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CABINET OFFICE

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Benny Acker

For info. Let me know  
if you think it's way  
off target. RJ.

C. J. S. Brearley, Esq.,  
Deputy Secretary,  
Department of the Environment,  
2 Marsham Street,  
LONDON, SW1

19 June, 1990.

Dear Chris,

THE COMMUNITY CHARGE

As promised, I attach a draft of the Cabinet Office paper for the next Ministerial meeting on Thursday. I would be grateful for comments by lunchtime tomorrow, Wednesday 20 June, so that we can get it round during the afternoon.

The main aim of the paper is to help structure the discussion. We have not yet seen the Solicitor General's advice which makes it difficult to know what to say about the "excessive increase" text.

I would be grateful if recipients would ensure that the draft is seen only by those who need to do so, and that no unauthorised copies are taken.

Copies go to Andrew Edwards, David Bostock, Nick Ilett and Andrew Hudson (HM Treasury), Neil Summerton, Ian Scotter and John Catlin (DoE), Michael Carpenter (Law Officers' Department) and to Peter Owen and Andrew Wells (Cabinet Office).

Yrs. ever,

Richard

R. T. J. WILSON

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## THE COMMUNITY CHARGE

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Note by the Cabinet Office

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We were asked to clarify the difference between using existing powers to cap local authority expenditure more toughly next year ("existing powers"), and using a new regime of capping powers plus referendums which would require legislation ("new regime"). A description of the new regime, on the lines previously discussed, is appended at annex A for convenience.

**Overview**

2. There are five main differences, discussed in turn below, which Ministers may wish to weigh up in deciding between reliance on existing powers and on a new regime:

- i. the toughness with which existing powers could in practice be used compared with a new regime;
- ii. the merits of referendums compared with derogations;
- iii. the extent to which local authorities would in practice be deterred by the two different approaches from levying high community charges;
- iv. the implications for the AEF settlement;
- v. the need for legislation.

**Toughness with which the powers could be used**

3. The tables in annex C to the Cabinet Office Note of 12 June and those attached to the Secretary of State for the Environment's minute of 12 June exemplified the effects of the following capping criteria:

i. existing powers. All authorities spending above SSA + 12.5% were assumed to be capped without a £75 per adult threshold or de minimis rule. This is the toughest possible interpretation of an excessive absolute level of spending under the existing powers, according to previous legal advice. In addition it might be possible to select further authorities which made excessive increases in spending, under the second limb of the powers. But the effects are difficult to assess in advance of 1991-92 budgets. [The Solicitor General has circulated new legal advice on the scope of this second test which indicates that it could be used much more rigorously than previously thought.]

ii. new regime. All authorities spending above SSA + 5% were assumed to be capped. This is the toughest possible use of the proposed scheme, since authorities below SSA + 5% would be exempt. There would be no power to cap authorities spending below this level, even if they made excessive increases in spending.

4. If capping were operated in this way, the new regime could be expected to yield greater savings for any given level of TSS. For example, with TSS of £38.4bn (5% above 1990-91 budgets), and with expenditure increased by 14% across the board, 114 authorities might be capped under the new regime, compared to 75 with existing powers. Under the new regime £1.7 billion of spending would be within the scope of the powers, compared with £0.7 billion under existing powers; and realisable savings might be £1.2 billion (a cut of £34 on the average community charge) compared to £0.5 billion under existing powers (a cut of £15 on the average charge). But greater cuts might be achievable with the existing powers if an excessive increase criterion were used in addition to an excessive absolute level criterion.

5. The important question is whether the powers could, and would, in fact be operated this toughly under either option. There are two main issues:

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i. political and presentational implications. The figures given above are based on the assumption that about half of all authorities with budgets over £15m would be capped using existing powers, and no less than three quarters under the new regime. In either case the list would include authorities of all types, including some who would present themselves as among the most responsible authorities. For example, on the assumptions used above, all inner London borough except Westminster would be selected under either scheme. [Other examples - eg shire counties?]

ii. manpower implications. To operate the existing powers so that 75 authorities or more were selected would put severe strain on DOE's resources, both to set the initial caps and to deal with derogations. As many as [ ] skilled staff would be needed. The new regime would also impose burdens, but to a lesser degree, because of the use of referendums rather than derogations and, to the extent that this was judged legally practicable, the setting of caps by general principles.

6. Ministers will wish to consider how toughly the powers under each option could be used in practice.

#### Merits of referendums compared with derogations

7. The use of referendums rather than derogations as a safety valve is one of the key features distinguishing the proposed new regime from the existing powers. This has three main advantages:

i. accountability. The use of referendums would allow local voters to decide whether their local authority could exceed the cap set by the Secretary of State, strengthening local accountability. In contrast, derogations weaken accountability.

ii. risk of legal challenge. Referendums would provide a

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safety valve which did not involve the Secretary of State's use of discretion. There would therefore be substantially less scope for judicial review.

iii. manpower. As noted above, a system based on referendums would substantially reduce the burdens on DOE.

8. The main disadvantages of referendums are that they would require legislation, and that they would weaken controls over public expenditure if local electors voted in favour of higher budgets and community charges.

9. Ministers will wish to consider whether the advantages of referendums outweigh the disadvantages.

#### The deterrent effect of the schemes

10. Ministers asked for advice on the possible deterrent effect of the two schemes. Both might be expected to deter some authorities from setting budgets which would make them liable for capping. The deterrent effect would however operate at different levels: under the existing powers at SSA plus 12.5%, and under the new regime at SSA plus 5%. The effect of deterrence would be some expenditure savings among authorities who were not actually selected for capping.

11. There is some evidence that a deterrent effect has operated this year, 1990-91, principally through the use of balances. If authorities had made no use of balances, no fewer than [ ] would have been liable for capping this year on the basis that their precepts or demands were more than 12.5% above SSA. In fact many of these authorities have made substantial use of balances to reduce their precepts and demands, so that only [ ] were actually liable for capping on the basis of the 12.5% rule. Similar use of balances in 1991-92 would reduce the number of authorities capped under either scheme. Every £0.5 billion drawn from balances would reduce average community charges by £14 per head.

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12. The savings shown in the tables attached to the earlier Cabinet Office Note and the Secretary of State's minute would not be affected by any deterrent effect. They assumed that authorities would make no use of balances and would all increase their expenditure by a common percentage. All authorities close to the capping criteria (SSA + 12.5% or SSA + 5%) were assumed to reduce their expenditure right down to the threshold. In practice some authorities might choose to do this in advance to escape capping, but the financial savings would be the same as if they had been capped.

#### Implications for the AEF settlement

13. It was suggested at the last Ministerial meeting that introduction of the new regime would allow the Government to make more grant available by way of TSS and AEF, because there would be greater certainty that it would feed into lower community charges rather than higher expenditure. The implications can be judged from the earlier tables, by comparing different combinations of TSS and AEF with the two schemes. For example, Table A to the Secretary of State for the Environment's minute suggested that if TSS was set at £38.4 billion, AEF was set at baseline plus £1.5 billion and actual spending was £40.5 billion, then average community charges would be £415 with existing powers and £404 with the new regime. But if the introduction of the new regime were felt to justify setting a higher TSS of £39.5 billion and a more generous AEF settlement at baseline plus £2.5 billion, then the average community charge would be £381 for the same level of actual spending.

14. Ministers will wish to consider how far the introduction of the new regime would justify a more generous settlement.

#### Need for legislation

15. The need for contentious legislation is the main disadvantage with the new regime. A Bill would be controversial, and could be expected to exacerbate the arguments about the community charge through the autumn and winter and to lead to new legal challenges

next year to test out the new powers. This needs to be set against the advantages of the new regime: the ability to cap closer to SSAs; a more secure legislative base; and the use of referendums rather than derogations as a safety valve.

16. Ministers will wish to consider whether the problems associated with legislation outweigh the advantages.

CABINET OFFICE

19 June 1990

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cc ~~Mr Potter~~  
Mr Wells

From: P F Owen  
18 June 1990

P 03691.

MR WILSON

NEW LEGISLATION ON COMMUNITY CHARGE CAPPING

1. I mentioned to you this afternoon that I had some worries about the description of the new legislation (in Annex A of the Note attached to your minute of 12 June to Mr Potter) and offered to explore them with lawyers.

2. My worries centred on 2(iv) and 2(v): the methods of selecting authorities for capping and of setting caps for them. The specific concern I had was whether it would be possible, at the limit, for the Secretary of State to operate virtually on a formulaic basis so that administrative problems for DOE associated with the exercise of the Secretary of State's discretion could be minimised.

3. I discussed this - in a non-alarmist way - with Michael Carpenter. The specific questions I put to him were:

(a) would it be possible for the Secretary of State, having announced that authorities spending more than 5% above SSA would be at risk of capping, to go ahead and cap all of them?

(b) having selected all those authorities for capping, could he then set their caps on a formulaic basis?

Mr Carpenter was more comforting on the first question than on the second.

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4. On (a), he suggested that it might be possible to frame the legislation in a way that established on the face of the statute that all authorities spending more than 5% above SSA would be selected for capping unless the Secretary of State chose to establish more lenient criteria. The only challenge that would then lie would be against a decision by the Secretary of State not to exercise his discretion; but that would be very difficult to sustain in the face of a clear intention by Parliament that he should not be obliged to do so.

5. Mr Carpenter was less sanguine about (b) - formulaic setting of caps. He took the view that unless the legislation was unusually frank - explicitly entitling the Secretary of State to set limits without regard to their attainability in the real world - it would be necessary to take account of the circumstances of individual authorities. Otherwise the decision could be challenged on the grounds that it was unreasonable to oblige the authority on the basis of an unattainable target to go to the expense and inconvenience of holding a poll.

6. At about this stage in the rate-capping legislation I was beginning to consult both Parliamentary Counsel and outside Counsel (Robert Alexander) about this sort of difficult operational issue; we shall have to do without the luxury of that sort of consultation before Thursday's meeting! My suspicion, on the basis of my cautious conversation with Michael Carpenter, is that we can drive new legislation quite hard but that, almost irrespective of the drafting of the legislation, DOE will be obliged to take at least some account of the circumstances of individual authorities in setting caps. That means that the availability of skilled manpower to DOE will remain a constraint on the practical application of the new scheme.

7. The \$64,000 question is whether they could nevertheless cap enough extra expenditure by enough additional authorities to make the effort entailed in new legislation worthwhile. I would guess

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that they could go quite a bit further with new powers, since the court would be reluctant to intervene where an authority had a remedy (the referendum) in its own hands; but they would still have to aim off in setting caps so that some of the theoretical savings would have to be forgone.

8. Against that, you mentioned the difficulty, if we had to proceed with rigorous use of existing powers, that the "excessive increase" approach could be argued to give an unfair advantage to those who had spent up this year. The traditional way of dealing with that was to use multiple criteria to exempt low spending authorities even if they had a large year-on-year increase. The latest legal advice seemed to be moving back in that territory. I await the next gripping instalment!



P F OWEN

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