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c/c IV

DEPARTMENT OF THE ENVIRONMENT
2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

MINISTER FOR LOCAL GOVERNMENT AND ENVIRONMENTAL SERVICES

Prime Minister (2)

MLS 24/3

24th March 1982

Dear Michael,

LOCAL GOVERNMENT FINANCE (NO 2) BILL

I am very grateful to you for the helpful advice in your letter of 18 March about points arising on Part I of the Bill following the issuing of a supplementary precept for 1982/83 by Bedfordshire County Council.

In the light of your advice I propose to make a statement in Standing Committee tomorrow morning, the last day on which the Committee is due to consider the Bill. The purpose of the statement is two-fold. First, to confirm the Government's view about the retrospective effect of the Bill in relation to supplementary rates and precepts for 1982/83 and to clarify the position of the districts in Bedfordshire. Secondly, to announce our intention to table amendments on Report in the Commons if possible to clarify the position of rating authorities and ratepayers generally in the light of the House of Lords decision in the GLC/Bromley case as well as in view of the Bedfordshire situation.

I am proposing that rating authorities be given not merely the power to reduce a rate and to make refunds but also the duty to do so in the event of for example a (supplementary) precept being declared invalid. We do not intend at this stage to give rating authorities express powers to pay interest to ratepayers. We do, however, propose to take the opportunity to provide for the recovery by the rating authority both of monies paid to the precepting authority in respect of an invalid precept and of the costs of collecting it, reducing the rate, making refunds to ratepayers and other associated costs.

I attach a copy of the draft of the statement which I propose to make tomorrow. I should be very grateful for your agreement to its terms by close of play tonight, with apologies for having to trouble you again at such short notice.

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I am sending a copy of this letter to the Prime Minister and to first Parliamentary Counsel for information.

Yours

Tom

TOM KING

The Rt Hon Sir Michael Havers QC MP

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~~On a point of order, Mr Chairman, I think it may help the Committee if, with your permission, I intervene to make a brief statement.~~

Members of the Committee will be aware that a number of complicated rating issues have flowed from the House of Lords' decision in the GLC/Bromley case. As I indicated to the Committee on 2 February we have been considering whether any changes to rating legislation are needed in the light of that judgment. I undertook to report back if the Government felt that action was necessary.

The Government believes that it is necessary to make further statutory provision to clarify the position of rating and precepting authorities and of ratepayers, particularly in cases where a precept or a rate is found to be unlawful. The provisions will deal with the powers and duties of rating authorities to reduce a rate, make refunds to ratepayers and to recover sums paid to precepting authorities and to deal with resultant costs incurred by the rating authorities. We intend to table amendments to this effect on Report in the House of Commons if possible, or otherwise in the House of Lords.

Members of the Committee will appreciate that I cannot be more specific at this stage about the technical details of our proposals in this complex area of rating law. A meeting which ~~we~~ had been ~~hoped to~~ arranged with the local authority associations has unfortunately been delayed, but we shall be consulting them very shortly about the best means of achieving our objective of protecting the position of rating authorities and ratepayers alike.

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Members of the Committee will also be aware of the situation which has arisen in Bedfordshire, where the County Council has issued a supplementary precept for 1982/83. We discussed these matters at length on 16 March and I indicated that we were looking into the matter and that I would give the Committee any guidance that might be helpful.

I should like to confirm the legal advice which I have received, namely that the Bill will invalidate retrospectively any supplementary rates or precepts made in respect of 1982/83, that this includes those made before 1 April and that Bedfordshire County Council's supplementary precept will, therefore, fall on Royal Assent. I am also advised that nevertheless, until the Bill receives Royal Assent the supplementary precept is valid and the four districts in Bedfordshire must rate for it. My advice is that in the case of the two districts which issued a supplementary rate to collect the supplementary precept, the supplementary rate will be invalidated on Royal Assent and that in the case of the two districts which included both the original and supplementary precepts in their main rate, that rate will remain valid after Royal Assent.

The amendments which we propose to table will make it clear that these main rates can be amended, and that any payments made to the precepting authority in respect of the supplementary precept can be recovered by the rating authorities along with the administrative costs incurred. The rating authorities will in consequence be able to reimburse their ratepayers.

6

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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

18 March 1982

Urgent advice please (Mr Donald)

The Rt Hon Tom King MP
Minister for Local Government and
Environmental Services
Department of the Environment
2 Marsham Street
LONDON S W 1

cc PS/Secretary of State
PS/Mr King
PS/Mr Shaw
Mr Hesier
Mr Davey
Mrs D. Phillips LG4
Mr Comber LEG.

Dear Tom.

LOCAL GOVERNMENT FINANCE (NO 2) BILL : BEDFORDSHIRE COUNTY COUNCIL

You wrote to me on 16 March about three points which have arisen on Part I of this Bill in relation to Bedfordshire County Council.

Status of the Supplementary Precept

I agree that the effect of Clauses 1(2), 2(2) and 30(2) of the Bill will be, once it receives Royal Assent, to invalidate retrospectively any supplementary rates or precepts made in respect of 1982/3. I note that Alan Fletcher of Counsel and I believe others consider that it is arguable that the prohibition on supplementary precepts does have retrospective effect. However I am reasonably confident that the courts would hold that it did.

Position of the District Councils and the Ratepayers

This is a more difficult problem. Until the Bill receives Royal Assent the supplementary precept is valid. The four district councils must rate for it (section 2(1) General Rate Act 1967). They are not entitled to refuse to pay over the supplementary precept before Royal Assent. Moreover the precept must state the date or dates on which payments are required to be made on account (see - section

/12(2)).

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12(2)). If the amount due is not paid the precepting authority can charge interest (see - section 12(8)). They can also sue for it (see section 15(3)).

I understand that 2 rating authorities have made one rate which includes the original and the supplementary precept and that the two other rating authorities have issued two rates - one for the original precept and one for the supplementary.

In the case of the first two authorities I take the view that the rate is valid and will remain so after the Bill receives Royal Assent because the rate will not offend Clause 1 of the Bill. In the case of the latter authorities the supplementary precept and rate will be invalidated upon Royal Assent. It is then arguable in these circumstances whether the district councils can recover from the County Council the rate raised to meet the invalid supplementary precept. The position is unclear, it differs from the GLC case where the precept was invalid ab initio. However it is possible to see arguments in support of a view that they can.

I have left out of consideration questions arising in relation to whether interest can be claimed and what the position would be if the precepting authority has already spent the precept. There may also be other transactions contingent upon the validity of the rate e.g. tenant's covenants to pay rates, inclusive rents and benefit related payments such as rate rebates which you will of course need to consider.

/However,

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE,
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However, I am driven to the firm conclusion that in view of the difficult position the district councils are placed in and their several reactions to it there is no alternative but to have transitional provisions in the Bill. It cannot be right that ratepayers should be treated in different ways both within Bedfordshire itself and compared with the rest of England and Wales. The Bill must provide transitional arrangements to deal with repayment and if it is thought necessary, interest. This method could also have the added advantage of making it clear beyond the shadow of doubt that the Bill is retrospective.

In view of the decisions of the four district councils it is no longer necessary to pursue the idea of two resolutions. However, it follows from the views which I have expressed above that it would not have been open to the district councils to hold back the supplementary rate.

I am copying this letter to First Parliamentary Counsel.

Yours ever,

Michael

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C&SV B

DEPARTMENT OF THE ENVIRONMENT
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MINISTER FOR LOCAL GOVERNMENT AND ENVIRONMENTAL SERVICES

16 March 1982

Dear Richard,

LOCAL GOVERNMENT FINANCE (NO 2) BILL: BEDFORDSHIRE COUNTY COUNCIL

A point has arisen on Part I of the Bill, on which I would welcome your urgent advice. My officials have already spoken to yours.

Part I of the Bill bans supplementary rates and precepts and prevents local authorities from issuing rates or precepts for any period other than a financial year. Clause I relates to rates and Clause 2 to precepts; each provides that "this section has effect in relation to any financial year beginning on or after 1 April 1982".

The problem arises because of a most unusual series of events in Bedfordshire, where the political control of the County Council is very finely balanced. The Council approved in February a budget for 1982/83 prepared by the Conservative Group (which is in an overall minority on the Council) and an appropriate precept to finance it. However, on 9 March the Labour and Liberal opposition parties on the Council combined to force through an extra amount of expenditure for 1982/83 on top of the original budget, together with a supplementary precept to finance it (press reports suggest that there were in fact two separate resolutions involving two supplementary precepts, but this is not materially significant to the points at issue).

Although it is stated on the face of the Bill that it has effect in relation to any financial year from 1 April 1982, the Bill has yet to receive Royal Assent and is unlikely to do so until about June. The questions which now arise are:

(1) what is the status of the supplementary precept(s) issued by Bedfordshire;

(2) what should be the response of the 4 district councils in the county, 2 of which have already made their rate for 1982/83 on the basis of the original precept issued by the County in February, while the other 2 have yet to make any rate for 1982/83; and

(3) what should ratepayers be advised to do?

We are being pressed for early advice on these matters by County Councillors and by the District Councils. As we are clearly going to have to give advice I thought it right to seek your views.

Status of the Supplementary Precept

It has always been our intention that Clauses 1 and 2 of the Bill should bite retrospectively for the whole financial year 1982/83 and they have been drafted with this in mind. As I indicated in my first paragraph, both Clauses provide explicitly that they shall have effect in relation to any financial year beginning on or after 1 April 1982; furthermore clause 1(2) defines "financial year" as meaning a period of twelve months beginning with 1 April, while clause 2(2) defines supplementary precept as a precept for a period in respect of which the precepting authority has already issued a precept. In addition, Clause 30(2) makes it clear that Part I of Schedule 4 to the Bill (which repeals, inter alia, local authorities' existing powers to levy supplementary rates and precepts, respectively S.3(5) of the General Rate Act 1967 and section 149(1) of the Local Government Act 1972) has effect for financial years beginning on or after 1 April 1982.

My advice is that these provisions will, as soon as the Bill receives Royal Assent, invalidate in toto any supplementary rates or precepts made in respect of 1982/83 before enactment of the Bill. My lawyers have confirmed this with Parliamentary Counsel (a copy of the appropriate letter is attached). I am therefore satisfied that the Bedfordshire supplementary precept(s) will be invalidated on Royal Assent and I assume you would not dissent with that view.

Your officials will be aware that in the context of the much more controversial proposals in the Local Government Finance No 1 Bill, where we are prescribing actual limits to rate levels, we adopted a belt and braces approach to the question of retrospection (Clause 11 of that Bill). In the context of the much more straightforward proposals in the No 2 Bill this did not appear necessary. I should make it clear that I am convinced that any attempt to meet the present situation by seeking to re-introduce the belt and braces approach in the present Bill would be highly embarrassing by undermining our earlier statements that the Bill had the effect of banning supplementary rates and would exacerbate the arguments about retrospection by appearing to act after events. Our principal defence against the retrospection argument has been that we have given ample warning from 16 December onwards when the No 2 Bill was published that a ban for supplementary rates and precepts for 1982/83 was in prospect.

This leaves outstanding, however, the question of the duty of the rating authority to make payments now (ie for the first two or three months of the financial year) in respect of a supplementary precept which may theoretically be lawful at this stage but which will subsequently be invalidated.

Position of the District Councils and the Ratepayers

This is more difficult. The Districts are faced with a demand for a supplementary precept which is currently lawful and with a corresponding schedule of payments which they must make to the

County Council during the financial year. Under the law as it stands (S2(1) of the General Rate Act 1967) they are required to make a rate sufficient to meet their total estimated expenditure which is not met by other means, including sums payable to other authorities under precepts.

I would be grateful for your view as to whether or not, in view of the impending legislation, the districts will be entitled to refuse to pay over the supplementary precept amounts demanded by the Council before Royal Assent is secured. If they are, all well and good: once the Bill is enacted, the supplementary precept falls and assuming that the Bill is fully retrospective - the districts owe the county nothing further apart from the main precept; if for any reason clauses 1 and 2 are not enacted in their present form they will then have to levy the necessary supplementary rates. If the districts, however, are not absolved from making supplementary precept payments to the county pending Royal Assent - and I imagine that the districts are being advised by their own lawyers that this is the case - then the position is more difficult. How do the districts cover themselves in such circumstances?

One possibility might be for the districts to make separate rate resolutions: one for the original main precept and the other for the supplementary precept (in the case of districts which have already made a rate such a resolution would have to be separate in any case; in the case of those which have not, the situation is a little less happy). The districts would then issue the main rate but hold the supplelementary in reserve. They would pay the full amount demanded by the County Council as if the supplementary precept were valid, financing it from balances, or by borrowing in anticipation of revenue receipts or simply by "front-loading" their payments to the County in the first two or three months of the year. Once Royal Assent was obtained the districts could re-schedule their payments to the County as necessary. If for any reason Royal Assent was not obtained the supplementary rate could then be issued. I would like to be in a position to give this advice to the districts provided you are content that the steps outlined above would not be unlawful. If you are so content, then no problems should arise for the ratepayer, since - assuming the districts are also prepared to follow this advice - they would never actually receive the supplementary demand.

We are being pressed to give urgent advice on these matters and really do need to be able to do so not later than the end of this week. I would therefore be very grateful for your views as soon as possible. If you would like to discuss this I would be very willing to do so.

I am copying this letter to First Parliamentary Counsel.

TOM KING

The Rt Hon Sir Michael Havers QC MP

Department of the Environment
2 Marsham Street London SW1

Direct line 01-212 4729
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Your reference

C H de Waal Esq, CB
Office of the Parliamentary Counsel
36 Whitehall
LONDON
SW1

Our reference

Date 11 March 1982

Dear de Waal

LOCAL GOVERNMENT FINANCE (NO 2) BILL: RETROSPECTION

This is to confirm our telephone conversation today.

Bedfordshire county council have resolved to issue a precept for 1982/83 for 24.6p in the pound. Subsequently, they resolved to issue a supplementary precept for the same year for a further 16.7p in the pound.

Clause 2(1)(a) takes away a precepting authority's power to issue a supplementary precept. Clause 2(3) makes it clear that the clause has effect in relation to the financial year 1982/83.

Clause 30(2) and Part I of Schedule 4 repeals section 149(1) of the Local Government Act 1972 for financial years beginning on or after 1st April 1982 to the extent that it enables a local authority to issue a supplementary precept.

Section 16(1)(a) of the Interpretation Act 1978 provides that the repeal of an enactment does not affect the previous operation of the enactment repealed or anything duly done under that enactment. But this rule yields to a contrary intention.

We agreed that the Bill if enacted in its present form would retrospectively invalidate the Bedfordshire county council supplementary precept. I mentioned that Bedfordshire county council had been advised by leading counsel that he believed that the Bill "may not be sufficiently tightly drawn" to achieve this result. You said that the link between a precept and a financial year was not too secure, but that there was nothing in any event which we could do about this. The Bill proceeds on the assumption that the link can be established.

If we are able to obtain a copy of counsel's opinion I will send it to you. Meanwhile, we are agreed that nothing further needs to be done to secure that the Bill when enacted will operate retrospectively to invalidate a supplementary precept issued before Royal Assent.

Yours sincerely

J.L. Comber

J L COMBER