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CONFIDENTIAL

The Rt Hon Viscount Whitelaw CH MC  
Lord President of the Council  
Privy Council Office  
Whitehall  
London SW1

10 September 1986

*ELF*  
*NBP*

*Dear Lord President,*

E(LF): COMMUNITY CHARGE - FRAMEWORK OF DUTIES AND OFFENCES

*attached* — At its meeting on 3 July ELF broadly accepted the proposals in my memorandum E(LF)(86)4, except that civil penalties rather than criminal sanctions should be applied to heads of household in breach of their duties. The detailed provisions of the civil penalty system have now been the subject of further inter-departmental discussion and the purpose of this letter is to set out the detailed package which I now propose should be incorporated in my Bill for introduction next Session.

Basic duties and penalties

The registration system will be based on information collected by canvasses or other enquiries at head of household level. As a basis for this a "responsible person" will be defined for each address and will be under the duties:-

1. to respond to canvass forms or other enquiries within a specified period of time.
2. To provide complete and accurate information as requested in the canvasses and enquiries.

ELF has agreed that responsible persons should be subject to a civil penalty for failure to discharge either of these duties.

Individuals will be subject to a general duty to ensure that they are registered and to notify changes to the Registration Officer, in each case within a specified period of time. ELF has agreed that the civil penalties to be imposed upon individuals should not be associated directly with failure to register but should be framed in terms of individuals who are caught having avoided payment.

The amount of the civil penalty

The main precedent for civil penalties lies in VAT registration. Section 15 of the Finance Act 1985 provides for a civil penalty in relation to late registration or non-registration to be chargeable by the Commissioners of Inland Revenue equal to 30% of the tax loss or £50 if that is greater (or the circumstances are as such that there is no relevant tax). This precedent suggests that the amount of the civil

I have considered whether it might be possible to limit the grounds of appeal in order to reduce the workload on the Courts. Such a course would be fraught with difficulties; and in any case it would be damaging to the prospects for acceptance of the new system to make "justice" too hard to obtain. I am, however, considering whether legal aid needs to be available for these appeal cases, where relatively minor sums will be at stake - normally substantially less than the cost of the case.

#### Collection of penalties

I propose that the penalties payable by responsible persons should be civil debts to the local authority employing the Registration Officer, and should be subject to the same summary warrant procedures as will be used for community charge debts. The penalties due by individuals will effectively become part of their community charge liability and so will also attract summary warrant procedures. These procedures which will be modernised in the Debtors (Scotland) Bill and for which the Lord Advocate has H Committee approval generally, may lead to pouncing of goods and arrestment of wages. The modernised procedures will not lead to imprisonment.

Many of the "new payers" under the community charge system will be people who are wholly dependent on benefits and any penalties they incur on top of their charge liabilities will increase the financial pressures upon them. I do not wish to propose that there should be any provisions for compulsory deduction of penalties (or community charge payments themselves) from benefit in these cases. Instead it seems sufficient to rely on the well-tried arrangements for direct payments to be made on a voluntary basis which are used quite widely in relation, for example, to fuel bills. We do need, however, to be sure that the administrative arrangements we make for the registration of those dependent on benefits minimise the likelihood of their becoming subject to penalties.

#### Conclusion

I seek the authority of the Committee to incorporate the detailed proposals outlined in this letter in the Bill I am at present preparing for introduction next Session. It would be helpful to have any detailed comment which colleagues wish to make by Friday 26 September.

I am copying this letter to the members of ELF, to the Lord Chancellor, the Lord Advocate and to Sir Robert Armstrong.

*Margaret Pollock*

MALCOLM RIFKIND

Approved by the  
Secretary of State and  
signed in his absence



penalties in relation to community charge registration should be as follows:

1. For the responsible person there is no clear cut relationship between failure in his duties and the avoidance of a specific amount of tax: a flat rate penalty of £50 therefore seems appropriate. It might be worthwhile for a responsible person to pay the penalty but continue to refuse to provide information: in these circumstances, I propose that the penalty should increase to a much more severe rate of £400 for each subsequent failure until canvassing of that responsible person has been satisfactorily completed. The alternative is to go down the route of placing the responsible person in contempt of court which would be contentious and might lead ultimately to imprisonment, consequences which we should avoid associating with the new system if at all possible.

2. On individuals, it seems sensible to follow the VAT precedent and set the penalty at a proportion of the community charge avoided subject to a flat rate minimum amount: 30% and £50 seem reasonable figures. I propose that all those who are registered some time after their period of residence begins should be liable to pay the charge backdated to when the residence began with the addition of interest at a prescribed rate so that they derive no financial advantage from late registration. I propose, however, that the penalty (30% or £50 if greater) should apply only to those who have avoided payment for 3 months or longer.

#### Administration of the penalties

The duties of the responsible person are entirely associated with registration and it seems appropriate that the Registration Officer should have discretion in deciding whether or not to impose a penalty. The Assessor/Electoral Registration Officer in Scotland already exercises discretion in deciding whether or not to make a report to the Procurator Fiscal (which may lead to criminal prosecution) when responses to the canvas forms they send out are late back or are inaccurate.

The penalty to be imposed upon the individual will relate to amounts of community charge avoided. I therefore propose that decisions on the imposition of penalties on individuals should be the responsibility of the local authority. This has the advantage of maintaining the separation between registration matters and collection matters which is part of the rationale for creating Registration Officers.

In the case both of responsible persons and of individuals I propose that the penalty should not be imposed if the person can satisfy the Registration Officer or levying authority that there was a reasonable excuse for the failure.

#### Appeals

I propose that responsible persons and individuals should have the right to appeal to the Sheriff in Scotland against the imposition of penalties. The results of such appeals will, of course, be widely reported and will swiftly help establish the basis for common practice on the part of Registration Officers and levying authorities.