



01-936 6201

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

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CONFIDENTIAL : CMO

The Rt. Hon. Nicholas Ridley, AMICE, MP
Secretary of State for the Environment
2 Marsham Street
LONDON SW1P 3EB

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6 July 1988

CH/EXCHEQUER	
REC.	-6 JUL 1988
ACTION	
COPIES TO	

Handwritten signature: Nicholas
1989/90 RSG SETTLEMENT

You copied to me your minute of 1 July to the Prime Minister in connection with the risk that local authorities will seek, by various dubious accounting practices, to maximise their rate support grant entitlement in the final year of the present RSG system.

I have considered carefully the details of your preferred option for closing down the present system. Your basic objective is to secure that the spending assumptions which form the basis for the imminent RSG Report for 1989/90 should also form the basis for any Supplementary Report or calculation of RSG for 1989/90, without the need to update those assumptions by reference to information which subsequently becomes available. Moreover, in the calculation for any earlier year for which there had been no final determination of RSG you would wish to take account of information available to you on or before a chosen cut off date in July 1988. These proposals are to be carried into effect by an early announcement in Parliament of what is proposed, followed by a short Bill which will, in effect, relieve you of any obligation to take account of information which comes to light after the cut-off date.

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Your proposed announcement to Parliament will of course be no more than a statement of intention to change the law, and no such change will be effected until the Bill you propose has received the Royal Assent. It is obviously essential that, during the period between the date of your announcement and the granting of Royal Assent, you and your officials act in accordance with the statutory provisions for the time being in force, albeit that you know that the position will change after Royal Assent. Those local authorities which are hostile to your policy will not be slow to challenge in the Courts any failure to comply with the present law for so long as it remains in force. However, while you are obliged to comply with your existing statutory duties and powers, and may not (for example) select an option which it would not otherwise be appropriate for you to adopt within that framework, you may relevantly take into account the prospect of the enactment of the proposed Bill when you make decisions or exercise discretions in the context of the present RSG system. I understand that your officials have had the advice of Counsel on this point.

Although there will be no question of your making any Supplementary Report or calculation by reference to the proposed cut off date until after the Bill receives Royal Assent, the Bill is retrospective to the limited extent that you will be enabled to leave out of account information arising prior to Royal Assent which you would otherwise have been obliged to take into account. The Law Officers advised in February on an earlier proposal by your Department (in relation to loopholes in the capital control system) to announce new policy and to give the legislation retrospective effect to the date of the announcement. On that occasion we observed that it was constitutionally undesirable to employ this device in circumstances where a long interval was expected to elapse between the announcement and the enactment of the relevant legislation. By way of guidance we suggested that the device should be used only where the policy was to be implemented by a provision in a Bill currently before Parliament at the time of the announcement or which is to be introduced in the same Session. That guidance was not, however, intended as an inflexible rule. It is clear that by

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mid-July in any year there is no realistic possibility of getting a controversial Bill, however short, through all its stages by the end of the current Session. In the present case, despite the fact that the anticipated period of 9 months between the dates of your announcement and of Royal Assent to the proposed Bill is a significant one, I am satisfied that your need to act quickly to pre-empt abuse of the RSG system does justify the modest degree of retrospection that the Bill will involve, particularly as it is your intention to introduce it as early as is practicable in the new Session. I would not therefore wish to raise any objection to it on constitutional grounds.

Following your announcement, there will be complaints from local authorities that there has been no consultation about the changes you have proposed. This is inevitable, because any period of consultation would have afforded to local authorities the opportunity to exploit the very abuses of the system that you are seeking to eliminate. I am satisfied that the absence of consultation can in these circumstances give rise to no significant risk of successful legal challenge, because your announcement will in effect be no more than a statement of your intention to promote primary legislation. It is nevertheless important that local authorities be given early notice of the terms of your announcement, which should, of course, accord exactly with the terms of the instructions to the draftsman of the proposed Bill.

I am sending a copy of this letter to the Prime Minister, and the other recipients of your minute.

Lawson,
ALW

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Alex: I have spoken to
AG office about classification
of document. They have
decided it should be
CMO until further notice.

With the Compliments of I have informed
the Attorney-General CST's office
who usually Action
these PPS out.

Attorney General's Chambers,
Law Officers' Department,
Royal Courts of Justice,
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the Attorney-General*

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