"The Community Charge"

SCC. 1986
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INTRODUCTION


The Scottish Consumer Council has not before taken a view on the best means of funding local government services, and does not intend to do so now. However, in representing Scottish consumers' interests, SCC does have a responsibility to look at how proposals will affect consumers in practice. Indeed, in this field SCC has just completed a report in the wake of last year's rating revaluation on the experience of people whose domestic appeals have been heard by valuation appeal committees in different parts of Scotland. This will shortly be published as Valuation Appeals: Do domestic ratepayers get a fair hearing? (ISBN 0 907067 21 2 1986)

Since the Green Paper described its proposals for a new community charge as "the most radical reform of Local Government finance this century," the Scottish Consumer Council decided to undertake research to see how consumers would be affected by such a radical change. It commissioned three academics* at the Law Faculty of the

* Mr. Paul Watchman, Dr. Christine Barker and Dr. James McManus
University of Dundee to carry out this work. They were asked to examine particularly registration, collection and enforcement, as detailed in the consultation paper on operational issues, and the impact of the proposals on poor and disadvantaged people. The Scottish Consumer Council has a particular remit to represent the interests of poor and disadvantaged consumers.

The paper therefore concentrates on two of the three main criteria set out in the Green Paper:-

Technical adequacy: Simplicity, stability, cost, ease of assessment, collection, administration, operation

Fairness: Distribution and consideration of equity

It does not look in any detail at the third criterion:

Accountability: Accountability, efficiency, (minimising distortions and provision of clear choices and signals); responsiveness

In the course of preparation, the researchers studied a great number of other submissions, in addition to the government's own papers on the subject. Several other submissions go into considerable detail on questions of registration. Almost every submission has some comment on the fairness of the proposals. Few of the other submissions, however, go into very great detail about the collection of the proposed charge, whether "normal" collection or collection on
default. The SCC submission provides very detailed observations on aspects of registration and collection, many of which have only been alluded to in general terms elsewhere.

It is a considerable surprise to the Scottish Consumer Council and to the researchers that the Government does not appear to have considered in detail the practicalities of collecting the new community charge. It is all the more surprising because in recent years the Scottish Office has produced a considerable and impressive body of research on diligence, rent arrears and related issues. It is far from clear that the Scottish Office has consulted this research, and what, if any, conclusions it has drawn about the practicability of collecting and enforcing collection of a community charge.

It is also far from clear that the Scottish Office has consulted the most efficient creditors in the commercial sector about the practicality of collecting the charge, who, unlike local authority finance and housing departments, cannot be said to have any vested interest in this issue. The Scottish Consumer Council generally has a healthy scepticism about the claims of the professional providers of any service, including public administrators. But in this instance those professionally responsible for local government finance and administration do not overstate the problems associated with the community charge.
Government proposals, particularly when legislation is imminent, usually provide most of the answers. These answers may be more or less congenial to the reader but they are usually there, and provide a coherent picture of how a system will work. For once, study of Government proposals raises countless questions and brings few answers. The gaps speak eloquently of work being done in a hurry.

The main conclusion of the SCC's study is that the problems associated with implementation are insuperable. The proposed ways of maintaining a register of people liable to pay the community charge will be ineffective. Government has rightly rejected as draconian the measures which would make the register effective. So a significant proportion of adults - even more than the 7% who do not appear on the electoral register - will evade registration.

For those whose names do appear on the register, the paper examines methods of collecting money, particularly from those required to pay a local tax for the first time, and finds them expensive. The more effective the method is, the less efficient it is: the more efficient, the less effective.

The paper then examines ways of enforcing payment against people who default. Not one of them will work. Nor is there any method that might work, apart from imprisonment, which again, for good and honourable reasons, the government has said it will not use.
The inescapable conclusion is that a significant proportion of adults will evade payment. The community charge will become a "voluntary" tax, the worst and most unfair of any sort of tax - paid by the scrupulous, and avoided by the unscrupulous. Moreover, because the unscrupulous, the transient or the very poor will not pay, and will not be able to be made to pay, the rest of the community will have to pay even more.

There are a number of specific examples of unfairness in the report. The fact that poorer households in general will pay more is difficult to justify as being fair. Less publicised is the fact that people in the more remote parts of rural Scotland will also pay more, even though they often have limited or non existent access to certain local authority services. This is also unfair. There are other serious anomalies, concerning people living in communal establishments and students, which will also cause considerable unfairness.

However, the greatest unfairness is that the community charge will be paid by some and evaded by others. In this sense, the proposed tax will not work. It falls at the very first hurdle of technical adequacy, and so much of the public debate about whether a community charge "in theory" is a good idea or not is almost beside the point.

The Scottish Office should think again.

Scottish Consumer Council. August 1986
"Effective local accountability must be the cornerstone of successful local government."


The Green Paper, Paying for Local Government (HMSO, Cmnd. 9714, 1986) represents the latest, and arguably the most fundamental, attempt by central government to change the system of local taxation during the last fifteen years. During that period no less than five other initiatives have been put forward in an attempt to change a system of local taxation which is widely recognised to be in need of reform: [The Future Shape of Local Government Finance (HMSO, Cmnd. 4741, 1971); Report of the Committee of Inquiry, Local Government Finance (Layfield Report)(HMSO, Cmnd. 6453, 1976) Local Government Finance in Scotland (HMSO, Cmnd. 6811, 1977); Alternatives to Domestic Rates (HMSO, Cmnd. 8449, 1981); and Valuation and Rating in Scotland (HMSO, Cmnd. 9018, 1983)]. The Layfield Committee recommended the introduction of a local income tax to substantially but not wholly replace the system of domestic rates and central government grants. However, their radical proposals for a system of local income tax did not find favour and nothing came of them. The 1981 Green Paper, Alternatives to Domestic Rates, set out the options for paying for local government, including a domestic rating system, a local sales tax, a local income tax, a poll tax and a system of assigned revenues, and their respective advantages and disadvantages. After consultation the government produced a White Paper, Valuation and Rating in Scotland, in 1983 which concluded that a radical change was unnecessary and therefore proposed minor amendments to the valuation and rating system.

The Objectives of a Local Tax

The Green Paper states that the local tax should achieve three main objectives: technical adequacy, fairness, and the encouragement of local democratic accountability [G.P., para. 3.6].
Technical Adequacy

The Green Paper [paras. 3.7] relying on Alternatives to Domestic Rates, identifies five aspects of the technical adequacy of local taxation:

(1) cost-effective administration;
(2) the need for a local tax system to fit with the overall national tax system;
(3) compatibility with sensible and tight budgeting - proper financial control;
(4) predictable yield to enable local authorities to plan ahead and to make incremental changes in tax rates;
(5) suitability for all tiers of local government, recognising the varying responsibility of the different tiers of local government and the differences between the large city authorities and other authorities.

Fairness

Fairness in respect of local taxation is described as being based on two main principles [G.P. paras. 3.8-3.10]:

(1) **redistributive principle:** according to which tax is levied generally to pay for services which benefit poorer members of the community; and
(2) **beneficial principle:** according to which tax is levied on particular groups to share the cost of providing an amenity from which they all benefit.

Local Democratic Accountability

The encouragement of local democratic accountability is described by the Government [G.P., para. 3.11] to be "of crucial importance" and "the key to local government finance that rests on responsible local spending decisions and a reduction in central government intervention". The fostering of local accountability through a local taxation system then is the 'litmus' test of the appropriateness of a tax system and to meet this requirement the Green Paper [para. 3.12] states that a local tax must have the following features:
"the tax base should be wide so that the burden is not unfairly concentrated on too few shoulders and a substantial proportion of electors have a direct financial interest in the decisions of their authority; and

(2) there should be a clear link between changes in the expenditure and changes in the local tax bill."

**Domestic Rates**

Domestic rates satisfies the first of these three tests, technical adequacy, because it is perceptible (i.e. it is high public awareness) evasion is difficult because it is related to the beneficial occupancy of property, and it is cheap to collect [G.P., para. 3.15]. In sum, the objections put forward in the Green Paper to continuing the present system of domestic rates are:

(1) **They fall on too few shoulders** - less than one-third of the adult population in Scotland directly pay full domestic rates [G.P., paras. 3.17 and 8.13]. Therefore the majority of electors who do not directly pay full rates are said to be less aware of the relationship between rates and voting.

(2) **Rates fail to give clear signals to those who pay** - it is difficult to link domestic rates with local accountability in a practical way thus the link between local government expenditure and rating becomes unclear [G.P., para. 3.18].

**Local Sales Tax**

Although a local sales tax would meet the criteria of fairness, if used in the sense that it would have a wide coverage, the Green Paper [paras. 3.20-3.23] dismisses this option on two grounds:

(1) **It would not aid accountability** in that the link between local expenditure and the sales tax would not be readily perceived by voters;

(2) **It would lead to administrative complexity**, as it would be necessary to compensate authorities whose residents shopped outside their areas.
Local Income Tax

Three principal reasons are given for rejecting a local income tax [G.P. para. 3.25].

(1) it would run counter to the Government's commitment to reduce income tax;
(2) it would not underpin local accountability; and
(3) it would be inappropriate for local authorities to rely on redistribution from central government to fund local services.

Community Charge

Because of the perceived deficiencies of the existing system of domestic rates and the alternatives of a local sales tax or local income tax the Government proposes to introduce a new flat-rate charge (poll tax) for local services to be paid by all adults resident in the area of a local authority [G.P., paras. 3.33-3.38]. This 'community charge' is preferred because:

(1) it would be more perceptible than domestic rates;
(2) each authority would determine the level of their own community charge;
(3) all adult residents, not just householders, would pay;
(4) it will increase accountability.

The Main Proposals of the Green Paper

The main proposals in the Green Paper are:

1. The replacement of domestic rates by a community charge;
2. A national non-domestic rate; and
3. A new grants system for local authorities.

1. Community Charge

Domestic rates are to be replaced by a flat rate community charge which is to be payable by all registered adults over 18 years of age. A separate community charge register is to be maintained in each area. The community charge is scheduled to be introduced on 1st April 1989 and
domestic rates are to be phased out over a three year period. The Green Paper [G.P. paras. 8.34 and 8.48] envisages that domestic rate poundages might be successively reduced as follows:

Year 1 (1 April 1989–31 March 1990): reduction to 60% of the previous rate poundage.
Year 2 (1 April 1990–31 March 1991): reduction to 40% of the original rate poundage.
Year 3 (1 April 1991–31 March 1992): reduction to 20% of the original rate poundage.
Year 4 (1 April 1992 onwards): community charge only; domestic rates abolished.

2. National Non-Domestic Rate

Non-domestic rates (viz. business rates) are to be retained but central government will set a uniform national non-domestic rate poundage. The revenue raised from business rates will thereafter be distributed in proportion to the adult population of each local authority [G.P. paras. 2.24–2.31]. The Green Paper suggests that there will be a further non-domestic rating revaluation in 1990 but acknowledges that because of the valuation difficulties which apply to certain types of non-domestic properties that there will have to be a transitional period of unspecified length because the change over to the national non-domestic rate system will not be completed. [G.P. paras. 2.40–2.42 and para. 8.30].

3. New Grant System for Local Authorities

The system of central government grants to local authorities is to be radically altered. In the place of the Block Grant and Domestic Rate Relief the Government proposes to introduce a new Needs Grant (to compensate authorities for differences in the cost of providing a standard level of service to meet local needs) and a Standard Grant (to provide an additional contribution from national taxation towards the cost of local services). Each grant is to be distributed to local authorities on the basis of their adult population [G.P. paras. 4.34–4.52].
Reactions to the Green Paper

Reactions to the Green Paper have been overwhelmingly adverse. Submissions made to the Scottish Office by the closing date of July 31, 1986 revealed that a very large majority, almost 3 to 1, were opposed to the proposed introduction of the community charge (of the 438 submissions commenting specifically on the community charge, 324 were opposed and 114 were in favour) (The Scotsman, August 8, 1986). Support for the proposed charge came largely from ratepayers or owner-occupier groups whereas widespread opposition was voiced by other political parties, caravan owners, professional bodies and local government organisations. As the latter groups may be judged to be less partial and will be responsible for administering the community charge it may be helpful to briefly list their views.

The Convention of Scottish Local Authorities have condemned the reforms proposed by the Green Paper as being unjustified, wrong in principle, simply impractical and ineffective. Adding that, "as a whole they will not even secure the dubious objectives which central government has set". [Convention on Scottish Local Authorities, Submission by The Convention of Scottish Local Authorities on The Green Paper Proposals (Command 9714) "Paying for Local Government", June 1986, para. 1.13]. The Scottish Branch of the Society of Local Authority Chief Executives have plainly stated that there are major difficulties with the Green Paper proposals and that they "conflict with the findings of all major studies into local taxation over the past two decades, have no parallel in other advanced industrial economics, and are meeting with opposition from the main professional associations". ["Paying for Local Government", Society of Local Authority Chief Executives, Comments by the Scottish Branch (2 July 1986) p. 12]. The Chartered Institute of Public Finance and Accountancy (CIPFA) have stated that the community charge would be difficult and expensive to collect, and likely to create public resentment because of the lack of equity and ease of evasion. The Rating and Valuation Association has identified a large number of technical defects.

Despite the united opposition of local government and the professional administrators who will be called upon to implement these proposals the government remains committed to the introduction of the
community charge (The Scotsman August 8, 1986). In a statement issued by the Scottish Office, the Secretary of State, Mr. Malcolm Rifkind while acknowledging the criticisms levelled against the Green Paper proposals stated that the opposition "pales into insignificance besides the groundswell of popular opinion that we felt last year".

**Timetable for Implementation of Proposals in Scotland**

The time-scale for the implementation of the Green Paper's proposals in England and Wales is a decade. However, for Scotland, where re-valuation was carried out in 1985 and the issue of non-domestic rates is high on the political agenda, the Secretary of State for Scotland has indicated that the change-over to the community charge will be completed in little more than half this period.

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<td>2. End of Consultation Period</td>
<td>31 July 1986</td>
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<td>3. Publication of White Paper</td>
<td>Not specified</td>
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<tr>
<td>5. Introduction of Community Charge</td>
<td>1 April 1989</td>
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<td>7. New rateable value for non-domestic property available from</td>
<td>1 April 1990</td>
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<td>8. Start of transition to national non-domestic rate</td>
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Scotland therefore will once more have the role of acting as guinea pig for government legislation.
COMMUNITY CHARGE : OPERATIONAL ISSUES

In February 1986 the Scottish Office issued a paper, Paying for Local Government, The Community Charge : Operational Issues, which attempted to identify the main operational issues raised by the Green paper proposals for Scotland and which formed the basis for "inviting the views of local authorities and others who are concerned with the present rating and valuation and electoral regulation systems or who will have an interest in the operation of the new system" [Scottish Office Paper, para. 2].

The Research Study

As a response to the Green Paper and the paper issued on 17 June 1986 by the Scottish Office on the operational issues raised by it the Scottish Consumer Council commissioned research on the consumer aspects of the government's proposals to replace the domestic rating system with a new community charge which was to focus on three different aspects of how the government's proposals will work in practice:

1. the registration process;
2. how particular poor individuals and households will be affected by the new system, especially if they have to pay a minimum of 20% of the community charge; and
3. how registration and payment of the new charge will be enforced.

REGISTRATION

"The key to the whole system is the creation of the Community Charge Register which would provide the basis for levying the charge on individuals."

[Scottish Branch of the Society of Local Authority Chief Executives.]

The effectiveness of the community charge as a local tax on eligible adults fundamentally depends on the development and maintenance of a system of registration. Registration is required in a large number of areas of public activity, e.g. electoral registration,
national insurance, national health, vehicle licensing, TV licensing and rating registration. However, in each case the registration is kept separately and independently and is only required for one specific purpose. The Green paper proposes to follow what is grandly termed the "British Tradition of Registration" and to maintain separate community registers for each registration authority [0.5: "There will be no national register and no obligation to carry an identity card."]

Having rejected the notion of a central register as being 'un-British' the Green Paper [0.12-17] considers the advantages of a fixed and rolling register:

**Fixed Register**

A fixed register, if based on the electoral register, would operate on the basis of a qualifying date for residence in an area. At that date all persons resident in the area would be liable to pay the community charge for the whole of the next financial year. It would be necessary therefore to have an annual canvass of households to obtain the names of those resident on the qualifying date which would form the basis of the register. This register would, thereafter, be updated on defects with the idea of basing the community charge on a fixed register:

1. Collecting the community charge from persons who moved within the year without notifying the authority would be difficult;
2. Enforcement of registration would be more difficult as the register would rapidly become out of date;
3. Housing benefit would be complex to administer because housing benefit authorities would have to calculate community charge rebate on the basis of the widely differing community charge liabilities which would be payable by persons moving into one area who nevertheless were liable to pay community charge to the authority from which they had moved.

**Criticiams of the Fixed Register**

The Scottish Branch of the Society of Local Authority Chief Executives have stated that if a fixed register was adopted the
opportunity for evasion of the community charge by the highly mobile would be increased and that it would lead to "rough justice" as individuals moving in one assessment year between authorities with different community charge rates would gain if they moved to an authority where the community charge rate was higher and lose if they moved to an area where the community charge was less [Supra. p. 7].

Strathclyde Regional Council's Policy and Resources Committee has stated that a fixed register would be simpler to administer and less costly than a rolling register but raises a number of practical difficulties:

1. collection difficulties where liable adults move on without providing forwarding addresses;
2. evasion;
3. 'cross-border' problems during the transitional period when the community charge will be exigible in Scotland but rate collection continues in England and Wales;
4. problems with individuals moving between different types of dwellings and communal establishments.


**Rolling Register**

The Scottish Office Paper [para. 7] states that the "balance of arguments in the Green Paper tends to favour a rolling register". The Green Paper [G.16-17] lists the advantages of a rolling register as follows:

1. Liability to the community charge would cease when a person left the authority and the amount payable to an authority would be a pro rata portion of the year that the individual had lived there.
2. The cessation of liability on moving out of an authority's area would create an incentive to
notify the council of their move.

3. The information so provided would assist enforcement.

4. Inter-authority arrangements would be developed to allow for transfer of registration.

5. The complexity in administering housing benefit (see 'Fixed Register', supra, p.10) would be avoided since all residents in the local authority's area would be paying its own rate of community charge.

**Criticisms of the Rolling Register**

The Rating and Valuation Association and the Scottish Branch of the Society of Local Authority Chief Executives had criticised the rolling register on the ground that it would be *impracticable*. [Solace, "Paying for Local Government", supra, p. 7].

Strathclyde Regional Council's Policy and Resources Committee have indicated that with an estimated change of household composition in 20% of addresses in Strathclyde each year it would be necessary to carry out a full annual canvass which would be costly to administer, create a very considerable workload and inevitably would lead to error. [supra p. 3].

**Incentive to Notify?**

If there is a clear incentive for a person who moves from an authority where there is a higher rate community charge to an authority where a lesser rate is charged to notify the council of their move it follows that there will be a clear disincentive to notify if the move is in the other direction. To take a simple example, assuming that the City of Glasgow is more highly rated than other authorities and that more people move into the area of that authority than out of it to other areas the disincentive to notify will apply to more people than the incentive to notify.

As long as the community charge applies in Scotland alone there may be an incentive to notify of a fictitious move to England, Wales or Northern Ireland, and the lack of a comparable register will make it
difficult to check whether a person has in fact gone there, particularly if friends or relatives provide an 'accommodation address'. It is not clear who will take the initiative in checking who has moved away from a particular area.

Central Register/National Identity Cards

Although the government has firmly rejected the idea of a central register and a national identity card system as being contrary to the British tradition of registration support for them has been voiced as a means of making registration effective.

Central Register?

The Law Society of Scotland's Law Reform Committee states that "whilst it may be considered politically unacceptable we consider that a Central Register System would be the most practical". [Law Society of Scotland, Memorandum of Observations on the Scottish Office Consultation Paper "The Community Charge: Operational Issues" (undated) para. 12]. Concluding that "in the absence of a central register the system of unlikely to be as effective and efficient as it might". [ibid. p. 10]. The main reason put forward by the Law Society of Scotland is that a Central Registrar alone would make decisions on the question of residence and thereby avoid the problem of dual registration.

National Identity Cards?

The Scottish Branch of the Society of Local Authority Chief Executives [supra, p. 7] go even further arguing that, even if area registers were to be retained, "the creation of a comprehensive Register would be achieved only by a system of individual identity cards which citizens would be required to possess by law".

Drawing-up the Register

It is proposed that a new register of resident adults should be compiled for the purposes of administering the community charge. The task of drawing up the register (which is to be held on computer) is to
fall on the Regional and Islands Councils, taking as its starting point the valuation roll and electoral register and supplemented by local canvassing in their areas.

**Electoral Register**

Section 9 of the Representation of the People Act 1983 obliges the electoral registration officer to prepare and publish each year a register of parliamentary and local government electors, and to take all reasonable steps to obtain such information as is required to enable him to fulfil this statutory duty. Information is obtained by personal door-to-door canvass or by means of an enquiry form to be completed by the household. Although disenfranchisement provides a powerful incentive for persons eligible to vote to ensure that they are registered on the electoral register it is estimated that the electoral register only provides a 93% coverage. [G.24]. The Green Paper [*ibid.*] states that "OPCS have estimated that the 93% coverage of the electoral register could be increased by improving the record of addresses, following up non-responders, door to door canvassing and a variety of other measures".

This view is not shared by the Rating and Valuation Association which have expressed doubt as to whether a response rate of much more than 90% can be achieved no matter how assiduous the follow-up procedures. Indeed, it should be noted that non-registration is significantly higher amongst young adults. A recent Home Office Study concluded that one in four young people who were eligible to vote for the first time, were missing from Electoral Registers. The Scottish Branch of the Society of Local Authority Chief Executives cite this report as further evidence of the deficiencies of the electoral register as a basis for drawing up the community charge register:

"... the rate of non-response would be significantly higher amongst those groups which the Government is particularly concerned to bring into the local tax base for the first time ... Unless acceptable procedures can be identified which would guarantee to include the majority of such people in the Register, then the case for replacing the Rating system by the Community Charge system is significantly weakened since local accountability would not be greatly enhanced."

[Payring for Local Government: Society of Local Authority Chief Executives Comments by Scottish Branch (2 June 1986, p. 6).]
In addition as the Scottish Office Paper [para. 3] notes the electoral register suffers from two inherent disadvantages:

1. it is not an up-to-date document. As the qualifying date for the entry on the electoral register is the preceding 1 October, a register coming into force on 16 February is already some four months out of date and towards the end of its life is some 20 months out of date; and

2. it does not include non-electors, such as resident foreign nationals, who benefit from local authority services and therefore are to be registered in the community charge register.

Other disadvantages affect the accuracy of the electoral register:

1. young persons coming of age, students, single persons and those who are changing address between September/October when the canvass is carried out are particularly at risk of being omitted from the canvass.

2. clerical error.

3. there is a substantial change in the register each year. For Tayside Region the Assessor and Electoral Registration Officer has stated that on average there is a 25% change.

In December 1982 the OPCS estimated the level of inaccuracy in Scottish electoral registers at 5.3% in 1981.

**Valuation Roll**

Although the valuation roll is a more up-to-date register and will provide information on proprietors, tenants and occupiers of individual properties, it is a property register and therefore does not include non-householders. [Scottish Office Paper, para. 3]. Yet is it at adult non-householders who benefit from local services but do not pay rates that the community charge is directed. [G.1.36-1.39 and G.1.541-1.54]. In addition, it should be noted that the accuracy of this roll depends to a large extent on occupiers submitting returns and we have been informed
that the 'non-response' rate is substantial. There is also delay in new properties entering the roll for the first time due to the need for a valuation survey. This means that whilst the Valuation Roll is generally likely to be more up-to-date than the Electoral Register for the names of owners and occupants for existing houses the Electoral Register may at certain times of the year be more up-to-date in respect of electoral occupants of new houses.

The Valuation Roll, however, is generally a more up-to-date document than the Electoral Register because the Assessor is obliged to keep it up to date on an on-going basis rather than only at the qualifying date.

The Initial Canvass

Because of the deficiencies of the Electoral Register and the Valuation Roll the Government recognise that it is likely to be necessary for registration authorities to conduct a separate initial canvass to supplement the information available to them from these sources. [Scottish Office Paper, para. 3]. Although the preparation of the Electoral Register and Valuation Rolls has provided experience of conducting canvasses the canvass for the new register is regarded as a major operational issue which will require greater resources than hitherto have been employed.

Keeping the Register Up-to-Date

The principal means by which the information required to up-date the register would be provided is by imposing an obligation on the head of household to notify the authority of relevant changes in the composition of households for registration purposes. [Scottish Office Paper, para. 7]. While it is not envisaged that there will be any difficulties in obtaining information about members leaving a household it is recognised that it will be necessary to facilitate the registration of newcomers because of the incentive of avoiding liability to pay the community charge. In addition to imposing a further obligation on the head of a household to notify the departure of members of his household or the transfer of property three further sources of information are identified:

1. Local knowledge.
2. Authority's records of the use of services.
3. Canvassing.

Registering Authority's Records

Reference is made in the Green Paper to a registering authority making use of its own records for the purpose of keeping the register up-to-date [G.56] and to linking access of local authority services to proof of registration. [G.25].

Quite apart from the effectiveness of linking access to local authority services of proof of registration as a means of up-dating the community charge registers the idea of creating such a link brings into question the appropriateness or justification for basing access on this ground.

Monitoring

Whatever form of register is adopted it is clear that the task of keeping the community charge register up-to-date will be a formidable one. Local authorities have little experience of detailed monitoring of returns, albeit that incomplete and unclear information provided in electoral and valuation returns is checked when it comes to light, but it is evident that this will be necessary. To give some idea of the scale of this task it has been estimated that there is up to 25-30% change in the Electoral Register in Grampian Region over a 12 month period. As a similar movement is likely to apply to the community charge register to maintain the register, particularly a rolling register, as an accurate record it will be necessary for registering authorities to conduct extensive and repeated canvassing and issue of returns.

Who are to be Registered?

Basically all adults over the age of 18 who are resident in the area of the registering authority (with the exception of those living in some communal establishments who are not to be registered individually) would be entered on the register. [G.6 and G.32-36]. However, there are two specific proposals relating to those who attain their eighteenth birthday during a financial year and those for whom child benefit is payable until their nineteenth birthday because they are in full-time non-advanced education. To avoid partial liability to pay the community charge, it
is proposed that persons who attain their eighteenth birthday during a financial year are to be registered in that year, but no liability to pay the community charge is to arise until the first full financial year following their eighteenth birthday. [G.7]. In the case of persons in full-time non-advanced education for whom child benefit is paid until their eighteenth birthday it is proposed that they would be registered in the year after their eighteenth birthday. A separate record would be maintained and they would not become liable to pay the community charge until the first full financial year after their nineteenth birthday. [Ibid.]

Only or Main Residence

It is proposed that individuals should only be registered in one local authority charge register. [G.8 and Scottish Office Paper, para. 4]. In most cases liable adults will be registered with the authority in the area of which they live but in cases of dispute as to where a person should be registered the test to be applied is the test of 'only or main residence' which is used to determine eligibility for mortgage interest tax relief? [Section 75(1) of and para. 1 of Schedule 9 to the Finance Act 1972 and para. 4(1)(a) of Part II of Schedule 1 to the Finance Act 1974]. The Green Paper [G.8] states that "which residence is the main one is a matter which should be easily established on the facts of the case". However, disputes of this nature are anticipated. Both the Green Paper [G.8 and 39] and the Scottish Office Paper [paras. 4, 11-12 and 17] mention two areas in which it is expected that registration will be contested:

(1) Where liable adults who apparently are resident in the area of an authority claim that in fact they are not resident there; and

(2) Where a person has two or more homes and disputes whether a property constituted a 'sole or main residence' or a second home for community charge purposes.

In such cases it is proposed that a local authority should be empowered to enter on the register any person whom they had reasonable cause to believe had their 'only or main residence' within their area.
This power of 'compulsory' registration is, failing agreement with the local authority, to be subject to right of appeal by summary application to the Sheriff Court [Scottish Office Paper, paras. 12 and 17].

While accepting that the test of 'sole or main residence' is the only practicable one on which to base a registration system the Law Society of Scotland observe that there will be "a number of difficulties arising out of this concept" and add that they "do not consider that the difficulties which will arise in dual or multiple residence cases ... have been sufficiently explored in the Green Paper ..." [Memorandum of Observations on The Scottish Office Consultation Paper, "The Community Charge: Operational Issues" (undated), p. 2].

This observation is borne out by an examination of the case law on the meaning of 'only or main residence' under the Finance Acts. The question which of two houses in a taxpayer's 'only or main residence' is "a question of fact and degree" [Mr. Justice Nourse, Frost (Inspector of Taxes) v. Feltham 1981 STC 115 at p. 118] which "cannot be determined solely by reference to the way in which he divides his time between the two" [ibid.]. Indeed, Lord Justice Salmon has commented that "there was an infinity of variations of circumstances to take into account on deciding which was a man's main home" [Bryne v. Rowbothan (1969) 210 E.G. 823] and Lord Denning has plainly admitted that in some cases "it is almost impossible to say which is the main residence" and that "in such a case the judge has to come down on one side or the other". [Foxwell v. Radford (1969) 21 P. & C.R. 99 at 101].

The difficulties in applying the concept of 'only or main residence' may be illustrated by examples:
Example 1:

Iain, a 19 year old, lives with his parents in Coatbridge which is in Strathclyde Region. He leaves home in April to share a flat in Falkirk which is in Central Region, with two friends. In August he leaves the flat to take up employment in Edinburgh, which is in Lothian Region, where he rents a bed-sit.

In the space of four months Iain has lived in three separate premises in three regions.

Which is his 'sole or main residence'?

His home in Coatbridge?
The flat in Falkirk?
The bed-sit in Edinburgh?

This is a factual question which depends on detailed factual inquiries as to the nature of his occupancy in the three premises and his intentions.

It may be that all three for the times he lived in them are his 'only or main residence'.

If so, for what periods is he liable to pay the community charge to Strathclyde, Central and Lothian Regions?

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Example 2:

Mary is a freelance journalist. She has a flat in Glasgow and a residential caravan on Skye. Last year she was commissioned to write a book on the Western Isles and lived for most of the year in her caravan on Skye.

Which is her 'only or main residence'?
The Law Society of Scotland (supra, p. 6) are also sceptical of the appropriateness of the Sheriff court as an appropriate forum to determine registration disputes because of "the possibility of partial actions and conflicting decisions" which could result in an individual being found by two separate Sheriff courts to be resident in two different regions and thereby liable to pay dual community charge and urge that a central administrative tribunal should hear such appeals to "ensure consistency in the application of criteria for determining an individual's 'sole or main residence'."

Head of Household

The term 'head of household' not only has the taint of Victorian patriarchy but runs counter to the reform of taxation and social security law which now permit married women to make their own tax returns independently of their husbands or allow for the election of a 'nominated breadwinner'. We deal with this concept in detail later [see Enforcement of Registration, infra] but are concerned that this concept is inspecific and contrary to the trend of modern legislation. In particular, we doubt the applicability of this concept to 'flat-sharers' where there is no obvious family grouping and the designation of a head of household has important implications. [See SOLACE Paper, supra, p. 7 and 'Separate Dwelling' and 'Joint and Designated Head of Household', below].

Household

It is suggested that a definition of household might be based on the concept of 'separate dwelling' as used in section 1 of the Rent (Scotland) Act 1984. [Scottish Office Paper, para. 5]. The reasons for making this suggestion can be appreciated but the notion which appears to be implicit in this suggestion, that the jurisprudence of the Rent Acts [where it has been said "the rules of formal logic must not be applied ... with too great strictness" Lord Porter, Baker v. Turner [1950] A.C. 401 at p. 417] provides a concept which readily can be adopted to serve for a definition of household in respect of the community charge, flies in the face of over half a century of extensive litigation on flat sharing which has produced no satisfactory principle of differentiation [see for example, Lord Justice MacKinnon in Cole v.

Separate Dwelling

The purpose of the words 'separate dwelling' as used in the Rent Acts is relatively straightforward to state: "to exclude from full Rent Act protection tenants who have a right to the daily use of a living-room simultaneously with members of another household". [Lord Reid, Goodrich v. Paisner [1957] A.C. 65]. Or as Lord Justice Russell has stated the word separate "is used to exclude the letting of a dwellinghouse involving the sharing with another person of an essential feature of a living such as a kitchen from being a protected tenancy". [Horford Investments v. Lambert [1976] Ch 39 per Lord Justice Russell at p. 45]. But in Goodrich v. Paisner [1957] A.C. 65 [at p. 91] Lord Radcliffe despaired of providing any formula to cover the infinite varieties of dwelling even though it has been said elsewhere [Lord Green MR, Curl v. Angelo [1948] 2 All E.R. 189 at p. 190] that the question to be asked is "is this the 'home' of anybody?", i.e. are all the essential operations of living (sleeping, eating, sitting, etc.) mainly carried on there [Wimbush v. Cibulia [1949] 2 K.B. 564]. However, these rather simplistic tests belie the difficulties which will face authorities in determining whether there was a 'separate dwelling' and hence an independent household for the purpose of the community charge. An idea of the difficulties which will face authorities in this respect may be obtained from a brief examination of case law:

Rent Acts

In Neale v. Del Soto [1945] K.B. 444 a tenant was let two unfurnished rooms in a seven-roomed house, together with the use jointly with the landlord of the garage, kitchen, bathroom, lavatory, coalhouse and conservatory. In proceedings for the apportionment of rent it was held that as there was really a sharing of the house there was not a lot of a separate dwelling in respect of the two rooms. In essence what was important here was the sharing of the kitchen. [Kitchens have in subsequent cases been held to amount to living rooms whereas bathrooms have not].
In *Curl v. Angelo* [1948] 1 All E.R. 189 the Court of Appeal held that two rooms let as extra bedroom accommodation for an adjoining hotel were not let as a separate dwelling under the Rent Acts. Lord Green MR stating (p. 192) that "one cannot attribute the character of a dwelling to a room where the tenant carries on one only of his many family activities".

In *Wimbush v. Cibulia* [1949] 2 K.B. 564 it was held that the ground floor and basement of a house as let by themselves did not constitute the tenant's separate dwelling when all his sleeping accommodation was on another floor.

In *Wright v. Howell* (1955) 204 L.T.J. 299 it was held that as a single room let on a weekly basis to a tenant was devoid of cooking facilities and water supply and as the word "dwelling" on its true construction included all the major activities of life, the room was not therefore a dwelling and the tenancy was not protected.

In *Goodrich v. Painsner* [1957] A.C. 65 it was held that a let of four unfurnished rooms on the first floor of a house was the let of a separate dwelling notwithstanding the fact that the tenant was granted a right to the shared use of a bedroom on another floor.

Other legislation also uses the concept of 'separate dwelling' but as will be seen without providing any greater elucidation to the problem.

**Tenants' Rights (Scotland) Act 1980**

Section 10(1) of the Tenants' Rights Etc. (Scotland) Act 1980 provides *inter alia* that a dwellinghouse shall be a secure tenancy if "(a) the dwellinghouse is let as a separate dwelling ..." In a recent case, *Thomson v. City of Glasgow District Council* [Unreported, 10 June 1986], the Lands Tribunal for Scotland relying on the case law on 'separate dwelling' under the Rent Acts, refused an application from the occupant of a room in a hostel for single homeless men to purchase his room on the ground that it was not a separate dwelling as most of the essential living facilities were provided on a commercial basis elsewhere in the building.
Rating and Valuation Law

The question of separate dwellings also figures largely in rating and valuation law where the question whether premises should be entered in the valuation roll as a 'separate dwellinghouse' has frequently been contested. In *Wright v. Assessor for Glasgow* 1936, S.C. 344 four separate apartments with common bathroom and kitchenette were held to constitute separate dwellinghouses.

In *Assessor of Lothian Region v. Viewpoint Housing Association Kitchen Ltd.* 1983 S.L.T. 479 Lord Ross sitting in the Lands Valuation Appeal Court upheld the decision of a local valuation committee that sheltered accommodation for the elderly, providing each occupant with a bed-sitting room with a bathroom but with no cooking facilities apart from a shared kitchen, should be entered in the valuation roll as separate dwellinghouses. In rejecting the submission made by Counsel for the Assessor that the three activities of sleeping, sitting and eating must be present before a place can be described as a separate dwellinghouse, Lord Ross stated that while "these activities are normally present if a place is being used as a dwellinghouse ... they need not be present in every case". To illustrate his reasoning Lord Ross gave the example of a bachelor who choose to eat all his meals out apart from breakfast. The fact that he did so, Lord Ross stated, did not mean that his residence ceased to be a dwellinghouse. In a case decided by the Lands Valuation Appeal Court in the following year, *Lothian Regional Assessor v. Link Housing Association Ltd.* [Unreported, 23 March 1984] Lord Ross held that a local valuation appeal committee was wrong to conclude that each of six cluster flats was a separate dwellinghouse in joint or multiple occupation. Each tenant of a bed-sit in each cluster flat had the exclusive right to the use of his own room, and a right in common with the other four tenants of each cluster flat to the use of the common parts, but each tenant had no right at all in the other four bed-sits in the house. Lord Ross adding that he did not see how the tenant of one bed-sit could be held to have a joint tenancy of the cluster flat in which the bed-sit was situated when he had no right of access to or occupation of the majority of rooms in the cluster flat. He also rejected the original decision of the Assessor that the premises were a single hostel and that there were multiple hostels. In these
cases Lord Ross observed it is a question of fact and degree and he was satisfied that on this criteria the proper approach was to treat each bed-sit as a separate dwellinghouse.

**Representation of the People Acts**

In *Adair v. Murray* (1874) 2 R. 11 Lord Ardmillan stated [p. 12] that "a single room may be a separate dwellinghouse" and Lord Ormidale added [p. 12] that "a dwellinghouse must be a place where, in a substantial and reasonable sense, the man lives, and not a small apartment in which he occasionally sleeps".

In each of these legislative codes the test would appear to be whether a 'living room' is shared. However, this is a question of fact as "a living room is not something which can be identified objectively without regard to the situation of its particular occupant, occupants, or users". [Lord Radcliffe, Goodrich v. *Paisner* (1945) K.B. 144]. In short, it is not sufficient for an authority to assume that because X and Y share a kitchen that they are members of the same household because there is no 'separate dwelling'. The authority must conduct detailed inquiries to discover their respective rights in relation to the shared 'living room' to ascertain if they are joint tenants, tenants and sub-tenants, or a sole tenant who has merely given permission to the other occupant to use his kitchen.

The purpose of this review of the main case law on 'separate dwelling' is four-fold:

1. To illustrate that the question of determining whether there is a 'separate dwelling' is far from straightforward.
2. To explain that there is no definitive and simple test which will aid authorities in determining the question.
3. To underline that in cases where there is sharing of accommodation it will be necessary for authorities to conduct detailed enquiries into the nature of the occupancy rights.
4. To emphasise that the question whether there is a
'household', if based on the concept of 'separate dwelling', will understandably lead to delay and litigation in the Sheriff Court.

Joint and Designated Head of Household

It is envisaged that "where there was doubt about who was the head of a household, there could be joint heads, jointly and severally liable for the provision of information" and that "as a fallback in cases of difficulty, the local authority (or its appointed officer) might be given power to designate one of the residents as head of household". [Scottish Office Paper, para. 5]. It is suggested that there would be a right of appeal against designation as head of household to the Sheriff Court but the Scottish Office Paper is silent about right of appeal in respect of joint heads, despite the fact that the unusual step of creating joint and several liability in respect of a criminal offence is envisaged.

It is our view that, basing 'household' on the concept of 'separate dwelling' is unsatisfactory for the reasons given above. But to go further and apparently not to provide for a clear appeal mechanism in respect of flat sharers seems preposterous. It does not take a great deal of imagination to see that in the context of flat sharing (which is largely undertaken by young persons who move in and move out of flats over fairly short periods of time) the idea of making flat sharers jointly and severally criminally liable for the provision of information is quite unrealistic. Why should, for example, three eighteen year olds sharing a flat be subject to criminal liability for providing information on each other? Equally, although in this case there will be a right of appeal to the Sheriff Court, why should one of the three be selected as head of household and made solely responsible for providing information on the others? Our view is that there can be no justification for this and that the difficulties we have outlined re-affirms our belief that the responsibility for providing information should not rest on the head of the household but on the individual himself or herself.
Communal Establishments

The Green Paper [G.32] states that about 3% of the population is highly mobile and live in communal establishments (such as houses in multiple occupancy [HMO] boarding houses or institutions).

The problem of collecting rates from this sector of the community is at present overcome to some degree by enabling local authorities to designate classes of property for which the owners, rather than the occupants, are responsible for paying rates. It would be contrary to the aims of the Green Paper if this arrangement were to be continued in its present form but the government [G.32] suggests that to uniformly apply the general arrangements for payment of the community charge to persons living in such accommodation would not be appropriate. In order to create a sufficient direct link between persons occupying communal establishments and the authority in which they live it is suggested that different approaches should apply to different types of these establishments.

Types of Communal Establishments

The Scottish Office Paper [para. 15] identifies the following 15 types of communal establishments which require different treatment because of the 'different' characteristics of their occupants:

Children's Homes
Common Lodging Houses
Defence establishments and other Crown property
Detention Centres
Homes for the old and disabled
Hospitals
Hostels
Hotels and guest houses
Houses in multiple occupation
Nurses' homes
Prisons
Residential schools
Sheltered/amenity housing
University and college halls of residence
Young offenders' institutions.

The Scottish Office Paper [paras. 14-15] proposes to deal with the various types of communal establishment in one of three ways:

A. Non-domestic subjects

It is proposed in relation to communal establishments such as hospitals and prisons whose residents or clients can be considered either as so transient as not to justify resident status, or lacking any direct link with the electoral process and therefore not subject to the principle of accountability, to continue the present practice of entering them in the valuation roll as non-domestic subjects. In this case there would be no liability to pay the community charge. In general it would appear that, subject to making provision for long-term patients (e.g. severely disabled and handicapped), that this proposal is acceptable.

B. Collective Community Charge

In the case of communal establishments such as common lodging houses and houses in multiple occupation it is proposed that a collective community charge is levied. The reasons for advocating the collective community charge in respect of such premises are that although the establishment may be the sole or main residence of the occupants their stay is regarded to be so transitory in the majority of cases that the administrative burden of requiring them to pay the individual community charge would not be justified.

In such cases the establishment would not appear on the valuation roll but would appear on a collective community charge register. The collective community charge would be based on the amount of accommodation provided and would be collected as a single lump sum payment from the proprietor of the establishment. It is envisaged that the cost of the collective community charge would be passed on to the residents in the form of increased rent.

It is proposed [Scottish Office Paper, para. 16] that in respect of these communal establishments a notional occupancy rate should be entered on the community charge system. The 'notional occupancy rate'
is to be set by the authority in consultation with the proprietors of these establishments in their area and the amount payable in respect of such an establishment is proposed to be calculated as follows:

\[
\text{notional occupancy rate} = \frac{\text{collective community charge}}{\text{individual charge}}
\]

The collective community charge is to be set to reflect the number of residents normally present in the establishment.

In the case of disputes about the amount of the collective community charge to be levied in respect of this category of communal establishment it is envisaged that such questions might best be referred to the Local Valuation Appeals Committee, who from their valuation expertise would be well placed to judge the overall capacity of any particular establishment. [Scottish Office Paper, para. 16].

This important exception is contrary the raison d'etre of the Green Paper [G.1.54]. If, as the government suggests, it is necessary to establish a clear and direct link between paying for local services and voting the question must be asked why it should be thought that administrative cost should outweigh the necessity of establishing such a link in the case of persons occupying such forms of communal establishments. We know little of the number of people living in such establishments and their movements but it is proposed to treat them in a different way than other members of the community by removing direct and individual responsibility for paying the community charge and to 'submerge' it in a global rent charge. Indeed, it may be asked how long people live in such establishments. Many groups who represent their interests have stated that the stereotype of high mobility is questionable. [SCSH, The Community Charge: Operational Issues (7 July 1986) para. 2]. Furthermore, although we know little of their destinations on leaving the accommodation it is at least worth questioning if they would move entirely outwith the authority's area.

The Scottish Council for Single Homeless have expressed their concern that "single people who, whether by choice or necessity, have to live in communal or shared accommodation are not treated differently from the rest of the community in the method of collecting the proposed new charge" [SCSH, The Community Charge : Operational Issues, submission
to the Scottish Office (7 July 1986) para. 1.1]. We would agree with that assessment.

**Notional Occupancy Rate**

The Scottish Council for Single Homeless have criticised the idea of the 'notional occupancy rate' which is to be used in calculating the collective community charge as to be "virtually impossible to predict accurately" and warn of "the possibility of abuse by a limited number of experienced private landlords who could easily underestimate occupancy levels in their hostels or bed and breakfast establishments to their advantage". [ibid. para. 3.6]. We are unable to comment on the difficulties in assessing the 'notional occupancy rate' but the warning of abuse in the "bed and breakfast sector" would appear to be justified and consistent with the detailed evidence of recent research into that area [see, for example, J. Conway and P. Kemp, *Bed and Breakfast Slum Housing of the Eighties* (SHAC, London, 1985)].

**Local Valuation Appeals Committee**

The Scottish Council for Single Homeless is also critical of the proposal to use Local Valuation Appeal Committees as an appeal mechanism, in respect of the notional occupancy rates:

"Without considerable reassessment and training, the Valuation Appeal Committee would seem to be a quite inappropriate body to determine occupancy levels as these have nothing to do with property values. The task would rightly be undertaken by housing and environmental health experts with knowledge of design, amenity requirements and management of premises."

Whether or not the Local Valuation Appeal Committees are an appropriate appeal mechanism or could be 'made' into one is open to question. However we accept that the Scottish Office Paper must do more than assert that they would be an appropriate appeal mechanism. It was suggested to us that the reason why Local Valuation Appeal Committees have been suggested is that with the abolition of domestic rates it is necessary to find something additional to non-domestic valuation appeals for them to do. While we are not suggesting that
this is the case we are of the opinion that the relevance of valuation expertise to the assessment of notional occupancy rates must be explained in detail.

Although we can understand why the government has put forward the collective community charge in respect of some types of communal establishments we believe that it should be rejected for the following reasons:

1. the difficulties attendant upon distinguishing between 'separate dwellings' and accommodation such as HMO's will be so great in practice that it will lead to delay and appeals.

2. the advantages of the collective community charge do not outweigh the need to treat this sector of the community in the same way as the rest of the community.

3. the collective community charge destroys the clear link between the citizen and his authority which is central to the Green Paper.

4. the concept is based on assumptions about this sector of the community which appear to be unjustified.

5. at present persons in hostels etc. are treated as resident in such establishments for electoral purposes, it is thought therefore that this principle should be equally applicable to the community charge.

6. sufficient doubts have been raised about the problems of implementation and abuse to cast doubt on the effectiveness of the collective community charge.

C. Individual Community Charge

In the last category the occupants of communal establishments such as sheltered or amenity housing would be individually liable to community charge as the premises are only communal in that they are located in a
single building or a group of buildings and are under common management and the establishment constituted the permanent home for the occupants. However, in the cases of such establishments the proprietor would be regarded as head of household for registration purposes.

It is also suggested [Scottish Office Paper, para. 15] that in the case of communal establishments, such as homes for the old and disabled, that an informal arrangement could be made with the authority whereby the proprietor or warden paid the individual community charge for the occupants. While informal arrangements of this kind may be entered into between occupants of these establishments and those managing the establishment we believe that it would be best for this matter to be left entirely to them with the authority playing a facilitative role if requested to do so.

We accept that in this category of accommodation individuals should be liable for the community charge. However, we are concerned that the suggestion that the proprietor of the establishment be considered head of household for registration purposes places an unwarranted burden on the organisations who own or manage such accommodation. Our concern is two fold:

1. The use of the word 'proprietor' would mean that many district councils who own premises which they let to organisations such as SACRO would be liable for providing information about occupants with whom they have little or no contact and who live in premises the control and management of which they have ceded to another organisation.

2. Even if one of the concepts of 'control', 'management', or 'landlord' was substituted for 'proprietor' we feel that to place the burden of the registration obligations on them would not only place a heavy responsibility on them but would run counter to the purpose of many of these establishments which, by providing a 'halfway house' between institutional confinement and the community, is to assist them in resuming responsibility for the management of their own affairs.
This simple categorisation of communal establishments, however, is recognised by the Scottish Office to be deficient. It is admitted that hospitals with residential accommodation for staff might fall within all three categories and that separate arrangements may have to be made for taxing them. Yet, as we have already noted in respect of the concept of 'separate dwelling' how a communal establishment should be treated, for example, whether as a hostel or a 'single dwelling', is a complex matter which requires detailed investigation and a grasp of nebulous legal distinctions. This is not just an academic point but one which will have profound consequences for the running costs and management of communal establishments.

Second Homes and Time-Share Developments

The treatment of second homes and time-share developments will depend on the nature of the use and the services provided [0.39 and Scottish Office Paper, para. 17]. Where the second home is used for domestic purposes, (viz. where a non-commercial use is predominant) the second home is to be included in the community charge register as a separate registration category and will attract liability for a charge which is suggested might be equivalent to 2 x individual community charge. Where the use is predominantly of a commercial nature, however, it is proposed to retain the property on the valuation roll, attracting commercial rates. In the case of time-share developments it is proposed that the property either be classified as a second home, with each proprietor paying a pro rata proportion of the double community charge or where a high level of common services is provided, the time-share development might more appropriately be classified as non-domestic and continue to be liable for commercial rates.

In addition to the question whether a property is the 'sole or main residence' or a second home, whether a second home predominantly is let out commercially or is used for domestic purposes is one of obvious importance for owners of caravans and cottages and is likely to lead to disputes.
Example:

Mr. Jones owns a residential caravan in Anstruther which he lets out to students during the University term-time but which is used by him and members of his family over Easter and throughout the summer.

Is his caravan predominantly let on a commercial basis or is it used for domestic purposes?

The Green Paper proposals for second homes and time-share developments runs contrary to its explicit policy to levy local taxation on people not property and has been criticised on this basis. The Law Society of Scotland [supra, p. 9] state that "no-one should be liable to pay two community charges for the same period".

Enforcement of Registration

The comparison made between the enforcement of electoral registration and the enforcement of registration in respect of the community charge [G.9] is fundamentally flawed.

Disenfrancisement provides a powerful incentive for persons ineligible to vote to register but, as has been noted, the electoral register is estimated to have only a 93% coverage. [G.24]. The reasons why persons eligible to vote do not complete an electoral return are varied. In some cases it may only be dilatoriness or that the return form has been mislaid or lost. In other cases, it may be that the failure to do so arises from a deliberate decision not to exercise the right to vote or because of a misapprehension of the consequences of registration. The number of persons who deliberately choose not to register to vote, however, must be comparatively small. On the other hand in the case of the community charge the obligation to pay will provide a powerful incentive to evade registration and, unlike domestic rates which are levied on the occupier of a house, the opportunities for evasion are obvious. This is particularly the case with young people who would be liable to pay the community charge. The 18-25 year age group is recognised to be more mobile, and to have less income and property than others. Yet, while it is at this age group the community charge is
largely aimed, they will find it relatively easy to evade their responsibility for payment because of their greater mobility.

Responsibility for providing information for electoral registration purposes of adults to vote is placed on the head of the household. [G.9]. However, it should be noted that we have been informed by the Assessors and Registration Officers for a substantial number of regions that no prosecutions have been initiated in recent years for failure to make a return or for false returns. It is proposed also to place responsibility on the head of the household for providing both initial information to enable the register to be drawn up and further information to keep the register up-to-date. This would be achieved by imposing a statutory obligation on the head of the household to furnish full and accurate details on all adults eligible for registration in the household and notify the registration authority of changes for registration purposes in the composition of his or her household. [G.9 and Scottish Office Paper, paras. 5 and 7]. These obligations are to be reinforced by the creation of two new criminal offences:

1. Failure by the head of a household to provide information about the residents of his household over 18 years of age or to provide accurate and complete information.

2. For any person to induce a head of household to withhold such information or to give false information.

[G.9 and 10; Scottish Office Paper, paras. 18 and 19].

In each case it is proposed that the offence would be triable by summary procedure and that it would attract "a maximum fine set at a level which would provide an appropriate deterrent, in view of the potential financial incentive for a head of household to avoid registration for himself and his household". [Scottish Office Paper, para. 18].

The third offence [Scottish Office Paper, para. 19] paralleled in electoral law of attempting to interfere with the establishment of a complete and accurate register by destroying, removing or defacing any notice published in connection with the community charge register, or any copy of the register made available for public inspection will not
bdered here as we have been informed that "maltreatment of official
notices is outwith the experience of EROS in Scotland". [Law Society

The exact nature of these two offences are not revealed. It may
be that a specific mens rea requirement (such as "if a head of a
household for the purpose of evading the liability of any member of his
household to pay community charge wilfully or recklessly (a) makes any
statement which he knows to be false, or incomplete in any material
particular, or (b) fails to disclose any material fact ...) will be
imposed. It is to be hoped that this will be the case if such offences
are to be created because of the serious consequences of making one
adult criminally liable for providing information about another. We
have already touched on what we perceive to be the impracticality of
making a young adult responsible for providing information on other
young adults with whom he or she shares a flat and have explained that
in our view responsibility for providing information should rest on each
adult who is liable to pay the community charge. That view, we believe
is confirmed by consideration of the problems attendant upon enforcing
registration. Some of these problems are as follows:

(1) It would have to be established that there is a
household.

(2) It would have to be established that the accused
was head of the household.

(3) It would have to be established that the person
whom he failed to inform the registering authority
of was residing with him as a member of his
household.

(4) It must be shown that the statement made was made
with the intent of evading liability to pay the
community charge.

This problem may be illustrated by an example:
At Christmas Mr. Smith's grandmother comes to his home for the holiday period. It is intended that she returns to the hospital where she is a long-term in-patient. During her stay she became ill and lives with him for some months while she recuperates. After six months she has not recuperated.

Is Mr. Smith's grandmother a member of his household?

If so, when did she become a member of his household?

At what point should Mr. Smith have realised that she was a member of his household?

How, in these circumstances, can the requisite mens rea be established?

The same example, without the problem of illness, would prove even more difficult to establish in the absence of family or blood ties.

It may be objected that this example can be discounted as being fanciful and irrelevant given that the government has stated that "it will rarely be necessary for prosecutions to be brought against heads of households under these provisions" as the aim is to secure payment of the community charge through registration. [Scottish Office Paper, para. 20]. That may be so, but in our view if the offence is to be rarely used there is even less justification of imposing criminal liability on one adult for what clearly should be the responsibility of another adult. Indeed, we would question the notion for imposing criminal liability even in cases of large scale deception [ibid]. In our view responsibility for providing accurate information should rest with the individual backed up, if thought necessary, with a power given to the registering authority to impose financial penalties or surcharges on the lines used by the Inland Revenue or rating authorities. This we believe would be a more effective and just way of securing the enforcement of registration.
COMMUNITY CHARGE: IMPACT ON PEOPLE ON LOWER INCOME

The proposal to replace domestic rates by a flat rate community charge payable by everyone over the age of eighteen means that many people who at present are not eligible to pay rates will be required to pay the new charge, including a substantial number of people on low incomes.

The Government wishes to increase local "accountability" by seeking to establish a clearer relationship between rates payments and local authority spending, arguing that the more members of the community who are directly involved with paying rates, the more responsible they will be when they use their votes at election time.

As far as the community charge is concerned, the Green Paper assumes that these changes to the benefit system have already been made.

Although the Government claims that the community charge will be more equitable than the present rating system, research done so far suggests that there will be various implications arising from the introduction of the charge which will adversely affect many poorer sectors of the community. It appears that many poorer families will suffer financially, either in a direct sense, if they have to pay some form of charge when they are at present paying nothing in the way of rates, or indirectly since a large proportion of lower income groups live in areas which will suffer from the kind of "geographical disparity" outlined below.

The impact on lower-income groups will take a social as well as a financial form, and some of these social implications may well be as serious as the financial ones for some families.

Ability to Pay

One of the reasons given for the introduction of the community charge, in preference to the present rates system, is that the Government dislikes the inequality of, for example, single householders paying the same rates as a household with three or more adults. While some single householders on low incomes are eligible for a rates rebate, not all of them apply - particularly pensioners, who may be ignorant about the
rebate system or may be too proud to apply. A number of low income householders — again particularly pensioners — also have savings which make them ineligible for a rebate, but which are gradually depleted, with no possibility of replenishment, by large rates bills. The Green Paper draws a contrast between such householders and households with three or more working adults, who are faced with a similar rates bill.

However, the majority of the Scottish population do not fall into either of these categories, with only 9% living in single person households and only 8.6% in households with three or more working adults. So, while single adult households would, on the whole, gain from the proposed community charge and those with three or more adults would lose, the largest proportion of households in Scotland are two-adult ones. They would pay more if their present rateable value is below average for their area and less if it is above.

A criticism made of the community charge is that it bears no relation to income, and, in effect, falls sharply as a proportion of income as incomes rise. Thus, while seeking to redress the balance for certain minority categories of household who are at present unfairly disadvantaged by the rates system, the Government is in danger of disadvantaging a far larger group of people, namely, the poorer two-adult households.

The amount of community charge payable by a two-adult household in a particular registration area would, of course, be exactly the same regardless of how much the household earns, and the burden of local taxation would, therefore, be greater for poorer households. Smith and Squires examine the different effects of the new system on high and low income households, comparing it with the present rating system:

"At income levels of up to £100 per week, both systems are 'progressive', in that the percentage of local tax rises as income rises. Above this level, both are regressive: the burden of local taxation diminishes as a percentage of income as income rises. But the Community Charge is considerably more regressive than
the rates are. At the highest levels of equivalent net income the Community Charge will be only about half the level of local tax payments under the existing rating system."


Smith and Squires argue that the Green Paper analysis in paragraph 3.37 and Figure 11 on p. 25 is misleading in that it shows the effects on different households in terms of gross rates and gross community charge, i.e. before rebate. In their view, Figure F7 on p. 107 of the Green Paper gives a truer picture in that it shows the comparative net household income levels after rebate, and it is clear from this that the community charge will generally benefit higher income households at the expense of lower income households, with substantial benefits at the top end of the income scale.

Thus, leaving aside the particular categories of low income groups dealt with elsewhere in this section, it appears that the community charge will disadvantage poorer households falling into the majority, two-adult category of the community in terms of the important criterion of local taxation as a proportion of income.

**Supplementary Benefit and the 20% Rule**

One of the main criticisms which has been levelled at the community charge proposal is the requirement that even the very poorest members of the community would pay a minimum charge of at least 20%. Even if the level of benefit is raised to try to compensate for the effects of the "20% Rule", there will still be gainers and losers among the households receiving benefit if the increase in benefit is based on "average" figures, which will mean that households whose rates bills are above the average will lose out.

Any increase in benefit is likely to be based on a "national average", which will mean that people in high charge areas will be adversely and unfairly affected unless some special provision is made for them. Within Scotland there will, of course, be substantial regional variations too, since some areas will have a much higher community charge than others. Unless a very complex rebate system is introduced, low income households will be unfairly treated, depending on the area in
which they happen to reside. For example, a Glasgow resident faced with a community charge of £296 may be entitled to an 80% rebate, but would still have to pay a sum of £59.20, while a similar resident in a low community charge area of, say, £50 per head, would have to pay only £10, even though his income may be exactly the same as that of the Glasgow resident.

The proportion of Scottish ratepayers currently receiving a rebate is high. Based on 1984-85 statistics, 21% received a partial rebate, and 17% a full rebate, so that the effects of the proposed minimum payment of 20% on these householders would be felt particularly keenly in Scotland. In Tayside Region for the 1985-86 period, 22,165 owners and tenants received a rate rebate, including 7,720 people on supplementary benefit.

The Green Paper states that a flat rate community charge would represent a smaller proportion of net income for the lowest income households than domestic rates, as a disproportionate number of low income households have only one adult [p. 127]. While it is true that a certain number of low income single-adult households, such as those occupied by pensioners, would certainly gain from the proposed new system, it was noted above that only 9% of households in Scotland fall into this category.

As far as the majority of those on lower incomes are concerned, it is difficult to see how they could fail to be worse off under a community charge system than under the present rating system, without the introduction of a complicated rebate system. As well as adversely affecting those householders whose level of rate rebate is such that they at present pay less than 20%, the proposal that all adults should pay a minimum contribution of 20% in the form of a community charge would, of course, affect an even larger group of non-householders on low incomes. The average community charge in Scotland would be £207 on 1985-86 levels of expenditure, increasing the number of local taxpayers by two million.

In Strathclyde some 300,000 people claim supplementary benefit or family income supplement, with probably some 31% of Strathclyde's population living on incomes at or below the recognised poverty line. If they have to pay at least 20% of the community charge, most of these people would be adversely affected, unless benefits are increased very substantially (which seems unlikely). For example, over 70% of council
tenants in Glasgow have their rents wholly or partly paid through housing benefit. As at March 1986, 116,681 out of 162,038 tenants were claiming housing benefit, and 66,200 of these had all their housing costs paid. [See The Bulletin, May 1986]. Therefore, at least one third of all tenants would lose out if they had to pay the 20% minimum contribution.

COSLA describes the extension of tax liability to those on the lowest incomes as "utterly repugnant":

"This proposal runs counter to the whole philosophy of income support which was incorporated in the Housing Benefit System, one of the great practical advantages is that benefit can be applied to discharge liability, rather than being paid by one agency to be recovered often with considerable difficulty by another."

[op. cit. p. 15].

The problems which will inevitably occur regarding the collection of the community charge are dealt with below, and low income groups are likely to be the main defaulters, which will involve the local authorities in considerable effort and expense in their attempts to collect relatively small sums of money. The greater the number of defaulters, the greater will be subsequent rises in the community charge, and it would appear, therefore, that those who live in "deprived" areas, where there are large numbers of low income households, will be engaged in an everdecreasing spiral.

Impact on Multi-adult Households

It is not only those in receipt of supplementary benefit who will suffer under the new system, but also those just above benefit level, who will face substantial increases in tax liability.

The Government has identified as the "losers" in the new system households with three or more adults. Many of these households will consist of young adults living with their parents who are, in many cases, either unemployed or on low incomes such that they are unable to afford independent accommodation. While the present system, involving only one payment of rates for the entire household, may make such an arrangement
financially desirable, this will no longer be the case if the community charge system is introduced and the total outgoings of the household are substantially increased.

Although the "loss" incurred by multi-adult households under the new system will apply to high as well as low income groups, it was noted above [p. 38] that in terms of tax as a proportion of income, poorer households will suffer more than high-income households.

Poorer households with young adult members will, therefore, be penalised financially by the community charge system, and the Scottish Council for the Single Homeless is also worried that the strains which will result in many households as a result of these young people being liable to pay the community charge might result, in some cases, in eviction and a consequent increase in homelessness amongst young adults.

It may well be that parents feel a particular responsibility for members of their family named on the register who are on low incomes. If they encounter difficulties in getting members of their family to pay the charge themselves, either because they are unwilling or unable to do so, they may feel under an obligation - which they may be financially unable to meet - to pay the charge themselves, and in some cases may choose to evict rather than face the difficulties which would arise from non-payment. "There has already been evidence of similar problems where the non-householders' addition for Housing Benefit purposes has been removed for young people". [The Community Charge: Operational Issues, Submission to the Scottish Office by the Scottish Council for Single Homeless, p. 5].

Impact on Students

Another "low income" group who will be affected by the community charge are students over the age of eighteen in receipt of full-time tertiary education. The various implications of the new charge on students are set out in an article in the Times Higher Education Supplement of 4 July 1986 and in submissions by student bodies in Scotland in response to the Green Paper.

From the point of view of students in Scotland, the earlier date proposed for introducing the community charge in Scotland means that during the interim period of some five years or so, students at Scottish universities will be at a financial disadvantage in comparison to student
elsewhere in the UK. This is compounded by the fact that most first
degree courses in Scotland are one year longer than elsewhere in Great
Britain, and may mean that potential students will be less willing to
attend Scottish universities and colleges.

The suggestion that the liability to pay the charge for the first
time would not arise until the start of the first full financial year
after the student's eighteenth birthday [see G.P., para. G.7] would lead
to the further disparity of some students being liable to pay the charge
and others not. A submission by the students' representative council of
the University of St. Andrews in response to the Green Paper also points
out that there will be practical difficulties in operating the system if
the financial, and not the academic year is used. [para. 2.1].

By and large, it is single adult households who gain from the
community charge system. Since most students live in multi-adult
households for financial reasons, they will suffer a proportionally
greater burden than other sectors of the community. They would face
increased expenditure and probably would not get a rebate, in the light
of recent proposals to remove students from the benefit system. "The
Government remain committed to the aim ... of removing students from
dependence on social security benefits" [The Reform of Social Security,
Cmnd. 9691].

The Government proposes that the main residence of students should
be their term-time address, which will have differing implications
depending on whether a student is living in a hall of residence or in
private accommodation. As far as halls of residence are concerned, the
university or college would pay a collective community charge. If this
collective charge is reimbursed by the UGC as the rates of such
accommodation are at present, students living in halls would escape the
charge, while those in private accommodation would have to pay.

If the charge is passed on to students in halls in the same way as
rates for private accommodation are at present, this would lead to
considerable administrative difficulties: some students would be
eligible to pay the charge and others not (since they would be below the
minimum age limit); some students would be absent on courses abroad,
engaged in field work etc. There would also be a disparity in terms
of the "accountability" argument, since students in halls would not have the same appreciation of their local taxation as those in flats and lodgings who would be personally liable for the charge. Another anomaly is that while students would be classified as adults for community charge purposes, they would still be regarded as dependant on their parents for the purpose of grant assessment.

It is also questionable whether students could be expected to identify with the area in which they attend university or college to the same extent as other residents, or to make any great use of the services for which they will be paying. Commenting on the probability that students will be prevented from claiming rebates on their community charge, St. Andrews University students' council state:

"It seems doubly unfair that students, who make much less use of local services than other low income residents, should therefore have to pay a high higher community charge than those on equally low incomes."

[para. 2.3].

Students living in private sector flats are likely to be most seriously affected, since they will be individually liable for the community charge, but will be unlikely to have this additional financial burden offset by any reduction in living costs. Most students in private accommodation pay a fixed rent inclusive of rates, which the landlord then pays to the local authority. In theory, the abolition of rates means that the private sector landlord should have a reduction in his outgoings and should therefore be able to reduce the rent of his accommodation accordingly. However, there seems little likelihood that he will do so, unless a "fair rent" has been registered under the Rent Acts, and this means that the student will probably be paying the same rent as before plus the community charge.

St. Andrews University students' council point to the fact that most private student accommodation falls into precisely the area which the Green Paper acknowledges to be one where the rent registration system is rarely used, namely, furnished lettings, particularly in areas where there is a shortage of furnished accommodation. [para. 2.2(iii)].

The fact that there will be "high" and "low" community charge areas may also mean that students might be more inclined to opt for
universities in "low" areas, which would introduce an added financial element into the choice of university. Even if the parental home were made the main residence, thus removing the distortion regarding the choice of university or college, students residing in Scotland would still be penalised during the interim transitional period, and, at the end of the transitional period, all students would fall into the category of young, low income adults residing with their parents who have been identified as "losers" in the proposed new system. ("The main losers would be non-householder tax units who would become liable to pay local taxes for the first time, the majority of whom are in the 18-24 age group". [G.P., para. 5.22]).

It seems, then, that students will be particularly disadvantaged by the new system and that students in Scotland will suffer disproportionately for at least five years.

Head of Household in Community Dwellings

The proposals in the Green Paper with regard to communal establishments which are dealt with in detail above [pp. 26-30] as far as problems of registration are concerned are briefly as follows:

(1) Those with transient populations such as hospitals and prisons might be treated as non-domestic residences;

(2) The proprietor of lodging houses might be made liable to a community charge based on the amount of accommodation provided which he would then pass on in rents;

(3) The proprietor of accommodation such as sheltered housing might be registered as "head of household" with responsibility for registering occupants, though the responsibility to pay would rest with individual residents.

There are various problems attached to both of the latter categories, and these affect lower income groups in particular, since they tend to live in various types of communal accommodation.
As far as the second category is concerned, the difficulties outlined above [p. 44] with regard to students living in private sector flats would clearly apply to other low income groups too. Like students, other low income groups tend to live in furnished accommodation in crowded city areas where no "fair rent" has been registered and where there is therefore little likelihood of landlords reducing rents to allow for the fact that rates will no longer be included.

The City of Glasgow's environmental health department stated in a recent letter on the subject of multiple occupancy that their last annual report indicated that they were aware of 1,900 multiple occupancies in the city, but that this figure excludes guest house/bed and breakfast/hostel accommodation which they anticipate will be regarded as multiple occupancies in the future. In Strathclyde Region as a whole there are some 7,000 residences occupied by more than one household, so the difficulties attached to communal dwellings with regard to the community charge will clearly affect large numbers of people.

The question of definition is one which also applies to a "head of household" in communal establishments and is bound to lead to problems since there is often no particular individual who could be said to be "in charge" of such establishments. It is evident that where residences are occupied by more than one household, none of them have any particular responsibility for each other.

It is doubtful, first of all, whether anyone would willingly take on the role of head of household in such circumstances, given the various implications of the duties he would then incur not only to register all the occupants eligible to pay the community charge, but also to notify the authorities if an individual left the area of registration. The appointment of a head of household against his will would not only create resentment, but could also result in a whole series of appeals against such a designation.

The information which a head of household in a communal dwelling would be required to furnish would require a far greater involvement with the lives of fellow residents than would be desirable, and any attempts to elicit the requisite information would justifiably be regarded as an invasion of privacy. In some cases serious conflict could well result. There would also be considerable difficulty in establishing with any
degree of certainty just who is resident at any given time, and this too could well result in friction.

The solution in some cases may be to appoint several joint heads of household, who would be jointly and severally liable, but this would involve all the legal and practical difficulties outlined above [p. 25].

In cases where the proprietor of a lodging house is liable to pay a community charge based on the amount of accommodation provided, there would obviously be a temptation to underestimate levels of occupancy in order to reduce the amount of community charge payable, and if the collective charge is to be passed on to tenants in the form of rent, some very careful monitoring would need to be carried out in order to establish that a fair proportion of the charge is actually being passed on. The Scottish Council for the Single Homeless has expressed concern about the dangers of giving a small minority of unscrupulous landlords even more power over vulnerable residents who have nowhere else to go.

Where the head of household has responsibility for registering the occupants, but the residents themselves are liable to pay the community charge, there would probably be pressure from residents to exclude them from registration, which could lead to very strained relationships in many establishments, given that the head of household would be legally liable for the information provided for the purposes of registration. This would be a particular problem with sheltered housing, where the designated head of household would be in the very difficult position of being legally required to register residents whom he might feel could not afford to pay the sum due.

**Geographical Disparity**

One of the ideas behind the proposed reform is to reduce inequalities in the present system where similar services cost different amounts in different parts of the country and where comparable properties have very different rateable values. However, with the new system there would be great variations in the community charges in different areas of Scotland, and it seems that a new kind of inequity would then arise.

The "safety" net which will operate in the transitional phase will afford some short-term protection against too great a disparity, but even
so - based on 1985-86 figures - the initial regional community charge in Scotland would range from £140 in Dumfries and Galloway to £219 in Strathclyde and £223 in Lothian. Once the "safety net" has been removed, the figures will probably range from £51 per head in Dumfries and Galloway to an average of £246 her head in Strathclyde.

Within each region there will, of course, be great variations also from district to district (with Glasgow incurring the highest community charge of £296, based on 1985-86 figures). Part of this huge variation arises from distortions in the way the rate support grant needs element is allocated among the various district councils. Although the Green Paper proposes a new needs grant, Strathclyde Regional Council, in their Policy and Resources Committee Report of 27 March 1986, express their doubts about whether the equalising needs grant "can be made sufficiently sensitive to real relative needs of authorities to prevent significant variations in the community charges imposed arising simply from inequalities in the grant distribution". [Paying for Local Government, Report by the Chief Executive in conjunction with the Director of Finance and the Assessor and Electoral Registration Officer, para. 20(f)]. The Council estimates, for example, that residents in Eastwood and Bearsden and Milngavie will have a reduction of 40% and 42% in their share of the region's costs, while those living in Glasgow, Monklands and Motherwell will have to meet an increased share of 14%, 6% and 5% respectively.

COSLA express fears too that one of the effects of the new system will be "the cumulative redistribution in favour of high amenity housing areas with typically high rateable values and away from areas of urban deprivation". [COSLA, op. cit., para. 3.26(i)]. This, it seems, may well be a widespread problem in Scotland, with areas of high unemployment suffering even greater decline, compounded by the introduction of a uniform business rate which would be pooled and redistributed on a population basis, thus eliminating the financial incentive for industrialists to set up businesses in low rated areas and specifically favouring those urban areas already possessing basic transport facilities etc..

**Effects of the Pooling and Redistribution of Non-Domestic Rates**

The proposal in the Green Paper is that non-domestic rates will be a national rate, set by Central Government as a uniform rate in the pound,
which will be pooled and redistributed to all authorities on a per capita basis. The immediate impact of this in Scotland would be to reduce the amounts payable in highly rated areas and increase the amounts payable in low areas such as Borders and Dumfries and Galloway, so that substantial sums of money would effectively be transferred from urban areas to rural or dormitory areas.

This would have a significant impact on the communities in the respective areas, since non-domestic rates account for a substantial proportion of the costs of local government services. According to figures given in the Green Paper, domestic rates cover only 13% of the costs of these services in Scotland, with the balance coming from Central Government or non-domestic rates, so that reductions in these contributions - once the "safety net" has been removed - could lead either to substantial increases in the community charge in those areas and/or curtailed local government spending.

This would be bound to have a particularly severe impact on low income groups, who tend to be very dependent on these services and who would also be likely to suffer more from any consequential increase in the community charge. The majority of low income groups tend to reside in the city areas which seem most likely to incur substantial increases in the community charge once the period of transition is over.

In addition, therefore, to the variations in community charge outlined above, once the effects of the changes affecting non-domestic rates have been absorbed by the local authorities, district variations could range - according to COSLA's figures - from "a positive charge of £124 per adult to a minus charge of £29". [COSLA, op. cit., para. 7.14].

Although the Government may introduce measures to combat these extreme variations, the Scottish Council for Voluntary Organisations points out that as one of the ideas behind the proposed rates reform is to prevent irresponsible overspending by individual authorities, with a view to reducing the overall level of local government spending, "There is little change of the new accountability being allowed to bring in higher levels of spending, only lower ones". [Paying for Local Government: No Representation without Taxation", Report of 12 June 1986, p. 5].
Impact on People in Rural Areas

One important geographical implication of the community charge will be its effect on people living in the more remote and sparcely populated areas of Scotland. The latest issue of Rural Scotland Price Survey, commissioned by the Highlands and Islands Development Board indicates that on average prices in rural Scotland are currently 7.3% higher than in urban Scotland. In the more remote communities, indeed, prices can be as much as 10% or even 15% higher, and it is precisely these communities that tend to have least access to local authority services.

Under the rating system, this limited or expensive access to goods and services, both public and private, is to some extent discounted by the generally lower valuation of properties in these areas. So, at present, people who do not have pavements, street lights, council homes or libraries where they live tend to pay less in rates. Under a community charge system the approximately 300,000 people who live in "remote or very remote" areas of Scotland will pay exactly the same for Regional, Island or District services as people with the full range of services on the doorstep. As COSLA points out, there will be great disparity, "with a resident in Tiree paying the same as a resident in Oban". [COSLA, para. 3.27].

While the pooling of non-domestic rates may well benefit rural areas in general if the redistribution is made in proportion to the number of adults in each case, the more remote, sparcely populated areas would obviously not benefit, and rural areas would suffer from the introduction of the uniform business rate, which would do away with the "low rate" incentive for industrialists to consider setting up businesses in rural areas (and thereby create employment).
THE PROPOSED COMMUNITY CHARGE: ENFORCEMENT ISSUES

There are two separable issues to be considered under this head, first 'normal' collection and, second, collection on default.

1. Normal Collection

The Green Paper is silent on collection methods. This leads CIPFA to the conclusion that "since it says nothing to the contrary it may be reasonable to infer that no change is planned". As a point of principle, a question must be raised about the continuance of the existing arrangements whereby a considerable amount of domestic rates are collected along with rents by either District Councils, Housing Associations or, in a reducing number of cases, by private factors and landlords. Regional Councils, in reply to questions addressed to them, estimate that between 19% and 31% of their total rates bill is collected in this way. Given that on average some 50% of rates income comes from non-domestic properties this means that between approximately 38% and 60% of domestic rates are paid along with rents, with the Regional Councils paying an agency fee (averaging around 3%) to the landlords.

The proposed community charge is not related to property. It therefore seems inappropriate that the charge should be paid along with a property rent. But total separation would, of course, require new arrangements to be made for payments currently made along with rents.

If, however, existing arrangements are to continue to be used to collect the proposed community charge, consideration would still require to be given to the following issues. First, the proportion of the overall sum to be collected by this method will drop considerably since, presumably, only the individual tenant's community charge would be collected along with his rent. It may be possible in the case of joint tenants for both their community charges to be collected with their rent, but this may cause problems when, for example, one of the joint tenants was not liable for community charge in the same region (e.g. because he or she was registered elsewhere, was in prison or in the armed forces). In any case there would be considerable inconvenience caused by having to collect different sums from identical properties because of the type of tenancy. It may be estimated, therefore, that around 45% of the liabilities currently collected in this way would require to be collected
by a different method.

The second issue involved is that the major public authorities involved in rent collection are the District Councils. The Green Paper proposes that Regional Councils should be responsible for collecting the community charge. Arrangements already exist for District Councils to pay to Regional Councils the rates which are paid along with rents, but the community charge might put particular stress on those arrangements. At the moment, each property is liable to pay a fixed amount for the year. Under the new dispensation, each person will be liable to pay a particular amount depending on how long he or she resides in that area and depending on his/her financial circumstances. The amount might be considerably smaller than existing rates. If this is still collected at the same intervals as rent is at the moment then taking the hardest case of the person liable to pay 20% of £200 community charge who pays weekly rent, the District Council will be collecting less than £1 per week and generating a considerable amount of paper work in the process.

The third issue concerns those tenants whose landlord is not the District Council. While there is some logic in private sector landlords and groups like Scottish Special Housing and Housing Associations collecting rates along with rent and paying the rates element over to Regional Councils, that logic would disappear when the community charge is not related to property. At the very least, therefore, such landlords would be entitled to an enhanced agency fee were they to continue to collect tenants' contributions on behalf of the Councils. More logical, however, would be the discontinuance of the arrangement altogether. Alternative methods of payment of the community charge would then have to be provided for those tenants. (Incidentally, care would also have to be taken to ensure that particularly private landlords recalculated the amount to be collected from tenants to take account of the disappearance of rates, whether or not the landlords remained responsible for collecting the community charge).

In sum, therefore, the proposed community charge poses considerable difficulties which are not presently experienced by those who currently pay or collect the existing domestic rates along with rents. These difficulties require consideration in depth. Even if they are all overcome the fact still remains that an alternative collection system will be required for many people who live in properties whose rates are
paid by another person along with the rent of the property.

Those who pay their domestic rates directly to the Regional Councils are currently offered the option of paying by a single payment, or by ten monthly instalments. Some Regions also have a two payment option. The money is paid directly to the Regional Council and payments can be made by cash, cheque, banker's order, postal order or bank giro transfer. Most Regional Councils maintain a variety of offices throughout the Region at which payment can be made in person. None operates a door-to-door collection service and none accepts instalments at less than monthly intervals (save in the case of default). Ratepayers choose which of the payment methods to adopt. If they fail to indicate their choice of the ten instalment method by making their first payment in May, they are presumed to have chosen one of the other methods. Equally, if they default on any of the monthly payments, they become immediately liable for payment of the full amount in September.

The appropriateness of this collection process requires consideration in the light of two features of the community charge which are different from rates. The first of these is that the average sum to be paid by each person liable for the community charge will be considerably lower than the average sum to be paid by each ratepayer. This feature will be especially important in the proposed transitional period when everyone liable for the community charge will be paying only a fraction of the charge. Since this period will be crucial for both the image of the community charge and for resolving practical problems associated with its collection, it is important that it is taken into account at the planning stage. The second is the corollary of this - there will be many more individuals liable for payment of the community charge than for rates. The impact of both of these features is compounded by another proposed change, not directly related to the introduction of the community charge, the provision in the current Social Security Bill that everyone should pay at least 20% of their assessed contribution to local government finances.

The first implication of these differences is that Regional Councils will have to devote more resources to the collection process, even if they maintain the current arrangements. More people will be paying smaller sums and the administrative costs must increase as a proportion of the amount collected on both counts. Secondly, in view of both the
increased numbers of payers and the fact that their personal characteristics will be markedly different from existing payers, different arrangements may be necessary for collection. The community charge will be payable by almost everyone over 18. That means that, for example, non-householders, young people, the unemployed, the low paid and transient groups will all be liable for payment. We have little experience of collecting annual or other periodic sums from many people in these groups, either in the public sector or in the private sector. Credit companies are not likely to see them as good risks and may thus refuse them credit or insist on a guarantor (see further below). Equally their liability for tax, national insurance etc., if any, would normally be discharged by PAYE or direct deduction from income. Many who are householders make payments for rent or the services provided by public utilities by direct deduction from social security or other payments. Several public utilities and private rental companies make use of prepayment meters with people in these groups. Accordingly, judging the changes required to current collection procedures to ensure payment of the community charge by such people is difficult. But some factors can be singled out.

First, payment in a single annual instalment seems unlikely to be relevant to most of them. Even if their liability is only for 20% of a total charge, this is still likely to represent a significant proportion of their period income and thus require that they save up if they wished to make a one-off payment. The chances of this must be remote. Accordingly, the cheapest and most convenient collection method is unlikely to be greatly used. (It is useful in this regard to look at the problems experienced in collecting television licence fees. Peacock says "Much of the unpopularity of the licence fee arises from dissatisfaction with its method of collection. The once-a-year lump sum payment is clearly an inconvenience to some viewers, especially those on lower incomes" [para. 626, p. 138]. The BBC suggested in its evidence to Peacock ten different instalment collection methods tied to existing periodic payments, including income tax, telephone bills and, interestingly, local authority rates.) Instalment payment methods will thus be required more often than at the moment.

Secondly, the existing arrangements for instalment collection may need to be reassessed in order to meet the different needs of this
payment group. Both the timing of payments and the methods of payment are more suitable to payers who have an established budgeting system and, preferably, a bank account. Ten monthly instalments would put particular pressure on both low earners who are paid weekly and benefit recipients who tend to receive payments fortnightly. Any increase in the frequency of collection would, of course, be expensive for the collector but, as the Scottish Office research study on Rent Arrears clearly shows, "Net arrears in relation to rent collectable and the proportion of tenants owing more than £20 (or 4 weeks rent) both decreased as the proportion of tenants paying their rent weekly increased; conversely the proportion of tenants owing more than £20 increased as the proportion paying their rent monthly increased". [para. 4.7, p. 33]. The best indications are thus that weekly payments are the most effective collection interval. They are also, of course, the most expensive option and would be particularly so in relation to the relatively small amounts to be collected under the community charge system.

The Rent Arrears Study provides data on both the frequency and the method of rent collection which reflect partly the choice of tenants and partly the choice of District Councils. Most Councils give tenants a choice in relation to each of these factors and the outcome may provide some insight into what the most efficient and effective frequencies and methods are.

Table 1: Frequency of Rent and Rate Collection

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Total % of tenants using frequency (weighted average)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly</td>
<td>26</td>
</tr>
<tr>
<td>Fortnightly</td>
<td>39</td>
</tr>
<tr>
<td>Monthly/4 weekly</td>
<td>34</td>
</tr>
<tr>
<td>Quarterly</td>
<td>1</td>
</tr>
</tbody>
</table>

[D. Williamson: Rent Arrears in Public Authority Housing in Scotland (1980) p. 16].

Payment methods also vary, with each authority making use of several alternatives [ibid. p. 15]. Tenants' use of different methods of payment are shown in table 2.
Table 2: Tenants' use of Payment Methods

<table>
<thead>
<tr>
<th>Method</th>
<th>% using method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Door-to-door</td>
<td>21</td>
</tr>
<tr>
<td>Central Office</td>
<td>22</td>
</tr>
<tr>
<td>Local Office</td>
<td>39</td>
</tr>
<tr>
<td>Giro</td>
<td>5</td>
</tr>
<tr>
<td>Special GPO arrangement¹</td>
<td>8</td>
</tr>
<tr>
<td>Post</td>
<td>1</td>
</tr>
<tr>
<td>Standing order (bank)</td>
<td>3</td>
</tr>
<tr>
<td>Wage deductions</td>
<td>&lt; 1</td>
</tr>
<tr>
<td>Mobile offices</td>
<td>&lt; 1</td>
</tr>
</tbody>
</table>

¹ Cash paid through the Post Office by special arrangement (e.g. voucher schemes).

[ibid. p. 15].

While the study did find a valid correlation between collection frequency and default, there was no strong or consistent evidence of a relationship between collection method and default. However, it does seem likely that collection methods which require least effort and least expense on the part of the payer are more likely to produce good results.

Thus door-to-door collection would seem the best expedient for those who cannot or will not pay by bankers order. Equally requiring individuals to call at a Regional or area or District office to make payment in person seems the least likely to secure good results. An acceptable compromise, particularly for those on state benefits, might be payment through the Post Office. This would, of course, involve some agency fee as would any arrangement made with any other public utility or organisation. Perhaps the easiest such arrangement could be made with the Inland Revenue, though it might be difficult, were this done, to persuade payers that they were not paying a local income tax. Whichever methods of collection are selected, most are likely to be more expensive from the collectors' point of view than the existing methods of collecting rates. Any attempt to pass this cost on to payers, though for example a direct fee to the Post Office or bank, would constitute a further disincentive to paying.
Conclusion

It is suggested that insufficient attention has so far been given to the question of routine collection of the proposed community charge. As indicated, several changes are likely to be required to the existing system for collecting rates in order to ensure that everyone liable to pay the community charge can do so in a way suited to their situation. Those changes are likely to incur considerably higher costs than existing arrangements. During the transitional period in particular, and especially for those liable to pay only 20% of the charge, it is difficult to see how any collection arrangements can be both effective and economic.

2. Enforcement on Default

Again the Green paper is relatively silent on the question of enforcement on default: "The Government envisages that the existing procedures for the enforcement of the payment of rates would be carried over to the new arrangements. The procedure are well established but the Government is prepared to consider practical suggestions for further improvements". [G.29].

Regional Councils are currently bound by section 8 of the Local Government (Scotland) Act 1975 in deciding when to initiate action for recovery of overdue rates. This provides that if by September of the rating year a person has not paid at least four of the ten monthly instalments due or if, after September a person falls at least two instalments behind in payment, the total sum becomes due immediately. At this stage most Authorities issue a 14 day warning notice, advertise in the local press their intention to seek summary warrants, apply for the warrants and pass them to Sheriff Officers for enforcement. At each stage more people are persuaded to pay yet, in Tayside and Grampian Regions respectively 5,000 and 6,000 summary warrants were issued for Rates arrears in 1985.

The procedure for debt collection in Scotland, known as diligence, has come under scrutiny in recent years. One result of this is a report by the Scottish Law Commission, suggesting fundamental changes in the whole area. Leaving aside all this debate, the proposal to use existing procedures for the enforcement of the community charge poses
particular difficulties.

The first of these is the sheer potential number of cases in which resort might have to be had to enforcement methods. The Society of Messengers-at-Arms and Sheriff Officers suggests that, if numbers increase only in direct proportion to the numbers of people liable to pay the community charge as opposed to rates, a four-fold increase in the number of defaulters can be expected. [Response by the Society to the Green Paper, May 1986, pp. 2,3]. The chances are, of course, that the rise in the number of defaulters will be much more than proportional to the increase in number of persons liable to make payment. This is the result of the factors mentioned above under "Normal Collection", and, in particular, the introduction of non-householder payers, the practical difficulties in organising collection systems and the Social Security Bill provision that everyone should pay a minimum of 20% of the total charge personally. It is particularly difficult to be exact in the estimate of the number of likely defaulters in view of the paucity of experience anywhere in the market of enforcing debts against many of those who would be liable for the community charge.

The second point relates to the expense of legal methods of debt collection compared with the sums to be collected. Various private companies operate different levels at which they find it more economic simply to write-off debts. From the evidence available, debt collection agencies will rarely resort to formal debt recovery methods for sums less than £50. [D. Kay, Can't Pay, Won't Pay: The Policies and Practices of Debt Collection Agencies in Scotland S.S.C. 1985]. Individual companies are naturally reluctant to reveal their policies on this, but it might reasonably be expected that the size of the debt is generally a crucial factor in prompting decisions on how far to go in attempts to collect. The same is true of public agencies. Thus, for example, attempts to enforce repayments or over-payments by the D.H.S.S. are tailored to both the size of the debt and the circumstances of the debtor. Equally the Rent Arrears study shows that the average sum owed before resort was had to court action varied from £45 to £250. [Table 5.7].

In relation to Rates collection, however, Local Authorities state that their decision to proceed to summary warrant stage is not affected by the amount outstanding. They also state that they write off a
minimal number of debts, with no Authority giving a figure higher than in the hundreds for 1985.

There are, of course, sound tactical reasons for adopting this policy but the economic wisdom of it must be questioned. The smaller the amount involved, the more uneconomic resort to courts becomes. Given that the community charge would involve a massive increase in the numbers liable to pay only a very small amount, the pressure to adopt a policy of writing off debts of a certain amount would mount considerably.

If this policy were to follow the best of practices in the private sector, it may be thought unwise to pursue many of those who fall behind with a payment liability of less than the full amount. In any case, presuming that some method of instalment payment is provided, a considerable interval will need to be allowed to pass before formal action is in any way sensible. Taking the most ridiculous possible case, with the existing section 8 rules and a person liable to pay 20% of the charge during the transitional period, enforcement action would start when the person was £4 in arrears. It would be difficult to persuade anyone to believe that legal action would commence for such a sum. Equally it would be impolitic to ignore such arrears given both the increasing difficulty which the person would experience in settling the debt and the need to convince everyone of the determination of the Authority to collect the dues. In all, the proposal creates a problem for enforcement which is not capable of sensible resolution. The Authorities would either end up taking legal action for sums which no one else would consider, and, as will be argued below, without guaranteed success, or else they adopt an economically sensible write-off policy which would provide a considerable disincentive to payment. Even when the community charge is fully implemented, many of those liable for 20% of the full amount would be incurring a liability which at the end of the year would be on the margins for full enforcement under normal commercial criteria.

Similar points fall to be made in relation to the pre-legal action stage of enforcement on default. Both the S.C.C. study and the Rent Arrears study emphasise the importance of speedy identification of defaulters, prompt and preferably personal contact with defaulters and the provision of frequent easily accessible payment methods for defaulters. All of these are expensive and, even altogether they are
not likely to reduce the problem to a level which is tolerable without considerable resort to legal proceedings. (Both reports also indicate that informal arrangements to pay off arrears are highly unlikely to be sustained without at least some further default).

Not surprisingly, too, the Rent Arrears study identified as most likely to default on payments those families which were otherwise disadvantaged. Thus, defaulters were, on average, younger, more mobile, in less secure employment or unemployed and on lower incomes than non-defaulters. Equally many of them had experienced a "personal crisis" (illness, job loss or marital breakup) and a substantial minority had heavy credit commitments. [para. 1.11]. In many cases, therefore, the cause of failure to pay or inability to sustain an arrangement to pay off a deficit, may have been lack of money.

Already, therefore, we can identify a cohort which is likely to pose enforcement problems. But, for the proposed community charge, the size of this group will be considerably greater. All the people in the Rent Arrears study were, by definition, householders. It is likely, therefore that they are significantly different, in relation to relevant social factors, from the new groups which the proposed community charge would bring into liability for payment. In particular this group will include non-householders, even younger adults, more unemployed or low income earners and people with much less settled accommodation, social and economic habits.

Perhaps, therefore, a better indication of the problems of collecting sums of money from this group is provided by the experience of Regional Councils in recovering payments made for emergency needs under section 12 of the Social Work (Scotland) Act. Each of the Regional Councils which provided us with information on this accepts that, unless the reason for the loan is an outstanding giro, which can then be made over to the Region, the chances of recovering the loan are not high. All leave considerable discretion to the field officer (a social worker) in assessing the likelihood of various measures recouping the sum involved. Generally the sum involved is small, normally under £20 and, in the words of one Region, "There is no specific formal collection process as action has proved expensive and unsuccessful". The proposed community charge, together with the 20% rule, will bring more of those poor people
into liability for paying small sums.

The problem does not stop here. The same factors which render it more likely that those new groups of payers will default on payments are also crucially important for legal reasons. The main ultimate weapons available to enforce payment of sums due are Pounding, Arrestment and Warrant Sale. Pounding is the method by which goods belonging to and in the possession of the debtor can be attached and ultimately, by means of warrant sale, sold to pay the debt or part thereof. Along with a pounding order, the court normally grants a warrant for a Sheriff Officer to open shut and lockfast places occupied by the debtor or where there are goods in the debtor's possession. In the current cases of rent or rates default, it is relatively easy to discover the premises occupied by the debtor and, since the debtor is generally the householder, there is a strong presumption that goods contained within the premises are in his possession and ownership. The community charge, however, will be payable by many non-householders. Executing warrants against non-householders is fraught with difficulty.

The Sheriff Officer would have to be convinced that the debtor had goods in his possession before he would be entitled to enter any premises. In the words of the Society of Messengers-at-Arms and Sheriff Officers, "No Officer could be secure in the knowledge that effects in the possession of the debtor are guaranteed to be within the premises of the third party with whom the debtor resides and therefore an officer will only force entry when in the knowledge he has the right of entry against the householder". (Evidence, p. 4)

It is not proposed in the Green Paper that the householder should generally be liable for the payment of the community charge due by members of his household. It might therefore be presumed that pounding as a method of enforcement would be practically useless against non-householders who default on payment. (This leaves out of account altogether the separate argument concerning both the morality and the practical utility of pounding and sale generally as methods of debt enforcement and, of course, the counter arguments of the need for such ultimate sanction against non-payers if only to encourage as many as possible to pay). A further practical consideration requires to be mentioned in the discussion of pounding the moveable effects of non-householders. These effects are likely to be minimal, and of
minimal value. This is, of course, especially true in those cases of
the young low wage earner or benefit recipient, whose only personal
effects are likely to be records or clothes, neither of which has any
great second-hand value.

The alternative to poinding is arrestment, which involves the
freezing of funds due to the debtor in the hands of a third party, most
commonly wages or bank accounts. The Society of Sheriff Officers
considers that "it is highly unlikely that any Officer would be able to
obtain the required information to effect successful Arrestment of Wages
or Bank Account in more than a very small number of cases". [Evidence,
p. 5]. This information difficulty is likely to be compounded by the
fact that few of the young, non-householders, unemployed or lowly paid
will have bank accounts which can be arrested. Arrestment might thus
also be ineffective as an enforcement tactic.

The only other enforcement tactic available at the moment in
relation to Rates is the ultimate sanction of imprisonment. As stated
above, it appears that it is not current practice for Rating authorities
in Scotland to resort to this sanction. (One authority indicated in its
reply to us that it had applied for the imprisonment of one defaulter,
but this action had failed because the defaulter had moved to England.)
Indeed, at least from 1932 onwards, there has been a strong reaction
against the use of imprisonment as a sanction for debt of any kind and
the main circumstance in which it is still used in Scotland is wilful
failure to pay maintenance to a spouse and family. It would certainly
be politically unpopular were authorities to resort to the use of
imprisonment on any scale, or even at all. Both the Law Commission and
the S.C.C. are firmly against any use of imprisonment for debt. English
experience, where imprisonment is still used in extreme cases (some 352
in 1984), seems to be that those ratepayers who are refusing to pay their
full rates for some reason of personal principle, or as part of a
campaign for some local change, are the main ones who end up in prison.
This bring them considerable publicity, and it might be thought,
therefore, that the imprisonment is counter-productive from society's
point of view.

In sum, therefore, the Green Paper's presumption that existing
methods of enforcing rates payments could be carried over to the
proposed community charge must be questioned. At the very least, there
would be a considerable increase in the number of enforcement cases. More likely, however, the credibility of the whole system would be challenged by the failure of existing methods of debt collection to cope, particularly with default by non-householders, the unemployed, the low paid, the young and the transient. From their everyday experience, private credit grantors know that there groups are high risk borrowers; from the Rent Arrears study we can identify even householders who are more likely to default than others; from the Sheriff Officers experiences, we can see the problems with existing legal methods of diligence. To fly in the face of this experience and common sense would be to invite irremediable default on such a scale that the community charge may speedily be perceived by a voluntary tax by substantial groups in the community, or perhaps, worse, a tax that costs more to collect from some sections of the community than the revenue it generates.
CONCLUSIONS

This report does not set out to defend the domestic rating system or to propose what reforms should be introduced. Rather, our aim has been objectively to examine from the standpoint of the consumer the way in which the proposed community charge will operate in practice. The Green Paper outlines the three criteria [para. 3.6] of technical adequacy, fairness and the encouragement of local democratic accountability. This response is concentrated on technical adequacy - registration and the collection and enforcement of payment of the community charge - and fairness - the impact of the community charge on poor and disadvantaged families. The main conclusions of our study is that the problems associated with the implication of the community charge, contrary to the assertion made in the Green Paper [para. 3.38], are insuperable.

Is the Community Charge Technically Adequate?

As explained above [p. 2] the Green Paper identified five aspects of technical adequacy - cost-effective administration, compatibility with the national taxation system, proper financial control, predictability of yield, suitability for all tiers of local government and the different nature of authorities. Our analysis focuses primarily on the cost effectiveness of the administration of the community charge and predictability of yield which are more closely related to operational issues than the other criteria. However, we have interpreted these criteria more widely than the interpretation of them put forward in the Green Paper to enable us to discuss other aspects of consumer interest which we believe should be discussed.

Cost Effectiveness

The cost of administering the rating system are comparatively low. Moreover, although no detailed study has been undertaken of the likely costs of developing and administering the community charge system, maintaining the Community Charge Register will be very much higher because of the need for frequent canvassing, cross-checking records, monitoring returns and detecting evasion.
Drawing the Register

Using the Electoral Register and the Valuation Roll as a starting point for drawing up the Community Charge Register will result in a high degree of coverage. However, both have acknowledged deficiencies and in particular are unlikely to provide information on the young non-householder at whom the community charge is especially targeted. Indeed, the community charge itself will provide an incentive for young people who do not wish to pay the community charge not to register on the Electoral Register when they come of age. The Electoral Register therefore may become an increasingly unreliable source of information about persons liable to pay the community charge.

The operational problems of maintaining the register and monitoring information provided in respect of community charge registration are likely to be daunting. Indeed the operational problem of cross-checking records against returns and following-up non-responses, particularly in the case of the young and highly mobile non-householder who is likely to be omitted from the authority's records, may be insurmountable. Local authorities do not have the resources, manpower or expertise to effectively monitor the adult population of their areas and without these evasion will be simple and render the community charge in many cases a 'voluntary' tax.

Only or Main Residence

The question of what is the only and main residence of a person with two or more homes is not as the Green Paper [G.8] states "a matter which should be easily established on the facts of the case". The case law on mortgage interest tax relief indicates that this question requires detailed factual enquiry to establish the quality of residence and that in some cases the decision is based not on principle but on the need to come down on one side or the other. It is likely therefore that this question will result in substantial litigation because of the difficulties in establishing residence.
Head of Household

Establishing who is head of household and therefore legally responsible for providing information to the registration authority on liable adults, particularly on the context of flat sharing, making husband and wife jointly and severally liable for the payment of each other's community charge, and the designation of a head of household are areas which also are likely to give rise to dispute. Indeed, the idea of making one adult criminally liable for providing information about another adult is in our view not only repugnant but is likely to lead to family discord. And, it may be added, the suggestion that husband and wife should be made jointly and severally liable for payment of the community charge is contrary to legal and legislative trends towards treating wives as being financially independent from their husbands.

Household

The concept of 'separate dwelling' on which it is proposed to base the definition of household is vague and is difficult to identify in many cases. Given the importance of this concept and the need for authorities to make detailed inquiries into the nature of occupancy rights there is also likely to be substantial litigation on this issue.

Communal Establishments

It would appear that the Government has been unable to devise a suitable method of assessing liability for the multivarious types of communal establishments. Even the division of communal establishments into three categories breaks down when it comes to deal with institutions such as hospitals. In addition, doubts have been expressed, and we would support this view, whether the proposals for the collective community charge can be made to work efficiently given the scope for evasion which they present. More importantly, however, even if they could be made to work the question remains whether persons living in communal establishments should be treated differently from the rest of the community in respect of collection of the community charge.
Second Homes and Time-Share Developments

The difficulties which apply to the concept of 'only or main residence' have already been discussed and need not be rehearsed here. However, it is necessary to state that the proposals for second home owners are contrary to the proposal to move away from a 'property' tax and that the problem of determining whether a second home for a predominantly communal or domestic use must be faced.

Enforcement of Registration

It is here that the registration system breaks down. The problems of identifying non-registration of adults, monitoring population movement on a fairly large scale, and the improbability of prosecution except in the most extreme cases, will mean that the community charge lacks the necessary teeth to ensure that it is universally applied.

Appeals Mechanisms

Given the apparent difficulties which are likely to arise in connection with the administration of the community charge the Scottish Office Paper suggests that there should be a right of appeal to the Sheriff Court in respect of the exercise of the power by a registration authority to enter persons in the community charge register [para. 12], disputes about whether a property constituted an 'only or main residence' or a second home [para. 17] and the exercise of the power to designate a resident as head of household [para. 5] and to the Local Valuation Appeal Committee in respect of the notional occupancy rate of establishments which would be subject to the collective community charge [para. 16]. While it is essential that there be an appeal mechanism in respect of the administration of the community charge in general we would suggest that these appeal mechanisms are inappropriate. It is not evident why these appeal mechanisms should be thought to provide the necessary expertise to
deal with these questions and in terms of access and non-fragmentation of the appeal structure we believe that it is necessary to set up an independent administrative tribunal on the present structure, such as the Rent Assessment Committees and Social Security Appeal Tribunals, which would operate at a local level. These should be inexpensive to operate, and allow for lay as well as legal representation to enable disputes to be resolved informally and expeditiously.

Normal Collection

Existing collection procedures are unlikely to cope adequately with their new task because:

(i) the new charge is unrelated to property, while 50% of existing domestic rates are collected along with rent;

(ii) there will be a vast increase in the number of individuals liable for payment;

(iii) the amount to be collected from individuals liable to pay less than the full amount, especially in the transitional period, will constitute a high proportion of the collection costs;

(iv) existing collection arrangements in relation to timing of instalments will have to be revised to take account of the different social and economic characteristics of new payers. What is likely to be the most effective option, weekly collection, will also be the most expensive.

(v) existing collection arrangements in relation to methods of payment should be re-examined to account for different social and economic characteristics of new payers. Again the likely most efficient method, door to door collection, is the most expensive option.

Collection on Default

Existing rate default enforcement methods are unlikely to be
effective and efficient for the community charge because:

(i) the cost of any enforcement measures is likely to be disproportionate to the financial return. This is especially true for those who will be liable for less than the full charge and in the transitional period. The sums involved are at a level which most commercial enterprises would simply write-off;

(ii) the numbers against whom enforcement methods are likely to be required will probably increase more than proportionately with the increase in numbers liable for payment;

(iii) arrestment is unlikely to be a useful enforcement tactic because of both information difficulties and the unlikelihood of those most liable to default having any funds in the hands of third parties;

(iv) pounding and sale of moveables is most appropriate against householders. Non-householders pose problems for Sheriff Officers acting within their powers. The non-householder is also less likely to own sufficient moveables to satisfy any debt.

(v) imprisonment for any form of debt is not an option likely to find favour with anyone;

(vi) detailed guidelines would be required to ensure consistency among Authorities in deciding how far to go on enforcement. Such guidelines should either reflect considerations of cost-benefit or some provision would be required to compensate Authorities enforcing the uneconomic enforcement tactics.

(vii) detailed provision would be required to enable Authorities to cope with under-receipt of moneys.

Predictability of Yield

The yield of taxation can only be predictable if there is little scope for evasion. Rates provides a stable tax structure for local government in terms of yield. Yet, as we have shown, both in terms of enforcement, of registration and payment the community charge will either
be relatively simple to avoid through non-registration or failure to notify changes in the composition of households or, because of financial considerations, it will not be cost-effective to pursue non-payers.

Rates it would seem are more technically adequate than the proposed community charge: they are cheap to collect, difficult to evade, and simple to administer.

Is the Community Charge Fair?

The Green Paper argues that the two systems of rates and community charge are broadly similar in their relationship to ability to pay: rates "are not better related to ability to pay than a flat-rate charge" [para. 3.34].

The Government has just changed the social security system so that every ratepayer or community charge payer, no matter how poor, will in future have to pay at least 20% of the appropriate tax. The introduction of this so-called "20% rule" - will greatly complicate the collection process for either scheme - or indeed for both during the period of transition - and the implications in terms of administration and fairness cannot be calculated precisely until the details of the community charge rebate scheme are published. However, even if the level of state benefits is raised to take account of the national "average" amount of rates or community charge paid, people in highly rated areas or dependent on benefits would be hit hard.

Moreover, the arguments discussed above [p. 37 onwards] show that the proposed community charge will result in the majority of low income households paying more than at present, even where there are only two adults in residence. Where there are three or more adults in residence a poor household will be significantly worse off. In the cases of households with only one adult, the introduction of a community charge will mean that many poorer people paying less, which is welcome as far as it goes; however, the poorest one-adult households who at present pay no rates will be required by the 20% rule to pay more than at present. Overall, more poor people will pay more under the community charge system. It is therefore difficult to see how the Government can claim on its "redistributive" principle that its proposals will be as fair or indeed fairer than the present system.
Moreover, on the "beneficial" principle" [that those who benefit from a service should contribute towards its costs - the Government argues that the community charge will be fairer than rates because the "use of local authority services ... now more closely reflects the number of people in a household than the value of the property occupied" [para. 3.34]. (The use of the word "now" is intriguing. When did the valuation of a property more closely reflect the use of local authority services, and when did this cease to be the case - since the White Paper Valuation and Rating in Scotland in 1983?)

There is, however, one substantial group of consumers for whom the valuation of property does relate more closely to the use of local authority services than the number of adults in the household: the approximately 300,000 people who live in the remote and sparsely populated areas of Scotland [see p. 50 above]. Their limited access to local authority services is to some extent discounted by the generally lower valuation of their property, which means that they pay lower rates. Under the proposed community charge the person who lives miles from the nearest library will pay precisely the same as the person who has a library next door. As COSLA points out: "a resident in Tiree (will pay) the same as a resident in Oban" [COSLA, para. 3.27]. This will penalise a section of the population which already pays significantly higher prices for goods and services and will be unfair to yet another group of disadvantaged people.

An overriding unfairness in the proposals, however, relates to neither of the Green Paper's principles of "redistributive" and "beneficial" fairness, rather it relates to the discussion of technical adequacy. Quite simply, the Green Paper's proposals for maintaining a comprehensive register of people liable to pay the community charge are defective. Without a central register, a national identity card system, or access to all of the Government's own records (such as tax, social security, and other information about individuals) which has been rejected by Government for entirely honourable reasons, the register will be significantly incomplete. Moreover, many people whose names do appear on the register will pay only some of their charge or none at all. There are no collection methods presently operated in the public or commercial sector which will be effective in pursuing the debts, which
could be as low as £10 or £20, of non-householders such as the young and mobile. In the absence of effective methods of collection and enforcement, default will be widespread.

For a significant part of the population, particularly in large urban areas where there is a transient population, the community charge will become a voluntary tax. A tax which is paid by honest and scrupulous people, who may be on very low incomes, but can be evaded by large number of less scrupulous people, fails the most basic test of fairness.

The problems of the community charge proposals are insuperable. The Government should think again.
Appendix: Community Charge Rebate

The Green Paper [G.31] states that "it would be possible to extend the application of the revised housing benefit scheme to everyone liable to pay the community charge". It gives little detail as to how this is to be achieved, merely that "there will be separate consideration of the interaction between the community charge and the benefits system, including whether any modifications are required to housing benefit in the light of the new local tax proposals and the arrangements for phasing their introduction in England, Wales and Scotland". In Scotland, where it is proposed to phase the introduction of the community charge between 1 April 1989 and 1 April 1992, the question of exactly how the community charge rebate scheme is to be implemented is particularly pressing. At the moment as we have no detail as to how such a scheme may operate we can only make tentative comments but would like to raise the following points for consideration:

1. During the transitional period when domestic rates and the community charge are run in tandem it will be necessary for local authorities to calculate entitlement both to rates rebate and community charge rebate.

2. The volume of workload in carrying out these calculations will be awesome. At the moment there are some 3.9 million adults in Scotland who will be eligible to pay the community charge. [G.P., para. 8.13]. Of these only 1.1 million householders pay full rates [ibid.]; which represents 62% of ratepayers, 21% receive partial rate rebates, and 17% full rebates. [G.P., para. 1.37]. There will therefore be a need to continue to calculate eligibility for rate rebate for approximately 2 million householders. In addition, eligibility to community charge rebate will have to be calculated for those 3.9 million adults. Not all will claim or be eligible for the rebate but the size of the task will be daunting whatever measure of workload is used. In addition, given the 'rolling' nature of the proposed register and the substantial changes in household composition noted earlier it is evident that there will be a need for 'fine tuning'.

3. It is not clear how the housing benefit scheme may be extended to cover those not presently paying rates. At present some 3.5
million households in Great Britain get full rebate because they are receiving supplementary benefit; another 3.8 million receive partial help through rate rebates. However, eligibility for rate rebates is part of the housing benefit scheme and depends on the claimant being an owner-occupier, tenant, etc. Under the community charge scheme just less than 2 million adults in Scotland will be liable to contribute to local government finance for the first time. Some of these will be on social security benefits and it may be possible to use tests of entitlement to benefit as a passport to community charge rebate, as with entitlement to benefits in kind through the S.B. - and F.I.S. schemes. However, unless there is uniformity in the income support schemes proposed in the Social Security White Paper there may be a considerable number of people whose entitlement to community charge rebate will have to be calculated.

4. Even if the housing benefit scheme could be modified to enable authorities to make payment to everyone entitled to community charge rebate through it possible, and we are uncertain as to how this can be achieved, it would appear to us that to do so may weaken the clear link which the government wishes to establish between local authority spending and the electorate. Housing benefit per force is a scheme whereby the housing needs of poor people are met by way of financial payments. At the moment one of the advantages of the community charge is it is a tax which can be clearly perceived as a tax on people and not on property. The extension of the housing benefit scheme to deal with the administration of community charge rebate may blur that distinction.

As we have stated our observations on the administration of the community charge rebate scheme are necessarily vague due to the scant detail provided in the Green Paper. Our decision to express our views in these circumstances arise from the unhappy history of the introduction of the housing benefit scheme, aptly described by The Times (January 20, 1984) as "the biggest administrative fiasco in the history of the welfare state". Given the larger volume of claims which will have to be processed and the attendant difficulties we have already identified in relation to the administration of the community charge we believe that if