VOTE 30 -MARINE AND NATURAL RESOURCES

26. Collection and Refund of Administration Charges for Afforestation Grant Schemes

Since July 1997, the Department of Marine and Natural Resources is responsible for the operation of the EU Afforestation Grant and Premium schemes introduced in 1989. (Up to 1993 the former Department of Energy was responsible while the Department of Agriculture, Food and Forestry was responsible until 1997). The purposes of the schemes are to promote and support afforestation as an alternative use for agricultural land and to encourage the diversification of agricultural land to forestry related activities. The schemes are co-financed, 75% by FEOGA and 25% by the State. Under the schemes, grants in general were paid to farmers and non-farmers who complied with the conditions of the schemes by way of a 75% first instalment grant at establishment stage and a 25% second instalment grant four years later, subject to proper care and maintenance of the plantation. Under the CAP Afforestation Grant and Premium Schemes, which have applied since 1993, a yearly premium is also payable.

For a large number of hectares planted and grant aided each year grant applicants employed contractors to carry out the forestry development work on their behalf. In most of these cases the applicant mandated or assigned the grant payment to the forestry contractor as consideration for the development work. The mandating system administered by the Department also facilitated planters in borrowing money from financial institutions to cover the cost of carrying out development works themselves. However, the yearly premium is payable to the landholders.

In April 1992, when increased grants were introduced, a flat rate administration charge of 5% of the value of grant payments to beneficiaries was introduced. This charge continued until December 1995. In the period April 1992 to December 1995, £4.5m was collected in charges in respect of 6,221 applicants.

During audit it was noted that:

- The charge was introduced without the advice of the Chief State Solicitor's Office (CSSO) or the Attorney General (AG). In January 1993, the Department of Energy was made aware by the CSSO that the legal basis for the collection of this charge was doubtful. Contrary to the advice the charge was continued.

- The charge was dropped in December 1995 following an EU audit which identified it as being contrary to EU regulations. In addition the EU Commission made it known that it would impose a financial correction if the amounts were not repaid.

- The pre-planting approval letter stated that an administration charge would apply to beneficiaries of grants and would be calculated by reference to the value of the grant payment at the rate of 5%. Payment was subsequently made to the Department, directly by the applicant or in many cases by a contracting company on behalf of the applicant.

- Department of Finance sanction was obtained in November 1997 to refund the charges on condition that legal advice was obtained from the AG's Office on the matter of appropriate entitlements to refund.

- The charges were repaid in 1997 (£3.4m), 1998 (£1.1m) and 1999 (£0.04m) on the following basis:

    - To the afforestation contractors where the contractors had been invoiced for the charges (£3.25m to 30 contractors). The contractors were required to sign an indemnity to refund the amount to the Department should another party prove better title to it .

    - Direct to the grantee where the grantee had been invoiced for the charge (£1.25m).

The Accounting Officer informed me that:

- The introduction of the administration fee arose as a consequence of Government policy in the late 1980s to reduce the national debt. An aspect of that policy, developed by the Department of Finance, was the introduction of charges for services which were being supplied free by the State. In that connection, charges in respect of tree-felling licences and repeat visits by Forestry Inspectors were introduced in 1990. The 5% administration fee was introduced early in 1992 in conjunction with increased rates of grants and premia. The concern at that time was to frame the administration fee in such a way as to be acceptable to the EU. The prevailing wisdom was that, if the administration fee was set at a level below the actual costs of administering the scheme and was treated as a separate transaction rather than as a deduction from the grant payment, it would be acceptable to the EU. The view was taken within the Department that the Appropriation Acts and the Forestry Act, 1946 provided the legal basis for introducing the fee. Legal advice to substantiate this interpretation was not secured at that time.

- In 1993, the CSSO and the AG's Office raised doubts about the legality of the fee under national law. The position was not clear cut, however. For example, the AG's Office pointed out that whether or not the Department could justify the 5% charge by reference to actual administrative costs incurred would have a bearing on the matter. There followed lengthy internal consideration of the issue and correspondence within the Department and with the CSSO and the Department of Finance. The CSSO and the AG's Office gave their definitive view in late 1994 that the Minister did not have the power to introduce the administration fee as it stood. Consideration then focused on whether the administration fee could be reframed in line with the comments by the AG's Office and also on the possibility of amending legislation. However, events were overtaken by the development at EU level in January 1995 when the Commission informed all Member States of its view that the imposition of offset and administration charges on payment to beneficiaries was unacceptable. Following consideration of the matter within the Department, it was decided to abolish the administration fee from the end of 1995.

27. Forestry Failures due to Shell-Marl Soil and Related Conditions

Under the various forestry schemes, the Department operated an advisory service whereby at application stage the site to be planted was examined by the Department's Inspectors who advised on the suitability of the site and the prescribed and most suitable species. Based on this report an approval letter issued allowing the applicant to proceed with the plantation. The second instalment becomes payable following a further inspection of the plantation, usually within 4 years.

Since 1992, certain afforestation plantations which were planted in the late 1980s and early 1990s

were discovered mainly at second instalment stage, not to have thrived. Following soil testing, it was established that these plantations would not produce a commercial crop and in fact the trees would die due to the presence of shell-marl in the soil. The geological condition had been known to exist since the 1950s on certain lands purchased by the State as it had been found that such lands planted in the 1950s and 1960s had proved unsuitable for forestry.

During audit it was noted that:

- Many of the inspecting staff who carried out field assessments at pre-planting approval stage were not aware of shell-marl condition.

- In order to identify and prevent the planting of shell-marl sites at approval stage, soil testing in general was introduced in 1994.

- A number of sites had been planted when Coillte, the State body, acted as agents for the Department on advisory/inspection work but there was no formal written contract covering Coillte's responsibilities and role in regard to the inspections and advice.

- Following advice from the Chief State's Solicitors Office, Department of Finance sanction was sought in 1997 for the payment of second instalment grants under the Afforestation Grant Schemes in cases affected by shell-marl conditions and not to recoup the first instalments already paid as it was understood from discussion with the EU Commission that they would not seek recoupment of their contribution towards the cost of the first instalment. The Department of Finance was also informed that the Department had come to an agreement whereby Coillte would undertake a soil survey of the sites concerned (at Coillte's expense) and, where appropriate, return the land to agricultural use (again at Coillte's expense). The survey would show whether certain of the sites concerned could produce commercial crops of broadleaved species and those sites deemed unproductive would be returned to agricultural use and the owners would be encouraged to enter the FEOGA scheme of REPS grants. Department of Finance sanction was given in June 1997 on the following conditions:

    - The write off of first instalment grants already paid was limited to a total of £67,000.
    - Payments of second instalment grants were also limited to a cumulative total of £67,000.
    - These arrangements were to be in full and final settlement of 36 cases involved.

By May 1999, I noted that the number of shell marl cases had risen to 58 involving 373.5 hectares. The conversion cost of returning these lands back to agricultural use is estimated at £740 per hectare.

I requested information as to the extent of this problem and its possible financial effect on the Exchequer. I also inquired whether any further cases had come to light of crop failure on sites planted since the new procedures were introduced in 1994 and whether the revised soil testing procedures had proved effective.

The Accounting Officer informed me that:

- Grant and premia amounts paid/payable in respect of the 58 cases totalled £575,182.

- A further 4 cases covering 11.3 hectares were awaiting confirmation of existence of shell- marl. Amounts paid/payable in these cases total £17,761.

- Compensation claims totalling £154,806 in respect of 12 cases covering 85.1 hectares were being dealt with. Compensation totalling £8,328 in respect of 3 cases covering 27.5 hectares had already been paid.

- No legal proceedings for compensation were pending.

- The Department of Finance has been advised of the additional cases which have come to light since 1997. It is now estimated that the necessary write off/payment of first and second instalment grants respectively will be approximately £90,000 each, instead of £67,000 each as previously approved. The necessary additional sanction is being sought.

- Coillte's survey of the sites was on-going and discussions were underway between the Department and Coillte regarding its responsibility in the matter.

- Only one further case (5.6 hectares) of crop failure had come to light for trees planted since the revised procedures were introduced in 1994 out of a total of 10,000 files processed. The revised testing appeared to be working effectively.