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Dear Lord President,

COMMUNITY CHARGE: MARRIED AND UNMARRIED COUPLES

E(LF) discussed this subject on 22 January. Colleagues were inclined towards extending joint and several liability for the community charge to unmarried, as well as married, couples, but asked officials to prepare a scheme suggesting how joint and several liability might work.

I enclose a note which my officials have prepared in consultation with other Departments concerned. I understand that the suggested framework has been accepted by all those involved, subject to one issue remaining unresolved.

The paper considers, but rejects, the suggestion that there should be no explicit provision at all for joint and several liability. Instead it recommends that joint and several liability should apply to married couples and to unmarried couples living together as husband and wife.

The operation of the system is summarised in paragraph 31 of the paper. It would mean that the need to establish joint and several liability arose only where a bill was unpaid, but that at that point that local authority would be able to take action against the debtor's partner as well as the debtor. In all cases, however, those concerned would have the opportunity to appeal.

I support the proposals that officials have made. I also feel that joint and several liability should be for the full amount of the debt at any point (paragraph 30 of the paper). That will mean that, in some cases, unmarried (and married) partners will find themselves liable for sums relating to a time before they started to live together. But the alternative of applying joint and several liability only to the period when the couple lived together would make it necessary for the local authority to establish when cohabitation began; this would be particularly difficult for unmarried couples.

Officials' proposals would mean slightly different arrangements in Scotland from those in England and Wales. This is inevitable given the decisions we have already taken about the system for enforcement of payment and for community charge appeals. But the

principles would be consistent across Great Britain, and it would be clear both that we intended to prevent avoidance of payment, and that unmarried couples were being treated in the same way as those who were married.

I understand that Malcolm Rifkind is hoping to put down Government amendments for Commons Report Stage of his Bill. My officials will be consulting other Departments further about the implications for drafting of the England and Wales Bill in due course.

I am copying this letter to the Prime Minister, the Lord Chancellor, members of E(LF) and to Sir Robert Armstrong.

Yours sincerely,

Nicholas Ridley

PP NICHOLAS RIDLEY

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

THE COMMUNITY CHARGE - JOINT AND SEVERAL LIABILITY

Background

1. Summing up E(LF)'s discussion of this subject on 22 January, the Lord President said that the Sub-Committee were inclined towards extending joint and several liability for the community charge to unmarried couples, although they recognised that there were considerable practical problems.

2. Officials were asked to prepare a detailed scheme suggesting how joint and several liability might work, and how the practical objections might be overcome. This note, prepared by DOE officials in consultation with those from DHSS, Scottish Office, Welsh Office Home Office and Lord Chancellor's Department fulfils that remit.

Summary

3. This paper:

(i) explains that there is a need for joint and several liability for the community charge because of difficulties in enforcing payment solely against the individual;

(ii) proposes that joint enforcement arrangements should be limited to married couples, and those living together as husband and wife, and that joint and several liability should be established as part of the enforcement process rather than at the registration stage;

(iii) sets out proposed procedures for joint enforcement in Scotland and in England and Wales, including provision for the couple to contest joint and several liability.

Individual liability: problem cases

4. The personal community charge is envisaged primarily as an individual liability. If the person concerned has no earnings, and

• Their savings fall below the qualifying limit, then the individual concerned may be eligible for social security benefits. In many cases where two adults living in the same household will be liable to pay the community charge - for example a brother or sister, or parent and grown-up son or daughter - then each will be eligible for assistance in their own right. This means they will each have income from which to pay the community charge.

5. But there are some individuals for whom this is not the case, and who will not necessarily be eligible for help even if they would otherwise meet the qualifying criteria. In these difficult cases, if the individual does not pay his or her community charge, the local authority may have problems enforcing payment. They may seek to distrain against the individual's personal possessions, but the value of the goods may be insufficient to pay the whole debt. In some cases an individual may claim that goods belong not to him but to his partner, or that goods are jointly owned or owned in common.

6. The largest of the problem groups is married and unmarried couples with one earner. They are jointly assessed for benefit to prevent (for example) a housewife being eligible for support where her spouse is in a well-paid job.

7. There are also other individuals who will not be eligible for benefit, including

- students who are dependent on their parents - either because they are on courses that do not attract awards, or their parents' incomes are such that the student receives little or no grant; there are about 100,000 students in these categories;
- those who refuse to make themselves available for work without good reason;
- immigrants who are dependent on sponsors.

8. Officials have considered whether joint enforcement arrangements should take special account of these relatively small groups, or

ould be limited to married and unmarried couples. The detailed arguments are set out at Annex A. We recommended that joint enforcement arrangements should be limited to married couples and those living together as husband and wife.

The Debtors (Scotland) Bill

9. At the E(LF) meeting on 22 January, Ministers considered with two options for dealing with married and unmarried couples:

- individual liability, with the debt being enforced by seizure of the individual debtor's goods or of his earnings;
- joint and several liability, with the debt enforced by the seizure of goods or earnings belonging to either spouse.

10. Further examination of the issues has shown that, in Scotland there will not be such a clear distinction between enforcement against an individual and enforcement against a couple. The Debtors (Scotland) Bill, presently in the Lords, allows the Sheriff officer to poind (distrain on) goods which the debtor owns in common with any third party. This will make poinding easier in cases where the debtor is married, because Scottish family law (the Family Law (Scotland) Act 1975, section 25 - not yet in force) will create the presumption that household goods are in common and equal ownership.

11. The Debtors (Scotland) Bill also creates the rebuttable presumption that all goods in the debtor's home belong to the debtor, making it easier for the Sheriff officer to poind the goods he finds there in the possession of the debtor.

12. These provisions do not cover all the situations that E(LF) wished effective remedies to apply to.

- They do not allow arrestment of the earnings of the debtor's spouse.
- They do not allow poinding of goods which belong solely to the debtor's spouse.

- They affect married and unmarried couples unequally since the household goods of unmarried couples will not be presumed to be held in equal shares.

- They apply only to Scotland. Parallel legislation does not exist and is not at present planned in England and Wales.

13. Moreover, it would be difficult for the Government to retract from the present statement in the Abolition of Domestic Rates Etc (Scotland) Bill, which provides that married couples should be jointly and severally liable for the community charge. Pressure in Committee has been for the extension of joint and several liability to unmarried couples. There has been relatively little criticism of the idea of joint and several liability.

Joint and several liability

14. Only joint and several liability fulfils the E(LF) remit to treat married and unmarried couples equally, and paves the way for the introduction of comprehensive enforcement procedures.

When joint and several liability should be established

15. The Abolition of Domestic Rates Etc (Scotland) Bill assumes that the decision on whether joint and several liability applied would be taken as part of the process of registration for the community charge. The Bill envisages that people would need to declare on the canvass form whether they were married to someone living at the address. However, to follow the same approach for unmarried couples would mean

- requiring people to say, in responding to the canvass, whether they were living with someone as 'husband and wife';

- making it a requirement that anyone who began to cohabit, or ceased to do so, in the course of the year should inform the local authority.

The alternative, given that joint and several liability will come into play only at the stage when a community charge bill has not been

id, is to leave the question of whether a person is jointly and severally liable until the need for enforcement actually arises. It would still be possible to seek information about married couples at the registration stage. But on balance we do not recommend this: to do so would mean that the system did not treat married couples in the same way; and married couples are in any case likely to provide fewer problems.

16. There would need to be included on each community charge bill a clear statement that, although the person to whom it was addressed was individually liable to pay it, in the case of married and unmarried couples failure to pay could result in action being taken against the partner.

17. In most cases where bills are not paid on time, payment will be forthcoming following a reminder, or where the authority makes clear that is prepared to take action through the courts.

Proposed Scottish procedures

18. Where legal remedies against non-payment were needed, the local authority would apply for a summary warrant for the recovery of the amount owed. The summary warrant would usually in the first instance be simply against the debtor. It would be enforced by the Sheriff officer who may poind the debtor's goods, arrest his earnings, or seize other assets including money held in the debtor's bank account, according to the local authority's specific instructions.

19. It is proposed that the Bill should provide that persons who are living together as man and wife are jointly and severally liable for each other's personal community charges, but that this should not be a matter which is checked at the registration stage and that it should not therefore appear on the register. The local authority would have the discretion at any stage in enforcement proceedings to apply to the Sheriff court for an ordinary court decree in the names of both the debtor and the spouse. The local authority would have to make a case that the couple were living together as husband and wife. The debtor and the partner would have the opportunity to make

presentations. If a decree was granted the Sheriff officer would be able to seize the assets of both the debtor and the debtor's partner.

20. The point at which the local authority sought a joint decree against the couple would vary depending on the circumstances. In some cases, the local authority would do this straight away, without first attempting enforcement solely against the debtor. For example, the local authority might have knowledge of the couple accumulated as part of a history of bad debts, or it might have dealt with a rebate application for the couple, in which they accepted that they were living together. In other cases, the authority would seek a joint decree once enforcement solely against the individual had been tried and failed.

Proposed English and Welsh procedures

21. As in Scotland, it is proposed that in England and Wales the local authority would usually first attempt enforcement solely against the debtor, before seeking a warrant in joint names, but the authority would have the discretion to seek a joint warrant in the first instance. The warrant would be administered by the local authority. It would give more limited powers than a warrant in Scotland - it is proposed that it would allow only distraint on goods (by bailiffs) and attachment of earnings. It would not allow the local authority to arrest assets in bank accounts, etc.

22. The procedures for acquiring a joint warrant would be slightly more complex than in Scotland because of the different court system. Where an authority had evidence of the identity of the debtor's spouse it could apply to the magistrates' court for a summons, then a warrant, in both names. Both the debtor and the alleged spouse would have the right to object that they were not in fact living as husband and wife. Where such an objection was made the case would not normally be heard by the magistrates' court but would be referred to the relevant body dealing with such appeals. In the interim the magistrates' court would issue a warrant only in the name of the debtor.

Appeals in England and Wales

23. Under the system described above, appeals against issue of a joint warrant would always be by the debtor or (alleged) partner, against the local authority's contention that the couple were living together as husband and wife. In Scotland, cases would be dealt with by the Sheriff, who will be the normal channel for appeals on community charge matters there.

24. Which body decided the appeals in England and Wales would depend on the circumstances, as set out below.

25. If there had already been an appeal against joint assessment for income support that appeal would have been heard by the Social Security Appeal Tribunal or would be pending. The decision of that Tribunal should be conclusive so far as joint and several liability for the community charge was concerned unless material circumstances had changed.

26. The same would apply if a similar appeal had already been made to the Local Authority Review Board. This body deals with appeals on assessment for housing benefit for those not on social security.

27. Where the couple had not made such an appeal, separate hearings would be needed on joint and several liability. These could be dealt with

- by the Local Authority Review Boards, which (as noted above) have experience of these matters, but use of which would involve expanding their remit to include people who were not receiving rebates;

- by the new Local Taxation Tribunals which will be based on the existing Local Valuation Courts but will be hearing appeals about a wide range of community charge issues, including appeals against civil penalties.

On balance we favour the use of Local Taxation Tribunals.

Necessary conditions for Joint and Several Liability

28. There are two final points about the conditions which should be satisfied for joint and several liability to apply.

29. First, joint and several liability for the community charge has always been envisaged as applying to all married couples, including those where both partners have incomes. E(LF) was concerned that unmarried couples should not be treated more favourably than those who were married. We therefore assume that joint and several liability should also apply to all unmarried couples living together as husband and wife, irrespective of their financial circumstances.

30. Second, it is for consideration whether, in the case of married couples, the local authority should be able to require a spouse to pay his or her partner's community charge, whether or not the debt arose before the couple married; and similarly, in the case of unmarried couples, whether joint and several liability should apply to community charge debts dating back before the couple began living together. This approach may be criticised as harsh. It would also be inconsistent with Scottish matrimonial property law, which limits a husband's liability for his wife's ante-nuptial debts to the value of any property she brings to the marriage, and under which a wife has no liability for her husband's previous debts. There is however no equivalent of this legislation in England and Wales. Moreover, if joint and several liability were limited to community charge debts incurred while the couple were living together, the local authority would need to show, not only that the couple were living together as husband and wife, but had been so throughout the period to which the debt related.

Conclusions

31. (i) The provisions of the Debtors (Scotland) Bill ease some of the problems associated with enforcing payment by couples, but do not achieve all that was required by E(LF). Officials recommend that the Abolition of Domestic Rates Etc (Scotland) Bill, and parallel

English and Welsh legislation, should enable or provide for joint enforcement procedures against married couples (unless separated) and against unmarried couples living as husband and wife.

(ii) Invoking joint and several liability should be left to the stage of seeking payment, not dealt with as part of the registration process. But a warning about joint and several liability should be included on all community charge bills.

(iii) In the first instance, enforcement would generally be sought against the debtor alone. Where the local authority believed it knew the name of the debtors partner it could apply to the court for an appropriate order which would contain both names.

(iv) The debtor and the alleged spouse would have the opportunity to object. In Scotland the case would be heard by the Sheriff court. In England and Wales the Local Taxation Tribunal would decide whether a couple were living together as husband and wife, unless the issue had already been considered (or was being considered) by other appeal bodies in the context of income support or housing benefit.

(v) It is for consideration whether, to ensure effective enforcement procedures, joint and several liability should apply to community charge debts amassed before a couple began living together as husband and wife, as well as to debts incurred after they began cohabiting.

THE SCOPE OF JOINT AND SEVERAL LIABILITY

A1. It is proposed that joint and several liability should apply only to married couples who are not separated, and unmarried couples who are living together as husband and wife. An alternative would, however, be to extend joint and several liability beyond these categories to cover other people who may be dependent on a friend or relative. Examples previously mentioned are students who do not receive Government grant; those who refuse to make themselves available for work for reason unacceptable to DHSS, and sponsored immigrants.

A2. The main arguments for extending joint and several liability to these group would be that, where such people have no income and few possessions, it might be difficult to enforce payment of the community charge. If this happened, the local authority might reasonably look to those on whom such individuals were financially dependent to meet any unpaid bill,

A3. Such a wide definition of joint and several liability

i. would be contentious, and would tend to undermine the argument that the community charge is an individual liability;

ii. might still provide problems of definition and proof for the local authority: those concerned might, for example, be found to be partly dependant on a small amount of savings, rather than wholly dependent on any one other person;

iii. could make enforcement cumbersome - where the student did not live at the same address at his parents, for example.

A4. The risk of avoidance may, in any case, be rather less with these groups than it is with married and unmarried couples with only one earner. Many of the students for example will have part-time

jobs or some savings. So the local authority in England and Wales will have the option of seeking committal to prison if failure to pay the community charge is due to 'wilful refusal or culpable neglect' - that is, that the individual had had money which could have been used for the purpose. (In Scotland, civil imprisonment will not result: Debtors (Scotland) Bill, clause 74). In difficult cases there will be the possibility of renewing enforcement at a later date if the individual's circumstances change - for example, if someone who was not working got a job.

