

SECRET AND PERSONAL

Prime Minister

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29 A(a-b)



10 DOWNING STREET  
LONDON SW1A 2AA

From the Private Secretary

You may like to see the minute sent today, seeking simplification of the new approach put forward by the Solicitor-General. I also attach his advice.

21 June 1990

Dear Juliet,

You may like to discuss the handling of next Tuesday's critical meeting on the community charge with Andrew I tomorrow.

COMMUNITY CHARGE

The Prime Minister has noted the Solicitor General's minute of 19 June, giving advice on the scope for using existing powers under Section 100(1)(b) of the 1988 Local Government Finance Act to ensure that any extra grant for next year goes to keeping down community charges rather than adding to local authority spending; and for his views on how new legislation might be enacted to provide for an enhanced capping regime.

BTP  
2/6

I should be grateful if you and copy recipients could ensure that this letter is seen only by those with a strict need to know.

In the light of the earlier advice from the Solicitor General's office, the Prime Minister was surprised by the Solicitor General's view that, under existing powers, it would be possible to cap authorities so extensively. The Prime Minister appreciates that this revised view draws heavily upon last week's judgment in the High Court, where Lord Justice Leggatt took the view that the Secretary of State for the Environment can determine what constitutes "excessive" under the present legislation in terms of wider macro-economic policy considerations, rather than the circumstances of individual local authorities. That judgment is of course being challenged in the Appeal Court.

The Prime Minister has commented that the robustness of this advice is clearly of great importance. Colleagues would wish to be satisfied at the next meeting that, if they were to adopt this approach rather than take fresh legislation, it would in the Solicitor General's view withstand legal challenge in practice as well as in principle.

The Prime Minister is not at this stage persuaded that the approach set out in the Solicitor General's minute is the right way forward. Nonetheless, the Prime Minister would be grateful if the Secretary of State for the Environment could provide urgently an assessment of the likely spending by local authorities in England, which would follow from the strict application of the proposals set out in paragraph 4 of the Solicitor General's minute; and, for given assumptions about the level of AEF, what would be the likely levels of community charges.

SECRET AND PERSONAL

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On this basis, at the meeting next Tuesday, Ministers would be in a position to consider:

- (i) the Solicitor General's minute - both the sections on introducing an enhanced capping regime with new legislation and on the scope for using existing powers;
- (ii) a paper from the Secretary of State for the Environment setting out the expenditure and community charge implications of pursuing the approach under existing powers suggested in the Solicitor General's minute (alongside the existing exemplifications); and
- (iii) a report on the further negotiations on AEF and TSS between the Chief Secretary and the Environment Secretary.

I am copying this letter to Phillip Ward (Department of the Environment), John Gieve (H.M. Treasury), Carys Evans (Chief Secretary's Office), Trevor Beattie (Office of the Minister for Local Government), Tim Sutton (Lord President's Office), Murdo Maclean (Chief Whip's Office), Sonia Phippard (Cabinet Office), Peter Owen (Cabinet Office) and Richard Wilson (Cabinet Office).

Yours,

Barry

BARRY H. POTTER

Miss Juliet Wheldon,  
Law Officers Department.