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The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
70 Whitehall
LONDON
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W B M

27 February 1987

Dear Lord President,

with DRN

COMMUNITY CHARGE: MARRIED AND UNMARRIED COUPLES

Nicholas Ridley's letter of 27 February proposes a scheme of joint and several liability for married and unmarried couples along the lines set out in the note by officials which he attaches in fulfilment of the remit from E(LF) on 22 January that such a scheme should be prepared.

I am broadly content with the scheme proposed by officials. As the note makes clear, the current Debtors (Scotland) Bill contains provisions which mean that in many cases of co-habitation it will be possible for effective debt recovery to be achieved without recourse to joint and several liability if the co-habitors own goods in common. I agree however that it will be necessary to provide for joint and several liability to apply in cases where the Debtors (Scotland) Bill arrangements might not be fully effective in achieving full recovery of personal community charge debts.

I have however reservations about the scope of joint and several liability envisaged in the fifth paragraph of Nicholas Ridley's letter. It would be contrary to basic principles of Scots law, most recently expressed in the Law Reform (Husband and Wife) (Scotland) Act 1984, for partners to find themselves liable for sums relating to a time before they were married or started to live together. I therefore propose that in Scotland joint and several liability should only apply to debts relating to the period within which a couple are married or have cohabited. It will be for the Sheriff to consider, as part of his determination of whether or not to grant a decree to the local authority permitting debt recovery on the basis of joint or several liability, the date on which cohabitation can be shown to have started. I prefer this approach on the general grounds of natural justice as well as on the ground that it is necessary against the background of family law in Scotland. If Nicholas Ridley and Nicholas Edwards nevertheless feel

strongly that it is necessary to provide for a wider scope of the debts covered by joint and several liability in England and Wales, however, I think that the difference could be defended on the grounds of differences between the legal systems north and south of the Border.

Since the Report Stage of the Abolition of Domestic Rates Etc (Scotland) Bill will be on 4 and 5 March, I have today given instructions for the relevant amendment to be tabled.

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

Yours sincerely

M. R. Gilchrist

MALCOLM RIFKIND

Approved by the Secretary
of State and signed in his
absence

