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MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

LOCAL GOVERNMENT FINANCE BILL

MEMORANDUM BY THE SECRETARY OF STATE FOR THE ENVIRONMENT

1. Following our discussion in E Committee on 25 November (E(81)35th meeting) I was invited to consider what elements of Part I of the Bill should be retained and to examine first, a scheme requiring statutory consultation of ratepayers by authorities planning to levy supplementary rates and, second, a "controls" scheme on the Scottish model, designed to catch only the very highest spenders.

PROTECTING THE RATEPAYER

2. Colleagues wished to retain protection for the non-domestic ratepayer. At the same time they considered it even more important to provide a measure of protection for the domestic ratepayer. Regrettably, these aims are incompatible since one can only be protected at the expense of the other. In our existing proposals, it was the deterrent effect of the referendum which provided protection for the domestic ratepayer.

3. As I said at our last meeting, it would be possible to retain limits on main rates, introduce non-domestic protection for supplementary rates above those limits and impose a statutory duty on authorities to consult ratepayers before levying supplementary rates. This would have the merit of enabling us to retain Part I of the Bill, albeit in a severely diminished form. Our problem would lie in trying to persuade the domestic ratepayers in high spending local authorities that we had done anything other than cause them to pay supplementary rates at a higher level than otherwise, because we were protecting commerce and industry. The right to be consulted might not appear to be a sufficient compensation since it would not entail a real vote and authorities could, eg through the local government unions, rig the result of any such consultation.

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CONTROLS

4. I have considered various forms of central control through a system of Parliamentary Orders - eg approving supplementary rates or temporary borrowing.

5. I have, however, discussed these proposals with the Attorney General (see his letter of 24 November) and the Chief Secretary and our conclusions were as follows:-

- (i) It would be impossible to draft the legislative provisions in such a way as to avoid a serious risk of legal challenge to any decisions I might take; even the procedure of the Parliamentary Order offers no protection from such challenge.
- (ii) Since the deterrent effect of a referendum would have been removed, we would probably, if we set realistic limits, be facing applications for temporary borrowing approval or supplementary rates, not from a handful of authorities but from 30 or 40 authorities; in order to satisfy the standard requirements of administrative law and of natural justice - which would undoubtedly be tested in the Courts in such circumstances (vide the Camden case earlier this year) - we would have to give the most careful and thorough consideration to each authority's individual circumstances, involving a detailed service-by-service examination of up to 20 major local authority services. The complexity of such a task within the inevitable tight time constraints would place the Government at serious risk in the courts.

We also concluded that such objections would apply not only to a scheme designed to place individual limits on supplementary rates or borrowing but to any system which attempted to impose absolute limits on the revenue or expenditure of individual authorities.

6. It might be thought that it would be possible to avoid these difficulties by setting the limits so high that only, say, 6 authorities were caught. But there are real problems associated with such fine tuning:-

- (i) We would be setting the limits in advance of the rating decisions of the councils themselves. An attempt to set

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them to achieve this object might mean we caught none or 12. (ii) Whoever we caught we might not get the authorities we expect. We would, moreover, probably not catch some of the authorities we would wish to catch - eg the GLC.

7. The Chief Secretary thinks any scheme based on temporary borrowing would have unacceptable consequences both in the market and for the PEPR.

SCOTLAND

8. The Scottish system is a variant of the control system. It relies upon the setting of guidelines for individual authorities and the further selection of those authorities considered to have unreasonable or excessive expenditure by criteria decided by the Secretary of State. In order to accomplish these tasks the Secretary of State for Scotland needs, and has, both extensive and long standing knowledge of the authorities and control of all local services within his own Department. In England we have neither this knowledge nor control of services within one Department. We also have, of course, a vastly greater number of authorities and a totally different relationship between them and the Government - which includes a willingness to challenge the Government legally whenever it can be so challenged. I do not think, therefore, that the Scottish system or any variation if it would be practicable in England.

SUPPLEMENTARY RATES

9. An alternative approach might be to ban the levying of supplementary rates altogether. (Scottish authorities cannot levy supplementary rates.) This would have obvious political attractions since the recent supplementary rates have been a major irritant to ratepayers. Further, it would prevent the situation which we have seen this year, where authorities have changed political control and the new councils have levied large supplementary rates in order to finance higher levels of expenditure. There are however 2 major difficulties. First, there is the danger that authorities will set their main rates at a high level in order to provide for contingencies and, at least in the first instance, they will blame the Government. Second, it would be necessary for me to use my existing powers to sanction temporary borrowing to cover emergencies and contingencies which could not have been foreseen at the time of the making of the main rate. The second consideration

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is the more worrying, because, inevitably, some authorities would attempt to force me to grant temporary borrowing at a level which I should wish to reject. I could thus be open to challenge in the courts. However, I believe that the risk here is much less than in any 'control' scheme because I would not have placed any limit on the main rate.

TIMETABLE

10. To attempt to go for any control scheme is inconceivable in the timescale within which we would have to operate - there would be no hope of having a Second Reading before Christmas and therefore no chance of putting the legislation into effect before the end of May 1982. I therefore have to conclude that a central controls system to be operated in 1982/83 is impracticable on both legal and practical grounds. The time constraints for options (ii) and (iii) below are less severe because Royal Assent in, say, May would be acceptable in both cases.

CONCLUSIONS

11. I conclude, therefore, on practical and timetable grounds that the only options before us are:-

- (i) To drop Part I of the existing Bill altogether.
- (ii) To drop Part I and to adopt a "minimalist" Part I - retaining only the main rate limit with the consequences of non-domestic protection for supplementary rates. This could be combined with a statutory requirement to consult the ratepayer.
- (iii) To drop Part I and adopt the supplementary rate scheme (paragraph 9 above).

The decision between these courses rests upon:-

- (1) Timetable - would we get any Bill containing rating material before, say, the end of April. Royal Assent later than that would create great difficulty for authorities - including those we did not wish to inconvenience.
- (2) Whether the difficulty in getting any rating material through Parliament is worthwhile in terms of real public expenditure savings which might be achieved.
- (3) The background engendered by the eventual decision on the GIC cases.
- (4) Any scheme for the control of PTEs the Secretary of State Transport proposes.

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- (5) The need to avoid a complete retreat on Part I and to be seen to do something for the ratepayer - domestic and non-domestic alike - in a form that will be acceptable to our colleagues on the back benches.

RECOMMENDATION

12. I recommend that we adopt option (iii) together with the Secretary of State for Transport's proposals for the control of PTEs. This would mean that we would withdraw the present Bill and introduce a new Bill, preferably before Christmas, containing the existing Parts II and III and the revised Part I.

NEH

Department of the Environment
1 December 1981

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