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CONFIDENTIAL

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

8 June 1989

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Dear Nick,

STANDARD COMMUNITY CHARGE

You will recall that I wrote to you and E(LF) colleagues on 22 February describing the problems which have arisen in Scotland following the introduction of the standard community charge and I took due note of colleagues' views in response to that minute.

However representations and adverse publicity about the standard charge have increased subsequently, to the extent that I think they are now diverting attention from the many positive points which are emerging from the introduction of the community charge system generally.

I am convinced that some action has to be taken and I think that there are a number of ways in which we could make adjustments to the present arrangements to meet the concerns that have been expressed, without undermining the objectives which the standard charge arrangements were originally intended to meet. I have therefore prepared a paper which describes the main problems (paragraph 5) and suggests some solutions (paragraph 8). In formulating these proposals I have had particular regard to your concerns and those of Peter Walker about the standard charge multiplier, and for this reason I have suggested taking powers to prescribe the multiplier in Scotland up to a maximum level of two. This would, in practice, bring the Scottish arrangements more closely into line with your own powers. I appreciate, of course, that you have no intention at the moment of prescribing anything less than a maximum multiplier of 2 for that class of properties which broadly equates to those properties in respect of which our local authorities have discretion over the level of multiplier. Nevertheless, our particular problem is that we have no powers to limit the multiplier even if, as is happening, local authority action in setting (with two exceptions) their charges at the

maximum is having serious practical effects upon certain categories of people, and equally serious effects upon our presentation of the charge in Scotland. My Scottish Office colleagues and I are all firmly of the view that the level of multiplier is the key to the problems we are facing and that without some early promise of action we are going to continue to face considerable criticism.

I would be pleased to discuss any of the proposals with you and I would be grateful for your comments on the paper and for those of other E(LF) colleagues to whom I am copying this letter.

Yours ever,

MALCOLM RIFKIND

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THE STANDARD COMMUNITY CHARGE IN SCOTLAND

1. The Green Paper 'Paying for Local Government' (Cmnd 9714), published on 28 January 1986 made proposals for the introduction of the community charge and paragraph G39 of Annex G to that paper proposed that owners of second homes should pay a standard charge equivalent to two individual charges. Members of E(LF) subsequently agreed that the local authorities should be given discretion to set the standard charge multiplier at up to a maximum of 2.

2. The standard community charge arrangements which are now in operation in Scotland under section 10 of the Abolition of Domestic Rates (Etc) Scotland Act 1987 in summary provide that the standard community charge is payable in respect of domestic property which is not the sole or main residence of anybody. Local authorities have some discretion in setting the level of the charge through the standard charge multiplier which can be set at between one and two (ie they can set the standard charge for their area at from one to two times the level of the personal community charge). Similar arrangements apply in respect of the standard community water charge. There is a statutory 'period of grace' of 3 months under which the standard charge will not be payable for the first 3 months that any unfurnished property has nobody solely or mainly resident in it. The 3 month period is indefinitely extendable at the discretion of the local authority. The 1987 Act also provides that properties can be exempted from the standard charge by means of regulations.

3. This paper proposes that a number of changes should be made to the present arrangements to deal with problems which have emerged and which were not foreseen at the time the 1987 Act was drafted. Two of the three proposed changes would require amendments to be made to the 1987 Act and this paper proposes that these amendments could be made in the context of the Local Government and Housing Bill which is now before Parliament. The changes would all be capable of being brought into effect on 1 April 1990.

The main problems

4. The standard charge arrangements as they stand have extended to situations considerably beyond the original Green Paper proposals described above. An illustration of this is that there are an estimated 19,000 second homes in Scotland but about 85,000 properties registered for the standard charge. A significant proportion of the difference may be accounted for by empty local authority houses and houses which become empty for a short while during changes of ownership. Other reasons for a standard charge liability arising other than for conventional second homes include the situation where persons, because of their employment or for other reasons, are obliged to live away from their property and cases where people in tied housing have bought properties for occasional use, for security or for their retirement.

5. The standard charge arrangements have generated a very considerable amount of adverse publicity and critical correspondence at a level sufficient to divert public attention away from many of the positive aspects of the introduction of the community charge in Scotland.

The main problems are as follows:-

5.1 Many more second home owners than expected have been faced with very substantial increases in some cases 10 times or more over the amounts they paid in rates before 1 April. In many cases their losses on the standard charge have not been made up by savings on the rates they used to pay on their main residence. The expectation at the time of the Green Paper (paragraph G39 of Annex G) was that a standard charge set at 2 "would leave second home owners broadly unaffected by the removal of rates". This has not been borne out by experience in Scotland.

5.2 Owners of unfurnished and unoccupied properties retained by them, for example by farmers for future use or because they are unsaleable or unlettable for a variety of reasons, are facing standard charges where previously in most cases they paid no rates because of the reliefs which applied.

5.3 People who are being cared for by their relatives, for example elderly people who are convalescing for an extended period before returning to their own home, are liable for a standard charge on that temporarily unoccupied home if the Community Charges Registration Officer (CCRO) determines that they are mainly resident at the address where they are convalescing and where they will also be liable for a personal charge.

5.4 People who are required by their terms of employment to live "in house" such as some hospital doctors, boarding school staff or people whose employment requires them to live away from a dwelling they regard as "home", may face both a standard charge and a personal charge.

5.5 People who live in tied housing and who buy a house for their retirement (eg ministers of religion or farmworkers) may face both a standard charge and a personal charge.

5.6 Owners of holiday self-catering accommodation previously rated as domestic property are tending to face a significant increase in the amount payable, unrelated to the income generated by the property.

5.7 Local authorities are facing considerable administrative burdens arising from the fact that a standard charge liability is generated the moment that nobody is solely or mainly resident in a property. The 'period of grace' provisions only apply to the liability actually to pay the charge. Thus where a house changes hands there often has to be a considerable amount of paperwork while no actual revenue is generated.

5.8 In many cases second home owners can claim to make negligible demands on local authority services, because limited use is made of their properties or because they are remote, and very often they have no vote in the charging authority's area so can exercise no influence through the ballot box. For these reasons and because the extent of liability has been greater and the range of circumstances

in which it exists wider than was anticipated, it is not easy to hold that the standard charge is not an even blunter form of property tax than domestic rates.

Proposed Solutions

6. The law as it stands is not necessarily the cause of these problems (apart, perhaps from 5.7). Rather it is that the law as it applies to particular cases is having effects which were not envisaged or intended when the arrangements were drafted. The courts may come to interpret the statutory concept of a person's sole or main residence in ways which reduce the incidence of the standard charge where residence away from home is temporary although this may take time and it is not certain. It can also be argued that in some cases a solution lies in the hands of the person affected as anyone unable to pay the standard charge can rent or sell their property. However it is not always the case that there is an identifiable market for the property in question. While the domestic housing market in most areas in Scotland remains active, many of the properties are in areas where demand for houses is weak or in locations or physical states which make them literally unsaleable, even though their owners may have invested in the maintenance and improvement of the property. The last resort for owners of such properties is to avoid the standard charge by making them uninhabitable.

7. It is clear though that not all cases admit a simple solution and the opportunities for adverse publicity are obvious. Representations have tended to argue for alternatives to the present standard charge arrangements including the extremes of outright abolition, the re-introduction of rating for second homes or a system of variable multipliers related to the value of the property concerns. Abolition of the standard charge would leave second homes free of any local taxation and reduce the local tax base. The other 2 extreme options would in effect involve the re-introduction of local property taxes for dwellings, albeit on a restricted scale. While this may indeed be appropriate for self-catering accommodation used in the same way as other tourist accommodation already subject to non-domestic rates, it does not appear appropriate for second homes in general.

8. The courses of action which are proposed for Scotland are as follows:

8.1 The Secretary of State should be given the power to prescribe the standard charge multiplier up to a maximum of two. We would give serious consideration to a multiplier of one.

8.2 The existing 'period of grace' provisions should be repealed and existing powers used to prescribe as exempt from the standard charge any domestic property which is unoccupied and unfurnished.

8.3 Holiday self-catering accommodation should be moved into rating where it is genuinely available on the market for holiday lets.

8.4 Provisions similar to the existing 'period of grace' provisions should be applied to properties which are unoccupied but furnished.

9. The most important of these proposals is 8.1. With the exception of two of the Islands Councils, all authorities in Scotland have set a multiplier of 2. The level of standard charge thus generated (the highest in Scotland being Lothian's at £784) is a common factor in most of the problems described above. As an illustration of this, in Strathclyde Region the average standard charge is £585. However an estimate by Strathclyde's own officials is that second homes in Strathclyde tend to be situated in the traditional holiday areas with typical rates paid of £210-£220 last year, well under half the standard charge. On Cumbrae, one of the particular problem areas, where about half the housing stock consists of small second homes, the income generated by the standard charge is over 170 per cent higher than that previously generated by rates (£398,652 as against £146,351). Had the standard charge multiplier been set at one, income from second home owners would have risen by 36 per cent. We have had representations from the owners of a number of premises where the rates paid are less than £100 per year in comparison with the standard charge of £556. Although the level of standard charge is the result of local authorities' decisions, there is in practice little incentive for authorities to set a lower figure. They will by and large be judged by their electorates on the level of their personal charge and it is therefore in their interests to maximise income from other charges. Furthermore the great majority of second home owners do not live and vote in the local authority area in which their second home is situated.

10. The power to prescribe a maximum multiplier would enable the Scottish Office to determine a maximum figure in a context in which these other influences did not have a bearing with account taken of the problems referred to at 5.1, 5.3, 5.4, 5.5 and 5.8. Local authorities would still have the discretion to set a multiplier below the maximum. The Secretaries of State for the Environment and Wales already have a similar power under section 40 of the Local Government Finance Act 1988 which could be used if the circumstances arise in England and Wales which required a limitation to be placed on the level of standard charges set by local authorities on second homes. The financial effects of a decision to limit the multiplier would be modest, since the total revenue generated by the charge in Scotland this year is likely to be between £9 million and £12 million - or about 1% of forecast income from all the community charges.

11. Proposal 8.2 would effectively restore the situation to what it was before 1 April 1989. It would resolve the problems described at 5.2 above, would alleviate the position of other problem groups such as those described at 5.5, and would reduce administration costs (5.7). The proposal is not likely to have a significant effect on revenue from the standard charge.

12. Proposal 8.3 is designed primarily to meet the situation in which owners of properties used as self-catering accommodation will be faced with a significant increase in the amount they have to pay (5.6). Representations have pointed to the limited income-generating potential of these homes as tourist accommodation and the fact that self-catering accommodation in complexes is subject to non-domestic rates which take income generating potential into account. The financial effects of taking these properties out of the standard charge would be balanced by the

rates income they would generate. It is understood that similar action is proposed in England and Wales.

13. "Proposal 8.4 would give a period of statutory relief from the charge and would provide local authorities with the discretion to determine in individual cases what longer period of relief might be appropriate. It would, in particular, give people such as convalescents staying with their families a breathing space before a standard charge became payable to decide whether they wished to retain their own home in the long term. It would also enable relief to be given to unoccupied but unfurnished domestic church property, which in England and Wales it is proposed to exempt from the standard charge by means of regulations."

Legislative Requirements

14. To implement the proposal giving the Secretary of State power to prescribe the multiplier would require the repeal of section 10(7) of the 1987 Act which at present defines the term 'standard community charge multiplier' as a number not smaller than 1 nor greater than 2 which the local authority shall determine and its replacement with a definition of the multiplier as a number not greater than 2, or such other number, smaller than 2, which may be prescribed.

15. The proposal to exempt all unoccupied and unfurnished properties from the standard charge would require the repeal of section 10(8) to 10(8C) inclusive of the 1987 Act. Regulations could then be made under section 10(2) of the Act, which would exempt these properties from the standard charge.

16. The proposal relating to self-catering tourist accommodation could be achieved by regulations made under section 2(4) of the Act excluding such properties from the definition of domestic subjects. This would have the effect of moving such properties automatically into rating.

Summary of Recommendations

17. I invite Colleagues:

17.1 To note the problems which have emerged following the introduction of the standard community charge in Scotland summarised in paragraph 5 above; and

17.2 to agree to the proposals for amending the present standard community charge arrangements in Scotland summarised in paragraph 8 above.

MALCOLM RIFKIND

Scottish Office
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