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ECSS



Price Mark

Content:

- ① With no extension proposed at X? Yes
- ② A similar extension in Scotland?
- ③ For officials to consider future charging for certificates.

Prime Minister

Yes but it can't fall on the individual  
 COMMUNITY CHARGE: EXEMPTION FOR SEVERELY MENTALLY HANDICAPPED PEOPLE  
 exempted mt.

PCC 6 18/5

The Local Government Finance Bill exempts from the personal community charge individuals who are severely mentally handicapped. It defines that term to include only those who were handicapped from birth or in childhood. In this, it follows the precedent of the Scottish Act.

At Commons Committee and Report Stages, Michael Howard and I came under considerable pressure to widen the definition. We agreed to consider doing so, and have since consulted the other Departments primarily concerned - DHSS, Scottish Office, Welsh Office and Treasury.

It seems to me - and colleagues do not dissent - that we shall simply be unable to justify the existing definition when the issue is raised again (as it undoubtedly will be) in the Lords. My own inclination had been to try to secure a definition which avoided any risk of anomalies. That would have meant exempting all those who are severely mentally handicapped, for whatever reason and at whatever stage in their life. Malcolm Rifkind, John Moore and John Major have however pointed out the definitional problems that would ensue from attempting to include those in advanced stages of progressive deterioration (senile dementia, for example); the risk of inconsistent interpretation by doctors; and the potentially large number of people who could be involved.

In view of those concerns, I recommend that we should announce a more modest extension to the existing exemption, designed simply to extend the exemption to those who suffer severe intellectual impairment as a result of brain injury in adulthood. This will include individuals who suffer from accidental injury, medical accident, criminal injury, brain surgery, infection affecting

X



brain tissue, and the effect of toxic or nutritional conditions. I must warn, however, that such a concession may not be sufficient to satisfy the House of Lords.

The enclosed note by officials sets out in detail the definition that is proposed and how it would operate. I support the conclusions of that paper. The number of additional people who will be exempt from the personal community charge as a result of the change will be small - around 10,000.

*- bringing the total to about 60,000. RR CG.*

The paper also recommends that officials should consider further the implications of allowing doctors to charge for certificates; this is a topic on which Malcolm Rifkind wrote to John Moore on 31 March. I think it would be helpful if officials were to provide a further paper on this subject by the end of May.

I would be grateful for your agreement that we should proceed as I have suggested. It would be helpful to have a response by 20 May so that an announcement can be made in Lords Committee early the following week.

I am copying this minute to members of E(LF) and to Sir Robin Butler.

*BP*

*BP* N R

17 May 1988

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

COMMUNITY CHARGE: EXEMPTION FOR SEVERELY MENTALLY HANDICAPPED  
PEOPLE

Background

1. The Abolition of Domestic Rates Etc (Scotland) Act exempts from the personal community charge those people who are suffering from a severe mental handicap. The exemption extends only to individuals handicapped from birth or in childhood. Such an exemption is unlike other personal taxes - such as Income Tax - where the mental condition of an individual does not affect his liability.
2. A similar exemption is included in the Local Government Finance Bill. That Bill - like the Scottish Act - provides other exemptions from the personal community charge which may cover some people who are mentally handicapped. In particular, long-stay hospital patients, and patients whose sole or main residence is a residential care home or a nursing home, will be exempt from the personal community charge.
3. During Commons Stages of the Local Government Finance Bill, DOE Ministers came under considerable pressure to widen the scope of the exemption for the severely mentally handicapped. The Minister for Local Government agreed to consider, with colleagues in other Departments, the possibility of such an extension.
4. This note, prepared by DOE officials in consultation with those from the Department of Health and Social Security, the Scottish Office, the Welsh Office and the Treasury, looks at the

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implications of a proposal to extend the exemption to cover some of those who become severely intellectually impaired

in adulthood. It is written primarily in the context of the England and Wales Bill. If Ministers were to decide to extend the exemption, changes would also need to be made to the Scottish legislation. We envisage these having a similar effect, though the exact procedures adopted might be different in Scotland; the administrative arrangements envisaged by the Local Government Finance Bill already differ in some respects from those in ADRES.

Criteria to be adopted

5. The scheme in the Local Government Finance Bill requires 3 criteria to be met before exemption on the grounds of severe mental handicap can be granted.

(i) That the individual concerned is entitled to severe disablement allowance (SDA).

(ii) That the person is severely mentally handicapped, defined as "suffering from a state of arrested or incomplete development of mind which involves severe impairment of intelligence and social functioning".

(iii) That a doctor's certificate has been provided, indicating that the person concerned is severely mentally handicapped.

6. There are attractions in this three-criteria test. The doctor's certificate relieves the community charges registration

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fficer of the need to make medical judgements. The requirement that the individual should also be receiving a disability benefit (in this case SDA) acts as a filter, and gives doctors some indication of the extent of disability that is envisaged.

## The definition

7. The central feature of an exemption scheme must be the definition. In order to extend the exemption to cover accident victims, we envisage that it would be necessary to amend the definition at present in the Local Government Finance Bill (paragraph 5(ii) above) so that it referred to those

"suffering by reason of arrested or incomplete development of mind or brain injury - from a severe and apparently permanent impairment of intelligence and social functioning."

## Doctor's certificate

9. As presently required by the Bill, there would also need to be a certificate, in each case, setting out that, in the doctor's opinion, the person concerned met the qualifying criterion for the purposes of exemption from the community charge.

10. The issues that arise in respect of certificates are whether doctors should be paid for providing them; and, if they are, whether the cost should fall on the exempted individuals or should be met from public funds (presumably by local authorities).

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Doctors will almost certainly expect to be paid for the certificates they issue, as they are in other cases. Difficulties have arisen in Scotland, however, over the possibility of local authorities reimbursing the cost of certificates. There is outstanding Ministerial correspondence on this issue (the Secretary of State for Scotland's letter of 31 March to the Secretary of State for Social Services). Although this topic needs to be settled quickly, it is not quite as urgent as the need to resolve the basic definition. We suggest, therefore, that officials should consider further the issues that arise on charging for certificates, and report separately.

## Entitlement to disability benefit

11. One risk is that doctors will err on the side of giving certificates, and thereby exemption from the community charge, wherever possible. That is what happened with the disabled parking 'Orange Badge' scheme. Such an outcome would mean that the number of people granted an exemption would be larger than the Government had wanted, or thought justified.

12. To minimise that risk, and to help ensure consistency of approach between doctors, we recommend that entitlement to Severe Disablement Allowance or Invalidity Benefit should be one of the criteria for claiming the exemption. Unfortunately, these two benefits will not provide an effective filter for people over retirement age. Because there is no comparable benefit for people over retirement age, this criterion would not, therefore, apply to them - exemption would be by doctor's certificate alone.

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Appeals

13. Under the system set out in the Local Government Finance Bill, all appeals relating to registration in England and Wales will be to a Valuation and Community Charge Tribunal (VCCT). Because the requirement for a doctor's certificate will be a legal prerequisite to exemption, however, any individual who did not have such a certificate would not be able to mount a legitimate appeal against being registered for the personal community charge. Nor would we favour a separate formal right of appeal to a medical body against the refusal by a doctor to issue a certificate. We do not think such a provision is necessary, and it would almost certainly overburden the system.

14. Under the approach set out in the Local Government Finance Bill, the registration officer is not obliged to exempt those who have the necessary certificates, if he does not believe that the individual concerned meets the main criterion. It would, of course, be inappropriate for registration officers - who will not be medically qualified - to challenge a doctor's certificate, except in extreme cases. Where a CCRO does judge, however, that the person does not in fact qualify for the exemption, he will insist on registering the individual concerned, who will then have the right of appeal to a VCCT. VCCTs, which will be lay tribunals, may need to be able to call on expert advice in such cases.

Effect of extending the exemption

15. We estimate that about 60,000 individuals would be exempt from the personal community charge as a result of the definition set out in this note. This is about 10,000 more than would have been exempt under the definition at present in the Local Government Finance Bill. Many of those concerned would be likely to be receiving community charge rebates at the maximum, 80% level. The annual cost of widening the exemption would therefore be about £2½ million in lost revenue to local authorities. That is equivalent to an increase of under 10p in the average community charge to be paid by other adults.

Issues for Ministerial decision

16. If Ministers agree that the exemption from the personal community charge should be widened to cover those who are handicapped as a result of brain injury in adulthood, we recommend

- (i) the definition set out in paragraph 7 of this note;
- (ii) that doctors should give certificates, and that officials should consider further the issues that arise on charging for certificates (paragraphs 9/10);
- (iii) that entitlement to Severe Disablement Allowance or Invalidity Benefit should also be a prerequisite for exemption, except in the case of individuals over retirement age (paragraphs 11/12); and



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(iv) that there should be provision for appeals, though these would very rarely be needed (paragraphs 13/14).

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