSS have pointed out that these figures are almost certainly over-estimates of numbers because of the way in which the statistics are compiled.