VOTE 26. - OFFICE OF THE MINISTER FOR EDUCATION

27. Deeds of Trust for Recreational Facilities

The Recreational Facilities Scheme assists voluntary community organisations in the provision of, improvements to and equipping of recreational, leisure and community facilities. Under the terms of the scheme, existing amenities must be assessed to ensure an equitable spread of facilities within the area and the completed facility must be available to the local community. The scheme is subject to the Department of Finance rules on National Lottery funded expenditure, which require careful evaluation and monitoring of projects, including follow up for grants of over £5,000. The grant conditions laid down by the Department of Education are intended to safeguard the State's financial interests and include provision for grant repayment should the facility cease to operate for the purposes grant aided or should a change of use occur. In this regard, the policy of the Department of Education is to have a Deed of Trust executed, *i.e.* an agreement between the Department and the grantee giving the Department a charge over the grantee's property, in respect of grants of £40,000 or more.

In June 1993, a capital grant of £100,000 was allocated under the scheme to a company, trading as a football club, towards the cost of the development of a soccer stadium and sports complex. Following allocation of the grant, the Department notified the company of the conditions, which included the requirement for a Deed of Trust to protect the State's investment and provision for a grant refund should the facility not continue to be used for local sports purposes. In response, the company acknowledged the conditions and stated that the project was already substantially complete at that time.

In July 1993, the directors of the company signed a declaration accepting the Department's entitlement to a refund of the grant should the facility cease to be used for the stated purposes and that the declaration would have the effect of a primary charge on the facility. In October 1993, the chairman of the company gave a written undertaking to sign a Deed of Trust, but a grant of £99,000 was issued in December 1993 without a Deed of Trust being in place although the Department had established that all the conditions of the scheme were met in terms of the availability of local funds for the project, architectural drawings, specifications, planning permission, tendering and tax clearance procedures and certification of construction work. The facility was completed in early 1994 and continued in use as a football stadium until April 1996 when the club went into liquidation.

In May 1995, following moves to execute a Deed of Trust, the Department became aware that a first charge had already been taken out on the company's property in favour of a commercial bank for £80,000 in November 1993. The company redeemed the first charge in favour of the bank in June 1995 but, with the agreement of the Department, immediately took out a new first charge in favour of another financial institution for £250,000. Following a request by the Department, the Chief State Solicitor advised in November 1995 that the company was in severe financial difficulties and, drawing attention to previous advice to the Department not to make grant payments without a Deed of Trust being executed, stated strongly that the practice of handing over grants prior to execution of the Deed was dangerous and should be discontinued. He referred to the possibility of a similar situation arising in 23 other cases where no Deeds of Trust existed.

In January 1996, the Department advised the Chief State Solicitor that it would be executing a Deed of Trust and would accept a second charge on the property. However, the Deed had not been executed by July 1996 when the Department became aware of the company's liquidation. After being notified of the liquidation, the Chief State Solicitor advised the Department that the Minister had no redress whatsoever as the grantee was not specifically bound by way of Deed of Trust and the grant would have to be written off. The property was put up for sale. No action has been taken by the Department to seek repayment of the grant as the Chief State Solicitor indicated that, in the absence of a Deed of Trust, any such action would probably not succeed. Various parties lodged offers for the property and these bids were considered by the High Court as part of the liquidation process. Ultimately an offer made by an organisation involved in sport at a national level was accepted.

By May 1997, only 8 of the 23 cases referred to by the Chief State Solicitor in November 1995 had Deeds of Trust in place or approaching completion. Despite the advice of the Chief State Solicitor regarding the execution of Deeds of Trust before grant payment, the most recently updated conditions of approval issued by the Department in May 1996, continued to allow payment of grants on the basis of written undertakings to sign a Deed of Trust.

In view of the Department's apparent failure to act on legal advice about the Deeds of Trust, thereby exposing the State's financial interests to risk, I raised the matter with the Accounting Officer who advised me in June 1997 that

- It had not been possible to finalise the execution of Deeds of Trust in the remaining fifteen cases due to pressure of work, but these were now being given priority. The total value of grants in these cases is £6.9 million of which £5 million relates to a single project at Croke Park which is not considered to represent any risk. The Department is satisfied, from its ongoing contacts with the operators, that all these facilities are being used for the purposes for which the grants were paid.

- The procedures followed by the Department on the payment of grants and the acceptance of undertakings to execute a Deed of Trust were in accordance with normal practice at that time. Although the Department continues to allow payment of grants on the basis of written undertakings to sign a Deed of Trust, since late 1996 it retains, as an interim measure pending the possible introduction of new procedures, a significant portion of the grant until a Deed of Trust is executed.

- The sports capital programme is a large and complex one, which is being dealt with directly by two full-time staff in the Department. Since 1988, 2,245 individual projects have been funded, with over £61.5m allocated by the Department. In 1997 alone some 1,400 applications had to be assessed in detail and in excess of 500 projects had recently been allocated grants. The Department has had to administer this programme so as to ensure that the schemes could be operated effectively, spending targets met, moneys appropriated correctly and much needed facilities provided for clubs and communities around the country. The Accounting Officer is satisfied that the Department's procedures for vetting and monitoring projects ensures value for money.

- A number of fundamental issues in relation to the execution of Deeds of Trust had to be taken into account *viz.*

  - Even if a Deed of Trust had been executed in the case cited prior to the payment of the grant, it was arguable whether the Department would have secured the repayment of the total grant. This was due to the fact that the Department accepted a second charge on the property which was in line with long established practice. Refusal by the Department to allow financial institutions to take out first charges in cases such as this would seriously jeopardise the sports capital programme. Since the inception of the programme the Department has always accepted second charges in cases where the taking out of loans by grantee organisations was judged to be essential to ensuring that the project goes ahead. Without loans, the grantee organisation in very many cases will not be in a position to provide the counterpart finance.

- The preparation of a Deed of Trust can be a lengthy procedure involving the Department, the Chief State Solicitor and solicitors on behalf of the grantee organisation. If a Deed of Trust were to be executed in all cases prior to the payment of grants, the Department would have difficulty in expending the annual Government approved allocation for the sports capital programme. Failure to spend the annual voted provision would have serious effects on the programme including the capacity of grantee organisations to raise funds.

- It was not evident that the need for a Deed of Trust is either practical or proportionate for every project funded under the Programme. For example, where sporting leases were granted by local authorities for the development of sport facilities, Deeds of Trust may not be necessary as the leases provide for the reversion of the facility to the local authority for recreational purposes if the conditions of the lease are not met.

As far as the Department was aware the specific case cited is the only case where a facility is not currently being used for the purpose for which the grant was provided and where the Department is facing the potential loss of a grant. While the weaknesses demonstrated by the case were acknowledged, the Accounting Officer contended that there are inherent weaknesses in any grant scheme, as by its very nature such a scheme provides funding for organisations needing assistance and providing such funding inevitably carries some risk. He accepted that this risk must be minimised and the Department is now reviewing grant procedures with a view to developing a system which would be practicable and would protect the interests of the Exchequer.

28. Cost Overruns on National School Projects

The guidelines for public procurement, which set out the procedures that must be followed in awarding public sector contracts, state that it is essential that every effort should be made to ensure that all aspects of the design are finalised before a project goes to tender, in order to avoid increased costs later. At the outset, upper cost and area limits should be set and a detailed brief prepared which is sufficiently comprehensive to establish clearly the services required and the relevant standards and constraints. The unnecessary use of provisional sums or quantities as a substitute for detailed planning should be actively discouraged. At the later construction stage, proper supervision is essential to ensure that the works are being carried out as required under the specifications and within the time and cost limits for the contract.

For national school projects the Department makes grants representing 85% of costs, except for schools designated as disadvantaged where a grant of 95% is payable and gaelscoileanna where grants of 100% are payable.

It was noted during audit that

- the contract sum for building projects and the overall final costs of some national school projects were materially greater than the original estimated costs, which had been used in presenting the projects to the Minister for Education for approval. Table 5 gives details of a sample of such projects completed or nearing completion in 1996.

Table 5 - Cost of Projects

Project	Programme Year	Estimated Cost at Ministerial Approval £	Building Contract Price £	Final Building Contract Cost (Est.) £	Final Cost of Project[a] (Est.) £
Project A	1993	188,000	480,000	510,000	543,000
Project B	1993	176,000	200,000	290,000	330,000
Project C	1993	187,000	200,000	270,000	304,000
Project D	1994	80,000	230,000	255,000	285,000
Project E	1994	400,000	540,000	610,000	699,000
Project F	1994	294,000	330,000	428,000	484,000
Project G	1994	118,000	130,000	218,000	252,000

[a] *Includes cost of consultants fees and furniture additional and separate to the building contract.*

- Tenders were invited on the basis of detailed drawings and specifications/bills of quantities, but detailed cost plans were not in place when the tender documents issued. These procedures were not in line with the Department of Education's design team procedures, introduced in 1990, which stipulate that detailed cost plans should be drawn up before a building project goes to tender.

As the indicative final cost of the projects on completion was significantly greater than the approved estimate and/or the contract price, I inquired of the Accounting Officer if he was satisfied that the procedures in operation were conducive to effective cost control. He stated that

- Pre-planning estimates are given prior to detailed examination of the projects and prior to preparation of design drawings, cost plans, incorporation of planning authority and fire officer requirements and information on the timing of the project.

- The Department regards pre-planning cost estimates of national school building projects as an essential element of submissions of projects to the Minister for consideration for inclusion in the capital programme and does not propose to alter this practice.

- The pre-planning estimate gives the Minister a broad indication of the number of projects which can be chosen. The alternative approach is to carry out detailed planning of up to 300 projects before the cases are submitted to the Minister for decision. This approach would require significant additional financial investment in design fees as detailed pre-contract costing of a project requires the services of a quantity surveyor.

- It has not been the Department's practice to engage quantity surveyors on projects with an estimated cost below £250,000, in keeping with the value thresholds suggested in the public procurement guidelines. However, within the last year, a limited quantity surveyor service is used on smaller building projects where this can be justified in terms of cost/benefit.

- More recently, the Department's design team procedures have been introduced for the national school programme.

- The extent of cost overruns should be measured by reference to the final account when viewed against the contract price rather than against the pre-planning estimate.

The Accounting Officer explained that the cost overruns between the building contracts and the final building accounts arose chiefly due to

- Unforeseen improvements/repairs to existing buildings

- Unforeseen extra site work

- Provision of general purpose rooms in accordance with new departmental policy after project commencement

- Provision of permanent rather than prefabricated extensions

- Additional security measures

- Underestimation of costs.

He added that the Department was introducing a contingency sum in contract pricing to cover changes considered necessary during the course of a building contract. Such changes are quite normal, particularly where a project involves interference with an existing building. Work of this nature must be taken on board by way of provisional sum, contingency sum, or an extra on the contract. Without using contingency sums or provisional sums, it would be expected that the final account in each project would exceed the contract sum.

29. Secondment of Teachers

Primary and post-primary school teachers may be seconded, while being retained on full salary by the Department of Education, to organisations outside the Department. Secondments have been approved in the past on a full recoupment or on a non-recoupment or partial basis. Although not formalised, the Department indicated that approval for secondment is usually, but not exclusively, restricted to posts with a direct link to education.

In 1996, £840,000 was received by the Department in refunds of salary from bodies to which first and second level teachers had been seconded. 62 primary and 28 post-primary teachers are at present seconded under the arrangement.

During audit, weaknesses and inconsistencies were noted in the administration of secondments and the recoupment of salary costs as follows

- There appeared to be no formal or standard criteria for secondment and applications tended to have been dealt with on an ad hoc basis. Some secondments had been approved for posts which did not appear to have an educational purpose.

- Evidence of approval by senior management was not recorded in the majority of secondments.

- While Department of Finance sanction is normally required for secondments to outside bodies, in some cases, there was no evidence of this sanction. In other cases, Department of Finance sanction had been given for a specific number of years, but the secondment had been extended without the further approval of that Department.

- Applications are usually made by teachers to the school board of management. If approved, the application is forwarded to the Department and then to the Department of Finance. In some cases, secondments commenced before approval was given by either Department but the arrangement was sanctioned retrospectively.

- Secondments were approved but failure to notify the proper sections within the Department resulted in delays in updating records and in recouping salaries. As a consequence, arrears built up over a number of years and presently stand at £200,000 from 3 bodies.

- Procedures for recording, reviewing and collecting arrears were found to be inadequate. No formal system for collecting moneys due existed. Individual files were reviewed periodically but no listing of arrears was produced. As a result, no mechanism existed to allow senior management to monitor and review arrears.

In response to my inquiries the Accounting Officer informed me that

- While standard criteria exist for secondment and these criteria are applied in individual cases, it is also necessary to take account of the wide diversity of needs within the education sector and to retain a capacity to respond accordingly. In the case of secondment on a recoupment basis, the Department has, historically, sought to establish a link to education as a condition for the granting of such secondments. That said, flexibility has been a feature of the administration of these secondments, prompted by the awareness that no cost to the Exchequer was involved. The review of secondments currently underway in the Department will have as one of its objectives the setting out of revised procedures for this type of secondment which more fully reflect this need for flexibility. The criteria for approving secondments on a non-recoupment basis provided that each application for this type of secondment is considered on its merits. Particular regard is had to the relevance of the experience of the individual to the relevant organisation. If there is any doubt on this issue the application is considered from a professional perspective by the Department's Inspectorate. As a rule, secondments of this type are permitted only where a seconding body has established a clear and direct link with the development and/or delivery of education or in a limited number of cases where there is a clear "national interest" justification for the secondment. These will now be restated in a more formal manner and set out in an internal Departmental circular.

- As a rule, secondments are approved at a level not below assistant principal officer. In atypical cases approval is at a more senior level. Revised procedures are now being put in place to require a formal approval for all secondments at a level not below principal officer. This approval will be recorded on a new application form which is also being put in place. While secondments have traditionally been reviewed on a periodic basis, revised procedures are being put in place which will provide that all secondment arrangements will be reviewed annually. In addition, a once-off review of all existing secondments is being undertaken at present. This review will regularise any case where Department of Finance sanction has expired.

- The revised internal guidelines will require centralised records of all secondments, to include the designation of a named principal officer responsible for the review of each individual secondment and for ensuring that all conditions attaching to that secondment, including recoupment where necessary, are complied with. Procedures already in place for the pursuit of arrears involve a quarterly review of secondment files and the issue of invoices. It is intended to strengthen these procedures with a quarterly report of outstanding balances to the relevant assistant secretary.

- The education environment has become increasingly complex in recent years, involving a wide range of initiatives and new programmes, and there is a corresponding requirement for flexible and innovative approaches to meet short-term skills needs. The secondment arrangement has significant strengths in meeting these requirements in a cost-effective and flexible manner. It is also a most valuable tool for enhancing the experience of teachers and in the process increasing their contribution to the education sector. A review of procedures in this area is appropriate and timely given the expansion in recent years in the volume of secondments and the consequent need for more formality of procedures. This review will involve a programme of systematic updating of all procedures and systems in this area.

- The major arrears are the subject of discussion with the bodies concerned and with the Department of Finance.