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cc Mr Mills, This page
Mr Gray
I still don't know your
appreciation of the problem. Standard
Charge is a property tax, albeit
calculated using some of the variables
of personal charge. At least it is
clearly a direct successor to rates.
10 July 1989

ANDREW TURNBULL

can't envisage any serious challenge in
the House arguing that unlike rates it should
not be reimbursed. The Lord President believes
he could read legislation to
exclude SC and could not
get it passed. JF

MPs AND COMMUNITY CHARGE

I have discussed this with the Treasury and Inland Revenue officials who advised the Lord President.

To answer first your three questions:

- (i) ACA can be claimed on either the London or constituency home;
- (ii) ACA is exempt from income tax. This is special treatment for MPs. Reimbursement of a standard charge for anyone else would be a taxable benefit;
- (iii) there will be no personal charge reimbursement at all under ACA. This is because ACA relates only to additional expenses away from the main residence (to which personal charge must by definition relate). But it is possible that the main residence for ACA purposes, which is the MP's election, could be different from the main residence for charge purposes. That is the Registration Officer's election.

This does not assuage my concern over the sensitivities of the issue:

- standard charge is likely to be a contentious issue next year. There will be plenty of hard cases (eg pensioners paying 5 or 6 times as much for a fixed caravan compared with rates). Scotland points the way;

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- in this kind of context, public knowledge that MPs and Ministers were being reimbursed would be at best embarrassing, at worst damaging;

- the Government has adopted a clear policy not to reimburse community charge in situations where rates were reimbursed because it is a personal tax rather than a tax on property. For example, the Armed Forces will have to pay community charge whereas they have not paid rates on Service quarters (plenty of likely standard charge cases there). It is also a live and contentious issue in current discussions on Police Rent Allowance, within which rates have always been reimbursed. Although these cases relate essentially to personal charge, I cannot see that there is any sustainable legal difference between this and standard charge (as opposed to the relevant considerations which apply to one or the other) (extract from Act attached);

- there must at least be an element of doubt whether the ACA resolution (copy attached) can, without amendment, be used to repay a tax as if it was an 'expense'. At the very least, this is an area where the Government is vulnerable to legal challenge, for example from a high-minded Labour MP. The policy decisions on the Armed Forces and Police would hardly help the Government's case;

- at worst, one might even envisage a concerted effort by the Opposition, having imposed its own self-denying ordinance on its MPs, challenging the Government in the Courts for refunding its own MPs and Ministers a tax not an expense. Win or lose, a case of that kind would obviously have damage potential, and would be entered into with that in mind

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There is clearly a balance of risk here. My feeling is that opponents of the Government will be so anxious to seek to embarrass it over community charge (cf. the Greenwich leaflet case), that any potential weak spot will be attacked. There is clearly a weak spot here, presentationally if not legally. It would seem prudent to consider, at least at the outset, a self-denying ordinance upon Ministers, so that they do not reclaim any standard charge under ACA.

But ahead of that, it would I think be wise to seek the Attorney's advice on John Wakeham's letter, to be sure whether the qualitative distinction he seeks to draw between personal and standard charge is sustainable in law. If not, I would have thought the Government has no realistic option, in the light of the Police and Army cases, but to block all standard charge reimbursement under ACA. Amending the Resolution to that effect would, incidentally, put the Opposition on the spot!

John Mills

JOHN MILLS

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PART I
Persons subject to
personal
community
charge.

2.—(1) A person is subject to a charging authority's personal community charge on any day if—

- (a) he is an individual who is aged 18 or over on the day,
- (b) he has his sole or main residence in the area of the authority at any time on the day, and
- (c) he is not an exempt individual on the day.

(2) Schedule 1 below shall have effect to determine whether a person is for the purposes of this section an exempt individual on a particular day.

(3) In deciding whether a person has his sole or main residence in an area, the fact that he does not live in a building is irrelevant.

(4) If a person's sole or main residence at a particular time consists of premises, and the premises are situated in the areas of two or more authorities, he shall be treated as having his sole or main residence in the area in which the greater or greatest part of the premises is situated.

(5) A person undertaking a full-time course of education and resident in England and Wales for the purpose of undertaking the course shall be treated as having his sole or main residence, on each day of the course, in the place where he is resident for the purpose of undertaking the course.

(6) A person detained in legal custody (other than an individual for the time being exempt) is not to be treated as having his sole or main residence in the place where he is detained.

Persons subject to
standard
community
charge.

3.—(1) A person is subject to a charging authority's standard community charge on any day if he has at any time on the day a freehold interest in the whole of a building, and the following conditions are fulfilled as regards the building throughout the day—

- (a) it is situated in the authority's area,
- (b) it is not the sole or main residence of an individual (construing sole or main residence in accordance with section 2 above),
- (c) it is domestic property,
- (d) it is not designated for the purposes of collective community charges of the authority,
- (e) it is not divided into self-contained parts, and
- (f) it is not subject (as a whole) to a single relevant leasehold interest.

(2) A person is subject to a charging authority's standard community charge on any day if he has at any time on the day a relevant leasehold interest in the whole of a building, and the following conditions are fulfilled as regards the building throughout the day—

- (a) the conditions mentioned in subsection (1)(a) to (e) above, and
- (b) the condition that it is not subject (as a whole) to a single relevant leasehold interest inferior to his interest.

(3) A person is subject to a charging authority's standard community charge on any day if he has at any time on the day a freehold interest in the whole of a self-contained part of a building, and the following conditions are fulfilled as regards the part throughout the day—

- (a) the conditions mentioned in subsection (1)(a) to (d) above, and
- (b) the condition that it is not subject (as a whole) to a single relevant leasehold interest.

EXTRACT FROM ACA RESOLUTION

Overnight expenses allowance

(2) provision should be made for Members of this House who are Members for constituencies other than those specified in the Schedule set out below to receive an allowance in respect of additional expenses necessarily incurred by any such Member in staying overnight away from his only or main residence for the purpose of performing his parliamentary duties as follows, that is to say—

- (a) where his only or main residence is in the London area (that is to say, the area consisting of the constituencies specified in the Schedule set out below), parliamentary duties performed in his constituency;
- (b) where his only or main residence is in his constituency--
 - (i) parliamentary duties performed in the London area, except in the case of any such Member whose salary as a Member is determined in accordance with paragraph (b) of the Resolution passed this day with respect to remuneration of Members (in this paragraph referred to as an 'excepted Member'), and
 - (ii) parliamentary duties performed in a part of his constituency where a stay overnight is reasonably necessary in view of its distance from his only or main residence;
- (c) where his only or main residence is neither in the London area nor in his constituency, and he is an excepted Member, parliamentary duties performed in his constituency;
- (d) where his only or main residence is neither in the London area nor in his constituency, and he is not an excepted Member, then (at the option of the Member, to be exercised by notice in writing to the Fees Office) either--
 - (i) parliamentary duties performed in the London area, or
 - (ii) parliamentary duties performed in his constituency,

ICTA 1988 S. 200

200. An allowance—

- (a) which is paid to a Member of the House of Commons; and
- (b) for which provision is made by resolution of that House, and
- (c) which is expressed to be in respect of additional expenses necessarily incurred by the Member in staying overnight away from his only or main residence for the purpose of performing his parliamentary duties, either in the London area, as defined in such a resolution, or in his constituency,

Expenses of
Members of
Parliament.

not be regarded as income for any purpose of the Income Tax Acts.