

## **Chapter 9**

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**Central Government**

**State Body Management**



# State Body Management

9.1 The OECD<sup>74</sup> review “*Ireland Towards an Integrated Public Service*” in April 2008 highlighted the need for a better framework of engagement between Government departments and State agencies. In particular, it pointed to the need for formal criteria for establishing reporting relationships. It also drew attention to the need for a new focus on the capacity of departments to discharge their oversight function taking account of the specialist nature of many agencies, how they are resourced and how their performance is measured. Furthermore it drew attention to the need for practical guidance on the winding down of agencies once their objectives have been met.

9.2 State bodies in Ireland fall into two main classes – non-commercial State bodies and commercial State bodies. Commercial State bodies enjoy a greater freedom in the pursuit of their objectives and they are not directly accountable to Dáil Éireann. Non-commercial bodies in the main carry out core functions of the State and together with education institutions and most regulators are audited by the Comptroller and Auditor General. They are accountable to Dáil Éireann through its Committee of Public Accounts for both their financial affairs and the economy and efficiency of their operations.

9.3 There has in recent times been a concern that there is a proliferation of State bodies in the non-commercial sector and that central supervision for all State bodies needed to be strengthened. These concerns have resulted in

- a programme of rationalisation of State bodies and functions
- alterations to the Code of Practice for the Governance of State bodies
- attempts to address performance monitoring using a common framework.

## Chapter Focus

While a variety of informal bodies and boards operate under the aegis of departments and a number of State bodies have also established subsidiary companies to carry out related functions, this chapter focuses mainly on those bodies that have been formally constituted either as corporations under specific legislation or have been established by a process of registration under the Companies Acts.

The review examined

- the status of the arrangements to rationalise State bodies and certain other activities
- the progress in establishing enhanced mechanisms to supervise the performance of State bodies and confirm their adherence to governance norms.

In order to inform the examination, key features of oversight as exercised by the Department of Transport over the Córás Iompair Éireann (CIÉ) group of companies and by the Department of Communications, Energy and Natural Resources (DCENR) over the National Oil Reserves Agency (NORA) were examined.

A review of integration and cohesion in local and community development schemes is dealt with in chapter 24. Special Report Number 74 examines, *inter alia*, the integration of the School Completion Programme, the Home School Community Liaison Service and the Visiting Teacher Service for Travellers under the aegis of the National Education Welfare Board.

<sup>74</sup> Organisation for Economic Co-operation and Development.

## Rationalisation of State Bodies and State-sponsored Activity

9.4 In October 2008, the Government agreed to the rationalisation of over 60 State entities or functions by means of amalgamation, abolition or absorption into already established entities or into parent departments. The plan was initially to reduce the number of entities by at least 41 and, thereafter, further work on rationalisation would take place. No public savings target was adopted. Eleven departments were involved in the rationalisation plans and the Department of Finance was to oversee and report on the progress of the overall programme.

9.5 Figure 39 sets out the type of entities and functions targeted in the Government decision of October 2008.

**Figure 39 Entities and Functions to be Rationalised by Type**

Entity/Function	Number
State Bodies	32
Department Sections	9
Unincorporated Entities	15
Other Functions	5
<b>Total</b>	<b>61</b>

9.6 I asked each department with responsibility for supervising the entities or functions for information on the present position in regard to their rationalisation. Of the 61 entities or functions to be rationalised, implementation had occurred in 33 by June 2010 as set out in Figure 40. In the case of the 33 entities, rationalisation has resulted in the reduction of these entities to six in number. Annex A sets out the status of these completed rationalisations.

**Figure 40 Rationalisation Actions Taken<sup>a</sup>**

Entity/Function	Total	Amalgamation	Abolished	Absorbed
State Bodies	20	12	1	7
Department Sections	3	-	2	1
Unincorporated	7	1	4	2
Transfer of Function	3	2	-	1
<b>Total</b>	<b>33</b>	<b>15</b>	<b>7</b>	<b>11</b>

Note:

a The figure includes three entities in which rationalisation has been implemented administratively but the corresponding legislation is currently with the Oireachtas.

9.7 In response to my enquiries supervising departments identified potential annual savings of €9.97 million in the case of 25 entities. A further €20,000 in once-off savings was identified in one of these entities. Comments received on the remaining cases were

- in 15 cases savings were dependent on what could be achieved under new structures
- in five cases savings were expected but were not quantified
- in five cases savings were not commented on
- in eleven cases, no savings were expected.

9.8 Departments noted 16 instances where material set up costs and restructuring costs accrued. These totalled €4.24 million. In the remaining cases restructuring costs were either not calculated or not identified.

9.9 I sought information on what consideration had been given in the planning and implementation process to the achievement of post-rationalisation efficiencies and asked departments to identify how business processes had been or would be adjusted.

9.10 Generally, departments did not address the form of business re-engineering that would take place on rationalisation. Where measures were indicated these generally dealt with administrative mechanisms such as the proposed management structure, budgets or drawing up of legislation. In some cases departments stated that the substance of the business would be unchanged following the merger.

9.11 The foregoing suggests that departments have not yet identified the fundamental changes in business processes to be delivered following rationalisation. This effort would be needed to bring economy and efficiency gains under the revised structure.

9.12 Figure 41 describes the status of the remaining 28 entities or functions that had not been rationalised by June 2010. Of these, there are no current proposals for rationalisation in ten cases. In the remaining 18, departments expect to have full implementation by end 2011.

**Figure 41 Rationalisation to be Completed**

Entity/Function	Total	To be Amalgamated	To be Abolished	To be Absorbed	Under Consideration
State Bodies	12	5	-	2	5
Department Sections	6	1	-	-	5
Unincorporated Entities	8	8	-	-	-
Other Functions	2	2	-	-	-
<b>Total</b>	<b>28</b>	<b>16</b>	<b>-</b>	<b>2</b>	<b>10</b>

9.13 Annex B lists the entities and functions that have not yet been rationalised.

## Views of the Accounting Officer of the Department of Finance

9.14 The Accounting Officer of the Department of Finance informed me that the agency rationalisation process was a structural reform initiative aimed at streamlining service delivery and promoting efficiency and good governance in the delivery of public services. In adopting the rationalisation process outlined in the 2009 Budget the Government set out a clear set of guiding principles that underpinned the decision-making process. These principles made it clear that rationalisation was not just about the pursuit of a fixed level of savings.

9.15 He stated that classifying and calculating the savings and efficiencies that arise from implemented rationalisations was extremely difficult because of the impact of other savings initiatives in addition to the rationalisation measure. For example, he stated that it was very difficult to disaggregate the savings arising from pay rate reductions, general staff number reductions and cuts in consultancy. One approach was to use a simplified before-and-after approach that compares the full year costs of the Agency for a year before rationalisation with

the ongoing costs of delivering continuing functions, which themselves may have changed, for a period well after the new arrangements had bedded down.

### **Conclusion – Rationalisation**

A considerable element of the rationalisation is still a work-in-progress with nearly half of the projected changes yet to be effected.

Rationalisation offers an opportunity to achieve process efficiencies. While the initial phase may, for practical reasons, involve little more than the bringing together of previously separate functions there is a need for supervising departments to ensure that the new functions have a comprehensive change plan that seeks to identify how the business processes might be reengineered in order to provide joined-up services and achieve maximum synergy through cohesion and integration.

Departments should put monitoring arrangements in place in order to ensure that the desired benefits are realised and that services are being delivered to defined standards and that any surplus assets are identified and used to optimum effect or disposed of.

### **Supervision of State Bodies**

9.16 Excluding minor non-statutory bodies there are approximately 316 non-commercial State bodies and funds in Ireland and a further 17 commercial State-sponsored agencies.<sup>75</sup> Non-commercial State bodies are classified in Figure 42.

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<sup>75</sup> Second Schedule, Comptroller and Auditor General (Amendment) Act 1993 updated to reflect current status of bodies listed. Since the Act, a number of bodies have been sold, dissolved or liquidated. In three instances, the bodies formerly scheduled are now audited by the Comptroller and Auditor General.

**Figure 42 Classification of Non-Commercial State Bodies and Funds<sup>a</sup>**

Type	Number	Activity <sup>b</sup> €
Regulation and Arbitration	52	613,736,457
Enterprise Development	44	903,618,213
Subsidiary Companies	38	72,505,760
Second Level Education	34	1,367,021,621
Third Level and Further Education	36	4,361,208,000
Cultural and Language	17	313,904,529
Funds	19	26,022,433,957
Hospitals and Health	13	15,846,923,834
Sport and Tourism	10	452,582,000
Research	9	516,323,055
Housing and Welfare	8	104,085,000
Information and Advice	6	46,970,247
Miscellaneous	6	942,200,000
Regeneration	5	13,305,000
Safety Promotion	5	82,588,000
Parliamentary Bodies	4	135,700,000
Promotion	4	140,300,000
Infrastructure Procurement	3	1,766,800,000
Training	3	1,101,600,000
<b>Total</b>	<b>316</b>	<b>54,803,805,673</b>

## Notes:

- a The Central Bank and Financial Services Authority of Ireland has not been included in Figure 42 nor have a number of debt management functions administered by the National Treasury Management Agency. Cash flows accounted for by these are in the order of €63 billion.
- b This represents the estimated turnover of the bodies for 2009. In a small number of instances, turnover figures for 2008 are used.

9.17 The benefits of dedicated agencies focused on the delivery of specific services have been well recognised in Ireland. At the same time, due to their proliferation, the appropriate level of direction and supervision has been an issue raised in a number of recent reports.

9.18 In November 2008, the Task Force on the Public Service<sup>76</sup> (the Task Force) recommended the development of a new governance framework in respect of State agencies, offices and bodies to improve their efficiency and effectiveness while clarifying the respective role and function of departments and agencies in policy making and strategic direction.

<sup>76</sup> Transforming Public Services: Citizen Centred – Performance Focused.

9.19 Governance concerns of this nature have also been mirrored in the accountability field as demonstrated by the legislative response to identified shortcomings in the arrangements for supervising and governing Foras Áiseanna Saothair (FÁS)<sup>77</sup>. The key legislative changes subsequently implemented are outlined in Figure 43.

**Figure 43 New Governance Structure for FÁS**

In January 2010, new legislation was enacted<sup>a</sup> which provides for a significantly stronger governance and accountability structure at FÁS. Some of the key matters addressed by this legislation are

- a reduction in the size of the Board of FÁS from 17 to 11
- introduction of a rolling system of appointments to the Board
- appointments to the Board following consultation and reflecting particular skill sets
- removal of the automatic right to nominate individuals for appointment to the Board from bodies not directly accountable to the taxpayer
- making the Director General of FÁS accountable to the Oireachtas
- requiring the disclosure of conflicts of interest by Directors and staff at FÁS
- banning directors and staff of FÁS from any involvement on matters where they have a conflict and providing for the removal of directors or termination of staff contracts where there is a breach in this regard
- protection for ‘whistleblower’ members of staff who report serious wrongdoing in the organisation
- allowing directors representing the Minister to report matters arising without breaching fiduciary duties to the Agency.

Note:

- a Labour Services (Amendment) Act 2009.

9.20 The Task Force called for a performance framework for agencies that defined the expectations of Government and Ministers. This type of framework should provide for the adoption of both annual and multi-annual targets and the development of performance indicators based on clear outputs including milestones to measure their delivery. A greater use of output and outcome indicators should form the basis for a new performance dialogue between Government departments and State bodies.

9.21 The Task Force recommended that the development of and widespread use of service level agreements should form part of the wider performance management framework for those agencies involved in service provision.

<sup>77</sup> Special Report Number 10, “*General Matters arising on Audits – Non-commercial State-sponsored Bodies, Health Sector Bodies and Vocational Educational Committees*” (Chapter 2), May 2008, Special Report Number 66, “*Advertising and Promotion in FÁS*”, September 2009 and Special Report Number 73, “*Internal Control and Governance in FÁS*”, Office of the Comptroller and Auditor General, January 2010 and the *Fourth Interim Report on Special Report 10 of the Comptroller and Auditor General and FÁS 2007 Accounts*, Committee of Public Accounts, February 2009.

9.22 It proposed that output and outcome indicators should be regarded as the basis for increased delegation to agencies and for greater operational autonomy and not as an additional form of centralised control. Annual Output Statements should be produced by all non-commercial agencies in line with the new performance framework.

9.23 Overall, the concerns articulated by the Task Force and a range of other reports fall into two main categories

- confirming conformance by State bodies with governance norms
- ensuring that bodies perform their functions and deliver services to the highest standards.

9.24 The Task Force Report envisaged that the Department of Finance would lead the development of models of performance and governance frameworks to be completed within eight to 12 months of the Task Force Report's publication. The Transforming Public Services Steering Group of Secretaries General subsequently asked the Secretary General of the Department of Communications, Energy and Natural Resources to lead a project to develop recommendations in relation to the establishment and governance of State agencies.

## Implementation Progress

9.25 A revised Code of Practice for the Governance of State Bodies ('the Code') was published by the Minister for Finance in June 2009 and applied with immediate effect. Progress in addressing performance issues has been slower.

## Governance

9.26 The Code has been revised on a number of occasions. While many such codes adopt a 'comply or explain' approach the Irish Code is more prescriptive allowing only a limited margin of flexibility for certain bodies for which compliance with all its requirements would have a disproportionate effect because of the nature and/or scale of their activities. The approach has been to place annual reporting obligations on the Board and the Chairperson. Significant features of the regime include

- the requirement to adopt an annual statement on the system of internal financial control
- the obligation to have functioning internal audit and audit committees
- a system of risk management designed to address strategic, operational, and financial risks.

9.27 The new or revised measures introduced in the 2009 version emphasise

- the key responsibilities of the Board in the areas of strategic planning and the State body's system of internal control and its risk management framework
- additional requirements and clarifications on business conduct including internal audit, Audit Committees, procedures for dealing with conflicts of interest and confidential disclosures
- additional responsibilities for the State body in key operational matters in the areas of procurement, travel, disposal of assets, investment appraisal, legal action, including compliance with tax clearance and public sector contracts regulations
- further reporting requirements for the Chairperson in his annual report to the Minister and additional disclosures to be made in State bodies' annual accounts and reports on the CEO's salary, fees paid to Directors and expenses paid to the Board

- new departmental responsibilities for oversight and Accounting Officers responsibilities to satisfy themselves that the requirements of the Code are being implemented.

An outline of the key changes is set out in Annex C.

9.28 Overall, the changes implemented in the Code imposed significant requirements on Chairpersons and Directors of State bodies. The Code also recommended development of performance frameworks through dialogue between the State body and the Department as recommended by the OECD and mirrored in the Task Force's report. It further recommended that each Department/Office set out in writing the respective role of its Accounting Officer and the Chief Executives of State bodies under its aegis.

### ***Opportunity to Improve Governance Reporting***

9.29 As a result of the 2009 revision, considerable progress has been made in addressing the governance aspects of performance by State bodies. This has been built on extending the obligations of boards and confirming compliance in an annual report by the Chairperson to the supervising Minister as well as the existing reporting on control and risk management by way of statements on internal financial control. Going forward, it would be worth considering whether

- the statement of internal financial control could be replaced by a Statement that encompasses all controls and mirrors that applying in large private and public companies and in the UK government sector.
- in order to underpin the annual statements of the boards and Chairperson on governance and control there could be a process of certification, at least in bodies above a defined size, which would lend assurance to board members in issuing the reports required under the Code.

9.30 In March 2010, the National Standards Authority of Ireland (NSAI) and the Institute of Directors in Ireland published a new code of practice for corporate governance assessment for Irish companies and State bodies<sup>78</sup>. The new code provides a best practice standard for an independent evaluation of an organisation's compliance with existing corporate governance codes such as the OECD principles, the Combined Code on Corporate Governance and the Code of Practice for the Governance of State bodies.

9.31 The SWiFT 3000 initiative awards certification to companies and State bodies that meet the required standard following independent assessment.

9.32 A particular concern which hampered the effectiveness of State supervision was the belief that in the case of State nominees directors' fiduciary duty was generally understood as preventing a board member from reporting to the Minister on key issues of governance, regularity, probity and financial performance.

9.33 Bearing in mind the complexity of amending all sectoral legislation and because the objective is of a limited nature, the Department of Finance has, in the first instance, prepared a protocol for civil servants nominated to Boards of non-commercial State bodies to address this issue. The protocol was noted by Government at its meeting of 13 July 2010 and has been promulgated by circular letter to heads of Government Departments and Offices. It will also be included in the Code of Practice for the Governance of State Bodies.

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<sup>78</sup> SWiFT 3000: 2010 Code of Practice for Corporate Governance Assessment in Ireland.

## Accounting Matters

9.34 A key part of the discharge of a State board's accountability is evidenced through the production of annual accounts. The vast majority of these accounts are certified as giving a true and fair view using an audit system that complies with international standards of auditing.

9.35 Without qualifying audit opinions, reservations are sometimes included in audit reports. Departments should from time to time review the significance of matters raised in those audit reports. While many of the matters reported are technical in nature and arise out of the strict application of Financial Reporting Standards to State bodies, they often highlight areas for consideration both by central steering departments and supervising departments.

9.36 Reservations have been expressed in the audit reports of a number of State bodies in recent years. The range of issues upon which reservations were expressed in opinions in the period 2006 – 2009 included

- failure to review the effectiveness of internal financial control
- failure to account in accordance with Generally Accepted Accounting Practice (GAAP) in Ireland, for pension costs and pension liabilities
- instances where value was not derived from expenditure including non-effective expenditure, improper expenditure (i.e. expenditure not in compliance with the proper authority) and non-business related expenditure
- deficiencies or uncertainties relating to accounting for depreciation, valuation of investments and disposal of assets
- shortcomings in financial controls including cut-off procedures.

9.37 A summary of the type and extent of reservations raised in each year covering the period 2006 – 2009 is set out in Figure 44.

**Figure 44 Reservations in Audit Reports 2006 – 2009<sup>a</sup>**

	Accounting Year			
	2006	2007	2008	2009 <sup>b</sup>
Failure to Review the Effectiveness of Internal Financial Control	2	14	18	-
Pension-Related Matters	30	31	28	5
Expenditure Related Matters	2	1	6	1
Asset Valuations and Disposals	1	1	2	1
Shortcomings in Financial Controls	1	1	2	-
Other Matters <sup>c</sup>	5	4	9	8
<b>Total</b>	<b>41</b>	<b>52</b>	<b>65</b>	<b>15</b>

Notes:

- a This covers audits reports signed in the period 2007 to 30 June 2010. In general, since 2009, the policy of the Comptroller and Auditor General is not to refer to issues that are self-reported by State bodies either by way of notes to accounts or as part of their Statements on Internal Financial Control unless the matters are judged to be material by amount, nature or context.
- b This covers audit reports signed in the period up to 30 June 2010.
- c These include disclosures regarding litigation, income related matters, going concern issues and divergence of accounting policies from Generally Accepted Accounting Practice.

## Conclusion – Governance

The responsibilities of boards for the governance of State bodies could be strengthened further by extending reporting on internal control and having the process supporting the production of a Statement on Internal Control underpinned by certification to NSAI standards.

The protocol for board members drafted by the Department of Finance should help remove any communication barriers between Ministers and civil servants appointed by them to non-commercial State bodies in areas of governance and probity where those barriers relate to their concomitant fiduciary duty to the State body.

State bodies, in general, are given unqualified audit opinions on their accounts. However, audit reports often draw attention to issues of control, management, accounting and governance which come to light in the course of audit. In addition, below a materiality level agencies often self-report shortcomings in control or accounting.

A welcome change in recent years, has been a greater internalisation of accountability – with Boards, through audit committees and internal audit functions, equipping themselves with information, feedback and advice on the management of their programmes. This development which is driven by the Code of Practice has enhanced overall assurance about the management of public programmes.

## Performance Management

9.38 While a comprehensive performance management framework would encompass the corporate governance arrangements referred to above, it would also extend to the delivery by the State body of its services.<sup>79</sup> It is unlikely that a ‘one size fits all’ framework could apply to all State bodies because of the need to acknowledge the differences in function and objectives of purely commercial entities, those commercial entities with social objectives and of agencies with enterprise development, debt management, promotional, service delivery and regulatory functions. However, some common aspects of State supervision are capable of articulation. These might be based around a proposition that if State agency performance is to be managed effectively there needs to be a framework that has the following features

- a clear statement of the agency’s current mission and purpose agreed with the Department
- an annual agreement that converts that mission and purpose into goals and associated outcome targets
- a defined reporting mechanism (set out with that agreement)
- a provision for a formal review of performance on a periodic basis with a focus on whether and to what extent the desired or intended outcomes are being achieved.

<sup>79</sup> This section focuses on operational performance.

9.39 As an initial step the Accounting Officer of the DCENR has been charged to undertake a study setting out proposals, including frameworks which might inform the establishment, functions, corporate governance<sup>80</sup> and performance management of agencies. The specific areas of focus include

- principles which might inform policy on the establishment and retention of agencies
- the structure and governance of agencies
- the establishment by Ministers and departments of the tasks and priorities of agencies (including re-mandating and allocation of additional functions)
- implementation of corporate governance arrangements
- departmental oversight of agencies, including corporate governance and related capacity issues
- measurement of performance by agencies, including the use of Service Level Agreements.

9.40 I asked the Accounting Officer for an update on the current status of this work. He informed me that the study has been finalised and submitted to the Secretaries General Sub-Group on Transforming Public Services. He stated that it will be a matter for that sub-group as to how the study should be progressed and subject to this, it is expected that consideration of recommendations in the study will be a matter for Government. He stressed that as set out in the areas of focus above, performance management and evaluation is just one element of the study.

9.41 He stated that one challenge to uniformity of performance monitoring arose from the fact that non-commercial State bodies range very much in size and structure and have varying functions and statutory bases. This, in turn, has implications for the nature of interaction with the supervising Minister and Department and implementation of governance and performance measurement frameworks. He pointed out that in the area of performance measurement his study focused primarily on appropriate general frameworks rather than details of individual performance measurement templates. Existing performance frameworks such as Statements of Strategy, Annual Output Statements and Service Level Agreements should provide an adequate general basis for a robust system of performance measurement. It is key, however, to ensure that these processes enable a transparent performance measurement system by reference to relevant and measurable performance indicators – the quality rather than the quantity of the latter is also crucial. This requires, in turn, appropriate engagement between departments and State bodies on the specifics of a performance measurement system within any general framework.

## Funding and Cash Management

9.42 A number of State bodies and institutions who receive substantial State funding report considerable cash balances. A key aspect of monitoring is the funding plan of the agency. It is a principle that there be economy in the management of State funds. Consequently, close monitoring of cash balances and the management of creditor positions consistent with prompt payment obligations should be a feature of department supervision. The necessity for such an approach is highlighted by the instance noted beneath.

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<sup>80</sup> Taking account of existing corporate governance and other relevant operational guidance for State agencies.

## Road Safety Authority

At the end of 2009, the Road Safety Authority (the Authority) reported a surplus of €12.87 million for the year and had a bank balance of €12.21 million. Heretofore, the Department of Transport has not requested details of the funds on hands at the time of the Authority's drawdown of State funding. The Accounting Officer has indicated that this requirement, following consultation, may be considered as part of the drawdown process going forward.

He stated that his Department is in frequent communication with the Authority and was formally notified in January 2010 that the Authority was reporting a surplus of €12.87 million for 2009. At a meeting in February, this surplus was explained as arising from the Authority's increased non-Exchequer income (in excess of the amount originally budgeted for). In addition, a third party contract for the supply of High Visibility Material for road safety promotional purposes was terminated due to inability of the provider to deliver, leading to a further reduction in expenditure. Finally, as previously agreed with the Department, the surplus also included €4.2 million to fund a Commercial Vehicle Roadworthiness Reform programme.

He also stated that it had been intended to commence the latter programme during 2009, but due to various difficulties, including obtaining approval for the required staffing resources, it was not expected to commence until this year. The remainder of the surplus had been allocated to other capital projects, including a Digital Tachograph Online System, a Driver Licensing Plastic Card Programme and a Driver Testing Data Capture Programme. Apart from a relatively small amount of funding from the Department, the Authority funds its capital programme mainly from non-Exchequer income. The allocation of the balance of the surplus to these programmes has been the subject of various discussions between his Department and the Authority in 2010.

9.43 Overall, short of reducing the level of grant payments to bring an entity's State funding into line with its cash needs, there may be merit in consolidating balances through more active treasury management.

## Day-to-Day Interaction

9.44 A revised performance framework could not rely on formal reporting alone. A comprehensive performance framework would need to address the factors which should give rise to immediate reporting outside the formal process.

9.45 The establishment of a range of such issues and materiality levels might be considered. In order to strike a balance between the responsibility of the board for day-to-day operations and the special considerations that attach to bodies capitalised or funded by the State or whose functions are determined by law the reporting threshold should be set at a reasonably high level. Some key reporting issues that could be considered are

- the emergence of material contingent liabilities
- major litigation claims that could have an effect on the financial position of the body
- working capital deficiency in terms of risk to the body's capacity to meet its obligations for at least the next twelve months
- material fraud or irregularity, or suspected fraud or irregularity, affecting the body
- breach of borrowing limits approved by the Department.

9.46 An example of an event that should have triggered such a report is set out in Figure 45.

**Figure 45 Defalcation at CIÉ**

In late October 2009, following media reports concerning an investigation into infrastructure procurement and internal controls in Iarnród Éireann by Baker Tilly Ryan Glennon (BTRG), the Minister met with the Chairperson of CIÉ and expressed his concern that the BTRG report had only been mentioned to his Department for the first time in the preceding days and that it had never been specifically mentioned by the Chairperson in his annual statements on compliance with the Code of Practice. The Minister also expressed concern at the number of procurement exceptions in these reports. He indicated that a Chairperson's report to him in November 2009 needed to provide assurances in respect of all procurements being undertaken within Iarnród Éireann.

The Chairperson acknowledged that in retrospect it would have been appropriate to bring the procurement matters to the Minister's attention but that, as the issues arising were being dealt with, he felt that there was no need to make specific mention in that regard. The actual loss was in the region of €2.6 million.

The Accounting Officer of the Department of Transport stated that on being made aware of the existence of the BTRG report on 9 October 2009, the Minister made clear that it should have been brought to the attention of the Department on its completion. He sought a full report from the Board of CIÉ on the circumstances giving rise to the report, the extent to which progress had been made in implementing the recommendations in the report and the measures being taken to ensure adequate controls in expenditure areas not covered by the report. He also discussed the matter with the Chairman of CIÉ on 23 October 2009 and expressed his concern to him on the weaknesses identified and the fact that neither he nor the Department had been informed. The Chairman briefed the Minister on the issues and confirmed that almost all of the recommendations in the report had already been implemented.

Detailed replies from CIÉ were received in January and March 2010 outlining the steps taken in strengthening procurement policy and practice, the extent of implementation of the BTRG recommendations and the Board's satisfaction with the adequacy of the controls in place in expenditure areas not covered by the report.

The Accounting Officer stated that the Department is satisfied that the CIÉ Board has taken the necessary steps to ensure adherence to the procurement requirements detailed in the Code of Practice.

## Monitoring Capacity of Supervising Departments

### Code of Practice – Requirements<sup>a</sup>

The Accounting Officer of the Department under whose aegis a body lies should satisfy him/herself that the requirements of the Code of Governance are being implemented and if reports indicate that problems exist, ensure that appropriate action is taken as soon as possible.

Note:

a This is set out in Section 13.4 of the 2009 Code of Practice for the Governance of State Bodies.

9.47 In discharging their responsibilities, Accounting Officers need to ensure that adequate resources are available to monitor and report on State bodies. In this regard, some of the Department of the Taoiseach's recommendations on regulatory governance are equally pertinent in the case of State body governance capacity, and, in particular, *"If performance indicators and reporting are to be effective, it is important that Departments have the analytical capacity and technical expertise to effectively scrutinise both outputs achieved and proposed targets."*<sup>81</sup>

9.48 A review of the implementation of the key provisions of the Code for the 2009 round of reporting for two State bodies — CIÉ and NORA, was undertaken. Both supervising departments have developed internal checklists to determine whether the Chairperson of each body has complied with reporting requirements under the Code. In addition, the Department of Transport has developed a template to promote a more uniform and structured approach to the compilation of Chairpersons' reports which sets out all the necessary components to be included.<sup>82</sup>

9.49 The audit review identified the following

- DCENR has completed a checklist based on the provisions of the Code. With the exception of a performance framework, the checklist indicates that NORA is compliant with the Code provisions for 2009.
- The Chairperson's Report for CIÉ for 2009 was submitted under the older 2001 Code of Practice. The Department requested that a revised report be submitted. This was received at the end of July 2010.

9.50 While existing reporting requirements regarding the timely submission of accounts for NORA have been adhered to for 2009, this has not been the case for CIÉ

- interim unaudited accounts for the first half of 2009 were not submitted until mid October 2009 (due by the end of August)
- draft unaudited annual accounts were received in early March 2010 (due by the end of February)
- submission to Government of annual report and accounts for 2009 took place in July 2010 (due by end of April 2010).

## Observations of Accounting Officers

9.51 The Accounting Officer of the Department of Transport stated that in November 2008, the Minister for Transport put in place enhanced arrangements to strengthen corporate governance within the Transport related agencies. This initiative followed a number of reviews of corporate governance carried out both within the Department of Transport and across the wider system. He stated that the new initiative – A Change in Tone – had established arrangements to improve communications and set the relationship between the Minister/Department and each agency on a more formal footing. Included in the new arrangements is an annual meeting between the Minister and the Board which provides a forum for discussion of any corporate governance issues arising. Less formal meetings between the relevant Assistant Secretaries and the staff of State bodies occur on an ongoing basis. Any

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<sup>81</sup> Better Regulation, Department of the Taoiseach, 2009.

<sup>82</sup> The Department sent this template to the Chairperson of CIÉ in July 2009 requesting that his report for the year be drawn up in accordance with the template.

significant issues of concern that arise are brought to his attention or to the attention of the Management Board.

9.52 DCENR's checklist captures wider compliance with the Code, in that it covers all areas of the Code regarding operational activities within NORA, not only those aspects specifically attested to by the Chairperson in his annual report. Its ability to complete a full checklist of compliance with the detailed Code provisions is aided by the presence of a Departmental official on the Board of NORA.

9.53 The Accounting Officer for DCENR informed me that following the publication of the new Code, his Department revised its checklist to monitor compliance with the Code. When the annual report and accounts of each company/agency are submitted to the Department for approval, they are accompanied by the Chairperson's Statement of Internal Financial Control and statement of compliance with the Code of Practice. As part of the Department's review of the annual report and accounts, the Chairpersons' statements are analysed in detail within the relevant Division and by the Department's financial advisor. The Department also meets with bodies under its aegis for a full briefing on its annual accounts.

9.54 He stated that compliance with individual aspects of the Code is marked on the checklist, which is signed by the relevant Head of Function and submitted to him, along with the annual report and accounts. Where non-compliance is identified, explanations are sought and remedies applied where appropriate. He intends to keep the operation of this process under ongoing review in order to ensure that the obligation placed on him under the Code of Practice is implemented effectively.

### **Conclusion – Performance Monitoring**

Both departments have either direct or indirect access to financial, technical, legal and a broad range of generalist skills for effecting their oversight functions. Evaluation of both CIÉ's and NORA's performance is carried out on a regular basis throughout the year by each department.

Both departments have formal liaison arrangements in place which provide for regular meetings between key officials in the Department (including the Minister) and the State body. Arrangements are also in place for less formal interactions on a day-to-day basis.

The introduction of performance frameworks must await consideration of a report of a sub-group considering that and related matters and the outcome of subsequent government deliberation.

Overall, in the two cases examined, providing due regard is had to the nature of their operations, a performance management framework and the associated process of development could help drive a more outcome-focused delivery of service. There has, as yet, been no movement to introduce output statements in non-commercial State-sponsored bodies.

Audit reviews would suggest that there is scope for reviewing the monitoring arrangements that apply to funding and cash management and considering more active treasury management.

## Conclusion

There would be value in compiling practical guidance on the wind down of agencies and functions chosen for rationalisation so that the maximum savings and operational synergies can be targeted.

There is clear consensus based on the OECD Review, and the Task Force Report on the Public Service that a Performance Management Framework for State bodies should be in place.

In general, good progress has been made in creating a regime that gives assurance in regard to State body compliance in the area of governance and its association with the accountability process helps ensure that all conformance matters are on Boards' agendas.

Wider aspects of performance now need to be addressed and a framework developed that balances the operational independence of State bodies with the need for focused delivery. It may be useful to focus attention on achievement of outcomes in formulating this framework.

The nature of the framework to be implemented will need to be adjusted to the circumstances of each State body. Different levels of oversight may need to be considered according, for example, to whether the State body is in the commercial or non-commercial sector, the risk levels associated with the sector, previous experience and whether the body appears before the Committee of Public Accounts in its own right. In addition, independent sectoral regulators have specific features which mean that this recommendation would need to be tailored to their specific circumstances. The recent legislative proposals dealing with financial regulation could provide a framework for greater public scrutiny of such functions including the provision of three-yearly strategic plans and annual regulatory performance statements.

More generally, performance statements should be sufficiently comprehensive to allow the identification of objectives, enable progress tracking to take place through regular reporting and review, and facilitate corrective action where planned progress is not being made.

Departments should consider requiring State bodies under their aegis to apply for and achieve certification under the new NSAI assessment code within a reasonable period of time. This would give assurance to board members that there is a reasonable evidence base to support the assertions set out in annual Statements on Internal Financial Control.

## Annex A Schedule of Implemented Rationalisation Decisions

Agency/Initiative	Amalgamation	Abolished	Absorbed
<b>Department of Transport</b>			
Dublin Transportation Office	√		
<b>Department of Social Protection</b>			
Citizens Information Board	√		
Office of Social Inclusion			√
Money Advice and Budgeting Service <sup>a</sup>	√		
Combat Poverty Agency			√
<b>Department of Environment, Heritage and Local Government</b>			
Rent Tribunal <sup>b</sup>	√		
Private Residential Tenancies Board	√		
<b>Department of Education and Skills</b>			
Educational Disadvantage Committee		√	
National Adult Learning		√	
Centre for Early Childhood Development and Education		√	
<b>Department of Health and Children</b>			
National Cancer Screening Board			√
National Council on Ageing and Older People			√
Children Acts Advisory Board			√
Women's Health Council			√
Crisis Pregnancy Agency			√
Postgraduate Medical and Dental Board			√
<b>Department of Defence</b>			
Longford, Lifford and Monaghan Barracks		√	
Rockhill House, Letterkenny		√	
<b>Department of Agriculture, Fisheries and Food</b>			
Council for Forest Research and Development			√
Marketing/Promotion functions from An Bord Iascaigh Mhara to An Bord Bia			√
<b>Department of Tourism, Culture and Sport</b>			
Culture Ireland			√
<b>Department of Justice, Equality and Law Reform</b>			
National Crime Council		√	
National Consultative Committee on Racism		√	
Censorship of Publications Office	√		
Censorship of Publications Appeals Board	√		
<b>Department of Communications, Energy and Natural Resources</b>			
Central Fisheries Board	√		
Eastern Fisheries Board	√		
North Western Fisheries Board	√		
Northern Fisheries Board	√		
Shannon Fisheries Board	√		
South Western Fisheries Board	√		
Southern Fisheries Board	√		
Western Fisheries Board	√		
<b>Total</b>	<b>15</b>	<b>7</b>	<b>11</b>

Notes:

a The Money Advice and Budgeting Service has been merged with the Citizens Information Board.

b The Rent Tribunal has merged with the Private Residential Tenancies Board.

## Annex B Schedule of Rationalisation Decisions not yet Implemented

Agency/Initiative	Effective Implementation Target	To be Amalgamated	To be Absorbed/Merged	Under Consideration
<b>Department of Transport</b>				
Commission for Taxi Regulation	End 2010	√		
Bus Route Regulation	Third quarter 2010	√		
Railway Accident Investigation Unit	Third quarter 2010	√		
Air Accident Investigation Unit	Third quarter 2010	√		
Marine Casualty Investigation Board	Third quarter 2010	√		
<b>Department of Environment, Heritage and Local Government</b>				
Local Government Management Services Board	Fourth quarter 2010	√		
Local Government Computer Services Board	Fourth quarter 2010	√		
<b>Department of Education and Skills</b>				
National Qualifications Authority	2011	√		
Higher Education and Training Awards Council	2011	√		
Further Education and Training Awards Council	2011	√		
<b>Department of Health and Children</b>				
Pre-Hospital Emergency Care Council	No Target Date Set			√
Opticians Board	No Target Date Set			√
Food Safety Authority of Ireland	No Target Date Set			√
Office of Tobacco Control	No Target Date Set			√
Irish Medicines Board	No Target Date Set			√
National Social Work Qualifications Board	End 2010	√		
National Council for the Professional Development of Midwifery	No Target Date Set	√		

<b>Agency/Initiative</b>	<b>Effective Implementation Target</b>	<b>To be Amalgamated</b>	<b>To be Absorbed/Merged</b>	<b>Under Consideration</b>
Drug Treatment Centre	September 2010		√	
National Cancer Registry Board	No Target Date Set		√	
<b>Department of Defence</b>				
St. Bricin's Hospital Dublin	No Target Date Set			√
<b>Department of Tourism, Culture and Sport</b>				
Irish Museum of Modern Art	No Target Date Set			√
Crawford Art Gallery	No Target Date Set			√
National Archives	No Target Date Set	√		
Irish Manuscripts Commission	No Target Date Set	√		
<b>Department of Justice, Equality and Law Reform<sup>a</sup></b>				
Equality Authority	Ongoing			√
Human Rights Commission	Ongoing			√
<b>Department of Enterprise, Trade and Innovation</b>				
Competition Authority	2011	√		
National Consumer Agency	2011	√		
<b>Total</b>	<b>28</b>	<b>16</b>	<b>2</b>	<b>10</b>

Note:

a Further progression is a matter for the Department of Community, Equality and Gaeltacht Affairs.

## **Annex C Additional Obligations under the Code of Practice for the Governance of State Bodies 2009**

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### **Clarity on Board Responsibility and Related Matters**

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Extension of schedule of matters specifically reserved to the Board for decision to include delegated authority levels, treasury and risk management policies, succession planning for the Chief Executive, specific staffing related matters, reporting requirements to the Minister for bodies operating on a commercial basis – i.e. business is a going concern (qualified as necessary).

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Responsibility of the Board for the State body's system of internal control. It should review annually its effectiveness, including financial, operational and compliance controls and risk management. Board required to confirm annually to the Minister that the State body has a system of internal financial control in place.

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Preparation of strategic plan now a primary responsibility of the Board (formerly the Body's responsibility). Strategic planning requirements now different for commercial and non-commercial State bodies. Draft plans should be sent to the Minister prior to finalisation and his/her views should be considered.

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Decisions on major items of expenditure to be aligned with medium/long-term strategies and a performance measurement system put in place to assess effectiveness/outcome of expenditure which should be reported to the Board.

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Each State body should develop a Risk Management policy. The Board should approve the risk management framework and monitor its effectiveness. It should also review material risk incidents and note or approve management's actions as appropriate. Key issues of Board's oversight to include - risk management as a standing meeting agenda item, establishment of a risk committee (or inclusion in charter of Audit Committee), inclusion of risk management experience/expertise in competencies of at least one Director or source external advice, appoint a Chief Risk Officer or empower a suitable management alternative, require external review of risk management framework on a periodic basis.

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Board should deal with the issue of post resignation/retirement employment, appointment and/or consultancy of Directors/employees by private sector and monitor application of procedure put in place in this regard.

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The Board should review its own performance and that of its committees and individual directors.

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### **Business Conduct**

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Extension of Codes of Business Conduct for Directors to deal with conflict of interest matters and non-retention of documentation obtained during term of office.

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Requirements for internal audit function now include provisions for alternative means of accessing the function where the size or risk to the Body does not warrant a separate unit.

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Clarification that bodies with 20 employees or more must have an Audit Committee with at least three independent non-executive directors. One member at least to have recent and relevant financial experience. Smaller State bodies permitted to have only two members on the Audit Committee. Audit Committees also mandated to review effectiveness of the State body's internal audit activities and ensure early communication to the Board of matters arising.

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The Board should have procedures to monitor and manage potential conflicts of interest of management and Board members. It should also put procedures in place to deal with confidential disclosures.

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Extension of issues that new Directors should be briefed on regarding conflict of interests and provision of a listing of statutory requirements relating to the body.

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More detailed rules regarding Board Members' ability to obtain fees where there are subsidiary or associated bodies.

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### **Key Operational Matters**

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State bodies to be clear about their mandates including identification of appropriate structures to deliver them.

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Enhanced procurement procedures including set up of a sub-Committee of the Board (or include in Charter of Audit Committee) where there is a significant procurement function, EU Treaty principles to be observed and compliance with EU directives, completion of a Corporate Procurement plan.

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State bodies to ensure that they are in compliance with 2006 Tax Clearance requirements and Department of Finance regulations on Public Sector Contracts.

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The role of the Chief Executive and the Chairman should not be combined, except with the consent of the Minister.

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State bodies also to have regard to appropriate models for investment appraisal and seek to apply best practice in the appraisal and management of all investment proposals. The Department of Finance Value for Money Frameworks to be adhered to in all cases.

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Non-commercial State bodies to adopt and comply with Department of Finance regulations on travel and subsistence. Commercial State bodies should also be cognisant of the need to achieve economy and efficiency in expenditure on official travel.

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Boards of State bodies that incur significant annual expenditure on foreign travel should put appropriate procedures in place to monitor, report and enforce the relevant rules and requirements. A Framework Travel Policy is also suggested which considers value for money principles.

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The threshold for activating procedures regarding disposal of assets increased from €70,000 to €150,000. Directors connected to potential disposals should also absent themselves from Board deliberations.

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New responsibilities introduced regarding legal disputes involving other State bodies. Every effort should be made to mediate, arbitrate or otherwise before expensive legal costs are incurred. State bodies should provide a list of legal issues to the Department of Finance together with an estimate of the legal costs incurred up to the date of this information.

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### **Annual Reports and Accounts and Chairperson Reporting Requirements**

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State bodies should publish in their annual reports details of fees paid to each of their directors, expenses paid to the Board and the salary of the CEO. The attendances of each Board Member at Board meetings to be reported in the Annual Report. Annual reports should be published on the website and online publication considered when this can reduce costs.

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Amendment of wording regarding consent of Minister to extend relevant annual report and accounts submission and publication deadlines.

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More formalised reporting to the Minister by the Chairperson of instances of non compliance with statutory obligations setting out the consequences of non-compliance and the steps taken or will be taken to rectify the problem. Additional matters to be included in his annual report are - outlining steps to be taken to guard against breaches of internal financial controls (where breaches have occurred). He/she must also certify that Government travel policy requirements are being complied with and affirm that appropriate procedures for travel are being carried out.

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Chairperson to specifically confirm in annual report compliance with Department of Finance 2005 guidelines on Capital Investment Appraisal.

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Compliance reporting by Chairman in annual report to Minister affirming adherence to the relevant procurement policy and procedures and the development and implementation of a Corporate Procurement Plan (this plan to be completed by all non commercial State bodies).

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The Chairpersons of each subsidiary should formally report to the main Board in a similar manner as the main Board Chairperson reports to the Minister. This report should be received prior to the main Board reporting.

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### **Departmental and Accounting Officers' Responsibilities**

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The Code recommends that each Department/Office set out in writing the respective roles of its Accounting Officer and the Chief Executives of State bodies under its aegis.

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The accountability of the Accounting Officer/Accountable person to the Oireachtas must be differentiated from that of the Board's general responsibilities in certain instances.

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Responsibility for preparation of Appropriation Accounts and associated public financial procedures are the responsibility of the Accounting Officer not the Board.

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The Accounting Officer of the Department should satisfy himself /herself that the requirements of the Code are being implemented and where problems exist ensure that appropriate action is taken as soon as possible.

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New departmental oversight provisions are set out in the context of the development of performance frameworks.

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