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COMMUNITY CHARGE

In the light of our discussion I attach a note (Annex A) which argues the case

- for having no derogations at all in 1991/2
- for excluding referenda from the scope of a Bill next session
- for separate legislation on referenda next year to take effect from 1992.

My starting-point is that referenda are an excellent idea in principle; the arguments in support of the above are essentially practical. But it is important to note that increasing accountability through referenda could, if it led to higher spending being approved,

- increase GGE
- increase RPI (through higher average charge)
- increase PE (through extra benefit)

all in a way manifestly outwith control by the Government. This obviously needs to be weighed against the attractiveness of, once and for all, putting the responsibility for deciding on high local spending on to the people who actually have to pay.

I also attach, as background, a note (Annex B) describing the referendum issue in 1981. This is of some relevance to the debate.

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REWARDS FOR SPENDING BELOW LIMITS

We also discussed this briefly. Assuming a reasonable income limit - say 8% above 1990/91 spending - it is evident that for some authorities this will be a higher figure than they might have opted for on unchanged policies. Their temptation to spend up to the limit could accordingly increase total spending next year beyond what it would otherwise have been, with consequent effects on the level of average charge.

There is thus a case for some form of reward, for spending below limits. This could perhaps be in the form of a specific grant which would be distributed for the express purpose of further reductions in charges in areas where authorities are spending at given proportions below limits.

No doubt this is not as easy as it sounds, but the idea is not new and was in fact canvassed, albeit in a rather complicated form, earlier in the current discussions. It is however surely a crucial element in getting across the message that the income limits are to be maxima not norms.

It also goes hand in hand with the proposition that, if there are to be no derogations, the income limits need to be reasonably generous. In this case it would be all the more important to have incentives against spending up to the limit.

I would therefore strongly recommend that the Prime Minister commissions further work on this aspect at next week's meeting.

John Mills

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Annex A

The Case against Referenda in 1991/2 (or indeed any means of breaching income limits)

DOE's current proposal takes for granted that in any system of income limits a safety valve will be needed for authorities which find themselves unable to meet statutory or contractual obligations within the limits. Safety valves could be designed, according to DOE, either as

- derogations approved in each case by the Secretary of State;
- local referenda to approve higher spending.

There is little enthusiasm for the first of these. They would reduce accountability even further, and put the Government in the unenviable position of having to decide for or against breaching the limits it had already imposed. Decisions unfavourable to local authorities would provide fertile ground for legal challenge.

On the other hand, the idea of referenda is in principle very attractive. It will increase accountability. It is also much more likely to focus on the single issue of spending than the related idea of special whole council elections, which would surely spill over into wider political issues and which could easily yield perverse political results.

There are however very strong practical arguments against including the referendum idea in a Bill next session dealing with income limits, and therefore against implementing referenda in 1991/2. It would be preferable to deal with it separately next year.

First, it would certainly make passage of the income limits legislation much harder:

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- 'constitutional' opposition, from the Government backbenches as well as the Opposition proper, would re-emerge along 1981 lines. Referenda, it will be argued, are alien to the constitution and a dangerous precedent: especially binding referenda. The Lords in particular could be very unpredictable on this;
- at the very least, this would open the prospect of the Bill being taken in Committee of the Whole House as an important constitutional measure. This could easily jeopardise the very tight timetable;
- the way would be opened for amendments along the lines of Mr Heseltine's election proposal. This would obviously create scope for disunity among Government backbenchers on a subject extremely controversial to start with.

The Parliamentary timetable for a Bill simply focussing on income limits is so formidably tight, and the path on this subject already so rocky, that the risks of further complications as outlined above do not seem worth running.

Secondly, referenda (or any system of derogation) which approved higher spending would, in 1991/2 at least, create a new animal: supplementary community charge bills. Even if these have a local mandate, their political implications clearly merit careful consideration, especially if, for example, a local majority in favour of the higher spending is less than overwhelming.

Given the legislative timetable, it would not be possible in 1991/2 to hold referenda until well into the financial year. Likely dates for the issue of supplementary bills could be June or October 1991. The old supplementary rate bills, which the Government abolished in 1982, were extremely unpopular. In the present climate, it is at least questionable whether local authorities, as opposed to the Government, would in practice receive all the blame for them.

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In particular, it should be noted that the supplementary rates demanded, for example, by the GLC in 1981 had a specific, political purpose: transport subsidies to keep down fares. When they were abolished, fares rather than rates took the strain. But this time round, it is likely that supplementary charges would be presented as needed to avoid cuts in basic services like education, because of Government underfunding. However mischievous, it might prove difficult to counter such arguments purely by reference to 'overspending'.

Supplementary charges in mid-year could be avoided altogether if referenda were not introduced until 1992. Provision could be made, in separate legislation during 1991, for councils to set budgets a bit earlier leaving time for referenda, if necessary, before the beginning of the financial year. Thus initial bills could then reflect any agreed higher spending. This approach would also avoid mid-year confusion on the payment of community charge benefit.

This delay of a year might also give time for further consideration as to the inclusion of the community charge in the RPI. It would be much easier for the Government to set a tough income limits regime if resulting additional spending approved by referenda, without any reference to the Government, did not feed through automatically to the RPI. (It might even be desirable for such additional spending not to feed through to increased benefit, either).

Should there be any breaches at all in income limits?

The above considerations lead on to the question whether any breaches in limits at all should be permitted in 1991/2.

Quite apart from the possible Parliamentary complications of referenda, it seems that any provision for derogations will be interpreted as the Government's not really believing in the validity of the income limits it has set. This will further undermine the credibility of SSAs as an achievable and realistic target. This could be very damaging.

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There would appear to be a strong case for setting a reasonably generous income limit, which it would be hard for councils to argue was inadequate, with no provision for breaches in the limits (but provision for rewards for underspending.) This would impose a tighter discipline not only on next year's budgets, but also on the husbanding of available resources this year in order to increase end-year balances for spending next year.

In addition it would ensure that there were no unexpected RPI or PE effects in 1991/2 as a result of referendum results in favour of higher spending.

This could be coupled with an announcement which trailed the Government's intentions, in a separate short Bill in 1991, to provide for referenda in 1991/2, such referenda to be held before the beginning of the financial year so that no-one would receive more than one bill.

Conclusion

Referenda to approve higher spending are attractive in principle. But the idea is certain to arouse heated controversy and allegations of constitutional innovation which could delay or jeopardise legislation on income limits. Getting the latter in place is such a crucial objective, and the Parliamentary timetable so tight, that the risks of including referenda at the same time seem too high.

Moreover there is a strong case for ensuring that, in 1991/2 at least, there is no means whereby some chargepayers could receive supplementary bills, for which the Government could all too easily take the blame and which would affect the RPI.

Finally, allowing no breaches at all in 1991/2 of income limits seems much more likely to impose discipline on local authority spending. Although this may necessitate setting reasonably generous limits, rewards for underspending would help ensure they did not simply become spending norms.

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Referenda: The 1981 experience

The 1981 Local Government Finance Bill proposed that authorities would have to hold local referenda to gain approval for levying supplementary rates. The referendum would be based on the normal electoral roll, with the form of the question prescribed by the Secretary of State. An authority would be able to issue a leaflet to electors, and also the opposition: both leaflets to be sent out in the same envelope.

The aim was simply to make it difficult for authorities to levy supplementary rates, by requiring explicit reliance on accountability. Accountability would, it was hoped, be further enhanced by a provision requiring supplementary rates, if approved, to be skewed disproportionately in favour of domestic, as opposed to non-domestic ratepayers. This was coupled in the Bill with new, controversial provisions to strengthen the Government's ability to impose spending targets, and grant 'hold back' (penalties) for those authorities exceeding targets. So the 1981 Bill represented a three-pronged attack to deal, once and for all, with local authority overspending:

- powers to specify maximum rates or precept
- powers to impose penalties for exceeding targets (grant hold-back)
- extra spending above the rate limit only through supplementary rates approved by referendum

The background to this was a situation at the start of 1981-82 where local authority budgets were 5.3% above Government plans. The Government therefore asked authorities to submit revised budgets in order to meet its requirements for reduced public spending. Most of them responded positively and produced lower budgets but there were a predictable few which went in the other direction and increased budgets. The few increases were so great that total revised budgets turned out to be £15m more than the original ones. The main extra spending was on transport subsidies (especially the GLC).

The intention to legislate was announced by Mr Heseltine on 24/9/81. There had been a long internal debate before this on whether to opt for special elections of the whole council or referenda as the best means of approval of supplementary rates. It is evident from the papers that Mr Heseltine's preferred option of special elections found little favour with colleagues because it was felt that in practice they would not be confined to the single issue of spending. It was considered that local referenda would better meet this objective. The announcement generated much criticism, most of which was concentrated not on spending limits, the validity of whose objective was widely recognised, but on referendums. Many commentators,

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including senior back-benchers, were saying that referenda were a constitutional innovation and dangerous precedents open to abuse in the future however justified in the instant case. There was moreover serious concern that there would be a considerable number of Tory authorities which would have no option but to face referenda as a result of the new targets, because their existing expenditure was so far over GRE. Lots of figures were put about in support of this. There was general political alarm that the proposal would backfire.

Ministers however decided to go ahead and publish the Bill. It was agreed however to work up an alternative in case referenda did not attract sufficient support in Parliament. This would have been to make levying of supplementary rates dependent upon the Secretary of State's decision in each case. (This was formidably unattractive, however, because of the risk of legal challenge to the Secretary of State. Decisions on each authority would have to be taken separately as an exercise of statutory discretion. The Attorney-General said the risk of error was so great, if there were many applications, that the risk was not worth the candle.)

After the Bill was published, the so-called 'constitutional' issue gathered even more steam.

Before 2nd Reading, the Opposition used one of its days for a debate on a motion not to interfere with local government's autonomy. Their focus of attack was the referendum proposal, and virtually every Tory back-bencher who spoke was extremely critical about the use of referenda from a so-called 'constitutional' perspective. About 20 Tories abstained. In the press, the Bill's fate was clearly sealed as a result.

Two weeks later, Ministers decided not to proceed with the referendum proposal. The Whips had advised that the Bill was unlikely to get second reading because of this. A revised Bill was prepared which abolished supplementary rates altogether, a move which was well received by Government supporters.