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DEPARTMENT OF HEALTH AND SOCIAL SECURITY
Richmond House, 79 Whitehall, London SW1A 2NS
Telephone 01-210 3000

From the Minister of State for Social Security and the Disabled

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

9 August 1988

Dear Nicholas,

COMMUNITY CHARGE: ATTACHMENT OF BENEFIT

Following the E(LF) Committee decision, there has been some discussion at official level between our two Departments and a great deal of thought given to the practicalities of making deductions for community charge arrears from Income Support payments. My understanding is that, in England and Wales, local authorities will be able to apply to a magistrates' court for a liability order if a person is in arrears with community charge payments This could occur quite early if he has missed a few instalments and the liability order would then cover the whole of the year.

The local authority would then, as one option, be empowered to ask the Department of Social Security to arrange deductions from Income Support. The details would be put into regulations which would be made under the Local Government Finance Act.

I understand from officials that you wish to put the deduction details in a single set of regulations dealing with the whole range of enforcement measures which will be available to local authorities. While I can understand that this seems tidier from your point of view, it has disadvantages to us and we would prefer to make that part of the regulations ourselves.

As we see it, your regulations would deal with the procedures up to the point where the local authority applies to the Secretary of State for deductions to be made and our regulations would deal with the handling of such applications.

As you are aware, we already make a number of deductions for a variety of essential purposes - repayments of Social Fund loans and overpayments as well as deductions for payments to third parties for essential items like housing, fuel and water supplies and it is essential that this Department is, and is seen to be, in control of the deductions for community charge arrears to ensure that beneficiaries retain enough of their benefit to live from day to day.

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It would be inconvenient if we had to amend your regulations when we wished to make adjustments to deduction rules across the board. Similarly, our local offices need to have a copy of the regulations to hand and it would be unwieldy for them if deductions for community charge were part of a much longer set of regulations most of which had no relevance to them.

I understand that your officials have suggested that our lawyers draft the regulations - which would in any event be essential - and that they appear in your complete set which would be signed jointly by Ministers of both Departments. However, you will see that we do not regard this as a satisfactory solution for a variety of reasons and I would be grateful if you will reconsider this aspect and agree to the deductions appearing in a free-standing set of regulations which we will make. Similar considerations apply to the passing of names and addresses to the Community Charge Registration Officer. As it is the Secretary of State for Social Security who decides, for the purposes of Schedule 2, what information should be prescribed, we think it is more appropriate that this should be in our regulations rather than your set which deals with the duties to provide information which the Schedule imposes.

Turning to the details of the deductions themselves, it seems to us to be sensible to fix the level of deduction at 5 per cent of the personal rate for a person aged 25 or over (currently £1.70) which is the amount set for other deductions of arrears. This amount would apply whether a liability order related solely to the beneficiary's own debt or was a joint liability with his partner and would not, in the latter case, be increased to £3.40.

The 5 per cent would be separate from the other direct deduction provisions and there would be no possibility of it being used for other purposes. Thus for the majority of cases we would not need to give it a priority ranking in relation to those items.

However, there will be some instances where the amount of Income Support payable is insufficient for a deduction to be made or the whole of the Income Support will already have been used for deductions relating to essential items and we will need the power to refuse community charge direct deductions in such cases. Equally, there will be some instances where the existence of a deduction for community charge arrears combined with other deductions uses all the income support and subsequently a debt arises for an essential item such as rent, fuel or water, non-payment of which could have disastrous consequences for the claimant and his family. We will need to have the power to stop paying the local authority in such circumstances.

The decision to deduct an amount from benefit will have to be made, as at present, by the adjudicating authorities with payment being made by the Secretary of State at such intervals as he determines - probably at quarterly intervals in arrears for economical administration. Any appeal from the adjudication officer's decision will be through the existing appeal system to a

E.P.

Social Security appeal tribunal in the first instance. I understand that you intend to introduce an appeal to a magistrates' court against an attachment of earnings order but there can be no question of an appeal against an adjudication officer's decision lying with a magistrates' court.

There are two aspects of deductions which are of particular concern. The first is where the debt is for a period when there was 100 per cent liability but the debtor is now on benefit. In such cases, the debt could take a considerable time to clear and, whilst the arrears are being paid, current debts may accrue. The local authority could not expect deductions on a second liability order whilst an existing order was being complied with, but I would hope that some discretion would be exercised by charging authorities or the courts in dealing with such cases involving people living on Income Support.

The second concern is the addition of costs - both legal and local authority - to a liability order. I understand that these have not yet been fixed and, although it is the intention to provide equity of treatment between those in work and those on benefit, I hope that such costs can be kept to an absolute minimum for those on benefit. On average, the arrears for a whole year's 20 per cent minimum liability will be relatively low and for reasons similar to those I have set out in the preceding paragraph, I think it would be counter-productive if the costs were disproportionately high in such cases. I think we will need to look at this question again when the level of costs becomes clearer.

Finally, I return to a topic John Moore first raised in his letter of 20 February. We shall be seeking a PES transfer for the substantial administrative costs involved in operating direct deductions for this purpose. We estimate that if 5 per cent of our Income Support cases required deductions. the additional cost for GB would be in the region of £6 1/2 million a year.

In general, I think we have reached agreement on a scheme to put into regulations. I have outlined some of our difficulties and concerns and I hope you will be able to agree the suggestions I have made and provide some reassurances on our remaining concerns.

I am copying this to other members of E(LF) and Malcolm Rifkind since separate regulations will be needed under the Scottish Act.

Yours ever,

Nick

NICHOLAS SCOTT

SECRETARY OF STATE FOR THE ENVIRONMENT

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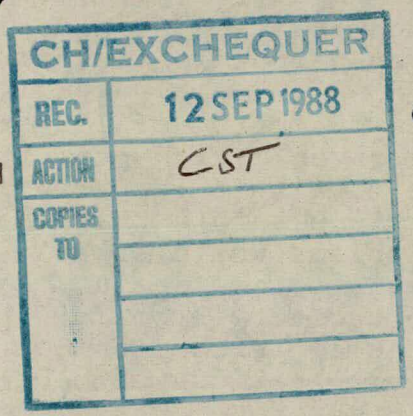

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9 September 1988

Dear Minister

COMMUNITY CHARGE: DEDUCTIONS FROM BENEFIT

Thank you for your letter of 9 August about the way forward in implementing our decision to permit deductions from income support to pay off community charge arrears.

Clearly, your lawyers must draft the regulations and the substance of the community charge deductions scheme must align with your other schemes. I am not convinced, however, that it would be sensible to have the deduction regulations separate from the main regulations. Deduction from benefit is part and parcel of our system of enforcement. It was specifically intended to parallel exactly the provisions for attachment of earnings and the Act provides for the two remedies in neighbouring paragraphs of the same schedule of the Bill. I understand your wish to be able to amend all deduction powers in parallel; but the fact that these particular powers would be included in a larger set of regulations would not, I think, make them any more difficult to amend. And the problems you foresee for local offices could be overcome simply by retaining copies of only those parts of the regulations which apply to DSS.

Against your arguments we must set the administrative inconvenience of having an enforcement system, which was specifically intended to be all of a piece, contained in two separate instruments. Local authorities will complain that there is no logical reason for the distinction - an argument which it would be difficult to deny. And, as you will know, the deduction provisions are particularly sensitive. To have them contained in separate regulations would draw attention to them and would give our opponents a further opportunity to prolong debate on them. For all these reasons I think it would be more sensible for them to be included with the main administration and enforcement regulations.

I am broadly content with the details of the scheme as you set them out with one exception. I agree that 5% of the personal rate

for a single person would be an appropriate maximum deduction: you will recall that this was the amount I suggested in my letter of 11 March to John Moore. I agree also that appeals should lie in the first instance to a Social Security Tribunal. I am not happy, however, with your proposals for priority.

As I explained in my letter of 11 March, I believe that community charge should be given a high priority. Its importance is reflected in the fact that failure to pay is punishable by imprisonment. It is possible that income support recipients facing multiple debt problems would be held by the courts to have been culpably negligent if they are unable to pay their community charge. Culpable neglect is one of the two grounds on which a person can be sent to prison for not paying the charge. Clearly this would have very serious consequnces for the claimant and his family. I think, therefore, that we must ensure that the system will enable community charge deduuctions to be made even where there are other claims on the income support.

You are concerned about the possibility of current liability accruing while a debt is being paid off. You will recall that in my letter of 11 March I suggested that this situation could be tackled in the same way as is provided for in the existing deduction schemes, by making the deduction the aggregate of two amounts. The first would be an amount towards the debt, up to the maximum of £1.70. The second would be an amount towards the continuing liability, which may consist of anything up to the actual weekly cost of the charge. As with housing costs, there would be a power for the adjudicating authority to direct that the actual weekly amount could continue to be deducted and paid directly after the debt had been discharged.

As to the addition of costs to liability orders, I agree that we will need to look at this in the context of the costs provisions of the enforcement regulations.

Finally, you raise the matter of PES transfer. I do not understand your reference to John Moore's letter of 20 February (which I take to be a misprint for 29 February). That implied that he would be making a running costs bid in this survey. There was no mention of PES transfers. Nor, in my view - contrary to the view set out in John Major's letter of 23 August - would a PES transfer be appropriate in a case such as this, involving a collectively agreed policy central to our overall programme. The correct course would be for DSS Ministers to make and justify a bid.

I am sending a copy of this letter to members fo E(LF), Malcolm Rifkind and to Sir Robin Butler.

Yours sincerely

NICHOLAS RIDLEY

PP (approved by the Secretary of State and signed in his absence)

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CONFIDENTIAL

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9 September 1988

Dear Nicholas,

COMMUNITY CHARGE: ATTACHMENT OF BENEFIT

Thank you for copying to me your letter of 9 August to Nicholas Ridley. I agree with your basic proposal, that the regulations setting out the rules for attachment of benefit should be made by your Department and should be free-standing. There are separate provisions for Scotland incorporated by the Local Government Finance Act 1988 in our Abolition of Domestic Rates Etc (Scotland) Act 1987, and it is essential that the arrangements for attachment of benefit in Scotland in accordance with these provisions should be fully in operation by 1 April 1989. The regulations will in fact have to be made some time in advance of that so that your offices and local authorities can work out their procedures.

Your letter proposes an upper limit for the amount which may be deducted in any week, of 5% of the personal rate for a person aged 25 or over. That seems a reasonable figure for a single person, since it would enable the level of arrears likely to have built up before local authorities are able to obtain attachment of benefit to be paid off over a reasonable period of time. I do not understand, however, why you propose that the same weekly sum should apply for couples. Where both members of a couple are in arrears, as is presumably likely to be the normal case, the weekly deduction you are proposing would mean that it could easily take in excess of a year to pay off the sort of accumulated arrears we are likely to be talking about. I suggest that your figure of 5% should be applied to the couple's rate in this case.

I have no comments at this stage on the various operational points you have made but I hope there will be an opportunity for my officials to be fully involved in discussions of these matters before the regulations are finalised, and that there will be suitable consultations with local authorities.

Finally, I turn to your proposal that there should be a PES transfer in respect of the administrative costs of operating direct deductions. I am

surprised that you are raising now, for the first time, an issue which John Moore did not, as you suggest, refer to in his letter of 29 February. What he did say was that he would need additional running cost provision and that your department were currently looking at your estimates in the light of these decisions and that the requirements would be included in the Public Expenditure Survey. The only reasonable inference from this is statement following so closely on and in the light of what was agreed collectively on 4 February that he would (if necessary) make a bid for a running cost increase. Neither your nor Treasury officials have initiated any discussions with my Department on your new proposition. In any case I cannot as a matter of principle see why the cost of administering this aspect of the arrangements which your Department makes to help its clients meet their debts should be paid for by the Environment Departments. As John Major and you point out, the decision to attach benefit in this case is in furtherance of a collective decision that defaulting income support recipients should be treated in the same way as persons at work and that direct deductions in respect of community charge are no different in principle from a range of other deductions you make for such things as rates, rent and fuel. There is quite properly no PES transfer for these. I do not, therefore, consider it necessary or appropriate for me to make a PES bid for this element.

I am copying this letter to Nicholas Ridley and other Members of E(LF).

Yours ever,

MALCOLM RIFKIND

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