



Ard-Reachtair Cuntas agus Ciste
Comptroller and Auditor General

Report on the Accounts of the Public Services 2021

September 2022

Report of the Comptroller and Auditor General

Accounts of the Public Services 2021

Article 33 (4) of the Constitution of Ireland requires me to report to Dáil Éireann at stated periods as determined by law. The Comptroller and Auditor General (Amendment) Act 1993 provides the main basis for such reporting.

Statutory reporting provisions

Section 3 (10) of the 1993 Act requires me each year to prepare a written report that includes

- any matters I consider it appropriate to report arising from my audits of the appropriation accounts prepared by the Accounting Officers of government departments and offices in relation to the appropriations voted by Dáil Éireann for the previous financial year
- any matters I consider it appropriate to report arising from my examinations of the internal accounting controls operated by government departments and offices (in the current or previous financial year) to ensure the regularity of their financial transactions, the correctness of their payments and receipts, the reliability and completeness of their accounting records and the safeguarding of the assets owned and controlled by them
- the results of my examinations of the accounts of the revenue of the State collected by the Revenue Commissioners and of the accounts of such other persons who receive money which is by law payable into the Exchequer– these examinations include assessment of whether the accounts are complete and accurate, and whether systems, procedures and practices have been established that are adequate to secure an effective check on the assessment, collection and proper allocation of the revenues.

Other statutes require me to prepare and present reports to Dáil Éireann on certain specific matters together with my section 3 (10) report.

Separately, section 11 of the 1993 Act provides for the preparation by me of certain special reports.

Presentation of this report

This is my report under Section 3 (10) of the 1993 Act relating to the 2021 financial year. The report is set out in four parts, which deal with the following matters

- the Central Fund of the Exchequer
- voted expenditure in 2021
- examinations of State receipts
- reports on other matters including statutory reports on the audits of the accounts of the National Treasury Management Agency, and of the Irish Fiscal Advisory Council.

The report was prepared on the basis of audited information, where available, and other information, documentation and explanations obtained from the relevant government departments and offices. Drafts of relevant parts of the report were sent to the departments and offices concerned and their comments were requested. Where appropriate, those comments were incorporated into the final version of the report.

The report is concerned with the accountability of public bodies in respect of their administration of public funds. References to third parties should be read only in that context.

I hereby present my report in respect of the year ended 31 December 2021 to Dáil Éireann in accordance with Section 3 (11) of the 1993 Act.

Presentation of appropriation accounts 2021

Section 3 (11) of the 1993 Act also requires me to present the appropriation accounts for the various Votes to Dáil Éireann together with the report prepared under section 3 (10).

I have certified each appropriation account for the year ended 31 December 2021 and submit those accounts, together with my audit certificates, to Dáil Éireann.



Seamus McCarthy
Comptroller and Auditor General

30 September 2022

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**Report on the
Accounts of the Public Services 2021**

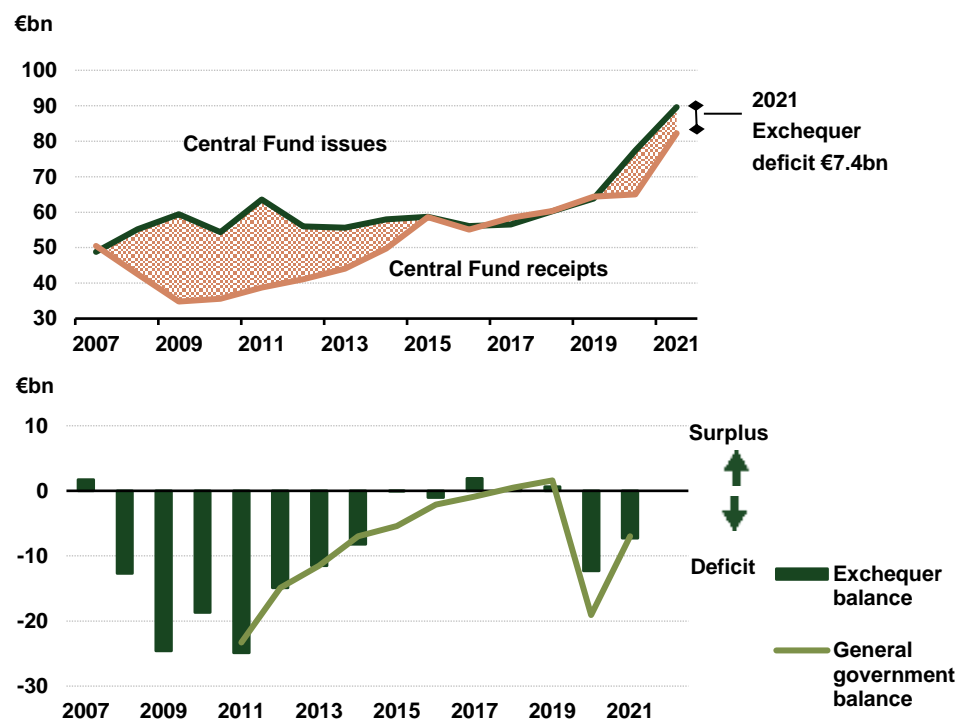
Central Government

1 Exchequer financial outturn for 2021

Fiscal summary

- 1.1 All revenues of the State are paid into the Central Fund of the Exchequer unless otherwise determined by law.¹ Issues from the Central Fund are used mainly to fund expenditure on State services, and to service State debt.
- 1.2 The annual Finance Accounts present the receipts into and issues from the Central Fund, together with details relating to borrowing undertaken by the National Treasury Management Agency (NTMA) on behalf of the State.²
- 1.3 In 2021, the Exchequer deficit was just under **€7.4 billion**. This represented a significant improvement in the Exchequer balance from the deficit of €12.3 billion reported in 2020 (see Figure 1.1). The improvement of almost €5 billion was largely driven by increases in tax revenue in 2021.
- 1.4 A more complete view of the State's fiscal performance in 2021 indicates there was a general government deficit of **€7 billion**, a decrease of over 63% on the 2020 deficit of €19 billion.³

Figure 1.1 Central Fund receipts and issues, and Exchequer and general government balances, 2007 to 2021^a



1 State revenue not paid directly into the Central Fund includes, for example, Pay Related Social Insurance (PRSI) receipts, which are paid into the Social Insurance Fund.

2 Transactions recorded in the Finance Accounts represent around 75% of total government revenue and expenditure.

3 The general government balance is a broader measure than the Exchequer balance. It measures the fiscal performance of the general government sector, and is the standard benchmark used for comparative purposes across the European Union. Annual and quarterly general government finance statistics are prepared by the Central Statistics Office. See Annex 1A for an outline of these statistics.

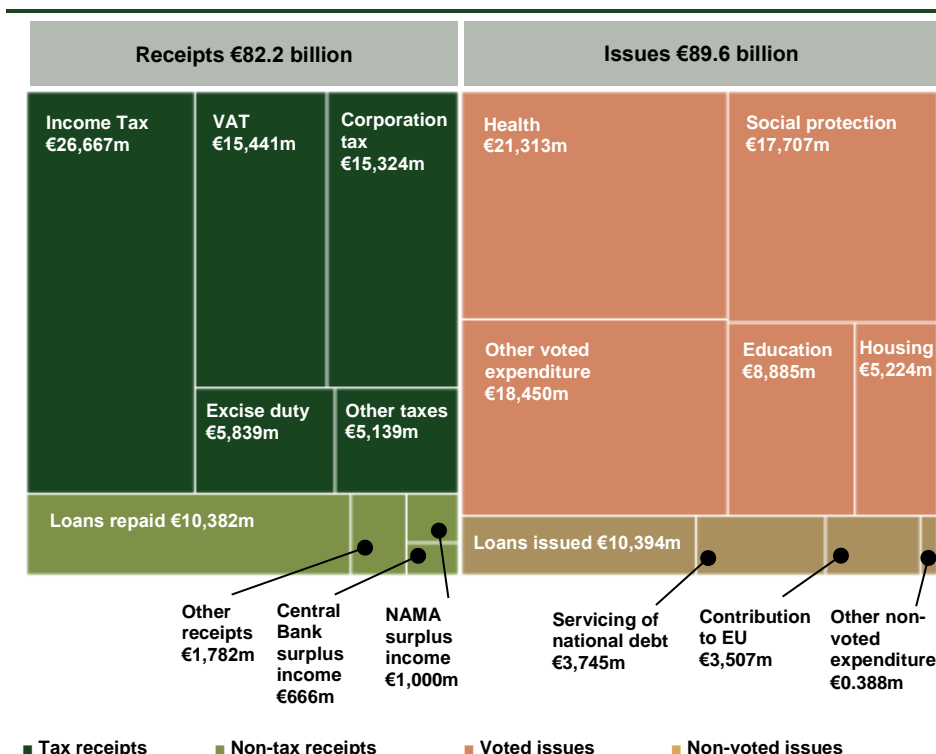
Source: Finance Accounts 2007 to 2021 (Exchequer balance). Central Statistics Office: Government Finance Statistics, July 2022 (general government balance).

Note: a Central Fund receipts and issues include the service of national debt but exclude borrowing undertaken by the NTMA on behalf of the State and the repayment of national debt. See Annex 1B, Figure 1B.1 for analysis of Central Fund receipts and issues for 2016 to 2021.

Central Fund receipts and issues

- 1.5** Central Fund receipts in 2021 totalled **€82.2 billion**. Taxes accounted for 83% of the receipts (see Figure 1.2).¹ Issues in 2021 totalled **€89.6 billion** comprising issues for voted services (80%), servicing of national debt (4%), contributions to the EU (4%) and other non-voted expenditure (12%).

Figure 1.2 Central Fund receipts and issues in 2021



Source: Finance Accounts 2021. Any apparent differences in totals are due to rounding.

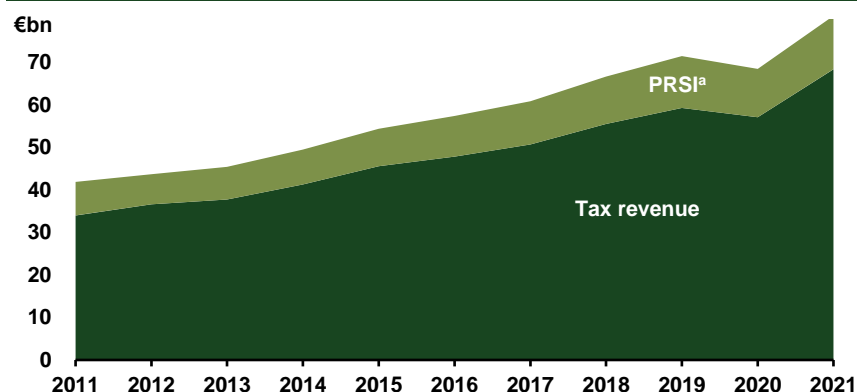
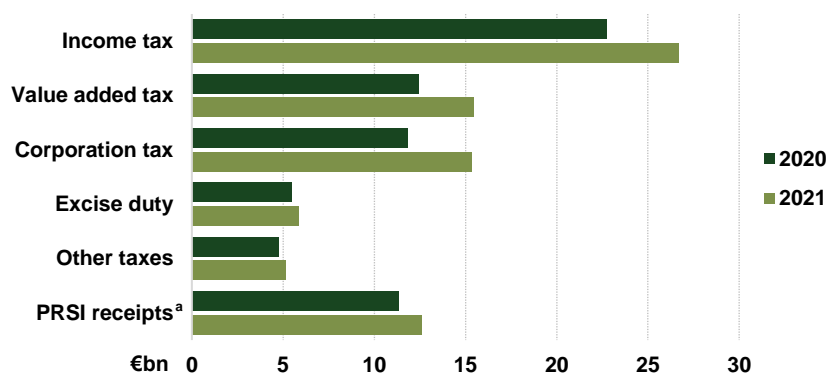
Exchequer receipts

- 1.6** Total receipts into the Central Fund increased by around €17.2 billion in 2021, reflecting increases of €11.2 billion in tax receipts and €6 billion in non-tax receipts. A significant part of the latter involved the repayment of temporary Exchequer loans.

Tax receipts

- 1.7** Tax receipts in 2021 were €68.4 billion, the highest ever tax yield collected by the State. Significant increases in income tax (17%), corporation tax (30%) and VAT (24%) contributed to the record yield (see Figure 1.3).
- 1.8** Corporation tax represented 22% of total Exchequer tax receipts in 2021, and were almost equivalent in value to VAT receipts at 23% (see Figure 1.3).
- 1.9** Customs duties increased by 91% in 2021 to €526 million (2020: €276 million), mainly due to a significant increase in customs declarations as a result of Brexit. Under the Brexit free-trade agreement, goods imported from Britain into the EU, but which do not originate in Britain, are now subject to customs duty. More than 40% (€215 million) of the customs duties collected applied to goods imported from Britain.

¹ An analysis of Central Fund receipts and issues (excluding NTMA borrowing) for the years 2016 to 2021 is set out in Annex 1B, Figure 1B.1.

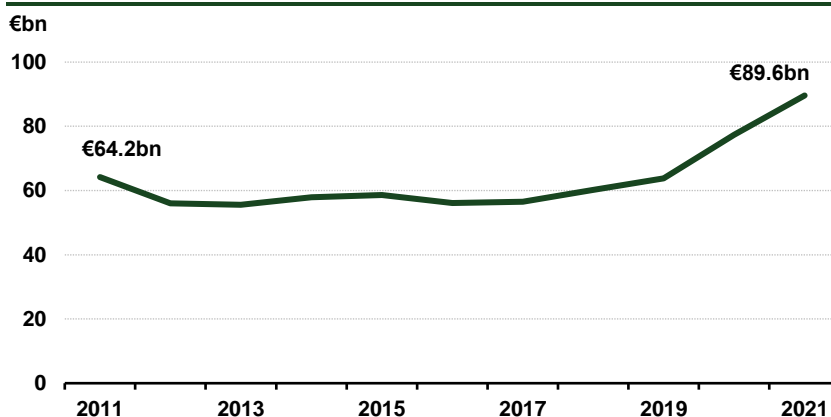
Figure 1.3 Tax revenue and PRSI receipts, 2011 to 2021**Year on year change by receipt type**

Source: Finance Accounts. Social Insurance Fund accounts.

Note: a PRSI receipts are paid into the Social Insurance Fund.

Central Fund issues

- 1.10** Issues from the Central Fund increased significantly in 2021 to €89.6 billion — up €12.3 billion or 16% on the prior year (€77.3 billion) (see Figure 1.4).

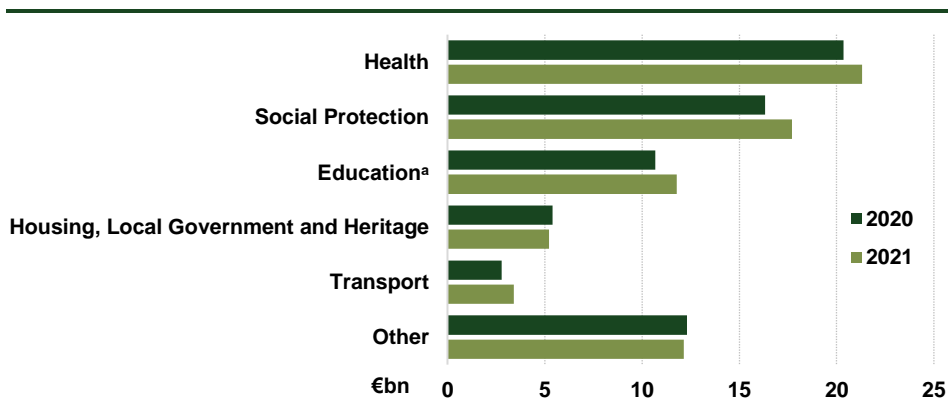
Figure 1.4 Total Exchequer issues, 2011 to 2021

Source: Finance Accounts, 2011 to 2021

Voted issues

- 1.11** Voted expenditure increased by €3.7 billion (5%) to €71.6 billion and reflected the continued funding of Covid-19 related support measures throughout 2021. Nearly 55% of voted expenditure issues was attributable to two departments — Health and Social Protection (see Figure 1.5).

Figure 1.5 Voted departmental expenditure, 2020 and 2021



Source: Finance Accounts 2021

Note: a Includes Department of Further and Higher Education, Research, Innovation and Science with expenditure of €2.4 billion in 2020 and €2.9 billion in 2021.

Ireland's contribution to the EU

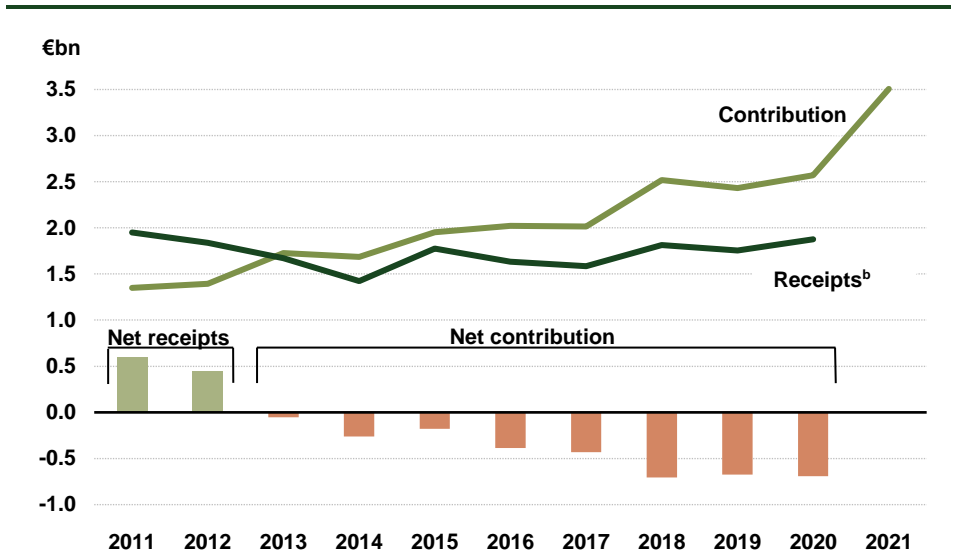
- 1.12** Ireland's contributions to the EU budget are managed by the Department of Finance and are accounted for in the Finance Accounts, on a cash basis.
- 1.13** Currently, there are four main components to Ireland's contributions to the EU Budget
- traditional own resources (TOR) — these comprise customs duties collected by the Revenue Commissioners on imports from outside the EU, of which 75% is payable to the EU
 - a VAT related contribution — 0.3 per cent on Ireland's VAT base
 - an unrecycled plastics based contribution — at a rate of €0.80 per kilogram on plastic packaging waste that is not recycled¹
 - GNI own resource — a contribution based on level of income as defined by gross national income (GNI).²
- 1.14** The contribution to the EU budget in 2021 was €937 million (36%) higher than in 2020. In addition to an increase related to economic growth, the main reasons for the increase were
- the commencement of the EU 2021–2027 Multiannual Financial Framework (MFF), which established a higher level of total expenditure than the previous MFF
 - a balancing adjustment for previous estimates of GNI and VAT
 - increased customs receipts related to the impacts on trade between Ireland and the UK
 - a new contribution to the budget related to unrecycled plastic.

1 In 2021, a new contribution based on the amount of non-recycled plastic packaging waste in each country was introduced. In 2021, Ireland's contribution was €145.8 million.

2 GNI own resource contribution is deemed the balancing element to ensure that all agreed expenditures in an EU annual budget are sufficiently covered by the total budget revenues. Depending on the total annual revenues required to finance expenditures, a uniform call rate is applied to each member state's GNI. The call rate varies from year to year. Ireland's average GNI contribution accounted for 77% of the overall contribution over the period 2017–2020, compared to an EU average of 74%.

- 1.15** Department of Finance budgetary statistics show that Ireland was a net beneficiary from the EU up to 2012 and has been a net contributor since then. Ireland's contribution to the EU in 2021 was €3.5 billion (see Figure 1.6).

Figure 1.6 Ireland's EU contribution, receipts and net position, 2011 to 2021^a



Source: Finance Accounts. Department of Finance, Ireland: Budgetary Statistics 2020.

Notes: a Fund flows are shown on a cash basis.

b Figures for 2021 receipts were not available at time of publication.

- 1.16** The forecasted or estimated annual contributions to the EU budget are regularly adjusted as updated data is provided or published by a wide variety of sources. In addition, annual balancing exercises are carried out in respect of GNI and VAT elements of the contributions. This involves retrospective comparison of the forecasts for GNI and VAT provided by the member states for the prior year with the outturn.
- 1.17** Ireland's monthly payments to the EU are based on a compromise figure agreed between the Department of Finance and the EU Commission, which is based on estimates prepared by both parties. The compromise figure usually falls somewhere in the middle of the two estimates. The following year when the actual figures are available, a true-up calculation is prepared and amounts are paid to, or refunded from the EU.
- 1.18** In June 2022, an adjustment of €185.7 million, in favour of the EU, was applied to Ireland's contribution for 2021 and previous years. This represented an estimation underpayment of 6.8%. Figure 1.7 sets out the value of such adjustments in respect of the period 2019 to 2021.

Figure 1.7 Ireland's gross GNI and VAT contributions and adjustments

Relevant year	Gross GNI and VAT contributions ^a € million	Subsequent year adjustment ^b € million	Percentage adjustment
2019	1,992	(44.5)	(2.2%)
2020	2,187	84.5	3.9%
2021	2,740	185.7	6.8%

Source: Department of Finance. Analysis by the Office of the Comptroller and Auditor General.

Notes: a The amounts reflect gross GNI and VAT payments and exclude any other adjustments made relating to other member states.

b Adjustments can relate to more than one year and usually occur in June of the following year.

1 The Commission brought an action against the United Kingdom (UK), to the European Court of Justice. The UK had disputed the statistical calculation method applied by the Commission. In March 2022, the Court ruled in favour of the Commission, but partly rejected the Commission's calculation method for the total claimed losses, ruling that it did not meet the requisite legal standard.

2 This commitment was in response to a recommendation in the Comptroller and Auditor General's special report 105: *Ireland's transactions with the EU in 2017*.

3 The 2019 report can be found [here](#).

4 Bord Telecom Éireann (Eircom) was formed in 1984 under the Postal and Telecommunications Act 1983.

5 The Minister for Finance was required to make contributions to the superannuation scheme to cover pre-privatisation pension liabilities for staff and their survivors who transferred from the former Department of Posts and Telegraphs to Bord Telecom Éireann in January 1984.

6 In accordance with sections 26, 46(9) and 46 (11) of the Postal and Telecommunications Services Act 1983.

7 Deed of Amendment Eircom No. 2 Superannuation Fund and Eircom Superannuation (Amendment) Scheme 2016 were put in place to provide for future funding of the Eircom No. 2 Fund.

EU traditional own resources (TOR) fraud

1.19 The EU Commission identified an EU-wide fraud pattern relating to the import of textiles and footwear from China at significantly understated value, which led to a systematic loss of EU 'traditional own resources' (TOR) over several years. The Commission calculated Ireland's TOR losses at €30.4 million (0.69%) of the total EU losses incurred. In July 2021, Ireland paid over the €30.4 million in customs duties from the Central Fund, on reserve, to avoid the accumulation of late payment interest on the losses.

1.20 Following the outcome of a ruling by the European Court of Justice in March 2022, whereby the Court partly rejected the Commission's method for calculating the total claimed losses, it is now expected that the Commission will reassess each member state's liability based on the Court's decision.¹

EU transactions reporting

1.21 In January 2020, the Department committed publicly to publish an annual report, on a consolidated basis, on the financial transactions between Ireland and the EU. The aim of the report is to provide a comprehensive overview of such transactions in a single document, since this information is not otherwise readily available.²

1.22 In September 2020, the Department published its report on *Ireland's transactions with the EU in 2018*. The equivalent report for 2019 was published in June 2022.³ The Department has stated that preparation of the report in respect of Ireland's transactions with the EU in 2020 is in progress.

Eircom pension scheme subvention

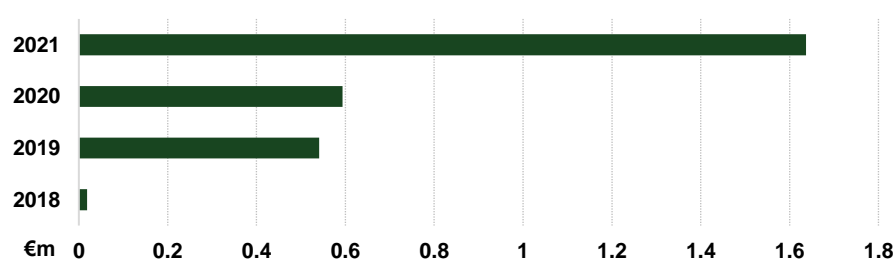
1.23 In 1996, the State sold 20% of its holding in the former Bord Telecom Éireann (Eircom) to private investors.⁴ By the end of July 1999, the company had been fully privatised. The Minister for Finance provided just over €1 billion to the Eircom No. 2 pension fund when it was set up in December 1999.^{5,6} The State is the pension fund's sole contributor and no further funding from the State was expected to be required.

1.24 By early 2021, the pension fund was fully depleted. The latest actuarial valuation, as at October 2021, calculated the outstanding scheme liability at €1.1 billion. In 2021, €81.2 million was paid into the scheme from the Exchequer to meet pension liabilities. Annual costs will reduce gradually to zero over the estimated 40 year lifetime of the fund.⁷ Contributions to the pension fund are to be made on a 'pay as-you-go' basis whereby the Minister will pay moneys to the fund on a scheduled basis in respect of benefits due.

Interest charges on public expenditure balances

- 1.25** The Surplus Public Expenditure Monies (SPEM) account was opened in September 2018 to hold surplus cash in the public expenditure system. The SPEM account replaced the previous Deposit Monies Investment Account (DMIA). The account is held at the Central Bank.
- 1.26** Negative interest has been charged on Central Bank accounts since 2014. Negative interest charges associated with the SPEM account increased significantly in 2021 (see Figure 1.8). Such charges arising on the SPEM account are charged to the Finance Vote, whereas negative interest charges which accrued on the DMIA were paid by the NTMA.

Figure 1.8 Negative interest charges on the SPEM account, 2018 to 2021



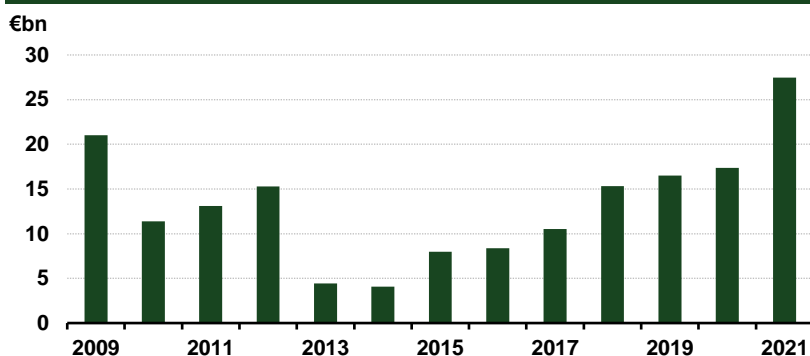
Source: Surplus Public Expenditure Monies (SPEM) account

Exchequer assets

Central Fund cash balance

- 1.27** The value of cash held by the Exchequer totalled almost €27.5 billion at end 2021 (see Figure 1.9). The increase of over €10 billion (58%) year-on-year reflects the impact of net borrowing of €17.3 billion and the Exchequer deficit of €7.4 billion. See Annex 1B, Figure 1B.2.

Figure 1.9 Central Fund cash balance, 2009 to 2021



Source: Finance Accounts, 2009 to 2021

Exchequer lending

- 1.28** At 31 December 2021, Exchequer financial assets included almost €1.7 billion (2020: €1.6 billion) of Housing Finance Agency guaranteed notes and €10 million of Strategic Banking Corporation of Ireland (SBCI) guaranteed notes.
- 1.29** Excluding the Housing Finance Agency and SBCI guaranteed notes, net loans and advances provided from the Central Fund increased marginally (around €12 million) in 2021, with just over €2.1 billion outstanding at the year-end (see Annex 1B, Figure 1B.3).
- 1.30** During 2021, €9.4 billion was advanced to the Social Insurance Fund for cash flow purposes. No interest accrued on the loan and it was fully repaid before the end of the year.
- 1.31** Amounts totalling €130 million were issued from the Central Fund in 2021 to Irish Water under a loan agreement entered into with the Minister for Finance in June 2020. Under the agreement, over €1 billion will be made available to Irish Water to repay existing non-domestic commercial debt and to fund its future non-domestic water borrowing requirements. The total amount drawn down to end 2021 was €502 million (see Annex 1B, Figure 1B.3).

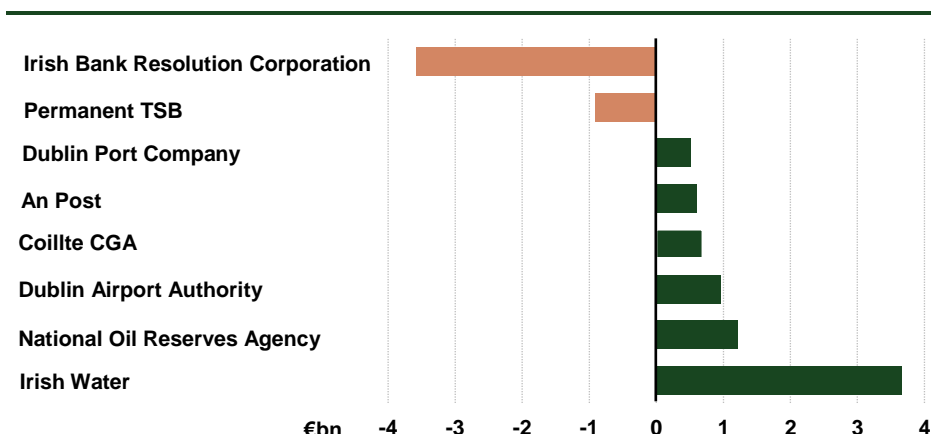
Shareholding in Irish companies

- 1.32** Shareholdings in 24 State and private companies are disclosed in the Finance Accounts.^{1,2} The State's interest in these companies is recorded at historic cost, and at 31 December 2021 totalled €7.96 billion.
- 1.33** Shareholdings at cost in Irish Bank Resolution Corporation Limited (IBRC), Permanent TSB Group, Coillte CGA, Irish Water and the Dublin Airport Authority represent just over 95% (by value) of the total shareholdings as disclosed in the 2021 Finance Accounts.
- 1.34** Up to end 2013, the Finance Accounts also disclosed details of the net asset value (NAV) of the shares.³ Figure 1.10 illustrates the difference between the NAV and the historic equity cost for the eight companies with the highest movement. The total NAV for the eight companies at 31 December 2021 was €10.8 billion and the historic cost was €7.7 billion, a difference of almost €3.2 billion. However, operating losses incurred by IBRC and Permanent TSB have significantly eroded the value of the State's shareholdings in the companies (- €3.6 billion and - €914 million, respectively) while Irish Water (€3.7 billion) has had a significant increase in value.

1 See statement 1.8(A) of the Finance Accounts 2021, which can be accessed [here](#).

2 The Department of Finance has stated that the Finance Accounts are not a comprehensive financial statement for the State, its assets and liabilities and that the State holds an interest in more entities than those set out in the Finance Accounts.

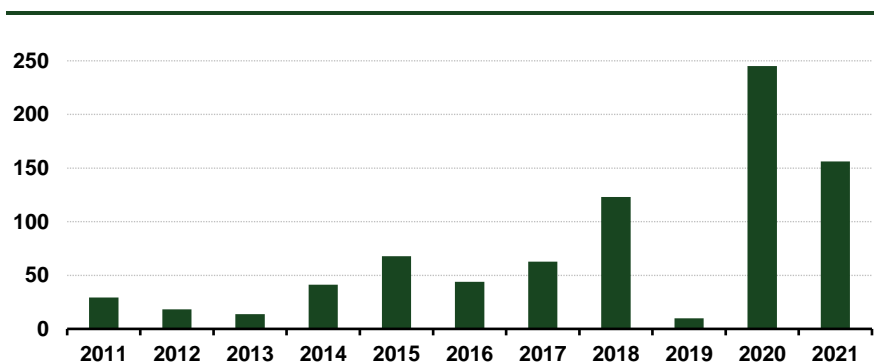
3 Net asset value, or NAV, is the value of a company's assets minus its liabilities.

Figure 1.10 Movement in net asset value of share capital to historic cost, at end 2021

Source: Department of Finance, Finance Accounts 2021

Sundry Moneys Account

- 1.35** The Sundry Moneys Account (SMA) is a temporary holding account that records transactions and balances that usually are received into the Central Fund of the Exchequer, but that are held back until proper and sufficient instructions are received for final disposal. The account is managed by the Department of Finance and is accounted for separately from the Finance Accounts. Administratively, the objective is to minimise the time that funds are held in the account, to ensure their timely receipt into the Central Fund.
- 1.36** Receipts into the SMA in 2021 totalled just under €602 million. Transfers out of the SMA to the Central Fund amounted to €691 million in 2021. The balance held in the SMA at the end of 2021 was €156 million, most of which had been received in the previous 30 days (see Figure 1.11).¹ The balance at the end of 2020 was €245 million.

Figure 1.11 Sundry Moneys Account year-end balances, 2011 to 2021

¹ The end-2021 balance is taken from the unaudited draft account.

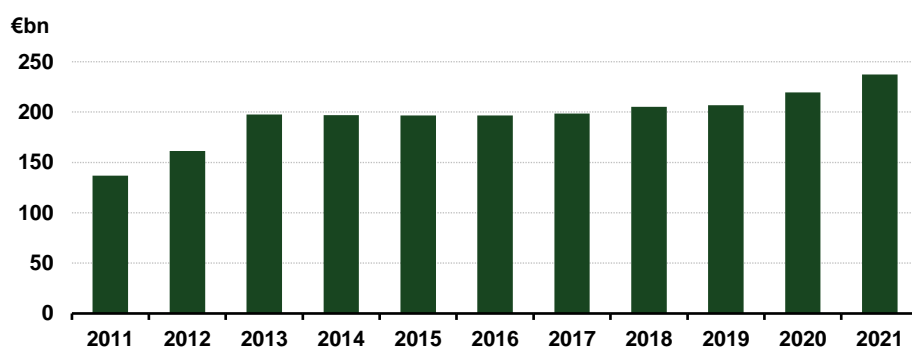
Source: Sundry Moneys Account, 2011 to 2021

Exchequer liabilities

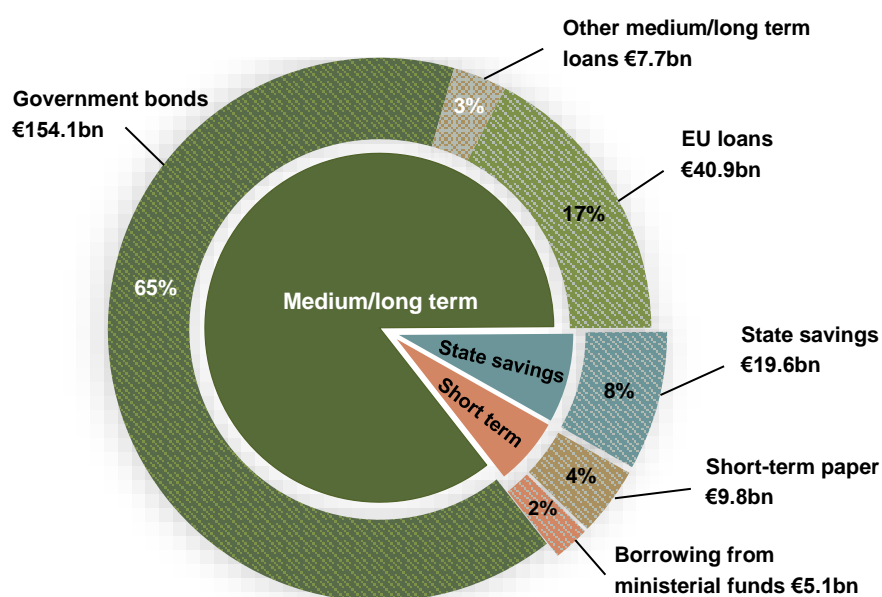
National debt

- 1.37** Ireland's national debt increased by 8% (€17.7 billion) in 2021 to €237.2 billion at the year-end (see Figure 1.12).¹
- 1.38** Around 85% (€202.7 billion) of the national debt at end-2021 was in the form of medium and long term borrowing. This comprised mainly government bonds (fixed rate, floating rate, amortising and inflation linked bonds) and EU loans (European Financial Stabilisation Mechanism, European Financial Stability Facility, and the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE)).
- 1.39** Debt arising from the various State savings schemes accounted for €19.6 billion, or 8% of the national debt at end-2021.

Figure 1.12 National debt at redeemable par values, end 2011 to end 2021



Composition of national debt at end-2021^a



¹ National debt is defined by section 1 of the National Treasury Management Agency Act 1990 as the debt outstanding for the time being of the Exchequer.

Source: Financial Statements of the National Debt of Ireland 2021, National Treasury Management Agency
 Note: ^a Due to rounding, the percentages for the individual debt elements do not total 100%.

1.40 Short-term debt accounted for €14.9 billion of the national debt at end-2021.¹ This comprised 'short-term paper' to the value of €9.8 billion; borrowings from the Post Office Savings Bank Fund of €3.1 billion; and €2 billion of surplus Paymaster General funds.²

1.41 The NTMA long-term bond issuance in 2021 totalled €19.3 billion (2020: €24.6 billion).³ Bonds were issued at a weighted average maturity of over 14 years and a weighted average yield of just under 0.2%. The debt included the issuance of bonds with maturities of between five and 29 years (see Figure 1.13). There were two new syndicated bond issuances, €5.5 billion (10-year bond) and €3.5 billion (20-year bond).⁴

1.42 The NTMA also raised almost €1 billion in other long-term debt issued under its *Euro Medium Term Note* programme. There were eight fixed-rate private placements with long maturities ranging from 65 to 100 years and one 30-year inflation linked bond.⁵

1 Short-term paper debt has an original maturity of less than one year.

2 The surplus public expenditure moneys account records the borrowings and repayments of surplus funds held in the supply account of the Paymaster General.

3 This includes €0.8 billion (€0.6 billion in 2020) issued in non-competitive bond auctions.

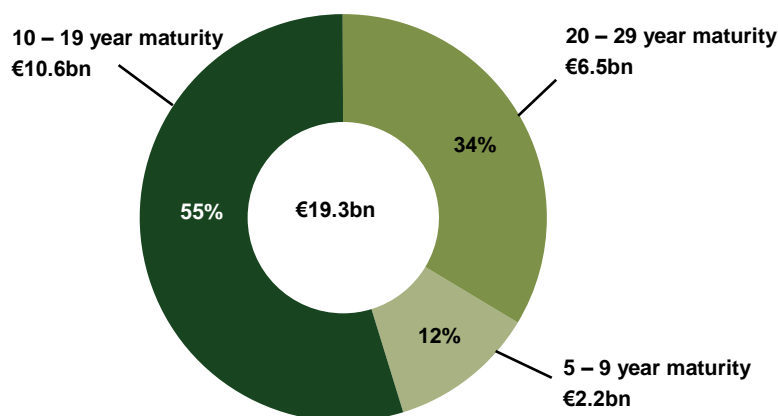
4 A syndicated bond sale is the issue of a new or existing bond through a syndicate of primary dealers in Irish government bonds. The NTMA currently recognises 14 primary dealers — mostly international financial institutions — which are responsible for market-making and the sale and distribution of Ireland's government bonds to end investors.

5 A private placement is a sale of debt instruments, called Notes, through a primary dealer to a single or to multiple end investors. These transactions are normally the result of a direct approach by an investor to a recognised primary dealer who will negotiate the terms of the issue with the NTMA.

6 The ISGB Framework enables Ireland to fund eligible 'green' projects through the issuance of ISGBs. The Framework was approved by Government, pursuant to a cabinet decision in July 2018.

7 The SURE instrument provides for financial assistance from the European Commission to member states in the form of loans of up to €100 billion in total.

Figure 1.13 NTMA government bond issues, 2021^{a,b}



Source: National Treasury Management Agency

Notes: a Includes non-competitive auctions.

b Due to rounding, the percentages for the individual bonds do not total 100%.

Irish Sovereign Green Bond

1.43 The government bonds balance at end 2021 includes €6.8 billion of green bonds issued under the Irish Sovereign Green Bond (ISGB) Framework.⁶ This includes €0.75 billion of new issuance under the framework in 2021. ISGBs are designed to provide investors with the financial features of a standard Irish Government bond combined with sovereign green bond market practice, and to help finance Ireland's transition to a low-carbon, climate-resilient and environmentally-sustainable economy.

EU SURE instrument

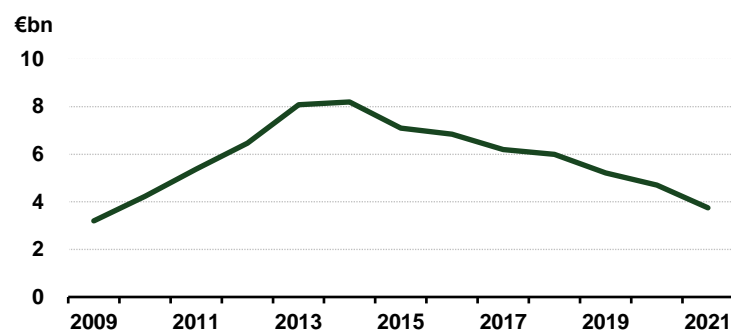
1.44 In March 2021, the NTMA drew down €2.47 billion in loans from the European Commission's SURE instrument.⁷ The amounts drawn down were based on costs already incurred under the Covid-19 Temporary Wage Subsidy Scheme (TWSS). The SURE loans drawn down comprised

- a €1.27 billion five-year loan with 0% interest, maturing in March 2026, and
- a €1.2 billion 25-year loan with 0.45% interest, maturing in April 2046.

Debt service costs

- 1.45** The cost of servicing Ireland's national debt in 2021 was €3.75 billion — this was 20% down compared to the cost in 2020, and the lowest cost since 2009 (see Figure 1.14). The cost comprised net interest on the national debt of €3.48 billion, net interest paid on cash held at the Central Bank and on other financial assets of €112 million, and fees and operating expenses of €151 million.

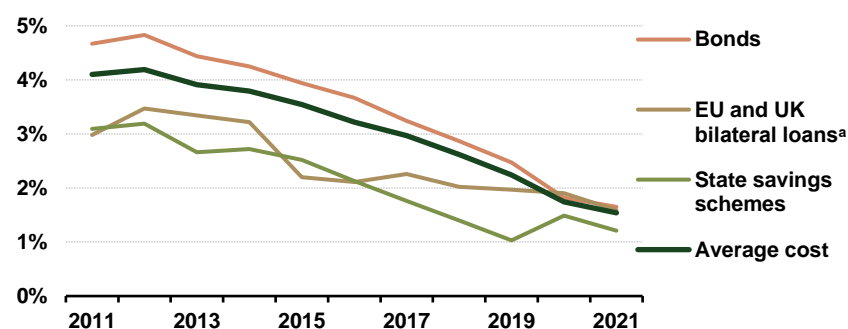
Figure 1.14 Debt service costs, 2009 to 2021 (cash basis)



Source: National Treasury Management Agency

- 1.46** The NTMA attributes the prolonged fall in the debt service bill mainly to the maturing of high coupon bonds — mostly issued during the financial crisis of the late 2000s — and their replacement with cheaper funding, together with the compression of sovereign bond yields brought about by the European Central Bank's quantitative easing programme.¹
- 1.47** These factors are reflected also in the average cost of State borrowing, which continued to fall in 2021. At the end of the year, the overall weighted average debt service cost estimated at 1.54% (see Figure 1.15).

Figure 1.15 Weighted average debt service cost by debt type, 2011 to 2021



Source: National Treasury Management Agency

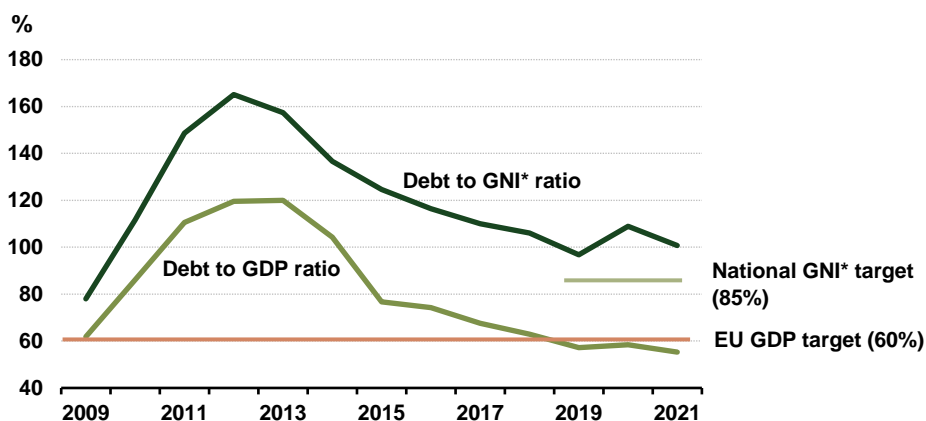
Note: a In March 2021, the NTMA completed the repayment of Ireland's bilateral loan from the UK — part of the EU/IMF programme of financial assistance. The amount repaid was €0.48 billion.

¹ The NTMA noted that no bonds matured in 2021.

General government debt target

- 1.48** General government debt is a more comprehensive measure of State indebtedness than national debt, and is the standardised measure which all EU countries are legally obliged to report under the Maastricht Treaty.¹
- 1.49** European fiscal rules state that member states' general government debt should not exceed 60% of GDP or, if greater, should steadily decrease towards the 60% target.² Due to strong GDP growth, Ireland's general government debt ratio reduced to 55.3% at end 2021, despite the increase in overall debt levels, compared with 58.4% at end 2020 (see Figure 1.16).
- 1.50** The Department has stated that due to statistical distortions in Ireland's GDP, ratios related to GDP do not provide a true reflection of the Irish economy's repayment capacity. For this reason, a new Irish target based on GNI* was adopted in 2019.³ The national target is to reduce Ireland's general government debt-to-GNI* ratio to 60% at a suitable pace, with an interim target of reaching 85% of GNI* by 2025 (see Figure 1.16). At the end of 2021, the debt-to-GNI* ratio was 100.8% (108.9% in 2020).⁴

Figure 1.16 Ireland's debt to GDP and debt to GNI* ratios, 2009 to 2021 (percentage)



Source: Central Statistics Office. Department of Finance.

1 General government debt comprises the debt liabilities of central government, local government and government funds, excluding debt owed by one sector of government to another.

2 The European Commission has temporarily allowed EU member states to suspend requirements to meet these fiscal targets while taking appropriate budgetary measures to address the exceptional circumstances posed by the Covid-19 pandemic.

3 The CSO defines GNI* ('GNI star') as an indicator designed to exclude globalisation effects that disproportionately impact the measurement of the size of the Irish economy.

4 The debt-to-GNI* ratio for 2020 was initially reported at 104.7%. This was subsequently revised to 108.9%, as published by the CSO in July 2022.

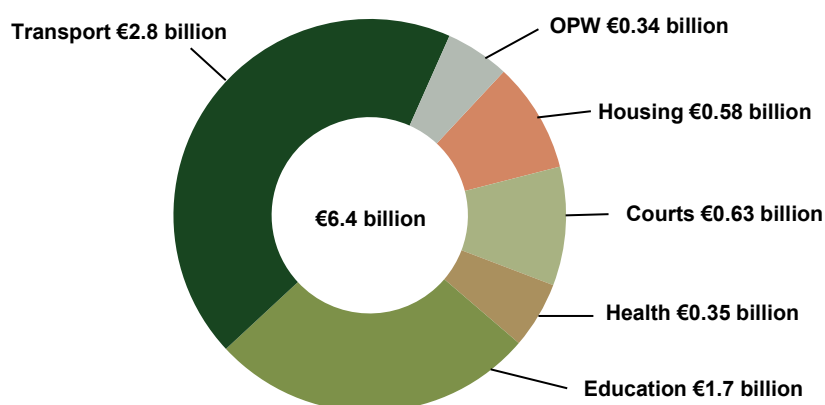
Other liabilities

Public private partnerships

- 1.51** A public private partnership (PPP) is an arrangement between a public authority and a private partner designed to procure and deliver public infrastructure assets and/or services under long-term contracts. The asset is funded and constructed by the private partner, following which it is made available for public use and is paid for by the State and/or by users (through user charges) over an extended period (typically 25 years), after which the asset comes into State ownership.
- 1.52** PPPs are recorded as an 'off-balance sheet' funding mechanism from a general government perspective, as liabilities under PPP contracts are generally not included in the calculation of general government debt. Liabilities are met as they arise from voted issues out of the Central Fund, or from user charges in the case of PPP concession projects.

- 1.53** Future commitments under PPP projects are tracked by the Department of Public Expenditure and Reform. At the end of 2021, 30 PPP schemes were fully operational and six were at development stage. At that date, future PPP commitments totalled just over €6.4 billion (see Figure 1.17).
- 1.54** Expenditure on PPP unitary payments totalled just over €320 million in 2021. Under the deals currently in place, the Exchequer is committed to making payments totalling on average around €325 million a year until 2035.¹ Thereafter, payments under those deals will taper off, largely because the older contracts will have been completed.

Figure 1.17 Composition of projected total cost of all PPP outstanding payments



Source: Department of Public Expenditure and Reform

Debt relief payment

- 1.55** In 2020 and 2021, the Minister for Finance consented to the transfer of Ireland's share of resources in International Monetary Fund (IMF) managed accounts to the IMF's administered accounts for Somalia and Sudan, for the purpose of clearing arrears owed by both countries. In total, Ireland contributed around €8.5 million from the IMF managed accounts, of which €6.5 million was payable to the Central Bank of Ireland (CBI).
- 1.56** The European Central Bank (ECB) has determined that the use of CBI funds for this purpose was monetary financing and in breach of Article 123 of the Treaty on the Functioning of the European Union.
- 1.57** In light of the ECB determination, Ireland (the Exchequer) is required to refund the money to the CBI.² Accordingly, the CBI's 2021 financial statements include a receivable for €6.5 million.³ In its 2021 annual report, the ECB has referenced that financial donations by central banks to IMF debt relief initiatives for heavily indebted poor countries are not compatible with the prohibition of monetary financing and warrant corrective measures.⁴
- 1.58** Because the Finance Accounts are presented on a cash basis, and do not contain a statement of financial position, the debt is not recognised in the 2021 Finance Accounts.

1 Aggregate annual repayment levels in this period could increase as new PPP contracts are put in place.

2 A provision will be included in the Bretton Woods Agreements (Amendment) Bill 2022 to provide a legal basis for the payment.

3 The Central Bank's 2021 Annual Report and Annual Performance Statement 2021–2022 can be found [here](#).

4 The European Central Bank annual report 2021 can be found [here](#).

Annex 1A Central Statistics Office government finance statistics

The European Union's statistics authority, Eurostat, requires each member state to produce a range of finance statistics that comply with the harmonised definitions and standards within the European System of Accounts 2010.

The Central Statistics Office (CSO) is responsible for the official reporting of Ireland's general government finance statistics.

The CSO's general government finance outputs and general government statistics include the following key statements

- Table 1.1 — general government finances
- Table 1.2 — general government transactions: revenue, expenditure, financing and deficit
- Table 2.1 — general government; detailed classification of revenue and output
- Table 2.2 — general government; detailed classification of expenditure and consumption
- Table 3.1 — general government gross and net debt
- Table 3.2 — general government financial transactions
- Table 3.3 — general government: detailed breakdown of net worth
- Table 3.4 — general government net worth, gross and net debt.

The general government sector encompasses both central and local government, non-commercial State-owned bodies and extra budgetary funds, the larger approved housing bodies and voluntary hospitals.

The full list of entities included is published on the CSO's website.

Annex 1B Data tables

Figure 1B.1 Composition of Central Fund receipts and issues, 2016 to 2021^a

	2016	2017	2018	2019	2020	2021
	€m	€m	€m	€m	€m	€m
Receipts						
Current receipts						
Tax revenue	47,864	50,737	55,557	59,314	57,165	68,410
Transfer from Local Government Fund	318	230	—	—	—	—
Central Bank surplus income ^b	1,800	1,836	2,108	2,395	2,050	666
National Lottery surplus income	219	227	225	251	270	290
Dividends from State bodies	269	324	261	262	133	152
Other current revenues	498	248	311	440	197	422
NAMA Surplus Income	—	—	—	—	2,000	1,000
Capital receipts						
Loans/advances repaid ^c	2,143	1,021	933	1,055	1,680	10,382
Financial sector stabilisation measures	1,871	3,723	341	682	3	—
Exceptional capital receipts ^d	—	—	—	—	1,500	—
Receipts from EU			89	24	25	645
Other capital receipts	75	30	483	6	5	274
Total receipts	55,057	58,376	60,308	64,429	65,028	82,240
Issues						
Issues for voted expenditure	43,986	46,291	50,445	54,146	67,849	71,579
Service of national debt	6,845	6,227	5,967	5,220	4,676	3,745
Contribution to EU budget	2,023	2,016	2,519	2,432	2,569	3,507
Oireachtas Commission	114	110	131	126	132	133
Loans/advances ^c	2,320	963	975	935	1,523	10,264
Financial sector stabilisation measures	4	—	—	—	—	—
Irish Water (shares, capital contributions and loans)	184	270	—	758	372	130 ^e
Transfer to Local Government Fund ^e	463	480	12	—	—	—
Other payments	136	113	160	165	224	255
Total issues	56,075	56,470	60,209	63,782	77,345	89,612
Surplus/(deficit) for the year	(1,018)	1,906	99	647	(12,317)	(7,372)

Source: Finance Accounts 2016 to 2021. Any apparent differences in totals are due to rounding.

- Notes:
- a Transactions of the Central Fund account and the Capital Services Redemption Account are consolidated. The latter account is maintained by the NTMA for servicing national debt and transactions of a normal banking nature.
 - b The amount received into the Central Fund each year principally consists of the surplus income for the previous financial year, as per the audited financial statements of the Central Bank of Ireland.
 - c See Figure 1B.3 for further details.
 - d Exceptional capital receipts are non-recurrent. The 2020 figure relates to the National Surplus Reserve Fund.
 - e Related to application of local property tax (LPT) receipts, which were included in tax revenue prior to 2018. With effect from 1 January 2018, LPT receipts are paid directly into the Local Government Fund by the Revenue Commissioners, rather than indirectly through the Central Fund.

Figure 1B.2 Movements in Exchequer cash and financial asset balances, 2016 to 2021

Movement in year	2016	2017	2018	2019	2020	2021
	€m	€m	€m	€m	€m	€m
Balance at 1 January	13,554	11,119	13,217	17,593	18,536	19,200
Net Exchequer borrowing/ (repayment) in year	(1,417)	193	4,276	297	12,981	17,321
Exchequer surplus/(deficit)	(1,018)	1,906	99	647	(12,317)	(7,372)
Balance at 31 December	11,119	13,217	17,593	18,536	19,200	29,149
Composition of cash and financial assets at 31 December	2016	2017	2018	2019	2020	2021
	€m	€m	€m	€m	€m	€m
Central Fund cash balance ^a	8,385	10,533	15,338	16,502	17,362	27,474
Commercial bank deposits	199	—	—	—	—	—
SBCI medium-term guaranteed notes ^b	85	85	85	25	—	10
Housing Finance Agency guaranteed notes	2,032	1,742	1,558	1,913	1,586	1,665
Collateral funding	418	857	612	96	252	—
Balance at 31 December	11,119	13,217	17,593	18,536	19,200	29,149

Source: Finance Accounts 2016 to 2021. Any apparent differences in totals are due to rounding.

Notes: a Includes a balance of €216,000 held in the Capital Services Redemption Account (CSRA) (2020: €216,000).

b Strategic Banking Corporation of Ireland (SBCI) was established under the Strategic Banking Corporation of Ireland Act 2014. Its aim is to ensure access to flexible funding for Irish small and medium enterprises by facilitating the provision of lower-cost funding and flexible products. The issued share capital of the SBCI is owned by the Minister for Finance.

Figure 1B.3 Loans and advances, 2016 to 2021

	2016	2017	2018	2019	2020	2021
	€m	€m	€m	€m	€m	€m
European Agricultural Guarantee Fund						
Opening balance	599	770	740	725	750	670
Repayments	(599)	(770)	(740)	(725)	(750)	(670)
Loans issued	770	740	725	750	670	655
Closing balance	770	740	725	750	670	655
Social Insurance Fund						
Opening balance	—	—	—	—	—	—
Repayments	(1,370)	—	—	—	(600)	(9,370)
Advances	1,370	—	—	—	600	9,370
Closing balance	—	—	—	—	—	—
Insurance Compensation Fund						
Opening balance	812	706	636	636	556	414
Repayments	(106)	(70)	—	(80)	(142)	(69)
Loans issued	—	—	—	—	—	—
Closing balance	706	636	636	556	414	345
EU stability support to Greece						
Opening balance	347	347	347	347	347	344
Repayments	—	—	—	—	(3)	(22)
Closing balance	347	347	347	347	344	323
Irish Water						
Opening balance	96 ^a	—	—	—	—	372
Repayments	—	—	—	—	—	—
Advances	—	—	—	—	372	130
Closing balance	—	—	—	—	372	502
Other loans and advances						
Opening balance	81	194	236	293	228	296
Repayments/loans conversion	(67)	(181)	(193)	(250)	(185)	(253)
Loans issued	180	223	250	185	253	241
Closing balance	194	236	293	228	296	284
Total closing balance	2,017	1,959	2,001	1,881	2,096	2,109

Source: Finance Accounts 2016 to 2021. Any apparent differences are due to rounding.

Note: a In December 2016, the loan was converted into an unconditional, irrevocable and non-refundable capital contribution.

2 Net cost of banking stabilisation measures

- 2.1** Following the onset of the financial crisis in 2008, the State undertook a series of measures to stabilise the banking system, including
- substantial recapitalisation of domestic banks
 - the provision by the Central Bank of exceptional liquidity assistance to domestic banks
 - Government guarantees of deposits and certain other liabilities and
 - the establishment of the National Asset Management Agency (NAMA) to acquire impaired assets from banks.
- 2.2** The exceptional measures undertaken were complex and interrelated, and have a long term impact on the Exchequer. While the amounts invested in recapitalising banks, proceeds from disposals, income accruing from the investments, and estimated residual values can be readily identified, estimation procedures are required to identify the costs incurred by the State in funding the investments.
- 2.3** In previous reports, I have provided estimates of the net cost of the stabilisation measures based on the best information available at the time (at the end of each of the years 2014, 2016 and 2018). Those estimates were generally in the range of €40 billion to €42 billion.¹ Given the elapse of time and the substantial outworking of many of the stabilisation measures, this report was undertaken to review the estimate of net cost to take account of relevant developments since 2018, and of information available up to the end of 2021.

Overview of net cost

- 2.4** Based on the information available up to the end of 2021, this examination has estimated that the net cost to the State from banking stabilisation measures was around €45.7 billion (see Figure 2.1). This estimate takes account of the estimated value at 31 December 2021 of the State's residual investments in banks (€4.9 billion), and of NAMA's retained earnings (€1.8 billion).
- 2.5** The net outturn in respect of the State's level of support for each institution has also been estimated, taking account of the estimated residual value of the State's investments at 31 December 2021 (see Figure 2.2). This is estimated at
- Irish Bank Resolution Corporation (IBRC) — net cost of €37.3 billion
 - Allied Irish Banks plc (AIB) — net cost of €13.1 billion
 - Permanent TSB — net cost of €1.5 billion
 - Bank of Ireland — net surplus of €1.4 billion.
- 2.6** Across the four banks, the outturn indicated is a net cost of €50.5 billion. This does not take account of NAMA's accumulated earnings of €4.8 billion, because these cannot be readily attributed to loans acquired from specific banks (see Figure 2.2).

¹ Report on the Accounts of the Public Services 2014; Report on the Accounts of the Public Services 2016; Report on the Accounts of the Public Service 2018.

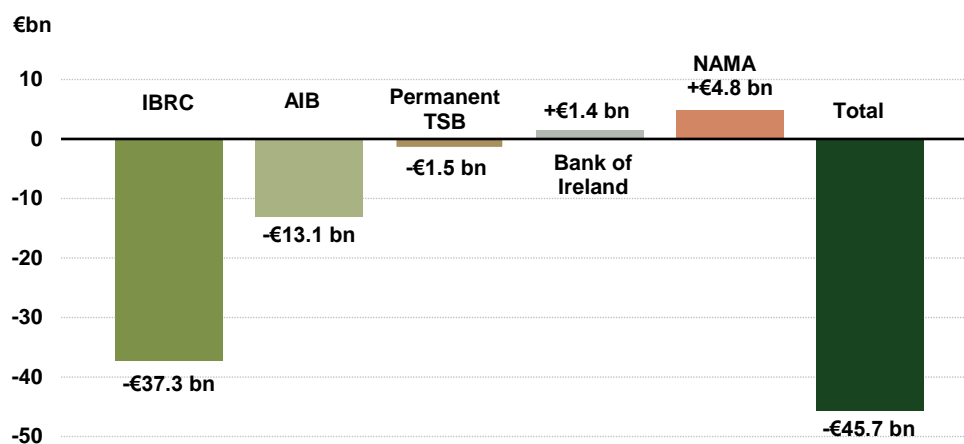
Figure 2.1 Estimated net outturn from banking stabilisation measures as at end-2021

	€bn	€bn
Net investments		
Investments in banks	€66.8	
Disposals of equity/shares	(€12.8)	
Estimated residual value of investments at end-2021	(€4.9)	€49.1
<i>Add net cost of debt servicing</i>		
Cost of debt servicing (estimated) ^a	€28.8	
Central Bank additional income (estimated) ^b	(€16.9)	€11.9
<i>Less income from investments/other measures</i>		
Dividends/interest	(€5.5)	
Net income from liability guarantee schemes and dividend from IBRC special liquidator	(€5.0)	
NAMA surplus paid to Exchequer	(€3.0)	(13.5)
Net cost to the State		€47.5
NAMA's retained earnings		(€1.8)
Estimated net outturn to the State from banking stabilisation measures as at end-2021		€45.7

Estimated long-term recurring annual cost of servicing the debt €0.7 billion to €0.9 billion a year^c

Source: Analysis by the Office of the Comptroller and Auditor General. See Annex 2A for further detail.

- Notes:
- a The estimated cost of servicing the debt associated with the investment in banks includes the imputed debt service costs of investments made by the Ireland Strategic Investment Fund (ISIF), and premiums paid by the National Treasury Management Agency (NTMA) when it redeemed Government bonds issued to the Central Bank to replace promissory notes.
 - b Estimated portion of the Central Bank's surplus income that is attributable to banking stabilisation measures.
 - c Range assuming rates of 1.5% to 2% per year; actual cost will be determined by the amount realised from the remaining investments and by the State's cost of borrowing.

Figure 2.2 Estimated net outturn for individual banks as at end-2021

Source: Analysis by the Office of the Comptroller and Auditor General. Further detail is set out in Annex 2A.

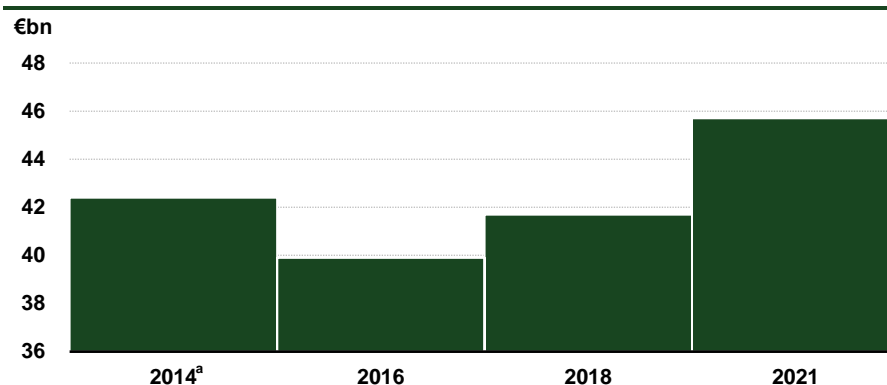
Evolution of estimates of net cost

2.7 The estimate of net cost of the stabilisation measures based on end 2021 information (€45.7 billion) is 8%–15% higher than the previous estimates (see Figure 2.3). This is mainly because

- the estimated net cost of servicing the debt associated with the State's investments includes borrowing costs incurred for three extra years (2019 to 2021)
- the estimated residual value of the State's shareholdings in the banks (adjusted for disposals) is significantly lower.

These adverse impacts are partially offset by dividend receipts from the bank investments and from the IBRC special liquidators, and an increase in NAMA's projected accumulated earnings.

Figure 2.3 Estimates of net cost of banking stabilisation measures using information available at the end of each year 2014, 2016, 2018 and 2021



Source: Analysis by the Office of the Comptroller and Auditor General

Note a The net cost estimate reported in respect of end 2014 data was €43.1 billion. This has been adjusted here to €42.4 billion, to be consistent with the methodology used in all the later estimates. The adjustment takes account of Central Bank reserves of €800 million and a NAMA accumulated deficit of €75 million, as at end 2014.

Capitalisation of the banks

2.8 Between March 2009 and the end of 2010, the State invested a total of €46.8 billion in the banks. Following a Central Bank review in 2011,¹ the State invested a further €20 billion in the period 2012–2014. The investments — totalling €66.8 billion — were funded as follows

- The Exchequer — €44.4 billion, including €30.85 billion in the form of promissory notes. The promissory notes were eligible collateral for the banks for Exceptional Liquidity Assistance from the Central Bank.
- The Ireland Strategic Investment Fund (ISIF) — €22.4 billion, including ordinary shares received in lieu of dividends on preference shares to the value of €1.7 billion.²

1 Prudential capital assessment review (PCAR 2011) which identified further capital requirements in three banks — AIB, Bank of Ireland and PTSB. IBRC was not subject to PCAR 2011.

2 The investments were originally made by the National Pensions Reserve Fund (NPRF). In 2014, the assets of the NPRF transferred to the ISIF.

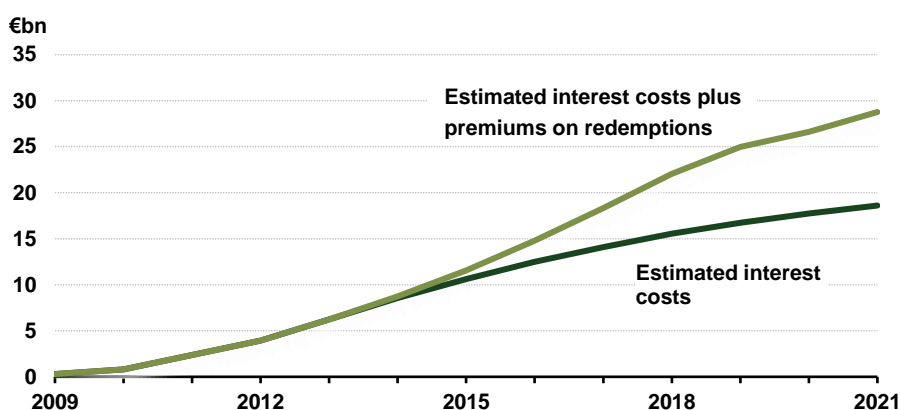
2.9 In February 2013, following the appointment of special liquidators to IBRC, promissory notes to the value of €25.034 billion were replaced by Government bonds. Between 2014 and 2021, the NTMA redeemed €19.5 billion of these replacement bonds.

- 2.10** Further detail on the investments, disposals and the income from them is set out in Annex 2B.

Debt-related costs

- 2.11** Because the investments in the banks were funded substantially by increased borrowing, the State bears additional annual debt service and other related costs. In total, the debt-related cost to the State associated with the investments was around €28.8 billion over the period 2009 to 2021 (see Figure 2.4). The cost comprises
- Estimated interest costs (totalling €18.6 billion), including the imputed interest costs of investments made by the ISIF.¹
 - Premiums (totalling €10.2 billion) paid by the NTMA when it redeemed Government bonds that had been issued to the Central Bank to replace promissory notes. The premiums arose because the yield on Government bonds was lower at the time of disposal than when the Central Bank acquired the bonds.

Figure 2.4 Cumulative estimated debt-related costs associated with the State's investments in banks, 2009 to 2021^a



Source: Analysis by the Office of the Comptroller and Auditor General

Note: a Further detail of the estimated debt service costs and the methodology used are set out in Annex 2C. NTMA payments to the Central Bank are described in greater detail in Annex 2D.

¹ Because the ISIF funded its investments from its own resources, there was no direct interest charge. However, there is an opportunity cost to the State for the investment. For the purposes of this examination, this imputed cost has been calculated as the interest incurred by the Exchequer on the borrowings that could have been avoided if the ISIF funds had been available to the State for purposes other than investing in banks.

² Surplus income of €22.9 billion before net actuarial losses on the Central Bank's pension scheme of €400 million over the period 2009 to 2021.

³ The other sources of Central Bank income include interest earned on lending conducted by the bank as part of the Eurosystem's monetary policy operations and income earned on securities held under the Eurosystem bond purchase programmes.

Central Bank surplus income related to banking stabilisation

- 2.12** The cost to the State of servicing the debt associated with banking stabilisation measures has been partially offset by related income of the Central Bank of Ireland.
- 2.13** For the years 2009 to 2021, the examination has estimated that around €16.9 billion of the Central Bank's surplus income (total €22.9 billion)² was attributable to financial instruments held as a result of banking stabilisation measures taken by the State (see Figure 2.5).³ All of the Central Bank's surplus income accrues to the State — the Central Bank increased its reserves by retaining 20% of its surplus income (around €3.4 billion relating to banking stabilisation measures); and paid the balance (80%) to the Exchequer (€13.5 billion relating to banking stabilisation measures) in the form of additional annual dividends.

Figure 2.5 Estimate of Central Bank surplus income attributable to transactions in respect of banking stabilisation measures, 2009 to 2021

	Net interest income	Gains on bond disposal	Total
	€bn	€bn	€bn
Exceptional liquidity assistance (ELA) ^a	1.89	—	1.89
Government bonds, or Government-guaranteed bonds, held by the Central Bank ^{b,c}	3.99	11.05	15.04
Total	5.88	11.05	16.93

Source: Analysis by the Office of the Comptroller and Auditor General

Notes: a Between 2009 and 2013, ELA was advanced to the four banks capitalised by the State.
b These included IBRC-related bonds issued by NAMA, bonds issued to meet a promissory note payment of €3.06 billion, and bonds issued to replace promissory notes to the value of €25.034 billion when IBRC was liquidated.
c €10.2 billion of the gains was paid by the NTMA when it redeemed Government bonds held by the Central Bank; the remaining €0.9 billion was realised from a sale on the open market.

- 2.14** Exceptional liquidity assistance was provided mainly to IBRC, and all of the income and gains in respect of Government bonds was related to IBRC. In total, an estimated €16.7 billion (99%) of the Central Bank's surplus income for the years 2009 to 2021 that arises from banking stabilisation measures is attributable to transactions between the Central Bank and IBRC. The balance is attributable to Bank of Ireland (€99 million), AIB (€66 million) and Permanent TSB (€44 million).
- 2.15** The interest on the bonds held by the Central Bank, and the €10.2 billion premiums paid when the NTMA bought back some of the bonds, is paid by the NTMA from Exchequer funds. Annex 2D provides further detail on Government bonds held by the Central Bank and payments by the NTMA to the Central Bank.

Ongoing debt servicing costs and income from 2021

- 2.16** At the end of 2021, the Exchequer continues to incur the cost of servicing the debt associated with the net €52.4 billion cost of the investments in the banks.¹ The examination estimated that the net debt servicing cost is likely to be around €0.8 billion for 2022.² The bulk of this will be in respect of IBRC (around €0.5 billion) and AIB (around €0.25 billion). The ongoing cost of servicing the debt associated with Permanent TSB is estimated at around €30 million for 2022.
- 2.17** The State has recouped its investment in Bank of Ireland (including associated debt servicing costs), and therefore incurs no ongoing debt servicing costs in respect of that institution.
- 2.18** The estimated annual cost of servicing the debt associated with the investments has fallen in recent years, due to a reduction in the weighted average cost of servicing the national debt which is used to estimate these funding costs (see Figure 2C.2). At the end of 2021 this stood at 1.54%.

1 The net cost of the investments before estimated residual values and NAMA's retained earnings. This funded amount, which incurs interest costs, will reduce as disposals of residual shareholdings take place, and when the balance of NAMA's surplus is paid to the Exchequer.

2 This represents interest costs only. Any premiums paid in respect of bond redemptions will be an additional cost.

2.19 The long-term cost of servicing the debt associated with the investments in the banks will depend on a number of factors including

- The amount the State realises from disposal of its residual bank shareholdings, and from any further transfer of NAMA surplus.
- The period for which the Central Bank continues to hold some Government bonds. (However, this interest expense for the State will be offset by the related surplus income earned by the Central Bank — see above).
- The cost of funding for the State as it refinances existing debt when it matures.

2.20 In the long-term, the cost of servicing the debt associated with the investments is projected to be around €450 million annually for each percentage point that the State pays on its debt.¹ For example, at the average cost of debt of 1.54% at the end of 2021, the cost of servicing the bank stabilisation debt would be around €700 million annually. This estimate does not take account of the additional interest costs that will arise in the future from funding the annual debt servicing costs.

Liability guarantee scheme income

2.21 The State guaranteed certain bank liabilities under three main schemes.

- The Deposit Guarantee Scheme (DGS) under which deposits by individuals in covered credit institutions are guaranteed to a limit of €100,000 per eligible depositor per institution.² No fees are payable to the State by the credit institutions covered by this scheme.
- The Credit Institutions (Financial Support) Scheme (CIFS), which operated between 2008 and 2010, provided a guarantee for a broad range of bank liabilities for seven institutions that opted to avail of the scheme.³ The credit institutions were required to make payments for the protection provided under the scheme.
- The Eligible Liabilities Guarantee Scheme (ELG) came into effect in December 2009 and closed to new liabilities in March 2013. The scheme ended in March 2018. The four institutions that participated in the scheme⁴ were required to pay fees for the cover they received.

¹ Based on estimated net outturn at end-2021. The amount to be funded will increase each year by the amount required to pay ongoing debt servicing costs, and will also incur interest costs.

² Only institutions that are licensed to receive deposits in Ireland and are authorised by the Central Bank are covered.

³ The institutions that availed of the scheme were AIB, Anglo Irish Bank, Bank of Ireland, EBS, Irish Life and Permanent, Irish Nationwide Building Society (INBS) and Postbank Limited (the 'covered banks').

⁴ AIB (including EBS), IBRC, Bank of Ireland and Permanent TSB.

2.22 By the end of 2021, the State had received net income of around €5 billion under the schemes. €4.5 billion had been received in fees. In addition, just over €1.1 billion had been paid in claims, and €1.24 billion, including interest, in respect of guarantee schemes had been received from the IBRC special liquidators.

2.23 In addition, the State had received €0.35 billion from the IBRC special liquidators in respect of preference shares held by the State in the former Anglo Irish Bank upon the date of its nationalisation.

National Asset Management Agency

- 2.24** NAMA was established to acquire certain property-related bank assets (largely loans to debtors who had invested in property) from Irish banks, to hold and manage the loans and related collateral, and ultimately to dispose of these assets in a manner that protects the State's interests.¹ NAMA paid €31.8 billion to banks to purchase loans in respect of which the borrowers owed just over €74.4 billion. The banks incurred losses on the loans of €42.6 billion (57% of the loans' carrying value), precipitating their requirement for recapitalisation.
- 2.25** In 2020 and 2021, NAMA paid a total of €3 billion to the Exchequer, out of its accumulated retained earnings. NAMA's financial statements at end-2021 reported additional accumulated retained earnings of just over €1.8 billion.
- 2.26** At the end of 2021, NAMA was forecasting that it would deliver a total lifetime surplus of €4.5 billion to the Exchequer. NAMA has pointed out that the achievement of the projected lifetime surplus is dependent on realising remaining assets at end-2021 fair value. It also takes into account the projected costs associated with the continued operation of the Agency over the period 2022–2025.
- 2.27** This examination has included NAMA's accumulated earnings of €4.8 billion at end-2021 in its calculation of the estimated net outturn as at end-2021 (€3 billion already paid to the Exchequer by NAMA and a further €1.8 billion of retained earnings at end-2021), and not NAMA's projected lifetime surplus of €4.5 billion.
- 2.28** NAMA managed its loan assets by 'debtor connection', resulting in many portfolios involving borrowing from a number of credit institutions. It is not practical, therefore, to attribute NAMA's contribution to the Exchequer directly to individual banks.

Conclusions

- 2.29** By the end of 2021, the estimated cost to the State of measures taken to stabilise the banking system was a net €45.7 billion, after taking account of the value of the State's remaining shareholdings in AIB, Bank of Ireland and Permanent TSB (a combined €4.9 billion), and NAMA's retained earnings at the end of 2021 (€1.8 billion).
- 2.30** The most significant net costs to the State at the end of 2021 were in respect of
- IBRC, which had a net estimated cost of €37.3 billion.
 - AIB, which had an estimated net cost of €13.1 billion, after taking account of the value of the State's residual shareholding at end-2021 (€4.0 billion).
- 2.31** The eventual net outturn will be impacted by a number of factors
- the extent to which the amounts realised by the State for its remaining shareholdings differs from the end-2021 values
 - whether the final surplus from NAMA differs significantly from its end-2021 accumulated earnings of €4.8 billion — there may be limited scope for NAMA to achieve any significant increase from this figure, as its assets (excluding cash) at end-2021 amounted to only around €1 billion
 - the ongoing cost of servicing the associated long-term debt.

¹ The banks were Anglo, AIB, Bank of Ireland, INBS and EBS.

- 2.32** In the long-term, when all of the State's remaining shareholdings have been sold, NAMA has realised the balance of its surplus and the Central Bank has disposed of the government bonds it holds, the cost of servicing the debt will be determined by the prevailing borrowing costs for the State — around €450 million for each percentage point incurred. For borrowing rates between 1.5% and 2.5%, it is estimated the interest cost will be between €0.7 billion and €1.1 billion a year for the foreseeable future. This estimate does not take account of additional interest costs that will arise in the future from funding the annual debt servicing costs.
- 2.33** Overall, unless the State realises significantly more than end-2021 values for its residual shareholdings, the overall net cost of the banking stabilisation measures will be around €46 billion. This net cost will increase by upwards of €0.7 billion annually (from end-2021) due to the cost of servicing this level of debt, with the extent of the increase determined by the State's average cost of borrowing.

Annex 2A Outturn as at end-2021

Figure 2A.1 shows the components of the net outturn from banking stabilisation measures as at 31 December 2021 for each bank.

Figure 2A.1 Estimated net outturn, by bank, from banking stabilisation measures as at 31 December 2021

	AIB ^a	Bank of Ireland	Permanent TSB ^a	Trading banks total	IBRC ^a	Total
	€bn	€bn	€bn	€bn	€bn	€bn
Cost of capitalising banks, through investments	(22.2)	(5.9)	(4.0)	(32.1)	(34.7)	(66.8)
Disposals of investments	6.7	4.3	1.8	12.8	—	12.8
Estimated cost of servicing debt associated with the investments	(7.1)	(0.7)	(0.7)	(8.5)	(20.3)	(28.8)
Related income from the Central Bank ^b	0.1	0.1	—	0.2	16.7	16.9
Income from investments	3.6	1.7	0.2	5.5	—	5.5
Fees received under liability guarantee schemes	1.8	1.5	0.7	4.0	0.5	4.5
Claims made under liability guarantee scheme	—	—	—	—	(1.1)	(1.1)
Receipts from IBRC special liquidators ^c	—	—	—	—	1.6	1.6
NAMA surplus paid to Exchequer ^d	—	—	—	—	—	3.0
Estimated net cost as at 31 December 2021	(17.1)	1.0	(2.0)	(18.1)	(37.3)	(52.4)
Estimated residual value as at 31 December 2021 ^e	4.0	0.4	0.5	4.9	—	4.9
NAMA retained earnings as at 31 December 2021 ^d	—	—	—	—	—	1.8
Estimated net outturn as at 31 December 2021	(13.1)	1.4	(1.5)	(13.2)	(37.3)	(45.7)

Source: Analysis by the Office of the Comptroller and Auditor General

- Notes:
- a Investments in Allied Irish Banks plc (AIB) include those in the Educational Building Society (EBS) which was acquired by AIB in July 2011. Irish Life and Permanent changed its name to Permanent TSB in May 2012. IBRC was formerly Anglo Irish Bank (Anglo) and Irish Nationwide Building Society (INBS).
 - b Around €40 million of the related income from the Central Bank is attributable to Permanent TSB. Due to rounding, it does not appear in Figure 2A.1.
 - c €1.6 billion received from the IBRC special liquidators comprised €1.24 billion, including interest, in respect of guarantee schemes and €0.35 billion dividend in respect of preference shares.
 - d NAMA's accumulated earnings cannot be attributed to individual banks.
 - e See Annex 2B for further details.

Annex 2B Capitalisation of banks through investments

In total, the State made capital injections of €66.8 billion, net of fee income of just over €260 million, into four financial institutions and had, by the end of 2021, made disposals to the value of €12.7 billion (see Figure 2B.1).

Figure 2B.1 Capitalisation of banks — investments and disposals, December 2021

	AIB	Bank of Ireland	Permanent TSB	Trading banks total	IBRC	Total
	€bn	€bn	€bn	€bn	€bn	€bn
Investments						
Ordinary shares ^a	(10.8)	(3.1)	(2.3)	(16.2)	(4.1)	(20.3)
Preference shares ^b	(3.5)	(1.8)	—	(5.3)	—	(5.3)
Capital contribution	(6.0)	—	—	(6.0)	—	(6.0)
Contingent capital notes ^c	(1.6)	(1.0)	(0.4)	(3.0)	—	(3.0)
Value of promissory notes issued ^d	(0.3)	—	—	(0.3)	(30.6)	(30.9)
Irish Life	—	—	(1.3)	(1.3)	—	(1.3)
Investments net of fee income^e	(22.2)	(5.9)	(4.0)	(32.1)	(34.7)	(66.8)
Disposals						
Ordinary shares	3.4	1.4	0.1	4.9	—	4.9
Preference shares	1.7	1.9	—	3.6	—	3.6
Contingent capital notes	1.6	1.0	0.4	3.0	—	3.0
Irish Life	—	—	1.3	1.3	—	1.3
Disposals of investments	6.7	4.3	1.8	12.8	—	12.8
Net investment	(15.5)	(1.6)	(2.2)	(19.3)	(34.7)	(54.0)

Source: Ireland Strategic Investment Fund and Department of Finance

- Notes:
- a Ordinary shares include dividends on preference shares received in the form of ordinary shares (AIB €1.41 billion and Bank of Ireland €0.25 billion).
 - b In March 2009, the ISIF invested €3.5 billion in preference shares in Bank of Ireland. In quarter one 2010, a total of €1.66 billion of these shares were converted to ordinary shares (included in ordinary shares above).
 - c Contingent capital notes qualify as tier two capital. They convert to ordinary shares under certain circumstances, including if the core tier one capital ratio falls below 8.25%.
 - d The promissory notes held by IBRC were cancelled in February 2013 and exchanged between the NTMA and the Central Bank for floating rate treasury bonds totalling €25.034 billion.
 - e Fee income deducted from investments totalled around €260 million.

Income from investments and estimated residual value of State's investments in banks

Total income received in respect of the investments to the end of 2021 amounted to €5.44 billion and the estimated residual value of the State's investments in banks as at 31 December 2021 was €4.9 billion (see Figure 2B.2).

Figure 2B.2 Income from and estimated residual value of State's investments in banks, December 2021

Income from investments	AIB	Bank of Ireland	Permanent TSB	Total
	€bn	€bn	€bn	€bn
<i>ISIF</i>				
Fee income on preference shares	0.03	0.03	—	0.06
Ordinary shares in lieu of dividends on preference shares	1.41	0.25	—	1.66
Dividends on ordinary shares	0.81	0.04	—	0.85
Dividends on preference shares	0.45	0.74	—	1.19
Cancellation of preference share warrants	0.05	0.49	—	0.54
<i>Exchequer</i>				
Coupon interest on contingent capital notes	0.80	0.15	0.15	1.10
Accrued dividend on sale of Irish Life	—	—	0.04	0.04
Total	3.55	1.70	0.19	5.44
Estimated residual value of investments				Valuation
Bank				€bn
IBRC				—
AIB ^a				4.0
Bank of Ireland ^a				0.4
Permanent TSB ^a				0.5
Total				4.9

Source: Ireland Strategic Investment Fund and Department of Finance

Note: a The equity held in AIB, Bank of Ireland and Permanent TSB was valued at market prices.

Annex 2C Estimated cost of servicing the debt associated with the State's investments

The examination has estimated the cost of servicing the debt associated with the investments, including the imputed debt service costs of ISIF investments, as at end-2021 as around €28.8 billion (see Figure 2C.1).

Figure 2C.1 Estimated cost of servicing debt associated with the investments, 2009 to 2021 (including the imputed debt service costs of ISIF investments)

Classified by Year	2009 to 2018	2019	2020	2021	Total
	€bn	€bn	€bn	€bn	€bn
Source of funding					
Exchequer ^a	16.1	2.6	1.4	1.9	22.0
ISIF	5.9	0.3	0.3	0.3	6.8
Total	22.0	2.9	1.7	2.2	28.8

Classified by Bank	AIB	Bank of Ireland	Permanent TSB	Trading banks total	IBRC	Total
	€bn	€bn	€bn	€bn	€bn	€bn
Source of funding						
Exchequer ^{a,b}	1.0	0.0	0.7	1.7	20.3	22.0
ISIF	6.1	0.7	—	6.8	—	6.8
Total	7.1	0.7	0.7	8.5	20.3	28.8

Source: Analysis by the Office of the Comptroller and Auditor General

Notes: a Exchequer source of funding includes interest paid on promissory notes issued in 2010, interest paid on floating rate Government bonds that were issued to replace the promissory notes, and premiums paid by the NTMA to repurchase floating rate notes from the Central Bank.

b Around €40 million was incurred in respect of Exchequer funding for Bank of Ireland. Due to rounding, this appears as nil in this table.

The methodology used to calculate the estimated cost of servicing the debt associated with each source of funding is set out in Figure 2C.2.

Figure 2C.2 Methodologies used to estimate cost of funding investments in banks as at end-2021

Source of funding	Method
Exchequer funding	<ul style="list-style-type: none"> For the years 2009 to 2014, the cost of funding investments was estimated using the rate of the most recent borrowing by the NTMA in the quarter in which the transactions occurred, using rates provided by the NTMA. For the years 2015 to 2021, the rate used was the weighted average cost of servicing the national debt at the end of each year as provided by the NTMA. For disposals or income received in cash, the reductions in the cost of funding when the proceeds were received by the Exchequer were calculated using the same approach. The cost of funding Government bonds (including floating rate notes) was calculated using the rates applying to the bonds. Premiums paid by the NTMA to redeem Government bonds held by the Central Bank are treated as an expense in the year in which they are paid, and the associated income from the Central Bank is treated as income.
ISIF	<p>The ISIF funded its investments from its own resources. Therefore, there was no direct interest charge to the State for these investments. However, there was an opportunity or imputed cost to the State because, if the funds had not been invested in the banks, they would have been available for other purposes. Two approaches were considered by the examination as a basis for estimating the imputed cost of funding to the State.</p> <ul style="list-style-type: none"> The first was to estimate the opportunity cost — that is, what the ISIF would have earned if it had retained the funds to invest at its discretion. The ISIF pointed out that the assets liquidated to fund the investments in the banks were mainly liquid global assets (including debt and equity instruments), which left the Fund with an increased weighting in illiquid assets (including private equity and property). The ISIF stated that if the withdrawals had not occurred, it is reasonable to assume that the Fund would have remained invested in line with its long-term strategic asset allocation and that the Fund would have earned the same return as its long-term strategic benchmark over the period 2009 to 2014 — around 11% per annum (when the assets were held by the NPRF). For the seven years 2015 to 2021 the ISIF reported an annualised average return of 4.5% on its discretionary investments. The second was to estimate the cost of the funds at the Exchequer's cost of borrowing, on the basis that if the funds had been available to the Exchequer, State borrowing could have been reduced by the cost of the investments made by the ISIF (€20.7 billion). The imputed interest cost has been calculated, by the examination, as the interest incurred by the State on the borrowings that could have been avoided if the ISIF funds had been available to the State for purposes other than investing in banks. <p>The second approach (which gave a significantly lower cost of funding than the first approach) was used by the examination (including from 2015 on).</p>

Source: Office of the Comptroller and Auditor General

Annex 2D Government bonds held by the Central Bank

In 2013, the Central Bank acquired Government bonds with a nominal value of €28.5 billion issued by the NTMA following the liquidation of IBRC. Between 2013 and 2021, the Central Bank realised gains of €11.1 billion from the disposal of some of these bonds.

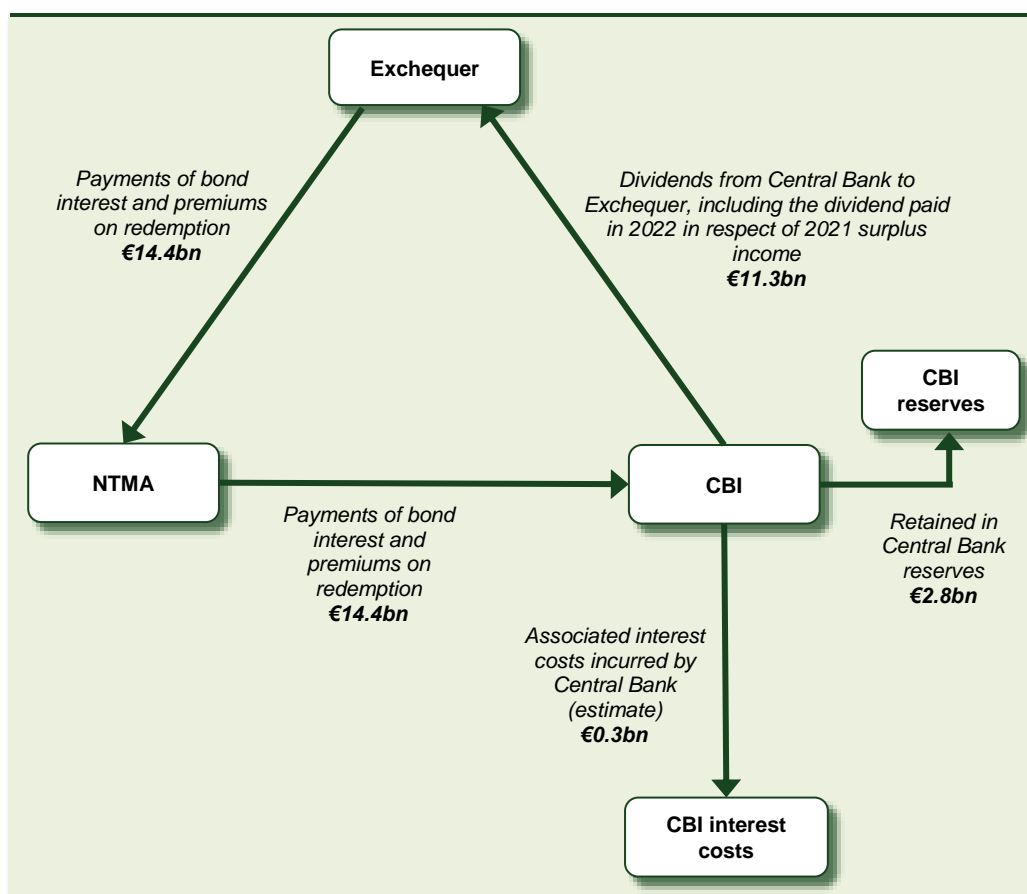
- €10.2 billion of the gains arose from a disposal back to the NTMA of floating rate bonds with a nominal value of €19.5 billion.
- €0.9 billion of the gains arose from disposals to the open market of a 5.4% Government bond.

NTMA payments to the Central Bank

The interest on the bonds held by the Central Bank, and the €10.2 billion premiums paid when the NTMA bought back some of the bonds, is paid by the NTMA from Exchequer funds.

A significant proportion (over 78%) of the interest and premiums paid by the NTMA to the Central Bank has been returned to the Exchequer as part of the dividend paid by the Central Bank from its surplus income, thereby reducing the net cost of servicing this part of the debt. This circular flow of funds is described in Figure 2D.1.

Figure 2D.1 IBRC-related bonds held by Central Bank (CBI) — flow of funds from/to Exchequer, 2013 to 2021^a

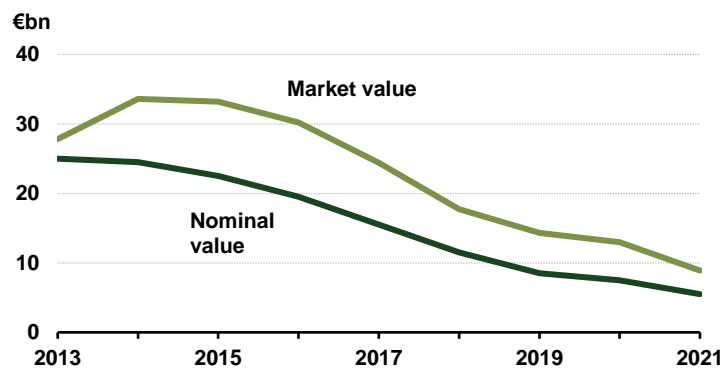


Source: Analysis by the Office of the Comptroller and Auditor General

Note: a In addition, the Central Bank realised a further €0.9 billion from the disposal of IBRC-related bonds on the open market. These funds did not come from the Exchequer.

At the end of 2021, the Central Bank held floating rate bonds with a nominal value of €5.5 billion and a market value of €8.9 billion (see Figure 2D.2). The Central Bank has stated that it intends to sell its remaining floating rate bonds as soon as possible, provided conditions of financial stability permit, and that it will sell a minimum of the bonds in accordance with the following schedule: 2022–2023 (€1.0bn nominal value per annum) and from 2024 on (€2.0bn per annum until all bonds are sold).

Figure 2D.2 Floating rate notes held by Central Bank of Ireland, nominal and market values, 2013 to 2021



Source: Central Bank of Ireland Annual Reports 2013 to 2021. Analysis by the Office of the Comptroller and Auditor General.

The net impact of the disposal by the Central Bank of government bonds on the Exchequer is the same whether the bonds are redeemed by the NTMA using funds borrowed at market rates, or the bonds are sold on the open market. The consequent effective cost of servicing the debt that is related to the disposals is the same.

- If the bonds are redeemed by the NTMA using borrowed funds, any premium paid by the NTMA on redemption returns to the State, either as part of the Central Bank dividend or retained by the Central Bank in its reserves.¹ The NTMA will then pay interest, at the lower refinanced rate, to an external party on the funds it has borrowed to redeem the bonds.
- If the bonds are sold to a third party, the Central Bank will realise a gain. In these circumstances, the NTMA continues to pay interest on the bonds, to the purchaser, at the same rate that would have been paid to the Central Bank prior to disposal. This higher interest rate (compared with the lower interest cost if the NTMA redeems the bonds) is offset for the State by the Central Bank's gain on disposal.

¹ It is assumed that the yield on bonds at disposal is lower than the yield when the bonds were issued, giving rise to a gain on disposal for the Central Bank.

Voted Expenditure

3 Vote accounting and budget management

- 3.1** Government departments and offices receive annual funding from the Exchequer to carry out their statutory functions. Expenditure is provided for under 'votes' approved by Dáil Éireann, with one or more covering the functions of each department or office. Final legal effect is given to the votes in the annual Appropriation Act.
- 3.2** The head of each department or office is appointed as the 'Accounting Officer' for the relevant vote(s), with a statutory obligation to prepare an annual appropriation account for each relevant voted service, showing how the outturn for the year compared with the amount provided by Dáil Éireann. These accounts are subject to audit by the Comptroller and Auditor General.
- 3.3** The Appropriation Act 2021 provided for spending on voted services (appropriations) totalling €76 billion. This was to be funded by the issuing to the votes of €73.1 billion from the Central Fund of the Exchequer (referred to as supply grants), and the use of certain expected vote receipts (referred to as appropriations-in-aid) of €2.9 billion. In addition, unused capital funding totalling €710 million was carried over from 2020 for spending in 2021, bringing the total available vote funding to €76.7 billion.¹

Results of 2021 audits of appropriation accounts

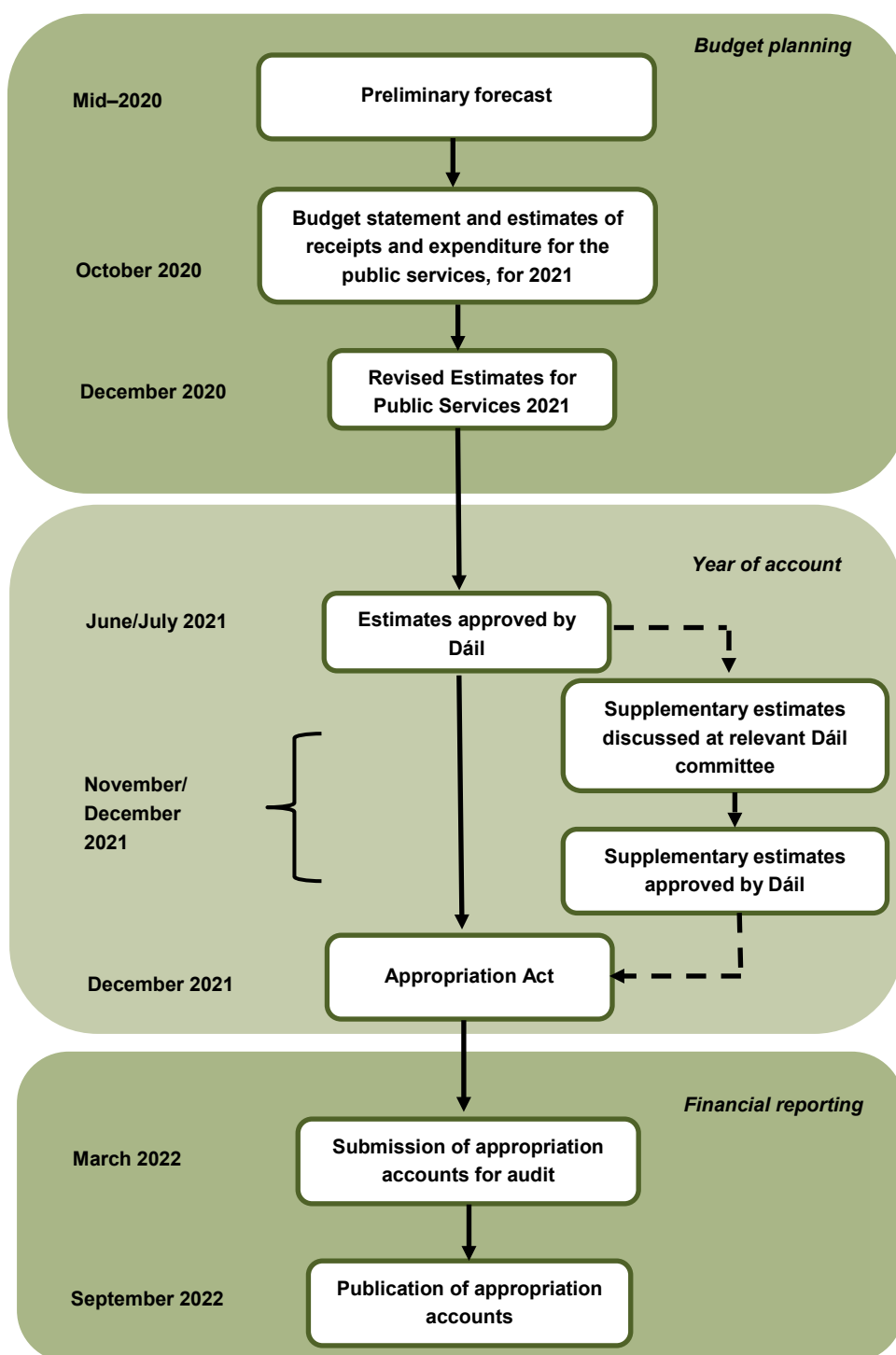
- 3.4** Audits of the 2021 appropriation accounts for all votes have been completed. Each account, together with the related audit report, is being presented to Dáil Éireann with this report.

Annual voted expenditure cycle

- 3.5** The estimates of expenditure presented to the Dáil for approval should reasonably represent the amount that it is expected will be spent on each departmental service. They also effectively serve as cash limits.
- 3.6** If, as the year progresses, large funding adjustments are required after Dáil approval of the votes, formal approval for these adjustments must be sought from the Dáil. This is done through the supplementary estimate process (see Figure 3.1). This process may also be used to move funds between programmes and subheads, if required. Details of supplementary estimates requested are discussed at the relevant Dáil committees (typically in the final quarter of the year) before approval is sought from the Dáil itself.

¹ In presenting estimates and reports on voted expenditure, the Department of Public Expenditure and Reform generally includes the Social Insurance Fund and the National Training Fund in total gross voted expenditure. These are not voted appropriations, but the Department considers that their inclusion in those circumstances provides a more complete picture of overall Government expenditure.

Figure 3.1 Sequence and timing of the 2021 estimates process^a



Source: Office of the Comptroller and Auditor General

Note: a Further details on the estimates and appropriation account process are set out in the Department of Public Expenditure and Reform publication *Public Financial Procedures*.

Evolution of vote estimates in 2021

3.7 The *Revised Estimates for Public Services 2021* published in December 2020, provided for total net voted funding of almost €67.7 billion across 45 votes. This was subsequently revised on a number of occasions.

3.8 In 2021, further revised estimates¹ were presented for the following voted services

- Enterprise, Trade and Employment
- Tourism, Culture, Arts, Gaeltacht, Sport and Media
- Social Protection and
- Rural and Community Development.

This resulted in an increase of €4 billion in the net amount approved for spending.

3.9 Approved supplementary estimates provided a further €1.3 billion, resulting in an aggregate provision of €73 billion (net) for voted services in 2021.

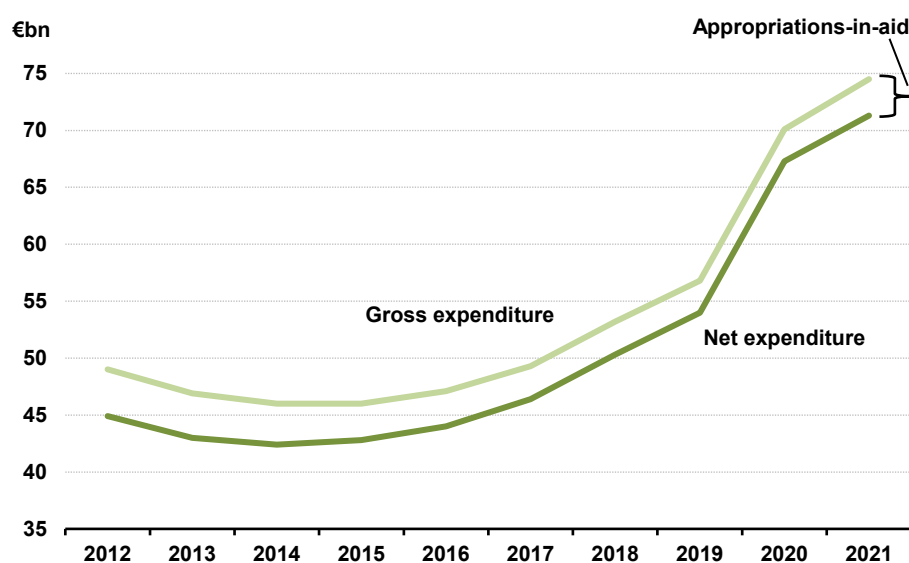
Appropriations

3.10 A summary of the amounts appropriated in 2021 for voted public services is included in Annex 3A (Figure 3A.1). The outturn for the year is also shown, together with the surplus of appropriations over expenditure.

Vote outturn

3.11 The total amount spent by departments and offices in 2021 was €74.5 billion (see Figure 3.2). After deduction of realised appropriations-in-aid totalling €3.2 billion, the net expenditure in the year was €71.3 billion.

Figure 3.2 Voted expenditure outturn, 2012 to 2021



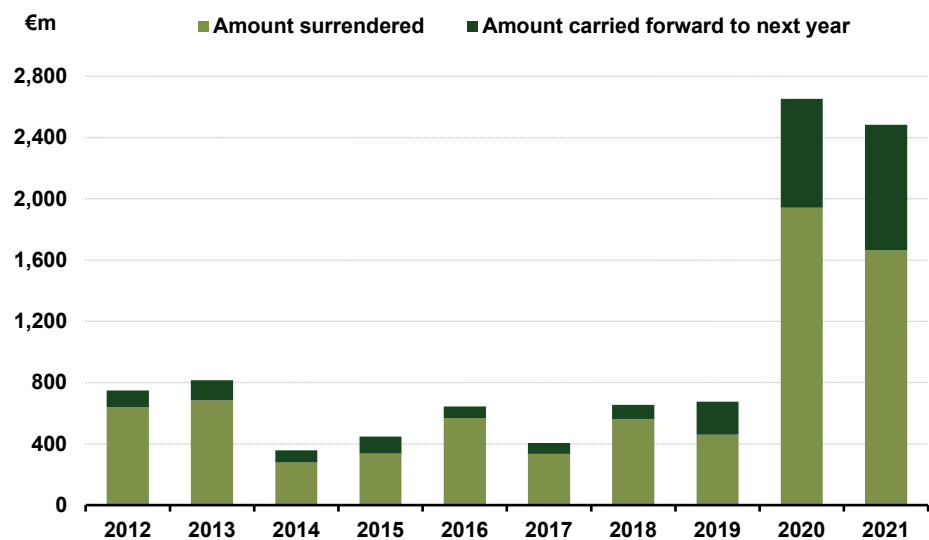
¹ For most votes, the standard estimates cycle is followed. However, votes can have a further revised estimate published where changes to its budgets are agreed in the period between the revised estimates and Dáil approval.

Source: Reports on the Accounts of the Public Services, 2012 to 2021, Annex 3A Figure 3A.1

Surpluses

- 3.12** Departments and offices are not permitted to spend more than the amount appropriated for each vote. When the net expenditure in the year is less than the amount provided, the surplus is liable to be surrendered to the Exchequer.
- 3.13** Surpluses were recorded by all votes in 2021. The 2021 surpluses totalled €2,484 million (see Figure 3.3). Of that amount, a total of €819 million was approved for carry over to 2022. The balance of €1,665 million was due for surrender.

Figure 3.3 Surplus appropriations, 2012 to 2021

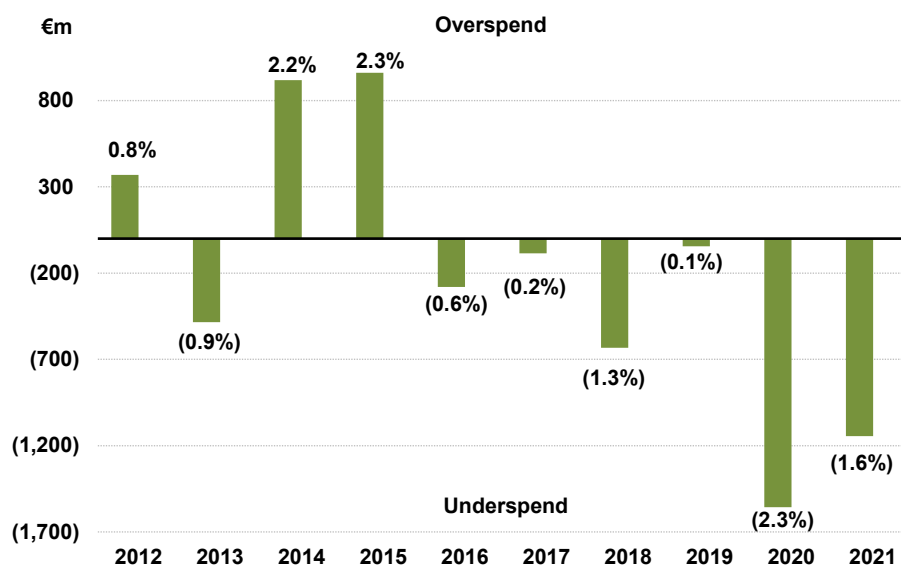


Source: Reports on the Accounts of the Public Services, 2012 to 2021, Annex 3A Figure 3A.2

1 There is a statutory provision to allow unspent capital allocations to be carried over to the following year for use for the same purpose, with Department of Public Expenditure and Reform agreement. In this report, such carryover amounts are treated as part of the (following year's) annual appropriations.

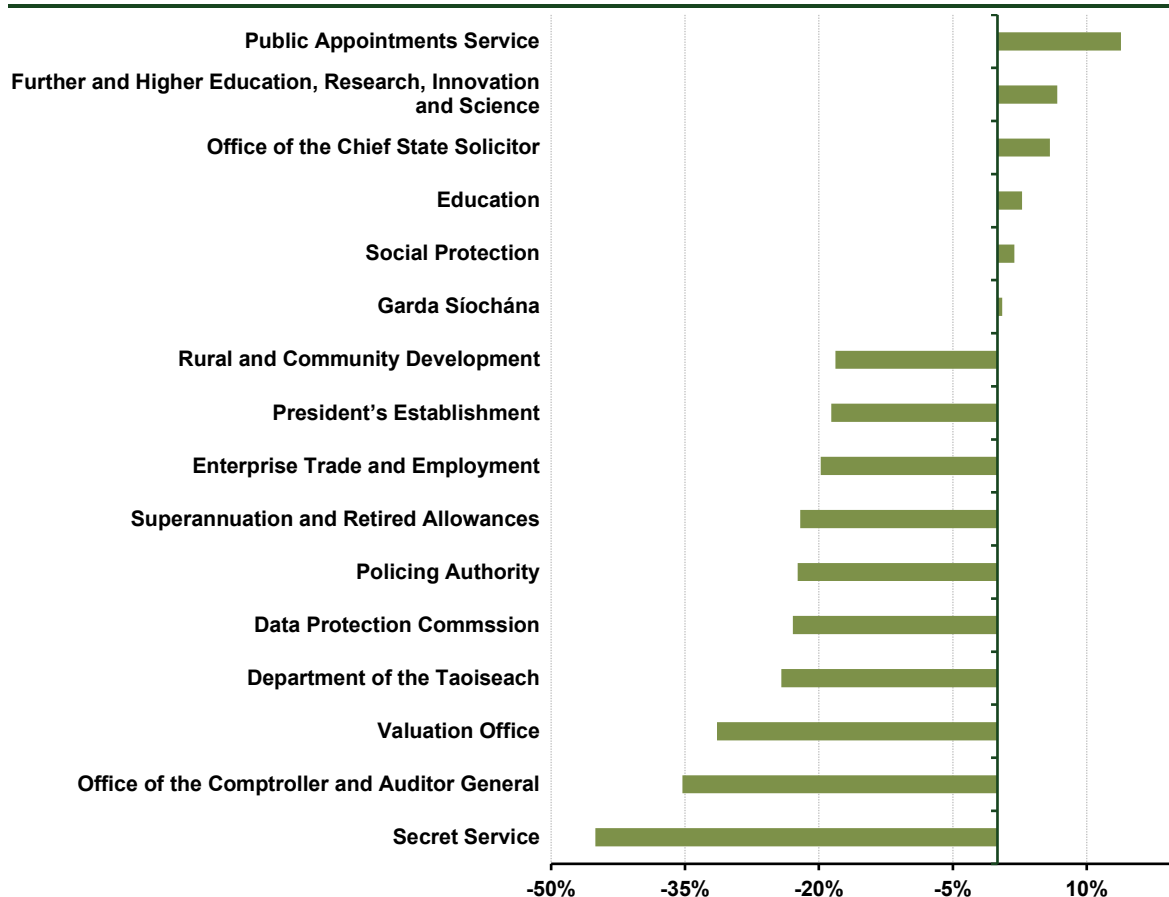
Budget variance

- 3.14** The estimated amounts approved by Dáil Éireann for 2021 represent the forecast of the amount required to meet the cost of the services to be provided from each vote. The budget variance is the difference between these estimates of net expenditure and the actual outturn in a year.¹ Each year since 2016, the total net expenditure for all votes has been less than the total provided (see Figure 3.4).

Figure 3.4 Net expenditure variance from budget, all votes, 2012 to 2021

Source: Analysis by the Office of the Comptroller and Auditor General

- 3.15** Only six of the 45 votes spent more than was originally budgeted for in 2021. All other votes spent less than originally budgeted for, including a number where the outturn was significantly less than provided for (see Figure 3.5).

Figure 3.5 Net expenditure variance, as a proportion of the original budget, selected votes 2021

Source: Office of the Comptroller and Auditor General

Exchequer receipts

- 3.16** All receipts of central government departments and offices are liable for lodgement to the Exchequer, unless Dáil Éireann decides that they may be applied as appropriations-in-aid.
- 3.17** Examples of receipts that are not treated as appropriations-in-aid include Ireland's receipts from the EU Emissions Trading System, Property Registration Authority fees and court fine receipts. These are transferred to the Central Fund, and are referred to as Exchequer 'extra' receipts. Windfall receipts are also usually brought to account in this way, including proceeds of important sales of property, receipts on foot of surplus income or profits of State companies, interest, dividends or capital repayments and compensation.
- 3.18** Exchequer extra receipts realised in 2021 are shown in the notes to the relevant appropriation accounts. Exchequer extra receipts recorded by departments and offices in 2021 totalled €370 million (2020: €245 million). The aggregate amount of those receipts reported in each account is set out in Annex 3A (Figure 3A.3).

Vote 11 Office of the Minister for Public Expenditure and Reform: exceptional charge re payment of interest and arbitration costs

- 3.19** The 2021 appropriation account for Vote 11 Office of the Minister for Public Expenditure and Reform discloses (in note 6.3) a payment of €460,000 to a supplier as a result of arbitration proceedings.
- 3.20** The Communications Regulation (Postal Services) Act 2011 provides for the Minister for Public Expenditure and Reform to agree the terms and conditions for the provision of free postage allowances to election candidates, and for the related costs to be a charge on the Central Fund of the Exchequer. Payments are issued from the Central Fund as required, at the request of the Minister for Public Expenditure and Reform.
- 3.21** The amounts issued from the Central Fund in respect of the cost of postage for the general elections in 2011, 2016 and 2020 were:
- 2011 — €15.8 million
 - 2016 — €15.6 million
 - 2020 — €20.2 million.
- 3.22** There was an agreement in place with An Post for the 2011 general election in relation to the discounted cost per item for the free postage service to election candidates. No agreement was put in place between the Department of Public Expenditure and Reform and An Post in respect of the 2016 general election.
- 3.23** A dispute arose over the amount of the postal charges due to An Post for the 2016 general election. The dispute related to the higher cost per item (54 cent) billed by An Post for the 2016 election, as compared to the cost of 48 cent per item charged for the 2011 general election. The total amount invoiced by An Post in 2016 was €15.6 million. The Department directed a payment of €14.1 million to An Post, to issue from the Central Fund in May 2016. The Department disputed the liability of the Exchequer to pay the balance of €1.5 million.

- 3.24** Since 2016, the Department and An Post have had protracted engagement in relation to the disputed amount, and agreed to enter binding arbitration on the matter. An agreement was reached that resulted in the payment, in December 2021, of the outstanding postal charges (€1.5 million) and an additional payment of €460,000 to An Post.
- 3.25** The payment of the disputed postal charges balance was charged to the Central Fund.
- 3.26** The additional charge of €460,000 comprised €370,000 in lieu of late payment interest on the disputed amount (the agreed amount was equivalent to 50% of the interest otherwise due on the late payment); and a contribution of €90,000 towards the arbitration costs. These expenses were not chargeable to the Central Fund, and were paid instead from Vote 11 Office of the Minister for Public Expenditure and Reform, under the classification of incidental expenses.
- 3.27** In May 2022 the Department entered into an agreement with An Post to fix the cost of election postage for set periods up to February 2026.

Annex 3A Vote financial outturn

Dáil Éireann provides money for the ordinary services of government departments and offices by approving estimates of the amounts required for those services in the course of each year, and giving statutory effect to those estimates in the annual Appropriation Act. The expenditure is provided for under a series of 'votes'. By law, an appropriation account must be produced for each vote. The account must provide details of the outturn for the year against the amount provided by Dáil Éireann.

Figure 3A.1 provides a summary of appropriations for public services in 2021, by vote.

Figure 3A.2 shows how surplus appropriations in 2021 were applied — either through deferral of expenditure to 2022, or by surrender to the Exchequer.

Figure 3A.3 shows the Exchequer extra receipts recorded against each vote in 2021.

Explanations of some of the terms used in the tables are given below.

Supply grant	The money granted (or voted) by Dáil Éireann for each of the public services.
Deferred from 2020	Amount of capital funding not spent in 2020 and carried over for expenditure on capital services in 2021. The carry-over of these sums was approved by Dáil Éireann.
Appropriations-in-aid	Departmental receipts which, with the agreement of Dáil Éireann, may be retained to defray the expenses of the vote to which they relate.
Total appropriations	Sum of the supply grant, deferred 2020 capital moneys (if any) and appropriations-in-aid.
Surplus for the year	The excess of total appropriations by Dáil Éireann over the gross expenditure together with any surplus on appropriations-in-aid. The surplus for the year is liable for surrender back to the Exchequer.
Deferred surrender	Amount of capital funding not spent in 2021 which was carried over for expenditure in 2022. These carry overs were approved by Dáil Éireann.
Surplus to be surrendered	Amount of money appropriated in 2021 but not spent in the year or deferred to 2022, and so required to be surrendered to the Exchequer.
Exchequer extra receipts	Departmental receipts that are not appropriated-in-aid of the vote, but are transferred to the Exchequer.

Figure 3A.1 Summary of appropriations for public services in 2021, by vote

Vote	Service	Amount appropriated				Outturn			Surplus/deficit		
		Supply grants	Deferred from 2020	Appropriations -in-aid	Total	Gross expenditure	Appropriations -in-aid	Net expenditure	Gross surplus (deficit)	Excess/ (deficit) in receipts	Net surplus for the year ^a
		€000	€000	€000	€000	€000	€000	€000	€000	€000	€000
1	President's Establishment	4,511	-	82	4,593	3,783	112	3,671	810	30	840
2	Department of the Taoiseach	50,177	-	917	51,094	38,719	699	38,020	12,375	(218)	12,157
3	Office of the Attorney General	16,754	-	705	17,459	16,707	556	16,151	752	(149)	603
4	Central Statistics Office	63,155	-	1,520	64,675	61,880	1,663	60,217	2,795	143	2,938
5	Office of the Director of Public Prosecutions	44,704	-	845	45,549	45,244	772	44,472	305	(73)	232
6	Office of the Chief State Solicitor	40,685	-	810	41,495	41,432	1,530	39,902	63	720	783
7	Office of the Minister for Finance	39,511	-	1,150	40,661	36,378	1,151	35,227	4,283	1	4,284
8	Office of the Comptroller and Auditor General	9,623	-	5,883	15,506	14,548	8,322	6,226	958	2,439	3,397
9	Office of the Revenue Commissioners	441,727	-	59,487	501,214	488,701	56,739	431,962	12,513	(2,748)	9,765
10	Tax Appeals Commission	3,218	-	75	3,293	2,825	63	2,762	468	(12)	456
11	Office of the Minister for Public Expenditure and Reform	42,674	-	2,275	44,949	42,478	2,952	39,526	2,471	677	3,148
12	Superannuation and Retired Allowances	339,869	-	360,400	700,269	698,543	433,798	264,745	1,726	73,398	75,124
13	Office of Public Works	501,775	20,000	13,000	534,775	492,530	11,113	481,417	42,245	(1,887)	40,358
14	State Laboratory	10,513	-	1,046	11,559	11,190	1,125	10,065	369	79	448

Vote	Service	Amount appropriated				Outturn			Surplus/deficit		
		Supply grants	Deferred from 2020	Appropriations -in-aid	Total	Gross expenditure	Appropriations -in-aid	Net expenditure	Gross surplus (deficit)	Excess/ (deficit) in receipts	Net surplus for the year ^a
		€000	€000	€000	€000	€000	€000	€000	€000	€000	€000
15	Secret Service	2,000	-	-	2,000	1,099	-	1,099	901	-	901
16	Valuation Office	16,296	-	1,283	17,579	12,130	953	11,177	5,449	(330)	5,119
17	Public Appointments Service	20,301	200	154	20,655	19,525	361	19,164	1,130	207	1,337
18	National Shared Services Office	55,587	1,435	6,238	63,260	59,094	6,438	52,656	4,166	200	4,366
19	Office of the Ombudsman	12,139	-	505	12,644	10,443	366	10,077	2,201	(139)	2,062
20	Garda Síochána	1,879,075	12,750	119,011	2,010,836	2,000,881	122,332	1,878,549	9,955	3,321	13,276
21	Prisons	385,384	5,468	9,152	400,004	392,389	10,568	381,821	7,615	1,416	9,031
22	Courts Service	126,882	4,895	27,633	159,410	154,092	27,011	127,081	5,318	(622)	4,696
23	Property Registration Authority	32,481	-	580	33,061	31,108	660	30,448	1,953	80	2,033
24	Justice	399,510	3,900	89,401	492,811	467,028	90,513	376,515	25,783	1,112	26,895
25	Irish Human Rights and Equality Commission	6,933	-	81	7,014	6,817	76	6,741	197	(5)	192
26	Education	8,910,710	-	370,191	9,280,901	9,263,008	380,141	8,882,867	17,893	9,950	27,843
27	International Co-operation	569,984	-	1,030	571,014	568,273	1,041	567,232	2,741	11	2,752
28	Foreign Affairs	236,760	-	44,701	281,461	266,350	51,169	215,181	15,111	6,468	21,579
29	Environment, Climate and Communications	719,977	37,747	11,078	768,802	664,001	12,286	651,715	104,801	1,208	106,009
30	Agriculture, Food and the Marine	1,462,330	31,600	363,789	1,857,719	1,692,718	386,665	1,306,053	165,001	22,876	187,877

Vote	Service	Amount appropriated				Outturn			Surplus/deficit		
		Supply grants	Deferred from 2020	Appropriations -in-aid	Total	Gross expenditure	Appropriations -in-aid	Net expenditure	Gross surplus (deficit)	Excess/ (deficit) in receipts	Net surplus for the year ^a
		€000	€000	€000	€000	€000	€000	€000	€000	€000	€000
31	Transport	3,627,199	151,480	20,990	3,799,669	3,460,152	35,956	3,424,196	339,517	14,966	354,482
32	Enterprise, Trade and Employment	1,088,160	106,200	53,982	1,248,342	1,027,077	69,051	958,026	221,265	15,069	236,334
33	Tourism, Culture, Arts, Gaeltacht, Sport and Media	876,097	16,892	250,606	1,143,595	1,086,892	234,822	852,070	56,703	(15,784)	40,919
34	Housing, Local Government and Heritage	5,255,420	214,000	61,932	5,531,352	5,143,024	66,076	5,076,948	388,328	4,144	392,472
35	Army Pensions	257,650	-	5,000	262,650	259,903	4,983	254,920	2,747	(17)	2,730
36	Defence	785,461	-	24,320	809,781	786,405	30,457	755,948	23,376	6,137	29,513
37	Social Protection	17,863,508	910	393,810	18,258,228	18,152,515	432,977	17,719,538	105,713	39,167	144,880
38	Health	21,696,964	68,174	432,770	22,197,908	21,748,684	481,780	21,266,904	449,224	49,010	498,234
39	Office of Government Procurement	18,500	59	400	18,959	17,246	483	16,763	1,713	83	1,796
40	Children, Equality, Disability, Integration and Youth	1,879,461	4,100	39,121	1,922,682	1,824,224	39,175	1,785,049	98,458	54	98,512
41	Policing Authority	3,750	-	47	3,797	2,975	65	2,910	822	18	840
42	Rural and Community Development	308,000	13,180	43,027	364,207	344,450	81,580	262,870	19,757	38,553	58,310
43	Office of the Government Chief Information Officer	22,799	-	142	22,941	22,664	181	22,483	277	39	316
44	Data Protection Commission	18,898	-	230	19,128	14,757	189	14,568	4,371	(41)	4,330
45	Further and Higher Education, Research, Innovation and Science	2,911,500	16,700	126,368	3,054,568	3,007,836	128,974	2,878,862	46,732	2,606	49,338
Total		73,058,612	709,690	2,945,767	76,714,069	74,502,718	3,217,924	71,284,794	2,211,351	272,157	2,483,507

Source: 2021 Appropriation Accounts. Any apparent differences in totals are due to rounding.

Note: a The net surplus is comprised of the excess of total appropriations by Dáil Éireann over the gross expenditure together with the excess (deficit) on appropriations-in-aid.

Figure 3A.2 Application of surplus 2021 appropriations, by vote

Vote	Service	Surplus for the year	Deferred surrender (to 2022)	Surplus for surrender
		€000	€000	€000
1	President's Establishment	840	-	840
2	Department of the Taoiseach	12,157	-	12,157
3	Office of the Attorney General	603	-	603
4	Central Statistics Office	2,938	-	2,938
5	Office of the Director of Public Prosecutions	232	-	232
6	Office of the Chief State Solicitor	783	-	783
7	Office of the Minister for Finance	4,284	-	4,284
8	Office of the Comptroller and Auditor General	3,397	-	3,397
9	Office of the Revenue Commissioners	9,765	493	9,272
10	Tax Appeals Commission	456	-	456
11	Office of the Minister for Public Expenditure and Reform	3,148	-	3,148
12	Superannuation and Retired Allowances	75,124	-	75,124
13	Office of Public Works	40,358	20,700	19,658
14	State Laboratory	448	-	448
15	Secret Service	901	-	901
16	Valuation Office	5,119	325	4,794
17	Public Appointments Service	1,337	-	1,337
18	National Shared Services Office	4,366	-	4,366
19	Office of the Ombudsman	2,062	-	2,062
20	Garda Síochána	13,276	-	13,276
21	Prisons	9,031	3,601	5,430
22	Courts Service	4,696	3,648	1,048
23	Property Registration Authority	2,033	100	1,933
24	Justice	26,895	5,122	21,773
25	Irish Human Rights and Equality Commission	192	-	192
26	Education	27,843	-	27,843
27	International Co-operation	2,752	-	2,752
28	Foreign Affairs	21,579	-	21,579
29	Environment, Climate and Communications	106,009	57,917	48,092
30	Agriculture, Food and the Marine	187,877	29,900	157,977
31	Transport	354,482	161,100	193,382
32	Enterprise Trade and Employment	236,334	79,660	156,674
33	Tourism, Culture, Arts, Gaeltacht, Sport and Media	40,919	18,400	22,519
34	Housing, Local Government and Heritage	392,472	275,800	116,672
35	Army Pensions	2,730	-	2,730
36	Defence	29,513	-	29,513
37	Social Protection	144,880	1,200	143,680
38	Health	498,234	104,000	394,234
39	Office of Government Procurement	1,796	35	1,761
40	Children Equality, Disability, Integration and Youth	98,512	3,200	95,312
41	Policing Authority	840	-	840
42	Rural and Community Development	58,310	16,860	41,450
43	Office of the Government Chief Information Officer	316	-	316
44	Data Protection Commission	4,330	-	4,330
45	Further and Higher Education, Research, Innovation and Science	49,338	37,200	12,138
Total		2,483,507	819,261	1,664,246

Source: 2021 Appropriation Accounts. Analysis by the Office of the Comptroller and Auditor General.

Figure 3A.3 Exchequer extra receipts 2021, by vote

Vote	Service	Extra receipts realised
		€000
1	President's Establishment	0
2	Department of the Taoiseach	99
3	Office of the Attorney General	0
4	Central Statistics Office	0
5	Office of the Director of Public Prosecutions	0
6	Office of the Chief State Solicitor	388
7	Office of the Minister for Finance	1
8	Office of the Comptroller and Auditor General	0
9	Office of the Revenue Commissioners	1,324
10	Tax Appeals Commission	0
11	Office of the Minister for Public Expenditure and Reform	44
12	Superannuation and Retired Allowances	0
13	Office of Public Works	0
14	State Laboratory	0
15	Secret Service	0
16	Valuation Office	0
17	Public Appointments Service	0
18	National Shared Services Office	0
19	Office of the Ombudsman	4
20	An Garda Síochána	8,550
21	Prisons	0
22	Courts Service	7,252
23	Property Registration Authority	70,987
24	Justice	37
25	Irish Human Rights and Equality Commission	0
26	Education	0
27	International Co-operation	0
28	Foreign Affairs	0
29	Environment, Climate and Communications	148,086
30	Agriculture, Food and the Marine	3,484
31	Transport	3,081
32	Enterprise, Trade and Employment	112,075
33	Tourism, Culture, Arts, Gaeltacht, Sports and Media	22
34	Housing, Local Government and Heritage	767
35	Army Pensions	0
36	Defence	0
37	Social Protection	3
38	Health	53
39	Office of Government Procurement	75
40	Children Equality, Disability, Integration and Youth Affairs	10,875
41	Policing Authority	0
42	Rural and Community Development	16
43	Office of the Government Chief Information Officer	0
44	Data Protection Commission	800
45	Further and Higher Education, Research, Innovation and Science	2,002
Total		370,025

Source: 2021 Appropriation Accounts. Analysis by the Office of the Comptroller and Auditor General.

Note: a The receipts stated are net figures.

4 Re-allocation of voted funding

- 4.1** The Oireachtas allocates funding in the annual Appropriation Act by specifying the general nature of the services to be funded under each vote, in what is referred to as the 'ambit' of the vote (set out in the schedule to the Act). The Act does not give legal effect to the various programmes and subheads set out in the second part of each vote estimate, on the basis that to do so would almost certainly result in considerable overestimation and disrupt the smooth working of the financial system. For practical reasons, the Minister for Public Expenditure and Reform has discretion to vary the allocations between subheads within an individual vote.
- 4.2** The Department of Public Expenditure and Reform has set out extensive guidance on the principles and procedures for managing and accounting for voted expenditure in a publication called *Public Financial Procedures*. This states that the use of any savings or underspending emerging on one subhead to increase expenditure on another subhead
- "... should not be taken as a matter of course. The Exchequer has first claim on any savings on a vote and in the normal case Departments are expected to surrender such savings rather than retain them for allocation to other items of expenditure, except where prior approval of the Department [of Public Expenditure and Reform] has been obtained".*
- 4.3** There are two formal mechanisms in place to allow for voted funding to be re-allocated between subheads (and programmes) during the fiscal year. These are the passing of a (technical) supplementary estimate by Dáil Éireann; and specific approval by the Department of Public Expenditure and Reform for the transfer, under a process called 'virement' (see Figure 4.1).

Figure 4.1 Mechanisms for re-allocation of vote funding

Dáil Éireann

Application can be made to Dáil Éireann for a 'technical' supplementary estimate, which re-allocates funding without necessarily increasing the overall funding provided for the vote.

Department of Public Expenditure and Reform

Application can be made to the Department of Public Expenditure and Reform for permission to re-allocate the funding between subheads, referred to as 'virement'. The Department may decide to refuse such virement for a number of reasons, including if the additional expenditure would be large in relation to the original provision in the subhead. In the event of such a refusal, a supplementary estimate would require to be taken.

Source: Public Financial Procedures

- 4.4 The Department's guidelines about how virement works are clear.

"The prior approval of the Department [of Public Expenditure and Reform] should always be obtained when virement is proposed. If there is doubt as to the actual amount involved, the proper procedure is for the Department concerned to apply to the Department [of Public Expenditure and Reform] for provisional sanction when it becomes clear there will be an excess on a subhead which can be met from savings on another subhead. The definitive sanction should be sought when the appropriation accounts have been prepared and the actual amounts involved are known."

- 4.5 As vote holders operate mainly on a cash basis, they should normally be able to identify savings emerging on a subhead — and thus available to meet excess spending on another subhead — before year end. However, *Public Financial Procedures* anticipates that the final amounts required may not be known at that stage, and so provide for provisional sanction to be sought before the year end.
- 4.6 The *Public Financial Procedures* acknowledges that the exercise of discretion by the Department of Public Expenditure and Reform in sanctioning virement may be inquired into by the Committee of Public Accounts, which may decide to report to Dáil Éireann any particular cases where it considers the approval of the Dáil for the re-allocation of funding should have been sought.

Purpose of this report

- 4.7 In the course of audit of the appropriation accounts for 2021, a number of cases were identified where there was substantial re-allocation of voted funding from one or more programme subheads to other subheads, but where the procedures prescribed in *Public Financial Procedures* did not appear to have been complied with. The circumstances of a number of these cases are outlined below, to illustrate the concerns that arise.

Vote 9 Office of the Revenue Commissioners

- 4.8 The estimate for Vote 9 Office of the Revenue Commissioners provided for spending of up to €501 million in 2021. This included approved appropriations-in-aid totalling €59 million.¹ In August 2021, the Department of Public Expenditure and Reform wrote to Revenue in relation to delegated sanction for 2021 current expenditure. The letter states that *'savings arising from any subhead on your Office's Vote should be surrendered to the Exchequer in the first instance. Requests for virement will only be considered in exceptional circumstances and does not apply between pay and non-pay subheads'*.

¹ Certain receipts arising in the normal course of a department's or office's ordinary business may be retained to meet expenditure under the vote, instead of being paid directly into the Exchequer. These receipts are known as 'appropriations-in-aid'.

- 4.9** Excess expenditure was incurred on a number of Vote 9 subheads, without recourse to a supplementary estimate, on the basis that savings totalling €13.7 million were available to meet the excesses, as follows.

Source of savings	Applied to cover excess spending
Subhead A1 Salaries wages and allowances €9.1 million	<ul style="list-style-type: none"> ▪ €6.4 million excess on subhead A3 — Training and development and other day-to-day expenses ▪ €2.2 million excess on subhead A5 — Office equipment and external IT services ▪ €0.5 million excess on subhead A4 — Postal and telecommunications services.
Non-pay subheads — various €4.6 million	<ul style="list-style-type: none"> ▪ €3.7 million excess on subhead A5 — Office equipment and external IT services ▪ €0.5 million excess on subhead A10 — Compensation and losses ▪ €0.3 million excess on subhead A8 — Motor vehicles and equipment maintenance ▪ €0.08 million excess on subhead A7 — Consultancy services and value for money and policy reviews.

- 4.10** Revenue did not apply to the Department of Public Expenditure and Reform for provisional sanction for the re-allocation until 8 February 2022. After receiving provisional sanction on 14 February, Revenue applied for definitive virement sanction on 23 March. The Department of Public Expenditure and Reform provided sanction on an exceptional basis on 24 March. The appropriation account for Vote 9 was signed by the Accounting Officer on 31 March 2022.
- 4.11** During the audit of the appropriation account, it was found that the analysis supporting the virement application was incomplete. Expenditure of €2.1 million under subhead A.5 Office equipment and external IT services was found to have been incorrectly classified. When the misclassification was corrected, additional savings had to be identified from outside the subhead.
- 4.12** As a result, the Office of the Revenue Commissioners had to apply to the Department of Public Expenditure and Reform for sanction to re-allocate an additional €2.1 million from the pay subhead. The Department of Public Expenditure and Reform granted an amended sanction on 6 September 2022, for a total of €15.8 million. This comprised €11.2 million from the pay subhead and €4.6 million from non-pay subheads. The sanction letter emphasised that the re-allocation of funds from pay to non-pay was being allowed on an exceptional basis.

Vote 33 Tourism, Culture, Arts, Gaeltacht, Sport and Media

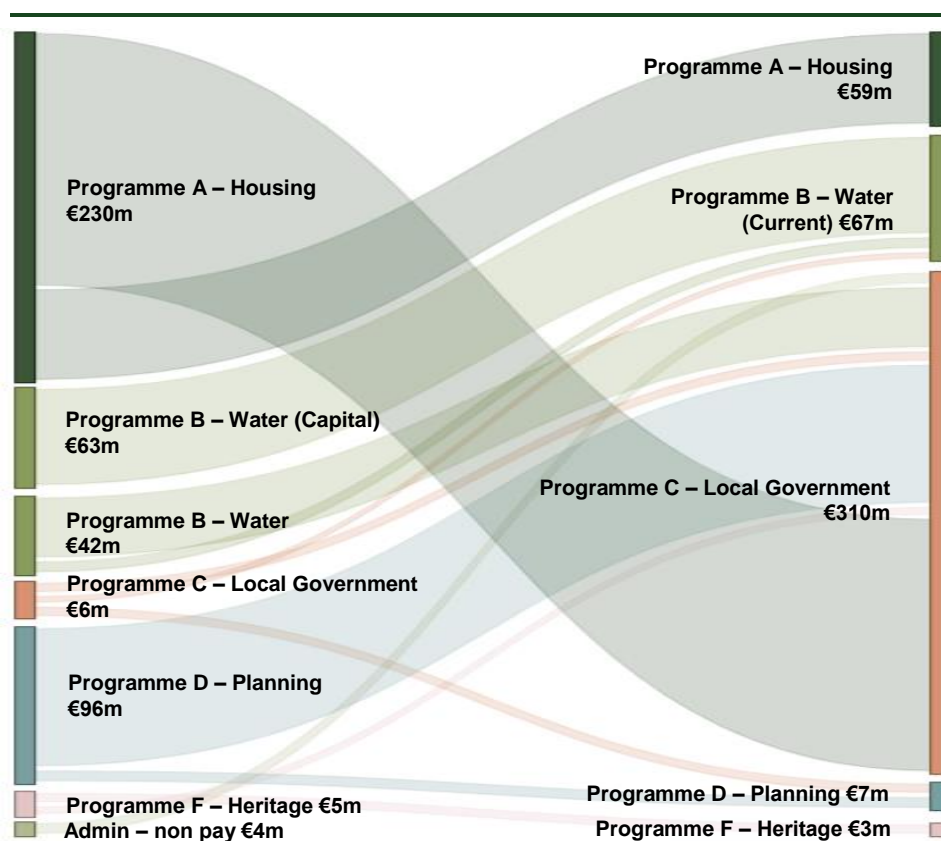
- 4.13** The estimate for Vote 33 Tourism, Culture, Arts, Gaeltacht, Sport and Media provided (in subhead E.6) a 2021 allocation for a contribution to the Broadcasting Fund of €16.9 million. The outturn in the 2021 appropriation account was €23.6 million.
- 4.14** In order to make the additional contribution to the Broadcasting Fund, the Department for Tourism, Culture, Arts, Gaeltacht, Sport and Media sought sanction for virement of €8.1 million, on the basis it was required “to meet emerging pressures under this subhead in relation to the Sound and Vision fund”. The savings identified were from the following subheads
- €5.5 million from B.5 Concert Hall and the Crawford Gallery
 - €1.7 million from B.8 Culture Ireland
 - €0.9 million from B.15 Decade of Centenaries.
- 4.15** In the accounts of the Broadcasting Fund, the €8 million additional transfer has not been recognised as 2021 income, and has been treated instead as deferred income. The funding was unspent at the end of 2021.
- 4.16** A supplementary estimate for Vote 33 was approved by Dáil Éireann on 8 December 2021. This provided an additional €35 million in funding for the sports programme. None of the other programmes in the Vote were adjusted in the supplementary estimate.
- 4.17** The Department of Public Expenditure and Reform issued provisional sanction on 16 December 2021 for the transfer of savings. Final sanction was given for this transfer on 13 May 2022, after the appropriation accounts had been signed.
- 4.18** In this case, the virement of savings was sanctioned as required. However, *Public Financial Procedures* points out that
- Doubt will occasionally arise as to whether an item of expenditure should be covered by virement or by a supplementary estimate. The Department [of Public Expenditure and Reform] may decide to refuse virement if, in its view, the additional expenditure would [inter alia] ... be large in relation to the original provision in the subhead.*
- 4.19** The amount of the virement was equivalent to 48% of the value of the original estimate for subhead E.6 and was approved by the Department within days of a supplementary estimate being approved by Dáil Éireann for that particular Vote.

Vote 34 Housing, Local Government and Heritage

- 4.20** The Department of Public Expenditure and Reform has confirmed that it has agreed informally with the Department of Housing, Local Government and Heritage that the latter was not required to seek prior provisional sanction for virement of amounts up to €3 million from an individual subhead. There is no cumulative limit in place. The Department of Housing is required to compile a record of the funding transfers proposed under this arrangement, and to submit this record to the Department of Public Expenditure and Reform before the relevant year end. The reason advanced for the granting of this derogation from the arrangements set out in the *Public Financial Procedures* was “... to ease the administration burden on both Departments”.

- 4.21** The revised 2021 estimate for Vote 34 Housing, Local Government and Heritage provided funding of €5.1 billion for the specified services.¹ In addition, there was a capital carryover provision from 2020 of €214 million.^{2,3} A supplementary estimate approved by Dáil Éireann on 8 December 2021 provided an additional €199 million mainly for Covid-19 supports to local authorities. This brought the 2021 gross expenditure provision for the Vote to €5.5 billion — €2.5 billion current and €3 billion capital.
- 4.22** Separate from the supplementary estimate, funding of €446 million was transferred from vote subheads where savings had emerged to subheads where there was excess spending (see Figure 4.2).

Figure 4.2 Vote 34 Housing, Local Government and Heritage funding transfers 2021



1 This amount did not include the provision for appropriations in aid.

2 The Department also carried over €275.8 million of unspent capital funding from 2021 to 2022.

3 Carry over of unspent capital is provided for in Section 91 of the Finance Act 2004.

Source: Department of Housing, Local Government and Heritage. Analysis by the Office of the Comptroller and Auditor General.

Note: The movement between programmes relates to the transfer of funds across subheads under those programmes.

- 4.23** The amount transferred within Vote 34 under the delegated virement arrangement was around €5.4 million. A schedule setting out details of the sums involved was submitted to the Department of Public Expenditure and Reform before year end 2021, as required.
- 4.24** In various communications and documents issued before the year end, the Department of Public Expenditure and Reform expressed its awareness of proposed transfers of savings. In some cases, specific provisional sanction was given for transfers. In addition, in the memo to Government requesting a supplementary estimate for the Department of Housing, Local Government and Heritage, reference was made to the anticipated use of savings on capital subheads, including housing, to increase funding for the local government programme. This funding was intended, together with the supplementary estimate provision, to meet the costs of Covid-19 financial supports.
- 4.25** When the schedule of amounts being transferred under the delegated virement arrangement was submitted to the Department of Public Expenditure and Reform, it included notification of the proposed virement of €310 million for the local government programme. This amount represents 78% of the estimate provision.¹ The schedule also referred to a proposed transfer of €4 million from subhead B.4 Rural water programme to subhead B.6 Legacy water services loans. The Department of Public Expenditure and Reform did not issue provisional sanction for these proposed transfers.
- 4.26** A total of €31 million was transferred from subhead A.21 Infrastructure fund (capital) to subhead A.27 Planned maintenance (capital), with specific provisional approval of the Department of Public Expenditure and Reform. In the event, the excess expenditure on subhead A.27 Planned maintenance (capital) amounted to €19 million. The Department of Housing received approval to carry over the remaining €12 million for spending in 2022.
- 4.27** The Department of Housing sought formal sanction for the transfer of €434 million of savings on 23 June 2022 i.e. after the appropriation account for Vote 34 had been signed. The Department of Public Expenditure and Reform issued the formal sanction for the amounts sought on 27 July 2022, but reiterated the following conditions.
- Prior approval of the Department of Public Expenditure and Reform, subject to the administrative arrangements between our two departments, should always be obtained when virement is proposed.
 - The use of savings on one subhead to increase expenditure on another (whether by way of virement or supplementary estimate) should not be assumed as a matter of course.
 - All Department of Public Expenditure and Reform requirements regarding public financial procedures and procurement must be complied with.

¹ The estimate provision figure of €390 million includes the supplementary estimate of €197 million.

Vote 38 Health

- 4.28** The revised estimate for Vote 38 Health provided a budget of €22 billion for the Department of Health in 2021. In addition, €68 million of unspent funding from 2020 was carried over into 2021.¹
- 4.29** Excess expenditure was incurred on a number of the vote subheads, without recourse to a supplementary estimate, on the basis that savings of €593 million arising mainly from subhead J.1 — HSE (including services developments) were available to meet the excesses, as follows:
- €527 million excess on subhead J.2 HSE — Covid-19 actions
 - €55 million excess on subhead K.4 — Payments to the State Claims Agency
 - €8 million excess on subhead L.2 — Primary care reimbursement services — Covid-19 actions
 - €3 million excess on six other subheads.
- 4.30** The Department of Health did not apply for prior (provisional) sanction for the funding re-allocations to cover the excess spending. However, the Department stated that
- It provided regular expenditure updates to the Department of Public Expenditure and Reform showing significant expenditure above the level of funding provided in relation to Covid-19 responses and this was being offset by savings on core expenditure.
 - It discussed the Covid-19 overspends being offset by core underspends at the Health Budget Oversight Group during 2021.
- 4.31** The Department of Health sought Department of Public Expenditure and Reform sanction to transfer the savings on 14 April 2022 after the appropriation account had been signed. The Department of Health stated that it is common practice that sanction is only sought when the appropriation account is prepared and the Department of Public Expenditure and Reform has never raised an issue with seeking sanction in this manner.
- 4.32** The Department of Public Expenditure and Reform conveyed sanction on 23 August 2022 and noted that this sanction was provided on the understanding that
- the transfers were required to meet matured liabilities in 2021, and
 - the Department of Health is satisfied that the proposal will not give rise to a demand for additional funding in future years.

Views of the Department of Public Expenditure and Reform

- 4.33** The Department of Public Expenditure and Reform has an understandable concern to discourage and minimise the number of applications for supplementary estimates, and their quantity where they do arise. Within the overall financial parameters and where possible and appropriate, the Department is willing to consider the virement of sums from subheads to other subheads. The Department considers such cases in the context of the *Public Financial Procedures* and where it is considered proportionate to facilitate a department to deliver its policy objectives and priorities.

¹ Carry over of unspent capital is provided for in Section 91 of the Finance Act 2004.

Conclusions

- 4.34** The provisions in *Public Financial Procedures* in relation to the re-allocation of funding between vote subheads were not followed in a number of cases. Even though the guidelines emphasise that it should not be presumed that re-allocation of funds through virement would be a matter of course, in practice, this is what appears to have happened in some cases. In cases brought to light through audit, retrospective sanction has been sought and granted.
- 4.35** Some of the funding re-allocations through virement referred to above have involved very significant sums, and sums that are large by reference to the sums in the original subhead. The guidelines suggest that in such cases, best practice would require that a supplementary estimate be taken. That would allow the relevant committee of Dáil Éireann to examine the emerging savings and excess expenditures, and to consider any proposed re-allocations.
- 4.36** As a general principle, all arrangements involving the re-allocation of voted funding should be formally agreed and documented. Decisions on specific proposals for the re-allocation of voted funds should also be documented in a timely fashion. The universal availability of electronic communications means that this memorialisation of important decisions is reasonably easily achieved.

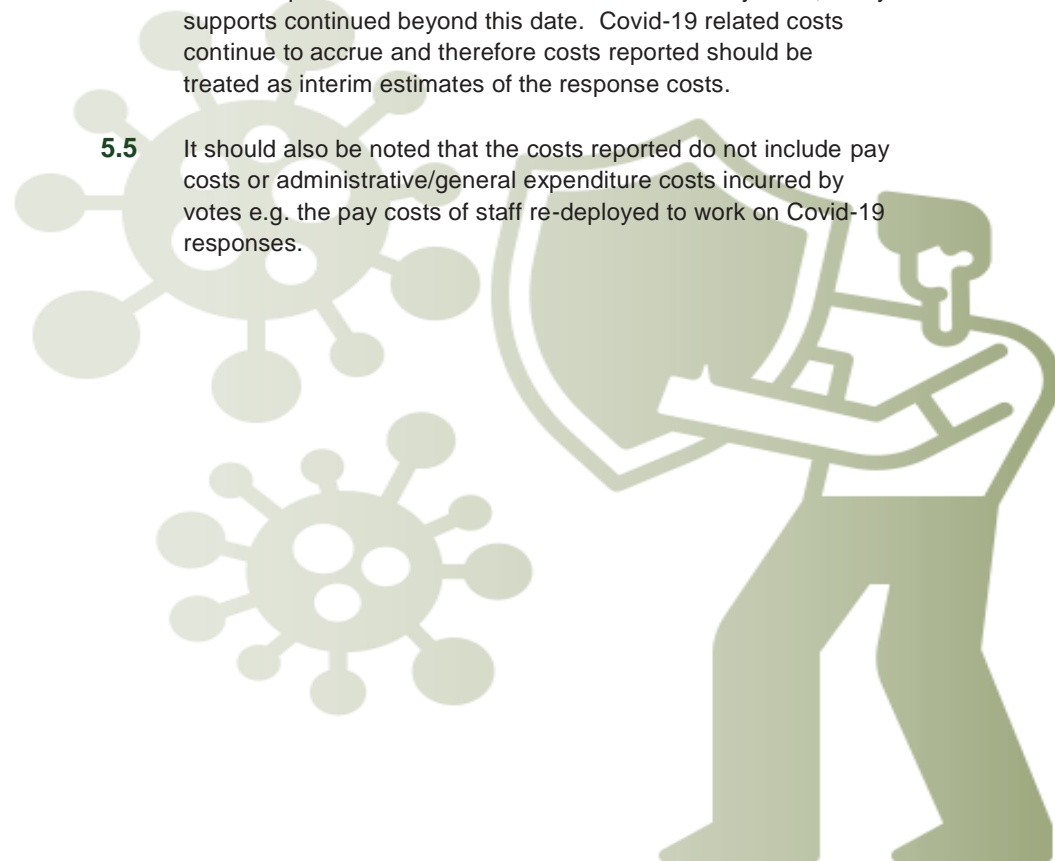
5 Overview of the cost of responding to Covid-19

- 5.1** On 30 January 2020, the World Health Organisation (WHO) declared the Covid-19 outbreak a public health emergency of international concern. The first Irish case of Covid-19 was reported on 29 February 2020.
- 5.2** The Government's response to Covid-19 has evolved during the pandemic to address the evolving circumstances and to take account of public health, social and economic factors. To date, five national strategic response plans have been published
- National action plan in response to Covid-19 (March 2020)
 - Roadmap for re-opening society and business (May 2020)
 - Resilience and recovery 2020 – 2021: Plan for living with Covid-19 (September 2020)
 - Covid-19 resilience and recovery 2021: The path ahead (February 2021)
 - Covid-19: Reframing the challenge, continuing our recovery and reconnecting (August 2021).

5.3 This report has been prepared to provide an overview of the cost of direct responses to Covid-19 or its impacts, as reported by the relevant government departments. The figures presented include costs incurred on support schemes or direct spending on Covid-19 responses in the year to end February 2022.

5.4 While the majority of public health restrictions relating to the Covid-19 pandemic were lifted in Ireland in February 2022, many supports continued beyond this date. Covid-19 related costs continue to accrue and therefore costs reported should be treated as interim estimates of the response costs.

5.5 It should also be noted that the costs reported do not include pay costs or administrative/general expenditure costs incurred by votes e.g. the pay costs of staff re-deployed to work on Covid-19 responses.



Section 1 Total direct costs

Total expenditure

Total direct expenditure as a result of Covid-19 in the one year period ending 28 February 2022 is estimated at €12.4 billion (see Figure 5.1 and Figure 5.2). The total reported for the same period the previous year is €17.1 billion, bringing reported expenditure on direct responses to Covid-19 or its impacts to €29.5 billion at the end of February 2022.

Figure 5.1 Total expenditure breakdown by government department

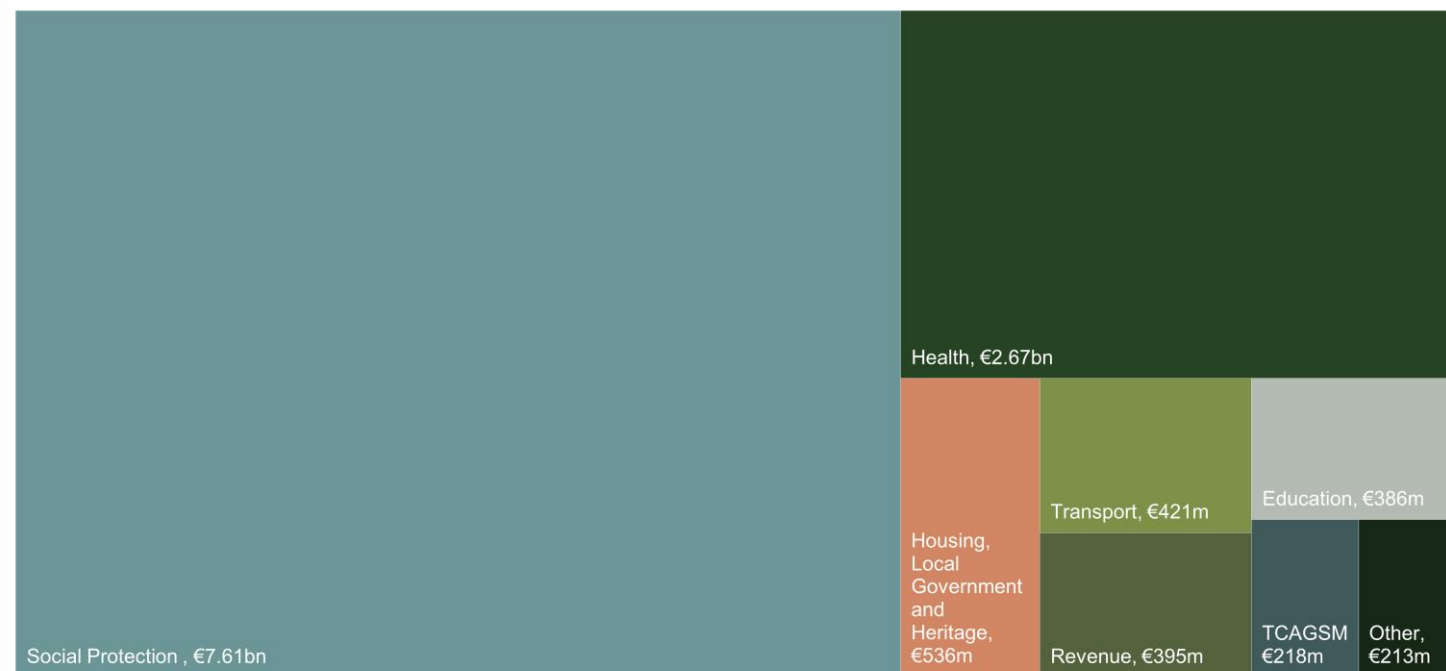
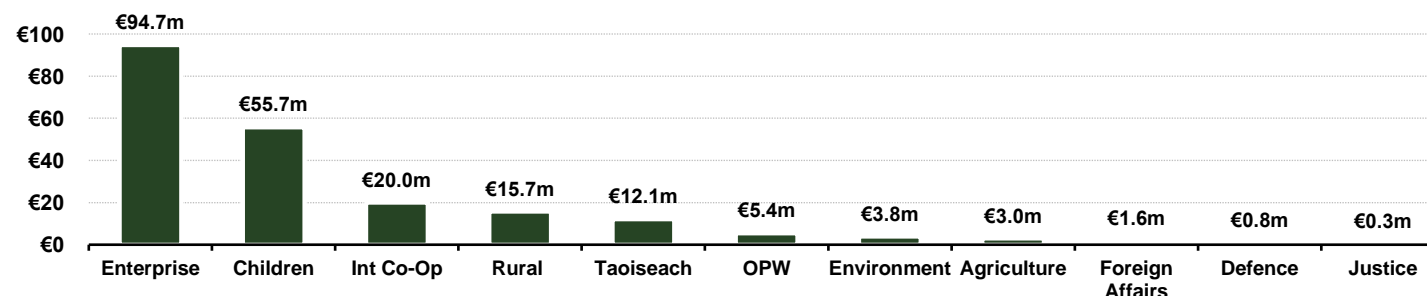


Figure 5.2 Breakdown of 'other' expenditure



Source: Departments of Social Protection; Health; Housing, Local Government and Heritage; Enterprise, Trade and Employment; Education; Further and Higher Education, Research, Innovation and Science; Transport; Justice; Agriculture, Food and the Marine; Children, Equality, Disability, Integration and Youth; Environment, Climate and Communications; Rural and Community Development; Tourism, Culture, Arts, Gaeltacht, Sport and Media; Defence; Office of Public Works; Office of the Revenue Commissioners; Department of Foreign Affairs; International Co-Operation; Department of the Taoiseach.

Note: The amount included for OPW includes payments of €1.9m made by the OPW on behalf of other Departments/agencies.

Section 1 Timeline of expenditure

With the exception of December 2021, the month on month cost of direct responses to Covid-19 or its impacts remained relatively steady during the second year (March 2021 – February 2022) of the pandemic (see Figure 5.3).

In both years, the Departments of Social Protection, Health and Housing, Local Government and Heritage were the highest spending departments as a result of Covid-19 (see Figure 5.4).

The three departments account for 86% of the total reported expenditure of €29.5 billion for the two year period to the end of February 2022.

Figure 5.3 Timeline of total expenditure March 2020 – February 2022

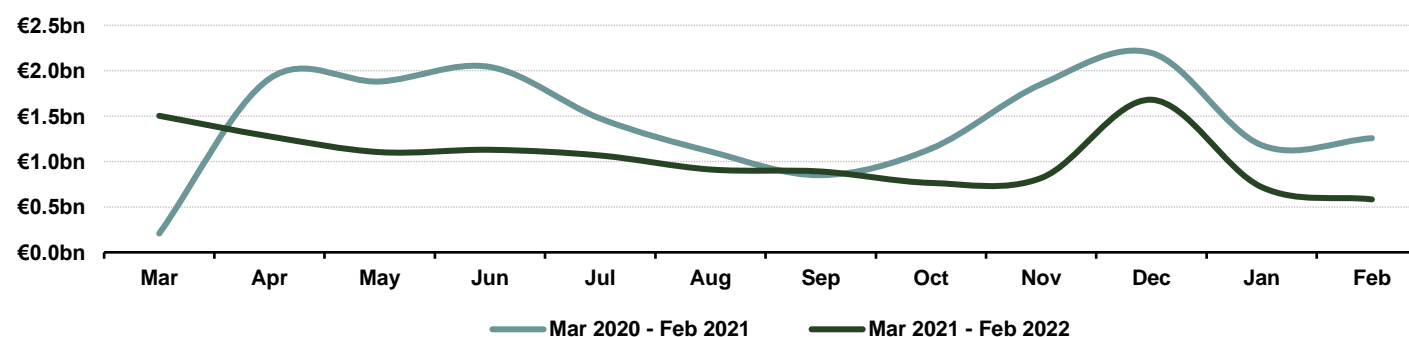
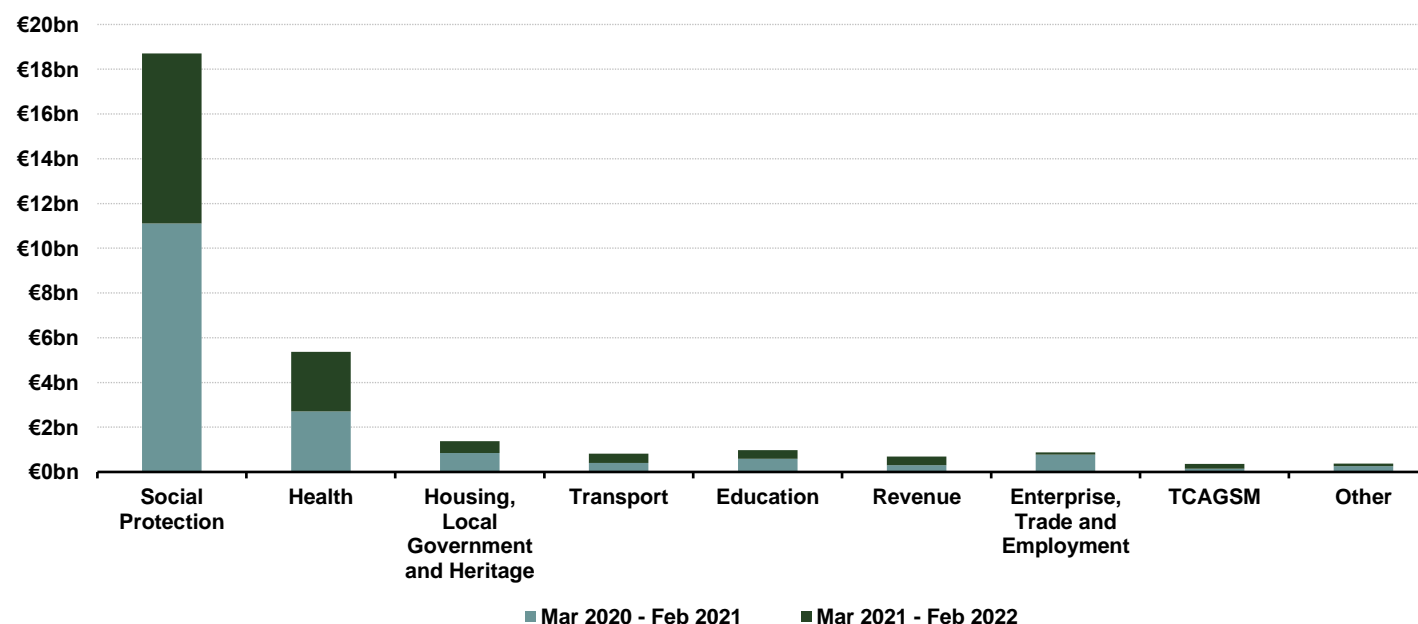


Figure 5.4 Total expenditure by government department March 2020 – February 2022



Source: Departments of Social Protection; Health; Housing, Local Government and Heritage; Enterprise, Trade and Employment; Education; Further and Higher Education, Research, Innovation and Science; Transport; Justice; Agriculture, Food and the Marine; Children, Equality, Disability, Integration and Youth; Environment, Climate and Communications; Rural and Community Development; Tourism, Culture, Arts, Gaeltacht, Sport and Media; Defence; Office of Public Works; Office of the Revenue Commissioners; Department of Foreign Affairs; International Co-Operation; Department of the Taoiseach.

Note: a The Department of Housing, Local Government and Heritage provided a monthly breakdown of 95% of its total expenditure for Mar 2020 – Feb 2021.

Section 2 Analysis by department

Social Protection

The Department of Social Protection reports that it incurred expenditure of €7.6 billion on specific Covid-19 related schemes up to the end of February 2022. Expenditure for the same period the previous year totalled €11.1 billion, bringing total expenditure by the Department to €18.7 billion at the end of February 2022.

In the period the Department's monthly expenditure was on a downward trajectory in keeping with the economy reopening (see Figure 5.7).

The Department incurred costs of €9.1 million in the year to end February 2021 for enhancements to systems solely developed for the purpose of administering the PUP scheme. This was in addition to the expenditure reported for the same period the previous year (March 2020 – February 2021).

Figure 5.5 Social Protection expenditure supports

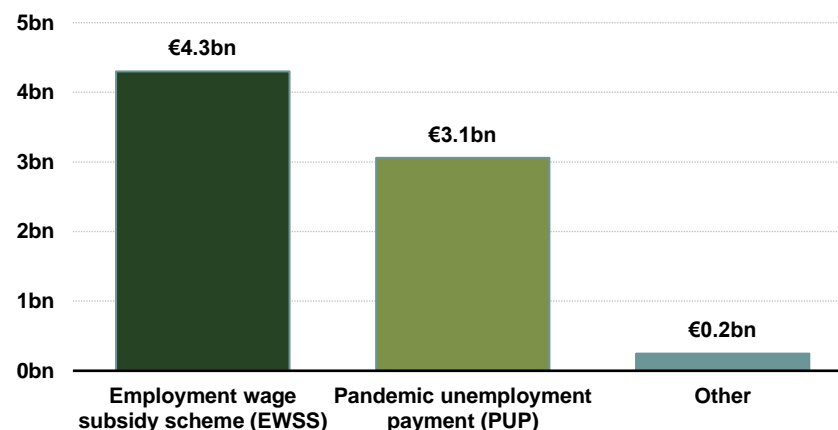


Figure 5.6 Breakdown of 'other' expenditure

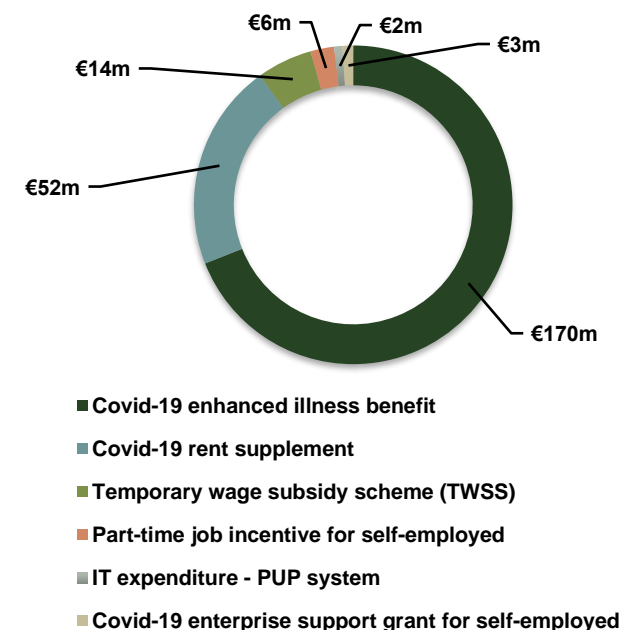
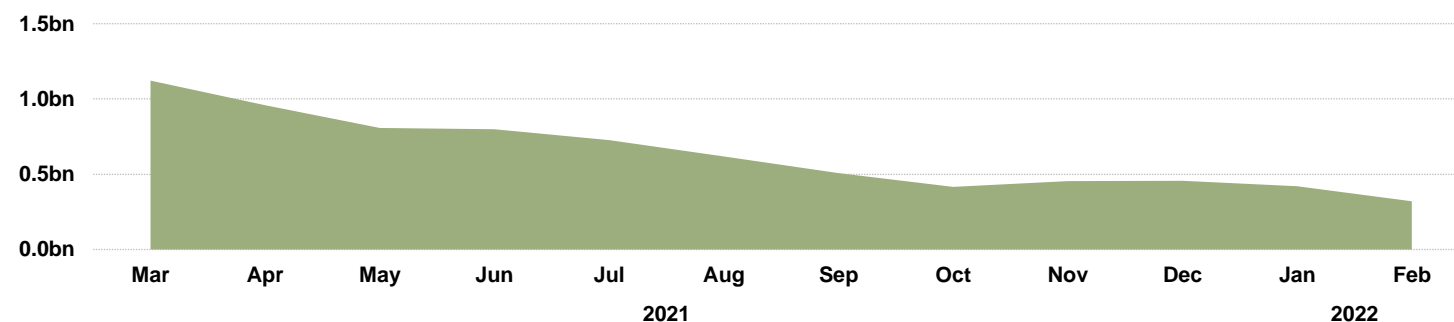


Figure 5.7 Timeline of Social Protection expenditure



Source: Department of Social Protection

Note: Expenditure on EWSS and TWSS are reported gross. Overpayments recovered for TWSS and EWSS were €170m and €20m respectively.

Section 2 Analysis by department (continued)

Health

Spending by the Department on testing and tracing increased by 46% from €359 million^a (March 2020 – February 2021) to €664 million. Expenditure on testing and tracing and vaccines accounts for nearly half (47%) of the Department's Covid-19 expenditure in the year to February 2022.

In the period, peak expenditure in the health sector occurred during December 2021 in response to the emergence of the Omicron variant (see Figure 5.10).

Figure 5.8 Health Covid-19 expenditure supports

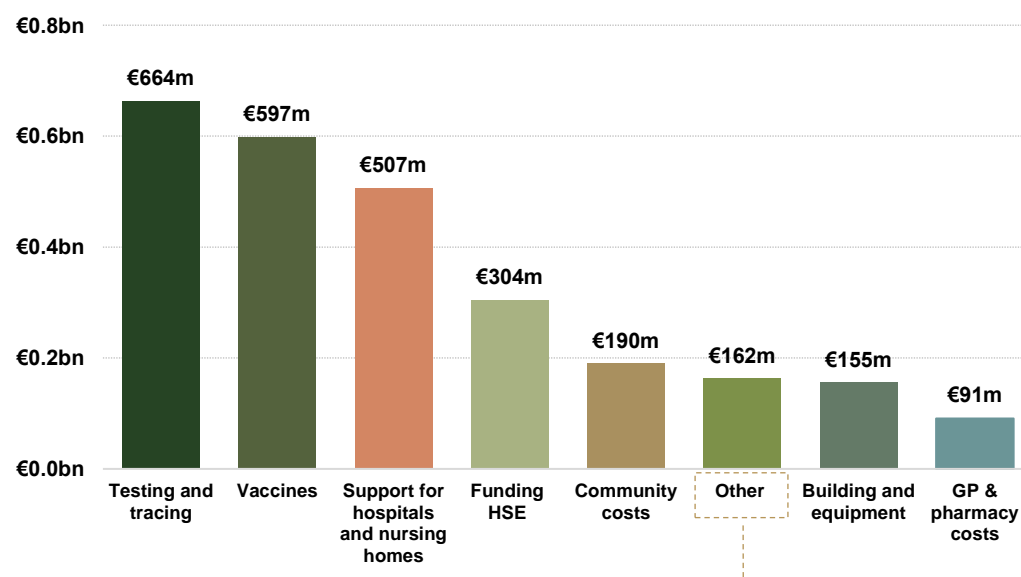


Figure 5.9 Breakdown of 'other' expenditure

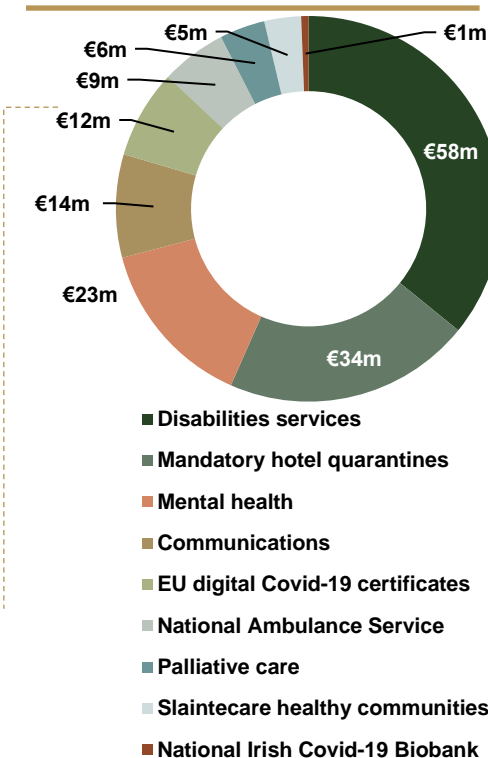
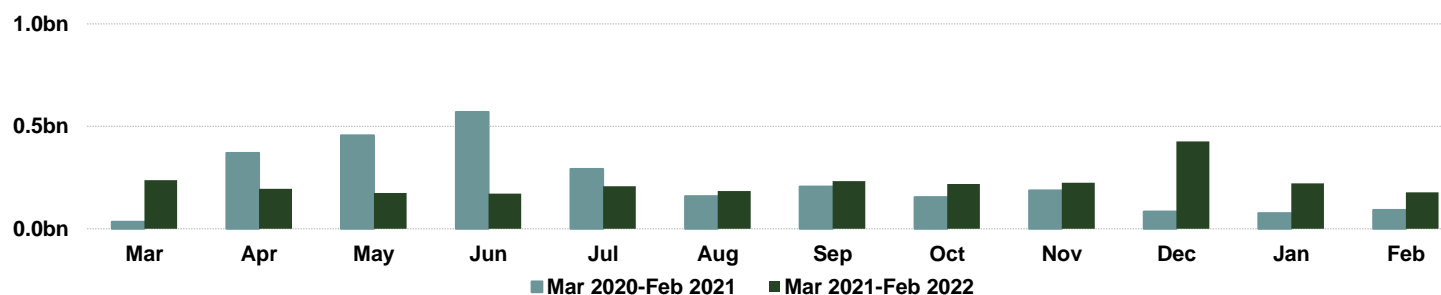


Figure 5.10 Timeline of Health expenditure



Source: Department of Health

Note: a Previously reported expenditure on testing and tracing for the year to February 2021 was €292 million, this has been restated by the Department to €359 million.



Section 2 Analysis by department (continued)

Housing, Local Government and Heritage

Up to the end of February 2022, the Department of Housing, Local Government and Heritage paid out a total of €536 million in supports.

The payment of commercial rates to local authorities was waived for businesses that were significantly affected by Covid-19 related trading restrictions. The loss of such income was remedied by additional grant funding, at a cost of €485 million.

An initial three-month waiver of rates was announced in May 2020 to cover the period from 27 March 2020. The waiver was extended a number of times ultimately covering a nine month period to end December 2020.

A more targeted rates waiver was put in place during 2021 and was expected to end in September 2021. However a further, more limited waiver was put in place until the end of December 2021 and further extended to the first quarter of 2022.

The rates waiver contributed to the peak in expenditure in December with over €422 million paid to local authorities in December 2021. (Chapter 4 provides further detail on the transfer of funds in the Department at year end).

Figure 5.11 Housing, Local Government and Heritage Covid-19 expenditure supports

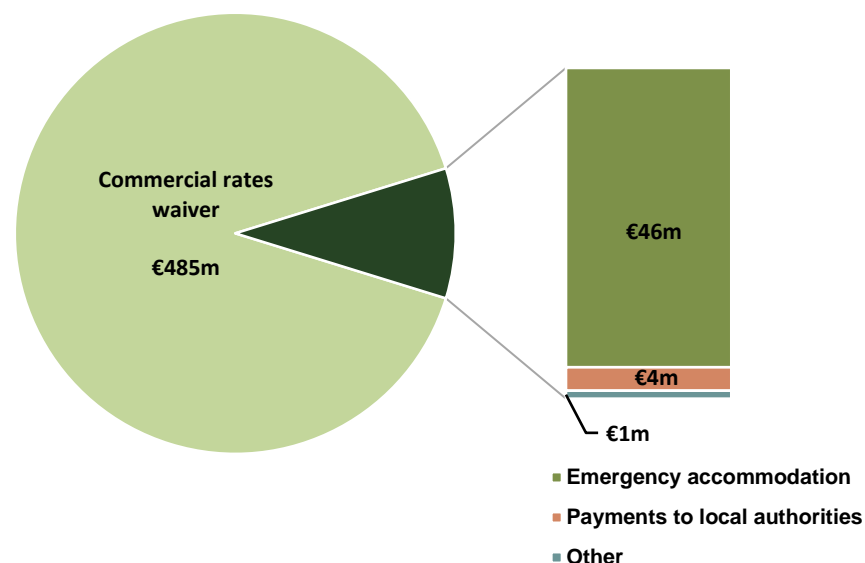


Figure 5.12 Commercial rates waiver distribution.

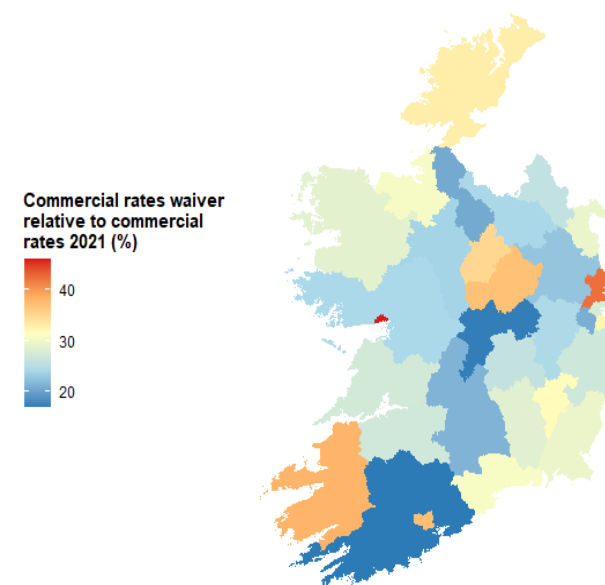
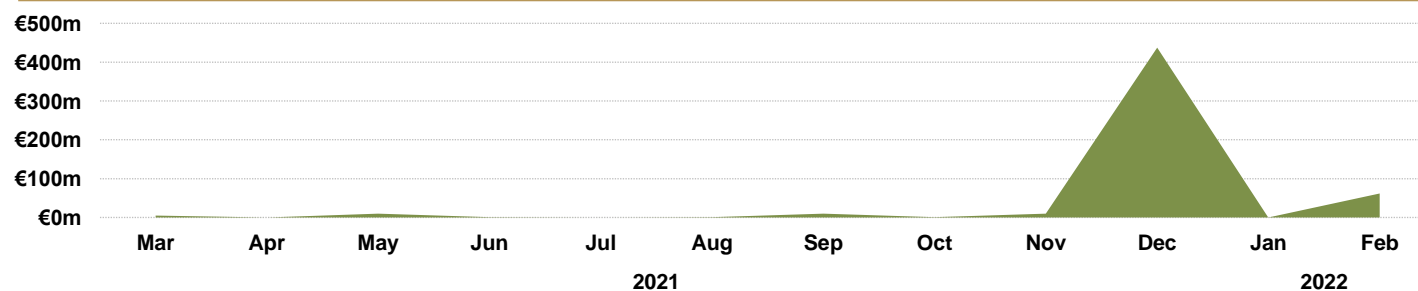


Figure 5.13 Timeline of Housing, Local Government and Heritage expenditure



Source: Department of Housing, Local Government and Heritage

Note: a The timeline shows gross expenditure. Commercial rates waiver refunds of €0.24 million were received in January and February 2022.

Section 2 Analysis by department (continued)

Tourism, Culture, Arts, Gaeltacht, Sport and Media

Expenditure by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media increased from €139 million (March 2020 – February 2021) to €218 million for March 2021 – February 2022. The increase mainly relates to supports for the tourism sector.

Over €70 million of the expenditure which occurred during December 2021 was in relation to sporting grants.

Figure 5.14 Tourism, Culture, Arts, Gaeltacht, Sport and Media Covid-19 expenditure

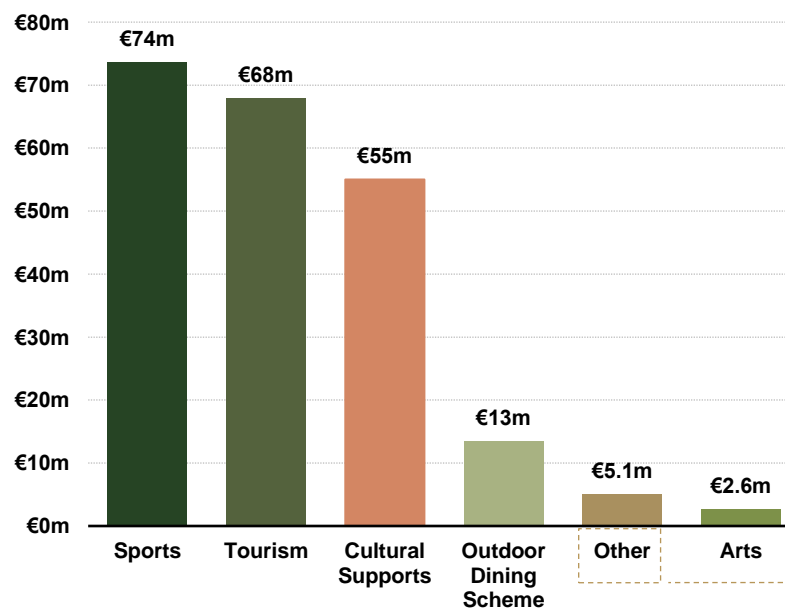


Figure 5.15 Breakdown of 'other' expenditure

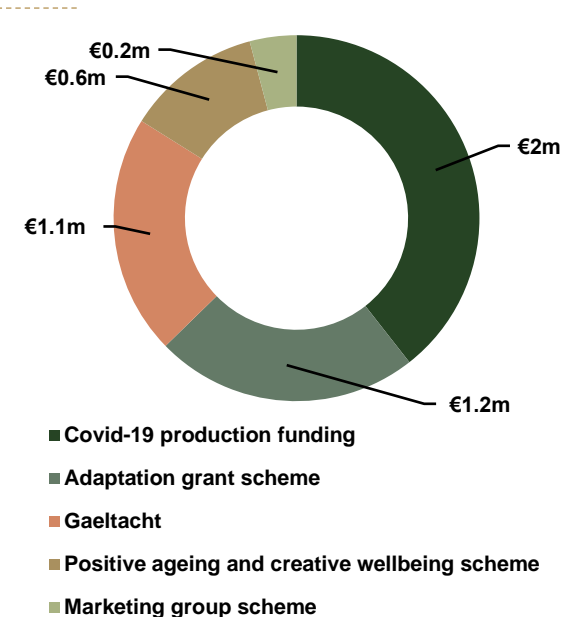
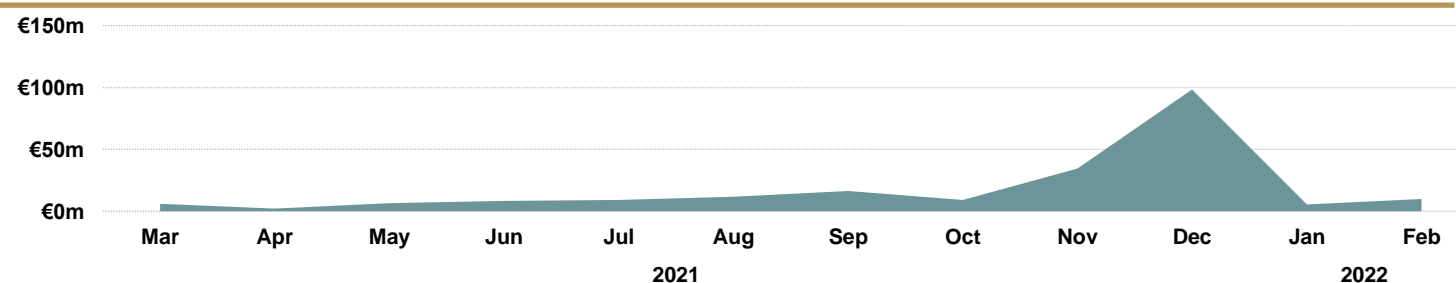


Figure 5.16 Timeline of Tourism, Culture, Arts, Gaeltacht, Sport and Media expenditure



Source: Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media

Section 2 Analysis by department (continued)

Education sector

The Department of Education and the Department of Further and Higher Education, Research, Innovation and Science combined incurred direct Covid-19 expenditure estimated at €386 million. Over 79% (€306 million) of this expenditure relates to educational support funding (See Figure 5.18).

Following restrictions, schools fully returned to in-person learning in March 2021 and were not required to close again as a result of Covid-19.

78% of the expenditure in September was paid by the Department of Education in grants to primary and post primary schools to assist with the implementation of infection prevention and safety measures.

Over a third of the peak expenditure in December relates to minor works grants paid by the Department of Education.

Figure 5.17 Education Covid-19 expenditure supports

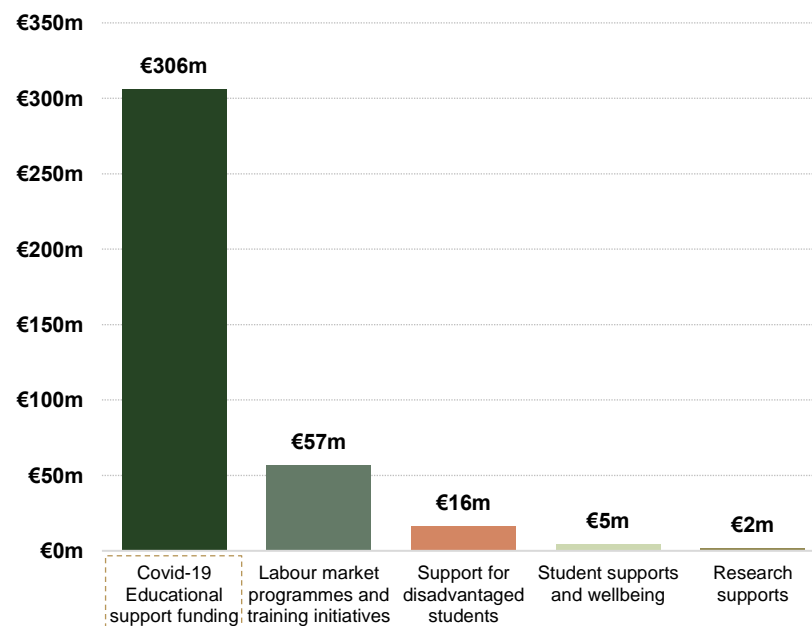


Figure 5.18 Breakdown of educational support funding

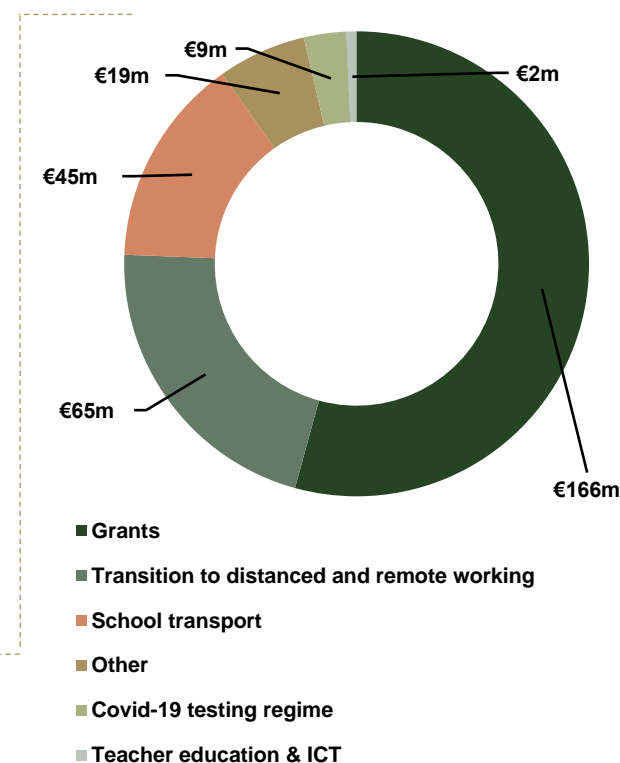
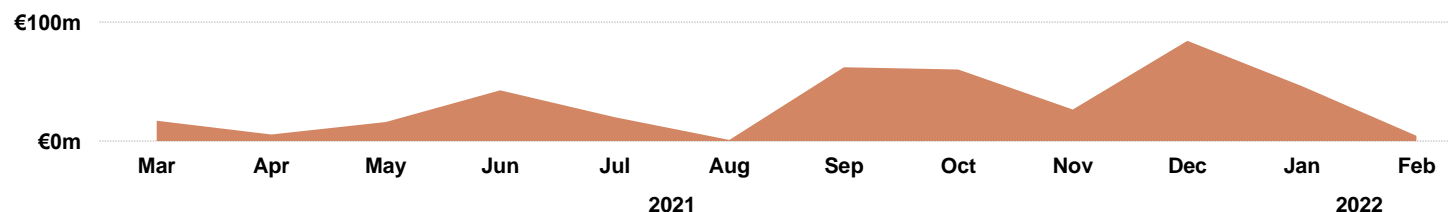


Figure 5.19 Timeline of education expenditure



Source: Department of Education and the Department of Further and Higher Education, Research, Innovation and Science.

Note: €20 million in additional funding of the SUSI grant is included in education expenditure. This amount is the estimated additional expenditure on SUSI grants as a result of Covid-19. It was not possible for the Department to identify the specific amount separately as grants were paid as one block which included additional Covid-19 allocations.

Section 2 Analysis by department (continued)

Transport

There was significant disruption of travel as a result of Covid-19. In response, financial support was provided to the transport companies to ensure that socially beneficial transport services continued to be provided. This took the form of additional public service obligation (PSO) grants.

Funding to airports is administered under the Covid-19 regional airports programme 2021 as well as the Covid-19 supplementary supports scheme for Irish airports. Figure 5.21 details payments made to each airport during the period.

Figure 5.20 Transport Covid-19 expenditure supports

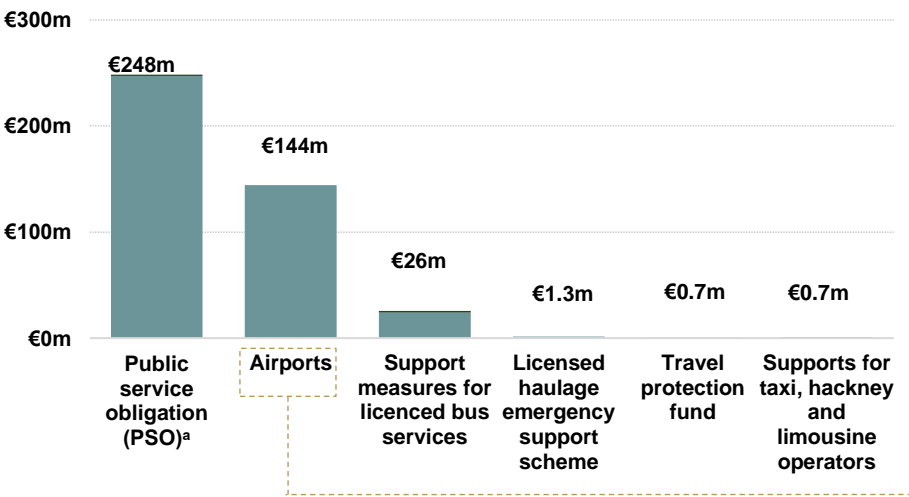


Figure 5.21 Analysis of airport expenditure

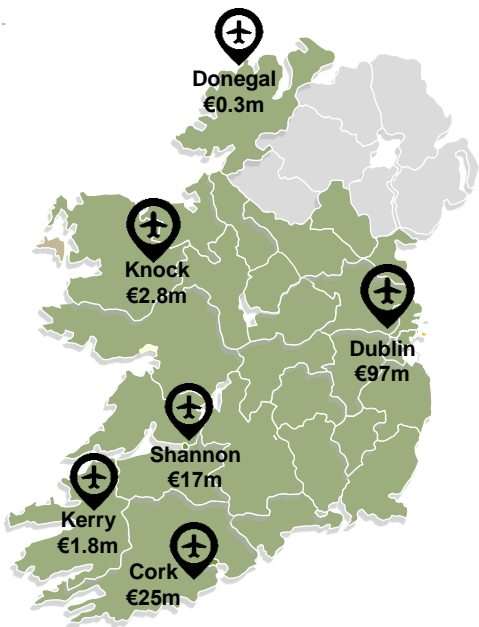
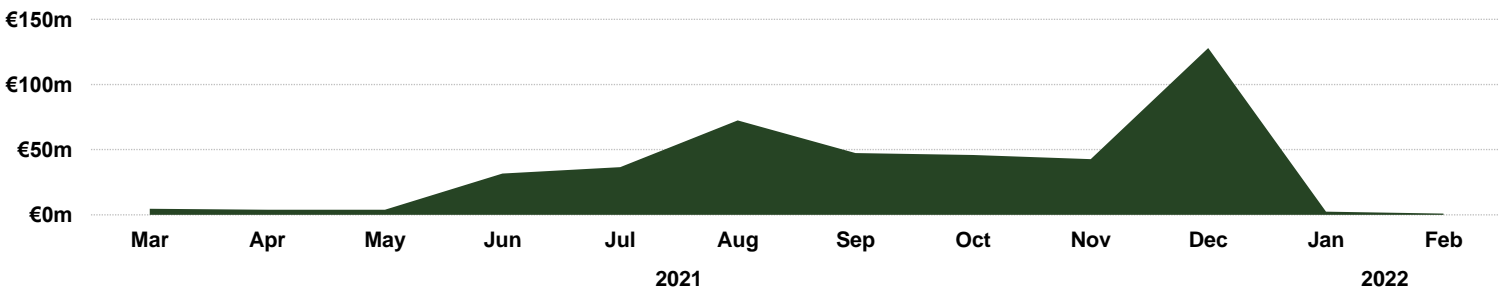


Figure 5.22 Timeline of Transport expenditure



Source: Department of Transport
Note: a The figures provided by the Department for January and February 2022 PSO expenditure (€1.3 million) are estimates.

Section 2 Analysis by department (continued)

Revenue

The Office of the Revenue Commissioners administered tax expenditure of €395 million — €387 million on the Covid-19 restrictions support scheme (CRSS) and €8 million on the business resumption support scheme (BRSS).

The schemes began in October 2020 and September 2021 respectively. Both schemes were designed to support businesses significantly affected by restrictions introduced to combat the Covid-19 pandemic.

To the end of February 2022 total expenditure on both schemes stands at €724 million.

CRSS and BRSS payments are funded from gross tax receipts.

Figure 5.23 Timeline of Revenue expenditure

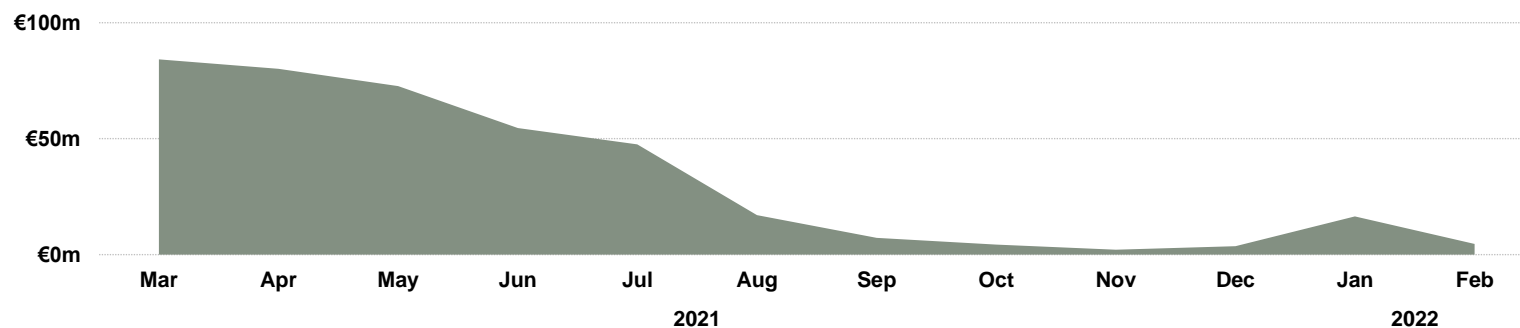
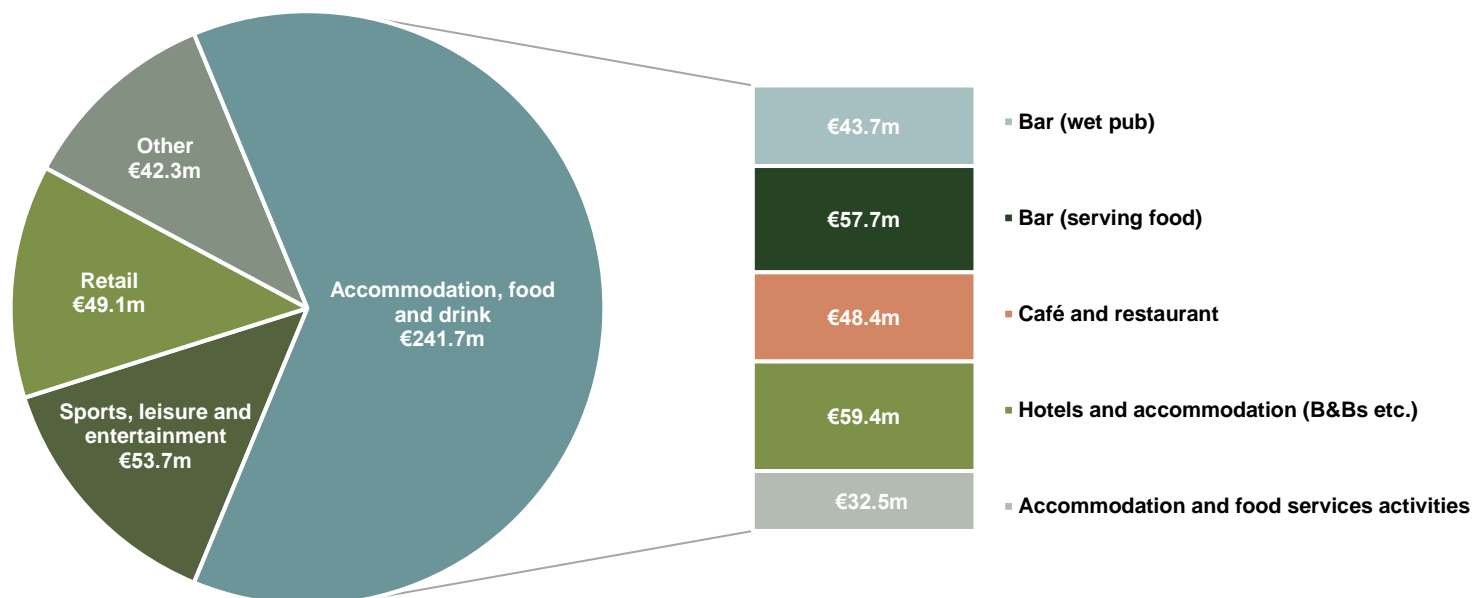


Figure 5.24 Breakdown of CRSS expenditure by sector



Source: Office of the Revenue Commissioners



Section 3 Total cost by support type

Total cost split

An analysis of total expenditure by type of recipient is set out in Figure 5.25 with the source of the funding displayed in Figure 5.26.

Supports for businesses account for 39% of all expenditure with the majority being funded by the Department of Social Protection. Supports to individuals accounts for 26%, the majority of which is also funded by the Department of Social Protection.

Supports for both businesses and individuals were on a downward trajectory during the year to end February 2022, as restrictions were progressively lifted (see Figure 5.27).

Health and social care accounts for 23% of total expenditure and was funded mainly by the Department of Health.

The majority of the funding towards state and public supports came from the Departments of Housing, Local Government and Heritage, Transport and the Education sector.

€20 million included in health and social care costs relates to humanitarian assistance provided to developing countries.

Figure 5.25 Grouped analysis for Covid-19 expenditure

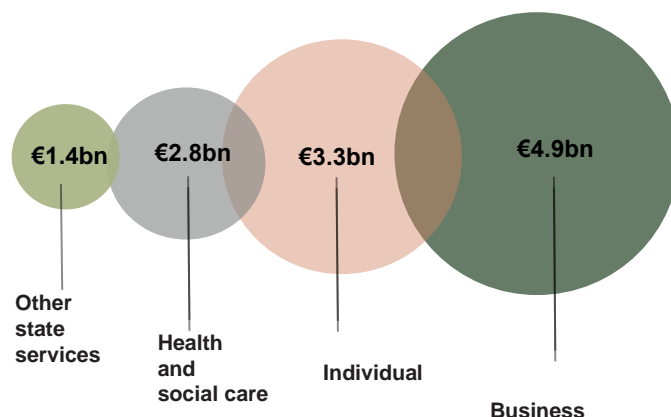


Figure 5.27 Timeline of individual and business supports

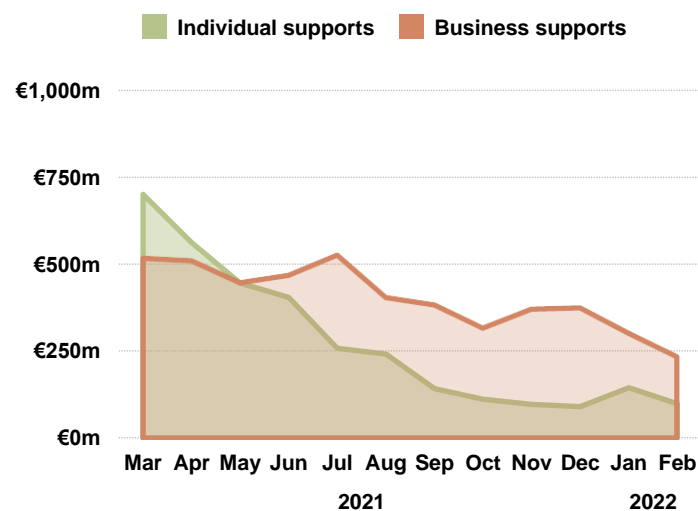
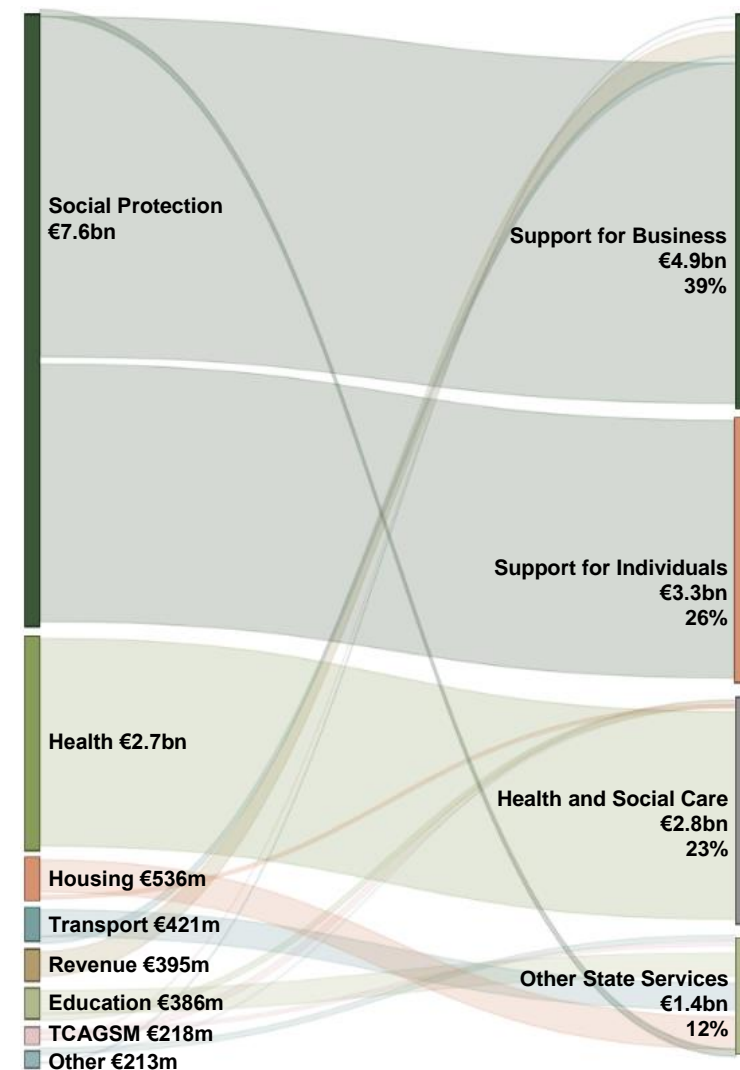


Figure 5.26 Grouped analysis of department expenditure

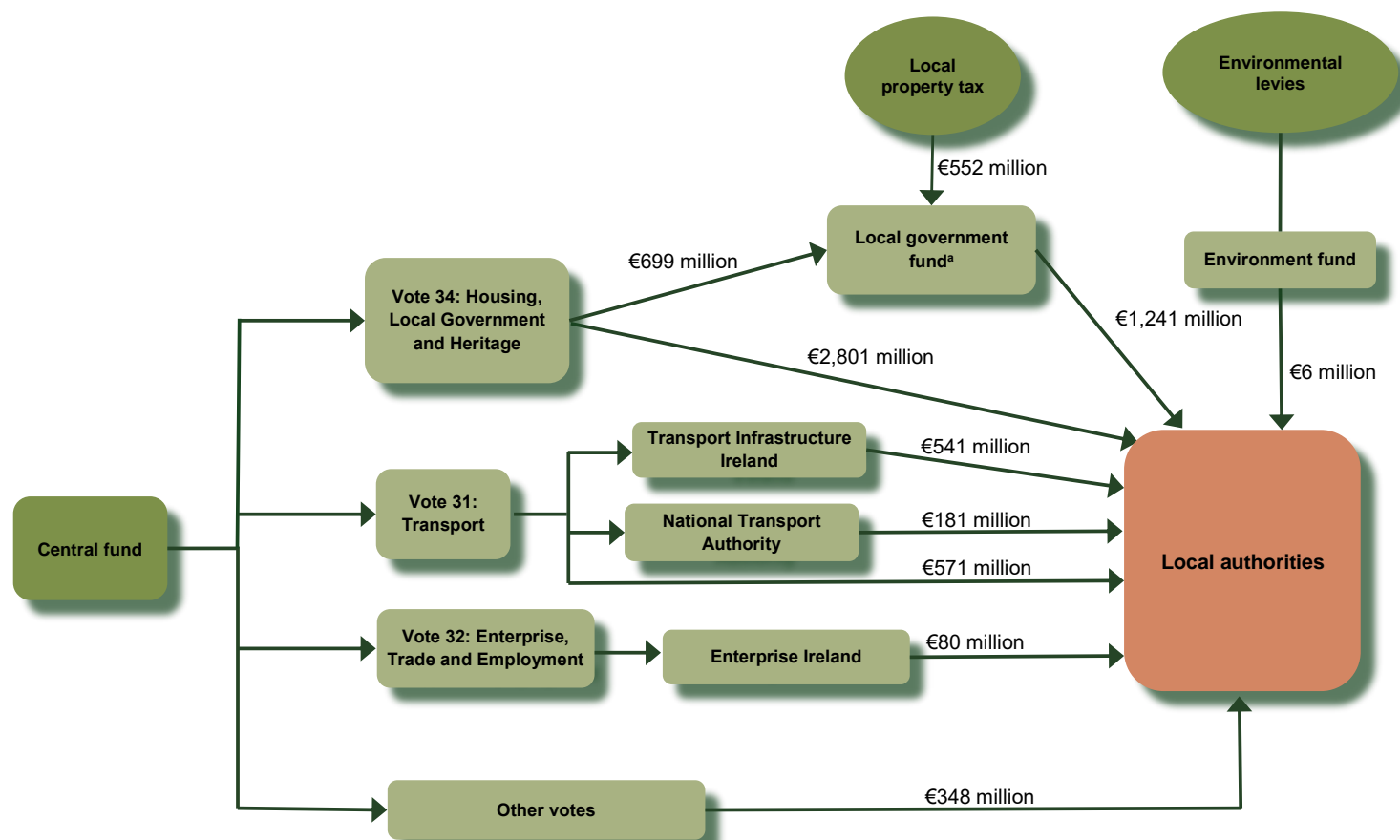


Source: Departments of Social Protection; Health; Housing, Local Government and Heritage; Enterprise, Trade and Employment; Education; Further and Higher Education, Research, Innovation and Science; Transport; Justice; Agriculture, Food and the Marine; Children, Equality, Disability, Integration and Youth; Environment, Climate and Communications; Rural and Community Development; Tourism, Culture, Arts, Gaeltacht, Sport and Media; Defence; Office of Public Works; Office of the Revenue Commissioners; Department of Foreign Affairs; International Co-Operation; Department of the Taoiseach.

6 Central government funding of local authorities

Local authorities receive a substantial part of their annual funding from a range of central government departments and agencies (see Figure 6.1). The primary objective of this report is to provide an overview of the funds flowing from and through central government sources to local authorities, and of the purposes for which those funds have been provided.

Figure 6.1 Flow of central government funding to local authorities in 2021



Source: Office of the Comptroller and Auditor General

Note: a The flow of funding to and from the Local Government Fund may not be equal in a given year, resulting in changes in Local Government Fund balances at year-end.

Section 1 Central government transfers and application of central government funding

In 2021, funding from central government to local authorities totalled €5.8 billion. This was down 5% from the 2020 level, but significantly up from 2016 (see Figure 6.2).

The decrease in funding from 2020 was mainly due to the reduction in Covid-19 support payments to local authorities.

The main sources of central government funding are the Department of Housing, Local Government and Heritage (through Vote 34 and the Local Government Fund); and the Department of Transport (see Figure 6.3).

The main purposes for which central government funding was provided were for the provision of social housing and transport investment; a contribution towards local authority general activities and support in response to Covid-19 impacts (see Figure 6.4).

Figure 6.2 Central government funding, 2016 – 2021

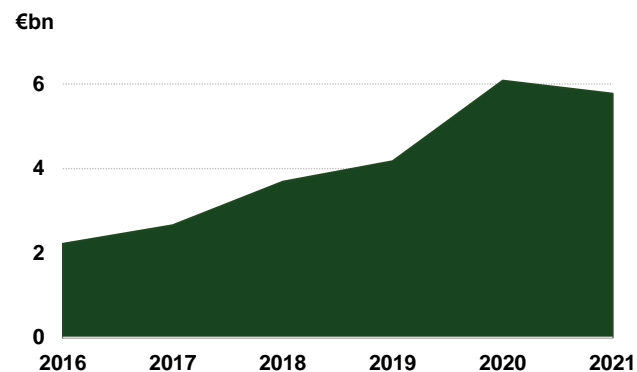


Figure 6.4 Purpose of central government funding, 2021

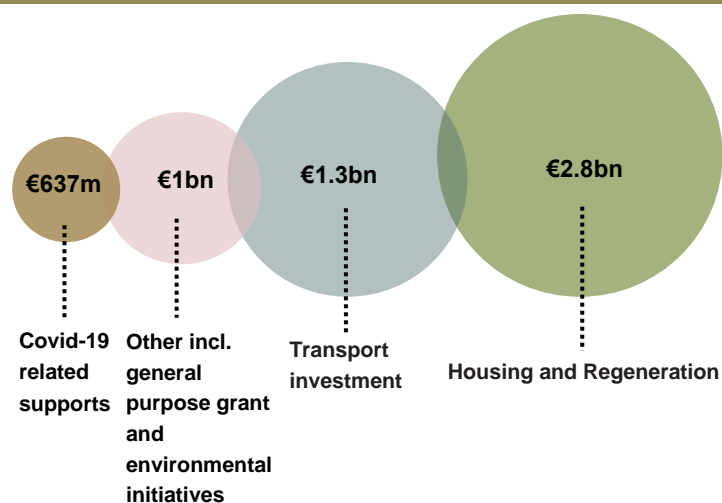
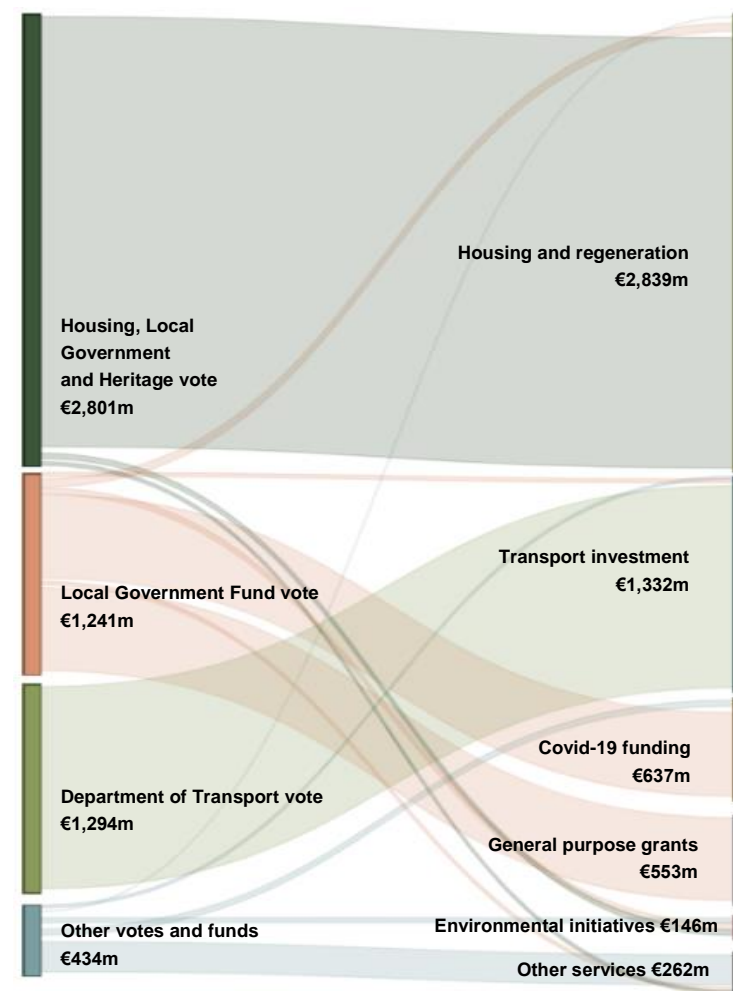


Figure 6.3 Grouped analysis of central government funding by programme category, 2021



Source: Annex 6A

Section 2 Housing and regeneration

The Department of Housing, Local Government and Heritage provides the bulk of the funding for local authority expenditure on housing and regeneration — an estimated 99% in 2021. The funding is used by the local authorities for the provision of social housing stock (managed by local authorities and voluntary and cooperative housing bodies) and a range of other housing supports including the housing assistance payment (HAP), rental accommodation scheme (RAS), and accommodation for homeless people. It is also used for improvement of existing local authority units and adaptation grants for older people and for people with a disability. Figure 6.5 shows the funding provided for housing and regeneration, as well as the funding provided for HAP and RAS over the last six years which forms part of the social housing provision funding.

The Department of Rural and Community Development also provides funding to local authorities for rural regeneration — €38 million in 2021. This funding is used to support schemes targeting building vacancy, infrastructure to develop town-centre housing, and the development of community or public facilities that enhance heritage and other community assets.

Figure 6.5 Central government funding to local authorities for investment in housing and regeneration, 2016 – 2021

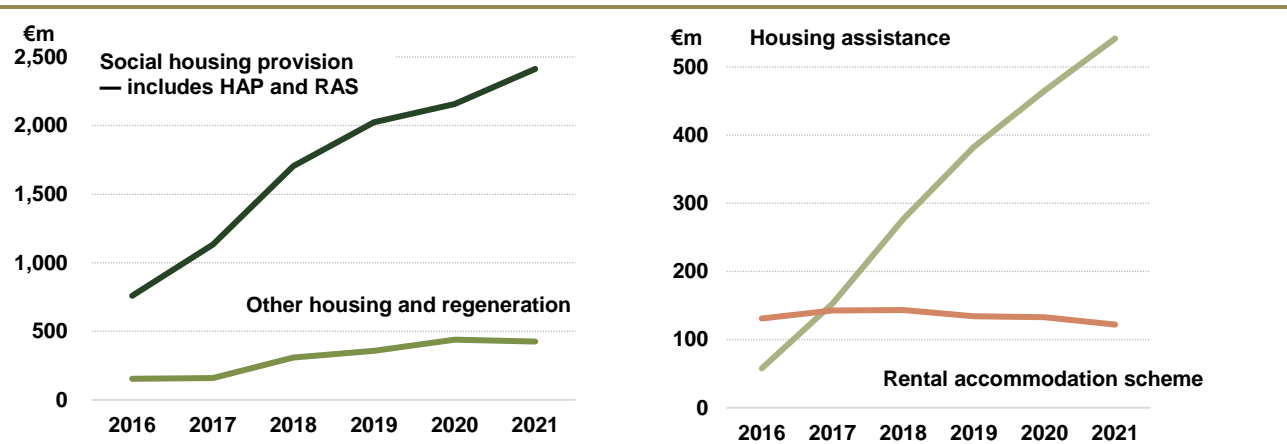
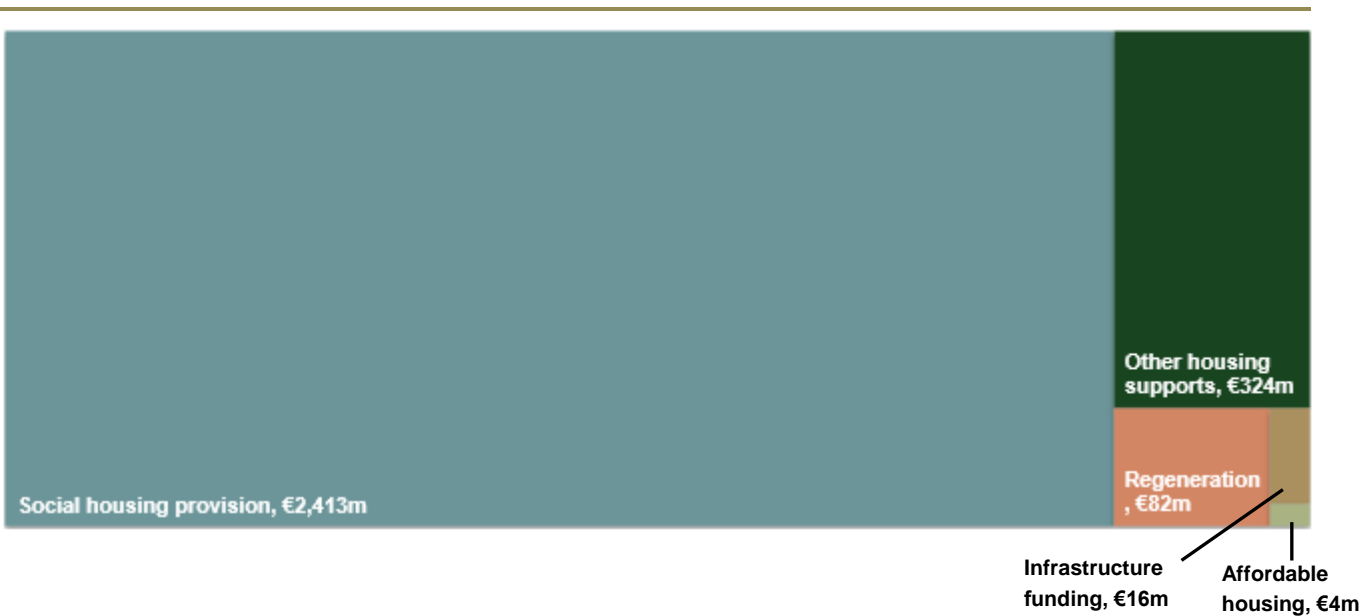


Figure 6.6 Breakdown of funding for housing and regeneration purposes, 2021



Section 3 Transport investment

The Department of Transport and the Department of Rural and Community Development provide funding to local authorities for roads and public transport investment. The Department of Transport provides funding for regional and local roads directly to local authorities, with funding for other purposes provided via the National Transport Authority and Transport Infrastructure Ireland. Some local authorities also self-fund expenditure on local and regional roads (€16.4 million in 2021) from local property tax allocations.

Figure 6.7 Central government funding to local authorities for transport investment, 2016 – 2021

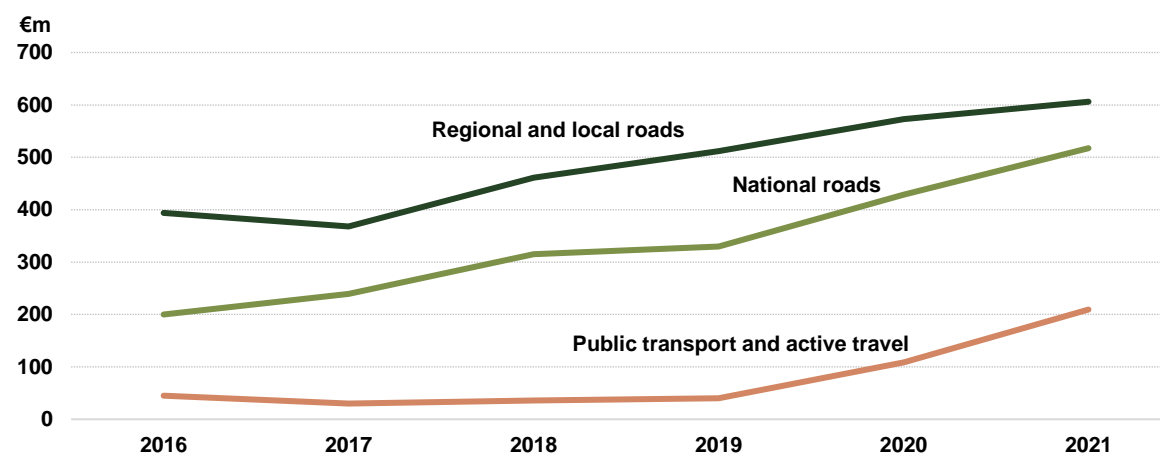
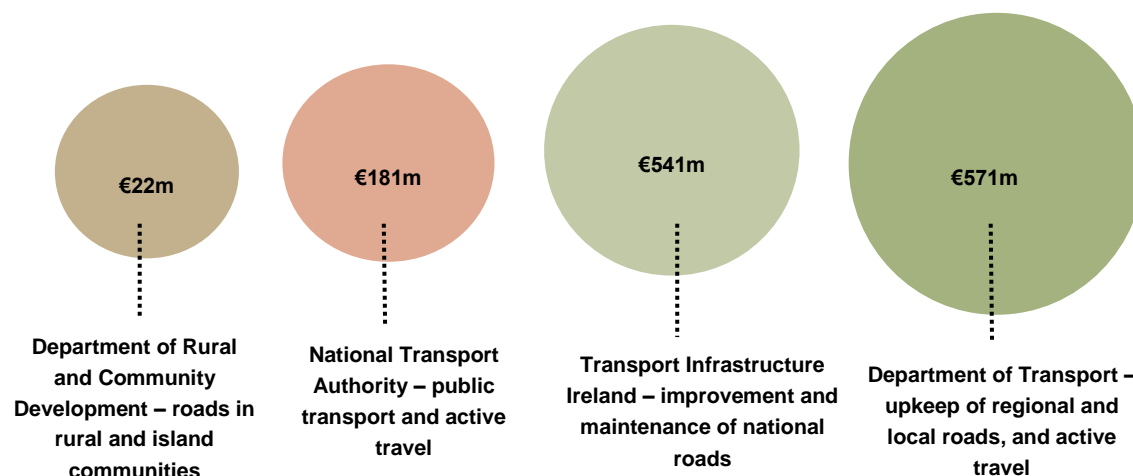


Figure 6.8 Transport investment, by organisation and role, 2021^a



Source: Annex 6A

Note: ^a This figure does not include funding from local property tax allocations of €16.4 million for expenditure on local and regional roads.

Section 4 Regional and local roads — average road expenditure and quality

Local authorities are responsible for the management of the local and regional roads network. However, most of the funding for maintenance and improvement work carried out by the local authorities is provided by the Department of Transport.

Over the period 2016 – 2019, the greatest level of expenditure per kilometre of local and regional roads was in the Dublin City Council (€37 per km per annum) and Galway City Council (€24 per km per annum) areas (see Figure 6.9). The lowest level of expenditure was in the Westmeath County Council and Mayo County Council areas.

The Department of Transport monitors cyclically the condition of all of the roads network, and classifies roads using a rating system called the Pavement Surface Condition Index (PSCI). For 2020, Dublin City Council's and Roscommon County Council's local and regional road networks were found to be in the poorest condition, with 52% and 53% respectively of the networks identified as having moderate or severe defects (see Figure 6.10).

Figure 6.9 Average annual road expenditure over the period 2016 – 2019 per kilometre of local and regional road in each local authority area

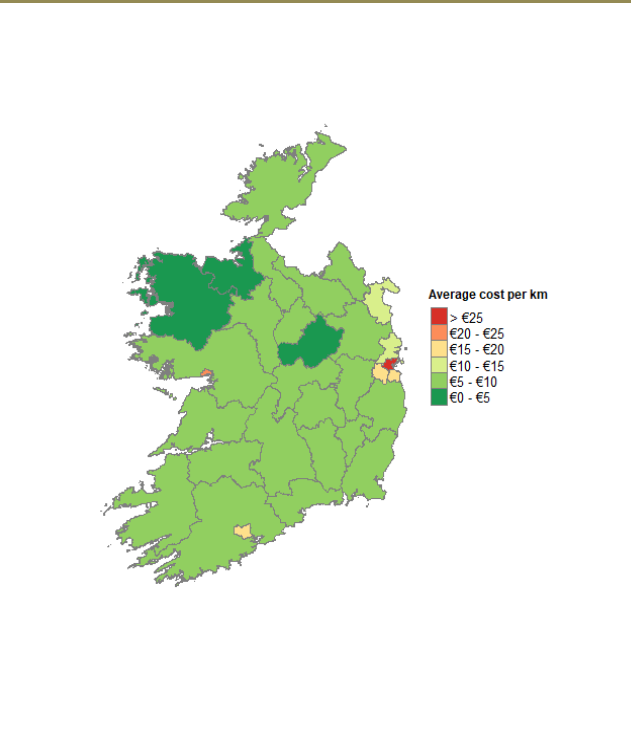
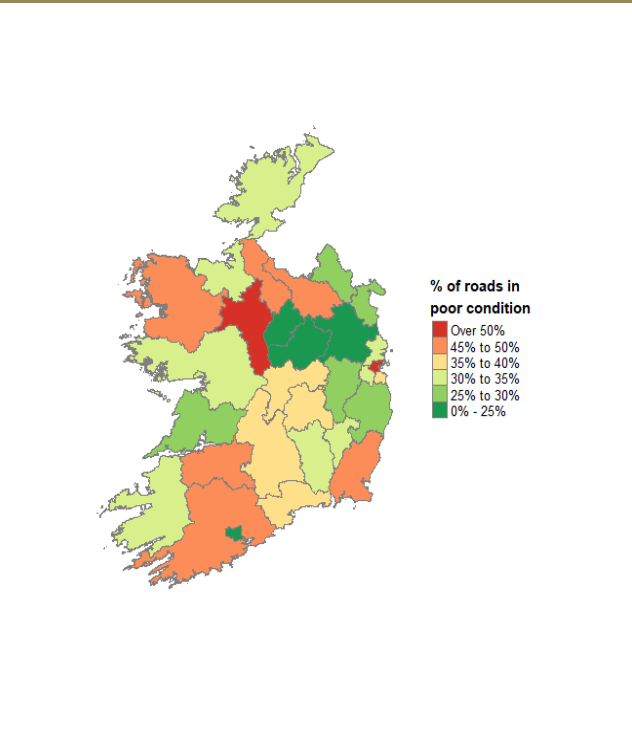


Figure 6.10 Regional and local road quality — % of roads with quality ratings indicating roads as being in poor condition, 2020^a



Source: Department of Housing, Local Government and Heritage; National Oversight and Audit Commission. Analysis by the Office of the Comptroller and Auditor General.

Note: a All roads are required to be monitored for quality, but not all roads in local authority areas have been evaluated.

Section 5 Environmental initiatives

Funding is provided to local authorities for a range of environmental services, including water and sanitation projects, waste management, and flood relief.

Over a third of the funding provided by the OPW to local authorities for flood relief works in 2021 (€8.8 million) was provided to just two local authorities: Cork City Council and Clare County Council.

In 2021, funding of around €3 million was provided to Offaly and Longford County Councils to replace lost water rates payments due to the impact of the closures of peat-fired power stations in their areas.

Figure 6.11 Central government funding to local authorities for environmental initiatives, 2016 – 2021

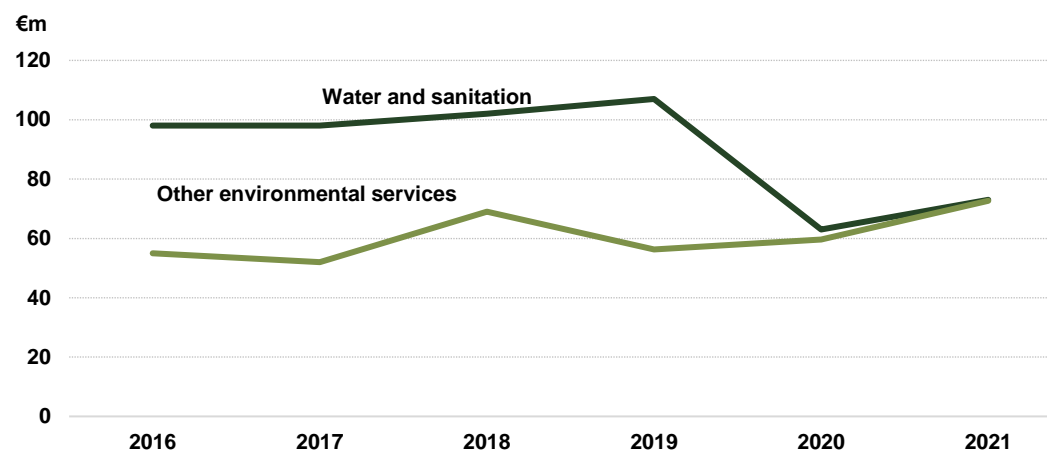
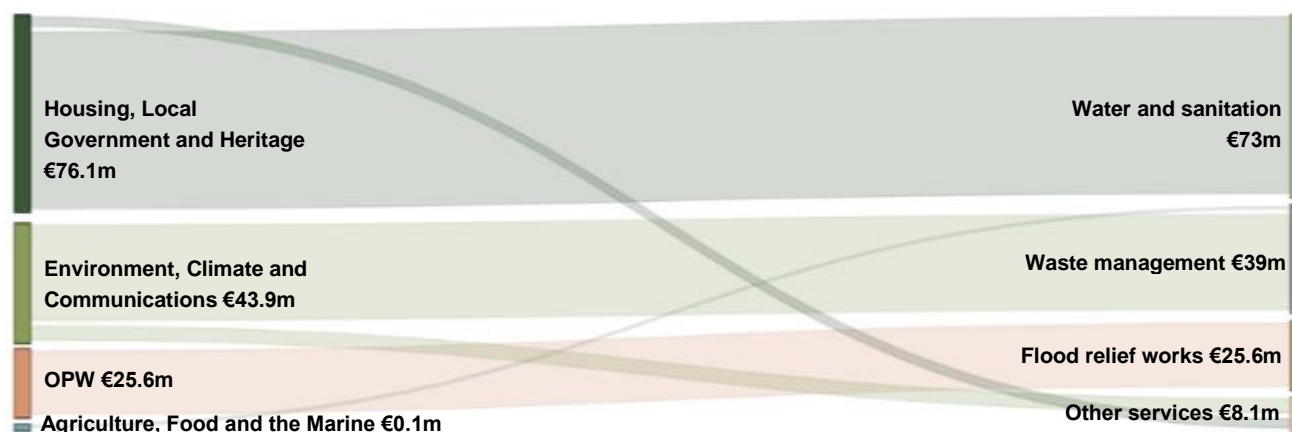


Figure 6.12 Source and purpose of funding, 2021



Source: Annex 6A

Section 6 Miscellaneous capital programmes

The Department of Rural and Community Development provided €47 million to local authorities in respect of the LEADER programme.

The Department of Agriculture, Food and the Marine provided around €4 million for harbour development.

Figure 6.13 Central government funding to local authorities for miscellaneous capital programmes, 2016 – 2021



Figure 6.14 Source and purpose of funding, 2021



Source: Annex 6A

Section 7 Employment schemes

The Department of Enterprise, Trade and Employment, through Enterprise Ireland, provided €31 million (2020: €44 million) to local authorities for the local enterprise development programme delivered by local enterprise offices (LEOs).

The Department of Rural and Community Development provided €40 million (€40 million in 2020) to local authorities for the Social Inclusion and Community Activation Programme (SICAP) — this aims to support disadvantaged individuals with lifelong learning and labour market supports, and to address social equality and exclusion issues.

Figure 6.15 Central government funding to local authorities for employment schemes, 2016 – 2021

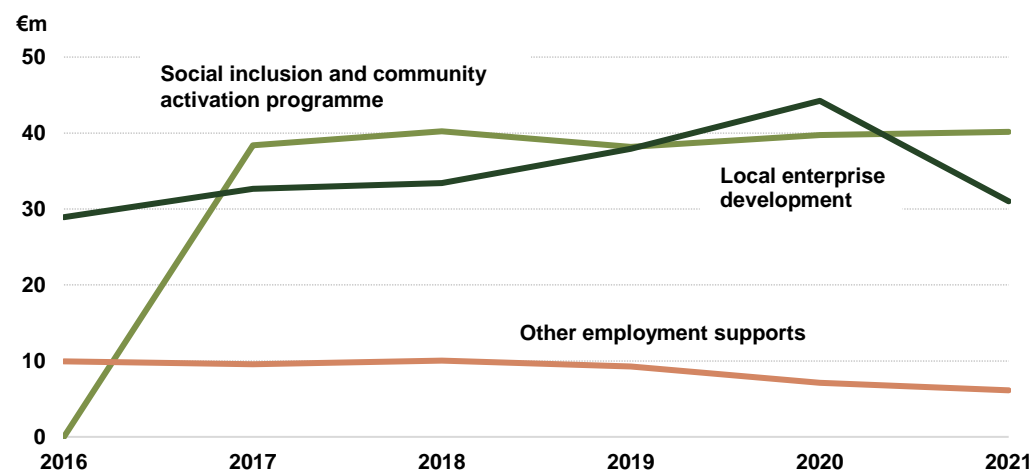


Figure 6.16 Source of employment scheme funding, 2021



Source: Annex 6A

Section 8 Other services

Central government bodies also fund local authorities to assist in providing a wide range of other services.

Other miscellaneous services included funding of €8 million (2020: €6.9 million) from the Department of Health for the local authority veterinary service and €4 million (2020: €5 million) from the Department of Defence for civil defence activities.

Figure 6.17 Central government funding to local authorities for other services, 2016 – 2021

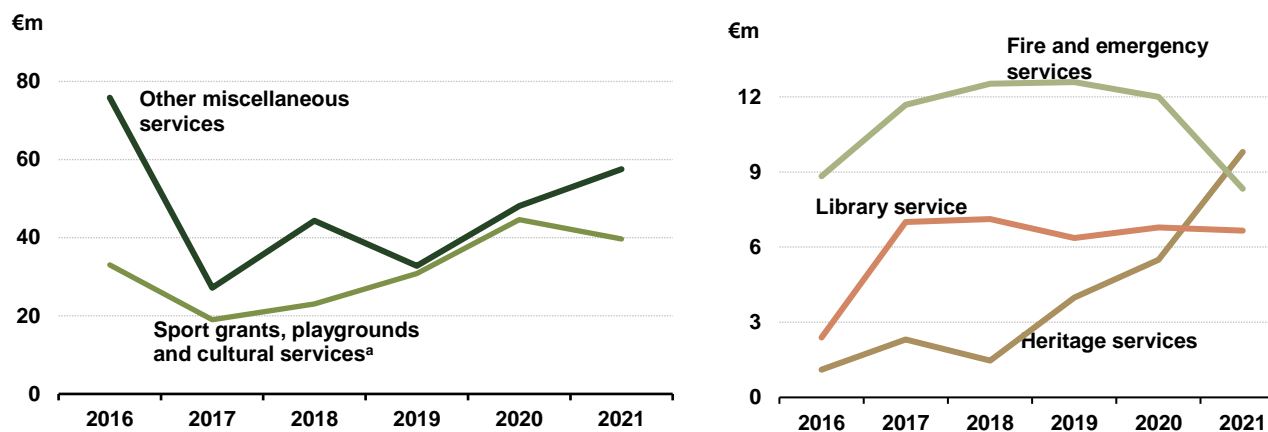
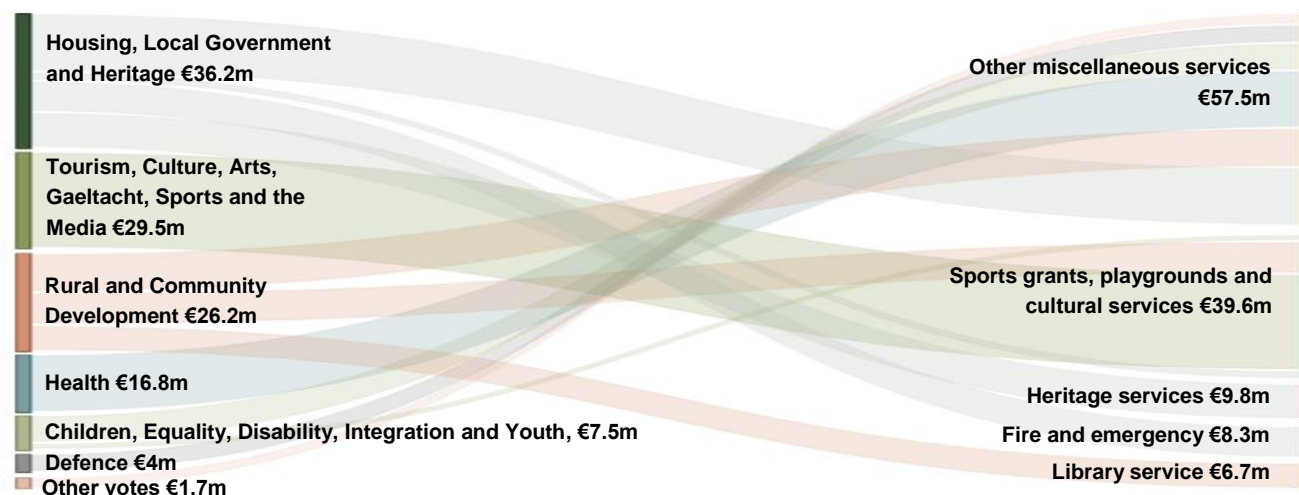


Figure 6.18 Source and purpose of funding, 2021



Source: Annex 6A

Note: a Includes funding for swimming pools in respect of 2016 – 2018.

Section 9 Special funding to mitigate the impact of Covid-19

In 2021, central government provided additional funding totalling €637 million to local authorities to mitigate the impact of Covid-19 restrictions on their operations. The provision in this regard in 2020 was €1.42 billion. Around 90% of the total funding was provided by the Department of Housing, Local Government and Heritage via the Local Government Fund (LGF).

The funding provided in 2021 was mainly in the form of support for the local authorities, to replace losses in rates income as a result of the commercial rates waivers operated during lockdowns, and to replace other forms of lost income. The funding by central government of rate waivers also provided significant support to ratepayers.

Figure 6.19 Direct supports to assist local authorities, 2020 and 2021

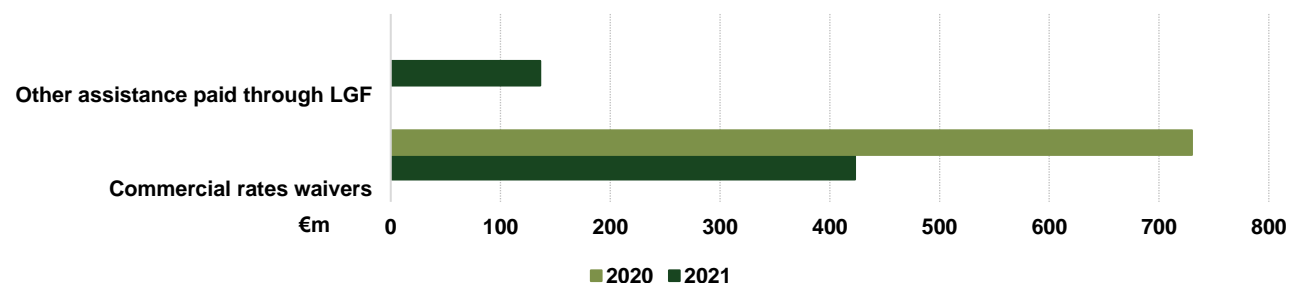
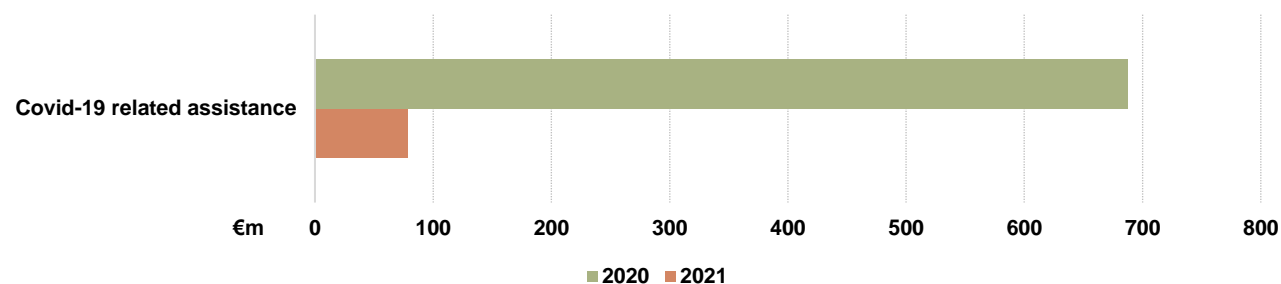


Figure 6.20 Supports to businesses administered by local authorities, 2020 and 2021



Source: Annex 6A

Section 10 Local Government Fund

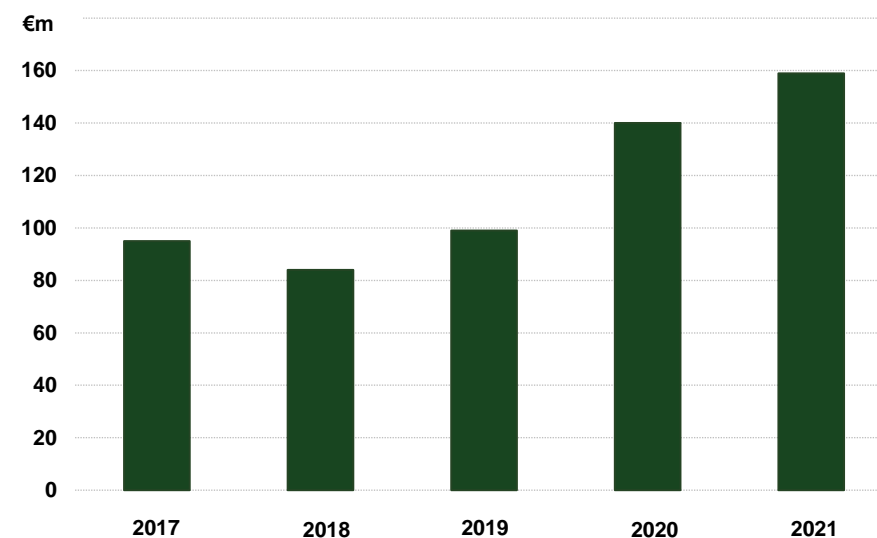
The Local Government Fund (LGF) is a special central fund managed by the Department of Housing, Local Government and Heritage (the Department) that distributes funding to local authorities from the Exchequer (via the Department) and from the local property tax (LPT) receipts collected during the year by the Revenue Commissioners.

Towards the end of each year, the Department estimates the total LPT yield that will be liable on properties for the following year. Along with an equalisation contribution from the Exchequer, this is the LPT allocation that local authorities will receive in that year (see Annex 6B for the calculation of LPT 2021 allocation).

The LPT collected in a particular year may not match the allocations for that year as property owners may pay their LPT in the year prior to liability, or as a late payment in a following year. For example, €124 million of LPT receipts were received in 2021 in respect of the 2022 liability year. €72 million of LPT receipts were received in 2020 in respect of the 2021 liability year.

As shown in Figure 6.21, LGF reserves have increased from €84 million at the end of 2018, to over €159 million at the end of 2021. The Department has stated that the reserves at the end of 2021 include funding for committed future expenditure, including €124 million for the 2022 LPT allocations, and €14 million for the 2022 Covid-19 commercial rates waiver.

Figure 6.21 Year end reserves of the Local Government Fund, 2017 – 2021



Source: Department of Housing, Local Government and Heritage, Local Government Fund accounts

Annex 6A Central government transfers to local authorities, by expenditure programme, 2016 – 2021

The trends in funding to local authorities in the period 2016 to 2021 is shown in Figure 6A.1. Adjustments have been made to some previously reported amounts to reflect amounts not previously included and reclassifications. Some figures may not tot due to rounding.

Sources of funding

The sources of funding reported in Figure 6A.1 below are

The Office of Public Works

Department of Housing, Local Government and Heritage

Department of Transport

Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media

Department of Health

Department of Justice

Department of Agriculture, Food and the Marine

Department of Social Protection

Department of Children, Equality, Disability, Integration and Youth

Department of the Environment, Climate and Communications

Department of Defence

Department of Enterprise, Trade and Employment

Department of Rural and Community Development

Department of Further and Higher Education, Research, Innovation and Science

Local Government Fund account (2021)

Environment Fund account (2021 unaudited).

Figure 6A.1 Central government transfers to local authorities, by expenditure programme, 2016 to 2021**Expenditure category**

	2016	2017	2018	2019	2020	2021
	€m	€m	€m	€m	€m	€m
Housing and regeneration						
Social housing provision	759	1,133	1,704	2,024	2,156	2,413
Affordable housing, etc.	2	3	—	—	—	4
Infrastructure funding	—	—	7	22	32	16
Other housing supports	92	79	215	258	340	324
Regeneration	60	78	86	79	67	82
	913	1,293	2,012	2,383	2,595	2,839
Transport investment						
National roads improvement	200	239	315	330	429	517
Regional and local roads improvement	394	368	461	512	573	606
Public transport (capital payments) and active travel	45	30	36	40	109	209
	639	637	812	882	1,111	1,332
Environmental initiatives						
Water and sanitary services	98	98	102	107	63	73
Flood relief works	34	28	31	28	31	26
Waste management	18	17	25	23	26	39
Other environmental measures	3	7	13	6	3	8
	153	150	171	164	123	146
Miscellaneous capital programme	24	22	64	85	103	62
Employment schemes	38	81	84	86	91	77

Figure 6A.1 Central government transfers to local authorities, by expenditure programme, 2016 to 2021 (continued)**Expenditure category**

	2016	2017	2018	2019	2020	2021
	€m	€m	€m	€m	€m	€m
Other services						
Swimming pools	4	6	1	—	—	—
Fire and emergency services	9	12	13	13	12	8
Library service	2	7	7	6	7	7
Sports grants, playgrounds and cultural projects	28	13	22	30	45	40
Heritage services (architectural heritage)	1	2	1	4	5	10
Other miscellaneous services	76	27	44	34	48	58
	120	67	88	87	117	123
Covid-19 supports						
Covid-19 related funding for waived rates	—	—	—	—	730	423
Covid-19 related funding for businesses	—	—	—	—	687	78
Other Covid-19 assistance	—	—	—	—	—	136
	—	—	—	—	1,417	637
LPT allocations — general purpose/discretionary	310	393	395	394	410	422
Remuneration-related payments paid from the LGF	25	20	60	86	109	130
Total funding provided to local authorities	2,223	2,662	3,686	4,167	6,076	5,768

Source: Annex 6A

Annex 6B Allocation of local property tax

Every local authority is entitled to receive a minimum amount of funding known as baseline funding. Local authorities that do not have a strong enough property base to meet this minimum level of funding (20 out of 31 local authorities in 2021), have their allocation increased by a process known as equalisation.

Local authorities initially retain 80% of their LPT projected yield with the remaining 20% redistributed to local authorities below the baseline. Central government also contributes funding to equalisation when this redistribution pool is not sufficient (€35 million in 2021).

Local authorities are permitted to vary the rate at which local property owners pay the LPT. When local authorities vary upwards they retain the increased revenues, while a downwards revision leads to a reduced allocation. In total, LPT allocations increased €3 million in 2021 due to local variations.

Local authorities who are above the baseline are also required to use some of their allocation for housing and transport expenditure that would otherwise be funded by the Exchequer. This amounted to €108 million in 2021.

			2021	2020
	80% retention > base	80% retention < base	All	All
Number of local authorities	11	20	31	31
	€m	€m	€m	€m
Total LPT projected yield	331	161	492	488
Local retention (80%)	265	129	394	390
Equalisation funding				
- LPT redistribution (20%)	—	98	98	98
- Exchequer contribution	—	35	35	37
Pre-variation LPT allocations	265	262	527	526
Adjustment for local variations in tax rate	(14)	16	3	(9)
Post-variation LPT allocations	251	278	530	517
Of which				
- for authority's own general use	143	279	422	410
- self-funding of housing/roads services	108	—	108	107

Source: Department of Housing, Local Government and Heritage

Note: a Some figures may not tot due to rounding.

7 The Housing Agency's Revolving Acquisitions Fund

7.1 In the last quarter of 2016, the Department of Housing, Local Government and Heritage (the Department) provided the Housing and Sustainable Communities Agency, more generally known as the Housing Agency (the Agency), with €6.7 million in capital funding for the purposes of acquiring vacant houses and apartments. Subsequently, in 2017, the Agency received a further €70 million capital funding to establish a revolving fund for housing acquisition.

7.2 The intention was that this funding would be used to engage with banks and private equity investment funds in areas with high levels of social housing demand to acquire vacant residential units for social housing.¹ The units acquired would then, if necessary, be refurbished to comply with the standards for rented accommodation and offered for sale to approved housing bodies (AHBs) and to local authorities.² The Agency would replenish the revolving fund with the proceeds from the onward sale of the units. The restored fund could then be recycled by the Agency to acquire further residential units for social housing use.

7.3 The Housing Agency Acquisitions Fund (the Fund) was formally established with effect from 1 January 2017. The Fund was designed to complement, not displace, ongoing targeted acquisition activity by local authorities and AHBs.

7.4 The Agency's management of the Fund is overseen by the Department. The Department's strategic goal in relation to the Fund (as set out in the *Rebuilding Ireland Action Plan (2016 – 2021)*) is to acquire properties for social housing nationally, thereby increasing social housing delivery.³

7.5 The Agency is responsible for the day-to-day operation of the Fund including its financial management, the acquisition process, management and onward sale of the acquired residential units.

7.6 The relationship between the Agency and the Department is included in a broader oversight agreement (the agreement), effective from 2019.^{4,5} The agreement briefly sets out the purpose of the Fund, the financial management and reporting requirements. The agreement expired in 2020. The Department stated that a revised agreement was drafted but has not yet been signed.

7.7 The Agency works with the Department, local authorities, AHBs and the private sector in the delivery of housing for citizens. The Agency's operating procedure sets out how the Agency reports to various stakeholders including the Department, local authorities and the Agency's Board. The Agency stated that it communicates regularly with all AHBs that are in the process of purchasing properties for use in social housing. Weekly or fortnightly meetings are held between the Agency and AHBs actively acquiring units.

1 This was set out in the *Rebuilding Ireland Action Plan (2016 – 2021)* as a short to medium term initiative in direct response to the social housing shortage.

2 While the primary focus was for onward sale to AHBs, some units were disposed of to local authorities.

3 The Department's strategy document *Housing for All*, covering the period to 2030, was published in September 2021.

4 The purpose of the agreement is to ensure, *inter alia*, that the Agency is discharging its statutory functions in an efficient manner.

5 The Agency stated that the governance arrangements and reporting requirements were set out in a letter from the Department in December 2016 and that these were implemented in early 2017.

7.8 A Steering Group comprising representatives from the Agency and the Department was established in 2017 to support the strategic delivery of the Fund programme. The Group meets monthly to monitor the operations of the Fund.

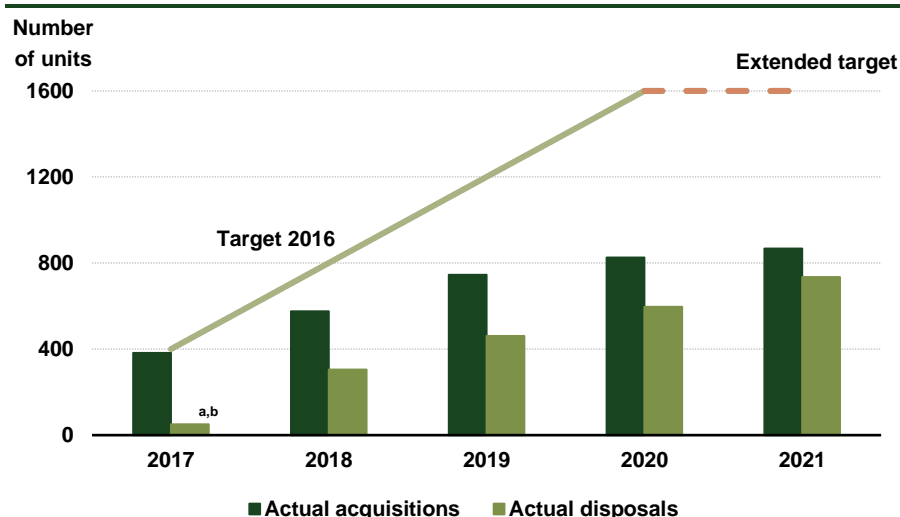
7.9 This examination was undertaken to assess the outturn and performance monitoring of the Fund.

Outturn

7.10 At the outset, it was projected that an investment of €70 million would likely yield acquisitions in the order of 1,600 residential units over a four-year period to 2020. The time target for delivery of the units was subsequently extended to 2021.

7.11 This target was not achieved. By end 2021, the Agency had completed acquisitions of 868 units (54% of the target) of which 735 units had subsequently been disposed of (see Figure 7.1).¹

Figure 7.1 Target and actual acquisition and disposal of residential units, 2017 to 2021 (cumulative)



Source: The Housing Agency. Analysis by the Office of the Comptroller and Auditor General.

Notes: a Acquisitions for 2017 include 16 units acquired in 2016.

b Disposals include 15 units transferred to local authorities.

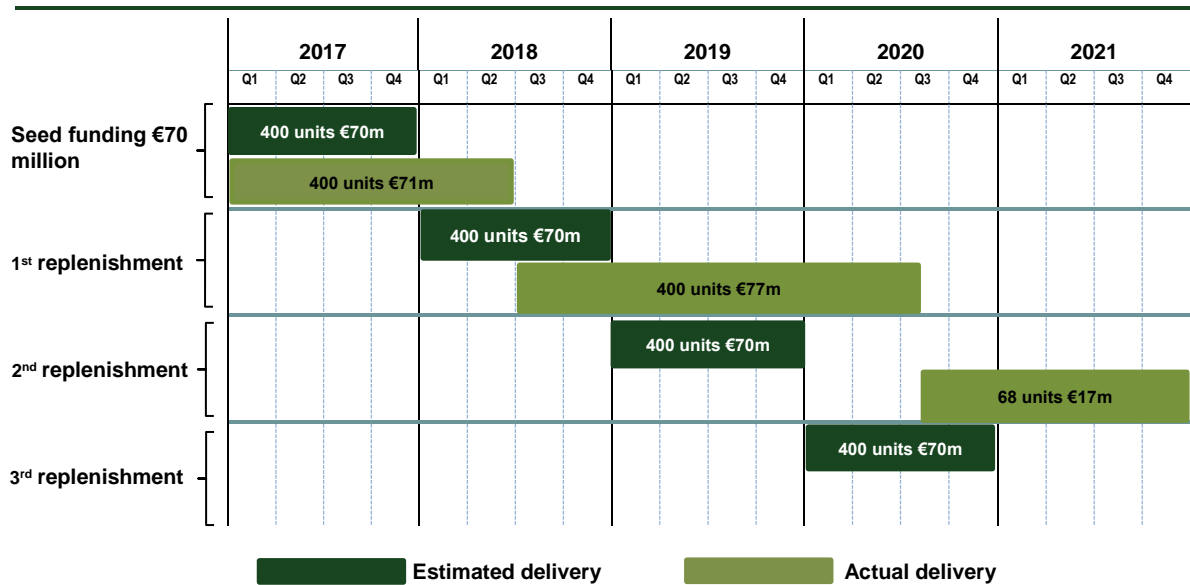
7.12 The Agency and the Department stated that the Fund delivery shortfall was mainly due to slower than anticipated sales of properties and consequent delayed replenishment of the Fund, combined with a reduced stock of suitable available properties.

7.13 To meet the original delivery target, the Agency needed to acquire and dispose of a housing unit at an average cost of around €175,000 within an average turnaround time of 12 months. The average turnaround time achieved was just over 17 months per unit. The Agency stated that at the outset of the scheme, it had aimed to recycle properties within six months. However, it became apparent for a number of reasons — AHB operational capacity, AHB lender requirements to bundle property sales into larger transactions and conveyancing requirements — that this would not be possible.

¹ This includes 15 units transferred to the local authorities for no consideration.

- 7.14** The acquisition of the first 400 units was completed in mid-June 2018 (six months later than estimated) and the actual capital cost was €71.4 million — an average of €178,500 per unit. The acquisition of the second 400 units, through the recycling mechanism, was completed in July 2020 (18 months later than estimated) at a capital cost of €77.3 million — €193,250 per unit, representing an increase of 8.3% in the average unit cost. The next cycle commenced in July 2020, and just 68 units were acquired to the end of 2021. The capital cost of acquiring the 68 units totalled €16.8 million — an average cost of €247,000 per unit.¹ At that unit cost, the total capital cost of acquiring 400 units, in the third cycle would amount to approximately €99 million (see Figure 7.2).

Figure 7.2 Target and actual acquisitions of residential units, 2017 to 2021



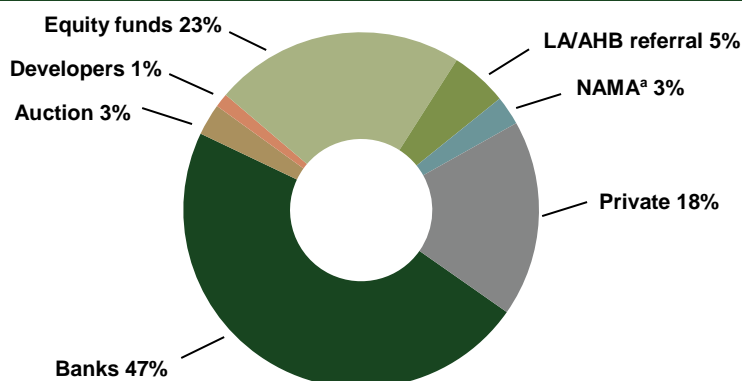
Source: The Housing Agency. Analysis by the Office of the Comptroller and Auditor General.

- 7.15** The Agency stated that the longer than anticipated recycle time between property acquisition and subsequent sale was mainly due to the requirement for repairs and upgrades, and the AHB funders' requirements.

- 7.16** Over half of all residential units acquired to the end of 2021 were located in five local authority areas — Dublin City Council (19%), Fingal (11%), Dublin South (8%), Kildare (9%) and Cork County Council (8%).

- 7.17** In 2018, in order to reduce the risks of not achieving the Fund's overall target, the Board of the Agency agreed that alternative approaches to acquiring properties for use as social housing be considered. Since mid-2018, acquiring properties directly from the private market has become a more common source (see Figure 7.3). However, the Agency's procedures require it to refrain from bidding against first-time buyers, owner occupiers, local authorities and AHBs.

¹ The Agency stated that the profile of the properties acquired has changed over time. Earlier properties acquired from banks and funds were effectively distressed assets which generally had been vacant for long periods. Since 2020 in particular, a higher proportion of properties have been acquired on the open market which are generally in better condition than properties acquired from the banks and funds.

Figure 7.3 Source of units acquired to the end of 2021

Source: The Housing Agency

Note: a National Asset Management Agency.

- 7.18** The Agency's disposal of 735 residential units to the end of 2021 included two units which were sold on the open market and not used for social housing. The Agency stated that the open market sale was due to issues that arose with these units.¹ The Agency also stated that the Fund did not incur any losses in these cases and that the Department approved the on-market sale in both cases.

Leasing

- 7.19** Initially, the completion of a sale to an AHB was considered to represent delivery of a housing unit. However, since 2018, the number of properties placed on caretaker leases (but not yet sold) are reported as units delivered in the Department's figures for social housing delivery.
- 7.20** Caretaker leases are entered into with the relevant AHBs to allow for remedial works and the early provision of the property to tenants during the sales process. The lease is accompanied by an option agreement which provides the Agency with the security of taking the property back should the sale not proceed within six months.²
- 7.21** At the end of 2021, the Agency held 133 residential units acquired through the Fund at a cost of €27.4 million.³ Of these properties, 69% had been acquired prior to 2021 — 26% in 2020, 30% in 2019, 8% in 2018 and 5% in 2017. Over two-thirds of the 133 units are therefore significantly in excess of the six months limit within which the sale of the unit should have proceeded.
- 7.22** For 130 of the 133 units held, the Agency had signed caretaker leases in place with AHBs.⁴ The remaining three units had only been purchased in December 2021. The Agency stated that there are various reasons impacting on the disposal of these properties, *inter alia*, upgrading delays due to Covid-19, works that are dependent on the apartment owner management companies which fall outside of the Agency's control, and AHBs' resourcing.
- 7.23** Since 2018, the Agency has monitored the residential units it acquired until the units are occupied (this monitoring continues even after the sale to AHBs). 54 of the 133 units held by the Agency at the end of 2021 were vacant, with an average vacancy period of over seven months. The vacancy periods of individual units varied from zero to 38 months, with ten units vacant for over twelve months.

¹ Estate management issues and extensive structural work required which was not discovered until the initial works took place.

² The option to buy (by the AHB) must be executed within six months of signing the caretaker lease.

³ This excludes a further seven properties, for which legal ownership had yet to pass to the Agency i.e. the acquisition process had not formally concluded at end 2021.

⁴ The total disposals of 735 to end 2021 do not include the units on caretaker lease at year end.

Financial outturn of the Fund

- 7.24** To the end of 2021, the Agency had acquired 868 residential units through the Fund at a combined cost of €165.6 million, and had recovered €148.4 million through the sale of 720 units.¹ The cash position of the Fund at the end of 2021 was €37.7 million — representing around half the value of the Fund.
- 7.25** The Agency prepares regular cashflow projections which are provided to the Department. The Agency does not have the authority to go into an overdraft on the Fund.
- 7.26** For the purposes of its quarterly reporting to the Department of Public Expenditure and Reform (DPER), the Agency defines its funding capacity — the amount it has available to purchase properties — as the total funding provided by the Department, less the value of contracts for purchase signed by the Agency, less rental income, with value of sales completed added back.² Using this definition, the Agency calculated that the funding capacity of the Fund at the end of 2021 was €58.5 million (see Figure 7.4). The Agency stated that the funding capacity, as reported to DPER quarterly, is not used operationally.
- 7.27** When the Agency is reporting to the Department, the Fund's actual cash balance is considered to be its funding capacity.

¹ This excludes the 15 units transferred to local authorities for no consideration.

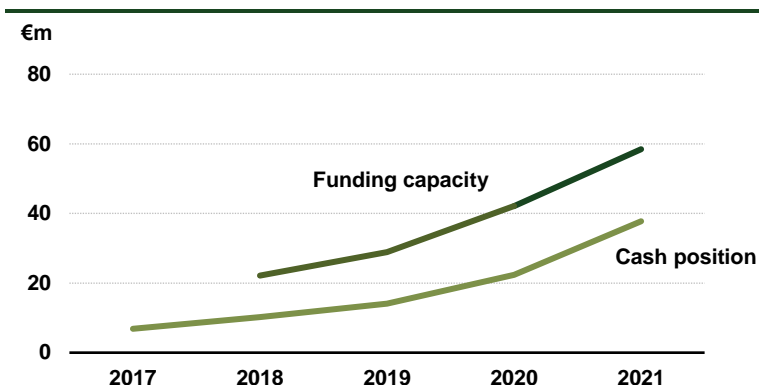
² The Agency stated that rental income is adjusted to reflect the potential for this rent to be paid over to an AHB at a later stage.

³ The Agency stated that bids were initially made on 115 properties in this portfolio, of which 52 were ultimately purchased. At the time the bids were accepted, the Fund's financial position suggested insufficient capacity to complete the acquisitions if called upon at short notice.

⁴ The properties were bought directly by the local authorities in 2019/2020. The Agency managed these transactions.

⁵ The 52 properties are not reflected in the 868 acquisitions and 735 disposals (inclusive of properties transferred) referred to throughout this report. These properties are reported separately in the monthly activity reports submitted to the Department.

Figure 7.4 The Fund's cash position and funding capacity, 2017 to 2021^{a,b}



Source: The Housing Agency

Notes: a The cash position reflects actual available amounts held in the Fund's bank account.

b The funding capacity excludes upgrade costs and non-recoverable costs incurred by the Fund.

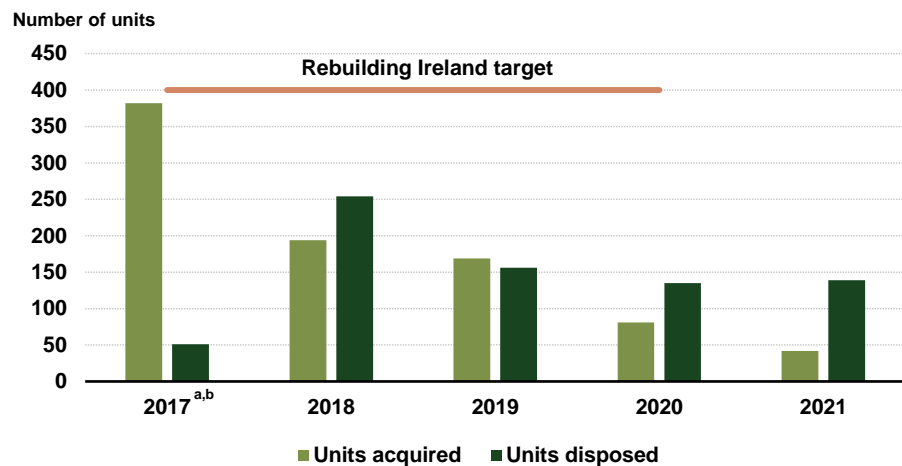
- 7.28** At the end of 2019, the funding capacity of the Fund was €28.9 million — up from €22.1 million at the end of 2018. Nevertheless, the Agency stated that in 2019 it did not have sufficient funds to purchase a portfolio of 52 properties at a cost of €7.6 million (an average of €146,000 per unit) offered to the Agency by a financial institution.³ While the portfolio of 52 properties was ultimately purchased outside of the Fund using local authority capital funding from the Department, the Agency stated that it was agreed with the Department to record these units as having been delivered under the Fund.^{4,5}

- 7.29** The Department stated it is satisfied that the monthly reporting from the Agency to the Department and the quarterly reporting to DPER is very comprehensive, consistent and accurate and has been agreed with the Agency. It further stated that a unit is only ever counted once at each status point and therefore inconsistencies or double counting do not occur. Acquired, sold or delivered figures are provided as per the specific query being answered with clarifications provided as necessary. It stated that the 52 properties acquired are an exception to all other local authority direct acquisition activity and are presented independently in the monthly activity reports submitted by the Agency. All other local authority direct acquisition activity is reported by local authorities in their quarterly returns and is not included in the Fund's 'delivered' figures. The Fund's financial reporting does not reference the 52 properties, as there was no capital expense incurred by the Fund for these properties.

Monitoring performance

- 7.30** The Agency's strategic plan 2019 – 2021 set out an average annual target of acquiring 400 units for social housing using the Fund. This was in line with the *Rebuilding Ireland Action Plan (2016 – 2021)*. This level of acquisitions was almost achieved in 2017, but the rate of acquisition declined year on year thereafter (see Figure 7.5).
- 7.31** A target of 400 disposals a year is implied from the concept of a revolving fund. Since the acquisitions didn't happen, consequently the disposals could not happen.

Figure 7.5 Annual target and actual acquisitions and disposals, 2017 to 2021



Source: The Housing Agency

Notes: a 2017 acquisitions include 16 properties acquired in 2016.

b 2017 disposals include 15 units transferred to local authorities.

7.32 The Agency is required to provide the Department with regular reports which include information on a set of measures for the key outputs and activities of the Fund. Specific targets for some of these measures were not adopted.¹

7.33 This examination reviewed the Fund's objectives and the sufficiency of its performance indicators and noted the following opportunities for improvement

- develop performance indicators to monitor the economy and efficiency of the Fund
- ensure adequate systems are in place to set achievable, timely and relevant targets based on robust information
- document the procedure for the approval of revised annual targets.




7.34 In line with the commitment under *Housing for All*, the Department has carried out a review of the scope and operation of the Fund. The review was completed in 2022 and resulted in a number of recommendations. The Department has stated that it is engaging with DPER to obtain sanction to implement the review's proposals.

Control measures

¹ A range of performance indicators was agreed at the outset and included as part of the reporting requirements in the departmental letter to the Agency in 2016 in relation to the Fund.

7.35 The Agency is required to ensure the suitability, quality and value for money of residential units purchased under the Fund. It is also required to ensure that the funds for further acquisitions which are recycled through the sale of units are ring-fenced. An assessment of the key controls over the Fund is set out in Figure 7.6.

Figure 7.6 Assessment of key Fund controls

Area	Key control	Assessment of operation of control	Overall assessment
Exchequer funds are protected, accounted for and managed properly	The funds for acquisitions which are recycled through the sale of properties to AHBs and local authorities are ring-fenced	In mid-2018, the Agency set up a separate bank account for the Fund. The balance on the bank account is periodically reconciled to the Fund's income and expenditure account. In 2021, to mitigate the exposure to negative interest, 95% of the Fund's balance was placed on a finance facility with the Housing Finance Agency. While the facility is used for the Agency's cash balances generally, the Fund's transactions are recorded and shown separately (under a separate heading).	
	Compliance with the DPER Circular 13/2014 — <i>Management of and Accountability for Grants from Exchequer Funds</i>	<p>There is no written procedure to ensure compliance with circular 13/2014.</p> <p>The Agency stated that the checklist for adherence to circular 13/2014 was reviewed to ensure compliance and that compliant governance structures are in place. The Agency also stated that all Fund amounts were drawn down from the Department in 2017. Confirmation of compliance with the circular is provided to the Department monthly.</p> <p>Administrative checks are carried out by the Agency when drawing from the Fund's ring-fenced bank account. The checks include: 1) a review of whether the funding is being used for the purpose intended (social housing); 2) confirmation that the purchaser i.e. the AHB has a current tax certificate; 3) confirmation that there are adequate financial controls in place.</p>	
Value for money of properties purchased under the Fund	Adherence to acquisition limits for local authorities, set out periodically by the Department	<p>The Agency's operating procedure requires Board approval of purchase within the acquisition limits. To the end of 2021, the acquisition limits were exceeded by an average of €50,000 (19%) for six (0.7%) of the 868 residential units acquired. While the Agency stated the reasons for exceeding the limits for five properties, there was no record of why one property was acquired at a price above the limits. The Agency stated that Board approval to proceed to acquire the properties was obtained by email from the designated Board member in all cases and that there are no Board minutes which deal specifically with these properties.</p> <p>The Agency also stated that the Fund's standard operating procedures, which have evolved significantly over the years, are formally updated annually and signed off by senior management. It further stated that the current procedures require that acquisition cost guidelines are consulted at each of the following stages — property sourcing, bidding and acquisition sign off.</p>	

Area	Key control	Assessment of operation of control	Overall assessment
	Independent professional valuations	The Agency's operating procedure requires an independent professional valuation to be conducted for all properties for which a positive response from the local authority has been received. The property valuation is conducted by an independent valuer from a panel of valuers appointed by the Agency following a procurement process.	●
	Approval process	The Agency's internal controls require a Board member to sign off on each purchase under the Fund along with a delegated member of the executive.	
Suitability of properties acquired	The Agency is required to work in close consultation with local authorities throughout the process to ensure that, prior to entering into any contracts or commitments, suitable properties only are approved for purchase in areas where there is a demand for social housing	<p>The Agency has operating procedures in place to assess demand for properties. All potentially suitable available properties are referred to the relevant local authority to advise whether there is a need for the property or not. Local authorities also specify, as part of this 'expression of interest' process, whether they wish the property to be acquired directly for them (in trust for the local authority) or whether they would like the Fund to acquire it for onward sale to AHBs. If a need and positive interest is confirmed by the local authority, the Agency obtains a valuation and commences the purchase process.</p> <p>By the end of 2021, the Agency stated that it had considered 5,064 properties and made bids on 1,655 properties. The Agency stated that demand (positive expressions of interest/need for the properties) from local authorities was confirmed for 2,345 properties. The Agency also stated that it may decide, for a variety of reasons, not to bid on a property for which demand has been confirmed. These reasons include — not bidding against a first time buyer/owner occupier; bidding may already have exceeded the Agency's market valuation before it gets involved; the property may have been withdrawn by the vendor; the property may be tenanted and following investigation, the Agency decided to withdraw.</p>	●
Quality of properties acquired	Building survey report	The Agency has operating procedures in place to ensure the quality of properties acquired. An independent professional building survey report is required as part of the final sign off to acquire a property. This report includes the property description, building condition and works required. The cost of required works identified by the survey is assessed, with consideration given to AHB requirements and standards.	●
	A flood risk assessment	A flood risk assessment is initially undertaken by the Agency's staff by reference to the OPW website. If the property is within a flood risk area, a detailed flood risk assessment report is conducted by the designated flood risk consultants.	

Source: The Housing Agency. The Department of Housing, Local Government and Heritage. Analysis by the Office of the Comptroller and Auditor General.

Key: ● Adequate key control in place. ● Opportunity for improvement. ● No key control in place.

Conclusions and recommendations

- 7.36** The concept of a revolving fund is that the same funding is made available for use a number of times successively. The original objective of the Housing Agency Acquisitions Fund was to purchase residential units from financial institutions, and to sell them on mainly to AHBs.

Outturn

- 7.37** There has been a significant shortfall relative to the target for delivery of 1,600 residential units by the end of 2020. The target for delivery was extended to end 2021, but the revised target was not achieved.
- 7.38** To the end of 2021, the Housing Agency completed acquisitions of 868 residential units (54% of the target) of which 718 units were sold on to AHBs and local authorities; two units were sold on the open market; and fifteen units were transferred to local authorities for no consideration.
- 7.39** Under the Fund's mandate, only units sold are considered units delivered. Since 2018 however, the number of residential units placed on caretaker leases (but not yet sold) have been counted as units delivered in the Department's figures for social housing delivery. At end 2021, 130 units were held under caretaker agreements. Of these, 54 were currently vacant.
- 7.40** 52 properties were bought directly by local authorities in 2019/2020 using local authority capital funding from the Department. As the Housing Agency was involved in the acquisition, it stated that it was agreed with the Department to record these units as having been delivered under the Fund. These units are not captured in the 868 acquisitions but are shown separately in the Agency's monthly reporting to the Department.

Cash balances

- 7.41** The Agency's acquisition of properties in 2021 was at its lowest level since establishment of the Fund. At the year end, the cash balance of the Fund was €37.7 million — more than half of the total Fund investment. This represents an underutilisation of the Fund's resources.

Recommendation 7.1

The Department should, in conjunction with the Agency, consider whether at least some of the financial resources available to the Fund should be returned to the Exchequer.

DHLGH Accounting Officer's response

Part agreed.

In Q1 2022, my Department completed a review of the Acquisitions Fund, which investigated the challenges faced by the Fund and explored opportunities that centred on the possibility of re-purposing the Fund to support other initiatives within *Housing for All*, including *Housing First* and *Town Centre First*. My Department is currently engaged in a process with the Department of Public Expenditure and Reform to obtain sanction that would allow the proposals within the review to be implemented. If the outcome of this engagement allows the mandate of the Fund to be amended around these proposals, the financial resources will be directed to their implementation. If sanction is not received to progress these proposals, the above recommendation will be taken on board.

Monitoring performance

7.42 The examination reviewed the Fund's objectives and the sufficiency of its performance indicators and noted the following opportunities for improvement

- develop performance indicators to monitor the economy and efficiency of the Fund
- ensure adequate systems are in place to set achievable, timely and relevant targets based on robust information
- document the procedure for the approval of revised annual targets.

Control measures

7.43 The Housing Agency is required to adhere to the cost acquisition limits set by the Department. The examination found that the limits were exceeded in some instances.

Recommendation 7.2

The Housing Agency should ensure that it has adequate processes in place to assess the reasons why acquisition limits are exceeded and put mitigating controls in place to address these. Departmental approval should also be sought prior to acquisition limits being exceeded.

Chief Executive Officer's response

Agreed.

The Housing Agency's standard operating procedure (SOP) sets out the basis for the bid assessment; and that the acquisition cost guidelines issued by the Department of Housing, Local Government and Heritage are used to calculate whether a bid may be made. The SOP sets out that three conditions must be satisfied for obtaining Board approval for an acquisition — one of these conditions is that the bid accepted is within the Department's acquisition cost guidelines.

It is accepted that the SOP does not deal with exceptions to the limits (as these are very rare) and how such cases should be approved.

7.44 The Housing Agency is required to ensure value for money for residential units purchased under the Fund and that the Exchequer funds are protected, accounted for and managed properly.

7.45 The Fund expenditure is recognised as a grant and the Agency is required to ensure compliance with the requirements under Department of Public Expenditure and Reform circular 13/2014. The examination found that the Agency does not have a written procedure to ensure compliance with the circular.

Recommendation 7.3

The Housing Agency should introduce a written procedure which provides for formal and regular reviews of compliance with the requirements of circular 13/2014 to ensure that Exchequer funds are properly accounted for and managed.

Chief Executive Officer's response

Agreed.

The Housing Agency accepts that there is no specific written procedure dealing with compliance with circular 13/2014 and accepts that a written procedure can be drafted which specifically sets out how compliance with circular 13/2014 is ensured.

Notwithstanding the absence of such a specific procedure, the Housing Agency is satisfied that the terms of circular 13/2014 are being fully complied with, within the governance structures in place between the Agency and the Department.

8 Contract payments in respect of Convention Centre Dublin

8.1 The Office of Public Works (OPW) entered into a public private partnership (PPP) with Spencer Dock Convention Centre Dublin Ltd (SDCCD) in 2007.¹ Under the terms of the PPP, SDCCD was contracted to design, build, finance, operate and maintain a new national convention centre. The Convention Centre Dublin (CCD) opened in early August 2010.

8.2 The final contract (project agreement) between the OPW and SDCCD was approved subject to a maximum cost to the Exchequer of €422 million in net present value terms.² The primary objective for the Exchequer expenditure — as set out in the project agreement — is to increase Ireland's share of the international conference market, thereby increasing incoming tourism revenues. The main measure of the success of the investment is the extent to which the CCD succeeds in contributing towards meeting this objective.

Unitary payment

8.3 PPP projects financed by private sector partners are typically remunerated by a stream of annual payments, called unitary charges. In the case of the CCD, an annual unitary charge of around €47 million applied for the first five years of the contract, reducing to €23 million a year for the remaining 20 years of the contract.³ The unitary charge payment amount is subject to indexation on each review date based on criteria prescribed in the project agreement.⁴

Performance monitoring

8.4 The project agreement includes performance incentives for SDCCD in the form of pre-determined key performance indicator (KPI) targets, with specified payment reductions in the case of underperformance. Payment reductions are provided for when the KPI targets are not achieved. The three KPIs included in the project agreement relate to

- availability of the CCD facilities
- service performance
- the number of international conference delegates attracted to use the facilities.

8.5 Unavailability of any functional area within the CCD for a period has to be logged and reported to the OPW. A unitary charge deduction is applicable depending on the duration and frequency of unavailability.

8.6 Service performance is measured by reference to the achievement of the performance parameters set out in the project agreement, and is assessed under headings such as cleaning, general services management and waste management.⁵ SDCCD is obliged to promptly inform the OPW if it becomes aware of underperformance in any area. The OPW can also carry out inspections at any time to ensure contract compliance. All performance parameters are assessed on a 'pass or fail' basis. A unitary charge deduction is applicable for failure to adhere to the standards as set out in the contract.

1 A PPP is an arrangement between a public authority and a private sector partner designed to deliver a public infrastructure project and service under a long-term contract. The public authority remunerates the private sector partner, subject to satisfactory performance, in the form of regular unitary payments over the term of the contract.

2 Chapter 20 of the Comptroller and Auditor General's *Report on the Accounts of the Public Services 2009* reviewed the procurement process undertaken and included a comprehensive analysis of the associated costs and benefits of the project.

3 The project agreement provided for additional 'up-front' unitary charge payments of €20 million in each of the first five years of operation.

4 Schedule 15, part 3 of the project agreement details the criteria used to calculate the indexation of the unitary charge.

5 Performance parameters are detailed in Annex 3 to Schedule

7 Operations and Maintenance of the project agreement.

International conference delegates

- 8.7** International conference delegates (ICDs) are residents from outside the State who attend an event at the CCD. Each year, SDCCD must submit a booking report to the OPW specifying details of events held in the previous payment year and the number of ICDs in attendance.¹ The booking report forms the basis for the ICD performance evaluation. Fáilte Ireland also receives the booking report to determine which delegates properly constitute actual ICDs as per the project agreement.
- 8.8** The contract provides for a graduated deduction to the unitary charge if there is a failure to attract the requisite number of ICDs annually. Depending on the level of under-performance, deductions from the unitary charge are made in the following year, using an agreed formula, spread evenly over the twelve months. The KPI targets for ICDs, and the graduated deductions for underperformance, are set out in Annex 8B. The ICD KPI is divided into various ranges from zero to 34,139 delegates.

Focus of this examination

- 8.9** A core concept in utilising the PPP model for delivery of public infrastructure is the achievement of an appropriate risk/reward balance. In order to achieve this, the negotiation process is designed to ensure the risks are allocated between the public and private partners on the basis of who is better able to manage them. The final agreed allocation of risks, and the projected revenue streams, are reflected in the payment schedule to which the public sector partner commits.
- 8.10** Because of the impact of pandemic-related restrictions on travel and indoor gatherings, SDCCD did not achieve the targeted level of ICDs either in payment year 10 (August 2019 to July 2020) or payment year 11 (August 2020 to July 2021). This examination was undertaken to assess how the OPW responded to this underperformance in light of the relevant contract provisions, and whether the State's interests were protected.

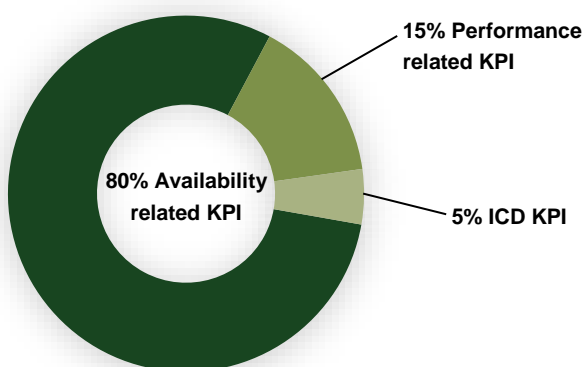
Payment structure

- 8.11** Schedule 15 to the project agreement sets out the grounds on which unitary charges can be reduced and the weightings that apply. Over the period 2015 – 2035, 80% of the unitary charge is based on availability, 15% on performance and 5% on the number of ICDs (see Figure 8.1).²

¹ The payment year for ICD target numbers runs from 1 August to 31 July (see Annex 8A).

² The weighting of the unitary charge was different for payment years 1 – 5 (2011 – 2015) with 80% for availability, 10% for performance and 3% for ICDs. The OPW stated that the project agreement was negotiated more than three years prior to CCD opening and that the calculations reflect the negotiated position at that time and the reasonable latitude given to a new project to establish itself in the early years.

Figure 8.1 Unitary charge weightings, payment years 2015 – 2035



Source: OPW Project agreement

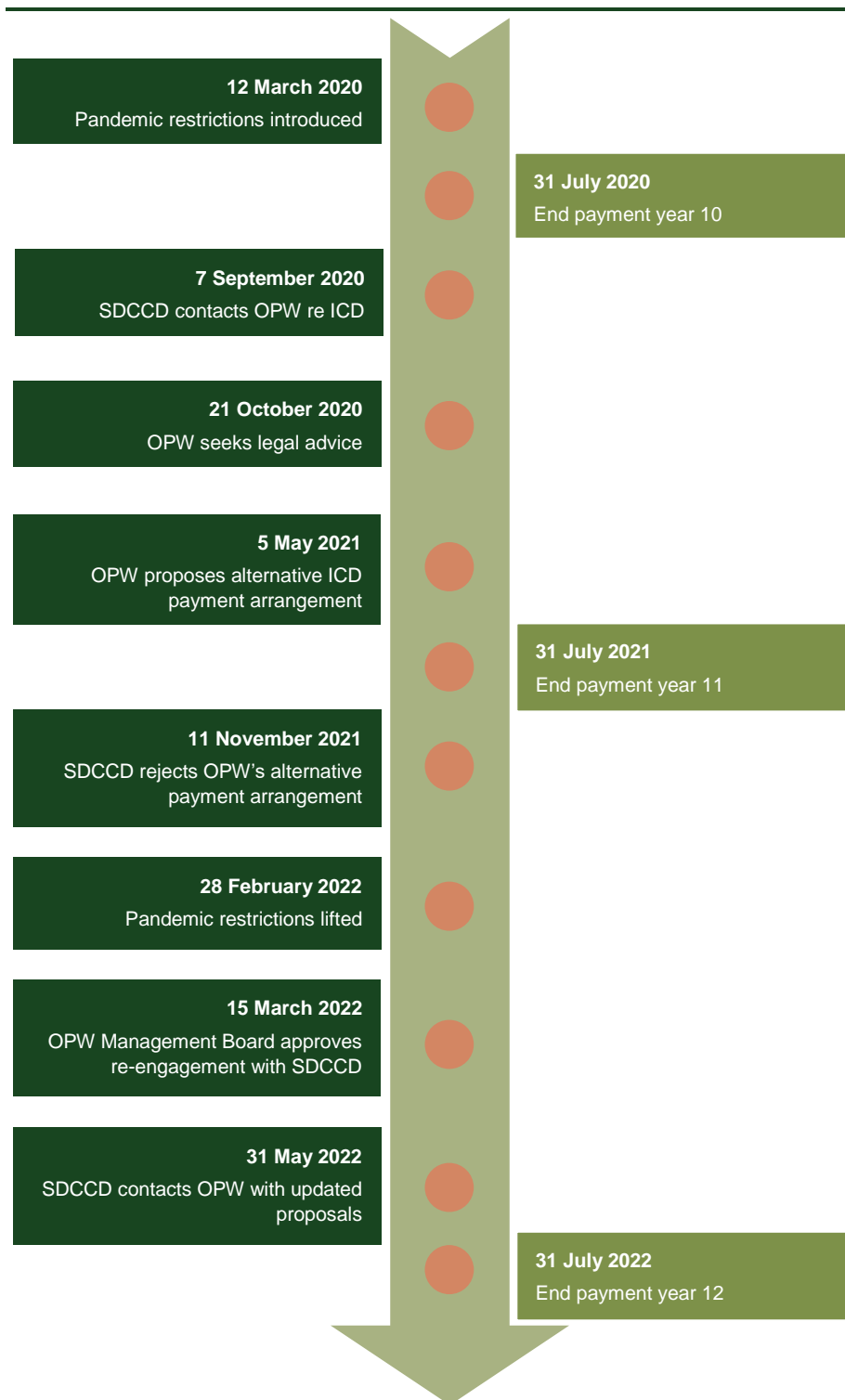
Impact of Covid-19 restrictions on ICDs

- 8.12** On 7 September 2020, SDCCD wrote to the OPW about the Covid-19 pandemic declared by the World Health Organisation in March 2020. SDCCD outlined that on 12 March 2020, the Irish Government had prohibited indoor gatherings of over one hundred people. SDCCD noted that restrictions were further tightened on 18 August 2020, when the Government imposed a ban on events organised indoors of more than six people from three households. SDCCD stated that in addition to social distancing requirements, the restrictions also required the mandatory quarantine of international travellers, which made it impossible for the CCD to reach the ICD target for payment year 10 (August 2019 to July 2020) specified in the PPP agreement. Consequently, SDCCD sought a waiver from the requirement to reach the ICD targets set out in the project agreement for payment year 10.¹
- 8.13** In addition to seeking the waiver, SDCCD noted that when events were permitted to commence, there would be a lag before international events could proceed as the lead-in time for international conferences can be a number of years. Consequently, the company advised that the number of ICDs projected for years subsequent to the pandemic would be less than the level anticipated by the project agreement.

OPW's management of waiver request

- 8.14** In October 2020, the OPW sought legal advice on the legal implications of waiving the ICD deduction. The legal advice noted that the SDCCD proposal to waive ICD related deductions was not specifically provided for in the project agreement. The legal advice stated that there was nothing within the agreement to prohibit the OPW adopting a policy to modify the application of the ICD regime and that the wording of any waiver granted would be important to emphasise its concessionary nature.
- 8.15** The OPW has stated that it did not receive notification of any specific central Government policies regarding the management of PPPs during the pandemic either before the question of the ICD deduction was first considered or subsequently.
- 8.16** Following the OPW's consideration of SDCCD's request for a waiver of the ICD deduction, it communicated an alternate solution to SDCCD on 5 May 2021. The solution proposed by the OPW was for any excess ICDs for the period to the end of the project to be accumulated to clear the deficit arising in payment year 10. In the event that excess ICDs were not achieved by the end of payment year 24, then the ICD related deduction, arising from payment year 10 plus interest, would be applied in payment year 25 (August 2034 – July 2035).
- 8.17** SDCCD rejected the OPW's offer by letter dated 11 November 2021 and again requested a waiver from the requirement to reach the specified ICD targets for payment year 10. The justification provided was that SDCCD was exceeding the ICD target, on a pro rata basis, until it was effectively forced to close due to circumstances outside of its control, namely the Government ban on mass gatherings and subsequent restrictions on international travel. A summary timeline of the key events in each payment year is outlined in Figure 8.2.

¹ The ICD target for payment year 10 was 32,140. The number of ICDs recognised from August 2019 to cessation of conference operations in March 2020 was 25,951 — a deficit of 6,189.

Figure 8.2 Summary timeline of key events, March 2020 to July 2022


Source: OPW

Terms of project agreement

- 8.18** The OPW has acknowledged that SDCCD's request for a waiver of the ICD deductions and the alternate solution, proposed by the OPW on 5 May 2021, represent a material change and would require the creation of a supplemental agreement to the original agreement.
- 8.19** The project agreement includes a dispute resolution clause and neither party has sought to exercise this clause to date.¹ It also includes a force majeure clause. However, terms such as 'medical emergency', 'pandemic', 'outbreak', etc. are not expressly specified in the clause.
- 8.20** The OPW is contractually obliged to continue paying the unitary charge. In terms of the ICD deductions, there is no specified relief in the project agreement for a failure to reach the specified quotas regardless of fault.

Value of ICD performance related deductions

- 8.21** Figure 8.3 shows a breakdown of the calculated value of ICD related deductions for the period August 2019 to July 2022. The period covers the payments years 10 to 12 inclusive.

Figure 8.3 Potential ICD deductions, payment years 10 – 12

Payment year	Upper band ICD target	Actual number of ICDs	Percentage ICD related deduction	Estimated value of ICD deduction € million
10 (August 2019 - July 2020)	32,140	25,591	0.6%	0.14
11 (August 2020 - July 2021)	34,140	—	5.0%	1.18
12 (August 2021 - July 2022) ^a	32,140	12,345 ^b	0.8%	0.19
Total ICD related deduction				1.51 (excl. VAT)

Source: OPW

- Notes:
- a Final figure for payment for year 12 is not yet known. Current estimate is for a deduction of around 0.8% of unitary charge or €190,000.
 - b Current estimated number of ICD delegates. The CCD is awaiting confirmation documentation for a further potential 500 delegates.

- 8.22** Pending the outcome of negotiations, the OPW paid the full unitary payment amounts otherwise due for contract years 10, 11 and 12, without the ICD deduction. The payments made totalled almost €71 million.
- 8.23** The potential deduction from the unitary payments in respect of underachievement of the ICD targets for payment years 10, 11 and 12 (August 2019 to July 2022) is estimated at €1.51 million. Based on the contract terms, €1.32 million of this was due for withholding in the period August 2020 to July 2022 (the estimated balance of €190,000 is due for withholding in the period August 2022 to July 2023). Consequently, there has to date been an overpayment of €1.32 million to the PPP company by reference to the contract provisions.

¹ The Disputes Resolution Procedure is included at section 57 of the project agreement and detailed at Schedule 26.

Views of the Accounting Officer

- 8.24** The OPW does not consider that an overpayment has been made to the PPP company or that an amount of €1.32 million was due for withholding in the period August 2020 to July 2022, as a decision on SDCCD's application seeking a waiver of deductions for failing to meet ICD targets has not yet been made. Since the CCD commenced operations, there has always been a period of due diligence to determine, and agree, the correct level of ICDs. It is only following this due diligence process that the situation with ICDs and any associated deductions is determined.
- 8.25** An overpayment situation would only arise if a final decision to waive a deduction, due under the project agreement, is made and implemented. A decision on the deductions, provided for in the project agreement, covering the period of Covid-19 restrictions which prevented the CCD from operating to its normal business model, will be made by the OPW Management Board in the light of all the circumstances, including, but not limited to the following
- the impact of the Covid-19 public health restrictions (particularly social gathering and travel restrictions) on the CCD's capacity to operate to its normal business model
 - government policy to support companies impacted by Covid-19 restrictions, whereby the tourism and hospitality sectors were particularly badly affected and were provided with significant and prolonged financial support for the duration of the Covid-19 emergency, yet SDCCD chose not to avail of the various business and employment supports available from the State
 - advice from the OPW's legal and financial advisers
 - views of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
 - the provision, in the public interest, of the facility by the CCD on a cost recovery basis only, for use by the Houses of the Oireachtas so that Government's business could be conducted in a safe socially distanced environment.
- 8.26** It is acknowledged that the decision on the application of ICD deductions is taking longer than envisaged by the project agreement and in normal times a decision would have been made at this stage on payment years 10 and 11. These payment years present a most unusual set of circumstances and the risk sharing principles underpinning PPPs cannot automatically be assumed to include the complete shutdown of the CCD's normal operations owing to entirely exceptional circumstances relating to the impact of an unprecedented pandemic.
- 8.27** The OPW has always made it clear to SDCCD that while its requests for a concession will be considered, no such concession has yet been made; and the company's understanding of this position is clear from its letter to the OPW dated 31 May 2022, where it put forward its most recent proposals. Furthermore, it is notable that the SDCCD carries a provision for potential deductions in its accounts.
- 8.28** In light of the evolving public health situation during the course of the pandemic and the uncertainty this created, postponing decisions on the ICD deductions has clearly proved to be a prudent approach.

- 8.29** It is expected that a decision on ICD deductions for payment years 10, 11 and 12 will be made by the OPW's Management Board by the end of October 2022 with sanction from the Department of Public Expenditure and Reform being sought if necessary. It is also confirmed that any deductions that might be due under the project agreement for the period since the relevant Covid-19 restrictions were lifted, will be applied.

Conclusions

- 8.30** PPPs are agreements between the State and a private partner where costs associated with each of the inherent risks are assigned to the party better positioned to manage the particular risk. The financial terms of the deal reflect the allocation of the risks.
- 8.31** The Covid-19 pandemic was an unforeseen event that restricted international travel and indoor gatherings. The State, through the OPW, was obliged to pay the bulk of the unitary charge for an asset that was not handling large conference and business tourism events. Under the terms of the PPP agreement, there is provision for a modest reduction in the unitary charge payments to the PPP company when the number of international delegates falls below specified minimum levels.
- 8.32** SDCCD wrote to the OPW asking for a waiver of the unitary payments reduction. The OPW did not grant the waiver and made a counterproposal to defer the reduction, subject to certain conditions. SDCCD did not accept this proposal.
- 8.33** Pending the outcome of negotiations, the OPW paid the full unitary payment amounts otherwise due for contract years 10, 11 and 12, without the ICD deduction.
- 8.34** The potential deduction from the unitary payments in respect of underachievement of the ICD targets for payment years 10, 11 and 12 (August 2019 to July 2022) is estimated at €1.51 million. Most of this — €1.32 million — was due for withholding in the period August 2020 to July 2022, with the balance due to be withheld in year 13 (August 2022 to July 2023). Consequently, by July 2022, there had been a payment of €1.32 million to the PPP company in excess of its entitlements by reference to the contract provisions.
- 8.35** The OPW has not sought or received the sanction of the Department of Public Expenditure and Reform for the payment of sums in excess of the PPP contract conditions.

Annex 8A Projected international conference delegates (ICD) bands by payment year^a

Payment year	Period covered	Projected ICD (Band 1) ^b	Projected ICD (Band 2) ^c
1	Aug 2010 — Jul 2011	4,660	n/a
2	Aug 2011 — Jul 2012	7,900	n/a
3	Aug 2012 — Jul 2013	9,780	n/a
4	Aug 2013 — Jul 2014	12,140	n/a
5	Aug 2014 — Jul 2015	14,140	34,140
6	Aug 2015 — Jul 2016	12,140	32,140
7	Aug 2016 — Jul 2017	12,140	32,140
8	Aug 2017 — Jul 2018	14,140	34,140
9	Aug 2018 — Jul 2019	12,140	32,140
10	Aug 2019 — Jul 2020	12,140	32,140
11	Aug 2020 — Jul 2021	14,140	34,140
12	Aug 2021 — Jul 2022	12,140	32,140
13	Aug 2022 — Jul 2023	12,140	32,140
14	Aug 2023 — Jul 2024	14,140	34,140
15	Aug 2024 — Jul 2025	12,140	32,140
16	Aug 2025 — Jul 2026	12,140	32,140
17	Aug 2026 — Jul 2027	14,140	34,140
18	Aug 2027 — Jul 2028	12,140	32,140
19	Aug 2028 — Jul 2029	12,140	32,140
20	Aug 2029 — Jul 2030	12,140	32,140
21	Aug 2030 — Jul 2031	14,140	34,140
22	Aug 2031 — Jul 2032	12,140	32,140
23	Aug 2032 — Jul 2033	12,140	32,140
24	Aug 2033 — Jul 2034	14,140	34,140
25	Aug 2034 — Jul 2035	12,140	32,140

Source: OPW

- Notes:
- a The unitary charge for each payment year will only be paid in full insofar as the actual ICDs exceed the projected ICDs. Where the actual ICD number is less than the projected ICD, then the unitary charge will be reduced in accordance with the provisions set out in Schedule 15, part 7 of the project agreement.
 - b Band 1 represents the minimum ICD numbers required to allow the carry-over of excess ICDs from a previous payment year into a future payment year. Band 1 delegate ranges are subject to a higher percentage deduction from unitary charge.
 - c Band 2 represents the minimum level of ICD numbers required in a payment year in order to avoid deductions to the unitary payment. See Annex 8B for details on the deduction charges.

Annex 8B Projected international conference delegates bands and deduction charges^a

Payment year	Delegate range	Deduction from unitary charge	Delegate range	Deduction from unitary charge
	Band 1		Band 2	
1	0 — 2,329	3.0%	n/a	n/a
Aug 2010 — Jul 2011	2,330 — 3,727	1.5%	n/a	n/a
	3,728 — 4,659	0.6%	n/a	n/a
2	0 — 3,949	3.0%	n/a	n/a
Aug 2011 — Jul 2012	3,950 — 6,319	1.5%	n/a	n/a
	6,320 — 7,899	0.6%	n/a	n/a
3	0 — 4,889	3.0%	n/a	n/a
Aug 2012 — Jul 2013	4,890 — 7,823	1.5%	n/a	n/a
	7,824 — 9,779	0.6%	n/a	n/a
4	0 — 6,929	3.0%	n/a	n/a
Aug 2013 — Jul 2014	6,930 — 9,711	1.5%	n/a	n/a
	9,712 — 12,139	0.6%	n/a	n/a
5	0 — 6,929	3.0%	14,140 — 19,999	0.8%
Aug 2015 — Jul 2016	6,930 — 11,170	1.5%	20,000 — 24,140	0.7%
	11,171 — 14,139	0.6%	24,141 — 29,999	0.6%
			30,000 — 34,139	0.5%
8, 11,14,17,21,24	0 — 6,929	5.0%	14,140 — 19,999	0.8%
Aug — Jul	6,930 — 11,710	2.5%	20,000 — 24,140	0.7%
	11,171 — 14,139	1.0%	24,141 — 29,999	0.6%
			30,000 — 34,139	0.5%
6,7,9,10,12,13,15, 16,18,19,20,22,23,25	0 — 6,929	5.0%	12,140 — 17,999	0.8%
Aug — Jul	6,930 — 9,711	2.5%	18,000 — 22,140	0.7%
	9,712 — 12,139	1.0%	22,141 — 27,999	0.6%
			28,000 — 32,139	0.5%

Source: OPW

Note: a The unitary charge for each payment year will only be paid in full insofar as the actual ICDs exceed the projected ICDs. Where the actual ICD number is less than the projected ICD, then the unitary charge will be reduced in accordance with the provisions set out in Schedule 15, part 7 of the project agreement.

9 Implementation of the National Broadband Plan

- 9.1** The main objective of the National Broadband Plan (the plan) is to ensure access for all Irish residences and businesses to a high speed broadband service. The plan is focused on those parts of the country where private commercial providers of broadband have no plans to invest. This geographic area is collectively known as the State's intervention area.^{1,2} Figure 9.1 summarises the expected coverage under the intervention area.

Figure 9.1 Expected coverage under National Broadband Plan as at 2019^a



Source: Department of the Environment, Climate and Communications, 2019

Note: a The scope of premises to be passed is revised quarterly to reflect changes including new builds in the intervention area. At August 2022 (based on Q1 2022 premises information), the updated number of premises was almost 562,000.

¹ The intervention area is the areas to which high speed broadband must be delivered under the plan. The number of premises within the intervention area is dynamic and can change for a number of reasons.

² The high speed broadband plan map, available [here](#), shows the coverage under the State's intervention area together with the areas served by commercial operators.

³ NBI Infrastructure designated activity company (NBI) was set up as a special purpose company to deliver the plan.

⁴ The State has an option to extend the contract for a further ten years.

- 9.2** In November 2019, the Department of the Environment, Climate and Communications (the Department) entered into a contract with National Broadband Ireland (NBI) to deliver the plan's objectives.³ Under the contract, NBI is responsible for designing, building, operating and managing the broadband network over a 25-year period.⁴ NBI will retain ownership of the network on conclusion of the contract.
- 9.3** Delivery of the plan is being funded by Government subsidy, NBI commercial revenues and investor funding. The Department is required to pay the agreed subsidy amounts at the appropriate time and is responsible on behalf of the State for managing all elements of the contract, including monitoring NBI's compliance with the contract.
- 9.4** The overall Government subsidy is capped at €2.7 billion — this comprises a €2.1 billion base subsidy, a €500 million contingency subsidy that can only be drawn down for specific purposes, and €100 million for VAT. The majority of the subsidy is payable over the first ten years of the contract but payments continue to the end of the contract term.
- 9.5** This examination was undertaken to review the Department's contract oversight arrangements, the progress on delivery and the cost to date to the State of the implementation of the National Broadband Plan.

Oversight arrangements

- 9.6** A comprehensive governance structure has been put in place for the implementation of the contract and the plan. The Department has put in place a Senior Management Team with responsibility for the oversight of, and compliance with, the contract (see Figure 9.2). Delivery of the project is jointly overseen by the Department and NBI through a Contract Liaison Board, established in February 2020, and a number of working/engagement groups.¹ Both the Department and NBI are represented on the Board and on all of the working/engagement groups.

Figure 9.2 Oversight of the National Broadband Plan



¹ The role of the Department with regard to the Contract Liaison Board is set out in the contract. The Assistant Secretary with responsibility for the communications sector function was appointed as the Minister's representative to execute the various elements of the contract with NBI and to facilitate management of the contract and engagement with NBI. This function has been further delegated to the Senior Management Team.

² The €500 million contingency subsidy can only be drawn down for specific purposes.

Source: Department of the Environment, Climate and Communications Compliance and Assurance Framework

- Notes:
- a The Senior Management Team, chaired by the programme director, reports to the Assistant Secretary with responsibility for the Department's communications sector function.
 - b The functional areas are — unit operations and stakeholder engagement; contract management, compliance and governance; project management office; network operations; network deployment; financial and commercial.
 - c Recommendations agreed by the Contract Liaison Board are communicated to the Minister (via the Senior Management Team).

Risk sharing arrangements

- 9.7** The risk sharing arrangements in the contract (see Figure 9.3) may result in variances in the subsidy payments.
- 9.8** Certain circumstances may therefore give rise to project savings that the State can benefit from (see Figure 9.4). Other circumstances may allow NBI to claim additional subsidy if due, subject to thresholds.²

Figure 9.3 Key risks sharing arrangements, by category

Risk category	Description	Risk owner
Financial	<p>The contract allows the State to recoup cost savings made by NBI during its network deployment (first seven years) by reducing the State's subsidy during this period.</p> <p>NBI carries the operating and capital costs once deployment commences in a deployment area.</p> <p>The most significant source of revenue during network deployment is subsidy payments. Any delay in deployment must be met by additional working capital funding from NBI.</p> <p>The contract provides that NBI bears the risk of adverse cost variances in excess of the cap (€500 million contingency fund) and of adverse cost variances not covered by the agreed contract provisions.^a</p>	<p>NBI/ Department</p> <p>(when risks under agreed contract provisions actually materialise)</p>
Roll-out	<p>Roll-out risk is interrelated with the financial and construction risks. The most significant source of revenue during the network deployment is subsidy payments. Any delay is therefore expected to result in an additional working capital funding requirement to be met by NBI.</p>	NBI
Construction	<p>Construction risk is interrelated with the financial and roll-out risks. Unknown site conditions, for example, the current condition of existing telecommunications' infrastructure, materials' cost increases, disruption to supply chains and labour shortages may result in delays and impact delivery of contractual milestones under the NBI programme.</p>	NBI (subject to available contingency subsidy, where applicable)
Inflation	<p>The financial cost model includes assumed average inflation of circa 2% and contract assumptions to manage the risk. The risk of average inflation increasing above this level is carried by NBI. NBI has indicated that it has forward-contracted some of the required materials to mitigate the risk of inflation.^b</p>	NBI (subject to available contingency subsidy, where applicable)
NBI viability	<p>If NBI is not viable at defined points during the build and operations, or triggers a default, the Department can cease the contract and the business or assets may revert to the State.</p>	NBI

Source: Department of the Environment, Climate and Communications. Analysis by the Office of the Controller and Auditor General.

Notes: a This relates to the risk of events that are outside of NBI's control.

b National Broadband Plan expenditure and related matters — Committee of Public Accounts debate 10 February 2022.

Figure 9.4 Potential State receipts under contract mechanisms

Trigger event	Description
Network deployment	The Department will share 50% of deployment cost savings. ^a This relates to circa 20% of project capital expenditure.
Excess profit	The State will receive 60% of any excess NBI profits over and above NBI's target returns at final tender over 25 years. ^b
Sale of NBI	The State will be entitled to receive 25% of any gain in excess of 25% of the value of the business at the time of sale where the majority of shares are sold in the first ten years of the contract.
Terminal value	At the end of the project, the Department will receive 40% of the terminal value of NBI over and above the terminal value assumed by NBI at final tender.
Contract assumptions	Under certain assumptions included in the contract, the State may benefit from 100% of the savings made by NBI, and/or under certain assumptions, a contingency subsidy may be paid to NBI once evidenced. This relates to circa 80% of project capital expenditure which will be incurred mainly over the first ten years.

Source: National Broadband Intervention Project Agreement. Analysis by the Office of the Comptroller and Auditor General.

Notes: a This is not subject to any assumptions within the contract.

b This increases to 75% where the company has an internal rate of return in excess of 25%.

Performance reporting

9.9 The contract term formally commenced on 1 February 2020, and (unless extended) will end on 31 January 2045.

9.10 The contract includes over 1,000 milestones. Subsidies are not payable until the pre-agreed milestones have been confirmed as delivered. Contractual sanctions apply for a delay in the achievement of build-related milestones (delay sanction).¹ Under the terms of the contract, NBI is required to provide a set of monthly, quarterly and annual reports in relation to the network build and coverage which include the status of the programme milestones. The Department has stated that the build phase is the most critical area of contractual obligations in the initial years and consequently the build related performance regime has been its primary focus.

9.11 The contract also includes 37 key performance indicators (KPIs). Each KPI has a specific target performance level for network operations and if breached, NBI is liable to incur financial sanctions depending on the KPI and the level of the breach.²

9.12 Under the terms of the contract, NBI is obliged to self-monitor its performance and to provide the Department with quarterly performance monitoring reports (see Figure 9.5), starting with the period May to July (Q2) 2020.³

1 Delay sanctions are applicable from day 1 of the third contract year (1 February 2022) and will be applied where there is a delay of more than 28 days in achieving build related milestones.

2 Performance related sanctions are referred to as performance credits and apply once the relevant KPI is live.

3 The reporting year runs from 1 February to 31 January. Q2 covers the period May to July.

- 9.13** The performance monitoring reports summarise NBI's performance against each of the KPIs and present the status (e.g. KPI met, failure, serious failure, severe failure, repeat failure, etc.). The performance monitoring reports also provide 'root cause' analysis and remedial plans for KPI failure and report whether there are any performance points and performance-related sanctions accrued in the reporting period which consequently adjust the subsidy amount paid by the State.¹
- 9.14** The Department has access to and monitors the NBI's operational management system for performance data. The Department has stated that it intends to carry out an audit of this performance data in due course.

Figure 9.5 Performance monitoring reports due to the Department from NBI, status at August 2022

Quarter	Status
Q2 2020	Derogation from reporting was granted due to almost all KPIs being inactive at that stage of the NBP programme.
Q3 2020	Department's assessment of this report identified that NBI did not report six incidents which should have been notifiable events as per the contractual requirements.
Q4 2020	Department confirmed that NBI included the six incidents that should have been reported in Q3 2020 report in this report.
Q1 2021	First report to include sanctions for not meeting KPIs.
Q2 2021 and subsequent	Department granted a temporary derogation to NBI until 15 August 2022 for the submission of the outstanding reports. NBI submitted all outstanding reports by the end of August 2022.

Source: Analysis by the Office of the Comptroller and Auditor General

- 9.15** The Department stated that NBI raised concerns around the proportionality of the sanctions that are likely to accrue under the current KPI regime (based on the February to April (Q1) 2021 report submitted). The Department also stated that it agreed, as provided for in the contract, to undertake a review of the KPIs and to assess whether it would be appropriate to modify the KPIs considered to be disproportionate.
- 9.16** A joint Departmental/NBI performance subgroup was set up in November 2021 to undertake an operational review of the KPI regime. The review was completed in July 2022 and the Minister has been briefed on its findings. The operation of the KPI related sanctions mechanism had been put on hold pending the outcome of the review.
- 9.17** The Department stated that it is undertaking a detailed review of all performance monitoring reports and is working with NBI on the contractual amendments required to take account of agreed changes to the KPI regime on foot of the review.² It also stated that financial sanctions will be applied retrospectively, where appropriate, once this work is complete.

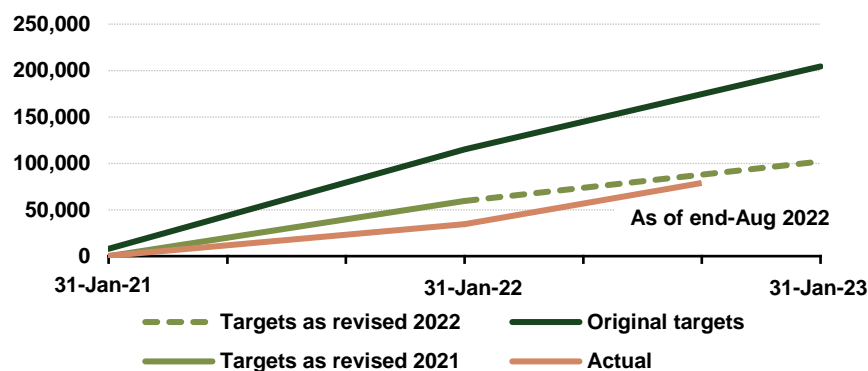
¹ Performance points are numerical values attributed to breaching the target performance level of a KPI over the measurement period.

² 26 of the 37 KPIs were reviewed. Amendments agreed were categorised under five headings — no change required; error; proportionality; simplification; and clarification. Some of the impacted KPIs were categorised under more than one heading.

Delivery

- 9.18** The primary performance measure for the plan roll out is the number of **premises passed** i.e. high speed broadband is available to these premises should they seek a connection.
- 9.19** The contracted deployment plan is a seven year build programme which was scheduled for completion by 31 January 2027. The Department has stated that the programme is currently twelve months behind schedule.
- 9.20** Under the original contract, the milestones for delivery of premises passed envisaged a steady build up to 204,400 premises passed by the end of January 2023 (see Figure 9.6).¹
- 9.21** Subsequently, the delivery milestones were revised downwards in 2021, and again in 2022, under interim remedial plans submitted by NBI.
- In May 2021, the milestone deliverable for premises passed by January 2021 was reduced (retrospectively) to zero; and by January 2022 to just under 60,000.
 - In April 2022, the milestone deliverable for premises passed by January 2023 was reduced to almost 102,000 — just under half the original target.
- 9.22** At the end of January 2022, the number of premises passed was 34,456, representing a shortfall of almost 43% on the target level for that milestone. By the end of August 2022, 75,590 premises had been passed. This has reduced the gap between the (revised) target and the outturn.

Figure 9.6 Target and actual delivery of premises passed



Source: Department of the Environment, Climate and Communications

- 9.23** Following detailed analyses of the remedial plans submitted by NBI (in March 2021 and February 2022), the Department agreed to the reductions in the targets proposed by NBI.^{2,3} The Department concluded, on foot of the remedial planning processes under the contract, that the delays in delivery were mainly due to the Covid-19 pandemic (8.5 months), which impacted the delivery of the fibre network. However, the Department imposed sanctions for delays, which it concluded were not directly linked to Covid-19 and related to issues within NBI's control (3.5 months).⁴

1 The contract year runs from 1 February to 31 January.

2 The Department's detailed analysis was undertaken in conjunction with its external advisors.

3 The Department gave its determinations in May 2021 and April 2022 respectively.

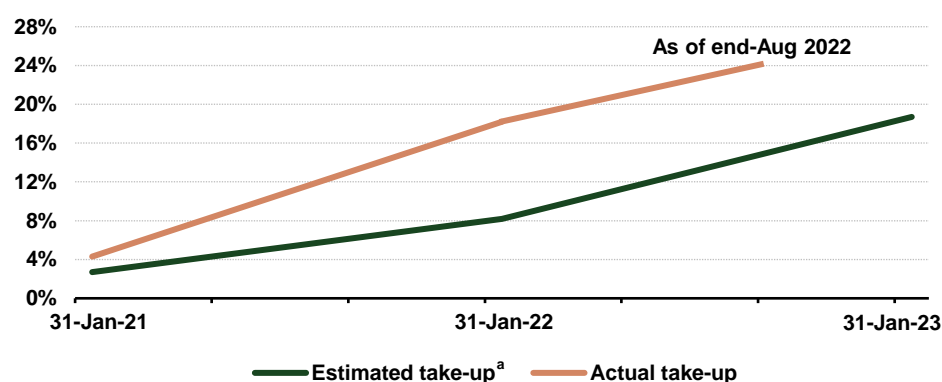
4 This included challenges with the mobilisation of key contractors due to restrictions on operations, supply chain and logistic delays, as well as the recruitment of key personnel as NBI and its contractors scaled up, including associated challenges with on-boarding and training people

- 9.24** The Department also agreed to revise the timeframes for delivery of other deployment programmes such as strategic community points passed and operational environment. In these cases, delivery by NBI was achieved within the revised timeframes.^{1,2}
- 9.25** The Department stated that it is NBI's responsibility to set targets that it believes it can achieve and to measure performance against those targets; and that it is the Department's role to assess the feasibility of the targets — i.e. are they likely to be achieved — and to monitor and assess compliance against the targets.
- 9.26** The Department also stated that full assessments of NBI's applications for revised targets are performed. Similar to missing a KPI, once a build milestone is missed, NBI must prepare a root-cause analysis and report to the Department. Reductions in subsidy payments can be triggered at this stage and the contract also allows the Minister to step in to rectify any significant issues that could impact the viability of the company or, in a worst case scenario, to issue a termination notice where NBI is deemed to be in material default of its obligations.
- 9.27** NBI is required to agree its final remedial roll out plan by the end of 2022, which is expected to cover annual targets for the remainder of the build programme.

Take-up of service

- 9.28** While the availability of a service to a premises is measured by the 'premises passed' measure, actual take up of the service by a home or business is what determines the societal value of the State's investment.³
- 9.29** NBI projected in its final tender that take-up of the available broadband service will reach circa 80% for residential customers, with higher take-up rates for business customers, at the end of the 25 years. While the actual take-up (by number) to end January 2022 is lower than estimated, the rate of take-up — the proportion of premises connected relative to premises passed — exceeds the original estimates (see Figure 9.7).
- 9.30** By the end of August 2022 over 18,400 premises had been connected — a 24% take-up rate.

Figure 9.7 Estimated and actual take-up percentage



1 Strategic community points (SCPs) are specific key locations in rural communities that will be connected with high speed broadband for (public) use by the wider community.

2 Operational environment (OE) is the collective term used to refer to the universal wholesale gateway (UWG) and the associated information systems environment.

3 Take-up refers to the level of premises connected to the high speed broadband relative to premises passed.

Source: Department of the Environment, Climate and Communications

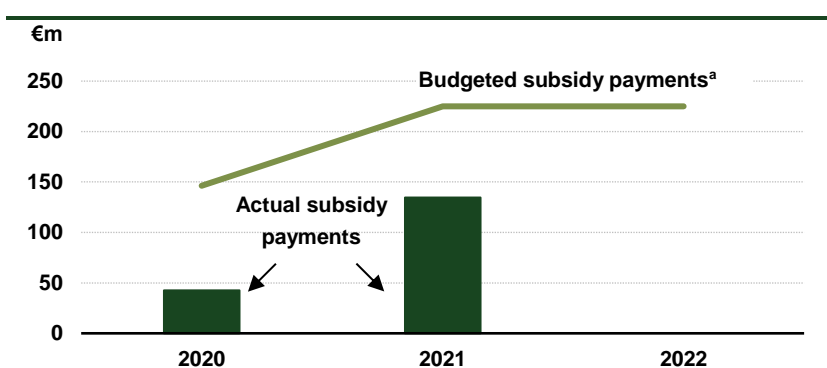
Note: a Estimated take-up is based on the original estimates for years ended 31 January 2021 and 2022 and the revised estimates for year ended 31 January 2023.

- 9.31** The Department stated that NBI expects take-up to grow steadily and to be lower in the early stages due to consumers being under contract with existing providers. The Department also noted that one of the existing providers is planning to switch off the existing copper network services once the NBI fibre network is rolled out, which will increase demand significantly as many consumers will then have fewer options to avail of services.

Cost

- 9.32** The Government allocated a total of €371.3 million for the rollout of the plan in 2020 and 2021. To the end of 2021, payments made totalled €177.2 million i.e. 48% of the available funding (see Figure 9.8).
- 9.33** The subsidy is only payable once NBI has incurred costs that qualify as permitted expenditure and on the achievement of milestones in accordance with the contract. In line with the contract requirements, an independent certifier has been jointly appointed by the Department and NBI. Subsidy payments are only made once NBI achieves the related milestone(s) and the independent certifier issues a milestone achievement certificate.
- 9.34** In 2021, the subsidy paid was less than forecast primarily due to delays in deployment, which impacted NBI's ability to achieve the milestones originally forecasted.

Figure 9.8 Estimated and actual subsidy payments, 2020 to 2022^a



Source: Department of the Environment, Climate and Communications

Note: a The 2021 estimate was subsequently revised downwards to €159 million due to the delays in deployment.

Sanctions

- 9.35** The sanctions regime included in the contract is designed to incentivise the achievement of build milestones and KPI targets.¹
- 9.36** Where build targets have been amended via Departmental approval of NBI's remedial plans, these become the contractual targets that NBI is required to meet and to which (delay) sanctions may apply if they are missed.²
- 9.37** Delay sanctions are applicable under the contract from 1 February 2022. To August 2022, delay sanctions totalling €134,800 have been imposed in relation to build-related milestones for delays in passing deployment areas. However, this is refundable if (or when) NBI achieves other build milestones ahead of its target. In addition, a performance credit sanction of €22,500 has been applied under the KPI regime.

¹ A summary overview of sanctions is presented in Annex 9A.

² Delay sanctions may be subject to relief where relief is requested and subsequently approved by the Department. The impact of Covid-19 is an example of relief consideration.

- 9.38** The application of sanctions regarding the remaining performance level breaches had been on hold pending the outcome of the KPI regime review, which is now complete. The performance monitoring reports (covering the period February 2021 to July 2022) submitted to the Department by end August 2022 include further estimated sanction amounts.¹ The Department has stated that the reports are currently being assessed to determine the level of sanctions, which will be applied retrospectively, as appropriate.

Conclusions

- 9.39** National Broadband Ireland was engaged in late 2019 to design, build, operate and manage the broadband network for the designated deployment area over a 25-year period. Under the contract, the deployment plan envisaged a seven year 'build' programme, which is currently expected to conclude by early 2028 (twelve months behind schedule).
- 9.40** The Department has established a comprehensive governance structure to oversee the implementation of the plan and to ensure compliance with the contract.
- 9.41** It is currently estimated that almost 562,000 premises will be provided with access to broadband under the plan. The target for the number of premises to be passed by end January 2022 was originally 115,000, but NBI proposed that this be reduced to 60,000 premises. The actual number of premises passed at that date was 34,456 — 30% of the original target, and 58% of the revised target. However, the take-up rate for the service by those premises passed is higher than was originally anticipated.
- 9.42** The contract contains over 1,000 milestones and contract subsidies are not paid in full until the pre-agreed milestones have been confirmed as delivered. Under the terms of the contract, the related targets can be revised by NBI. The Department assesses these revisions for credibility. In May 2021, NBI was allowed retrospectively to reduce the target deliverable for January 2021 of premises passed from 8,000 to zero. Since 1 February 2022, financial sanctions apply for a delay in the achievement of build-related milestones. These sanctions apply to underachievement of the revised targets.
- 9.43** The subsidies paid to NBI under the contract are subject to verification by an independent certifier jointly appointed by the Department and NBI. Because of the delays in rolling out the contract, the actual subsidies paid out to end 2021 — a total of €177.2 million — represent 48% of the original subsidy payment provided for up to that point.
- 9.44** Under the terms of the contract, NBI is required to submit quarterly performance monitoring reports to the Department so that its operational performance can be monitored in a timely manner and to ensure that sanctions, where they arise, are promptly applied.
- 9.45** The performance report covering the period February to April (Q1) 2021 was the first report in respect of which the Department determined that financial sanctions applied, which would reduce future subsidy payments. The Department stated that NBI had raised concerns on the proportionality of sanctions likely to accrue under the current KPI regime.
- 9.46** A performance subgroup was set up in November 2021 to undertake an operational review of the KPI regime. The review was completed in July 2022.

¹ Sanctions are included in the reports from NBI on an indicative basis, and are subject to assessment by the Department prior to final sanctions being applied.

- 9.47** A temporary derogation for the submission of the other outstanding performance reports had been granted by the Department pending completion of the review. The reports were subsequently submitted by NBI by the end of August 2022. The Department is undertaking a review of all reports and has stated that financial sanctions will be applied retrospectively, where appropriate, on completion of this work.

Annex 9A Overview of sanctions^a

Sanction	Overview
Delay payments regarding the timeline to achieve design and build milestones	
Ongoing capital payments (OCP) delay payments	<ul style="list-style-type: none"> Delay sanctions are applicable from 1 February 2022, where there is a delay of more than 28 days in achieving build related milestones. A delay sanction is levied for each day that the achievement of the relevant build milestone is delayed. The aggregate value of all delay payments is capped. If NBI achieves a build related milestone prior to the milestone date and delay payments have previously been incurred, then NBI may claim a delay reimbursement.
Ribbon milestone delay sanctions ^b	<ul style="list-style-type: none"> This sanction was introduced in 2022 to provide additional protection to ensure that once the deployment stage started, that all works would be completed within the specified timeframe. NBI can claim a proportion of subsidy when individual ribbons are completed (50% of the total value of a milestone, with the 50% split between the number of ribbons as a proportion of premises passed in each ribbon). This breaks the implementation for a deployment area into ribbon milestones and allows a 12-month backstop period from completion of the first ribbon within the deployment area to the completion of the final ribbon within the deployment area. In the event that the completion of the final ribbon milestone in a deployment area does not occur on or before the final ribbon milestone backstop date, a delay sanction is levied for each day that the achievement of the relevant final ribbon is delayed beyond the final ribbon milestone backstop date. This will reduce the subsidy payable to NBI for build milestones. The aggregate value of all delay payments for ribbon milestone delay sanctions is capped, and is in addition to build milestones related delay payments.
Performance credits for meeting KPIs in relation to connecting premises and operating the network service	
	<ul style="list-style-type: none"> Following from the design and build of the network, NBI is required to adhere to agreed performance levels for both the connection of premises and the operational performance of the network. If NBI's performance is not in accordance with the requirements set out in the contract, performance points and consequently performance credits will accrue and will reduce the value of subsidy payments payable to NBI^c The aggregate value of performance credits is capped for any rolling period of four consecutive quarters. However, there are some exceptions to this cap.

Source: National Broadband Intervention Project Agreement. Analysis by the Office of the Comptroller and Auditor General.

Notes:

- a The sanction values have not been included due to being commercially sensitive.
- b The completion of works in each deployment area is broken down into sections called ribbons.
- c Performance credits are the amounts payable in respect of NBI's failure to meet one or more contracted target performance levels.

10 Regularity of social welfare payments

- 10.1** The Department of Social Protection (the Department) is required to ensure that
- the expenditure it incurs has been applied for the purposes for which the money has been made available by Dáil Éireann, and
 - its financial transactions conform with the authorities under which they purport to have been carried out.

Financial transactions are considered to be 'regular' when both of these conditions are satisfied.

- 10.2** Any payments that are in excess of claimants' entitlements under the terms of welfare schemes are, accordingly, irregular. Such excess payments can arise due to suspected fraud, claimant error or official error (see Annex 10A).

- 10.3** The level of expenditure incurred each year by the Department means that even a small incidence of error and/or suspected fraud can result in a large monetary loss to the Exchequer, which funds Vote 37 Social Protection, or to the Social Insurance Fund (SIF), which is mainly funded by social insurance contribution receipts.¹

- 10.4** In the period 2013 to 2019, the Department incurred annual expenditure of around €20 billion under about 80 schemes and programmes. Reflecting the Department's response to the Covid-19 pandemic, annual gross expenditure increased to €31 billion in both 2020 and 2021 and had very significant impacts on the Department's operations.

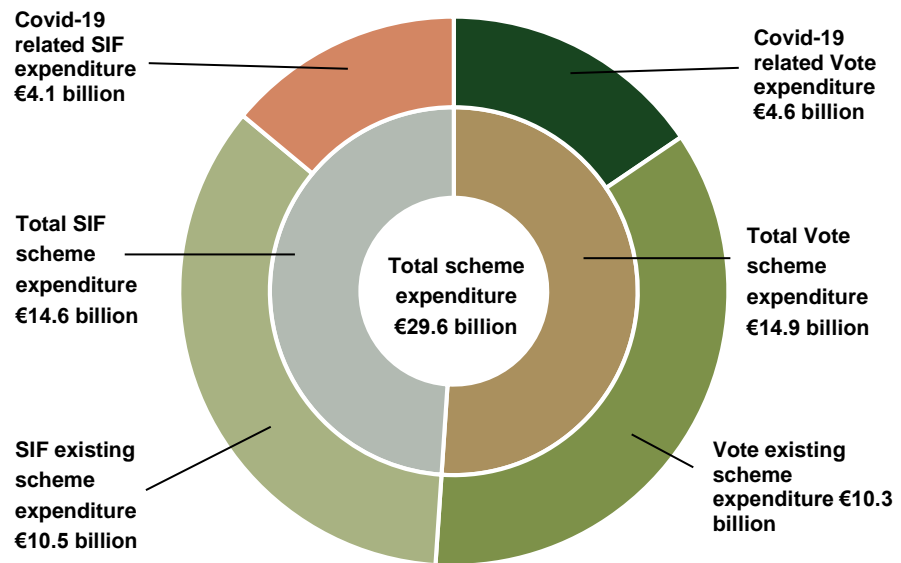
- **Continuation of emergency schemes:** The Department funded expenditure totalling €8.7 billion in 2021 (2020: €9.1 billion) in relation to four schemes introduced to provide support to individuals whose income was adversely affected by restrictions imposed to reduce the impacts of the pandemic. Two of the schemes — the pandemic unemployment payment (PUP) and enhanced illness benefit (EIB) — were implemented by the Department. Two other schemes — the temporary wage subsidy scheme (TWSS) and the employment wage subsidy scheme (EWSS) — were administered by the Office of the Revenue Commissioners (Revenue), but were funded by the Department.²
- **Suspension of certain scheme controls:** The Department's compliance and anti-fraud strategy includes a comprehensive set of controls and measures aimed at preventing, deterring and detecting fraud and error. Implementation of the Department's control regime for existing schemes continued to be affected by operational restrictions imposed during 2021 due to Covid-19.

¹ In 2021, 18% (€2.6 billion) of the SIF income was in the form of an Exchequer subvention paid through the Vote.

² TWSS and EWSS legislation provided that the administration of both subsidy schemes was under the care and management of Revenue and the application of controls is a matter for Revenue.

³ Payments are made from the SIF to the National Training Fund as these are amounts collected through the employer's PRSI charge on behalf of the Department of Further and Higher Education, Research, Innovation and Science.

- 10.5** In 2021, the Department's scheme expenditure totalled €29.6 billion (see Figure 10.1), which was around the same as in 2020. In addition,
- €789 million was paid for administration expenses
 - €797 million was paid over to the National Training Fund³
 - €59 million was paid to the Citizens Information Board.

Figure 10.1 Vote and SIF scheme expenditure in 2021^a

Source: Department of Social Protection

Note: a Any apparent differences are due to rounding.

Control surveys

- 10.6** The Department's compliance and anti-fraud strategy provides for the completion of surveys of scheme payments in order to determine the level of excess payment that is occurring. This is a key measure of the Department's success in preventing, detecting and deterring fraud and error in its scheme payments. The surveys also assist the Department in identifying scheme-specific risks and required changes to the control measures in place.¹
- 10.7** The surveys involve reviews of random samples of claims in payment to establish if the recipients are entitled to the payments they are currently receiving and if so, whether the correct amounts are being paid.

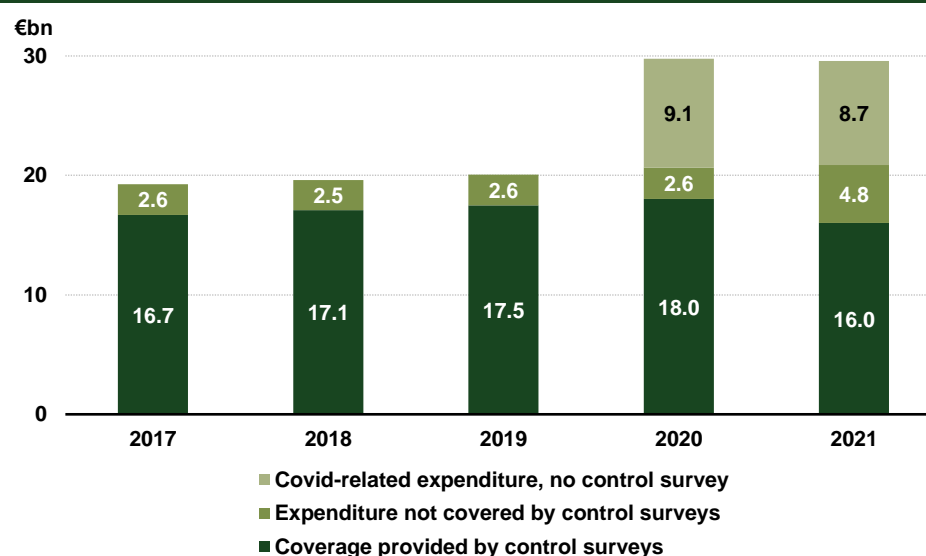
Control survey methodology

Control surveys generally review between 500 and 1,000 randomly selected claims for each scheme and aim to provide an estimate — with 95% confidence — of the level of incorrect payment at a point in time. The surveys typically capture

- the **gross excess payment** which is the total value of any overpayment identified
- the **net excess payment** which adjusts for transfers to other schemes in situations where a claimant (and/or a dependent person) was found to be paid in excess of their entitlements on the scheme reviewed, but was entitled to a different social protection payment.

The Department considers the net excess payment identified to be the more accurate measure of the level of excess payment on schemes.

¹ In May 2022, the Department published the detailed methodology for control surveys at www.gov.ie/en/publication/59304-detailed-methodology-for-control-surveys-in-the-department-of-social-protection.

Figure 10.2 Coverage of scheme expenditure provided by control surveys^a

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

Note: a Coverage provided by control surveys published within the last ten years.

1 Control survey coverage for non-Covid-19 related schemes is 77% in 2021 compared to 87% in 2020 and 2019.

2 The Department stated that the Covid-19 related schemes were temporary and therefore a control survey of the schemes would be of limited use in relation to the amendments of scheme controls. The schemes are now closed with the final recipients transferring to standard jobseeker schemes in May 2022.

3 Disability allowance scheme expenditure in 2021 was €1,829 million. The last control survey of this scheme, published in 2012, estimated the level of net excess payments to be 4.6%. A new control survey of the scheme commenced in April 2022.

4 Jobseekers' benefit scheme expenditure in 2021 was €332 million. The last control survey of this scheme, published in 2012, estimated the level of net excess payments to be 1.6%. A new control survey of the scheme commenced in February 2022.

5 The Department noted that of 1,284 medical reviews conducted in 2022, there were only 17 disallowances (15 of which are under appeal).

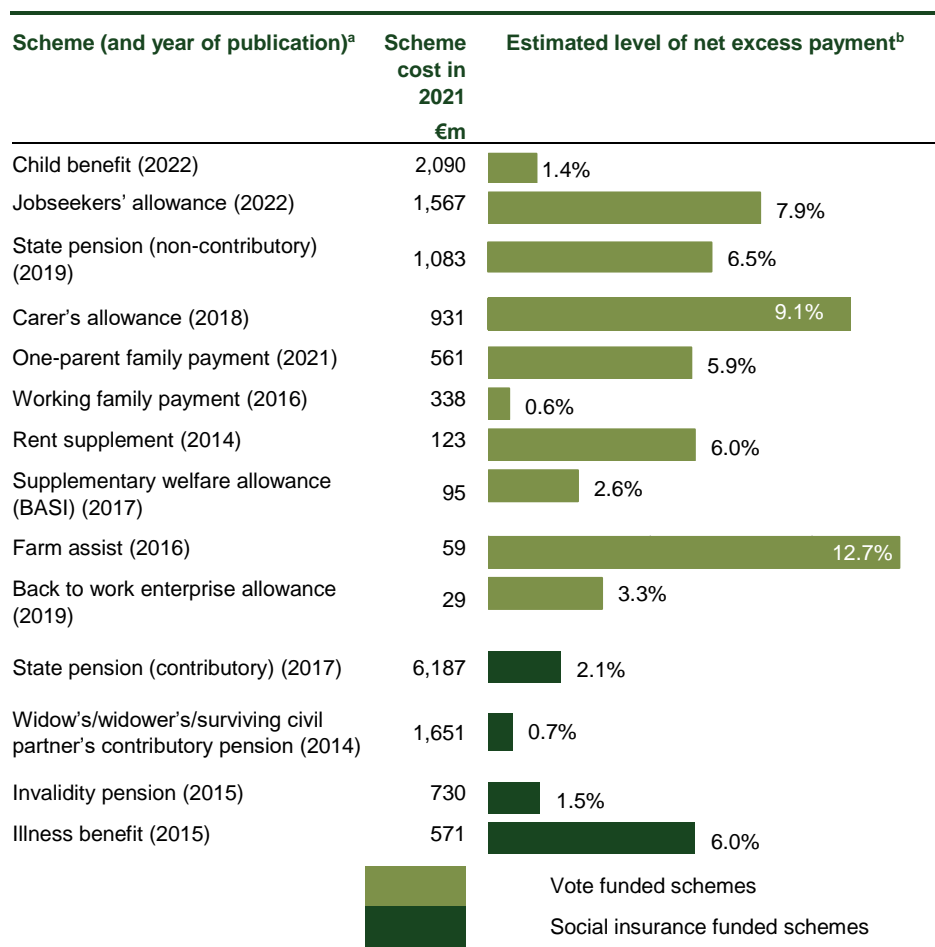
10.8 Just over half (54%) of the Department's total scheme expenditure in 2021 was covered by control surveys conducted during the last ten years (see Figure 10.2). This was down from 61% of total scheme expenditure in 2020, and from 87% in 2019.¹ The reduction is primarily due to the implementation of Covid-19 related schemes, in respect of which control surveys have not been undertaken.² In addition, the results of the control surveys published in 2012 of two high-value schemes may no longer be valid, and have therefore been removed from the analysis.^{3,4}

10.9 The Department published two control surveys in both 2021 and 2022, and none in 2020. The Department stated that no control surveys were published during 2020 due to various health and safety restrictions, and additional Department workload caused by the Covid-19 pandemic. The Department also stated its commitment to publishing two control surveys per annum and to ensure that there is adequate coverage in future years.

10.10 The scope of future control surveys should consider all key risk factors. However, the forthcoming survey of the disability allowance scheme does not include a review of medical eligibility, which is a key scheme condition. The Department stated that including medical reviews would delay the time to complete the survey by up to 18 months. In addition, the Department believes the absence of medical reviews from the survey will not materially impact the survey outcome given the relatively high level of medical review decisions that are overturned on appeal — it expects the final number of cases disallowed on medical grounds to be less than 1%.⁵

Implications of control surveys for audits

10.11 Figure 10.3 shows the expenditure in 2021 on Vote and SIF schemes in respect of which control surveys have been undertaken (at least once) since 2013 and the level of irregular payment identified.

Figure 10.3 Estimated level of irregular payments in schemes subject to control surveys published since 2013

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a The household benefits survey in 2016 is not included because the survey only related to beneficiaries not in receipt of another welfare payment and represented only 7% of those in receipt of the benefits package. Since 2016, schemes representing a further 62% of household benefit recipients have been examined — the Department estimates the error rate in respect of entitlement to the benefits package for the schemes surveyed to be 1.3% by value.
 - b The net excess payment is the value of all excess payments identified less transfers to other schemes. The figures shown are the net excess payments identified in control surveys as a percentage of the total value of payments of income support included in the survey cases.

10.12 There is wide variation in the level of excess payments found by surveys.

- In relation to Vote funded schemes, estimated rates of net excess payments range from 0.6% of scheme expenditure (working family payment) to 12.7% of scheme expenditure (farm assist).
- Estimated rates of net excess payments for SIF schemes range from 0.7% (Widow's/widower's/surviving civil partner's contributory pension) to 6% (illness benefit).

Latest control survey findings

Jobseekers' allowance

- 10.13** In February 2022, the Department published the results of a control survey of the jobseekers' allowance scheme, which is a means-tested scheme available to those working three days a week or less, who are habitually resident in the State, and are genuinely seeking full-time employment. The survey examined 750 claims in payment in 2020 and 2021 in three batches — 250 claims in January 2020, 250 claims in November 2020 and 250 claims in July 2021.
- 10.14** This is the second 'rolling' survey of the jobseekers' allowance scheme that the Department has published — the previous survey was published in January 2021. The Department had stated that in future years, batches of claims will be surveyed quarterly.
- 10.15** The control survey found that 18% of the Jobseekers allowance claimants surveyed were receiving more than they were entitled to. The value of the overpayments was estimated at 8% of the expenditure on the sampled cases.¹ Transfers to other schemes reduced the excess payment level to a net 7.9%. This compares with a net excess payment level of 8.3% found in the previous control survey published in 2021.
- 10.16** The control survey also found that 5.1% of claimants were being underpaid, with the underpayments equivalent to 0.9% of scheme expenditure across the claims examined.
- 10.17** The report on the control survey noted the impact of the Covid-19 pandemic on scheme controls during the period examined, with staff assigned to manage pandemic unemployment payment applications, data analytics being suspended from March 2020 to November 2021, face-to-face interactions with claimants curtailed, and all new claims being paid via electronic fund transfer (EFT).
- 10.18** At 7.9%, the level of net excess payment detected by the survey is high. The Department outlined the steps taken to address the key scheme risks identified by the survey and to improve the controls over jobseekers' allowance (see Figure 10.4).

¹ The main causes of excess payments were underdeclared means (3.9% of scheme expenditure), a failure by the claimant to provide the required information (2% of scheme expenditure) and a failure to meet eligibility criteria (1.4% of scheme expenditure).

Figure 10.4 Jobseekers' allowance — control survey findings and control changes**Scheme risk**

- claimants with means other than from employment are more likely (36% of cases) to receive an overpayment than those without other means (15%)
- risk of overpayment to part-time/casual workers (31%) is twice as high as to non-casual workers (15%)^a
- married or cohabiting claimants have a higher risk of overpayment (29%) than single claimants (11%)
- increased risk of overpayment by EFT (24%) compared to post office payments (14%)
- claimants aged over 25 have higher risk of overpayment (20%) than under-25s (6%)

Changes to the control regime

- the Department resumed data matching with real-time payslip information from Revenue in November 2021 — rules have been developed for the identification of changes in means or employment for claimants and their qualifying adults, and changes in means for casual jobseekers
- utilisation of the Special Investigation Unit to target higher risks, such as concurrent working and claiming, the shadow economy and PRSI compliance
- ensure all new applicants for jobseekers' allowance will be paid at the post office, and eventually all jobseekers to be paid through the post office^b
- physically attending a post office or Intreo centre for certification and signing-on was reintroduced following suspension during the Covid-19 pandemic^c

Source: Department of Social Protection

- Notes:
- a The report concluded that while casual workers were more likely than non-casual workers to be overpaid, this is not reflected in the expenditure impact as the overpayment amount is, on average, less.
 - b In May 2022, the circular allowing all jobseekers to be paid by electronic funds transfer was rescinded and the prior payment arrangements were restored, including the payment of new and repeat claims only at a post office.
 - c The Department stated that jobseekers were required to sign on in May 2022. Targeted sign-on will be required from selected claimants as an ongoing control.

Child benefit

10.19 Also in February 2022, the Department published the results of a control survey of the child benefit scheme, which is payable to the parents or guardians of

- each child under 16 years of age
- a child under 18 years of age if in full-time education or training or who cannot support themselves due to a disability.

10.20 The benefit is not means-tested but habitual residence criteria must be satisfied.

10.21 The survey examined 600 claims in payment in May 2021. The control survey found there was a net excess payment level of 1.4% of scheme expenditure.^{1,2} This compares with a net excess payment level of 0.5% found in the previous control survey published in 2013. There were no cases of scheme underpayment detected by this control survey.

1 Transfers to other schemes does not arise in the case of this scheme, so the gross excess payment and net excess payment are both 1.4%.

2 The main causes of excess payment were: family not resident in the state (1.2% of scheme expenditure); claimant failed to supply required information (0.1% of scheme expenditure); and child not residing with the claimant (0.1% of scheme expenditure).

- 10.22** The Department did not propose any changes to scheme controls, concluding that due to the low level risks of the scheme, the current controls will remain in place and be continuously monitored.

Recovery of overpayments

- 10.23** The Department may revise a benefit payment where new evidence becomes known that impacts the eligibility to, or value of, a scheme payment entitlement. Benefits may also be revised where a prior error or a suspected fraudulent claim is identified. If the revised benefit is lower than the payment the claimant had been receiving, the Department may raise an overpayment debt against the claimant in respect of prior payments.

- 10.24** The decision on whether to raise an overpayment is the responsibility of the case deciding officer. The Department publishes internal guidance to all staff on the assessment of overpayments, depending on the circumstances found to have led to the excess payment.

- **Customer error** — where there is no evidence that the customer deliberately or wilfully provided wrong information — the deciding officer will determine on a case-by-case basis whether a 'current date' decision (i.e. correction of future payments but no recovery of prior overpayments) or a 'retrospective' decision (i.e. raising of overpayment) is appropriate.
- **Error by an official of the Department** — the deciding officer will determine on a case-by-case basis whether a current date or retrospective decision is appropriate.
- **Fraud or concealment of facts** — the deciding officer should always make a retrospective decision. Raising an overpayment in a case of suspected deliberate misclaiming requires a high burden of proof. The deciding officer must establish that evidence provided by the claimant was false or materially misleading or that facts were wilfully concealed.¹

- 10.25** The jobseekers' allowance control survey detected 135 instances of excess payment of the 750 payments examined by the survey. The examination team randomly selected and reviewed 25 excess payments cases, to establish what the subsequent action was.

- In eight cases, an overpayment was raised — full recovery was made in three of these cases; recovery is ongoing in one case; and recovery has not commenced in the remaining four cases.
- In thirteen cases, the deciding officer made a current date decision, so no overpayment was raised — in most of these instances, the claimant had previously declared means but the Department had not been informed when those means increased.
- In four cases, no overpayment was raised for a range of reasons — the claim was cancelled as the claimant did not respond to the survey; the claimant cancelled the claim shortly after engaging with the Department; the claim was reinstated after being stopped when the claimant commenced engagement with the Department; or the excess payment recorded was an official error.

¹ The legislation states that the revised decision shall take effect from the date of the original decision (when misleading documents were supplied or facts concealed), but the deciding officer has discretion as to whether to raise an overpayment for periods to which the misleading information or facts withheld do not relate.

- 10.26** In relation to the child benefit control survey, the examination team examined all ten cases (of 600 payments examined by the survey) where an excess payment was detected by the survey.
- In three cases, an overpayment was raised — in two of these cases, the full overpayment was recovered by the Department and recovery is ongoing in the third case.
 - In one case, relevant evidence was subsequently provided and the claim was reinstated.
 - In six cases, an overpayment was not raised, with the payment stopped in five of these cases — the Department subsequently stated that the current address of the claimant is unknown in these cases and the last date of entitlement could not be established; if the claimant sought to reinstate the claim, documentary evidence would be sought and an overpayment raised.¹
- 10.27** This examination highlights that overpayments were not raised in the majority of cases where the control surveys identified an excess payment. The rationale for raising, or not raising, an overpayment was not recorded on the case files examined at the time of the control survey. The Department stated that in April 2021 it instructed deciding officers to state clearly and to record the reason they decided to issue a current date decision instead of a retrospective decision.
- 10.28** The examination team also examined a random sample of ten cases from both control surveys where the Department did not detect an excess payment. The team concurred with the finding of the Department that the payments examined were not irregular.

¹ In the sixth case, the claimant did not respond to the control survey, but the Department had other simultaneous engagement in relation to another scheme which provided sufficient evidence of eligibility for the child benefit payment.

² For these cases, Revenue data did not show evidence of recent employment and there was no recent PRSI contribution history. There was also no evidence of recent self-employment for the cases where there was no evidence employment had been lost.

³ The statutory filing date for income tax returns is 31 October in the year following the year of assessment e.g. 2020 income tax returns were required to be filed by 31 October 2021. However, an administrative arrangement extends the filing date for those who file online to a specific date during November each year. For the 2020 year of assessment, the extended filing date was 19 November 2021.

Sample testing of pandemic unemployment payment (PUP) claims

- 10.29** Pandemic unemployment payments (PUP) in 2021 accounted for a charge of €4 billion on the SIF (2020: €5 billion). The payments were available both to employees and to self-employed persons whose earning was interrupted by restrictions imposed in response to Covid-19.
- 10.30** In a review of 219 employee PUP claimants, the audit found that for around 8% of 2021 claims examined, there was evidence that the claimant was not eligible for the payment received on the payment date tested. In two-thirds of these cases, there was evidence that the claimant was employed while in receipt of the PUP. In the remaining ineligible cases, there was no evidence that a job had in fact been lost, suggesting the claimants had not been working prior to claiming the PUP payment.²
- 10.31** A sample of 53 claims for PUP recipients in 2021 who declared themselves to be self-employed was also reviewed. In those cases, the audit found there was a significant number of cases where there was a lack of evidence on file to prove a loss of work. No self-employment returns for 2020 had been made for 23 (43%) of these cases, and in four cases (8%), there was no evidence of submission of a return for 2019.³
- 10.32** The audit also followed up on a random sample of 25 PUP self-employed cases examined for the 2020 audit, in respect of which additional information should have become available. It was found that 15 claimants (60%) had made annual income tax returns to Revenue in respect of earnings other than PUP payments in 2020. However, since these were aggregate annual returns, it was not clear to what extent income had been affected by Covid-related restrictions.

- 10.33** In 11 of the 15 cases, the returns filed indicated that the claimants' 2020 earnings had decreased relative to 2019.¹ However,
- two claimants had similar income in 2019 and 2020, despite claiming weekly PUP for nine months in 2020 (both claimed from March 2020 to mid-2021)
 - another claimant reported 2020 income that was more than 50% higher than 2019 income, despite being in receipt of PUP for 8.5 months in 2020.
- 10.34** In ten of the 25 self-employed PUP cases examined, the claimants had not submitted an income tax return to Revenue in respect of 2020. As a result, the Department has no evidence via Revenue returns that the PUP payments made in those cases were valid. The Department stated that the failure to submit a tax return by self-employed individuals is a compliance matter to be followed up by the Revenue Commissioners. While the Department had not followed up on such cases as of August 2022, it stated an intention, in co-operation with Revenue, to identify any such cases for review from the end of Quarter 3 or start of Quarter 4 2022.
- 10.35** The audit findings in respect of 2021 PUP expenditure are broadly consistent with those of the 2020 audit, and indicate that the rate of irregular payment on the PUP scheme continued to be material in 2021.² There has been no control survey to estimate more reliably the level of irregular payment of PUP claimants.

Impact of Covid-19 on scheme controls in the Department

- 10.36** The estimated level of irregular payment found by a control survey is measured when the Department's control activities are operating as normal. Covid-19 impacted the Department's ability to operate some of its normal controls over its schemes when processing new applications and to conduct other control activities for claims in payment. The Department has stated that, during 2020,
- the impact of public health restrictions necessitated widespread redeployment of staff to other priority work
 - restrictions on personal movement and interactions had an extraordinary impact on the labour market leading to an unprecedented increase in unemployment
 - managers of scheme areas, in conjunction with the Assistant Secretary responsible, made decisions in regard to the suspension or curtailment of certain scheme controls having considered the relevant risks, and adhering as best as possible to the health and safety restrictions.
- 10.37** The restrictions on scheme controls continued into 2021, but during the year progress was made in reinstating controls or utilising alternative methods on some schemes.
- 10.38** Annex 10B summarises the changes made to the key controls over 16 schemes due to Covid-19 restrictions and the actions of the Department in 2020 and 2021 to mitigate the impact of the changes and to restore those controls. The examination reviewed the changes made to key controls and assessed the impact of these changes on the estimated level of irregular payment by scheme. We found that the continuation of restricted scheme controls in 2021 was likely to have resulted in a higher than normal risk of payments in excess of entitlement.

¹ One claimant did not have earnings in 2019 against which to compare to 2020 earnings.

² See chapter 11, *Controls over the Covid-19 pandemic unemployment payment*, Report on the Accounts of the Public Services 2020.

Controls over enhanced illness benefit scheme

- 10.39** The enhanced illness benefit (EIB) scheme was a new Covid-19 related scheme introduced in March 2020 and available to employees and the self-employed who could not work in the short term due to being Covid-19 positive or being medically certified to self-isolate or restrict their movements. Scheme expenditure in 2021 was €106 million (2020: €57 million).
- 10.40** The 2020 financial audit of the SIF financial statements found that the required recent PRSI contribution history of claimants was not checked before their claims were put into payment, giving rise to a risk of irregular payment where claimants did not meet the eligibility conditions. The Department undertook to conduct an analysis of a number of high-risk claimants on EIB to confirm their eligibility. The results of that analysis indicate that there was a low risk of EIB claims being awarded where the claimant did not satisfy the contribution eligibility requirement.

Conclusions

- 10.41** As a result of a range of policy responses to the challenges presented by the Covid-19 pandemic, expenditure by the Department of Social Protection increased by more than 50% in 2020 and 2021, as compared to the average expenditure level in prior years. With expenditure totalling over €31 billion in 2021, even small levels of payments in excess of entitlements to welfare can amount to significant losses of public funds.
- 10.42** The level of irregular payments found by the Department through its ongoing programme of scheme-level control surveys is material. While such surveys have not been undertaken in respect of the temporary Covid-related schemes, work undertaken as part of the audit of the Department's annual financial statements for 2020 and 2021 indicates that there is likely to have been a significant incidence of payments in excess of entitlement under the PUP scheme. Based on these findings, I have referred in my audit reports on the 2021 appropriation account for Vote 37 Social Protection and on the 2021 financial statements of the SIF to the material level of irregularity of scheme payments.

Control surveys

- 10.43** The available evidence points to a material incidence of payments in excess of the entitlements of claimants under many welfare schemes. This has been confirmed by the level of irregular payments found through the Department's most recent control surveys, on the jobseekers' allowance and child benefit schemes (published February 2022).
- 10.44** The amount of scheme expenditure in 2021 for which control surveys have been published in the last ten years was 54%. This was down from 61% for 2020 expenditure, primarily because of the elapse of time since surveys were last published in respect of two major schemes (in 2012): disability allowance and jobseekers' benefit.¹ The Department commenced control surveys of both schemes in 2022.
- 10.45** An increase in the number of control surveys completed is required to ensure that there is adequate coverage of scheme expenditure in future years. The Department has stated its commitment to publishing two control surveys per annum and to ensure that there is adequate coverage in future years.

¹ Control survey coverage for non-Covid-19 related schemes is 77% in 2021 compared to 87% in 2020 and 2019.

Latest control survey findings

- 10.46** The Department has implemented changes to controls on the jobseekers' allowance scheme to address the risks identified in survey work carried out in 2021. The Department did not deem it necessary to amend controls on the child benefit scheme in response to the findings of a control survey of that scheme, also completed in 2021.

Recovery of overpayments

- 10.47** This examination has found that, for a sample of 35 of the survey cases where the Department identified an excess payment in the latest control surveys, overpayments were recorded for less than one third (11 cases). In most of the remaining cases, the deciding officer implemented a 'current date' decision (meaning that there was a payment adjustment for future payments only and there was no recovery sought of prior excess payments), or the Department concluded it did not have enough information to calculate the overpayment amount.
- 10.48** A perceived low likelihood of having to repay any overpayments received in the past, even if an excess entitlement situation is detected, may mean that there is little or no incentive for many claimants to keep the Department informed of information relevant to their claims.

Impact of Covid-19 on scheme controls in the Department

- 10.49** In 2020, Covid-19 impacted the Department's ability to operate some of its normal controls over its schemes when processing new applications, or to conduct other control activities for claims in payment. The impact on scheme controls continued into 2021, but during the year progress was made in reinstating controls or utilising alternative methods on some schemes.
- 10.50** The examination reviewed the changes made in 2021 to the key controls over existing schemes and assessed the impact of these changes on the estimated level of irregular payment for 16 schemes that account for the majority of the Department's normal expenditure.
- 10.51** The changes in the Department's control activity in 2020 due to Covid-19 restrictions were considered in the short term, and in the circumstances brought about by the pandemic, to be unlikely to have increased the level of payments in excess of entitlements. However, the continued reduction of normal scheme controls into 2021, when restrictions in the economy and in society are removed, increases that risk. Normal scheme controls should therefore be fully restored as soon as possible, prioritising those where the remaining risk is greatest.

Annex 10A

Categorisation of irregular payments

1 In some cases, claimant and official error can also result in claimants receiving less than they are entitled to (an underpayment).

2 Where the last review of a claim was conducted more than five years previously (or three years previously for working age schemes), excess payment is categorised as an official error.

- **Suspected fraud** — where it is suspected that a claimant for welfare payments intentionally provides incomplete or inaccurate information in relation to a claim, or deliberately fails to inform the Department of relevant changes in circumstances (such as an increase in means or a change in medical condition) affecting a claim in payment.
- **Claimant error** — when the claimant has provided inaccurate or incomplete information, or failed to report a relevant change in circumstances, but there is no fraudulent intent on the claimant's part.
- **Official error** — where benefits are paid incorrectly due to inaction, delay or mistakes made by the Department's staff.^{1,2}

Annex 10B

Figure 10B.1 Changes to key welfare scheme controls by scheme

Scheme (2021 expenditure)	Changes to key controls over schemes
Pensions	
State pension contributory (€6.2 billion)	<p>All key controls in place from June 2021.</p> <p>From March 2020 until May 2021, the Department suspended reviews of eligibility for non-resident claimants, which is deemed the highest risk type of claim. Under the Department's normal control regime, one fifth of non-resident claims were reviewed annually, equating to approximately 10,000 reviews. In 2021 the Department conducted 10,700 reviews.</p>
Non-contributory State pension (€1.1 billion)	<p>Controls improved relative to 2020, but not all key controls were in place in 2021. Just over half of the planned (12,000) control reviews were conducted in 2020. This increased to around 10,500 reviews in 2021 which is more than the 7,500 planned reviews.</p> <p>A standard control is that 5% of cases be desk-reviewed by Social Welfare Inspectors. This control was suspended during 2021 and resumed in February 2022.</p>
Widow's/ widower's/ surviving civil partner's contributory pension (€1.7 billion)	<p>Controls improved relative to 2020, but not all key controls were in place in 2021. In 2020 claimants aged over 70 were excluded from the continuing eligibility reviews. All age cohorts were included in control reviews in 2021.</p> <p>In 2021, sixteen control reports were not run at the normal frequency. The Department stated that the priority was to process all new claims within six weeks.</p>
Working age income support	
Jobseekers' allowance (€1.6 billion) and Jobseekers' benefit (€0.3 billion)	<p>Controls improved relative to 2020, but not all key controls were in place in 2021. From mid-March 2020, due to restrictions on personal movement, applicants submitting new claims were not required to be SAFE2 registered (identify verification process). In the absence of SAFE2 registration customers had to provide photo ID and proof of residence.</p> <p>Bringing customers to SAFE 2 registration recommenced in April 2021. At the end of December 2021, around 3,200 Jobseekers' Allowance and 3,200 Jobseekers' Benefit claimants were not SAFE2 registered.</p> <p>In 2021, the Department conducted 65,000 control reviews, compared to 129,000 in 2019. In addition, quality control checks for jobseekers' allowance were not completed on a timely basis during 2021.</p>
One parent family payment (€561 million)	<p>Controls continued to be impacted — there was no material improvement in controls in 2021.</p> <p>A scheme control is that each claimant must complete a self-declaration of continuing eligibility — in 2020 and 2021, no such reviews were conducted. However, the Department did conduct over 27,000 control reviews, which is more than half of all recipients, in both 2020 and 2021.</p> <p>The Department restored its policy to review all One Parent Family Payment claims yearly in March 2022.</p>
Maternity benefit (€267 million)	<p>All key controls were in place from May 2021.</p> <p>During 2020, quality control checks to ensure accuracy of processing of new claims were carried out by a lower grade member of staff, at a reduced level and conducted later than normal.</p> <p>From early March 2021, staff at the appropriate grade completed the quality control checks and all backlogs were cleared by the end of April 2021.</p>

Figure 10B.1 Changes to key welfare scheme controls by scheme (continued)

Scheme (2021 expenditure)	Changes to key controls over schemes
Working age employment support	
Community employment (CE) programme (€320 million)	<p>Amended scheme controls to mitigate the impact of the pandemic were implemented during 2021.</p> <p>From mid-March 2020, due to restrictions on personal movement during lock-down periods, CE participants and supervisors were paid without having to attend their places of work.</p> <p>Commencing in January 2021 the Department implemented a remote monitoring process, with schemes that were not monitored during 2020 being prioritised. On-site monitoring has since resumed where it is safe to do so. A blended model, part on-site and part remote, is now in operation.</p>
Supports for children	
Child benefit (€2.1 billion)	<p>Controls improved relative to 2020, but not all key controls were in place in 2021.</p> <p>From mid-March 2020, all new claimants were required to submit their birth registration documentation online or by post. The Government discontinued this temporary provision in September 2021. The number of control reviews conducted in 2019 was 242,000 — in 2021, only 170,000 were conducted (237,500 were planned).</p> <p>A requirement to provide a certificate that children remained in education after turning 16 was suspended from March 2020 to September 2020 and ran at a reduced level (just under 70,000 certificates were issued) until June 2021 when it resumed full operation.</p>
Back to school clothing and footwear allowance (€52 million)	<p>Controls continued to be impacted — there was no material improvement in controls in 2021.</p> <p>A low level of quality control inspections were conducted — less than 1% of the 27,000 claims — just over 2% of claims were inspected in 2020.</p> <p>The requirement for a means assessment was extended from every three years to every five years.</p>
Illness, disability and carers	
Disability allowance (€1.8 billion)	<p>Controls improved relative to 2020, but not all key controls were in place in 2021.</p> <p>Means reviews commenced in January 2021 and were conducted on 5% of claimants in 2021, compared to none in 2020 and 7% in 2019. Fewer than 500 of 3,000 cases selected by the business analytics unit were reviewed. Medical reviews were not conducted in 2020 or 2021 (1,000 were planned in 2021) — medical reviews recommenced in January 2022. Data matching exercises were delayed and targeting cases by exception reporting were suspended through 2021.</p>
Carer's allowance (€931 million) and carer's benefit (€48 million)	<p>Controls continued to be impacted — there was no material improvement in controls in 2021.</p> <p>Normal data matching exercises were not conducted during 2021. No medical reviews were conducted during the year. In 2019, 892 intelligence-led reviews were conducted — in 2021 only 72 such reviews were conducted.</p> <p>The number of Carer's Allowance reviews completed for 2021 was 4,275, compared to 4,100 in 2020. To the end of June 2022, the number of reviews completed was 5,400.</p>

Figure 10B.1 Changes to key welfare scheme controls by scheme (continued)

Illness benefit (€571 million)	<p>Amended scheme controls to mitigate the impact of the pandemic were implemented during 2021.</p> <p>There were no in-person medical assessments conducted from March 2020. Telephone assessments commenced in June 2020, which the Department considers a robust mitigating control.</p> <p>In 2021 the Department conducted 1,892 telephone assessments (2020: 1,357), which found 21% of claims reviewed were ineligible. In 2019, the in-person medical assessments found 12% of claims reviewed were ineligible.</p>
Other schemes	
Rent supplement (€123 million)	<p>Controls continued to be impacted — there was no material improvement in controls in 2021.</p> <p>Standard controls over this scheme include checking that the claimant must have been paying rent for six months in the property (to ensure rent was within means) and conducting home visits — these controls were suspended from mid-March 2020 and remained suspended through 2021. The six-month requirement was reintroduced in March 2022 and home visits recommenced in February 2022.</p>
School meals (€58 million)	<p>Controls continued to be impacted — there was no material improvement in controls in 2021.</p> <p>As at the end of 2021, no quality control checks were conducted in relation to 2020 or 2021 expenditure. The Department stated that these control checks were completed in 2022.</p> <p>Onsite inspections of 400 schools in relation to 2019 expenditure was scheduled in 2020, but were not completed until 2021. The 400 onsite inspections related to 2020 expenditure, which should have occurred in 2021, were not conducted — the reviews are due to commence in September 2022.</p>

Source: Analysis by the Office of the Comptroller and Auditor General

11 The recovery of benefit and assistance payments following compensation awards

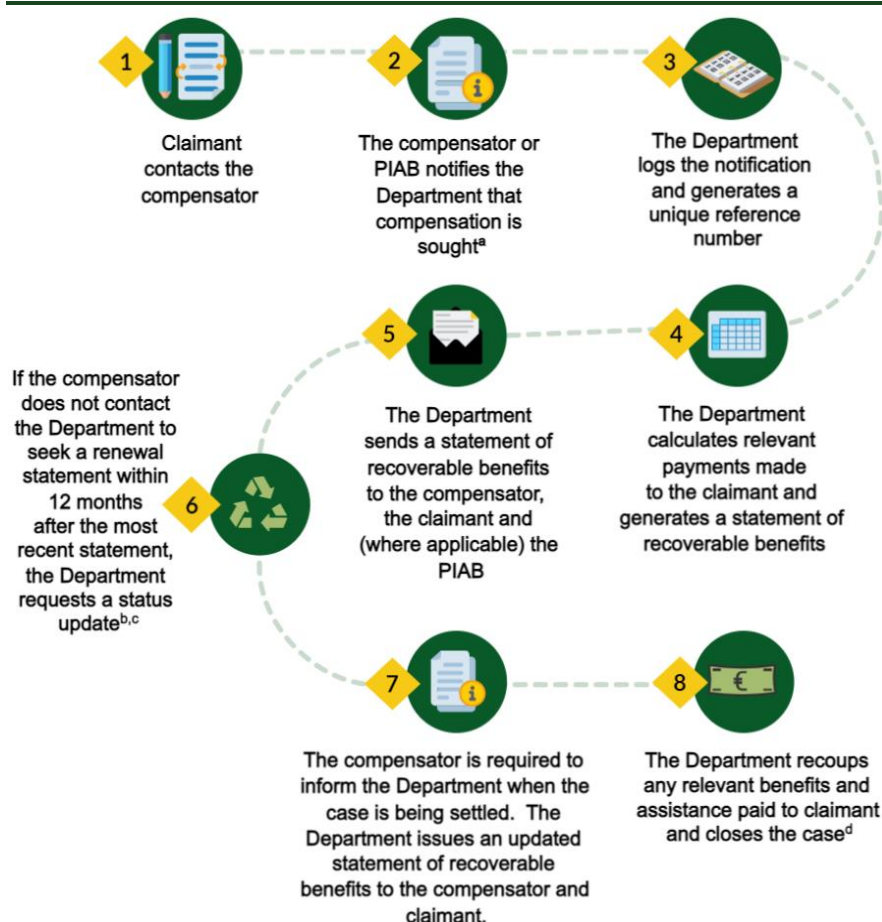
- 11.1** The recovery of benefits and assistance (RBA) scheme is administered by the Department of Social Protection (the Department). The scheme provides for the recovery of certain social welfare payments from compensation awards made to a claimant as a consequence of a personal injuries claim.
- 11.2** The objective of this report is to examine
- the operation of the RBA scheme
 - the Department's process to identify and monitor compensation claims where there may be a recovery of benefits and assistance
 - the recovery of benefits and assistance after compensation has been awarded
 - the recovery of benefits and assistance where a loss of earnings or profits is not specified in a court order or Personal Injuries Assessment Board (PIAB) assessment.¹
- 11.3** This review examined relevant documentation, interviewed relevant Department personnel, and examined a randomly selected sample of cases.

Operation of the scheme

- 11.4** The RBA scheme is provided for in sections 13 and 14 of the Social Welfare and Pensions Act 2013. The scheme came into effect on 1 August 2014 and applies to compensation awards made on or after that date.
- 11.5** The Act provides for the Department to recover welfare payments made to claimants resulting from the injury on which the compensation claim is based under the following schemes: illness benefit, partial capacity benefit, injury benefit, incapacity supplement, invalidity pension, disability allowance and the supplementary welfare allowance. No recovery from compensation is sought where the injuries sustained result in death or where compensation is awarded under specified exempt schemes — see Annex 11A.
- 11.6** The compensator is liable to pay the recoverable amount to the Minister for Social Protection and must pay any recoverable amounts to the Minister before making a compensation payment to the injured person (claimant).²
- 11.7** The RBA scheme has a five year time limit on the recoupment of benefits and assistance, commencing from the day the claimant becomes eligible for the relevant benefit/assistance and concluding at either five years or the date of payment of compensation, whichever is earlier. A person in receipt of one of the specified payments as a result of injuries for which compensation is being sought may continue to receive relevant benefits or assistance for a number of years before a compensation claim is settled.

¹ The Personal Injuries Assessment Board (PIAB) is a self-funded public body established to support the resolution of personal injuries claims without the need for unnecessary litigation.

² The compensator is the person or entity that is liable to compensate the claimant and is typically an insurance company.

Figure 11.1 RBA claim process

Source: Department of Social Protection

- Notes:
- a The PIAB only requests a statement where the claimant seeks compensation related to a loss of earnings or profits.
 - b This process commenced in March 2021. The Department did not periodically engage with compensators prior to March 2021.
 - c Each statement is valid for three months for open claims or 12 months for closed claims. Where another statement has been issued in the interim, the Department does not seek an update until twelve months from the latest statement.
 - d Where some or all relevant benefits and assistance are not recouped, the compensator is required to supply supporting evidence.

11.8 Figure 11.1 outlines the RBA claim process. A compensation award may be determined

- through negotiation, where a compensator agrees to making a compensation payment to a claimant, in which case the compensator must pay the Department the full liable amount of relevant social welfare payments that have been paid as a consequence of that personal injury
- by court order or PIAB assessment, in which case the recoverable amount is limited to the value of the loss of earnings or profits specified in the award (there is no recovery from other elements of compensation, such as that for pain and suffering).

11.9 The legislation sets out the process for dealing with certain issues that arise in the recovery process.

- In the case of multiple compensators, each of the compensators is liable for the whole of the recovery and must agree collectively how much each of them will pay i.e. they are 'jointly and severally liable'.
- An appeal of the recoverable amount cannot be made until the recoverable amount has been paid to the Department.

Identification and monitoring of compensation claims

11.10 The Department is informed through the submission of a standard form — from either the compensator or the PIAB — that a compensation claim has been lodged.¹

11.11 Once the Department has been informed of a compensation claim, the relevant deciding officer reviews all recoverable claims, calculates the recoverable amounts, records it on the system and issues the statement. Thereafter, the Department's IT system automatically updates the record as additional scheme payments are made.

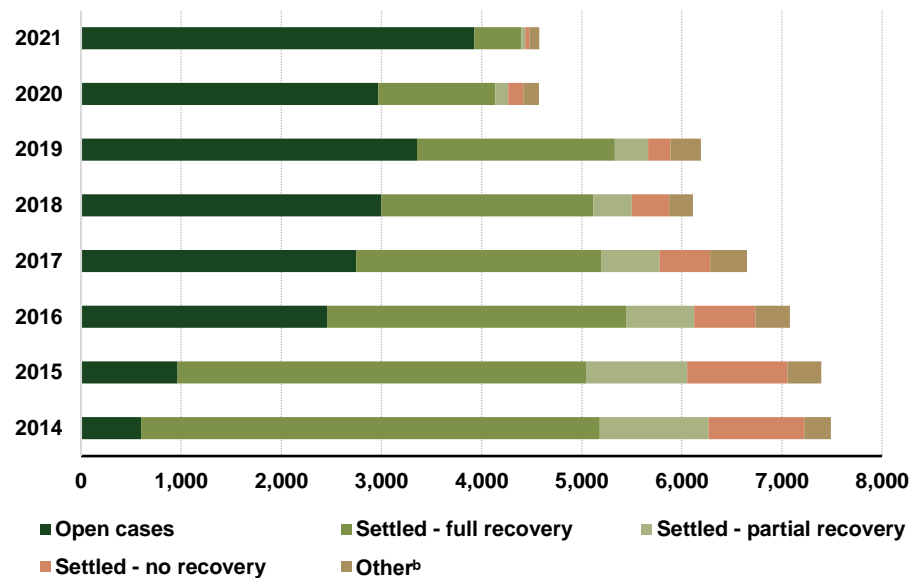
11.12 Where a claimant has not been in receipt of a relevant payment, the Department issues a 'nil statement' to the compensator, stating that no relevant payments were made to the claimant in the relevant period. The Department issued over 22,000 nil statements for each year from 2014 to 2019.²

¹ PIAB only requests a statement where the claimant seeks compensation related to a loss of earnings or profits.

² Up to February 2022, the Department issued over 15,000 nil statements for 2020 and for 2021 — this number may increase as further claims for compensation are lodged. There may be more than one nil statement for a single claim, for example where a statement issues when compensation is first sought and a further statement issues when the case is close to being settled.

11.13 Figure 11.2 shows the status of all cases commenced since 2014 where relevant benefits or assistance was paid. For example, of the cases that commenced in 2014, around 8% (599 claims) remain open. Of the 7,489 cases

- 76% (5,667 claims) resulted in compensation being paid to the claimant where the Department recovered some or all of the benefits and assistance paid (shown as 'Settled — partial recovery' and 'Settled — full recovery' in Figure 11.2)
- 13% (958 claims) resulted in compensation being paid to the claimant but the Department had no basis upon which to recover any of the benefits and assistance paid because the court order or PIAB assessment did not include, or was silent in respect of, a loss of earning or profits (shown as 'Settled — no recovery')
- 3% (265 claims) resulted in no compensation being paid to the claimant (shown as 'Other').

Figure 11.2 Status of recovery cases commenced 2014 to 2021, as at February 2022^a

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

Notes: a Excludes all 'nil statement' cases.

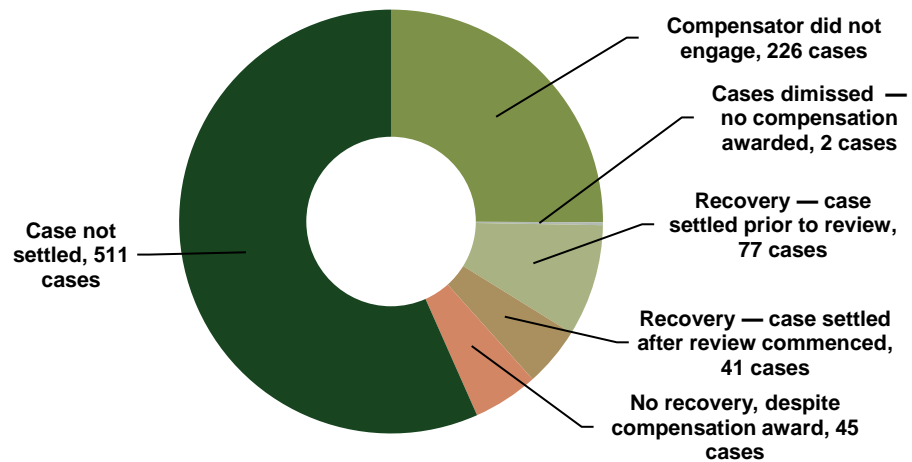
b 'Other' includes cases which are closed as no compensation was awarded to the claimant, the claimant is deceased, or the case was withdrawn by the claimant. No benefits or assistance are recoverable in these cases.

11.14 Since March 2021, the Department seeks periodic updates from the relevant compensator on the status of each case that commenced since 2020. An update is sought twelve months after the date the latest statement was issued. Prior to this, the Department did not routinely seek status updates for open cases.

11.15 In July 2020, the Department began a review of open cases by calendar year, starting with those that commenced in 2014. Figure 11.3 shows the outcome or current status (as at March 2022) of the 2014 cases reviewed as part of that exercise. This indicates

- In 25% of the cases, the potential compensator had not engaged with the review, despite up to three written requests for an update. The Department has sought legal advice in relation to pursuing these cases.
- Around 9% of the cases were found to have been settled prior to the Department's review, but it had not been made aware of the settlement and had not received payment from the compensators. At the time of this examination, the Department had not analysed the key risks of compensators not making the required payments on a timely basis.

11.16 At end-April 2022, the Department began reviewing all open cases that commenced in 2015, and, when the 2015 review is completed, plans to commence a review of cases that commenced in 2016. As at April 2022, the Department had not set a target completion date for reviews of open cases that commenced in the period 2015 to 2019.





Figure 11.3 Review of open cases that commenced in 2014, as at March 2022

Source: Department of Social Protection

Recovery of welfare payments after compensation awards

- 11.17** Payment of the amount due to the Department is the responsibility of the compensator. Figure 11.4 sets out the amount recoverable by the Department for different illustrative case scenarios.¹

Figure 11.4 Recovery by the Department after compensation claims settled by PIAB assessment or court order — illustrative examples

	   			
Category	Case 1 — no compensation	Case 2 — no loss of earnings ^a	Case 3 — benefits more than loss of earnings ^a	Case 4 — benefits less than loss of earnings ^a
	€	€	€	€
Benefits or assistance received by claimant (amount potentially recoverable)	20,000	20,000	20,000	20,000
Total compensation awarded	—	100,000	100,000	100,000
Comprising				
— loss of earnings	—	—	10,000	30,000
— pain and suffering	—	100,000	90,000	70,000
Amount recovered by the Department	—	—	10,000	20,000

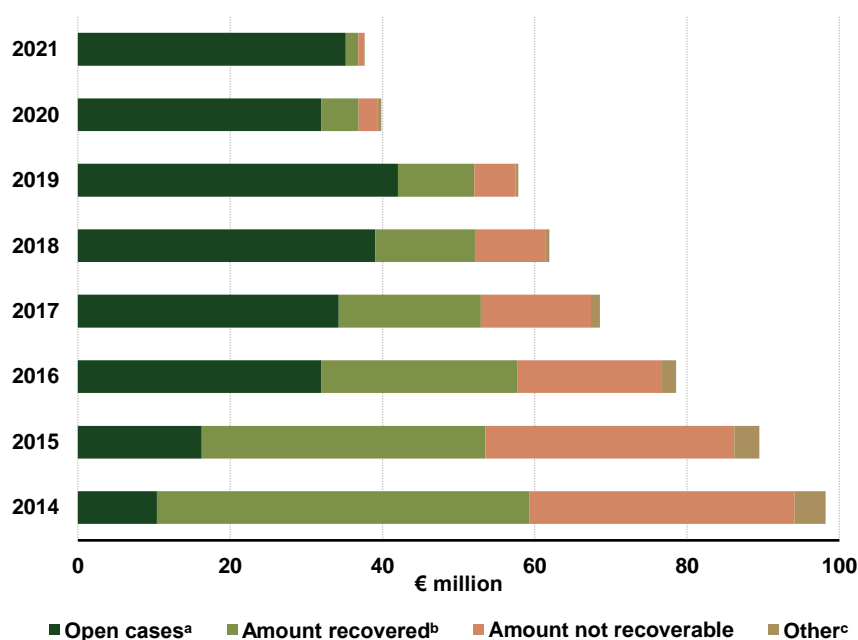
Source: Office of the Comptroller and Auditor General

Note: a 'Loss of earnings' refers to a loss of earnings as stated in the PIAB assessment or court order. Benefits refers to all benefits and assistance received by the claimant.

¹ Where a compensator agrees through negotiation (not involving a PIAB assessment or court order) to make a compensation payment to a claimant, the compensator must pay the Department the full liable amount of relevant social welfare payments that have been paid as a consequence of that personal injury.

- 11.18** The value of benefits and assistance potentially recoverable under the scheme depends on how long a claim remains open before settlement (see Figure 11.5). For example, for cases commencing in 2014, the total potentially recoverable amount at March 2022 was €94 million¹ — of this total, the Department had recovered €49 million ('amount recovered' in Figure 11.5) by February 2022 and a further €10 million relates to cases which are not yet resolved ('open cases') and may be recovered. The €35 million amount not recoverable in relation to 2014 is the amount the Department has no basis upon which to recoup because the PIAB assessment or court order did not state an amount related to loss of earnings, or the amount stated was less than the benefits and assistance received by the claimant.
- 11.19** The Department publishes the value of recovered benefits and assistance payments under the RBA scheme annually.² The examination found that the Department does not publicly report on the value of open cases or the value of payments to claimants which it had no basis to recover.

Figure 11.5 Potentially recoverable amounts and case status, by year of commencement, as at February 2022

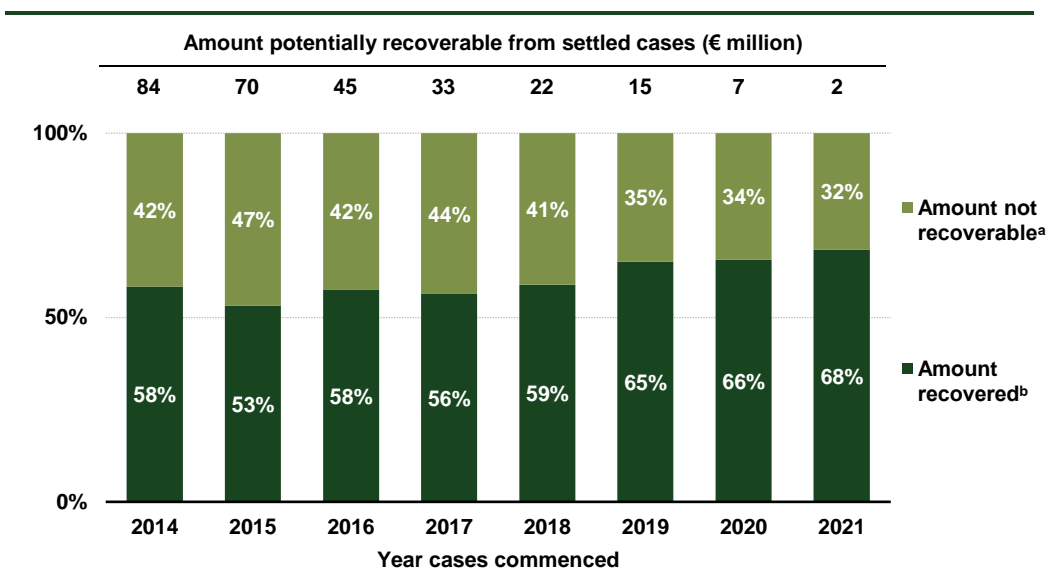


¹ The total amount potentially recoverable (€94 million) excludes cases where no compensation was awarded to the claimant (see 'other' in Figure 11.5) — €4 million in benefits and assistance had been paid to these claimants.

² The Department's *Annual Statistics Report on Social Welfare Services* reports the value of recoveries in the Social Insurance Fund and the annual appropriation account publishes the value of recoveries for the Social Protection Vote.

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a The value of open cases commencing in more recent years (for example, 2020 and 2021) will increase over time as some claimants continue to receive specified benefits and assistance while awaiting settlement.
 - b 'Amount recovered' is the actual amount the Department received in cases with full or partial recovery.
 - c 'Other' includes cases which are closed as no compensation was awarded to the claimant, the claimant is deceased, or the case was withdrawn by the claimant. No benefits and assistance are recoverable in these cases.

Figure 11.6 Benefits and assistance recovery rate for settled cases as at March 2022, by year claim commenced

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

Notes: a 'Amount not recoverable' is the amount which the Department had no basis upon which to recover in cases with partial or no recovery.
b 'Amount recovered' is the actual amount the Department received in cases with full or partial recovery.

11.20 For all cases settled with compensation awarded up to March 2022, the Department recovered 58% of the potentially recoverable amount (see Figure 11.6). This amounted to receipts of €160 million.

Reasons a loss of earnings or profits is not specified by a court order or PIAB assessment

1 There is no standard template on which the court order is to be recorded — a review of a sample of cases noted a variety of approaches. PIAB assessments are recorded on a standard template which specifies the amount payable to the Minister.

2 Section 343R of the Social Welfare and Pensions Act 2013 limits the recovery of benefits or assistance from a court order or PIAB assessment to the amount of the award attributed to loss of earnings or profits.

3 A role of the court registrar is to document the decision of the judge in the court order — where no reference is made to a loss of earnings in that judgement, no reference will be included in the court order.

11.21 A compensation award recorded on a court order or PIAB assessment may itemise the award into amounts related to loss of earnings or profits, pain and suffering, and other damages.¹ However, in some cases, a compensation award only specifies a total award amount and does not indicate an amount attributable to loss of earnings or profit. Where this occurs, under current legislation, the Department has no basis upon which to recover the benefits or assistance it paid.²

11.22 PIAB stated that, in a limited number of cases, it may not award compensation for the loss of earnings or profits, for example due to the claimed loss not being supported by documentation or not supported by previous earnings. The Courts Service stated the reasons why a court order would not specifically articulate awards for a loss of earnings as

- no application was made for compensation for loss of earnings or the award was solely for losses other than loss of earnings
- no submission was made in court by counsel to separate out loss of earnings from other compensation
- the presiding judge did not articulate in pronouncing their decision any specific amount in respect of loss of earnings.³

Conclusions and recommendations

- 11.23** The recovery of benefits and assistance (RBA) scheme enables the Department to recover certain scheme payments following an award of compensation to the claimant where loss of earnings or profits is specified.
- 11.24** Since March 2021, the Department engages with each compensator every 12 months seeking a status update for open cases, commencing with cases initiated in 2020. Prior to this, the Department did not routinely seek status updates for open cases.
- 11.25** In July 2020, the Department initiated a review process for open cases, beginning with the longest outstanding (i.e. from 2014). The review of 2014 cases is substantially complete. As a result of the review, the Department found it had not been notified of some cases settled before the review commenced and that some compensators have not engaged with the review.
- 11.26** At April 2022, no target had been set for the completion of reviews for each year from 2015 to 2019.

Recommendation 11.1

The Department should set target dates to complete its review of all open cases for each year and actively monitor progress towards achieving these targets.

Accounting Officer's response

Agreed.

In August 2022, the Department set the following targets and will actively monitor progress towards achieving these targets.

Review year	Start date	Target complete date
2014	July 2020	Substantially complete
2015	July 2020	Substantially complete
2016	Sept 2022	Jan 2023
2017	Jan 2023	May 2023
2018	June 2023	Oct 2023
2019	Nov 2023	Mar 2024
2020	Ongoing	Ongoing
2021	Ongoing	Ongoing
2022	To start in 2023	Will be ongoing

Recommendation 11.2

The Department should pursue the resolution of open cases where the compensator has not engaged with the Department's review.

Accounting Officer's response

Agreed.

The Department continues to engage with these compensators and is currently reviewing options available in relation to compensators who consistently do not engage with the Department, including seeking legal advice.

Recommendation 11.3

The Department should analyse the outcome of the year-by-year review process and amend its controls as necessary to address risks identified by each review.

Accounting Officer's response

Agreed.

In July 2020, the Department commenced a historical review of RBA claims from 2014 and 2015. As part of the learning from that review process, in March 2021 new procedures were introduced to review current claims from 2020 onwards on an ongoing basis to ensure that timely action is taken in respect of the recovery of benefits and assistance. The Department intends to analyse the outcome of the year-by-year reviews as these are completed.

11.27 The Department recovered €160 million of recoverable benefits and assistance from all cases settled with compensation awarded up to March 2022. This represented 58% of the potentially recoverable benefits and assistance amount. A significant factor in the settled cases where recovery of benefits and assistance has not occurred was the absence of a statement of compensation in respect of loss of earnings or profit in the recorded court order or PIAB assessment.

11.28 The Department does not publicly report on the value of open cases or the value of payments to claimants which the Department had no basis to recover.

Recommendation 11.4

For each settled RBA compensation case, the Department should record the reasons for any non-recovery of welfare payments, monitor trends in such cases, and report publicly on the amount of non-recoverable payments.

Accounting Officer's response

Agreed

For each settled RBA compensation case, the Department records the reasons for any non-recovery of welfare payments and monitors trends in such cases. For cases that are closed with a court order or PIAB assessment, the Department records any reasons noted on the order or assessment. The Department reports on the performance of RBA in its annual statistics report. The Department is also considering options for other data publication, including publishing to relevant bodies.

Annex 11A Exempted compensation sources

The RBA scheme applies to all compensation payments made in respect of personal injuries on or after 1 August 2014. No recovery is sought where compensation is awarded from the following exempted sources.

1. Compensation payments made in respect of injuries causing death.
2. Compensation payments made to an injured person
 - by the Hepatitis C and HIV Compensation Tribunal
 - by a court of competent jurisdiction to compensate certain persons who have contracted Hepatitis C or HIV within the State from the use of Human Immunoglobulin Anti-D, whole blood or other blood products
 - by the Residential Institutions Redress Board
 - by the Residential Institutions Statutory Fund Board
 - under the provisions of the Health (Repayment Scheme) Act 2006
 - by the Criminal Injuries Compensation Tribunal
 - in relation to a disability caused by thalidomide
 - in accordance with the Garda Síochána (Compensation) Acts 1941 to 2003
 - by a prescribed tribunal, redress board or scheme of compensation.
3. Compensation payments made pursuant to a court order or an order of the PIAB or a settlement which was made before 1 August 2014.

12 Financial impact of cyber security attack

1 Conti is a human operated ransomware. In addition to stealing data, the attackers threaten to expose the data as well as encrypting it. This is known as a 'double extortion' ransomware.

2 Malware is a catch all term for any type of malicious software designed to harm or exploit any programmable device or network.

3 PwC's published report can be found [here](#).

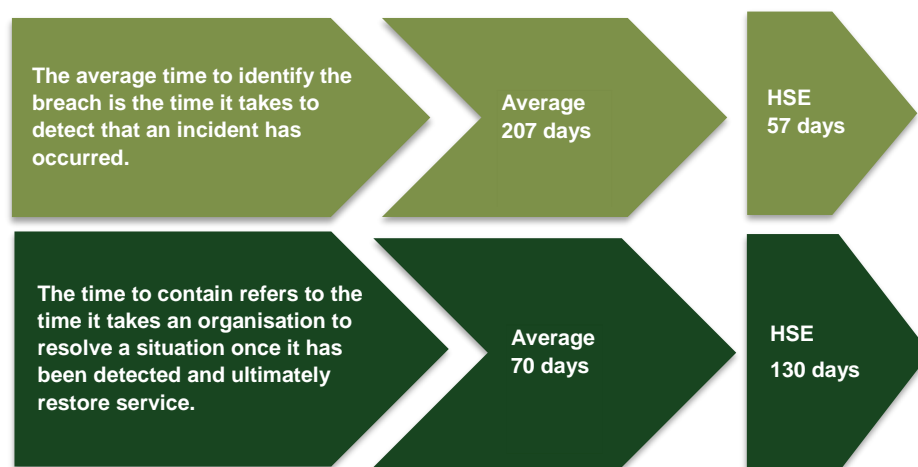
4 The NCSC is an operational section of the Department of the Environment, Climate and Communications. It is tasked with, *inter alia*, leading in the management of major cyber security incidents across Government and providing related guidance and advice.

5 Mandiant is a global specialist in cyber recovery and defence.

6 The reverse engineering process involved examination of the tool provided and obtaining the source code holding the decryption key. Software was developed to decrypt the HSE systems. The decryption software had to be uploaded to each device on the network before access was restored. Assistance in these tasks was provided by a number of organisations including the Defence Forces.

7 IBM Security publishes an annual report on the *Cost of a Data Breach* in association with the Ponemon Institute. The 2022 report can be found [here](#).

- 12.1** On 14 May 2021, the Health Service Executive (HSE) announced that it had been the subject of a very significant ransomware cyber attack which was impacting all of its systems involved in the provision of its core services. The HSE reported that some of its servers and workstations had been encrypted with Conti ransomware and that staff were unable to access impacted patient data.¹ In addition, it became aware that other health bodies, including hospitals, were also reporting that their information technology (IT) systems had been externally encrypted and that the Department of Health (the Department) had reported suspicious activity on its systems.
- 12.2** In a typical ransomware attack, a piece of software (malware) is activated which is designed to encrypt information on a device, rendering any files and the systems that they rely on unusable.² A demand is then made for a ransom in exchange for decryption. In the case of the HSE, a demand was received for a ransom of almost \$20 million. The HSE has stated that it did not engage with the attackers and did not pay any ransom.
- 12.3** Subsequent to the attack, the HSE Board and Chief Executive Officer (CEO) engaged PricewaterhouseCoopers (PwC) to carry out a post incident review of the cyber attack and the circumstances surrounding the exfiltration of data from the HSE's IT systems. The final report contained detailed recommendations which were accepted by the HSE Board in November 2021.³
- 12.4** This examination was undertaken to review the impact of the cyber attack on the HSE and other health bodies, the HSE's cyber attack preparedness, the financial impact of the attack and the status of implementation of PwC recommendations.
- ### Impact of the cyber attack on the HSE
- 12.5** At the time of the attack, the HSE had over 70,000 IT devices in approximately 4,000 locations. To contain the spread of the ransomware, the HSE shut down its Information and Communications Technology (ICT) network. The network shutdown affected all HSE systems whether they had been impacted by the data encryption or not.
- 12.6** On the advice of the National Cyber Security Centre (NCSC), the HSE engaged an external firm, Mandiant to provide it with expert response assistance.^{4,5} On 21 May 2021, the attacker posted a link to a tool that would decrypt the encrypted files. Mandiant validated that the decryption tool worked, reverse engineered its capabilities, and produced a new decryption tool that was rolled out on the HSE IT systems.⁶
- 12.7** In a review of 550 organisations with data breaches over the period March 2021 to March 2022, IBM Security has calculated the average number of days to identify a data breach, and the average number of days to contain it.⁷ Relative to the calculated averages, the HSE was notified of the data breach significantly earlier, but took longer to contain and recover from it (see Figure 12.1).

Figure 12.1 Time taken to resolve data breaches^a

Source: IBM Security *Cost of a Data Breach report 2022*, HSE and PwC

Note: a In its review, IBM has defined a data breach as an event in which an individual's name and a medical record and/or a financial record or debit card is potentially put at risk — either in electronic or paper format.

- 12.8** The timeline in Figure 12.2 summarises the key events and actions taken by the HSE in response to the attack on its systems.

Impact on other bodies

- 12.9** Prior to the cyber attack, a number of organisations which included voluntary hospitals, some HSE hospitals and the Department operated their own domain networks, but were also connected to the HSE network through an 'active domain trust'.^{1,2}
- 12.10** In this type of trust network, users input their user name and password on their own network and are able to access information and services on the other network without being asked for additional authentication. For example, clinical staff in voluntary hospitals could access HSE shared national data systems.
- 12.11** The relationship of trust between the HSE and the Department, and the HSE and Beaumont Hospital, facilitated the attackers' access to the Department and Beaumont Hospital's ICT networks. However, the ongoing monitoring of network threats and the identification of suspicious activity allowed the Department and Beaumont Hospital to proactively respond to an attack on their networks, preventing widespread encryption of their ICT networks.
- 12.12** Sophos, the Department's monitoring provider, notified the Department of the attempt to install malicious software on its systems. The Department acted by contacting the NCSC and engaging Grant Thornton to provide assistance. The deployment of a security tool by the Department in collaboration with Grant Thornton prevented the ransomware from inflicting additional damage on its systems.
- 12.13** The sequence of events leading up to the attack on the Department and the actions taken by the Department are summarised in Figure 12.3.

1 Hospitals in the public system are HSE hospitals (statutory hospitals) or run by voluntary organisations (voluntary hospitals). Voluntary hospitals are separate legal and corporate entities.

2 An active domain trust is a method of connecting two distinct active domains to allow authenticated users in one domain use resources and systems in the other domain.

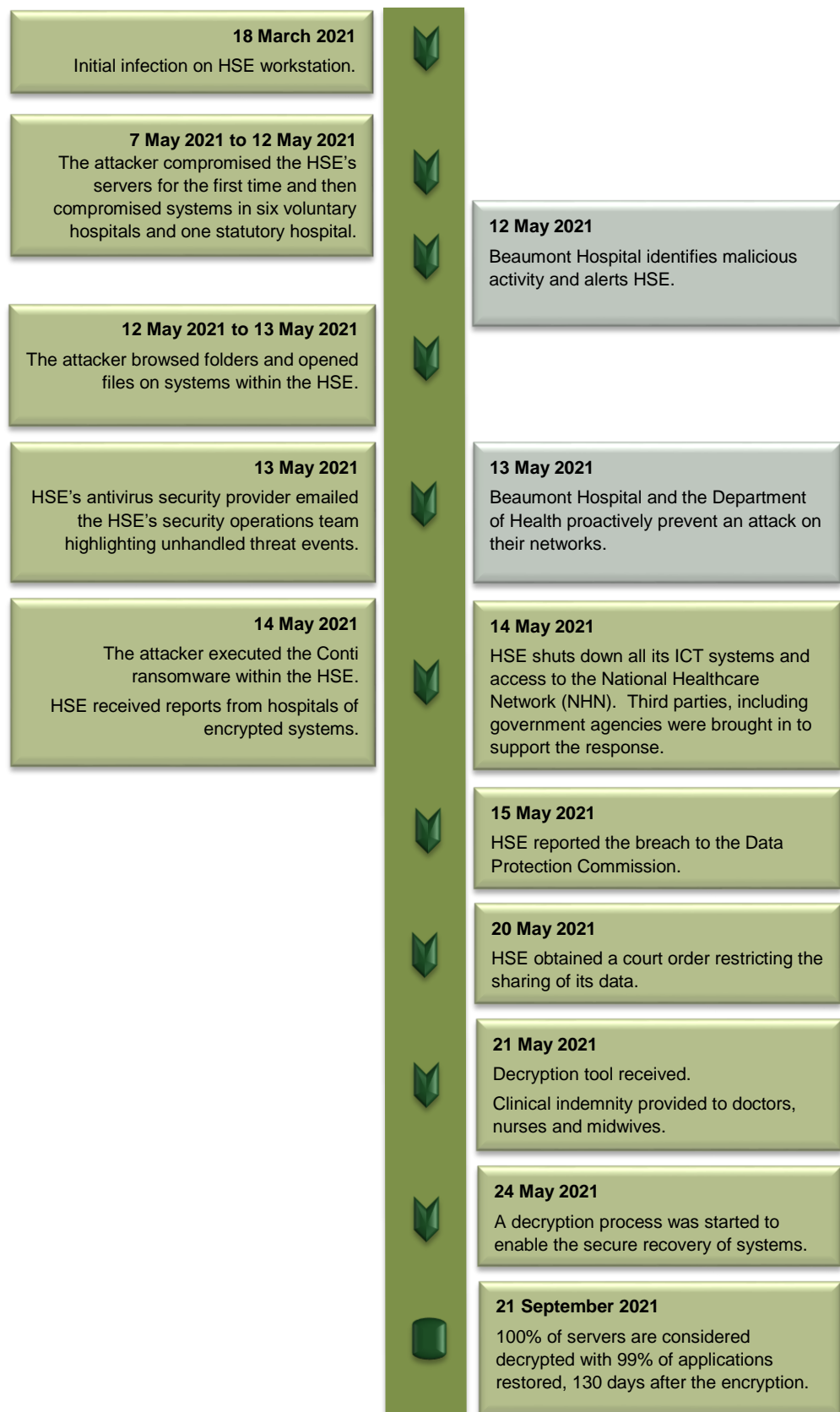
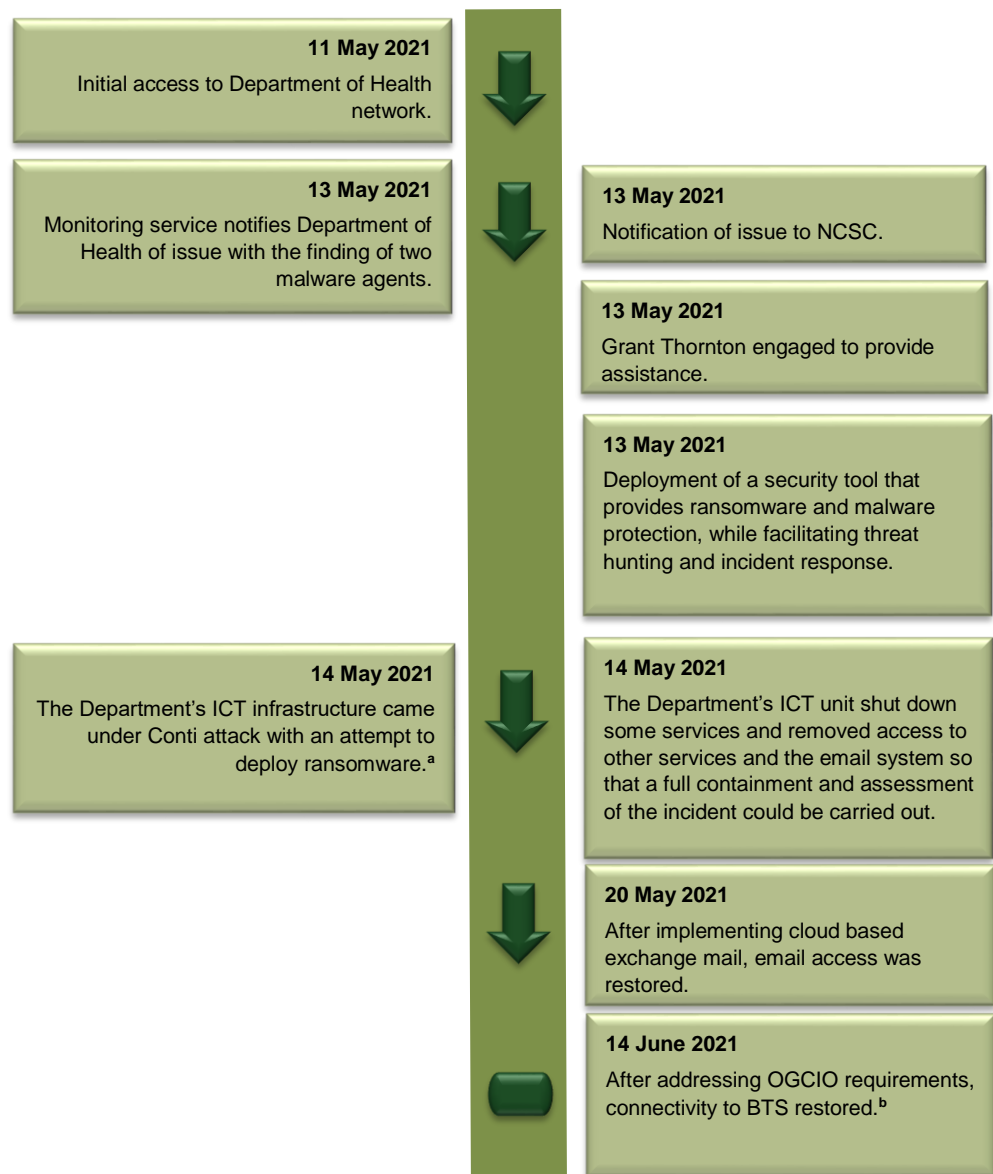
Figure 12.2 Timeline of key events and actions taken in response to HSE cyber attack

Figure 12.3 Timeline of key events and actions taken in response to the attack on the Department of Health



Source: Department of Health

- Notes:
- a ICT is the infrastructure that enables the operation of modern computer systems.
 - b The Office of the Government Chief Information Officer (OGCIO), through the Build to Share (BTS) programme, delivers a range of collaboration tools, platforms and services for public service bodies.

Impact on patient care

- 12.14** The patient care services most impacted by the cyber attack included radiology, pathology/laboratories, radiotherapy, maternity, primary care, and disability services. Some activities like blood tests took longer to complete. Other services closed completely.
- Radiation machines were shut down and radiation treatment ceased in the days following the cyber attack in five centres (St Luke's Rathgar, St Luke's Radiation Oncology Network facilities on the campuses of St James's and Beaumont Hospitals, Galway University and Cork University Hospitals). A plan was implemented for the provision of urgent patient care in the private hospital sector.
 - X-rays and imaging services were available within hospital radiation departments. However, as the national integrated medical imaging system (NIMIS) which allows for sharing of x-rays and other images was put offline, staff were unable to access historic imaging and images could not be shared across the network.¹
- 12.15** Where systems were unavailable, HSE staff had to develop manual workarounds to ensure continuity in the provision of services and to mitigate the impact on patient care. This included switching to paper systems to update health records which was slower than the normal processes.
- 12.16** Indirect impacts of the workarounds used included delayed patient admissions and discharges, difficulties with patient hand-overs and the recording of clinical information in a complete and timely manner. The absence of automated prompts to ensure that all required information was obtained may have resulted in certain clinical and non-clinical information not being recorded.
- 12.17** Following the restoration of clinical systems, significant resource effort was required to backload clinical information and to ensure that information was complete and accurate. However, the HSE has reported that some data is irretrievable and therefore the impact of the cyber attack will be long lasting and will affect clinical practice for some time.

Impact on the voluntary hospitals

- 12.18** The HSE has reported that voluntary hospitals were affected in different ways by the cyber attack.²
- 12.19** Beaumont Hospital was subject to an attempted ransomware attack. The hospital's monitoring system raised an alert that there was a potential issue and the hospital was able to take action to block access to its system. This occurred prior to the deployment of the ransomware on the HSE network which minimised the impact on the hospital's system.
- 12.20** Some voluntary hospitals were moderately impacted by the attack, with local systems generally not impacted. The key operational problems experienced in those cases were as a result of the HSE's removal of access to national systems.
- 12.21** Some voluntary hospitals were severely impacted. In those cases, the hospitals' local systems were either encrypted or they were reliant on the main clinical system, hosted by the HSE, which was impacted.

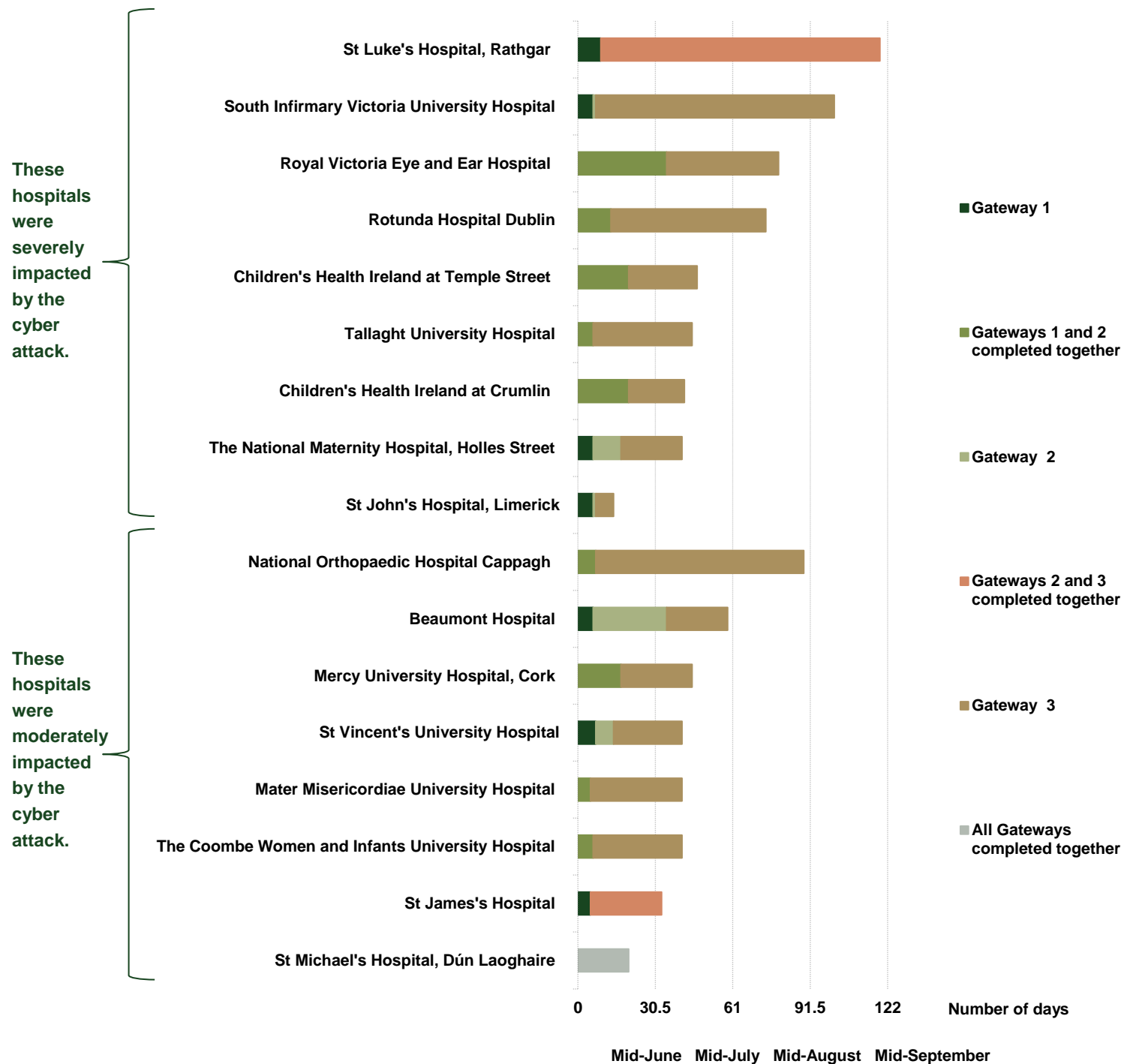
¹ NIMIS holds personally identifiable information for the population of Ireland which is shared with health service providers in the public health system.

² Information on the impact of the cyber attack on voluntary hospitals was provided by the HSE.

1 Before restoring access to the network, Mandiant had to review the systems in the relevant hospitals to ensure that they were clear from indicators of compromise.

12.22 Hospitals identified as having attacker activity had to agree a bespoke plan with the HSE and Mandiant based on the extent of the attack activity.¹ The restoration process involved three stages, called 'gateways' — Gateway 1 involved the restoration of internal systems without internet; Gateway 2 allowed some specific internet activity; while Gateway 3 allowed hospitals to resume normal internet-based activity. The restoration timeline for each hospital, by gateway, is set out in Figure 12.4.

Figure 12.4 Restoration process timeline for each hospital by gateway^a



Source: HSE

Note: a The restoration process took place over the period mid-May to 10 September 2021.

HSE's preparedness

- 12.23** PwC's post-incident review of the cyber attack found that the HSE was operating on a frail IT estate that had evolved rather than having been designed for resilience and security; and that part of the reason for the frailty of the IT estate was an over-reliance on legacy systems. PwC noted that while the design of the network made it easy for staff to access the applications they required, the network's flat nature exposed the HSE to the risk of cyber attacks from other organisations connected to the network as well as exposing other organisations to cyber attacks originating from the HSE network.
- 12.24** The risk of a cyber security incident had been considered by the HSE prior to the attack. The audit and risk committee (ARC) was briefed on cyber security in February 2020 and again in March 2021. The HSE stated that cyber risk was also on the corporate risk register and that the register is reviewed by the ARC and the HSE Board on a regular basis.
- 12.25** Internal audit also reported on the HSE's IT systems prior to the attack and its recommendations were accepted by HSE management. For example,
- In 2018, an internal audit of the NIMIS found that certain servers used outdated software — Microsoft Windows Server 2003 — supplier support for which ended in July 2015.¹ It also found that a number of web applications in use did not follow secure coding practices. Therefore, there was a risk that the HSE could be subject to an attack where a malicious user could trick normal users of the application to perform actions without their knowledge, obtain sensitive information, or insert malicious code into the application.
 - In 2019, an internal audit of the HSE's national data backup and resilience infrastructure found that the HSE did not have a standardised approach for managing data backup and recovery across its data centres, and that the national backup and recovery policy had not been finalised. It also identified servers running unsupported software.
- 12.26** In the statements on internal control published with the HSE's 2019, 2020 and 2021 annual financial statements, the HSE acknowledged the weaknesses and stated that it was committed to improving controls in respect of cyber security.
- 12.27** The initial focus of the IT response in the aftermath of the attack was to try to restore the systems from the backup. However, the HSE stated that, due to the number of systems that would have to be restored mainly from disks or tapes, this process would have taken much longer than the process involved by obtaining the decryption tool.
- 12.28** Since the attack and to safeguard against a similar event occurring, the HSE has put in place an enhanced network monitoring service. Prior to the attack, there was limited monitoring of the network — a third party provided an antivirus monitoring service which operated from 8 am to 6 pm each day, with an on-call service outside those hours. The enhanced monitoring service provides 24-hour support. Additional measures, such as virus scanning software and a network monitoring device scanning all traffic which enters or leaves the network, has increased the HSE's preparedness to deal with similar attacks.

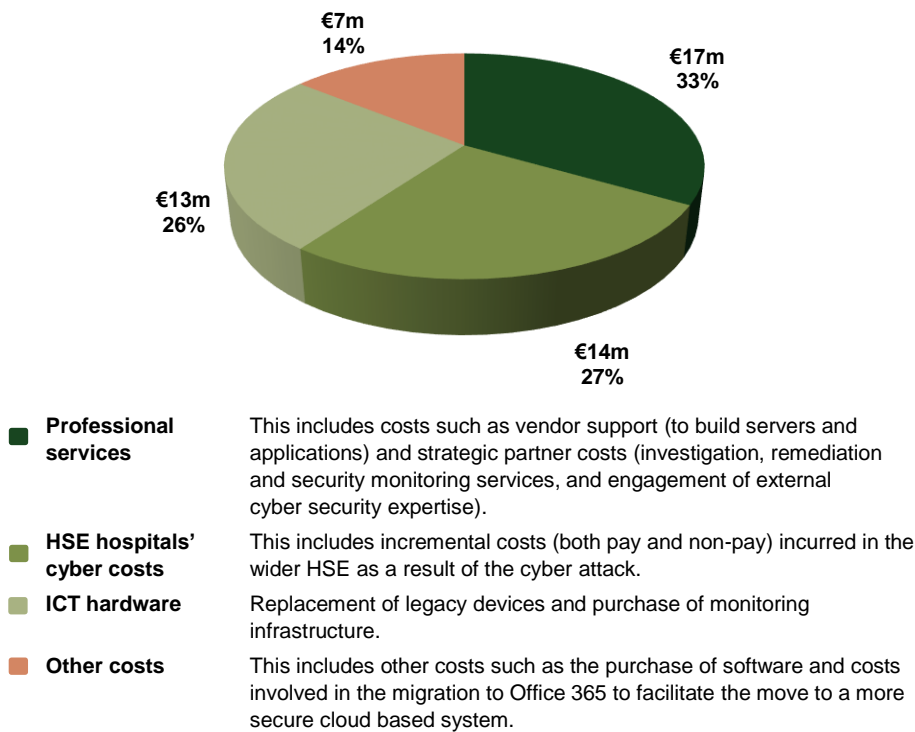
¹ Vulnerability Assessment — National Integrated Medical Imaging System (NIMIS), June 2018.

Costs of the attack

HSE costs

- 12.29 The financial implications of a cyber attack are significant, with costs ranging from those associated with the initial attack, to costs associated with recovery, rebuilding and enhancing the security of systems.
- 12.30 Following the cyber attack, the HSE incurred significant costs in recovering access to encrypted systems and in enhancing security across its ICT network (see Figure 12.5). In 2021, the HSE (excluding voluntary agencies) incurred revenue expenditure of €37 million and capital expenditure of €14 million.¹

Figure 12.5 Costs of the cyber attack 2021^a



Source: HSE

Note: a ICT hardware costs together with €537,000 included in professional services are capital costs, while the remaining costs are revenue related costs.

- 12.31 In addition, revenue costs incurred of around €4.4 million, mainly relating to Microsoft Office 365, have been expensed in 2022. The HSE has stated that it will incur other mitigating costs in 2022.
- 12.32 The full cost of the attack on the HSE has not been quantified. Costs incurred by the voluntary agencies are not included in any of the figures. Staff time incurred in addressing the technical aspects of the cyber attack and the additional time required to resume normal services have not been costed by the HSE.
- 12.33 The HSE was also unable to provide the staff costs associated with the maintenance of hard copy records while systems were down, and for the subsequent updating of electronic records once system access was restored.

¹ €23.6 million of the total revenue expenditure and all of the €13.7 million capital expenditure were incurred directly by the HSE's Office of e-Health and Disruptive Technologies. This Office is responsible for the delivery of technology to support and improve healthcare in Ireland.

- 12.34** The HSE incurred legal costs of €2.6 million since the cyber attack.¹ This included securing a high court order to prevent, *inter alia*, the sharing of its data, without its consent. The HSE stated that no legal actions have been taken against it to date by individual patients. However, HSE patients, clients and staff whose personal information was stolen as part of the cyber attack had yet to be informed as at August 2022.
- 12.35** In addition to the costs incurred in 2021, the HSE has secured an increase in its recurrent funding from 2022 of €43 million for ICT expenditure of which €38 million is for immediate and shorter term actions to enable it to increase its capability to deal with future threats.
- 12.36** The HSE has prepared an initial plan to implement PwC's post-incident review recommendations and to cost the associated actions required. The HSE stated that initial estimates are that this will require almost €657 million over seven years for implementation of cyber security improvements.²

Impact of cyber attack on patients

- 12.37** Many patient appointments were cancelled in the aftermath of the cyber attack, which has led to an increase in waiting lists. However, the HSE noted that a significant number of appointments were cancelled due to Covid-19, rather than being directly due to the cyber attack. It is difficult to separate the impacts, which in any event would be difficult to cost.

Other health bodies' costs

The Department

- 12.38** As a result of the cyber attack, the Department incurred direct costs of almost €647,700 to deal with the immediate response and aftermath of the attack. It also incurred expenditure for an interim managed detection and response service of €305,000 and for professional advice of €22,000.
- 12.39** Prior to the attack, the Department had tendered for a monitoring service at a cost of €61,000 for three years. Following the attack, the Department decided to centralise all security options and implement a cloud-based email system. The licences for all staff cost €293,000 for 2021.

St James's Hospital

- 12.40** Following the attack, St. James's Hospital identified potential improvements to its network security. The hospital stated that it has provided the HSE with costings for additional measures to secure an increase in its annual ICT budget to include €2.8 million for non-pay costs, €482,000 for recurring pay costs and €2.2 million for capital expenditure.

Beaumont Hospital

- 12.41** Beaumont Hospital has estimated that as a result of the cyber attack, it incurred additional costs of €512,000 of which around €233,000 will be recurring annual costs.

¹ The legal costs covered the period from May 2021 to the end of July 2022.

² This is comprised of €127 million capital and €530 million revenue based on current estimates.

- 12.42** The fragility of Beaumont Hospital's IT system means that the hospital's focus is on delivering a patient records administration system as the hospital's current system is due to cease functioning on 31 December 2025.

PwC recommendations

- 12.43** PwC's post incident review into the cyber attack sought to
- urgently establish the facts regarding the HSE's technical and operational preparedness for a strategic risk of this nature
 - identify the lessons from the incident and identify improvements to the HSE's preparedness for and response to other major risks; and
 - share the lessons within the HSE and externally.
- 12.44** The PwC report includes a total of 83 key recommendations (see Figure 12.6).¹

Figure 12.6 PwC key recommendations, September 2021

Area	Focus of review	Key recommendations
Overall	Transformational change ^a	22
Focus area 1	Technical investigation and response	15
Focus area 2 ^b	Organisation wide preparedness and strategic response	24
Focus area 3	Preparedness of the HSE to manage cyber risks	22

Source: [PwC Conti cyber attack on the HSE, independent post incident review](#)

- Notes:
- a The PwC report includes ten strategic recommendations to deliver transformation change and twelve tactical recommendations which contribute to the implementation of the strategic recommendations.
 - b Six of the recommendations in focus area 2 were further sub-divided.

- 12.45** The HSE stated that as at June 2022, three of the recommendations have been fully implemented. It also stated that many of the recommendations will take a number of years to complete, others are an ongoing commitment and that the status of each recommendation does not fully capture the extent of ongoing work to ensure that the HSE is safe from a future attack.
- 12.46** The HSE also noted that some of the recommendations in the report contain duplicate elements which were analysed with PwC so that a refined and costed plan could be prepared which will be capable of being tracked to ensure the recommendations are implemented.
- 12.47** PwC also identified a number of lessons for sharing with other bodies to inform their future preparedness for the threat of a cyber attack (see Annex 12A).

¹ The HSE has stated that many of the key recommendations contain a number of sub recommendations totalling 245 recommendations overall.

Conclusions and recommendations

- 12.48** The HSE was subject to a significant cyber attack in May 2021 which resulted in a large number of its systems being encrypted and the theft of patient private information. In response to the attack, the HSE shut down its network to prevent further harm being done by the attackers, but this resulted in severe disruption to the activities of legitimate users of the HSE systems. Full access to systems was not restored until late September 2021.
- 12.49** A post incident review by PwC into the attack found that Ireland's public health service was operating on a frail IT estate with an architecture that had evolved rather than having been designed for resilience and security. PwC determined that part of the reason for the frailty of the IT estate was an over-reliance on legacy systems.
- 12.50** Previous internal audits had also identified issues with the HSE's IT infrastructure, which included the continued use of outdated and unsupported software and some web applications not following secure coding practices.
- 12.51** The financial cost of the cyber attack on the HSE has been significant. However, the full cost of the attack and its long term impact on patient care have not been determined. The use of manual workarounds while systems were offline and the subsequent back loading of information also presented challenges in ensuring that recorded information is accurate, complete and accessible. The HSE has reported that difficulties in retrieving some data will affect clinical practice for some time.
- 12.52** In their post incident review of the attack, PwC set out a broad range of recommendations which were accepted by the HSE Board in November 2021. The HSE has prepared an initial plan to cost the implementation of the recommendations. Substantial investment in the HSE IT systems will be required to ensure that the systems are fit for purpose, that operational platforms are upgraded and to ensure that client and patient personal data is sufficiently protected from external threats.

Recommendation 12.1

The HSE's plan for the implementation of the PwC recommendations should clearly set out target deliverables, costs and timelines, against which progress can be measured.

Chief Executive Officer's response

Agreed.

The HSE has progressed an investment case which has been submitted to the Department of Health.

The HSE has established a sub-group of the Executive Management Team to oversee the implementation of the PwC recommendations.

Recommendation 12.2

ICT systems which do not have ongoing support should be replaced so that systems which store personal information are sufficiently secure.

Chief Executive Officer's response

Agreed in principle.

System replacement and upgrading is an ongoing requirement undertaken by the HSE and replacing older unsupported technology will take a number of years.

- 12.53** PwC's post incident review also found that the flat nature of the HSE's network exposed the HSE to the risk of cyber attacks from other organisations connected to its network as well as exposing those organisations to attacks originating from the HSE.

- 12.54** The relationship of trust between the systems used by the HSE and the Department, and those used by the HSE and Beaumont Hospital, facilitated the attackers' access to each entity's ICT network. However, better ongoing monitoring of network threats and suspicious activity by the Department and the hospital was successful in blocking the ransomware cyber attack on their systems and minimising the impact of the HSE cyber attack in those organisations.

Recommendation 12.3

The HSE should review the trust relationship arrangements currently in place to ensure that they reflect best practice and that the risk of cyber attacks originating from either party to each arrangement is appropriately addressed.

Chief Executive Officer's response

Agreed.

A number of key steps have been undertaken to improve the cyber posture of the organisation, including the recruitment of a Chief Information Security Officer to lead the end-to-end cyber security operations function.

- 12.55** At the time this examination was being finalised, patients, clients and staff of the HSE whose personal data was stolen as part of the cyber attack had yet to be informed about how they were affected.

Recommendation 12.4

The HSE should prioritise its engagement with the relevant stakeholders so that all those impacted are fully informed of the extent of their personal data stolen as part of the attack.

Chief Executive Officer's response

Agreed.

A notification process is underway which has been notified to the Data Protection Commissioner.

- 12.56** All organisations that operate online are at risk of a cyber attack. Significant personal data and confidential data is held by State bodies. There is a high reliance by these bodies on properly supported and functioning IT systems. The HSE included a request in its commission to the external consultants that they consider lessons learned from the cyber attack so that these can be shared with State and non-State organisations. These lessons have been shared publicly.

Annex 12A Recommendations for all public sector organisations to consider based on lessons learned from the HSE cyber attack

No.	Recommendation
1	Boards and/or executive leadership of organisations should ensure that they understand the extent to which their critical operations are dependent on technology.
2	Organisations should ensure they have a cybersecurity strategy that defines the key cybersecurity risks to the organisation, how those risks are being mitigated and the resourcing and investment to execute the strategy.
3	Organisations should perform a cybersecurity assessment specific to the threat of ransomware, given the heightened threat posed by ransomware attacks.
4	Organisations must possess an effective security monitoring capability that can detect and respond to the tools and techniques used by human-operated ransomware groups.
5	Testing of cybersecurity capability through the use of ethical hackers simulating end-to-end attack techniques (i.e. 'red team' testing) is essential to provide a threat-based perspective of an organisation's vulnerability to ransomware and other types of attacks.
6	Organisations should develop and exercise cybersecurity-specific incident response and crisis management plans that define how a response should be led, managed and coordinated.
7	Organisations should prioritise business continuity planning and disaster recovery planning that would ensure provision for continuity of critical operations and the ability to recover in the face of a ransomware attack that results in total loss of IT and associated data.
8	Organisations should establish contractual retainers with key third parties that may be required to support a crisis response.

Source: [PwC Conti cyber attack on the HSE, independent post incident review](#)

13 Guardian *ad litem* service — follow up report

- 13.1** A guardian *ad litem* is an independent person appointed by the court to ensure the best interests and the views of a child/children are heard in public family law proceedings. Section 26 of the Child Care Act 1991 provides for the appointment of a guardian *ad litem* in respect of care proceedings where a child is not a party to those proceedings and where the court is satisfied that it is necessary in the best interest of the child and in the interest of justice.
- 13.2** The presiding judge is responsible for deciding if a guardian *ad litem* should be appointed in a case. The 1991 Act does not set out criteria for such appointments, or the qualifications required for a person to be appointed to act as a guardian *ad litem*; or the role, function or status of a guardian *ad litem* in care proceedings.
- 13.3** The Children Acts Advisory Board (CAAB) was established under Section 20 of the Child Care (Amendment) Act 2007.¹ In May 2009, CAAB published guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed (see Annex 13A). However, the guidance was never given a statutory footing. CAAB was dissolved in 2011.
- 13.4** The Department of Children, Equality, Disability, Integration and Youth (the Department) is responsible for the policy relating to guardian *ad litem* arrangements. Responsibility for discharging the costs associated with the service rests with the Child and Family Agency (Tusla).² Tusla does not have a role in the management or monitoring of the service.

1 CAAB was set up to provide advice on policy issues relating to the coordinated delivery of services to children and young people at risk.

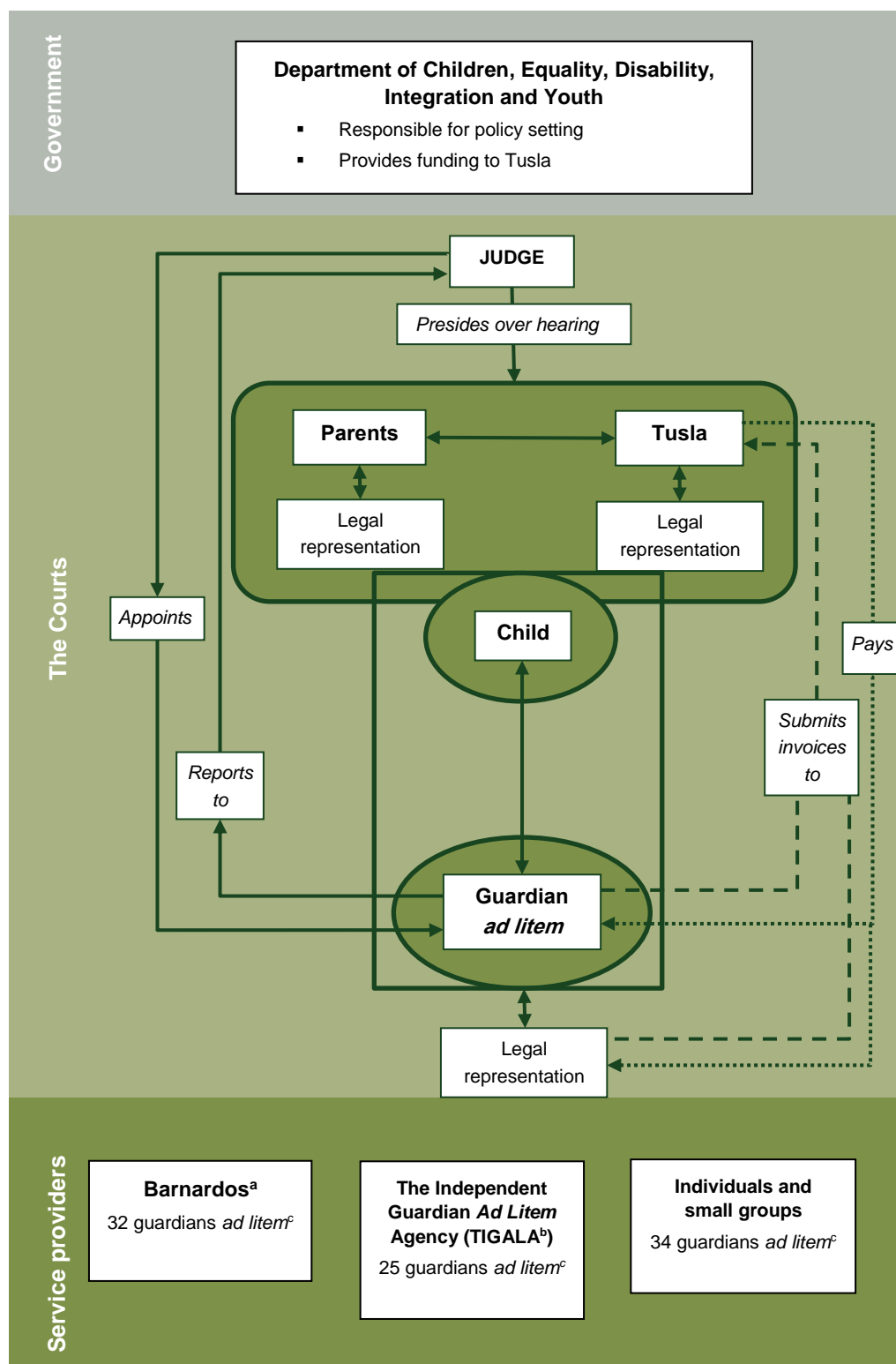
2 Until the end of 2013, the costs associated with this service were reported by the HSE in their annual financial statements as 'professional services'.

3 Chapter 11 Guardian *ad Litem* Services, Report on the Accounts of the Public Services 2015.

- 13.5** An overview of the guardian *ad litem* system is set out in Figure 13.1.

Focus of this examination

- 13.6** The Comptroller and Auditor General examined the operation in 2015 of the guardian *ad litem* system, and published a report on the examination in September 2016.³ Based on the findings of the examination, the report included three recommendations, which were agreed to by the Department and Tusla.
- 13.7** This examination reviews the progress made by the Department and Tusla in implementing the recommendations.

Figure 13.1 Overview of the guardian *ad litem* service

Source: Office of the Comptroller and Auditor General

- Notes:
- a Barnardos has been providing a guardian *ad litem* service to the courts since 1997.
 - b TIGALA was formed over the period 2014 – 2015 by a number of guardians *ad litem* who had previously operated on an individual basis.
 - c Number of guardians *ad litem* identified in 2021

Management and supervision of the service

Recommendation

Responsibility for the management and supervision of the service should be assigned to a single entity, and preferably a body that is independent of the legal proceedings. Reliable statistical information should be captured by that body and used to forecast demand for the service, to budget accordingly and to develop key performance indicators, which might include measures of timeliness and quality of service delivered, to allow for performance management.

In the interim, the Department of Children, Equality, Disability, Integration and Youth should utilise the information currently available from Tusla for this purpose.¹

- 13.8** The examination reported that, in 2015, there was no national management structure or body charged with oversight of the guardian *ad litem* service. At the end of July 2022, this remains the case.
- 13.9** The Department commenced a process to reform delivery of the guardian *ad litem* service in 2015, which included amendments to the legislation currently underpinning the service. This culminated in the passing of the Child Care (Amendment) Act in July 2022.

Child Care (Amendment) Act 2022

- 13.10** The Act provides the Minister with a number of regulation-making powers, which will enable him/her to establish a new guardian *ad litem* service within an executive office of the Department. It is proposed to set up the new service as an executive office with a view to longer term arrangements for the office being dealt with in the context of the proposed transition to a family court system.
- 13.11** Other provisions of the Act
- create a presumption in favour of appointment of a guardian *ad litem* in proceedings before the District Court and provides for mandatory appointment in special care cases before the High Court
 - set out the process whereby an individual guardian *ad litem* is assigned to a child care case and specifies the role and status of a guardian *ad litem*
 - give the Minister the power to make regulations on the qualifications and experience required to act as a guardian *ad litem*
 - provide for a transition period in the first year of operation of the executive office to provide for a seamless transition from the current system to a new model of provision
 - require the court, where a child is capable of forming their own views, to determine how to facilitate the child in expressing those views
 - require the court to give any views that the child wishes to express due weight, having regard to the child's age and maturity.

¹ The Department of Children, Equality, Disability, Integration and Youth was previously named the Department of Children and Youth Affairs.

Establishment of the executive office

- 13.12** A project team was put in place in 2018 to manage the establishment of the executive office within the Department. The project team was put on hold in early 2020 because the legislation was delayed and staff were needed elsewhere to meet the demands of the Covid-19 pandemic. The project team has not yet reconvened.
- 13.13** In anticipation of the passage of the necessary legislation, the Department's financial statements for 2020 and 2021 included an estimate provision of €845,000 each year for the operation of the guardian *ad litem* executive office. In 2020, expenditure of €127,000 was incurred, the majority of which was spent on developing an IT system that will be used for case management. None of the 2021 provision was expended due to the further delay in the establishment of the office.

Statistical information for performance management and forecasting

- 13.14** Neither the Department nor Tusla prepares or publishes key performance indicators in relation to the guardian *ad litem* service. Tusla collects information about the cost of the service and the elements that inform the cost e.g. hours billed, kilometres travelled. Tusla prepares budgeted figures for guardian *ad litem* costs (including their legal representatives) by conducting a review of the previous year spend.¹ While data about hours and travel is being captured, it is not being used to forecast the activity for the service.

Tusla's response

- 13.15** Tusla does not have authority with regard to monitoring the work of a (court-appointed) guardian *ad litem* or in assessing the quality of the service provided. Tusla is not privy to matters such as timeliness nor does it have any authority to review a guardian *ad litem*'s work performance or to make any enquires in this regard. The service is demand led and Tusla has no control or input and this makes it difficult to predict with any certainty what the guardian *ad litem* activity will be for the year ahead.

Department's response

- 13.16** Under the 2022 Act provisions, Tusla will no longer have responsibility for payments to guardians *ad litem*, which instead will be the responsibility of the executive office. The Department notes that the executive office will be required to gather statistical data so as to forecast demand and annual budgetary requirements for the service and notes that key performance indicators will be developed.
- 13.17** The 2021 provision in the appropriation account for the executive office was not expended due to the delay in progressing the legislation to underpin the reform of the guardian *ad litem* service and the continued impact of Covid-19 on the Department. Preparatory work relating to the opening of the executive office is ongoing, but the Office could not be set up in advance of the legislation as it would have risked infringing the separation of powers between the executive and the judiciary. In addition, the Department had discussions with the Department of Justice in relation to the final location of the executive office leading to uncertainty about the potential future transfer of the office to a family court system.

¹ The Department is not involved in compiling the budget figures as part of the estimates process for the guardian *ad litem* service.

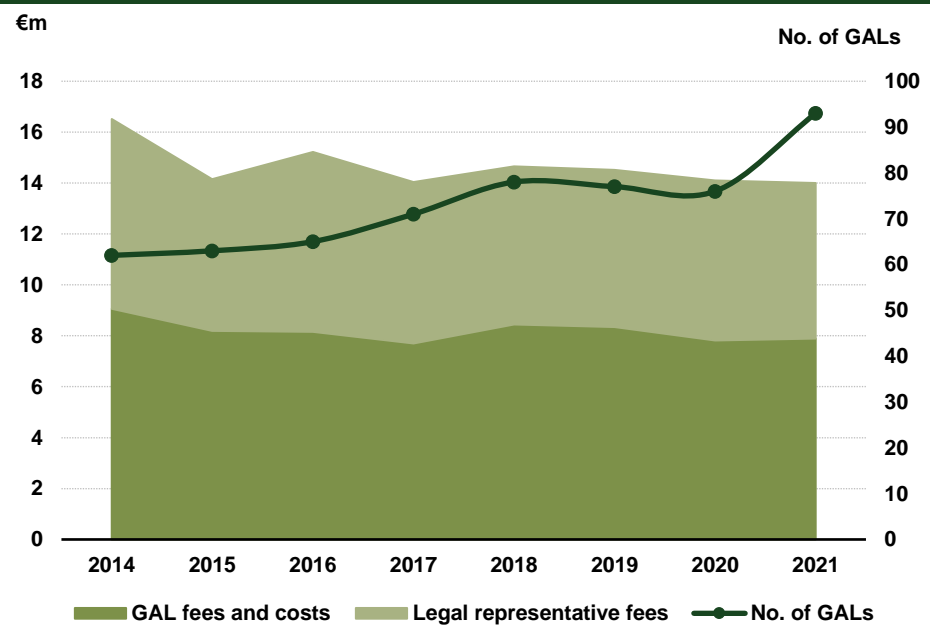
Cost of the service and performance metrics

Recommendation

Tusla should utilise the available information to develop a range of performance metrics, for example average cost per case, average case load per guardian ad litem, and average cost per service type provided by guardians ad litem, in order to identify outliers and gain assurance that costs over and above average are appropriate.

- 13.18** Most guardians *ad litem* engage solicitors and counsel to represent them/their clients in court. Fees for both the guardian *ad litem* and their legal team fall to be discharged by Tusla.¹ In the period 2014 to 2021, Tusla incurred costs of €117 million on the service (see Figure 13.).).
- 13.19** As the guardians *ad litem* are appointed by the court, Tusla can only implement limited financial controls and cannot apply a value for money control over these payments. While Tusla has agreed a rate for professional hours with guardians *ad litem*, the service is demand-led, with the expenditure being determined by the number of professional hours billed for each case.

Figure 13.2 Guardian *ad litem* numbers, costs and legal fees



¹ Section 26 (2) of the Child Care Act 1991 states that 'Any costs incurred by a person in acting as a guardian *ad litem*, under this section shall be paid by the health board concerned'. Responsibility subsequently passed to the Health Service Executive (in 2005) and to Tusla (in 2013).

Source: Tusla financial statements 2014 – 2021

13.20 Tusla applies a number of financial controls to guardian *ad litem* invoices (see Figure 13.).**Figure 13.3 Financial controls implemented by Tusla over guardian *ad litem* invoices**

Type of control	Outcome	Details
Standard control checks — applied to all invoices	Tusla issues queries to guardians <i>ad litem</i> on any anomalies noted, which must be resolved before payment.	Invoice batches and payment files authorised at appropriate level within Tusla.
Reasonableness checks — applied to all invoices	Tusla pays the approved guardian <i>ad litem</i> invoices.	Conducted at invoice level Checks carried out to ensure invoice is valid and totals are correctly calculated. Determine if hours claimed relate to guardian <i>ad litem</i> tasks. Ensure no duplication of claims for professional hours, mileage and expenses. Determine if the hours claimed appear reasonable based on Tusla's knowledge and understanding of the courts system and child care process.
Retrospective reviews — carried out on an ad-hoc basis	Tusla secured reductions in the amounts billed from 2019 – 2021.	Conducted at guardian <i>ad litem</i> level Informed by trends identified by the reasonableness checks at invoice level. Review of hours claimed and tasks completed on a cumulative level over an extended period.

Source: Analysis by the Office of the Comptroller and Auditor General

Retrospective reviews

- 13.21** A retrospective review involves a detailed examination of any anomaly identified in invoices over an extended period of time. As invoices are reviewed each month for reasonableness, potential issues are noted and possible patterns of billing identified. Specific matters are then queried with the guardian *ad litem* and the responses considered. The matters may be monitored over a number of months and verifications obtained.
- 13.22** Where Tusla has identified patterns of consistently high costs billed by a guardian *ad litem*, a retrospective review of invoices over a number of months or years for all or a number of cases may be undertaken. Typically, Tusla endeavours to negotiate and come to an agreement with the guardian *ad litem*, and has received discounts on fees in most reviews. For one case, where a discount on fees was not offered, the matter was referred back to the appointing court.
- 13.23** As the tasks involved in carrying out retrospective reviews are resource intensive, the number of these reviews is limited. The examination enquired of Tusla the number of retrospective reviews conducted each year since 2014. Tusla was not in a position to provide this information, but estimates that a total of approximately 30 reviews were carried out since 2015.

Performance metrics

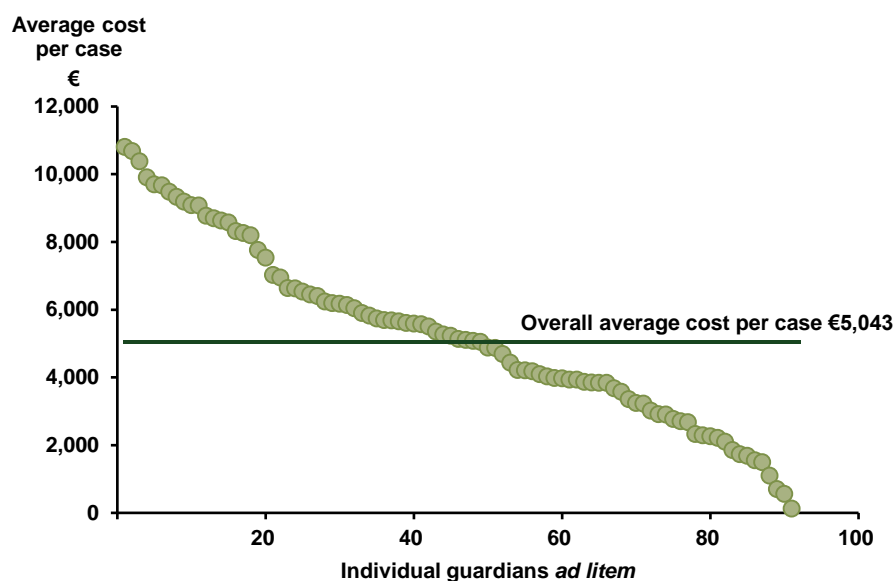
- 13.24** The examination found that the average reported caseload per guardian *ad litem* was approximately 17 cases (see Figure 13.). There was relatively little variance in average caseloads between the supplier groupings.

Figure 13.4 Service providers' average caseloads for 2021

Service providers	Barnardos	TIGALA	Individuals and small groups	Total
Number of guardians <i>ad litem</i> identified	32	25	34	91
Number of cases on hand	503	453	621	1,577
% share of caseload	32%	29%	39%	100%
Number of children represented	819	726	976	2,521
Average caseload per guardian <i>ad litem</i>	16	18	18	

Source: The Child and Family Agency (Tusla)

- 13.25** Tusla maintains a tracking spreadsheet of guardian *ad litem* activity. The spreadsheet contains the following information: case name, invoice number, invoice total, time billed, mileage, travel time, time spent on report and time spent attending court.
- 13.26** At the end of each year, Tusla extracts a summary of costs per guardian *ad litem* from the tracking spreadsheet. This summary provides the following information per guardian *ad litem*: total number of cases, total number of invoices, total costs, total mileage and total travel time. The average cost per case by guardian *ad litem* is calculated in this summary of costs spreadsheet.
- 13.27** Other than the average cost per case per guardian *ad litem*, no other performance metrics were calculated using the information available.
- 13.28** For the purposes of this examination, Tusla provided the examination team with an analysis of information it had captured in relation to hours billed per case in respect of 91 guardians *ad litem* for the period January to December 2021, and the average cost per case by guardian *ad litem*. This indicates a wide spread between guardians *ad litem* in the average cost per case handled. The overall average cost per case was €5,043, but for individual guardians *ad litem*, the average cost per case varied from just over €127, to over €10,800 (see Figure 13.).

Figure 13.5 Analysis of average cost per case by guardian *ad litem*, 2021

Source: The Child and Family Agency (Tusla)

- 13.29** In 2021, Tusla carried out a comparison exercise using the summary of costs data from 2020 and 2019. From the exercise, Tusla reports that it was possible to identify the highest billing guardians *ad litem* across the two years, readily identify guardians *ad litem* whose costs increased or decreased, to get an overall view of the movement across the two years and it also assisted in identifying guardian *ad litem* matters which may require further review.
- 13.30** The comparison indicated a 9% increase overall in the number of guardians *ad litem* submitting invoices, a decrease in total costs by 11%, a decrease in professional hours billed by 12% and a 39% decrease overall in mileage billed. However, with the onset of Covid-19 and the impact it had on the State, a comparison of the years may not give a reliable or meaningful picture.

Tusla's response

- 13.31** Tusla receives over 1,000 invoices per month from over 90 guardians *ad litem*. They are required to provide an extensive amount of information on each invoice. The data required to provide an average cost per case and an average case load per guardian *ad litem* is recorded mainly on spreadsheets. A case management system is used for invoices from Barnardos.
- 13.32** In carrying out the required service, it is necessary for guardians *ad litem* to engage in a number of activities. In order to collate information relating to the frequency and cost of each activity it would be necessary for invoices to be received via a bespoke case management system. Pending the takeover of the guardian *ad litem* service by the new agency it was decided not to proceed with procuring a new system.
- 13.33** The legal office endeavours to capture as much information as is feasible in circumstances where it does not have either sufficient IT or human resources. Furthermore, Tusla has no remit regarding the performance of the service.

Competitive tendering

Recommendation

The Department should examine the options for engagement of guardian ad litem legal representatives by way of a competitive tendering process.

- 13.34** A guardian *ad litem* may appoint a legal representative if he or she feels it is in the best interests of the child to do so. However, the current provisions of the 1991 Act does not allow a child to be represented by both a solicitor and a guardian *ad litem*. Therefore, in practice, a guardian *ad litem* may engage a solicitor to act on their (the guardian's) behalf. While Tusla discharges the legal costs incurred by guardians *ad litem*, there is no data collected on the number of guardians *ad litem* who engage legal representation.
- 13.35** In the period 2014 – 2021, Tusla paid €51.6 million in legal costs for guardians *ad litem*. Department of Public Expenditure and Reform (DPER) circulars require public bodies, where possible, to use a competitive process when procuring legal services. However, because guardians *ad litem* are not employed or managed by a public body, the procurement of their legal services does not come under the scope of DPER's guidance.
- 13.36** The Child Care (Amendment) Act 2022 states that the Minister shall provide, or arrange for the provision, to the guardian *ad litem* of legal advice and also legal representation where they consider that it is in the best interests of the child.

Department's response

- 13.37** The Department has been exploring the options for engagement of legal representatives for guardians *ad litem* in the planned executive office. Currently guardians *ad litem* have no obligation to use such services and the Department had no statutory basis to advance this work in advance of the enactment of the Child Care (Amendment) Act 2022.
- 13.38** The Department's broad plan is to establish a legal unit within the executive office which will provide legal advice to guardians *ad litem*, sometimes provide legal representation and will set up a panel of legal practitioners to represent guardians *ad litem*. While it is intended that this measure will reduce expenditure on legal representation, it is the intention of the Department that guardians *ad litem* will have legal representation when necessary.

Conclusions

- 13.39** Significant annual expenditure continues to be incurred by Tusla in relation to the payment of fees to guardians *ad litem*, and to their legal representatives. In all cases, Tusla itself is a party to the legal proceedings in which the guardians *ad litem* are engaged. This arrangement creates a conflict of interests that would be better avoided.
- 13.40** Recommendations made in a 2015 report of the Comptroller and Auditor General, and accepted then by the Department and Tusla, have not yet been implemented.
- 13.41** Legislative changes were required to create an independent entity to be responsible for the management and supervision of the service. Legislative reform commenced in late 2015, but this was interrupted and delayed by the 2020 general election, and as a result of Covid-19 impacts. A revised legislative basis for provision of the service was finalised in July 2022, with enactment of the Child Care (Amendment) Act 2022. The provisions of the Act create potential for implementation of the recommendations, including establishment of an executive office within the Department to manage and oversee the service for the foreseeable future. In the longer term, it is envisaged that the management and oversight of the service would transfer to a family law court service.

- 13.42** Tusla maintains a tracking spreadsheet of guardian *ad litem* activity which includes number of cases, total costs, mileage and travel time. Tusla requires the details of legal representatives be included on invoices, but it does not collate this information as standard to inform its overview of the service and to understand the drivers of cost.
- 13.43** In response to the 2015 report, Tusla agreed to develop a range of performance metrics and the Department stated it would engage with Tusla in the development of those metrics. Apart from calculating the average cost per case, Tusla has not developed performance metrics, noting that it has no remit regarding oversight of the performance of the service.
- 13.44** The Child Care (Amendment) Act 2022 will allow the new guardian *ad litem* service to provide advice on legal matters to guardians *ad litem*, and in some cases legal representation for guardians *ad litem* in child care proceedings.

Annex 13A Section 1 of the Children’s Act Advisory Board guidelines — “Giving a voice to children’s wishes, feelings and interests,” May 2009

Section 1: Guidance for the Role, Appointment, Qualifications and Training of Guardians *ad litem*

1.1 Role

Following the CAAB’s consultation with national stakeholders it was agreed that the role of the guardian *ad litem* should be to “**independently establish the wishes, feelings and interests of the child and present them to the court with recommendations**”.

The guardian *ad litem* has a dual role, to inform the court of the child’s wishes and feelings and to advise on the child’s best interests.

This role informs – or at the very least influences – the appointment, qualifications and specific training of candidates for the role of guardian *ad litem*.

In this light, Section 1 is the core of the document, setting the tone for what follows in Sections 2 and 3. Section 1 looks at good practice standards for the role, appointment criteria, qualifications, and finally training.

1.2 Standards for Good Practice

1.2.1 Summary of Standards

In providing independent representation to a child who is the subject of child care proceedings under the Act of 1991, the guardian *ad litem* must recognise the Health Service Executive’s responsibility for management of any case in which s/he is involved. The following standards are applicable to the various aspects of the role of a guardian *ad litem*:

- (a) **Independence:** the guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.
- (b) **Inclusiveness:** the guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.
- (c) **Inquiry into the child’s circumstances:** the guardian *ad litem*’s approach to the task shall be planned, focused, and flexible. Avoiding delay, other than planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the

Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

- (d) **Interests of the child:** the guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are ascertained and adequately represented to the court.
- (e) **Evaluation and report:** the guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.
- (f) **Attendance at court:** the guardian *ad litem* shall attend on all court dates unless excused by the court.
- (g) **Closing the case:** when proceedings have concluded, the guardian *ad litem*’s involvement in the case ceases. However, if the case is scheduled for further review, s/he shall seek clarification from the court regarding its expectations of his/her further involvement.

These standards are now examined in more depth.

1.2.2 Independence

The guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.

To achieve this, a guardian *ad litem* shall:

- (a) Avoid cases where there may be a conflict or a perceived conflict of interest for him/her and notify the court of any possible conflict that may arise in the course of proceedings.
- (b) Take professional responsibility for his/her assessment and recommendations in each case and be accountable to the court.
- (c) Seek to achieve an appropriate outcome based on the wishes, feelings and interests of the child through adopting a partnership approach and consulting and involving all parties.

1.2.3 Inclusiveness

The guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.

To achieve this, a guardian shall:

- (a) Ensure the child is aware of what is happening throughout the proceedings and of the outcome.
- (b) Taking into account the age and/or level of maturity of the child and using professional judgement, consider sharing some or all of the contents of his/her report with the child.
- (c) Ensure his/her report is made available to all parties, via their legal representatives where appropriate, and that recommendations are included.
- (d) Explain the nature and purpose of expert assessments and examinations which s/he recommends and seek the agreement of all parties on such provision.

1.2.4 Inquiry into the Child's Circumstances

The guardian *ad litem*'s approach to the task shall be planned, focused and flexible. Avoiding delay, other than that which is planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

In conducting an inquiry a guardian *ad litem* shall:

- (a) Address areas relevant to the particular court proceedings.
- (b) Record initial and updated plans throughout the investigation and retain these together with notes and other documentation acquired throughout the inquiry.
- (c) Inform the child of the nature and purpose of the guardian *ad litem*'s role.
- (d) Be aware of the duty of confidentiality under the provisions of Children First National Guidelines 1999 whether updated, amended or replaced, professional confidentiality, the limitations of confidentiality in certain circumstances and the rights to privacy.
- (e) Comply with the requirements of the Data Protection Acts, 1998 and 2003 and the Freedom of Information Acts, 1997 and 2003 together with the rights to privacy of all individuals.

1.2.5 Interests of the Child

The guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are adequately represented to the court.

To achieve this, a guardian *ad litem* shall:

- (a) Regularly analyse, review and assess any risks to the child.
- (b) Continually focus on the need to arrive at specific decisions that are in the child's interests and evaluate all information obtained throughout the inquiry taking account of the rights of the child and his/her parent(s), guardian(s) or carer(s).
- (c) Report on any other issues as appropriate as directed or requested by the court.
- (d) State for the court's assistance, key areas of agreement and disagreement between the relevant parties including the child, to the proceedings.
- (e) Comment on the criteria for making an order for the proceedings in question.
- (f) Consider whether it is in the child's interests to seek the appointment of a legal representative to represent the child in the proceedings.
- (g) Consider seeking the approval of the court regarding:
 1. The appointment of a legal representative for the guardian *ad litem*.
 2. Consulting where necessary, with a legal professional regarding legal issues in the proceedings.
- (h) In particular, when representing children in special care or civil detention, a guardian *ad litem* shall:
 1. Keep in mind the constitutional rights of the child and his/her parents.
 2. Inquire into the circumstances in which the child is placed in a special care unit or civil detention by High Court Order, reporting to the court on the suitability of the placement, the appropriateness of the care plan and any alternatives.

1.2.6 Evaluation and Report

The guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.

To achieve this, a guardian *ad litem* shall:

- (a) Systematically analyse all the material gathered before writing the report.
- (b) Address significant differences in views and incorporate these into the report.
- (c) Focus on a well-argued independent case analysis containing clear recommendations to help the court make appropriate decisions for the child.
- (d) Consider and report on all options open to the court and indicate the suitability or otherwise of each.
- (e) Be familiar with all work undertaken together with its relevance and refer to relevant professional knowledge and research findings in support of recommendations.
- (f) Not duplicate work done elsewhere.
- (g) Not take on the responsibilities of other service providers or agencies.
- (h) Highlight any issues regarding the services available to the child.
- (i) Ensure that where interim reports are requested by the court, each report contains up-to-date information.
- (j) Make reports available to all parties involved before the next court date, the timetabling for which should be agreed at previous hearings.

1.2.7 Attendance at Court

The guardian *ad litem* shall attend on all court dates unless excused by the court.

The purpose of attending will be to:

- (a) Present a report to the court and be available to give evidence.
- (b) Bring to the court's attention any urgent matter affecting or likely to affect the child's rights, well-being and interests.

- (c) Assist in the overall court management of the case by contributing at court hearings relevant views which focus on the child's needs.
- (d) Alert the court to issues of avoidable delay in decision-making for the child.

1.2.8 Closing the Case

When proceedings have concluded, the guardian *ad litem*'s involvement in the case ceases. If the case is scheduled for further review, the guardian *ad litem* shall seek the court's clarification on its expectations of his/her further involvement.

In addition:

- (a) When proceedings conclude, the guardian *ad litem* shall advise the child of the outcome of the case and of the termination of his/her involvement.
- (b) S/he shall inform other relevant individuals, for example expert witnesses, of the outcome of the court hearing and that the guardian *ad litem*'s involvement has concluded.
- (c) At the close of proceedings the guardian *ad litem* shall ensure that appropriate security measures are taken against unauthorised access to, or alteration, disclosure or destruction of any data gathered during the course of the case and against their accidental loss or destruction in accordance with the provisions of Section 2(1)(d) of the Data Protection Act, 1988.

1.3 Appointment Standards

1.3.1 Interpretation of the Term 'Criteria for Appointment'

It was further acknowledged during the consultative process that the term 'criteria for appointment' could have two meanings. Firstly that those wishing to become guardians *ad litem* shall comply with the eligibility criteria set out in 1.3.2 below; and secondly, that the court may consider the guidance suggested by the CAAB in deciding to appoint a guardian *ad litem* to a specific case as described in 1.3.3.

1.3.2 Eligibility for Appointment to the Role of Guardian *ad Litem*

To be eligible for appointment to the role of guardian *ad litem*, the following criteria shall be adhered to:

- (a) Candidates for the role of guardian *ad litem* must be vetted by An Garda Síochána.
- (b) Candidates must be prepared to provide a self-declared statement of fitness to practice every three years.
- (c) If a candidate has lived in any country other than Ireland for longer than three months, s/he must be vetted by the police of that country.
- (d) Candidates must supply the required number of references.
- (e) Candidates must have a third level qualification in, social work recognised by the National Social Work Qualifications Board, psychology or other third level qualification relevant to the role.
- (f) Candidates must have at least five years' postgraduate experience of working directly in child welfare/protection systems.

1.3.3 Guidance on the Appointment of a Guardian *ad Litem* by a Court in a Specific Case

Areas of consideration that may influence the appointment of guardians *ad litem* to specific cases shall include:

- (a) Only suitably qualified persons, as outlined at 2.4 shall be appointed as guardians *ad litem*.
- (b) The complexity of the case, for example where there is a difficulty in identifying an appropriate placement for the child.
- (c) The ability of the child concerned to express his/her wishes and feelings.
- (d) The nature of the proceedings and the implications for child and family, for instance in some circumstances, there may be the possibility of long-term separation from parents, siblings or extended family.
- (e) Cases, where there is reduced or no parental support or where parent(s)/guardian(s) are absent.

- (f) Cases where there are issues about a child's identity, nationality or entitlement to residence in the jurisdiction. S/he may be separated from his/her family or be an unaccompanied minor.
- (g) Cases where a child's liberty is at issue, for example where the young person's emotional and behavioural needs can only be met at that time by a secure placement in a special care unit and where the HSE seeks a special care placement for the child.
- (h) Cases where other circumstances exist as determined by a court, such as the effects on the child of an out-of-state placement due to the unavailability of an appropriate placement nationally.
- (i) A guardian *ad litem* who has been appointed to represent a child in previous proceedings may be appointed in new proceedings.

1.3.4 Interests of the Child, Justice and Benefit to the Court

Overview

In addition to 1.3.3 above, legislation states that when a court appoints a guardian *ad litem* it must be satisfied that to do so is in the interests of the child and justice.

Additionally, there should be a benefit to the court in making such an appointment. The interests of each of these may and sometimes do overlap. The following are examples of how the interests of the child and justice can be served and benefits to the court can be achieved.

1.3.4.1 Interests of the Child

Appointing a guardian *ad litem* can serve the child's interests by:

- (a) Examining the nature of proceedings and the implications of the proceedings for the child, his/her family, parent(s), guardian(s) or carer(s).
- (b) Ensuring the complexity of the case does not prevent achieving an appropriate outcome to the proceedings.
- (c) Assessing the child's ability to express his/her wishes and feelings and ensuring these are communicated to the court.

- (d) Ensuring the child's circumstances are considered in every case.
- (e) Considering and addressing areas of disagreement between parties and the possible implications of any disagreement for a child who is the subject of care proceedings.

1.3.4.2 Interests of Justice

Appointing a guardian *ad litem* can serve justice by:

- (a) Determining the nature of the proceedings before the court.
- (b) Assessing the complexity or otherwise of the case.
- (c) Identifying possible areas of disagreement between parties that can affect the outcome of the case.

1.3.4.3 Benefit to the Court

Appointments may be made by a court of its own motion or following an application by a party to the proceedings.

A guardian *ad litem* can be of benefit to the court by:

- (a) Ensuring that the wishes, feelings and interests of the child are made known to the court.
- (b) Assisting the court with independent professional advice.

In addition, during the consultative process, stakeholders acknowledged that independent appointments made by the court ensured that guardians *ad litem* were seen to be and were in effect independent.

The following are important in maintaining the independent role of the guardian *ad litem*:

- (c) The court of its own motion appointing a guardian *ad litem*.
- (d) The court appointing a guardian *ad litem* based on the application of any party to the proceedings.
- (e) The court independently appointing a guardian *ad litem*.

1.4 Standards for Qualification

Guardians *ad litem* shall meet certain standards in order to qualify for the role namely:

- (a) Possess a third level qualification in, social work recognised by the National Social Work Qualifications Board, psychology or other third level qualification relevant to the role.
- (b) Have a minimum of five years postgraduate direct experience in child welfare and/or protection work.
- (c) Have an understanding of child care and family law.
- (d) Have knowledge and experience of the courts system.
- (e) Possess analytical capability.
- (f) Possess the ability to assess and understand complex family relationships.
- (g) Have well-developed inter-personal skills.
- (h) Be skilled in communicating with children of different ages and circumstances.
- (i) Have relevant report writing skills.

1.5 Standards for Training

During the consultation process, stakeholders broadly agreed that training was important for guardians *ad litem*. The child care and legislation landscapes are constantly changing and guardians *ad litem* must keep up with these changes if they are to play an effective role in representing children. Training can help them to be properly briefed in all areas in which they operate. This is covered in more detail in 2.5.

With this in mind, any training undergone shall:

- (a) Be directly related to the consistent provision of a guardian *ad litem* service.
- (b) Enhance existing knowledge, skills and values.
- (c) Ensure continuous professional development.
- (d) Develop new relevant skills and knowledge.
- (e) Help to improve performance and service delivery.

Revenues of the State

14 Classification of workers for PRSI purposes

- 14.1** Pay Related Social Insurance (PRSI) contributions are payable in respect of earnings of almost all persons of working age (16 – 66).¹ PRSI contributions are paid into the Social Insurance Fund (SIF), which funds a range of social insurance benefits and pensions.² In 2021, over €11.8 billion was collected in PRSI receipts.
- 14.2** There are different classes of PRSI contributions, with varying contribution rates (see Annex 14A). In general, the appropriate PRSI contribution class is determined by the nature of a person's employment and weekly earnings. A person's PRSI classification is important because it affects the PRSI contribution rate payable on their salary or income, and the social insurance benefits and/or pensions to which they are (or will be) entitled (see Annex 14B). Because of the different contribution rates that apply, a key risk to the completeness of PRSI contribution receipts is the incorrect classification of liable persons.

Cases of public sector bodies incorrectly classifying workers for PRSI

A failure by any employer, including public bodies, to understand and to implement the principles set out in the *Code of Practice on Determining Employment Status* may result in a liability for interest and penalties, in addition to a liability for employer's PRSI.

For example, following an internal review, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media made a payment of €176,400 to the Revenue Commissioners in 2021 in relation to the incorrect classification of eleven workers originally engaged under contracts for service but who should have been classified as employees for the purposes of PRSI.

The payment to Revenue comprised €104,000 in employer's PRSI contribution arrears, interest of €59,000 and a penalty of €13,400.

In 2022, the Office of the Ombudsman for Children paid around €12,000 to Revenue in relation to two workers. The Department of Social Protection reviewed the cases of 19 workers employed by the Office. Two cases were selected for a full investigation and resulted in the liability. The Office subsequently reviewed the remaining 17 workers and is preparing a voluntary disclosure to Revenue in relation to seven of these workers, with the liability expected to be around €21,000.

¹ Unearned income (such as rent or interest) may also be liable for PRSI.

² Entitlement to benefits is conditional upon claimants having a certain number of contributions paid or credited in a specified period of time, and satisfying any other scheme eligibility criteria.

- 14.3** The Department of Social Protection (the Department) has responsibility for the PRSI system and the determination of all social insurance matters. The Office of the Revenue Commissioners (Revenue) collects PRSI contributions on behalf of the Department on a statutory basis and under an agency agreement.¹
- 14.4** This report examines the potential impact of misclassification of employment status on PRSI contributions to the SIF. The report considers
- the clarity of criteria to determine employment status
 - the extent of recorded self-employment in the State
 - compliance activity undertaken to detect misclassification of employment status.

Criteria to determine employment status

- 14.5** There is no single clear definition of the terms ‘employed’ or ‘self-employed’ in Irish or EU law. Apart from the Department’s determination of employment status for PRSI classification purposes, the employment status of a worker may also be separately determined for other purposes, under relevant legislation. For example
- Revenue may determine a worker’s employment status in the context of deciding their treatment for income tax purposes.
 - The Workplace Relations Commission (WRC) determines employment status as a preliminary issue when adjudicating on employment rights complaints.

Decisions of the Department or the WRC or Revenue are not binding on each other. As a consequence, a determination of employment status in one context (e.g. worker insured under class S for PRSI purposes) does not in itself confer the same employment status in another context (e.g. worker pays income tax under schedule E).

Code of Practice on Determining Employment Status

- 14.6** The *Code of Practice on Determining Employment Status* was first prepared in 2001 by the Employment Status Group established under the Programme for Prosperity and Fairness.² The Hidden Economy Monitoring Group updated the code in 2007.³ In July 2021, an interdepartmental working group comprising the Department, Revenue and the WRC further updated the code.⁴
- 14.7** The code sets out the criteria used to determine whether a worker is employed or self-employed, based on five key factors established by case law.
- **Mutuality of obligation** — whether, and to what extent, there is an obligation on one party to provide work and on the other party to accept it. The code states that the Irish courts regard the mutuality of obligation as the most important factor, to the extent that when it is not present in an employment situation, the worker is deemed self-employed without the need to consider the other criteria. If a mutual obligation is present, the other criteria must be assessed to determine employment status.
 - **Substitution** — whether, and to what extent, the worker is allowed to send a substitute in the event that they are unable to do the work themselves and, if applicable, who engages and pays the substitute.
 - **Enterprise test** — whether, and to what extent, the worker who has been engaged to carry out the work is doing so as an individual in business on their own account, and has the ability to profit from their own efficiency/entrepreneurial skill or, conversely, runs the risk of suffering a financial loss.

1 The Department pays Revenue an annual agency fee in relation to expenses incurred by Revenue in the collection of PRSI. The fee is a charge on the Social Insurance Fund.

2 The group was established to address concerns over workers being categorised as ‘self-employed’ when ‘employee’ status would be more appropriate.

3 The Hidden Economy Monitoring Group (HEMG) is a non-statutory group to tackle the shadow economy and comprises representatives from business groups, trade unions and State agencies (including Revenue, the Department and the WRC).

4 Other stakeholders such as the Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU) were consulted during the updating of the code. The code is considered as a ‘living’ document which will be updated as necessary to account for any changes to legislation, case law and changes in the labour market.

1 Platform workers are individuals who use an application (such as Uber) or a website to match themselves with customers, in order to provide a service in return for payment.

2 Intermediary companies are personal service companies (where the individual is the sole director and owns most/all shares in the company) and managed service companies (where a number of individuals own the company and only deliver services to one organisation).

3 The digital economy encompasses businesses that sell goods and services via the internet, and digital platforms that connect spare capacity and demand.

4 By comparison, the 2007 version was 12 pages long.

5 This may represent a challenge, in particular, for those for whom English is not their first language e.g. foreign-national students or immigrants who may work in sectors where the risk of misclassification may be higher, such as meat factories or food delivery.

6 A directive is an EU legislative instrument that sets out a goal that all EU countries must achieve but it is up to the individual countries to devise their own laws on how to reach these goals.

7 The Commission estimated that 28 million Europeans worked through digital labour platforms in 2021 and this is expected to increase to 43 million by 2025.

- **Integration** — whether, and to what extent, a worker has become an integral part of a business, as opposed to carrying out work that, although done for the business, is peripheral or accessory to it.
- **Control** — whether and to what extent the person or business paying for the work has control over the worker, including the power to decide what work should be done, as well as when, how and where it should be done.

14.8 The Department stated that the code is an important and necessary step in guiding and informing people, and is a valuable tool to assist all stakeholders in resolving employment classification issues.

14.9 The examination team reviewed the revised (2021) code and noted that

- key case law relied upon is set out — this had not been set out in the previous guidance
- the key characteristics of employment and self-employment referenced in the revised code are not materially different to the previous guidance in place — the Department stated that this reflects the fact that case law had not changed significantly between 2007 and 2021
- material had been added in relation to special circumstances and more recent developments in the labour market, including individuals who control companies, agency workers, platform workers, the use of intermediary and managed services companies and the digital economy generally^{1,2,3}
- the revised code is significantly more comprehensive than previous guidance, but at 27 pages it may be more onerous to read and understand⁴
- the code is only published in English⁵
- the contrast between employee status and self-employed status might be clearer if presented side-by-side rather than on separate pages (for example, the format adopted in Annex 14C).

14.10 To date, there has been no survey or similar analysis to assess the extent to which the code is accessed and understood by potential users. Both the Department and Revenue stated that, at this point (as at August 2022), a survey may be of limited value to determine how widely the revised code is used as it was only published in July 2021.

Addressing employment status issues at European Union level

14.11 EU law does not currently define the terms ‘employed’ or ‘self-employed’.

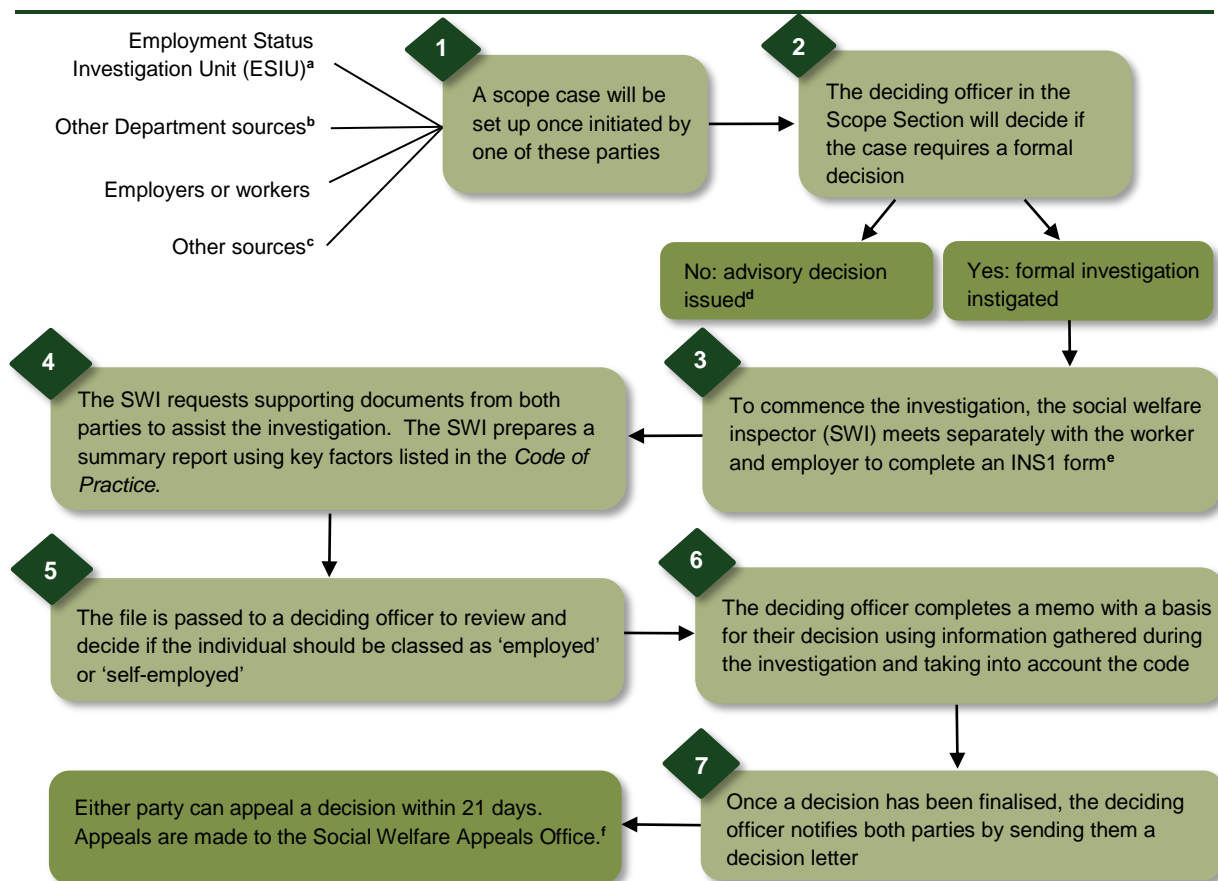
14.12 Employment status, particularly for platform workers, is being considered at EU level. In December 2021, the European Commission proposed a set of measures, in the form of a draft directive, to improve working conditions for platform workers and to support the sustainable growth of digital labour platforms in the EU.^{6,7} Significant amendments were made to the draft directive in September 2022, and it may be several years before a final directive is agreed and comes into force.

Employment status determinations

14.13 The Department's Scope Section deals with all decisions relating to PRSI insurability including employment status, company directors, family employments, partnerships, civil and public servants (class A or class D), and office holders (including specified 'public office holders'). The Scope Section decided between 1,250 to 1,500 cases each year in the period 2018 to 2021.

14.14 Scope Section decisions on a worker's employment status are made on a case-by-case basis, taking account of the particular circumstances of the case and relevant legislation, case law, and the *Code of Practice* — Figure 14.1 outlines the decision process. The Department has stated it does not apply decisions on sample cases to other individuals working with the same employer but that it might consider this approach, if, and only if, each worker concerned agreed and that each worker would be entitled, if they so wished, to an individual assessment.

Figure 14.1 Employment status decision process

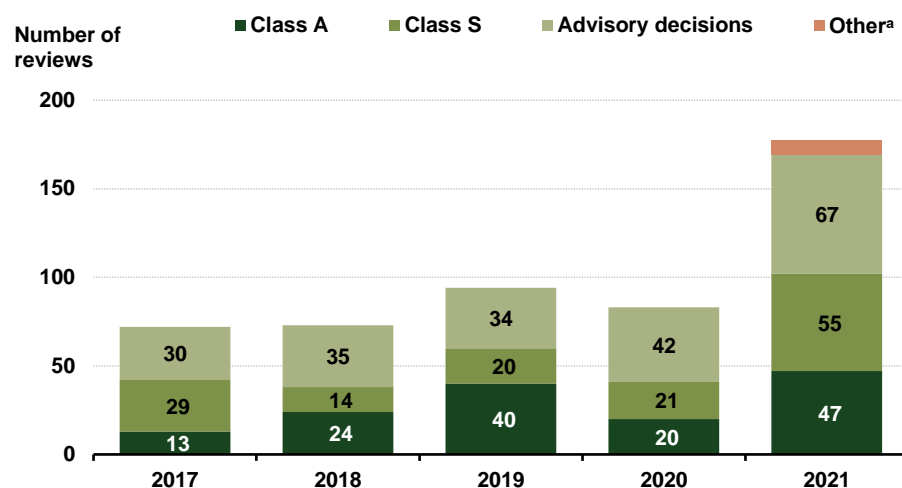


Source: Office of the Comptroller and Auditor General

- Notes:
- a The ESIU comprises a team of SWIs who focus on employment status investigations.
 - b Other Department sources includes the Department's special investigation unit, the joint investigation unit (JIU) (which comprises the Department, Revenue and the WRC), SWI and insurability case issues that may arise during claims processing across the Department's various schemes.
 - c Other sources include the Department of Enterprise, Trade and Employment, whose redundancy and insolvency legislation is tied to insurability under the social welfare acts, and therefore may also request confirmation of insurability.
 - d Deciding officers can make advisory decisions where they deem that a formal decision is not required. Advisory decisions are normally given when confirmation of an existing class of PRSI is requested or when a change of PRSI class is not required, or where a change of class is required but the parties are in agreement about the change.
 - e The INS1 is the 'form for determination of employment or self-employment' that addresses key factors regarding an individual's working arrangements.
 - f Appeals can also be made to the Courts or to the Office of the Ombudsman.

- 14.15** In the past, Scope Section typically determined 70 – 100 employment status reviews per year. There was a significant increase in the number of determinations in 2021 (see Figure 14.2).

Figure 14.2 Employment status decisions and outcomes, 2017 to 2021



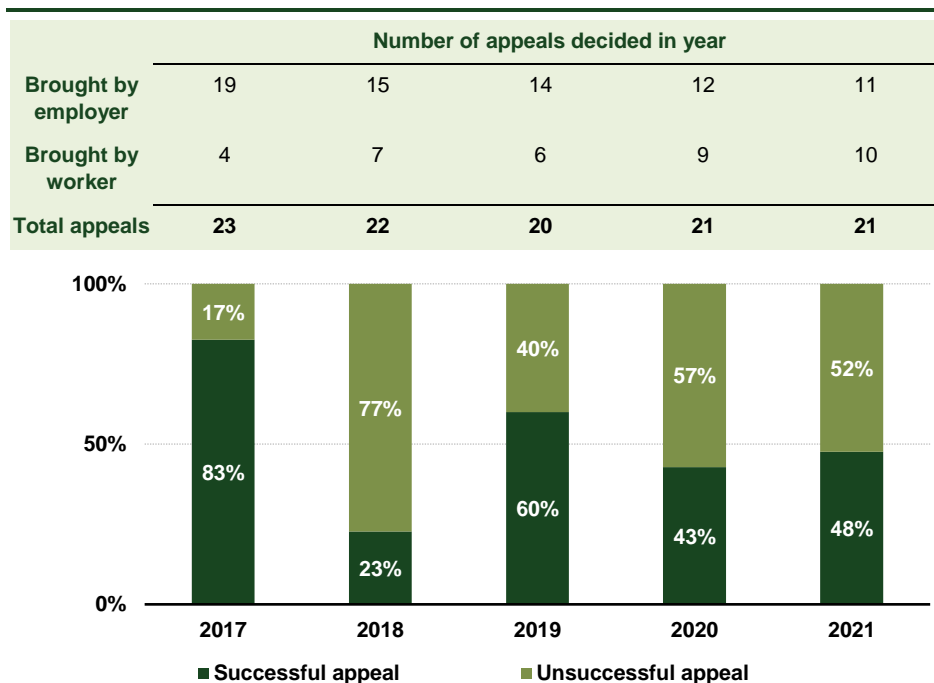
Source: Department of Social Protection

Note: a In 2021, there were other outcomes in eight cases, comprising five class M, two class J and one class K decisions.

- 14.16** The main PRSI classes that the Scope Section decides upon in relation to employment status are class A and class S. A 'class A' outcome is where the Scope Section completed an employment status review and decided a worker should be classified as an employee for PRSI purposes and pay PRSI at the class A rate (see Annex 14A for further details on PRSI classes). This could represent confirmation of employment status where the worker was already classified as class A, or a change of employment status to class A where the worker was previously misclassified (e.g. as class S). The Department stated that the vast majority of determinations made by the Scope Section resulting in a class A outcome relate to a change in classification. Prior to 2022, the Department did not compile data on both the original and final PRSI class for each decision — the Department has compiled this information for cases commencing since March 2022.
- 14.17** A randomly selected sample of 25 cases processed by the Scope Section in 2021 was reviewed for this examination. The examination team found that in each case reviewed, all five key factors to determine employment status were investigated, regardless of whether mutuality of obligation existed or not. Each case file recorded evidence of a nature that appears to be relevant to the determination, including evidence gathered in interviews with the worker and the employer.
- 14.18** Employment status decisions by the Scope Section can be appealed to the Social Welfare Appeals Office by the worker or the employer. Examples of appealed employment status decisions include cases that relate to whether a worker is employed or self-employed; whether a public sector worker should be class A or class D; the appropriate classification for company directors; and appeals in relation to voluntary PRSI contributions.

- 14.19** In the period 2017 to 2021, there was an average of around 21 appeals of employment/self-employment decisions each year (see Figure 14.3).

Figure 14.3 Insurability of employment status appeal outcomes



Source: Social Welfare Appeals Office

Determination of employment status in other jurisdictions

- 14.20** Issues and concerns around the determination of employment status are not confined to Ireland.¹ In the UK, HM Revenue and Customs has, since 2017, made available an online tool ('Check Employment Status Test' or CEST) for use by workers and employers to assist in the determination of employment status. The CEST tool poses questions relating to the contractual arrangements and working practices and addresses the same key factors (such as mutuality of obligation) as the code.
- 14.21** HM Revenue and Customs has committed to accepting the result produced by the CEST tool, provided the information entered is accurate and the tool is used in accordance with the guidance provided. However, the tool does not produce a result in all cases. For example, it did not determine a result in around 20% of cases in the period 2019 to 2021.
- 14.22** In discussions with the examination team, the Department emphasised the judgement required to determine employment status, due to the wide variety of work arrangements and the need to seek the perspective of both the worker and the employer. The Department stated
- that a detailed review of a worker's employment status by the Scope Section provides a greater assurance on complex arrangements than an automated process
 - where a worker's arrangements are less complex, the worker can use the factors outlined in the code to assist them in establishing their correct status and revert to the Scope Section if any doubt remains.

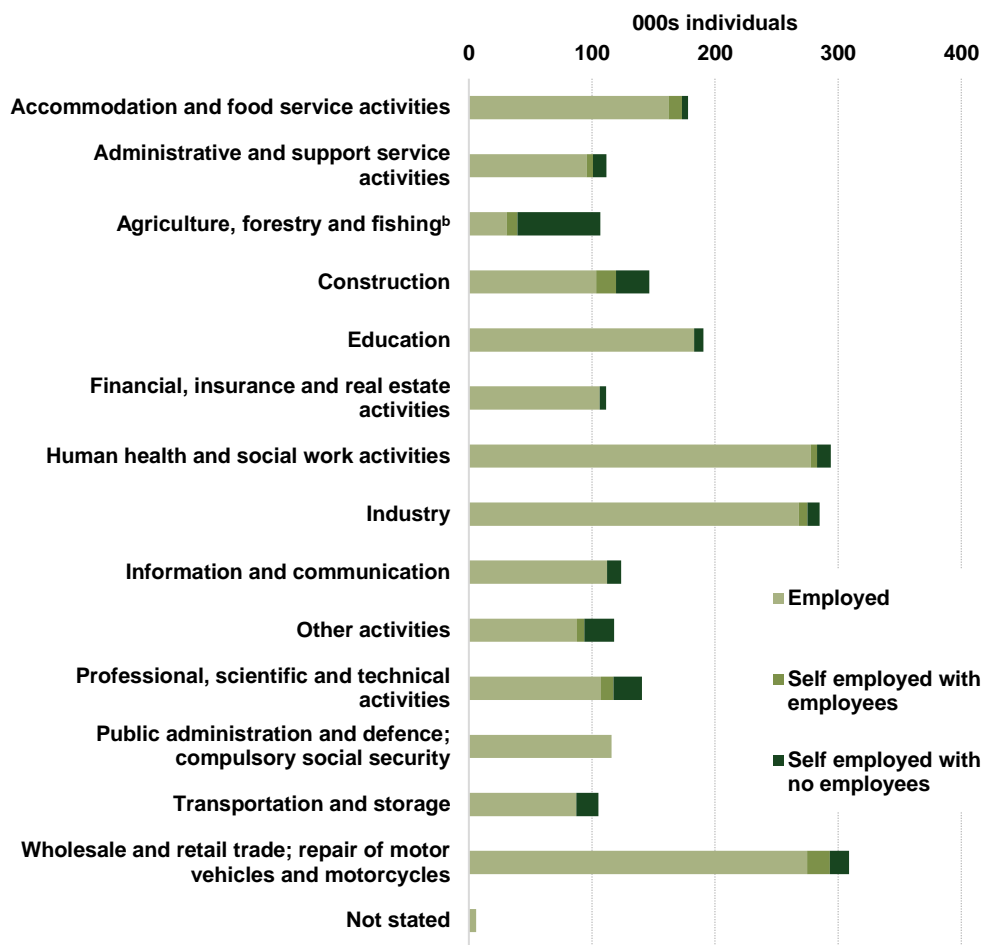
¹ Examples include: the Uber BV vs Aslam case in the UK; in Spain when enacting a law recognising food delivery riders as employees ('Riders' Law'); and in the Netherlands where the Court of Appeal ruled that Deliveroo workers are entitled to an employment contract.

What is the extent of self-employment in the State?

Labour Force Survey estimates of self-employment

14.23 Based on quarterly labour force surveys, the Central Statistics Office (CSO) provides regular estimates of the numbers in employment, and their employment status. At the end of 2019, the CSO estimated that around 2.4 million individuals were employed or self-employed in the Irish economy (Figure 14.4).¹

Figure 14.4 Number of individuals working in the Irish economy by sector, Quarter 4 2019^a



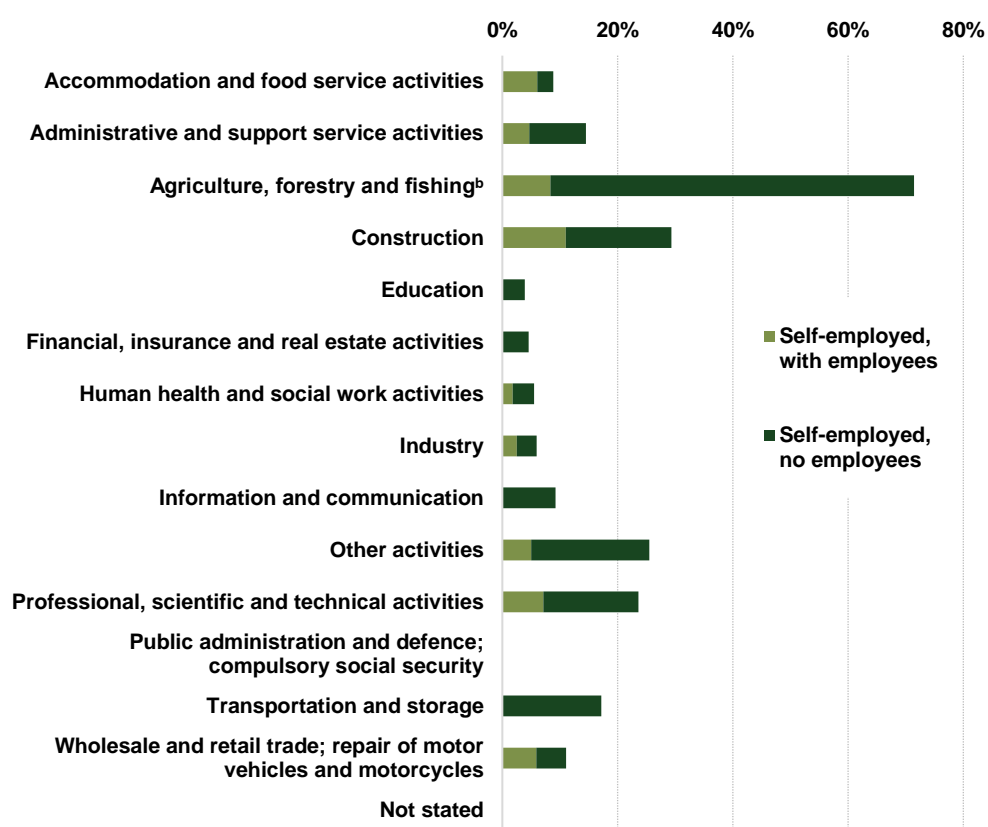
¹ The examination used 2019 as a reference year to avoid the impact of the pandemic on the number of individuals who were self-employed and on the value of their income.

Source: Central Statistics Office. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a Classification is by the NACE (Nomenclature générale des Activités économiques dans les Communautés Européennes) structure, which is the statistical classification structure for economic activities in Europe. Platform workers have not been classified separately under the NACE structure.
 - b In this sector, self-employed with no employees includes over 5,000 individuals who were working for a relative.

14.24 The CSO data indicate that around 2 million (86%) individuals are employees, 99,000 (4%) are self-employed with employees and 244,000 (10%) individuals are self-employed without employees (includes individuals assisting a relative). Unsurprisingly, the proportion of workers self-employed is highest in agriculture, forestry and fishing (71%). Other sectors with high self-employment rates are construction (29%); professional, scientific and technical activities (24%); transportation and storage (17%); and the general 'other activities' category (26%) (see Figure 14.5).

Figure 14.5 Self-employment rates (with and without employees), by sector, Quarter 4 2019^a



Source: Central Statistics Office. Analysis by the Office of the Comptroller and Auditor General.

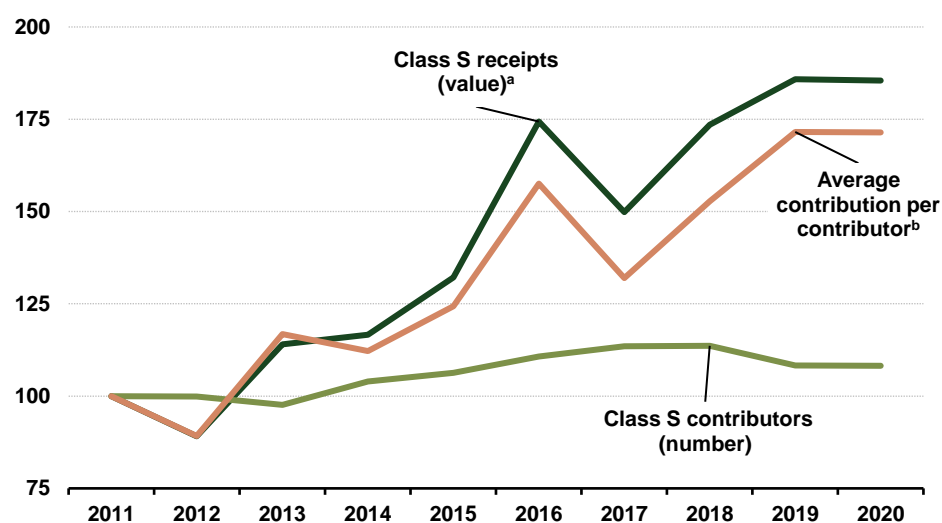
Notes: a Classification is by the NACE structure.

b In this sector, self-employed with no employees includes over 5,000 individuals who were working for a relative.

PRSI estimates of self-employment

14.25 Data from the PRSI system indicate that the number of persons classified in class S has increased moderately in the past decade. In 2020, the number of class S contributors — 351,000 — was around 8% higher than in 2011 (see Figure 14.6). In contrast, the revenue raised through class S related contributions in 2020 was 86% higher than in 2011, reflecting significantly increased average earnings for class S contributors over the period.

14.26 Class S PRSI contributors accounted for 11% of all PRSI contributors in 2020. Reflecting the relatively lower contribution rates for class S contributors, the associated PRSI contribution receipts account for 6% of all PRSI receipts collected in 2020.

Figure 14.6 Class S PRSI receipts and number of contributors, 2011 to 2020, indexed to 2011

Source: Department of Social Protection. Analysis by the Office of the Comptroller and Auditor General.

Notes: a The value of class S receipts for each year relates to the preceding fiscal year i.e. the 2020 receipts are based on 2019 trading income.

b The average contribution per contributor reflects contributions received and the number of class S workers in that year.

1 The examination used 2019 as a reference year to avoid the impact of the pandemic on the number of individuals who were recorded as self-employed and the value of their income.

2 In the Revenue data, the individual's NACE code is the one selected by the taxpayer at the time of tax registration (with occasional updates following Revenue case work).

3 Revenue's figures are on a tax unit basis, where one unit may represent one or two individuals — either an individual with any personal status who is singly assessed or a couple in a marriage or civil partnership who have elected for joint assessment.

4 Revenue stated that it will form a working group with the CSO to prepare for the next NACE update which is due to be implemented in 2025. This will present an opportunity to improve alignment of NACE usage for statistical purpose.

Revenue estimates of self-employment

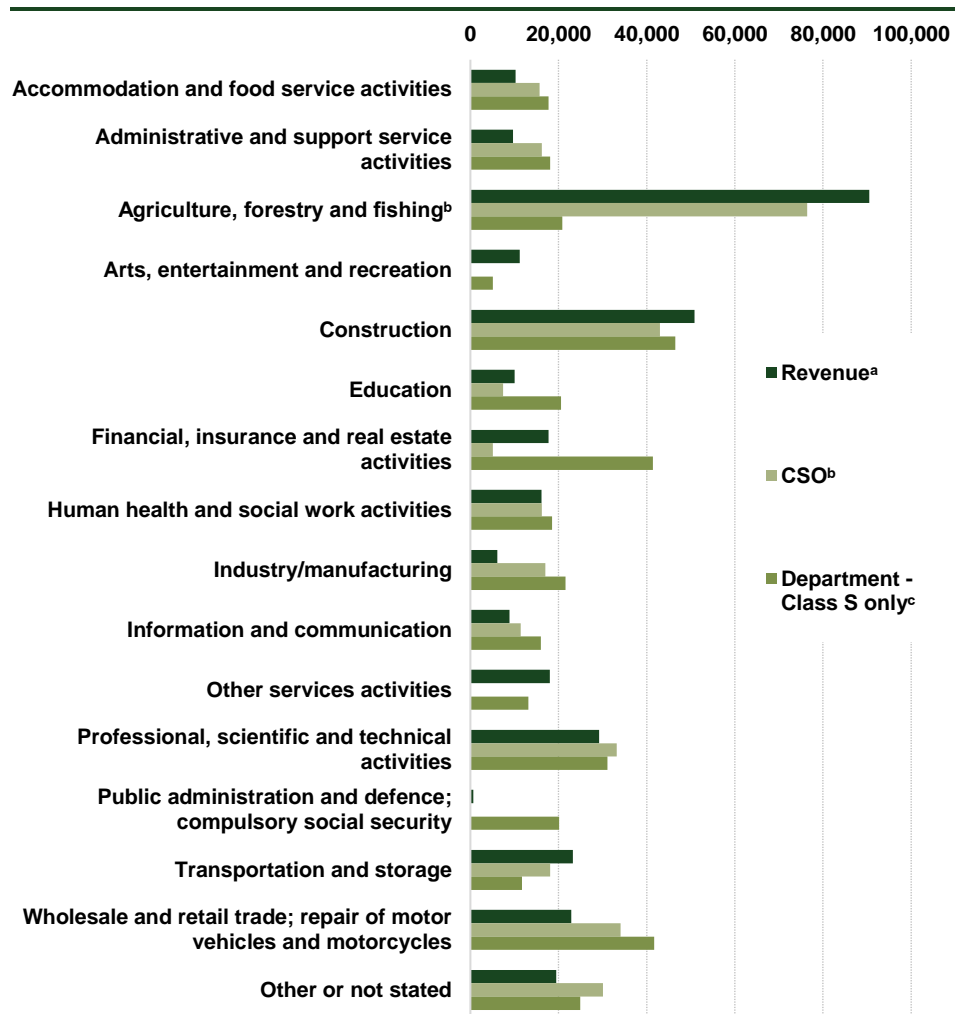
14.27 Separately, Revenue uses data from income tax returns of all self-assessed individuals in the State (Form 11 returns) to identify self-employment. This includes taxpayers who do not trade (e.g. company directors, those in receipt of foreign investment or rental income) and who consequently are not at risk of employment misclassification. Revenue stated this data is a key underpinning for risk assessment and compliance interventions.

Comparison of estimates

14.28 2019 data on the extent of self-employment, by sector, was provided by the Department (based on the number of PRSI returns and the Department's record of the last known employment sector) and Revenue (based on Form 11 returns).^{1,2} The overall number of self-employed individuals is broadly similar: CSO figures indicate 324,000 self-employed; Revenue figures indicate 345,000 (with reported trading income of €18.3 billion in 2019); and the Department indicates 369,000.³ This represents a 14% difference between lowest and highest estimates.

14.29 However, there is a very significant variation within individual economic sectors between the three information sources (see Figure 14.7).⁴

Figure 14.7 Number classified as self-employed, by sector, in 2019 — comparison of CSO data with data from the Department of Social Protection and Revenue Commissioners



Source: Department of Social Protection, Central Statistics Office, and Revenue Commissioners. Analysis by the Office of the Comptroller and Auditor General.

Notes: Basis of analysis and assumptions

- a Data from Revenue relates to individuals who filed a Form 11 return for 2019 with trade panels completed for the relevant sector. This data is on a tax unit basis, where one unit may represent a singly assessed individual or a couple who elected for joint assessment.
- b The CSO data is drawn from the result of the labour force survey for Q4 2019 (not the entire year). Figures for the agriculture, forestry and fishing sector includes around 5,000 individuals who were assisting a relative.
- c The Department's data relates to class S PRSI returns made for 2019 — the Department explicitly states that the sectoral breakdown of PRSI contributions is based on the economic activity code of the last known employment sector and may not reflect the sector of the contributor in the reference year.

14.30 The Department stated there are a number of reasons for this variation, such as

- the Department's data is based on the economic activity code of the last known employment sector as captured by the Department's administrative systems, and so may not reflect the sector of the contributor within the reference year
- a person may submit a return to Revenue but have no PRSI liability as their income is under the threshold of €5,000
- persons with more than one income source from different economic sectors may be classified differently in the Department, Revenue or the CSO data
- persons in receipt of Approved Retirement Fund payments, which are liable to pay class S on those payments, may be classified in the Department's data as self-employed in the financial services sector based on the economic activity code of the fund administrator.¹

14.31 Changes made to the labour force survey conducted by the CSO will provide further information on the extent of 'economically dependent self-employed' individuals.² The Department has stated that it will engage with the CSO to review this data, as it expects that PRSI misclassification is most likely to be present within this category, and to establish its usefulness in sectoral analysis.

14.32 Greater certainty around the level of self-employment in each sector of the economy is required to inform risk analysis and targeted compliance activity.

Why do some individuals who are not employees pay tax on a PAYE basis?

14.33 The Department is responsible for determining PRSI class while Revenue is responsible for the determination of the appropriate schedule for income tax payment purposes. The decision of one organisation is not binding on the other, and there are occasions where the determination of employment status may appear to differ. For example

- **Home tutors** — The Department of Education has an administrative agreement with Revenue that while home tutors are subject to class S PRSI (self-employed for the Department), income tax and PRSI are deducted under the PAYE system (the Revenue treatment for employees) and the tutor must file an income return only if they are in receipt of other income.
- **Coroners** — From a Revenue perspective, all payments to coroners, which arise in their capacity as office holders, are chargeable to income tax under schedule E and subject to deductions at source under the PAYE system i.e. treated similar to an employee. The Department considers that a coroner is an 'office holder', subject to class M PRSI.

14.34 For both examples, Revenue has stated that the PAYE system is a tax and contributions collection mechanism, and allocation of an individual to schedule E for tax collection purposes does not confer employment rights or employment status for PRSI purposes.

¹ Distributions from Approved Retirement Funds are subject to PAYE. Where the recipient is not a chargeable person, they will not appear in the Revenue data used in Figure 14.7. Where the individual is a chargeable person, Figure 14.7 would reflect their main income source.

² 'Economically dependent self-employed' individuals are defined as self-employed individuals without employees, who have only one (or one main) client, and whose one (or one main) client decides the working hours.

- 14.35** Revenue has proposed non-standard taxation arrangements for self-assessed platform/gig economy workers by taxing income earned on a PAYE basis, to provide more certainty as regards their end-of-year liability.¹ Under these arrangements, the platform administrators would calculate the tax to be withheld from each payment to the worker by querying the individual's personalised withholding tax status via a secure and responsive Revenue interface. Employment status for PRSI purposes would need to be determined separately.

Recent analysis of the impact of intermediary companies and misclassified self-employment

- 14.36** A 2018 report jointly produced by the Department, Revenue and the Department of Finance aimed to estimate the potential loss of income tax and PRSI resulting from intermediate-type structures and certain self-employment arrangements.² The report considered the available CSO data and stated that there is no quantitative data on the incidence of disguised (or misclassified) employment in Ireland.
- 14.37** In June 2021, the Joint Committee on Social Protection, Community and Rural Development and the Islands, undertook an examination of the issue of 'bogus' self-employment i.e. misclassification of employment status. The examination report recommended that the Department, in conjunction with the CSO, should develop a framework for collecting data on areas of employment where there is a potential risk of bogus self-employment. The Department stated that the additional data from recent amendments to the CSO labour force survey will be informative in that regard.

Compliance activity to address the risks of misclassification of employment status

- 14.38** Neither the Department nor Revenue has estimated the potential loss of PRSI contributions due to the misclassification of employment status i.e. the 'tax gap'. They state that this is on the basis that the estimation of such figures would not assist them in targeting their response to risk, and that resources involved in carrying out such exercises would be better used in tackling the various risks identified under their compliance programmes.
- 14.39** In 2019, Revenue, in conjunction with the Department and the WRC, carried out a series of unannounced investigations on construction sites.³ Of 6,650 workers whose employment status was reviewed in the course of the investigations, 94% were found to be in order. Fewer than 300 workers (4.5%) were identified as unregistered, and were duly classified as new class A employees. Fewer than 100 workers (1.5%) were found to be incorrectly classified for PRSI purposes, and were reclassified to class A.
- 14.40** These results suggest that the misclassification of construction sector workers as self-employed is not widespread, and that unregistered workers may be a more significant problem in the sector.

Compliance activity of the Department's ESIU

- 14.41** The Department's Employment Status Investigation Unit (ESIU) was established in August 2019, with the focus of detecting and investigating misclassification of employment status. The ESIU targets both specific employers and sectors.

¹ Revenue Commissioners, Submission to the Commission on Taxation and Welfare, January 2022.

² *The use of intermediary-type structures and self-employment arrangements: implications for social insurance and tax revenues*, the Department of Social Protection, the Department of Finance and the Revenue Commissioners, 2018.

³ Virtually all construction site visits were unannounced.

- 14.42** To May 2022, the ESIU has not used random sampling to select cases for investigation. The current ESIU approach, based on employment trends and other sources of information, is to target sectors of interest for compliance activity.¹
- 14.43** The Department stated that as the ESIU is still in an early phase of operation, it has focused mainly on the construction sector and the media/journalism sector, and that it will target other sectors over time.
- 14.44** The Department sets annual targets for employer investigations and PRSI compliance by social welfare inspectors (SWIs), including ESIU activity. While a specific portion of these targets has not been allocated to ESIU to date, the Department intends to do so for 2023.
- 14.45** To date, the number of staff allocated to ESIU has been low — from establishment to early 2022, total staffing was between six and nine staff. In June 2021, the Department's Management Board sanctioned an increase of twelve officers for the ESIU, as well as six staff for the Scope Section; the intention is that the first four of the new ESIU positions will be filled from September 2022.
- 14.46** From its inception to June 2022, the ESIU reviewed over 500 employers and their contractors across various sectors. Following those reviews, 311 investigations were commenced (see Figure 14.8). By August 2022, 167 of the investigations had been completed. This resulted in the reclassification of 93 workers for PRSI purposes, and arrears totalling €811,000 had been identified (an average of €8,720 per worker).
- 14.47** Of the 167 investigations completed, there were 34 cases on appeal as of August 2022 — the majority (65%) of these appeals relate to the media/journalism sector.

Figure 14.8 ESIU investigations commenced from August 2019 to June 2022, by sector — status as at August 2022

Sector	Number of investigations commenced	Number of investigations ongoing	Number of investigations complete	Number of workers reclassified	PRSI arrears charged to employers €000
Media/journalism	110	28	82	50	452
Construction	104	82	22	9	104
Meat industry	33	18	15	5	13
Health/wellness	12	3	9	4	1
Forestry/agriculture	5	1	4	—	—
Manufacturing	2	—	2	2	33
Miscellaneous services	29	10	19	15	119
Miscellaneous other	16	2	14	8	89
Total	311	144	167	93	811

Source: Department of Social Protection

¹ The ESIU targets employers for inspection considering factors such as

- cross checking data and information with Revenue
- referrals from other social welfare inspectors
- concerns raised by trade unions or other bodies
- whether the employment type is likely to have marginalised, low-paid workers vulnerable to exploitation
- whether prevalence of self-employment with that employer or sector is notably larger than other comparable employers or sectors.

- 14.48** During 2021, the ESIU completed investigations of 90 workers who had been in class S for PRSI purposes. The result of the investigations was that 40 workers (44%) were reclassified by Scope Section as class A; the remaining 50 workers (56%) were confirmed to be class S.¹ The investigations involved individuals who worked for 40 different employers — 19 of the employers (47%) had one or more workers reclassified to class A and 23 employers (57%) had workers confirmed to be class S.²
- 14.49** During the course of an investigation, an employer may agree to accept the assessment of the ESIU and transfer misclassified workers to class A (employees) without the requirement for a Scope Section decision. In the period from 2019 to June 2022, this resulted in 117 workers transferring from class S to class A (not included in Figure 14.8 above). These cases related to the construction sector, with PRSI arrears of €323,000 charged to employers (an average of €2,760 per person reclassified).
- 14.50** Revenue is the collecting agent for PRSI contributions, including any arrears of contributions from employers arising from the misclassification of workers. When a Scope Section decision is finalised, the ESIU issues a compliance notice to the employer. The Department also informs Revenue of the PRSI class amendments and where additional PRSI is receivable.

Misclassification compliance work outside of the ESIU

- 14.51** In addition to ESIU staff noted above, there are approximately 350 other SWIs across the Department, comprising
- 256 general SWIs
 - 99 Special Investigation Unit (SIU) SWIs.
- 14.52** The role of 'general' SWIs includes investigating selected cases where a benefit or allowance is claimed, to investigate suspected fraud and detected irregularities, and to carry out inspections on employers to ensure that they are complying with the PRSI system. Claimants and employers are required to furnish the inspector with any information or documentation deemed relevant to the investigation. The objective of the SWIs in the SIU is to investigate social welfare fraud and abuse — including cases where concurrent working and claiming is alleged.
- 14.53** In 2021, SWIs conducted approximately 6,600 employer and PRSI reviews. However, the work of these SWIs is not primarily focused on the detection of misclassification of employment, though such cases may be detected — there is no breakdown available on the number of employment status reviews conducted by general SWIs. Where SWIs conduct employment status investigations, their reports are submitted to the Scope Section for decision. 20 of 110 formal Scope Section decisions in 2021 as per Figure 14.2 did not originate from the work of the ESIU — the Department stated most of these decisions and the 67 advisory decisions originated from the SWIs. Where a local investigation becomes complex or is likely to result in a larger scale project, SWIs may request the ESIU to investigate.

¹ One of the 90 investigations related to a case where the worker was selected for investigation due to previous class S contributions but was making class A contributions at the time the investigation commenced.

² Two employers had multiple workers investigated where some workers were determined to be class A and some were determined to be class S.

Action by the Department to address misclassification findings in its compliance work

- 14.54** The ESIU has conducted targeted rather than random control testing, and the number of cases reviewed by the ESIU is still far less than would be required to establish reliable estimates of the incidence of misclassification of workers.

- 14.55** A project undertaken by the ESIU analysed cases it had undertaken in the period to September 2021 aimed at identifying characteristics of potentially misclassified workers. The Department stated that, to May 2022, the data has not yielded any meaningful patterns or trends to help predict risks. However, it intends to record the characteristics of investigated cases on an ongoing basis to ensure that data is available to inform future investigations. The ESIU will re-examine the usefulness of the data when significantly more employment status decisions have been made.

Revenue compliance activity

- 14.56** Revenue stated that employment classification is a complex area and that there is no single profile of a self-employed taxpayer — for example, the complexity and judgement required is reflected in a case known as *Karshan (Midlands) Limited (trading as Domino's Pizza) v Revenue Commissioners* (see Annex 14D).
- 14.57** Revenue targets compliance interventions and investigations based on risk models and compliance resources are targeted at the areas of greatest assessed risk.¹ Revenue has stated that it has conducted a range of projects over the years on specific business sectors where misclassification was included as part of the potential risk areas examined. While instances of widespread misclassification have not been identified through these projects, the learning from such projects is re-applied to future projects to improve the targeting and risk examination procedures. Consideration of employment status is included in Revenue's planned compliance work for 2022.

Conclusions and recommendations

- 14.58** Misclassification of employment status may arise where a worker is classified as self-employed but has the characteristics of being an employee (or vice versa). A key impact of the misclassification of employment status is the difference between PRSI contribution rates for the employed and self-employed. This may result in a loss of PRSI contribution income for the Social Insurance Fund (SIF), but may also result in misclassified workers being deprived of access to social insurance benefits in the long term. There is no reliable estimate of the level of misclassification of employment status in Ireland.

Criteria for the determination of employment status

- 14.59** There is no single clear definition of the terms 'employed' or 'self-employed' in Irish or EU law. In July 2021, the Department, Revenue Commissioners (Revenue) and the Workplace Relations Commission (WRC) published a revised *Code of Practice on Determining Employment Status*. While the revised guidance is more comprehensive than prior guidance, it is lengthy and only published in English. To date, there has been no assessment of the extent to which the code has been used by workers or employers reviewing an employment status.

¹ Revenue uses its 'Risk Evaluation and Profiling (REAP)' system to enhance its understanding of sectoral risks and to learn from the outcomes of previous compliance projects.

Recommendation 14.1

The Department, in consultation with Revenue and the WRC, should consider opportunities to make the code more accessible. Opportunities to evaluate the extent of use and understanding of the code by relevant parties should also be considered.

Accounting Officer's response

Part-agreed.

The Department considers that the increased length of the revised code reflects the fact that it is significantly more comprehensive than previous guidance. A range of stakeholders were consulted during the drafting stage, and the code was written and formatted in accordance with plain language guidelines. The Department's view is that, taking on board the advice of stakeholders and by adhering to the principles of plain language, the information contained in the code is relatively easy to understand and is accessible by workers and employers who have an interest in the matter. To the extent that there may be a knowledge deficit, this is more likely to relate to awareness of the information and code rather than the content or accessibility of the code itself.

The Department will, as part of its ongoing engagement with Revenue, the WRC, and other stakeholders consider opportunities to make the code more accessible. Opportunities to evaluate the extent of use and understanding of the code by relevant parties will also be considered. This may include the re-running of previous large scale information campaigns using social, broadcast and print media.

The Department will give consideration to providing the code in other languages.

- 14.60** The Scope Section in the Department is responsible for the determination of employment status for PRSI purposes. An employment status decision may be requested by a worker or employer, or may arise from the work of the staff of the Department, Revenue or other bodies. The number of employment status decisions was between 70 and 100 per annum in the period 2017 to 2020, but increased significantly in 2021, to almost 180 decisions. Just over 20 decisions were appealed to the Social Welfare Appeals Office each year.

The extent of misclassification of employment status

- 14.61** Aggregate data on the extent of self-employment in the State available from the CSO, Revenue and the Department appears broadly consistent. However, when analysed on an economic sector basis, there appears to be significant differences in the estimated numbers identified as self-employed in certain economic sectors. There is no formal periodic analysis or reconciliation of apparent conflicts in the estimates.
- 14.62** While both the Department and Revenue conduct investigations targeting the misclassification of employment status, neither has estimated the related potential loss of contributions to the SIF. Random sampling and testing of the classification of a sufficient number of individuals would be required to accurately estimate the prevalence of misclassification of employment.

Recommendation 14.2

The Department should develop a programme of random reviews of PRSI classification in order to establish reliable estimates of the extent of misclassification of employment status and of the associated lost contributions to the SIF. Such a programme may also assist the development of a risk model to better target compliance activity.

Accounting Officer's response

Part-agreed.

The Department's inspectorate carries out targeted investigations based on data analytics, sectoral profiling and cases referred by workers, employers, other Departmental scheme areas and Revenue. It liaises with Revenue inspectors as part of the Joint Investigation Unit. Proposed enhancements to the CSO's Labour Force Survey should improve the quantification of the number of 'economically dependent self-employed' individuals which will assist the Department in further targeting employment status investigations. These strategies are seen as the most effective use of resources and will remain as the primary approaches. In addition, as part of this approach, unannounced reviews will be undertaken in key sectors of concern similar to that set out in Section 14.39. These will not be conducted for the purposes of establishing reliable estimates (though they may help in this regard) but as part of an approach to identify and investigate sectors where there is some intelligence that misclassification may be a particular problem.

Compliance activity to detect misclassification of employment status

- 14.63** The Department established the Employment Status Investigation Unit (ESIU) in 2019 to focus on the misclassification of employment status. However, staffing levels of the ESIU have not enabled significant progress to be made across a range of sectors. The Department approved a significant increase to staffing level for the unit in June 2021. The first four of the additional positions are expected to be filled in September 2022. The Department has not yet set specific targets for the number of investigations to be conducted by the ESIU.
- 14.64** Of the 90 targeted investigations completed by the ESIU in 2021, 40 (44%) resulted in a change of PRSI status from class S to class A. While the misclassification rate in those targeted investigations was significant, the results provide no indication of the scale of misclassification across the economy generally.
- 14.65** The Department has established a project to learn from the results of investigations completed — while that project has not yet yielded significant benefits, its continued operation may provide valuable insights to inform future compliance activity.

Recommendation 14.3

The Department should set annual targets for the ESIU for the number of investigations by sector, and ensure that adequate resources are allocated to meet those targets.

Accounting Officer's response

Part-agreed.

The Department already sets annual targets for employer investigations and PRSI compliance by social welfare inspectors, including ESIU, and the latter's activity counts towards these targets. While a specific portion of these targets has not been apportioned to ESIU to date, the intention is to apportion separate targets to the general SWI cadre and ESIU for 2023.

While setting such targets by sector will be looked at, it may not make sense to do that as it may hinder the flexibility the Department's inspectorate needs to employ on a regular basis. In common with all other areas of the Department, the staffing levels assigned to the ESIU are monitored to ensure an efficient and effective use of available staff resources.

Annex 14A PRSI classes — 2022

PRSI class	Description of individuals covered	Maximum applicable rates ^a	
		Individual	Employer
A	Employees under the age of 66 in industrial, commercial and service-type employment who have reckonable pay of €38 or more per week from all employments as well as public servants recruited from 6 April 1995. ^a	4%	11.05%
B	Permanent and pensionable civil servants, registered doctors and dentists employed in the civil service and Gardaí recruited prior to 6 April 1995.	4%	2.01%
C	Commissioned officers of the defence forces and members of the army nursing service recruited before 6 April 1995.	4%	1.85%
D	Permanent and pensionable employees in the public service, other than those mentioned in classes B and C recruited before 6 April 1995.	4%	2.35%
E	Minister of religion employed by the Church of Ireland representative body.	3.33%	6.87%
H	NCOs and enlisted personnel of the defence forces.	3.9%	10.35%
J	People in private sector employments with reckonable pay of less than €38 per week from all employments. However, a small number of employees are insurable at class J, no matter how much they earn, such as employees aged 66 or over or people in subsidiary employment.	Nil	0.5%
K	Since 2011, certain public office holders pay PRSI at a rate of 4% on all income, where their income is over €5,200 a year. Public office holders with weekly income of €100 or less should be returned at class M.	4%	Nil
M	People with a nil contribution liability such as employees under 16, people 66 or over (including those previously liable for class S), persons in receipt of occupational pensions or lump sum termination payments and public office holders with a weekly income of less than €100.	Nil	Nil
P	Self-employed people whose main income comes from share fishing (optional payment in addition to class S contributions).	4%	Nil
S	Self-employed people, including certain company directors, certain people with income from investments and rent, and certain local authority members.	4%	Nil

Source: Department of Social Protection

Note: a Rate applicable is dependent on the amount of weekly gross pay (including notional pay where relevant). The applicable rates displayed above are the highest rate payable in each case. For example, a class A employee who earns less than €352 in a week is not liable for PRSI in that week and where a class A employee earns less than €410 in a week, the employer rate is reduced to 8.8%.

Annex 14B Summary of benefits in 2022 for each insurance class

Benefit / Class	A	B, C, D	E	H	J, M	P	S
Jobseeker's benefit	✓			✓		✓ ^b	
Jobseeker's benefit (self-employed)							✓
Illness benefit	✓		✓	✓		✓ ^b	
Maternity benefit	✓		✓	✓			✓
Paternity benefit	✓		✓	✓			✓
Adoptive benefit	✓		✓	✓			✓
Health and safety benefit	✓		✓	✓			
Invalidity pension	✓		✓	✓			✓
Widow's, widower's or surviving civil partner's (contributory) benefit	✓	✓	✓	✓ ^c			✓
Guardian's payment (contributory)	✓	✓	✓	✓			✓
State pension (contributory)	✓		✓	✓			✓
Treatment benefit	✓		✓	✓ ^c		✓	✓
Occupational injuries benefit	✓	✓ ^a			✓ ^d		
Carer's benefit	✓	✓	✓	✓ ^c			
Partial capacity benefit	✓		✓	✓			✓
Parent's benefit	✓	✓	✓	✓			✓

Source: Department of Social Protection

- Notes:
- a Limited occupational injuries benefits are available to those insured under class B and none are available to those insured under class C.
 - b Jobseeker's Benefit and Illness Benefit is limited for those insured under class P.
 - c Widow's, widower's or surviving civil partner's (contributory) benefit, treatment benefit and carer's benefit are the only benefits paid during service for those insured under class H.
 - d Occupational injuries benefits are available to those insured under class M in certain circumstances.

Annex 14C Factors determining if a worker is an employee or self-employed

Characteristics of an employee	Characteristics of self-employment
Mutuality of obligation	
The payer must provide a reasonable amount of work and the worker must perform all such work.	There is no obligation on either party to provide or accept work.
Is obliged to perform work on a regular basis by working set hours or a given number of hours per week or month.	Controls the hours of work in fulfilling the job obligations.
Substitution	
Inability to subcontract the work.	Is free to hire other people, on his/her terms, to do the work which has been agreed to be undertaken.
Enterprise test	
No exposure to personal financial risk in carrying out the work and does not assume any responsibility for investment and management in the business.	Exposure to financial risk and assumes responsibility for the investment and management of the enterprise, with an opportunity to profit from sound management in the scheduling and performance of engagements, including costing and agreeing a price for the job.
Receives a fixed rate wage, working set hours and receives expenses.	Owns their own business.
Entitled to sick pay and overtime.	Provide their own insurance cover.
Tax deducted from wages through PAYE system.	Registered for self-assessment tax returns or VAT.
Works for one person or for one business.	Ability to provide the same services to more than one person or business at the same time.
Supplies labour only and does not supply materials or equipment for the job.	Provides the materials, equipment and machinery necessary for the job and has a fixed place of business where these items can be stored.
Control	
Works under the control of another person that tells them what, how, when and where the work is done.	Controls what, how, when and where the work is done, and whether they do it personally.
Integration	
Is an integral part of the organisation, may have employees reporting to them.	An independent contractor is likely to be an accessory to the business.

Source: Code of Practice for Determining Employment Status, 2021

Annex 14D Karshan (Midlands) Limited trading as Domino's Pizza v Revenue Commissioners

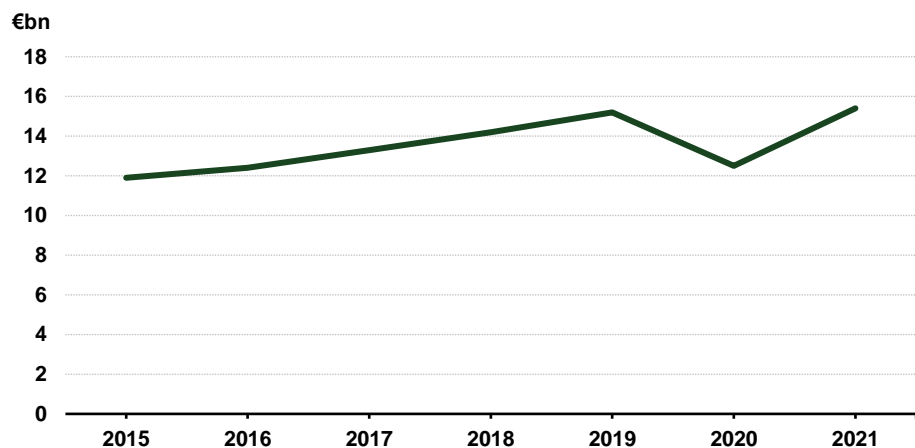
Date	Event
2011	<ul style="list-style-type: none"> Revenue commenced case working.
2012	<ul style="list-style-type: none"> Interviews with drivers conducted. Revenue issued audit notification letter concluding drivers were taxable as PAYE employees.
2016	<ul style="list-style-type: none"> Appeal proceedings heard before the Tax Appeals Commission (TAC) — Revenue's conclusion upheld.
2019	<ul style="list-style-type: none"> The company appealed to the High Court which upheld the determination of the TAC.
2022	<ul style="list-style-type: none"> The Court of Appeal (by a 2 to 1 majority) set aside the High Court decision and determined that the drivers were self-employed independent contractors because no mutuality of obligation existed.

Source: Revenue Commissioners

15 Collection of VAT on e-commerce

- 15.1** Value Added Tax (VAT) is a tax on consumer spending, which is charged to the final consumer of the goods or services but collected from the supplier. VAT is collected through a staged process which focuses on the value added at each stage in the production and distribution cycle. Each trader registered for VAT in the supply chain charges VAT on their sales, with a corresponding entitlement to a deduction of the amount of VAT charged to them on their purchases. The Office of the Revenue Commissioners (Revenue) is responsible for collecting and enforcing the payment of VAT.
- 15.2** An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. An e-commerce transaction can be business-to-business or business-to-customer, and the business supplying the goods or services may be in Ireland, another European Union (EU) member state or elsewhere in the world. E-commerce is a method of facilitating business transactions that is used across all business sectors and business models. A large proportion of the Irish economy is involved in e-commerce activities or in activities which enable and facilitate e-commerce, such as online marketing. The advent of e-commerce means that businesses can operate within a market in a country without ever establishing a physical presence in that country.
- 15.3** In 2021, the total net amount of VAT collected by Revenue was €15.4 billion (see Figure 15.1). These receipts represented 23% of the overall tax yield to the Exchequer in the year. VAT receipts had fallen significantly in 2020, but the trend in receipts suggests this was a temporary fall associated with measures related to the Covid-19 pandemic.
- 15.4** The EU has standard rules on VAT, but these rules may be administered differently in each EU country. For EU-based companies, VAT is chargeable on most sales and purchases of goods within the EU. In general, VAT is charged and due in the EU country where the goods are consumed, or services received, by the final customer.

Figure 15.1 VAT receipts 2015 – 2021



Source: Annual reports of the Revenue Commissioners

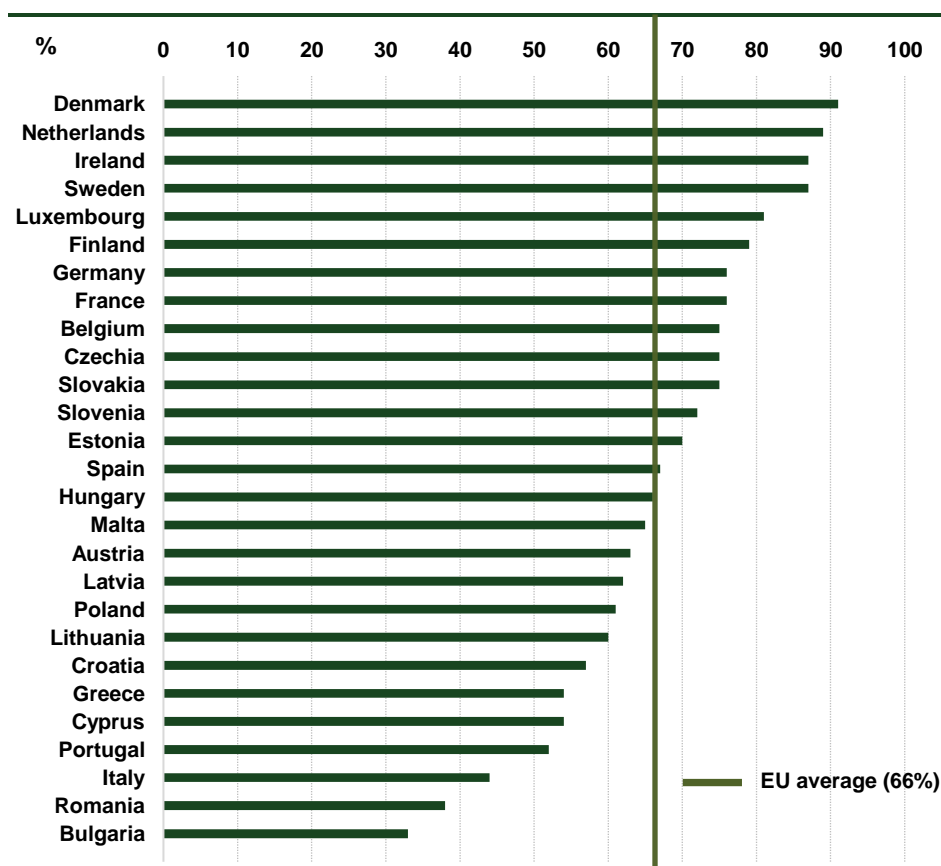
- 15.5** VAT is not charged on goods exported to countries outside the EU. VAT is charged and due in the country of import if that country operates a VAT system. While the exporter does not need to charge any VAT, they will need to provide documentary evidence to prove that the goods were transported outside the EU such as invoices, transportation documentation, an import customs record or customs documentation to the relevant tax authority, if requested to do so.
- 15.6** This examination was undertaken to consider what are the implications for VAT receipts resulting from the shift to online trade. It focuses on Revenue's
- strategy to capture and collect VAT due on e-commerce
 - assessment of e-commerce risks
 - e-commerce compliance work.

Scale of e-commerce activity

- 15.7** The Central Bank collects data each month from the largest issuers of credit and debit cards resident in Ireland.¹ The data collected on debit and credit card transactions is published on the Central Bank website. This includes a sectoral breakdown of expenditure, e-commerce and spending outside of Ireland. The statistics published by the Central Bank show that estimated online expenditure was just over €33 billion for 2021. This compares with estimated online expenditure of €27.6 billion in 2020 and €22 billion in 2019.
- 15.8** The European Commission's 2022 report on *Digital Economy and Society Index* summarises indicators on Europe's digital performance and tracks the progress of EU countries. The report notes that 33% of Irish SMEs sell online, with 11% selling across borders — significantly above the EU averages of 18% and 9% respectively. In addition, 22% of Irish SMEs total turnover originates from online sales, which is almost double the EU average of 12%.
- 15.9** In January 2022, Eurostat published the results of the 2021 survey of information and communication technology usage in households and by individuals. The report found that 66% of individuals aged 16-74 in the EU had shopped online in the previous 12 months prior to the survey (see Figure 15.2).
- 15.10** The survey results varied considerably across the EU ranging from 33% in Bulgaria to 91% in Denmark. Ireland ranked in the top three countries with 87%.

¹ Only euro-denominated cards issued by these providers to Irish residents are included. Credit and debit cards issued to Irish residents by issuers that are not resident in Ireland are not included in the compilation of data.

Figure 15.2 Percentage of individuals that bought/ordered goods or services for private use on the internet in the previous 12 months



Source: Eurostat, 2021 information and communication technology survey

Developments in the area of VAT on e-commerce

- 15.11** The growth of e-commerce poses a number of challenges to the administration of taxation systems with particular risks to the collection of VAT. To address these issues, the European Commission has undertaken a number of initiatives in this area. For example, the Mini One Stop Shop was introduced in 2015 and the VAT on e-commerce package was introduced in July 2021.

Mini One Stop Shop (MOSS)

- 15.12** MOSS was introduced in 2015 for the payment of VAT on telecommunications, broadcasting and electronic services (TBE). It was a voluntary scheme, for which traders could register in order to reduce the administrative burden associated with filing returns and paying VAT in multiple EU countries.¹ A MOSS return was filed quarterly, in the member state where the trader registered for the scheme. This notified the relevant tax authority of the TBE sales in each EU member state in which they were trading, facilitating the payment of local VAT and avoiding the requirement to register for VAT in each relevant member state. The Revenue web portal for MOSS was developed in advance of 2015 and Ireland was the first member state to make MOSS registration available to businesses.

¹ Under MOSS, a business engaged in telecommunications, broadcasting and electronic services can register in a single member state — the member state of identification (MSID) — to file a single quarterly return and pay its VAT liability due to all member states through a web portal in its chosen MSID.

- 15.13** Between 2015 and 2018, member states were permitted to retain a portion of the tax collected under the union scheme on behalf of other member states.¹ However, since 2019, the practice of retention has been abolished. Figure 15.3 shows the amount of VAT collected on behalf of Ireland by other member states from 2015 to 2021. It also shows the amount of VAT collected by Ireland on behalf of other member states from 2015 to 2021 and the amounts retained by Ireland for doing so between 2015 and 2020.

Figure 15.3 VAT collected by Revenue via the MOSS/OSS schemes and amounts retained, 2015 – 2021

Year	VAT collected by other member states proper to Ireland €'000	Net VAT collected by Ireland proper to other member states ^a €'000	Amount retained by Ireland €'000
2015	23,900	313,690	88,200
2016	39,166	397,205	158,826
2017	39,904	1,183,497	255,520
2018	54,059	1,428,971	242,245
2019	67,401	2,006,182	67,576 ^b
2020	89,166	2,365,806	15 ^b
2021	144,458	3,115,681	—
Total	458,054	10,811,032	812,382

Source: Certified Account of the Receipt of Revenue of the State collected by the Revenue Commissioners for the years 2015 – 2021

Notes: a Net VAT collected by Ireland proper to other member states is net of VAT repayments.

b These are amounts retained by Ireland as a result of late payments received in 2019 and 2020 in respect of returns for earlier years.

1 There are two schemes under MOSS — the union scheme, for businesses established in the EU or with at least one branch based in an EU country; and the non-union scheme, for businesses not established in the EU and without any branches based in the EU. The retention percentage was 30% for 2015 and 2016 and 15% for 2017 and 2018.

2 The changes made to the VAT Directive were transposed into Irish law in June 2021 through a Regulation made under section 3 of the European Communities Act 1972.

3 Further detail on these measures is included in Annex 15A to this chapter.

- 15.14** Between 2015 and 2020, Ireland collected €10.8 billion in respect of the union and non-union schemes on behalf of other member states. Of the amount collected for the union scheme, Ireland was permitted to retain just over €812 million. Ireland also received just over €458 million (after retention) in VAT MOSS receipts from other member states.

VAT on e-commerce package

- 15.15** In July 2021, the 'VAT on e-commerce package' was introduced to simplify VAT obligations for e-commerce activities.² The new measures were introduced to facilitate cross-border trade, combat VAT fraud and ensure fair competition for EU businesses.³ The new measures include

- extension of the scope of the Mini-One-Stop-Shop (MOSS), now referred to as a One Stop Shop (OSS)
- introduction of a new Import-One-Stop-Shop (IOSS)
- treatment of online marketplaces and platforms as 'deemed suppliers' for certain transactions
- introduction of special arrangements for certain imports of goods.

- 15.16** Revenue established a Cross-Divisional e-commerce Oversight Group in May 2021, to manage the implementation of the EU VAT on e-commerce package, including the implementation of the OSS and the IOSS. The group covers a range of issues including system changes, communications with stakeholders, guidance, registrations and the division of the case base for OSS, IOSS and intermediaries. There are also sub-groups which cover OSS/IOSS compliance and payment compliance.

Brexit

- 15.17** When the UK left the EU on 31 December 2020, there were a number of implications from a VAT e-commerce perspective, including¹
- MOSS could no longer be used by traders to pay UK VAT when selling to customers in the UK. Instead, traders need to register for UK VAT in order to record VAT on those sales.
 - Irish traders will be liable to charge UK VAT, at the point of sale, at the appropriate rate on goods shipped from Ireland to consumers in Great Britain in consignments of £135 or less.
 - For consignments with a value over £135, import VAT and potentially customs duty will be due and the Irish supplier will need to consider whether they arrange for payment of the UK VAT and custom duty or if their customers should be responsible for the payment of any customs duty and VAT arising in the UK.
 - Similarly, goods despatched by UK-established businesses to Irish customers from the UK would be treated as third-country imports. These UK businesses are no longer subject to EU distance-selling rules and can no longer register for VAT in Ireland as distance-sellers.
 - UK MOSS businesses were previously registered under the union MOSS scheme for EU businesses prior to Brexit. Following Brexit, these cases were obliged to re-register in an EU member state under the non-union OSS/IOSS scheme for non-EU businesses.
 - The VAT Information Exchange System (VIES) is no longer available for the UK/ Great Britain.²

Revenue strategy for e-commerce

- 15.18** One of the actions taken by Revenue in recent years was to establish an e-commerce senior management group in 2018, the aims of which included
- assessing the compliance risks associated with e-commerce
 - developing strategies to address e-commerce related compliance risks and developing and proposing business initiatives and projects to senior management for this purpose
 - considering specific measures to improve Revenue's capacity to manage compliance risks arising from e-commerce
 - increasing organisational awareness of e-commerce and digitalisation activities and associated risks
 - considering structural, resource, skills and legislative measures to enhance Revenue's capacity to identify and address e-commerce related risks
 - providing an update on progress for Revenue's management advisory committee by end 2018.

¹ Northern Ireland is treated as a member state with regard to VAT on goods but it is not treated as a member state with regard to VAT on services.

² The VAT Information Exchange System provides a mechanism whereby checks can be made in each member state on the validity of claims to zero-rating. It helps to detect unreported movements of zero-rated goods between member states.

- 15.19** The senior management group met in April and May 2018 and was due to meet again in September 2018. However, the group was disbanded prior to that meeting. Minutes are only available for the May meeting. At that meeting, the importance of “... *analysing the compliance risks associated with the e-commerce sector and the development of an up-to-date strategy to tackle the identified risk priorities* ...” was stressed.
- 15.20** Revenue’s *Statement of Strategy 2021-2023* is underpinned by eight corporate priorities. One of the corporate priorities — international tax and customs agenda — includes an objective to *actively participate in the dedicated strategic projects at EU level with a view to influencing the implementation of agreed objectives so as to minimise the customs burdens on all legitimate cross border commercial activity, including e-commerce*.
- 15.21** Revenue stated that while the number of discrete e-commerce issues set out in its more recent statements of strategy has declined, e-commerce tax compliance considerations have featured in Revenue’s input into considerations of new tax initiatives at both national and international fora. Revenue considers that they do not need a specific strategy for e-commerce as changes in place at EU level have significantly reduced the risks identified in any of its historic strategy papers. The introduction of Central Electronic System of Payment (CESOP) information in 2024 will add a further level of assurance.¹

Revenue’s assessment of e-commerce activity

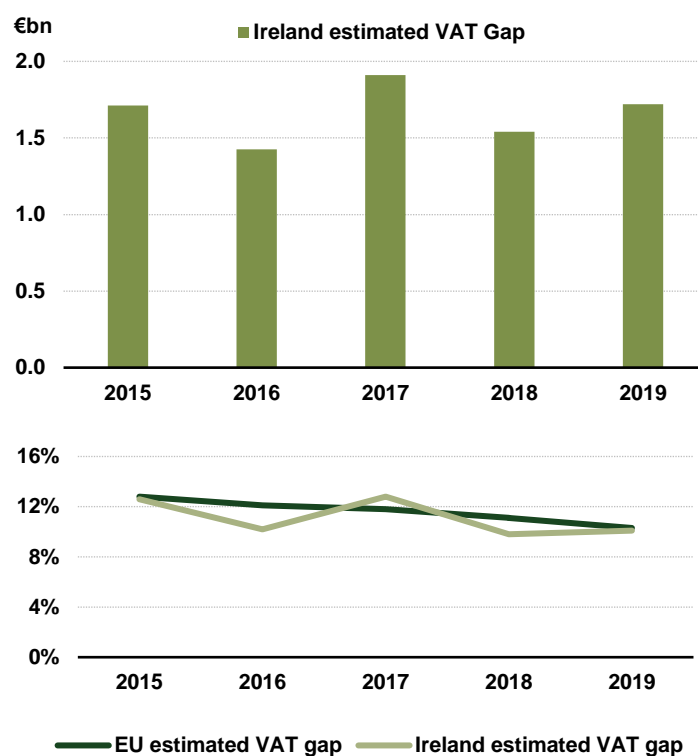
- 15.22** In July 2018, Revenue’s planning division prepared a paper for the e-commerce senior management group which stated that Revenue had no way of identifying or capturing the volume and nature of online trade on an ongoing basis. The paper noted that if this information was available to Revenue, it would help in understanding the relevant business models and in identifying emerging trends.
- 15.23** To address this issue, the paper suggested amending the existing self-assessment forms, such as the Form 11, CT 1 form and registration forms to capture additional information, for example, on the level of online sales/purchases, or payment methods accepted. Revenue stated that this was considered in 2019 but as macro-data sources such as the Central Bank, CSO, Eurostat and Visa had improved significantly, Revenue did not see the need to revise tax returns in this regard. Revenue also noted that the proposed revisions of the forms would require revision of enabling legislation and regulations.
- 15.24** Revenue implemented an alternative approach, based on a revision of the customer registration process, to improve its analytics capability. In November 2018, the tax registration forms (TR 1 and 2) were amended to request the taxpayer to provide the percentage of sales anticipated online. This field is only mandatory for all new online registrations. The information supplied by new online registered tax payers for the ‘percentage of sales anticipated online’ field is not in a format suitable for extracting statistics.
- 15.25** Revenue stated that it does not require taxpayers to quantify their e-commerce turnover given the challenges in defining such turnover, the additional costs to all parties and the relatively limited additional value of this data. Revenue has stated the value of a separate requirement for businesses to quantify e-commerce turnover is questionable as there is little evidence to suggest that the turnover from the digital channels of an established business presents a higher VAT risk than turnover from physical channels.

¹ In February 2020, the EU Council adopted a legislative package to request payment service providers to transmit information on cross-border payments originating from member states and on the payee of these cross-border payments. This information will be centralised on a European database (CESOP) and made available to member states via Eurofisc.

Compliance VAT gap

- 15.26** The compliance VAT gap is the difference between the expected VAT revenue in accordance with the current legislative framework and the amount of VAT that is actually collected by Revenue. Revenue does not calculate the compliance VAT gap.
- 15.27** A briefing paper by the European Parliamentary Research Service in December 2020 noted that, among indirect taxes, VAT has the highest share in the member states' indirect taxation revenues. As a result, the paper concluded that estimations and actions to narrow the difference between expected and actual VAT revenues — the VAT gap — are important. There is no common methodology for estimating the VAT gap and the quality of VAT gap estimates depends on the availability, accuracy and completeness of national accounts data.
- 15.28** Since 2013, the European Commission has published a report annually that provides VAT gap estimates for the EU member states. The European Commission follows a top-down approach to estimate the VAT gap by calculating the difference between the VAT due and the actual VAT revenues. The VAT gap represents VAT lost due to
- fraud and evasion
 - avoidance practices and optimisation
 - bankruptcies and financial insolvencies and
 - administrative errors.
- 15.29** The latest report, published in December 2021, provides VAT gap estimates for the period 2015 – 2019. The report states that the VAT gap is defined as the difference between the amount of VAT collected and the tax liability according to tax law i.e. the VAT total tax liability (VTTL).
- 15.30** For 2019, the report estimates the EU VAT gap to be €134 billion or 10.3% expressed as a share of the VTTL and calculates the VAT gap for Ireland at 10.1%. This represents about €1.7 billion in tax receipts. The estimates for the majority of member states lie in the range of 5 – 15%, with half of the member states having an estimated VAT gap above 8.6% (see Figure 15.4).

Figure 15.4 Estimated value of the VAT gap in Ireland and estimated VAT gap as a percentage of the VTTL in the EU and Ireland 2015 – 2019



Source: VAT gap in the EU, report 2021, European Commission

- 15.31** A working group on tax gap analysis was established by the European Commission in February 2021. The aim of the working group is for tax administrations to learn and share knowledge on the development and improvement of tax gap methodologies. Four sub-groups have also been established, one of which is on the e-commerce VAT gap (internal and cross-border) and Ireland is represented on that group by a Revenue official. Each sub-group will prepare an interim and final report with recommendations and methodologies and also develop a set of metrics to support tax administrations in the decision-making process of adopting and monitoring new tax compliance strategies. It is expected that the interim report will be completed in 2023 and the final report will be completed in 2025.
- 15.32** The e-commerce VAT gap sub-group is part of a wider project established under the EU Fiscalis programme of administrative co-operation. The project has a four-year life span and aims to identify and share best practice across the EU 27 in the identification and measurement of tax gaps across the spectrum of taxes including personal income tax, social security contributions, corporate income tax and value added tax. The sub-group planned to meet quarterly but to date has had just one meeting, held in September 2021. Revenue stated that the main outcome of that meeting was confirmation that no member state is currently measuring the e-commerce VAT gap. Future meetings of the group will consider possible methods to address this, dependent on assessment of the available data and applicability of general tax gap measurement methods to e-commerce.

Revenue's assessment of e-commerce risks

15.33 The examination team reviewed the most recent paper prepared in July 2018, for the e-commerce senior management group on the specific risks posed by e-commerce. Figure 15.5 sets out the risks included in the paper and includes an update from Revenue on the impact of these risks.

Figure 15.5 Risks posed by e-commerce identified by Revenue in July 2018

Risks	Description	Status as at September 2022
Anonymity of traders	For e-commerce transactions, it is more difficult to identify whether a transaction occurred, in what jurisdiction it occurred, whether tax is applicable and, if so, who is taxable.	Ongoing risk. However, the introduction of the OSS/IOSS and the deeming provision for marketplaces and platforms as part of the 2021 e-commerce package and the introduction of CESOP from 2024 go some way to address this issue.
Payment methods	Unlike traditional financial institutions such as banks and credit card companies, many electronic payment providers are under no legal obligation to provide information to Revenue.	Domestic transactions are addressed by S.891D of the TCA 1997. Cross-border payments will be addressed by the planned introduction of CESOP from 1 January 2024.
Location of data	Data holders of transactional and financial data associated with e-commerce may not be accessible to Revenue due to the location of the data and jurisdictional issues.	Domestic transactions are addressed by S.891D TCA 1997. Cross-border payments will be addressed by the planned introduction of CESOP from 1 January 2024.
Jurisdictional issues	Where jurisdictional issues arise they can impact on Revenue's power to impose a tax and Revenue's power to compel traders to comply with domestic tax law. Revenue officials in one country do not have enforcement powers in another.	This risk is largely applicable to distance sales. The introduction of OSS and IOSS in July 2021 has significantly reduced the barriers to cross-border taxpayer compliance. The associated OSS Compliance Framework implemented in July 2021 mandates increased intra-jurisdictional administrative cooperation. ^a Council Regulation 904/2010 on administrative cooperation in the field of VAT has been strengthened since 2017 to allow for increased cooperation between member states. It also now contains specific rules on administrative cooperation in respect of the e-commerce package.
Data privacy	Financial institutions and online marketplaces hold information on the trading activities of Irish and distance sellers that would be useful for Revenue compliance programmes. The main obstacle to getting this information is data protection rules which do not allow businesses to share data with tax authorities.	Mitigated by measures introduced by the VAT on e-commerce package such as changes in relation to distance selling, the introduction of the deemed supplier provision in 2021 and the planned introduction of CESOP from January 2024.
International reputation	Failure by Revenue to address non-compliance issues in relation to domestic e-commerce and distance sellers operating out of Ireland could damage Ireland's reputation internationally.	Mitigated by Revenue's engagement with EU Commission proposals and implementation of adopted VAT and mutual assistance legislation. This work is ongoing and Revenue continues to engage at EU level on future changes.
International cooperation	International cooperation is required to ensure that third parties located in a different jurisdiction comply with domestic information reporting regulations and to enforce penalties if necessary.	Addressed by strengthening of Council Regulation 904/2010 on administrative cooperation in the field of VAT which is already in place. The EU Commission is also currently looking to agree similar administrative cooperation agreements with third countries outside of the EU.

Source: Revenue Commissioners

Note: a Unlike previous cross-border EU VAT schemes, compliance under the new OSS/IOSS schemes is subject to a specific EU cross-border framework and rules which have been implemented by the EU Commission. The framework is designed to ensure close cross-border collaboration in future OSS compliance management.

Revenue compliance activity

- 15.34** Revenue stated that e-commerce activities are an integral part of whole case management in Revenue and that therefore an integrated risk management approach is applied in all divisions involved in compliance management.
- 15.35** There is no distinction between VAT registered traders that derive their income from e-commerce sales and those that derive their income from physical sales for the purposes of revenue compliance activities. Therefore, Revenue stated it is often impossible to separately identify e-commerce-only compliance activity from non-e-commerce compliance activities. All compliance branches may therefore undertake compliance interventions involving cases with e-commerce activity. VAT registered traders with e-commerce sales will also be subject to triggers in Revenue's risk profiling systems such as REAP and VAT Real Time Risk.
- 15.36** Non-resident suppliers making distance sales to Irish consumers in excess of the Irish registration threshold of €35,000 and that are not registered for VAT in Ireland do not have an identifier in the Revenue customer registration system. This means that they cannot be recorded in Revenue's case management system.¹ Revenue stated that, in the absence of turnover data, it is almost impossible to target unregistered businesses or to validate non-resident VAT returns effectively and efficiently. This means that Revenue is often dependent on the full co-operation of the trader when checking registration obligations, verifying returns and quantifying liabilities. The introduction of the CESOP system is designed to provide an EU-wide source of third-party payments data which will enable independent verification of returns and disclosures filed by non-resident traders.
- 15.37** Revenue considers that it is not practical to disaggregate e-commerce risk management activities from routine risk management activities except insofar as niche regulatory or compliance issues require specialist resources. Revenue stated that there are specific VAT risks involved with non-resident unregistered traders and for that reason, there are specialist areas dealing with particular areas of the digital economy but these are the exception.
- 15.38** One such specialist area, the non-resident online business (NROB) branch was established in October 2018 following a pilot project which commenced in January 2018 to
- develop a legal, procedural and technical capability for Revenue to meet its compliance obligations for non-resident unregistered traders under EU cross border e-commerce VAT regulations, and
 - ensure the VAT compliance of both registered and unregistered non-resident online traders that supply goods and digital services into Ireland.
- 15.39** The NROB branch is responsible for policy and systems development and for providing customer service, advice and support to non-resident online businesses which serve the Irish market under the various EU cross-border and e-commerce VAT schemes. From quarter one 2019, the branch comprised two teams — the registered traders compliance team and the unregistered traders compliance team.

¹ Up to July 2021, member states were required to adopt a threshold of either €35,000 or €100,000 for distance sales. Ireland's threshold was €35,000. The 2021 VAT on e-commerce package removed the distance sales thresholds. From July 2021, once the value of the goods (and certain services) sold in the previous 12 months reaches €10,000, the business needs to account for VAT at the rate applicable in the country where the customer is located.

- 15.40** Revenue stated that NROB is a small branch providing a niche function to non-resident online businesses and it has no role in other e-commerce compliance activities. The branch carried out 333 compliance interventions over the period 2018–2021, including 192 appraisals.¹ Of the 141 aspect queries and audits carried out, 83 cases yielded a total of €10.8 million.
- 15.41** Between 2018 and 2021, to address the risk of non-compliance of unregistered non-resident distance selling, Revenue carried out profiling of websites and issued letters to traders in other jurisdictions that may be selling to Ireland but not registered for VAT in Ireland.² The screening of unregistered cases was carried out on a part-time basis by two members of staff in the NROB branch. The aim of this work was to advise unregistered non-resident traders operating in the Irish market of Irish distance-selling requirements. The websites screened and contacted as part of this work were recorded on a standalone database.
- 15.42** Target traders are sourced from third-party data sources, local intelligence, reviews of ceased distance sellers and traders excluded from the MOSS scheme. Revenue reviewed the use of automated tools to assist with detecting unregistered traders. One of the analysis tools was downloaded for evaluation with a view to implementing it, but for a number of reasons including GDPR/security issues and the pending introduction of the OSS and CESOP, it was decided not to proceed with its implementation.
- 15.43** Sales and turnover data for these websites is not available and so it was not possible for Revenue to identify traders which exceed the Irish distance-sales registration threshold of €35,000 in a 12-month period. Accordingly, the letters issued to traders were primarily advisory in nature, setting out the rules around distance selling to Irish customers and outlining how a business can register for VAT. In order to try and identify subsequent registrations, the initial letter asked the trader to confirm whether they have exceeded the Irish distance selling threshold and provided details of registration procedures. The letter did not specify a reply date. In October 2019, Revenue introduced a reminder letter to issue two months after to prompt an outstanding reply. Where a reply was not received within three months, no further action could be taken by Revenue and the case was closed.
- 15.44** Between 2018 and 2021, there were just over 9,000 websites/traders profiled by Revenue. Each case worker records the results of the profiling carried out on individual spreadsheets which are combined and recorded on a master spreadsheet. Revenue is unable to quantify the number of registrations arising directly from the NROB branch contacts during this period as the registration function in Revenue is centralised and the branch are not involved in this process. However, Revenue stated that 127 traders which were contacted were subsequently identified through customer contacts and profiling, as having registered for VAT in Ireland. These 127 cases accounted for an Irish VAT uplift of approximately €22 million in declared VAT from their dates of registration to the end-June 2022 VAT period. Revenue believes that there are likely to be additional registrations and VAT uplift related to NROB activity that have not been identified.
- 15.45** Revenue stated that a more systematic approach to capturing the registration outcomes of the profiling carried out on unregistered traders would require either significant IT developments or the establishment of a dedicated registration function within NROB branch. The latter was considered in 2020 but the branch did not have the capability or capacity to undertake this function, particularly as the function was expected to wind-down following the implementation of the OSS in 2021.

¹ Appraisals are carried out to establish whether there is a need for any action. The outcome of an appraisal is a recommendation from the caseworker, as to the appropriate compliance intervention, i.e. aspect query, profile interview, audit or investigation. Alternatively, the caseworker may recommend that no further action is required, where the appraisal has clarified the risk(s). As a result, a yield is not expected from an appraisal.

² An intra-community distance sale of goods occurs when goods are dispatched or transported by, or on behalf of, a supplier in one European Union member state to certain customers in another member state.

- 15.46** Revenue stated that, reflecting the adoption of OSS across the EU, other changes in the EU regulatory environment which have reduced the risks of unregistered online trading, and the restructuring of the Irish online market following Brexit, the unregistered programme has been wound down. Since July 2021, the work of the unregistered compliance team has been focused on the administration of the OSS/IOSS case base, the management of various Brexit-related issues, the implementation of the EU CESOP programme in 2024 and the progression of a programme of IT developments needed to integrate OSS/IOSS more fully with Revenue systems. The unregistered compliance team was re-designated as a CESOP-focused team in September 2022.
- 15.47** As mentioned above, Revenue stated compliance activity on VAT registered traders with e-commerce related sales is carried out by all compliance branches. Revenue does not distinguish the level or outcome of VAT related e-commerce compliance activity from its total compliance activity. This is also the case for MOSS registered traders as it is not possible to identify the specific compliance activities carried out on MOSS traders.

Conclusions

- 15.48** An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The phenomenon of e-commerce means that businesses can operate in a market without ever establishing a physical presence in that country.
- 15.49** E-commerce sales are an important income stream for many businesses. The European Commission's 2022 report on *Digital Economy and Society Index* shows that 33% of Irish SMEs sell online, with 11% selling across borders — significantly above the EU averages of 18% and 9% respectively. There has also been a significant increase in flows of tax revenues between member state revenue authorities in respect of the amounts paid via Mini One Stop Shop since its introduction in 2015.
- 15.50** The growth of e-commerce poses a number of challenges to the administration of taxation systems with particular risks to the collection of VAT. To address these issues, the European Commission has introduced a number of changes in this area, for example, the introduction of the Mini One Stop Shop in 2015 and the more recent VAT on e-commerce package introduced in July 2021. The planned introduction of CESOP from January 2024 will also be a significant development allowing the transmission and exchange of payment data to assist cross-border VAT compliance.
- 15.51** Significant changes are being implemented at EU level to ensure that effective and coordinated arrangements are in place to manage the taxation system. With this in mind, this is an area that will be kept under review by my Office and may be reported upon again in the future, as necessary.

Revenue's strategy for e-commerce

- 15.52** While one of Revenue's corporate priorities for 2022 refers to active participation at EU level in respect of e-commerce, Revenue does not have a specific statement of strategy focussed on this area.
- 15.53** Revenue considers that they do not need a specific strategy for e-commerce as e-commerce rules at EU level have significantly reduced the risks in this area and the introduction of CESOP in 2024 is expected to add a further level of assurance.

Revenue's assessment of e-commerce risks

- 15.54** In July 2018, Revenue documented the e-commerce specific risks for a senior management e-commerce group. As part of this examination, Revenue updated its assessment of the risks and stated that many have either been addressed or largely mitigated by the introduction of the 'VAT on e-commerce package' in July 2021 and the planned introduction of CESOP from 1 January 2024.
- 15.55** In 2018, Revenue commenced requesting traders registering for the first time to provide their estimated percentage of online sales. However, the data received from newly registered traders is not recorded in a format suitable for extracting statistics, and data is not available from existing registered traders. As a result, Revenue has no way of identifying or capturing the volume and nature of online trade on an ongoing basis.
- 15.56** Revenue stated that it does not require taxpayers to quantify their e-commerce turnover separately given the challenges in defining such turnover, the additional costs to all parties and the relatively limited additional value of this data. Revenue has stated the value of a separate requirement for businesses to quantify e-commerce turnover is questionable as there is little evidence to suggest that the turnover from the digital channels of an established business presents a higher VAT risk than turnover from physical channels. Revenue added that it is not aware of any other EU member state which currently requests this data because the range and diversity of income streams associated with online and digital service models is enormous and is extremely challenging to define and verify on an ongoing basis.
- 15.57** Revenue stated that e-commerce activities are an integral part of risk management as most businesses have a mix of e-commerce and non-e-commerce sales. As a result, it is not possible to disaggregate e-commerce risk management activities from routine risk management activities except for niche regulatory or compliance issues which require specialist resources.

E-commerce compliance activity

- 15.58** All Revenue compliance branches are responsible for the compliance of businesses in their case base, whether their income derives from e-commerce sales, physical sales or otherwise. Revenue stated that interventions dealing with businesses which operate online sales channels will not usually be recorded for statistical purposes as 'e-commerce' interventions because online business models are now normalised, widespread and integral to businesses in all sectors of the economy.
- 15.59** Compliance activity on VAT registered traders with e-commerce related sales is carried out by all Revenue compliance branches. Revenue has not established systems to distinguish the level or outcome of VAT related e-commerce compliance activity from Revenue's total compliance activity. This is also the case for MOSS registered traders.
- 15.60** There are specific VAT risks involved with distance sales traders and Revenue has established specialist units dealing with particular areas of the digital economy, for example the non-resident online business (NROB) branch. This branch carried out compliance work in this area between 2018 and 2021 that yielded €10.8 million. Revenue also noted that a minimum additional Irish VAT uplift of almost €22 million has been declared by previously unregistered distance sellers which are known to have registered as a result of work carried out by the branch's unregistered compliance programme.

- 15.61** Revenue stated that from 2021, the NROB branch's non-resident unregistered traders programme is being wound down. The work of the unregistered compliance team is focused on both the implementation of the EU CESOP programme in 2024 and a programme of IT developments needed to integrate OSS/IOSS more fully with Revenue systems. The team was re-designated accordingly in September 2022.

Annex 15A VAT on e-commerce package

From 1 July 2021, a number of changes were made to the VAT Directive to simplify VAT obligations for e-commerce activities. The changes made to the Directive were transposed into Irish law in June 2021 through a Regulation made under section 3 of the European Communities Act 1972.

The new measures were introduced to facilitate cross-border trade, combat VAT fraud and ensure fair competition for EU businesses. The new measures include

- an extension of the transactions that can be declared in the Mini-One-Stop-Shop (MOSS) leading to the creation of the One Stop Shop (OSS)
- introduction of a new Import-One-Stop-Shop (IOSS)
- treatment of online marketplaces and platforms as 'deemed suppliers' for certain transactions
- introduction of special arrangements for certain imports of goods.

Extension of MOSS

MOSS was introduced in 2015 and applied to the supply of telecommunications, broadcasting and electronic (TBE) services to non-taxable persons. MOSS was open to both suppliers established in the EU and suppliers established outside of the EU. From 1 July 2021, the scope of MOSS was extended to include a wider range of supplies of goods and services when made to customers in the EU and it is now referred to as a One-Stop-Shop (OSS). The OSS is designed for companies based inside and outside of the EU selling goods/services in EU countries.

Under the OSS, a supplier can register electronically in a member state and declare and pay the VAT due on cross-border business-to-customer supplies of services and intra-community distance sales of goods in the EU on a quarterly basis. Similar to MOSS, the OSS is an optional scheme and if it is not availed of the supplier will be required to register in each member state in which they make supplies to consumers.

Introduction of IOSS

From 1 July 2021, the low value consignment VAT relief of €22 was abolished and all goods imported into the EU are now subject to VAT.¹ A new Import One Stop Shop (IOSS) was introduced for the declaration of VAT due on distance sales of goods imported from outside the EU. The IOSS is designed for companies selling goods to customers in the EU, in consignments of an intrinsic value of €150 or less. For consignments of a higher value, standard VAT import rules apply. The use of this scheme is not mandatory, and it is open to both suppliers established in the EU and suppliers established outside of the EU. If a taxable person does not have an establishment in the EU and wishes to use the IOSS, they are obliged to appoint an intermediary.² Although the VAT liability remains the liability of the supplier represented by the intermediary, the intermediary is responsible for the declaration and payment of the VAT due.

¹ The current customs duty exemption for goods imported into the EU up to an intrinsic value of €150 remains unchanged.

² The role of the intermediary is to fulfil the obligations of the IOSS on behalf of the supplier.

The IOSS allows traders to register and declare import VAT due in all member states through a monthly IOSS return in the member state where they have registered for the scheme. Where the IOSS applies, the customer will be charged the VAT due on the supply at the time of purchase and the importation of the goods will not be subject to VAT. The VAT collected by the supplier will instead be remitted through their monthly IOSS return. This scheme only applies to imported goods, excluding goods subject to excise duty, where the intrinsic value of the consignment does not exceed €150.

Online marketplaces and platforms

New rules were introduced for online marketplaces and platforms facilitating supplies of goods in the EU. Where online marketplaces or platforms are facilitating certain supplies of goods, they will be deemed to be making the supplies themselves. This means that the online marketplace or platform will be responsible for accounting for the VAT on those supplies.

Where an online marketplace or platform is deemed to be making supplies of goods, they will be treated as any other supplier of goods which means they can opt to register for the OSS or the IOSS or both, depending on the supplies they are making. The rules of those schemes apply in the same way to that online marketplace or platform as they do to other suppliers using those schemes.

Special arrangements for certain imports

Prior to 1 July 2021, goods with a value of less than €22 were not subject to import VAT on importation into the EU. As mentioned above, from 1 July 2021, this relief was abolished and VAT becomes chargeable on all imports, regardless of their value. Special arrangements have been introduced, for goods with an intrinsic value not exceeding €150, as a simplification for the declaration and payment of import VAT as an alternative to the IOSS and the standard rules relating to VAT due on import. The rules are designed to be used by postal operators, express carriers or customs agents who declare low-value goods for importation.

When low-value goods are ordered from outside the EU by an EU consumer then VAT is generally due in the EU by the customer who orders the goods. Under the special arrangements, the customer will pay VAT to the person presenting the goods to customs, such as a postal operator or customs agent.

All goods imported under the special arrangements are subject to the standard rate of VAT. The postal operator will pay the import VAT due to Revenue on the 15th day of the month following the month in which the goods are imported.

16 Revenue's suspension of periodic reviews of tax clearance certificates

- 16.1** The purpose of Revenue's tax clearance scheme is to ensure that persons who derive an economic benefit from a licence or permit to conduct certain activities in the State, or who are in receipt of contracts, grants, subsidies and other payments from the State, are in compliance with their tax and customs obligations.
- 16.2** A tax clearance certificate (TCC) is confirmation from Revenue that a person's tax and customs affairs are in order. There are two elements to this
- the taxpayer's returns are up-to-date; and
 - any taxes, interest or penalties required to be paid have been remitted to Revenue.¹
- 16.3** A current TCC is required in several situations, including being eligible to receive certain government grants and to enter into a contract for the supply of goods and services to a public body. The validity of a TCC automatically expires one year after issue for grant application and Covid-19 support purposes, and after four years for other purposes.
- 16.4** Revenue has an online verification system that allows individuals or public bodies to verify the tax clearance status of persons or businesses through the Revenue Online Service (ROS) or the Government Networks service.^{2,3}
- 16.5** Revenue's eTax Clearance (eTC) system is designed automatically to check the tax compliance of holders of a TCC every six months to determine whether their tax affairs are in order — those who are no longer compliant have their tax clearance status rescinded (withdrawn).
- 16.6** In March 2020, as part of its response to Covid-19 restrictions on businesses, Revenue suspended its automated 'periodic reviews' of TCCs. At that time, approximately 324,000 TCCs were in place. Taxpayers who held tax clearance at that point retained it and the tax clearance status was not subject to the six-monthly periodic review that would apply in normal circumstances. Revenue stated that this was a policy decision at the outset of the pandemic as it was expected that businesses would be subject to restrictions and face difficult trading circumstances.
- 16.7** The requirement to hold and maintain tax clearance status was relied upon for a number of Revenue administered Covid-19 support schemes introduced in response to the Covid-19 pandemic (as shown in Figure 16.1). Entry on to the Covid-19 support schemes was permitted (providing that all other relevant criteria were met) for those taxpayers whose tax clearance status was extended without review. Those who did not already have tax clearance had to apply for it, in order to qualify for access to the schemes. A total of just under 240,000 new TCCs were issued in the period 13 March 2020 to the end of June 2022.

1 Revenue may issue a TCC to a taxpayer who has tax arrears where the tax arrears are covered by an instalment arrangement.

2 ROS provides taxpayers with a secure facility to file tax returns, pay tax liabilities and access their tax details.

3 Government Networks is a private, managed, wide area network connecting public service bodies on a data, voice and video capable network.

Figure 16.1 Covid-19 support schemes administered by Revenue^a

Scheme	Operated from	Number of recipients	Average payment €	Total payments €m
Employer Wage Subsidy Scheme (EWSS) ^{b,c}	September 2020 to May 2022	51,800	131,973	6,836
Covid-19 Restrictions Support Scheme (CRSS) ^c	October 2020 to January 2022	22,108	32,533	719
Business Resumption Support Scheme (BRSS) ^c	September 2021 to November 2021	1,988	3,960	8
Total		75,896	—	7,563

Source: Revenue Commissioners

Notes: a Figures provided by Revenue are as at 23 June 2022.

b The Temporary Wage Subsidy Scheme (TWSS) was in place from March 2020 and was replaced by the EWSS in September 2020. TWSS did not require claimants to hold tax clearance. An examination of the controls over the TWSS is included in the Comptroller and Auditor General's *Report on the Accounts of Public Services 2020*, chapter 12.

c The EWSS was provided for under the Emergency Measures in the Public Interest (Covid-19) Act 2020. The CRSS and BRSS were provided for under the Finance Act 2020 and the Finance (Covid-19 and Miscellaneous Provisions) Act 2021, respectively.

16.8 Revenue also administered the 'stay and spend' scheme. This scheme made a tax credit available to taxpayers who incurred 'qualifying expenditure' from 1 October 2020 to 30 April 2021, subject to certain limits and conditions being met. Qualifying service providers — mainly holiday accommodation and 'eat-in' food and drink businesses — were required to register with Revenue and to hold a TCC throughout the duration of the eligibility period.

16.9 Exceptional arrangements introduced in May 2020 allowed all businesses dealt with by Revenue's Business Division to file their tax returns in the normal way, but to 'park' their VAT and PAYE liabilities, interest free. Revenue has stated that the purpose of the arrangement was to promote the filing of returns, without the obligation of payment. This was referred to as debt warehousing.¹

16.10 Revenue carried out three targeted campaigns in 2021 in order to identify and engage with cohorts of taxpayers with tax return compliance issues. The first two campaigns focused on businesses that were registered for EWSS and CRSS with the third campaign focusing on a broader cohort.² Revenue stated that the key aim of these three campaigns was to get taxpayers to file their tax returns, leading to visibility, for both Revenue and the taxpayers concerned, of the full extent of any debt being warehoused.

16.11 Figure 16.2 shows the outcome of the two tax clearance campaigns undertaken in 2021 that targeted businesses in receipt of payments under EWSS/CRSS.

1 Interest on late payment of VAT and PAYE (employer) was suspended for small enterprises automatically and for medium and larger businesses on request. VAT and PAYE (employer) debts associated with Covid-19 could also be warehoused.

2 The focus of the third campaign was on the cases dealt with by Large Corporates Division, Large Cases - High Wealth Individuals Division and Medium Enterprises Division.

Figure 16.2 Reviews of tax clearance status of EWSS/CRSS recipients, 2021

Review period	2021	
	February to May	July to September
Number of recipients	39,580	36,397
Number of recipients identified as non compliant for filing	11,064 (28%)	6,768 (19%)
Number of recipients where tax clearance rescinded	2,292 (6%)	2,547 (7%)

Source: Revenue Commissioners

- 16.12** In each round, a proportion of claimants were found not to be up to date with their filing of returns. Where this was found to be the case, Revenue engaged with the claimants to request that their returns be brought into compliance by a specified date. Where this engagement did not result in the required compliance, the tax clearance status was rescinded and no further Covid-19 support scheme payments were made.
- 16.13** In the first round of testing (5 February 2021), a total of 11,064 claimants (28%) were identified as no longer being compliant in relation to their returns. These claimants were contacted by Revenue and asked to bring their outstanding returns up to date, at the latest by 21 May 2021. A total of 8,772 were able to do so by the specified date, but 2,292 claimants (6%) were identified as still having outstanding returns and had their TCCs rescinded. At that point, their Covid-19 support payments also ceased.
- 16.14** In the second round of testing (30 July 2021), a total of 6,768 claimants (19%) were identified as no longer being compliant in relation to their returns. These claimants were also contacted by Revenue and asked to bring their outstanding returns up to date, at the latest by 14 September 2021. A total of 4,221 were able to do so by the specified date, but 2,547 claimants (7%) were identified as still having outstanding returns and so also had their TCCs rescinded. Their Covid-19 support payments also ceased.

- 16.15** Revenue has stated that all of the claimants identified as non-compliant in terms of their returns in 2021 had TCCs when they first claimed EWSS/CRSS payments, and (subject to other criteria also being satisfied) would have been eligible for the payments they received while their TCCs remained valid. A period of forbearance was extended, to allow non-compliant taxpayers to file returns and thus renew their compliance, and those still non-compliant at the end of that period had their tax clearance rescinded. Revenue is satisfied that none of the payments made under the schemes represented ineligible expenditure.
- 16.16** Revenue re-commenced the periodic review of TCC holders on a rolling basis from May 2022. The review process will be completed for all TCC holders by the end of September 2022.
- 16.17** Revenue has not undertaken a retrospective review to identify the date when holders of TCCs became non-compliant in relation to their tax returns and could have had their TCCs rescinded. Revenue stated there is no legal basis to estimate the amounts of any EWSS and CRSS payments that were made to claimants whose TCCs were rescinded. Revenue did not process any payments under these schemes once tax clearance was rescinded.

Views of the Accounting Officer

- 16.18** At the outset of the COVID-19 pandemic in March 2020, Revenue took some key policy decisions to assist businesses to cope with unprecedented cash flow and trading difficulties arising from the public health restrictions introduced at the time. One of those policies was to allow what were at that stage tax compliant businesses retain their tax clearance status. This decision was in line with overall Government direction and policy at the time to optimise support for businesses in what was an unprecedented challenge facing the country and most businesses. This was one of several administrative policy decisions in relation to debt collection, interest and enforcement. At the same time, and later into 2020 and 2021, the Government introduced and legislated for the various COVID-19 support schemes which were administered by Revenue — the TWSS, the debt warehouse scheme, CRSS, EWSS and BRSS — to enable taxpayers avail of vital financial supports throughout the pandemic, mitigating the risk of significant business closures and loss of employment.
- 16.19** It is important to note that what was delivered was not a suspension of tax clearance but rather an extension of the then existing tax clearance status as of a specific time i.e. March 2020. It is also important to have regard to the fact that the debt warehouse scheme introduced on an administrative basis from May 2020 and subsequently legislated for, specifically provided for the non-payment of certain current taxes as they arose and the parking of those debts in the warehouse initially on an interest free basis. The retention of tax clearance status was, therefore, a pragmatic and administratively straightforward approach by Revenue that aligned fully with the provisions of the debt warehouse scheme, designed to support business during the pandemic when businesses were subject to restrictions and faced extremely difficult trading circumstances.
- 16.20** To summarise, the subsidy and support schemes were payable to eligible businesses holding a TCC under the provisions of the relevant legislation namely the Emergency Measures in the Public Interest (Covid-19) Act 2020 in respect of the EWSS and the Finance Act 2020 in respect of the CRSS. Revenue did not pay a subsidy or a support to any business that did not hold a TCC.

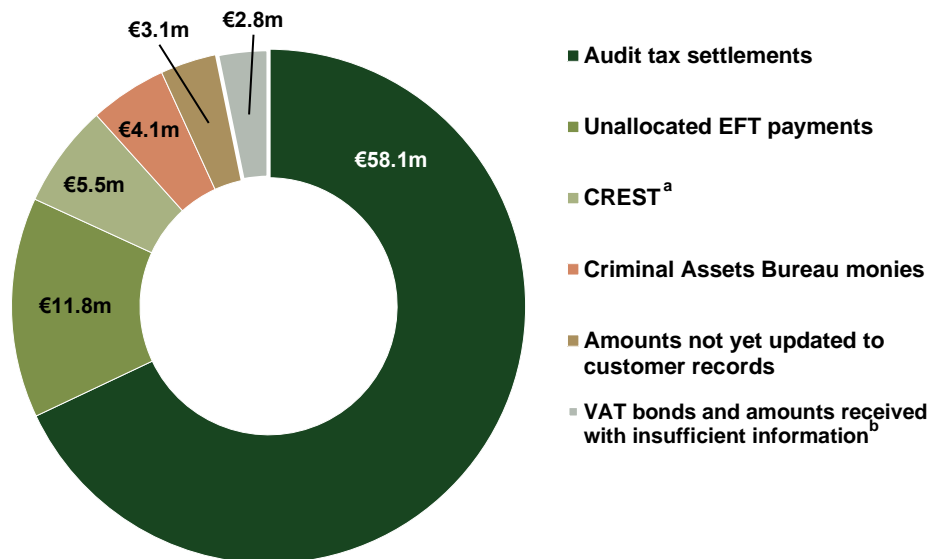
Conclusions

- 16.21** Revenue suspended its established control of six-monthly automated checks of the tax clearance status of businesses in March 2020, in recognition of the very significant trading difficulties resulting from Covid-19 related restrictions.
- 16.22** When EWSS and CRSS were introduced in September 2020 and October 2020 respectively, there was a requirement for claimants to hold and maintain tax clearance status. The introduction of the debt warehousing scheme during Covid-19 meant that being tax compliant was much less onerous than it had been previously. Taxpayers who availed of debt warehousing could remain tax compliant by filing their tax returns on time with no immediate obligation to pay any tax liability associated with the returns.
- 16.23** In February 2021 and July 2021, Revenue undertook two targeted campaigns focused on CRSS and EWSS recipients with a view to identifying and engaging with claimants with tax return compliance issues. Where Revenue identified there was a non-compliance issue, it extended forbearance for a significant period to allow claimants to file required returns. Claimants who failed to come into compliance by the end of the forbearance period had their claims suspended. Revenue is satisfied that there were no payments made under the two schemes to businesses whose tax clearance status was rescinded on foot of these campaigns and that therefore no ineligible payments took place.
- 16.24** After Revenue's engagement with claimants whose tax returns were not up to date, there remained a significant number of claimants who had their tax clearance rescinded. On that basis, I have a concern that a significant number of claimants of EWSS and CRSS continued to receive financial support under the schemes when they were not up to date with their tax returns. Had they presented as new claimants in those circumstances, they would not have been admitted to the schemes, and would not have received the payments they did receive.

17 Overstatement of certain unallocated tax deposits

- 17.1** The primary function of the Office of the Revenue Commissioners (Revenue) is the assessment and collection of taxes and duties. The total net receipts collected by Revenue on behalf of the Exchequer for 2021 was €67.5 billion (€56.2 billion in 2020).
- 17.2** The statement of balances in the revenue account for the year ended 31 December 2021 includes a liability amount of €85.4 million in respect of 'unallocated tax deposits' (UTDs) (see Figure 17.1).^{1,2} These include
- receipts that cannot be allocated to either a taxhead or taxpayer record at year-end
 - payments made on account during tax audits and audit settlements
 - non-audit payments for which accounting instructions have not yet been completed.
- 17.3** Although recognised as a liability in the revenue accounts statement of balances, UTD receipts are regularly lodged to the Central Fund, along with other Revenue transfers, to avoid large cash sums being held outside the Exchequer for extended periods.

Figure 17.1 Unallocated tax deposits reported at end 2021



¹ The official title of the revenue account is the account of the receipt of revenue of the State collected by the Revenue Commissioners.

² The UTD balance of €85.4 million is included in the liabilities figure of €99.1 million in respect of amounts awaiting receipting and allocation.

Source: Revenue Commissioners

- Notes:
- a CREST is an electronic clearing system which settles transfers of shares that are dealt with on selected exchanges.
 - b VAT bonds are a security required by Revenue where there is a perceived risk relating to a particular taxpayer. This category also includes miscellaneous amounts received with insufficient information for allocation to the relevant taxpayer or taxhead record.

- 17.4** Payments are received in a number of ways from taxpayers, for example, by EFT, cheque and via the Revenue Online Service (ROS).¹ Once a payment is received, a work item is generated on Revenue's integrated taxation processing (ITP) system, to be processed by a caseworker.
- 17.5** For all non-ROS payments on account, the caseworker updates the taxpayer record on the ITP system with all necessary details, including the related taxheads. This automatically updates Revenue's financial management system. For ROS payments on account, a separate, additional step is required by the caseworker to record the related taxhead on the financial management system. The information on the financial management system is used to produce the annual revenue account.
- 17.6** As part of the audit of the 2021 revenue account, the audit team requested an aged listing of the taxpayers who had paid the audit settlements to the value of €58.1 million that were recorded in the UTD balance at the year-end (as shown in Figure 17.1). Based on further testing, the audit concluded that the amount that should have been recorded as audit tax settlement UTDs was in fact circa €25.5 million i.e. approximately €32.5 million less than the amount recorded in the revenue account.
- 17.7** In response to the audit finding, Revenue identified errors that had arisen due to caseworkers failing in some cases to carry out the additional step on the financial management system to record the relevant taxheads.
- 17.8** While this error did not affect the taxpayer record or the prompt transfer of funds to the Exchequer, it did result in the UTD balance in the revenue account at 31 December 2021 being overstated by an estimated €32.5 million and the 2021 taxhead receipts being understated by the same amount. The settlement amounts of €32.5 million were not recorded in the relevant taxhead receipts until April 2022.
- 17.9** At the request of the audit, the statement on internal financial control included with the 2021 revenue account was amended to include a disclosure on the error of €32.5 million. Revenue considered that the error did not represent a material misstatement in terms of the revenue account, so no amendment was made to the account in this regard.
- 17.10** Revenue is planning to introduce an ICT system enhancement to eliminate the additional step that is required to record the taxhead on the financial management system when payments on account are recorded in ROS. This will ensure that the UTD allocation to the relevant taxhead(s) will happen automatically when the taxpayer record is updated. This enhancement is planned for October 2022.

¹ Revenue Online Service (ROS) enables taxpayers/agents to view their/their client's current position with Revenue for various taxes and levies, file tax returns and forms and make payments for these taxes online.

Conclusions and recommendation

- 17.11** The audit of the 2021 revenue account found that the taxhead receipts for 2021 were understated by an estimated €32.5 million as audit tax settlements made by taxpayers were incorrectly included in the year-end UTD balance rather than being allocated to the relevant taxhead(s). Relative to reported receipts of €67.5 billion, this represents an understatement of 0.05%, which in accounting terms would not be regarded as a material error or misstatement requiring correction in financial statements.
- 17.12** The audit tax settlement payments of €32.5 million were transferred to the Exchequer in a timely way and allocated to the taxpayers' records correctly.
- 17.13** Manual interventions increase the risk of errors that may result in account balances and transactions being materially misstated in financial statements. While manual interventions may be a necessary part of the Revenue audit and settlements process, there should be a strong control in place to ensure those transactions are processed correctly.

Recommendation 17.1

Automated solutions should be implemented to replace the need for any manual interventions identified, where possible. Where not possible, Revenue should implement a robust system of controls to ensure the required manual interventions are carried out correctly and in full.

Accounting Officer's response

Agreed.

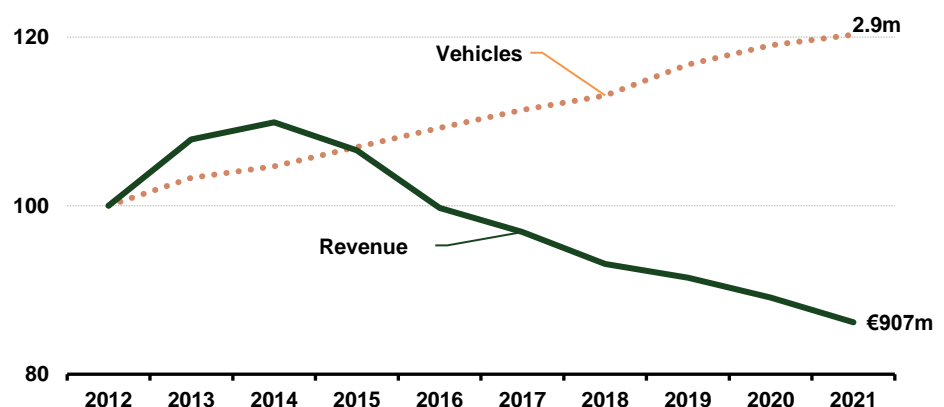
The system enhancement to ensure the automatic reallocation of payments from UTD to the appropriate taxhead record when taxpayer records are updated is on schedule for release in October 2022. Current accounting controls are being strengthened to ensure that audit settlement payments recorded as UTD balances are verified as part of the month-end accounting process.

The monthly reconciliation exercise and systems enhancement will ensure that all future reallocations from UTD will be reported correctly in the revenue account.

18 Motor tax receipts

- 18.1** A vehicle used in a public place in Ireland is liable to motor tax.¹ In general, the amount of motor tax charged for a vehicle is graduated, based on either the vehicle's design CO₂ emission level, or the size of its engine capacity (see Annex 18A).² There is a flat rate motor tax charge of €120 a year for a fully electric vehicle.
- 18.2** Motor tax can be paid online or in a motor tax office. In 2021, a total of €907 million in tax was collected, of which 86% was paid online.
- 18.3** The Department of Transport (the Department) and the local authorities are responsible for the administration and collection of motor tax.
- The Department is responsible for motor tax policy and legislation, online motor tax services and managing the national vehicle and driver file (NVDF) — a database containing details of registered vehicles and their owners as well as licensed drivers in the country.
 - The local authorities are responsible for operating the motor tax offices.³
- 18.4** The financial transactions for motor tax are managed by the Department through the motor tax account. The Department holds a bank account to allow for the collection and allocation of motor tax, and transfers that income to the Central Fund of the Exchequer.
- 18.5** While the number of vehicles taxed has been increasing, the revenue collected has fallen significantly from almost €1.2 billion in 2014 to around €907 million in 2021 (see Figure 18.1).

Figure 18.1 Index of number of vehicles taxed at year end, and motor tax revenue collected, 2012 to 2021 (2012 = 100)



¹ Certain vehicles are exempt from paying motor tax. These include vehicles exempted under the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994 (SI 353/1994).

² Commercial vehicles are assessed on the unladen weight of the vehicle i.e. the weight when it isn't carrying a load.

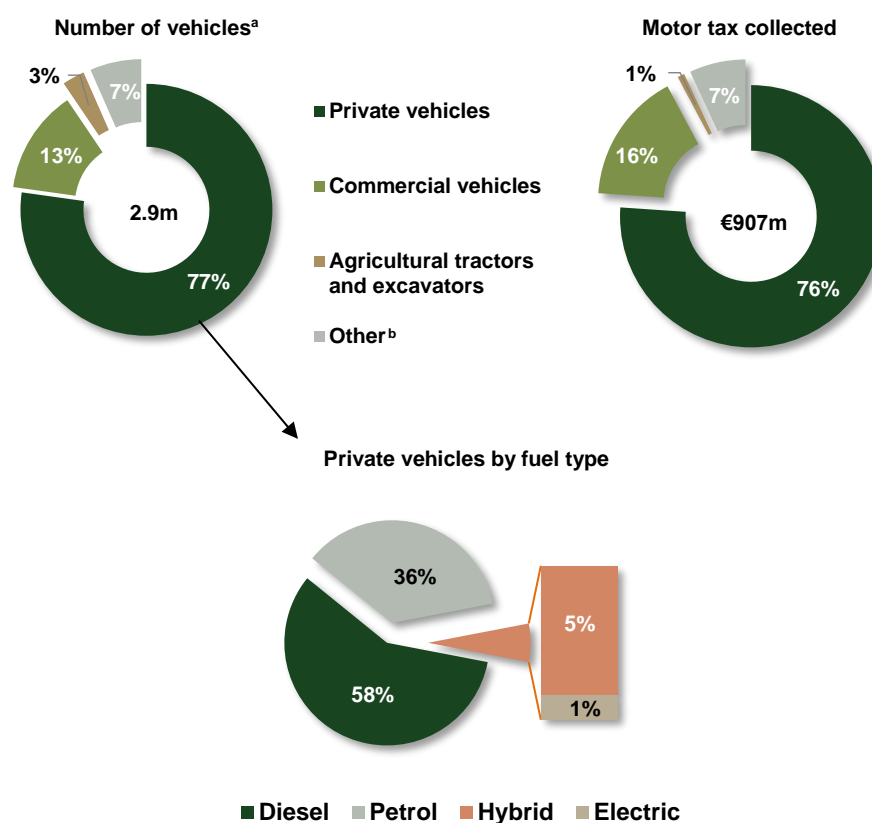
³ Motor tax offices are designated in 42 locations across 26 local authorities.

Source: Department of Transport

18.6 This report examines the administration and collection of motor tax, and the extent to which the Department has implemented the recommendations contained in a previous report.¹

18.7 The analysis presented in this report is based on data extracted from the NVDF by the Department of Transport. The report focuses in the main on motor tax collected in respect of private (non-commercial) vehicles, which accounted for around 77% of the vehicles on Irish roads in 2021, and for 76% of the motor tax income (see Figure 18.2).

Figure 18.2 Vehicle population and motor tax income by vehicle type, 2021



Source: Department of Transport

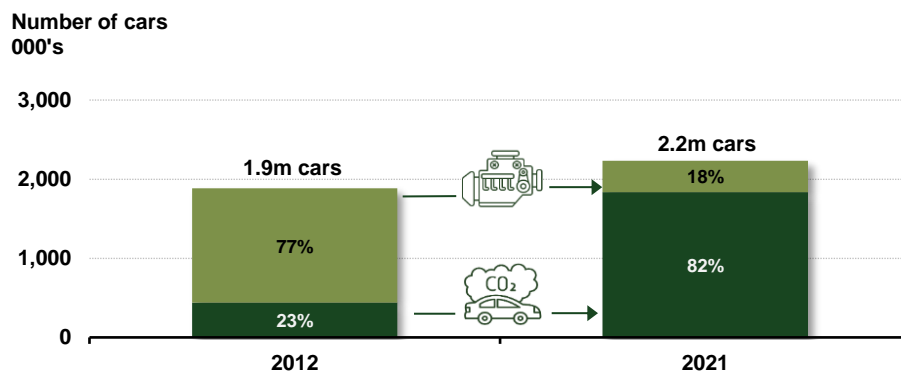
Notes: a Almost 3.1 million vehicles were taxed at some point during 2021. Of these, around 2.9 million were taxed as at 31 December 2021.

b Other vehicles comprise a variety of vehicles that include vintage vehicles, motorcycles, taxis and caravans (see Annex 18B). This category also includes motor tax arrears of €45 million for all vehicles.

Private vehicles motor tax income

- 18.8** In 2021, motor tax income from private vehicles was almost €691 million. For the majority of private cars, the motor tax rate was calculated on the basis of the vehicle's CO₂ emission levels, a significant change when compared to 2012 (see Figure 18.3).

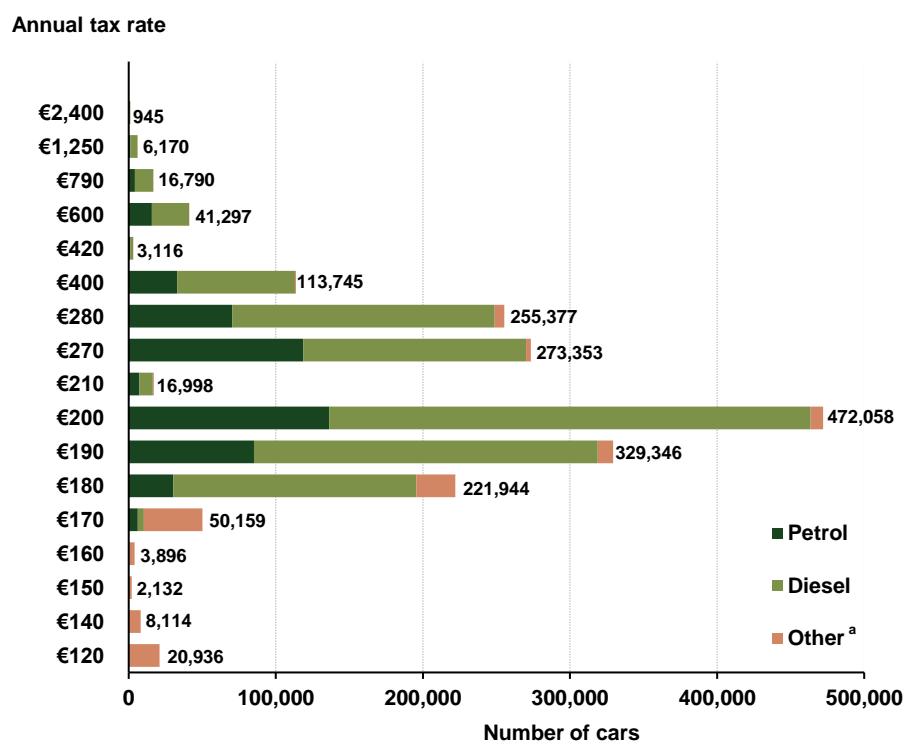
Figure 18.3 Basis of assessment for private cars, 2012 compared to 2021



Source: Department of Transport

- 18.9** As shown in Figure 18.4, around 60% (1.1 million) of private cars taxed on a CO₂ emission basis in 2021 were in the lowest CO₂ emission bands attracting lower rates of motor tax (ranging from €120 to €200).

Figure 18.4 CO₂ emission bands by fuel type for private cars, 2021



Source: Department of Transport

Note: a Other includes petrol/electric (77,357), petrol/plug in hybrid (23,012), electric (20,950), ethanol/petrol (5,560), diesel/electric (3,558), diesel/ plug in hybrid (651), petrol and gas (339) and other (9).

Other motor tax income

- 18.10** Just over 385,000 commercial vehicles were taxed as of 31 December 2021 contributing a total of €146 million in motor tax income. The motor tax assessment for commercial vehicles is based on unladen weight i.e. the weight when it isn't carrying a load.
- 18.11** Almost 274,000 vehicles taxed during 2021 were not classified as private or commercial vehicles (see Annex 18B). These agricultural and other vehicles contributed around €25 million to motor tax receipts in 2021. Certain vehicles such as emergency vehicles, diplomatic vehicles and vehicles used by disabled drivers or passengers are exempt from motor tax.¹

Motor tax arrears

- 18.12** For second hand vehicles that had been taxed before, motor tax arrears become due from the beginning of the month after sale. For brand new or imported vehicles, motor tax arrears become due from the beginning of the month after registration. Monthly arrears are charged at one tenth of the annual rate.² Arrears paid in 2021 were around €45 million.

Legal case

- 18.13** In October 2015, the Court of Appeal ruled that the weight of a semi-trailer should not be considered when assessing the weight of an articulated vehicle.³ On foot of this ruling, an action was subsequently lodged in the High Court seeking a refund of historic rates of motor tax paid. The claim is for just over €3 million but the action may lead to similar claims to follow. The case has yet to come before the court.

¹ Owners of such vehicles are obliged to obtain and display a disc if the vehicle is used in a public space.

² Finance (No. 2) Act, 1992 as amended by the Non-Use of Motor Vehicles Act 2013.

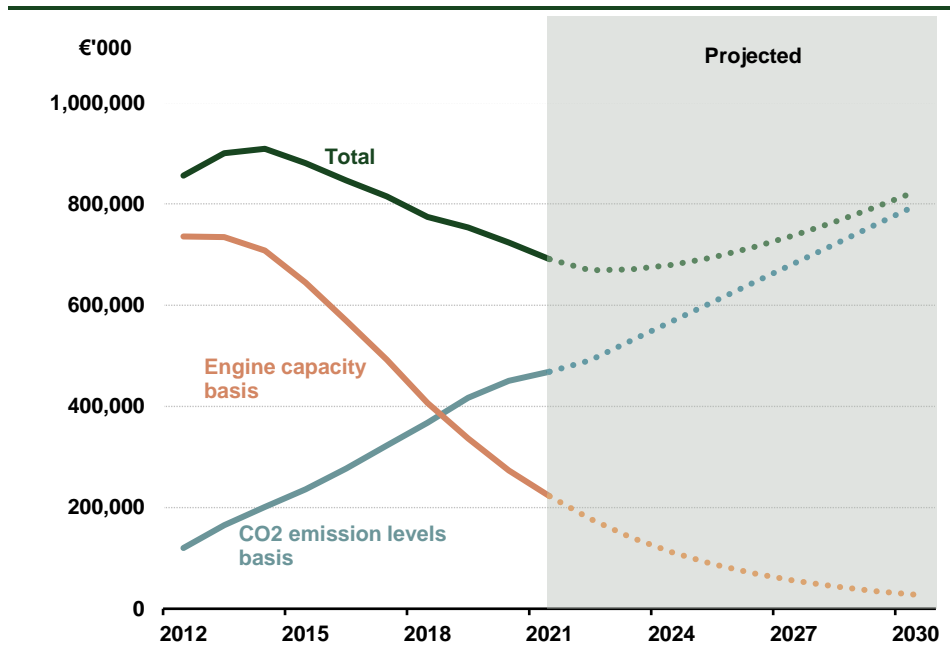
³ Prior to the Court of Appeals ruling, for articulated vehicles, the unladen weight was considered the weight of the tractor unit plus the weight of the heaviest semi-trailer to be used during the period of the licence. Amending legislation (Motor Vehicles (Duties and Licences) Act 2015) was passed in December 2015.

⁴ The Worldwide Harmonised Light Vehicle Tests Procedure replaced the New European Driving Cycle. These procedures are designed to assess the emission levels of car engines and fuel economy in passenger cars.

Forecast motor tax income

- 18.14** Forecasts of future motor tax income prepared by the Department predict that the decline in motor tax income from private vehicles will level off in 2023. Thereafter motor tax income is predicted to increase year on year back to 2017 levels by 2030 (see Figure 18.5).
- 18.15** The Department stated that the forecast figures are based on the assumptions that the average trend in the last five years broadly continues and that there will be no change in motor tax policy. However, the outcomes may be impacted by factors not modelled including but not limited to
- overall economic performance
 - the introduction of the Worldwide Harmonised Light Vehicle Tests Procedures (WLTP) for vehicles registered on or after 1 January 2021⁴
 - the ongoing impact of Covid-19 and Brexit on the economy
 - changes in car buying behaviour, in particular the further rollout of Government policies and incentives to encourage faster take up of electric vehicles.

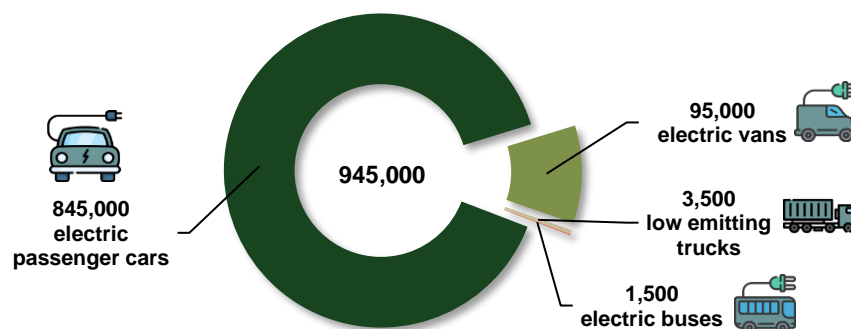
Figure 18.5 Total private vehicles motor tax income 2012 to 2021, and projected income 2022 to 2030



Source: Department of Transport

Impact of electric vehicle targets on tax base

- 18.16** Based on the past five years' growth in the number of electric vehicles, the Department's projection is that the number of electric vehicles will increase from around 21,000 in 2021 to around 416,000 by 2030. The projected income from motor tax indicated in Figure 18.5 incorporates this projected trend. The forecast does not incorporate the target take up of electric vehicles envisaged under the Government's Climate Action Plan 2021.
- 18.17** The programme for government 2020 has committed to an average 7% per annum reduction in overall greenhouse gas emissions from 2021 to 2030 (a 51% reduction over the decade) to achieving net zero emissions by 2050. The Climate Action Plan 2021 sets out planned actions to achieving this target. One of the actions includes increasing the number of electric vehicles and low emitting vehicles on the road to 945,000 by 2030 (see Figure 18.6).

Figure 18.6 Target electric and low emitting vehicles by 2030

Source: Climate action plan, 2021

1 This estimate is based on an extra 429,000 EV's by 2030 in addition to the 416,000 included in the projections at an average reduction in motor tax paid of €136.

2 The number of motor tax transactions greatly exceeds the number of vehicles, as most vehicles can be taxed for a period of three, six or twelve months.

3 Motor tax renewal currently cannot be completed online for island vehicles, school buses and large public service vehicles. First time payment of motor tax cannot be completed online for commercial vehicles, motor caravans, exempt State owned vehicle, exempt emergency vehicles, diplomatic vehicles, rescue vehicles and youth community buses. Tax class changes from exempt to private and from private to vintage cannot be completed online.

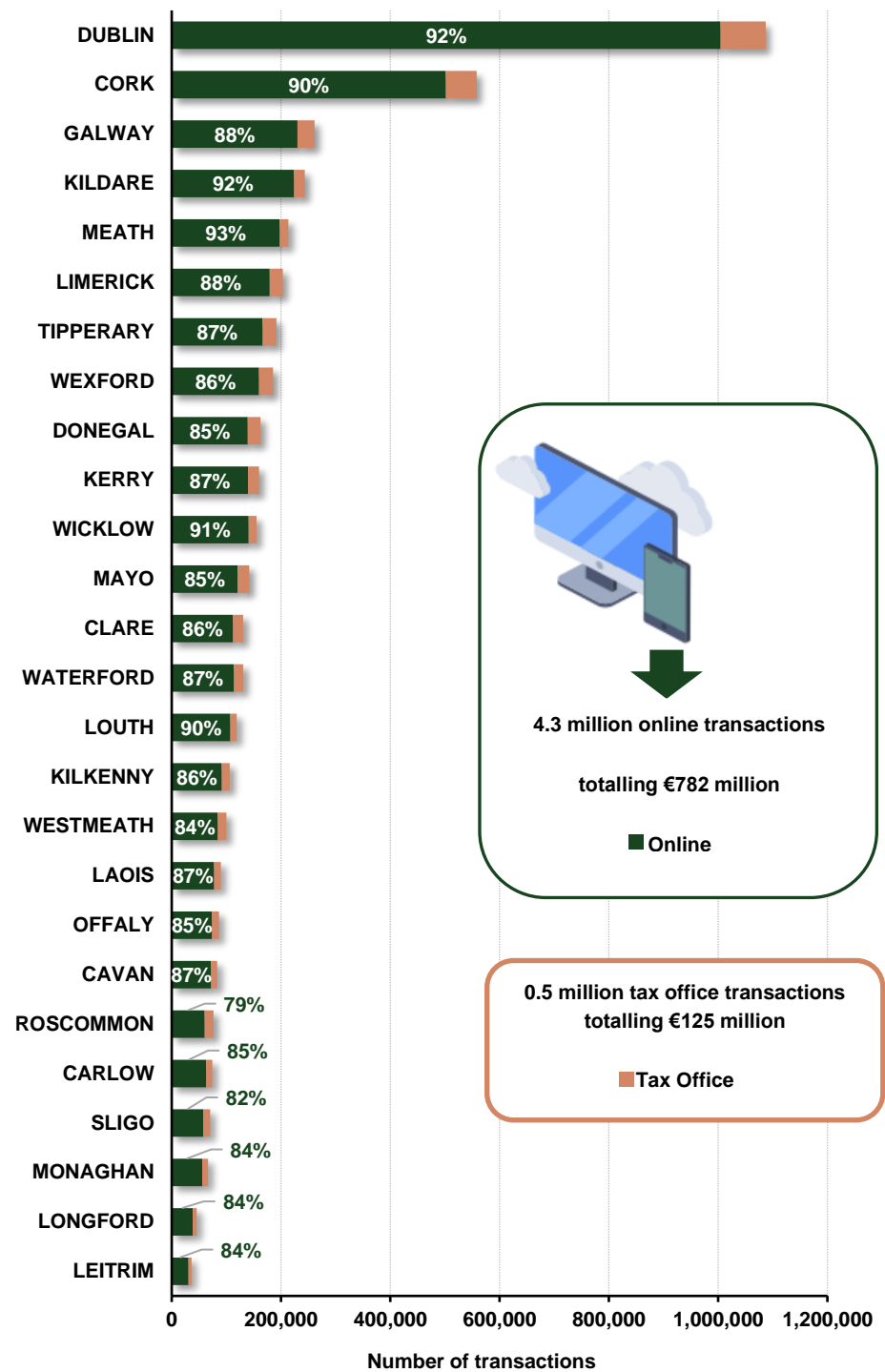
18.18 The Department stated that a key factor in the actual outturn in future motor tax receipts will be the extent of growth in electric vehicles on the road. If the climate action plan target for electric passenger vehicles is reached, the Department estimates, that this could result in a reduction of around €58 million in the projected motor tax income for 2030.¹

Motor tax payments

18.19 Motor tax can be paid either online or in a local motor tax office. In 2021, there were almost 4.8 million payment transactions, in respect of all vehicles, of which around 89% were completed online (see Figure 18.7).^{2,3} This is a significant change since 2012 when only half of the motor tax transactions were completed online.

18.20 The year on year increases in online transactions since 2012 were reasonably steady with the largest increases occurring in 2014 and 2020 — 8% and 9% respectively. The increase in 2014 was partly due to the introduction of online renewal for light commercial vehicles and the 2020 increase was partly due to the COVID 19 pandemic.

Figure 18.7 Number of transactions online by county, 2021

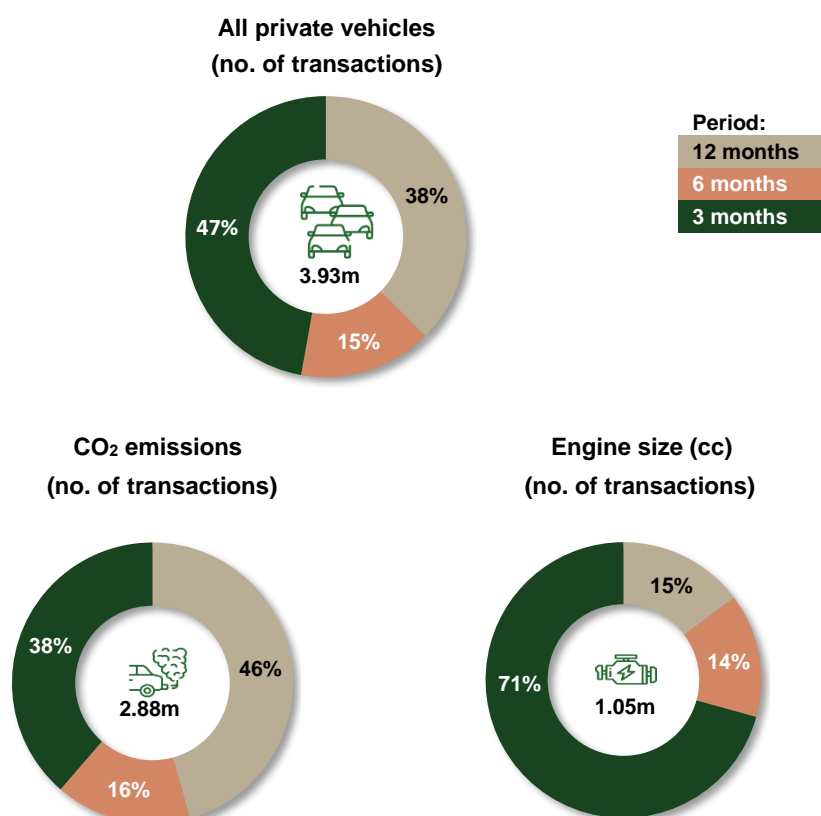


Source: Department of Transport

Frequency of payment

- 18.21** Vehicles can be taxed for periods of three, six or 12 months. Almost two-thirds of private vehicle tax transactions were for periods of three or six months in 2021.
- 18.22** In addition, there is a marked difference in the use of three and six-month taxation with the owners of vehicles taxed on engine capacity being significantly more likely to tax for the shorter periods (see Figure 18.8).¹ The average renewal period for private vehicles taxed on the basis of engine capacity is just over six months compared to just over nine months for those taxed on the basis of CO₂ emission levels.

Figure 18.8 Private vehicle motor tax by duration of renewal, 2021



¹ An additional charge of 11% – 13% is applied for paying for quarterly or half-yearly periods. For all vehicle types, there is an additional cost for the payment of arrears, with the monthly rate based on one-tenth of the annual rate.

² The National Car Test (NCT) is a compulsory vehicle inspection programme. The primary aim of this programme which is required under the EU Directive 2014/45, is to improve road safety and enhance environmental protection by reducing harmful emissions in Ireland.

Source: Department of Transport

- 18.23** Taxing vehicles for shorter periods is more expensive for taxpayers and results in extra receipts to the Exchequer. In 2021, these extra receipts were estimated to be worth over €32.7 million — €16.2 million from cars taxed on the basis of CO₂ emission levels and €16.5 million for cars taxed on engine capacity. However, the Department stated that renewal for shorter periods also gives rise to higher operational costs for the Department and the motor tax offices.
- 18.24** Possible reasons for taxpayers choosing to tax an older vehicle for less than a year noted by the Department include affordability and vehicle reliability (for example the potential to fail the National Car Test).²

Administration and operational costs

- 18.25** Motor tax receipts are lodged to the motor tax fund, and subsequently transferred to the Central Fund. The administration and operational costs incurred in running the motor tax system are not charged to the motor tax fund. Instead, the related expenses are incurred by the Department and by the local authorities. As a result, the full costs of collecting the tax are difficult to identify.
- 18.26** The Department has not separately identified the costs that relate to motor tax collection. The costs incurred by the Department are charged to Vote 31 Transport, and are reflected in the annual appropriation account under subhead B.5. In 2021, the total costs incurred in respect of the subhead amounted to around €22 million, but this includes costs not associated with the collection of motor tax such as driver licencing services. Departmental pay costs associated with the operation of the motor tax system are not included in this subhead.
- 18.27** The costs of running motor tax offices incurred by the local authorities are reflected in their annual financial statements. These annual financial statements are amalgamated and published by the Department of Housing, Local Government and Heritage.
- 18.28** The most recently published amalgamated financial statements for the local authorities is for year end 31 December 2020. These report that the total cost of running the motor tax service at local authority level for that year was €29.5 million — down by almost 40% from €48.7 million in 2012.

Motor tax offices internal control weaknesses

- 18.29** Motor tax offices are subject to annual audit by the Local Government Audit Service (LGAS). Any findings from this work which the auditor considers should be reported is included in the motor tax office audit management letter to the relevant local authority.
- 18.30** LGAS management letters containing issues that relate to the operation of the motor tax service are copied to the Department. In the past, the management letters have covered a broad range of issues, many of which are outside the immediate control of the Department. Examples of the issues raised include the absence of standardised procedures manuals in motor tax offices, delays by local authorities in paying over motor tax receipts to the Department, and concerns about the level of blank tax disc stocks.
- 18.31** The Department stated that it is endeavouring to address actions identified that are in its direct control for example reducing the tendency for over-ordering of tax disc stock and development of a policy manual.

Implementation of recommendations

- 18.32** A previous report on the administration and collection of motor tax was completed in December 2016. The examination reviewed the trends in motor tax receipts, the costs of collection and the effectiveness of controls in ensuring compliance with motor tax regulations. The report made seven recommendations addressed at the time to both the Department and the Department of Local Government, Heritage and Housing — all of which were accepted.
- 18.33** This examination sought to establish the progress the Department has made in implementing the recommendations. As shown in Figure 18.9, as of August 2022, one recommendation had been implemented, three were in the process of being implemented and three had not been implemented.

Figure 18.9 Progress implementing recommendations at August 2022

Summary recommendation	Implementation status ^a
1 Establish the overall cost of the motor tax system and the factors influencing that cost.	●
2 Analyse the factors influencing taxpayer behaviour, to inform the planning of the provision of services in future years.	●
3 Establish the factors influencing the decision of a customer to use online or physical payment methods.	●
4 Evaluate the potential to use IT solutions to reduce the cost of operating the motor tax system.	●
5 Evaluate the methods of assessing motor tax compliance rates in Ireland and commence regular periodic monitoring of the rate of compliance with motor tax regulations.	●
6 Enhance the validation of owner identifying data stored on the NVDF to ensure that the data quality is fit for purpose.	●
7 Instigate a process of regular data analysis to inform the development of motor tax policy and the enforcement of motor tax regulations.	●

Source: Analysis by the Office of the Comptroller and Auditor General

Note: a Implementation status key:

- **Implemented** — the Department has implemented the recommendation actions.
- **Work in progress** — the Department has started work, including planning, to implement the recommendation actions.
- **Not implemented** — the Department has not implemented the recommendation actions and no work has commenced on implementing the recommendation actions.

Accounting Officer's views

- 18.34** The Accounting Officer stated that progress on implementing the recommendations has been made where feasible. The views of the Accounting Officer on the implementation status for the six recommendations that are currently in progress or are yet to be implemented are set out below.

- ***Establish the overall cost of the motor tax system***

The Department of Transport reports on the costs of its functions within the wider motor tax system, where possible to separate these out from other services or functions of the Department. While this recommendation has not been implemented in full, the Department of Transport has implemented it to the extent possible for its motor tax functions. The Department of Transport is not responsible for reporting on the cost of the motor tax offices network.

- ***Analyse the factors influencing taxpayer behaviour***

The Department has not undertaken a specific analysis of the reasons why vehicle owners choose to renew quarterly, half-yearly or annually. However, from interactions with vehicle owners, representations to the Minister and other customer contacts, the reasons for doing so relate to cost, timing of NCT checks and uncertainty around future tax changes, among other factors. The Department's view is that this recommendation is being partially implemented, through this ongoing feedback.

- ***Evaluate the potential to use IT solutions to reduce the cost of operating the motor tax system***

The Department introduced electronic motor tax renewal notices resulting in savings of around €3 million per year. In addition, the range of motor tax categories eligible for online motor tax was broadened, the online service was made more adaptable for mobile devices, and payment security facilities online were enhanced. Any further enhancements to the online service to enable for example additional vehicle owners use the service would primarily require legislative change, and in effect would not be driven by an IT solution.

- ***Evaluate the methods of assessing motor tax compliance rates***

Measurement of tax non-compliance is challenging, given the illicit and usually unrecorded nature of non-compliant activity. With the evolving nature of data protection measures and the issues around use of data for any purpose other than which the data is being gathered (e.g. toll data), it is not clear that any methods exist to allow for accurate evaluation of this nature, without requiring possible legislation and a fuller consideration of the likely data sharing requirements.

- ***Enhance the validation of owner-identifying data on the NVDF***

Vehicle owner identity provisions are included in Part 3 of the Road Traffic and Roads Bill 2021. This legislation is currently passing through the Houses of the Oireachtas.

- ***Instigate a process of regular data analysis to inform the development of motor tax policy and the enforcement of motor tax regulations***

The Department is in the process of establishing a dedicated data analytics function. One of the objectives of this function will be deriving further analytical value from datasets such as the NVDF.

Conclusions

- 18.35** Although the number of vehicles taxed has increased by almost a half a million between 2012 and 2021, motor tax income has declined significantly, from almost €1.2 billion in 2014 to around €907 million in 2021. Private vehicles accounted for 76% (€691 million) of the total receipts in 2021.
- 18.36** Newer vehicles are generally taxed on the basis of their CO₂ emission levels. As vehicle designs have improved in that regard, replacement of vehicles has resulted in a significant drop in the average motor tax paid. As vehicles currently in the fleet are replaced by electric models, this drop in the average tax paid is likely to continue.
- 18.37** The Department has projected, based on current trends in vehicle ownership and there being no change in motor tax policy, that motor tax income from private vehicles will stop falling in 2023, and increase to just over 2017 levels by 2030 (€824 million). However, if the Government target of 845,000 electric vehicles by 2030 is met, the Department estimates that this could see a reduction in the projected motor tax take for 2030 of around €58 million.
- 18.38** The majority (89%) of the 4.8 million motor tax payments, for all vehicles, in 2021 were completed online. This represents a significant change since 2012 when only half of motor tax payments were being made online.
- 18.39** The 2021 costs incurred by the Department in respect of motor tax collection were charged to Vote 31 Transport subhead B.5. However, the subhead charges also includes costs not associated with the collection of motor tax such as driver licencing services. Furthermore, the subhead charges do not include Departmental pay costs associated with the collection of motor tax. The Department has not undertaken an exercise to identify the total costs that relate to motor tax collection.
- 18.40** The costs of running motor tax offices incurred by the local authorities are reflected in their annual financial statements. These annual financial statements are amalgamated and published by the Department of Housing, Local Government and Heritage. For year end 31 December 2020, the reported total cost of running the motor tax service at local authority level was €29.5 million. This has reduced significantly since 2012.
- 18.41** As previously recommended, better and more integrated information is required regarding the costs of collecting motor tax.
- 18.42** Responsibility for implementation of seven recommendations made in 2016 now rests with the Department of Transport. Although previously agreed, as of August 2022, the Department has implemented just one of the recommendations; three were in the process of being implemented; and three had not been implemented.

Annex 18A Motor tax rates 2021

Engine Capacity		CO2 Emissions							
Cars registered before 30 June 2008 ^a		Cars registered from 1 July 2008 to end 31 December 2020 (NEDC value) ^b				Cars registered from 1 January 2021 (WLTP value) ^b			
Engine capacity (cc)	Annual rate €	Band	CO2g/km		Annual Rate €	Band	CO2g/km		Rate €
			From	To			From	To	
Electric vehicles	120	A0	0	0	120	A	0	0	120
0 – 1,000	199	A1	1	80	170	A1	1	50	140
1,001 – 1,100	299	A2	81	100	180	A2	51	80	150
1,101 – 1,200	330	A3	101	110	190	A3	81	90	160
1,201 – 1,300	358	A4	111	120	200	A4	91	100	170
1,301 – 1,400	385	B1	121	130	270	A5	101	110	180
1,401 – 1,500	413	B2	131	140	280	A6	111	120	190
1,501 – 1,600	514	C	141	155	400	B1	121	130	200
1,601 – 1,700	544	D	156	170	600	B2	131	140	210
1,701 – 1,800	636	E	171	190	790	C1	141	150	270
1,801 – 1,900	673	F	191	225	1,250	C2	151	160	280
1,901 – 2,000	710	G	more than 225		2,400	D	161	170	420
2,001 – 2,100	906					E	171	190	600
2,101 – 2,200	951					F1	191	200	790
2,201 – 2,300	994					F2	201	225	1,250
2,301 – 2,400	1,034					G	more than 225		2,400
2,401 – 2,500	1,080								
2,501 – 2,600	1,294								
2,601 – 2,700	1,345								
2,701 – 2,800	1,391								
2,801 – 2,900	1,443								
2,901 – 3,000	1,494								
3,001 or more	1,809								

Source: Department of Transport

Notes: a Private vehicles first registered between 1 January 2008 and 30 June 2008 initially had their motor tax charged on the basis of engine capacity. These vehicles were switched to CO2 basis on next renewal (post 1 July 2008) where it was financially beneficial. This tax band stays with those vehicles until end of life even if motor tax rates change.

b The New European Driving Cycle (NEDC) was originally designed to assess the emission levels of car engines and fuel economy in passenger cars. This was replaced by the Worldwide Harmonised Light Vehicle Tests Procedure (WLTP).

Annex 18B Motor tax rates for agricultural tractor/excavator and other vehicles 2021

Classification	Annual tax rate €	Number of vehicles
Agricultural tractor/excavator	102	82,972
Vintage/veteran	26 to 56	54,680
Cycle	35 to 88	45,924
Exempt vehicles	—	31,851
Motor caravan	102	16,181
Taxi	95	15,267
Large public service	154 to 403	11,090
Mobile machine	333	4,994
Forklift	102	2,511
Limousine	95	1,619
Hackney	95	1,197
Hearse	102	970
School bus	95	779
Youth community	154 to 403	769
General haulage	333	691
Island vehicle	102	667
Dumper	102	618
Tricycle	35 to 88	369
Cycle and sidecar	35 to 88	343
Emergency rescue vehicle	—	182
Off road dumper	885	28
Total		273,702

Source: Department of Transport

19 Exchequer receipts from National Lottery ticket sales

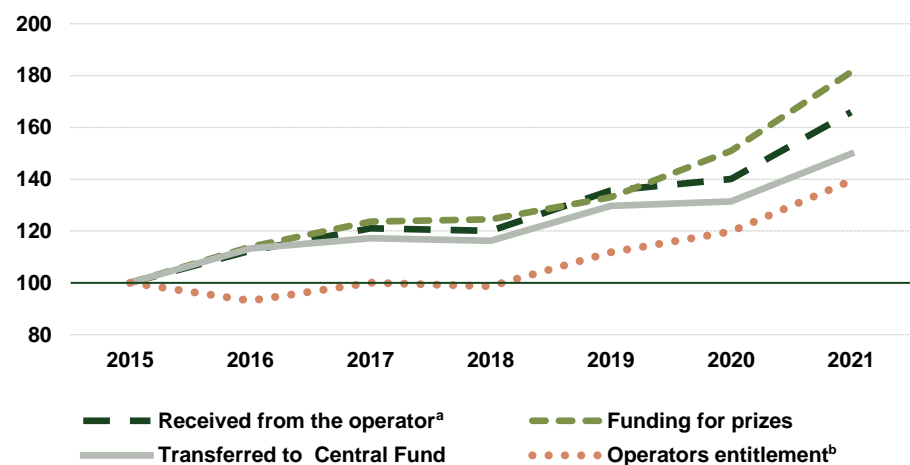
19.1 The National Lottery Act 2013 (the Act) established the Office of the Regulator of the National Lottery (the Regulator), and sets out the legislative provisions for the operation of the National Lottery and the National Lottery Fund account.¹ In 2014, a 20 year licence to operate the National Lottery was awarded to Premier Lotteries Ireland Limited (the operator).² The operator's activities are overseen by the Regulator.

19.2 A key function of the Regulator is to ensure that Exchequer revenues from the National Lottery are maximised by reference to the terms contained in the licence, and that they are transferred to the Exchequer in a timely way.³ Such receipts are used to fund or to part fund 'good causes' i.e. expenditure by various government departments on projects across Ireland in the areas of health, sports, arts, Irish language, children and youth, heritage, the natural environment and such other objectives (if any) as the Government may determine from time to time.⁴

19.3 As shown in Figure 19.1, over the period 2015 to 2021

- the amount received from the operator into the Fund increased by 66% (to just over €682 million in 2021)
- funding for prizes paid to the operator increased by 81% (to almost €287 million in 2021)
- transfers from the Fund to the Central Fund increased by 50% (to almost €290 million in 2021)
- the operator's entitlement increased by 39% (to just over €103 million in 2021).

Figure 19.1 Index of National Lottery Fund key measures 2015 to 2021 (2015 = 100)^a



Source: National Lottery Fund financial statements, 2015 to 2021

- Notes:
- a The amounts received from the operator comprise ticket sales less retailers' remuneration and prizes paid by the retailers. Amounts received from the operator were just over €682 million in 2021. Total sales on an accrual basis for the year ended 31 December 2021, recognised in the financial statements of the operator were around €1.1 billion in 2021.
 - b Excludes amounts forfeited in favour of the operator in respect of expired unclaimed prizes for the promotion of the National Lottery and/or the Lottery games (see paragraph 19.22).

1 The National Lottery Act 2013 repealed the National Lottery Act 1986.

2 The operator paid a total of €405 million for the licence to operate the National Lottery until 2034.

3 Section 44(3)(c) of the Act provides that payments allocated for the purposes set out in Section 41 shall be made by the Regulator from the Fund to the Central Fund at intervals determined by the Minister, subject to any provisions in the licence.

4 National Lottery funding is paid into the Central Fund and is allocated to Government Departments through the annual estimates process.

19.4 The licence provides that the operator shall be paid any moneys from ticket sales (and moneys becoming unclaimed prizes) after payment and reservation of funds for prizes, good causes and the Regulator's levy. The operator is also required to maintain three separate bank accounts as follows

- collections account — used to receive all amounts from retailers (less retailers commissions and prizes paid locally) and online sales which are required to be transferred to the National Lottery Fund on a weekly basis
- prizes account — used to receive from the National Lottery Fund the amounts required for the payment of prizes not already paid by retailers
- general account — the operator's own operating account where the operator's entitlement is paid after all other amounts have been dealt with.

19.5 The Regulator manages and control's the National Lottery Fund and accounts for the transactions of the Fund on a cash receipts basis. The Fund account is maintained by the Regulator at the Central Bank of Ireland. As at 31 December 2021, the balance of the account was €22 million. An overview of the National Lottery flow of funds is presented in Figure 19.2.

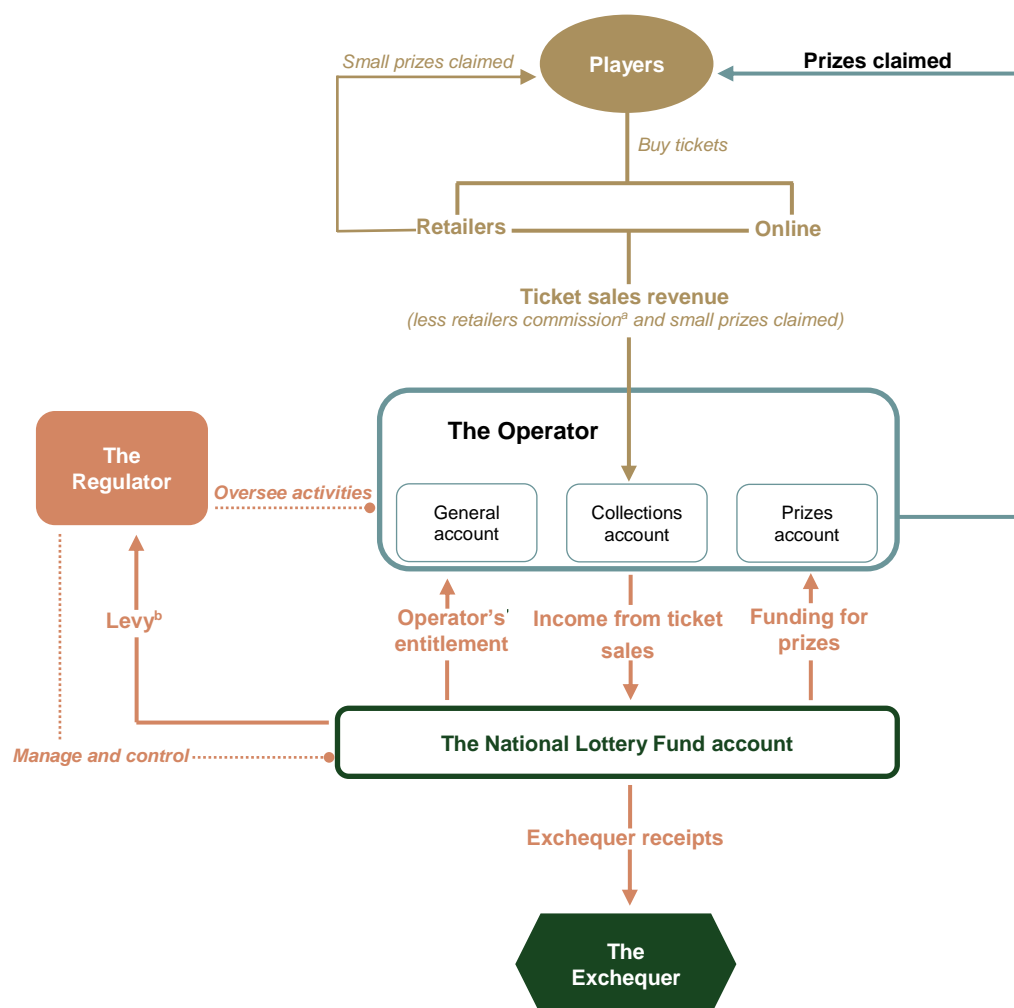
19.6 In accordance with the Act, the Regulator prepares annual accounts of the National Lottery Fund.¹ The accounts detail the amounts paid into the Fund during the year under review and an analysis of the balance held at year end.

19.7 A principle of financial reporting is that the notes to the accounts disclose information not presented elsewhere in the financial statements but that is relevant to their understanding. The accounts of the Fund do not provide information that enables users of the accounts to see that key provisions of the licence are being complied with, in particular the appropriateness of the amounts transferred to the Exchequer.

19.8 This examination was undertaken to review

- movement in the share of the lottery sales proceeds transferred to the Exchequer
- whether the proceeds are being transferred to the Central Fund in a timely manner
- how unclaimed prize money is used.

¹ Section 44(4) of the Act provides that the accounts of the Fund shall be submitted annually to the Comptroller and Auditor General for audit and the Regulator shall cause a copy of an abstract of the accounts so audited together with a copy of the report of the Comptroller and Auditor General thereon to be laid before each House of the Oireachtas.

Figure 19.2 National Lottery flow of funds

Source: Office of the Comptroller and Auditor General

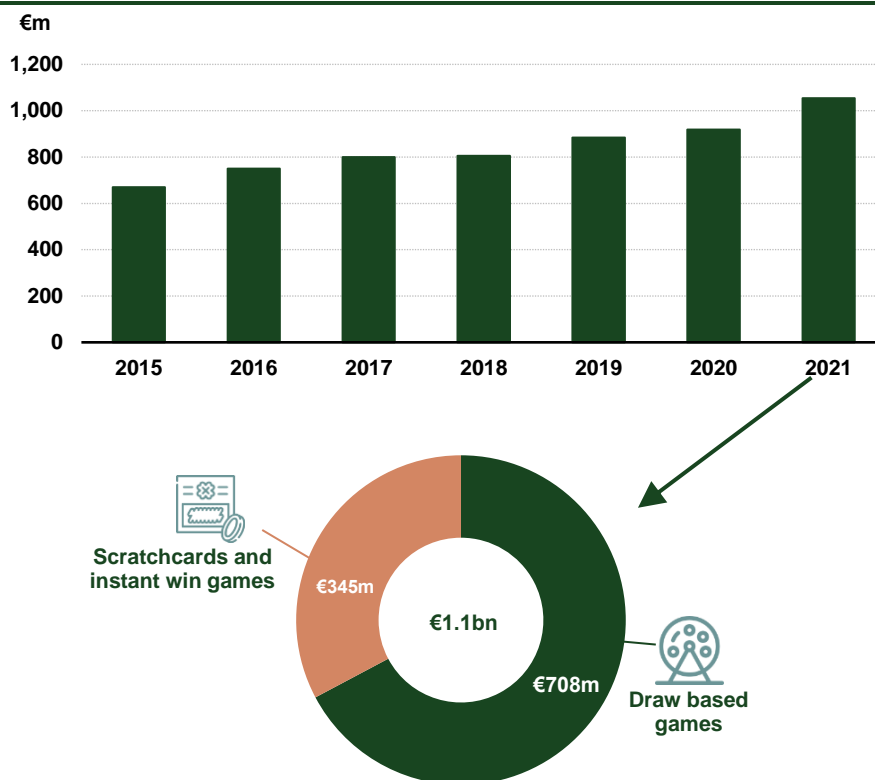
- Notes:
- a The licence provides that the operator shall compensate all retailers who operate through retail outlets equally by means of percentage rate commissions of the value of tickets sold by the respective retailer being 6% for all National Lottery games, excluding the game known as "Lotto 5-4-3-2-1" for which it shall be 5%.
 - b The licence provides for an annual levy to be paid to the Regulator, pursuant to section 24 of the Act.

Sales from National Lottery games

19.9 There is a range of National Lottery games, including draw-based games (for example Lotto and EuroMillions draws) and instant-win games and scratch cards. Tickets for games can be either purchased online or from retail outlets.¹

¹ A retailer is any person whom the operator has authorised, in writing, or entered into an agreement with, to sell National Lottery tickets from a retail outlet.

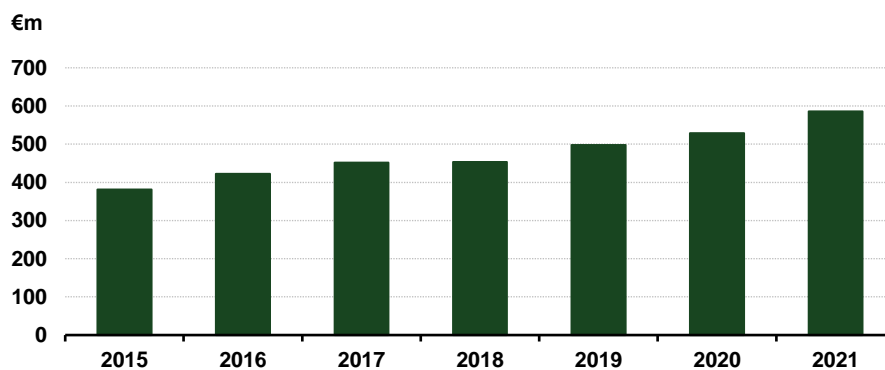
19.10 Sales from National Lottery games have increased year on year from around €670 million in 2015 to around €1.1 billion in 2021, with total sales over this period being almost €6 billion (see Figure 19.3). Online sales accounted for 16.6% of total sales in 2021.

Figure 19.3 National Lottery sales, 2015 to 2021

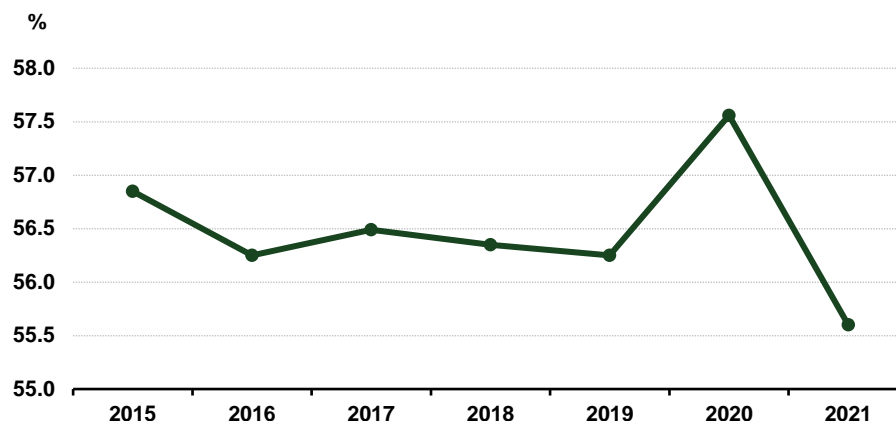
Source: Premier Lotteries Ireland Holdings DAC consolidated financial statements 2015 to 2021

National Lottery prizes

- 19.11** The total value of National Lottery prizes won in 2021, inclusive of small prizes paid locally, was almost €586 million (see Figure 19.4). This represented 55.6% of ticket sales value.
- 19.12** Section 40(2) of the National Lottery Act 2013 provides that "... the total value of the prizes distributed by the National Lottery in any financial year of the operator shall be equal to or not less than 50% of the total moneys received by the operator in that year in respect of the sale of national lottery tickets in that year or such a greater percentage as may be specified in the licence." The licence does not specify a greater percentage.

Figure 19.4 Prizes won 2015 to 2021

Source: Premier Lotteries Ireland Holdings DAC consolidated financial statements 2015 to 2021

Figure 19.5 Prizes as a proportion of sales 2015 – 2021

Source: Premier Lotteries Ireland Holdings DAC consolidated financial statements 2015 to 2021

- 19.13** The proportion of ticket sales allocated for prizes (total prize pay-out percentage) across all games per year is determined by the mix of sales across products. As can be seen in Figure 19.5, when total prizes won are compared to total National Lottery sales, the overall prize pay-out percentage remained above 50% ranging between 55.6% and 57.6% over the period 2015 to 2021.

Prize fund account

- 19.14** The operator holds and manages a prize fund account for the receipt and payment of prize moneys. The amount paid into the prize fund account by the Regulator each week is calculated on the basis of the prizes that would be expected to be won for the ticket sales of each game in the relevant week using the prize pay-out percentage approved for each National Lottery game. The transfer is based on expected (rather than actual) winnings for a number of reasons.

- As National Lottery games are not all 'pari-mutuel' games (the latter involving both minimum jackpots and fixed prizes), the actual prizes won will usually vary from the prizes expected to be won.¹
- The amounts won on scratch cards sold in any week are not known for security reasons to ensure that winning tickets cannot be identified prior to being scratched. It is also not known what prize winning scratch card tickets have been sold, only those where the prizes have been claimed.
- In a particular week, the amount of actual prizes won in draw based games or paid out in a particular week may exceed the total sales for the week.

- 19.15** The amounts paid into the prize fund account in any given week will therefore not be aligned with the liability for actual prizes won in National Lottery games. However, the prize fund has always been sufficient to meet the demands for payment of prizes to date.

- 19.16** In 2021, an amendment was made to the licence due to a perceived widening gap between the funding of the prize fund account (to pay the expected prizes) and the actual prizes won.

¹ Pari-mutuel is a system of betting in which the winners divide in proportion to their wagers, the total amount minus a percentage for the operators, taxes etc.

- 19.17** The Regulator proposed a licence amendment that resulted in the introduction of an annual reconciliation exercise to ensure that the prize fund account was correctly funded to pay the actual prizes won.
- The first reconciliation exercise carried out in 2021 covered the period from commencement of operations under the licence on 30 November 2014 to 31 December 2020. This identified a shortfall of €8.8 million in the prize fund that had built up since 2014.
 - In March 2022, the reconciliation was performed for the year ended December 2021. On this occasion, the review identified overfunding of the prize fund by €9.6 million in respect of 2021.
- 19.18** Depending on the outcome of the reconciliation exercise, funds are transferred between the prize fund account and the National Lottery Fund.

Unclaimed prizes

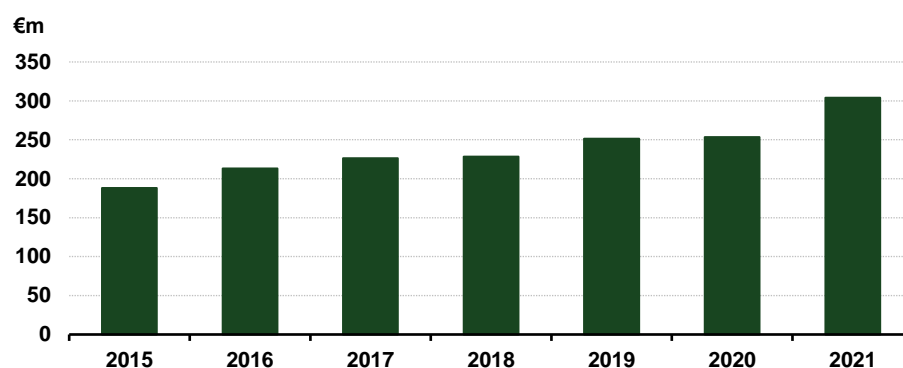
- 19.19** Winning tickets that remain unclaimed after a specified period are classified as expired unclaimed prizes and the proceeds are forfeited in favour of the operator in accordance with the licence. However, the licence requires that amounts forfeited in favour of the operator in this way be used solely for the promotion of the National Lottery and within 365 days from the date on which they were forfeited.
- 19.20** The use of expired unclaimed prize money for Lottery promotion purposes must include additional funding of special draws and additional or top-up prizes and may include incremental marketing and advertising.¹ The license does not specify the proportion of funding to be allocated between the categories of spending.
- 19.21** The Regulator reviews the operator's compliance with the licence through a review of the operator's base marketing budget, incremental marketing expenditure and the operator's account of the expired unclaimed prizes.
- 19.22** Reports from the operator to the Regulator show that since 2015, just over €124 million in respect of expired unclaimed prizes has been forfeited in favour of the operator — an average of around €17.7 million per year. By the end of 2021, almost €122 million has been used for the promotion of the National Lottery/and or the Lottery games. Of this, 98% (or €120 million) has been spent on incremental marketing with the remaining 2% (under €2 million) spent on top-up prizes.

¹ Incremental marketing costs are defined as all marketing expenditure of the operator other than base marketing. Base marketing costs being marketing expenditure that is fundamental to the promotion and operation of the National Lottery in the ordinary course, as determined by the operator in consultation with the Regulator on an annual basis in advance, and funded by the operator.

Contribution to the Exchequer

- 19.23** As can be seen in Figure 19.6, contributions due to the Exchequer have increased year on year since 2015. For 2021, the contribution due to the Exchequer was €304 million.

Figure 19.6 Contributions due to the Exchequer 2015 to 2021

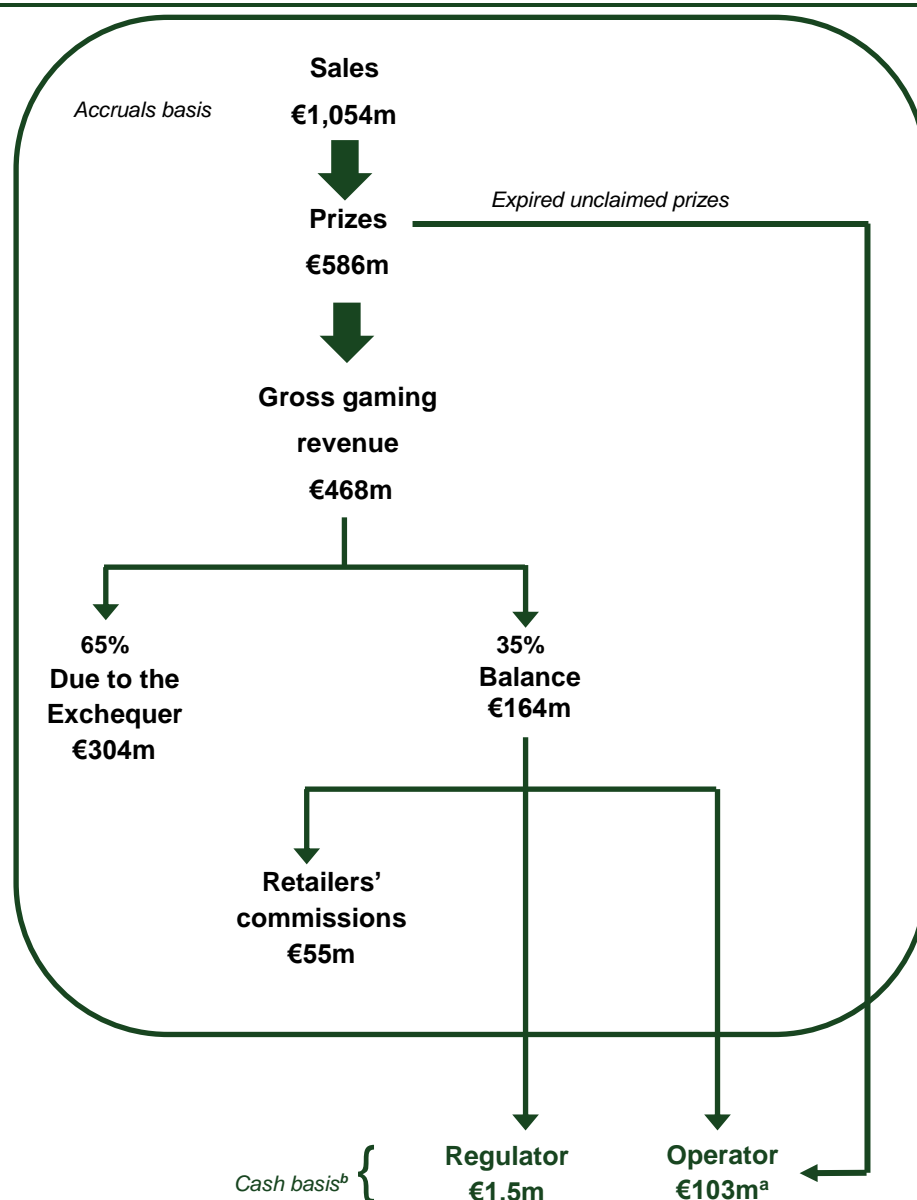


Source: Premier Lotteries Ireland Holdings DAC consolidated financial statements 2015 to 2021

- 19.24** The annual contribution due to the Exchequer out of National Lottery sales is calculated in accordance with the relevant provisions of the Act and the licence. In particular, the licence provides that 65% of the **gross gaming revenue (GGR)** is allocated to good causes. The Exchequer contribution is calculated on an annual basis using the following formula.

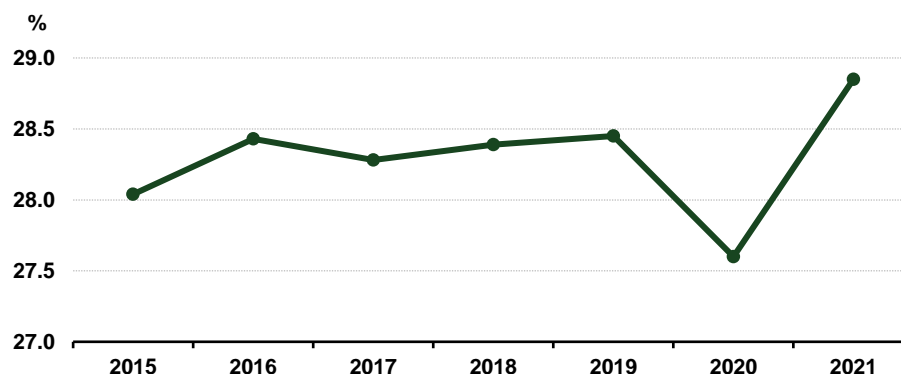
$$(\text{Total sales} - \text{prizes} = \text{gross gaming revenue}) \times 65\% = \text{Exchequer contribution}$$

- 19.25** The remaining 35% of GGR is available to pay retailers' commissions and the Regulator levy, with the balance allocated to the operator. This is available to cover the operator's running cost (see Figure 19.7). Any surplus or residue is available as a return on the operator's investment.
- 19.26** In any year, changes in amounts allocated to prizes, in a game's design, in a particular sales mix or in the actual prizes won, impact the GGR which in turn has a pro-rata impact on the amounts available to the Exchequer and to the operator.
- 19.27** Figure 19.8 shows the distribution of National Lottery sales for 2021, with the amounts for sales, prizes, gross gaming revenue, amounts due to the Exchequer and retailers' commissions taken from the accounts of the operator, which is prepared on the accruals basis. The remaining figures are taken from the National Lottery Fund account which is prepared on a cash basis.
- 19.28** The Exchequer contributions as a proportion of sales have varied between 27.6% and 28.8% over the period 2015 to 2021 (see Figure 19.8).

Figure 19.7 Distribution of National Lottery sales proceeds, 2021

Source: National Lottery Fund financial statements 2021 and Premier Lotteries Ireland Holdings DAC consolidated financial statements 2021

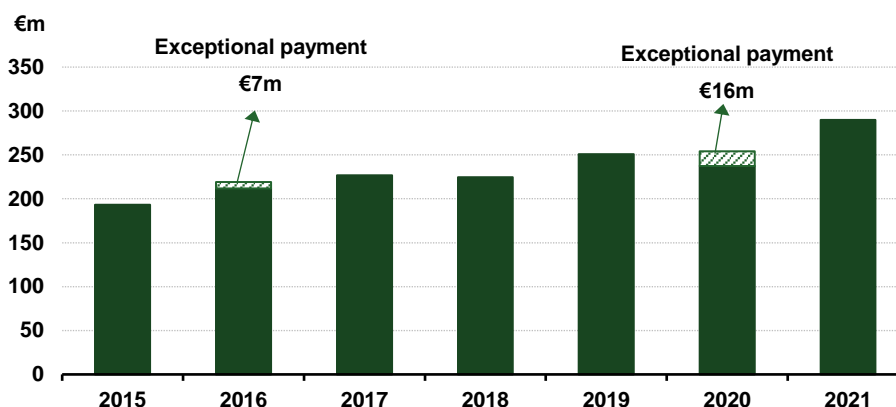
- Notes:
- a Excludes amounts forfeited in favour to the operator in respect of expired unclaimed prizes for the promotion of the National Lottery and/or the Lottery games (see paragraph 19.22).
 - b The amounts do not balance due to the different bases of accounting.

Figure 19.8 Exchequer contribution as a proportion of sales 2015 – 2021

Source: Premier Lotteries Ireland Holdings DAC consolidated financial statements 2015 to 2021

Transfers to the Central Fund

- 19.29** The process for the disbursement of funds from the National Lottery Fund to the Exchequer is set out in the Act and the Minister for Public Expenditure and Reform determines the timing of the transfers. In 2015, the Minister determined that funds would be transferred from the National Lottery Fund to the Exchequer every two months with the Department of Public Expenditure and Reform notified of each transfer.
- 19.30** Almost €290 million was transferred to the Exchequer in 2021 (see Figure 19.9).¹ The figure for 2016 included an amount of €7 million previously retained in the Fund to meet transition costs, that was ultimately not required. Included in the total for 2020 is an exceptional payment of €16 million. This amount was in relation to expired unclaimed prizes that had accumulated during the operation of the National Lottery by An Post National Lottery Company (APNLC) and that had remained in the National Lottery Fund as of 30 November 2014 when Premier Lotteries Ireland commenced operation of the National Lottery.

Figure 19.9 Transfers to the central fund, 2015 to 2021

Source: National Lottery Fund financial statements 2015 to 2021

¹ This is the amount actually transferred in 2021. The operator's financial statements (which are prepared on an accruals basis) report that the amount due to the Exchequer for 2021 was €304 million (65% of GGR).

Conclusions and recommendations

19.31 Contributions from the National Lottery due to the Exchequer have increased by almost 62% from around €188 million in 2015 to around €304 million in 2021.

19.32 The annual contribution due to the Exchequer is calculated by reference to the Act and the licence with 65% of gross gaming revenue (total sales less prizes won) being allocated via the Exchequer. Therefore, amounts due to the Exchequer in any year will be affected proportionately by any changes in amounts allocated to prizes, in the design of games, in the product sales mix or in the actual prizes won. For example, as can be seen below, there is an inverse relationship between prizes won as a proportion of sales and the Exchequer contribution as a proportion of sales — when one rate increases the other rate falls

As a proportion of sales	2019	2020	2021
Prizes won	56.3%	57.6%	55.6%
Exchequer contribution	28.5%	27.6%	28.9%

19.33 Transfers from the National Lottery Fund to the Exchequer are carried out every two months with the Department of Public Expenditure and Reform notified of each transfer. In 2021, almost €290 million was transferred to the Exchequer. The balance remaining in the National Lottery Fund at the year-end was €22 million.

19.34 Between 2015 and 2021, in accordance with the licence, €124 million of expired unclaimed prizes have been forfeited in favour of the operator. The licence provides that this must be used for the promotion of the National Lottery and/or the Lottery games, specifying that this must include the funding of special draws and additional top-up prizes. The licence provides that forfeited prize money may also be used for incremental marketing and advertising of the National Lottery, but does not specify how the money is to be apportioned.

19.35 By the end of 2021, almost €122 million in forfeited prize money had been used for the promotion of the National Lottery. Of this, 98% has been spent on incremental marketing, with just 2% used to top-up prizes.

19.36 An important principle of financial reporting is that the notes to the accounts include additional information not presented elsewhere in the financial statements but is relevant to their understanding. The National Lottery Fund accounts, as currently presented, do not include sufficient information to demonstrate that certain provisions of the licence are being complied with, in particular around the amounts allocated to the Exchequer annually.

Recommendation 19.1

The Regulator should consider including such additional information that would allow users of the accounts to see that the key provisions of the licence are being complied with. This could, for example, include disclosure of the allocation to the Exchequer as a proportion of National Lottery sales; and the total amounts forfeited annually in favour of the operator in respect of expired unclaimed prizes.

Regulator of the National Lottery response

Partially agreed.

It is not the purpose of the National Lottery Fund accounts to provide information to enable users to see that terms of the licence are being complied with. The Regulator's annual report already provides information on how National Lottery sales were allocated to good causes, the checks in place to ensure compliance (and any incidence of non-compliance) and why the amounts transferred in a financial year differ from the amount earned for good causes in the same period.

However, it is accepted that transparency and understanding could be improved.

The Regulator's statement of strategy for 2022 to 2024 includes a key strategy to provide more accessible information to the public on how the National Lottery is regulated and returns for good causes are calculated and transferred to the Exchequer. Its aim is to provide greater transparency and understanding of the National Lottery and work has begun on implementing it.

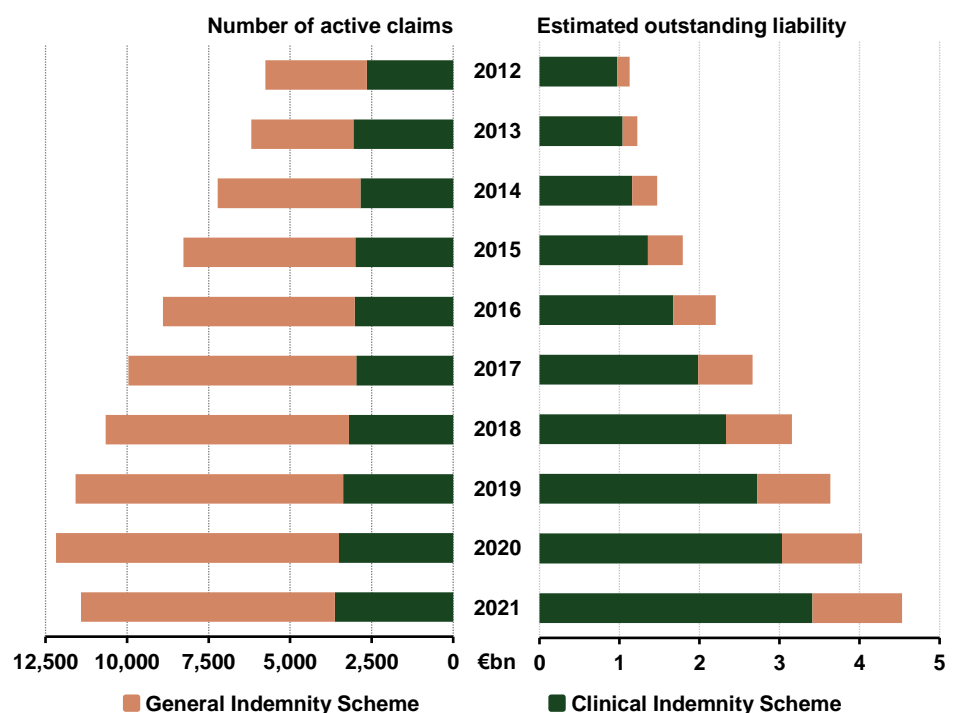
In this context, the Regulator is happy to consider what additional information would assist users of the accounts to have greater transparency and understanding of the National Lottery Fund, and the related provisions of the licence, and where this information might be best provided and signposted.

Other matters

20 Management of the Clinical Indemnity Scheme

- 20.1** The National Treasury Management Agency (NTMA) manages personal injury claims including clinical negligence claims and third party property damage claims on behalf of the State and delegated State authorities (DSAs). It also has a risk management role, advising and assisting the DSAs in minimising their claim exposures. In addition, the NTMA manages third party costs against the State arising from all categories of litigation. When performing these functions, the NTMA is known as the State Claims Agency (SCA).
- 20.2** The SCA provides claim and risk management services through two State indemnity schemes — the Clinical Indemnity Scheme (CIS) and the General Indemnity Scheme (GIS).^{1,2}
- 20.3** Since 2012, both the total estimated outstanding liability and the number of claims have generally been trending upwards. At the end of 2012, the estimated outstanding liability was €1.1 billion; by the end of 2021, it had increased to €4.5 billion, representing a four-fold increase over the period. The number of active cases being managed by the SCA at the year-end almost doubled over the same period, from 5,755 in 2012 to 11,408 active cases in 2021.³
- 20.4** At the end of 2021, CIS claims comprised almost 32% (3,626) of total claims, but accounted for over 75% (€3.4 billion) of the total estimated outstanding liability (see Figure 20.1). The cost of managing and resolving CIS claims in 2021 was €357.4 million, of which €76.5 million (21%) related to legal services and other costs.

Figure 20.1 Estimated outstanding liability and number of claims, 2012 to 2021



1 Under the Clinical Indemnity Scheme, indemnity is provided to State authorities in respect of the provision of professional medical services.

2 Under the General Indemnity Scheme, indemnity is provided to State authorities in respect of personal injury and third party property damage due to negligence by the State body, its servants and/or agents.

3 Active claims are those that have been notified to the SCA through a legal process and that have not yet concluded at the reporting date.

Source: State Claims Agency. Analysis by the Office of Comptroller and Auditor General.

20.5 This examination was undertaken to review the SCA's management of the CIS, with a particular focus on

- incident reporting and monitoring
- the claims and key cost drivers impacting the increasing liability
- how the SCA ensures that lessons learned from past cases are used to inform future outcomes and projections, and
- the system of accountability for claims incurred.

CIS management process

20.6 The SCA has comprehensive guidance and quality procedures in place governing the management of clinical negligence claims.¹

20.7 The average claims processing time for a clinical negligence claim varies depending on the particular clinical speciality involved.² Since 2012, the average time taken to finalise a clinical claim has increased from 4.26 to 4.97 years (17%). The largest increase (59%) was in respect of surgery related claims — 5.25 years in 2021. For maternity services related claims, the average processing time increased by 39%, from almost four years in 2012 to almost 5.4 years in 2021.

20.8 The SCA stated that while it endeavours to make all due efforts to resolve claims quickly, factors causing delays can include the speed with which plaintiffs and their legal representation prosecute claims, particularly where clinical negligence is alleged. It also stated that commissioning of expert witness reports to inform liability and causation issues can also add to the life span of a claim, as can the time taken to reach agreement of a plaintiff's legal costs.

National Incident Management System (NIMS)

20.9 The National Incident Management System (NIMS) is a confidential end-to-end risk management tool developed by the SCA in 2014 and which became fully operational in 2016.³ NIMS enables the SCA and the DSAs to manage adverse incidents that could result in a claim, throughout the incident lifecycle (see Figure 20.2).⁴

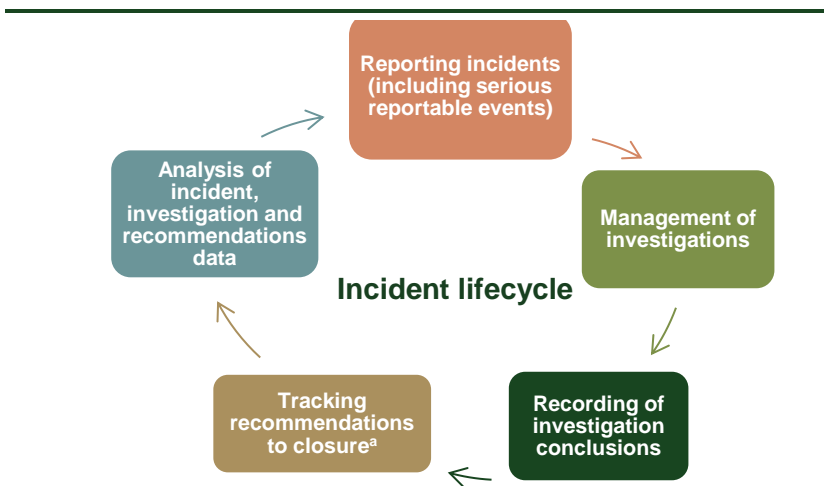
1 An overview of the clinical negligence claims management process, from the time of the incident to the closing of the claim, is included in Annex 20A.

2 The lifetime of each claim is measured as the time from the date the claim is received to the date when all matters associated with it, including costs, have been agreed, but not necessarily paid.

3 NIMS replaced its predecessor — the National Adverse Events Management System (NAEMS).

4 NIMS is used by DSAs to fulfil their statutory responsibility under the National Treasury Management Agency (Amendment) Act 2000, to report incidents to the SCA and is also used for their own incident and risk management purposes.

Figure 20.2 NIMS incident lifecycle



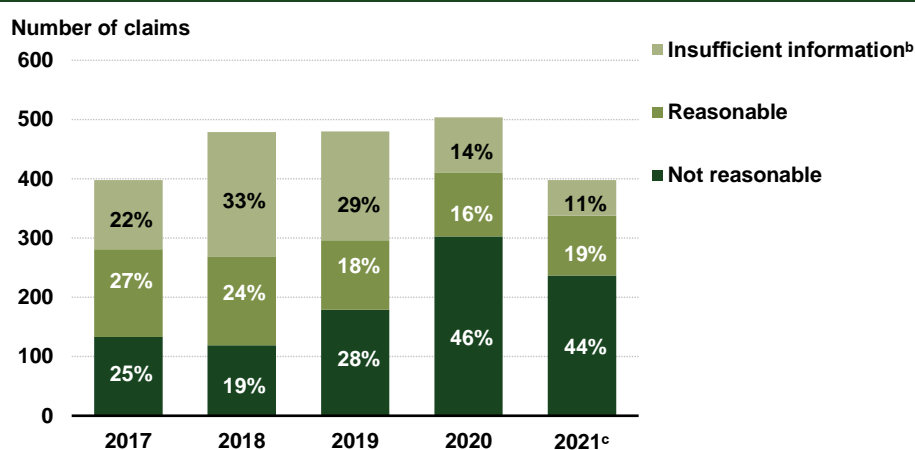
Source: State Claims Agency

Note: a Relates to the initial recommendations made at DSA level.

Incident reporting

- 20.10** SCA guidance sets out that early reporting of incidents will increase the chance of a positive claim resolution. The SCA stated that there is evidence that high levels of incident reporting and a culture of learning are associated with lower levels of litigation.¹
- 20.11** Overall, in the period 2017 to 2021, only 25% of claims received had previously been reported by the DSAs as incidents on NIMS prior to claim notification.
- 20.12** Of the 75% of claims not previously reported as incidents on NIMS over the period 2017 to 2021, (see Figure 20.3), the SCA concluded that
- in 22% of cases, there was insufficient information available to determine whether or not the incident should have been reported;
 - it was reasonable for the incident giving rise to the claim to have been recorded on NIMS in 21% of cases i.e. it should have been recorded; and
 - in around one third of all cases (32%), the DSA would not have been aware of the incident, and so could not reasonably be expected to have reported it.

Figure 20.3 Classification of claims not previously reported as incidents for acute hospitals, 2017 to 2021^a



¹ The SCA measures the performance of incident reporting by individual DSAs, by assessing whether each claim had previously been reported as an incident on NIMS.

Source: State Claims Agency

- Notes:
- a Mass action claims are excluded.
 - b Includes four claims that were not populated.
 - c The level of claims received in 2021 may have been impacted by reduced activity due to Covid-19.

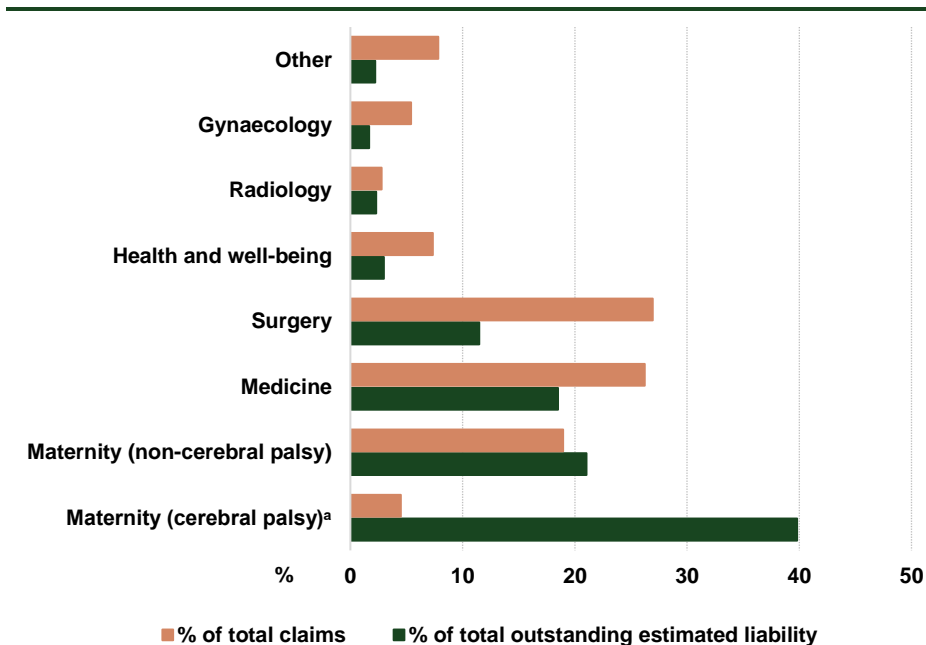
Delta CPRI performance monitoring

- 20.13** The SCA uses ‘claims previously reported as incidents’ (CPRI) to calculate the ‘delta CPRI’ — a key performance indicator of the comprehensiveness of DSA incident reporting.¹
- 20.14** The SCA monitors each DSA’s performance in reporting incidents leading to claims on a quarterly basis, by reference to expected incident reporting targets individually set and communicated to DSAs by the SCA. For the 52 acute hospitals within the clinical indemnity scheme, the analysis for 2020 shows that
- 20 hospitals did not have an average of at least one new claim per quarter and so for statistical reasons were not included in the analysis
 - 24 hospitals had under-reported incidents leading to claims by 10% to 30%, and
 - eight hospitals had under-reported such incidents by 40% or more.²

Estimated outstanding liability

- 20.15** At the end of 2021, the estimated outstanding liability for CIS claims was around €3.4 billion, of which maternity services accounted for just under €2.07 billion (61%). Cerebral palsy claims, which predominantly relate to maternity services, accounted for 40% (€1.36 billion) of the overall CIS estimated outstanding liability, but represented just 4.5% of the total number of active claims (see Figure 20.4).

Figure 20.4 Clinical claims by service and estimated outstanding liability, at end 2021



¹ ‘Delta CPRI’ is defined by the SCA as the difference between the number of claims expected to have been previously reported as incidents and the actual number of claims previously reported as incidents. A low delta CPRI value is an indicator of high levels of incident reporting.

² 2021 data unavailable at time of publication.

Source: State Claims Agency

Note: a There are also an additional 11 cerebral palsy claims included in other services such as medicine, surgery, health and well-being and radiology.

Calculation of liability

- 20.16** The SCA calculates an estimated potential liability for each individual claim. Its policy is to forecast the most likely outcome, in terms of the award or settlement and all associated costs, taking account of settlement levels in previous similar cases, and then to add a 'margin of comfort' of 20%. The estimated liability is broken down into general damages; special damages; plaintiff legal costs; and agency legal costs. Estimates are subsequently adjusted over the life of the claim if required to reflect any new information that becomes available.
- 20.17** In cases involving cerebral palsy or other catastrophic brain injuries, an initial reserve is set at a standard amount.
- 20.18** A previous report of the Comptroller and Auditor General on the Clinical Indemnity Scheme included a recommendation that the estimates of potential liability for cases on hand should be based on statistical probabilities and informed by analysis of the outcomes of previous cases. This would result in removal of the 'margin of comfort' addition.¹ While the recommendation was agreed to by the NTMA/SCA, it has not been implemented. During this examination, the SCA stated that it maintains a cautious approach in setting estimated liabilities and continues to build a degree of prudence into its estimates.
- 20.19** The SCA also stated that the actuarial review of annual cash projections takes into account the estimated versus settled figures for cohorts of claims. The SCA traditionally has relied on the actuarial cash projections analysis and internal audit's biennial confirmation that case estimated liabilities are set within reasonable parameters and that claims are dealt with in accordance with or better than industry standards. However, the SCA has stated that from 2023 it intends to track outturns against estimated liability on an ongoing basis.

Cost drivers for increased estimated liabilities

- 20.20** The main cost drivers in the estimated CIS liability are the number and type of claims on hand, and the average damages awarded.
- 20.21** The average award is influenced by a small number of high-value claims, typically catastrophic injury cases, and particularly those relating to cerebral palsy. In 2021, there were 335 active cases relating to catastrophic injury, with an estimated outstanding liability of €2.4 billion. The average estimated outstanding liability for a catastrophic injury claim is €7.24 million, compared to €300,000 for clinical negligence claims not categorised as catastrophic injury.
- 20.22** The life expectancy of claimants, which is actuarially derived, has a significant bearing on the estimates of liability. For example, a child injured at birth may be expected to require additional care and supports over their whole life, while an older person injured in an occupational accident may require care and supports over a shorter period.
- 20.23** The real rate of return that may be expected on investments is also a determinant of the estimates. As a result of a Court of Appeal decision in a specific case in 2017, the SCA adjusted the real rate of return it uses for liability estimation from 3% to 1% for future care-related special damages, and to 1.5% for all pecuniary losses. The lower the rate, the higher the estimated claim liability.

¹ Report on the Accounts of the Public Services 2012, Chapter 29 'Clinical Indemnity Scheme'. The report is available [here](#).

Periodic payment orders

- 20.24** Most settlements of claims are done on the basis of an award on a lump sum basis. This results in claimants being exposed to certain risks, including that they require care for longer than their actuarially assessed life expectation; or that inflation is higher than projected over their life time.
- 20.25** Where there may be uncertainty about the care needs of a claimant, especially in a catastrophic injury case, a settlement may be made on an interim payment order basis, where the adequacy of the settlement may be reviewed after an appropriate period.
- 20.26** As an alternative to one-off lump sum awards of damages, statutory periodic payment orders (PPOs) were introduced in October 2018, whereby claimants' future care costs are covered on an annual basis until the death of the claimant (an initial lump sum may also be paid, if appropriate).
- 20.27** Typically, PPO payment amounts are adjusted to take account of inflation. The adequacy of the *Harmonised Index of Consumer Prices* (HICP) used in calculating increases in annual PPO payments is under review by Government, following a court determination in 2019 that HICP inflation-related increases on a PPO award will be insufficient to cover the cost of care over time.
- 20.28** The SCA expects that most claims will continue to be settled on a lump-sum or interim payment order basis, excepting a change to the statutory index used to adjust PPO payment amounts. From January 2020 to July 2022, no statutory PPOs were made. There were just six PPOs in 2019.

Cerebral palsy

- 20.29** The total estimated liability of cerebral palsy claims, occurring in maternity services, received in the ten-year period 2012 to 2021 was €1.6 billion — almost €400 million of which has been paid with an outstanding liability of €1.2 billion.¹ Six hospitals account for 59% of the outstanding liability and 56% of paid damages. However, the SCA does not publish claim data at individual hospital level, and does not calculate comparative performance measures for hospitals, such as number of cerebral palsy cases per 1,000 live births per year.
- 20.30** The SCA stated that no national cerebral palsy registry exists in Ireland. There is currently only one region that has an active register, so data on recorded cerebral palsy cases is confined to that geographical area.

¹ Additionally, legal and other costs paid related to these claims totalled €55 million.

Information flow and lessons learned

- 20.31** The SCA has a Clinical Risk Unit (CRU) which reviews, analyses and distils learning from reported incidents and claims data, and which shares the lessons with DSAs and national stakeholders to inform risk mitigation strategies at a local and national level.¹
- 20.32** CRU key activities in the lessons learned process include
- NIMS data analysis, including incident surveillance and subsequent action
 - reports on incident and claims analysis
 - patient safety notifications
 - education and training, conferences and webinars
 - membership of a number of advisor bodies, including the Patient Safety Council and National Neonatal Encephalopathy Action Group (NNEAG)
 - identifying risk trends and bringing them to the attention of the relevant DSA.²
- 20.33** The SCA focuses on services with the highest risk profiles, prioritising the clinical risk issues that are most likely to lead to significant claims. It carries out an annual targeted litigation risk management work programme, working closely with the relevant State authorities, and in particular the Health Service Executive (HSE). The NTMA (Amendment) Act 2000, states, *inter alia*, that the SCA's role is to advise and assist DSAs in relation to risk management. The SCA stated that ultimately the responsibility for the management of risks lies with the relevant DSA, and not with the SCA.
- 20.34** The SCA also stated that it is very difficult to measure the impact of its activities on the incidence of clinical negligence claims, due to the difficulty in detecting a statistically significant trend in claim numbers and in attributing trend movements to SCA related activities, given the multiple factors involved in the activities to improve patient safety and to mitigate risk. It further stated that measurement of impact is also complicated by the time lag between incidents occurring and claims being finalised and changes in clinical activity during that time.
- 20.35** The SCA produces a number of reports that are provided to relevant DSAs quarterly which include summary details of incidents; active claims; and the estimated outstanding financial liabilities. The SCA may also, on occasion, prepare reports at the request of individual DSAs to assist them with their risk management.
- 20.36** The elapsed time for issuance of some once-off SCA incident and claims analysis reports varies depending on the nature of the report. For example, patient safety notifications — statements highlighting a specific risk issue — were released within a year of the reporting period, while other SCA incident and claims analysis reports — undertaken to extract and share learnings — were released on average 2.5 years after the reporting period (see Figure 20.5).³ The SCA has stated that longer term reports and communications, based on finalised claims data, typically involve more in-depth analysis compared with shorter-term reports and communications arising from the ongoing analysis of incidents.

¹ The SCA implements its risk mandate through two specialist risk units the Enterprise Risk Management Unit and the Clinical Risk Unit.

² Further information on the CRU's activities is included in Annex 20B.

³ Publications relating to Covid-19 and the HSE cyber-attack, were not included in the calculation of the issuance timeline of SCA incident and claims analysis reports. Those reports were issued, on average, within two months of the reporting period.

Figure 20.5 Overview of the incident and claims analysis reports produced by SCA^a

Report ^b	Year under review	Year issued	Publicly available	Content
Research reports				
National clinical claims report	2017	2020	No	Provides an in-depth analysis of clinical claims that were finalised by the SCA in 2017.
Medication incident report	2017 – 2018	2020	Yes	Provides an analysis of medication incidents that were reported by Irish public hospitals in 2017 and 2018.
Analysis of clinical claims finalised in 2017 relevant to six hospital groups	2017	2021	No	Provides an in-depth analysis of clinical claims finalised by the SCA in 2017, specific to the hospital groups.
Analysis of all available national incident and claim data related to venous thromboembolism	2004 – 2020	2020	No	Provides high level analysis of incidents and claims in the period under review.
Review of clinical claims relevant to safe surgery 2016 – 2020	2016 – 2020	2021	No	Provides details of a review of clinical claims in the context of the HSE's review of the safe surgery policy.
National clinical incidents, claims and costs report: Lessons learned, a five year review 2010 – 2014	2010 – 2014	2017	Yes	Presents a review of the most common clinical incidents and claims nationally over a five year period.
Medication related litigation in Ireland: A six year review	2011 – 2016	2019	Yes	The study aimed to identify those medications most frequently associated with clinical litigation in Ireland and to quantify the costs of such litigation.
Incident analysis reports				
Snapshot analysis of NIMS incidents through an "anaesthetic lens"	Q1 and Q2 2020	2021	No	Presents an analysis of anaesthetic related incidents over two quarters.

Source: State Claims Agency

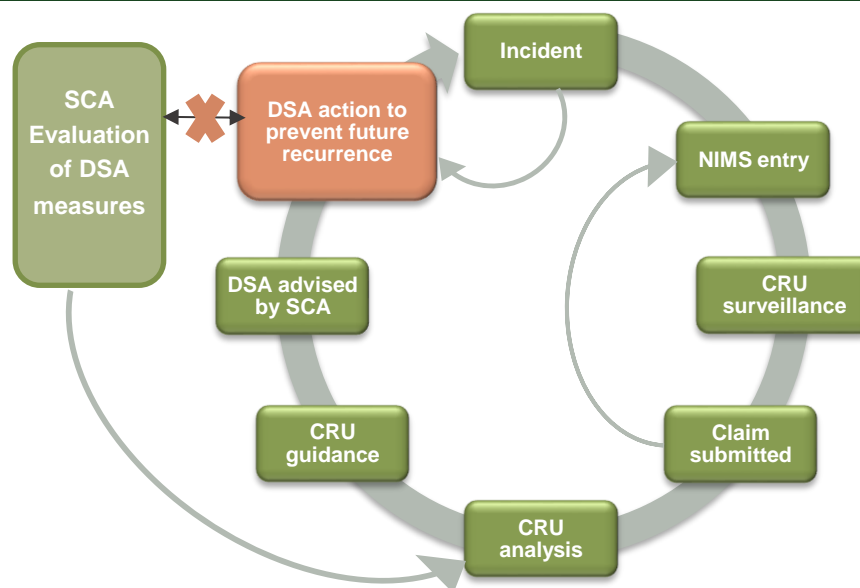
Notes: a Covid-19 and HSE cyber-attack reports; and advice related reports are excluded.

b These publications are once-off reports and are in addition to the quarterly reporting to DSAs and where published, can be found online.

Evaluation of measures adopted by DSAs

20.37 The SCA's statutory risk mandate sets out that the provision of assistance to DSAs may include, *inter alia*, the evaluation of the adequacy of the measures adopted by an authority to counter risks identified (see Figure 20.6).

20.38 The SCA noted that, when incidents are reported on NIMS or when claims occur, in most cases the relevant DSA will already have undertaken a review of the incident, made recommendations and have either implemented or be in the process of implementing the recommendations. It also noted that in these situations, it is often not appropriate or practical to make additional recommendations. Instead, the SCA may seek reassurance that recommendations already made have been implemented or are being progressed. The SCA stated that all healthcare DSAs must comply with the HSE's National Incident Management Framework, which sets out reporting requirements, including the use of NIMS and thereafter the requirements for reviews, recommendations and actions.

Figure 20.6 Summary of the State Claims Agency's lessons learned lifecycle

Source: Analysis by the Office of the Comptroller and Auditor General

Reporting the financial liability for claims

- 20.39** The SCA's annual financial statements disclose the aggregate estimated liability of State authorities for all claims under SCA's management at 31 December each year.
- 20.40** The HSE reimburses the SCA in respect of settlements made in relation to the CIS, and in respect of GIS claims in HSE facilities and voluntary hospitals. It also bears the cost of claims in respect of the activities of Tusla. In addition to the costs incurred in the period of account and accounted for on a 'pay as you go' basis, the HSE's financial statements disclose the contingent liability it has in respect of CIS and GIS claims that the SCA has on hand.¹ The HSE is not required to disclose a breakdown of the liability at individual hospital or unit level.
- 20.41** The costs incurred by the HSE are not passed back to the hospitals or units where the incidents giving rise to the claims occurred. Consequently, claim settlements and costs are not recognised in the financial statements of the DSAs in question.
- 20.42** The financial statements for five major hospitals were reviewed as part of the examination. None of the hospitals disclosed any details of the financial liability arising from claims related to their activities or acknowledged any serious adverse events in the financial statements. However, the number of active/settled claims and incidents reported were included in the annual reports of two hospitals (see Figure 20.7).
- 20.43** The SCA stated that it has always taken the position that to publish the claims experiences of individual hospitals would create a 'league table', which could lead to misinformed comparisons between hospitals with consequent negative impacts on delivery of services.

¹ The HSE discloses the estimated liability in line with the accounting standards specified by the Minister for Health under the provisions of the Health Act 2004.

Figure 20.7 Disclosures of number of active claims and estimated liability in the financial statements and annual reports, by entity^a

Entity	Financial statements			Annual reports
	Number of active claims	Estimated outstanding liability	Additional disclosures	Additional disclosures
State Claims Agency	✓ ^b	✓	Receivable from DSAs	
Health Service Executive	×	✓	Payments to the SCA	
Hospital 1	×	×		Number of active claims and incidents
Hospital 2	×	×		
Hospital 3 ^c	×	×		
Hospital 4	×	×		
Hospital 5	×	×		Number of settled claims and incidents

Source: Analysis of the Office of the Comptroller and Auditor General

Notes: a Financial statements for the years 2019 to 2021 were reviewed.

b Number of active claims is not split between the CIS and GIS.

c Does not publish an annual report.

Conclusions and recommendations

20.44 Since 2012, the estimated outstanding liability for SCA managed CIS claims has steadily increased. At the end of 2021, the estimated outstanding liability for CIS claims was €3.4 billion — an increase of €2.4 billion since 2012.

20.45 Claims related to maternity services accounted for just under 61% (€2.07 billion) of the estimated outstanding clinical liability at the end of 2021. Within this speciality, cerebral palsy claims, while representing just 4.5% of the total number of claims, accounted for around 40% of the estimated outstanding liability (€1.4 billion). There were 163 active cerebral palsy claims related to maternity services at the end of 2021.

20.46 Since 2012, the average time taken to finalise a clinical negligence claim has increased by 17%. The largest increase (59%) was for surgery related claims. For maternity services related claims, the duration increased by 39% from almost four years in 2012 to almost 5.4 years in 2021.

20.47 DSAs are statutorily required to report incidents to the SCA using the online system NIMS. SCA guidance states that early reporting of incidents increases the chance of a positive claim resolution. The SCA stated that there is evidence that increased levels of incident reporting and a culture of learning is associated with lower levels of litigation.

20.48 In the period 2017 to 2021, 25% of claims received had previously been reported on NIMS as an incident. The SCA considered that another 21% of claims received should have been previously reported as incidents. About one third of claims received were deemed to be of a type that could not reasonably be expected to have been reported.

20.49 The SCA analyses the rate of reporting of incidents and has identified a number of hospitals with a poor incident reporting record.

Recommendation 20.1

The SCA should work with DSAs where the culture of incident reporting is poorest to adopt a programme of measures to bring their reporting of incidents to an acceptable level.

Chief Executive Officer's response

Agreed.

The NTMA (Amendment) Act 2000 sets out that DSAs shall report to the SCA any adverse event, meaning any act, omission or other matter in relation to which a claim has been or may be made. It should be noted that the SCA does not have the authority to compel DSAs to report incidents. The SCA already has a number of measures in place to drive improved incident reporting levels by DSAs including

- the setting of annual incident reporting targets based on CPRI scores
- writing to DSAs with low reporting levels to remind them of their statutory requirement to report incidents
- flagging low reporting levels to hospitals at engagement meetings
- continuously improving NIMS to facilitate incident reporting e.g. roll-out of ePoint of Occurrence Entry (i.e. incident recorded directly on NIMS)
- providing education and training to DSAs in relation to NIMS and incident reporting.

20.50 The cost of managing and resolving CIS claims in 2021 was €357.4 million, of which €76.5 million (21%) related to legal services and other costs.

20.51 The main cost driver behind the increased estimated outstanding CIS liability is the average damages awarded. The estimated CIS liability is influenced by a small number of high-value claims, involving cases of catastrophic injury in a clinical setting, in particular those relating to cerebral palsy.

20.52 Currently, only one region in Ireland has an active cerebral palsy register. This captures data on recorded cerebral palsy cases for that geographical area. Similar information captured in all regions could enable a better understanding of preventable causes.

20.53 The dissemination by the SCA of advice and assistance to DSAs on the management of litigation risks, on enhancing the safety of service users/patients to minimise the incidence of claims and the liabilities of the State under the CIS, is extensive and comprehensive.

20.54 The SCA has legislative authority to evaluate the adequacy of the measures adopted by a DSA to counter identified risks. The SCA does not routinely evaluate the adequacy of the measures adopted by DSAs.

20.55 Some of the clinical risk issues identified by the SCA through its analysis and investigations have resulted in many recommendations being issued to DSAs. The SCA is of the view that it is impractical and not the best use of its resources to track implementation of these recommendations in detail.

Recommendation 20.2

The SCA should incorporate a process of evaluating the adequacy of measures adopted by DSAs countering risks identified, into its lessons learned procedures. Such a process, as provided for in its risk mandate, would help the SCA measure the effectiveness of the actions recommended and help improve accountability within DSAs.

Chief Executive Officer's response

Part agreed.

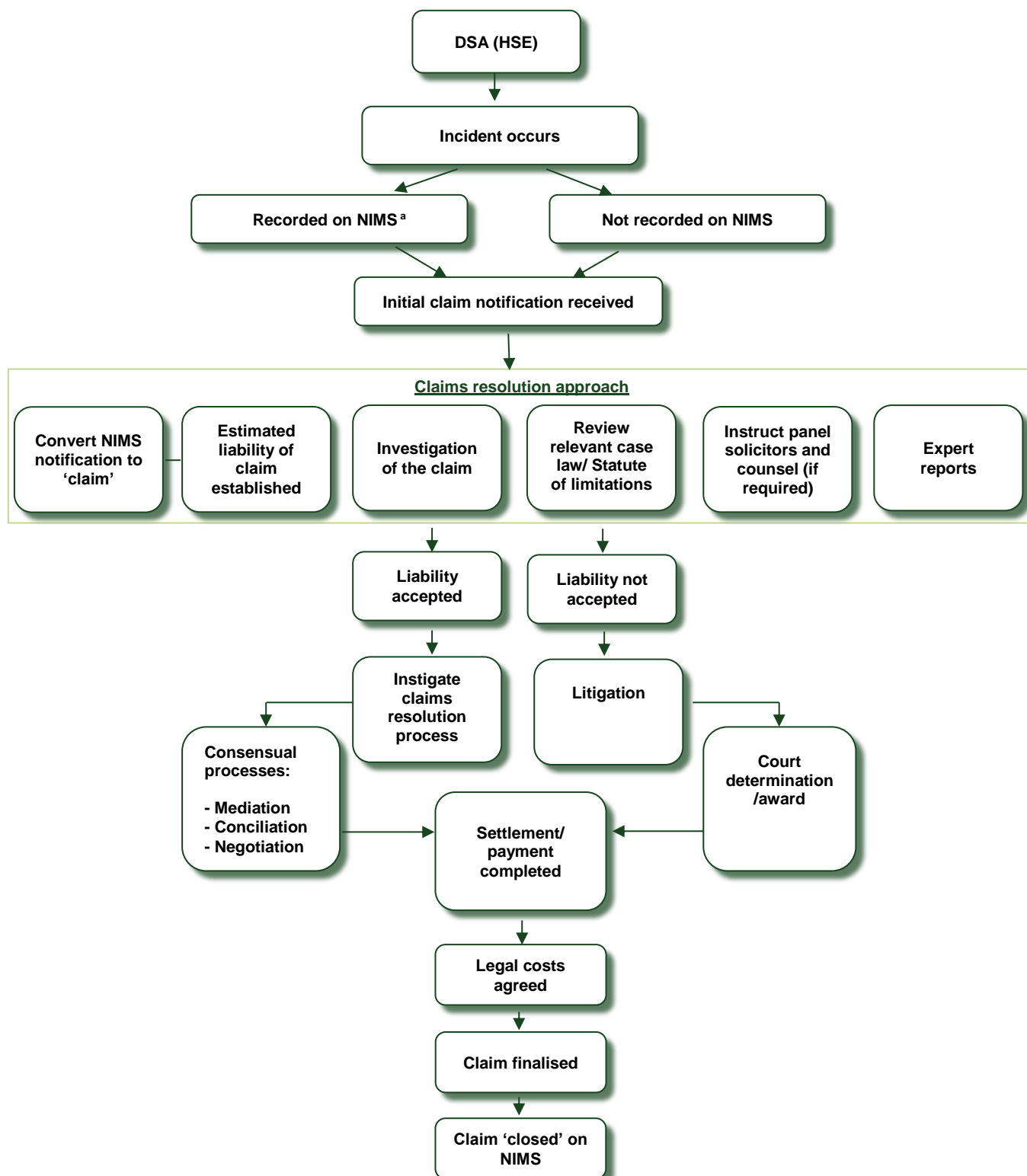
The SCA issues advices based on its analysis of incidents and claims to the HSE and other DSAs, some of which are of a general nature and issued broadly and some of which are specific and targeted. It is impractical and not the best use of its resources to track implementation by DSAs of all these advices, although the SCA does seek reassurance from DSAs on the implementation of risk mitigation measures in specific instances. While the SCA may seek to evaluate the adequacy of such measures in particular cases, it would not be an effective use of its resources to seek to routinely carry out such reviews.

It is important to note that it is very difficult for the SCA to identify the impact of its activities on the incidence of clinical negligence claims, due to the difficulty in detecting a statistically significant trend in claims numbers and attributing any trend to activities undertaken by the SCA, given the multiple factors involved in activities to improve patient safety and mitigate risk.

With regard to improvement of accountability within DSAs, responsibility for managing risks and setting risk management priorities remains in all cases a matter for the DSA concerned and the SCA's risk management role is an advisory one. In addition, healthcare DSAs are required to comply with the HSE's National Incident Management framework, which includes requirements for reviews, recommendations and actions.

- 20.56** The HSE's financial statements report the estimated CIS liability incurred as a consolidated total figure. The DSAs are provided with claims related data, including active claims, finalised claims, and financial information. However, since they do not bear the costs of claims, the DSAs covered by the CIS are not required to disclose details on the estimated liability or even to acknowledge the occurrence of serious adverse events in their financial statements.

Annex 20A Overview of claims management process



Source: Analysis by the Office of the Comptroller and Auditor General

Note: a NIMS is the confidential end-to-end risk management tool developed by the SCA that allows the DSAs to report incidents to the SCA and to manage incidents throughout the incident lifecycle.

Annex 20B Clinical Risk Unit activities

CRU activity	Description	Distributed to DSAs
NIMS data analysis	Review and analysis of incidents reported on NIMS, and appropriate follow-up actions. These actions include, but are not limited to, the development of patient safety notifications, local follow up with DSAs, or escalation to HSE.	Yes
Claims analysis (active and closed claims)	In-depth analyses of claims data undertaken in order to extract and share learning with DSAs and others.	Yes
Issuing of reports on incidents and claims analysis	Production of detailed reports on a specific incident or claim topic or theme. An in-depth analysis of incidents and / or claims data is undertaken in order to extract and share learning with the system.	Yes
Conducting CPRI analysis of new clinical negligence claims	The SCA measures incident reporting by organisations using a key performance indicator (KPI) called 'delta claims previously reported as incidents' (Δ CPRI). This KPI is designed to encourage DSAs to report incidents, building a culture of learning.	Yes
Provision of clinical risk and indemnity advices	Responding to queries from DSAs. These queries relate to risk management advice, indemnity advice, and incident reporting guidance.	Yes
Education and training for DSAs and higher education institutions	Educational sessions delivered by members of the CRU in areas such as risk management, patient safety and incident reporting.	Yes
Conferences and webinars	Conferences and webinars hosted by the CRU on a wide range of topics relevant to patient safety.	Yes
Representation on a number of national bodies and groups	CRU representation on a wide range of national bodies and groups that include the Independent Patient Safety Council, the Safety and Quality Committee of the HSE Board, and co-chairing the National Neonatal Encephalopathy Action Group (NNEAG).	Yes
On-going engagement with DSAs and stakeholders	Client and stakeholder engagements undertaken by members of the CRU. These engagements include meetings with DSAs, key stakeholders within the HSE and at a national level.	Yes
Identifying risk issues and bringing them to the attention of DSAs	Engagement with DSAs on specific risk issues, seeking reassurance from DSAs that appropriate mitigation measures are being put in place.	Yes
Co-designing and implementing with the HSE national initiatives to mitigate risk	The CRU is involved in co-designing and implementing with the HSE national initiatives to mitigate risk (e.g. the NNEAG programme).	Yes
Publication of Clinical Risk Insights newsletter	Newsletter generated by the CRU with a wide distribution — it includes articles on clinical risk management issues, case studies, NIMS updates.	Yes
NIMS continuous improvement projects	CRU staff are members of NIMS project teams and contribute to the on-going development and evolution of the system, in collaboration with the HSE	Yes

21 Accounts of the National Treasury Management Agency

- 21.1** Section 12 of the National Treasury Management Agency Act 1990 (as amended) (the 1990 Act) requires the National Treasury Management Agency (the NTMA) to keep accounts of all moneys it receives or expends in the form approved by the Minister for Finance (the Minister), and to submit the accounts annually for audit by the Comptroller and Auditor General. Following completion of the audit, the NTMA must submit the accounts and the related audit reports to the Minister, who in turn must present them to the Houses of the Oireachtas.
- 21.2** Separately, section 12 of the 1990 Act requires the Comptroller and Auditor General to report to Dáil Éireann with respect to the correctness of the sums brought to account by the NTMA each year. This is the report for 2021 under that section of the 1990 Act.

Accounts of the NTMA 2021

- 21.3** The accounts audited under section 12 of the 1990 Act are
- National debt of Ireland
 - NTMA administration account
 - Post Office Savings Bank Fund
 - State Claims Agency¹
 - Ireland Strategic Investment Fund (ISIF)
 - Ireland Apple escrow fund²
 - National Surplus (Exceptional Contingencies) Reserve Fund.
- 21.4** Separately, the NTMA prepares the financial statements of the Dormant Accounts Fund (under the Dormant Accounts Act 2001) and of the Carbon Fund (under the Carbon Fund Act 2007). These are published by the NTMA together with the other (section 12) accounts it publishes.
- 21.5** The accounts for 2021 have been audited. My reports on the audits were issued on 16 May 2022.

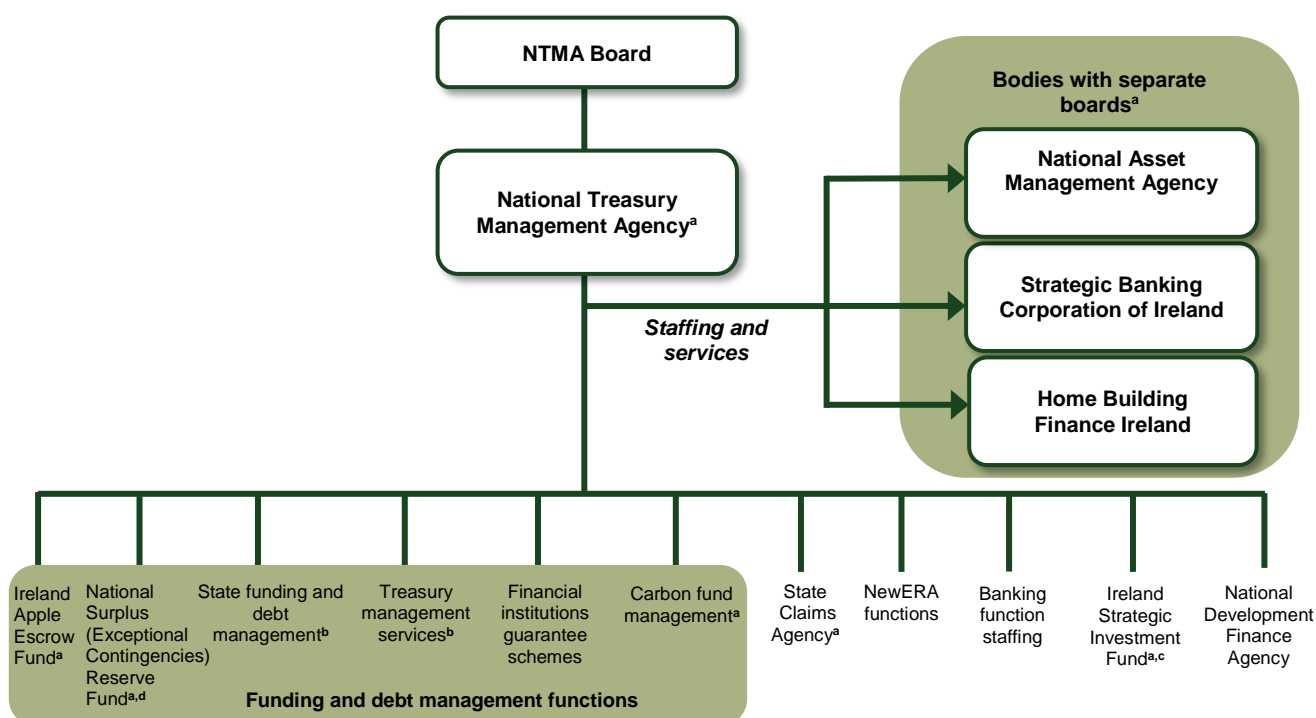
¹ See Chapter 20 *Management of the Clinical Indemnity Scheme* for details on the State Claims Agency's management of that scheme.

² See Chapter 22 *Ireland Apple escrow fund* for details on the establishment of the fund, and on the accounting thereof.

Structure, costs and staffing of the agency

- 21.6** The NTMA was originally set up in 1990. It has since evolved into a complex organisation with multiple functions that extend beyond its original and core role in managing Ireland's national debt (see Figure 21.1). Figure 21.2 summarises the distribution of the NTMA's costs across the functions.
- 21.7** At the end of 2021, NTMA staff numbers totalled 783 on a whole time equivalent basis. The assignment of staff to the various functions and activities is shown in Figure 21.3.
- 21.8** The NTMA Executive Management Team comprises the Chief Executive, the Chief Financial and Operating Officer, the Director of the State Claims Agency, the Chief People Officer, the Chief Legal Officer, the Director of ISIF, the Director of Funding and Debt Management, the Director of the National Development Finance Agency and NewERA, and the Head of Banking (who is seconded to the Department of Finance).

Figure 21.1 Functions of the National Treasury Management Agency



Source: National Treasury Management Agency

- Notes:
- a Separate financial statements are prepared for the activities of each of these functions/entities.
 - b In the case of State funding, debt management and treasury management services, separate financial statements are prepared for the Dormant Accounts Fund, the Post Office Savings Bank Fund and the national debt.
 - c The Ireland Strategic Investment Fund (ISIF) took over the assets and liabilities of the National Pensions Reserve Fund (NPRF) in 2014. At 31 December 2021, there were no assets remaining in the NPRF. The NPRF Commission was dissolved on 31 December 2021. NPRF 2021 accounts were prepared and audited for that period.
 - d €1,500 million was transferred from the National Surplus (Exceptional Contingencies) Reserve Fund to the Central Fund of the Exchequer in October 2020, to allow for public expenditure to mitigate the impact of the Covid-19 pandemic. The Fund has had a nil balance since that transfer was completed.

Figure 21.2 Cost of operations, by business area, 2018 to 2021

	2018	2019	2020	2021
	€m	€m	€m	€m
NTMA business units				
Funding and debt management	12.3	12.3	12.6	12.4
Ireland Strategic Investment Fund	14.5	15.2	16.0	17.2
State Claims Agency	25.0	28.5	28.1	29.2
NewERA	6.1	6.0	5.8	6.1
Banking Unit (Shareholding and Financing Advisory Division, Department of Finance)	3.8	3.9	1.8	2.2
National Development Finance Agency	11.3	12.6	11.3	11.6
Supported bodies				
National Asset Management Agency	40.8	40.7	33.9	30.2
Strategic Banking Corporation of Ireland	5.9	5.9	6.2	6.5
Home Building Finance Ireland ^a	—	5.3	5.0	6.0
Total payments	119.7	130.4	120.7	121.4

Source: National Treasury Management Agency

Note: a No costs arose in relation to HBFi prior to 2019.

Figure 21.3 NTMA staffing distribution at year-end, 2018 to 2021^a

	2018	2019	2020	2021
NTMA business units				
Funding and debt management	24	23	23	23
Ireland Strategic Investment Fund	42	47	53	59
State Claims Agency	148	156	166	170
NewERA	26	25	26	29
Banking Unit (Shareholding and Financing Advisory Division, Department of Finance)	11	11	9	8
National Development Finance Agency	63	64	67	67
NTMA corporate functions				
Finance, technology and operations	138	133	145	143
Legal, compliance, HR and internal audit	46	43	48	55
Risk	21	20	20	20
Other	9	3	1	1
Supported bodies				
National Asset Management Agency	236	210	174	145
Strategic Banking Corporation of Ireland	17	23	28	32
Home Building Finance Ireland	5	21	27	31
Total	786	779	787	783

Source: National Treasury Management Agency

Note: a Numbers are based on whole time equivalent.

Performance-related pay

- 21.9** The provision for a discretionary performance-related payment is included in the majority of NTMA employee's contracts. The Remuneration Committee of the NTMA is responsible for approval of the overall amount of performance related pay in a year and for the approval of individual proposed awards to members of the Executive Management Team (EMT). Awards of performance-related payments to employees below EMT level are approved by the CEO following a review by a sub-committee of the EMT.
- 21.10** Performance-related payments of €2.22 million were made to 231 employees for 2021, of which €195,000 was paid to six members of the EMT. No performance-related payments were made for 2020. The CEO of the NTMA did not receive a performance-related payment in respect of 2021.

Supported agencies

- 21.11** In addition to its own operations, the NTMA assigns staff to the National Asset Management Agency (NAMA), the Strategic Banking Corporation of Ireland (SBCI) and Home Building Finance Ireland (HBFI) and provides them with business and support services and systems on a cost recoupment basis. Each of the supported entities has its own board and is separately accountable to Dáil Éireann.
- 21.12** Performance-related payments of €511,000 were awarded to NTMA staff members assigned to other agencies for 2021 — NAMA €371,000, SBCI €85,000 and HBFI €55,000. No performance-related payments were made to NTMA staff assigned to supported agencies for 2020.

Banking system functions staffing

- 21.13** The NTMA's Banking Unit has been seconded to the Department of Finance since August 2011, where it now forms part of the Department's Shareholding and Financial Advisory Division. At the direction of the Minister, costs of the Banking Unit, comprising staff costs and certain professional advisor costs, are met by the NTMA. Costs incurred by the NTMA in 2021 in relation to the Banking Unit totalled €2.2 million (2020: €1.8 million).

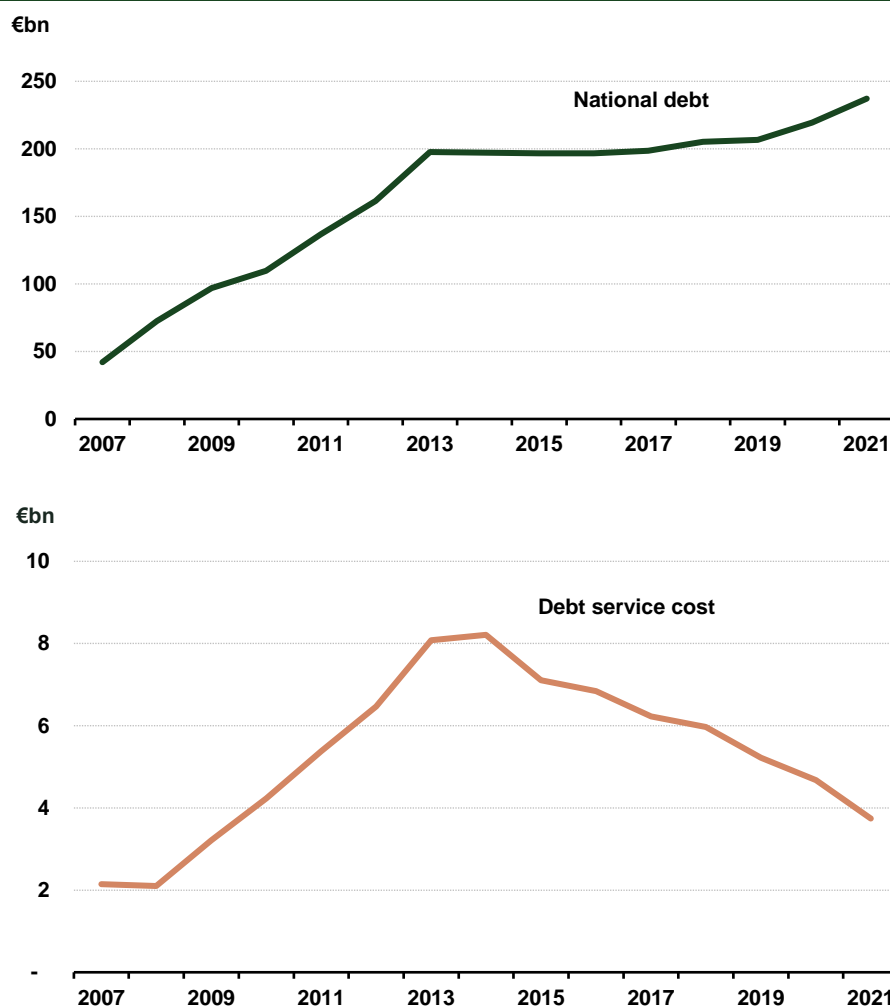
Key NTMA operations in 2021

- 21.14** Key developments in the NTMA's operations in 2021 relate to
- a €17.7 billion (8.1%) increase in the level of the national debt
 - an increase of €1.7 billion in the estimated value of the net assets of the Ireland Strategic Investment Fund
 - disposal of 67 million shares (6.1%) of the State's shareholding in Bank of Ireland
 - continuation of the upward trend in the estimated contingent liability of the claims being managed by the State Claims Agency.

National debt

- 21.15** The NTMA's primary function is to borrow on behalf of the Minister and to manage Ireland's national debt. This is defined in the NTMA Act 1990 as the total debt outstanding for the time being of the Exchequer.¹
- 21.16** At 31 December 2021, the national debt stood at €237,177 million (2020: €219,482 million) (see Figure 21.4). The increase of €17,695 million (or 8.1%) in 2021 was largely attributable to the net additional funding requirements of the State as a result of the ongoing response to the Covid-19 pandemic.
- 21.17** Debt service costs paid in 2021 were €3,745 million and included net interest paid, transaction fees and operating expenses. This was down from €4,676 million in 2020, and represented a continuation of the downward trend occurring since 2014. This relates mainly to the NTMA's re-financing of the debt over a number of years in the context of an international low interest rate environment.

Figure 21.4 National debt and debt service costs, 2007 to 2021



¹ See section 1 of the 1990 Act.

Source: National Treasury Management Agency

21.18 The NTMA initially planned to raise between €16 billion and €20 billion in bond funding during 2021, in line with its debt re-financing objectives. Following the publication, in July 2021, of the Government's Summer Economic Statement, the NTMA revised the funding range to between €18 billion and €20 billion. Over the course of the year, the NTMA completed €18.5 billion of benchmark bond issuance. A further €0.8 billion was issued in non-competitive bond auctions, bringing total bond issuance to €19.3 billion.

21.19 The NTMA held seven bond auctions during 2021, issuing bonds to the value of €10.3 billion. In addition, the NTMA undertook two bond syndications during the year, issuing €5.5 billion of a new 10-year bond and €3.5 billion of a new 20-year bond. The yields associated with the two new bonds issued by way of syndication were in the range of -0.257% to 0.585%.¹

21.20 The NTMA also raised the following during 2021

- €1 billion in other long-term debt issued under the NTMA's Euro Medium Term Note Programme. There were eight fixed-rate private placements with maturities ranging from 65 to 100 years and one 30-year inflation linked bond.
- A €2.5 billion loan was drawn down by the NTMA from the European Commission's temporary Support to Mitigate Unemployment Risks in an Emergency programme (SURE programme). The SURE loan is intended to support member states in dealing with the employment impact of the Covid-19 pandemic.
- A €0.2 billion European Investment Bank loan was drawn down.

21.21 This brought total long-term borrowing in 2021 to €23 billion.

¹ A syndicated bond sale is the issue of a new or existing bond through a syndicate of primary dealers in Irish government bonds. The NTMA currently recognises 14 primary dealers — mostly international financial institutions — which are responsible for market-making and the sale and distribution of Ireland's government bonds to end investors.

Ireland Strategic Investment Fund

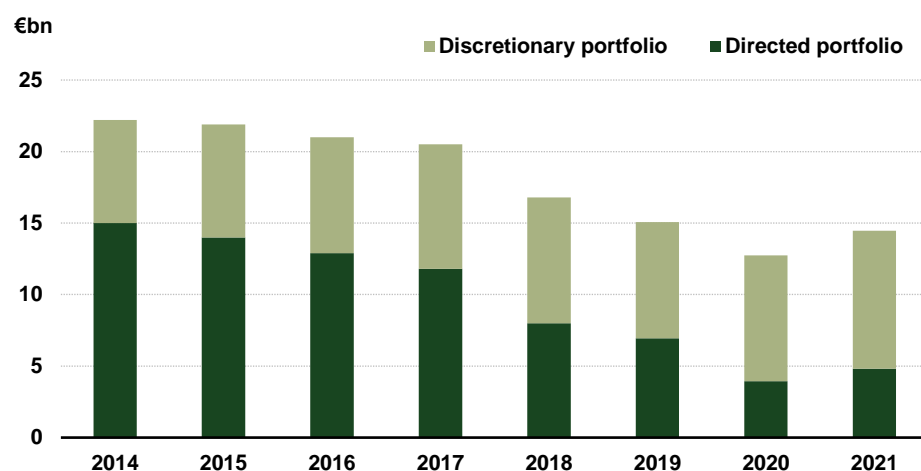
21.22 The Ireland Strategic Investment Fund (ISIF) was established in December 2014, pursuant to the National Treasury Management Agency (Amendment) Act 2014. On its establishment, the assets and liabilities of the National Pension Reserve Fund (NPRF) became assets and liabilities of the ISIF.

21.23 The assets of the ISIF are held in two portfolios.

- The **directed investment portfolio** is subject to directions given by the Minister for Finance.¹ The assets in the portfolio primarily comprise investments in a number of banks. The Minister has directed that any interest or other income received in respect of deposits and/or securities held in the directed portfolio are transferred to the discretionary investment portfolio and are held or invested by the NTMA (see below).
- The **discretionary investment portfolio** consists of investments made in accordance with the relevant sections of the 2014 Act, where the NTMA holds or invests the assets of the ISIF (other than directed investments) on a commercial basis.

21.24 At 31 December 2021, the ISIF held net assets of €14.4 billion (2020: €12.7 billion). The net assets comprised €4.8 billion in the directed portfolio, up from €3.9 billion at the end of 2020; and €9.6 billion in the discretionary portfolio, up from €8.8 billion at the end of 2020 (see Figure 21.5).

Figure 21.5 Value of ISIF net assets, 2014 to 2021



Source: Financial Statements of the Ireland Strategic Investment Fund, 2014 to 2021. Analysis by the Office of the Comptroller and Auditor General.

¹ Section 43 of the 2014 Act provides that the Minister may give direction to the NTMA in relation to the holding and management of a directed investment, the exercise of any voting rights attaching to a directed investment, or the disposal of a directed investment.

Directed investment portfolio

21.25 The €900 million increase in the value of the directed portfolio is largely attributable to the improvement in market value of Allied Irish Bank (AIB) and Bank of Ireland (BOI) shares. At end 2021, shares in AIB were valued at €2.084 per share (2020: €1.678 per share) and BOI shares were valued at €4.986 per share (2020: €3.296 per share).

- 21.26** On 23 June and 4 November 2021, the Minister for Finance directed the NTMA to facilitate the sale of part of the State's shareholding in BOI, via a share trading plan and to subsequently transfer the net proceeds of sale to the Exchequer. A total of 67 million BOI shares were disposed of during 2021. Net proceeds of €249 million from the share disposals were transferred to the Exchequer on 10 November 2021. ISIF's direct shareholding in Bank of Ireland had reduced to 7.81% by 31 December 2021 (2020: 13.95%).
- 21.27** On 21 December 2021, the Minister for Finance directed the NTMA to facilitate the sale of part of the State's shareholding in AIB, via a share trading plan over a period of up to six months and to transfer the net proceeds of the sale to the Exchequer.

Pandemic Stabilisation and Recovery Fund

- 21.28** In May 2020, the Minister for Finance instructed the ISIF to make a €2 billion fund available, to be known as the Pandemic Stabilisation and Recovery Fund (PSRF). The PSRF seeks — on a commercial basis — to support medium and large enterprises affected by the Covid-19 pandemic in Ireland, with a focus on enterprises employing more than 250 employees or with annual turnover in excess of €50 million. The PSRF is a sub-portfolio of the ISIF's discretionary portfolio and operates within the existing ISIF statutory mandate.
- 21.29** The NTMA has stated that, as the economy transitions from a stabilisation phase to a recovery phase, the particular focus of the PSRF is on regional redevelopment, indigenous businesses, housing, climate change, food and agriculture, and Brexit. It has continued to use the PSRF to support new indirect and existing direct investments including certain investment funds, where the funds' strategies are pandemic related, throughout 2021.
- 21.30** The NTMA has stated that 32 new PSRF investments were approved, comprising cumulative capital of €1 billion. Of this amount, €670 million was committed to 25 separate investments during 2021, with an average investment size of €27 million.

Urban investment programme and new investment strategy

- 21.31** In June 2022, ISIF announced a €500 million investment programme for Ireland's 5 regional cities (Cork, Galway, Limerick, Waterford and Kilkenny). The programme is targeted at new places to work, places to live and the regeneration of regional city centres. The Minister for Finance stated at that time that the flexibility of ISIF's new investment strategy would allow the PSRF, established in response to the pandemic, to be wound down.

State Claims Agency

21.32 The NTMA manages personal injury, including clinical negligence, and third-party property damage claims on behalf of the State and delegated State authorities. In addition, it has a risk management role, advising and assisting those State authorities in minimising their claims exposure. It also considers and manages third party cost claims against the State and delegated State authorities, arising from all categories of litigation. When performing these functions, the NTMA is known as the State Claims Agency (SCA).

Extension of scope of claims (due to Covid-19 response)

21.33 During 2020, the management of certain claims against private healthcare facilities and clinicians was delegated to the SCA. This arose from a temporary arrangement for private hospitals and clinicians to provide facilities and professional medical services resources to the public health system in the management of Covid-19 cases, and the delivery of acute hospital care more generally during the pandemic. The management of claims against a private sector company assisting with the Covid-19 testing programme was also delegated to the SCA in 2020.

21.34 The SCA has stated that a relatively small number of claims relating to Covid-19 had been received by the end of 2021.

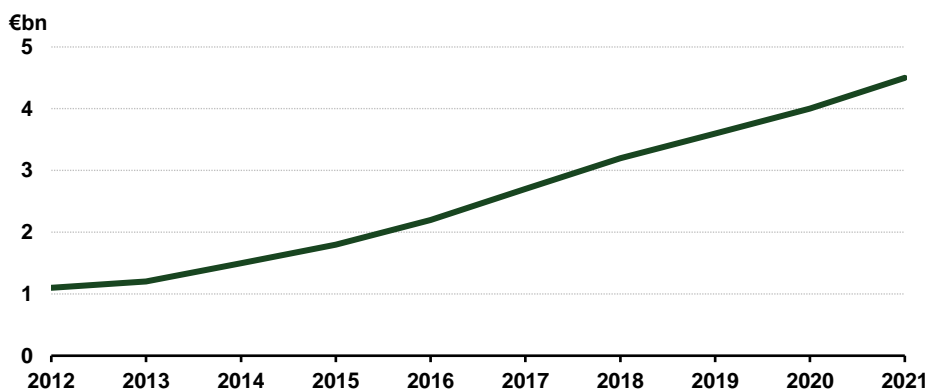
Claim settlement in 2021

21.35 Awards and associated claim costs of the SCA in 2021 amounted to a total of €513 million — an increase of 19% in the year (2020: €430 million).¹ These costs are recoupable from the relevant State authorities availing of the SCA services.

21.36 In addition to the settlement costs, the NTMA incurred €29.2 million (2020: €28.1 million) in administrative costs in the performance of its SCA functions. These administrative costs are included in the administration expenses of the NTMA, which are charged on the Central Fund.

21.37 The estimated cost of settling outstanding claims has been steadily increasing.² The estimated outstanding liability at the end of 2021 has been estimated by the SCA at €4.53 billion — over four times the estimated outstanding liability at the end of 2012 (see Figure 21.6).

Figure 21.6 Estimated outstanding claims liability at year end, 2012 to 2021



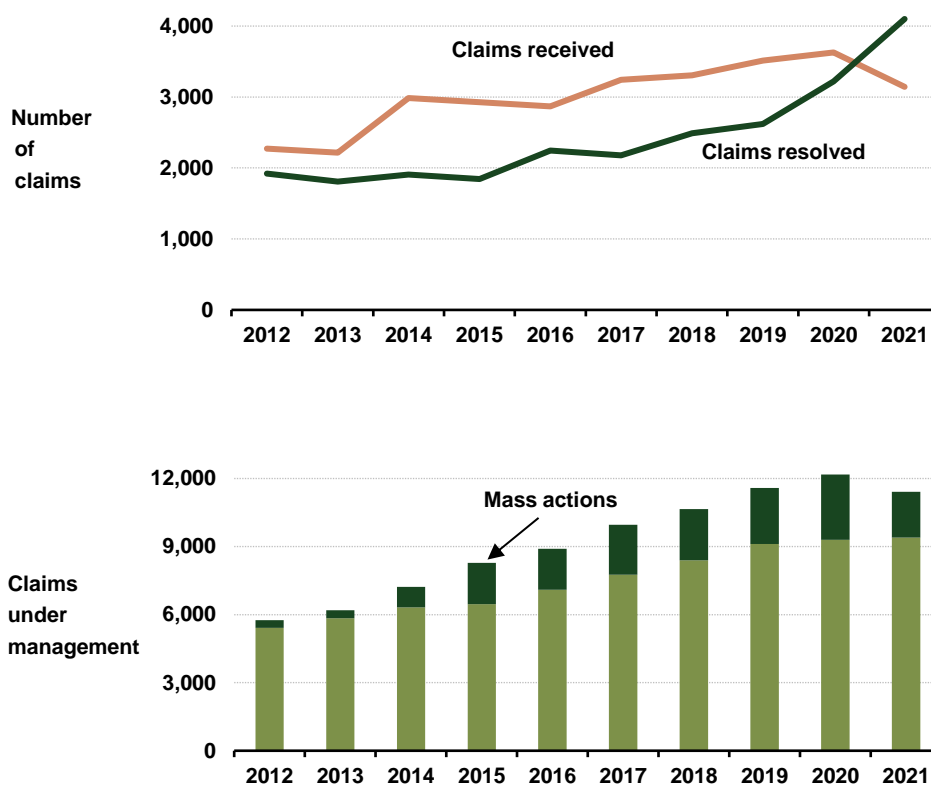
¹ Includes all awards and costs paid under the general and clinical indemnity schemes and all other costs paid by the Legal Costs Unit — including Tribunal costs.

² Of the €4.53 billion outstanding estimated liability at year-end, €562.1 million relates to interim payment orders and 'periodic payment orders'.

Source: National Treasury Management Agency

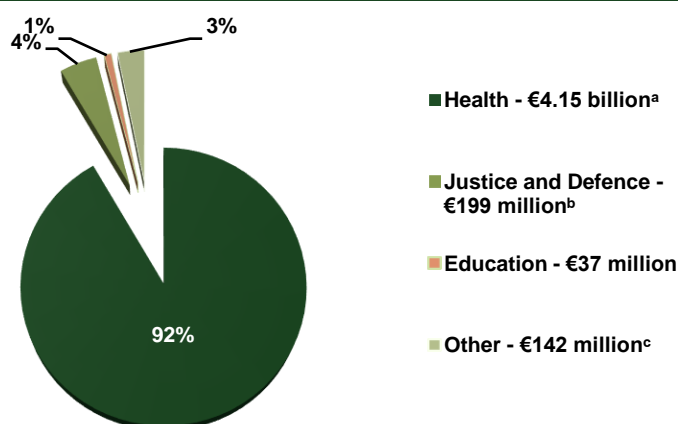
21.38 Around 4,100 claims were resolved in 2021 — an increase of 27% over the previous year. The number of claims under management by the SCA at the year-end declined, but nevertheless remains high (see Figure 21.7). At the end of 2021, there were 11,408 claims under management including 2,016 claims in mass actions (general and clinical).

Figure 21.7 Claims received and resolved annually, and claims under management, at year end, 2012 to 2021



Source: National Treasury Management Agency

21.39 Health sector bodies (including the HSE and the Department of Health) accounted for 92% of the estimated outstanding liability at the end of 2021. Two other sectors (Justice and Defence, and Education) accounted for a further 5% (see Figure 21.8).

Figure 21.8 Proportion of estimated outstanding liability for each State authority sector, at end-2021

Source: National Treasury Management Agency

Notes: a The health sector includes the HSE, Department of Health and bodies under its aegis.

b Justice and Defence include the Irish Prison Service, An Garda Síochána, Defence Forces and certain others.

c Tusla claims included within Other category given that they now sit under the Minister for Children, Equality, Disability, Integration and Youth.

Cervical cancer litigation

21.40 At end-2021, the SCA had received notification of 340 claims against the HSE's CervicalCheck programme (end-2020: 234 claims).¹ This includes 68 psychological injury claims from members of the families of the women concerned.

21.41 There were 42 CervicalCheck claims concluded during 2021, bringing the total numbers of claims concluded as at end-2021 to 64. Mediation is offered in almost every CervicalCheck case.

Erroneous payments

21.42 The NTMA's statement on internal control for the year ended 31 December 2021 discloses that a number of erroneous payments were made during the year to service providers of the SCA. Fifteen erroneous payments occurred, with a combined value of €345,666. The payees returned the payments and no net losses to the Exchequer have arisen.

21.43 Some of the business processes used by the SCA in making payments to suppliers are partly manual, and errors in the implementation of checks on those transactions resulted in erroneous payments.

21.44 The NTMA has enhanced its controls and procedures to mitigate this business risk in 2020 and 2021 and is working to identify any further required enhancements to the relevant controls and procedures.

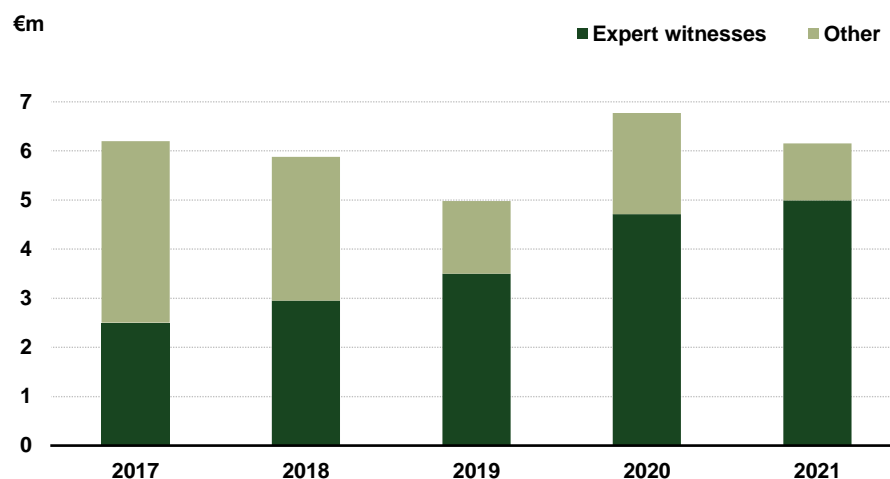
Procurement exceptions and expert witnesses

21.45 During 2021, the NTMA made payments with a total value of €6.15 million (ex VAT) (2020: €6.77 million) in respect of goods/services that were the subject of procurement exceptions approved in accordance with the NTMA's Procurement Policy and Procurement Procedure.

¹ A CervicalCheck Tribunal has been in operation since December 2020, as an alternative system to the courts for processing claims arising. It is a matter for the plaintiffs in each case as to whether they wish to bring claims to the Tribunal or pursue them through the courts. Plaintiffs who submit claims to the Tribunal retain a right of appeal to the High Court.

- 21.46** The overall level of non-competitive procurement by the NTMA has remained at a relatively consistent level over the last five years. However, the proportion of expenditure associated with expert witnesses retained by the SCA has increased year-on-year over the same period (see Figure 21.9). Non-competitively procured expert witness costs have increased from 40% of total procurement exceptions in 2017, to 81% in 2021. The SCA's claims portfolio has also increased in size and complexity over that time.
- 21.47** The SCA categorises its expert witnesses in two broad categories — witnesses as to causation and liability (e.g. medical and engineer witnesses), and witnesses as to quantum and fact (e.g. actuarial witnesses). The SCA does not competitively procure witnesses as to causation and liability on the basis that it considered that such a procurement process would be likely to give rise to an added level of litigation risk in relation to the independence of such witnesses.
- 21.48** Expert witness costs of €4.99 million (2020: €4.71 million) were incurred by SCA in 2021. 90% of those costs related to causation and liability witnesses, with the remaining 10% being attributed to quantum and fact witnesses.
- 21.49** A panel of two service providers was procured in 2021 for the provision of actuarial expert witness services. SCA has indicated that it plans to go to tender for certain other expert witness services as to quantum and fact (private investigators and architects) in 2022.

Figure 21.9 NTMA procurement exceptions, 2017 to 2021



Source: Financial Statements of the National Treasury Management Agency, 2017 to 2021. Analysis by the Office of the Comptroller and Auditor General.

22 Ireland Apple escrow fund

22.1 The Ireland Apple escrow fund is a multi-billion-euro fund held under the terms of a formal agreement between the Minister for Finance (the Minister) and Apple Sales International Limited and Apple Operations Europe Limited (jointly referred to as Apple), pending the final outcome of legal challenges to the findings of a State aid investigation undertaken by the European Commission (the Commission). The investment and management of the fund is jointly overseen by the Minister and Apple. The Minister delegated his functions in that regard to the National Treasury Management Agency (NTMA).

Origin of the escrow fund

22.2 In June 2014, the European Commission opened a formal investigation procedure into the tax opinions issued by the Revenue Commissioners in 1991 and 2007 to Apple. The investigation was focused on establishing whether these opinions conferred any advantage on the Apple Ireland subsidiaries relative to competitors, such that they constituted State aid.

22.3 In August 2016, the Commission issued a decision ('the Commission's decision') concluding that Ireland had given illegal State aid to Apple.¹

22.4 The Commission ordered Ireland to recover, from Apple, the alleged State aid plus interest, related to a ten-year period from 2003 up to 2014.² The Commission estimated that the State aid allegedly granted was in the order of €13 billion. Both the Irish Government and Apple separately appealed the Commission's decision.

22.5 Notwithstanding Ireland's appeal against the Commission's decision, the Irish Government complied with its obligation to recover the alleged State aid plus interest from Apple. The Minister agreed with Apple that the amounts collected would be held in an escrow fund until the legal process is completed.

22.6 The Revenue Commissioners computed the alleged State aid to be collected by reference to the Commission's decision. The sum was €13.1 billion plus interest of €1.2 billion. Apple transferred €14.3 billion into the escrow account in 2018.³

22.7 In July 2020, the General Court of the European Union issued its judgement in respect of the appeal case. The Court annulled the Commission's decision that Ireland had granted unlawful State aid to Apple.

22.8 The Commission lodged an appeal of the Court judgement. As a result, the monies will remain in escrow pending a final decision by the European Court. This process of litigation could take a number of years. The Court has yet to set a date for the appeal hearing and is not obliged to provide a minimum notice period for a hearing date. Department of Finance officials have indicated that the timing of the appeal hearing is entirely at the Court's discretion.

¹ Commission Decision on State Aid SA.38373 of 30 August 2016.

² Article 9, Chapter V of the Commission Regulation (EC) No 794/2004 of 21 April 2004. The Ireland Apple case is the largest State aid recovery ever ordered.

³ Figures in this report have been rounded.

Oversight and management of the fund

- 22.9** Placement of the funds in an escrow account allows the escrow parties (the Minister and Apple) to determine jointly how these funds are invested until a final judgement by the European Court, and the ultimate owner of the fund is determined.
- 22.10** In April 2018, the Minister and Apple entered into an escrow framework deed. This sets out the detailed legal arrangements governing the collection of funds from Apple, how they are to be managed and any required releases from the escrow account. The arrangements for oversight, management and monitoring of the fund are summarised in Annex 22A.

Investment strategy

- 22.11** The investment principles and parameters for the escrow fund are set out in the investment policy. The objective of the investment policy is to preserve the capital value of the escrow fund to the greatest extent possible in light of the prevailing market conditions. The agreed risk appetite in respect of the escrow fund is 'low', with investments permitted only in securities that have a low degree of inherent risk, such as highly rated fixed income securities of short to medium-term duration. The investment committee periodically reviews the ongoing appropriateness of the investment policy.¹
- 22.12** The escrow fund is exposed to a variety of market, liquidity and credit risks. The risk management programme for the fund seeks to minimise the potential adverse effects of the risks on its financial performance.
- 22.13** The management and monitoring of risks is carried out by the investment managers. The escrow agent/custodian independently monitors compliance by the investment managers with their mandates and reports to the NTMA and Apple on a daily basis. The mandates issued to the investment managers are consistent with the investment policy for the fund. Compliance with the investment policy is considered by the investment committee on a quarterly basis. Regular meetings are held between the investment committee and the investment managers to review the investment managers' performance and that of the overall escrow fund.

¹ The investment committee comprises three representatives of the NTMA and three representatives of Apple. An NTMA representative chairs the committee.

² As a consequence of the Minister's delegation of the investment functions, the NTMA is required to prepare annual financial statements to be audited by the Comptroller and Auditor General, and to be presented (following audit) to the Houses of the Oireachtas. This arises from the terms of Section 12 of the NTMA Act 1990.

³ The financial statements of the escrow fund are prepared pursuant to Section 28(5) of the National Treasury Management Agency (Amendment) Act 2000.

Performance of the escrow fund

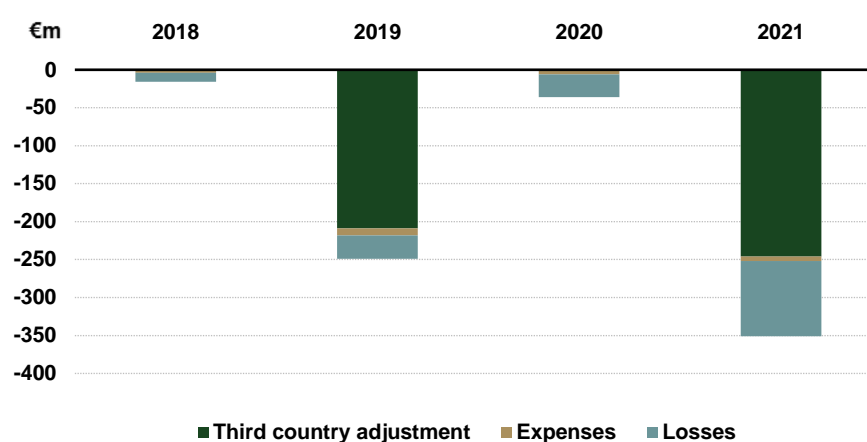
- 22.14** The financial statements of the escrow fund are prepared in accordance with International Financial Reporting Standards (IFRS), as directed by the Minister.^{2,3} All financial assets of the escrow fund are priced at fair value, which is the quoted market value at the close of trading on the period-end date.
- 22.15** In line with the investment policy, the escrow fund is invested in highly rated euro-denominated fixed income securities, or held as cash and cash equivalents. Fixed income securities include sovereign, quasi-sovereign and corporate bonds. Cash and cash equivalents include cash and other short-term investments (with maturities of three months or less).
- 22.16** At 31 December 2021, the total assets held in the escrow fund amounted to €13,635 million (31 December 2020: €13,986 million).

22.17 The total net assets of the fund reduced in 2021 by €351 million to €13,633 million (2020: €13,984 million).¹ The reduction was primarily due to a 'third country adjustment' amounting to almost €246 million (see below). The remaining €105 million decline in value for the year reflects the current negative interest rate environment and negative yields on highly rated euro sovereign and quasi-sovereign bonds, and fund operating expenses.

22.18 The escrow fund incurred operating costs of €6 million during 2021 (2020: €7 million). Operating costs include investment managers' fees, escrow agent/custodian's fees and other fees.

22.19 Figure 22.1 shows the movement in the fund's net assets each year, from 2018 to 2021.

Figure 22.1 Movement in the fund's net assets — 2018 to 2021



Source: Financial Statements of the Ireland Apple Escrow Fund, 2018 to 2021

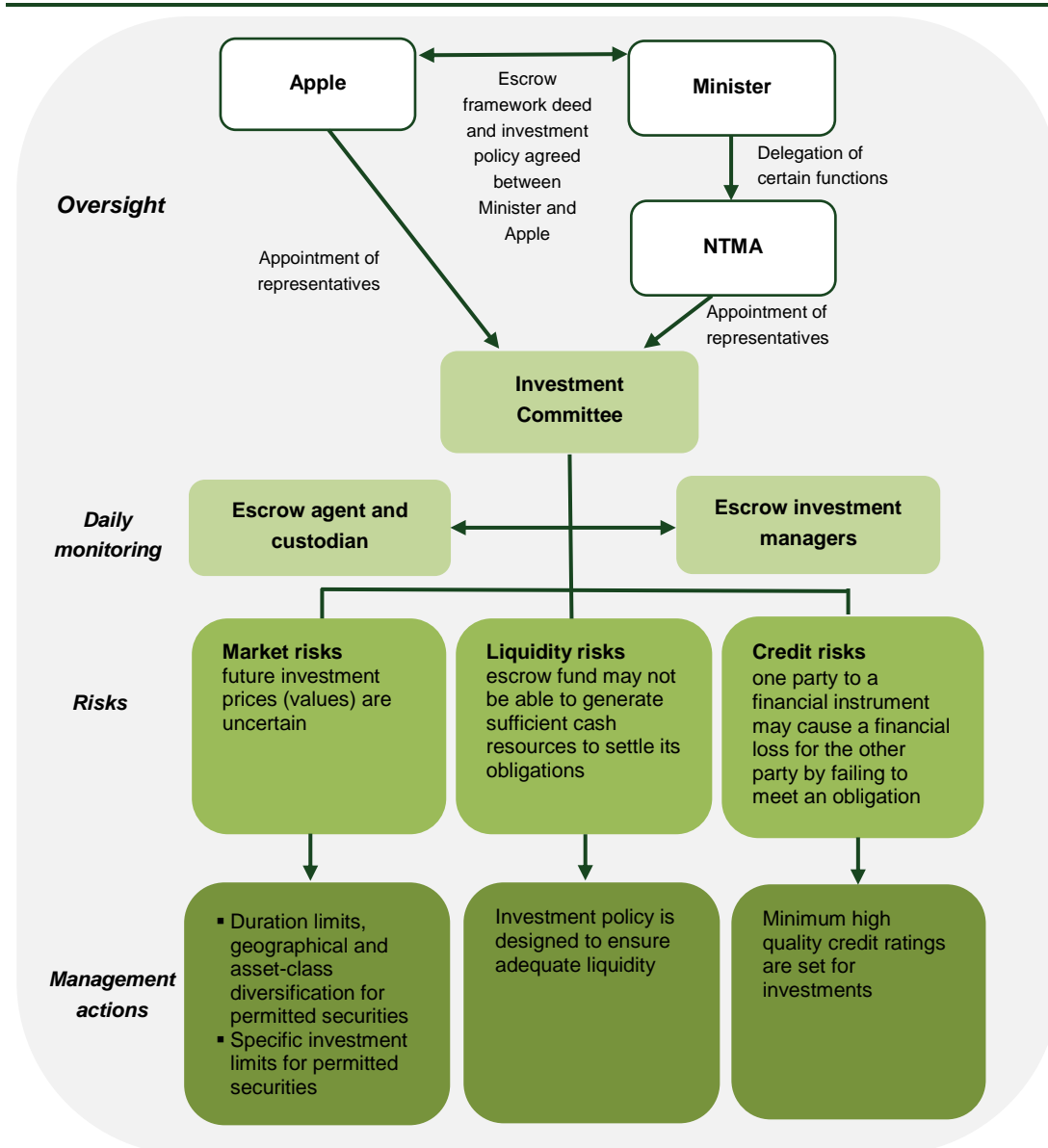
Third country adjustment

22.20 The Commission's decision noted that the profits to be subjected to tax in Ireland for the period covered by the decision could be reduced if Apple was required to pay taxes in another jurisdiction in respect of (some of) the same profits. Such reductions are referred to as 'third country' adjustments and are provided for in the escrow framework deed. The Minister for Finance determines the validity of any third country adjustment applications made by Apple in accordance with the escrow framework deed.

22.21 In April 2021, Apple made a claim for a third country adjustment. On 25 May 2021, following the appropriate determinations by the Minister for Finance, with advice from the Revenue Commissioners, €246 million was transferred from the fund to Apple in respect of the claim.

¹ The difference between the total assets and the total net assets is liabilities of the fund outstanding at the year-end.

Annex 22A

Figure 22A.1 Oversight, management and monitoring of the escrow fund^{a,b,c}

Source: Financial Statements of the Ireland Apple Escrow Fund, 2021. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a The role of The Bank of New York Mellon, London Branch (BNYM) as the escrow agent and custodian is to open and maintain escrow bank/securities accounts as well as to hold, apply and realise the escrow funds in accordance with the terms and conditions of the escrow agent/custodian agreement.
 - b The investment managers — Amundi Asset Management, BlackRock (Netherlands) BV and Goldman Sachs Asset Management International — are responsible for the management of investments in accordance with an investment manager mandate to preserve the fund's capital to the greatest extent possible in light of prevailing market conditions.
 - c The escrow fund is held by BNYM, as escrow agent and custodian. The investment and management of the escrow fund is jointly overseen by the Minister and Apple Sales International Limited and Apple Operations Europe Limited through an investment committee. The Minister for Finance is the beneficial owner for the duration of the escrow fund in accordance with the agreed escrow framework deed.

23 Irish Fiscal Advisory Council

- 23.1** The Irish Fiscal Advisory Council was established under the Fiscal Responsibility Act 2012 (the Act) to provide independent assessments of the Government's budgetary plans and projections and to inform public discussion of economic and fiscal matters.

Accounts of Irish Fiscal Advisory Council

- 23.2** The Chairperson of the Fiscal Council is the officer accountable for the preparation and presentation of its financial statements for audit.¹ Under the Act, the Fiscal Council is required to keep accounts of receipts and expenditure in the form approved by the Minister for Finance (the Minister)² and to submit them for audit by the Comptroller and Auditor General within three months after the end of the accounting period to which they relate. On completion of the audit, a copy of the accounts and of the audit report must be given to the Minister, who in turn must lay them before the Houses of the Oireachtas.
- 23.3** Separately, the Act requires the Comptroller and Auditor General to report to Dáil Éireann with respect to the correctness of the sums brought to account by the Fiscal Council each year. This is the report for 2021.

- 23.4** The accounts of the Fiscal Council for 2021 have been audited, and the report on the audit was issued on 13 September 2022.

- 23.5** I am satisfied that the accounts give a true and fair view of the assets, liabilities and financial position of the Fiscal Council at the end of 2021 and of its income and expenditure for the year.

Funding

- 23.6** The Fiscal Council is funded from the Central Fund of the Exchequer, subject to an inflation-indexed annual 'ceiling' amount.³ The cash based funding ceiling for 2021 was €834,000 (2020: €838,000)⁴ and funds of €648,000 were drawn by the Fiscal Council in the year.
- 23.7** The Fiscal Council's income for the year when accounted for on an accruals basis was €836,000 (2020: €786,000).⁵
- 23.8** Current expenditure of the Fiscal Council totalled just over €836,000 in 2021 (2020: €787,000).
- 23.9** Salary costs accounted for 53% of the expenditure in 2021. The largest element of the Fiscal Council's non-pay administration expenditure related to an administration fee payable to the Economic and Social Research Institute (ESRI) in respect of office accommodation costs and support services in 2021 which totalled around €131,000.

1 Mr Sebastian Barnes (OECD) is the Chairperson of the Fiscal Council.

2 The Council's financial statements have been prepared in accordance with Financial Reporting Standard (FRS)102.

3 Paragraph 9 of the schedule to the Act provides for the funding source and sets the baseline level of spending for the Council on commencement (31 December 2012) at €800,000.

4 The Department of Finance applies the Central Statistics Office Harmonised Index of Consumer Prices (HICP) when determining the ceiling for any year. The HICP rate used in calculating the 2021 ceiling was -0.5%.

5 Income and expenditure are determined under the accrual accounting convention whilst the funding ceiling is cash based.

Peer review

- 23.10** In line with its strategic plan 2020–2022, the Fiscal Council commissioned the Organisation for Economic Co-operation and Development to conduct an external evaluation to assess the functioning of the Fiscal Council with respect to its mandate under the Act, its governance structures, how effectively it communicates its work and the impact of its work.
- 23.11** The review group's report was published in February 2021.¹
- 23.12** The review found that the Fiscal Council performed well relative to international standards, meeting or exceeding the principles and standards in almost all areas. The review noted that the Fiscal Council has helped strengthen fiscal management in Ireland by developing new tools for assessing compliance with fiscal rules and for measuring the economic cycle. The review found that the Council demonstrates high levels of transparency regarding its methodologies and is perceived as independent and non-partisan.
- 23.13** The review made a number of recommendations across six areas: budget, leadership, governance requirements, access to information, staffing and medium to long term fiscal issues.
- 23.14** Arising from the report recommendations, the Fiscal Council identified 28 recommended action points. Following review, the Council decided not to implement one recommendation, and identified that implementation of 15 of the recommendations was within its direct control, but that implementation of the remaining 12 recommendations was outside its control.
- 23.15** The Fiscal Council has begun to implement the recommendations under its direct control, while engaging with Government on the other issues. At end August 2022, ten of the recommendations under the Council's direct control had been fully implemented, and the remaining five were partially implemented. Of the 12 recommendations not within the Council's direct control, three had been fully implemented and two had been partially implemented. The Council is engaging in on-going discussions with the Department of Finance in relation to implementation of the remaining seven recommendations.

¹ The review report is available at www.fiscalcouncil.ie.