

VOTE 31 - AGRICULTURE AND FOOD

29. FEOGA Operations

The EU makes monthly advances to the Department of Agriculture, Food and Rural Development, refunding payments made to farmers and others who are eligible to receive support under the Common Agricultural Policy. The accounting year for FEOGA operations ends on 15 October. By the following 10 February, the Department submits a detailed claim to the EU itemising all expenditure incurred and amounts received on behalf of the FEOGA Guarantee Fund. The claim is certified by a private firm of accountants (certifying accountants) appointed by the Department in accordance with EU regulations.

During 1999, £1,270m was incurred on FEOGA expenditure comprising

	£m
Export Refunds	356.2
Intervention Costs	89.2
Production Aid	97.2
Premia Schemes	461.5
Other support measures	266.3

Disallowances by the EU in 1999 totalled £3.18m. In addition to the certifying accountants and normal management controls, the control procedures in the Department include an Internal Audit Unit. The unit also reports on the results of its audits to an audit committee, appointed by the Minister to advise on the development of internal audit within the Department. During my audit of Departmental FEOGA operations I examine the reports of both the internal auditors and the certifying accountants and rely on their work, where appropriate, to enable me to fulfil my audit mandate.

30. Collection of Debts

Participants in the Rural Environment Protection Scheme (REPS) must carry out their farming activities for a five-year period in accordance with an agri-environment plan approved by the Department and are paid annually. In the event of participating farmers failing to comply with the conditions of the scheme, such as not remaining in it for five years, they are obliged to repay some or all of the amounts paid, depending on the particular circumstances. Since 1994 some £560m has been paid under the programme.

A report issued by the Internal Audit Unit of the Department in March 2000, noted that there were no written procedures in the REPS procedures manual in relation to how farmers withdrawing from the scheme should be dealt with. It also noted that there were no procedures in place to recover moneys which could not be recovered by offset against moneys payable to farmers, such as livestock premia and headage grants and it recommended that appropriate procedures be put in place and action be taken through the courts if necessary to recover moneys due.

The certifying accountants' report on the 1999 FEOGA (Guarantee) Annual Account referred to the Department's debtors ledger and REPS debtors. It noted that while there was a central debtors ledger unit, it was not fully meeting the requirements of the EU Commission and, in particular, was not maintaining a centralised debtors ledger. The report stressed the importance of the continued prioritisation of the implementation of the new accounts system within the Department, as this would provide a fully-integrated central debtors ledger system and would permit a central review of the age of debts as well as the prospects for recovery. The report recommended that the Department address the issue of outstanding debt and take appropriate action.

Under Commission Regulations, the Department is responsible for maintaining a ledger of all debtors in relation to FEOGA expenditure and taking the necessary steps to recover the amounts on a timely basis. This is the main function of the Department's debtors ledger unit. It is also responsible for ensuring the ledger's completeness and for monitoring the activities of the Operating Divisions in the area of debt establishment, recording and recovery. The unit produced a review of the debtors ledger system in July 2000 which indicated that the overall level of REPS debts owing was continuing to rise significantly. The review noted that the debt stood at £1,968,000 as at 30 April 2000 and no recoveries, partial or full, had been received from the vast majority of the REPS debtors.

The records of the Department showed debtors in relation to the farmers Early Retirement Scheme (ERS) of £1,063,232 at 31 December 1999. The main reason for this debt was, apparently, that in the course of a review of farmers receiving early retirement pensions who were aged 66 and over, it came to light that many of them were also in receipt of a pension from the Department of Social, Community and Family Affairs, which had not been deducted from the early retirement pension. Since 1994 some £312m has been paid under the scheme.

In response to my inquiries the Accounting Officer stated that

- Penalties applied under REPS were clawed back from participants' future payments where possible. Debts occurred when participants' remaining payments were not sufficient to offset penalties due or where participants were removed or withdrew from the scheme and previous payments had to be recovered. Since the inception of the scheme in 1994 until July 2000 £1.5m in debts have been recovered from 426 debtors.
- The policies and procedures for the recovery of amounts owing in respect of REPS were now detailed in the REPS Procedures Manual for Debt Recovery, as recommended by the Internal Audit Unit in March 2000. The manual included formal procedures in relation to review of data entry and transfer of amounts owed and subsequently recovered and procedures would be reviewed regularly to ensure their adequacy.

It was acknowledged that the recovery process had been slow and that the level of debt had increased, but the full effect of the consistent referral of debts to the Department's Overpayments section had not yet become apparent and that this together with improvements in debt management generally, would in due course generate results. The Department was also giving consideration to alternative means of debt recovery such as the factoring of debts and the use of legal proceedings.

- The Department had put increased emphasis at Divisional management level on the importance of debt management. Additional resources had been allocated to debt collection, as recommended in the 1999 certifying accountants' report and an individual assigned to the REPS unit had been given specific responsibility for debt management.

Further additional staffing had been approved for the REPS area and, as these posts were filled, Divisional management would continue to review resources to ensure that they were adequate. The increased resources, together with additional management input, would ensure a more focused approach and greater potential for debt recovery.

It was felt that as a result of these measures, together with work completed on the development of the debtors' ledger database, the Department would be able to comply with EU Commission standards and that financial corrections by the EU Commission were unlikely.

- It was a condition of the ERS Scheme that participants, on reaching the age of 66, must apply for a national retirement pension and notify the Department of the outcome. A significant number had not done so in the past, however, and it was from those cases that the bulk of the ERS debt had arisen. Of the total ERS debt of £1,063,232 as at 31 December 1999, £836,408 related to national retirement pensions. The control procedures involved the periodic identification and investigation of participants who had reached the age of 66 but who were not having a national pension offset against their ERS payments. However, the frequency with which this control procedure was activated proved insufficient and a corrective exercise begun in 1999 and now in its final stage had identified a significant number of overpayments.

Procedures in place since the beginning of 2000 would ensure that future debts relating to national retirement pensions did not arise. The Department had also arranged to have direct on-line access to relevant Social Welfare computer records which would give the Department immediate access to all necessary information on ERS participants' national pension entitlements as a means of verifying the information given by participants on Social Welfare pensions. The remainder of the ERS debt arose mainly from irregularities, where participants in the scheme or transferees broke their undertakings. These were of their nature difficult to predict but the Department's inspection system was the chief deterrent.

- About 75% of the existing ERS debt related to participants still in the scheme and could be recovered by withholding part of the payments due to them during their remaining time in the scheme. Between January and July 2000 £400,000 was recovered in this way. Where this was not possible repayment was demanded by the Department. The Department was giving consideration to other means of debt recovery, where the repayment demands were ignored.

31. Collection of Land Annuities

Problems in relation to the effectiveness of the procedures to collect land annuities and rents have existed since the mid 1980s and have previously been referred to in the 1985, 1992 and 1996 C&AG Reports on the Appropriation Accounts.

The arrears increased from £2.2m in 1985 to £6.1m in 1992. Following the introduction of a scheme in 1993 under which high interest annuities were reduced, small annuities were written off and farmers not in arrears were allowed to buy out their annuities at a discount of 50%, the level of arrears decreased to £2.6m in March 1994. The amount of income forgone as a result of the scheme was £16.3m. The arrears again continued to grow and stood at £4.5m at April 2000. The figures

indicate that annuities and rents are on average not collected for some 2½ years after their due date. Apart from the risk that some of this debt may never be collected, the arrears give rise to a significant and continuing cost to the Exchequer due to the financial cost of carrying the debt and the interest forgone. The cost incurred in billing and collecting these debts in 1999 was £292,642.

While the Department has, as stated in previous Reports, indicated a number of measures which it proposed taking, the arrears figures over the past ten to fifteen years would suggest that they have been largely ineffective.

In a review of the collection procedures being employed by the Department, carried out by my staff, it was noted that the offsetting of land annuity and rent arrears against headage and premia grants owing by the Department to farmers ceased in 1993 but was recommenced in 1998 and arrears of approximately £250,000 were collected by this measure in 1999. It was also noted that there were doubts about the legality of the procedure and the Attorney General had advised in June 1998 that legislation would be necessary to put the procedure on a sound legal footing. The necessary legislation has not been introduced. It was also noted that interest is not charged on annuity and rent arrears.

A review carried out by the Economic and Planning Division of the Department in 1999 recommended that interest should be charged on overdue accounts, but that this would require minor legislative amendment to the Land Acts. Greater use of offsetting was also recommended in the review.

In the light of the level of annuity and rent arrears which has existed over the past fifteen years, I sought the Accounting Officer's views on the adequacy and effectiveness of the procedures employed by the Department to collect land annuities and rents, and enquired as to the Department's policy on offsetting arrears against moneys owed to farmers and the charging of interest on arrears and whether there was any expectation within the Department that performance would be improved.

The Accounting Officer stated that:

- A major reason for the increase in arrears since the end of 1993 was the resource problems which the Department faced in implementing the CAP reform schemes during the 1990s resulting in an inability to pursue defaulters as diligently as would have been desirable. The arrears peaked at £5.2m in June 1998 when 8,700 annuitants were in arrears. Since then there had been a decline in the level of arrears to £4.8m in June 2000 with 5,900 annuitants in arrears.
- The Department had taken a number of measures to reduce the arrears. Between 1993 and 1996, collection work was principally confined to issuing bills and recording cash payments which were made to the 'collection' office in Castlebar. In view of the continuing growth in annuity arrears, the Department decided in 1996 to assign an officer full time to collection work and seek repayment from the top defaulters through visits by the Department's Inspectorate. A new computer system for billing and recording receipts of annuities was introduced in 1998. Also, in 1998, the Department decided to resume offsetting from headage and premium payments. Following a further review of the situation during 2000, the Department had decided to take a more comprehensive approach towards reducing the level of arrears and the Minister intended to bring these proposals to Government in early Autumn.

- The Department adopted a targeted approach to securing repayment of arrears from the largest defaulters in 1996, when 150 files - each involving minimum arrears of £4,000 - were referred to the Inspectorate. The visits of Departmental inspectors were extended in subsequent years to defaulters with minimum arrears of £2,000 and a total of 620 farmers had now been visited. In some cases substantial payments were made as a token of good faith with promises to clear the balance of the arrears over a number of years. In other cases written consent to offset against headage and premium entitlements had been obtained. Where the outcome of the visit was unsatisfactory the Inspector's report was considered with a view to what further action should be taken. In the course of and follow-up to these visits £1.4m had been collected in payments made to Inspectors and follow-up payments made directly to the Department. Some £700,000 had been offset against headage and premium entitlements with or without the consent of defaulters. In addition, 40 warrants for arrears amounting to £343,000 were issued and £91,563 has been paid on foot of them. 22 farmers had been given the benefit of rescheduling and their capitalised arrears amounted to £213,000. It was a condition of rescheduling that the beneficiary must give written consent allowing the Department to offset against headage and premium entitlements if he falls into arrears.
- The Department's policy on offsetting has been determined by EU policy and law. It had operated offsetting to a limited degree in the early 1990s. However, following the introduction of the new direct income schemes under CAP reform, the EU Commission advised Member States in 1994 that offsetting was not legally permissible. This position was based on the view that payments under the schemes had to be paid in full to the beneficiary. In the light of this, the Accounting Officer stated that his Department had no option at the time but to cease the practice of offsetting.

However, in 1995, the Danish Government took a case to the European Court (the Jensen case) seeking to establish a right to offset certain EU payments against liabilities which a farmer had in respect of the Danish State. In 1998, the European Court found in favour of the Danish Government and in the light of this judgment, the Department resumed offsetting from 1998 onwards.

- Offsetting of annuity arrears was confined to headage and premia schemes. This was due to administrative reasons, as the Division dealing with these schemes was based in Castlebar along with the Section dealing with the collection of annuities. Since the re-introduction of offsetting in 1998, a total of £512,810 had been offset. In 1999, £249,905 was collected from 188 farmers using the offsetting measure. There were limitations in the computer systems to assist in offsetting and there was a significant amount of manual work involved.
- It was not possible to say with accuracy how many farmers with annuity and rent arrears on 1 January 1999 received headage or premia grants or grants of any type from the Department in 1999. This was because, in many cases, the names and addresses of annuity payers and of beneficiaries of payments did not match. This shortcoming would be addressed in the context of the development of the new Departmental Client Database on which all basic client details would be held. The development of this database was at an advanced stage and when completed, it was the intention that any money owed to the Department would be automatically offset against money due to be paid to the beneficiary.
- There was no provision in the purchase or rental agreements which have been signed between the Land Commission and allottees for charging interest. It was considered that

a legal challenge to charging interest would be successful. Furthermore, the Department was not aware of any provision in the Land Acts that would enable interest to be charged and it was not considered possible to enact legislation providing for the charging of interest on arrears arising under existing agreements. The Department would, however, seek the advice of the Attorney General's Office on these points.

- The Department had earlier in 2000 reviewed the adequacy and effectiveness of its procedures to collect land annuities and rents. While progress had been made, it had not been rapid enough or effective enough. The main way through which effectiveness could be improved was through a larger number of farmers being subjected to offsetting and the key to achieving this was through the final development of the Client Database which would enable a match to be made between farmers with annuity arrears and beneficiaries from other Departmental schemes. It had also been decided to extend the requirement to redeem annuities when consents to let holdings were granted.
- The Minister intended bringing a Memorandum to Government in early Autumn proposing legislation on a number of Land Commission matters, including rationalisation and updating of the legal basis for offsetting and the upgrading of the status of warrants issued to County Registrars for enforcement against annuity defaulters from 'enforcement' orders to 'attachment' orders. The Attorney General's Office has advised that legislation would be necessary to make a warrant the equivalent of any attachment order which would mean that a County Registrar could then direct any institution which owes money to a defaulter to pay it to him for onward transmission to the Department.
- Consideration was being given to the employment of a professional debt collection agency and this, together with the other measures in train, should lead to a significant decrease in the land annuities and rent arrears.

32. Recoverability of Moneys associated with EU Schemes

Beef Fines

In the aftermath of the decision by the EU Commission to impose fines totalling £68.7m on Ireland as a result of weaknesses in the operation of the beef intervention system in Ireland in 1990-1992, the Government set up an expert group to examine the feasibility of recovering some or all of the disallowed amounts from the beef industry. The group made its report in March 1996 and concluded that the imposition of a general levy on the industry or, indeed, a specific levy on those companies where there was evidence of wrongdoing, would not be sustainable.

In relation to specific recoveries based on proven irregularities, legal advice was obtained by the group that the disallowance levied on Ireland did not of itself give any entitlement to the Minister for Agriculture, Food and Rural Development to recover any part of the disallowance from companies who may have featured in the case against Ireland by the Commission. Any proceedings brought against companies must be based upon a recognised cause of action in Irish law and be proven in accordance with the applicable rules of evidence in civil proceedings. The main elements relied upon by the Commission in their disallowances related to inadequate control systems by the Irish authorities. In addition, certain companies were alleged to have retained meat yields in excess of the minimum required by the EU Regulations and the group considered that this might give rise to the possibility of proceedings. The group pointed out that there is a substantial difference in the

procedure and burden of proof as between the Commission's application of disallowances and Ireland's possibilities for recovery arising from irregularities. The proof required in order to win a civil claim for recoveries would be extensive and detailed.

The position regarding the specific action taken by the Department on recoveries relating to the disallowances can be summarised thus:

During the course of the investigations into the beef processing industry by the Beef Tribunal in May 1991, a former staff member of a beef processing company disclosed serious irregularities at a Rathkeale boning hall to the Tribunal. The Minister decided to set up a Control Enquiry Team which visited the plant at Rathkeale in October 1991. The team identified a number of serious irregularities in the conduct by the beef processing company of deboning and canning of intervention beef, which were later to become the subject of a whole chapter in the Beef Tribunal Report. As a result of what was found by the team, the Minister suspended intervention deboning operations at Rathkeale in accordance with the deboning contract, refused to pay the deboning and canning fees for the contracts in question and referred the matter to the Gardaí.

The Director of Public Prosecutions brought criminal proceedings arising out of the irregularities against three senior employees of the company at Rathkeale involved in boning operations. In April 1995, two of the employees pleaded guilty in the Circuit Court to three charges of conspiracy to defraud the Minister arising from the misappropriation of intervention beef at Rathkeale. The third employee was acquitted by the trial Judge. He has taken a case against the Minister for damages arising out of the criminal proceedings. Separate criminal proceedings were commenced against three other senior employees of the cannery at Rathkeale, arising out of the canning of beef for the former Soviet Union. The three all pleaded guilty of conspiring to defraud the Minister.

In October 1994, the Department asked the Attorney General's Office to proceed with civil cases against the company. In February 1996, the Minister issued proceedings for the recovery of damages of £2.7m arising out of the misappropriation by the company, its servants or agents of intervention beef the property of the Minister, which was deboned at Rathkeale. In April 1996, the Minister issued a second set of proceedings against the company concerning further irregularities at Rathkeale in respect of canning operations carried out under an EU Scheme which provided for the supply of canned meat intended for the former Soviet Union. In this case the Minister is seeking to recover £0.9m arising out of the misappropriation of more than ten thousand cartons of intervention beef. The first case should soon be ready for trial and in the second case the Minister has sought a trial date.

In December 1996, the company issued proceedings against the Minister for £1.6m damages because of the non-payment of deboning and canning fees at Rathkeale.

In October 1997, the Minister issued proceedings against the company for the recovery of damages of £1.8m for allegedly retaining meat yields in excess of the minimum required by EU Regulations in the boning halls of ten of its subsidiaries. The Department delivered a statement of claim in February 1997 and following an order of the Court the company delivered its defence on 24 July 2000.

Export Refund Cases

The Minister is taking four sets of cases in respect of export refunds. In August 1990, the Minister issued proceedings against five companies to recover £454,000 in respect of forfeitures of export

refunds on exports of beef to Canada and the USA during 1983-1985 which had been rejected. In January 1992, the Minister issued proceedings against two companies to recover £156,000 as securities were released before the Department became aware of the failure to market the beef in South Africa. In 1994, the Minister issued proceedings against two guarantors to recover £1.16m as a result of their failure to honour their guarantees. Finally, in January 1998, the Minister issued proceedings against a company to recover £595,000 of export refunds on beef rejected in Egypt in 1993.

Ballaghaderreen Fire Case

The Department is also involved in another series of cases arising from a fire which broke out at a cold store in Ballaghaderreen, Co. Roscommon in January 1992. About seven thousand tonnes of intervention beef with an approximate value of £20m, which had been stored there on behalf of the Minister for Agriculture, Food and Rural Development was completely destroyed. While intervention beef is the property of the EU, the Department, as EU Intervention Agency, is responsible for its safe custody and is obliged to compensate the EU for any loss that may occur. Thus, the Minister was obliged to refund £19.8m to the EU in respect of the beef destroyed. Further costs sustained involved clean-up expenses of (£0.8m). The Commission has proposed a further correction of £9m to convert the intervention price for carcase weight into boneless yield. The Department has presented counterarguments on this amount for the Commission's consideration. A decision is expected in early 2001.

In January 1992 the Department notified its brokers of the fire and provided an estimate of the cost of the beef destroyed and the clean-up operation. The estimated cost, at that time, was £21.9m but the actual cost came to £20.6m. In February 1992 all insurance companies involved under the first lead insurer denied liability and sought court orders against the Department to this effect on the grounds that they alleged that cover had been cancelled from 31 October 1991. They also claimed material non-disclosure by the Department. The Minister counterclaimed against the insurance companies for the recovery of the costs arising from the fire.

In 1993, the Minister instituted proceedings against another insurance company with whom the insurance brokers had purported to replace the original lead insurer. This insurance company challenged the jurisdiction of the Court, an objection ruled ill-founded by the High Court in March 1998. An appeal is pending in the Supreme Court.

In 1997, the Department instituted proceedings against its insurance brokers.

These cases are being pursued on the Minister's behalf by a private firm of solicitors appointed in July 1999 at the request of the Chief State Solicitor because of the complexity of the cases.

Other estimated costs incurred by the Department since the fire occurred are interest on moneys borrowed for the value of beef destroyed and repaid to the EU (£10.7m) and legal costs (£0.5m).