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CONFIDENTIAL

FINANCIAL SECRETARY

FROM: B H POTTER

Date: 1 December 1987

cc: Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Sir Peter Middleton
Mr Anson
Mr Kemp
Mr Scholar
Mr Beastall
Mr Hawtin
Mr Turnbull
Mr L Watts
Mr Fellgett
Mr Dyer
Mr Tyrie

Mr Morgan (V/O)

L COMMITTEE: LOCAL GOVERNMENT FINANCE BILL

The primary purpose of the Bill is to introduce a new system of local government (current) finance in England and Wales as from April 1990. Its main features are

- replacement of domestic rates by the Community Charge;

- a uniform national non-domestic (business) rate;

- a new simpler system of central government grants to local authorities; and

- a power to cap or reduce an excessive Community Charge proposed by any individual local council.

In addition, the Bill includes provisions on the qualifications and duties of the Chief Finance Officer in a local authority.

Line to take

2. The draft Bill contains many errors and serious omissions. Its preparation has been badly handled by DOE and Parliamentary Counsel. Since there is no time to make further changes to the draft Bill, if it is to be laid before the House as intended on Thursday 3 December, a large number of amendments will have to be put down later on the Government side. That will lead to considerable political embarrassment. Some of the amendments will be controversial (with Government supporters as well as the Opposition); and some outside bodies such as the CBI may react sharply to the omissions and subsequent changes.

3. A delay of a month would allow the bulk of the drafting problems to be resolved. But given the political pressures to achieve Second Reading before Christmas, it would be difficult to delay introduction and very awkward for a Treasury Minister to propose that at L Committee. Ministers seem likely to regard delay as more politically embarrassing than removing the errors and omission by Government amendment.

4. On balance, we recommend that you agree to introduction of the Bill but only on condition that L Committee formally confirm (and Cabinet Office record) that certain policy provisions, not in the draft Bill, will be taken in as amendments in the Commons, at Committee Stage or Report. These are:

i) powers for the Chancellor to override the indexation of the National Non-Domestic Rate (NNDR) poundage in England, Wales and Scotland;

ii) provisions for a cost-effective mechanism to handle deficits in the National Non-Domestic Rate fund; and the Money Resolution to be changed or supplemented accordingly and a Ways and Means Resolution introduced if necessary;

iii) a power to take account of a local authority's access to other sources of income before its Community Charge cap is determined.

In addition, there are a large number of errors and omissions identified by the Valuation Office. You will wish to ask for these to be remedied.

Background Briefing

5. There should be no opposition from colleagues to recording the above three requirements in the minutes as a necessary condition for Treasury agreement to the Bill. At official level, it is acknowledged by DOE that such amendments to the Bill will be required.

6. The most important for the Treasury is the first - overriding annual indexation of the NNDR poundage (paragraph 4(i) above). At official level DOE have written to acknowledge that the clauses to introduce the necessary powers for the Chancellor have been omitted because of time pressures. We understand Mr Howard has been briefed to state that the amendments will be introduced at Committee Stage. Mr Rifkind is also being briefed to support the necessary amendments. Nonetheless you must get the need for this amendment formally recorded. Within the drafting time available, DOE have instructed Counsel to give priority to other changes eg on dual-running of the Community Charge and domestic rates in London over this (agreed) policy requirement. DOE do not like these powers which are to be conferred on the Chancellor; we must give no scope for wriggling off the policy commitment.

7. Annex A sets out the background to the problem on deficits in the NNDR fund (paragraph 4(ii) above). Though it deals with a hopefully rare contingency, it is an issue on which policy is still to be agreed. Paragraphs 3 and 4 of Schedule 5 of the draft Bill presented to L had set out one method of handling deficits; but it was found by us to be wholly unsatisfactory and Counsel has agreed to excise that section. Mr Howard will formally record at L that the paragraphs will be deleted before

the Bill is presented to the House. It is accepted by DOE officials that a mechanism for dealing with deficits needs to be found and that this will require a revised Money Resolution and may need a Ways and Means Resolution. Our understanding is that these Resolutions can be introduced at later stages. This is also the view of the House authorities; but the Resolutions will require time for debate on the floor of the House.

8. Similarly on Community Charge capping (paragraph 4(iii) above) DOE officials acknowledge the deficiency in the present draft and agree it needs amendment. But, since the point was originally a Treasury requirement, it is again desirable to reaffirm the policy commitment - lest DOE seek to evade it.

9. Annex B sets out the large number of errors and omissions identified by the Valuation Office. Again most of the problems are acknowledged by DOE officials. But the length of the list demonstrates the poor state of overall preparation in the Bill - though the Parliamentary Counsel Mr Bowman, who will be attending L Committee, has faced severe time constraints.

10. Finally one whole section of the Bill - giving enabling powers to local authorities to raise fees and charges - is missing, even though policy was agreed last February. We have advised the Chief Secretary to write about this separately - see Annex C.

Conclusion

11. It is unlikely that L Committee will countenance delay on introduction of the Bill in order to sort out the acknowledged serious drafting problems. Treasury interests are best served by ensuring L Committee formally confirm that the above policy commitments will be met by amending the Bill at the appropriate stages.

Barry H. Potts

BARRY H POTTER

ANNEX A

1. The underlying policy issue is as follows.

i) Each LA in England pays into a notional fund a fixed payments schedule of projected NNDR proceeds. Each LA receives NNDR proceeds on the basis of its population. The fund is required to balance, taking one year with another.

ii) To ensure good financial and cash management and avoid large payments in and out of each LA, it is agreed policy that any net payment of NNDR due will be subtracted from or added to RSG entitlement. The effect is that in England only two or three authorities would actually pay into the fund.

iii) A deficit could arise if one or more of these LAs were to go on strike. It is agreed that a temporary in-year shortfall could be met by accelerating RSG payments to other LAs. But a deficit could arise at the end of the year (after RSG was paid out). Also if the fixed schedule of payments in any year turn out to exceed what LAs could reasonably collect, again a technical deficit would arise if the appropriate adjustments were made.

iv) Treasury wants to see all payments in classified as money into the Consoldated Fund; and payments

out would be Voted Supply. This would allow deficits to be overcome by the usual Supplementary/Contingencies Fund route; and the money would be recovered from LAs by adjusting the payments out schedule in a later year. The Fund could be created as a notional accounting fund and presented annually so demonstrating the balance.

v) DOE want a separate fund. They accept it would be managed by LAs and would be at arms-length from the NLF. It would as a result be more expensive (the LAs would have to borrow from the NLF to make up shortfalls). It would involve extra administration and complicate the netting off of payments with RSG. Access to loans to overcome a deficit might be delayed as the LAs negotiated with each other.

2. The distinction between the models is essentially one of presentation. The DOE approach is designed to sustain the fiction that NNDR proceeds are LA money - even though we believe it is more expensive and less secure (in terms of getting money to the LAs on time) than our proposal.

VO/OTM/19

LOCAL GOVERNMENT FINANCE BILL: DRAFT CLAUSES

This paper provides a commentary on the draft clauses. These points were discussed with Mr Ward and Mr Dunabin at DOE on 28 October and any relevant conclusion reached is also included. It was not, however, possible to get any of these necessary changes included in the Bill prior to publication.

Clause Number	Remarks
32(1)	We do not understand what is meant by the expression "compile", especially in sub clause (3) where a compilation is supposed to take place in one day. Earlier legislation has focused on the idea of the valuation list coming into force, and we prefer that idea. The sub clause talks about "lists" for the authority; there should only be one per charging authority area. We would rather it be called a "valuation list" than the terminology now suggested. DOE agreed.
32(3)	We assume that this provision, read together with (7) provides that whilst a list is the primary basis of charge between revaluations, it will continue to have effect until old list appeals have been resolved, and outstanding charging issues have been finalised. DOE thought so too.
32(4) & (5)	Again, we cannot understand what compilation is supposed to mean. It will take us something like two years to actually prepare the valuation list in question, and its compilation using computer technology will extend over many months. The list that is deposited with the Charging Authority, as it is now termed, will be the actual list that comes into effect the following April. We had never intended to send the authority a provisional list; subject to any changes that might be necessary before the date it comes into effect, that is the list in question. Accepted

32(8)

This provision, in an earlier draft, has been dropped. It replicated s68(5) GRA and, without it, the lists are open to judicial review if the VO omits relevant hereditaments.

33

It is quite unworkable to require that the contents of local lists should be on a day-by-day basis. The list shows valuations, it is not as presently constituted the vehicle for charging. Effective dates have never appeared on its pages, and this has been a matter for discussion and arrangement with the rating authority and the ratepayer. We intend to amend the lists at about monthly intervals, certainly it would be chaotic to try to achieve much shorter intervals than that.

DOE think Counsel has confused the purpose of the list with the issue of chargeable liability.

33(4)

It is inappropriate to give so much attention to the idea of disabled person relief. This is presently subject to a certification process in the Rating (Disabled Persons) Act 1978 and comprises a local authority function. It is now suggested that the apportionment should be shown in the body of the list. We would like to avoid this if at all possible and continue with the sort of informal arrangement that presently applies.

This is a mistake in the Instructions, the provision has to be recast.

35 (7) and elsewhere

The expression "non-domestic rating multiplier" seems a curious way of expressing what has earlier been called the national non-domestic rate poundage. If it is the poundage that is meant, would it not be simpler to say so.

DOE think poundage preferable. They think (9) would be better as "50% or such lower figure".

36 (1) There is no period of grace allowed before empty rate begins to apply. Rating authorities can be expected to be very unwilling to work a system where liability for empty property rate could be triggered the day after vacation occurs.

DOE accept that and Counsel drew attention to it in his covering letter.

39 (1) This is a muddled provision for lists which are now intended for statutory undertakings, valued by formula.

DOE thought there was a better way of designating what went in the central list (eg "when Secretary of State orders that an undertaking should be valued by formula, it shall be entered on the central list").

41 (2) This covers the appeal regime once the list has come into force, and relegates the entire process to regulations.

The whole of the community charge arrangements have been so relegated. DOE hope to achieve the same here.

41 (3) As drafted the VO is expected to have to give notice of his intention to alter the list. The intention was to enable the VO to be able to alter it and then notify the ratepayer accordingly. This uncertainty in the drafting will lead to further confusion about whether the VO is issuing a proposal (ie. a proposal to amend the list) or a notification (as in Scotland, and as ori ginally intended).

Accepted.

41 (4)

This uncertainty is also reflected in (4) (a) where it is implied that the VO will make proposals for the alteration of the list. That sub clause also contains the implication that others, apart from the VO are to be charged with the duty to maintain the list in an accurate form. This is something long asccepted as the sole responsibility of the VO.

DOE thought it would be helpful to separate out the VO's and ratepayer's roles, rather than combining them as now drafted.

41 (5)

We find this a strangely worded provision. We would have thought that the disagreement ought to be about an entry in the list, rather than the accuracy of the list per se. The expression now used by Counsel sounds more like an order of mandamus power alleging that the list is not accurate. Likewise, we would have thought that it was easier to say that the dispute could be determined by the VCCT rather than saying that an appeal should be made to them. We had understood that we would continue to be, as we think we should, the recipients of all such appeals. They will be referred on to the Tribunal as necessary.

DOE agreed that it should relate to an entry or a proposed alteration to the list. It was accepted that the provision tightening up what constitutes an agreement would be appropriate for regulations.

41 (6)

Sub clauses (a) and (b) appear to suggest that the list might contain details of the effective date for charging purposes. As we have said, several times, this is not something that we are currently able to achieve. The relevant information is held by the local authority, and if DOE are intending to charge us with this duty, we need clear powers of access to that information if we are to be able to discharge our function. Even then, there is a resource cost in all this for which no provision has yet been made. By contrast with 41(3), sub clause (c) contains the sort of provision we had earlier in mind, namely that we would notify prescribed persons of an alteration that had been made to the list.

DOE intend to discuss this with the LAAs - they understand the problem.

The combined effect of 41 (3) and (6) (c) appears to be that we would first notify people of what we intended to do with regard to the list, and then inform them that we had done it! This is the sort of paper chase the Rates Act 1984 was expressly designed to reduce.

Point taken.

42 It is inappropriate to group together valuation provisions and those concerned with the establishment of the non-domestic poundage level. We would prefer to see the valuation matters brought into the body of the Bill rather than relegated to a schedule.

DOE agree there should, if possible, be separation of these different subjects.

45 Details now contained in schedule 5 relating to the NNDR poundage would appear to fit better with this provision for the non-domestic rating pool, rather than being attached to clause 44.

Accepted.

48 (9) We would have thought it undesirable to establish exemption by regulations rather than by including them in the body of the Bill. This is especially relevant with regard to agriculture.

Agreed. As a minimum a schedule of subjects would be needed.

49 (1) and (2) Clause 48 4 (a) includes lands within the definition of a hereditament. It therefore seems unnecessary to supplement the expression in these two provision.

49 (7) This is a new and simplified charging arrangement. Instead of liability being placed upon the owner, any lessee or the user of the right, it is now suggested that the owner should be charged in every instance. This seems a desirable simplification.

DOE were not sure why Counsel had decided to change this, nor whether their Ministers would be happy with the change for this politically sensitive issue, but the change is in the Bill!

50 (1)

There is a need to tie this provision in better with the Time and Class of Hereditament Order (SI 1987 No 604) paragraph 2(3), for example, with regard to a property which will be a dwelling house, etc., when next in use. In sub clause (b) we prefer the word "occupied" to the proffered "enjoyed". Sub clause (c) re-introduces the idea of the use of a private garage for the accommodation of a motor vehicle, but this does not seem to easily fit in with the paragraph 1 (2) description in the aforementioned SI, (the 25 square metre test) which we have earlier said is the only provision we can work. It is intended that this description should override the earlier one, but we are far from happy with this intention.

This is the place where a clearer definition should be made between domestic and non-domestic property, and we think there is certainly scope for such. Regard should be had to the draft Scottish regulations which will cover such things as domestic car spaces. We need decisions about car ports and car parking spaces.

DOE take the view that this clause is meant to replace The Time & Class of Hereditaments Order as the primary division between the sectors, and that the new garage definition in (c) is intended to replace the earlier one.

50 (2)

The definition in sub clause (a) appears to bring into non-domestic property, holiday accommodation which comprises accommodation for short periods, time shares, leisure caravan sites, short stay hostels, and certainly hotels. We had understood that it was only hotels and guest houses that were to be included as non-domestic. We consider it most undesirable to have to apportion out accommodation in a hotel complex which is being used for permanent residence - we are strongly against that.

DOE accept it does not presently achieve what they want but their lawyers have told them that they cannot ask Counsel to change the primary legislation when they can use the order making power in (5) to put things right. They are not happy with this either, but it seems likely to happen nevertheless.

Sub clause (b) requires that we should bring into assessment moorings for all boats (even those used as residences) and (c) that we should assess the land on which residential or leisure caravans are stationed.

These are mistakes, to be corrected.

56

This provision only makes sense if composite hereditaments are valued in their entirety and then apportioned, so that relativites can be read back into the 1973 lists. We have earlier advised that we would much prefer to simply value the non-domestic part for 1990 and, separately, apportion and certify the 1973 assessments. DOE have accepted that view but the Bill does not recognise it.

Sch 3 para 2

We have earlier argued that the Bill should retain the concept of "net annual value" leaving rateable value to be the basis of charge. This is especially relevant for mineral hereditaments, but it will also be useful for the transitional arrangements, when the discounted figure can be described as the rateable value.

DOE think they will have to redefine terms for Mineral hereditaments, and leave it as drafted. They do not now think that transitional relief figures need to be shown in the valuation list, so no new terms are required to distinguish NAV and RV.

On sub paragraph (2) this rounding down provision is something that belongs to the gross value/rateable value regime. It belonged to the process of statutory deduction from one to the other and is no longer required.

Noted.

On sub paragraph (3) it is inappropriate to speak of the rateable value being "calculated", we prefer something like "ascribed". Calculation has a technical sense within a valuation, and we have already commented upon the undesirability of the terminology "compiling a list" and "the day", which appears several times in this sub paragraph. Rather than "such day" in sub paragraph (3) (b) we would prefer "such earlier time" following the GRA provisions.

The terminology in question runs right through this schedule and we find it unacceptable wherever it occurs.

Noted.

It remains our view that sub paragraph (c) should be altered so that it reads as follows: "the quantity of minerals or other substances extracted from the hereditament, or the quantity of refuse or waste material brought on to the hereditament from elsewhere and permanently deposited there". This change was the subject of Mr Heard's letter to DOE in August.

DOE thought this further description could be included in a relevant order for Mineral classes.

Sub paragraph (9) appears to be a catch-all for all sorts of regulations to establish prescribed principles. As there is nothing elsewhere in the bill about the valuation and mineral hereditaments, plant and machinery, school premises, advertising stations, or rights of sporting, it would appear that this provision is designed to give the Secretary of State an order making power. If so, this would also serve as a preamble to the possible prescribed statutory rate for the contractors method of valuation.

DOE thought it was strange to exclude all valuation provisions, but thought it might have to suffice regardless.

Schedule 3 para 3(2)(b)

Here the expression "prescribed rules" appears to relate to formula valued properties. Presumably this is to be understood differently from "prescribed principles" in the earlier sub paragraph. Paragraph 4 (2) contains rounding provision which are again relevant to the process of statutory deduction in ascertaining rateable from gross value. They are irrelevant in the new era, when values are to be direct to rateable value.

Noted.

Schedule 6 para 4(4)

Nothing has been done to decriminalise the provisions for the issuing of rent returns, nor to take the opportunity to harmonise with Scotland. Neither would there appear to be anything about how a rent return is to be used as evidence in the defence of the list (a parallel provision to Section 83 GRA). Perhaps Counsel intends that this would come in as part of the regulations for VCCTs.

Schedule 6 para 5(1)

We have earlier suggested that the duty of a local authority to notify the valuation officer needs to be strengthened beyond what Section 85 GRA now requires. Counsel has used the same term "comes to the notice", and we think that this is insufficient. For, in the new world, charging authorities are unlikely to go out of their way to notice changes which are value-significant for the non-domestic valuation list, unless they are provided w some incentive so to do. It will be much more difficult to introduce this as a Government Amendment, yet it is vital to the whole rating process.

Schedule 6 para 6

The power of entry provisions are more limited then in Section 86 GRA, and we think too limited. Powers of entry were earlier conferred "to enter on survey and value any hereditament", and the term now used "needs to value" will not suffice. In the same way as for the last paragraph, we suggest this provision should also be decriminalised. We have earlier suggested that it migh appropriate for the Lands Tribunal to deal with issues sort.

Schedule 6 para 7

Sub paragraph 1(b) refers to "any proposal made or notice of appeal given". This again owes something to Counsel's uncertainty about the distinction between a proposal and a notification. Presumably DOE will want to give ratepayers the right, as Section 108 GRA did, to inspect the notifications issued by valuation officers as well as proposals or notices of appeal made in respect of ratepayer action.

Although we have no objection to sub paragraph (4), we do wonder if this is really necessary. There seem to be adequate opportunities for complainants to pursue their grievances, either through their MPs or the PCA, without making the custodian of documents liable to summary conviction. But, if it is decided that this ought to stay, again it would seem to need decriminalising.

VALUATION OFFICE
NOVEMBER 1987