23A

PRIME MINISTER

THE COMMUNITY CHARGE

You are meeting colleagues tomorrow - Chancellor, Chief Secretary, Chief Whip, Mr Patten, Mr Portillo and the Lord President - for a further discussion on the community charge.

I attach the new Cabinet Office paper (Flag A) and the Cabinet Office brief (Flag B). At Flag C is a minute from Mr Patten (just arrived).

The paper marks an important step forward. First there is only one legislative proposal on the table - the enhanced capping regime worked out last week. Secondly, at Mr Patten's insistence, the paper also includes tables showing possible combinations of the Government's assessment of LAs need to spend (TSS); the target community charge (CCSS); actual forecast LA spending; actual forecast community charges; and AEF.

The aim of the discussion is to see whether decisions can be reached on:

(i) whether to pursue enhanced capping with legislation next year;

(ii) what in broad terms should be the shape of next year's grant settlement.

A realistic objective might be to see whether an understanding can be reached that the enhanced capping regime should be enacted subject to agreement on a satisfactory grant settlement.

Overall approach

Mr Patten's position is no legislation; plus a generous settlement to keep down community charges; and aim to shift blame from central government to local authorities, if there is overspending and community charges average over £400.

B

The merits of the approach are that it avoids difficult and potentially controversial legislation; and, if successful, it would validate the existing community charge regime.

The disadvantages lie in the substantial political and financial risks. It gives no certainty about spending or community charges: there is very little accountability next year because there are few elections; the complexity of the safety net changes will provide an excuse for authorities to raise spending and charges; and the political complexion of the large spending authorities is not promising.

The enhanced capping regime:

- would allow central government to cap all LAs spending at 5 per cent above SSA;

- would therefore given an incentive to all LAs to keep down spending, so as to avoid being capped;

- would be little used if LAs are thereby encouraged to budget modestly;

- would provide a long stop, to rein back spending and community changes if LAs do spend up irresponsibly;

- would enhance and deepen accountability through the referenda (further discouraging LAs from risking being capped);

- would therefore be difficult to object to politically.

The disadvantages are the need to legislate; this is difficult practically; and referenda or community charge polls represent unchartered territory.

The Settlement

The Chancellor's line is to support the enhanced capping regime

and a low grant settlement for next year. The capping regime and low grant would keep down the spending of local authorities. Low grant would avoid restricting his room for manoeuvre on income taxes next April. But too low a grant settlement will mean high charges.

The Treasury negotiating position is likely to be that the Government cannot afford more than an extra £1.5 billion. (All figures are on top of the £1.3 billion already in the base line for extra AEF; cover England only; are on the basis of existing functions; and exclude extra transitional relief etc.)

The Environment Secretary is seeking around £3 billion extra, on the basis of the present regime i.e. no legislation.

It is unclear whether Mr. Patten can be brought to accept the enhanced capping regime and the need for legislation. But both he and his officials have hinted that he might accept the legislation if two conditions are met:

(i) the settlement must be realistic in terms of the target CCSS and acknowledged local authority need to spend; and

(ii) there must be sufficient grant to keep down actual community charge levels on forecast actual spending levels.

The Lord President's position is not clear. But he too might be brought to accept the enhanced capping regime, provided the grant is sufficient: that would be consistent with his remarks at earlier discussions.

Finally, as you know, the Chief Whip is reluctant to take legislation but indicated willingness to proceed if the referendum provision were dropped. In fact, Mr. Patten will certainly want the referendum element of the package in place.

D

Conclusion

The enhanced capping regime should bring acceptable community charges next year for three reasons:

a) LAs will budget lower to avoid being capped (and face referenda);
b) capping can be more extensive;
c) more grant can be put in, because it will lead to lower community charges, not higher spending.

Y

I doubt whether the complex tables in annex C (or Mr Patten's promised note) need to be mastered. It seems unlikely the meeting will get down to discussing detailed numbers on grant. (The Chancellor wants the Chief Secretary to take this on.) But it is important to beware of direct comparisons between numbers of LAs capped under the no legislation and legislation approaches respectively. (See marginal note on Cabinet Office brief). Point a) above is crucial: with legislation, LAs in general are likely to budget lower.

My own view (shared privately by Mr Wilson and Mr Owen) is that the Treasury must make some more grant available. A realistic settlement requires:

- a CCSS for 1991-92 that is believable by the public; that means a cash figure at or only a little below the current charge of £363 i.e. around £350;

- an increase in TSS that means achievable SSA targets for individual LAs: in particular, it is necessary that, backbenchers, can expect their LAs to escape capping at SSA + 5 per cent;

- allowing for LA actual spending rising by a minimum of 8 or 9 per cent in cash terms, and most likely at 10 per cent: (without the enhanced capping regime, Mr. Patten acknowledged last week the figure would be 12 or 13 per cent);

- keeping actual community charges down below an average of £400 - perhaps constant in real terms, say around £380.

On this basis, the position can only be squared with an injection of about £2¼ billion or a little more on AEF. The Government can only afford this level of settlement with enhanced capping in place to ensure acceptable community charges. The corollary is that, without this sort of settlement, it cannot secure the necessary legislation. And without the legislation, it cannot be sure of either acceptable spending or community charges.

You will however not wish to be specific about numbers at this stage: and the Chief Secretary will want room to negotiate an overall package, i.e. extra grant, money for transitional relief and other changes. But some hint about the broad terms of a realistic settlement are probably necessary to get support from Mr. Patten, the Lord President and Chief Whip for the legislation.

BHP

BARRY H. POTTER
12 June 1990
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SECRET AND PERSONAL

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-270

MR. B. POTTER

THE COMMUNITY CHARGE

I attach a paper for discussion at the Prime Minister's meeting tomorrow. It has been prepared in consultation with the Treasury and Department of the Environment.

2. I would be grateful if recipients would ensure that the paper is not copied without their authority and is seen only by those who need to do so.

3. I am copying this minute and the attachment to the private secretaries to the Lord President, the Chancellor of the Exchequer, the Secretary of State for the Environment, the Chief Secretary, the Chief Whip and the Minister for Local Government, Mr. Portillo.

R. T. J. WILSON
12 June 1990

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B



# THE COMMUNITY CHARGE

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Note by the Cabinet Office

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Previous papers have set out options for keeping down local authority expenditure and community charges in 1991-92. Ministers may now wish to draw the threads together and consider their game plan for next year. There are three main elements:-

i. the possibility of legislation next session to strengthen capping powers and introduce referendums;

ii. the settlement of Aggregate External Finance (AEF) for next year including the level of grant; and

iii. measures to soften the impact of the community charge on particular groups, in particular through changes to transitional relief and the standard community charge.

These elements are considered in turn below.



**Overview**

2. Community charges are not determined by the Government. They depend on local authorities' own budgetting decisions and there can be no guarantee that any particular level of AEF will result in particular levels of community charge. The Department of the Environment calculate on the basis of material from service departments that local authority spending would need to rise from £36.6 billion to £39.3 billion next year in order to provide the current volume of services without any compensating savings; and that the actual outcome could be £40-41 billion or more.



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**Legislation**

3. One option would be to legislate to enable the Government to intervene if local authority spending next March threatened to get out of hand. There are a number of approaches which might be adopted in legislation. Annex A spells out an approach suggested by the Chancellor of the Exchequer in his letter of 5th June. This was based on stronger community charge capping powers which would enable the Government to cap any authority which set its budget more than 5% above its SSA, coupled with referendums for those capped authorities which wished to spend at a level higher than that proposed by the Secretary of State.

4. If Ministers were to decide to legislate on these lines they might wish in particular to consider the variant in paragraph 3 of the Annex. Under this approach local authorities selected for the new form of capping would be required to set their initial charges at the level determined by the Secretary of State. This would mean that any referendum would be based on a local authority proposal to increase charges beyond the cap set by the Secretary of State.



**No legislation**

5. The alternative to legislation 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 higher charge levels. This would be backed as far as possible by tougher use of existing capping powers as discussed in earlier papers. It would have the advantage of not requiring legislation next session.

6. Earlier legal advice about the scope for the more stringent application of the present capping system, as well as possible legislative changes, is appended for convenience in Annex B.

D



**The AEF settlement**

7. On present plans the Government will announce in July its decision on Total Standard Spending (TSS) for local authorities in 1991-92. This is its own judgement about what the total of spending by local authorities should be to provide a standard level of service. It will also need to announce how much of the total should be financed by AEF, the rest being financed by the community charge. This latter amount, divided by the number of community charge payers, will produce a figure for the community charge at standard spending (the CCSS).

8. In reaching their decisions on the TSS and the level of AEF Ministers will wish to have in mind what amount of grant is affordable in the context of this year's Public Expenditure Survey. They will also wish to consider what actual level of community charges would be likely to occur at different levels of government grant and with different rates of growth in local authority spending.

9. The tables in Annex C illustrate some possible outcomes. The figures assume:

i. that responsibility for community care is <u>not</u> transferred to local authorities next year; and

ii. that local authorities taken together make no use of their balances in 1991-92. In practice, use of balances could make a significant difference to the figures. Every £500 million drawn from or added to balances could reduce or increase community charges by £14 per head on average.

**Measures to help individuals**

10. Whether or not there was legislation, the announcement of the AEF settlement in July could be accompanied by a package of measures to tackle the perceived unfairness of the community charge and the unified business rate (UBR) on particular groups of individuals. These options have been discussed in earlier papers and are summarised in Annex D.

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**Next steps**

11. Ministers will wish:

i. to consider whether work should proceed on the introduction of legislation next Session on the lines set out in Annex A. If so there will need to be early consultation with the Home Office about referendums. Consultations with the Scottish and Welsh Offices will also be needed on how far any legislative changes should apply also to Scotland and Wales;



ii. to take a preliminary look at the issues arising in this year's AEF settlement;

iii. to consider what measures should be included in a package to help individuals. Depending on what is decided, consultations will be needed with the Department of Social Security.

**Cabinet Office**
**12 June 1990**







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SECRET

(Prime Minister
You have read this
before)

ANNEX A BTP 12/6

THE COMMUNITY CHARGE

ENHANCED COMMUNITY CHARGE CAPPING COUPLED WITH REFERENDUMS

This note sets out a new option for 1991-92 and subsequent years. It is based on stronger community charge capping powers which could be applied to substantially more authorities than at present, coupled with referendums to enhance local accountability.

2. The main features would be as follows.

i. The Government would make a conventional RSG settlement. There would be consultative statements in the normal way in July and October, followed by the formal settlement in December. Each authority's SSA would then be known.

ii. The statement in July would be accompanied by an announcement about the outcome of the present review. The Government would then bring forward legislation at the beginning of the 1990-91 Session to amend the community charge capping powers. The revised powers would explicitly allow the Secretary of State to cap authorities spending more than 5% above SSA, but there would be a new safety valve, based on referendums. The powers would apply to major authorities: those spending less than £15m would continue to be exempt. The Bill would need to include a definition of SSAs, which would need to embrace the 1991-92 SSAs already set in December.

iii. Authorities would proceed to set their budgets (which they are currently required to do by early March) and issue community charge bills consistent with them. Those setting budgets below SSA plus 5% would know that they were exempt from capping. The remainder would be uncertain as to whether they would be capped or not and would have to make a judgement about whether, if they were, they could win a referendum.

iv. The Secretary of State would consider the budgets of all authorities with budgets above SSA plus 5%, and choose selection criteria for capping, on the basis of general principles. The condition that spending be excessive would be dropped from the legislation. The legislation would need to be drafted in a way which would enable him, for instance, to choose all authorities more than 5% over SSA, or to set a higher limit (eg 8% over SSA), or more complex criteria (eg 5% above SSA and an increase of more than 7% in cash over the previous year's budget). The present power to cap authorities solely on the basis of an excessive increase in spending (irrespective of the absolute level in relation to SSA) would disappear.

v. The Secretary of State would then set precept limits for all capped authorities. The limits could be set either according to general principles or perhaps in the light of the circumstances of each authority - a decision on this point would be needed before legislation was drafted. The limits, and any principles on which they were based, would be contained in an Order subject to Affirmative Resolution, without going through the present designation procedure which allows authorities to adopt delaying tactics.

vi. Each capped authority would then have a fixed period (eg 28 days) to decide how to proceed.

vii. Its first option would be to accept the cap. In that case, the authority would have to revise its budget and issue lower substituted community charge bills in place of the original bills. If the capped authority were the county it would pay for re-billing, although the work would be done by the districts.

viii. The alternative would be for the authority to hold a referendum (a "community charge poll"), asking its electors to choose between the original budget and community charge (or any lower figures which it now proposed) and the Secretary of

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State's cap. The referendum would have to be held within a further period (eg 21 days as a minimum). A decision would be needed on a number of matters, including who was eligible to vote: either all electors, all chargepayers or all personal chargepayers. Referendums would be organised by the lower tier authorities (eg the districts), but if the capped authority were the county it would pay the costs.

ix. The result of the poll would determine the next step. If chargepayers voted in favour of the original budget, the existing community charge bills would stand. If chargepayers voted for a lower budget proposed by the council, it would be obliged to revise its budget and issue lower substituted bills in line with that figure. But if chargepayers voted against the council, it would be obliged to cut the budget and issue new bills in line with the Secretary of State's cap.

x. There would be no power for a council to hold a second referendum, or for the Secretary of State to grant derogations. If the authority found that it could not live within the cap figure, it would need to exercise its existing right to ask the Secretary of State to consent to temporary borrowing for revenue purposes. Such borrowing would have to be repaid in the following year, when it could be taken into account in setting the cap figures.

3. A variant. The scheme described above follows the framework of the existing powers: authorities set their own budgets and community charges, but if they are capped they are obliged to issue new bills at the level set by the Secretary of State. Another option, which might be more attractive under the new scheme, would be to require authorities to set their initial community charges at the level set by the Secretary of State, and then to hold a referendum seeking their chargepayers' endorsement for a subsequent increase in bills to the level they propose. This might however mean delaying the first community charge bills for authorities liable to capping by a few weeks. Its advantage would be that chargepayers were asked to vote for an increase in

their bills from the Secretary of State's figure to the council's higher figure, rather than vice versa. The implications for the RPI are being explored.

4. Timing. Ideally the legislation would be introduced as early as possible in November 1990 and enacted by the end of February 1991, though this has not yet been discussed with the Business Managers. It would be all the more important to meet this timetable if Ministers wished to adopt the variant described in paragraph 3. So far as the mechanics of capping are concerned, the major constraints on timing are the current statutory deadlines for setting and notifying budgets and precepts and the Easter Recess. At present precepting authorities are required to set their budgets and notify charging authorities of their precepts by 1 March, and to notify the Secretary of State by 8 March. Charging authorities are required to set their budgets by 11 March, and to notify the Secretary of State by 18 March. In 1991 the Easter Recess is likely to start on 27 or 28 March; and Parliament would probably re-assemble on 8 April.

5. The attached chart shows a possible timetable for 1991-92 based on the existing deadlines. Events on the chart are shown as occurring on the last possible date, but in some authorities they will occur earlier. The timetable has again not been discussed with the Business Managers, or the Joint Committee on Statutory Instruments. It will be seen that it involves making and laying the capping order during the recess, arranging for it to be scrutinised by the Joint Committee the day after Parliament re-assembles, and obtaining the approval of the House of Commons the following day. If this can be achieved referendums would have been held in all authorities by 29 May (allowing 28 days for decisions on how to react to the Secretary of State's decision and a further 21 days for arranging and holding a referendum).

6. In future years it might be possible to advance this timetable by requiring all authorities to set their budgets by, say, mid-

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February. This requirement would have to be imposed in the legislation.

**CABINET OFFICE**
12 June 1990

| Date | Precepting authorities | Charging authorities | Secretary of State | Parliament | Billing on Original Budgets | Billing on Capped Budgets* |
|---|---|---|---|---|---|---|
| MARCH | | | | | | |
| 1 | Set budgets. Notify Charging authorities. | | | | | |
| 8 | Notify SofS | | } | | | |
| | | | } | | | |
| 11 | | Set budgets. | } | | | |
| | | | } Consider | | | |
| 18 | | Notify SofS | } budgets. | | | |
| | | | } Make & | | | |
| 27 | | | } lay order | } | | |
| | | | } | } | | |
| APRIL | | | } | } | | |
| | | | } | } Easter recess | | |
| 1 | | | } | } | Charging | |
| | | | } | } | authorities | |
| 8 | | | } | } | set charge & begin billing | |
| 9 | | | | JCSI | | |
| 10 | } | | | Debate | | Billing on basis of capped charges begins |
| | } | | | | | |
| MAY | } Decide on action if capped | | | | | |
| | } (both tiers) | | | | | |
| 8 | } | | | | | |
| 29 | | Hold referendums | | | | |
| 30 | | | | | Begin re-billing if necessary (both options) | |

*In areas where neither the precepting authorities nor the charging authority had a budget which exceeded SSA by more than 5% billing would proceed on the usual timescale.

Prime Minister

Annex A is important: I have highlighted the main points. Annex B is low-key and correctly "nothing can be done" in tone: but annex A to annex B is a useful summary of new burdens. On page 43 is a new improved lay-out for ANNEX A community charge bills.

Prime Minister
Since this annex was identical to the earlier paper, I substituted the version you have already marked ANNEX B.

BTP 1/6

The remaining material on other issues like transitional relief can be left over till the next round of discussions.

BTP
1/6

**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 Energy 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 decisions are 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 addition 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 them 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 four 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 C

DESCRIPTION OF TABLES

1. The attached tables summarize the potential effects of capping in England, on various assumptions about the level of TSS and local authority spending in 1991/92. They also provide ready reckoners for the Community Charge for Standard Spending (CCSS) - the headline figure which the Government will announce in July - and for average community charges. None of the figures make any allowance for the transfer of responsibility for Community Care to local authorities.

2. The main aggregates relating to local authority spending are:

- Total Standard Spending (TSS): the Government's assessment of the amount which it would be appropriate for local authorities taken together to spend on providing services. Together with Aggregate Exchequer Finance (AEF) (see below) this determines the CCSS;

- Local authority budgets for 1991/92: the amount which local authorities taken together might actually budget to spend on services in 1991/92. If they make no use of balances in 1991/92, this (together with AEF) will determine the actual average community charge in 1991/92. If authorities budget to spend more than the amount the Government thinks appropriate - TSS - then charges will be correspondingly higher than the CCSS;

- Aggregate External Finance (AEF): this is the amount of finance provided to local authorities from business rates and grant. For given assumptions about spending it determines the level of the CCSS and of actual charges.

3. The relationship between TSS and actual budgets is important both for the credibility of the Government's SSAs and the credibility of the CCSS which will be seen as the Government's forecast of community charges. It is also important to the savings which might be achieved from capping (see below).

4. Five levels of TSS have been considered in the following tables, ranging from £35.4bn (3% below 1990/91 budgets) to £40.5bn (10½% above 1990/91 budgets). Five levels of assumed 1991/92 budgets have also been considered, ranging from £38.4bn (5% above 1990/91 budgets) to £41.7bn (14% above 1990/91 budgets). Throughout the analysis it is assumed that local authorities taken together make no use of balances in 1991/92. If they drew down their balances by £500m in 1991/92 then charges would be £14 lower on average. The pattern of use of balances in recent years has been as follows (-) indicates drawings from balances and (+) adding to balances):

| | At budget | Outturn |
|---|---|---|
| 1985/86 | £-789m | £ 259m |
| 1986/87 | £-876m | £ 390m |
| 1987/88 | £-850m | £ -20m |
| 1988/89 | £-876m | £ 5m |
| 1989/90 | £-889m | £-915m (revised budget estimates) |
| 1990/91 | £-643m | |

5. TABLE 1: is a ready reckoner showing the CCSS for 1991/92 which would result from the different combinations of TSS and AEF. The level of TSS increases from left to right on the table. The first column shows levels of AEF and the second column shows what those levels represent in terms of increases from the Public Expenditure White Paper baseline of £24.2bn (adjusted for change in function). The table shows a range of levels of AEF from no increase over the white paper provision to an increase of £3.5bn, in steps of £0.5bn. This table shows the figures which would be announced in July and interpreted as the Government's forecast of charges in 1991/92 for a reasonable level of spending.

6. TABLE 2: is a ready reckoner showing the average charge for 1991/92 which would result from the different combinations of local authority budgets and AEF. It is in the same format as table 1. It assumes no use of balances and shows the actual average charge which would arise for the range of 1991/92 budget mentioned in paragraph 4. These are the sort of figure which would emerge in the spring of 1991. If TSS and 1991/92 budgets were at the same level then the average charge as shown in table 2 would be about £10 lower than the CCSS for that same level of spending, mainly because the special grants for area protection and ILEA (£535m in total) do not go to reduce the CCSS but will reduce actual charges.

7. TABLE 3: looks for each combination of TSS and assumed spending at the possible impact of enhanced capping powers allowing caps to be set at 5% above SSA. For each TSS/spending combination the table shows:

(a) the number of authorities that would be spending more than 5% above SSA and which would have budgets above £15m. (The number of authorities with budgets above £15m ranges from 154 with the lowest spending assumption to 158 with the highest);

(b) the amount of the spending by these authorities in £ million which is more than 5% above SSA;

(c) an illustrative estimate of the maximum amount of that excess which it might be possible to capture by capping. This is estimated by assuming that capping can only take spending for individual authorities down to the higher of SSA plus 5%, or a minimum allowed cash increase from 1990/91 budgets. The minimum increase is 0% with spending assumption I, 3% with assumption II and 5% for the other 3 assumptions. So with spending assumption I, caps for 1991/92 would be set at the higher of 5% above 1991/92 SSA or 1990/91 budgets (a 5% real terms reduction).

8. TABLE 4: is similar to table 3 except that it is based on operation of the existing 'absolute excessiveness' arm of the capping powers. This would mean that the maximum allowed reduction would be to 12½% above SSA. The table is otherwise based on the same assumptions as table 2. But existing powers would also allow authorities to be capped on the basis of an excessive increase from year to year, whether or not they were spending more than 12½% above SSA: this would allow more authorities to be capped on the higher spending assumptions. On the assumed blanket increases in spending shown here it is possible that, on spending assumption V, all 158 authorities with budgets over £15m could be brought within the scope of capping by

the excessiveness criterion. We have no reliable basis on which to model the variation in spending increase between authorities in order to see how many might realistically be brought into capping as a result of excessive increases.

9. TABLE 5: sets out the assumptions about the aggregates in a way which identifies the increases from previous years' TSS, budgets and income. The top section (table 5A) shows the five levels of TSS in terms of percentage increases from equivalent aggregates in 1990/91 and 1989/90. Table 5B similarly shows the five levels of assumed spending in relation to previous aggregates. Table 5C shows the relationship between the assumed levels of spending and TSS, indicating the overall percentage overspend assumed with each combination.

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**TABLE 1: LEVELS OF TSS AND AEF:**
**IMPLICATIONS FOR COMMUNITY CHARGE FOR STANDARD SPENDING (CCSS)**

| AEF | Increase over baseline | Level of TSS: A £35.4bn | B £36.6bn | C £38.4bn | D £39.5bn | E £40.5bn |
|---|---|---|---|---|---|---|
| £24.2bn | £0.0bn | £330 | £364 | £414 | £445 | £473 |
| £24.7bn | £0.5bn | £316 | £350 | £400 | £431 | £459 |
| £25.2bn | £1.0bn | £302 | £336 | £386 | £417 | £445 |
| £25.7bn | £1.5bn | £288 | £322 | £372 | £403 | £431 |
| £26.2bn | £2.0bn | £274 | £308 | £358 | £389 | £417 |
| £26.7bn | £2.5bn | £260 | £294 | £344 | £375 | £403 |
| £27.2bn | £3.0bn | £246 | £280 | £330 | £361 | £389 |
| £27.7bn | £3.5bn | £232 | £266 | £316 | £347 | £375 |

Notes:

| | |
|---|---|
| Total relevant population | 35.65m |
| Payments to specified bodies | £16.0m |
| Area protection grant | £465.8m |
| Inner London education grant | £70.0m |

These figures assume no transfer of responsibility for Community Care in 1991/92

**TABLE 2: LEVELS OF TSS AND AEF:**
**IMPLICATIONS FOR AVERAGE COMMUNITY CHARGE**

| | Increase over | Level of 1991/92 budgets | | | | |
|---|---|---|---|---|---|---|
| | | I | II | III | IV | V |
| AEF | baseline | £38.4bn | £39.5bn | £40.5bn | £41.0bn | £41.7bn |
| £24.2bn | £0.0bn | £405 | £436 | £465 | £479 | £499 |
| £24.7bn | £0.5bn | £390 | £422 | £450 | £465 | £485 |
| £25.2bn | £1.0bn | £376 | £408 | £436 | £450 | £470 |
| £25.7bn | £1.5bn | £362 | £393 | £422 | £436 | £456 |
| £26.2bn | £2.0bn | £348 | £379 | £408 | £422 | £442 |
| £26.7bn | £2.5bn | £334 | £365 | £393 | £408 | £428 |
| £27.2bn | £3.0bn | £319 | £351 | £379 | £393 | £413 |
| £27.7bn | £3.5bn | £305 | £336 | £365 | £379 | £399 |

Notes:

| | |
|---|---|
| Total relevant population | 35.10m |
| Payments to specified bodies | £16.0m |
| City offset | £30.0m |
| Assumed use of balances | £0.0m |

These figures assume no transfer of responsibility for Community Care in 1991/92

If TSS and budgets were at the same level then the average charge shown in this table would be about £10 lower than the CCSS shown in Table 1. This is mainly because special grants reduce average charges but not the CCSS.

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**TABLE 3: POSSIBLE EFFECTS OF AN ENHANCED CAPPING SCHEME WITH LEGISLATION ON DIFFERENT ASSUMPTIONS ABOUT SPENDING AND TSS**

| Level of 1991/92 budgets | Level of TSS | | | | |
|---|---|---|---|---|---|
| | A | B | C | D | E |
| | £35.4bn | £36.6bn | £38.4bn | £39.5bn | £40.5bn |
| **I. Budgets 5% above 1990/91 (£38.4bn)** | | | | | |
| a. Number of authorities | 110 | 89 | 60 | 47 | 36 |
| b. Spending over 5% above SSA | £1520m | £960m | £460m | £300m | £210m |
| c. Maximum effect of caps | £710m | £470m | £230m | £140m | £70m |
| **II. Budgets 8% above 1990/91 (£39.5bn)** | | | | | |
| a. Number of authorities | 140 | 108 | 79 | 61 | 51 |
| b. Spending over 5% above SSA | £2300m | £1470m | £750m | £480m | £330m |
| c. Maximum effect of caps | £1070m | £710m | £380m | £240m | £150m |
| **III. Budgets 10.5% above 1990/91 (£40.5bn)** | | | | | |
| a. Number of authorities | 151 | 139 | 95 | 78 | 63 |
| b. Spending over 5% above SSA | £3140m | £2120m | £1110m | £740m | £500m |
| c. Maximum effect of caps | £1550m | £1110m | £610m | £420m | £280m |
| **IV. Budgets 12% above 1990/91 (£41.0bn)** | | | | | |
| a. Number of authorities | 154 | 145 | 106 | 88 | 70 |
| b. Spending over 5% above SSA | £3580m | £2520m | £1330m | £900m | £630m |
| c. Maximum effect of caps | £1990m | £1510m | £830m | £580m | £400m |
| **V. Budgets 14% above 1990/91 (£41.7bn)** | | | | | |
| a. Number of authorities | 157 | 149 | 114 | 96 | 82 |
| b. Spending over 5% above SSA | £4210m | £3100m | £1700m | £1170m | £820m |
| c. Maximum effect of caps | £2620m | £2100m | £1200m | £850m | £590m |

NB: Not all of the spending more than 5% above SSA could be saved by capping. For many authorities the required reductions in spending would be impossible. At the most favourable, about 60% of savings might be achieved. The figures for the maximum effect of caps are based on the assumptions set out in paragraph 7(c).
Any de-minimis provisions would reduce the potential savings

**TABLE 4: POSSIBLE EFFECTS OF EXISTING POWERS (EXCESSIVE SPENDING CRITERION) ON DIFFERENT ASSUMPTIONS ABOUT SPENDING AND TSS**

| Level of 1991/92 budgets | Level of TSS | | | | |
|---|---|---|---|---|---|
| | A | B | C | D | E |
| | £35.4bn | £36.6bn | £38.4bn | £39.5bn | £40.5bn |
| **I. Budgets 5% above 1990/91 (£38.4bn)** | | | | | |
| a. Number of authorities | 71 | 53 | 29 | 27 | 25 |
| b.Spending over 12.5% above SSA | £630m | £370m | £190m | £150m | £130m |
| c. Maximum effect of caps | £320m | £180m | £70m | £50m | £40m |
| **II. Budgets 8% above 1990/91 (£39.5bn)** | | | | | |
| a. Number of authorities | 90 | 68 | 46 | 30 | 29 |
| b.Spending over 12.5% above SSA | £990m | £610m | £290m | £200m | £160m |
| c. Maximum effect of caps | £490m | £310m | £130m | £70m | £50m |
| **III. Budgets 10.5% above 1990/91 (£40.5bn)** | | | | | |
| a. Number of authorities | 109 | 87 | 60 | 47 | 32 |
| b.Spending over 12.5% above SSA | £1440m | £900m | £440m | £290m | £210m |
| c. Maximum effect of caps | £780m | £510m | £240m | £140m | £80m |
| **IV. Budgets 12% above 1990/91 (£41.0bn)** | | | | | |
| a. Number of authorities | 117 | 96 | 64 | 53 | 39 |
| b.Spending over 12.5% above SSA | £1710m | £1090m | £530m | £350m | £240m |
| c. Maximum effect of caps | £1050m | £700m | £330m | £200m | £120m |
| **V. Budgets 14% above 1990/91 (£41.7bn)** | | | | | |
| a. Number of authorities | 140 | 107 | 75 | 61 | 49 |
| b.Spending over 12.5% above SSA | £2190m | £1410m | £710m | £460m | £330m |
| c. Maximum effect of caps | £1530m | £1010m | £510m | £310m | £200m |

NB: More authorities and larger amounts of spending could be brought into capping if the excessive increase criterion were also used, but this cannot be modelled for projected years.

Not all of the spending more than 12.5% above SSA could be saved by capping. For many authorities the required reductions in spending would be impossible. At the most favourable, about 60% of savings might be achieved. The figures for the maximum effect of caps are based on the assumptions set out in paragraph 7(c).
Any de-minimis provisions would reduce the potential savings

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**TABLE 5: RELATIONSHIP BETWEEN ASSUMED TSS AND BUDGETS**

**TABLE 5A: ASSUMED INCREASES IN TSS**

| | | Level of TSS | | | | |
|---|---|---|---|---|---|---|
| | | A | B | C | D | E |
| | | £35.4bn | £36.6bn | £38.4bn | £39.5bn | £40.5bn |
| Increase over: | | | | | | |
| 1990/91 TSS | (£32.8bn) | 8% | 12% | 17% | 20% | 23% |
| 1990/91 income | (£35.9bn) | -1% | 2% | 7% | 10% | 13% |
| 1990/91 spending | (£36.6bn) | -3% | 0% | 5% | 8% | 11% |
| 1989/90 spending | (£31.6bn) | 12% | 16% | 22% | 25% | 28% |

**TABLE 5B: ASSUMED INCREASES IN SPENDING**

| | | Level of 1991/92 budgets | | | | |
|---|---|---|---|---|---|---|
| | | I | II | III | IV | V |
| | | £38.4bn | £39.5bn | £40.5bn | £41.0bn | £41.7bn |
| Increase over: | | | | | | |
| 1990/91 TSS | (£32.8bn) | 17% | 20% | 23% | 25% | 27% |
| 1990/91 income | (£35.9bn) | 7% | 10% | 13% | 14% | 16% |
| 1990/91 spending | (£36.6bn) | 5% | 8% | 11% | 12% | 14% |
| 1989/90 spending | (£31.6bn) | 22% | 25% | 28% | 30% | 32% |

**TABLE 5C: ASSUMED 1991/92 AVERAGE OVERSPENDS (BUDGETS OVER TSS)**

| Level of 1991/92 budgets | Level of TSS | | | | |
|---|---|---|---|---|---|
| | A | B | C | D | E |
| | £35.4bn | £36.6bn | £38.4bn | £39.5bn | £40.5bn |
| I. £38.4bn (5% increase) | 8% | 5% | 0% | -3% | -5% |
| II. £39.5bn (8% increase) | 12% | 8% | 3% | 0% | -2% |
| III. £40.5bn (10.5% increase) | 14% | 11% | 5% | 3% | 0% |
| IV. £41.0bn (12% increase) | 16% | 12% | 7% | 4% | 1% |
| V. £41.7bn (14% increase) | 18% | 14% | 9% | 6% | 3 |

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ANNEX D

# MEASURES TO HELP INDIVIDUALS

This annex summarises possible measures to tackle the perceived unfairness of the community charge and the unified business rate, discussed in earlier papers.

## Transitional relief scheme

2. 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 maintaining entitlements in 1991-92 and 1992-93 at the existing level.

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, from £3 per week to £2 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 for England only are set out in Table 1 attached.

3. 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, though no decision has yet been reached on the possible offsetting savings. 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**

4. 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.

The costs relate to England alone. 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.

**A higher rate charge**

5. A higher rate charge would be a supplementary levy broadly equal to the average community charge, levied on individuals with

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incomes above a certain amount. It would be charged at a flat rate and collected by the Inland Revenue alongside higher rate income tax. It might apply to those with taxable incomes above £40,000, raising about £150m in 1991-92. Ministers will wish to consider whether to adopt such a charge.

**Students**

6. 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 other chargepayers £14m per annum, unless Ministers decided to provide additional grant.

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.

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

**Standard charges**

7. In general local authorities have discretion to set multipliers of up to twice the community charge to apply in calculating their standard charges. The Government has already announced that it will review the position and if necessary increase prescription.

8. There are a number of changes which could be made to help specific groups. These 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. The package proposed by the Department of the Environment is:

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

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

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

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

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

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

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

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

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

x. 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;

xi. as above where the standard chargepayer is the carer of the person in need of nursing care.

Ministers will wish to consider whether to adopt this package. It would also be possible to introduce a narrowly-defined hardship waiver to deal with a small number of other hard cases. But this would require primary legislation.

**Composite hereditaments**

9. 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.

10. 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 to other chargepayers).

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

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

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 per annum, or for all small composite properties about £4m per annum.

Ministers will wish to consider whether any of these options should be pursued. It might prove difficult in practice to confine any of these concessions to small shops or even to composite properties generally. Options ii. and iv. would have the advantage of being transitional.

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

| | 1991/92 | 1992/93 | 1993/94 | 1994/95 | Total |
|---|---|---|---|---|---|
| Existing scheme | 260 | 200 | 0 | 0 | 810 [1] |
| **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 |
| Reducing relief in areas contributing to safety net | -60 | -60 | -55 | -50 | -225 |
| (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 [2] | 0 | 0 | 0 | 0 | 0 |
| (vi) Multi-unit hereditaments | 85 | 85 | 70 | 60 | 300 |
| Total additional costs | 645 | 760 | 815 | 695 | 2915 |

[1] Includes £350m cost in 1990/91

[2] Unknown savings foregone in later years