

*CCBly*

510



2 MARSHAM STREET  
LONDON SW1P 3EB  
01-212 3434

My ref:

Your ref:

The Rt Hon John Major MP  
Chief Secretary  
HM Treasury  
Parliament Street  
LONDON  
SW1P 3AG

*Price Minister*  
*A major problem. Cabinet with*  
*no proposed solution, subject to*  
*the views of colleagues!*

3 March 1988

*Yes - subject to*  
*time in this session.*  
*mb*

*Dear John*

*PLC*  
*4/1*

LOCAL AUTHORITY CAPITAL CONTROLS  
LEASING AND OTHER LOOPHOLES

In recent months, I have had a number of reports that some local authorities, including a number of London boroughs, have been entering into substantial leasing deals with a view to circumventing the limitations that we have placed on their council house building programmes.

It is increasingly clear that these reports are well founded and that the deals concerned represent a threat to the achievement of our expenditure and housing policies. In broad terms, loopholes have been found in the existing capital control legislation which enable local authorities to use leasing to finance the acquisition or construction of houses or other capital assets outside normal prescribed expenditure controls. And, to the extent that these loopholes are used to provide housing, the tenants are deprived of the Right to Buy.

I am satisfied that primary legislation is required in order to close these loopholes with effect from the date of the announcement. I am also satisfied that it would be unacceptable to let things run on until a new capital control system, for which I am seeking a place in next Session's legislative programme, comes into force in two years' time. There is just too much scope for authorities to run up commitments now which would be irrevocable by the time that the new system came in.

My officials have consulted the Law Officers about the possibility of including retrospective provisions in next Session's Bill. I reluctantly accept their advice that to do this would entail an unacceptable degree of retrospection in a situation of this kind.

I therefore propose that the necessary provisions should be included in either the current Housing Bill or the Local Government Finance Bill. They would catch not merely the leasing loophole but also certain other devices which local authorities have been using to add to their capital spending power or artificially to bridge deficits on revenue account.





Subject to your early agreement and that of other colleagues, I would propose to make an announcement as early as possible on the lines of the attached draft. I would therefore be most grateful for any comments by close of play next Tuesday, 8 March. Given the possibility of pre-emptive action by authorities it is most important that my intentions do not become widely known.

I am sending copies of this letter to the Prime Minister and the other members of E(LF), to John Wakeham and John Belstead, and to Patrick Mayhew and Sir Robin Butler.

*Johnson*

*Ridley*

NICHOLAS RIDLEY

PS The recent and much-publicised case of Brent Town Hall highlights the urgent need to tackle this issue.



**CONFIDENTIAL**

## DRAFT STATEMENT BY THE SECRETARY OF STATE FOR THE ENVIRONMENT

With permission, Mr Speaker, I will make a statement about local authority capital expenditure.

The Government's expenditure plans for the forthcoming year include provision of approximately 5.5 billion pounds for capital expenditure by local authorities in England. That provision represented an increase of 11% over the plans in last year's Public Expenditure White Paper and, indeed, an increase in real terms over the corresponding provision for the current year.

It is against that background that 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.

Whilst only a minority of authorities are involved, 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. And I would remind those in the City, and elsewhere,



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who are minded to provide finance to enable local authorities to evade capital expenditure controls, that the Government do not guarantee, or stand behind, the obligations of local authorities.

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

First, there are schemes under which local authorities are acquiring capital assets on terms which are outside the letter of existing capital controls. For instance by the taking of medium term leases or by barter.

Secondly, there are schemes under which local authorities are raising money by lease-and-leasebacks of their operational assets. This is borrowing in fact though it may not be borrowing in law.

I propose measures to bring both classes of transaction within capital expenditure controls.

Amendments have been made to the Prescribed Expenditure Regulations. These amendments will take effect from midnight tonight. The amending regulations will, however, be temporary in the first instance. My Department will consult local government and other interested parties about whether any changes or clarification are required before the amendments are made permanent. I have adopted this procedure to avoid any repetition



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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.

The main changes made by the regulations are as follows.

Acquisition of a leasehold interest 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 an underlease in property in which the authority hold a superior interest or of a lease of property which has during the previous 5 years been the subject of a development agreement to which the authority were a party.

Certain exceptions are specified to avoid double counting.

I accept that 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. We will consider issuing additional capital allocations in cases where we are satisfied that the agreements were not entered into for the purpose of evading capital expenditure controls.

Subject to the approval of Parliament to the necessary provisions, I propose to supplement the changes to the



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regulations with certain changes to the primary legislation. I have placed in the Library of the House a memorandum setting out in detail what I propose. In broad terms, amendments will be made to the Local Government Planning and Land Act 1980 as follows.

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 land acquired on the assumption that it was acquired freehold and for cash. That was the intention of the 1980 Act.

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.

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.

In addition, I intend to widen the statutory definition of prescribed expenditure to include two categories of capital expenditure which would undoubtedly have been included in that definition in 1980 if present circumstances had been foreseen. The categories are expenditure on the acquisition of share or



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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.

The necessary provisions will be included in the [Housing/Local Government Finance Bill]. They will, however, apply from midnight tonight.



*ceby*



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*Oddi wrth Ysgrifennydd Gwladol Cymru*

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Tel. 01-270 3000 (Switchboard)  
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*From The Secretary of State for Wales*

The Rt Hon Peter Walker MBE MP

9 March 1988

*MBM*

*Rec 6 9/3, 1  
afflat*

*A. ...*

Thank you for copying to me your letter of 3 March to John Major in which you outline your proposals to close the leasing loophole exploited by a number of local authorities to incur additional capital expenditure.

Although we have no evidence that this kind of activity is of a level to cause concern in Wales I am content with the thrust of your proposals and see no reason why the Regulations should not also apply in respect of Wales.

On the particular question of leasing, I would prefer a five year limit to allow for cases where an authority may have a genuine need to lease for a period of several years. However I am content to go along with a three year limit if that is necessary to deal with the position in England.

I should be grateful if you could make clear in your statement that the legislative changes will apply equally to the Principality. (My officials will be in touch with yours to arrange a suitable wording).

This is on the assumption that should additional allocations be needed for Welsh councils under the circumstances described in the statement, the Chief Secretary will agree to the additional PES cover being made available.

This letter is copied, as was yours, to the Prime Minister, other members of E(LF), John Wakeham, John Belstead, Patrick Mayhew and Sir Robin Butler.

*[Handwritten signature]*

The Rt Hon Nicholas Ridley MP  
Secretary of State for the Environment





LOCAL GOVT; Relations P34





DEPARTMENT OF TRANSPORT  
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

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

CEBET.  
E9 MAR 1988

Dear Nicky,  
Clap

MBM  
REC  
9/3

Thank you for sending me a copy of your letter to John Major of 3 March. I agree that there is a need to act quickly to close the leasing and other loopholes in capital controls as you propose.

It will however be necessary to make some allowance for the impact of a stricter regime on short leases where these are not involved in devices for evading controls, for example where properties are being bought up for demolition along the line of a new road scheme.

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

PAUL CHANNON

*[Handwritten signature]*

*[Handwritten initials]*





01-936 6269

ROYAL COURTS OF JUSTICE  
LONDON WC2A 2LL

*CCBG*

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*NBM*

*PLG*

*9(7)*

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

8 March 1988

*Dear Nicholas,*

LOCAL AUTHORITY CAPITAL CONTROLS : LEASING AND OTHER LOOPHOLES

*file with PG*

You copied to Patrick Mayhew your letter of 3 March to John Major in connection with your proposals for closing loopholes in the capital control system presently being exploited by certain local authorities.

I note that, in so far as primary legislation is required to close such loopholes, you are hoping to include the necessary provision in either the Housing Bill or the Local Government Finance Bill, to take effect retrospectively from the beginning of the day following that on which you announce the changes. I am quite satisfied that a moderate degree of retrospection is justified by the probability that, once they had notice of the impending closure of the loopholes, certain local authorities would otherwise seek to exploit them to the full during the period before the necessary statutory provisions could receive the Royal Assent.

Provided, therefore, that the necessary amendments can be effected in legislation during the present Session, I am content with what you propose, subject only to Parliamentary Counsel being satisfied that he will be able to draft a satisfactory provision which will reflect exactly the policy described in the statement, and to suitable arrangements being made to bring the terms of the statement to the notice of local authorities in time for the commencement of business on the following day. I understand that your officials will be in touch with mine about these last two points.

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A copy of this letter goes to the Prime Minister and other members of E(LF), and to John Wakeham, John Belstead and Sir Robin Butler.

*Yours ever*

*Nich.*

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LOCAL GOVT  
Relations pr 34





ce/BG



## 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*

NBPM

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

RECE  
 8/3

8 March 1988

*Nicholas*

LOCAL AUTHORITY CAPITAL CONTROLS  
 LEASING AND OTHER LOOPHOLES

*Flap*

You sought quick reactions to your letter of 3 March to John Major, proposing ways of closing off a number of recently uncovered loopholes in the controls on local authorities' capital expenditure. There are two comments I would like to make.

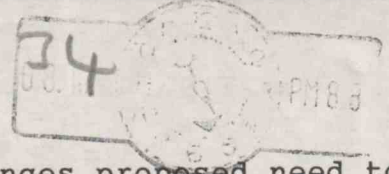
Firstly I note that you accept that some legitimate arrangements may be caught by the measures you propose and that additional allocations may be made available in such circumstances. It is possible that some joint schemes between NHS and local authorities may involve medium term leasing arrangements because of the time-limited nature of these schemes. I assume that this is the sort of problem you had in mind and I would be grateful if any guidance issued to authorities could draw attention to it and if my officials would be informed if any queries arise on this front.

Secondly, a more general point, it is possible that some authorities will find that their total capital spending power is severely curtailed when allocations or borrowing approvals have to be found to cover their obligations under these deals. For the scope for PSS investment to be adversely affected in this way would cut across our national priorities for the PSS. Once the effect of the measures you propose can be quantified on an individual authority basis we may need to give further thought to ways of protecting capital expenditure on services other than those directly involved in these deals in some authorities. I would be grateful if you could circulate the relevant information as soon as it is available.



**E.R.**

LOCAL GOVT: Relations pt



Subject to these points, I accept that the changes proposed need to be made.

I am copying this letter to the Prime Minister and the other members of E(LF), to John Wakeham and John Belstead, and to Patrick Mayhew and Sir Robin Butler.

A handwritten signature in dark ink, appearing to read 'John Moore', is written above the printed name. The signature is fluid and cursive.

JOHN MOORE

*CPM*



Treasury Chambers, Parliament Street, SW1P 3AG

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

*NBRM*

*RCCG*

*8/3*

*7<sup>th</sup>* March 1988

*Dear Nick,*

**LOCAL AUTHORITY CAPITAL CONTROLS**

*WILL REQUEST IF REQUIRED*

Thank you for your letter of *13* March.

I agree that immediate action is needed to plug the gaps in our present capital control systems which are being exploited by a number of local councils. I am therefore content with your proposal to make an early announcement of your intention to take appropriate legislative action in the current session.

I am copying this letter to the Prime Minister, other members of E(LF), John Wakeham, John Belstead, Patrick Mayhew and Sir Robin Butler.

*Yours Ever,  
John*

JOHN MAJOR



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*File SH  
cc BG*

10 DOWNING STREET  
LONDON SW1A 2AA

*From the Private Secretary*

7 March 1988

*Dear Roger,*

**LOCAL AUTHORITY CAPITAL CONTROLS  
LEASING AND OTHER LOOPHOLES**

The Prime Minister has seen your Secretary of State's letter of 3 March to the Chief Secretary. Subject to the views of colleagues and to the necessary time being found this session to accommodate the proposed provisions, the Prime Minister is content with your Secretary of State's proposed statement.

I am copying this letter to the Private Secretaries to members of E(LF), the Lord President, the Lord Privy Seal, Sir Patrick Mayhew and to Trevor Woolley (Cabinet Office).

*Yours,  
Paul.*

**PAUL GRAY**

Roger Bright, Esq.,  
Department of the Environment

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*[Handwritten signature]*