

5. Referendum Commissions

In March and April 1998 the Minister for the Environment and Local Government set up two Referendum Commissions, under the Referendum Act, 1998 to provide information to the electorate in respect of the referenda on the Amsterdam Treaty and on the Northern Ireland Agreements. The Commissions were chaired by a former Chief Justice of the Supreme Court and the four ordinary members were the Clerk of Dáil Éireann, the Clerk of Seanad Éireann, the Ombudsman and the Comptroller and Auditor General. The Commissioners were independent in the performance of their functions. Not later than six months after the completion of the performance of their functions the Commissions shall submit a report to the Minister for Environment and Local Government in relation to the performance by them of their functions and the Minister shall lay the report before the Houses of the Oireachtas. The Commissions stand dissolved one month after the submission of the report (In November 1998 the report was submitted and accordingly the Commissions dissolved in December 1998).

As the referenda were held on the same day there was a considerable amount of commonality in the work of the two Commissions. The Secretariat of the Commissions was drawn from the Office of the Ombudsman and the expenses incurred by the Commissions in undertaking their statutory duties were borne on the Vote for the Department of the Taoiseach in respect of the Northern Ireland Agreements Referendum (£2.137m) and on the Vote for the Department of Foreign Affairs in respect of the Amsterdam Treaty Referendum (£2.197m).

The total expenditure on both referenda of £4,334,861 can be analysed as follows:

	Amsterdam Treaty	Northern Ireland Agreements	Total
	£	£	£
Sub-contractor/supplier expenditure <i>via</i> media consultants	1,852,971	1,752,619	3,605,590
Media consultants management fees	<u>199,423</u>	<u>111,622</u>	<u>311,045</u>
Paid to media consultants	2,052,394	1,864,241	3,916,635
Direct expenditure through Referendum Commissions	<u>145,053</u>	<u>273,173</u>	<u>418,226^a</u>
Total	<u><u>£2,197,447</u></u>	<u><u>£2,137,414</u></u>	<u><u>£4,334,861</u></u>

^a Comprises

	£
Advertising	194,000
Postal Costs	177,000
Printing and Design	20,000
Legal Fees	14,000
Miscellaneous	13,000

As I was a member of the Commissions I decided in the interest of transparency to engage the services of the auditor who audits the Appropriation Account of my Office, on my behalf, to also carry out an audit of the expenses incurred by the Commissions. His report was brought to the attention of the Accounting Officers of the Department of the Taoiseach, the Department of Foreign Affairs and the Office of the Ombudsman and their observations were sought.

The auditor prefaces his findings with the statement that “it should be borne in mind that the Commission and the staff assigned to it were working under significant time pressure and had a heavy workload. This is due in part to the fact that the Commission was under-resourced from a staffing perspective. Accordingly, a number of the problems noted, in our opinion, arise from these matters”.

The main audit findings were:

- In the appointment of the media consultants public procurement procedures were not adhered to as:
 - For the Amsterdam Treaty Referendum campaign the lowest tender was not considered suitable and Government Contracts Committee approval was not sought or obtained for the award of the contract to a higher tenderer.
 - Guidance was not sought from the Department of Finance as to whether, due to the urgency of engaging a media consultant, the publication of the tender in the Official Journal of the European Union was not necessary. The successful tenderer however, had got legal advice that there was no requirement to so advertise.
 - As there was no time for a separate tendering process in respect of the Northern Ireland Agreements referendum the Commission sought proposals from the consultants then engaged on the Amsterdam Treaty referendum. The proposal was acceptable to the Commission and the contract was awarded accordingly. However, the approval of the Government Contracts Committee was not sought or obtained for this extension of the contract.
 - A tax clearance certificate must be provided by the consultants before a contract is awarded. Whilst the requirement was specified in the invitation to tender, this was subsequently not provided to the Commissions.
- Contract documents should be signed in duplicate by authorised persons and copies retained by both parties. Draft contracts/project management agreements were prepared but were not apparently finalised and signed, due to time constraints. There was a letter of 1 April 1998 from the consultants outlining budgeted costs for the Amsterdam Treaty referendum as it was anticipated by them that it would take some time to prepare and agree a detailed contract.
- The consultants organised sub-contracts with expenditure totalling £3.6m. Apart from the printing element (£611,000), a tender process was not arranged by the consultants.
- There were deficiencies in the system of internal control for authorising and approving invoices.

I was informed that:

- The Commission had to carry out a broad range of statutory functions within a predetermined time scale which was not of its own making and had to do so under the added pressure of a high level of public, media and political attention. The campaigns in respect of the referenda on the Amsterdam Treaty and the Northern Ireland Agreements, were the first such campaigns run by the Referendum Commission and as such were very much a learning experience for the Commission.
- The difficulties encountered by the Commission included:
 - Because two important referendums were held on the same date, the time scale available to the Commission to carry out its functions was particularly tight. Furthermore, the subject matter of the Amsterdam Treaty referendum was particularly complex and presented the Commission with very formidable challenges.
 - While the staff resources requested by the Commission were approved by the Government without delay, there was considerable delay in filling the approved posts because of the absence of any panels of qualified people. The Commission had, therefore, to draw from the staff of the Ombudsman's Office, who had no previous experience in or expert knowledge of the Amsterdam Treaty or the Northern Ireland Agreements, with the resulting vacancies being filled later on, when staff became available from service-wide panels.
 - The Commission obviously had to spend considerable time initially in putting staff and an office in place, setting up payment mechanisms and other logistical arrangements as well as engaging consultants and planning a comprehensive information campaign. Almost immediately work had to start on the preparation of the initial publications on the Amsterdam Treaty and on setting up the Website, Press Office and Information Line. In respect of the Amsterdam Treaty, a period of twelve weeks was available to the Commission to carry out its functions from the date of its establishment to the date of the referendum. In the case of the referendum on Northern Ireland, the time available was four weeks and during this period the Commission was running two separate information campaigns. As a result, the work pressures on the seconded staff, especially the Secretary to the Commission, were constant and intense and quite a number of logistical difficulties arose. A series of deadlines arose in quick succession.
- The Commission in its report to the Minister for Environment and Local Government agreed that it was desirable that any future Commission should have the maximum amount of time possible under the terms of the Constitution to fulfil its remit properly. Indeed some advance logistical and other work, including the putting into place of staff should be made possible even before the proposals for the referendum are settled by the two Houses of the Oireachtas, for example, as soon as the Government has publicly announced an intention to initiate the Bill concerned.
- Arising from the difficulties encountered the Commission also recommended that where it is decided to establish a Commission under the Act of 1998, the minimum period to elapse between the passing of the Bill or the making of an order under Section 12 of the Referendum Act, 1994 and the polling date should be 90 days.

- The matters raised on audit in relation to internal controls and procedures have been noted and appropriate measures will in future be put in place to deal with these matters. All the points raised relating to contract procedure are noted for future reference. The severe staffing and time constraints were again relevant in this regard.
- The Commission had less than one month to prepare and implement a multi-faceted information campaign in relation to the Northern Ireland referendum. It would have been impossible to do this except through the consultant as it was necessary to utilise the campaign framework already put in place in respect of the Amsterdam Treaty campaign *e.g.* press office, production company, printers, advertising company, media monitoring etc. The fact that these were already in place meant that the Northern Ireland campaign could be managed and run at a much reduced cost than would otherwise have been the case.
- When the consultants decided to submit a tender bid for the project management of the information campaign it formed a consortium to handle the advertising elements and to handle the broadcast production elements of the campaign. While it might have been more appropriate to ensure a tender process for all major elements of the services provided to the Commission these were on board from the outset as part of the consortium. The consultants did not engage in a tender process for these services. When a subsequent need for printing arose a tender process was followed at the request of the Commission. Due to the severe time constraints which the Commission operated under it was a distinct advantage in planning and implementing the campaign to have a number of service providers available at the outset. However, in future and assuming adequate notice is given of its establishment as outlined in its recommendations on these two campaigns, the Commission will seek to ensure that separate major services are contracted following a tender process.
- Work has already commenced on a Referendum Commission Procedures Manual which will put in place a series of procedures for expenditure controls, internal controls and strict compliance with public procurement and tendering procedures *etc.* for future referendum campaigns, where such proves practicable.