

CONFIDENTIAL



cc - CST.  
 Sir P. Middleton.  
 Mr Anson  
 Mr Mawer  
 Mr Moore  
 Mr Hawkins  
 Mr Fergusson  
 Mr Prior

Treasury Chambers, Parliament Street, SW1P 3AG  
 01-270 3000

3 March 1988

The Rt Hon Nicholas Ridley, AMICE, MP  
 Secretary of State for the Environment  
 2 Marsham Street  
 London SW1

*Cary's says  
 FB out of order*

*Dear Secretary of State,*

**VALUATION FOR RATING: THE "ADDIS" AND "CAKEBREAD" CASES**

Thank you for your letter of 1 March.

I agree with your view that we should legislate to reverse the decisions of the Law Lords in the "Addis" case, and the Court of Appeal in "Cakebread". I also agree that retrospection to the date of announcement is probably the best we can achieve, which reinforces the need for the earliest possible statement of our intentions.

You envisage (the end of the third page of your letter) that the Valuation Office might refrain from serving counter-proposals which would reverse the effects of the Addis decision with effect from the date of your announcement. In practice, this would normally be the case, particularly in 1987-88. However, I should be grateful if you could avoid any assurances of this nature. The Valuation Office could not ignore the law as it will be after amendment.

I also agree with your proposal for legislation covering "Cakebread", where our officials will need to be in touch to consider the implications for water authority EFLs.

The only proposal with which I do not agree, however, is your suggestion that the Exchequer should make good losses for past years to authorities in the neighbourhood of Enterprise Zones. As you mention, existing statutory provision provides for compensation where there is a significant annual loss, set in regulations at 2½ per cent of rateable value. This is a long-standing, and well known, arrangement to deal with exceptional loss of income for any reason. It has always been understood that a local authority could, and would, meet a smaller loss. I would be very concerned at the precedent that any departure from this arrangement would set.

Moreover, in this case the local authorities concerned were very well aware of the appeals in hand, and of the circumstances in





which they would have to cover the loss themselves if an appeal was successful. Any prudent authority should have made contingency provision, whatever campaign is now being mounted by authorities like West Glamorgan and Swansea, who will have benefited in other ways from the Enterprise Zone.

I am copying this letter to the Prime Minister, other members of E(LF), the Lord Chancellor, the Attorney General, First Parliamentary Counsel and Sir Robin Butler.

Yours sincerely,

Moirz Wallace

pp

NIGEL LAWSON

(Approved by the  
Chancellor and signed  
in his absence)



APS / Chancellor

Redrafted by Mr Felgitt  
to take account of  
the CST + Chancellor's  
amendments.

Din

3/3

one or two minor  
drafts  
changes.  
Must be

Ch/ main suggestions from  
CST are additions at  
X and Y, the latter  
keeping up the precedent  
argument. Example of  
why N Ridley should  
be cagey about VO and  
counter-proposals (formed  
at Z) has gone at VO's  
request - it seems they

PTD



felt the example  
somehow implied this  
was only case in  
which they might  
do this.

This ought to go  
tonight. We are  
having it typed  
up and will pp  
in your name, if  
you are content

mpw

8/3



*D.F.*

DRAFT LETTER FOR THE CHANCELLOR'S SIGNATURE TO THE SECRETARY OF STATE FOR THE ENVIRONMENT

VALUATION FOR RATING: THE "ADDIS" AND "CAKEBREAD" CASES

Thank you for your letter of 1 March.

2. I agree with your view that we should legislate to reverse the decisions of the Law Lords in the "Addis" case, and the Court of Appeal in "Cakebread". I also agree that retrospection to the date of announcement is probably the best we can achieve, which reinforces the need for the earliest possible statement of our intentions.

✓ 3. You envisage (the end of the third page of your letter) that the Valuation Office might refrain from serving counter-proposals <sup>which would</sup> to reverse the effects of the Addis decision with effect from the date of your announcement.

X In practice, this would <sup>normally</sup> commonly be the case, particularly in 1987-88. However, I should be grateful if you could avoid any assurances of this nature. The <sup>Valuation Office</sup> ~~VO~~ could not ignore the law as it will be after amendment.

Z

4. I also agree with your proposal for legislation covering "Cakebread", where our officials will need to be in touch to consider the implications for water authority EFLs.



5. The only proposal with which I do not agree, however, is your suggestion that the Exchequer should make good losses for past years to authorities in the neighbourhood of Enterprise Zones. As you mention, existing statutory provision provides for compensation where there is a significant annual loss, set in regulations at 2½% of rateable value. This is a long-standing, and well known, arrangement to deal with exceptional loss of income for any reason. It has always been understood that a local authority could, and would, meet a smaller loss. I would be very concerned at the precedent <sup>that</sup> any departure from this arrangement would set. // Moreover, in this case the local authorities concerned were <sup>very</sup> well aware of the appeals in hand, and of the circumstances in which they would have to cover the loss themselves if an appeal was successful. Any prudent authority should have made contingency provision, whatever campaign is now being mounted by authorities like West Glamorgan and Swansea, who will have benefited in other ways from the Enterprise Zone.

7. I am copying this letter to the Prime Minister, other members of E(LF), the Lord Chancellor, the Attorney General, First Parliamentary Counsel and Sir Robin Butler.

[N.L]



CONFIDENTIAL



*Mitchell*

BF 8/3

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS

Telephone 01-210 3000

From the Secretary of State for Social Services

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

CH/EXCHEQUER <sup>413</sup>	
REC.	04 MAR 1988
ACTION	MR FELLGETT
COPIES TO	SIR P. MIDDLETON
	MR N MONCK
	MRS A CASE MR HANTIN

3 March 1988

*Nicholas Ridley*

VALUATION FOR RATING: THE "ADDIS" AND "CAKEBREAD" CASES

I have seen your letter of 1 March to the Chancellor concerning urgent action to restore valuation law.

I agree that prompt action seems necessary. I note that you are seeking specific grant powers in order to recompense local authorities, but it is not clear where the resources are to come from. I am content with what is proposed as long as these resources are not taken from the agreed levels of block grant in support of service provision.

Copies of this letter go to the Prime Minister, other members of E(LF) and to Sir Robin Butler.

*Spencer works  
in the  
and  
the*

*John Moore*  
JOHN MOORE



Personal & Confidential

APS / Chancellor

From: R Fellytt  
4.3.88

cc Mr Hartini

Addis and Cakebread

1. I have confirmed with the Welsh office that neither the effect of Addis on rateable values (RVs), nor a decision on retro compensation, should ~~have~~ ~~any~~ affect on RSG penalties or on the normal operation of RVs in the RSG system.

2. Penalties depend primarily on expenditure. There is only a tiny second-order effect of changes in RVs. In this case, Swansea (the highest overspender in Wales) <sup>a West Glamorgan</sup> should see a minute reduction in penalties. Penalties would be unaffected by compensation.

3. Changes in RV occur all the time. In Wales, Addis changes will affect the distribution of RSG in the normal way for 1988-89; Swansea etc will receive compensation from a re-distribution of the agreed total of RSG. RSG for 1987-88 and earlier will be unaffected. Compensation would not affect the distribution of RSG.

4. WO officials confirm that they (a Mr Walker) see no undue difficulty in dealing with a political campaign for compensation by Swansea & West Glamorgan.

Robin Fellytt



**Y SWYDDFA GYMREIG**  
**GWYDYR HOUSE**  
**WHITEHALL LONDON SW1A 2ER**  
Tel. 01-270 3000 (Switsfwrdd)  
01-270 0538 (Linell Union)  
*Oddi wrth Ysgrifennydd Gwladol Cymru*



<b>CH/EXCHEQUER</b>	
REC.	04 MAR 1988
FROM	MR Fellgett
TO	Sir P. Middleton
	MR Monck
	MR Hawtun
	CST

**WELSH OFFICE**  
**GWYDYR HOUSE**  
**WHITEHALL LONDON SW1A 2ER**  
Tel. 01-270 3000 (Switchboard)  
01-270 0538 (Direct Line)  
*From The Secretary of State for Wales*

The Rt Hon Peter Walker MBE MP

4 March 1988

**CONFIDENTIAL**

**VALUATION FOR RATING: THE "ADDIS" AND "CAKEBREAD" CASES**

You will recall that I raised this issue in Cabinet on 25 February. I have now seen Nicholas Ridley's letter of 1 March and have to say that I agree with his conclusions that the effect of the judgements should be reversed, not only because of the loss of rate income involved and the increased workload in Valuation Offices, but also in order to restore to Enterprise Zones the full advantage in terms of rates which they offer to firms locating there. This is an integral part of our enterprise zone policy and should be maintained for the full ten years in each case.

As for grant compensation for local authorities suffering a loss of rate income, I have already been pressed to make arrangements to compensate councils for the refunds which they will have to make. I am not entirely convinced that we should go beyond Section 67 of the Local Government Planning and Land Act 1980. However if compensation is to be provided then it must be on the basis of additional resources and it must be offered on the same terms in England and Wales. Clearly this is not an occasion when we should be prepared to provide compensation from within existing resources.

I therefore support legislation to reverse the "Addis" and "Cakebread" judgements and I am prepared to go along with a decision to provide compensation to local authorities on the above terms.

/ I am copying this letter to the Prime Minister, to other members of E(LF), to the Lord Chancellor, to the Attorney General, to First Parliamentary Counsel and to Sir Robin Butler.

The Rt Hon Nigel Lawson MP  
Chancellor of the Exchequer



BF 813



CH/EXCHEQUER	
REC.	07 MAR 1988 ✓ H3
ACTION	MR FELGETT
COPIES TO	CST SIR P. MIDDLETON MR MONCK MR HAUTIN.

Rt. Hon Nicholas Ridley MP  
Secretary of State for the Environment  
Department of the Environment  
2 Marsham Street  
LONDON SW1P 3BE

Dear Secretary of State,

VALUATION FOR RATING : THE "ADDIS" AND "CAKEBREAD" CASES

You sent me a copy of your letter of 1 March to Nigel Lawson. You seek his approval, and that of colleagues, to your proposal to reverse, by legislative means, two recent Court decisions on rating, namely Addis and Cakebread. The idea is to insert two suitable provisions in the Local Government Finance Bill currently before Parliament, which are to have effect, in the case of the one reversing the Addis judgment, from the date of an announcement which you would make during this rating year (probably 8 March), and in the case of the one reversing the Cakebread judgment, from 1 April, that is to say the start of the next rating year. This degree of retrospection is seen as being essential to limit the financial damage to the rating authorities as a result of the judgments.

Subject to some points of detail set out below, I consider the retrospection proposed is defensible.

The Addis Judgment

In Addis you intend that any proposal for a change in valuation made before the date of your announcement shall be dealt with on the basis of the law as interpreted by the House of Lords; any proposal received on or after that date will be dealt with in accordance with the new law. Whilst persons submitting proposals on or after 8 March will not be able to claim that their proposal be considered under the old law as regards the period





up to that date, this seems an acceptable result, since proposals for revaluation are not, as I understand, appeals against valuations for that year, but applications to change the status quo. Therefore you would not be affecting accrued rights by preventing reliance on the old law, since no rights potentially arise until a proposal is made. By preserving the position of proposals made prior to 8 March, you would be respecting the expectations of their proposers that the old law will apply.

Your letter however recognises the possibility of "counter-proposals" being made by valuation officers on or after 8 March but before 31 March, which could have the effect of reversing any changes achieved by proposals made prior to 8 March based upon the House of Lords interpretation of the law. This would be clearly unacceptable, since accrued rights may be affected by the retrospection. It is not sufficient, in my view, to rely on the discretion of the valuation officers not to make such proposals; they should be prevented from doing so from the legislation.

A further point is that your announcement should set out in as much detail as possible how you intend the law to be amended, so as to give persons who are considering whether to make a proposal an opportunity to decide whether such a course would be worthwhile.

Your letter further indicates that you have not consulted Parliamentary Counsel as yet. It seems to me that this will not be an easy provision to draft. Your officials should therefore consult Parliamentary Counsel as a matter of urgency to check that a suitable provision can be drafted.





The "Cakebread" Judgment

This provision is more straightforward. Given the relatively short period of retrospection, I see no obstacles provided adequate notice of the change is given to the water authorities prior to 1 April.

I am copying this letter to the recipients of yours.

S.A. Parker  
Approved by the Attorney General  
and signed in his absence.





cc Mr Fulgett  
PS/CST

3 MARSHAM STREET  
LONDON SW1P 3EB  
01-212 3434

My ref:

Your ref:

The Rt Hon John Wakeham MP  
Lord President of the Council  
Privy Council Office  
Whitehall  
LONDON  
SW1A 2AT

*[Handwritten signature]*

8 March 1988

Dear Lord President

PARLIAMENTARY STATEMENT ON ADDIS, CAKEBREAD, AND LEASING

We discussed today the possibility of my making one statement dealing with all three of the topics on which I have recently been in correspondence with colleagues, ie Addis, Cakebread and Leasing. I too think it would be useful to cover all 3 topics at once and would like if possible to do this tomorrow. I attach a draft of the statement and would be grateful to know that you and colleagues are content.

It is important that, on the leasing issue, regulations are laid simultaneously with the statement being made. I am not yet absolutely certain that that can be done tomorrow and my office will keep yours in touch on the point. In any case my officials will be writing to local authorities at the time of the statement as required by the Attorney-General.

Finally, I should be grateful if you would give the necessary authority to have the provisions in these cases drafted for the Local Government Finance Bill.

Copies of this letter go to the Prime Minister, the Chancellor of the Exchequer, the Lord Privy Seal, members of E(LF), to First Parliamentary Counsel and to Sir Robin Butler.

*Yours sincerely*  
*Nicholas Ridley*

NICHOLAS RIDLEY

*(Approved by the Secretary of State and signed in his absence).*



## DRAFT STATEMENT FOR THE SECRETARY OF STATE

## LOCAL GOVERNMENT FINANCE BILL

1. Mr Speaker, with permission. I should like to make a statement about <sup>some</sup> the issues which will require amendments to be introduced to the Local Government Finance Bill. They concern the law of rating and arrangement for the control of local authority capital expenditure in England and Wales.

Addis v Clement

2. It is central to the rating system that the value of a hereditament should reflect the physical condition of the property and the "state of the locality" at any particular time but otherwise the basis for the valuation should be - the property market conditions - as they were at the date of the last revaluation.

3. For many years now the view has been that the expression "state of locality" related to its physical state and its amenities, and that in order to make a case for a change in rateable value appellants had to show that there had been physical changes to the property or its locality.

4. This view was recently tested in the case of Addis v Clement (VO) which turned on whether a factory on the borders of the Lower Swansea Valley Enterprise Zone could rely on the introduction of the EZ, to seek a reduction in rateable value. The Court of Appeal upheld the traditional view by holding that the establishment of an EZ was not a change affecting the state of the locality. The House of Lords, however, took the opposite view.

5. Following that judgement it appears that ratepayers may obtain changes in rateable value to reflect changes in market conditions since 1973. Many thousands of new proposals may result. In our view changes in economic circumstances should be taken into account at the general revaluation in 1990, and not piecemeal between revaluations.



6. I therefore propose to bring forward amendments to the Local Government Finance Bill so that, with effect from midnight tonight, proposals to amend current rateable values will be determined according to the law as it was understood <sup>to be</sup> prior to the decision in the Addis case. This means that changes will be taken into account only in so far as they relate to the physical state of the hereditament and its locality. Changes in economic factors will be taken into account in the 1990 and subsequent revaluations.

7. Proposals already made will be decided, where relevant, in the light of the law as decided by the House of Lords in the Addis case.

### Cakebread

8. The second issue affects the rating of water hereditaments. Most such hereditaments are currently rated by statutory formula. Others, particularly sewage treatment works, have, however, always been treated as excluded from the formula and rated conventionally. The Court of Appeal has now held, in the case of Severn Trent Water Authority v Cakebread (VO), that the Water Act of 1973 changed the statutory definition of a water hereditament so that those <sup>hereditaments</sup> previously excluded from the formula are covered by it, even though the formula did not make allowance for that. This decision would give a continuing windfall benefit to water authorities. We have therefore decided to restore the law to the position previously accepted for many years, also with effect from midnight tonight.

9. These <sup>two</sup> decisions will affect the revenue of the local authorities concerned. Rateable values are of course constantly changing as a result of appeals process and net additions to the rateable stock. Ordinarily, and by agreement with the local authority associations, changes in rateable value during and after a year are not reflected in rate support grant for that year or earlier ones. Exceptionally there is provision in section 67 of the Local



Government Planning and Land Act 1980 for authorities to be compensated if they suffer a reduction of more than 2% of their rateable value in any year. It is not yet clear whether as a result of these decisions any authority will lose rateable value in excess of that level and, therefore, whether the existing arrangements will be triggered. While I am prepared to listen to representations on this, I cannot give any commitment to extend the existing arrangements for compensation. I intend, by making my proposals retrospective <sup>effective from</sup> today to limit the losses which might otherwise arise.

*Continues---*

A



Local authority capital expenditure

10. Thirdly, I have to inform the House that, once again, a minority of local authorities are employing artificial devices to incur capital expenditure and to undertake borrowing over and above the levels permitted to them under the existing capital control system.

11. Only a minority of authorities are involved. But the sums involved are large. Individual deals can represent future expenditure of several hundred million pounds. If all options granted under agreements recently entered into are taken up, the equivalent of several billion pounds of capital expenditure may be incurred. No Government could ignore evasion of its expenditure controls on this scale.

12. A number of different devices are being used. They fall into two classes.

13. First, there are schemes under which local authorities are acquiring capital assets on terms which are outside the letter of existing capital controls, ~~for~~ <sup>for</sup> instance by the taking of medium term leases or by barter.

14. Secondly, there are schemes under which local authorities are raising money by lease-and-leasebacks or sale and leasebacks of their operational assets. This is borrowing in fact though it may not be borrowing in law. ~~[It is a particular cause for concern because~~ <sup>in effect,</sup> money is being borrowed by disposal of capital assets in order to finance deficits on revenue account.]

15. Amendments have been made to the Prescribed Expenditure Regulations. These will take effect from midnight tonight. But the amending regulations will be temporary in the first instance. My Department will consult local government and other interested parties about whether any changes or clarification are required



FROM DOE PARL (1) 16/03/88 21:08 NO. 11 PAGE 7  
before the amendments are made permanent. I have adopted this procedure to avoid any repetition of the events of 1986-87, when consultation preceded a change in the regulations and when nearly £2bn of deals were rushed through in the interim.

16. The main changes made by the regulations are that acquisition of a leasehold interest in land with a term of more than 3 years will score as prescribed expenditure. The present limit is 20 years. And, regardless of term, prescribed expenditure will be scored on acquisition of a lease of property in which the authority hold a superior interest or which has during the previous 5 years been the subject of a development agreement to which the authority were a party.

17. Some authorities may as a result of the new regulations incur prescribed expenditure as a result of the exercise of options provided for in agreements already entered into. I and my rt hon Friend will consider issuing additional capital allocations where we are satisfied that the agreements were not entered into for the purpose of evading capital expenditure controls.

18. Subject to the approval of Parliament to the necessary provisions, I propose to supplement the changes to the regulations with certain changes to the primary legislation. These changes are as follows:-

19. To clarify that, when a local authority acquire land on terms other than freehold for cash, the amount of prescribed expenditure scored is the value of the interest acquired on the assumption that it was acquired freehold and for cash. That was the intention of the 1980 Act.



20. To provide that where a local authority acquire property, or where works are carried out on property which the authority own, and valuable consideration for the acquisition or the works is given but not in money, then prescribed expenditure will be scored.

21. To clarify that, where a local authority acquire an interest in or right over land and the interest or right does not confer a right of occupation, nil prescribed expenditure is only scored if the interest is neither a freehold nor a leasehold.

22. In addition, I intend to widen the statutory definition of prescribed expenditure to include the acquisition of share or loan capital in a body corporate and expenditure incurred in the discharge of obligations under a guarantee or indemnity relating to borrowing by a person other than the local authority.

#### Conclusion

23. All the legislative changes which I have outlined will be included in the Local Government Finance Bill. They will, however, be retrospective to midnight tonight.