

VOTE 19. - OFFICE OF THE MINISTER FOR JUSTICE

22. Tax Clearance Certificates for Criminal Legal Aid Scheme

Department of Finance regulations require that tax clearance certificates, issued by the Revenue Commissioners, should be obtained before entering into contracts or standing arrangements for the supply of goods and services to the public sector. A tax clearance certificate is required where a person or firm is supplying goods or services with a cumulative value of £5,000 or more (VAT inclusive) during any twelve month period. The certificates are normally valid for one year and the contracting authority should seek a new certificate when the existing certificate expires.

In Paragraph 46 of my previous Report I drew attention to the failure of the Department of Social Welfare to obtain tax clearance certificates from qualified practitioners engaged under the Treatment Benefit schemes. The Department of Finance confirmed that such certificates were needed in relation to agreements entered into with participating practitioners and the Department of Social Welfare undertook to have the regulations implemented.

The Criminal Justice (Legal Aid) Act 1962 and the regulations made under it provide that free legal aid may be granted in certain circumstances for the defence of persons of insufficient means in criminal proceedings.

The assignment of a solicitor to a successful applicant is a matter for the court granting the legal aid and is normally made from a panel of solicitors who have indicated their willingness to undertake this type of work. Where the assistance of counsel is allowed the solicitor assigned may instruct any member of the Bar whose name is included in a similar panel of barristers.

In the course of audit of expenditure under the Criminal Legal Aid Scheme it was noted that some £8.2m had been paid out to solicitors and barristers for services provided under the scheme during 1996. However, tax clearance certificates did not appear to have been sought or obtained from these legal aid panellists in any instance.

In response to my inquiries the Accounting Officer furnished the following information :

- 116 solicitors and 63 barristers were paid more than £5,000 in fees under the scheme in 1996 and the total paid to them was £4,271,084 and £1,576,153, respectively.
- The tax clearance procedures were never applied to solicitors and barristers operating under the scheme.
- In March 1994, the issue of tax clearance procedures was raised with the Law Society and Bar Council, but both subsequently raised objections to the application of the procedures to payments under the scheme to their members.
- The advice of the Attorney General in the matter was obtained in November 1995. It stated that
 - ▶ The Department of Finance regulations do not apply to the granting of Criminal Legal Aid.

- ▶ It would be ultra vires the powers of a Judge and the powers of the Minister for Justice under any regulations pursuant to the Criminal Justice (Legal Aid) Act, 1962 to require a tax clearance certificate in the circumstances provided in the Department of Finance regulations.
 - ▶ The Criminal Justice (Legal Aid) Act, 1962 does not permit the making of regulations which would require that a tax clearance certificate be furnished in order for a lawyer to be assigned.
 - ▶ It would be legally possible to legislate to provide that solicitors and barristers be required to furnish tax clearance certificates before being assigned under the Criminal Legal Aid Scheme.
- In May 1995, (prior to the advice of the Attorney General being received), the Law Society lodged two claims for increases in the fees paid to solicitors under the Scheme, which, if granted, would have resulted in the cost of the scheme increasing by approximately £3.3m. Following receipt of those claims it was decided that a fundamental review of the Scheme was necessary. In June 1996, when the analysis of the Law Society's claims was completed, the Minister for Justice sought and received the approval of Government to establish a Committee to review the operation of the Criminal Legal Aid Scheme and to make recommendations as to the manner in which the Scheme might be improved on the basis that the Committee would specifically examine the feasibility of introducing a Public Defence Scheme in the light of the significant increase in the cost of the Scheme over the previous five years. Arrangements were made to appoint a committee representing a wide range of interest groups and in December 1996 the Criminal Aid Review Committee was appointed. It is now carrying out the review in accordance with the terms of the Government decisions.
 - The Department was fully engaged in assessing the Law Society's claims for the substantial increase in fees when the Attorney General's advice was received and it was only when the Review Committee was established that his advice was addressed by the Department.
 - In January 1997, the Department of Finance was informed of the substance of the Attorney General's views and that the question of drafting legislation to permit the application of the terms of regulations was under consideration in the Department. In February 1997, the Department of Finance responded by stating that it was essential that the Department of Justice take the necessary legislative steps to enable application of full tax clearance procedures at the earliest possible opportunity.
 - The Department of Finance was informed in March 1997 that in view of the amount of urgent legislation, particularly criminal legislation, being processed by the Department, it was unlikely that the Department would be in a position to introduce such legislation for some time. In the circumstances, the Department of Finance was requested to consider including a provision in the 1997 Finance Bill to give effect to the application of full tax clearance procedures to solicitors and barristers operating under the Criminal Legal Aid Scheme.

The Finance Act 1997 was enacted in May 1997 without such a provision.

23. Nationality and Citizenship Fees

The Irish Nationality and Citizenship Acts 1956 and 1986 set out the statutory criteria under which a person not born in Ireland may acquire Irish citizenship *viz.*

- Registration in the foreign births register of birth abroad of persons whose parent(s) or grandparent(s) were Irish citizens. This register is maintained by the Department of Foreign Affairs.
- Declaration of acceptance of post-nuptial citizenship by the spouse of an Irish citizen.
- Granting of a certificate of naturalisation.

Naturalisation and post-nuptial citizenship applications are administered by the Department of Justice. Applications for naturalisation are decided on individually by the Minister. When applicants have been approved for naturalisation a certificate of naturalisation is granted on payment of a fee of £500. In the case of minors or the spouse of a naturalised citizen the fee is £100. Post-nuptial citizenship is purely an administrative process. The post-nuptial citizenship fee of £100 is payable to the nearest Department of Foreign Affairs embassy/consulate when the married couple reside abroad and honorary consuls are entitled to deduct 50% from the fee. The applications and the net fees are forwarded to the Department of Justice for processing.

In 1996, the total receipts from fees for Nationality and Citizenship certificates amounted to £144,167.

In the course of audit carried out in late 1996 material weaknesses in the system of internal control were identified which if exploited could expose the Department to losses arising from errors and irregularities including cash defalcations which might remain undetected. In particular

- properly balanced financial records were not being maintained
- security over stocks of the blank naturalisation certificates and post-nuptial documents was poor
- supervisory and documentary checks were deficient.

Once the control weaknesses were brought to the Accounting Officer's attention, he introduced a number of additional measures to strengthen controls over the processing of applications and declarations relating to Irish nationality and citizenship including

- a computerised reconciliation between fees and applications
- the use of certificates incorporating security features
- a secure storage facility
- tighter supervisory and documentary checks.

He also assured me that internal audit would review the operation of these new procedures.