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THE COMMUNITY CHARGE

Note by the Cabinet Office

At the Prime Minister's meeting on 17 May we were asked to co-ordinate further work on the community charge.

2. This work is set out in the annexes attached to this paper. Annex A, by a working group of the Department of the Environment and the Legal Secretariat to the Law Officers, provides further legal advice. Annex B, by DOE, looks at ways of keeping down community charges in 1991-92 short of general income limitation. Annex C, also by DOE, looks at measures to help individuals.

Constraining expenditure and community charges in 1991-92

3. The work suggests three possible broad approaches to constraining local authority expenditure and community charges in 1991-92.

4. The first approach would be to continue to develop the present system without fresh legislation. The pressures of accountability under the community charge would be backed so far as possible with tougher use of existing powers to cap excessive spending on a selective basis after budgets had been set. The risk of high community charges would be accepted: the aim would be to make local authorities take the blame.

5. The second approach would be to introduce legislation to strengthen the existing capping powers so that they imposed a tighter discipline on high spending local authorities, but stopping short of general income limitation. This could be accompanied with other measures to improve accountability and bear down on spending.

6. The third approach would be to legislate to introduce a system of general income limits, for instance on the lines discussed at the last Ministerial meeting, setting a maximum on the amount of income which major local authorities could raise. This would be

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controversial, constitutionally and politically; but it would provide a more certain way of restraining community charges. If Ministers wished to strengthen local accountability and reduce the need for derogations from the Secretary of State, one variant would be to require an authority to hold a referendum if it wished to exceed the limit which had been set.

7. These approaches are summarised below. Each could be coupled with further action to improve accountability and to tackle the perceived unfairness and anomalies of the new system: a number of options are covered later in this paper.

Option I: no legislation

8. The essence of the first option would be to make a settlement which put the Government in a position to argue that authorities which made responsible budgets could set acceptable community charges, and to ensure that authorities took the blame for high charge levels.

9. Such a settlement would be backed, so far as possible, by tougher use of the existing community charge capping powers. Ministers asked for further legal advice on what might be achieved in this way. This is at Annex A. The main points are:

i. Any reduction in the criterion of 12.5% above SSA used to select authorities for capping in 1990-91 would invite a legal challenge which might well succeed.

ii. It might be possible to relax or drop the second criterion of £75 per adult above SSA. This decision would need to be explained, if need be to the satisfaction of the Courts; but DOE's preliminary view is that this should be possible. This would allow the selection of additional authorities with budgets 12.5% above SSA, where the per capita excess was below £75.

iii. The Secretary of State could also reduce the de minimis threshold of £26 per adult which was applied in 1990-91 to

prevent the selection of authorities where only a small reduction in community charge bills could be secured.

iv. The Secretary of State could also use the second criterion for selecting authorities set out in the existing legislation, which is based on an excessive year-on-year increase in their precepts. But the threshold would have to be set at a high level if it were to be reasonably safe from legal challenge. For example, with general inflation of 8%, the threshold might have to be set at a minimum of 12%.

10. This advice suggests that it might be possible for the Secretary of State to achieve a modest tightening of the capping criteria under existing powers. He might, for example, select authorities on the basis that their expenditure exceeded SSA by both 12.5% and £50 per adult, or that the increase in their expenditure compared to the previous year exceeded 12%, with a de minimis threshold reduced to £10 per adult. DOE estimate that if these criteria had been adopted in 1990-91, 83 authorities would have been selected, with potential savings of £1.15bn. If the £50 per adult test had been dropped altogether, 86 authorities would have been selected, with potential savings of £1.18bn. But it is unlikely that all the potential savings could have been achieved in practice. Furthermore the 1990-91 figures are not necessarily a good guide to what will happen to budgets in 1991-92.

Option II: legislative changes short of income limitation

11. The essence of the second approach would be to bolster the present system with legislation to provide tougher capping powers and possibly to make other changes designed to bear down on spending, to be in force for the financial year 1991-92.

12. Annex A provides legal advice on strengthening the capping powers, and Annex B discusses a number of options for legislative change. The main points are:

i. Greater protection against legal challenges to capping could be secured by legislating for procedural changes. For

example, the Secretary of State could be empowered to make an immediate capping Order, which could be made subject to approval by the House of Commons.

ii. It might be possible to reduce the margin of 12.5% above SSA if some safety valve procedure were introduced. For example, local authorities might be given the right to apply to the Secretary of State to have their selection for capping removed.

iii. A more direct approach would be to amend the capping legislation to increase the Secretary of State's powers. One option could be to add declaratory statements, for example to the effect that caps might be set as low as 10% or even 5% above SSA. Another would be to take powers to cap authorities before the start of the financial year in question, on the basis of their performance in the previous year. Finally, provisions could be added to allow multi-year capping (although the main effect would be on years after 1991-92).

13. Annex B also discusses a number of other options for legislative changes:

i. Annual election by thirds for all councils. The annex concludes that this could not be put in place for 1991-92 (or even 1992-93) because of the need to restructure wards and redraw electoral boundaries to provide three member wards everywhere. Annual elections for whole councils might perhaps be a possibility for 1991-92, but there could be implications for Parliamentary handling of the Bill.

ii. Separate billing by each tier of local authorities. The annex concludes that separate billing would have serious operational and presentational drawbacks. In any case, it could not be put in place for 1991-92 because of timing constraints, eg for changing the computer software needed for billing. It would however be possible to alter the presentation of bills: see paragraph 19 below.

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iii. A power for a specified proportion (eg 10%) of councillors to demand a referendum on the council's budget. The annex concludes that this option could not be introduced for 1991-92, because of the need to bring the whole budgetary cycle forward to accommodate a possible referendum.

14. In practice, Ministers would probably want any package of measures short of income limitation to include other changes, such as those set out in paragraph 19 below.

Option III: general income limitation

15. A particular form of this option was discussed in the Cabinet Office Note of 15 May. The legal advice which Ministers requested is at Annex A. It addresses the three questions raised at the last meeting:

i. the legal constraints on any scheme of income limitation. The advice is that, provided the legislation was explicitly framed, it could in principle provide powers to impose any reasonable limit to local authorities' income. In particular, there would be no requirement that an authority's expenditure had to be "excessive" before the powers applied.

ii. how far such a scheme could be made proof against successful legal challenge. The advice is that the way to achieve the greatest possible degree of protection against a challenge would be to put as much of the system as possible into primary legislation. Where it was essential for the Secretary of State to exercise discretion, eg in the setting of annual percentage increases, some protection could be obtained by requiring his decisions to be specified in Orders or reports which had to be approved by Affirmative Resolution of the House of Commons. But once an element of discretion was introduced there could be no absolute assurance of safety from legal challenge.

iii. how the scope of the legislation could be made as limited as possible. The advice is that it might be possible to limit

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the scope of a Bill to income limitation and capping. But given the need to refer to SSAs, amendments relating to Government grants might also be within its scope. There is also a danger that the House authorities, under pressure, would agree to accept amendments more generally related to the community charge, particularly in the Lords where there is traditionally a more relaxed attitude to scope.

16. If Ministers decided to proceed with a system of income limits, they would need also to reach decisions on its main features, as discussed in the earlier Note.

Option IIIa: income limits backed by referendums

17. At the heart of this approach would be the idea that an authority's electors or chargepayers should be asked to endorse expenditure over a given limit. The limit would be set in good time before the start of the financial year and authorities would have the power to set their budgets up to that limit. Where an authority wished to exceed the limit, they would have to organise a referendum, inviting chargepayers to choose between their proposal and the Government's maximum figure. If the vote went against the authority, they would have to set a budget within the Government's limit. There might need to be a limited power of derogation to deal with unforeseen circumstances during the financial year (eg disasters).

18. Subject to the legislative implications, such a system could be introduced for 1991-92, but it would need to operate through supplementary community charge bills in that year. If Ministers decided that they wished to pursue this approach, further work would be needed on the practical issues, including many of the questions posed in the earlier Cabinet Office Note, and on the constitutional implications, about which the Home Office would need to be consulted.

Other possible measures

19. Any of the above options could be accompanied by further measures designed to improve accountability and bear down on local authority spending. The main options are:

i. improved presentation of community charge bills. Existing powers could be used to make it clearer which authority was responsible for high bills, for example by highlighting the overspend of each tier and perhaps by including year-on-year comparisons of spending. This might produce most of the benefits claimed for separate billing without the major upheaval which that would involve.

ii. freezing new and enhanced burdens on local authorities. Annex B updates the earlier list of new burdens attached to our last Note.

iii. strengthening the role of the Audit Commission in relation to value for money (VFM) work. Annex B sets out a number of options, all of which would require primary legislation.

iv. a minatory Green or White Paper, setting out the measures for controlling local authority expenditure which the Government might have to introduce if authorities did not exercise more restraint in their spending. Annex B discusses this option.

20. Ministers will want to consider which of these options should be pursued.

Measures to help individuals

21. Annex C sets out a number of measures designed to tackle the perceived unfairness of various aspects of the community charge and the unified business rate (UBR).

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Transitional relief scheme

22. The main options for enhancing the transitional relief scheme are:

i. extending the life of the scheme, eg to 5 years rather than 3, coupled with a freeze on entitlements in 1991-92 and 1992-93.

ii. extending relief to cover increases in bills due to the withdrawal of the area safety net and the low rateable value grant. (The costs of this option could be offset by savings if relief were withdrawn from those whose assumed losses would be reduced by the phasing out of safety net contributions.)

iii. reducing the threshold for relief, eg from £3 per week to £2 or £1 per week.

iv. extra help for the disabled and/or young people, eg to treat these groups in the same way as the disabled and elderly who were not formerly ratepayers.

v. portability. It would be possible to provide portable relief for all recipients of special relief (the elderly, disabled and possibly under 21's) so that they would not lose entitlement if they moved.

vi. extra relief for the elderly and disabled in sheltered accommodation.

The costs of these options are set out in Table 1 attached.

23. Ministers have already agreed in principle to the first two measures: extending the scheme and providing cover for the effects of withdrawing the safety net and low rateable value grant. They will want to consider whether to adopt any of the further options. Decisions would be needed also on their application to Scotland and Wales.

Community Charge benefit

24. The main options for changes to community charge benefits (CCBs) are:

i. doubling the earnings disregards. This would cost up to £100m in 1991-92 if it could be confined to CCB, but several times this amount if extended to all means-tested benefits.

ii. reducing the benefit taper at the top end. This might cost £150-200m in 1991-92.

iii. reducing the assumed tariff income on savings below £16,000. This might cost £25-40m in 1991-92 if it could be confined to CCB, but several times this amount if extended to all means-tested benefits.

25. Ministers will wish to consider whether any of these options should be pursued. If so, further urgent consideration would be needed, in consultation with the Department of Social Security.

Students

26. There are three possible changes to the personal community charge for full-time students:

i. complete exemption for students who do not receive a local authority grant and are not entitled to social security benefits. This would cost £14m per annum.

ii. revision of the definition of a full-time student to cover the gap between secondary and higher education. This would prevent students being liable for the full community charge, often for a period of only 2 or 3 months, which can impose unnecessary costs for DSS and local authorities.

iii. extension of student status up to, say, 1 September in the year their studies end. This would close the gap which often exists between higher education and a first job.

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27. Ministers will wish to consider whether any of these options should be pursued.

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28. The main options for giving targeted relief from the standard community charge on second homes are set out in paragraph 21 of Annex C. These options would not increase general government expenditure. But they would lead to a modest reduction in local authorities' income, which might add £2-3 to community charges in some areas if no extra grant were provided. Ministers will wish to consider which of these options should be pursued.

Composite hereditaments

29. Composite hereditaments are properties which contain both domestic and non-domestic accommodation, such as small shops with living accommodation and guest houses. In such properties, the business element only is subject to the UBR. Residents of the living accommodation are subject to the personal community charge in the normal way. Such residents are therefore treated in the same way as shopkeepers or guest house proprietors who live away from their commercial premises.

30. Residents of small composite shops do however face large average increases in their local tax bills. If Ministers felt that it was essential to give some relief, the following options could be pursued:

i. special relief from the community charge, eg to 75% of the full charge, or to impose a maximum of one or two charges per property (cost between £18m and £36m per annum).

ii. additional community charge transitional relief for people living in composite hereditaments. Help would of course be transitional. The cost would probably be less than £10m per annum.

iii. de-rating of small composite shops. A 10% reduction in rateable value would cost about £5m.

iv. improvement of the UBR transitional arrangements for composite hereditaments. A reduction in the annual permitted real increase from 15% to 10% for small composite shops would cost about £2m, or for all small composite properties about £4m.

It might prove difficult in practice to confine any of these concessions to small shops or even to composite properties generally.

31. Ministers will wish to consider whether any of these options should be pursued.

Scotland and Wales

32. Decisions will be needed on how far any changes introduced for England should apply also in Scotland and Wales.

CABINET OFFICE
1 June 1990

Table 1: Costs of transitional relief proposals (£m).

	1991/92	1992/93	1993/94	1994/95	Total
Existing scheme	260	200	0	0	810*
Additional costs:					
(i) Extending the life of the scheme	90	150	260	200	700
(ii) Helping safety net withdrawal areas	50	75	90	75	290
(iii) Reducing threshold to £2	220	220	160	120	720
(iv) Disabled	20	20	20	20	80
Young	240	270	270	270	1050
(v) Portability	0	0	0	0	0
(vi) Multi-unit hereditaments	85	85	70	60	300

* Includes £350m cost in 1990/91

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CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-270

MR. B. POTTER

THE COMMUNITY CHARGE

Following the Prime Minister's meeting on 17th May the Cabinet Office were asked to co-ordinate further work in the light of the discussion. I attach a paper accordingly. It has been prepared in close consultation with the Treasury, the Department of the Environment and the Legal Secretariat to the Law Officers.

2. If the Prime Minister is content we will circulate the paper to all members of her group for the meeting next Wednesday 6 June.

3. I would be grateful if recipients would ensure that the note is seen only by those with a need to do so and that no copies are taken without their authority.

4. I am copying this minute and the attachment to the private secretaries to the Chancellor of the Exchequer, the Secretary of State for the Environment, the Chief Secretary, Treasury, and the Minister for Local Government and to John Mills (Policy Unit).

R. T. J. WILSON
1 June 1990

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THE COMMUNITY CHARGE

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(v) Portability	0	0	0	0	0
(vi) Multi-unit hereditaments	85	85	70	60	300

* Includes £350m cost in 1990/91

Prime Minister

SECRET

ANNEX B

COMMUNITY CHARGE CAPPING - LEGAL CONSIDERATIONS

1. This paper considers the legal implications of
   - a more stringent application of the present capping system,
   - possible legislative changes to the present capping system,
   - general income limitation.

A MORE STRINGENT APPLICATION OF THE PRESENT SYSTEM

2. Under the present system, the Government first calculates the amount (the Total Standard Spending - £32.8 billion for 1990/91) which, broadly speaking, is the amount it considers appropriate for local authorities to spend in the forthcoming financial year. The primary factors which the Department of Environment takes into account are national economic considerations and local authorities' needs by reference to the services they provide. The corresponding revenue is derived from community charge, non-domestic rating, Revenue Support Grant and various additional specific grants.

3. Central to the existing system of grant distribution and accountability is the standard spending assessment (SSA). The SSA is calculated for each authority by the Secretary of State and is used as the basis for the distribution of Revenue Support Grant. It is an assessment for each authority of what the Secretary of State considers would be an appropriate level of expenditure for the authority to incur to provide services locally to a common standard, consistent with local authorities as a whole spending up to the Total Standard Spending. The SSA is based on objective measures of the cost of providing services in seven major service blocks. As is shown by the current Revenue Support Grant Distribution Report, the calculation of SSA elements for each of the seven service blocks relies to a varying extent on estimations.

4. Under the current legislation the Secretary of State may designate a charging authority for capping if in his opinion it has calculated an excessive amount for expenditure. He may also designate if the amount so calculated shows an excessive increase over the amount calculated in the preceding financial year.

Capping of excessive amounts

5. The SSA has also been used as the basis for exercise of the capping powers under the 1988 Act. The Secretary of State is not required by the 1988 Act to use this basis, but he must make his decision to designate local authorities for capping in accordance with principles that are the same for

all local authorities falling within a class or for all of them which respectively have and have not been designated as regards the preceding financial year. Whether the Secretary of State is correct to base the designation decision on SSAs is one of the issues in the current judicial review proceedings in the Hammersmith and Fulham case. The Secretary of State will contend that in the light of the importance of the SSA for the distribution of Revenue Support Grant, he would legitimately be criticised if he ignored SSAs for the purposes of designation.

6. The fact that SSAs and the capping ordersare approved by affirmative resolution may well give a degree of protection from judicial review, following the House of Lords decision in the Nottinghamshire case, but there is always a risk that the SSA would be found to be so flawed as to make exercise of the capping power, based on such an SSA, improper or capricious. (How far the Nottinghamshire decision precludes review of "Wednesbury" reasonableness of decisions approved by Parliament is again an issue in the Hammersmith and Fulham case.)

7. The Secretary of State may designate an authority for capping if, in his opinion, its budget or precept is excessive. There is no statutory requirement on the Secretary of State to consult a local authority before a decision to designate. Whether there is a legitimate expectation that the Secretary of State should have consulted the local authority before deciding to designate is one of the issues in the Hammersmith and Fulham case. The Secretary of State asserts in that case that it was the proper course not to do so.

8. For this year, the Secretary of State has designated authorities with budgets or precepts over £15 million (the statutory minimum under section 101 Local Government Finance Act 1988) if their budget or precept is 12 1/2% and £75 per adult above SSA. The principles for designation also contain a de minimis rule. Given the inevitable cost to an authority of revising its budget and issuing fresh community charge bills, the Secretary of State has considered it would be undesirable to designate authorities where only a very small reduction would be required to remove the excess. Accordingly an authority with excessive spending has not been designated unless the reduction needed to remove the excessiveness amounted to at least £26 per adult. This appears to be a very comfortable margin and it could be argued that, as local authorities become used to the new system, revision of budgets and the issue of fresh bills will become less costly. The threshold could be lowered provided the court could be satisfied, as a matter of fact, that the revision of budgets and issue of fresh bills could reasonably be accommodated within the lower figure.

9. The margin of 12 1/2% mirrors the approach adopted with rate-capping under the Rates Act 1984. Like the GRE, the SSA is not a precise measure but contains approximations and estimations. In Nottinghamshire County Council -v- Secretary of State for the Environment [1986] 1AC240 Lord Templeman said that the GRE was "only a rough guide because it embraces a number of imponderables". In Hammersmith and Fulham the Secretary of

State will contend that the 12 1/2% is an adequate margin to allow for the inherent approximations in SSAs so that he can reasonably be satisfied that the authority was budgeting in excess of the appropriate level. For the purposes of rate-capping the Secretary of State never set designation principles lower than 12 1/2% over GRE. Under that system, it was recognised by the Department of the Environment that a 10% margin was needed to allow for the approximations in the GRE with an additional 2.5% margin of safety where a particular indicator might be regarded as unfair for a particular authority or otherwise flawed. (In the Hackney case the courts accepted that even if Hackney's GRE was uncharacteristically inaccurate, an expenditure guidance of 34% above GRE was sufficient to take account of any margin of error).

10. To go below the margin of 12 1/2% with existing legislation it would be necessary to argue that the SSA is a more accurate measure than the GRE. It is doubtful whether such an argument could be sustained. Such an approach would also invite a challenge to the SSA itself, since the narrower the margin over SSA, the more likely it becomes that the SSA will itself be challenged. Such challenge, if successful, would have serious consequences for the grant settlement.

11. The designation principles adopted this year have included the criterion of a £75 per adult overspend, which figure coincidentally corresponds to the maximum contribution to the safety net. Given the existence of the burden imposed by Government on some charge payers under the safety net arrangements, it would be difficult to argue that a per adult overspend by local authorities below the level of safety net contribution represents an excessive burden on charge payers. Next year there will be no contributions to the safety net, so this impediment would disappear, but against that would be the consideration that (if we are successful in the current litigation in Hammersmith and Fulham) the £75 criterion would have successfully withstood judicial review and that the Secretary of State would, in practice, need to explain why the £75 criterion had been reduced or abandoned. In the Hammersmith and Fulham litigation no specific link is being drawn with safety net contributions, but it is being generally contended that a £75 overspend is "of significance" in any judgment as to whether a local authority's budget is excessive. If the £75 criterion were to be reduced or abandoned, it would need to be explained why a factor which the Secretary of State once considered significant was no longer to be so considered, a burden which could be discharged on providing a satisfactory explanation.

12. The reasonableness of the 12 1/2% margin coupled with £75 per adult criterion is currently being tested in the Hammersmith and Fulham proceedings which will give the first guidance as to whether this approach will be supported by the courts. It has not been thought safe to go below this margin, even though there is provision for a local authority to challenge the maximum amount fixed by the Secretary of State after designation. Going below the margin imposes the burden of recalculation on local authorities, the making of representations and a prolonged period

of uncertainty. More substantially, the Government has made it public that SSAs inherently contain approximations. The possibility of challenging the maximum amount arises only after designation and would not make it safe for the Secretary of State to assume the increased risk of challenge in the courts by adopting a margin that did not fully allow for the SSAs' approximations. Similar considerations arose in the context of rate-capping under the Rates Act 1984. By reason of the need to put forward the best possible case in the current proceedings, the Secretary of State is effectively committed to the 12 1/2% margin.

13. An advance announcement by the Secretary of State of the designation principles he was minded to adopt would not overcome any approximations in the SSA and therefore assist in defending a decision to go below the 12 1/2% margin. In any event, the argument that local authorities have a legitimate expectation that the designation principles would be announced in advance is being resisted in Hammersmith and Fulham on the basis that the local authority would be entitled to expect that any level of spending in excess of SSA might be viewed by the Secretary of State as excessive.

Year-on-year increases

14. The Secretary of State may also cap an authority if he considers that there is an excessive increase over the amount calculated by the authority for the preceding financial year. This possibility was not available, by force of circumstances, for 1990/91. If the Secretary of State were to adopt this approach without allowing for a satisfactory margin he might face the same difficulties as he does on the "excessive amounts" approach, because the circumstances of individual authorities will differ. However, this type of control would be different in nature from that over excessive amounts and it is arguable that the analogy with GREs and their inherent approximations would not apply.

15. Capping on this basis would give rise to two distinct issues. The first would be the factor by which an allowance was made for inflation on a year-to-year basis. This need not necessarily be the retail price index (as this would contain elements, such as mortgage repayments, which are irrelevant for local authorities) but such indicator as was chosen would need to be one which was not demonstrably unfair for local authorities. The second issue would be the margin above that indicator which would justify the Secretary of State in considering that the increase was excessive. The margin would need to make reasonable allowance for inaccuracy in the inflation forecast and for the fact that the circumstances of local authorities may reasonably be expected to change during the year, although it would not have to cover every conceivable eventuality of each individual authority.

16. A local authority might well seek to argue that it should not be designated, despite an excessive increase in expenditure, if the increased amount remains below the SSA. It is clearly safer, (and Treasury Counsel has so

advised) to designate only those authorities whose increased amounts exceed their SSA. Against that it could be argued that it is legitimate to interpret the excessive increase provisions as operating on rates of increase of expenditure rather than by reference to absolute amounts, so that a local authority could be designated even if its spending fell below the SSA: if this were not so, the excessive increase provisions would be virtually superfluous.

POSSIBLE LEGISLATIVE CHANGES TO THE EXISTING CAPPING SYSTEM

17. The changes considered here are ones which might appear in a short bill to allow the existing capping system to be used to control local authorities' spending more tightly while affording the Secretary of State additional protection against challenge in the courts.

18. Some advantage might be gained by telescoping the existing provisions in section 100-106 of the 1988 Act so as to provide that the Secretary of State could proceed immediately to the making of a capping order without going through the stage of an earlier designation. A point highlighted in the current Hammersmith and Fulham litigation is that an authority may seek judicial review at the stage when the decision to designate is made. Thereafter the local authority has every incentive to prolong the proceedings, since substituted calculations and precepts become progressively less worthwhile the later they are made in the financial year. Provision could accordingly be made for the Secretary of State to lay a completed order which would not come into force until it had been approved by resolution. This would remove the present "window of opportunity" for early judicial review available under the present system. Some provision would, however, need to be made to allow a local authority to seek from the Secretary of State a variation of the order so made.

19. The course described above affords a fair degree of protection under the Nottinghamshire principles. It would not secure the Secretary of State against challenge on the basis of bad faith or that he had misunderstood the very nature of his powers, but - subject always to the outcome of the current Hammersmith and Fulham litigation - it would protect him against allegations that he had failed to take into account relevant considerations or had taken into account the irrelevant.

20. Another possibility might be to provide in the legislation that the Secretary of State should or could base the capping principles on SSAs. These would thus be referred to and described for the first time in primary legislation and make it more difficult to show that reliance on them was unreasonable. Whether such reliance is reasonable or not is an issue in the current litigation, and the courts may well uphold the principle that it is reasonable to rely on SSAs, perhaps making it unnecessary to put this principle in primary legislation.

21. Further possibilities are to include in primary legislation some general declaratory statement that the Secretary of State would be entitled or required to treat as "excessive" expenditure which was, say, 5% above SSA. (The SSA could remain to be determined as at present, although it might assist if the amount of the SSA were to be approved by affirmative resolution). By this means, the court could not find that the Secretary of State had acted unlawfully by adopting a margin of 5% in his capping decision and a local authority would need to show, in order to upset the SSA, that Parliament had approved it on a wholly erroneous basis or that there had been bad faith or misconduct.

22. The existing margin of 12 1/2% over SSA could not safely be reduced in the absence of some safety valve. As explained, this margin arises by reason of the approximate nature of the SSA. Under the existing system this is provided, to some extent, by the fact that authorities are, when designated, told the amount of the limit which the Secretary of State proposes and have twenty-eight days to indicate why a different limit should be imposed. The point may be open to argument, but the existing provisions do not envisage application by authorities to the Secretary of State after the process is completed to issue fresh notices of designation and propose limits or to vary or revoke a capping order. If clear provision were made for the Secretary of State to vary or revoke the order in the case of individual authorities, it may be possible to argue that Parliament intended the approximations inherent in the SSA to be dealt with by variation orders, making the Secretary of State the judge of fact so that his decision should not be reviewed, unless it is obvious that he is acting perversely (CF R -v- Hillingdon LBC ex parte Puhlhofer [1986] AC484). It might then be arguable that the margin of 12 1/2% could be reduced, because Parliament had provided a mechanism to deal with aberrations in the system of SSAs. A local authority which had not applied for variation might then find it difficult to argue that the Secretary of State had acted unreasonably by imposing a cap of, say, 10% above SSA.

23. Judicial review would be available of the decision by the Secretary of State to vary or not. The local authority would need to show that no reasonable Secretary of State would have refused to make and submit for Parliamentary approval a variation of a capping order in the light of the circumstances the local authority was able to demonstrate. This might be a difficult hurdle for the authority to overcome. As with other means of reducing the scope for challenge of capping decisions, there may be an increased risk of challenge to the SSAs themselves.

24. A safety valve of a different order would be a system of referenda. It could be provided that a local authority may not proceed to budget expenditure in excess of the prescribed limit, unless such a course was approved by a referendum. The Bill might provide that if the local authority were to proceed, its action would be open to review at the instance of any charge payer. In addition, it could be provided that billing for an amount in excess of the limit will be of no effect. By analogy with a system of derogations by the Secretary of State, it should be possible to argue that

the margin of 12 1/2% could be reduced, although there is a distinction in that the decision of the local electorate would not be judicially reviewable. The legislation would be drafted in order to show that Parliament intended the local electorate and not the courts to have the last word.

25. As with other means of reducing the scope for challenge to capping decisions, and in order to permit lower margins to be adopted, authorities may be prompted to challenge the SSAs themselves. The derogation measures discussed in the last three paragraphs might therefore be linked with other measures discussed elsewhere in this paper to secure greater improvements in the protection of SSAs against challenge.

GENERAL INCOME LIMITATION

26. The chief differences between a system of capping and of income limitation are that the latter would operate generally in respect of all authorities and would operate in advance. If the proposals on income limitations in the previous Cabinet Office note were to be adopted, the way to achieve the greatest possible degree of protection against challenge is to put as much of the system as possible into the primary legislation. One might envisage legislation subjecting all relevant authorities to an income limit based on defined criteria. These criteria need not include the concept of excessiveness. The legislation could be more specific fixing increases or reductions for each authority. To allow a degree of flexibility, it may be desirable to allow the percentages and adjustments to be changed by order, subject to approval by the House of Commons. If there were to be greater flexibility, such as a power to change the nature of the system, this could be provided for in the primary legislation by taking appropriate powers. It is likely that the Bill would have to provide that the exercise of such powers would require approval by the House of Commons. Depending on the nature of the limitation scheme, similar points would arise in relation to challenges to SSAs and derogations as arise with capping schemes.

27. A more radical change would be a system of annual Bills fixing the SSA and providing that no local authority is to spend above a fixed figure calculated by reference to SSAs. The Secretary of State could operate the present mechanism of consultation by which he would set out the provisional SSAs which would appear in the Bill for adoption by Parliament. Such a process might create difficulties of parliamentary handling as, subject to the views of Parliamentary Counsel and the House Authorities, it could not be regarded as purely a money Bill. However, it could not be said that Parliament was being invited to legislate an absurdity. Once enacted, the decisions by which the SSA and the margin were fixed and, indeed the procedure by which they were fixed, could not be challenged in the courts. Such a Bill would not, at first sight, appear to be hybrid but this again would be a matter to be established by advice from Parliamentary Counsel and, if necessary, the House Authorities. A system of derogations would not be needed for legal reasons, but they may be needed for reasons of

practicality.

28. Of course, once any element of discretion is introduced, decisions by the Secretary of State, including decisions not to exercise powers, become subject to the possibility of challenge in the courts. The Nottinghamshire principle should give a considerable degree of protection to decisions which are ratified by the House of Commons, but such protection would not be available in respect of decisions not to exercise powers. However, as shown above, a successful challenge might be a difficult prospect for a local authority.

29. The only other possibility is for Parliament to confer a delegated power on the Secretary of State to amend the primary legislation itself, with the order making the amendments subject to affirmative resolution.

Scope of Legislation

30. It is not possible to form a concluded view about the scope of legislation amending the existing capping provisions, introducing a new system for general income limitation or the annual Bill fixing a local authority's SSA. The provisions would amend or replace provisions in Part VII of the Local Government Finance Act 1988 which relates exclusively to capping. In the absence of specific proposals, it is premature to seek the views of Parliamentary Counsel, let alone the House Authorities on the scope of the Bill. If, however, the Bill does not contain any other subject matter, it might well be possible to confine its scope to amendments relating to capping. However, given the need to refer to SSAs and to provide protection against challenge, this might open up amendments relating to local authority grants.

31. In any event, parts of Part VII to the 1988 Act relate to substitute calculations and precepts and are linked to the duty to set charges. There is a danger that the House authorities would, under pressure, agree that amendments more generally related to the Community Charge would be in order. As a Bill to effect any of these three options would almost certainly not be a money Bill, it would have to pass its Lords' stages, where there is traditionally a more relaxed attitude to scope.

ANNEX B to
Cabinet Office
Paper

KEEPING DOWN COMMUNITY CHARGES IN 1991/92

INTRODUCTION

1. This note looks at ways short of general income limitation which might be used to try to keep down charges in 1991/92. Some are considered in detail in separate annexes. The measures are considered in three groups:

- those for which no primary legislation would be needed;

- those which could be introduced in 1991/92 with primary legislation in the 1990/91 session;

- those which could not be put in place for 1991/92 even with primary legislation in the 1990/91 session, but which could be considered in a Green or White paper.

MEASURES NEEDING NO PRIMARY LEGISLATION

PRESSURE OF ACCOUNTABILITY

2. In 1990/91 local authorities have been able to deflect much of the blame for high community charges onto the Government. Much of the blame has fallen on the introduction of the charge itself, but local authorities also argue that under-provision for inflation by the Government, the cost of collecting the charge, new education burdens, the safety net and changes in capital financing have pushed charges up. For 1991/92 authorities will not have these major changes in local government finance to shelter behind. Apart from new burdens (which are considered separately in this paper), and any changes resulting from this review, there are no significant changes in local government finance planned for 1991/92.

3. This should mean that the pressures on local authorities to keep charges down in 1991/92 will be greater than in 1990/91 when some were no doubt keen to set, or match, a 'going rate' and could blame the Government's changes for the level of the charge. In 1991/92, for the first time, chargepayers will have charges from a previous year as a clear base against which to compare. Chargepayers in many areas may be expecting reductions in charges because their contributions to the safety net will end.

4. Provided that the settlement makes a reasonable allowance for inflation and the distribution of grant does not change significantly, then for most authorities the Government will be able to point more clearly to local authority spending as the reason for high or increased charges. The pressure of accountability will be all the greater and local authorities may exercise restraint in anticipation of this pressure.

5. The next four sections consider Government measures which might reinforce this pressure of accountability in 1991/92:

- exhortation
- delaying new burdens;
- clearer community charge bills;
- greater use of existing capping powers.

EXHORTATION

6. Exhortation has always been one of the weapons in Ministers' armoury. Whatever other action may be taken, Ministers will certainly wish to make as strong a case as possible against unnecessary spending next year. No doubt it has some influence, particularly with the Government's supporters, and the increased accountability under the new system may strengthen Ministers' influence. It will be important to drive home in particular the point that this year's safety net contributions should not be used to finance extra spending next year.

DELAYING NEW BURDENS

7. Pressures of accountability should help to hold down the community charge in 1991/92 <u>provided that local authorities are given a stable environment</u>. Increases in local authority responsibilities are likely to operate against that pressure. On past behaviour, local authorities generally will claim that the Government has made inadequate financial provision for their new responsibilities and that this is the reason for the whole of any increase in their community charge and that therefore the level of the charge is the Government's fault. There are a number of changes in current legislation which could provide local authorities with an excuse.

8. Annex A to this note updates Annex F to the previous Cabinet Office paper, taking on board new information which has since become available. The table below sets out departments' estimates of the cost pressures in 1991/92 expected to arise from new legislation. Judging by previous behaviour local authorities will probably budget for larger increases in spending than these central estimates of costs. The largest increase is the effect of Community Care which Ministers are considering separately.

Ministers may wish to consider whether they should take action to delay any of the other legislative changes. Initial estimates (which are being discussed with Treasury) of the costs in England of the main new burdens in 1991/92 are:

	(£m)
Community Care	535
Litter	60
Waste Disposal	50
Town and Country Planning	35
Food	26
Other	52
Total	758

9. There are also some additional spending burdens arising from further implementation of the Education Reform Act which it may be possible to defer. And there are other new burdens on Police and Social Services arising from previous legislative changes. Some of those cost pressures cannot be deferred. There are also demographic pressures on local authority costs. In addition, stopping the front loading of the grant payment profile which was a special measure for 1990/91 will also increase costs. These will all need to be considered in the context of the settlement.

COMMUNITY CHARGE BILLS

10. The pressure of accountability could be enhanced by improving the form of community charge bills. The greatest force might be derived from having separate bills served by each local authority but it is not possible to have separate billing in England without extensive and detailed amendment to the Local Government Finance Act 1988. Primary legislation could not be in place in time to be reflected the 1991/92 grant settlement or in time for computer companies to change their software before 1991/92 bills have to be sent out. This is not therefore a prospect for 1991/92.

11. It would however be possible, through secondary legislation, to alter the presentation of information on the community charge bill. DOE will in any case be bringing forward revised regulations on the demand notice for 1990/91 to take into account changes such as the ending of safety net contributions. In particular, it should be possible to make even clearer than at present which authority is responsible for overspending and hence high bills - for instance by highlighting the contribution to the overspend by each tier to the final bill (the spending plans of each tier are already shown separately) and perhaps by including year on year comparisons of spending (though for 1990/91 this was omitted to avoid overloading the bill). Two preliminary examples of possible changes to the bill are shown in the appendices to Annex B to this Annex.

EXISTING CAPPING POWERS

12. Annex A to the Cabinet Office paper provides legal advice on the use of which could be made of existing capping powers. In summary the advice on the excessive spending arm of capping is:

- that it would not be possible to reduce the "excessive spending percentage to less than 12½% above SSA, without being able to show that SSAs are more accurate than GREs. It is doubtful whether there is any proof of accuracy which could be brought to bear in judicial review;

- that if the £75 criterion were reduced or abandoned it would be necessary to show why it was no longer thought appropriate (particularly if it is upheld in the courts in the current litigation). We think that this should be possible;

- it should be possible in future years to reduce the £26 per adult de minimis rule, provided the courts accept that it was a more than adequate margin in 1990/91 and it can be shown that whatever margin is chosen would exceed the cost of rebilling.

13. On the excessive increase arm, the legal advice is that the criterion would need to be reasonable in its inflation assumptions and would need to allow a margin above that.

14. Capping in 1990/91 will secure up to £215m of savings over original budgets from 21 authorities. Savings of up to £360m might have been possible if all 21 authorities had been taken down to 12½% and £75 per adult above their SSA. But consideration of budget information led the Secretary of State for the Environment to consider that such reductions could not be made in one year in some authorities.

15. The potential scale of savings from existing capping powers in 1991/92 depends largely upon the increase in spending planned by local authorities over and above their increased SSAs for 1991/92. The larger the excess in their planned spending above their 1991/92 SSAs, the greater the potential for savings through capping. Purely for illustration, the table below shows potential savings with different levels of local authority budget increases, if SSAs increased by 8% over 1990/91 (implying a cash cut from this years budgets) or were set at 1990/91 budgets plus 8% and if capping were applied to 12½% and £75 per adult above SSA:

Impact of capping with different combinations of SSA increase and spending increase

% increase la spending plans	Number of authorities capped	Maximum reductions in budgets	in average charge	Average spending increase after capping
8% increase SSAs				
10%	69	£ 930m	£26	7.2%
12%	81	£1230m	£35	8.3%
15%	104	£1810m	£52	9.6%
Total of SSAs at 1990/91 budgets +8%				
10%	18	£ 140m	£ 5	9.6%
12%	25	£ 200m	£ 6	11.4%
13%	35	£ 330m	£ 9	14.0%

16. It is unlikely that all of these savings could be realised. The Secretary of State would have to consider each budget to see what savings were achievable. As this year, he would no doubt have to make allowances for the particular circumstances of some authorities, and would probably also want to make a de minimis provision. Capping on the scale in the half of the table would mean doubling or trebling the skilled staff resources in DOE devoted to capping.

MEASURES FOR IMPLEMENTATION IN 1991/92 WITH PRIMARY LEGISLATION

ENHANCED CHARGE CAPPING

17. The present arrangements for capping involve the Secretary of State:

- first, after budgets have been set, designating authorities and setting proposed caps;

- second, listening to representations on proposed alternative caps, confirming or amending the original caps and seeking the House's approval by affirmative order.

18. Earlier minutes from the Secretary of State for the Environment have suggested that capping powers might be enhanced in two ways:

(i) to allow capping closer to SSA;

(ii) to allow multi-year capping so that a programme of reductions over several years could be set for an authority once it had come within the scope of capping.

He has suggested that it might be possible to use these powers to bring about 50 authorities within the scope of capping.

19. Legal advice is that it might be possible to cap closer to SSA in certain circumstances. Such circumstances would include:

- a power in primary legislation requiring or allowing the Secretary of State to regard, say, 5% above SSA as excessive;

- providing an improved safety valve, through a derogation which allowed local authorities to apply to the Secretary of State to vary a capping order (although the Secretary of State would need to avoid Wednesbury unreasonableness in refusing to use the power of variation); or

- a referendum as a possible safety valve.

20. It would be desirable to improve the capping powers by providing:

- powers to put the designation and cap in place from the original announcement by affirmative order, rather than having a gap before the caps come into force. This could avoid the incentive for local authorities to make spoiling applications for judicial review. Under such arrangements local authorities would have to implement the cap from the beginning even if they sought judicial review of some aspect of the decision;

- a legislative power to base caps on SSAs so that it would not be argued that it was unreasonable to do so.

21. Capping right down to 5% above SSA on this basis might have caught 94 authorities and offered potential savings of about £1400m in 1990/91. But it would not in practice have been possible to bring all authorities down to within 5% of SSA in one year and perhaps less than half of those savings would have been achieved. Ministers would need to consider whether they felt it worth putting forward controversial legislation to make capping safer for comparatively little extra effect on spending. They would also need to take into consideration the extra pressures that such a change would put on SSAs and the risks for the whole grant system.

ANNUAL ELECTIONS

22. One way of increasing local accountability would be to make all local authorities subject to election every year. This might be possible for 1991/92 with early primary legislation, if the whole of every council had to stand for re-election each year.

23. Annual elections would break the election cycle of spending in those authorities currently elected every 4 years (shire counties, London boroughs and some shire districts). They would bring spending decisions under closer scrutiny as elections would take place each year just after charge bills had been issued. The disadvantage is that they might give less stability and certainty for planning and administration in authorities currently elected every 4 years and might simply tend to reflect the national political situation each year rather than considerations of local accountability.

MEASURES FOR IMPLEMENTATION IN 1992/93 OR LATER, INVOLVING PRIMARY LEGISLATION

A CONSULTATIVE PAPER

24. As an alternative Ministers might wish to consider publishing a Green or White Paper later this year setting out possibilities for legislation in the second half of the 1990/91 session, to be in place in time for the 1992/93 financial year. This would be held over local authorities as a threat of action in the 1990/91 Parliamentary session to be acted upon if local authorities generally did not budget sensibly for 1991/92 (though this implies introducing the Bill in April 1990, very late in the 1990/91 Session).

25. Such a threat might well have a deterrent effect on local government spending. Consultation would give an opportunity for public discussion of ways of controlling local authority spending, a chance to gauge support for such proposals, and a longer lead time for legislation. However public discussion of controversial proposals would maintain the political profile of local government finance, perhaps to little good effects and with some loss of face if it were subsequently decided not to proceed with the proposals.

26. A consultative document might cover five areas which are considered in subsequent sections:

- annual elections;
- referendums;
- income limitation;
- separate billing;
- the powers of the audit commission.

ANNUAL ELECTIONS

27. A consultation paper might offer the possibility of election of councils each year for every local authority either by thirds, or whole councils (as discussed in paragraph 22). Elections by thirds could not be put in place for 1991/92 (or even 1992/93 for shire districts and London Boroughs) because it would be a very considerable operation to restructure wards, and redraw boundaries so as to give three member wards everywhere. But election by thirds might offer greater stability of policy and administration than election of the whole council. The advantages and disadvantages in paragraph 24 apply to either form of annual election.

28. Rather than annual elections everywhere, the need for more frequent elections than at present could be tied to spending intentions. In this case an election of the whole authority might be required if the authority wanted to raise more income than a level set by the Government. But the election of councillors would address itself to the full range of political issues against the background of national as well as local politics rather than simply to the level of expenditure and charge in the area concerned, and it is therefore questionable whether elections would be preferable to a referendum as the safety valve for general income limitation (see Annex A of the Cabinet Office paper discussed on 17 May).

REFERENDUMS

29. The main value of a referendum would be as a safety valve in the context of general income limitation or enhanced charge capping. A referendum would concentrate voters' attention specifically on the question of spending and puts a clear choice on spending levels to voters who might feel free to decide on cross-party lines. This clarity of choice would be absent from elections. This was covered in some detail in Annex A of the Cabinet Office paper and is examined again in Annex C to this paper. Any consultation paper would have to spell out in some detail the rules for a successful result (eg majority of voters, 50% of chargepayers etc) and the nature of the question to be put to the electorate.

30. A consultative paper could also consider whether there was a role for referendums in the absence of income limitation. A specified (but modest - say 10%) proportion of a councillors might be given the right to refer an alternative budget to the electorate. If this were approved by the electorate then the council would be ultra vires if it spent above the level approved by the referendum. There would be difficulties of timing in relation to budget setting and billing - the whole budgetary cycle might have to be brought forward -and this would not be possible for 1991/92. Rules would have to be devised on what

question should be put and what supporting information should be made available. Frivolous questions would have to be ruled out. Consideration would also need to be given to whether referenda could be called to ratify higher as well as lower levels of spending and to the consequences if the authority claimed that it could not put the result of the referendum into effect without, for instance, infringing its statutory or contractual obligations. Moreover, some would question how far a minority of councillors should be entitled to use such a device to frustrate the budgetary intentions of the majority, especially one resulting from annual or almost annual elections.

31. Annex C examines annual elections and referendums in more detail including the rules for 'winning' a referendum, the timing and the question to be put.

INCOME LIMITATION

32. Most of the groundwork on income limitation has already been done. Any consultative paper would broadly set out the arguments and methodology considered in Annex A to the previous Cabinet Office paper. It would probably need to specify in detail how the Government would propose to calculate income limits - for instance specifying that they would be derived from 1990/91 budgets, not 1991/92, to prevent bidding up of the baseline; and provisional figures would have to be published for individual authorities. These might be revised at the time of the 1991/92 settlement. Any scheme set out in a consultation paper would clearly have to follow legal advice on what was safe in terms of judicial review.

33. There is also a significant danger that announcement of the possibility of income limits for later years would push up community charges in 1991/92 because:

- authorities would try to raise their baseline for any income limits or for exercise of derogation. This might to some extent be headed off by making it clear that the baseline would be budgets for the present year;

- even if they could not get any benefit from a raised baseline (because it was based on 1990/91) they might make explicit or hidden contributions to balances in 1991/92 in the hope of bypassing limits in 1992/93;

- individual authorities might not think that their own spending up would trigger action, whereas the collective effect of individual authorities' thinking in this way would do so;

- individual authorities would be scared of being left behind if all other authorities spent up;

- authorities could blame the Government, saying that they were protecting future services.

SEPARATE BILLING

34. Paragraph 11 looked at the possibility of improving accountability through improvements to the community charge bill. In the longer term it would be possible to legislate for separate bills for different tiers. The background to the English arrangements and the prospects for separate billing are set out at Annex B. Although separate billing would increase clarity, it would also have some disadvantages:

- in theory up to 4 separate bills for each chargepayer and in practice 3 bills in many areas;

- different CCSS for different classes of authority making comparison between authorities more difficult;

- splitting grant and business rates between tiers can lead to negative grant or negative charges;

- major change to the operation of the collection fund and precepting arrangements;

- it would cost local authorities up to an extra £50m a year.

35. On balance improving the present bill (as proposed in para 11) seems to be the better possibility. Major primary legislation to introduce separate bills does not seem worthwhile, although the possibility might well be included in the scope of a consultation paper.

AUDIT COMMISSION

36. The Audit Commission and individual auditors already have considerable scope for value for money enquiry and for drawing attention to inefficiency. Much, however, depends on the priorities and style of the Commission and the auditors. It would be possible to strengthen the powers in this area to give a higher profile to the work. Possible steps which might be considered in a consultative para include:

(a) to legislate, as already agreed by Ministers, for immediate publication of public interest reports - sometimes authorities try in effect to conceal embarrassing reports;

(b) to require the officers and/or members to respond in writing to the management's letter;

(c) to require the auditors' management letter to be published in the local press in summary form;

(d) to require the members' response to be made public, possibly in the local press in summary form;

(e) to require executive summaries of the auditors' management letter and/or the members' response to be sent out with the community charge bills;

(f) to take new powers to direct more detailed audit of VFM issues where necessary.

37. These steps would require legislation. While they would act as a further useful discipline on local authorities, they could not be expected to have a significant effect on spending in the short term.

TIMING

38. Ministers have said that they will announce the results of the review at the same time as they announce the 1991/92 grant settlement in July. It seems unlikely that it would be possible to produce a fully specific White Paper or a thoroughly developed Green Paper before the end of September. But Parliament would not be sitting and Ministers would want to consider whether the wish to produce a high profile paper during the recess. Timing depends very much on what ground the paper would cover and how quickly Ministers made the necessary decisions.

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NEW BURDENS ON LOCAL AUTHORITY EXPENDITURE 1991/92

1. BILLS CURRENTLY BEFORE PARLIAMENT

Food Safety Bill — **£30m** (for Eng, Scot and Wales) £25.73m for Eng?

Local authorities will be required to maintain a register of food premises and undertake more inspections. This will necessitate additional staff.

National Health Service and Community Care Bill — **£535m** (£300m of this will be met from Social Security)

Management, administration and development costs as well as updating of the costs of additional demand for care on the basis of revised policy assumptions.

Environmental Protection Bill — **£110m**

The Explanatory and Financial memorandum states: "Most local authority costs associated with new duties under the bill are expected to be offset by charging regimes and efficiency savings". In the first year the new regime for waste management might cost £50m to introduce, falling thereafter as charging begins. There will be extra costs for litter clearance, and these are currently being considered by consultants. A very rough estimate might put these at £60m - consultants are studying this issue.

2. BILLS IN NEXT SESSION

Road Traffic Bill — **£1m**

To implement recommendations of the North report. Additional costs for Local Authorities resulting from speed detection measures, and traffic regulation measures associated with the introduction

of red routes in London.

Teachers Pay and Conditions Bill –
The new negotiating machinery and provision for LEAs to opt out should not in themselves result in higher spending.

Town and Country Planning Bill £35m
Sum relates to increased home loss payments in respect of local authority housing renovation and slum clearance schemes. The size of increase is currently under consideration by Ministers. Other Bill proposals are efficiency measures, some of which may incur small unquantifiable costs initially but yield savings in the longer term.

Criminal Justice Bill £5m
The Bill may include provision to make local authorities responsible for the secure remand of juvenile offenders. It may also entail some additional costs for magistrates courts.

3. NEW BURDENS RESULTING FROM REGULATIONS

EC Regulations Regarding Shellfish Beds £1.25m
DoH are currently looking in to the way Local Authorities can be funded to take on additional responsibilities in respect of shellfish beds. This expenditure will fall to Local Authorities in 1991/92. This will largely affect coastal authorities.

Other EEC Directives on Food Safety £3m

Construction Products Directive £5m
Implementation planned for 1991/92.

Renovation Grants The introduction of means testing will result in increased costs of administering grant applications.	**£15m**
Electromagnetic Compatibility Costs of enforcement - Local authorities are likely to be responsible only for consumer products sold in shops. Regulations planned for 90/91 session, but this might not be achieved.	**"less than £1m"**
Contaminated Land Local authorities would be required to set up local registers of contaminated land.	**£8m**
Charging For Valuation Services Local authorities would be charged for valuation services.	**£10m** (Eng, Scot & Wales)
Review of TBTO Wood Preservatives Disposal of TBTO by local authorities. Method of disposal and costs are uncertain.	-

4. MINOR NEW BURDENS **£4m**

These include the display of information at off street parking places, guidance on hygiene standards during poultry processing, regulations on resale of gas and electricity, regulations aimed at differential pricing between cash and credit cards, an order on price marking, regulations on estate agents, amendments to the trade descriptions act, regulations on bureaux de change, control of explosives regulations, and others. The total of minor new burdens falling to Local Authorities in 1991/92 is unlikely to come to more than £4m.

ANNEX B

DISAGGREGATED COMMUNITY CHARGE BILLING
SUMMARY

1. This annex discusses a system in which each local authority in England would set its own community charge and issue its own bill. This would be different from the current arrangements as, for example, shire counties would have their own community charge and bill. Assuming parish councils do not issue their own bills, most people would receive two bills in the shires, but three in London and the Metropolitan areas.

2. If such a system were adopted in practice it is likely that the districts would act as collecting agents for the community charge and business rates. In principle, the public might only make one payment even though they received more than one bill, although this depends on local authorities and individuals being well organised. About 50 million extra bills would be needed in England on top of the present 36 million currently needed. This might increase the administrative cost of the community charge by about £50m.

3. The paper outlines some technical and practical problems with separate billing which explain why the present system was adopted. Separate billing could mean:

- up to four separate bills;
- splitting grant and business rates between tiers with problems of negative grants and negative community charges;
- a different community charge for standard spending for different types of authority, blurring accountability; and
- major changes to the operation of collection funds and precepting arrangements which are set by statute.

4. If separate billing were adopted primary legislation would be required.

5. The alternative to separate billing is to make responsibility for high charges clearer on the face of the community charge bill.

THE PRESENT POSITION

6. In England community charge bills are aggregated. Chargepayers receive a single bill showing separately the spending plans of each local authority providing services in their area (see Appendix A). Those spending plans are shown alongside the cost of providing a standard level of service. Grant and business rates are deducted from the sum of these spending plans, and a single community charge is compared with the community charge for standard spending (CCSS - £278 in England in 1990-91).

7. In many areas there are three local authorities providing services. In the shires, services such as education and social services are provided by the county council. Most minor services are provided by district councils, but some services are provided by parish councils. Northumberland is served by the Northumbria Police Authority and some shire districts around London are also served by the Metropolitan Police, giving these areas four authorities. Many areas are not served by a parish council at all. But where they do exist, the split of a service between a district and parish varies from parish to parish and district to district. London Boroughs and the Metropolitan districts provide most services themselves, but the Police and Fire services in their areas are provided by separate joint boards.

8. Each charging authority (shire and metropolitan districts and London boroughs) is required to operate a collection fund. Each local authority providing services in the charging authority's area sets the amount it requires from the collection fund, and the charging authority has to set a charge which will meet these calls. All income from business rates, RSG and the community charge is paid into the collection fund to meet these calls. This approach was adopted so that the same CCSS could be shown for the area of every charging authority in the country in order to help comparison between areas.

9. The difficulty with this approach is that responsibility for high community charges may not be sufficiently identified. If each local authority issues a separate bill, showing the level of its spending relative to its standard spending assessment, then accountability would be heightened. It would also be clearer that the majority of spending is funded by government grants and business rates since the community charge set by each local authority would be substantially lower than their expenditure.

A. SYSTEM WITH DISAGGREGATED BILLING

10. With disaggregated billing the CCSS would only be the same in authorities of the same class. So there would be a CCSS for shire counties and another for shire districts. In theory, there could also be a CCSS for parish councils and consequently the CCSS for shire districts would vary from district to district depending on the services which were provided by parishes in their area. Even within a shire district, the CCSS could vary from area to area because the services provided by parishes are not uniform within each district - for example, parishes may provide street lighting in some areas of a district but not others. In practice it is not possible to disaggregate SSAs to parish level, so the district CCSS would have to be assumed to cover parish council services in the same way that the district SSA is presumed to cover parish services under the existing billing arrangements.

11. The CCSS for Inner London boroughs, Outer London Boroughs and the Metropolitan districts might be the same. There might be a separate CCSS for the single service police and fire authorities. With this variety of community charges for a standard level of service, comparisons between authorities in different classes would be more difficult than at present. But the performance of individual authorities would be clearer.

12. Under the present system it is not necessary to show any theoretical split of CCSS, business rates or grant between the various bodies making precepts or demands on the collection funds. If, however, it became necessary to do this to enable each body to produce its own bills, the split between the various tiers would be different in different classes of authorities. A rule would be needed on how to split the national CCSS between tiers within classes. This might, for instance, be done in proportion to shares of SSA (as in the past for equivalent calculations). But this would lead to changes in the split from year to year and consequent changes in grant and community charges which would be very difficult to explain.

13. Alternatively, for example, it might be decided that in the shire areas 80% of the CCSS should be attributed to the county and 20% to the district. In 1990-91 this would have meant a CCSS for counties of £222 and for districts of £56. For metropolitan districts and Inner and Outer London boroughs it might go 85% to the district/borough, 10% to police authorities and 5% to fire authorities, giving different figures. Similar decisions would be needed on the split of business rate income.

14. Splitting grant and business rates between tiers could also cause difficulties, which are at present avoided by paying grant and business rates into the collection fund rather than to individual authorities. Grant would be distributed, as at present, to ensure that if spending were at the level of the SSA, then the charge in each authority could be set at the CCSS for that authority. With grant and business rates paid directly to each authority in this way it would be possible for some district councils to need a negative grant. This would occur if the CCSS from an average split were more than their SSA per adult. Conversely, some district councils could have negative community charges if they spent sufficiently below their SSA (more than £56 per adult in the example in paragraph 8 - two authorities were in this position in 1990-91).

15. With grant distributed to each authority, it is possible that there would not be enough grant to fully equalise for differences in the cost of providing a standard level of service. This is because the variation in the cost of providing a common level of services is greater for shire districts alone than for shire districts and counties taken together. If there were insufficient grant, some authorities would only be able to

provide the standard level of services by setting a community charge in excess of the CCSS. Whether or not this is a problem depends on the amount of grant, the distribution of SSAs and the split of the CCSS between tiers. The current system avoids these complications.

16. One way of getting round the problems discussed in this section might be to merge the distribution of grant and the business rate into a single 'grant' which would be split between tiers. But this would effectively mean saying that the business rate was simply an unhypothecated central government tax, like any other tax, rather than a direct contribution to local authority costs.

THE POSITION IN SCOTLAND AND WALES

17. Scottish and Welsh billing works on an entirely different basis because in neither country does the Community Charge for Standard Spending, or the amount needed to provide a standard level of service appear on the bill. Ministers in England have, however, always considered the bill to be the prime instrument of accountability, and have wished both to appear. In Wales the bill shows only the amount of the community charge attributable to each tier (see example at Appendix B). Scottish bills are very similar to Welsh bills, differing only inasmuch as they also show water charges.

PRACTICAL CONSIDERATIONS

18. A practical argument against separate billing is that it could be inefficient and confusing. To have truly separate bills, each local authority could set up an independent billing and collection facility, to some extent duplicating resources. This would impose extra costs on shire counties and single purpose police and fire authorities, and directly on chargepayers who would each have to arrange two or three direct debits, or pay in cash to two or three separate offices. Different arrangements might be needed for different classes of authority - for instance instalments might not be allowed for fire authorities, which would have bills of only £20 to £30 a year?

19. One possibility would be for the charging authority to despatch the bills for all authorities in their area. But even if the systems were streamlined so that the bills for all authorities went out in the same envelope, and it was possible to pay them all with one cheque or standing order, the process would be more expensive than the current one. It would confuse some chargepayers who would not expect to find several bills in one envelope.

IMPROVING THE PRESENT BILL

20. An alternative to separate billing would be to revise the community charge bill to show more clearly the effect of the separate authorities on the bill payable, then consideration might be given to changing the format of the bill so as to emphasise the effect of spending decisions by each authority on the community charge payable. For instance, the second column of the bill currently shows the cost of providing a standard level of services. Chargepayers are left to calculate the difference between actual spending and this amount. Showing instead a column headed "Effect of spending decisions on the Community Charge" and explicitly setting out the difference might make the message clearer. Illustrative alternative bills are at Appendix B.

LEGISLATIVE IMPLICATIONS

21. The concept and operation of the collection fund is central to those parts of the Local Government Finance Act 1988 which govern local authority finances. It would not be possible to move to separate billing, with its consequences for grant payments, business rates, precepting and the collection fund, without primary legislation to amend or replace substantial parts of the 1988 Act. Given the scale of amendments needed, the constraints on the legislative timetable and the lead times needed for computer companies to change their billing software, it would be impossible to have separate billing in place for 1991/92, although it may be feasible for 1992/93 if a bill were introduced early in the 1990/91 session.

22. Amendments to the community charge bill within the present arrangements could be made through secondary legislation under present powers, although there are some restrictions as to the purpose of the bill.

APPENDIX A TO ANNEX B

COMMUNITY CHARGE BILL, 1990-1991

Date of issue: 01 APRIL 1990

MILTON KEYNES BOROUGH COUNCIL Community Charge

Director of Finance, P.O.Box 107, Civic Offices, Milton Keynes, MK9 3HE

Telephone: MILTON KEYNES (0908) 691691

MK8 9HD	
Account Ref.	70006814318

Address of property giving rise to charge (if different):	
MK8 9HD	
Property Ref.	036739

You are shown in Milton Keynes Borough Council's Community Charges Register as being subject to a Personal Community Charge.
The Community Charge helps to pay for spending by the local authorities in your area. The rest of their spending is supported by Government Standard Spending Grant; by rates paid by businesses; by other Government grants; and by fees, charges and other income. Standard Spending Grant is calculated on the basis that (subject to the effect of the safety net) a standard level of service can broadly be provided everywhere in England † for a community charge of £278.
The Community Charge for your area is made up as follows:

	Your authorities' plans †† £ per head	Amount for standard level of service £ per head
Bucks County Council	731.23	691.80
Milton Keynes Borough Council Loughton	152.69	} 110.79
Less Government Standard Spending Grant	232.14	232.14
Business rates	292.51	292.51
Charge before adjustment	359.27	277.94
Plus contribution to safety net	57.56	
Less other adjustments	18.83	
PERSONAL COMMUNITY CHARGE FOR 1990 – 1991	398.00	
Charge for 01/04/90 to 31/03/91	398.00	
Less your Government transitional relief	0.00	
Less your Government rebate	0.00	
AMOUNT PAYABLE BY YOU	398.00	

† But see explanatory note on Government Standard Spending Grant.
††Your authorities' plans are shown after deducting other Government grants estimated at £110.61 per head, and fees, charges and other income estimated at £162.53 per head.

PAYABLE BY PAYMENT BOOK ON THE 15TH OF EACH MONTH

APRIL 1990	£	39.80
MAY 1990 – JANUARY 1991 INCLUSIVE	£	39.80

City Hall
Gododdin
Rheged

Appendix B to Annex B

PERSONAL COMMUNITY CHARGE DEMAND NOTICE FOR THE FINANCIAL YEAR 1990-91
HYSBYSIAD HAWLIO TÂL CYMUNEDOL PERSONOL AR GYFER Y FLWYDDYN ARIANNOL 1990-91

Date of notice / Dyddiad yr hysbysiad: 4/3/1990

Ref. no. / Rhif. cyf: 1212121

J R Jones Esq
100 The Alley
Gododdin
Rheged

YOU ARE SHOWN IN THE COMMUNITY CHARGES REGISTER AS SUBJECT TO A PERSONAL COMMUNITY CHARGE AND YOU ARE REQUIRED TO PAY THE AMOUNT INDICATED BELOW.
THE COMMUNITY CHARGE HELPS TO PAY FOR THE SERVICES PROVIDED BY YOUR LOCAL COUNCILS. COUNTY AND DISTRICT COUNCILS (BUT NOT COMMUNITY OR TOWN COUNCILS) ALSO RECEIVE GOVERNMENT GRANTS AND A SHARE FROM THE NATIONAL POOL OF RATES FROM BUSINESSES AND OTHER NON-DOMESTIC RATEPAYERS.

DENGYS Y GOFRESTR TALIADAU CYMUNEDOL EICH BOD YN DESTUN TÂL CYMUNEDOL PERSONOL AC MAE'N OFYNNOL I CHI DALU'R SWM A NODIR ISOD.
MAE'R TÂL CYMUNEDOL YN HELPU TALU AM Y GWASANAETHAU A DDARPERIR GAN EICH CYNGHORAU LLEOL. MAE CYNGHORAU SIR A DOSBARTH (OND NID CYNGHORAU CYMUNED NA CHYNGHORAU TREF) HEFYD YN CAEL GRANTIAU'R LLYWODRAETH A RHAN O'R PŴL CENEDLAETHOL O DRETHI ODDI WRTH FUSNESAU A THALWYR TRETHI ANNOMESTIG ERAILL.

	£
Rheged County Council	150.00
Gododdin District Council	30.00
Collection adjustment Addasiad casglu	1.00
PERSONAL COMMUNITY CHARGE FOR 1990-91 TÂL CYMUNEDOL PERSONOL AR GYFER 1990-91	181.00
Less transitional relief Llai rhyddhad dros dro	10.00
Amount for the period 1/4/90-31/3/91 Swm am y cyfnod 1/4/90-31/3/91	171.00
Less community charge benefit Llai budd-dal tâl cymunedol	52.00
AMOUNT PAYABLE BY YOU SWM SY'N DALADWY GENNYCH	119.00

The amount shown as payable by you is payable in 10 instalments.
The first payment of £11.90 is due on 10/4/1990 followed by 9 payment(s) of £11.90 due on the 10th day of each following month.
Mae'r swm a ddangosir fel swm taladwy gennych i'w dalu mewn 10 rhandaliad Mae'r taliad cyntaf o £11.90 yn ddyledus ar 10/4/1990 ac wedyn 9 taliad o £11.90 yn ddyledus ar y 10fed dydd o bob mis dilynol.

Appendix C to Annex B

ALTERNATIVE COMMUNITY CHARGE BILLS

An actual bill is at Appendix A. Accountability is provided for each authority by showing both the amount they actually plan to raise and the level needed to provide the standard level of services which the Government believes is appropriate. This main part of the current bill, ignoring parishes, is in the general format:

	Your authorities' plans £ per head	Amount for standard level of services £ per head
County Council	750	700
District Council	150	140
Less Government Grant	272	272
Less Business Rates	290	290
Community Charge	338	278

What this format does not show immediately is the impact of authorities plans on the community charge. It is left to the chargepayer to calculate the difference between the two columns. An alternative for this section of the bill only could help to emphasise the contribution of spending above SSA to the community charge. The community charge for standard spending would continue to be shown in the pre-amble. A bill showing the level of spending relative to SSA might be in the form:

	Your authorities' plans £ per head	Impact of authorities' plans on your bill £ per head
County Council	750	+50
District Council	150	+10
Less Government Grant	272	-
Less Business Rates	290	-
Community Charge	338	+60

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To emphasise the impact of spending decisions, it may be helpful to show as few numbers as possible. So the actual levels of spending and external support could be dropped. This would give a simplified bill which could, subject to legal advice, take the form below.

You are shown in [ ] Council's Community Charges Register as being subject to a personal community charge.
The Community Charge helps to pay for spending by the local authorities in your area. The rest of their spending is supported by Government Standard Spending Grant; by rates paid by businesses; by other Government grants; and by fees, charges and other income. Standard Spending Grant is calculated on the basis that a standard level of services can broadly be provided everywhere in England for a community charge of £278.
The community charge in your area may differ from £278 because your local authorities' plans differ from the level of spending the Government thinks is appropriate to provide a standard level of services; because of transitional grants; and because of other adjustments[1].

	£
Your Community charge if local authorities provided standard level of services	278
Effect of county council spending plans	+50
Effect of district council spending plans	+10
[Your Area Protection Grant	-30]
[Your Inner London Education Grant	-40]
Other Adjustments	-5
Community charge for your area	263
[Your Government Transitional Relief	-13]
[Your Government Rebate	-60]
AMOUNT PAYABLE BY YOU	190

1. See explanatory notes for further information.

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ANNEX C

REFERENDUMS AND ANNUAL ELECTIONS

1. This paper examines:

a. the scope for allowing a local authority to budget in excess of its limits if its proposal to do so has been endorsed by a referendum of the chargepayers in the area;

b. the possibility of referendums in the absence of income limitation where a specified number or percentage of councillors apply for the charge to be the subject of a referendum; and

c. changes in the electoral cycle of local authorities so that there were elections for all local authorities every year.

REFERENDUMS TO AUTHORISE SPENDING OVER INCOME LIMITS

2. The first option is predicated on there being in force a system of statutory limits on the amount an authority can raise by way of precepts on the collection fund. If there were to be such a system it is likely to be targeted at precepting authorities, but it is possible that some charging authorities might also be the subject of such limits if they were proposing to raise more than £150 per adult.

3. One of the drawbacks of a system of income limitation is that it would be difficult to avoid providing for authorities to be able to apply to the Secretary of State for derogations if the income limits were to be set at challenging levels. If many authorities were to apply there could be significant resource implications for the Department, and scope for judicial review of the determination of applications for derogation. If, however, it were provided that an authority could raise more than its limit only if a proposal to do so had been endorsed in a referendum of community chargepayers then the need to provide for derogations would be removed. It would be for the chargepayers to say whether there should be a derogation.

4. A system of limits and referendums was put forward in the Local Government Finance Bill published in November 1981. The Bill was withdrawn before 2nd Reading and replaced with the Local Government Finance (No 2) Bill, which dropped the referendum provisions, and replaced it with a prohibition on supplementary rates. The mechanics of the original provisions are described in Attachment A.

DISADVANTAGES OF REFERENDUMS

5. A general argument against the use of referendums to validate local authority spending decisions is that it would undermine the local (and perhaps eventually the national) democratic process. An authority would argue that it had already been elected on a particular programme, and that it had a mandate to carry out that programme. It could be said that letting the electorate vote separately both on the level and type of services it wanted and on the amount it was prepared to pay for them was allowing it to have its cake and eat it; and might result in contradictory expressions of opinion.

6. It could also be argued that the acceptance of referendums would be setting a precedent with significant constitutional implications. If the principle of single-issue voting is accepted for local authority spending it would be difficult to resist pressure to extend it in other areas, both local and national. Why, for example, should local taxes be the subject of referendums, but not national taxes?

7. More specifically it would have to be accepted that giving the last word to the electorate on levels of local spending would mean, effectively, that the Government had no control over the level of local government expenditure. If the electorate was prepared to back the proposals of high spending councils then local authority spending could exceed the level the Government thought it appropriate to spend, and there would be nothing the Government could do about it. No matter how unlikely it might seem that people would vote for higher community charge bills, no result could be guaranteed. Turnout in local elections is traditionally low, and a "yes" vote could be achieved with the support of perhaps as few as 15% of the electorate in some areas.

WAYS OF AVOIDING THE DISADVANTAGES

8. The general arguments about the constitutional implications of referendums could be resisted only by firmly holding the line that local referendums were not to be regarded as a precedent.

9. The problem of "perverse" voting could be minimised by laying down careful conditions for the poll. Instead of a straight majority of those voting it could be laid down that an authority could increase its budget above the limit only with the consent of more than 50% (or some higher percentage) of those entitled to vote. This would, however, lead to comparison with the system used in ordinary local and national elections, and the difference would need robust defence.

10. The form of the question could also be carefully regulated, to ensure that the electorate was in no doubt about what it was

voting for; but it would not be possible to stop the vote becoming a party political issue, and the local parties could no doubt be expected to issue their own propaganda to voters.

11. It would be for decision whether the provisions of the Representation of the People Acts relating to expenditure incurred during a campaign, and to the publication of material, should apply to a referendum; but it would be difficult to defend such control, since the referendum would not be an election in the traditional sense, with candidates whose interests could be prejudiced by the power of their opponents' purse. Although the legislation could certainly prohibit the authority from issuing anything other than closely prescribed factual material, it would be almost impossible to prevent independent bodies, pressure groups and political parties from issuing their own material to the electorate. The results might be so similar to what the electorate had come to expect from a normal election that voting could simply be on party lines, based on simple slogans (for example, "Vote Labour - vote YES").

DETAILED POINTS

11. Decisions would need to be taken on the point at which the authority would put the question to its electorate, both in 1991-92, given the timetable constraints on the introduction and implementation of legislation, and in subsequent financial years.

12. In a normal year there are three possible models:

a. a referendum before budgets are set in early March. The electorate would be asked whether they wanted spending at the Government's limit, with the charge which that implied; or whether they wanted spending at a higher level and at a higher charge (which would be specified in the question);

b. a referendum after budgets and charges had been set within the limits, asking the electorate to endorse an increase - in effect a referendum on a supplementary charge, which could be held either at any time after the setting of the budget, or within time limits set out in the legislation;

c. a referendum after budgets and charges have been set in excess of limits, asking the electorate either to validate the budget, or to vote for a reduction.

13. The first option is, on the face of it, the most sensible; but there would be severe practical difficulties. The proposals put to the electorate would have to have been agreed by the councils concerned. In a shire county this means that the County Council would have had to come to a decision on the budget it would like, and have notified this to the charging authorities

well in advance of the statutory deadline of 1 March. All the charging authorities would similarly have had to come to a preliminary decision on their budgets. In effect each council would have to have two meetings to fix the budget; one to agree the proposal to put to the electorate and one to set the actual budget following the referendum. It would require close liaison between precepting and charging authorities at all stages of the budget planning process, and entail widespread acceptance that the budgeting process would be carried out on a timetable considerably earlier than that implied by the dates in the legislation. If the timetable slipped (as is likely) bills in some areas would be issued late.

14. It is difficult to envisage such a procedure working in practice, particularly where there is political antipathy between precepting and charging authorities. The second option, however, which would allow the electorate to vote for or against a supplementary charge would avoid the difficulties, and would enable bills to be issued in time for the beginning of the financial year. If the vote was in favour of a supplementary charge, new bills would have to be sent out. This would have to be at the expense of the authority whose budget proposals had led to the referendum, just as the cost of rebilling following the capping of a county under the present system, falls on the county council.

15. Referendums on the basis of the second option would not require any special provisions for 1991-92.

16. There seems little to be said for the third option.

THE ELECTORATE

17. Decisions would be needed on whether the electorate would be those on the electoral roll or those on the community charges register. The fact that it is (effectively) the level of the charge which is the subject of the vote points to the latter as the most appropriate, but decisions would also be needed on whether the franchise should extend to those who are shown as subject to personal charges only, or whether those who are subject to standard and collective community charges should also be entitled to vote. Standard chargepayers certainly have an interest in the level of the charge, but their inclusion might involve the need for postal voting arrangements, which would add to the administrative complexity of the operation.

18. Collective chargepayers, somewhat perversely, benefit from high charges, since, although the liability to pay rests with them, the cost is borne by their contributors, and the chargepayer is entitled to keep 5% of the contributions for himself. The contributors do not appear on the register, and could not vote in the referendum.

19. The most straightforward approach would be to allow all those shown in the register to vote, irrespective of the type of charge, voting to be in person; and for those shown in the register as subject to more than one charge to have only one vote. Those shown in the register of two or more authorities would be entitled to vote in a referendum held in any or all of them.

REFERENDUMS WHERE INCOME HAS NOT BEEN LIMITED

20. Under this option it would be open to a prescribed number or percentage of councillors (eg 10% of the council) to apply for the council's spending proposals to be referred to the chargepayers. The general and specific considerations described above would apply also to such referendums, in particular the need to co-ordinate county and district actions in order to arrive at a meaningful question to put to the chargepayers (who would want to know what the proposals meant in terms of the community charge implied by the proposals).

21. There is, however, a more fundamental difficulty with this kind of referendum. Under the proposal considered above there are two alternatives: the council's proposals and the Government's limit. A view needs to be taken on what the electorate is being asked to do in cases where there is no Government limit to provide an alternative. They could be asked simply to approve or reject the budget, and its implied community charge, without endorsing any particular alternative. It would then be for the council to adopt a revised budget, which might again be subject to a referendum if enough councillors applied for one (though it would be undesirable to make provision which allowed a group of councillors to delay the setting of the budget indefinitely by repeated applications for referendums).

22. Alternatively the councillors seeking the referendum might be permitted to propose an alternative budget, and the electorate asked to express a preference between the two (though this might in practice pose problems where the members seeking the referendum came from more than one opposition grouping, and where each had a different alternative budget. Presumably in such cases the electorate would be presented with a number of alternatives). This approach would, however, have far-reaching consequences for local democracy. If the controlling party resigned following defeat in such a referendum, and were re-elected on a programme implying the same level of spending, would it be allowed to reimpose the same budget, on the grounds that it had a mandate to do so? Or would it be compelled to abandon the policies it had been elected on in order to fit within a budget determined by the minority parties? This would seem a very difficult concept to reconcile with local democracy as it is currently understood. These problems are not so acute where the referendum is on proposals to exceed Government limits, since

the notion that a national mandate can override a local one is not unfamiliar.

ANNUAL ELECTIONS

23. It could be argued that the process of accountability would be helped by ensuring that there were local elections for all authorities every year. Currently there are elections in London Boroughs, shire counties and some shire districts only every 4 years. Metropolitan districts and the remaining shire districts have annual elections for one-third of the council. [Where elections are by thirds the seats which fall due for election in any particular year are determined on a geographical basis, so that although there is an election every year in such authorities not every elector is asked to vote every year].

24. If every elector is to have an opportunity to vote every year there are two alternatives:

a. annual whole council elections;

b. elections by thirds so designed that a councillor in every ward is to be elected every year - which entails the establishment of universal three-member wards.

25. The task of redrawing the boundaries of wards in order to ensure that each ward had three councillors would be a major task, which could take several years and would involve the Local Authority Boundary Commission. It could not, therefore, be implemented quickly. If change is required on a rather faster timescale, therefore, the only feasible approach is to introduce whole council elections every year. This would, however, be a very major change, and could lead to a lack of continuity and stability in local government. It would also widen the gap between the timescale thought appropriate for national and local elections, with pressure for a corresponding reduction in the life of a Parliament.

26. A whole-council election could be used as a safety valve instead of a referendum if a local authority wished to exceed Government limits on spend, but elections cover a whole range of issues besides the specific question of the level of the charge, and voting is much more likely to be on party lines. In areas which were relatively low-spending, but above the Government's limit, the alternative to the incumbent party's spending plans would probably be even higher spending by another party. Voters would not, therefore, be given the clear choice between the council's plans and a lower level of spending, which is the key feature of referendums on the lines discussed above.

CONCLUSION

27. Referendums would have implications for other parts of the democratic process, and pressure for their extension would be

difficult to resist. If they are adopted as a safety valve where the Government has limited an authority's income then the most practical approach would be to allow chargepayers to vote for supplementary charges rather than to vote on budgets in advance. If they are to be held at the instigation of Opposition councillors, and if those councillors are to be allowed to offer alternative proposals to the electorate, there could be serious implications for local democracy. Annual elections for one-third of the council could not be introduced quickly in a form which would allow every elector a chance to vote every year, but annual whole council elections could lead to an inefficient lack of continuity. Elections have no advantages over referendums as a safety valve for authorities wishing to exceed Government limits on income.

Department of the Environment

1 June 1990

ANNEX C to
Cabinet Office
paper

MEASURES TO HELP INDIVIDUALS

INTRODUCTION

1. This note considers action which the Government could take in 1991/92 to reduce the burden of the community charge and non-domestic rates on particular categories of community chargepayer and ratepayer. The aim is to improve the public perception of the fairness of the charge. Accordingly, one measure to improve perceived fairness in relation to those with high incomes is also included. Where costings are provided, they relate to England only - further costs could arise in Scotland and Wales. The measures were either considered in detail in annexes to the Cabinet Office paper discussed at the previous meeting, or are discussed in annexes to this paper:

- improvements to community charge transitional relief (Annex C to Cabinet Office paper and Annex A to this note);

- improvements to community charge benefit (Appendix A to Annex C to Cabinet Office paper);

- a national community charge supplement on those with high incomes (Annex D to Cabinet Office paper);

- abatement of standard charges in particular circumstances (Annex B to this note);

- abatement of the combined impact of the non-domestic rate and community charge for small shopkeepers (Annex C to this note).

COMMUNITY CHARGE TRANSITIONAL RELIEF

The present scheme

2. Under the present scheme in England, relief is paid to individuals in any household where one (for one adult households) or two (for households with two or more adults) assumed community charges is more than £156 a year above their 1989/90 domestic rate bill. The relief is paid to reduce the increase to £156. The assumed charges are consistent with the government's 1990/91 settlement assumptions and in most authorities are lower than the actual charges set, so most households receiving relief face increases of more than £156.

3. Extra relief is also available to the disabled and elderly who are not a former ratepayer or the spouse of a former ratepayer. Relief is paid to them to reduce their bill in 1990/91 to £156, on the basis of assumed charges.

4. Relief is estimated to cost £350m in 1990/91 and to help 7.5 million chargepayers. On present plans, £13 of relief would be phased out in 1991/92 for each chargepayer, a further £13 in 1992/93 after which no relief would be paid.

Possible improvements

(i) **Extending the life of the scheme**

5. One improvement broadly agreed by Ministers would be to extend the transitional relief scheme to five years rather than three and to freeze entitlements in 1991/92 and 1992/93 rather than phasing them out. This would cost an extra £90m in 1991/92, £150m in 1992/93 and a maximum of £260m in 1993/94.

(ii) **Helping areas where the safety net and low rateable value grant are withdrawn**

6. Also broadly agreed by Ministers is an increase in transitional relief payments in areas where the area safety net and low RV grant are being withdrawn, so as to protect those chargepayers with large increases in assumed bills from the effect of the withdrawal of the safety net. Entitlement would also be extended to those who would have been entitled in 1990/91 but for their safety net receipt. The Appendix to Annex A shows the local authority areas in which chargepayers could benefit from this extension of transitional relief. This would cost £50m in 1991/92, £75m in 1992/93 and a maximum of £90m in 1993/94. Part of the cost would be offset if transitional relief were withdrawn from those whose assumed loss was reduced by the ending of safety net contributions.

(iii) **Reducing the threshold**

7. Transitional relief is paid where the assumed increase is more than £3 a week. It would be possible to reduce this threshold for 1991/92 so as to give those households already entitled an extra £1 per week in relief (ie £52 a year for someone living alone and £26 a year each for the numbers of two adult households). It would also extend relief to an extra 4 million people so that 11.5 million would receive relief in total. This would cost £220m in 1991/92 and 1992/93, reducing thereafter (assuming no phasing out and so including the £90m at para 5).

8. Reducing the threshold to £1 would increase the total number of beneficiaries to 15.5 million and cost £450m in 1991/92 and 1992/93.

9. Ministers will wish to consider whether any decision to change the threshold for 1991/92 would lead to irresistable pressure to make the change retrospectively for 1990/91. Such pressure might be very difficult to resist, though it is doubtful whether the current powers would allow retrospective action.

(iv) **Extra help for the disabled and for the young**

10. The most practical way of helping either of these groups would be to make them eligible for the extra relief available to the disabled and elderly who were not former ratepayers (see Annex A). So all disabled people and all 2.1 million chargepayers aged under (say) 21 on 1 April 1990 would be entitled to relief to bring their assumed charge down to £156, so that they would only pay £156 plus the consequences of their authorities' charging decisions.

11. Extension to all of the disabled might cost about £20m in 1991/92 and later years. Extension to everyone aged under 21 on 1 April 1990 might cost £240m in 1991/92. Its cost would increase in 1992/93 as rising 18's became entitled and might then stabilise for the later years.

(v) **Portability**

12. Annex A also looks at the possibility of allowing portability of transitional relief for those entitled to special relief (the elderly, disabled and possibly under 21s) who move and do not become sole occupants. Present estimates of the cost of transitional relief do not incorporate any reduction because people lose relief when they move. In this sense, portability of special relief would have no additional cost.

(vi) **Multi-unit hereditaments**

13. Annex A also looks at extending special relief to the elderly and disabled in sheltered accommodation. This would be quite difficult to ring fence and might be sought retrospectively for 1990/91. It would cost up to £85m in 1991/92 and 1992/93, reducing thereafter.

COMMUNITY CHARGE BENEFIT

14. There are three possibilities for changes to community charge benefit which might be considered to help particular groups. These are to:

(a) double the earnings disregard - the amount a person may earn before their benefit is reduced - for community charge benefit only. This would help people in work, on modest incomes. It would bring about 300 thousand extra people into benefit, all of them in work and would give extra benefit to

those currently entitled and in work. It would cost up to £100m in 1991/92, if restricted to community charge benefit alone, but considerably more if extended to other benefits;

(b) reduce the benefit taper for those a little below the run out point for benefit and so extend benefit further up the income scale. This would help people both in and out of work with modest incomes and might cost £150m-£200m in 1991/92 depending on the exact specification of the change;

(c) reduce the assumed tariff income on capital from £1 per £250 above £3,000 to £1 per £400, for community charge benefit only. This would improve the impact of the increase in the upper capital limit announced in the budget. It would cost about £40m in 1991/92. A variant of this would be to alter the tariff only for those with capital of more than £8,000. A tariff of £1 per £400 above £8,000 would give an assumed return of about 13% above that level and would cost about £25m in 1991/92 if restricted to community charge benefit alone, but considerably more if extended to other benefits.

15. Possibilities (a) and (b) are alternatives. None of the possibilities has been considered by DSS.

A HIGHER RATE CHARGE

16. This would be a flat rate supplementary levy broadly equal to the average community charge, levied on individuals with income above a certain amount and collected by the Inland Revenue when assessing and collecting higher rate tax liabilities. The advantages and disadvantages of a levy and its implications for the income tax structure were discussed in Annex D to the previous Cabinet Office paper. It might apply to those with taxable incomes above £40,000 a year - broadly equivalent on average to gross income of about £50,000. This might raise about £150m in 1991/92.

STUDENTS

17. There are three possible changes which could be made in the arrangements for the personal community charge of full-time students.

18. First, complete exemption might be provided for those full-time students who do not receive grant from their education authority and are not entitled to social security benefits. This group of students are excluded from grant for a variety of reasons, eg, because they are overseas visitors; because they have previously received a grant; or because they choose to pursue a second degree or qualification which the education authority are not obliged to support. As full-time students they are liable to pay only 20% of the full community charge, which at around £70 a year represents a relatively small part of their

personal maintenance. There is no obvious justification for treating these individuals more generously than others on low incomes who are in receipt of a means-tested rebate. Creating a new class of exemption would increase pressure from other young people who have no employment. There are up to 200,000 students without grant who are assisted by their parents, by overseas institutions or support themselves. To exempt them all could cost £14m and open up fresh claims for exemption for other young people without employment or on low training allowances. It would require primary legislation at the margin, the imposition of 20% of the community charge can increase hardship but this seems to be a matter for local education authorities and the DES discretionary grant rules.

19. Second, the definition of a full-time student might be modified to eliminate the "student gap". Broadly, 18 and 19 year olds are exempt from the personal community charge if still in full-time secondary or further education. They become liable to pay 20% of the full community charge from the date on which they become full-time students in higher education but there can be an untidy gap between the date on which exemption ceases and studentship starts, during which they are liable for 100% of the charge. The gap does not usually persist for more than 2 or 3 months. During that period they can receive maximum community charge benefit and income support if they seek work, or the parents can give support. This process can involve unnecessary administrative and other costs for DSS and for local authorities by way of registration and billing twice within a month or two. The sensible alternatives seem to be either to extend the exemption (for 18 and 19 year olds) until the full-time higher education starts or to give student status (and therefore a 20% liability) from the point at which a person going on to higher education ceases to be exempt. Both can probably be done without primary legislation but the latter may be preferable in terms of equity with other school-leavers. DOE, DSS and DES are exploring the alternatives further.

20. Third, a more varied gap often arises at the end of a student's period of study when they cease to be eligible for the student relief and acquire liability to the full adult charge. There can be a gap of several months before they take up their first full-time job. In practice, many take up employment the following September and move around a good deal in the intervening period, thus complicating the task of community charge administration. There is a case for simplifying by continuing student status up to, say, 1 September. But this would need primary legislation and the arguments are less compelling than those in the preceding case: most students are likely to secure higher-paid employment than their contemporaries who chose not to study. If the gap between studentship and employment persists it would be open to the young adult to seek income support and community charge benefit.

STANDARD CHARGES

20. In general local authorities have discretion to set multipliers of up to twice the community charge to apply in calculating the standard charge for domestic property in their area which is not used as a sole or main residence (see Annex C). But for some classes of property, lower maximum multipliers are prescribed. Local authorities have discretion to establish their own class of circumstance to which different multipliers can apply, provided they do not conflict with the prescribed classes and multipliers. Some authorities appear to have made little use of their discretion - and some have set the maximum permitted multiplier for all classes of property. The Government has already announced that it will review the position and if necessary increase prescription.

21. There are a number of possible changes to help specific groups. None would lead to increased spending by central or local government but they would reduce the income of local authorities - particularly those with concentrations of second homes - but this is unlikely to raise charges by more than £2-£3 anywhere. The options are:

- prescribing a maximum multiplier of 1 for properties owned by people whose main home is provided by their employer;

- prescribing a maximum multiplier of 1 for unoccupied standard charge properties adjacent to non-domestic property of the same chargepayer;

- prescribing a maximum multiplier of 1 for unoccupied standard charge properties adjacent to the main residence of the same chargepayer;

- prescribing a zero multiplier for unoccupied property belonging to prisoners for the duration of their imprisonment;

- prescribing a zero multiplier for other property in the ownership of chargepayers exempt from the personal charge;

- prescribing a zero multiplier for unoccupied property repossessed by bank or building society;

- prescribing a maximum multiplier of ½ for property in the ownership of a chargepayer subject to student relief;

- extending to six months the period of grace before the owner of an unoccupied, unfurnished property becomes liable to a standard charge;

- extending to six months after probate has been granted the period of grace before an unoccupied property can give rise to the standard charge;

- removing the 12 months time limit during which an unoccupied property is subject to a zero multiplier where the chargepayer is cared for in a nursing home;

- as above where the standard chargepayer is the carer of the person in need of nursing care;

- subject to primary legislation, introducing a narrowly-defined hardship waiver to deal with a small number of other hard cases.

COMPOSITE HEREDITAMENTS

22. In properties which contain both domestic and non-domestic accommodation (described in the legislation as 'composite hereditaments') only the non-domestic element is rated. Both the business rate transition and community charge transitional relief may apply. The range of composites is wide, the most common types being shops with living accommodation attached and guest houses. Ordinary dwellings may be composite if a business activity is carried on there eg the householder who provides bed and breakfast accommodation. The paper at Annex C gives further details.

23. The annex analyses the impact of the new system on small composite shops, which have been the source of most complaints in this area. The average increase in overall bills per property in 1990/91 after taking account of transitional relief is £260 (21%) in real terms, of which £15 is attributable to rates and £244 to the community charge, assuming two charges per property. About £180 of the increase attributable to community charges is the result of local authority spending above settlement assumptions. In the longer term, once the transitional schemes have wound down, the average increase is £470 (37%) in real terms, of which £153 arises from rates and £317 from community charges.

24. Although there are wide variations around these averages, there does not seem to be a case for amending the business rating arrangements. During transition no bill for these shops will rise by more than 15% a year in real terms. And even once transition is complete, rate bills for small composite shops will on average be a third lower than for small shops generally. Any measure of permanent derating would set up very strong pressures for similar treatment from other property interests.

25. As for the community charge, this bears heavily on people living in composite properties because the domestic element was low-rated under the old system. However it is difficult to see why such people should be treated differently from those living in other types of domestic property which formerly had low rateable values. The annex however suggests some options for change if Ministers think it essential to give composites special treatment.

26. Changes focussing on transitional arrangements for the business rate or community charge transitional relief or both would be most appropriate to the problem and would avoid undermining the principles of the business rate and the community charge.

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ANNEX A

IMPROVEMENTS TO TRANSITIONAL RELIEF AND COMMUNITY CHARGE BENEFIT

1. This note considers ways in which transitional relief might be used to provide extra help to specific groups, such as the disabled, young first time payers and those living in multi-unit hereditaments.

BACKGROUND

2. Some 7½ million people will benefit from the transitional relief as originally formulated, of whom about half a million are expected to receive the special help for elderly and disabled people. The cost of the scheme over the three years of its intended life is expected to be £810m (£350 million in 1990-91).

IMPROVING THE SCHEME

3. Improvements to the scheme costing £150m in 1991/92 and along the following broad lines have already been agreed:

a. extending the period of the scheme;

b. reducing the rate at which relief is withdrawn after year 1;

c. providing relief to cover increased charges arising from withdrawal of the safety net and low rateable value grant (see Appendix for list of local authority areas in which chargepayers could benefit).

The cost of these measures could be offset significantly by a measure to deal with the mirror-image of the position at (c), ie to reduce existing entitlements to transitional relief where chargepayers benefit in 1991/92 from the ending of contributions to the safety net. This would save around £60m in 1991/92 and 1992/93, and smaller amounts in the later years, on the basis of the proposals above.

SPECIAL ASSISTANCE FOR PARTICULAR GROUPS

4. It has been suggested that the transitional relief scheme should be used to provide assistance for people with incomes just too high to qualify for rebates. Groups suggested are young first time payers and disabled people, but not non-working spouses.

DISABLED PEOPLE

5. The transitional relief scheme already provides extra help for disabled people who are not ratepayers. Disabled people who qualify for rates-based relief are treated no differently from other ratepayers, however, though they do have a higher earnings disregard under the community charge benefit system, which allows them to qualify for benefit at a higher income than other claimants.

6. There continues to be pressure for physically disabled people to be exempt from the community charge. The only disability which currently brings exemption is severe mental impairment. The reason for this is that people with severe mental impairment can have no understanding of local issues, or exercise an informed vote, and local accountability therefore cannot work in their case. These arguments do not apply to people who are physically disabled. Because, however, many physically disabled people benefited from special rate rebates under the old system there is a feeling that there should be special provision for them under the new.

7. Disabled persons' rating relief was designed to stop disabled people having to pay more than their neighbours if necessary adaptations to their home increased its rateable value. In a system which is not based on rateable values such relief is not necessary; but this argument is not easily understood by people who believe that they are losing a special rebate.

8. Many disabled people do have very low incomes. Although single disabled people can qualify for community charge benefit, the fact that couples are jointly assessed for benefit has given rise to some dissatisfaction where the earnings of a disabled person's spouse disqualifies the couple from benefit. A fairly common complaint is that the spouse of a disabled person has greater calls on his or her income arising from the partner's disability, though this is to some extent recognised in the higher earnings disregard, and in the availability of other benefits.

9. If it were decided to give further help to disabled people through the transitional relief scheme the most obvious way of doing so would be to allow the extra help, currently available only to disabled people who were not formerly ratepayers, to apply to all disabled chargepayers. This would mean that every disabled chargepayer could apply for relief to reduce the charge to £156, plus any excess of the actual community charge over the assumed community charge. For those who had already been given rates-based relief the extra help would be given in the form of a "top-up". Since charging authorities will not usually have details of disabled people it would be necessary for the extra help to be applied for.

10. We are not able to estimate the cost of providing extra help for all disabled people in this way, but it is unlikely to be more than £20 million. If adopted, the provision would be widely welcomed by disabled people and their representative organisations. Policy on disabled people is the responsibility of the Department of Social Security, who have not been consulted on this matter.

YOUNG PEOPLE

11. So far as young people are concerned, if the criterion for extra help is low income then it would be difficult to justify providing it through the transitional relief scheme, which does not currently contain a means test. In introducing such a test into the scheme it would be difficult to explain why the community charge benefit scheme, which has its own means test, and is specifically designed to help people on low incomes, would not be a more appropriate vehicle for assistance. It would be an admission that the benefit scheme did not extend far enough up the income scale.

12. On the other hand, help for young first-time payers which did not include a means test would involve offering extra help to a significant number of people who did not need it. But all students currently qualify for a reduced rate of charge irrespective of their income, and a similar blanket approach for young people would not therefore be unprecedented.

13. If it were decided to provide help for young people through transitional relief there are several possible approaches:

a. provide extra help for young non-ratepayers exactly parallel to the extra help currently provided for elderly and disabled people;

b. provide that young people who qualify for rates-based relief can apply for a special top-up to reduce their charge even further.

c. do both of the above (ie provide relief at "top-up" level for all chargepayers aged between, say, 18 and 21, irrespective of their former ratepaying status). Relief would be phased out in the normal way;

d. provide phasing for young people so that, say, 18 year olds pay 25% of the charge, with the proportion increasing to 100% when the young person reaches a certain age (which could be anything between 21 and 24).

14. If either of the first two were adopted it would be haphazard in its coverage. Many young people in similar circumstances would be treated differently, though option (a) is specifically targeted at young first-time payers. It would, however, be difficult to police, since it would be impossible to check the truth of statements that a young person living with his or her parents had previously made no contribution to the rates.

15. Options (c) and (d) would help all young people. Option (d) would be easy to explain, but would be expensive, and departs rather a long way from the original intention of transitional relief; there must be some doubt whether it falls within the scope of the powers.

MOVERS

16. In the present transitional relief scheme, entitlement to relief is lost when people move. This will reduce the cost of the scheme in later years. For those entitled to automatic relief because their charge bills are higher than their former rate bills, this is an appropriate rule. When they move, the rateable value of the property they move to will almost certainly be different from that of the property they have moved from. Freezing relief and making it portable would give excess relief where people moved to lower value properties, or to lower charge areas. Recalculating relief when people moved would reward them for decisions to move to higher rateable value properties or higher charge areas. Any form of recalculation of automatic relief would also mean that local authorities would have to maintain domestic rating lists for five years (with the extended relief scheme) and there would be inevitable problems with new properties. General portability does not therefore seem to be an appropriate option.

17. However the situation is different for those entitled to special relief by way of being elderly or disabled former non-ratepayers. Their relief is not related to former rateable values. It is relief given because of personal circumstances and those circumstances are arguably not changed by moving. There is a case for saying that when the elderly or disabled entitled to special relief move, they should continue to be entitled to special relief appropriate to their new local authority, so long as they do not become the sole occupant of the new property. This would mean that a pensioner living with one of his or her adult children would continue to receive relief if the children moved or if the pensioner themself moved, for instance, to live with another adult child.

18. The position of those on special relief who move becomes more acute the longer the scheme runs and the wider its scope. Extension of special relief to all under 21s would undoubtedly highlight the situation because these are the people who have the greatest propensity to move. Without portability for them, it could be argued that the change had little effect because most people would lose relief fairly quickly when they moved.

19. Ministers may therefore wish to consider providing portability to those chargepayers entitled to special transitional relief. This would not increase the cost of the scheme, or changes to the scheme, as estimated in this paper because the estimates make no allowance for cost reductions because of movers. It would of course increase the amounts of relief which will in practice be paid.

MULTI-UNIT HEREDITAMENTS

20. Where two or more chargepayers live at an address which appeared in the former rating list, their relief is calculated on the basis of two community charges. This approach was adopted in order to concentrate relief on first time payers and not to give extra relief in households where, for instance, adult children were living with their parents. This has led to some difficult cases where properties which comprise several separate living units appear as one entry on the rating list. In such circumstances, because of a relatively high combined rate bill, it is unlikely that any relief would be paid. This issue has particularly been raised in respect of large schemes of sheltered accommodation.

21. Sheltered housing (for the elderly) is defined in the Housing Act 1985 as dwelling-houses which are particularly suitable for occupation by persons of pensionable age and which it is the practice of the landlord to let for occupation by persons of pensionable age or for occupation by such persons and physically disabled persons, and special facilities are provided. It is measured in units of one, two or three people. A scheme can be made up of any number of units. There are some 450,000 units of sheltered housing in England which represents about 500-700,000 people. There is not much information on the numbers of differently sized schemes but a survey carried out in 1980 reported that about 70% of schemes numbered less than 30 units.

22. However, it would be difficult to prevent any extension of automatic relief to sheltered housing (by apportioning rateable values) spilling over into other multi-unit hereditaments. Examples might include bedsit accommodation (and other housing in multiple occupancy - HMOs), houses with extended families, and sheltered housing. The number of

people involved would be very large. In HMOs alone there are some 2 million people resident, of which 12% are above retirement age.

23. The simplest and most leak-proof way of helping people in sheltered accommodation would be to extend to them the special relief arrangements for the elderly and disabled who are not former ratepayers. Relief would be given to all individuals in sheltered housing schemes on the difference between £156 and the assumed (or, if lower, the actual) community charge. On an average assumed community charge of £272 the amount of relief given would be £116. Such relief would have cost £60-£85 million in 1991/92 assuming no withdrawal of relief.

24. It would be feasible to restrict relief to people in properties where there are more than a certain number of chargepayers resident, but this would inevitably attract criticism wherever the line was drawn. If extra relief were denied to people where there were only two or three chargepayers, it would not necessarily be guaranteed that automatic relief would apply in its place (entitlement to relief depending on the rateable value).

25. The change could be presented as an extension of the existing special treatment for elderly and disabled people. It would be widely welcomed as helping in an important group who are possibly hard hit by the community charge; although as it would not be income-related it would also go to pensioners who have no difficulty in paying their charge.

26. The scheme might attract criticism because it would treat one category of elderly people who pay rent differently from other categories of elderly people who also pay rent but who will not qualify for transitional relief. Such people may have a high rated property, be in bedsit accommodation in a large building that does not qualify as sheltered housing, or have a low assumed charge for their area but quite possibly a high actual charge to pay. Since the principle that extra relief only went to those that neither paid rates nor rent would have been relaxed, there would be great pressure to extend extra relief to all pensioners (over 6 million people).

Department of the Environment

1 June 1990

IMPACT OF AREA LEVEL TRANSITIONAL PROTECTION

	1990/91 receipt per adult	Planned withdrawal 1991/92 £/adult	1992/93 £/adult	1993/94 £/adult	1994/95 £/adult
	----1----	----2----	----3----	----4----	----5----
GREATER LONDON					
City of London					
Camden					
Greenwich	212	53	53	53	53
Hackney					
Hammersmith and Fulham	111	28	28	28	28
Islington					
Kensington and Chelsea					
Lambeth	27	25	2	-	-
Lewisham	147	37	37	37	37
Southwark	160	40	40	40	40
Tower Hamlets	168	42	42	42	42
Wandsworth	116	29	29	29	29
Westminster					
Barking and Dagenham	107	27	27	27	27
Barnet					
Bexley	7	7	-	-	-
Brent					
Bromley					
Croydon					
Ealing					
Enfield					
Haringey					
Harrow					
Havering	5	5	-	-	-
Hillingdon	42	25	17	-	-
Hounslow					
Kingston-upon-Thames					
Merton					
Newham					
Redbridge					
Richmond-upon-Thames					
Sutton					
Waltham Forest					

IMPACT OF AREA LEVEL TRANSITIONAL PROTECTION

	1990/91 receipt per adult	Planned withdrawal 1991/92 £/adult	1992/93 £/adult	1993/94 £/adult	1994/95 £/adult
	----1----	----2----	----3----	----4----	----5----
GREATER MANCHESTER					
Bolton					
Bury	6	6	-	-	-
Manchester					
Oldham	16	16	-	-	-
Rochdale	72	25	25	22	-
Salford					
Stockport					
Tameside	54	25	25	4	-
Trafford					
Wigan	69	25	25	19	-
MERSEYSIDE					
Knowsley					
Liverpool					
Sefton					
St Helens	22	22	-	-	-
Wirral					
SOUTH YORKSHIRE					
Barnsley	150	37	37	37	37
Doncaster	105	26	26	26	26
Rotherham	113	28	28	28	28
Sheffield	107	27	27	27	27
TYNE AND WEAR					
Gateshead	86	25	25	25	11
Newcastle upon Tyne	21	21	-	-	-
North Tyneside	41	25	16	-	-
South Tyneside	72	25	25	22	-
Sunderland	65	25	25	15	-
WEST MIDLANDS					
Birmingham					
Coventry					
Dudley					
Sandwell					
Solihull					
Walsall					
Wolverhampton					
WEST YORKSHIRE					
Bradford	55	25	25	5	-
Calderdale	163	41	41	41	41
Kirklees	132	33	33	33	33
Leeds	14	14	-	-	-
Wakefield	111	28	28	28	28

IMPACT OF AREA LEVEL TRANSITIONAL PROTECTION

	1990/91 receipt per adult	Planned withdrawal 1991/92 £/adult	1992/93 £/adult	1993/94 £/adult	1994/95 £/adult
	----1----	----2----	----3----	----4----	----5----
SHIRE DISTRICTS					
Barrow in Furness	136	34	34	34	34
Bolsover	133	33	33	33	33
Wansbeck	127	32	32	32	32
Wear Valley	125	31	31	31	31
Sedgefield	117	29	29	29	29
Copeland	116	29	29	29	29
Easington	114	28	28	28	28
Derwentside	112	28	28	28	28
Pendle	106	27	27	27	27
Allerdale	106	26	26	26	26
Burnley	101	25	25	25	25
Kingston upon Hull	99	25	25	25	24
Rossendale	91	25	25	25	16
Hyndburn	89	25	25	25	14
Boothferry	87	25	25	25	12
East Yorkshire	78	25	25	25	3
Chesterfield	70	25	25	20	-
Berwick-upon-Tweed	70	25	25	20	-
York	69	25	25	19	-
Blyth Valley	67	25	25	17	-
Eden	67	25	25	17	-
Torridge	65	25	25	15	-
Scunthorpe	65	25	25	15	-
Teesdale	65	25	25	15	-
North East Derbyshire	62	25	25	12	-
High Peak	60	25	25	10	-
Ashfield	59	25	25	9	-
Amber Valley	58	25	25	8	-
Scarborough	57	25	25	7	-
Hartlepool	57	25	25	7	-
Blackburn	52	25	25	2	-
Erewash	51	25	25	1	-
Craven	50	25	25	0	-
Alnwick	48	25	23	-	-
Mansfield	48	25	23	-	-
Cleethorpes	46	25	21	-	-
Great Grimsby	46	25	21	-	-
Carlisle	44	25	19	-	-
Chester-le-Street	43	25	18	-	-
Middlesbrough	40	25	15	-	-

IMPACT OF AREA LEVEL TRANSITIONAL PROTECTION

	1990/91 receipt per adult	Planned withdrawal 1991/92 £/adult	1992/93 £/adult	1993/94 £/adult	1994/95 £/adult
	----1----	----2----	----3----	----4----	----5----
SHIRE DISTRICTS					
Blackpool	35	25	10	-	-
Holderness	33	25	8	-	-
Stoke-on-Trent	33	25	8	-	-
Durham	32	25	7	-	-
Langbaurgh-on-Tees	32	25	7	-	-
Selby	32	25	7	-	-
Ryedale	30	25	5	-	-
Darlington	24	24	-	-	-
South Lakeland	24	24	-	-	-
Leicester	24	24	-	-	-
Oswestry	24	24	-	-	-
Glanford	23	23	-	-	-
Bristol	23	23	-	-	-
Tynedale	22	22	-	-	-
North Devon	22	22	-	-	-
Bassetlaw	19	19	-	-	-
Lancaster	17	17	-	-	-
Richmondshire	16	16	-	-	-
South Derbyshire	16	16	-	-	-
Mid Devon	16	16	-	-	-
Derbyshire Dales	14	14	-	-	-
South Ribble	14	14	-	-	-
Torbay	13	13	-	-	-
Ribble Valley	13	13	-	-	-
Kerrier	11	11	-	-	-
Newcastle-under-Lyme	11	11	-	-	-
Lincoln	10	10	-	-	-
Dartford	9	9	-	-	-
Great Yarmouth	9	9	-	-	-
Staffordshire Moorlands	7	7	-	-	-
Hambleton	6	6	-	-	-
Penwith	3	3	-	-	-
Thamesdown	2	2	-	-	-
Nuneaton and Bedworth	2	2	-	-	-
West Devon	2	2	-	-	-
Forest of Dean	1	1	-	-	-
Weymouth and Portland	0	0	-	-	-

ANNEX B

THE STANDARD COMMUNITY CHARGE

INTRODUCTION

1. The freehold owners or long lessees of some 200,000 second and subsequent homes are liable to pay a standard community charge in respect of that property to the charging authority for the area in which it is situated. The authority has discretion to set the level of the charge at a multiplier of 0, 0.5, 1, 1.5, or 2 times the personal community charge for the area. In addition, to mitigate the burdens which might result for owners or lessees in particular sorts of circumstance, the Secretary of State has the power to prescribe by 1 January preceding any financial year classes of second property to be subject in that year to mandatory (lower) multipliers. The regulations (summarised in Appendix 1) currently provide for:

- nine classes of circumstances for unoccupied property where the maximum multiplier, for a defined period, is 0;

- two classes where the maximum multiplier cannot exceed 1.

In addition, following concern expressed in Scotland last year, powers were provided in the Local Government and Housing Act 1989 to give local authorities a wider discretion to establish classes, in addition to those prescribed by the Secretary of State, subject to lower or different multipliers.

2. Appendix 2 summarises the use made by English charging authorities of their discretion to set standard charge multipliers and create additional classes.

CAUSES OF CONTINUING CONCERN

3. Despite the discretion available to authorities and clear signals that this would be monitored in 1990 and if necessary further prescription substituted for local choice, the standard charge continues to give cause for public concern. The main types of circumstances causing concern are:

i. those whose main home is provided by their employer own or lease a second property. This category includes publicans and licensees; caretakers and domestic staff; resident school staff; agricultural and other workers in tied accommodation

ii. persons who are exempt from the personal charge, most of whom have no income, but own or inherit a property to which the standard charge applies.

iii. owners of property which has been unoccupied for more than 3 months pending sale;

iv. students who leave an empty property while studying;

v. owners of unoccupied property adjacent to a shop or work place;

vi. owners of unoccupied granny flats, annexes, staff quarters etc;

vii. owners of unoccupied agricultural cottages;

viii. the owner of a repossessed property pending disposal by bank or building society.

4. This list is not exhaustive and improvements to the classes and multipliers are still likely to have some hard cases (see paragraph 22 below).

OPTIONS FOR CHANGE

Status Quo

5. One approach is to maintain the present structure but to increase the pressure on authorities to use their discretion. This has been deployed with some success in Scotland and there is a case for deflecting criticism to the authorities who have failed to use sensitively their powers. There is evidence that English authorities will make more use of their flexibility next year.

Rebates or Transitional relief

6. Community charge benefit and transitional relief is unavailable to owners liable to the standard charge. It would be complicated to legislate for this now but it could be done. Both options would be selective and whilst reducing the volume of inequities neither could be guaranteed to completely eliminate hard cases. Indeed those individuals remaining outside the protection would feel the inequity even harder. In the case of community charge benefit there would be particular problems in adjusting the savings rule since ownership of a second home is assumed to generate income which is added to the applicable amount in calculating relief. Transitional relief is not means

tested but because it is based on the assumed level of domestic rates at 31.3.90 would be unhelpful to liabilities arising after 1.4.90 and would offer relief capriciously to many second home owners not affected by hardship. Neither option is recommended.

Reducing the Multiplier

7. Reducing the maximum multiplier from 2 to say 1 would take the sting out of much of the criticism. Second homes have formerly been subject to rates: the problem derives from the increase in outgoings under the community charge and the value of the local services enjoyed by second home owners could be argued to square broadly to one community charge. The Secretary of State for Scotland proposed such a reduction last summer but it was rejected on the grounds that it favoured all second home owners, the vast majority of whom need little protection.

Selected Concessions

8. If neither of the general measures outlined in paragraphs 6 and 7 are taken, selected concessions could be considered for all or some of the classes of circumstance outlined in paragraphs 9 to 21 below.

Extensions of Existing Classes

9. Unoccupied and unfurnished properties have a multiplier of 0 for three months or such longer period as may be prescribed by the charging authority. (Appendix 1, Class C). It is evident that the single most common reason for unoccupation is failure to sell in the present market conditions, a factor which can cause hardship if employment forces a move. It would be possible to limit a concession to vacancy pending sale but difficult for chargepayers to prove intention. We propose that the period of zero multiplier could be extended from three to six months in all cases. This need not encourage landlords to prolong vacancies since loss of rent would far exceed the incentive to avoid a standard charge.

10. Property unoccupied following the death of the owner has a zero multiplier for 3 months after the grant of probate in England and Wales but for six months after death in Scotland (Appendix 1, Class E). As with the case outlined in paragraph 9 above there can be difficulties in disposing of property promptly in the present market. There is a case for extending the period of the zero multiplier from three to six months after probate in England, Scotland and Wales.

11. Unoccupied property owned by a resident patient of a nursing home or care home (who is therefore exempt from the personal charge) is subject to a maximum multiplier of 0 for 12 months (Appendix 1, Class D). The rationale for this is that one year provides a period for the patient to recognise they are not returning to their old home and to sell or lease it. This can produce difficulties if the sale is delayed or if the patient is reluctant to accept that their disability is long term. In Scotland the multiplier is 0 without time limit and we propose the same should apply in England and Wales.

12. Similarly, carers or their cared for have a period of grace of 12 months' zero multiplier after they move out of their main home in order to care or be cared for (Appendix 1, Classes FB and FC). In Scotland there is no time limit and we propose the same should apply in England and Wales.

13. In Scotland, a zero multiplier is available to students who leave behind a property which attracts the standard charge whilst studying. (Appendix 1, Scottish Class 2). Often it would not be possible for the standard charge property to be let since the student will need to use it out of term. Rates will have been payable under the old system. A multiplier of ½ probably reflects the most that could reasonably be expected from a student largely reliant on grant for income and already paying a 20% personal charge.

14. Also in Scotland (Appendix 1, Scottish Class 3) a multiplier of zero applies to properties left vacant while the owner is in prison or detention, reflecting the fact that such a chargepayer has no income. We propose that this should be mirrored in England and Wales.

15. Finally the Scottish Regulations exempt from the standard charge unfurnished properties on agricultural land previously occupied in connection with the farm. This reflects the particular difficulties of large numbers of agricultural cottages which are now surplus to the industry in Scotland and apparently cannot be used for other purposes. This may apply in some regions of England and Wales but is by no means general. There are powerful arguments discouraging such property from under use. We recommend that in England the existing local discretion should be retained.

Possible New Classes to be Prescribed with Maximum Multipliers

16. Those whose main home is provided by their employer will frequently choose to own or lease a second property to which the standard charge applies, in order to secure accommodation for

themselves when they no longer have tied accommodation available. Examples are resident school staff, caretakers and domestic staff, publicans and licensees, some MOD service personnel, agricultural and other workers in "tied accommodation" for whom the occupation of two properties is a consequence of employment. For such tied employees, their standard charge property is in reality their only home. Rates will formerly have been payable on the properties. A multiplier of one is recommended for all cases where one of the properties occupied by a standard chargepayer is provided by the employer.

17. Arguably there could be a parallel class for owners of standard charge property who are not employees but whose profession, business or vocation requires them to maintain more than one home. It would be extremely difficult to defend special treatment however for many such people eg, judges, doctors, Members of Parliament, and this is not recommended.

18. The owner of a property repossessed by a bank or building society pending disposal will be liable to a standard charge on the expiry of, the period of grace for unoccupied property. Formerly the rateable occupier was the financial institution (which compensated itself out of the proceeds of sale). The owner will be immediately liable to the standard charge and may often not have the income to meet it. It would require primary legislation to transfer liability to the financial institution. A simpler and surer alternative would be to provide a zero multiplier for such comparatively rare but hard cases.

19. In certain rare circumstances a chargepayer who is both exempt from the personal charge and has no income may become liable to a standard charge. Resident hospital patients and prisoners have already been protected from this to some extent in paragraphs 11, 12 and 14 above when unoccupied property is left behind. A standard charge liability could however arise on the inheritance of a property by a monk or nun, by a resident hospital patient, by a 19 year old still at school or by a severely mentally impaired person. A remedy exists if the property can be disposed of within six months of acquisition but this may not be possible if the property is in a remote location or has a negative market value. Unless the hardship waiver discussed in paragraph 22 below is introduced, there is a possible case for providing a multiplier of zero for standard property acquired by a chargepayer exempt from the personal charge, though a general provision of this kind would be likely unreasonably to benefit some exempt people.

20. Owners of domestic property adjacent to non-domestic property can become liable to the standard charge if it remains unoccupied. Planning restrictions or restrictive covenants may prevent its use for storage and difficulties of access may render letting impracticable. Examples include the domestic portions of mixed hereditaments or the vacant domestic quarters adjacent to business premises. We recommend a new class with multiplier of one.

21. A similar class of circumstance can arise within wholly domestic property where a self-contained portion becomes vacant for longer than the proposed 6 month period of grace. Examples include vacant rooms formerly occupied by lodgers which the resident owner no longer wishes to continue letting or a granny flat which remains unoccupied while a relative recovers from illness. Many of these anomalies could be reduced if a multiplier of one we provided in any circumstance where the standard chargepayer was registered as liable for a personal charge at an address which was within the same building as the standard charge property and the standard charge property is not fully self-contained.

A HARDSHIP WAIVER

22. Paragraphs 9 to 21 above outlined eleven changes in the standard charge rules relating to particular classes of circumstance. It would probably never be possible however to produce a complete list of all the individual circumstances where a standard charge liability can arise and produce hard cases. The circumstances will be rare and unpredictable. An option would be to empower authorities to reduce or remit the payment of a standard charge in circumstances where its payment would cause serious hardship to the chargepayer. This would not allow authorities to introduce a sliding scale but would allow them to waive the charge in particular and relatively narrow circumstances. Such a power is not unprecedented and could be closely modelled on section 53 of the General Rate Act 1967. Primary legislation would be needed for this. A hardship waiver would be selective and subject to the discretion of a charging authority. There would be no need for a right of appeal. The passage of such a provision in Parliament would attract a large number of amendments to widen its scope which would have to be firmly resisted.

COSTS

23. The total revenue from the standard charge amounts to some £12 million in Scotland during 1989-90 and an estimate of £150 million in England and Wales during 1990-91. This is between 1

and 1½% of total charge revenue collected. None of the above options suggest complete abandonment of the standard charge but instead focus on ways of relieving comparatively small numbers of standard chargepayers from inequitable liabilities. The precise number and distribution of standard charge properties is not known but it is unlikely that the concessions outlined above would add more than £2 or £3 to the charge of any area. Whilst the incidence of standard charge properties is uneven between authorities and concentrated in resort and retirement areas, hard cases will be randomly distributed. Standard charge income is not taken into account in calculating grant in England and compensation for any small loss in revenue brought about by any of the options above would have to be resisted.

SUMMARY AND CONCLUSIONS

24. The standard charge remains defensible for most second home owners but poses problems in some cases, often depending on its level. Introducing rebates or transitional relief is not attractive. Reducing the maximum general multiplier which can be levied from 2 to 1 is a possibility but open to the attack that it offers help to the comfortably off. Eleven options are identified for making selective changes in either the period of grace before liability arises or reducing the maximum multiplier that can be levied. Three of those options (paragraphs 7, 20 and 21) would not need to be specifically provided for if the maximum general multiplier was reduced to 1. These could all be brought into effect by secondary legislation. A narrowly- defined hardship waiver is proposed for the rare cases that may continue to cause individual hardship; it would require primary legislation.

STANDARD COMMUNITY CHARGE CLASSES CENTRALLY PRESCRIBED IN SCOTLAND AND IN ENGLAND AND WALES

English Class A Unoccupied property requiring structural repair works to make it inhabitable is excepted in Scotland; this property is zero-rated in England until 6 months after the work is complete.

Class B Property whose erection is not complete or is being structurally altered has a multiplier of 0 in England during the work and for 6 months after completion.

Class C Unoccupied and unfurnished properties which have been unoccupied for less than 3 months have a multiplier of 0; in Scotland a person who owns such a property may apply for a period of grace for 3 months (or more if so determined by their charging authorities).

Class D Property unoccupied by virtue of the previous occupant becoming resident in a nursing home, residential care home, hospital etc. has a multiplier of 0 for 1 year; such properties are excepted in Scotland.

Class E Property empty due to the death of the occupant has a multiplier of 0 until 3 months after the grant of probate or letters of administration; in Scotland there is no charge for 6 months after death.

Class F Property whose occupation is prohibited by law, or which is unoccupied by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting its occupation or acquiring it has a multiplier of 0; properties subject to a closing order, a demolition order or an order under section 13 of the Building (Scotland) Act 1959 because they are dangerous are all excepted in Scotland.

Class FA Property held as a residence for a minister of religion has a multiplier of 0 both sides of the border.

Class FB Property unoccupied because the previous occupier has become resident other than in those establishments covered in Class D for the purpose of receiving care has a multiplier of 0 for the first 12 months; in Scotland there is no time limit.

Class FC Property unoccupied because the previous occupier has become resident elsewhere for the purpose of providing care has a multiplier of 0 for the first 12 months; again in Scotland there is no time limit.

Class G Caravans on protected sites are subject to a maximum multiplier of 1; there is no equivalent in Scotland, though most caravans will come within the rating system there.

Class H properties which may not be occupied throughout the year due to planning constraints are subject to a maximum multiplier of 1; there is no equivalent in Scotland as these properties will normally be dealt with under rates.

Additional Scottish classes

There are three classes of property (the first excepted, the others with a multiplier of 0) which have no equivalents in England and Wales.

1. Unfurnished properties on agricultural land which, when occupied, is used in connection with that land.

2. Properties left unoccupied by full-time students required to live elsewhere to undertake their studies.

3. Properties left unoccupied because the previous occupant is in prison or other detention.

STANDARD CHARGE MULTIPLIERS: USE MADE OF DISCRETION BY ENGLISH AUTHORITIES

Information on standard charge multipliers is collected on form CFR1. So far 94 forms have been returned, including 7 London boroughs and 15 metropolitan districts.

3 authorities have set the multiplier at 0 for all classes of property (Hyndburn, Slough and Stoke).

9 authorities have set their highest multiplier at 1. All others (87%) have a set maximum of 2.

Second homes have always received the highest multiplier set.

Properties owned by students on courses elsewhere in the country have been separately distinquished by 21 councils (18 setting a multiplier of 0, 3 setting 1).

Properties owned by prisoners have been separately distinguished by 34 councils (32 setting 0, 2 setting 1).

Properties owned by those in tied employment requiring them to live elsewhere have been separately distinquished by 26 councils.

Relief on properties owned by those in-hospital has been extended beyond 12 months by around two-thirds of council.

Extensions to the full relief on properties subject to probate up to 3 months vary, but about a third of councils have extended relief to at least 6 months.

New/repaired/empty properties

One third of councils have extended full relief on empty property beyond the statutory 3 months up to 6 months.

15 councils have given distinct multipliers to properties empty up to 12 months and 6 to new or repaired properties up to 12 months. Some councils have used a sliding scale of multipliers (0 1/2 1 3/2 2) as the length of time empty increases.

Other categories

Some 40 different categories have been used by councils on returns received so far. Among the more curious are:

- exemption for the council's own property
- exemption for property used in the World Student Games
- exemption for employees of certain schools

7C

In conclusion the picture is fairly mixed. Some councils have produced numerous convoluted legal definitions of special classes, while about 10-15%, on the evidence so far, have applied a straight multiplier of 2 to all non-statutory classes.

FLAS/DOE
21 May 1990

C O N F I D E N T I A L

ANNEX C

NON-DOMESTIC RATES AND THE COMMUNITY CHARGE: TREATMENT OF COMPOSITE HEREDITAMENTS

Definition and Valuation of composites

1. In properties which contain both domestic and non-domestic accommodation in the same occupation, known as 'composite hereditaments' ('mixed hereditaments' under the old rating system), only the non-domestic use of the property is subject to business rates. Where the living accommodation is used as a sole or main residence the occupants will be liable to the personal community charge. The definition of a composite is however an artefact of the binary nature of the rating and charging systems. Of two physically identical properties one may be composite and the other wholly non-domestic, according to the particular pattern of use; and the status of a property may change over time. There is likely to be both substantial and continuing movement across the necessarily artificial boundary between composites and wholly non-domestic property.

2. There are around 240,000 composites in England of which the majority are shops with living accommodation attached. Other common types of composite are dwellings from which people run businesses, hotels and guesthouses occupied both by short-stay guests and by the proprietor and his staff, most public houses, boarding schools etc.

3. People who run businesses from home will usually only be liable for rates where the business use prevents part of the property being used wholly for domestic purposes. So, where a room in a house is used as a doctor's surgery or is equipped as an office, rates will generally be payable; but a householder who, for instance, uses the sitting room for child minding or a home telephone as a call-out number for a taxi service will not be liable. People who provide bed and breakfast accommodation in their homes will not pay rates unless they intend to make it available for 100 days a year or more.

4. When assessing the rateable value of a composite hereditament, the Valuation Officer values only the non-domestic use of the property. The value of any domestic use is not taken into account. The existence of the living accommodation may however affect the value of the non-domestic part eg the rental

value (and therefore rateable value) of a pub with living accommodation available will tend to be slightly greater than one without such accommodation. The same was of course true under the old system.

5. In order to determine the extent of non-domestic as opposed to domestic use, the Valuation Officer is required to consider how a hypothetical tenant in that locality would use the property if vacant and to let, rather than the actual level of use in the particular case (which would be impracticable and contrary to basic rating principles): so a parade of identical shops with flats above will all attract the same rateable value, even though some of the shopkeepers may use some of the living accommodation as storage space and some may not, or vice versa (though where a shopkeeper uses the whole property for non-domestic purposes it will not be composite and will be valued accordingly).

Transitional Arrangements

6. The transitional arrangements for the business rate apply to the non-domestic part of a composite hereditament as they do to any other business property. Community charge transitional relief is also available to those living in composite hereditaments. The baseline for determining eligibility in both cases has been established by apportioning the 1973 list rateable values of composite properties between their non-domestic and domestic parts.

Sources of Complaint

7. Most complaints about the treatment of composites have been in respect of small shops, particularly in rural areas. There has also been a significant number of complaints from householders providing bed and breakfast accommodation at having to pay both community charge and rates. On the other hand there has been criticism from firms concerned about fair competition that people running businesses from home often escape liability because the Valuation Officer is unaware of the activity; and there has been a concerted campaign from the hotel industry against the de minimis exemption for bed and breakfast accommodation mentioned above.

8. The remainder of this annex concentrates on small composite shops, that is shops with a new rateable value of less than £15,000 in London and £10,000 elsewhere, the definition used for the purposes of the business rate transition (though this threshold is somewhat arbitrary it will cover most corner shops outside prime shopping areas). This is much the largest, most coherent, and most readily analysed group of composites and the group in respect of which most complaints have been made.

Impact on Composite Shops: 1990/91

9. Table 1.1 analyses the effect on a sample of 97,000 small composite shops in England (about 90% of the total) of the new rating system and the introduction of the community charge in 1990/91. The figures are in constant prices (1989/90 rate bills have been uprated to 1990/91 prices using the September RPI

increase of 7.6%) and take account of the effect of transitional rating protection and community charge transitional relief. It is assumed that 2 unrebated community charges are payable in each property. The table shows that the average increase in bill per property is £260 (21%), of which £15 (1%) is attributable to business rates and £244 (19%) to the community charge (the figures do not sum because of rounding). There are considerable regional variations - from a 30% average increase in inner London to 12% in the West Midlands. In 5 of the 10 regions rate bills fall. Of the increase attributable to the community charge £180 arises from local authority spending above the level assumed in the settlement.

10. Table 1.2 shows the distribution of changes in bill by size of change using the same assumptions as for the previous table. The larger increases are by definition attributable mainly to the community charge because increases in business rates are limited to 15% in real terms in the first year.

Impact in the longer term

11. Tables 2.1 and 2.2 show the impact of the new system on the same sample of small composite shops using the same assumptions except that the effect of transitional protection is excluded. The average increase in bill per property is £470 (37%), of which £153 (12%) is attributable to business rates and £317 (25%) to the community charge. Again there are considerable regional variations, especially in respect of business rates, with reductions in 3 regions. Table 2.2 shows a wide distribution of effects with 11% of properties attracting reductions, 28% increases of between 50 and 100%, and 20% increases of more than 100%. These latter increases are attributable equally to business rates and the charge.

Analysis

12. The tables suggest that because the business rate transitional arrangements damp the impact of the new rating system more effectively than does transitional relief the community charge, in 1990/91 increased bills suffered by small shopkeepers living over the shop are very largely attributable to the charge, though there is some slight regional variation.

13. Once the transition is over, the increase in business rates assumes more significance, but nationally the increase due to business rates is still less than half of that due to the community charge. In 4 of the 10 regions the increase in rates is however greater than that attributable to the charge. Most of the properties suffering combined increases in bills of over 100% will remain subject to the business rate transition at least until 1993/94 and many will not have reached their full new bills at the 1995 revaluation, when their rateable values may well fall relative to those of other properties (because of the depressing effect on rents of higher rate bills over the next 5 years). So some of the more extreme rate bill increases may never in fact apply. Also in some cases rateable values may be reduced on appeal with effect from 1 April 1990.

14. The increase in rate bills for small composite shops is somewhat higher than for small shops generally, but is much lower in percentage terms than that for larger shops - those with new rateable values above the thresholds mentioned in paragraph 8. Also the average new rateable value for small shops which are not composite (£4,284) is 48% higher than that for small composite shops (£2,895).

15. The proportion of the old rateable value of these composites attributable to the domestic accommodation is generally low. The average domestic element of the old rate bill was only 74% of average domestic rate bills generally for 1989/90: that pattern was repeated in all regions. This was therefore low-rated domestic property, which helps to explain why the introduction of the community charge has had a relatively big impact.

Options for change

16. For the reasons given in paragraphs 17-19 below, the case for giving special treatment to composite hereditaments, either as regards business rating or the community charge, looks weak. If however Ministers are convinced that they must offer some concession, the following are among the possible options:

a. Community charges

It would be possible to reduce the community charge liability of those living in accommodation attached to small shops by setting the charge as a proportion of the full charge eg 75%; or by limiting the number of charges payable to a maximum of one or two per property, the liability to be divided amongst those living on the premises. It would be hard to confine the concession to small composite shops, or even to composite shops generally: there would be pressure to extend it to all composites (this might be preferable in any event to avoid potential problems of definition - this applies to all the options in this paragraph). Costing these options is difficult because there is no information on the number of people living in composites, but assuming that a concession were confined to small composite shops and an average of 2 persons per hereditament, the annual cost of setting the charge at 75% would be about £18m and of limiting the charge to one per property £36m. Primary legislation would be needed.

b. Community charge transitional relief

Transitional relief for households living above small shops could be widened to soften the impact of the charge on large households by allowing members of the household who were not formerly ratepayers to apply for relief (on the lines of the existing concession for the elderly). Such a concession might be confined to people working in the business carried on in the property. The cost is difficult to estimate but would probably be rather less than £10m a year. Again there would be pressure to widen such a concession to cover all composites. This option could be effected through existing powers to make regulations.

c. Business rates

It would be possible to de-rate small composite shops to some extent ie to reduce the rateable value by a prescribed percentage. This would be of no benefit to businesses while the property remained in transition and it would, of course, benefit losers and gainers alike. The cost in 1991/92 of a 10% reduction in RV would be £5m. It would be difficult to confine the concession to composite shops, however, since other small shops have higher average rate bills, though extending it to all small shops would cover the smaller outlets of national retail chains. Extending the concession to all small shops would in 1990/91 cost an additional £22m and to all composites a further £38m. Primary legislation would be necessary.

d. Business rate transition

The maximum increase in rate bills under the transition is 20% a year in real terms for large properties and 15% in real terms for small ones. It would be possible from 1991/92 to fix a lower ceiling for certain categories of hereditament. A reduction in the 15% limit to 10% for small composite shops would cost £2m a year, and for all small composites £4m. Reducing from 20% to 15% the limit for large composites would cost a further £8.5m. This can be achieved by regulation and provided that no wider concession is given it ought not to be necessary to make a compensatory reduction in the limit on rate reductions (bearing in mind that there is a statutory requirement so far as practicable to balance the transition).

Conclusions

17. On the basis of this analysis there does not seem to be a case for modifying the business rating arrangements. In the first and subsequent years of the transition increases in bills are limited to 15% in real terms (23.7% in cash in 1990/91), as for other small business properties. The pattern of gains and losses is much as expected when Ministers decided on the transitional limits in February 1989. The average increase in bills is 1% in real terms and in no region does it exceed 8%. Once the transition unwinds, the average real increase is still only 12%, though with much more regional variation. Rising rate bills will be offset to some extent by lower rents (for the substantial numbers of owner-occupiers it will mean lower capital values, but such values have in the past been inflated by the lack of a revaluation); and for the reason given in paragraph 12, the more extreme increases will probably never take effect where there is no change of occupation.

18. The introduction of the community charge bears more heavily on the occupiers of these properties, with a 19% average real increase in bills this year rising to 25% when transitional relief expires. The domestic element of these composites needs to be seen in the context of low-rated domestic property generally. It is arguable that the occupants have in the past

paid a disproportionately low personal contribution to local government costs. Any additional help aimed at former ratepayers in low-rated dwellings would benefit these chargepayers, but it is not clear that there is a case for singling them out for special treatment.

19. There is an argument that shopkeepers who live over the shop have been especially hard hit by the combination of the business rate and community charge and merit additional protection on that account. On the other hand it would be difficult to justify treating such people differently from shopkeepers who happen to live elsewhere, perhaps also in formerly low-rated property. Any concessions on business rating would immediately lead to claims for parity of treatment for all composites on the one hand and for all small shops on the other. Besides, derating of any kind infringes the key principle of the UBR, the level playing field, and would be likely to lead to the sort of accusations of unfair competition which have caused such difficulty for Ministers in the case of the de minimis exemption for bed and breakfast accommodation. Making concessions to a sub-group which is not generically different from other hereditaments is likely to cause distortions and lead to grievances from those to whom no concession is made. Any reduction in rate burden would in any event be likely to be partly offset by higher rents, leaving the occupier no better off. Similarly any reduction in community charges for those living in composites cuts across the principle of a common charge per head for local authority services.

20. If, however, Ministers feel that some concession is necessary, of the options in paragraph 16 changes to the community charge transitional relief or the business rate transition (or both) seem preferable since they do not undermine the principles of the charge or of rating.

N110/90

TABLE 1.1 - By Region, actual bills after transitional arrangements on both business rates and community charge

SMALL COMPOSITE SHOPS: RATE BILLS IN 1990/91 PRICES
USING A SAMPLE OF 104,668 (FROM TOTAL POP FOR E/W OF 117,378)

NAT ENGLAND

			ACTUAL OVERALL CHANGE IN TAX		ACTUAL CHANGE DUE TO BUSINESS RATE		ACTUAL CHANGE DUE TO COMM CHARGE	
				MEAN CHANGE		MEAN CHANGE		MEAN CHANGE
	N	%	%	£	%	£	%	£
REG								
NORTHERN	3631	3.7	19	203	-4	-48	23	251
YORKSHIRE & HUMBERSIDE	11676	12.0	19	196	-0	-5	20	200
EAST MIDLANDS	8171	8.4	24	259	-0	-2	24	262
EAST ANGLIA	3966	4.1	26	298	6	71	20	227
INNER LONDON	5551	5.7	30	410	8	111	22	299
OUTER LONDON	9816	10.1	16	269	5	78	11	191
REST OF THE SOUTH EAST	16601	17.1	20	286	5	70	15	216
SOUTH WEST	8758	9.0	24	313	3	45	21	268
WEST MIDLANDS	10930	11.2	12	162	-7	-94	18	256
NORTH WEST	18219	18.7	26	262	-2	-26	28	287
ALL	97321	100.0	21	260	1	15	19	244

TABLE 1.2 - By Size of Change - actual bills after transitional arrangements on both business rates and community charge

SMALL COMPOSITE SHOPS: RATE BILLS IN 1990/91 PRICES
USING A SAMPLE OF 104,668 (FROM TOTAL POP FOR E/W OF 117,378)

NAT ENGLAND

Size of Change in Tax Bill	N	%	ACTUAL OVERALL CHANGE IN TAX %	ACTUAL OVERALL CHANGE IN TAX MEAN CHANGE £	ACTUAL CHANGE DUE TO BUSINESS RATE %	ACTUAL CHANGE DUE TO BUSINESS RATE MEAN CHANGE £	ACTUAL CHANGE DUE TO COMM CHARGE %	ACTUAL CHANGE DUE TO COMM CHARGE MEAN CHANGE £
CHANGE								
-50% OR MORE	81	0.1	-81	-5977	-0	-32	-80	-5945
-5% TO -50%	6436	6.6	-12	-288	-9	-222	-3	-66
LESS THAN +/- 5%	8199	8.4	0	1	-7	-143	7	144
5% TO 50%	59759	61.4	24	311	4	53	20	258
50% TO 100%	19365	19.9	64	389	7	43	57	346
100% OR MORE	3481	3.6	126	426	8	27	117	398
ALL	97321	100.0	21	260	1	15	19	244

TABLE 2.1 - By Region, full bills before transitional arrangements

SMALL COMPOSITE SHOPS: RATE BILLS IN 1990/91 PRICES
USING A SAMPLE OF 104,668 (FROM TOTAL POP FOR E/W OF 117,378)

NAT ENGLAND

			FULL OVERALL CHANGE IN TAX		FULL CHANGE DUE TO BUSINESS RATE		FULL CHANGE DUE TO COMM CHARGE	
	N	%	%	MEAN CHANGE £	%	MEAN CHANGE £	%	MEAN CHANGE £
REG								
NORTHERN	3631	3.7	22	236	-7	-75	28	311
YORKSHIRE & HUMBERSIDE	11476	12.0	34	342	7	75	26	268
EAST MIDLANDS	8171	8.4	36	396	7	76	29	320
EAST ANGLIA	3966	4.1	55	627	31	352	24	274
INNER LONDON	5551	5.7	87	1197	59	810	28	388
OUTER LONDON	9818	10.1	41	685	23	382	18	303
REST OF THE SOUTH EAST	16601	17.1	39	569	21	302	18	267
SOUTH WEST	8758	9.0	44	565	18	236	25	329
WEST MIDLANDS	10930	11.2	6	77	-17	-236	22	313
NORTH WEST	18219	18.7	35	361	-2	-24	38	385
ALL	97321	100.0	37	470	12	153	25	317

TABLE 2.2 - By Size of Change, full bills before transitional arrangements

SMALL COMPOSITE SHOPS: RATE BILLS IN 1990/91 PRICES
USING A SAMPLE OF 104,668 (FROM TOTAL POP FOR E/W OF 117,378)

NAT ENGLAND

Size of Change in Tax Bill	N	%	FULL OVERALL CHANGE IN TAX		FULL CHANGE DUE TO BUSINESS RATE		FULL CHANGE DUE TO COMM CHARGE	
			%	MEAN CHANGE £	%	MEAN CHANGE £	%	MEAN CHANGE £
CHANGE2								
-50% OR MORE	238	0.2	-67	-3634	-30	-1623	-37	-2010
-5% TO -50%	11318	11.6	-21	-454	-27	-589	6	135
LESS THAN +/- 5%	4934	5.1	0	1	-12	-203	12	204
5% TO 50%	32252	33.1	26	375	6	92	20	283
50% TO 100%	27806	28.6	70	716	34	348	36	368
100% OR MORE	20773	21.3	144	951	76	497	69	454
ALL	97321	100.0	37	470	12	153	25	317