1998

Annual Report of the Comptroller and Auditor General

on

The Appropriation Accounts of the Sums granted by the Oireachtas for Public Services for the year ended 31 December 1998

(Presented pursuant to Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 (No.8 of 1993))

Baile Átha Cliath
Arna fhoilsiú ag Oifig an tSoláthair

Le ceannach díreach ón
Oifig Dhíolta Foilseachán Rialtais,
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The Annual Report of the Comptroller and Auditor General and the Appropriation Accounts is published in two Volumes

- Volume 1, this volume, contains the Report of the Comptroller and Auditor General on matters arising from his audit of the Appropriation Accounts for 1998

- Volume 2 contains the individual Appropriation Accounts for 1998 with the audit certificate of the Comptroller and Auditor General on each account

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The report was prepared on the basis of information, documentation and explanations obtained from Government Departments and Offices referred to in the report.

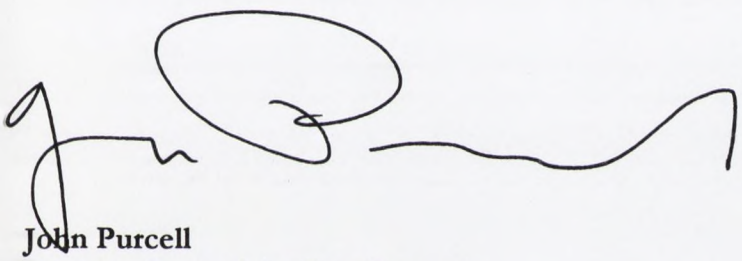
Drafts of relevant segments of the report were sent to the Departments and Offices concerned and their comments requested. Where appropriate, these comments were incorporated into the final version of the report.

Accounts of the Public Services, 1998

Report of the Comptroller and Auditor General

I am required under Article 33 of the Constitution to report to Dáil Éireann at stated periods as determined by law. Under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993, I am required to report to Dáil Éireann on my audit of the Appropriation Accounts, the stock and store accounts of Departments and the accounts of the receipt of revenue of the State not later than 30 September in the year following the year to which the accounts relate.

I hereby present the report for 1998 in accordance with Section 3 of the aforementioned Act.



John Purcell
Comptroller and Auditor General

28 September 1999

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GENERAL

1. Outturn for the Year

The audited accounts are summarised on pages *x* and *xi* of Volume 2. The amount to be surrendered as shown in the summary is £370.83m arrived at as follows:-

	£'000	Estimated £'000	Realised £'000
Gross Expenditure			
Original Estimates	14,102,440		
Supplementary Estimates	395,258	14,497,698	14,130,439
Deduct:-			
Appropriations in Aid	1,231,076		
Supplementary Estimates	49,151	1,280,227	1,283,796
		13,217,471	12,846,643
Amount to be Surrendered		£370,828 (€470,854)	

This represents 2.81% of the supply grant as compared with 2.43% in 1997.

2. Extra Exchequer Receipts

Extra Receipts payable to the Exchequer as recorded in the Appropriation Accounts amounted to £115,956,410.

3. Surrender of Balances of 1997 Votes

The balances due to be surrendered out of Votes for Public Services for the year ended 31 December 1997 amounted to £293.85m. I hereby certify that these balances have been duly surrendered.

4. Stock and Store Accounts

The stock and store accounts of the Departments have been examined with satisfactory results.

5. Referendum Commissions

In March and April 1998 the Minister for the Environment and Local Government set up two Referendum Commissions, under the Referendum Act, 1998 to provide information to the electorate in respect of the referenda on the Amsterdam Treaty and on the Northern Ireland Agreements. The Commissions were chaired by a former Chief Justice of the Supreme Court and the four ordinary members were the Clerk of Dáil Éireann, the Clerk of Seanad Éireann, the Ombudsman and the Comptroller and Auditor General. The Commissioners were independent in the performance of their functions. Not later than six months after the completion of the performance of their functions the Commissions shall submit a report to the Minister for Environment and Local Government in relation to the performance by them of their functions and the Minister shall lay the report before the Houses of the Oireachtas. The Commissions stand dissolved one month after the submission of the report (In November 1998 the report was submitted and accordingly the Commissions dissolved in December 1998).

As the referenda were held on the same day there was a considerable amount of commonality in the work of the two Commissions. The Secretariat of the Commissions was drawn from the Office of the Ombudsman and the expenses incurred by the Commissions in undertaking their statutory duties were borne on the Vote for the Department of the Taoiseach in respect of the Northern Ireland Agreements Referendum (£2.137m) and on the Vote for the Department of Foreign Affairs in respect of the Amsterdam Treaty Referendum (£2.197m).

The total expenditure on both referenda of £4,334,861 can be analysed as follows:

	Amsterdam Treaty	Northern Ireland Agreements	Total
	£	£	£
Sub-contractor/supplier expenditure *via* media consultants	1,852,971	1,752,619	3,605,590
Media consultants management fees	199,423	111,622	311,045
Paid to media consultants	2,052,394	1,864,241	3,916,635
Direct expenditure through Referendum Commissions	145,053	273,173	418,226[a]
Total	£2,197,447	£2,137,414	£4,334,861

[a] Comprises

	£
Advertising	194,000
Postal Costs	177,000
Printing and Design	20,000
Legal Fees	14,000
Miscellaneous	13,000

As I was a member of the Commissions I decided in the interest of transparency to engage the services of the auditor who audits the Appropriation Account of my Office, on my behalf, to also carry out an audit of the expenses incurred by the Commissions. His report was brought to the attention of the Accounting Officers of the Department of the Taoiseach, the Department of Foreign Affairs and the Office of the Ombudsman and their observations were sought.

The auditor prefaces his findings with the statement that "it should be borne in mind that the Commission and the staff assigned to it were working under significant time pressure and had a heavy workload. This is due in part to the fact that the Commission was under-resourced from a staffing perspective. Accordingly, a number of the problems noted, in our opinion, arise from these matters".

The main audit findings were:

- In the appointment of the media consultants public procurement procedures were not adhered to as:
    - For the Amsterdam Treaty Referendum campaign the lowest tender was not considered suitable and Government Contracts Committee approval was not sought or obtained for the award of the contract to a higher tenderer.
    - Guidance was not sought from the Department of Finance as to whether, due to the urgency of engaging a media consultant, the publication of the tender in the Official Journal of the European Union was not necessary. The successful tenderer however, had got legal advice that there was no requirement to so advertise.
    - As there was no time for a separate tendering process in respect of the Northern Ireland Agreements referendum the Commission sought proposals from the consultants then engaged on the Amsterdam Treaty referendum. The proposal was acceptable to the Commission and the contract was awarded accordingly. However, the approval of the Government Contracts Committee was not sought or obtained for this extension of the contract.
    - A tax clearance certificate must be provided by the consultants before a contract is awarded. Whilst the requirement was specified in the invitation to tender, this was subsequently not provided to the Commissions.
- Contract documents should be signed in duplicate by authorised persons and copies retained by both parties. Draft contracts/project management agreements were prepared but were not apparently finalised and signed, due to time constraints. There was a letter of 1 April 1998 from the consultants outlining budgeted costs for the Amsterdam Treaty referendum as it was anticipated by them that it would take some time to prepare and agree a detailed contract.
- The consultants organised sub-contracts with expenditure totalling £3.6m. Apart from the printing element (£611,000), a tender process was not arranged by the consultants.
- There were deficiencies in the system of internal control for authorising and approving invoices.

I was informed that:

- The Commission had to carry out a broad range of statutory functions within a predetermined time scale which was not of its own making and had to do so under the added pressure of a high level of public, media and political attention. The campaigns in respect of the referenda on the Amsterdam Treaty and the Northern Ireland Agreements, were the first such campaigns run by the Referendum Commission and as such were very much a learning experience for the Commission.

- The difficulties encountered by the Commission included:

    - Because two important referendums were held on the same date, the time scale available to the Commission to carry out its functions was particularly tight. Furthermore, the subject matter of the Amsterdam Treaty referendum was particularly complex and presented the Commission with very formidable challenges.

    - While the staff resources requested by the Commission were approved by the Government without delay, there was considerable delay in filling the approved posts because of the absence of any panels of qualified people. The Commission had, therefore, to draw from the staff of the Ombudsman's Office, who had no previous experience in or expert knowledge of the Amsterdam Treaty or the Northern Ireland Agreements, with the resulting vacancies being filled later on, when staff became available from service-wide panels.

    - The Commission obviously had to spend considerable time initially in putting staff and an office in place, setting up payment mechanisms and other logistical arrangements as well as engaging consultants and planning a comprehensive information campaign. Almost immediately work had to start on the preparation of the initial publications on the Amsterdam Treaty and on setting up the Website, Press Office and Information Line. In respect of the Amsterdam Treaty, a period of twelve weeks was available to the Commission to carry out its functions from the date of its establishment to the date of the referendum. In the case of the referendum on Northern Ireland, the time available was four weeks and during this period the Commission was running two separate information campaigns. As a result, the work pressures on the seconded staff, especially the Secretary to the Commission, were constant and intense and quite a number of logistical difficulties arose. A series of deadlines arose in quick succession.

- The Commission in its report to the Minister for Environment and Local Government agreed that it was desirable that any future Commission should have the maximum amount of time possible under the terms of the Constitution to fulfil its remit properly. Indeed some advance logistical and other work, including the putting into place of staff should be made possible even before the proposals for the referendum are settled by the two Houses of the Oireachtas, for example, as soon as the Government has publicly announced an intention to initiate the Bill concerned.

- Arising from the difficulties encountered the Commission also recommended that where it is decided to establish a Commission under the Act of 1998, the minimum period to elapse between the passing of the Bill or the making of an order under Section 12 of the Referendum Act, 1994 and the polling date should be 90 days.

- The matters raised on audit in relation to internal controls and procedures have been noted and appropriate measures will in future be put in place to deal with these matters. All the points raised relating to contract procedure are noted for future reference. The severe staffing and time constraints were again relevant in this regard.

- The Commission had less than one month to prepare and implement a multi-faceted information campaign in relation to the Northern Ireland referendum. It would have been impossible to do this except through the consultant as it was necessary to utilise the campaign framework already put in place in respect of the Amsterdam Treaty campaign *e.g.* press office, production company, printers, advertising company, media monitoring etc. The fact that these were already in place meant that the Northern Ireland campaign could be managed and run at a much reduced cost than would otherwise have been the case.

- When the consultants decided to submit a tender bid for the project management of the information campaign it formed a consortium to handle the advertising elements and to handle the broadcast production elements of the campaign. While it might have been more appropriate to ensure a tender process for all major elements of the services provided to the Commission these were on board from the outset as part of the consortium. The consultants did not engage in a tender process for these services. When a subsequent need for printing arose a tender process was followed at the request of the Commission. Due to the severe time constraints which the Commission operated under it was a distinct advantage in planning and implementing the campaign to have a number of service providers available at the outset. However, in future and assuming adequate notice is given of its establishment as outlined in its recommendations on these two campaigns, the Commission will seek to ensure that separate major services are contracted following a tender process.

- Work has already commenced on a Referendum Commission Procedures Manual which will put in place a series of procedures for expenditure controls, internal controls and strict compliance with public procurement and tendering procedures *etc.* for future referendum campaigns, where such proves practicable.

VOTE 9. - OFFICE OF THE REVENUE COMMISSIONERS

6. Revenue Account

Basis for Audit

An account showing all revenue received and paid over to the Exchequer by the Revenue Commissioners is furnished to me annually. I am required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993, to carry out such examinations of this account as I consider appropriate in order to satisfy myself as to its completeness and accuracy and to report to Dáil Éireann on the results of my examinations. The results of my examinations have been generally satisfactory.

I am also required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993 to carry out such examinations as I consider appropriate in order to ascertain 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 revenue of the State and to satisfy myself that the manner in which they are being employed and applied is adequate. Paragraphs 12 and 13 refer to matters arising from this examination.

Revenue Collected

Revenue collected under its main headings was as follows-

	1998 *£m*	1997 £m
Income Tax	**5,742**	5,208
Value Added Tax	**4,267**	3,707
Excise	**2,825**	2,523
Corporation Tax	**2,059**	1,697
Stamps	**541**	424
Customs	**160**	180
Capital Acquisitions Tax	**112**	89
Capital Gains Tax	**193**	132
Residential Property Tax	**1**	3
	15,900	13,963

The amount paid into the Exchequer was £15,899m leaving a balance of £10m prepaid to the Exchequer compared to a balance of £11m prepaid at the end of the previous year.

7. Write-Offs

The Revenue Commissioners have furnished me with details of taxes written off during the year ended 31 December 1998. The total amount written off is made up as follows:

Tax	**1998** **£'000**	1997 £'000
Value Added Tax	**79,128**	73,702
PAYE	**47,158**	61,625
Corporation Tax	**15,412**	40,801
Income Tax	**19,762**	47,343
Health/Social Insurance-Self Employed	**109**	55,183
Other Taxes	**5,342**	2,495
PRSI	**49,582**	-
	216,493	281,149

The distribution according to the grounds of write-off is:

	1998 **£'000**	1997 £'000
Liquidation/Receivership/Bankruptcy	**92,522**	152,008
Ceased trading - No Assets	**52,958**	20,855
Deceased and Estate Insolvent	**2,864**	-
Uneconomic to pursue	**54,192**	77,806
Unfounded Liability	**85**	19,594
Cannot be traced / Outside Jurisdiction	**7,099**	4,889
Compassionate Grounds	**4,030**	2,938
Uncollectable due to financial circumstances of taxpayer	**2,073**	-
Examinership	**670**	3,059
	216,493	281,149

The large increase in the amounts written off since 1996 (£90.73m in 1996) is due to a revision of the Commissioners' write-off policy with a view to deleting from their records the large amount of debts which are old and regarded as uncollectable and in the case of estimated assessments likely to overstate the actual liabilities. The objective of the programme, which will take a number of years to complete, is that the debt showing on the books will be more realistic and in large measure collectable, and enable resources to be better targeted and more effectively deployed in collecting arrears. The 1998 write-off programme is summarised as follows;

- £43.4m was written off on an automated basis comprising £2.9m Capital Gains Tax (Declared Liability), £10m Value Added Tax (Declared Liability), £11.1m Value Added Tax (Estimated Liability), £10.8m PAYE/PRSI (Estimated Liability) and £8.6m PAYE/PRSI (Declared Liability).

- Approximately £17m was written off as a result of the 1997 change in policy whereby amounts owing by companies in liquidation are written off at the beginning rather than at the end of liquidation proceedings.

- The sum of £49.6m in respect of Pay Related Social Insurance was formally written off in 1998. This was in accordance with new arrangements for write off of PRSI agreed with the Department of Social, Community and Family Affairs and my Office.

- Enhanced efforts were also put into the task of reviewing the debt showing in respect of companies in liquidation and arising from this an additional £76m was written off in 1998. An amount of approximately £17m still remains on the books in respect of amounts owing from companies in liquidation which is intended to be written off over a number of years.

Details of taxes automatically written off amounting to £43.4m were retained by Revenue in electronic media. It would be difficult however to determine with accuracy the number of cases involved without extra work being undertaken. For this reason, the number of items making up the amounts written off is not presented in the Report.

I have made a test examination of the cases and I am satisfied with the action taken.

8. Outstanding Taxes and Levies

Table 1 was prepared on the basis of information furnished by the Revenue Commissioners and reflects the activities and transactions in the twelve month period ended 31 May 1999 - the latest date for which data was available at the time of finalising my Report.

Table 1 - Outstanding Taxes and Levies

	Balance at 31 May 1998 £m	Charges/ Estimates Raised[a] £m	Paid £m	Dis-charged £m	Balance at 31 May 1999 £m	Estimate of amount likely to be collected £m
Income Tax (Excluding PAYE)[b]	555	1,253	1,289	25	494	250
VAT (Declared liabilities Net of Repayments)	98	3,680	3,691	-	87	59
VAT (Estimates)[c]	151	16	21	-	146	20
PAYE (Declared Liabilities)	91	4,389	4,401	-	79	50
PAYE (Estimates)[c]	44	244	261	-	27	7
PRSI (Declared Liabilities)	105	2,059	2,077	-	87	45
PRSI (Estimates)[c]	33	202	213	-	22	5
Corporation Tax	184	2,103	2,043	82	162	76
Capital Gains Tax	48	190	181	13	44	19
Capital Acquisitions Tax	14	117	117	1	13	7
Abolished Taxes	6	1	1	-	6	2.5
Total	**1,329**	**14,254**	**14,295**	**121**	**1,167**	**540.5[d]**

a. *Net of write-offs.*

b. *Includes Deposit Interest Retention Tax, Withholding Tax, PRSI for the Self-employed, Health Contributions and Levies.*

c. *Net of discharged estimates.*

d. *The estimate of the amount likely to be collected takes into account factors such as :*

- *anticipated reductions of estimated amounts included in balances brought forward from previous years*
- *the level of liquidations and business closures*
- *historical collection patterns.*

9. Prosecution of Non-Filers

A summary of prosecution action in 1998 for failure to file Income Tax and Corporation Tax returns is as follows:

	Income Tax	Corporation Tax	Total
Cases awaiting court hearing 1 January 1998*	1,117	448	1,565
Legal proceedings instituted	1,968	327	2,295
	3,085	775	3,860
Cases heard	659	198	857
Cases awaiting court hearing 31 December 1998	2,426	577	3,003

Fines were imposed in all cases heard to a total value of £709,090 in 1998.

** Note*

The Revenue Solicitor's Office carried out a review of the status of all cases outstanding with each State Solicitor in 1999 which has resulted in a revised set of statistics for 1997. The opening balance for 1998 has therefore been adjusted accordingly.

10. Revenue Audit Programme

An effective tax system must incorporate procedures for verifying the validity of the returns submitted by taxpayers. This involves the desk checking of returns for completeness, accuracy and reasonableness and on-the-spot inspection of documents and records.

The majority of audits carried out by the Revenue Commissioners are specific to taxheads, like VAT and PAYE, but a significant number of comprehensive audits are also carried out which may focus on all or any taxes payable but in practice are primarily aimed at Income Tax, Corporation Tax and Capital Gains Tax. There is also a body of work which comes under the general category of Revenue audit arising out of the activities of the investigation and anti-avoidance branches. In addition a special programme of field visits was undertaken in 1998 to check whether persons registered as self employed sub-contractors were correctly registered or whether they should pay tax and PRSI through the PAYE/PRSI system. A total of 6,040 visits were carried out under that programme during the year. The audit programme will involve continued monitoring of such taxpayers in future years. The outcome of the Revenue audit programme is summarised in Table 2.

Table 2 - Revenue Audit Programme

(i) Audits Completed

Audit Type	**1998**		1997	
	No of Audits Completed	**Yield £m**	No of Audits Completed	Yield £m
Comprehensive Audits	**3,283**	**61.62**	3,635	60.10
Value Added Tax	**9,162**	**45.28**	7,764	38.93
PAYE Employers	**4,423**	**14.03**	5,095	14.10
Capital Acquisitions Tax	**293**	**3.32**	315	3.30
Relevant Contracts Tax	**996**	**3.72**	1,856	8.10
Investigation Branch	**22**	**1.33**	77	3.71
Anti - Avoidance	**16**	**2.90**	20	2.40
Total	**18,195**	**132.20**	18,762	130.64

(ii) Comprehensive Audit Results

As part of the self assessment system comprehensive audits are carried out following review of returns made for Income Tax and Corporation Tax purposes. The result of this audit activity is as follows:

Audit Activity	**Total**		**Income Tax Returns**		**Corporation Tax Returns**	
Audits in progress at 1/1/98	1,808		1,072		736	
Audits initiated in 1998	3,430		2,462		968	
Total		5,238		3,534		1,704
Returns accepted	824		528		296	
Cases closed with additional liability	2,459	3,283	1,827	2,355	632	928
Audits in progress at 31/12/1998		**1,955**		**1,179**		**776**

(iii) Yield from Comprehensive Audits

Income Tax Returns		No.	As % of Total	Yield £'000	As % of Yield
Returns Accepted - No additional tax payable		528	23	-	-
Agreed settlements					
£1 - £5,000	763		32	1,261	4
£5,001 - £50,000	902		38	14,278	45
£50,001 - £100,000	70		3	5,992	19
Over £100,000	35	1,770	1	9,145	29
Referred to Collector General for enforcement action (a)		24	1	450	2
Settled by restriction of losses carried forward to future years (b)		33	2	410	1
Totals		**2,355**	**100**	**31,536**	**100**

Corporation Tax Returns		No.	As % of Total	Yield £'000	As % of Yield
Returns Accepted - No additional tax payable		296	32	-	-
Agreed settlements					
£1 - £5,000	245		27	902	3
£5,001 - £50,000	290		31	10,556	35
£50,001 - £100,000	36		4	3,008	10
Over £100,000	38	609	4	13,537	45
Referred to Collector General for enforcement action (a)		2	-	280	1
Settled by restriction of losses carried forward to future years (b)		21	2	1,800	6
Totals		**928**	**100**	**30,083**	**100**

a. *Where the Inspector is unsuccessful in collecting the additional tax and interest arising on audit adjustments, the amounts are referred to the Collector General. It is likely that the amounts eventually collected by the Collector General will be significantly less than the full amounts shown.*

b. *A number of audit settlements involve the restriction of losses available for carry forward against future years' profits, thereby providing higher tax yield in those years. The yield shown assumes that taxable profits in future years will fully absorb the losses. This may not always be the position and hence the yield figure may be less than the figure shown.*

c. *The amounts of the highest individual settlements in 1998 were £6,623,677 and £3,184,290 for Income Tax and Corporation Tax respectively.*

d. *Interest charges of £7.94m and penalties of £3.11m are included in the yield from agreed settlements.*

(iv) Random Audits

Random audits were carried out as part of the comprehensive audit programme up to 1997. For 1998 random audits were extended to the VAT and PAYE/PRSI audit programmes also. The objective is that 2% of all audits undertaken in the year will be selected randomly.

Cases selected randomly for audit were sent to districts late in 1998 and as a result not all audits were completed. A total of 89 comprehensive, 84 VAT and 70 PAYE/PRSI audits were however completed as part of the 1998 programme. Additional liabilities of £172,544 including £33,154 in penalty and interest charges were assessed in 61 cases while the returns of the remaining taxpayers were accepted as originally submitted.

(v) Arrears of Tax collected by Auditors

In addition to the yield collected by auditors on adjustments made to tax returns, they also collect any arrears of tax already on record with interest. This amounted to £27.6m in 1998 (£22.2m in 1997).

11. Investigation Branch Settlements and Prosecutions

Audits carried out by Revenue staff on taxpayers may reveal underpayments of tax due to inaccurate records, incorrect application of taxation rules and regulations and other factors. A settlement in relation to the taxes underpaid and interest and penalty charges arising is generally reached on audit between the taxpayer and Revenue staff. However, where evidence of systematic or widespread evasion of tax comes to the attention of Revenue, either through audit or from other sources, the cases are referred to their Investigation Branch. Where such investigation reveals that a taxpayer has failed to disclose relevant information, resulting in an underpayment of tax, legal proceedings may be instituted against the taxpayer. Alternatively, the Revenue Commissioners may agree to accept from the taxpayer a sum in settlement of the tax outstanding with the addition of interest and penalty charges.

Early in 1997 the Revenue Commissioners completed a reorganisation of the Investigation Branch, concentrating the preponderance of the staffing resource in pursuing a prosecution strategy in contrast to the previously prevailing policy of accepting monetary settlements in virtually all cases. The continuing reduction in both the number of investigations completed and the yield therefrom is a direct consequence of this change in emphasis.

During 1998, investigations were completed in 22 cases, 11 of which resulted in back-duty settlements amounting to £1,337,382 (77 cases in 1997 of which 24 yielded £3,712,897) becoming collectable inclusive of £553,553 (£1,462,818 in 1997) in penalty and interest charges.

The Accounting Officer supplied me with the following information in relation to prosecutions in 1998:

Cases in hands at 1 January 1998	25*
Cases referred for consideration for prosecution in 1998	8
Cases dropped due to lack of evidence	(1)
Cases brought to Court in 1998	(6)
Cases in hands at 31 December 1998	26

Of the 26 cases on hands at the year end, 20 were still under investigation and decisions to prosecute had been made in 6 cases.

Of the cases brought to Court in 1998 six resulted in successful convictions. Fines were imposed in 5 cases. In the sixth case, a director received a 6 month prison sentence (suspended), and disqualification from acting as a director was re-affirmed. Details of the fines imposed are shown in the following table:

Category	No. of Cases	Total Fines
		£
Company	1	2,250
Company/Director	2	22,500
Individual	1	1,000
Director	1	8,000
		33,750

Note *

The Office of the Chief Inspector of Taxes carried out a review of the status of all cases outstanding at 1 January 1998, which resulted in a revised set of statistics for 1998. The opening balance for 1998 has therefore been adjusted accordingly.

12. Judgment Mortgages

Enforcement measures used by the Revenue Commissioners in pursuing arrears from defaulting taxpayers include the referral of cases to their own Revenue Solicitor and to two firms of external solicitors. Cases are referred to Solicitors after failure by the sheriff to effect collection or are deemed unsuitable for sheriff enforcement. Solicitors may pursue the recovery of tax debts through the courts. When a court judgment has been obtained against the debt Revenue may request the Solicitors to identify any property assets to which the debt may be attached. Having identified unencumbered property assets owned by the defaulting taxpayer the Solicitor may then seek to have a judgment mortgage registered against that property. When the judgment mortgage is registered the owner cannot make an unencumbered sale of the property. The judgment mortgage remains in place until the debt has been satisfied or discharged. The Revenue appointed solicitor, with the permission of the court, may proceed with the forced sale of the property and offset the proceeds against the debt. Ultimately the Solicitor can initiate liquidation or bankruptcy proceedings or pursue a prosecution against the defaulting taxpayer.

Information provided by the Revenue appointed solicitors showed that 1,249 judgment mortgages were registered between 1990 and 1997 to a total value of £58,089,587 and the judgment mortgage was satisfied in approximately 10% of cases. Publication of a notice of satisfaction or discharge of the judgment mortgage in Iris Oifigiúil ends the enforcement process and the case is then settled.

In the course of an audit of the procedures for enforcing tax collection through the use of judgment mortgages the following points were noted:

(a) The profile of many tax defaulters was of individuals with their own business or classified as professionals who had been assessed for Income Tax mainly. These individuals had accumulated unpaid arrears for considerably long periods (up to 10 - 20 years). Some, in fact, have never paid tax or made an annual return. Despite the incentives provided by the tax amnesties of 1988 and 1993 to all tax defaulters to clear their arrears without penalty or interest charges on late payments none of these cases availed of the amnesties. In some cases Revenue had advised individuals directly to avail of the tax amnesties but received no response. These individuals also failed to respond at any stage of the enforcement process. Some defaulters continue in their businesses or professions up to the present.

The enforcement process did not commence in many cases until many years of unpaid arrears had built up. Several cases were noted where the elapse of time was so long that Revenue were ultimately constrained from proceeding to applying to the courts for a judgment mortgage because the taxpayer, by that stage, was deemed too old and no longer had any visible means of income.

There were also delays of between one and four years from the time Revenue obtained a court judgment to registering the judgment mortgage.

I sought an explanation for the long delays in proceeding to and applying the various enforcement stages.

(b) When a judgment has been obtained against tax arrears Revenue request their Solicitors to conduct a search for property assets to which the debt may be attached. Such searches invariably identified the family home but only in very few cases were other property assets traced. In some cases other properties were identified as owned by somebody of the same name

as the tax defaulter but no other checks were conducted to establish if he/she was the owner. Revenue currently operate a policy of not forcing the sale of the family home and since 1994 did not proceed with judgment mortgages in some cases because searches failed to reveal property other than the family home. Revenue have, in fact, never proceeded to a forced sale of any property, even in the occasional instance where a judgment mortgage was registered to property other than the family home.

I inquired as to the adequacy of the process and its value as a means of recovering tax arrears in the absence of any further action by Revenue.

(c) Judgment mortgages were satisfied or discharged on foot of:

- settlements offered by defaulting taxpayers and accepted by Revenue for amounts which were substantially less than the amount of the judgment mortgage registered.
- a reduction of the tax liabilities by Revenue to agree with the total already paid. There were cases where there was no payment and the tax assessments for all years in arrears were reduced to nil.
- tax returns submitted for the taxpayer some time after the registration of the judgment mortgage - such returns were outside the statutory deadline and were up to 20 years late in some cases. These returns were accepted without change and the tax charge was invariably reduced to an insignificant amount as a consequence.
- discovery that the 'charged' property was, in fact, owned by somebody other than the taxpayer, usually somebody by the same name or a close relation.
- discovery that other financial institutions had a prior charge or security on the property.

An analysis of the total tax paid for cases where the judgment mortgage was satisfied showed that the yield amounted to 30% of the registered debt at £1.25m.

In view of the non-compliance record of these tax defaulters I inquired as to why Revenue compromised on legally enforceable debts and failed to properly identify ownership and charges on property for the purpose of registering judgment mortgages.

In relation to (a) the Accounting Officer stated that:

- The longest gap between the original tax charge and referral to solicitor which could be located was 17 years in one case, while in a minority of other cases the gap was up to 10 years. In all of these cases there was activity in the intervening period, including appeals, amnesties and sheriff enforcement. Most defaulters sought to avoid imposition of the mortgage by negotiating with Inspectors or other areas of Revenue, but the responses were not satisfactory.

- Enforcement policy in Revenue has undergone a process of development since the mid 1980's. The treatment of each case depended on the date of the liability and the date at which crucial decisions concerning enforcement were taken.

- Revenue has always recognised that there were problems and difficulties in their enforcement of collection. Prior to 1986, enforcement was normally through solicitor action. There was scope also for the Collector General to refer warrants directly to the County Registrars for collection, but this was not a favoured option.

- Enforcement generally was hampered by the scope for taxpayers to appeal assessments, delaying the finalisation of a tax charge for years. In addition, the length of time taken to progress a case through the Courts rendered solicitor action ineffective, and the quality of information and information-handling systems available to Revenue often undermined attempts to focus on the most serious cases and take prompt action against them. Thus, the very resource-intensive process of instructing solicitors and managing cases through the courts made it difficult to work on recent liability and yet was not fully effective in collecting tax arrears.

- The result of such enforcement was the accrual of arrears and estimated arrears to a level of over half of total annual collection by the mid-1980s. The appointment of Revenue sheriffs in 1986 and 1987 had an immediate and marked effect on the collection of recent liabilities, but the amount of liability (especially estimated liability) which had accrued was too large for any rapid inroads to be made.

- The move to self-assessment and the Arrears Review Project were all attempts in the late 1980s to make some progress with the accumulated arrear, and considerable progress was made. At the same time, attachment was introduced, the registering of judgment mortgages against taxpayers' property was adopted as a normal practice. All of these initiatives were directed in varying degrees at more effective quantification of older liabilities and more effective enforcement of collection.

- Notwithstanding the beneficial effects of the measures taken, some of the older liability was based on unreliable estimates. Much of this type of liability has been written off in recent years. There still remains some soundly based liability, accrued before 1990, where attempts at collection have proved ineffective, but write-off is clearly inappropriate. Some of this liability is in cases where judgment mortgages have been registered.

- During the period (up to the early 1990s) when Revenue's systems and the available enforcement options were both less than fully effective, it was not possible to provide a streamlined enforcement system. This is the principal reason why there were sometimes very long delays in initiating action, and in progressing from one stage of legal action to the next. During the amnesties of 1988 and 1993, new referrals for enforcement could not be made and this contributed to the delay in many cases. By 1997 only a negligible number and value of cases referred for solicitor action were more than five years old. Most of the judgment mortgage cases are being enforced following an examination, under the Arrears Review Project or by a caseworker, which quantified the liability and rendered it suitable for enforcement. These cases are continuously progressed, but the length of time taken to reach the point of deciding whether to impose a judgment mortgage depends on the circumstances of each case.

- In regard to the tax amnesties, no case where solicitor action was underway or where a judgment had been registered was eligible for the 1993 amnesties, and these taxpayers were not advised by Revenue to avail of them. In relation to the 1988 amnesty, a thorough check of all of the cases would be required to establish whether any cases being proceeded against were advised to avail of the amnesty.

In relation to (b) the Accounting Officer stated that:

- the search for property assets by solicitors is not the only search carried out. In every case where the possibility of judgment mortgage is being explored, local Revenue officials are consulted in order to avail of local knowledge. In addition, since 1995 it has been a standard

part of collection case-working to establish in communication with the taxpayer whether assets exist which may later be called on as security for tax debt. In many cases, there were, in fact, no property assets other than the family home.

- It would be possible to conduct more extensive formal searches than at present. However, the cost of such a procedure would be excessive except in the most serious case, and in any event, it has been found that enquiries by the caseworkers managing the case are themselves very effective. He stated that he was satisfied that the current search procedures are generally adequate and that the new solicitor arrangements will add further to the progress being made.

- A forced sale of the family home would not normally be proceeded with except where the value of the property is sufficient to allow the taxpayer to obtain a substitute dwelling from the proceeds of sale. While there has never been a forced sale of a family home, the possibility of such a sale and the encumbrance of the mortgage have been effective in forcing payment in a number of cases. Since the introduction of collection case-working (where larger cases are individually managed) in 1995, forced sale has been threatened in several instances, resulting in sale of the property by the taxpayer, and payment of the tax from the proceeds of sale. It has not yet been necessary to proceed to actual sale by Revenue.

- In certain circumstances, it may be justifiable to register a mortgage as a means of securing the debt even where no other form of enforcement is available but as a general rule it is current policy that a mortgage should be used only as part of a definite scheme to obtain payment of all outstanding taxes. Most payments received on judgment mortgage cases result from further action taken by Revenue in the course of case-working.

- There is little benefit in mortgaging a fully encumbered property as a general practice. However, the actual debt owed and secured by mortgages may be much less than the nominal value of the mortgage where, for example, a debt is largely repaid or the tax debt is estimated. The sale value of a property may not be readily available and may be understated by the taxpayer in certain circumstances. For these reasons, it is sometimes prudent to register a further mortgage where there is a lack of information about the actual debts of the taxpayer or the value of the property.

- At present, Revenue are well advanced in the process of selecting new external solicitors for debt collection activity. New working arrangements will apply to the new solicitors. They will be expected to take responsibility for the effectiveness of their actions, and will be paid accordingly. They will be given considerable freedom of action within agreed parameters to pursue the enforcement option most likely to succeed in each case. In the event of failure to collect, they will report back to Revenue with a reasoned recommendation for further action to finalise the case. Revenue expect that this new arrangement will considerably improve the speed and effectiveness of solicitor action particularly when combined with the increasing proportion of solicitor referrals which originate with caseworkers who are fully familiar with each case.

In relation to (c) the Accounting Officer stated that:

- The great majority of judgment mortgages are now more than five years old, and much of the tax debt involved is older than ten years. In these cases, there is usually no other route which might reasonably be followed for the recovery of the tax. In the majority of cases, the mortgage is on the family home and the taxpayer no longer has the means to pay the full amount for

which the mortgage was registered.

- Mortgages are released after an approach by the taxpayer concerned, and the full amount of tax owing (including amounts not covered by the mortgage) is always demanded. In most cases, the mortgage was registered in the first place in the absence of any response from the taxpayer so that when release of the mortgage is being discussed it is normal for the taxpayer to substitute declarations (returns) for the estimated tax liability on record. It is not surprising that these declarations are for smaller amounts than have been estimated in the past, because the practice up to early 1990s was often to overestimate liability in order to elicit a response. In some cases it has emerged that trade ceased earlier than our records show, so that the liability for some tax periods is actually nil.

- Once the actual liability is established, it is necessary to obtain payment. Thorough and extensive checks, including consultation with Revenue officials in the taxpayer's locality, extensive interviews with the taxpayer, and examination of any relevant documentary evidence are carried out to establish the actual financial capacity of the taxpayer, and the full amount is required to be paid where Revenue are not satisfied that there is an inability to pay. It is often the case, however, that the taxpayer has no means except a retirement pension, and simply wishes to have his or her home unencumbered in their late years. Even in these cases, the largest possible payment is insisted on, and the mortgagee must also pay the legal costs of release. In many cases, other family members come together to raise a reasonable payment towards the tax debt. At a certain point, however, it must be recognised that the taxpayer cannot improve on his/her offer. At that point, Revenue must judge whether there is a practical alternative to acceptance of the offer. Only where there is no alternative the mortgage is released on payment of less than the full amount of tax due with any remaining uncollectable balance written off.

- Every reasonable effort is being made to identify property owned by the taxpayer. The most stringent measures are taken to ensure that property which is identified as being associated with a taxpayer is actually his/her legal property. It is sometimes the case, however, that the name of the taxpayer is shared by several people in the locality and it is only by carrying out a variety of checks that the legally registered owner is confirmed to be the taxpayer with whom Revenue are concerned. Despite thorough checking there have been only two cases identified where the property on which the mortgage was registered belonged to another individual with the same name (and in one case the same address) as the taxpayer. With the current approach to judgment mortgages the possibility of this happening is extremely remote.

- There is no specific link between the decision to proceed to register a mortgage and the decision to audit a case. At the present time, where judgment mortgages are used in conjunction with case-working, it sometimes occurs that a caseworker, in the absence of co-operation from a taxpayer, would request that an audit be carried out to establish actual tax liability. The decision to register a mortgage would, however, come later in the collection process.

- Many judgment mortgage cases contain old liabilities and are therefore likely to have been reviewed as part of the Arrears Review Project between 1989 and 1993. This project entailed examination of older cases by inspectors, who attempted to establish the actual level of tax liability, and submitted a report which included some information on assets held by the taxpayer. Due to resource constraints in the early 1990s and because of the disruption caused by the 1993 amnesties, however, some of these reports were not acted on for some time and

the information lost currency. In addition, the cases concerned continued to accrue liability after the inspector's examination, and in some instances, absence of books and records (or lack of co-operation) forced the auditors to estimate liability. For these reasons, even where a visit took place it was not always possible to be sure that the extent of debt and the capacity to pay were fully established.

In general, the Accounting Officer stated that most of the shortcomings identified in the use of judgment mortgages are historical in nature and have been corrected by Revenue as part of the ongoing development of the collection and enforcement processes.

He stated that he was satisfied that judgment mortgages will continue to be an important part of the range of enforcement options available to Revenue, but he was also of the view that the appropriate enforcement option must be chosen on the basis of good knowledge of the taxpayer concerned. At present and for the foreseeable future, the appropriate form of enforcement is selected on a case-by-case basis. Revenue are currently in the course of identifying suitable cases where it is intended to execute mortgages in default of payment. The process will be reviewed in the context of the proposed new arrangements with external solicitors.

13. Tax Implications of Companies Struck-off

Companies are obliged to make annual returns to the Companies Registration Office (CRO). Failure to do so can result in the company being struck-off the Company Register. Revenue became aware in early 1998 of proposals by the CRO to strike-off about 50,000 non-filers from the register commencing from November 1998. The main implication from a Revenue standpoint was that companies with tax liabilities could be struck-off and the collection and enforcement process against them would cease. Once the company is struck-off it is no longer a legal entity with the result that Revenue are unable to pursue tax liabilities from the dissolved company.

A survey carried out by Revenue of cases struck-off in an earlier period indicated that approximately 3% of cases could be 'live' Revenue cases. Other than the company taking steps to be restored to the register Revenue's only option is to apply to the High Court for reinstatement. This option would only be pursued if there was a realistic prospect that the tax recovery would exceed the costs of reinstatement.

In response to my inquiries as to the steps being taken to protect Revenue's interest the Accounting Officer informed me that:

- Since becoming aware in early 1998 of the proposed huge increase in company strike-offs Revenue had been working in consultation with the CRO to find a solution and to issue operating instructions.

- Revenue can identify, on a case by case basis, struck-off companies that are on the Revenue register by selecting the company CRO number from the lists published in Iris Oifigiúil. However, in order to bulk process those cases at District level a number of technical problems had to be overcome. These problems are currently being addressed and it is hoped to provide access shortly in each District to an extract of the CRO file to enable it to check, among other things, the status of a company. When this facility becomes available, together with a linking programme to the Revenue serial number of each case, work on struck-off cases will be prioritised starting firstly with those posing the greatest revenue risk, and written instructions will issue to staff.

- In relation to the reinstatement of cases through the High Court, while it is generally the position that such action is largely governed by recoverability and the costs involved, decisions are made on the facts of each case which would also take on board other relevant information relating to associated companies, directors *etc.*

- A new initiative to achieve better enforcement of company laws in response to the Report of the Working Group on Company Law Compliance and Enforcement on which Revenue was represented and to which Revenue made a submission has been announced by the Tánaiste. It recommends an amendment to the Companies Acts to allow a Court, if it thinks it proper to do so, to declare that any director or secretary of a company which has continued to trade while it had been struck-off shall, upon restoration, be personally liable without any limitation of liability for all or any part of the debts or other liabilities of the company during the period when it was struck-off. This will add considerably to the ability of Revenue as a notice party to effectively pursue the relevant liabilities if and when enacted.

- It is anticipated that the return filing compliance rates in the CRO will be significantly improved as a result of other recommendations of the Working Group thereby reducing the need to strike-off companies.

- Revenue have also discussed with the Company Registrar the possibility of further amendments to the Companies Acts to address some of the problems of struck-off companies continuing to trade. Briefly, if enacted, these would provide for reinstatement only from the date of the reinstatement decision by the Registrar or order of the Court. This would allow Revenue to compulsorily register and assess a continuing business as a sole trade and pursue the individuals concerned for the tax liabilities arising in the interim period before reinstatement. Alternatively, new legislation could provide for pursuit against the restored entity.

- The Companies (Amendment) (No.2) Bill, 1999, proposes to recognise Revenue as a notice party to any reinstatement *via* the High Court. This provision, if enacted, would enable Revenue to seek to have conditions, such as payment of taxes outstanding before strike-off, applied to all applications for Court reinstatement.

- Revenue are also examining the potential of the State Property Act, 1954, in relation to struck-off companies, with a view to the assets of these companies becoming the property of the State.

- When the computer programmes to support bulk processing of cases become available, administrative measures will be implemented including:

  - cancelling of all enforcement procedures
  - determining if the case currently has live status and continues in business
  - contacting the taxpayer with a view to having the company voluntarily reinstated
  - initiating reinstatement proceedings where there is a realistic prospect of tax recovery and the amount involved is material.

VOTE 18 - OFFICE OF THE CHIEF STATE SOLICITOR

14. Irregular Encashment of Cheques

Fees paid to counsel or costs awarded against the State are processed through the Chief State Solicitor's Office (CSSO). In general where costs are awarded the relevant cheques, whether drawn directly from the CSSO or from other Departments/Offices, are issued under cover of a letter signed by an official in the CSSO and are made payable to named solicitors or counsel.

In October 1998, following a complaint to the CSSO by a private solicitor about the non-receipt of payment due in respect of costs it was discovered that cheques issued from the Office were being cashed irregularly. In some instances the cheques concerned were generated correctly on foot of proper claims but never reached the payee, while in other instances duplicate and fictitious cheques were generated for the purposes of irregular encashment. The cheques were cashed in a licenced premises and, although crossed, were subsequently accepted by the bank for lodgment to the business's account. The Garda investigation into the matter indicated that 135 cheques, with a value of approximately £61,000, had been so irregularly cashed in the period January 1996 to October 1998. The investigation suggested that the irregular transactions had been carried on for some years prior to 1996, but details of numbers and amounts involved were difficult to ascertain. A member of the staff has been suspended on part pay.

In response to my enquiries the Accounting Officer informed me that:

- The Gardaí were carrying out a thorough examination of all documentation relating to the alleged irregularities and it was his understanding that a considerable amount of investigation work remained to be done as the investigation covers a period of 6 years.

- A preliminary review of payment control procedures indicated that inadequate segregation of duties within the office generally in the procedure for requisitioning and issuing cheques to counsel and solicitors and a lack of computerised checks on the issue of duplicate payments facilitated the alleged irregularity. New computer based checking routines had now been implemented in the general accounts area to provide comprehensive checking facilities. Total segregation of duties would require additional staff resources which are not available at present. A further possibility, also under consideration, is to have all Departments/Offices issue cheques, in respect of both costs and awards, direct to the solicitor involved rather than routing them through his Office. A more detailed review of this matter will be carried out when the results of the Garda investigation become available, and any further procedural changes deemed necessary will be put in place.

- Internally, he had endeavoured to ascertain (through a limited sample) if cheques were irregularly cashed at outlets other than the particular licensed premises. Neither the Gardaí nor his Office had come across any irregular encashment anywhere other than at the one licensed premises. That being so, he could only conclude that the irregular encashments through the licensed premises represented the full extent of the misappropriations. The Gardaí are still endeavouring to obtain details of possible irregularities prior to January 1996, but a number of factors including the disposal of some older records is making this difficult. He had no current knowledge as to how that part of the investigation is progressing.

- He proposes to seek full recovery of the amounts irregularly cashed and formal legal advice is awaited on this matter.

VOTE 19 - OFFICE OF THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

15. Irish Council of People with Disabilities

The Irish Council of People with Disabilities (the Council) is an independent State funded body established in January 1997 and funded through the Vote for the Office of the Minister for Justice, Equality and Law Reform. The Council was established on an interim basis primarily to support local disability networks and to oversee the establishment of a permanent Council. Funding of the interim Council for 1997 and 1998 amounted to £398,000 and £876,000, respectively. The interim Constitution which governed the affairs of the interim Council expired on 31 December 1998 without the interim Council having completed its work on the introduction of a permanent Constitution and elected Council, due to be in place on 1 January 1999.

In line with the Constitution of the interim Council the accounts were subject to audit by a private firm of auditors. The accounts for 1997 and 1998 had not been certified by the auditors by 31 August 1999.

During 1998, the Department became concerned with apparent serious deficiencies in the Council's financial management and its credibility. The documentary evidence available to the Department suggested failure on the part of the Council to follow proper accounting procedures and a very unsatisfactory approach to expenditure control, including:

- The high level of expenditure incurred by individual Board members and the apparently inordinate amount of travel by some Board members.
- The high costs incurred in the engagement of legal services to no apparent advantage.
- The very high level of settlement reached on the termination of employment of a former CEO.
- The failure on the part of the Council to recover from the relevant international organisations the travelling and subsistence expenses which it advanced to its delegates for attendance at meetings of these organisations.
- Advances made to bodies although they were in significant credit at the time and had not submitted expenditure plans.
- Decisions on the allocation of significant funds which appeared to have been made in an informal manner and, on occasions, by individual Board members.

The Department advised the Council of its concerns in June and July 1998 pointing out that, at local level, there was little evidence that the Council had been involved with the local disability networks other than handing out money and computers. There had been suggestions that the networks were suffering from lack of leadership, motivation, direction and training by the Council. The Department concluded that the credibility and reputation of the Council had been seriously damaged and directed the Council to take remedial action. This included the appointment, in consultation with the Department, of a full time Chief Executive Officer with an appropriate level of authority and an agreed job description, the installation of proper financial controls precluding expenditure without the proper authority, the establishment of sub-committees to liaise with the Department on the

Council's operations and the provision of proposals and a time frame for the establishment of a permanent Council.

In September 1998, following receipt of information from a senior official of the interim Council about particular payments, the Accounting Officer instructed the Department's Internal Audit Unit to carry out an immediate audit investigation of the interim Council's financial affairs under the following terms of reference:

- To examine the financial records of the organisation with a view to establishing the credibility of the internal controls and procedures which give assurance that all expenditure is in accordance with good accounting practice and

- To examine the payment of salaries and expenses to the Council's Administrator and the agreements, conditions of employment and resolutions of the Board to support these payments.

The draft report prepared by the Department's Internal Audit Unit, was critical of the manner in which the interim Council managed its financial affairs. The report was furnished in late November 1998 and circulated on a confidential basis to those people to whom reference was made and to members of the Management Board of the interim Council. They were asked to furnish any comments they might have to the Department by early December 1998. All responses received were forwarded to the Internal Audit Unit for consideration and some of these caused minor revisions to be made to the report. However, before the report could be released, legal action seeking a Judicial Review was initiated by the former Chairman of the interim Council who had resigned in June 1998. Consequently, the final report, while complete, was never issued and its contents are known only to its authors.

In response to my request for sight of the audit report, the Accounting Officer informed me that legal advice furnished by the Chief State Solicitor's Office states that it cannot be formally released to me until the legal proceedings are finalised. However, the Accounting Officer assures me that there is reason to believe that the matter can be resolved between the parties and that the audit report will be released to me then.

He also advised me that there is *prima facia* evidence to suggest that there was some misappropriation of public funds, but that this would be clarified by the audit report. In the meantime revised financial control arrangements were put in place in October 1998, immediately on receipt of a preliminary oral report from the head of the Internal Audit Unit and have operated without interruption to date.

The Accounting Officer also stated that, in January 1999, the Minister for Justice, Equality and Law Reform, on the recommendation of independent consultants, appointed a seven person Steering Group for a nine month period to oversee the establishment of a permanent Irish Council of People with Disabilities. While the Steering Group is progressing well in its work it now appears that it will be seeking an extension of time to complete its tasks. This is because of unexpected difficulties which it encountered in the course of its work and the time required by the consultative process in which it is engaged with the membership of the Council in the course of preparing a new Constitution for the Council.

VOTE 20. - GARDA SÍOCHÁNA

16. Witness Security Programme

I have been informed that the Witness Security Programme is under the control and administration of the Garda Commissioner and his senior officers and the funds are allocated to a separate subhead of the Garda Síochána Vote to ensure accountability in reporting of expenditure of these moneys. There is continuous review and assessment of the cases dealt with under the programme.

A public bank account has been set up for the disbursement of funds under this programme and the Commissioner is the sole signatory on this account.

The account is operated by the Commissioner requesting funds from the Accounting Officer of the Department. The funds are drawn by way of an imprest from the Garda Síochána Vote, and in this respect funds are requested, total expenditure reported and audit trails maintained in a similar fashion to drawdowns from the Secret Service Vote. Appropriate arrangements are also in place, to ensure that funds are transferred into the account only as required and that large balances are not lying idle in the account.

My audit of this expenditure is therefore limited to the procedure that applies to the Secret Service Vote and I accordingly rely on certificates signed by the Accounting Officer and the Garda Commissioner to the effect that the money was properly drawn by way of an imprest from the Garda Síochána Vote (£60,000 in 1998) and that the expenditure from that imprest (£41,608) was properly expended and was solely for the purpose of the Witness Security Programme.

VOTE 21. - PRISONS

17. Capital Projects

Capital projects at prisons are carried out on occasions on behalf of the Department of Justice Equality and Law Reform by the Office of Public Works (OPW). Each year I review a sample of capital projects so as to satisfy myself that contracting authorities adhere to public procedures for managing capital projects. In this regard, the sample includes projects which have just commenced, are ongoing, or have been completed. The final payments on a completed contract may not arise for some period after the project has been completed. However, if in the course of my review I note that there are matters which may have ongoing implications for the way projects are managed, I may deem it necessary to include a reference to them in my report, even though the project had been completed some years previously. Two such projects are outlined in the following paragraphs.

18. Castlerea Prison Perimeter Wall

The original cost estimate of the Perimeter Wall project at Castlerea prison prepared during the design stage in February 1994 was £3.57m while a second cost estimate prepared in April 1994 was £2.5m. Tenders were to be sought from 9 contractors short-listed from 46 firms who had declared their interest in the project. The Government did not agree to this restrictive tender approach and decided that an open tender competition be held.

Following receipt of 36 tenders the lowest one in the sum of £1.18m was accepted in May 1994. The successful tenderer had been declared as unsuitable when the original short listing assessment was carried out.

The completed contract price came to £1.2m and the project was completed in 1995.

In response to my inquiry as to why the cost estimates were so significantly higher than the contract price, the Accounting Officer of OPW stated that the estimates were guided by the cost of the Wheatfield Prison Wall, which although similar, was constructed differently but which was the only like project undertaken by the OPW in the modern era. The disparity between the estimate and the lowest bid reflects the keenness of the tender competition, and in particular the pricing approach adopted by the lowest bidder who, to quote the quantity surveyor's tender report "has adopted a keen price and risk taking method".

As to why a restricted tendering procedure was considered by the OPW to be appropriate in this case, the Accounting Officer stated that the tendering procedure to be used depends on the particular circumstances pertaining to the project. In this instance the size of the project and the nature of the work (i.e. on a security installation) restrictive tendering was appropriate. The Department of Justice Equality and Law Reform concurred with this view.

In the light of experience of this project, I inquired whether criteria for using restricted tendering have been revised to ensure that optimum value for money is achieved in the awarding of contracts. The Accounting Officer informed me that the OPW holds the view that the use of restricted tendering does not inhibit the achievement of optimum value for money. In addition, the existing criteria for using restricted tendering in the prisons context are not solely concerned with economic considerations (although they naturally form a large part) but also deal with issues particular to the security aspects of such projects.

19. Castlerea Prison Project

A design and build contract is one where the building client contracts with a developer/contractor to purchase a building complete in every respect and suitable for the intended purpose, at a fixed price. So as to ensure that design and build contracts are successful from an economic and cost control perspective it is vital that the outline design and specifications for such projects are clearly defined before tenders are sought so as to ensure that changes and/or additional works do not arise once the contract is awarded. However, during audit I noted that the Castlerea Prison design and build project which was contracted to cost £12.7m was completed at a cost of £14.34m.

In March 1994, the Government decided to provide accommodation for 150 male prisoners in Castlerea. The project involved the conversion of the existing hospital building to use as a prison and the construction of some new buildings. It was also agreed that the design and build method of procurement should be used for this project.

During 1994, the Office of Public Works (OPW), acting as contracting agent for the Department of Justice, Equality and Law Reform (Department), invited 19 contractors to apply for inclusion in the pre-qualifying process. Fourteen positive responses were received and, following assessment by OPW, were ranked in order of merit. In March 1995, tender documents were issued by OPW to 7 firms as:

- 4 had been ranked as highly suitable
- 1 had previous involvement in prison work
- 1 had previous experience of design and build developments and was located in the area
- 1, though ranked 13th in the order of merit, had a design team on board who had experience of prison work in the UK and was classed as a "wild card".

Following discussion with the Construction Industry Federation, OPW reduced the list of invitees from 7 to 4 but no tenders were received as, in June 1995, the Government decided to defer the project. In March 1996, the Department requested OPW to revise the project to effect cost savings, to reduce the prison accommodation from 150 to 120 and to construct a less elaborate prison within the budget of £12-13m.

Tender documents were re-issued in November 1996 to the 4 firms previously selected by OPW and four tenders were received, ranging from £11m (by the firm previously ranked 13th out of 14) to £23.5m. The tender documents issued to the firms included a design brief indicating the extent of the work to be carried out and the costs to be covered in the tender proposal.

Following review by OPW, the lowest tender was increased to £12.7m to adjust for an error of £200,000, the inclusion of VAT at £1.38m and the provision of a bond at a cost of £75,000. It was also agreed that payment of £250,000 to the local authority for a sewerage connection would be paid by the Department, even though the tender documents issued to the four firms required its inclusion.

It was further proposed by the tenderer, prior to the execution of the contract in January 1997, to substitute precast concrete for concrete block work (as proposed by OPW) in the construction of cell walls as this would provide an additional 12 cells. The proposal was accepted, at an extra cost of £247,500, the work to be carried out under a separate contract.

The project was completed in 1998 and the full cost came to £14.34m comprising

£m	
12.70	Design and Build contract
0.22	Sewerage Connection
0.25	Extra spaces as a result of change in cell block construction
1.17	Additional costs after work commenced.

In reply to my inquiry as to whether the assessment of contractors was satisfactory given that the contractor who was eventually successful was ranked 13th out of 14 in the order of merit, before being included in the short list of 4 who were invited to tender, the Accounting Officer informed me that:

- The OPW have informed him that it is considered that the assessment procedure was satisfactory, given the factors applying at the time. The assessment was based on information and data supplied, on request, by the candidates and which was current and valid at the time the evaluation was carried out. The criteria employed were also considered directly appropriate to this particular project, given the procurement method proposed.

- The placing achieved by the successful contractor following the assessment process did not necessarily reflect adversely on either that particular contractor or the assessment method used. The assessment did not, for example, conclude that this contractor, (or indeed any of the other candidate contractors), was incapable of carrying out the work, but merely said that, on an objective analysis based on the requirements of the project, the information supplied by candidates, the accepted criteria employed to evaluate that data and the OPW's own knowledge of the firm in question, this was the appropriate rating.

- It should be noted that the successful contractor for the project had already tendered and completed successfully the construction of the prison wall at Castlerea, at a very competitive price. (see paragraph 18).

As a design and build contract should include all costs to provide a suitable prison building, I inquired as to why the proposed sewerage connection estimated at £250,000 and the additional spaces costing £247,500 were not included in the tender proposals received from the successful applicant. In this regard I noted that the contractor expressly excluded any local authority charges from his tender bid price contrary to the tender document requirement.

The Accounting Officer informed me that:

- The sewerage scheme as originally designed and tendered for envisaged that there would not be a need for onsite sewerage treatment. The preferred option in dealing with this matter was to connect directly to the public system and this was the solution pursued by OPW. The existing public system did not have the capacity to deal with the volume of effluent from the proposed Prison so this option was not feasible. However, following discussions with the local authority and the Department of the Environment and Local Government, the Department and OPW became aware that there was a proposal, by Roscommon County Council, to construct a new public town sewerage scheme for Castlerea and in that context, it was logical that provision should be made to allow the County Council to connect the Prison directly into this new scheme and thus obviate the need for any arrangements to be made within the contract to

deal with this item. An agreement was reached between the County Council and the Department that the cost, to the Department, of this connection and associated works would be £250,000. This would have had the dual benefit of removing a significant element of work from the project and also ensuring that there would not be a need to provide for a continuing expense in future years in maintaining sewerage plant on site. The County Council had no difficulty with this proposal and consented to allow the direct connection to be put in place.

- As the project progressed through the construction phase however, it became apparent that, contrary to previous indications the new public scheme proposed for Castlerea was not, in fact, likely to be provided in the timescale previously indicated. The Department of the Environment and Local Government confirmed this to the Department as the contract for the Prison was nearing completion. In this context, the Department was obliged to make separate arrangements for the treatment of sewage. An onsite solution was eventually adopted, since neither of the "public" options was then feasible. The Department following a separate tender competition entered into a separate contract with a different contractor to install a suitable modern sewerage treatment plant exclusively for the prison at a cost of £220,227.

- The proposal to provide additional spaces was not made by the contractor in his tender because his price was based strictly on the tender documentation supplied. The proposal was made separately, later, on his own initiative and was specifically approved by the Inter-Departmental Committee (Departments of Justice, Finance and OPW) overseeing the Accelerated Prison Programme on the basis that it represented good value for money and should therefore be availed of.

In reply to my inquiry as to why £1.17m additional costs arose following the award of the design and build contract the Accounting Officer stated that these arose in order to deal with new requirements arising since the original design and matters which could not have been foreseen at the outset but which were necessary for the proper completion of the works. These included:

- £768,000 for the inclusion of Palmreaders and Audio Visual Units on doors and gates, the provision of fibre optic cabling between blocks, variations to doors and additional fencing. As the project developed, the Department became aware of the use of Palmreaders and Audio-Visual Units to gates and doors in prisons in Northern Ireland and the UK, where they proved to be very effective and cost-cutting. The installation of these devices in Castlerea has achieved staff savings in the region of 20 staff posts at a saving of £380,000 per annum. This will result in substantial savings over the coming years. The variation on the doors, the fibre optic cabling, additional fencing and other works were items which were identified during the construction period and were necessary for the proper completion of the works and the smooth running of the prison.

- £181,000 for sundry work including £78,500 for a water softening system. The water softening system was recommended by the technical engineers to prevent the build up of limescale on all the hot water equipment, which would have caused difficulties to the smooth operation of a working prison. The other principal items of expenditure were the provision of service ducts between Block B and the south west gatelock and the provision of firehose reels and enclosures. These were essential items which were required for the prison.

- £114,000 to construct a surface water drain. *(Though the tender documents issued to the four firms required the inclusion of such a drainage system in the tender price, I noted that the contractor specifically excluded provision for this in his successful tender proposal).* Towards the end of the contract, it became

apparent that a scheme of works would be required to rectify a problem which was then becoming apparent in relation to the system of surface water drainage. Historically, since the former hospital had been constructed, the surface and foul water systems had fed into one unified sewerage treatment plant. The system then in place was designed to cope with this. However, when the new prison sewerage system was constructed, it became apparent that this method of mixing foul and surface water would not be possible, since the more modern system proposed required that the two "feeds" could not be mixed. For this reason, it was necessary to put a project in place to separate the two and provide a separate outfall for the surface water, since it would, if it continued to drain into the sewerage system, interfere with the efficient operation of the sewerage system. The scheme of works to give effect to this proposal was put out to tender and was awarded, after competition, to the on site contractor.

- £55,000 for securing and making good the west wing. During the course of the contract, the contractor used the former hospital west wing as his base of operations/site office. This meant that he did not have to set up temporary site office accommodation and thus avoided incurring costs (which would ultimately have had to be borne by the Department under the contract). Since the building had up to recently been occupied, a minimum of work was necessary to bring it up to an acceptable standard. No specific prison related use had been established for the building by the time the contract had been completed and the contractor vacated the site. In the interim, until a final decision was made on the long term use to which the premises would be put, it was decided that, in order to prevent the building from falling into disrepair, a scheme of works should be put in place which would weatherproof the premises and establish a stable environment so that the building fabric would not deteriorate. This was especially relevant given the onset of winter when, unprotected, the building might have been vulnerable to frost and rain damage in particular. The contractor on site was awarded the contract for the works required after a competitive tender process and the necessary protection was duly applied to the building so that it could remain in relatively good condition pending a decision as to its future.

- £48,000 for a water main which was a requirement made by Roscommon County Council. The works included the extension and diversion of the water main with appropriate connections and junctions, as well as a 100mm spare duct in one of the trenches for future use.

The Accounting Officer also stated that consideration should be given to the fact that this was the Department's first experience of a design and build project. Because of the experience gained through this project, he has ensured that on current design and build projects underway there is a greater involvement of the Department's technical staff at all stages of the project. This leads to more cost effective and smooth running of the contract.

20. Compensation

In June 1998, the High Court at a sitting in Ennis awarded £796,654 plus costs, against the State in special and general damages on foot of a personal injuries case brought by a former prison officer following an accident at work in 1995. At the opening of the trial, the plaintiff made an offer to settle on £300,000, plus costs. However, despite the repeated advice of its Senior Counsel to accept this offer, the Department refused to concede liability and, on the advice of the Attorney General, responded with its own offer of less than £200,000. The offer was rejected by the plaintiff and the Department conceded liability on the third day of the trial. Following the High Court award the Department and the Attorney General considered an appeal to the Supreme Court but following negotiations between the plaintiff and the Attorney General a settlement of £550,000, plus plaintiff's costs of £150,182 was agreed in July 1998. As the State costs came to £37,790 the overall cost of this case was £737,972.

The following matters were noted during audit review of the case:

- The Senior Counsel for the State had advised on every occasion that he was consulted before and during the trial that, on the basis of the evidence available to him, the court was very likely to find in favour of the plaintiff, damages were likely to be substantial and settlement on the best terms should be considered.

- There were no defence witnesses in court who could contradict the plaintiff's statements on the circumstances of the accident, nor was there any evidence to contradict the charge of negligence on the part of the State. The defence evidence which was available tended to support the plaintiff's case.

- There was no medical evidence available to the defence which could challenge the plaintiff's evidence in relation to injuries suffered as a result of the accident, or which could challenge his claim for damages. The medical expert retained on behalf of the defence was not present in court. The defence rehabilitation expert, who was present, advised that he could not contradict the plaintiff's claim that he would never be employed again in any capacity.

- Counsel's initial damages estimate of £150,000 was revised to £300,000 days before trial, but was qualified by his statement that he still did not have any proper information on the plaintiff's loss of income to date, what he would be earning if still employed, or the capital value of his loss of earnings into the future. He reiterated his advice that the State was likely to lose the case and warned that the Department's termination of the plaintiff's employment some nine months previously on grounds of permanent ill health, of which he had just been informed, would have a disastrous effect on damages, particularly his claim for loss of earnings into the future.

- The plaintiff's claim for special damages was based on an actuarial report on loss of income, which, together with the evidence of the plaintiff's actuary, was accepted by the court as providing the basis for the special damages award of £496,654. An actuarial report was provided for the State just before trial but, according to the Senior Counsel, it did not differ in any significant way from that of the plaintiff. The defence actuary was not present in court. The Senior Counsel advised that he did not have and was not given any instruction, information, material or witnesses which would have enabled him to present any challenge in court to the plaintiff's claim.

- The Senior Counsel concluded that the true extent of the plaintiff's condition was not appreciated by the Department and the Attorney General's Office.

As it appeared that the failure to prepare adequately for the case, to assess its full implications and to disregard its Senior Counsel's repeated advice to settle the case when the opportunity to do so was available resulted in significant additional costs for the State, I sought the views of the Accounting Officers of the Department and of the Attorney General's Office.

The Accounting Officer of the Department of Justice, Equality and Law Reform informed me that:

- Though the Senior Counsel had advised at an early stage that a Court was very likely to find in favour of the plaintiff, this was not accepted by the Department as there were areas of concern in relation to some aspects of the case, principally regarding the circumstances of the accident.

- The attendance by and reports of expert witness were a matter for the Office of the Chief State Solicitor (CSSO).

- On Thursday 18 June 1998 the Attorney General requested the Chief State Solicitor to obtain a settlement figure from Counsel and to see about settling the case. On Monday 22 June 1998 the Department was advised by the CSSO that Counsel said that plaintiff's Counsel was looking for £500,000 but might settle for £300,000. The CSSO also said that the Attorney General was not in favour of settling for £300,000. In the absence of the agreement of the Attorney General it was not open to the Department to agree a settlement.

- The State's Senior Counsel contacted the Department directly on Tuesday 23 June 1998, the first day of the trial. He said that due to the plaintiff's condition he would get well in excess of £300,000, possibly £400,000 and that there might be contributory negligence of 25%, but he was not sure. Counsel said that the State would definitely fail on liability. With the agreement of the Attorney General's Office an offer to settle up to £200,000 was made on Wednesday 24 June 1998. The Attorney General advised, *via* the CSSO, later that day to concede liability (in order to prevent an escalation of legal costs), thus leaving it to the Court to assess damages. At all stages the advice of the CSSO and the Attorney General's Office was followed.

- It should be noted that the award of the Court was considerably in excess of the highest estimate from the State's Counsel. In addition, the Counsel's views on the question of an appeal were not accepted by the Attorney General. By following the advice of the Attorney General a reduction of £246,654 was achieved on the High Court award of £796,654, whereas the Counsel's advice was that a reduction of less than £150,000 was likely.

The Accounting Officer of the Office of the Attorney General stated that:

- The information about the termination of the plaintiff's employment on medical grounds and the actuarial and medical reports on the case were only received by his office just before the case commenced. The rehabilitation evidence and the Prison Governor's report on the plaintiff and the veracity of his claim only became available on the day of the hearing. The last minute provision of information and the lack of communication from the local State Solicitor on how the case was faring meant that those in a position to sanction a settlement were not up to date with the dramatic escalation in the value put on the case.

- Liability is kept as an issue in a case for tactical reasons. It is the recollection of the Attorney General's Office that it advised the Department *via* the CSSO on the day before the trial (22 June 1998) that liability should be conceded. The advice was given at the same time that an offer of £180,000 was suggested.

- The time available to settle the case for a sum of £300,000 was brief. The late delivery of information and the lack of communication meant that the Department had only a short time to obtain sanction. This also meant that those responsible for sanctioning a settlement were not aware of the impact the plaintiff's evidence was having in Court. There was no appreciation of why the settlement figure could move so dramatically from £200,000 to£450,000 in the same day.

- The two areas of difficulty - the late delivery of information by the Department and the failure of the local State Solicitor to communicate information - were discussed at a meeting held in the wake of this case which was attended by representatives from the Office of the Attorney General and the CSSO. Proposals were discussed as to how procedures in these two areas could be improved. However, the proposal to establish a claims agency has since been developed. The deficiencies identified by this case will need to be tackled by the new Agency. In particular the Agency will need someone with the authority to sanction settlement available at pre-trial consultations and during the hearing of the case to give a speedy response to any settlement proposal.

He also stated that:

- Neither the defendants nor the plaintiff in this case appreciated how great an award the judge was prepared to make.

- The award was based on the favourable impact which the plaintiff made on the Court in giving evidence. The impact of a witness in a case is unpredictable and can only be taken into account as the case progresses. In general there is nothing to suggest that a settlement is always more favourable to a defendant than a judge's evaluation in a case.

- The medical expert retained on behalf of the State was not present in court and Senior Counsel did not (as in the opinion of the Office of the Attorney General he should have done) seek instructions as to whether to proceed or to seek an adjournment of the case. The view of the Senior Counsel on the medical evidence is not shared by the Attorney General's Office.

- Senior Counsel's advice on the offer which should be made was couched in very vague terms which were difficult to act on. Nor was it clear from his advice what new information or evidence had changed so as to alter Counsel's original advice which set a figure of £150,000 as the full value of the case. The difficulty could have been remedied by having someone on the ground at pre-trial consultations who would be aware of all the last minute detail emerging. This is the function of the local State Solicitor. Because of the Department's failure to have someone present in Ennis court and the failure of the local State Solicitor to make contact with officials in Dublin it may be understandable why these officials did not understand why the figures were changing so rapidly.

- It is the opinion of the Office of the Attorney General that the amount in fact awarded by the Judge was excessive. This is borne out by the fact the case was settled for much less before the Supreme Court appeal.

VOTE 25. - ENVIRONMENT AND LOCAL GOVERNMENT

21. Controls over Local Authority Finances

The Local Government Audit service (LGA) is responsible for the audit of the accounts of all Local Authorities. In addition to the Local Authorities themselves, the LGA audit reports are submitted to the Department of Environment and Local Government as part of the controls exercised by the Department in relation to public expenditure by the Authorities. Some £624m was paid to Local Authorities by the Department in 1998. Copies of the audit reports are made available to me in my capacity as auditor of the Department. As at 1 July 1999, I had received copies of all 39 LGA reports for 1996 and copies of 31 of the 1997 reports.

In both my 1996 and 1997 Reports, I referred to certain critical comments included in the LGA reports about controls over Local Authority finances. These comments were common to a number of Local Authorities and had been adverted to in previous years' reports. My review of the 1997 LGA reports indicated that the matters reported in previous years continued to feature as audit concerns and included the following:

- Capital projects carried out by Local Authorities are usually financed by way of recoupment of the agreed cost from the Department. However, Authorities do not always recoup the full cost of projects, for example, when adding to their land banks for future housing development, or when engaged on projects not funded by departmental schemes. Such expenditure, where unmatched by receipts, is shown in the Authorities' accounts as Adverse Debit Balances on Capital Account. The LGA reports continue to highlight these balances, specifically drawing attention to the fact that many are unfunded. In those reports which I have examined, a total of almost £8m is highlighted as unfunded. The LGA reports also identify other debit balances of over £37m. It is not apparent in most cases how these balances are to be eliminated through funding from internal and/or external sources.

- Some Local Authorities continue to carry adverse Revenue Account balances with no provision for their elimination in the following year's estimates. Earlier than usual receipt of higher education grants gave a once-off boost to the 1997 Revenue Account balances of many Local Authorities. The total adverse balances identified in the LGA reports which I have examined amounts to £39m.

- The internal audit function is still not in place in many Local Authorities or, where an internal auditor has been appointed, the function is restricted in operation, in some authorities.

- Expenditure in excess of estimates should be approved beforehand by the Local Authority. Various programmes had expenditure exceeding that estimated without such approval, although retrospective approval was given in most cases in the following financial year. The situation showed some improvement over previous years, with a reduction in the number of cases where this type of incident occurred.

- The collection yield on Local Authority service charges and housing rent and annuities showed improvement in 1997, with the number of Local Authorities subject to critical comment on this matter being reduced in that year.

22. Cost Overruns on Fire Stations

Under the Department's reporting and budgetary measures for fire station projects, Local Authorities embarking on a project require the Department's approval at all stages, from preliminary to contract stage. At construction stage, the drawdown of project funds by the Local Authority is subject to control by the Department. The approval of the Department of Finance is also required for projects over £1m in value. In the course of audit it was noted that a number of projects had final costs significantly in the excess of the original estimate as outlined in Table 3.

Table 3 - Cost of Fire Station Projects at Each Stage

Project	Project Approval in Principle £	Design Stage £	Contract Stage £	Final Cost £	Grant Paid to Date £
Listowel	300,000 (1993)	365,000 (1994)	405,400 (1996)	422,500 (1997)	413,900 (1998)
Kells	300,000 (1990)	355,000 (1995)	355,000 (1997)	421,000 (1998)	355,000 (1999)
Kilrush	330,000 (1989)	337,100 (1993)	413,300 (1997)	436,900 (1998)	415,900 (1999)
Wicklow	250,000 (1992)	256,000 (1994)	319,300 (1997)	357,000[1] (est 1999)	338,000 (1999)
Milford	300,000 (1990)	299,900 (1991)	336,400 (1996)	411,400 (1998)	330,000 (1999)
Kilbeggan	295,000 (1995)	277,000 (1996)	312,700 (1997)	331,370	300,000 (1999)
Kilkenny	96,600 (1990)	102,000 (1992)	227,400 (1996)	255,700 (1998)	255,700 (1998)

[1] *Estimated, pending receipt of final accounts from the Local Authority*

In response to my inquiries the Accounting Officer stated that, generally, the principal causes for cost increases were:

- The significant time lag of some 5 to 6 years between approval-in-principle stage and completion of the projects. This delay was due to the limited funding available to the Fire Services Capital Programme, (average £4.8m per annum in the period 1990 - 1998), and the high level of demand from the fire authorities for funding of capital projects. As a result, cost estimates were overtaken by building industry increases.

- Conditions in relation to design and finishes imposed by planning authorities.

- Statutory increases under the terms of a contract's price variation clause.

- Variations to works specified in original contracts and additional works carried out at the request of fire authorities. Where the fire authorities do not obtain departmental approval prior to, or at the time of incurring these additional costs the increases are examined fully by the Department at final account stage and a decision taken as to whether they qualify for fire services grant aid.

In an effort to minimise cost increases, and notwithstanding the comprehensive cost control procedures already in place, the Department has introduced further controls which, *inter alia*, require the authorities to:

- Submit updated cost estimates for approval before proceeding to invite tenders in the case of proposals that have been before the Department for some time.

- Seek fixed price contracts for projects.

- Reduce the number of Prime Cost and Provisional Sums in contracts (where possible the items involved to be measured and priced competitively by tenderers).

- Review projects where, on receipt of tenders, it is clear that the approved budget limit will be exceeded.

In addition, the Department is now capping grants at appropriate limits at project detailed design or tender stages, where it considers this action to be necessary. All costs in excess of such limits would be a matter for the fire authorities to meet from their own resources, thus placing an incentive on the authorities to exercise stricter cost control measures. The Accounting Officer also stated that although it is expected that these provisions will go some way to curb the increasing costs of fire stations, it has to be accepted that the predominant factor in relation to cost increases is the degree of competition prevailing in the construction industry.

23. Tara Street Fire Station

In August 1996, following a public competition, Dublin Corporation stated they had accepted a tender of £3.6m for construction, on a design and build basis, of a new fire brigade headquarters at Tara Street, Dublin. The design and build contract required the contractor to provide a finished building for purchase by the Corporation, which would be completed in every respect and suitable for the intended purpose. The successful tender included a provision for the contractor to purchase surplus land on the site for a private development, at £1.2m, bringing the estimated net cost of the Corporation's project down to £2.4m.

Although it had embarked on the project and accepted the tender without the Department's approval, the Corporation formally requested a grant of £2.4m in December 1996. The Department had earlier contributed £450,000 in grants and £200,000 in loans towards site costs at Tara Street, but turned down the Corporation's grant application in January 1997 and again in April 1998, as the project had not been approved. The Department noted that despite its refusal of grant assistance, the contractor was on site in January 1997. However, in December 1998, £1m was paid to the Corporation as a once off contribution to the project. The Department advised the Corporation that no further contributions would be forthcoming. The current estimated net cost of the project is £4.37m as against the initial estimated net cost of £2.4m.

In response to my inquiries as to why the Department paid £1m when the contract had originally commenced without departmental approval the Accounting Officer informed me that:

- Dublin Corporation had for a number of years been seeking to redevelop the site at Tara Street. In seeking Exchequer assistance, Dublin Corporation pointed out that the Tara Street Station was the headquarters of the largest fire service in the State serving one million people, that it was a Victorian facility unsuitable for modern requirements and standards, and that staff and unions were threatening to withdraw from working in the station.

- It was not possible, however, to give Dublin Corporation a commitment that the normal 100% Exchequer grant assistance would be provided because of the scale and cost of the project, the limited funding available for the fire services capital programme and the competing demands throughout the country. Dublin Corporation, accordingly, decided to utilise the site's designated area status under the Urban Renewal Scheme to achieve the twinfold objective of having a new Fire Brigade Headquarters constructed while, at the same time, securing development on the surplus lands which had been derelict for many years.

- Against this background, Dublin Corporation decided to enter into a joint venture (Public Private Partnership) for redevelopment of the site to include the provision of a new fire brigade headquarters. The fire station was not a separate contract but part of an overall contract involving the development of the whole site, including an hotel and car park.

- The contract was advertised and awarded on a design and construct basis and the Department's procedures do not cater for this type of development. The Department was not included in the development of the fire station element of the project, as the project was not progressed in line with departmental financial and administrative procedures.

- In response to a request from Dublin Corporation in 1998, and as the original decision was considered to be somewhat harsh, the position was reviewed in the light of the different circumstances which then prevailed (the explicit support in Partnership 2000 for the concept of Public/Private Partnership) and a once off contribution of £1m was provided by way of Exchequer grant. As a high quality full-time headquarters fire station was being provided, this represented excellent value for money insofar as the Department was concerned.

24. Cost Overruns on Water Supply and Sewerage Schemes

Capital expenditure on water supply and sanitation schemes by the Department of Environment and Local Government amounted to £185m in 1998. Estimated expenditure on such schemes in 1999 is projected to increase by 50% to £275m. Projects approved by the Department to commence construction in 1998 range in value from £20,000 for the Athlone Water Conservation scheme to £200m for the Dublin Bay (Ringsend) Sewerage scheme, which will be financed over a number of years to completion.

The guidelines on awarding contracts for public sector construction projects stipulate that, in order to avoid increased costs later, every effort should be made to ensure that all aspects of the design are finalised before a project goes to tender. Upper cost and work limits should be established at the outset and a detailed design brief should be prepared. The design brief should be sufficiently comprehensive to establish clearly the services required and the relevant standards and constraints to be followed. Proper supervision is essential at construction stage to ensure that the works are being carried out according to the specifications and within the time and cost limits for the contracts and the project should be subject to a detailed cost review at completion.

A final account is transmitted by the Local Authority to the Department, which retains 5% of the scheme grant pending its submission.

Despite the existence of strict approval, reporting and budgetary control procedures designed to ensure adherence to the above guidelines at local and departmental level, it was noted on audit in previous years that cost overruns occurred consistently on water and sanitation projects. My 1995 Value for Money Report on Regional Development Measures indicated that, generally, cost estimations at the preliminary report stage differed substantially from design stage costing, which in turn tended to increase at the tendering stage. In some cases, cost at design stage became irrelevant because the schemes were delayed for considerable periods of time. In general, final costs of projects were in excess of the agreed contract costings and the excess arose as a result of adverse ground conditions not identified during site investigations, the introduction of additional cost classifications and substantial increases in salary, administration and miscellaneous costs.

In 1998, in response to an inquiry from my Office, the Department provided information on certain water and sanitation projects which indicated that the tendency for a cost drift to occur between tender and completion stages was continuing, as outlined in the examples in Table 4.

Table 4 - Water and Sewerage Schemes

Scheme	Contract Price £	Final Cost £
Bailieboro Sewerage	839,768	1,075,718
Annagry Sewerage (Donegal)	495,000	644,629
Dunlaoghaire Water Supply Contract No.1	6,200,000	7,138,699
Dingle Sewerage	3,705,402	5,693,516
Killybegs Water Supply Contracts	10,900,000	17,695,950
Tralee Sewerage Contract No. 1	2,900,000	4,126,889

The Department indicated that the factors giving rise to these costs variations were the same as those outlined in my 1995 Value for Money report and that final accounts and material required to complete examination of the final accounts, such as construction drawings, engineers' reports, *etc.* are still, typically, received no earlier than 2 to 3 years after substantial completion of a scheme, with longer delays frequently occurring. As a result, few final accounts are received and fewer final payments are made each year on completed schemes.

It was also noted that revised project monitoring arrangements introduced in 1998 include, *inter alia*, a requirement for Local Authorities to seek an increase in the approved grant from the Department at the time the projected cost overrun is identified, rather than when the approved grant is exhausted, as had happened previously. New arrangements on final accounts in early 1999 provided for the introduction of an interim final report, giving an initial assessment of the project and a preliminary statement of final costs, to be followed not more than two years later by the final report which should include a full post-project review and the complete final account. The Department also introduced design and build contracts for suitable projects in early 1999 as one of the main fundamental principles of infrastructure development under Public Private Partnership arrangements. The monitoring, payment and reporting procedures would remain broadly similar to those in current use.

Due to the substantial increase in final costs, I inquired as to whether the Department had conducted any further review of the factors giving rise to the cost overruns. I also inquired as to whether cost overruns on EU co-financed schemes were borne solely by the State or co-funded by the EU.

The Accounting Officer stated that the type of factors that led to cost variations were:

- Uncharted and poorly mapped services causing delays and disruption
- Road structures in poor condition when trenches were excavated, and requiring additional work
- In some cases, better but more costly technology becoming available during the contract
- New requirements of other authorities being made known during the contract
- Delays caused by difficult ground conditions not identified by initial survey
- Difficulties negotiating wayleave agreements

- Delays arising on associated contracts

- Changes such as adjusted Value Added Tax rates.

He also stated that, in recognition of, and in response to, the factors influencing the cost of a scheme over its lifetime, the Department had taken steps to minimise their effects as follows:

Measures taken by Department prior to Tender Stage

- Current practice is that schemes are not approved to proceed to planning stage unless the Department is confident that the funding is in place to allow the schemes to progress through to construction in the short term. The Accounting Officer informed me that since 1997, the Department has published the list of schemes to advance through planning with the result that the time between completion of preliminary report and commencement of construction has been shortened.

- Since March 1997, the Department requires Local Authorities to give advance notice to the Department of the Marine and Natural Resources of proposed water services schemes.

Measures taken by Department during Post Tender Stage

- In June 1995, Local Authorities were asked to revise scheme costs as part of the Annual Capital Returns process and to submit a report to enable approved finance for the scheme to be reviewed. The report must outline the current scheme cost and itemise the elements giving rise to increases such as price variation clauses, certified claims, overruns and/ or approved extras. It should also incorporate a detailed statement from the County/ City Engineer on the scheme. In addition, it has been emphasised to Local Authorities that it is important that the information in claim forms is carefully checked and verified before they are passed to the Department for payment.

- Local authorities have been reminded of the need to institute value for money and cost control regimes. In particular, rigorous value engineering methodologies are applied to the larger schemes.

- A Steering Group, made up of Local Authority representatives, departmental technical and administrative personnel and the Consulting Engineers, to facilitate regular exchanges of information and early signalling of problems, must be established in respect of each project.

- Local authorities have been reminded of their responsibilities and obligations as contracting authorities to ensure that adequate site supervision, cost control and project management techniques are in place for all schemes. The Department must be notified immediately of likely increases in scheme costs and the factors giving rise to such increases must be fully documented. Local Authorities are generally required to apply for prior written approval before any commitment is entered into. Applications of this nature must also clearly state why the works were excluded from the original scope of the scheme.

- The Department has adopted a policy of limiting the Contingency Sum in contracts to a maximum of 2.5%.

- The Department issued a circular to Local Authorities in December 1997 dealing with the issue

of sound financial management and control systems on water and sewerage schemes. In particular, guidance was given on:

- recording of Local Authority capital expenditure
- maintenance of scheme documentation
- categories of eligible expenditure
- Local Authority inspections of schemes
- quarterly monitoring returns
- preparation of audits
- Local Authority audits and assessment of control systems

- The introduction of the new administrative arrangements were notified to Local Authorities in December 1998 and, with effect from January 1999, the Department gave Local Authorities more direct responsibility, within approved cost limits, for the management of Water Service projects.

- A Working Group has been established with representatives of the Department and the Department of Arts, Heritage, Gaeltacht and the Islands to deal with archaeological issues arising.

- New arrangements have been put in place to ensure that site investigation works are carried out by specialist firms. In addition, Consulting Engineers are being asked to report to the Local Authority and the Department on the effectiveness of the site investigation contract where claims for extra cost due to ground conditions arise.

- The Department has put in place a system whereby baseline costs for projects are established with a view to determining at final account stage the real increase in costs over tender prices.

- The Department monitors the competitiveness of the sector by keeping track of the number of contractors bidding, and delays in start-up of jobs.

- In February 1999, the Department set out revised procedures for carrying out post-project reviews for water services projects. The main objectives of the new arrangements are:

  - To provide an assessment of the management of the project
  - To allow for a full evaluation of the impact and effectiveness of the project, particularly in terms of the environmental and economic objectives set
  - To ensure that information is collected in a manner that facilitates the conduct of financial audits and the aggregation of national statistics
  - To meet the various requirements of the EU in relation to the draw down of EU aid
  - To determine the final outturn cost, and identify any cost increases over the original estimates and tender prices
  - To identify, explain and, if possible, correct any irregularities in the management of the project and recover any financial losses arising from identified financial irregularities
  - To ensure that the appropriate maintenance of the works in question and for the ongoing monitoring of their performance have been put in place

- The Department is implementing a standard accounts system for the monitoring of expenditure on water services capital projects.

The Accounting Officer also stated that the Department had recently engaged a consultant to undertake an audit programme of interim certificates issued by consulting engineers to establish that these certificates reasonably reflect the value and efficiency of the work covered by them.

With regard to the funding impact of cost overruns in EU co-financed schemes, the Accounting Officer stated that there is no obligation on the European Commission to increase the maximum amount of assistance from the Cohesion Fund, the source of the majority of funding for such schemes. Nevertheless, he stated that, up to April 1997, in practice the Commission has approved most cost increases on individual projects but that since then has tended to disallow cost increases on water projects. The reason for doing so is stated to be due to Ireland's interpretation of Article 130 of the Treaty on European Union, *i.e.* the Polluter Pays Principle. Since that time also they have approved new water projects for funding at the lower aid rate of 80% (compared to a usual 85%) for the same reason.

In relation to a minority of schemes that benefit from Structural Funds and Interreg Funds, the Accounting Officer stated that the Exchequer bears any cost increases. However, he pointed out that no EU aid is lost to Ireland in this respect in view of the availability of schemes to be set against Structural Funds. In the absence of EU assistance, such schemes would be funded by the Exchequer in any event.

25. The Scientific and Technological Education (Investment) Fund

The Scientific and Technological Education (Investment) Fund Act, 1997, established the Scientific and Technological Education (Investment) Fund for the purpose of developing scientific and technological education at all levels, from primary schools to advanced research in third level institutions. The Fund is administered by the Department of Education and Science, with the sanction of the Department of Finance and is intended to operate in addition to, rather than in replacement of existing investment. The Fund has three major objectives:

- To renew and modernise the infrastructure of third level institutions, particularly in the technological sector
- To develop new areas of activities where emerging skills needs have been identified
- To invest in promoting innovation to maintain and further economic growth.

The Fund came into existence in December 1997 and commenced operation in 1998. The 1997 Act, as amended, provided for the payment of an Oireachtas grant of £130m into the Fund in 1998. Further payments of £150m are due, giving a total of £280m in State support by the end of the year 2000. During 1998, £30.5m was expended on approved projects by the Department of Education and Science, as follows:

	£	£	£
Third Level Capital Provision			
• Higher Education Authority Institutions		552,596	
• Institutes of Technology		14,993,530	
Schools IT 2000 Project Capital Provision			
• Primary Schools	9,342,941		
• Special Schools	491,520		
• Second Level Schools	3,207,860		
• Individual Special Needs Pupils	255,382		
• Education Centres	60,000		
• Support Service by the Inspectorate of the Department of Education and Science	108,496		
• Maynooth College	20,000	13,486,199	
Second Level Schools Capital Provision			
• Post-Leaving Certificate courses		1,475,720	
Total			**30,508,045**

The Act envisages contributions to the Fund from both the public and private sectors. The Private Donations Investment Account at the Central Bank was established under the Act to facilitate private contributions into the Fund and this money, together with the income arising from its investment, was to be used to supplement the funding provided by the State. However, by June 1999, no contributions had been received into the Private Donations Investment Account. I was informed that:

- There were no targets set for the private contributions. However, with the introduction of the tax incentive schemes under the 1997 Taxes Consolidation Acts, funds in the order of £50m have been attracted into the third level system either through projects already sanctioned or currently being processed. At present this appears to be the preferred method of channelling funds to the third level projects by donors to the sector. The Department is satisfied that very significant additional private money is being added to the State's investment and that this will significantly increase the core allocation for the institutions.

- It is expected that following the success in attracting the £50m from the private sector further significant funds will follow through the tax incentive route.

- The Private Donations Investment Account continues to offer an investment route to potential donors for whom the tax incentive schemes under the 1997 Taxes Consolidation Acts are not the preferred option.

- The Government is at present considering proposals for extending the concept of Public Private Partnerships and the Department of Education and Science is represented on an inter departmental working group on this matter.

VOTE 30 -MARINE AND NATURAL RESOURCES

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

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

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

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

During audit it was noted that:

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

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

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

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

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

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

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

The Accounting Officer informed me that:

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

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

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

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

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

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

During audit it was noted that:

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

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

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

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

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

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

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

The Accounting Officer informed me that:

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

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

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

- No legal proceedings for compensation were pending.

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

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

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

28. FEOGA Operations

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

During 1998, £1,350m was incurred on FEOGA expenditure comprising:

	£m
Export Refunds	308.9
Intervention Costs	71.7
Production Aid	73.5
Premia Schemes	584.2
Other support measures	311.2

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

In the following paragraphs 29 to 31 reference is made to matters noted during my audit and to other matters noted by the internal audit or the certifying accountants.

29. New Accounts System

In my 1996 Report, in response to concerns raised by me, it was indicated that a new computerised accounting system was being developed to be in place by late 1998 which would help to improve procedures to prevent duplicate payments and to provide more effective controls. As the system did not materialise during 1998 I reviewed the position in detail and the following outlines the progress of the project and the difficulties that have arisen.

Tender Process

Since 1994, the Department has been planning to introduce a new accounts system. Following tendering, an external consultancy firm was appointed to produce a tender document, specifying the requirements of this system. Work commenced in January 1996 and the tender document was issued in July 1996. The evaluation of tenders was completed in February 1997. Based on the technical assessment of the tenders, including demonstrations/assurances from the suppliers, the Department and the consultants concluded that one product provided the best fit to the Department's requirements. The proposal was rated significantly ahead of both of the other main proposals and was rated highly for coping with the Department's requirements for cash and accrual accounting.

The tender evaluation report listed one of the product's risks as a lack of experience with cash and commitment accounting. The conclusion was that there was no risk-free approach to implementing a new computerised accounting system but, in this instance, the product appeared to carry the least risk in both the short and medium term. The contract for the implementation of the system was awarded in June 1997 at a cost of £1.128m.

Project Implementation

The project implementation was overseen by a Project Board, chaired by the Secretary General and comprising representatives from the Department, the Department of Finance, the consultants and the contractor. Phase 1 to cover the core accounting system (general ledger, payments systems), a central client database and aspects of a debtors ledger/cash receipts system was initially due for implementation by March 1998. Phase 2 providing for the implementation of a fixed asset system, a purchasing system and the full debtors ledger/cash receipts system was due by October 1998. During the Autumn of 1997, there were certain delays in project implementation. The Project Board noted the main reasons why the project had slipped were insufficient resources, lack of clear methodology and a lack of effectiveness and cohesion between the Department/contractor management teams, and under-scoping of change management. Following a project review, a revised project plan was approved by the Project Board in December 1997. Phase 1 was re-scheduled for implementation by August 1998, later changed to September 1998. The revised plan included a change in the implementation methodology. The Department's detailed requirements were to be specified through 'process scripts', for which the software would then be configured. The revised project plan also envisaged a substantial input of external consultancy resources, which were put in place in early 1998. The additional costs of the new revised project plan would be of the order of £1-£1.1m or more.

In the June/July 1998 period, it became clear that it would not be possible for the contractor to deliver the full range of the envisaged configured software. The software which was delivered did not meet the Department's requirements, especially in relation to government cash accounting. This requirement had been specified in the tender document and the contractor had provided assurances that the system could meet the requirement. In light of the conclusion reached following testing, concerning the delivered software, the Project Board concluded, in early August 1998, that it would not be safe to proceed with project implementation in September and this decision was communicated to the EU Commission and the contractor.

In October 1998, the contractor indicated that it believed that an upgrade of the product could address all of the Department's requirements, including the ability to cater for cash accounting. It was agreed that this would be formally assessed through a feasibility study. On 1 February 1999, the contractor delivered a presentation to the Department on the proposed solution to the problems encountered. The proposed solution was examined by a Departmental Evaluation Group who, in February 1999, stated that the contractor's report, presentation and demonstration only reflected an outline of the proposed solution and that the solution was not yet built. Thus, the recommendation was based on an outline solution that could not be demonstrated fully. The group recommended that the technical solution should be pursued as it appeared to provide a solution to the Department's requirements, including cash accounting. However, the project should only be restarted when the expressed reservations had been satisfactorily addressed.

The Department sent its detailed conclusion to the contractor in March 1999. This noted that the major risks to the restart of the project appeared to be (a) lack of agreement on contract/cost issues, and (b) lack of agreement on the implementation plan and project structure. The new implementation date would be in the year 2000.

Project Costs

By July 1999 the following costs of £3.2m* were incurred:

	£
Payments under the contract	790,000
Fee to contractor for additional services under separate contracts	177,000
Further costs by contractor (under dispute)	485,000
4 separate projects by the external consultant firm including £110,000 for necessary consultancy services to support the project while on hold from September 1998/February 1999	814,000
Estimated Departmental staff costs for project work	930,000

* VAT exclusive

Once the decision to postpone the implementation date was taken, the Department commenced an urgent programme to ensure that the existing accounts system was appropriately amended for compliance with Year 2000. The estimate of total staff costs in connection with this work from August 1998 to January 2000 is £318,000.

General

The principal findings in the certifying accountants' report of 31 January 1999 on the 1998 FEOGA Accounts recognised the new accounts system as a major strategic issue.

The EU Commission had indicated that it would be obliged to reconsider the accreditation status of the Department, in the event of the project not proceeding satisfactorily.

As the project was not on target, I sought the views of the Accounting Officer who informed me that:

- The current situation regarding the main contract is that outline agreement has been reached with the supplier for the completion of the project. This outline agreement has focused on the time frame within which the project should be completed, the project plan, the resources required and the cost. Discussions on the contractual arrangements to give effect to the outline agreement reached are taking place and it is hoped that they will be concluded soon. Assuming these discussions are brought to a successful conclusion, the intention is to re-start the project as soon as possible thereafter.

- The proposed implementation for the re-start project has been the subject of detailed planning arrangements. The upgrade proposed has functionality which deals with government cash accounting and assurances have been received that should meet the Department's requirements. The detailed work plan agreed with the contractor for delivery of the system software includes milestones for key deliverables, which will be reviewed during project implementation. Plans for the necessary testing, training and change management within the Department are also in hand. Subject to a rapid resolution of current contract discussions and project re-start shortly

afterwards, it is envisaged that the system will be functioning in the second half of 2000.

- In regard to resources, particular attention has been paid to ensuring that the resources allocated to the project, from both the contractor and the Department, are adequate in terms of skills and numbers. Resources allocation will be kept under close review during implementation, taking account of the deliverables/milestones necessary to meet the target delivery dates. Where specialised skill deficits exist within the Department team, it is intended to use additional consultancy resources. Use of these resources will be kept to the necessary minimum.

- The Department has increased the number of its management staff allocated to the project. The project will continue to be monitored by a Project Board, chaired by the Secretary General, which meets on a monthly basis. The Board consists of senior users within the Department, representatives of the Department of Finance and the contractor. Below the Project Board level, review meetings between the Department and contractor Project teams are scheduled on a weekly basis.

- The additional consultancy costs were, to a large degree, due to the fact that the Department did not have the specialised resources required.

- The estimated final cost to the completion of the project will be determined by the outcome of the current discussions.

- In the absence of a figure for an estimated final cost of completion, it is not currently possible to provide an estimate of the cost which resulted from the failure to implement on time the contract as originally contracted for.

- The Department is satisfied that it maintained adequate control over the project. The tender process, and the resulting evaluation of offers, was rigorous and exhaustive. Following appointment of the contractors, the Department was not satisfied with the implementation methodology and requested a review which led to some changes in approach. In addition to the Project Board, three sub-project boards, chaired by an Assistant Secretary, also met on a monthly basis. From the Department's perspective, the major reason for the failure to implement on time was that the version of the software delivered by the contractor did not meet the Department's requirements, especially in the area of government cash accounting. This only became evident late in the project implementation, given that the software was delivered on a phased basis and that the earlier delivery of software appeared to meet the Department's transaction processing requirements.

30. Overpayments

The Department administers a number of headage/premia schemes which provide grants (£834m in 1998) to farmers producing livestock, mainly cattle and sheep. Most of the schemes are available to farmers throughout the country (the premium schemes) but a few (the headage schemes) are restricted to qualifying farmers in the EU-designated disadvantaged areas.

The Department's Headage Division has an Overpayments Section that is responsible for monitoring, controlling, recording and recovering overpayments of grants under livestock headage and premium schemes. Overpayments are established either manually or are automatically generated by the payments system. All manually established debts are discovered in the local livestock offices

and are submitted to the Overpayments Section for recording on the overpayments file. Written requests are sent to the herdowners for a refund within 14 days. The herdowner can pay by cheque or agree to have the amount offset against a future payment. More than 90% of all debts on the overpayments file are, however identified by the system. Recoupment is by means of automatic offset against future payments.

Over a number of years, weaknesses in the control systems leading to overpayments on schemes have been the subject of concerns regarding the associated risks of non recovery and bad debts. These concerns have been expressed in my previous reports; legal advice received by the Department; a 1998 Internal Audit report and the Certifying Accountants' 1998 Report.

In response to these concerns, I have been informed that the Department:

- Conducted a review of its Debt Recording System in September 1998

- Initiated a series of organisational and procedural changes which are set out later in the paragraph as part of the Accounting Officer's response to my inquiries.

Department's 1998 Review of its Debt Recording System

Under EU Regulations, the Department is responsible for holding a ledger of all debtors in relation to FEOGA expenditure and taking the necessary steps to recover the amounts in a timely manner. The Department's review of its Debt Recording System, carried out in September 1998 with the assistance of a professional accountant, found that there was no central function for co-ordinating and monitoring the management of debt across divisions. As a result there was some degree of variation between the methods of debt establishment, recording and recovery used by different sections within the Department. The Department also needed to be aware of its legal requirement to establish the existence of the debt at the earliest opportunity. The review recommended that standard procedures in relation to debt establishment, recording and recovery be introduced across the Department.

The review also noted that Headage Division had no satisfactory system in place to instigate follow-up procedures on debtor balances. Furthermore, there was no ongoing detailed monitoring of balances to establish the level of irrecoverable debts. As a result debts may have been included in accounts submitted to the EU which were no longer recoverable and therefore do not constitute valid receivables to the Department.

The review observed that legal opinion sought by the Department had indicated that in order to claim a right to offset a debt due to the Department against a debt payable by the Department, there is a responsibility upon the Department to establish the debt with the client by means of written communication. On this basis therefore, the review recommended that each section provide its clients with a statement of affairs detailing the amounts owing to the Department on a quarterly or half-yearly basis.

The review noted that a full and complete debtors ledger system capable of meeting fully with the requirements of the EU will not be installed until after the completion of phase 2 of the new accounts system project which has been delayed (see paragraph 29).

As a result of the review an interim Debtors Ledger Unit was set up within the Finance Division in September 1998 to co-ordinate and monitor the management of debt across divisions. A report from

Finance Division on the debtor situation is made to the monthly meeting of the Accreditation Review Group, which is chaired by the Secretary General.

Overpayments Position

The combined headage and premia overpayments outstanding at June 1999 were as follows:

	£
BSE 1995/1996 Cases	558,487
Clients with a Flock Number only	53,928
Premia - Pre 1992	12,146
Other premia/agri-monetary scheme (1992-1998)	823,855
Headage Schemes	303,206
	1,751,622

According to the Department, £832,594 (47.5%) of these overpayments related to dormant herd or flock numbers and these dormant herd numbers represent debtors who are no longer in receipt of premia/headage payment. Some £374,542 or 45% of the total involves BSE cases.

I requested the Accounting Officer's views as to whether he was satisfied that the measures taken by the Department would ensure that overpayments are prevented and that any which may occur would be promptly identified and recovered. I also inquired as to the steps taken and proposed, to recover overpayments, and when it was expected that the amounts of irrecoverable overpayments would be established so that formal write off could be sought.

On a general level the Accounting Officer stated that:

- The Premium Headage schemes involve large numbers of applicants and even larger numbers of individual applications and payment transactions. Applications are received at different times of the year and payment time-frames differ from scheme to scheme. There are considerable interlinkages between schemes. These can result in overpayment situations arising even in the tightest control environment. The Department's objective is to keep overpayments to the minimum, promptly identify where they occur and ensure the adequacy and timeliness of recovery arrangements.

- In the six year period 1993-1998 the level of overpayments arising under the main Integrated Administration and Control System (IACS) schemes (Suckler Cow Premium, Special Beef Premium, Ewe Premium and Extensification Premium) represented about 0.2% of scheme expenditure. Overpayments under these schemes for the 1998 scheme operations represent 0.075% of scheme payments.

In response to my specific inquiries, the Accounting Officer informed me that:

- As regards prevention, the following measures were undertaken:

Department's Clients

- The provision of clear and concise guidelines including help sheets and check lists to the Department's clients to ensure that they are fully aware of how to make the necessary scheme applications.

Department's Staff

- The provision of Procedures Manuals to all members of staff involved in scheme processing to ensure all staff are familiar with the rules of the schemes and the necessary control checks prior to payment approval.

- An initial briefing of staff at scheme launch.

- The provision of scheme specific staff at central locations to advise and assist staff throughout the scheme campaigns.

- The establishment of a Financial Control unit in the Headage/Premia area to monitor scheme implementation.

- The establishment of an enhanced overpayments unit to monitor and control registration and recovery of overpayments. An additional function of this Unit is to analyse the Overpayments Register in order to focus attention at specific areas which could lead to avoidance of error in the future.

- The installation of the new accounts system will add further enhancement to controls in this area particularly insofar as the operation of the Debtors ledger and client database systems are involved.

- As regards recovery, the following measures were undertaken:

  - Overpayments are either automatically written to the central Headage/Premium Debtors register or input manually. Once on the Debtors register, automatic recoupments occur (*i.e.* before a payment under any Headage/Premium Scheme issues there is a systematic check against this register and if there is an amount entered against a client then a recoupment is made).

  - In cases of BSE overpayments and flock number problems in particular, farmers have been written to on two separate occasions by the Department setting out the amount of the overpayment and with a request to make a refund.

  - The Department is arranging to write to all farmers on the Debtors register notifying them of their overpayment position and indicating how recovery is to be achieved *viz* immediate refund or offset against future payment where the debtor continues to be a participant in Premium/Headage Schemes.

  - Given the special nature of the BSE overpayments (they should be defined as "adjustments" rather than overpayments and are a direct consequence of the implementation arrangements laid down by the EU Commission), the Department is writing to the Commission to establish the extent to which recovery has to be pursued.

- Legal advice will be sought in appropriate cases.

Regarding potential write-off, the Accounting Officer informed me that the dormant herd or flock number cases are proving the most problematic to recover and it is expected that, ultimately, consideration will have to be given to writing-off some of these debts. The recovery procedures will enable the Department to establish the level of recoverability of the overpayments. It is hoped that this work will be completed by the end of 1999.

31. Disallowances by the EU Commission

The EU Commission, having carried out selected audits of the expenditure and receipts declared in the annual FEOGA claim, takes a decision on the correctness and validity of the transactions and, arising from this, determines what adjustments should be made. If these adjustments involve disallowances of expenditure they give rise to a charge to the Vote, although where the amounts disallowed are recovered from individual traders, any resultant receipts are brought to the credit of the Vote. Claims up to and including the 1995 FEOGA financial year[1] will be cleared by this procedure. The 1994 claim was cleared in this way during 1998.

Commencing with the 1996 claim, new account clearance arrangements introduced by the EU Commission involve the annual claim being cleared in two stages. The first stage involves the independently certified annual claim account of the Member State being submitted to the EU Commission by 10 February following the end of the FEOGA financial year. Any accounting adjustments arising from the reconciliation of the annual claim to the monthly advances made by the EU to the Department in the previous year, are charged or credited to the Vote as appropriate. The second clearance stage is based on the Commission's audits of selected measures and disallowances arising therein are also chargeable to the Vote. The first stage clearance of the 1997 claim was carried out in 1998.

Penalties for late payments are also imposed by the EU Commission for non-adherence to the payment deadlines and are implemented by making quarterly deductions from advances to the Department. Deductions in respect of late payments for the final quarter are implemented in the first stage clearance of the annual claim. In 1998, a total of £1.2m in late penalties for the years 1997 and 1998 was charged to the Vote.

A total of £5.28m in disallowances and losses were charged to the Vote in 1998, as outlined in Table 5.

Table - 5 Feoga Disallowances

	£	£
Amounts charged following the 1994 Clearance of Account		
Premia Schemes	2,512,626	
Intervention Beef - financial penalty for rejected beef not declared, delay in payments, losses at cold store in the Netherlands plus various adjustments	418,625	
Milk Products	61,058	2,992,309
Penalty for late payments		
1997	34,106	
1998	1,137,149	1,171,255
Other Adjustments and Charges		
Loss on damaged Intervention Beef	666,161	
Court Award	450,596	
Other adjustments	4,546	1,121,303
		5,284,867

[1] *The financial year for FEOGA purposes ends on 15 October.*

32. Overtime

In 1998, some £7.8m was paid in overtime and extra attendance to 2,932 staff. The highest amount paid to an individual officer was £33,229. Technical Agricultural Officers (TAOs) are employed by the Department, *inter alia*, on meat inspection duties at meat plants and cold stores (including poultry plants). These inspection staff are required to work overtime to facilitate factory operations.

During 1998, my Office drew the Department's attention to the fact that the top TAO overtime earner working at a meat plant was paid £34,843 overtime in 1997 in addition to a year's basic salary (£20,000 approx.). His working week was 41 hours and he alternated one week of days with one week of nights commencing work at 6am and 6pm respectively. However, he was being paid overtime for all of the time worked outside of the period 8am - 6pm. Other TAOs who were rostered to work outside normal hours were remunerated by way of shift allowance. In response, the Department explained that this officer was paid overtime under an agreement made with a trade union on overtime working. Under the overtime arrangement five other members of the Department's staff were remunerated in this manner, at three meat plants, as the trade union had been reluctant and unwilling to enter into a shift allowance agreement and indeed appeared to opt

out of earlier shift arrangements. The arrangements were not ideal but an alternative shift system would involve the assignment of at least one or two extra staff in each of the plants involved. The Department also noted that the restructuring agreement for TAO grades provides for discussions on the introduction of more flexible attendance arrangements. The Department would arrange such discussions during 1998.

During audit in May 1999, I noted that £536,000 was paid under the arrangement in the period 1995 - 1998 inclusive to these six officers. Five of them are included in the top ten recipients of overtime in 1998 ranging from £25,595 to £33,229. The actual hours worked between 8am and 6pm as a percentage of overall hours claimed and paid in 1998 to these five officers in respect of work carried out from Monday to Friday was 34%, 39%, 39%, 44% and 42% respectively. A further £33,000 was paid under this arrangement to seven TAOs at another meat plant in the period October 1998-April 1999.

The Accounting Officer informed me that:

- The overtime arrangements for the four meat plants concerned apply when these plants carry on production after 6pm and continue production until the early hours of the following day. Not all meat premises operate in this manner. The Department is obliged under EU Regulations and National Legislation to provide certain services in meat plants and aims to do so, at least cost to the Exchequer. One plant commenced an overnight deboning operation beginning in October 1998. The company agreed in advance to pay the extra cost involved for the additional hours worked. The other three companies pay £10 per hour for each hour of overtime worked by TAOs.

- The question of introducing a shift system was raised with the trade union in the past but no agreement was reached. In the Restructuring Agreement for Technical Agricultural Officer Grades there is a provision for the introduction of more flexible working arrangements for all technical staff. In addition, the enactment of the Working Time Act, 1997, means that the working arrangements of the technical staff in meat premises will have to be examined to ensure compliance with the terms of the Act.

- The introduction of more flexible working arrangements and the need to comply with the terms of the Working Time Act will have an impact on the income of staff assigned to meat premises and as such will involve difficult and slow negotiations before agreement is reached.

VOTE 33 - HEALTH AND CHILDREN

33. GMS (Payments) Board Deficits

The General Medical Services (Payments) Board (GMS Board) makes payments to general practitioners, pharmacists and dentists holding contracts with the eight Health Boards for the provision of services to qualifying persons. The Health Boards reimburse the GMS Board for the cost of the drug cost subsidisation scheme, the long term illness scheme, the dental treatment services scheme, the childhood immunisation scheme and the methadone treatment scheme. Payments under these schemes represent approximately 20% of total payments by the GMS Board. Funding for other schemes and services administered by the GMS Board, as well as the Board's administration costs, is provided by the Department of Health and Children on behalf of the Health Boards. In particular, the Department of Health and Children directly funds the GMS Board for the cost of free general practitioner services and free drugs and medicines supplied to persons qualifying for a medical card under the GMS Scheme.

I audit the accounts of the GMS Board and I noted that at 31 December 1997 the Board had borrowings of £32.8m and moneys owing to doctors, pharmacists and dentists of £58m which were broadly matched by amounts accrued as owing from the Department and the Health Boards of £87m. The unaudited accounts for 1998 indicated that the position had deteriorated further with borrowings of £63.6m and amounts due from the Department and the Health Boards of £125.8m. In addition, the GMS Board had incurred bank and interest charges of £542,000 in the 1996 - 1998 period.

In approving the GMS Board overdraft facility of £59m in December 1998, the Department of Finance requested that a review of the funding flows associated with the GMS Board's operation would be completed by the end of May 1999, with a view to identifying and resolving the problems which had led to a sharp deterioration of its year end cash-flow position over each of the previous two years.

In response to my inquiries about these deficits the Accounting Officer informed me that:

- The review concluded that growth in the cost of the GMS, particularly drugs and medicines and to a lesser extent doctors' fees, has exceeded the increase in the Board's allocation over the period 1997 to 1999. The increase in the Board's overdraft in 1998 arose as a result of the shortfall in the GMS scheme itself rather than the other schemes recouped by Health Boards. The Board had an actual overdraft at the end of 1998 of £54m. It is recognised that this is an inappropriate level of overdraft for the Board to continue to carry at the end of the year and addressing this will require further funding on a once-off basis.

- The Department's proposal to the Department of Finance is that an additional £90m would be made available to the Board in the current year. £50m of this would be on a once-off basis and would allow the overdraft at the end of the year to revert to a more normal level of approximately £14m. An on-going sum of £40m would bring the Board's base allocation up to the level necessary to meet its projected on-going requirements. The amounts to be included in a Supplementary Estimate had not yet been agreed with the Department of Finance.

- The Department has reviewed its procedures for estimating the GMS Board's requirements.

The following revised arrangements are being considered with the Department of Finance:

- All non-pay expenditure will be treated as demand led, pay expenditure will be fully recouped provided the pay agreements applicable from time to time are accurately and appropriately applied.

- The basis of estimation will be revised to give greater weighting to the levels of expenditure reflected in the most recent outturns and the current spending levels, and the adequacy of the provision for each year will be reviewed in the context of the Supplementary Estimate.

- The information used to monitor the Board's performance during the year has also been reviewed with the Board. The Board currently submits a return for the month ahead showing the projected expenditure and funding requirement. Following the review, now completed, a further set of monthly information is being agreed with the Board for submission to the GMS Division and Finance Unit of the Department. Broadly the return will be modelled on the type of return currently submitted by Health Boards as part of the service planning and monitoring arrangements. At the start of each year Health Boards submit a projected profile showing expenditure and the associated cash funding requirement for each month. These profiles are then used to monitor variances in expenditure over budget on a monthly basis throughout the year. This reporting format is being adapted to take account of the particular features of the GMS Board's operations and financing.

- Additional information will also be returned by the Department to the Department of Finance on a monthly basis. Currently the Department's monthly Vote return shows the funding issued to date to the Board. The Department makes a second monthly return showing expenditure by Health Boards and voluntary hospitals. As part of this return, it has been agreed that the Department will include relevant data for the GMS Board and will comment, as appropriate.

VOTE 34 - ENTERPRISE TRADE AND EMPLOYMENT

34. Drawdowns from the European Social Fund

Enterprise Ireland is financed by way of grant-in-aid from the Vote and by moneys received from the European Social Fund (ESF) and the European Regional Development Fund.

Enterprise Ireland provides financial support for training and management development activities carried out by client companies. 75% of amounts spent by Enterprise Ireland on such financial supports are eligible for funding from the ESF under the Human Resources Measure of the Operational Programme for Industrial Development. The total amount available for any year is set in accordance with the Operational Programme as adjusted by the Monitoring Committee. Based on these amounts, advance payments of 50% and 30% are received from the ESF by Enterprise Ireland *via* the Department of Enterprise, Trade and Employment. The balance is received following submission of a final claim.

Client companies are approved to carry out training and/or management development activity, usually as one element of a financial support package. Client claims must, in accordance with ESF requirements, be based on activity in a given year. When claims are received, they are examined and verified and then paid. Such claims are, in a large number of cases, received after the year end.

The Department of Enterprise, Trade and Employment issued an instruction that Enterprise Ireland must submit final claims for funding based on 1997 activity under the Human Resources Measure by 5 June 1998, as claims for ESF recoupment have to be made by 30 June. The final 1997 claims were prepared and submitted based on payments to client companies up to the 3 June 1998. The amount paid at that time was £1.7m. Subsequently, further claims based on 1997 activity were received and paid by Enterprise Ireland. The total paid by October 1998 was £2.9m and by March 1999 was £3.4m.

Given that many client companies submitted claims for payment subsequent to the submission of the final annual application for ESF funding and as a result would not qualify for ESF recoupment, I sought the views of the Accounting Officer and Enterprise Ireland as to whether the Exchequer was carrying the total cost of grants as a result.

I was informed that:

- In line with practice over many years, Enterprise Ireland, in the interests of facilitating companies to develop their skill base and minimising the related bureaucracy, does not put explicit pressure on companies to submit claims within any designated period.

- To the extent that claims were received and payments made by the agency but not included in submission of the final claim to the Department of Enterprise, Trade and Employment, the amount which was recouped was reduced. This, however, represented no loss to the Exchequer since any surplus ESF moneys were allocated, under the Operational Programme, to be recouped against other programmes where Exchequer funds had already been committed.

- As a result of work undertaken to enhance the level of client service, Enterprise Ireland is putting in place a series of process improvements designed to facilitate and encourage clients to drawdown funding in a faster and more efficient manner. This may be expected, *inter alia*, to improve the proportion of ESF funds which can be recouped by Enterprise Ireland.

35. Overpayments

The Department of Social, Community and Family Affairs administers some 50 social assistance and social insurance schemes, with 1998 expenditure amounting to £2.54bn and £1.96bn, respectively. During 1998 the annual expenditure on these schemes increased by 4.9%. As indicated in the following tables, during 1998, some 35,951 cases (34,684 in 1997) amounting to £22.22m (£20.78m in 1997) in overpayments were recorded for recovery.

Table 6 - Social Insurance - Overpayments Recorded for Recovery

	1998		1997	
Scheme	**Amount £'000**	**Cases**	Amount £'000	Cases
Disability Benefit	**738**	**1,650**	1,005	2,248
Maternity Benefit	**9**	**27**	5	17
Unemployment Benefit	**1,840**	**10,292**	1,523	8,576
Old Age (Contributory) Pension	**199**	**462**	308	491
Widow/er's (Contributory) Pension	**356**	**544**	445	392
Invalidity Pension	**601**	**326**	830	414
Retirement Pension	**189**	**352**	174	347
Disablement Pension	**71**	**11**	14	18
Injury Benefit	**11**	**63**	12	72
Deserted Wife's Benefit	**94**	**71**	146	213
Pay Related Benefit	**2**	**6**	1	15
Unemployability Supplement	**26**	**14**	4	14
Treatment Benefit	**6**	**79**	10	107
Equal Treatment	**-**	**-**	3	1
	4,142	**13,897**	4,480	12,925

Table 7 - Social Assistance - Overpayments Recorded for Recovery

	1998		1997	
Scheme	**Amount £'000**	**Cases**	Amount £'000	Cases
Old Age and Blind Pensions (Non-Contributory)	**6,218**	**1,090**	4,977	959
Child Benefit	**582**	**2,408**	463	2,298
Unemployment Assistance	**8,018**	**16,233**	7,477	15,270
Pre-Retirement Allowance	**195**	**126**	644	257
Widows' and Orphans' Pension (Non-Contributory)	**411**	**87**	293	86
Deserted Wife's Allowance	**28**	**14**	39	14
Lone Parent (Prisoner's) Allowance	**6**	**5**	30	10
Family Income Supplement	**283**	**846**	393	965
Lone Parent (Unmarried) Allowance	**1,299**	**371**	1,374	995
Lone Parent (Separated) Allowance	**231**	**119**	318	271
Lone Parent (Widowed) Allowance	**33**	**10**	42	35
Carer's Allowance	**50**	**88**	41	65
Supplementary Welfare Allowance	**58**	**52**	1	4
Disability Allowance	**193**	**213**	40	95
One Parent Family Payments	**218**	**201**	79	298
Fuel Allowance	**67**	**3**	-	-
Rent Allowance	**-**	**-**	3	6
Part-time Job Allowance	**5**	**15**	3	25
Back to Work Allowance	**184**	**173**	84	106
	18,079	**22,054**	16,301	21,759

36. Fraud or Suspected Fraud

During 1998 a total of 14,193 cases amounting to £10.7m of overpayments were attributed to fraud or suspected fraud as compared to £14.5m in 11,185 cases in 1997. This fall of £3.8m was principally due to a change in the way the Department classified overpayments arising from the finalisation of the estates of deceased non-contributory old age pensioners. Prior to 1998, such overpayments were deemed to be attributable to fraud or suspected fraud.

Table 8 - Social Insurance - Overpayments Attributed to Fraud or Suspected Fraud

	1998		1997	
Scheme	**Amount £'000**	**Cases**	Amount £'000	Cases
Disability Benefit	**305**	**182**	328	211
Maternity Benefit	**-**	**-**	2	3
Unemployment Benefit	**1,311**	**4,510**	986	2,890
Old Age (Contributory) Pension	**-**	**-**	7	7
Widower's (Contributory) Pension	**154**	**18**	128	12
Invalidity Pension	**358**	**74**	447	96
Retirement Pension	**1**	**3**	27	5
Disablement Pension	**2**	**1**	4	1
Injury Benefit	**1**	**6**	3	19
Deserted Wife's Benefit	**28**	**8**	84	14
Pay Related Benefit	**2**	**6**	1	13
Unemployability Supplement	**7**	**2**	-	-
	2,169	**4,810**	2,017	3,271

Table 9 - Social Assistance - Attributed to Fraud or Suspected Fraud

	1998		1997	
Scheme	**Amount £'000**	**Cases**	**Amount £'000**	**Cases**
Old Age and Blind Pensions (Non-Contributory)	**22**	**10**	3,872	445
Child Benefit	**267**	**565**	206	497
Unemployment Assistance	**6,935**	**8,385**	6,429	6,494
Pre-Retirement Allowance	**65**	**19**	430	83
Widows' and Orphans' Pension (Non-Contributory)	**41**	**5**	215	39
Deserted Wife's Allowance	**4**	**2**	21	2
Lone Parent (Prisoner's) Allowance	**5**	**1**	8	1
Family Income Supplement	**43**	**31**	167	81
Lone Parent (Unmarried) Allowance	**756**	**117**	886	148
Lone Parent (Separated) Allowance	**72**	**18**	137	22
Lone Parent (Widowed) Allowance	**22**	**5**	17	4
One Parent Family Payments	**93**	**55**	26	9
Disability Allowance	**34**	**28**	21	39
Supplementary Welfare Allowance	**54**	**33**	1	1
Carer's Allowance	**3**	**7**	8	3
Fuel Allowance	**1**	**2**	-	-
Rent Allowance	**-**	**-**	2	2
Part-time Job Allowance	**4**	**4**	1	3
Back to Work Allowance	**119**	**96**	56	41
	8,540	**9,383**	12,503	7,914

37. Recovery of Overpayments

The cumulative position on overpayments is outlined in Table 10.

Table 10 - Overpayments

	1998 £'000		1997 £'000	
Overpayments not disposed of at 1 January		**37,579**		35,082
Overpayments recorded for recovery	**22,221**		20,781	
Less: Overpayments recorded in prior years cancelled	**378**	**21,843**	301	20,480
		59,422		55,562
Less: Sums recovered in cash	**5,335**		4,638	
Sums withheld from current entitlements	**3,880**		4,274	
Amounts written off as irrecoverable	**7,978**	**17,193**	9,071	17,983
Overpayments not disposed of at 31 December		**42,229**		37,579

38. Prosecutions

Cases involving abuse of the system are scrutinised with a view to taking legal proceedings. Prosecutions are taken against employers who fail to carry out their statutory obligations and persons who defraud the social welfare payments system. Prosecutions can be either by summary or indictment proceedings. Civil proceedings are taken to facilitate the recovery of scheme overpayments or collection of PRSI arrears. Such cases are only contemplated, however, where it has been established that the debtor has sufficient means to discharge the debt.

During 1998, 234 criminal and 9 civil cases were forwarded to the Chief State Solicitor's Office for prosecution. Of the criminal cases forwarded, 117 were for offences in relation to the receipt of Unemployment Assistance, 34 to the receipt of Unemployment Benefit, 10 to the receipt of Disability Benefit, 2 to the receipt of Invalidity Pension, 13 to the receipt of One Parent Family payments, 1 to the receipt of Family Income Supplement and 57 were in relation to offences committed by employers.

A total of 117 prosecutions of persons who attempted to obtain or obtained benefits/assistance fraudulently were finalised in court in 1998. The total amount of overpayments assessed in these cases was £411,510. The results of the court cases and the penalties imposed are given in the following table.

Table 11 - Results of Court Cases finalised in 1998

	Cases Fined	£	Community Service	Imprison-ment	Probation Act	Proven/ No Penalty
Unemployment Assistance	48	12,460	13	7	14	9
Unemployment Benefit	8	1,460	-	1	6	3
Disability Benefit	3	175	-	-	2	-
Family Income Supplement	-	-	-	-	-	-
One Parent Family Payments	-	-	1	-	1	1
Total	59	14,095	14	8*	23	13

** 5 subsequently suspended*

In addition the prosecutions of 43 employers were also finalised - with 37 being fined (value £13,050), 1 receiving a prison sentence, 4 got the benefit of the Probation of Offenders Act with the remaining 1 proven with no penalty imposed. There was no civil case finalised during the year.

39. Equal Treatment Arrears

Reference was made in my 1995 report to the payment of £300m in equal treatment arrears to 79,000 claimants following the 1995 High Court ruling regarding the delay in implementing the EU Directive on equality treatment for men and women in social security. I also referred to overpayments arising due, *inter alia,* to insufficient checks being carried out by the Department in relation to RSI numbers and decisions being taken on claims for arrears where information was incomplete. I reviewed the recovery status of the overpayments during 1998 and the following table summarises the position.

Table 12 - Overpayments

Overpayments	Cases	£
Determined	2,674	1,900,000*
Recovered	396	100,000
Written off	500	300,000
Cancellation of Recovery	1,778	1,500,000
	2,674	1,900,000

* the highest amount was £13,212

The Accounting Officer informed me that:

- When claims were being reviewed after the issue of payments on account in July/August 1995 following the Court ruling, any amount overpaid to the claimant, including non-equal treatment overpayments, was deducted from the balance of arrears due. Where there was no balance, or insufficient balance, available to recover the overpayment, the relevant solicitor was informed of the outstanding overpayment in court cases and the claimant was notified directly in non-court cases. A number of legal questions arose in relation to the Department's power to recover overpayments from arrears. These questions were only resolved late in 1996. This enabled the appropriate arrangements to be put in place, including the application of the legal provisions and the Code of Practice for the recovery of overpayment, where appropriate.

- Overpayments are submitted to the Department of Finance for approval to be written off by request of the departmental line division or automatically after 3 years by virtue of there being no action on the recovery.

- The cancellations arose in cases where the Social Welfare (Code of Practice on the recovery of overpayments) Regulations, 1996, could be applied. The repayment of each of those outstanding overpayments was examined by an authorised officer. As these overpayments arose as a result of errors by the Department and as the claimants could not reasonably have been expected to be aware of the errors, the repayment of the overpayment was cancelled. The persons concerned, however, were not notified as to the overpayment, as the Department took the view that it was unnecessary to do so having regard to the decision that the amount to be repaid had been cancelled and the fact that the primary purpose of notifying the person would have been to secure his or her views on any proposed repayment. Where the repayment of the overpayment was cancelled, the sanction of the Department of Finance to write off these amounts has been sought.

- The total expenditure on equal treatment arrears over the years amounted to £300m and the overpayments determined represent less than 1% of the total expenditure. Given the circumstances surrounding the introduction of equal treatment payments, the complexities involved, the incomplete data available, and the urgency with which the administration of claims was required to be dealt with, the Department took all possible steps to minimise the incidence of overpayments and to deter fraudulent claims.

40. Miscellaneous Grants

The Department operates various schemes where qualifying persons are entitled to claim benefits in relation to certain household charges *viz.*

- The Free Electricity Allowance is available to people in receipt of certain Social Welfare pensions or other specified payments. Once approved the information is passed electronically to the ESB and the appropriate credit appears on the applicant's ESB bill. The ESB submits monthly invoices to the Department together with summaries of information on the number of customers and charges relating to the scheme.

- In the same manner applications for Free Telephone Rental Allowance are processed by the Department and the information is passed on tape to Telecom Éireann. Telecom Éireann invoices the Department on a monthly basis and provides the Department with information on customers and charges relating to the scheme.

- The Department processes applications for Free Television Licences. The applicant presents proof of entitlement directly to An Post, which issues the licence. An automated renewal system is in operation to process subsequent licences to qualifying applicants. An Post submits a monthly invoice to the Department in relation to free TV licences issued.

The 1998 expenditure under the Free Electricity Allowance, Free Telephone Rental Allowance and Free TV Licence schemes amounted to some £30.4m, £28.9m and £15.4m, respectively. Overcharging by and overpayments to these bodies by the Department was referred to in Paragraph 50 of my 1995 Report. I reviewed the follow up of this matter during my 1998 audit with the following results.

- With regard to the Free Electricity Allowance it was noted that 409 cases where the same Department reference number appeared on two ESB customer accounts making up the monthly invoice, remained to be reviewed and consequently no amounts had been recovered from the ESB in respect of this category. There were a further 110 cases identified where no departmental reference existed in respect of clients on the ESB file and a total of £92,384 was estimated to have been overcharged in these cases. This overcharge had not been recovered at the time of my audit.

  The Accounting Officer informed me that overpayments estimated at £146,000 occurred in 383 of the cases of duplicate records. These arose as a result of a data transmission problem on the Department's side and in respect of which the ESB accepts no responsibility. Of the 110 cases where no departmental reference existed on the ESB records the estimated overpayment was relayed to the ESB for examination. Following this, the estimate was revised and overpayments were agreed at £77,549. The ESB has refunded

£37,846 in settlement of the amounts overpaid (agreement on 50-50 responsibility for the overpayments in 63 cases (£27,631) plus 21 cases (£10,215) where the ESB accepted full responsibility). In the remaining 26 cases which arose due to the problems with data transmission the ESB accepted no responsibility (£12,072).

The ESB now submit a supporting reconciliation printout with each monthly invoice which identifies cases of duplicate ESB account numbers and cases with no client number and these are corrected immediately.

- As regards the Free Telephone Rental allowance it was noted that the Department had failed to comprehensively examine the billing data for the period June 1992 to December 1995 using existing procedures. Moreover, cases which did not have a social welfare client number, identified in a data matching exercise in relation to the January 1996 billing period, had not been reviewed by the Department.

The Accounting Officer informed me that given other work pressures and limited resources it has not been possible to apply the automatic check system retrospectively prior to 1994 or to applying the enhanced check program to listings prior to 1996. The unchecked data covers a period of 21 months. Based on the average overcharge in the 63 months which have been checked to date the estimated overcharge for periods in respect of which billing records were available but which remain unchecked by the Department is £75,000.

With regard to the elaborate data matching procedure the Accounting Officer stated that cases where Telecom Éireann had no record of a Social Welfare client number carried the greatest exposure of overpayment. In 1996 a total of 603 such cases were identified of which 9.6% (58 cases) were not entitled to the allowance. These were terminated from a current date but any potential overcharges relating to these remain to be resolved with Telecom Éireann. The Department extracted a new listing in March 1999 along the same lines as the 1996 extract. This has produced a further 410 cases where Telecom Éireann have no record of a departmental client number and these are being examined at present.

- As regards the Free Television Licence scheme a new system, introduced with effect from May 1997, provided that An Post would verify in advance with the Department the cases in respect of which it intends to automatically issue free renewal licences. This is in operation but it was noted on audit that the monthly bill from An Post was not verifiable using the automated renewal system. The Department's Internal Audit Unit (IAU) was requested by line management in the Free Schemes area to assist in the investigations they had initiated as a result of apparent discrepancies which had been detected in the February 1998 invoice from An Post. The Internal Audit report of January 1999 indicated that overpayments were arising.

The Accounting Officer informed me that monitoring of the arrangements for the automation of licence renewals suggested teething problems which required to be investigated. The enquiries indicated overcharging due to deficiencies in the operation of the arrangements.

Some matters are being examined by An Post while an overcharge of £19,722 has been refunded.

Regarding the extent to which the weaknesses identified in the IAU report have

overcharging implications for other billing periods the Accounting Officer stated that it was not possible to estimate the possible overcharging without carrying out a similar detailed examination. Efforts have been concentrated on eliminating the weaknesses identified in the IAU report. Up to the time of the report the monthly invoices from An Post had been accepted at face value without any attempt to reconcile against departmental records other than a check on the overall invoice amount against normal trends.

He added that technology constraints within An Post and the Department had delayed development for complete reconciliation of the monthly invoice submitted to the Department. The next stage of this development work is to automate the production of first TV licences which are presently issued manually.

The Accounting Officer also stated that regarding unrecovered overpayments in respect of these schemes the Department has a policy that recoupment of any overpayments detected are sought from the relevant body. In so doing the Department has to take account of any contributory factor on its own side which could have had a bearing on the overpayment. The question of resource allocation to overpayment detection and recovery is a matter for continual review.

41. National Debt

The National Treasury Management Agency has the statutory function of borrowing moneys on behalf of the Exchequer and managing the National Debt on behalf of and subject to the control and general superintendence of the Minister for Finance.

Expenses incurred by the Agency in the performance of its functions are met from the Central Fund. The Agency incurred expenditure of £6.3m on administration in 1998 (£6.2m in 1997).

Under the provisions of section 12 of the National Treasury Management Agency Act, 1990 I am required to audit the accounts of the Agency and when making my statutory annual report on the Appropriation Accounts, to make also a report to Dáil Éireann regarding the correctness of the sums brought to account by the Agency in the year. The Agency's accounts for 1998 have been audited and the accounts, including an administration account and accounts relating to the National Debt, have been presented to the Minister who has laid copies thereof before both Houses of the Oireachtas.

I am satisfied that the accounts properly present the transactions of the Agency in 1998 and its balances at year end.

Table 13 shows the outturn for the National Debt in the five year period 1994-98.

Table 13 -National Debt 1994-98

Year	National Debt Outstanding £m	Debt Service Cost £m
1994	29,227	2,313
1995	30,209	2,341
1996	29,912	2,475
1997	30,689	2,755
1998	29,541	2,410

The composition of the National Debt at 31 December 1998 was:

	£m	£m
Domestic Debt		
Medium/Long term Debt	21,733	
Short term Debt	3,537	
National Savings Schemes	3,975	
Less: Domestic Liquid Assets	(1,467)	27,778
Foreign Debt		1,763
National Debt		29,541

Notes:

a. *The National Debt is stated on the basis of nominal amounts of principal originally borrowed.*

b. *An estimated £3bn of domestic debt was held by non residents at 31 December 1998.*

The Agency's performance in regard to debt management activities is independently measured by an international investment bank specifically engaged for that purpose. The rationale and basis of the performance measurement was agreed with the Department of Finance. The Bank determined that, measured on a net present value basis against an independent benchmark portfolio, savings attributable to the Agency's management in the year amounted to £56m.

42. Savings Bank Fund

The audit of the Post Office Savings Bank is carried out on my behalf by the auditors of An Post subject to my right to carry out any further audit tests which I consider necessary.

In 1999, they reported to me on their audit of the 1998 accounts. I accept their opinion that the accounts of the Post Office Savings Bank give a true and fair view of its transactions for that year end and of its year end balance.

In addition to managing the National Debt, the National Treasury Management Agency is responsible for the investment and management of funds remitted to the Exchequer by the Post Office Savings Bank and the TSB Bank. The Exchequer is responsible for the repayment to the Banks of all such funds and for meeting interest charges thereon.

The state of affairs of these funds at year end was as follows:

	1998 **£m**	1997 £m
Liability in respect of funds due to depositors and creditors	474[a]	481
Value of related investments held by Post Office Savings Bank Fund (at cost prices) [b]	498	508
Surplus at 31 December	24	27

[a] *deposits from the TSB Bank were reduced to nil at 31 December 1998 (£15m at 31 December 1997) in line with arrangements made in 1992 whereby the funds to be deposited by the TSB Bank with the Agency are being reduced each year.*

[b] *The market value of the investments held by the Fund was £0.8m more than their cost price.*

Wt. P65001. 1,500. 10/99. Cahill. (MM61468). G.Spl.