



# 2001

## 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 2001

*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

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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 2001
- Volume 2 contains the individual Appropriation Accounts for 2001 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.

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## **Accounts of the Public Services, 2001**

### **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 2001 in accordance with Section 3 of the aforementioned Act.

A handwritten signature in black ink, appearing to be 'John Purcell', with a large, stylized initial 'J' and a circular flourish.

**John Purcell**  
**Comptroller and Auditor General**

13 September 2002



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## Chapter 1 - General Matters

### 1.1 Outturn for the year

The audited accounts are summarised on pages xii and xiii of Volume 2. The amount to be surrendered as shown in the summary is €515.07m arrived at as shown in Table 1.

**Table 1 - Outturn for the year 2001**

	€'000	€'000	€'000
<i>Estimated Gross Expenditure</i>			
Original Estimates	27,406,275		
Supplementary Estimates	757,323		
Adjustment*#	<u>(19,681)</u>	28,143,917	
<i>Deduct:-</i>			
<i>Estimated Appropriations in Aid</i>			
Original Estimates	2,401,953		
Supplementary Estimates	(110,147)		
Adjustment#	<u>(3,174)</u>	2,288,632	
Estimated Net Expenditure			25,855,285
Actual Gross Expenditure		27,558,747	
<i>Deduct:-</i>			
Actual Appropriations in Aid		<u>2,218,535</u>	
Net Expenditure			<u>25,340,212</u>
<b>Amount to be Surrendered</b>			€515,073 <u>(£405,653)</u>

\* See Supplementary Estimate for Vote 34 (Pn 10750)

# To reflect the adjustment to Vote 20 (Page 142 Volume 2)

The amount to be surrendered represents 2% of the supply grant as compared with 3.56% in 2000.

### 1.2 Extra Exchequer Receipts

Extra Receipts payable to the Exchequer as recorded in the Appropriation Accounts amounted to €172,455,923.

### 1.3 Surrender of Balances of 2000 Votes

The balances due to be surrendered out of Votes for Public Services for the year ended 31 December 2000 amounted to €761.37m (£599.63m). I hereby certify that these balances have been duly surrendered.

### 1.4 Stock and Store Accounts

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

## **Chapter 2 - Ordnance Survey Ireland**

### **2.1 Shortcomings in Financial Control**

The Appropriation Account for Ordnance Survey Ireland (OSI) for 2001 was submitted by the Accounting Officer for audit on 31 March 2002 – the statutory date by which Appropriation Accounts must be submitted.

During the course of audit it soon became apparent that the Account was materially incorrect. In particular, my staff established that the Account did not agree with the banking records of the Paymaster General and another bank account maintained for the purpose of credit card sales. On enquiry, it became clear that full monthly reconciliations between the accounting records and the banking records had not been performed throughout 2001. Such reconciliations are a fundamental control in the financial management of any organisation.

Over and above the failure to carry out bank reconciliations, certain financial transactions were not being correctly processed in the accounting records due to software problems and some human error.

The OSI, on being notified of the position withdrew the Appropriation Account and set about investigating the erroneous figures.

Following completion of the bank reconciliations and the resolution of accounting errors, the necessary adjustments were made and a revised Appropriation Account was prepared and submitted for audit on 4 September 2002.

My audit established that the revised Account properly presents in all material respects the receipts and expenditure of the Vote for 2001.

As I was concerned about the breakdown in financial control in OSI during 2001, I sought information from the Accounting Officer on the circumstances that gave rise to it and on the action being taken to prevent a recurrence.

The Accounting Officer informed me that in previous years OSI payments for supplies and travel had been administered by the Valuation Office, but that these functions had been taken over by OSI in 2001. Moreover, during 2001, OSI finance staff were participating in planning the legal transition of the organisation from a Government Office to a semi state body which involved a move to accrual accounting, and there was also additional work associated with the Euro changeover. While OSI had increased its staffing to allow for this additional work, including putting in place the necessary professional financial expertise, it was apparent that the overall capability to manage this substantial body of work had been less than fully adequate, especially in the early part of 2001. This was the main reason why anomalies and errors in the accounting records were not always detected and addressed.

The Accounting Officer believes that procedures and processes are now generally robust. However, to obtain full assurance in this respect, OSI has appointed external experts to review them, compare them to external requirements and best practice and to make recommendations in relation to any required changes. It is his



firm intention to implement any recommended changes by the end of 2002.

He informed me that OSI had also been working with the suppliers of its accounting software to resolve residual issues in system functioning. He stated that the bulk of these issues had now been resolved and that the remainder would be resolved by the end of 2002.

## **Chapter 3 - Central Statistics Office**

### **3.1 Census of Population**

#### **Background**

The first census of population was taken in 1841 and since 1951 has been repeated every 5 years, with the exception of 1976, when it was cancelled because of budgetary considerations.

In March 1999, the Government decided that a Census should take place on 29 April 2001, and that, as for previous censuses, it would be carried out by the Central Statistics Office (CSO).

Due to the threat posed by Foot and Mouth Disease, the Government, on 27 March 2001, postponed the census, and subsequently rescheduled it for 28 April 2002.

#### **Audit Objectives and Scope**

The objectives of the audit were to:

- Ascertain and evaluate the actions taken and the procedures put in place to provide for the taking of the 2001 census of population.
- Examine and evaluate the specific procedures followed in placing contracts for goods and services, in reacting to unforeseen events and in protecting the State's interest.
- Ascertain the cost of the project and evaluate the efficacy of the financial controls in operation.

The audit consisted of a review of the structures and procedures employed to manage the project. Files of the CSO and the Department of Finance were examined including Government Decisions and Memoranda, minutes of Consultative Groups, Evaluation Board and Project Board meetings, legal agreements and correspondence. Discussions were held with CSO staff and site visits were made to the Processing Unit at Swords in Dublin.

#### **Audit Findings**

##### ***Planning of Project***

The following key tasks were involved in carrying out the census:

- Planning
- Conducting a pilot study
- Securing professional advice on the technology to be used
- Selecting a supplier to provide computer hardware, software and related printing services
- Raising public awareness
- Recruiting additional staff
- Distributing and collecting census forms
- Processing analysis of completed forms

- Publishing results

The previous census held in 1996 involving 1.1 million households cost €19.5m, according to CSO estimates. The information contained in the 1996 census forms was captured on computer using keyboard data entry. The processing of the forms, including keying, coding and editing, took approximately 480 person years. The Census 2001 workload was expected to increase by about 20% because of a rise, also of that order, in the number of households and because of additional questions to be included in the census form. A rise in wage and field costs was also predicted taking account of general wage inflation and the impact of proposed minimum wage legislation and a tighter labour supply situation. When account was taken of these factors it was estimated that, using 1996 methodology, costs would rise to €31.7m.

At this time, the computer system in use within CSO consisted of a VAX network. The Department of Finance strongly advised CSO that because of EU procurement regulations, future hardware acquisitions should conform to a PC network architecture. Given this constraint, it was decided to invest in new computer hardware and software and avail of advances in image technology, which would enable the data in the census forms to be automatically read rather than having to be manually keyed into the computer. An analysis carried out by the CSO indicated that the cost of this new technology could be offset by reductions in labour and other direct costs of about €8.3m. The new technology would also speed up the processing of the census forms so that all relevant statistical reports would be published by April 2004, a gain of 8 months<sup>1</sup> on the Census 1996 timetable. It was also expected that the new technology could be used, to a certain extent, on ongoing CSO projects and in processing the returns relating to the next census due in 2006.

The National Statistics Board, which comprises members drawn from public, commercial and academic bodies, has as its main function the guidance of the strategic direction of the CSO, including the setting of priorities for the compilation of official statistics. In its Strategy for Statistics 1998-2002, the Board advocated maximum consultation with users and application of modern technology in carrying out the 2001 Census of Population. Acting on this recommendation, a Consultative Group was formed representing Government Departments, local authorities, the Social Partners and the transport, planning, academic and research sectors. In consultation with the Group, CSO conducted a pilot study in September 1999 involving 8,900 households to assess public reaction to possible new questions and amendments to existing questions, and to evaluate revised layouts for the census form and alternative collection procedures. Public comment was also invited through advertising in the national press and on the Internet. Using the results, that Group assisted CSO in drafting the questions to be included in the census form. The final questionnaire was approved by Government on 30 May 2000.

For administrative purposes, CSO divided the country into some 4,000 enumeration areas, each containing approximately 350 households. Each of these areas had been mapped by CSO. Existing records were updated by the inclusion of recent known household developments and individual developments noted by enumerators. As a result, CSO were confident of achieving total coverage in its distribution of census forms to all 1.35 million recorded households. After Census Day, forms from all households were collected by enumerators, with priority being given to establishments where the population was likely to be mobile. Approximately 1.3 million forms were returned, the difference being explained by second homes, unoccupied buildings, spoiled forms etc. Regular progress reports on the project were submitted to and considered by a Senior Management Committee within the CSO.

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<sup>1</sup> The final CSO Reports relating to the April 1996 census were released in December 1998; it is expected that those relating to the April 2002 census will be released in April 2004.

### ***Acquisition of Computer System and Printing***

#### ***Appointment of Professional Adviser***

In November 1999, the CSO requested Government Contracts Committee (GCC) approval to engage a consultant to provide specialist technical advice in managing the tendering process of engaging a contractor to provide the computerised scanning and recognition system. The timetable involved in delivering the solution had, in the opinion of CSO, become extremely tight due mainly to delays in securing union agreement. In these circumstances, which CSO regarded as being exceptional, permission was sought to dispense with normal competitive tendering procedures and to engage a named consultant. That consultant had assisted the UK Office for National Statistics in its tendering procedures to outsource the processing of its census and would, it was felt, be in a unique position to immediately provide an excellent service. CSO was also of the opinion that because of the uniqueness of the skill-set required, it was unlikely that a competitive process would result in very many candidates. GCC approval was given on 30 November 1999 for the engagement, the cost not to exceed the CSO estimate of €31,743 plus VAT.

CSO decided to expand the original role envisaged for the consultant and to also involve him in the detail of drawing up the legal contract and technical schedules for the procurement process. Following negotiations with the consultant, a cost of €158,717 plus VAT was agreed and the GCC gave its approval on 26 January 2000. CSO believes that the alternative would have involved acquiring substantial legal and technical advice from a number of outside sources at a considerably greater cost and, more importantly, could not have been obtained in sufficient time to allow the tendering process to go ahead within a tight timeframe.

The consultant assisted in streamlining the procurement, negotiation and award phase of the outsourcing contract by designing the tendering documentation, providing a tender evaluation model, acting as a facilitator during evaluation, providing advice during negotiations and designing the main contract. Actual expenditure on the consultancy totalled €177,763 plus VAT. This included additional expenditure necessitated by the re-negotiation of the contract because of the postponement of the census.

#### ***Selection of supplier***

The tendering process leading to the selection of a contractor for the provision of the new computer system was handled by an Evaluation Team comprising CSO census support management with IT and financial backgrounds.

A Contract Notice was published in the Official Journal of the European Community in January 2000. Following a process that involved an Open Suppliers meeting, and the evaluation of Contract Notice Questionnaires, four of the forty-one companies which had expressed interest in the contract, were issued with a Statement of Service Requirements. Two companies responded and, following detailed evaluation and negotiations, both were invited to submit a Best and Final Offer. While the two companies were rated very closely in non-financial areas, one offer was significantly cheaper. The Evaluation Team recommendation that the lowest tenderer be awarded the contract was endorsed by the Director General and a contract was signed on 24 October 2000 with that company. The contract amounted to €8.2m, including VAT, and was payable in instalments up to and including 31 December 2001.

The evaluation model used by the Evaluation Team was comprehensive and detailed and was sent to the GCC, and the procedures followed by the Team were reviewed for adequacy by a Director of CSO. Site visits were undertaken by Team members to inspect systems in other organisations provided by the two competing companies.

The contract covered an 8-year time span and was designed to give CSO flexibility in relation to carrying out

the 2006 census.

### *Postponement and rescheduling of census from April 2001 to April 2002*

Following the postponement and rescheduling of the census, the additional and amended services required for Census 2002 were negotiated by way of a Change Request procedure included in the original contract. Legal advice received indicated that this was permissible and that there was no obligation on CSO to re-open the tendering process. The revised substitute contract was signed in January 2002, and together with the cost of re-printing the census forms, amounted to €10.7m including VAT. Approximately €1.27million of the increase in contract cost relates to re-printing the census forms. The remainder is accounted for by additional work in the areas of system specification, technical design, and additional maintenance.

After the contract had been signed, a Project Board comprising representatives of CSO and the successful bidder was formed to oversee the implementation of the contract. The Board, which is still in existence, met regularly, and kept minutes of its meetings and decisions. It considered progress reports and agreed action to resolve problems encountered at the different stages of delivery of the project. Legal advice to the Evaluation Team and the Project Board was provided by the Attorney General's Office.

### *System Performance*

The new computer system was signed off for customer testing on 24 April 2001, some two months later than the scheduled date. With the postponement of the census, both CSO and the successful tenderer agreed that the priority should be on the optimal development of the system rather than on meeting the strict deadlines originally set. Correctly and incorrectly completed forms were fed into the system to determine the standard of recognition it carried. Once errors identified in the system had been logged, their source was established and corrective action was taken.

A number of system errors remained unresolved in early 2002. Most of these were considered by CSO to be of a minor technical nature and not to seriously compromise the overall functionality of the system, and were subsequently rectified. Some problems were encountered with scanning and other equipment, resulting in the replacement, under warranty, of all PC motherboards. Also, in June 2002, in a live processing environment, pressure placed on the network due to the volume of batches caused system errors, which, if uncorrected, could have lead to a loss of processing time. The ability of the system to handle such conditions could not have been tested prior to live processing as such a volume of completed forms was not available to CSO. The system was cleared for customer testing on 28 February 2002 and went live on 27 June 2002. The target performance level is 800 batches (12,000 forms) per day. Since the commencement of processing in early June 2002, there has been a steady improvement in the number of batches being processed. At end-June 2002, a level of 500 batches per day had been achieved.

While CSO were at all stages confident that the desired system was technically feasible, it did consider that a risk existed in relation to the project over-running the exacting timetable set. CSO reservations regarding system performance have been notified to the company under the terms of the contract, which entitles CSO to withhold payment in respect of a non-conforming service. In addition, it provides for the retention, by CSO, of €520,593 pending completion of the project to its satisfaction.

### *Printing of Census Forms*

Under the terms of the original contract with the company, CSO were to be supplied with 1.8million census forms at a cost of approximately €1.2m. The company sub-contracted the printing of the forms. However, based on a quality sampling exercise, approximately 55,000 of the forms were deemed to be of unacceptable quality. It was agreed that the forms would be reprinted. However, inspection of those reprinted revealed

further deficiencies. On 22 February 2001, CSO agreed to accept the defective forms in return for a reduction in the contract price of €29,204, together with a provision that a further deduction might be made in the event of reasonable additional costs being incurred by CSO as result of the deficiencies.

The situation was then overtaken by the postponement of Census 2001, rendering all the forms useless. They are currently stored by the company pending the outcome of legal proceedings and a decision as to their disposal. While CSO considered the position regarding payment for these 2001 forms, it soon had to make arrangements for the printing of Census 2002 forms. This was effected through the use of a contract Change Request mechanism. On 9 August 2001, the company were contracted to print the Census 2002 forms at a cost of approximately €1.27m. This time, the company, at CSO's request, introduced a Quality Control Procedure in respect of the printing of the forms.

Legal proceedings, not involving CSO, are currently underway in the UK regarding payment owing by the company to sub-contractors in respect of the printing of the 2001 forms.

Under the terms of the revised contract signed with the company on 7 January 2002, CSO retained €190,460, pending settlement of its claim regarding the 2001 forms.

### ***Staffing***

Department of Finance sanction was received for the recruitment of an additional 178 headquarters staff to assist in the mapping of enumerator areas, the fitting out of regional offices, the recruitment and payment of field staff, logistical support and the processing of returned census forms. In accordance with previous practice these staff would be recruited as permanent civil servants and following completion of their census duties would be redeployed to other Departments in the Civil Service. Of this number, 110 had been recruited by March 2001.

In the period April-December 2001, 19 were re-deployed to other Government Departments while the remaining 91 were retained pending the commencement of the Census 2002 project. CSO informed my staff that during this time they were engaged in census preparatory work such as, decommissioning all 2001 materials and preparing revised 2002 materials, investigating new housing, standing down and re-recruiting field staff, and developing educational material and the census website. They also undertook work on behalf of other divisions within CSO, primarily relating to the Census of Agriculture, Balance of Payments, the CSO business register and Quarterly National Household Survey mapping. In the normal course of events, it would have been necessary for CSO to carry out this work through outsourcing or through the use of overtime. In addition, some staff continued to be involved in training and additional system testing. From January 2002, CSO recommenced recruitment to achieve the sanctioned level.

The costs incurred in paying staff from the time of the postponement decision until end-2001 is estimated by the CSO to be about €1.2m.

In the fourth quarter of 2000 and in early 2001, 412 supervisory field staff were recruited on short-term contract to supervise the delivery and collection of the 2001 census forms. However, due to the postponement of the census, their contracts were terminated at the end of April 2001. Salary payments to these staff amounted to €2.7m.

An additional 3,974 were on the point of being hired on short-term contract as enumerators but had not taken up duty at the time the census was postponed in March 2001. No money was paid to these staff.

In early 2002, 4,386 field staff were again recruited on short-term contract to supervise and carry out the delivery and collection of the 2002 census forms.

Recruitment of supervisory field staff and enumerators was administered by CSO personnel. Security checks were carried out on all staff, who, on appointment, became Officers of Statistics and were required to sign Official Secrecy undertakings. Training was provided to all grades and a job manual issued to each staff member as detailed in Table 2.

**Table 2 - Census Staff in Place**

Quarters	1999		2000		2001		2002	
	Field Staff No.	HQ Staff No.	Field Staff No.	HQ Staff No.	Field Staff No.	HQ Staff No.	Field Staff No.	HQ Staff No.
Q1	-	42.5	-	52.5	412	141	412	183
Q2	-	45.5	-	63	-	135.5	4386	226.5
Q3	-	47.5	-	80	-	116.5	-	219.5
Q4	-	45.5	40	113	-	122	-	-

The terms of employment and post-census arrangements relating to all staff were sanctioned by the Department of Finance in line with Government Decisions.

### ***Miscellaneous Costs***

#### *Premises*

At the request of CSO, the Office of Public Works (OPW) secured premises suitable for housing the Processing Unit and the attendant equipment. The building, comprising 3,462 sq metres at Swords has been rented by OPW on a 25-year lease at an annual rent of €634,869. The cost of fitting out the building, including electrical and telecommunications wiring was €1,373,857, and €322,513 was incurred on office furniture. The building was occupied from October 2000.

OPW also leased 20 regional offices on short-term leases in late 2000 and early 2001. OPW carried out security audits on all premises and where necessary, alterations were made to bring them up to an acceptable standard. On postponement of the 2001 census, 18 of the buildings were retained and the leases extended so that they could be used on the 2002 census. The buildings remained unused in the interim period. Two additional premises were leased in 2002 for the 2002 census. The rents paid in 2001 totalled €265,375. Rents arising in 2002 in respect of the 2002 census are projected to amount to €165,066.

Office furniture purchased by CSO in fitting out these premises cost €38,092.

#### *Office equipment*

A number of items of equipment were purchased or leased for use in the Processing Unit, in the regional offices and by field staff. These included a telephone system, 24 photocopying machines, 2 fax machines, 400 mobile phones, storage boxes and satchels. In all cases, CSO engaged in a tendering process in acquiring the equipment.

Following the postponement of Census 2001, lease terms on photocopiers obliged payment in full, although the machines were not used during the period of postponement. New tenders were sought in respect of photocopiers used during Census 2002. Mobile phones, which had been distributed to staff, were de-activated and stored at Swords until the commencement of Census 2002.

The cost of office equipment is estimated at €657,724.

### *Advertising*

Fourteen companies responded to a Contract Notice placed in the Official Journal of the European Union on 15 September 2000, in respect of the provision of advertising services for the 2001 census. Following an evaluation process and consultations with senior administrative and field staff, the approval of the GCC was sought to engage one company. That approval was received in November 2000 and, the following month, a contract was signed in respect of recruitment and public awareness advertising campaigns.

Because of the difficult labour market situation pertaining in 2001 it was decided to use radio advertising on a wide scale basis for the recruitment of enumerators. Expenditure of €283,152 was incurred on the enumerator recruitment campaign in December 2000 and January 2001. The cost of the public awareness campaign up to the postponement date was €184,112.

The advertising agency was retained to carry out the awareness campaign in respect of Census 2002. This was effected by way of an amendment to the original contract and was in line with legal advice received by CSO. Payments in respect of this campaign are projected to cost €976,429. As a panel of potential candidates for enumerator positions had been established at the time of the proposed Census 2001, it was not necessary to carry out a recruitment campaign for Census 2002.

### *Project Cost*

The total projected cost (excluding costs incurred by OPW) of the project is estimated at €43.87m, as shown in Table 3.

**Table 3 - Project Cost**

Area	Census2002 €m	Postponement Costs €m	Total Costs €m	1996 Costs €m
Salaries				
HQ	5.65	1.63	7.28	8.51
Field Staff	<u>14.46</u>	<u>2.14</u>	<u>16.60</u>	<u>7.46</u>
Total	20.11	3.77	23.88	15.97
Travel	2.74	0.18	2.92	1.22
Computer	7.10	1.64	8.74	0.52
Office Equipment	1.09	-	1.09	0.22
Premises	0.69	0.36	1.05	0.19
Printing	1.23	1.28	2.51	0.32
Advertising	1.35	0.18	1.53	0.41
Consultancy	0.22	-	0.22	-
Postal & Telecommunication	0.22	0.10	0.32	0.13
Incidental	1.37	0.24	1.61	0.54
<b>Total</b>	<b>36.12</b>	<b>7.75</b>	<b>43.87</b>	<b>19.52</b>

Includes costs of staff redeployed to other duties following postponement

The actual amount paid up to 30 June 2002 was €28.98m .

### *Payment Procedures*

All payments relating to the project were authorised by the Census Support Unit prior to processing and payment by the Finance Unit, where they were checked for correctness and proper authorisation. Invoices were tracked from receipt to payment. Capital assets were highlighted for inclusion in the fixed asset register.



Project expenditure under each budgetary heading was also monitored, on a monthly basis, and records were reconciled with Finance Unit figures.

## Conclusions

- The overall management of the census by CSO was satisfactory.
- The postponement of the 2001 Census cost €7.75m. The procedures put in place to cope with the implications of the postponement were reasonable.
- CSO internally deployed 91 of the extra staff recruited for the postponed April 2001 census for the period April to December 2001. While the deployment ensured that the State got a measure of value for the pay costs of these staff, the very nature of the circumstances which gave rise to this unexpected resource windfall suggests that it is unlikely that an optimal return was obtained.
- CSO did not initially comprehensively scope the range of services to be provided by the professional adviser – a consequence being that there was not competitive tendering for a contract which was ultimately worth €177,763 plus VAT.
- CSO should continue to pursue an appropriate financial concession in respect of system performance and the defective census forms supplied.

## Chapter 4 - Office of the Revenue Commissioners

### 4.1 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.

#### Revenue Collected

Revenue collected under its main headings in 2001 is shown in Table 4.

**Table 4 - Revenue Collected**

	Gross Receipts €m	Repayments €m	Net Receipts €m	2000 Net Receipts €m
Income Tax	10,549	1,231	9,318	9,126
Value Added Tax	10,548	2,641	7,907	7,467
Excise	4,382	169	4,213	4,424
Corporation Tax	4,623	479	4,144	3,885
Stamps	1,257	34	1,223	1,091
Customs	171	6	165	207
Capital Acquisitions Tax	174	6	168	224
Capital Gains Tax	890	14	876	773
Residential Property Tax	2	1	1	1
<b>Total</b>	<b>32,596</b>	<b>4,581</b>	<b>28,015</b>	<b>27,198</b>

Of the net receipts of €28,015m, a total of €168m was paid during 2001 under Section 3 of the Appropriation Act, 1999 from the proceeds of tobacco excise to the Vote for Health and Children and €27,916m was paid into the Exchequer. As a result, there was a balance of €131m prepaid to the Exchequer at year end compared to a balance of €62m prepaid at the end of the previous year. As the final lodgment to the Exchequer at year end is required to be made on 31 December, before final reconciliations for each taxhead can be completed, there is necessarily an element of estimation which can result in over or under lodgments by Revenue to the Exchequer.

## 4.2 Outstanding Taxes and PRSI

Table 5 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 2002 - the latest date for which data was available at the time of finalising my Report. Table 6 sets out an aged analysis of the balance outstanding at 31 May 2002.

**Table 5 - Outstanding Taxes and Levies**

Balance at 31 May 2001 €m	Tax or Levy	Charges/ Estimates Raised €m	Paid €m	Balance at 31 May 2002 €m	Estimate of amount likely to be collected €m
160	VAT (Declared Liabilities Net of Repayments)	7,120	7,161	119	104
210	VAT (Estimates)	38	41	207	113
94	PAYE (Declared Liabilities)	12,136	12,061	169	118
28	PAYE (Estimates)	169	170	27	20
98	PRSI (Declared Liabilities)	8,035	7,936	198	141
20	PRSI (Estimates)	128	128	19	16
474	Income Tax (Excluding PAYE)	1,487	1,518	443	328
-	DIRT	214	214	-	-
291	Corporation Tax	4,123	4,225	189	126
93	Capital Gains Tax	910	892	111	92
17	Capital Acquisitions Tax	176	175	18	14
8	Abolished Taxes	1	1	8	-
<b>1,493</b>	<b>Total</b>	<b>34,537</b>	<b>34,522</b>	<b>1,508</b>	<b>1,072</b>

**Table 6 - Aged Analysis of Debt at 31 May 2002**

Tax	Total tax outstanding at 31 May 2002 €m	Amounts outstanding for period 30/4/- 31/12/01 €m	Amounts outstanding for 2000/01 €m	Due for periods 1990/91 to 1999/00 €m	Due for earlier periods €m
VAT	326	125	69	129	3
PAYE	196	58	40	78	20
PRSI	217	79	43	73	22
Income Tax	443	2	185	229	27
Corporation Tax	189	42	27	98	22
Capital Gains Tax	111	6	50	52	3
Capital Acquisitions Tax	18	18	-	-	-
Abolished Taxes	8	8	-	-	-
<b>Total</b>	<b>1,508</b>	<b>338</b>	<b>414</b>	<b>659</b>	<b>97</b>

The balance outstanding at 31 May 2002 of €1,508m is €15m greater than at the same point in 2001. It is estimated by Revenue that €1,072m or 71% of the total outstanding is likely to be eventually collected. This compares with an estimated collection ratio of 63% at May 2001. The estimation of the amount likely to be collected takes into account such factors as anticipated reductions of estimated amounts brought forward, the

level of liquidations and business closures and historical business patterns. The movement of the tax year to coincide with the calendar year has caused some alteration in the manner of computation of debt – the most notable being the dramatic increases in the PAYE and PRSI arrears categories.

### 4.3 Revenue Audit Programme

#### Overall Audit Programme

In a self assessment system returns filed by compliant taxpayers are accepted as the basis for calculating tax liabilities. The validity of returns is established by the auditing of a selection of cases either through reviewing and seeking further verification of particular details or by the examination of documents and records at a taxpayer's premises. The majority of audits carried out by the Revenue Commissioners are specific to taxheads such as VAT or PAYE, but a significant number of comprehensive audits are also carried out. These may focus on all taxes but are primarily aimed at Income Tax, Corporation Tax and Capital Gains Tax.

In the course of my audit, a small representative sample of audit settlements were reviewed with satisfactory results. The outcome of the 2001 programme of Revenue audits is summarised in Table 7, which also includes 40 audits arising from investigation and anti-avoidance activity.

**Table 7 - Revenue Audit Programme**

Audit Type	2001		2000	
	No. of audits completed	Yield €m	No. of audits completed	Yield €m
Comprehensive	2,200	74.4	2,270	68.3
Value Added Tax	4,223	61.2	4,409	35.0
PAYE Employers	1,443	10.3	2,104	11.9
Relevant Contracts Tax (RCT)	383	3.0	352	1.7
Combined Fiduciary (VAT, PAYE and RCT)	626	11.8	670	6.0
Capital Acquisitions Tax	334	6.3	388	3.7
Verification Audits and Desk Reviews	7,107	37.2	6,126	10.2
Investigation Branch	30	0.4	4	0.3
Anti-Avoidance	10	3.9	7	2.4
'Pick-Me-Ups'	-	-	21	0.1
DIRT	47	-	37	220.0
<b>Total</b>	<b>16,403</b>	<b>208.5</b>	<b>16,388</b>	<b>359.6</b>

#### Comprehensive Audits

The selection of cases for comprehensive audit is made on the basis of such factors as screening of annual returns, re-audit of cases with previous undercharges, other information available to Revenue and random selection. Generally, a settlement is agreed following completion of the audit and any outstanding amount is paid. A number of settlements involve the restriction of losses which may be carried forward against future years' profits. Where an Inspector is unsuccessful in collecting the additional amount of tax and interest arising on audit adjustments, the amounts are referred to the Collector General for collection.

The outcome of the 2,200 comprehensive audits completed in 2001 is detailed in Table 8. The highest individual settlements were €1,490,990 for Income Tax and €5,966,902 for Corporation Tax. The overall

yield of €74.4m includes interest charges of €13.1m and penalties of €7.9m.

**Table 8 - Yield from Comprehensive Audits**

	Income Tax		Corporation Tax	
	Number	Yield €'000	Number	Yield €'000
Agreed Settlements				
€1 to €12,697	561	4,325	176	1,563
€12,698 to €63,487	300	8,407	109	3,205
€63,488 to €126,974	59	5,353	34	2,905
Over €126,974	56	16,439	49	27,893
Other Settlement Activity				
Returns accepted – no additional tax payable	577	-	236	-
Settled by restriction of losses carried forward to future years	25	104	9	3,422
Referred to Collector General for enforcement action	8	711	1	15
<b>Totals</b>	<b>1,586</b>	<b>35,339</b>	<b>614</b>	<b>39,003</b>

## Random Audits

It is Revenue policy that 6% of cases selected for audit as part of the comprehensive, VAT and PAYE/PRSI audit programmes are selected randomly. The 6% policy would indicate a target of approximately 472 random audits for completion in 2001. In the event, 740 random audits were completed in 2001 consisting of 443 comprehensive (20%), 165 VAT (4%) and 132 PAYE/PRSI (9%). The returns of 510 taxpayers were accepted as originally submitted while additional liabilities of €3,381,890, including €1,033,281 in interest and penalties, were assessed in the other 230 cases.

## 4.4 Revenue Prosecution Activity

### Prosecutions for Serious Tax Evasion

Under Revenue prosecution strategy, audit districts are required to forward cases to Investigation Branch for investigation with a view to criminal prosecution where there is prima facie evidence of serious revenue offences having been committed. These cases are further evaluated within the Branch before commencement of the very resource intensive criminal investigation work which can take several years before reaching the Courts. Convictions were obtained in all 4 of the cases decided in Court in 2001

- An accountant who was a director of a company which provided payroll services to film production companies, was convicted of submitting false PAYE returns and sentenced to twelve months imprisonment.
- An individual whose company provided security services was convicted of submitting incorrect Income Tax returns, delivering incorrect information and failing to keep proper records. A sentence of six months imprisonment and a fine of €1,905 was imposed. On appeal, the prison sentence was suspended and a further fine of €1,270 imposed.
- A construction company director was convicted of submitting incorrect VAT and PAYE returns and received a six months suspended sentence and was fined €2,750. The company was fined €7,618.
- An individual providing plumbing and heating services was convicted of submitting false VAT returns, obtaining VAT repayments by false pretences and failing to keep proper records. A three months prison sentence was imposed.

Of a total of 31 cases on hands at the end of 2001, 17 are still under investigation, 4 cases have been submitted to the DPP for consideration for prosecution, 6 are proceeding to prosecution and 4 cases have been closed. In one further case, the defendant pleaded guilty in the District Court in 2001. However, when the case came up for sentencing in April 2002, the District Justice refused jurisdiction and sent the case for trial in the Circuit Criminal Court. In June 2002, the Circuit Criminal Court gave leave to apply for a judicial review of the District Court decision.

### **Prosecution of Non-Filers**

Taxpayers failing to submit returns of Income Tax and Corporation Tax normally receive a warning letter from the Revenue Solicitor. In the event that returns are still not submitted, legal proceedings are instituted. During 2001, 11,656 warning letters were issued and 1,101 cases (1,050 Income Tax and 51 Corporation Tax) were successfully prosecuted with fines totalling €1,045,354. Court orders were obtained in 40 of these cases which required the convicted person to submit all outstanding returns.

Penalties of €1,148,085 were imposed by Revenue on 476 employers who failed to make P35 employer returns on time. €372,255 of these penalties have been paid by 158 employers. Revenue are seeking to recover penalties of €347,220 from 139 cases by means of court proceedings. Penalties of €413,400 imposed on 173 cases have been withdrawn. The remaining six cases where penalties of €15,210 were imposed are under review as payment of the penalty is being offset from overpaid taxes.

## **4.5 Special Investigations**

### **DIRT**

In 2000, Revenue completed the DIRT 'look-back' audits of financial institutions and reported the results to the Committee of Public Accounts. Audits of all of the institutions have been completed with the exception of IIB Bank Limited and Guinness and Mahon (Ireland) Limited. Final liability in respect of these may depend on the outcome of investigations into the Ansbacher Accounts. Payments on account have been received from the two institutions. In 2001, 47 audits of financial institutions were completed to ensure continuing compliance with DIRT regulations.

Also in 2001, Revenue began to address the issue of the underlying tax on funds deposited in bogus non-resident accounts. The approach adopted by Revenue involved a deadline of 15 November 2001 for depositors to voluntarily disclose and pay any tax, interest and penalties. For those who availed of this, interest and penalties were capped at 100%, no prosecutions were taken and settlement details were not published. Under this arrangement, €227m was paid by 3,675 account holders in respect of 8,380 accounts. Of these, 599 account holders declared a nil liability. All returns are being checked for basic eligibility. In addition, samples have been selected both by the Underlying Tax Project Team and the various Tax Districts for review of the amounts disclosed.

Revenue are now seeking to identify bogus non-resident account holders who did not avail of the voluntary disclose and pay arrangements. Some 1,800 depositors identified during the DIRT look back audits have been referred to tax districts for investigation. The status of these cases at June 2002 is

- 108 have been settled with no liability
- 7 have settled with total liability of €352,724
- 166 have made submissions to Revenue and payments on account of €148,304 have been received

from some of these

- 5 cases are being considered for prosecution
- the remaining cases are being researched further.

Revenue have applied for 18 High Court orders to obtain information from financial institutions relevant to a person's tax liability and 17 orders have been granted. It is expected that this investigation will continue for a number of years.

### **Offshore Investments via National Irish Bank**

The investigation into individuals who invested in an offshore investment scheme operated by National Irish Bank is continuing. By August 2002, settlements were reached in 342 cases totalling €31m including interest and penalties of €17m. Of these cases, 90 were settled with no liability. In addition, payments on account totalling €7m have been received in respect of other unresolved cases. Seven cases have been referred for criminal investigation with a view to prosecution through the courts.

In 2001, National Irish Bank submitted to Revenue a list of 22 new cases. Of these, 15 involve relatively small sums and are thought unlikely to involve substantial tax evasion. Revenue have committed to investigate all additional cases as appropriate.

### **Ansbacher (Cayman) Limited**

A special project team of eight investigators together with support staff is investigating the Ansbacher accounts. The team is investigating cases directly involving Ansbacher type arrangements as well as other cases involving offshore funds and deposits. At August 2002, a total of 300 cases were under investigation.

Investigations into five cases have been concluded as follows

- One case was settled with no liability
- One Ansbacher case was settled for €330,971, including interest and penalties of €190,461
- One case involving Ansbacher type arrangements was settled for €292,040, including interest and penalties of €169,580
- Two other cases involving offshore funds or deposits were settled for €279,342 (interest and penalties €144,996) and €250,138 (interest and penalties €177,399)

Payments on account totalling €17.23m have been received to date in 51 cases as follows

- €11.24m from 44 cases involving Ansbacher-type arrangements
- €5.99m from 7 cases involving offshore funds and deposits.

In July 2002, the report of the High Court Inspectors into Ansbacher (Cayman) Limited was published. Revenue are examining the report and comparing the information in it with the results to date of their own investigations. Revenue have also applied to the High Court for additional documents gathered by the Inspectors but not published in their report. This application is expected to be heard in November 2002.

## Pick-Me-Up Schemes

Pick-Me-Up Schemes involved expenses for goods or services incurred by a political party being invoiced by the supplier to another trader who paid the supplier as a means of supporting the party. Such payments were not deductible for tax purposes, the VAT was not reclaimable and the invoices issued were not in accordance with legal requirements. The investigation has found that while some traders treated these payments correctly for tax purposes quite a large number did not. There were a total of 71 cases that apparently avoided tax by engaging in 'picking up' expenses which were proper to political parties. Of these, 15 have been mentioned at either the Flood or Moriarity tribunals and payments on account have been received from six of these. Of the remaining 56 cases, 42 have been settled. In 36 of these, no settlement exceeded €12,697, the total amount of such settlements being €144,233 including €79,913 in interest and penalties. Six of the settled cases involved payments of amounts greater than €12,697. The total yield from these was €326,491 including interest and penalties of €202,158.

## Tribunals

Matters disclosed at the Moriarity and Flood Tribunals which suggest that tax evasion may have occurred are being investigated as they come to notice.

## 4.6 Write Offs

The Revenue Commissioners have furnished me with details of taxes written off during the year ended 31 December 2001. Details of the total amount written off and the distribution according to the grounds of write-off are shown in Table 9 and Table 10.

**Table 9 - Taxes Written Off**

Tax	2001 €'000	2000 €'000
Value Added Tax	29,476	42,895
PAYE	12,790	16,763
Corporation Tax	11,270	6,914
Income Tax	68,092	19,163
Other Taxes	6,401	2,232
PRSI	12,263	16,292
<b>Total</b>	<b>140,292</b>	<b>104,259</b>

**Table 10 - Grounds of Write Off**

Grounds of write-off	2001 No. of Cases	2001 €'000	2000 No. of cases	2000 €'000
Liquidation/Receivership/Bankruptcy	382	26,942	397	24,834
Ceased trading – no assets	578	16,945	1,432	41,875
Deceased and Estate Insolvent	52	1,631	144	3,275
Uneconomic to pursue	35,173	82,552	1,196	15,486
Unfounded Liability	37	830	34	582
Cannot be traced / Outside Jurisdiction	117	4,096	297	5,984
Compassionate Grounds	70	1,545	89	1,503
Uncollectable due to financial circumstances of taxpayer	243	5,660	382	10,114
Examinership	2	91	4	606
<b>Totals</b>	<b>36,654</b>	<b>140,292</b>	<b>3,975</b>	<b>104,259</b>



The write off in 2001 included the write off on an automated basis of 33,791 cases totalling €67m in respect of Income Tax, Corporation Tax and Capital Gains Tax. The larger cases were manually checked to confirm that the write off was justified. All amounts were pre 1991 and no amount was greater than €32,000. Cases under the control of the Criminal Assets Bureau, cases under investigation and potential Ansbacher cases were excluded from write off.

The Internal Audit Branch in Revenue undertakes an annual examination of a sample of cases written -off. The internal audit of 2001 write-offs in which 163 cases were examined has recently been completed. The audit did not include the automated write off. The results of the audit were generally satisfactory and no instances were found where tax was improperly written off.

I have examined a sample of cases representing over 4% of the value written off through a review of the procedures followed and of supporting reports and records with a focus on high value cases. The results indicated that, in general, the authorised procedures were followed. However, I have also completed the detailed examination of a sample of cases which I referred to in my Report for 2000. The results of that examination are reported in the following section of the Report.

## **4.7 In Depth Examination of Tax Written Off**

### **Introduction**

In 2000, Revenue wrote off outstanding taxes to a total amount of €104m under the care and management provisions of the Taxes Acts. It was considered by Revenue that the taxes due in each case had become uncollectable for various reasons. The write offs were subject to internal control procedures, and some 4% of cases were examined by Internal Audit to ensure that procedures were followed and that tax was not improperly written off. My staff also reviewed a sample of cases which indicated that procedures had been followed. However, as a separate exercise, they commenced a more in depth examination of a sample of cases in some write off categories in order to establish the extent and adequacy of Revenue activity over the years prior to write off and whether the relevant lessons had been learned from such cases. This report sets out the findings of that examination.

### **Background**

An analysis by Revenue of outstanding taxes at the end of 1996 concluded that there was no realistic chance of recovering much of the book debt of €1,817m for tax years up to 1994/95 due to a number of factors:

- €745m of the arrears related to periods prior to self assessment, was more than 10 years old and remained uncollected at the end of the collection and enforcement cycle
- the overall debt included estimated assessments of €620m, many of which were regarded as speculative and overestimated
- €509m was due from cases cancelled by the Inspector of Taxes, usually on the basis of having ceased trading, and
- the rate of recovery of the €312m arrears amassed in the early years of self assessment was extremely low; even the very favourable terms of the 1993 tax amnesty had made little impression.

Revenue write-off procedures were revised in early 1997 so that much of the old uncollectable debt would be deleted from the records through the use of automation to write off small amounts, an enhanced effort to

review doubtful debt, and the write off of cases involving company liquidations at the beginning rather than the end of the company liquidation process. It was hoped that the measures would result in a significant reduction in the level of old book arrears and a greater focus on the collection of current taxes and collectable arrears, and lead to a more planned approach to debt management. Write off remained an internal management matter and decisions to write off are not notified to taxpayers or other interested parties. Revenue considers that the strategy has been successful on the basis of a fall of 11% in the level of recorded tax debt between 1997 and 2001, as against increases of 64% in the gross tax collection and 50% in the number of taxpayers in the same period.

At that time, the Revenue Commissioners sought my views on their proposals and I stated that I was in broad agreement but pointed out that:

- control procedures needed to be designed to minimize the risk of writing-off collectable debt
- the Revenue policy of reinstituting collection action on written off arrears should continue where circumstances change to an extent that the debt can be satisfied
- the revised write-off procedures should not be seen as giving the message that if Revenue demands are ignored for long enough they will go away.

Table 11 details the overall amounts of tax written off in the five years 1997 – 2001, and the amounts for two of the main categories - ‘liquidation/receivership/bankruptcy’, and ‘ceased trading – no assets’ which account for 40% and 20% respectively of the total.

**Table 11 - Tax Written Off**

Year	Overall Total Written Off		Liquidations etc.		Ceased Trading – No Assets	
	No. of Cases	€m	No.	€m	No.	€m
1997	-*	357	-	193	-	27
1998	-*	274	-	118	-	67
1999	4,501	112	475	36	2,347	42
2000	3,975	104	397	25	1,432	42
2001	**36,654	140	382	27	578	17
<b>Total</b>		987		399		195

\* Number of cases written off in 1997 and 1998 are not available.

\*\* Includes automatic write off of small amounts totalling €67m.

## Objectives and Scope of the Audit

The objective of the audit was to go beyond the standard write off papers, and to examine the role of the relevant divisions and processes within Revenue in managing and pursuing a sample of significant write off cases in the years prior to reaching write off stage in order to fully assess the appropriateness of the write off decision and to identify any lessons which might be learned from the loss, and whether Revenue had actually made the necessary adjustments to procedures and practice.

The expectation was that only the selected write-off cases would require to be examined. It was anticipated that the entity/person/ business had ceased and was no longer involved in any economic activity. However, it became apparent from an early stage in the examination of a number of cases that the people and their businesses had not ceased but often had multiple ongoing business involvements which gave every indication of deliberate abuse of the tax system. In the light of this preliminary finding, the examination was reoriented towards identifying the extent of these activities, the relationships between various business entities, the methods used to escape the tax system and the overall lessons for the tax collection system.

The original sample on which the audit was based was a selection of 50 cases in which an amount greater than €125,000 was written off during 2000. It comprised 34 companies, 14 individuals and 2 other institutions. The cases were selected to cover the various write off categories e.g. 'liquidations' and 'ceased trading – no assets', and the different units in Revenue which had been involved in the authorisation of the write offs. However, due to the extent of the work involved and the approximately 300 related cases which were also fully examined, the number of cases from the original sample on which a full review was possible was reduced to 25 with only a brief review of the remainder.

In each full review, the liquidation and write off files were examined. Case histories were reviewed on the Revenue computer systems i.e. Central Registration System, Integrated Taxation Processing and Active Intervention Management (in some cases). Additional data from other sources was also examined in certain cases as follows:

- tax assessment files
- Revenue property database
- excise licence databases
- Companies Registration Office system (available on Revenue computer systems from Sept. 2000).

The CRO system was particularly useful for identifying directorships, relationships and the status and activities of businesses. The various information sources were utilized to build up a comprehensive tax history of cases, which gave a more complete picture than that provided by any of the stand alone Revenue systems, or by the write off summary and backing papers. While all of these information sources were available to Revenue staff at the time of write off, some e.g. access to the new Companies Registration Office system and Revenue's Integrated Taxation Processing are relatively recent developments and were not available to Revenue staff when the sample cases were originally worked.

In addition to this report and analysis of the audit findings, with its focus on the performance of the overall system, detailed reports were forwarded to Revenue on an ongoing basis outlining all information which came to light in each case in order that any tax implications could be established and investigated.

## **Audit Findings**

The audit findings fall into two main categories i.e. audit concern relating to the appropriateness of each write off, and the weaknesses in the Revenue collection system which might be indicated by the details of the cases. The weaknesses and possible lessons are considered in areas such as registration, compliance, enforcement and audit. In addition, the implications of particular aspects of abuse noted in two business sectors – property development and the licensed trade – and the difficult area of the abuse of limited liability for tax evasion are also considered. At times, there may be some overlap between points which is unavoidable as many occur together and are closely related e.g.

- inadequate pursuit earlier in the case
- a narrow 'case-based' approach
- inadequate information on and understanding of the overall business and tax context of the case
- lack of awareness of previous write off record
- strong evidence of extended tax abuse.

However, it is necessary to attempt to isolate and categorise each issue in so far as that is possible in order

that it may receive full consideration within the context of the overall tax collection system.

While much of this report's content relates to systems and procedures, the write offs were processed on an individual case by case basis. Therefore, for illustration purposes, outlines are included of some details in relation to a sample of three cases which came to light during the audit as a result of following the information trail back from the write off of amounts of €442,000, €146,000 and €170,000. In my opinion, these serve to underline the main points made in the report, and also show the extent of Revenue's task when such activities are concealed within the millions of transactions of the taxes systems.

### *Appropriateness of Write Off*

Reports on the write off cases examined were forwarded to Revenue including comments on the issues coming to audit attention which raised questions on aspects of the write off decision in 2000. Essentially these can be summarised into two main issues – the inadequately informed 'case-based' approach, and the policy of minimising the write off amount.

#### *Write Off Decision based on Inadequate Information*

Write off decisions were made on the very narrow basis of the recent collection history of a case treated in isolation, and without an examination of all of the information which was available to Revenue. It is clear from cases reviewed that such an examination would have revealed a far more complex tax history and, in particular, relationships to other tax cases and write-offs involving the same principals. Given the depth of information revealed in some cases, the Revenue write off review could only be considered to be superficial in nature. A comprehensive record of an individual and his/her businesses is vital to a decision on the appropriateness of write-off. A more comprehensive tax history could have resulted in a different conclusion and decision on the collectability of outstanding taxes in a number of cases reviewed.

There is still every possibility that a write off will ultimately be the only option in many cases due to the very limited options available to enforce the recovery of tax owed by a company with no remaining business or assets. However, in cases where a pattern of behaviour encompassing aspects of chronic non-compliance or even deliberate tax evasion activity is identified, a lesson will have been learned either regarding an individual taxpayer, or a system weakness. Appropriate action either through the close monitoring of all of an individual's future activities, or by addressing the weakness, should minimise future losses.

#### *Full Extent of Loss Understated*

When a write off is reported, the reasonable expectation is that the amount recorded faithfully represented the substance of the transaction i.e. in this context the extent of the loss to the Exchequer. Obviously, the amount of the recorded loss should not be distorted by inflated estimates but, equally, the extent of the actual loss should not be misrepresented by the exclusion of reasonable estimates likely to be acceptable for legal action in other circumstances e.g. estimates made under Section 23 of VAT Act. It was noted in many cases examined that the extent of the recorded loss may have been understated as:

- there was no assessment of the extent of non-compliance or the likely size of the full tax debt
- the write off was based purely on charges on record, even where these only equated to some payments from a failed fixed payment arrangement

- a number of undercharges identified on tax audits were excluded
- all interest and penalty charges were excluded.

Revenue has stated that it would be unproductive to apply scarce resources to the task of establishing the full liability in circumstances where such tax would, in any event, most likely be uncollectable. Such activity would add nothing to the Exchequer and would operate to the detriment of more productive work.

While the Revenue position is understandable, in the context of resource allocation, I believe that some effort should be made to present a complete and accurate picture with regard to write offs bearing in mind that

- the real scale of a write off is likely to have an impact on the decision taken
- it would be expected that efforts to establish the full extent of a tax liability should arise earlier in the collection process
- accounting and transparency requirements cannot be totally put aside.

#### *Further Write Off Issues*

Irrespective of how the write off process is carried out, there is a further issue relating to its timing. It is, or should be, the final in depth review of all aspects of a case in order to establish whether it should be 'written off' or excluded from all of the live stages of the tax collection system. However it is usually carried out at a stage, e.g. six years or more after tax due, when the conclusion will be that it is too late to take any meaningful action and the difficulty of tracing persons and records too great. In order to maximise the value of such a review, consideration should be given to performing this process, say as a third party review, at a much earlier stage e.g. after 12 months/24 months without meaningful collection activity in order to get to the bottom of what has occurred in a case at a time where the chances of tax recovery may be much greater. Following the completion of this process cases could be moved to a 'pending write off' account for a further period, but would not be subject to routine collection activity unless new information of relationship comes to light. The current principle would not be affected whereby the debt does not totally disappear at any stage, but remains on taxpayer record for recovery should the opportunity arise, and any lessons for Revenue would be learned earlier. Revenue consider that a decision on whether to write-off or not should be taken at the time of review, as placing a case in a pending category to be re-examined again later would be wasteful of resources.

The weakness of the basis of the write off decisions in a number of the small sample of cases reviewed out of the €104m total written off in 2000 also raises the issue of the extent to which the 2000 write offs in total, and even earlier years, contain cases where the decision should be reviewed. Obviously, at this remove, any look back would require to be focused both with regard to size and type of cases. A further issue, and possibly of greater importance at this stage, may be the extent to which those write offs hide the successful efforts of tax evaders, allowing them the opportunity to repeat their undiscovered practices as instanced by the three sample outlined cases.

**CASE No. 1 - Property Developer**

- Developer entered the tax system through the 1988 tax amnesty with a payment of €79,000 for years 1970/71 – 1988/89; while that was considered inadequate by Revenue, no further payment was ultimately demanded;
- Write off of €442,000 CT from 1988 included in sample reviewed; demand returned undelivered 1990; no further collection action until write off in 2000 on basis that neither of the two directors could be contacted; Co. had failed to register issued share capital, directors, business address or any annual returns; no connection was made with the individual, the amnesty payment, or his other companies;
- Developer and his family were involved in at least 35 active million pound plus property development companies during 1990s including several major industrial estates, office blocks, apartment blocks, townhouse schemes and a shopping centre, with recent developments valued at over €125m.
- Dealings with Revenue:
  - o 35 Co.s registered for CT, 25 for VAT, and none for PAYE/PRSI
  - o while the core business was always property development, cases were spread over various tax districts due to a wide variation of declared activities
  - o CT returns rarely filed for post-completion i.e. disposal periods; Co.s typically informally dissolved without formal wind-up of final statement of affairs providing information on the sale of property or disposal of cash and other assets which would allow assessment of tax liabilities
  - o CT paid totalled €0.25m, while VAT Repayments exceeded VAT payments by €6m (however, portion of that difference is due to 'Section 4A' exemptions arising from sales to VAT registered purchasers)
  - o An agent for one of the Co.s informed Revenue that Co. had always been dormant, and the certified accounts filed with CRO reflected this position; Co. had constructed two townhouse developments and an apartment block in early 1990s which sold for €10m
  - o In response to a returned demand for €34,000 VAT arrears arising from four tax audits, a Revenue field officer called to the registered address of one of the Co.s and was informed that the Co. had transferred to another address, and that the whereabouts of the directors were unknown; at the second address it was stated that Co. no longer existed; both locations were owned by the developer's Co.s. The VAT arrears were written off. The Co. developed 36 houses to the value of €2.5m but no CT was paid.
  - o In all, our examination noted four write offs of taxes totalling €0.6m.
- While the developer was registered for Residential Property Tax, he was not considered to have a liability when his residence was sold for €3.9m because his declared income was below the income threshold.

*Revenue Response*

Having examined the write off cases referred by my staff, Revenue is satisfied that the cases were worked in accordance with the instructions, guidelines and work practices prevailing at the time the write off was recommended. The write off decision, taking each case on its specific merits, was fully justified. The write off procedure requires each staff member to make a judgment bearing the following factors in mind – the size and age of the debt, previous collection history, whether the debt is well founded i.e. based on returns filed not estimates, feasibility of further collection or enforcement action. Each recommendation is submitted for approval by the Assistant Principal or Compliance Manager, or where the total write off exceeds €320,000, by the Principal Officer or Senior Inspector.

Having reviewed write off procedures in light of cases highlighted by my audit, Revenue has introduced additional checks, called ‘commonality checks’ which seek to identify and check on the principals behind companies with significant tax payment problems and is amending Write Off Guidelines to provide for:

- checks for linkages to be carried out where tax is being considered for write off
- a specific question for caseworkers to confirm that they have checked the Companies Registration Office for links to other companies in which directors may be involved
- a check on the write off position in respect of the director’s personal tax together with the recording of a brief summary of those enquiries.

Revenue has stated that while an old Revenue system which collapsed in 1997 did allow for interrogation of Companies Registration Office records, it was not easy to use and the information was not up to date. The current system which was installed in September 2000 allows staff to create the links used by my staff during the course of this audit. In relation to use of information on the Revenue property file, property searches usually occur after a decision is made to pursue a debt e.g. in considering a judgment mortgage or forced sale. The property search is carried out using the more comprehensive and up to date on-line Land Registry database. The type of use to which the Special Enquiry Branch property file was put during our examination is usually reserved for audit cases. However, Revenue will give consideration to what further use can be made of that system in the context of write off operations. When the structured management system for Revenue’s data being developed under the LINKS project is fully operational, it should be possible to obtain all information held by Revenue relevant to a particular taxpayer through one enquiry. This will greatly assist the working of audit and compliance cases by increasing efficiency and focusing on the risk in a particular case. The first part of this system will become operational towards the end of 2002.

With regard to the question of reviewing other write off cases, Revenue considered that the audit sample which was drawn from the larger write off decisions in 2000 would not be fully representative of all write off cases. The larger cases sampled would be more likely to involve cases where enforcement action had never been successful and where evasion would therefore be more likely than in the generality of cases. Revenue has indicated that the recently introduced ‘commonality checks’ should pick up evaders who attempt to repeat the stratagem and that all of the previous write offs would be reviewed and, where possible, overturned in such cases. That approach would provide the most efficient use of available resources.

In conclusion, Revenue is satisfied that while the write off decisions on each individual case were correct in accordance with the procedures and information systems available at the time, deficiencies in the systems identified in my examination have now been addressed. Revised structures and procedures have been put in place to ensure detection and follow through where case linkages of the type revealed by my examination are identified. An investigation has commenced as to how a comprehensive examination of the cases noted can be put in train. The write off of uncollectable tax will play an important role in the challenging programme of debt reduction set out in Revenue’s Statement of Strategy 2001-2003, and Revenue is satisfied that the procedures and systems in place will ensure the appropriateness of its actions, taking all factors into account.

### ***Weakness in Revenue Activity***

This section of the report sets out a number of weaknesses in Revenue activity which were noted from the in depth examination of the sample of write off cases, and also from the many related cases which were sourced and reviewed in the course of that examination. The objective was to establish the extent to which such weaknesses, which had, in all likelihood, contributed to the failure of collection and to reaching the stage of write off, had been identified and rectified by Revenue. The items in this section are grouped under registration, compliance, enforcement, audit and other controls.

### *Registration*

Points noted in this area included:

- individuals with multiple tax
- the incorporation of companies was not linked to tax registration; many other companies owned by directors involved in write off cases were not registered for tax purposes
- companies registered for one tax but not for the obviously appropriate tax: pubs registered for Corporation Tax but not for VAT, similarly services sector businesses not registered for PAYE
- discrepancies as between the registration details in Revenue and Companies Registration Office different directors or business addresses
- formal documentation in Companies Registration Office e.g. annual returns and registered charges, indicated that the companies traded before being registered for tax.

There would appear to be a need to synchronise the incorporation of companies and their registration for tax. The tax registration process should be tightened to ensure that all relevant tax heads are included, and that complete and accurate details regarding beneficial ownership and business address are provided. Consideration could be given to including the PPS No. of each director as the objective of limited liability is to facilitate the conduct of business investment as opposed to concealment from the tax system.

### *Compliance*

The lack of monitoring and review of a number of cases which came to attention was indicative of weaknesses in the compliance area:

- companies found to be active had a 'dormant' status on the tax database
- Companies Registration Office indications of business activity e.g. annual returns, registration of charges, changes of business address, were not used to check compliance
- There was a pattern of registration for Corporation Tax and no other tax head, and of submitting no returns; from the check of several hundred companies registered for Corporation Tax, some with evidence of extensive trading activity, only a handful returned a liability, or any returns, for Corporation Tax
- Returned mail was a basis for a number of write off decisions; this should be seen as an early indicator of compliance or more serious problems – signalling the need for early action; in two cases, there were delays of many years before attempting to re-establish contact
- VAT returns are a valuable measure of business activity; this source did not appear to be used as a useful indicator of liability for other taxes
- The monitoring of Corporation Tax compliance appeared to have a low priority in the cases examined, particularly in comparison with the high yielding VAT and PAYE.

### *Enforcement*

An aspect which stood out from the review was the necessity for prompt and decisive action when matters reach enforcement stage. The opportunities for effective enforcement of tax debt can be limited when dealing with private companies, and collection procedures should have the flexibility to respond appropriately in such cases. Particular weaknesses in write off cases included:

- allowing token action by the taxpayer to revert the whole enforcement process back to the beginning as opposed to picking up where it was suspended
- excessive caution and inordinate delays (sometimes over minor matters) in proceeding to enforcement.



**CASE No. 2 - Publican A & Publican B**

From the early 1990s Publican A has, through Co.s, been involved at different stages in the operation of three pubs owned by Publican B; each of the newly-formed Co.s registered for tax, obtained Tax Clearance Certificates (TCCs) and renewed the pub licence;

- Each then followed a behaviour pattern which outsmarted and rendered useless the normal Revenue procedures in this area:
  - o Co.s were partly tax compliant (for VAT) during the first year
  - o At the end of the year an instalment arrangement for a small amount i.e. €1,000 per month was agreed with Revenue for Year 1 arrears, and TCC was issued enabling licence renewal
  - o The instalment arrangement was immediately abandoned and, by the third year, Co.s had large VAT arrears. These were mainly estimated because of failure to make returns.
  - o At this point, Co.s ceased to trade and were dissolved (no annual returns were sent to the CRO). Licence was transferred to the owner, Publican B, who successfully obtains a TCC and renewal of the licence
  - o An interim period follows during which the business is totally non-compliant: in one case VAT returns were not filed for an unbroken three years, and a return under any tax head for one year
  - o The dissolved Co. is then replaced by another with Publican A as a director, and which has a 'clean' tax record to allow the cycle to recommence.
- In addition to the write off of €146,000 in the audit sample, a total of €100,000 was written off in two further cases relating to Publican A.
- Publican A's companies have not made any Corporation Tax returns to date.
- Publican B has declared only one of his ten directorships to Revenue; one of his Co.s acquired eight properties, mainly pubs and hotels, in the period 1987 to 1997 while deregistered for tax. On licence renewal application, three of the pubs declared annual turnover of between €1m and €2.5m.
- Twenty two Co.s which operated pubs owned by Publican B were dissolved without a formal wind up or statement of affairs; no Co. returns were made to the Companies Registration Office during the period of incorporation.

*Revenue Response*

In relation to the areas of registration, compliance and enforcement, Revenue has stated that procedures regarding registration have been significantly tightened up over the years, and that it should not now be possible to register more than once. Individuals wishing to register must use the PPS No. and provide information on date of birth and mother's maiden name. To the extent to which they could be identified, existing registrations were merged and consolidated with the advent of the Central Registration System, Integrated Taxation Processing and Active Intervention Management. Revenue also advised that a review of all aspects of registration is underway and will be completed in Autumn 2002, with proposed implementation of recommendations by early 2003. The findings and implications of the audit report would be incorporated in the review.

The bringing together of the various registrations within the Central Registration System has enabled caseworkers to get a better overall perspective, and thus ensure that more effective action can be taken against non-compliance. Another example is the recent legislation on offsetting that now allows Integrated Taxation Processing to automatically offset where a tax liability is due or to withhold a repayment until outstanding returns are submitted. The Companies Registration Office system installed in September 2000 is also relevant in this context. The Active Intervention Management system and cross taxhead caseworking approach to non-compliance has been in place for a number of years and the approach had been a significant success in

ensuring that debt problems, whether highlighted through current compliance or arrears difficulties, were pursued promptly and efficiently.

A number of legislative changes introduced in recent years have resulted in closer cooperation between Revenue and the Companies Registration Office in policing newly incorporated companies and companies which have just commenced business. Revenue has also issued a form for completion by all dormant companies in order to ascertain their current business status. A company which does not reply may be struck off. Where the response indicated that business activity had not commenced, the matter would be followed up on a regular basis.

Some of the cases identified by the audit predated the caseworking era and Revenue was satisfied that pursuit of the cases would be radically different today. Expertise in pursuing tax debt had been steadily enhanced. Lessons had been learned and remedial changes had been introduced. For example, where the original caseworking guidelines had provided for a graduated customer service type approach to default, that had since given way to a more direct approach with early decision-making and a clear strategy in each case to ensure that default was effectively dealt with at the earliest possible date. Revenue stated that a more critical view was taken of instalment arrangements, especially repeat arrangements, with the taxpayer having to justify an instalment in all cases. Those aspects had been emphasised by training. There had also been considerable enhancement of Revenue's enforcement capability with the employment of six firms of solicitors to ensure the effectiveness of Revenue's enforcement capability through the Courts.

Because of those developments, Revenue was confident that many of the collection shortcomings identified by my examination could no longer arise. However, Revenue also accepted that the cases brought to attention from the examination demonstrated that some further developments would improve effectiveness and that a number of new measures are in the course of introduction to try and ensure that the problems highlighted can be overcome. Some of the changes were procedural and had been introduced straightaway. Others (referred to under later sections) required more detailed consideration, including possible legal changes, and would take a little longer to introduce.

#### *Revenue Audit*

Points in relation to Revenue audit which arose from the examination of selected write off cases were as follows:

- there was no facility for input to the audit selection process by anybody outside of the inspectorate e.g. cases being caseworked due to poor payment record were not referred for audit consideration despite the risk to the correctness of returns
- information sources which were critical to our examination viz. CRO, Revenue property file and excise licence database, did not appear to be used by Revenue to identify possible tax abuse
- there was little evidence of audits in the cases examined, apart from regular VAT audits up the early 1990s. These audits did result in the detection of a high incidence of under-declared liabilities and some instances categorised as evasion. However all cases were not assessed or pursued for the shortfall, action did not appear to be taken against those categorised as evaders, and there was no evidence of specific monitoring of risk cases identified from audit
- an audit was initiated in one case when returns were considered too low; the audit revealed substantial underdeclaration of tax due.

#### *Revenue Response*

Revenue stated that the compliance and collection programmes are designed to address the failure to comply

with payment and filing requirements with direct action, and that an approach to poor payment record cases that involved considering them for audit would not be the most productive use of resources. However, Revenue will consider the inclusion of poor payment compliance as one of the risk factors in the planned computerised risk analysis and risk scoring system which will be used to identify suitable cases for audit. It is intended that an automated process will calculate a risk score by applying rules and weighting to available data such as audit results, third party information, accounts, data from tax returns, intelligence information and trade classification codes. This process will be helped by the current links to the Companies Registration Office database and future linking of all Revenue databases under the LINKS project.

As regards the VAT audits of the sample which were carried out in the early 1990s, Revenue stated that in most cases the undercharges had been dealt with either by restricting repayment or by subsequent submission of the return. Assessments to recover the VAT were not required.

There has been continuous development in the area of monitoring of risk for audit since the 1990s. After 1993, VAT audit programmes were subsumed into the Revenue Audit Programme, and the selection of cases for audit has been based on tax at risk under all tax heads. The computerised risk management system previously described is at contract stage. Other developments in the audit area since the cases dealt with in this report included the AIM case-tracking mechanism and a Code of Practice for Revenue auditors under which all audits go through a set procedure to finality.

As regards cases which were brought to Revenue's attention in the course of my examination, detailed profiling of the principals behind the companies had been undertaken and arrangements were underway to have audits carried out.

#### *Direct Debit*

The direct debit facility for payment of taxes allows taxpayers to pay a fixed amount each month by direct debit followed by a single annual return together with any balance due. When operated correctly, the system benefits both the taxpayer and the Revenue compliance workload. However, cases of abuse of this system were noted where traders deliberately underpaid the direct debit amounts giving rise to significant liabilities at annual return stage.

#### *Revenue Response*

Revenue is satisfied that measures introduced in the last two years provide an effective mechanism for tackling the problem of deliberate abuse of the direct debit facility viz.

- legal provisions to establish a minimum amount of direct debit payment, with back dated interest payments for breaches
- the facility is withdrawn from cases with compliance problems, including 'phoenix' cases
- a dedicated unit has been established to systematically pursue annual returns in direct debit cases, and apply interest where appropriate.

#### *No Case Size'*

It was noted in a number of instances that a tax debt had accumulated from the early stages after registration without collection activity by Revenue. This arose because in the absence of tax returns or payments, the collection system was not able to determine an appropriate level of estimate, and a case was classified as 'no case size' and remained peripheral to the pursuit/enforcement process.

***CASE 3. - Leisure Sector Operator***

- Operator and family had interests over 12 years in 18 companies which ran 11 bars, nightclubs and hotels; 3 companies are currently 'live', while the others were dissolved or liquidated; Companies Registration Office registration or filing requirements were not fully met for any company.
- All of operator's companies were partly or totally non-compliant for taxes; some submitted tax returns but did not make payments; companies were registered for Corporation Tax but did not submit returns; a receiver of one of operator's companies generated and paid over substantial amounts of tax while running a business which had made no returns while controlled by the operator.
- VAT audits of a number of the operator's companies identified underpayments and evasion; each was treated on a single case basis, and not linked to the operator.
- Current nightclub business is run by a 'fourth generation' company, which received a Tax Clearance Certificate even though it is not registered for VAT or PAYE; previous owner was registered for these taxes.
- Excise licences have been issued to this operator up to one year after due date; companies conducting some of the businesses did not have any excise licence, but 'sheltered' under a licence held by unrelated operators of other bars in a complex.
- In addition to the write off of €170,000 which was included in the audit sample, there have been 5 other write offs totalling €520,000 in relation to this operator.

*Revenue Response*

Revenue indicated that the risks of the 'no case size' classification had been under review, and pointed out the complication that a new registration may not start trading immediately and that the issue of estimates could lead to unfounded debt. A solution is currently being implemented with the objective of ensuring that registrations will not remain in the 'no case size' category for longer than six months. All 'nil return' and permanent VAT repayment cases have been moved from 'no case size' to a new category. A computer program development will schedule a series of contacts with new registrations to encourage submission of returns. In the event that this step does not get a response, a visit to the premises will provide the basis for the issue of an informed estimate which will bring the case into the regular pursuit/enforcement process. Where it is established that no trading occurred, the registration will be cancelled.

***Tax Issues arising in Particular Sectors***

It was noted that a pattern of difficulties arose across a number of cases in two particular business sectors – property development and pubs – and some indication of the issues can be seen from the outline sketches presented in this report from each of the sectors. However it was considered that, side by side with the particular tax risks in each sector, Revenue also had particular risk control advantages in each of these areas through the requirement for formal legal transfers in all property transactions, and the requirement for an annual Excise licence and tax clearance in the licensed trade. General issues arising from limited liability and the corporate veil are considered elsewhere in this report.

*Property Development*

In the area of property development, there may be a complexity of company and financial arrangements and relationships. A separate legal entity may be established for each property development and, in some cases, a number of separate companies may be formed to deal with aspects of a development including property development, property holding, investment, and management of the completed building. During the course of the development a company can legitimately make VAT repayment claims, and no liability to Corporation Tax arises at that stage. The tax liability invariably arises when the development is complete and properties

are being leased or sold. This creates a large VAT and Corporation Tax liability and Revenue is particularly vulnerable to the situation where the development company ceases to trade immediately after the properties are leased or sold without making tax returns or payment. Even if Revenue were monitoring the situation and reacted quickly to raise VAT assessments, it is likely that collection and enforcement activity would be fruitless where legal liability rested with a company which has ceased, leaving only the option of liquidation which is unlikely to recover any of the outstanding tax. With any delay recovery becomes virtually impossible.

#### *Revenue Response*

Revenue accepts that more needed to be done to combat the type of abuse of VAT and Corporation Tax identified in the write off cases examined, and a Working Group to recommend proposals in this regard has been established. It seemed clear that legislative changes would be needed to counteract the problem, and Revenue indicated that appropriate proposals would be developed in time for the next Finance Bill.

#### *Pubs, Excise Licences and Tax Clearance*

The issue of Tax Clearance Certificates (TCC) by Revenue only to persons who are tax compliant is a strong control. TCCs are required for many areas of business e.g. for public sector contracts, obtaining various licences, and state grants. The audit found that:

- companies had obtained TCCs without registering for any tax head
- companies obtained TCCs by registering for one tax e.g. Corporation Tax, but not for the taxes which would give rise to their main tax liabilities i.e. VAT and PAYE. In many instances, pubs had obtained TCCs without registering for those taxes
- chronic arrears cases subverted the regulations and obtained TCCs simply by changing the name of the business usually by the creation of another company. The tax histories of the company owners were not considered in the vetting of applications for tax clearance
- TCCs were issued in serious arrears cases on the foot of a pledge or arrangement to pay off arrears, leaving Revenue at a loss when the arrangement collapsed
- A known 'phoenix' case with over 60 employees filed a 'nil' return for PAYE but received a TCC.

Over generous operation of the TCC system undermines the purpose and effectiveness of this control, and misses an opportunity to ensure tax compliance.

Case No. 2 demonstrates how the controls based on the requirement for a Tax Clearance Certificate before obtaining or renewing an Excise Licence can be circumvented.

#### *Revenue Response*

Revenue has stated that the requirement for a Tax Clearance Certificate in this area makes a significant contribution to the tax collection effort but acknowledges that it is not foolproof. Efforts have been made over the years to tighten requirements, but difficulties had arisen because the type of action ideally required would conflict with limited liability. However, in light of the cases identified in this report, Revenue has set up a Working Group to prepare proposals which would link the tax clearance requirement with the actual operation of the pub. As the types of remedy envisaged would require legislative change, definite Revenue proposals would be formulated in sufficient time for the next Finance Bill.

#### ***Abuse of Limited Liability for Tax Evasion***

The findings in this area are considered under the headings of abuse of limited liability, directorships, and 'phoenix' syndrome.

### *Abuse of Limited Liability*

The concept of limited liability allows the formation of a legal entity for the purpose of stated business activities, and limits the possible loss of owners to the amounts which have been invested in the company. The purpose of limited liability is to facilitate the growth of business and investment. However the degree of redress available to any third party is also limited to the net assets of the company. The requirements for setting up and operating a company are set out in company law and policed by the Companies Registration Office, the Department of Enterprise Trade and Employment and, more recently, by the Office of the Director of Corporate Enforcement. Certain details relating to each company are in the Companies Registration Office including details of directors, company address, and annual returns relating to the operation and financial position as certified by a public auditor.

It is generally understood that the key to successful business dealings with limited companies is accurate information and a close understanding of its business and relationships. As companies can cease trading and wind up with the same ease with which they are formed, and given the limitation of pursuit, it would be considered imprudent to place full reliance on the items of information in the Companies Registration Office, or to await the filing of the minimalist annual returns. Those engaged in major business transactions with companies e.g. banks and main suppliers also ensure that their interests are protected by such facilities as liens and charges, personal guarantees, and the absolute insistence on meeting tight payment deadlines. When dealing with companies, whether with regard to Corporation Tax and Capital Gains Tax or PAYE and VAT, Revenue is operating in exactly the same business sphere, and is effectively competing with the other interests for the cash available to each company. Therefore it has little option but to operate at a similar level. Anything less will lead to a frequent experience of dealing with the remains of a business which has closed and moved on. There will be little left as many companies on the tax system are of the ‘close’ company type with an issued share capital of €2.50.

In the course of our examination of the tax records of the cases in the sample, related companies and other business interests of principals revealed substantial abuses of the tax system by individuals through abuse of the principle of limited liability or the ‘corporate veil’. These individuals did not receive any particular interest from Revenue – even at write off stage. Clear patterns of abuse were identified as follows:

- there was extensive use of companies bought ‘off-the-shelf’ which were activated to operate a business activity for a short period (e.g. 1 – 5 years) and which then ceased trading, either having not registered for tax, or not made returns, or having run up substantial tax arrears
- individuals concealed their business interests under cover of the company veil. Directorships were not declared. Other family members and employees were registered as directors to conceal principal ownership. Concealment was aided by the declaration and registration of a plethora of home and business addresses
- in addition to such registration offences, all of the required Companies Registration Office registration information was not supplied. These were also accepted as companies by Revenue.

While there were few instances where Revenue cross checked information with the Companies Registration Office records, information at that source was less than complete for a number of cases reviewed:

- there were major information gaps with regard to directorships. A new number is allocated to each newly registered director, but the extent of individuals’ directorships are concealed by inconsistent declarations of details such as name, address, and date of birth; this makes it impossible to police the limit of 25 directorships per individual
- instances were noted where no directors were listed, or less than the number legally required; there was no issued share capital, and the address of the formation office was listed as the address of the new company

- there was a low level of annual returns compliance among the companies reviewed; most have been dissolved without provision of the required special motion of dissolution or of a statement of affairs showing the distribution of the company assets.

The Companies Registration Office will only be effective as a general information source and protection for the general public and Revenue when it ensures that complete and correct information is registered in accordance with company law.

However there are further risks for Revenue should the Companies Registration Office embark on a strike-off programme in order to enforce annual returns compliance. This could seriously hinder tax collection as the directors can then walk away from the tax debts of the struck off company, or even choose to bring about such a situation by failing to file annual company returns.

In summary, it was clear that the requirements of incorporation were treated with disdain by the companies reviewed, and that limited liability was merely a device to be used to escape tax obligations. The registration deficiencies must raise questions as to whether the companies created have the legal status to allow them to avail of limited liability. In view of the extent of lost tax revenues, there may also be an onus on Revenue to challenge such status, and to attempt to look beyond the companies and seek out and pursue beneficial owners. However, in a few cases, Revenue has recently pursued a course of action with the objective of obtaining the disqualification of an individual to serve as a director.

#### *Directorships*

Points noted were as follows:

- individuals had extensive directorships which were not on the tax record
- individuals with directorships on the tax records were not monitored as directors
- there was little evidence of usage of this information for establishing relationships with other cases
- there was no evidence that the directors of companies which dissolved while solvent were pursued for drawings, where there was no indication of any other accountability for the company assets
- there was evidence of inter-company asset transfers without the establishment of final tax liability or ultimate beneficiary.

The narrow ‘case-based’ approach in these instances may have resulted in considerable tax loss.

#### *Phoenix Syndrome*

Phoenix syndrome describes a particular area of tax evasion where directors attempt to use the protection of limited liability for the deliberate avoidance of tax liabilities, essentially by ceasing activity under the guise of one company and transferring the assets and business to a ‘new’ company with a clean tax record. To counter this activity, Revenue monitors a list of approximately 300 companies. It was noted that:

- ‘phoenix’ monitoring was focused on companies and not on the individuals behind the companies. Companies created for separate projects by the same principal, and subsequently dissolved leaving substantial assessed and unassessed tax liabilities were not included in the Revenue monitoring programme
- the ‘phoenix’ programme monitored the ‘new’ company but no action appeared to be taken in relation to the past activities of companies and directors
- instances were noted where it appeared that Revenue identified and investigated classic cases of ‘phoenix’ activity but did not add them to the programme.

Revenue activity in this area can be frustrated where the owner of a business, through careful leasing arrangements, ensures that the former companies do not own any assets against which action can be taken.

### *Revenue Response*

Revenue has indicated its awareness of the dangers that limited liability poses to tax collection, in particular where the principal of a company abuses limited liability by deliberately leaving tax debts unpaid and ‘walking away’ from insolvent companies. Revenue has stated that, because of the requirements of company law and limited liability, there were essentially only two remedies open to it in dealing with such individuals. Firstly, where such a practice is identified, to closely manage new cases associated with such persons from the start so that early and decisive action is taken where compliance problems develop. The phoenix monitoring programme demonstrated the success of that approach. Secondly, where such a practice was identified through a ceased business, to seek to have directors restricted or disqualified for fraudulent or reckless trading through the liquidation process.

It was also pointed out that the dangers posed by limited liability were not confined to Revenue and reference was made in that regard to the McDowell Report, the subsequent enactment of the Company Law Enforcement Act, 2001, and the establishment of the Office of the Director of Corporate Enforcement (ODCE). It was considered that the ODCE now had real teeth to take action against rogue directors using a ‘scorched earth’ policy to defraud creditors including Revenue. The ODCE and Revenue can exchange information, and the two agencies are cooperating closely with liaison procedures in place. The Company Law Review Group has also reported on ongoing issues in this area, such as mitigating the effects of strike off for Revenue and other creditors.

In recent years, Revenue had introduced a specific programme for phoenix companies aimed at stopping any build up of arrears in the current trading entity, and had been successful in minimising tax losses. Where the taxpayer’s co-operation was not forthcoming, enforcement action was taken without delay, and where necessary the company was liquidated. The approach was constantly monitored, and further refinements introduced e.g. seeking earlier identification, and the use of bonding. However, as the modus operandi of the cases identified from our examination did not conform to the classic phoenix outline, revised operational guidelines have been issued to broaden the scope of operations by changing the emphasis from company succeeding company to business succeeding business whether company, partnership or sole trader. At end 2001, 400 companies were intensively monitored under the scheme.

Revenue has stated that the use of the liquidation process was primarily to deal with a situation where ‘ordinary’ enforcement was not successful and the debts of a company continued to rise. Apart from preventing the rise of debt, Revenue also pursued the possibility of directors being restricted or disqualified and made personally liable for the debts of the company insofar as it was appropriate and possible. However, decisions in those areas were outside of Revenue’s control and the difficulty arose from the necessity for convincing evidence to be presented to the Court. Liquidators could be reluctant to pursue such possibilities in view of the legal costs involved, although where appropriate Revenue can guarantee funding for liquidators in that regard. A further problem arose in instances where the principal of a company ‘resists’ turning over the books and records of the company to the liquidator. While recent changes in company law made it more likely that errant directors would be restricted or disqualified, evidence of the impact of the change in practice was awaited.

Many of the companies identified by our examination had long since ceased trading, and the only course of action for Revenue to pursue the companies at this stage would be to apply to the High Court for the appointment of a liquidator on a just and equitable basis. The liquidator would then pursue the directors on the basis that there was a probable debt outstanding from the directors of the company. It was doubtful



whether such a course of action would be successful or cost effective based on the age of the debt, the limited and circumstantial information available and the costs involved. Revenue's experience would suggest that such a course would not be successful.

Notwithstanding the success of Revenue actions whether in relation to phoenix monitoring or caseworking generally, Revenue considered that it was clear from the cases emanating from our examination that further measures were needed to tackle the problem of people using limited liability as a vehicle for deliberate and sustained non-payment of tax liabilities. The effective elements of the measures which have now been introduced provide for

- mandatory checks to identify related cases where there was a history of non-compliance. These checks would be carried out at (a) registration stage (b) where the company had a significant tax debt problem and (c) prior to a write off decision of any significant level of debt
- systematic and vigorous pursuit of related cases by a Dedicated Pursuit Unit in the Collector General's Office. Such pursuit will include the principal plus all related companies, and will be supported where necessary by a co-ordinated cross-Revenue approach ensuring audits in appropriate cases.

The arrangements have already been introduced and the Unit has commenced work in pursuing the cases identified by our examination. Further cases would be brought into the programme as they are identified by caseworkers. Revenue is confident that the particular measures now being implemented provided an appropriate and effective remedy in the identification and subsequent pursuit of people using limited liability for the deliberate non-payment of tax liabilities.

#### *Response of the Department of Enterprise, Trade and Employment*

With regard to the role of the CRO the Department of Enterprise, Trade and Employment accepted that there had been abuses of company law, and indicated that the recognition of such abuses had led to the establishment of the McDowell Group with a mandate to review the compliance and enforcement regimes for company law and to make recommendations to address those issues. The Group's recommendations which sought to strengthen registration-type compliance, to properly enforce company law generally and to provide for the updating of company law on an ongoing basis were given effect by the Company Law Enforcement Act 2001 following which the ODCE was established and resourced to fully and effectively ensure the enforcement of the Companies Acts.

The Department also adverted to combined provisions enacted in company and tax law in 1999 to counter tax abuse in the area of Irish registered non-resident companies. The provisions strengthened Revenue's hand by introducing a requirement for newly formed companies to give details of proposed activity, and the ability for a company to be struck off the register for failure to provide information to the Revenue Commissioners. These provisions were specifically designed to enable the Revenue to immediately interact with newly incorporated companies and obtain any necessary information. A failure to supply the information requested can result in the company in question being struck off.

Particular areas covered by the Department's response included the concealment of directorships through the provision of inconsistent information to the Companies Registration Office, the low compliance rate in filing annual returns with the Companies Registration Office and the impact of the strike-off process on Revenue's ability to collect outstanding tax liabilities.

The Department stated that the question of the identification of directors had been considered in the First Report of the Company Law Review Group in December 2001. The Group concluded that while a formal identification procedure such as is found in certain civil law countries ought not be initiated, consideration should be given to requiring the pre-registration of directors who would at all times subsequently identify themselves on CRO filings by reference to their PPS number with parallel provisions for non Irish-resident directors. The Government had accepted that recommendation and the legislation to give it effect was currently being drafted.

The Department indicated that while there had, historically, been a low level of compliance with annual filing requirements, that had been one of the issues which the McDowell group had sought to address. By 2001 the compliance rate of 85% showed a considerable improvement over the 1997 level of 36%, and further improvement is needed. The initial improvement in compliance followed an extensive strike-off campaign carried out by the CRO. With effect from October 2001, a severe late filing penalty provided for in the Company Law Enforcement Act, 2001, was introduced and the strike off campaign was rolled back. The CRO is keeping under review the success of the late filing penalty in bringing about a satisfactory level of compliance and will use other enforcement processes as necessary.

The Act also provides for on-the-spot fines as an additional instrument for encouraging compliance and as an alternative to the more resource demanding court prosecutions. While it is open to the Registrar of Companies to prosecute companies and their directors (and that is regularly done), it is difficult to deal with the large numbers involved through that mechanism.

The Department also stated that the strike-off process, which had now been relegated to use as an instrument of last resort for dealing with non-compliant companies, had no effect on Revenue's ability to collect outstanding tax liabilities. Where there were sufficient assets to recover, the company could be easily restored to the register at the time of the appointment of a liquidator. If directors had deliberately disposed of their assets to avoid taxation (or other debts) the continuing existence or non-existence of the company was not the material issue. The Company Law Enforcement Act, 2001, established for the first time a real distinction in law between "Voluntary" and "Involuntary" strike off of a company. Where a company is struck off the register as part of the enforcement process, it is now open to the Director of Corporate Enforcement to seek the disqualification of the directors pursuant to the Companies Act 1990. Where a company itself requests strike off, the registrar will only agree to the request provided that the company files all outstanding returns and accounts, places an advertisement in a newspaper and secures the agreement of the Revenue Commissioners. No companies have been struck off compulsorily since these changes have come into effect but the registrar reserves the right to use this process as provided for by law where absolutely necessary.

## **Conclusions**

The task of Revenue is to collect due taxes from the assessed activities of more than two million taxpaying entities. By and large this is achieved through the acceptance of key procedures e.g. PAYE, tax returns, and the co-operation of the taxpaying public with the minimum contact. The process could hardly operate in any other way given the scale of the numbers involved. However, there is an ongoing risk that persons will attempt to evade tax liabilities through a recognition of the pressure under which the system operates, and by either attempting to hide within the great number of taxpayers and taxpayer activity or, should the attention of the system fall on them, by maximising the extent of Revenue action necessary thereby making the cost to the system so high that Revenue will 'go away'.

In undertaking this in depth examination of some of the largest write off cases in 2000, one might have expected to find one or two 'bad eggs' among a selection of cases which just ended up as write offs for a

variety of mundane reasons e.g. genuine business collapse, unfortunate change in personal circumstances. However, there must be considerable concern regarding the number of cases in the sample, involving the use of private limited companies that confirm at least elements of the 'hide or frustrate' approach. This raises questions not only about the adequacy of write off procedures but also, more importantly, about the extent to which Revenue is geared to deal with those attempting extensive tax evasion under cover of limited liability.

Revenue's debt reduction policy incorporating the write-off strategy has proved to be an efficient and effective means of tackling the problem of long outstanding tax arrears as well as allowing resources to be diverted to the prevention of new debt arising. Notwithstanding the success of that policy Revenue's response to the findings of this report recognises that improvements have to be made to its procedures in order to ensure that the risk of tax being inappropriately written off is minimised.

There is a strong message from the findings of this report that write offs, or at least certain categories of write off, must be subjected to a sharper review in the knowledge of what might have transpired in each case. Consideration must also be given to the issue of what may have been included in other significant write offs in recent years. A more time-consuming review of proposed write off cases over a predetermined monetary value, including cross checking with related registrations and principals and other information sources, should pay dividends in the management and control of future cases. Pursuit, even through the legal system, cannot only be on the basis of rate of return, and Revenue's recent use of liquidations to seek restriction and disqualification of directors are valuable steps along this road. There must be possibilities also of using the failure of companies to meet many Companies Registration Office and Revenue requirements to persuade the Courts to withdraw the protection of limited liability and render the directors liable for outstanding taxes.

A considerable portion of the report is devoted to the tax evasion issues arising from limited liability as this would appear to provide serious problems for Revenue. This is hardly surprising given the reality of the figures for 2001 - about 146,000 live companies and 1,200 being formed and 600 struck off each month - together with the possibility of a lack of complete or accurate information and time lags before a problem would become known to Revenue. The evader pays lip service to the requirements of Companies Registration Office and Revenue registration and returns but uses the concept of limited liability to avoid pursuit. Revenue's weapons are time-consuming liquidation and future monitoring where the connections have been identified.

In the business world, the institutions financing such private companies and their main suppliers prevent the possibility of similar losses by successfully penetrating the company veil by way of such facilities as liens and charges in advance, personal guarantees, and the absolute insistence on meeting tight payment deadlines, backed up by the threat of refusing future facility. Revenue in contrast cannot as easily choose its customers, although this is partially countered by the ability to propose amendments to rules and legislation when such a requirement is identified. The message from the practices of the business world is that the focus must be on prevention.

On the basis of the findings of the report, consideration should be given to implementing whatever changes are required to bring about closer co-operation between the Revenue and the Companies Registration Office to prevent a prospective tax evader from playing one institution against the other, and from using the facility of the limited liability of a private company to hide the identity and ultimately the tax liability of the directors from Revenue. The improved enforcement of company law, and the general application of the proposed identification of all directors by PPS Number will be of major benefit.

Revenue has already addressed some of the shortcomings identified by my examination by changing certain

procedures and through the development and implementation of new technologies to enable it to adopt a more integrated approach to the collection of tax arrears. Increased application of sophisticated technology tools by Revenue should gradually improve performance in identifying and collecting outstanding tax. But these developments on their own will not have optimum effect without changes in the law to strengthen Revenue's hand in a number of specific areas highlighted in this report. In this regard, Revenue has reacted positively to the report by implementing administrative changes and preparing legislative proposals to give effect to the necessary countermeasures.

## **4.8 Repayments of Value Added Tax to Registered Traders**

### **Background**

Value Added Tax (VAT) is an indirect tax on consumer expenditure that is charged on the value added at each stage of the production and distribution cycle. VAT is chargeable when a taxable person supplies goods or services within the State in the course or furtherance of business. Effectively, VAT is paid by a customer or consumer who is supplied goods or services for his or her own personal use. The supplier (i.e. the registered trader) is charging and collecting the tax on behalf of the Revenue Commissioners. There are currently over 200,000 traders registered for VAT. The gross amount of VAT collected by Revenue in 2001 was €10.5 billion.

A registered trader is charged VAT on the taxable goods and services it purchases for its business. A registered trader in turn charges VAT on the taxable goods and services it supplies. The trader is entitled to deduct the VAT charged on its purchases from the VAT it has charged on its sales. A trader accounts for VAT on his/her sales and purchases by means of a return to Revenue (normally every two months). In most periods, VAT charged on sales exceeds VAT charged on purchases and the trader pays the difference to Revenue. However, in certain circumstances the VAT on purchases exceeds the VAT on sales and the trader is due a repayment of VAT. For instance, if a trader increases stock or purchases an expensive item of equipment, a repayment can arise. Some businesses (e.g. food businesses) are in a permanent repayment situation because their sales are zero-rated but they are being charged VAT on some or all of their purchases. The total amount of VAT repayments by Revenue in 2001 was €2.6 billion. This includes refunds which arise where a trader has overpaid VAT and the overpayment is repaid by Revenue.

VAT is a self assessed tax and registered traders are required to maintain proper records of all transactions that affect their VAT liability. Revenue carry out a programme of audits which includes audits of traders' VAT records to ensure they are complying with the regulations and to check the accuracy of VAT returns including repayable returns. VAT audit activity may be dedicated or form part of general audit programmes. The VAT yield from audits in 2001 was €61.2m mostly arising from underpayment of tax but would also include an element of overstatement of VAT repayment claims.

In recent years, a number of taxpayers have been convicted and received prison sentences for obtaining payment by making false VAT repayment claims. In addition, a former official of the Revenue Commissioners received a prison sentence for conspiring with others to defraud the Revenue Commissioners of €4.8m by means of a false VAT repayment claim.

Revenue's customer service standards aim to repay 85% of VAT claims within 10 working days of receipt of claim with the balance being repaid within a further 20 working days. In 2001, figures supplied by Revenue showed that 80% were refunded within 10 days and 94% within 30 days.

## Objectives and Scope of the Audit

The objectives of the audit were

- To ensure that the system for repayment of VAT to registered traders is such that
  - Repayments are only made where properly due
  - All repayments are supported by valid and complete documentation
  - All payments are correctly made and recorded in the accounting records.
- To establish if appropriate arrangements are in place for setting repayment limits and for the approval of repayment claims which exceed those limits.
- To establish whether appropriate management information relating to repayments is produced and utilised to improve the efficiency and effectiveness of the system and its controls.

The examination of the VAT repayments system was based on a review of documentation and discussions with the Accountant General's Office and the Collector General's Office. The role of the Inspectorate in controlling VAT repayments was established by means of discussions with officials in the Office of the Chief Inspector of Taxes. A random sample of VAT repayments and refunds made in 2001 was selected and checked against the prevailing system validation rules. Where repayments in the sample were referred to the relevant tax district for certification the action taken in the district was reviewed.

## System for Repaying VAT

In recent years Revenue has been developing its systems so that each taxpayer will be treated as a single customer for all taxes. The Integrated Taxation Processing System (ITP) is a key element in moving to this approach. ITP is a system for issuing and processing returns, payments, repayments and refunds. VAT was incorporated into ITP in April 2000 and since then all claims for VAT repayments to registered traders are processed through the ITP system and payments are made from that system.

VAT returns when received by Revenue are scanned into electronic format and processed through the ITP returns reception sub-system. When the VAT return has been successfully processed through returns reception it will create an amount due from or to the taxpayer for the period depending on whether the return is payable or repayable. Each day the Debits/Credits sub-system of ITP is run which identifies credits on a taxpayer's record and instigates the processing of a repayment. The system checks each repayment claim against a series of validation rules which includes examining the taxpayer's record for outstanding taxes or returns. If a claim fails a validation rule the processing of the claim by the system ceases and a 'work item' is created which is delivered electronically to an official within Revenue to process. If the taxpayer has outstanding taxes the system will, in certain circumstances, automatically set the repayment claim against those taxes. In other situations where there are outstanding taxes, a work item will be created and the repayment claim may be offset against the outstanding taxes manually. The processing of a claim or 'credit' automatically by the computer or manually by an official can result in

- The full amount of the credit being approved and payment being issued.
- The full amount of the credit being disapproved. The credit will remain on the customer's account but there will be a stop to prevent the credit being processed.
- Issuing payment for part of the credit and disapproving the remainder.
- Offsetting the full amount of the credit to outstanding taxes.
- Offsetting some of the credit to outstanding taxes and payment being issued for the balance.
- Offsetting some of the credit and disapproving the balance.

The Debits/Credits system processes the credit through 3 stages

- Credit validation – confirming that the credit is valid and can be released for offsetting and/or repayment.
- Offset validation – offsetting the credit to outstanding taxes.
- Repayment validation – repaying the credit.

Work items created in relation to VAT repayments are referred to the relevant tax district of the taxpayer, to the VAT Repayments Section of the Accountant General's Office or to the Collector General's Office. The official to whom the work item is referred takes the appropriate action depending on the nature of the work item. For instance, if a work item is created because the taxpayer has outstanding returns, the taxpayer will be contacted and asked to submit the returns and informed that payment will be withheld pending their receipt. If a claim fails a particular validation rule and is referred to an official, it is the responsibility of the official to check the claim against the remaining system validation rules, as the claim does not re-enter the sequence of validation checks at the point it failed. The exception to this is a work item referred to the tax district which if approved re-enters the sequence of validation checks at a pre-defined point in the system. An official to whom a work item is assigned can use the comments box provided to indicate what action is being/was taken. The insertion of such comments is optional. When an official has processed a work item to his satisfaction, he electronically approves it and it is then referred to his supervisor for approval. In certain circumstances, for example high value repayment claims, a third level of approval is required.

## **Audit Findings**

### ***Returns***

As part of the examination a sample of 40 repayments and refunds made in 2001 were scrutinised. Each payment was checked against the original VAT return submitted by the taxpayer. Prior to scanning, all returns are reviewed to ensure all information appears to be in order. In certain circumstances, for example, if the taxpayer has not signed the return, it will be returned to the taxpayer. Correctly completed returns which have been damaged or which are considered to be uninterpretable to the scanner, are re-written by Revenue staff prior to scanning. In these cases, the original return is attached to the re-written version. This was the case for two of the claims examined both of which were for amounts in excess of €1m.

In seven of the 40 cases examined, the taxpayer submitted a second return for the same period after the original repayment claim had been processed. Each of these cases was a designated 'repayment only case' where the taxpayer is permitted to submit two claims for a period. For other cases, the system will accept a second repayable return for a period and will automatically treat it as supplementary to the first return and not as a replacement for it unless the second return is greater than the original in which case a work item will be created and customer confirmation sought. Revenue should consider introducing procedures to extend the confirmation process to all instances where second repayable returns are received. Alternatively, the VAT return could be revised to allow the taxpayer signify the nature of second returns. The exception to this is where the taxpayer clearly marks the second return as a replacement and this fact is noted by the Collector General's staff prior to scanning. In these cases, the system will substitute the amounts on the second return for those on the first and adjust the taxpayer's record accordingly. This can be problematic if the second return is for less than the first and repayment has already issued based on the first. The taxpayer's record will show an amount due from the taxpayer for the relevant period but this fact is not flagged by the system and recoupment of the amount already repaid will have to await normal collection activities. Revenue has indicated that the possible enhancement of ITP to facilitate the confirmation of all second repayable returns is being examined.

### ***System Validation Checks***

The validation checks carried out by the system involve checking against the information held on the taxpayer's record in the Revenue computer. In the main the checks relate to whether the amount of the claim exceeds monetary limits which are set for each taxpayer by the Inspector, whether the taxpayer has outstanding taxes, whether his returns are up to date and whether there are any stops or other markers on the taxpayer's record which would prevent repayment. For the sample of 40 repayments examined, it was found that the system was carrying out all the checks specified.

While staff did receive training and introductory training manuals when VAT was first introduced into ITP, there is a lack of user documentation to inform officials how to deal with work items that arise when claims fail validation checks. However, VAT Repayments Section are currently drafting a user manual. It should be borne in mind that with each new release of ITP, changes can be made to the system that affect the VAT repayments element of the system so that user documentation could become outdated. Nevertheless, it should be possible to maintain an up to date user manual to which staff could refer. Revenue has confirmed that the manual is expected to be completed in October 2002, following which it will be updated regularly.

The VAT Repayments Section is established in such a way that the each taxpayer deals with the same staff member and Revenue's view was that the advantage of this in terms of staff members becoming familiar with the case outweighed the obvious control weakness. Following the audit, Revenue decided to change this policy and will shortly implement the conventional control device of regular rotation of team members. For the sample examined, work items which were referred to officials in the VAT Repayments Section, were dealt with in an appropriate manner. Repayment claims which fail validation rules do not re-enter the sequence of checks at the point which they failed and the onus is on the user to check the claim against the remaining validation rules. Revenue should assess the risk that this gives rise to against the delay in repayment that would occur by subjecting approved work items to re-checking by the system. Revenue has stated that claims which fail validation rules are subject to at least two levels of approval before repayment and that the rechecking of such claims by the system would duplicate work already done and delay the repayment. They are also of the view that even in the unlikely event that the user releases the payment in circumstances where it would fail system checks, the risk is negligible as normal compliance activity would be initiated in due course.

### ***Offsetting Repayments against Outstanding Taxes***

The Finance Act, 2000 gave Revenue the power to introduce regulations to allow them to offset repayments due to a taxpayer under one taxhead against outstanding taxes in other taxheads. Previously, this was not possible without the permission of the taxpayer. Revenue introduced these regulations in August 2001. These regulations and the extension of ITP in September 2001 to incorporate almost all taxes with the exception of Relevant Contracts Tax (RCT) and some capital taxes will allow automatic offsetting of repayments due in most instances. The random sample examined showed that repayments and refunds were made in five cases where the taxpayer's record showed amounts outstanding in respect of RCT ranging from €1,825 to €108,146. Two cases were also noted where the taxpayer's record showed Capital Gains Tax outstanding of €14,349 and €21,527. While each of these cases pre-dated the regulations allowing automatic offsetting of repayment against unpaid taxes, they underline the need for the taxpayer's position as a whole to be examined prior to repayment being issued. These cases also highlight the need for Revenue to complete the introduction of all taxes into ITP to allow the system to automatically offset repayments against unpaid taxes. Until this is done, offsetting of unpaid taxes which have not yet been incorporated into ITP can only be done manually and there is the possibility that outstanding non-ITP taxes will be overlooked when repayment is being issued. Repayment claims which do not fail system validation checks and therefore are automatically approved by the system are by definition not brought to the attention of an official. Therefore, it is not possible to carry out manual checks for outstanding non-ITP taxes. It is understood that RCT will be incorporated into ITP before the end of 2002 which will allow greater use to be made of the offset

provisions. Capital Gains Tax is now incorporated into ITP and subject to the full offset provisions.

### ***Referrals to Inspectors***

The main risk based control of VAT repayments is the system of monetary limits set by the Inspector for each taxpayer. If a repayment claim is received which exceeds these limits the claim requires the approval of the Inspector before payment is made. The main objectives of this system of referral to Inspectors are

- To provide an improved service to compliant taxpayers.
- To assist in the detection of fraudulent or incorrect claims.

In addition, a small proportion of all claims are randomly selected and referred to the relevant Inspector for review prior to repayment.

The setting of these monetary limits is at the discretion of the relevant Inspector. Minimum levels have been prescribed centrally and criteria are set to identify high risk cases in this context, including

- 'Phoenix' type operations or cases with poor Revenue history.
- Traders registering with no fixed place of business.
- Non-resident companies.
- Liquidator/receiver cases.
- Cases where trading records are poorly maintained.

While these criteria are good indicators of potential risks it is essential that cases are constantly reviewed to ensure that all such high-risk cases are promptly identified and the limits adjusted accordingly as necessary.

When a claim is referred to the Inspector it is at the discretion of the Inspector what action should be taken. In essence, the decision has to be taken as to whether the claim can be certified with or without an audit. Instructions to inspectors require that in general all first claims in excess of a specified amount require an audit but that the Inspector has discretion in deciding the degree of checking required. The Inspector may decide that there is sufficient information available to certify the claim otherwise than by way of audit. Factors which the Inspector takes into account in making this judgment include

- Whether the case had previously been audited and what is the compliance history.
- What is the nature of the trade and whether it involves highly technical business transactions.
- The degree of understanding by the trader of his/her VAT obligations.
- The agent and his/her level of involvement.
- Are there exempt transactions involved?
- Is there a large volume or value of trade in goods in which the trader does not normally trade or is there a trade in high value goods to registered traders in other EU countries?

Revenue are currently examining the feasibility of establishing VAT Verification Units to deal with the checking of repayment claims. Planning is underway to establish one such unit on a pilot basis. The intention is to review the operation of this unit to establish whether similar units should be set up in all regions.

Of the 40 claims examined during this audit, 17 had been referred to the relevant Inspector for certification because the monetary limits had been exceeded. These claims were certified by the districts on the basis of



one or more of the following

- Requesting from the taxpayer supporting invoices, explanation for the claim or other information deemed necessary.
- Knowledge of the taxpayer and their tax history (including knowledge from any on-going audit).
- For single large transactions, checking that the vendor had paid to Revenue the VAT that the taxpayer is seeking repayment of.
- Carry out an audit of the taxpayer.
- Examination of latest accounts.
- Consideration of nature of the business.

In one case where a claim for €1.21m was certified by the Inspector, the comments box on the ITP system in relation to the work item notes that the claim was not checked due to lack of resources. Revenue has since stated that the basis for the decision to approve the claim also included knowledge of the company including a recent audit and the compliance record of the company.

### ***Risk Assessment***

In recent years, due to the growth in the economy, the number of claims being referred to Inspectors increased to such a level as to be unmanageable and it became necessary to universally increase the monetary limits for all but the most high-risk traders. In fact, two such general increases have been made in recent years in the level of these monetary limits. These increases were deemed necessary because the level of resources available in tax districts could not deal with the number of claims being referred to them for approval. Nevertheless, the identification of particular risk type cases and the setting of appropriate limits based on the identified risk would be more appropriate than general increases designed principally to reduce the number of claims being referred. The monetary limits are trader specific and therefore are only reviewed if the case is re-examined by the Inspector either because it is the subject of some type of audit or because the Inspector is required to certify a repayment claim. More research and information is required to identify the type of cases that may give rise to the risk of fraudulent or incorrect repayment claims and to apply this knowledge in setting appropriate monetary limits for particular types of cases.

Revenue has recently appointed contractors to develop a computerised risk analysis and risk scoring system to identify customers who are most likely to fail to meet their obligations in respect of the various taxes and duties. The intention is that an automated process of applying rules to available data such as audit results, third party information, accounts, data from tax returns, intelligence information and trade classification (NACE) codes will be implemented to assist Revenue in its audit and investigation activities. This will allow the degree of risk to be determined by the calculation of a risk score. The opportunity should be taken when this system is being introduced to incorporate risk factors in relation to VAT repayments and adjust the system of repaying VAT accordingly. Revenue has stated that the new system will be effective for all taxes and all areas of Revenue business including VAT repayments.

Revenue has estimated that approximately 50% of repayments and refunds are automatically approved by the system for payment. In many cases, a number of years can elapse between audits of traders and therefore it may be some time before the validity of repayments which have not been referred to the Inspector can be checked. Also, when an audit is carried out it does not examine all periods since the previous audit so some repayments may never be examined. In 2001, repayments and refunds of almost €63m were made to traders who registered for VAT in that year. Over €51m of these payments were to companies who according to data on the ITP system have not been audited. Repayments and refunds of over €571m were made in 2001 to traders who have not been audited since before 1990.

Revenue has stated that total reliance cannot be placed on the audit data on ITP as not all districts record audit details on that system. The Active Intervention Management System (AIM) provides a more comprehensive record of audit activity. However, the interface between AIM and ITP systems does not update the record of audit activity. The AIM system is currently under review and the issue of consistent and comprehensive recording of audit activity will be addressed as part of the review. Revenue has also pointed out that some of the companies who received repayments in 2001 with no apparent recent audit were in a group relationship with other companies. While no audit details were recorded in respect of the company that received the repayment, audit activity did in fact take place and was recorded on the computer record of another company within the group. In relation to new registrations, Revenue has stated that they are aware of the risks involved and have procedures in place to minimise that risk. These procedures include checking the PPS numbers of the principals involved in the business, examining the compliance record of associated businesses and in certain cases conducting pre-registration visits.

In relation to VAT risk analysis, Revenue stated that

- The increase in the referral limits followed a review in 2000 by a working group in the Chief Inspector's Office. It was a necessary stop gap measure to alleviate an unacceptably high level of non-productive referrals and to provide a breathing space in which to develop a real risk based selection model.
- Various options for the development of a more scientific method of case selection had been examined in recent years including
  - Flexible risk ratings based on industry sector, case size, compliance record, etc
  - Differentiating between 'payment' and 'repayment' traders so that different targeting rules could be applied to each category
  - The use of audit dates so that traders who had been satisfactorily audited could be given higher referral limits.
- In the absence of an overriding risk analysis system, the Chief Inspector's Office has centrally identified and issued to selected tax districts lists of VAT cases which posed a possible revenue risk. These were based on factors such as repayment only cases, cases in an overall repayment position and cases that had received two repayments in excess of the monetary limits in a calendar year.

Revenue has also stated that risk, in the context of Revenue operations, focuses on the potential loss of revenue arising from non-compliance with obligations under legislation with the purpose of identifying those who pose the greatest risk of tax default. In this context risk is not confined to repayments only.

### ***Management Information***

Possible risk based checking of claims is of course limited by the amount of information that is available. As the VAT return shows the amount of VAT on sales and purchases for the period but not the amount of sales and purchases themselves, it would not be possible to review ratios. Registered traders are required to submit each year a return of trading details showing the total of their sales and purchases for the year broken down by VAT rate. These returns are required to be submitted to the Collector General's Office but due to a lack of resources the information on returns submitted is not being captured on the taxpayer's record. This limits the ability to check the credibility of repayment claims against known trading levels. It is understood that proposals to resolve the matter are currently under consideration.

Each taxpayer registered with Revenue is given a trade classification code known as a NACE code. Proper classification of traders by type of business would help in assessing the validity of repayment claims. However, the current system of NACE codes is apparently not suitable for this due to a lack of definition in the code. A project is underway to review and revise the NACE codes.

Other than information in relation to the number and value of repayments made and performance in relation to customer service standards, very little management information is routinely produced in relation to VAT repayments. The production and review of relevant management information would provide a valuable tool in monitoring and controlling VAT repayments. Examples of the type of management information that could be obtained include

- Analysis of claims disapproved or partially approved by Inspectors. This could provide indicators of possible fraudulent claims and inform checks on future claims. Further analysis could be conducted by trade class to identify types of traders whose claims are adjusted most often.
- The random selection of claims for review by the relevant Inspector is capable of providing a valuable indicator as to whether the system is operating satisfactorily. However, unless the results of the Inspectors' reviews of these claims are collated and analysed, an assessment of the system based on this test can not be made.
- Details of claims from recently registered traders.
- The yield in terms of payment or offsetting of outstanding taxes from checking claims should be recorded.

Revenue has stated that the review of the NACE codes and the new computerised risk analysis system will allow greater analysis of available information for management information purposes.

## Conclusions

The administration of VAT differs significantly from that of other tax heads by virtue of the fact that almost one quarter of the gross amount collected is subsequently repaid. This is innate to the nature of the tax but it requires Revenue to continually reassess its strategies for striking the correct balance between legitimate demands for improved customer service in making VAT repayments with the equally important objectives of only making correct repayments and minimisation of the likelihood of fraud.

The consolidation of VAT, including repayments, with the integrated taxation processing system in April 2000 provided the opportunity for significant benefits both in the areas of customer service and internal control. However, the relative newness of these arrangements requires ongoing strategic and operational review to ensure that the full possibilities of the system are achieved and that where necessary it is modified to address any weaknesses detected.

The system now in operation puts a premium on the implementation and regular review of a comprehensive risk control strategy, together with full operation of the procedures designed to achieve the desired level of control. The findings of my examination indicate that there is scope for improving both the strategy and the application of controls. Revenue is now at an advanced stage in obtaining a comprehensive computerised risk management system for all taxes and all areas of Revenue business including VAT repayments.

There is an increased level of risk associated with the issue of substantial repayments to newly formed companies and to older companies which have not been audited for some time. Revenue has confirmed that with 25,000 new VAT registrations annually, risk analysis and risk management must be central to the control process. The tax history of the individuals behind each new business are checked in detail and further action such as new business visits and later audits are based on the on going assessment of risk. However, my examination noted low utilisation of management information for control purposes in an area where the volume of transactions would suggest that it could be a valuable control tool.

Potential weaknesses at the point where manual intervention necessarily allows for system checks to be overridden should be carefully managed, for example where there is a break in the sequence of validation tests. Clarity in the handling of second returns for a period, the better use of comments fields, improved user documentation, a more refined use of business codes together with the implementation of the staff rotation policy should help to further improve the control environment.

## 4.9 Dividend Withholding Tax

### Background

The scheme of Dividend Withholding Tax (DWT) was introduced in the Finance Act, 1999, and requires companies resident in the State to make a deduction at the standard rate of income tax from dividends paid or other profit distributions made after 6 April 1999, subject to certain exemptions. Recipients such as companies resident in Ireland, investment funds, charities and pension funds are specifically excluded. Others, including most non-resident individuals and companies, may qualify for an exemption by making the appropriate declaration and supplying adequate supporting documentation either directly to Revenue or to approved dividend paying companies or agents acting for the company (Authorised Withholding Agents). A financial institution or stockbroker which has registered with Revenue as a Qualifying Intermediary may receive distributions without deduction of DWT in respect of clients who have provided the intermediary with appropriate declarations of exemption. The Qualifying Intermediary takes responsibility for administering the DWT, must retain declarations and other relevant documentation for inspection for six years, and provide an auditors report of compliance with the scheme in its first year of operation and subsequently on request.

A company or Authorised Withholding Agent which makes a distribution is required to submit a return containing details of distributions made and DWT deducted to the DWT Section of the Customs and Residence Division of Revenue by the 14<sup>th</sup> day of the following month, together with payment of the full DWT liability. A return is required even where no DWT deduction is made from the distribution. An Inspector of Taxes may make an assessment for any unremitted tax or in cases where s/he considers that the return understates the full amount due. While the recipient of the distribution is required to declare the gross amount received for income tax purposes, credit may be claimed in respect of the DWT deducted at the standard rate. Where the DWT amount exceeds final tax liability, or where a valid exemption entitlement had not been sought, a refund of DWT may be claimed.

DWT receipts for 1999-2001 are shown in Table 12.

**Table 12 - DWT Receipts and Returns 1999 - 2001**

	Gross Receipts	Refunds*	Net Receipts	Total No. of Returns	No. of 'Nil' Returns
1999	€46m	€8m	€38m	1,003	378
2000	€203m	€18m	€185m	3,301	1,429
2001	€189m	€46m	€143m	4,010	1,628

*\* The table shows the overall DWT position, taking account of direct refunds by DWT Section and tax districts, and subsequent refunds on the basis of approved claims from non-residents etc..*

The low figures for 1999 reflect the nine month period, and special transitional arrangements for some non-resident persons. It was also likely that some distribution dates may have been brought forward to avoid the necessity for a DWT deduction. Revenue expectation was that DWT would yield in the region of €100m in a

full year.

## Objectives and Scope of the Audit

The objective of the audit was to examine the extent to which procedures currently operated by Revenue provide adequate assurance as to the assessment and collection of revenues due in respect of DWT. Audit work mainly focused on the operation of the DWT Section. Information and papers were also received from the Office of the Chief Inspector of Taxes. From an examination of records, a sample of recipients of distributions were selected and cross-checked to their IT returns. A sample of companies was selected from those which had previously made distributions for Advanced Corporation Tax purposes and failed to submit a DWT return. The sampled cases were cross-checked to Corporation Tax returns and company accounts for evidence of distributions. Procedures for granting exemption status from the payment of DWT, and for the issue of refund payments, were also examined.

This report also includes reference to a number of findings from a 2001 report by Revenue's Internal Audit Division on the procedures governing the administration of DWT.

## Audit Findings

### *Declaration of Distributions by Companies*

DWT operates on the basis of self-declaration by companies. Companies are not required to register for DWT, and the Revenue returns compliance programme is not applied to company distributions. There were no comprehensive procedures operated to ensure that all liable companies submitted returns for DWT. Corporation Tax returns and supporting annual financial statements were not systematically monitored for distributions which would indicate a liability for DWT returns and possibly deductions. Revenue has however stated that an enhancement is in the process of being developed whereby the response to the panel on the Corporation Tax return indicating whether a distribution had been paid will be captured by the Tax Districts and made available electronically to the DWT Section.

The level of returns received in 2000 and 2001 of 3,301 and 4,010 respectively (relating to some 2,300 companies) represents under 4% of companies classified as live for Corporation Tax purposes. For the same periods, DWT returns were submitted by only 50% of those companies which had returned Advanced Corporation Tax in 1997/98. Revenue have pointed out that the corresponding figure for 1998/99 rose to 57%. While it considers that these statistics in themselves do not indicate a DWT compliance problem, Revenue accepts the need to crosscheck former Advanced Corporation Tax filers against DWT filers and the DWT compliance programme now provides for this.

A review by my staff of 21 companies which had filed returns in respect of Advanced Corporation Tax but which appeared not to have submitted DWT returns revealed that

- 13 companies had not made distributions; however in five cases, distributions may have been made by other companies in the group
- 5 of the companies had, in fact, made returns in respect of the distributions identified. One of the companies filed a return in 2000 but had omitted to file a return in 1999. The liability was €7,807 and the return has since been received
- 3 companies had made distributions totalling €1.4m without completing a DWT return. Two of the companies had no liability and are now in the process of preparing 'nil' returns. In the other case, confirmation is awaited as to whether a proposed distribution was made.

Internal Audit noted that 439 or 25% of companies which had made a DWT return in 1999/2000 did not submit a return in 2000/01. Revenue stated that there may not be a compliance problem as a company which makes a distribution in one year may not do so in the following year. However, in June 2002, 79 companies which had previously filed a return in 1999 and 2000 showing a DWT liability in excess of €1,000 but did not file a return in 2001 or early 2002 were contacted. To date, 38 companies had responded and only 2 had a DWT liability which amounted to €11,000 in total.

Internal Audit found that 25 of a sample of 79 companies which had made Corporation Tax payments greater than €125,000 had failed to submit DWT returns. The formal response to Internal Audit stated that, of the 25 cases,

- 16 companies should have submitted 'Nil' returns
- 1 company had a DWT liability and subsequently filed a return
- 1 company had made the distribution prior to the introduction of DWT
- 2 companies which had provided for distributions in their accounts did not make the distributions
- Investigations were under way into the remaining 5 companies.

Revenue has pointed out that 92% of DWT yield comes from stock exchange quoted companies plus a handful of others (111 companies in all) – and these are very tightly controlled. In the case of companies quoted on the Dublin Stock Exchange, a weekly list of companies, who are due to make distributions is provided by the Dublin Stock Exchange to DWT Section. These companies are monitored to ensure that returns and payments are received on time. The compliance level has been excellent and ensures that the bulk of DWT is collected in full.

Revenue stated that the introduction of a comprehensive compliance programme for smaller companies was postponed until 2002 as it was considered that any loss of revenue would be very small, and that the initial focus had to be on customer service and on establishing a system to administer the tax. Revenue also stated that DWT Section has commenced a compliance programme to gauge the level of compliance of the smaller private companies, and that the only evidence of a compliance problem to date related to companies which did not have a DWT liability but which failed to file the required 'nil' return.

### ***Claims for Exemption Status***

A sample of exemption cases was examined by my staff and all appeared to be in order and were supported by appropriate declarations from the beneficiary. Variations were noted in the level of assurance provided in the audit certificates supplied by Qualifying Intermediaries. In this regard, it is noted that, following a consultation process with the accountancy profession, DWT Section had agreed a standard certificate with the objective of achieving a consistency in the audit work to be performed and the extent of the assurance to be provided. In addition, the Section has drawn up a set of audit checks for the examination of Qualifying Intermediary records, and a programme of Revenue visits to these agents commenced recently.

### ***Regular Distribution Patterns***

There are strong indications that salary payments and other remuneration are being made by companies in the form of distributions which initially only attract deductions at the standard rate of tax, and which also avoid the requirement for payment of PRSI contributions. The Internal Audit report noted 32 companies which had made monthly distributions of similar amounts to the same beneficiaries. The DWT Section has since identified 139 companies making regular distributions. The matter was initially referred to Special Enquiry Branch for investigation but Revenue has since referred the cases in question to its Anti-Avoidance Unit which will handle such cases in future.

### ***Declaration of Dividend Income on Income Tax Returns***

While DWT is deducted at the standard rate from the proceeds of distributions received, a taxpayer has an Income Tax liability at the marginal rate. However, while the name and address of recipients must be shown, there is no requirement to record the Personal Public Service (PPS) No. of dividend recipients on DWT returns. Even in the absence of this common reference, it is still possible to perform a manual matching between DWT and Income Tax returns for individual cases but an overall systematic check on the return of dividends for Income Tax, possibly through the selection and sampling of high value cases, is not feasible.

Revenue stated that, at the time the DWT legislation was enacted, it was considered that imposing a requirement on registrars of quoted companies and qualifying intermediaries to obtain the PPS numbers was a disproportionate compliance burden which could interfere with the efficient workings of the stock market. Revenue said that a recent report recommended undertaking a study to establish the benefits accruing and costs associated with the quoting of third party reference numbers on all forms, including the DWT form. The results of this study will inform the debate prior to requesting any legislative changes to implement the quoting of such PPS Nos. Revenue also stated that a prototype system for better matching and risk profiling of dividend recipients has been developed and will be made available shortly to Tax Districts.

A sample of 50 recipients of dividend income to the value of €1.6m was extracted by my staff from DWT returns and matched with individual Income Tax returns with the following results:

- 33 returned the dividend
- 5 returned an amount less than the dividend paid on DWT return
- a PPS No. could not be traced in 4 cases
- 2 did not submit an Income Tax return
- in 6 cases the submitted Income Tax returns were not traced by Revenue; a computer check has established that the relevant Income Tax returns have been processed in 5 cases, assessments have issued and that each has returned dividend income. The remaining case is under enquire by the tax district.

Internal Audit found that, of 17 Income Tax returns examined, 5 individuals had not returned their dividend. Revised returns and tax payments were subsequently received from 3 individuals. A further case, while not returned by a minors' trustee, was returned on the minors' returns. The final case was resolved by a repayment of the DWT.

### **Conclusions**

One of the lessons from the DIRT investigations was that, even in a self-assessment system, it would be inadvisable to rely totally on self-declarations by companies, or any other clients of the tax system. There are clear indications both from the findings of this audit and from the Internal Audit report that compliance by companies with the DWT scheme is not being monitored by Revenue in a systematic way.

The DWT Section is now becoming more proactive, for example by launching a programme of checking of recipients' agents. It is likely that this process will be accelerated by the Internal Audit report. Nevertheless, up to recently, DWT was less than fully established in the tax system, with the level of compliance unclear. It is considered that further improvement in this situation would be achieved with actions on two fronts:

- setting DWT compliance targets and implementing a clear strategy to achieve them, and
- putting structures in place to facilitate full exchange of data with other areas of Revenue.

Part of the administration of DWT is delegated to companies, to Authorised Withholding Agents and to Qualifying Intermediaries. While this makes a substantial contribution to the efficient operation of the scheme, Revenue should formally consider the risks inherent in a delegated approach. An appropriate programme of monitoring of this aspect of the scheme should then be implemented which is commensurate with the level of risk and the efficient utilisation of resources.

In response to the report, Revenue has stated that since the introduction of the scheme, much of the emphasis was on legislative, customer and information technology development issues. As priority was now switching away from those issues, greater emphasis and resources were being assigned to scheme compliance issues. Revenue has indicated that actions now under way or proposed include:

- 14 reviews are currently in progress under a programme for reviewing and checking the activities of paying companies and intermediaries. It is envisaged that there will be a significant expansion in this aspect of work in the future
- since September 2001, DWT is in the Integrated Taxation Processing system and, since May 2002, returns and payments can be filed through the Revenue On-line System. A comprehensive DWT database containing details of DWT payments and related shareholder information has been developed and is available to DWT section and is being rolled out to tax districts
- DWT Section intend to compile, on an ongoing basis, a register of companies with a potential DWT liability. Previous filers will be recorded and any who have not made a return in the previous 18 months will be contacted
- as part of the compilation of a DWT register, former Advanced Corporation Tax filers will be cross checked against DWT filers, and the position of all companies who have not made DWT returns will be checked
- electronic transfer of data from the Corporation Tax returns to DWT Section
- Corporation Tax filers who had a tax liability greater than €125,000 and who did not make a DWT return will be identified, and the accounts submitted to tax districts in these cases will be inspected.

#### 4.10 Forecasting of Tax Receipts

Under Article 28 of Bunreacht na hÉireann, a White Paper setting out Estimates of Receipts and Expenditure for the coming year is presented to Dáil Éireann prior to the annual Budget statement of the Minister for Finance. The estimated tax receipts in this statement are subsequently adjusted to take account of Budget changes, and the resulting 'Post-Budget Estimate' becomes the tax collection target for the coming year, and the main funding basis for the expenditure side of the Budget statement. While the final estimates of tax receipts are decided and formally presented by the Department of Finance, and while the estimates at all stages are prepared on the basis of economic forecasts from the Department, Revenue plays a major advisory role through the preparation of estimates of tax receipts and costing of options and proposals. Tax receipts are reported through the monthly Exchequer Statement, the annual Finance Accounts and my Annual Report (which differs from the other sources in showing the actual net receipts as opposed to the amounts paid into the Exchequer).

**Table 13 - Variation between Forecast Tax Receipts and Exchequer Outturn 2001**

Tax Head	2001 Post-Budget Estimate	2001 Outturn	Actual Shortfall	Shortfall As Percentage of Estimate
	€m	€m	€m	%
Customs	230	165	-65	-28
Excise	4,774	4,050	-724	-15
Capital Taxes	1,196	1,051	-145	-12



Stamp Duty	1,276	1,227	-49	-4
Income Tax	9,879	9,347	-532*	-5
Corporation Tax	4,302	4,156	-146	-3
VAT	8,792	7,920	-872	-10
Other	12	9	-3	
<b>Total</b>	<b>30,461</b>	<b>27,925</b>	<b>-2,536</b>	<b>-8</b>

\* includes PAYE shortfall of €762m

The considerable variances which occurred in 2001 between the final forecast of tax receipts for that year and the actual amounts collected for each tax head and paid into the Exchequer are detailed in Table 13. The overall outturn for 2001 was 8% less than predicted, and there were notable shortfalls in VAT, Income Tax and Excise. The outturn for Excise for 2001 was €213m lower than the 2000 total in a year when the preliminary estimate for GDP economic growth was just under 6%.

In the current year, the end-March 2002 Exchequer returns noted that year on year tax receipts were 2.8% lower in the first quarter of 2002 than for the equivalent period in 2001, as compared with a predicted increase of 8.6% for all of 2002 over 2001. Internal Revenue statistics for 2002 Income Tax for the period from 1 January to 31 May 2002, which are analysed in Table 14, indicate a shortfall of €295m (7.7%) over expected receipts in the period. The cumulative shortfall in PAYE, which is the major component of the Income Tax total, was €182m (5.8%).

**Table 14 - Income Tax: Projected and Actual Receipts to end May 2002**

	<b>Projected*</b> <b>to end May 2002</b>	<b>Actual Receipts**</b> <b>To end May 2002</b>	<b>Shortfall</b>
	€m	€m	€m
Income Tax (PAYE)	3,126	2,944	182
Income Tax (Non-PAYE)	695	582	113
Income Tax (Total)	3,821	3,526	295

\* For management information purposes, the Post-Budget Estimate for each tax head for the year is apportioned by Revenue over each of the months on the basis of the established payment patterns for that tax head.

\*\* Internal Revenue collection figures are not directly comparable with Exchequer lodgments.

Having regard to the serious implications for the economy of inaccurate revenue forecasting, I asked the Accounting Officer

- whether specific analysis has been undertaken with a view to establishing the factors which have given rise to the 2001 shortfalls in VAT (€872m), Capital Taxes (€145m) and Excise (€724m) and, if so, the results of such analysis
- the reasons for the continuing trend of shortfalls in the PAYE take, and if these shortfalls are mirrored in the PRSI take for 2001 and 2002 to date.

In addition, I sought the observations of the Accounting Officer as to the extent to which the recent variances in revenue collected as against that forecast, and in particular those outlined above, are indicative of

- a weakness in Revenue forecast data, calculations or methodology
- a weakness in Department of Finance forecast data, calculations or methodology, or
- a reduction in the efficiency and effectiveness of revenue collection.

I also invited the observations of the Accounting Officer at the Department of Finance.

Since I received the observations of the Accounting Officers the shortfall between projected and actual

income tax receipts has grown further as shown in Table 15.

**Table 15 - Income Tax: Projected and Actual Receipt to end August 2002**

	Projected to end August 2002	Actual Receipts To end August 2002	Shortfall
	€m	€m	€m
Income Tax (PAYE)	4,929	4,566	363
Income Tax (Non-PAYE)	863	729	134
<b>Income Tax (Total)</b>	<b>5,792</b>	<b>5,295</b>	<b>497</b>

## Revenue Response

In response the Accounting Officer of Revenue pointed out that the role of Revenue in forecasting tax revenue receipts was a supporting one to the work of the Department of Finance. He stated that each year Revenue was formally asked by the Department of Finance for preliminary forecasts of tax revenue. The forecasts for some taxes such as PAYE, VAT, Capital Gains Tax, Customs, and the VRT element of Excise Duties were normally derived by Revenue from applying the percentage growth rate projected by the Department for certain macro-economic indicators to the expected tax outturn of the preceding year. Appropriate specific macro-economic indicators were not available for other taxes such as Corporation Tax, Income Tax (non-PAYE) and Excise (other than VRT) and forecasts for these were based on alternative growth indicators derived from local or other sources. While the specific macro-economic indicator used for VAT, namely Personal Consumer expenditure, could also be used as a basis for forecasting Excise, other than VRT, it was considered much less appropriate because the Excise base was significantly narrower than VAT. Accordingly the prevailing method for forecasting Excise was by way of a trend-based analysis of the yields from the various dutiable commodities over a number of years. The forecast figures thus provided by Revenue were taken into account by the Department of Finance in their deliberative process leading up to publication of the Pre-Budget forecasts (the "White Paper" Estimates) and the Post-Budget forecasts. The latter reflected the projected impact of Budget changes on the economy as well as on tax revenues.

### *Specific Analysis*

As regards specific analysis, the Accounting Officer informed me that in 2001 the collection performances of all taxes were monitored as usual on a monthly basis and that the forecasts were continually revised where appropriate until year end. A number of special enquiries were also undertaken during the year into the collection performances of VAT, Excise and PAYE which were significantly under-performing against Budget forecast.

With regard to the factors giving rise to the shortfalls in VAT, Capital Taxes and Excise the Accounting Officer stated that, of the total shortfall of €872m for VAT against Budget target, VAT on Imports accounted for €233m with the main causes of the undershoot being a significant drop-off in imports of motor vehicles, fuels and computer parts from outside the EU. While falling significantly short of Budget forecast, the yield in 2001 from VAT Internal grew by over 8% compared with the outturn for 2000. That was a marked fall in the growth rate of 18% achieved in the year 2000 over 1999. Revenue was satisfied that the reasons for the fall in the rate of growth in 2001 was directly related to the level of activity in the economy reflecting a general slowdown in consumption, exacerbated by the Foot and Mouth crisis and influenced in the last quarter by the attacks in the USA on 11 September. Because of the general fall in growth rate throughout 2001, it was not possible to place monetary values on each of these effects.

The Accounting Officer said that Capital Taxes were more difficult to forecast than other taxes generally because of their nature. Capital Gains Tax and Capital Acquisitions Tax were driven by events (mainly

disposals of assets), and were not as closely related to general economic activity as VAT or Excise. Of the total shortfall of €145m for all Capital Taxes against Budget target, Capital Gains Tax accounted for €113m. He said that firm reasons for that shortfall were not available but that, while an element of it could have been attributed to some slowdown in the economy in early 2001, it may also have been an indication that the release of pent up investment funds which generated the acquisition of further capital assets in the years following the reduction of the Capital Gains Tax rate to 20% in the 1998 Budget had slowed down. The shortfall of €32m in yield from Capital Acquisitions Tax was accounted for principally by a reduction in the yield from Inheritance Tax.

The Accounting Officer also stated that receipts from Excise were down on target for all excisable commodities. An examination of the net receipt in 2001 indicated the following breakdown of the €724m shortfall as identified at commodity level in Table 16:

**Table 16 - Excise: Analysis of 2001 Shortfall by Commodity**

Commodity	Shortfall (€m)	Commodity	Shortfall (€m)
Beer	63	Tobacco	188
Spirits	57	Light Oils	66
Wine	14	Other Oils	56
Cider & Perry	3	VRT	276

The total of these figures emerges at €1m less than the total shown in Table 14 because of rounding in the constituent items.

While collection performance in general reflected a fall in consumer spending on excisable items, he added that some specific factors were also identifiable such as:

- the provision in the 2001 Finance Act to abolish the end-year payment catch-up for alcohols was not included in the Budget arithmetic - the cash flow cost of this factor at end 2001 was estimated at €39m for Beer, €33m for Spirits and €16m for Wine
- the negative effects on yields arising from the Foot and Mouth crisis, particularly in the tobacco and oils sectors (these were down on target by €188 million and €122 million respectively)
- the yield from VRT was affected by a drop of more than 66,000 new car registrations in 2001 compared with 2000 and with a 2001 Budget forecast which was based on an assumed “no change” year-on-year in the volume of car registrations (this was down on target by €276m).

The Accounting Officer informed me that the shortfalls in PAYE in 2001 and in 2002 to date were the subject of ongoing research. Various aspects of Income Tax forecasting and collection, particularly in regard to PAYE, were analysed on an ongoing basis by a technical group chaired by the Department of Finance and involving personnel from Finance, Revenue, Social and Family Affairs and the Central Bank. He indicated that some specific contributory factors towards the €762m shortfall in 2001 PAYE collection as against Budget forecast had been identified, such as an over-estimate of €67m in the 2000 outturn base when compiling the 2001 forecast, an underestimate by €203m in the cost of the 2001 Budget package in 2001 and the cost of the Special Savings Incentive Scheme, which was introduced in the 2001 Finance Act and not factored into the Budget arithmetic. The cost of the Savings Scheme in terms of PAYE tax forgone in 2001 was €55m but when that was offset by a reduction in the expected cost of Medical Insurance relief under the new Tax Relief at Source system the net cost was reduced to €27m. In the wider economy, the lower than expected growth in GDP in 2001 allied to a reduced growth in employment numbers (lower at 49,000 than the 60,000 estimated at Budget time) would also have affected income tax.

The Accounting Officer considered that most taxes were performing reasonably well in 2002 apart from Income Tax. As regards the negative collection performance by PAYE in 2002 to date, Revenue was confident that part of the variation was explained by issues of timing which could not be accurately predicted

because of changing the tax year to the calendar year, and the difficulty of predicting exactly when budget changes would take effect. Also, the monthly targets for PAYE collection in 2002 were broadly based on the monthly collection pattern over the 12 months of 2001. PAYE collection in 2001 was at its strongest in the first half of the year and using this as a basis for the corresponding target in 2002 may have had the effect of front-loading the target for the first half of 2002 to an unrealistic level. The 2002 forecast for PAYE was based on a projected growth over 2001 allied to an expected recovery in the economy. If this recovery takes place, PAYE receipts should recover over the remainder of the year in line with the general pattern in the economy.

While Revenue did not monitor PRSI collection against monthly targets, the Accounting Officer understood that PRSI outturn had come in ahead of targets set by the Department of Social and Family Affairs in 2001 and to date in 2002. As regards the comparison between PRSI and PAYE collection performance there were certain systemic differences in the way PAYE and PRSI operate which can account for different effects in the respective outturns. For example, if earnings were reduced (short-time working, less overtime or job loss) there was no refund of PRSI contributions already paid but there could be tax repayments due. Furthermore, any reduction in earned income for individuals who had already exceeded the PRSI ceiling (€35,870 in 2001 and €38,740 in 2002) had no effect on the individual's contribution to PRSI but it would reduce the tax yield.

### ***Quality of Revenue Forecast Data, Calculations and Methodology***

The Accounting Officer informed me that the forecasting of tax revenue could not be an exact science as it was necessarily based on a number of key factors which were themselves forecasts. Tax revenue forecasts were usually based on a combination of forecast yield figures for the outgoing year (or for a future year, where forecasts for more than one year were being prepared) and on projected annual trends in economic growth. Frequently it was also necessary to factor in an estimated carryover cost or yield impact of significant budgetary changes, which impact had itself been compiled on the basis of historical data projected forward using extensions of the same projected trends in economic growth. In summary, forecasts of tax revenue would be as sound or as weak as the variables on which the process depended and that while every effort was made to have reliable basic data there would also be scope for some margin of error. Tax receipts performance in 2002 was being kept under review by the technical group.

### ***Possibility of Reduction in Efficiency and Effectiveness of Revenue Collection***

The Accounting Officer assured me that Revenue had examined in considerable detail the question of whether the extensive shortfalls were indicative of a reduction in the efficiency and effectiveness of collection, and was fully satisfied that there was no such reduction. The pattern of return and payment compliance for PAYE is shown in Table 17. Similar patterns pertained to VAT and other taxes.

**Table 17 - PAYE Compliance: Number of Employers paying PAYE on time**

Year	Number of monthly returns issued to employers	Number of monthly returns/payments on time	*Percentage compliance
1999	1,373,321	702,069	51.12%
2000	1,534,609	805,224	52.47%
2001	1,676,013	896,963	53.52%
2002 (to end-May)	718,785	404,992	**56.34%

\* The figures shown related to returns received within the due month. For example in 2002 by the end of the following month, 74% of all cases which had a known liability had made returns.

\*\*Although percentage compliance appeared to be low (56% in 2002 to end May) the proportion of monthly liability represented was much higher as it included the big cases and most medium sized payers.

Another measure of compliance was the level of arrears outstanding. He stated that there had been no exceptional rise in the level of arrears at December 2001. Arrears of €351m at that date represented a rise of 1.4% over December 2000, while collection rose by 2.7%. The final possible area in which there might have

been a reduction in compliance would be the area of underdeclaration and, in particular, whether the extent of undeclared employment increased in 2001. Any significant rise would be visible as a divergence in trend between the number of employees and employments reported to Revenue, and the general employment statistics. The Quarterly Labour Force Estimates for 2001 showed a year-on-year rise in the number of persons in full-time employment of 3.6% at the start of 2001, falling to 2.5% in the final Quarter. Returns received by Revenue in 2002 (in respect of 2001) showed an increase of 7% in the number of employments. While the significance of the larger increase in the number of employments was under investigation, Revenue was satisfied that there had been no widespread failure to declare employment. In conclusion, the Accounting Officer indicated that Revenue was fully satisfied that taxpayer compliance and Revenue efficiency had been maintained or enhanced since the beginning of 2001, and had made no contribution to the relatively poor performance of that year.

## **Response of Department of Finance**

### ***Economic Growth Lower than Anticipated***

In response to my request for observations, the Accounting Officer at the Department of Finance informed me that the shortfall in tax receipts was mainly due to overall economic growth being lower than expected on Budget day. Budget 2001 was predicated on a forecast of 8.8% for real GDP growth for the year 2001. That economic forecast was based on the latest national and international data available to the Department at that time and was broadly in line with what was widely believed as the likely growth scenario for the economy. The EU Commission Autumn 2000 forecasts expected real GDP growth of the order of 8.25%, the OECD and the Central Bank about 8% and market commentators' forecasts did not differ substantially from that level.

However, the outturn for economic growth was much lower than anticipated, with the preliminary estimate for GDP growth for 2001 at 5.9%. That lower growth was due to the outbreak of Foot and Mouth disease and related restrictions which also affected the pattern of growth (depressing cross-border and domestic spending on petrol, for example), as well as to the effect of the slowdown in the United States economy, exacerbated by the events of 11 September. That lower economic growth and changed patterns of personal consumption generated less tax receipts than expected, especially in the areas of Income Tax, Value Added Tax and Excise. In the case of excise receipts €88 million of the shortfall was due to an oversight, as the cost of deferment of the payment of excise duty on alcohol was not included in the Budget arithmetic.

### ***Tax Forecasting Methodology***

The Accounting Officer stated that the tax forecasting methodology used by the Department was set out in a report published by the Department in 1999. Basically, the process of forecasting involves collaboration between the Revenue Commissioners and the Department. In the run up to the Budget, the Revenue Commissioners provide estimates of likely tax revenue for the Budget year in question and the subsequent years. In doing so, the Revenue Commissioners rely in certain cases (e.g. income tax) on macroeconomic forecasts supplied by the Department of Finance on earnings, employment and consumption growth. In assessing the overall tax revenue forecast the methodology involves relating that forecast to expected economic growth in nominal terms. The relationship is of the order of 1:1 with variation to be expected, depending on whether growth is mainly domestic or externally driven, and on whether budget tax measures are less or more generous. If growth is mainly externally driven or tax concessions are more substantial then when nominal GDP increased by 1%, taxes would be expected to increase by less than that.

In the period 1996 to 2000 the ratio (or elasticity) of the increase in taxes compared to nominal GDP averaged close to 1:1 i.e. every 1% increase in actual GDP resulted in an increase in taxes of 1%. The 2001 Budget elasticity based on the 2000 forecast out-turn for taxes was 0.84 and 0.91 based on the actual 2000 outturn. The forecast for the increase in tax revenue in the Budget for 2001 was 11.6%, which became 12.5%

as the tax out-turn for 2000 came in €216m below the Budget forecast.

### ***Factors which Impacted on Income Tax Yield in 2001***

The Accounting Officer considered that at the time of the Budget for 2001 the forecast increase in tax revenue appeared reasonable and consistent with previous experience. He said, however, that the experience in 2001 had turned out much differently. One relevant factor had been the decrease in average hours worked in the economy in 2001, which in the industrial and construction sector amounted to one hour or more. That in itself could have been expected to have a significant effect on the rate of growth in income tax receipts.

In the case of income tax, the forecast tax yield was further affected by an upward revision in the cost of the Income Tax reductions in the Budget for 2001 on the basis of subsequently available data. The annual update of the tax base completed in summer 2001 led to an upward revision in the cost of the tax package which had been announced in the Budget. The revised tax base reflected the fact that economic growth in 2000 was higher than expected in late 1999, leading to higher employment and incomes in 2000. For example, the Department of Finance forecast for GDP and GNP in the 2000 Economic Review and Outlook was 10.3% and 8.3% respectively. The eventual figures published by the CSO for the year 2000 were 11.5% and 10.4%. The revised tax base reflected the fact that the estimated number of PAYE income earners on Revenue's books in 2001 increased by 76,000 compared with the corresponding figure used in the Budget for 2001. The tax base revised on the basis of these figures caused the cost of the 2001 tax package to be revised upwards by €300 million in a full year (€200 million in 2001, i.e. April to December tax year).

A further consideration was that tax system changes (e.g. the widening of the spouse tax band, broadening of tax relief on pension contributions) could affect behavioural patterns, with the potential to affect tax yield in ways in which there was no "history" on which to ground estimates of impact. He said that substantial changes in the tax regime of recent years may have generated effects of that kind, the impact of which would only be determinable as later years' tax data became available for analysis.

### ***Factors Impacting on Tax Yield in 2002***

In relation to 2002, the Accounting Officer reported that tax receipts to end-June were down 7.1% compared with receipts during the same period last year. However, he pointed out that the due date for June Corporation Tax had fallen on Friday 28 June, and that payments of the order of €1 billion had been received on 1 July in relation to the June period. An adjustment for that timing factor left tax revenue at roughly the same level as 2001.

He indicated that tax receipts for the first half of 2002 had been affected by a number of factors:

- The tax reductions in the budget for 2001 came into effect on 6 April 2001 and there was a carry over cost of the full year effect of those reductions in the first four months of 2002. That cost was estimated at €540m in the first four months of 2001.
- The start of the income tax year had been brought back from 6 April to 1 January. As a result, the tax reductions announced in the Budget for 2002 were payable with effect from 1 January 2002, and not from 6 April as was the case in 2001. The additional cost of that was approximately €120m.
- Refunds of income tax of €170m were made in respect of Special Savings Investment Accounts (SSIAs) in the first six months of 2002 compared with €2m in the same period in 2001. SSIAs were introduced with effect from 1 May 2001.

Income tax receipts at the end of June 2002 were €630m below receipts at the end of June 2001, whereas the total of the foregoing measures was €830 million. He pointed out that this year's yield was also affected by

increases in income over the levels obtaining in 2001 – the size of which was conjectural at this point.

He also noted that the economy was growing at a much faster rate in the first half of 2001 compared to what was expected for the first half of 2002. That was a result of the sharp slowdown in growth in the economy in the second half of 2001. The Central Statistics Office provisional estimates showed that the economy grew on an annual basis by 12% in the first quarter of 2001 but had slowed to zero by the fourth quarter of 2001. As a result, income tax receipts in the first six months of 2001 grew at a rate of almost 9% but fell by over 3% in the second half of 2001 compared to the year 2000. It would have been expected on that basis alone that income tax receipts in the first half of 2002 would have performed poorly in comparison to the first six months of 2001.

Looking forward to the second half of the year, the Department of Finance expected revenue to improve in response to a stronger economy. Nevertheless, it was expected that tax revenue for the year as a whole would be of the order of €500 million less than the Budget estimate, due for the most part to lower than expected economic growth and higher than expected SSIA costs given the unexpectedly large number of accounts opened as the “window” came to a close in April 2002.

### ***In Depth Examination of the Income Tax Base***

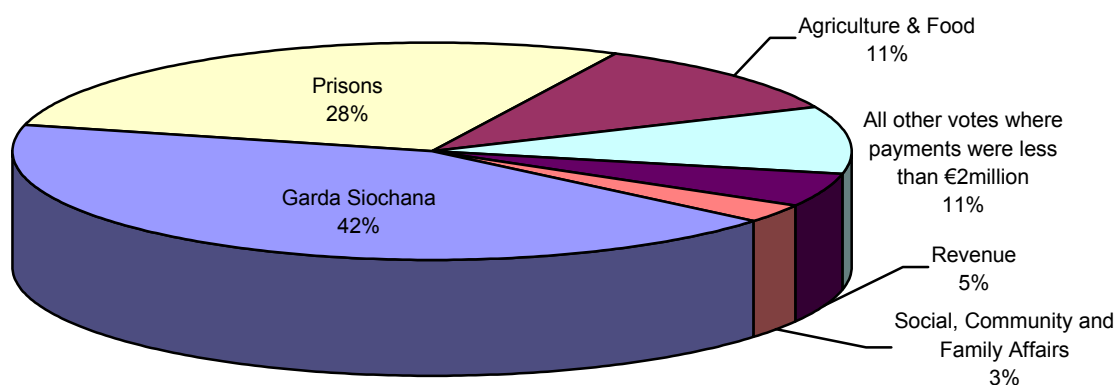
The Accounting Officer informed me that the Department, in consultation with Revenue, is examining the income tax base in more depth based on the up-dating of the income tax file to 1999-2000, supplemented by estimates based on latest PAYE returns to end-2001 and an examination of trends in PAYE payments by a sample of larger employers. That examination was ongoing. It was considered that the major changes made to the tax system in the 1999 and 2000 Budgets in relation to tax credits and widening of the standard rate band may have affected the income tax base and the projections that could be made on that basis. Furthermore, the elasticity of tax receipts at a time when GDP was increasing was likely to differ significantly from that experienced when economic growth slowed sharply, especially if overtime, bonuses or commissions were being cut as growth slows. Such income was more likely to be taxed at the higher rate. He stated that the issue was one of concern to the Department and was being carefully examined and monitored closely in preparation for the next Budget in December.

## Chapter 5 - Garda Síochána and Prisons

### 5.1 Overtime

Public financial procedures as prescribed by the Department of Finance require that each Appropriation Account shows the total amount charged to the Account in respect of overtime and extra attendance, the numbers who were paid overtime and the highest individual overtime payment. Total expenditure on overtime and extra attendance amounted to almost €200 million in 2001. Figure 1 shows the key areas in which this expenditure occurred.

**Figure 1 - Overtime in 2001**



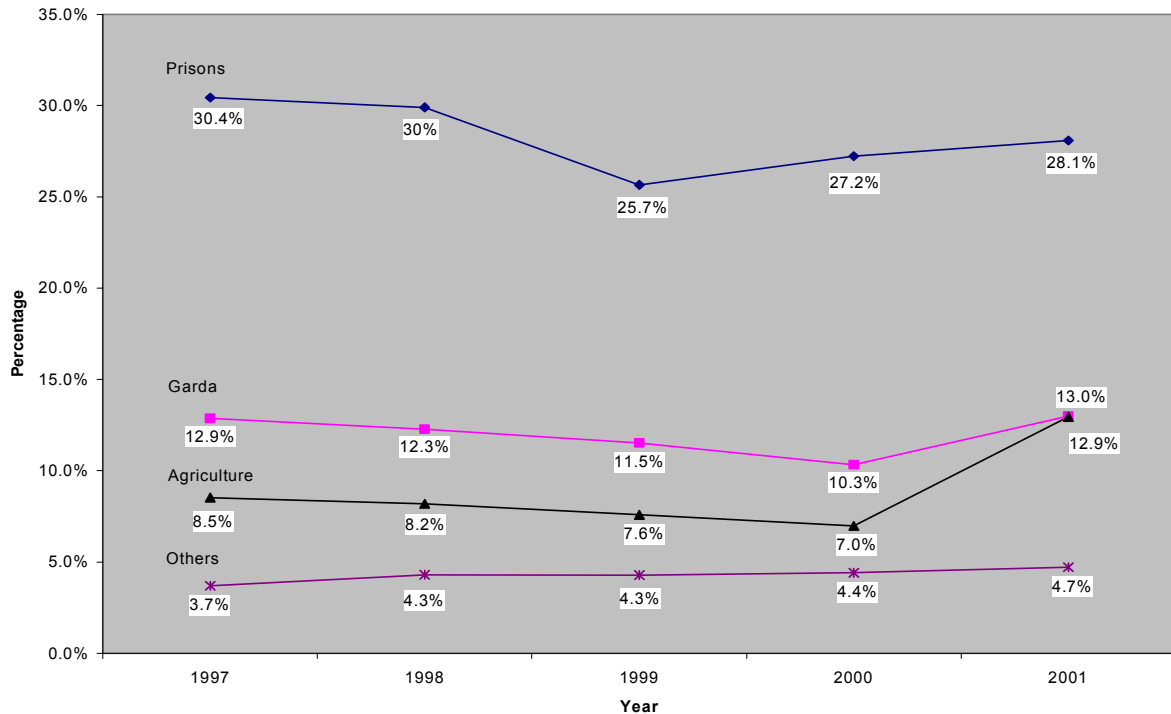
As can be seen the Garda Síochána and the Prison Service continue to dominate expenditure on overtime. Both votes saw their overtime payments increase by approximately 50% from 1997 when compared with 2001, as shown in Table 18 below.

**Table 18 - Overtime from 1997 to 2001**

Vote	1997 Millions €	1998 Millions €	1999 Millions €	2000 Millions €	2001 Millions €	5 Year Total Millions €
Garda Síochána	56.2	63.9	61.6	60.3	83.7	325.7
Prisons	36.6	43.0	38.6	49.1	55.4	222.7
Agriculture & Food	9.6	9.9	9.7	9.6	21.9	60.7
Revenue	5.9	5.7	7.3	8.0	9.9	36.8
Social & Family Affairs	3.5	3.6	4.2	5.1	5.4	21.8
All Others	13.0	14.5	15.1	17.3	22.1	82.0
<b>Total</b>	<b>124.8</b>	<b>140.6</b>	<b>136.5</b>	<b>149.4</b>	<b>198.4</b>	<b>749.7</b>

Figure 2 shows the trend in overtime as a percentage of pay between 1997 and 2001. Overtime in the Prison Service represents a significantly higher percentage of pay than anywhere else in the public service and at 28.1% in 2001 has fallen only slightly from the level prevailing in 1997. The next highest level of overtime as a percentage of pay occurs in the Garda Vote. The trend shown here initially declined from 12.9% in 1997 to 10.3% in 2000 before climbing again to 13% in 2001.



**Figure 2 - Development of Overtime as % of Pay 1997 - 2001**

Note: The exceptional increase in overtime in the Department of Agriculture in 2001 is entirely attributable to the Foot and Mouth crisis.

Given that the top two votes, namely the Garda Síochána and the Prison Service account for over 70% of overtime expenditure I asked the Accounting Officer for the Garda Síochána and the Prison Service:

- What, if any, steps have been taken since 1997 to contain expenditure on overtime in both Votes?
- What measures are in place to ensure that resources expended on overtime are used economically and efficiently?
- Had there been any change in the day-to-day management of overtime since 1997 and if so what results have been achieved?
- Had any research been undertaken since 1997 into the underlying reasons for the levels of overtime worked in both organisations and if so what conclusions were reached and what actions taken?

### Garda Overtime

In his reply the Accounting Officer said that the level of overtime as a percentage of salaries on the Garda Vote was decreasing up to last year and prior to the introduction of Foot and Mouth policing operations that were undertaken in 2001 in response to the threat of Foot and Mouth Disease.

The Foot and Mouth operation was resource-intensive and involved at times the redeployment of some 700 Gardaí. The measures required made very substantial demands upon Garda resources and resulted in an increase in overtime. The fact that there would be a substantial increase in overtime was made known to both the Department of Finance and the Government.

The cost of overtime hours directly worked on the Foot and Mouth campaign between February and December 2001 amounted to some €19.07 million. Approval for this additional expenditure was sought in due course from Dáil Éireann in the context of a Supplementary Estimate for the Garda Vote for 2001. If the cost of the Foot and Mouth operation is excluded from the 2001 figure for overtime, the resulting figure of €64.68 million represents 10 % of salaries.

As regards steps taken to contain overtime expenditure and research to establish the underlying causes of the level of overtime worked the Accounting Officer indicated that a Report on Garda Overtime was produced in 1998 as part of the Strategic Management Initiative process of reviews of expenditure programmes in the public service and copies were provided to the Public Accounts Committee.

The Report reviewed in detail Garda overtime expenditure and provided an analysis of that expenditure. The nature of Garda work and the requirement that the Garda authorities respond at short notice to crisis situations means that overtime expenditure is sometimes unavoidable for the purposes of effective policing. Overtime allows the Garda Síochána flexibility in responding to circumstances which require personnel resources over and above those available from Gardaí on rostered duty.

The Report clearly established that a level of overtime is both necessary and desirable because of the nature of police operations. No general areas were identified in the Report where expenditure was not justified or where immediate and substantial savings could be made. A number of structural changes were identified where legislative changes could reduce overtime particularly in the area of court attendance and the implementation of these changes is being pursued.

The Report also made recommendations to enhance the management and monitoring of overtime expenditure. On a strategic level, overtime expenditure is monitored on a monthly basis by the Department and as appropriate discussed with the Garda authorities. Subject to the provisions in the Estimates, there is full delegated sanction to the Garda Síochána for incurring overtime expenditure and they are responsible for all operational decisions regarding overtime.

Prior to January 2001, overtime budgets were allocated to Chief Superintendents. As it was considered that Chief Superintendents were too close to operational exigencies to exercise control, the overtime budgets are now allocated to Assistant Commissioners. Once an Assistant Commissioner has been notified of the budget allocation, it is his responsibility to allocate the Regional budget to the Chief Superintendents who in turn allocate it to their Districts. The Finance Directorate is informed of the budget profiles so that performance can be monitored on an ongoing basis and prepares a Regional Overtime Summary Report.

This report is sent to the Commissioner and both Deputy Commissioners. If there are significant deviations from the profiled budget, this is highlighted in the Director of Finance's report. The Director of Finance will write to the relevant Assistant Commissioner seeking an explanation for the deviation and also requesting that corrective action be taken. The Deputy Commissioner in Strategic and Resource Management may also write to the Assistant Commissioner instructing that corrective action be taken.

If a Region is persistently exceeding its budget allocation, the Deputy Commissioner will require the relevant Assistant Commissioner to account for his stewardship and prepare a detailed report as to what corrective action will be taken to bring overtime consumption into line with budget. If necessary, the Garda Commissioner will convene a meeting with the Assistant Commissioners and Chief Superintendents to discuss the imperative that overtime usage must be contained within budget. To-date in 2002 the Commissioner has convened two such meetings.

These revised reporting arrangements and accountability roles represent something of a cultural shift. While it may have taken some time for the revised arrangements to become established, the Accounting Officer stated that the new procedures are working very well and significant improvements have been made to control overtime usage.

## **Prison Overtime**

In his reply the Accounting Officer said that apart from 1999 when the percentage dropped to 25.7% prison overtime as a percentage of total pay was in the range 27% to 30%. The percentage dropped in 1999 because additional staff were recruited in advance of opening the new Cloverhill Prison in 2000. The extra staff were distributed to prisons around the Prison Service until Cloverhill opened. This had the effect of reducing the overtime cost as these staff undertook tasks that would normally have been completed through the use of overtime.

The underlying causes of prison overtime are derived from the agreed and officially sanctioned rostering and detailing arrangements for prison officers, which date back many years. The issue is made more complex by the fact that these arrangements are the subject of formal detailed industrial relations agreements over the last 14 years with the staff side.

A factor that has to be borne in mind in relation to overtime working is the pressure which the Service is currently operating under and which continues through 2002. The volume of prisoners now being committed is higher than ever before. Over the last five years the prisoner population has increased from 2,191 to 3,177 an increase of 45%. More prisoners have a drug problem than in the past. Roughly 7 out of 10 committals now have a significant illegal drug history – most have a background of heroin addiction. Five new prisons have opened in the last five years and despite an accelerated recruitment campaign for Prison Officers there is a shortfall between the numbers recruited and the numbers required to operate these new prisons.

The Prisons Finance Directorate receives weekly analyses of overtime hours worked in each prison and summaries of these figures are sent to senior management. Explanations for variations in overtime levels are sought from the individual prisons. The figures show that the number of overtime hours worked increased by 186,753 hours in 2001 over 2000, an increase of 9.7%. However if new prisons are excluded the overtime hours worked in 2001 shows a slight decrease over 2000 and analysis of the total overtime hours worked in the Prison Service for the first six months of 2002 shows a slight decrease compared to the same period in 2001.

Prison Governors have been instructed by the Director General of the Prison Service to take all possible steps to control overtime and to ensure that resources spent on overtime are used efficiently and effectively. The fact that the staffing complement for prisons does not include provision for core operational activities such as escorting prisoners to court and hospitals and cover for annual and sick leave makes control of overtime difficult.

The Prison Service has noticed a trend over the last 18 months where staff are not always returning to undertake overtime. It appears to some extent that saturation point has been reached. In general younger staff are anxious to spend time with their families and other staff want to limit the overtime they undertake in order to improve their quality of life.

The Prison Service has long recognised that a strategic and structured approach to address the fundamental causes of overtime was required. As these issues affect the fundamental conditions of service for Prison

Officers, any change will require negotiation through the normal industrial relations machinery.

In August 1996, as a first step to resolve this problem once and for all, a Cost Review Group was established to examine the operating costs of the Prison Service. Its members were drawn from the public and private sector. The Group's Report was published in August 1997. The central finding of the Report was that there was no short-term solution to the high levels of overtime being worked in the Prison Service.

A team of senior Prison Service and Department officials carried out a detailed analysis of staffing arrangements at each prison between 1999 and 2001 in order to develop a blueprint for the operation of the Prison Service on a non-overtime basis. The team produced detailed reports for each institution and published a Global Report in February 2001, which summarises the teams extensive conclusions and recommendations in relation to the service wide staffing issues.

The individual reports identify substantial potential overtime savings to be achieved through, for example, renegotiation of staffing levels, eliminating unnecessary practices, restructuring of certain grades, rostering to eliminate in-built overtime, the rationalisation of store functions and escorts arrangements, tighter local management of attendance, empowerment of Governors generally to manage their prisons and full implementation of the already agreed Program for Competitiveness and Working, specifically contracting out of canteens, civilianisation of offices and automation of gates.

These findings and recommendations are the lynch pin to the next phase in the process of meeting prisons operational requirements without recourse to overtime attendance payments. The Prison Service considers that the prospect of a successful implementation of the process is greatly enhanced where staff representatives actively participate in planning how best implementation can be delivered.

The Prison Service is currently developing a detailed attendance and rostering system based on the detailed individual prison reports which will eliminate the use of overtime to operate the Prison Service. The Accounting Officer pointed out that the prison overtime situation is not unique to this country. Similar overtime cultures developed in neighbouring jurisdictions in recent times and were tackled in a strategic way similar to the process now being undertaken by the Prisons Service.

## Chapter 6 – Courts Service

### 6.1 The Administration of Bail

#### Background

The Gardaí bring persons arrested and charged with an offence before a District Court as soon as possible after arrest. The arresting Garda prepares a charge sheet for presentation to the court outlining the reasons the person is before it. This charge sheet becomes the court record of the progress of the case and as such will contain the record of court attendances, the judge's decisions on bail, individual charges, bench warrant issued for non-attendance and forfeiture and estreatment orders made. Figure 3 gives an overview of the key stages in the grant and subsequent administration of bail.

Where the judge decides, the person charged may be released from custody on bail on receipt of a guarantee that the person charged will appear for trial on a date determined by the Court.

One of the principal objectives of the bail system is to allow accused persons freedom to pursue their normal daily lives pending preparation of the State's case against them while imposing conditions that seek to ensure their subsequent attendance at trial. One of the conditions normally imposed requires the person charged (or one or more sureties) to promise to pay a monetary amount set by the Court should the accused person fail to appear at the date determined.

The Court has discretion as to whether to demand that some portion of the bail fixed be paid into Court before the person charged is released. In the period May 2000 to April 2002, Section 5 of the Bail Act, 1997 obliged the Court to impose a one-third cash payment requirement on persons charged. The provision was amended in May 2002 because it had resulted in a huge increase in the workload of the criminal courts not only for Court officials, but also for judges, An Garda Síochána and to some extent the Prison Service. Judges found themselves being obliged to impose bail amounts of less than €50, €10 or even €5 in 2001 in order to prevent massive numbers of remand prisoners.

Persons who are granted bail, or their sureties, make their promise to pay by entering into a Bail Bond in the District Court office.

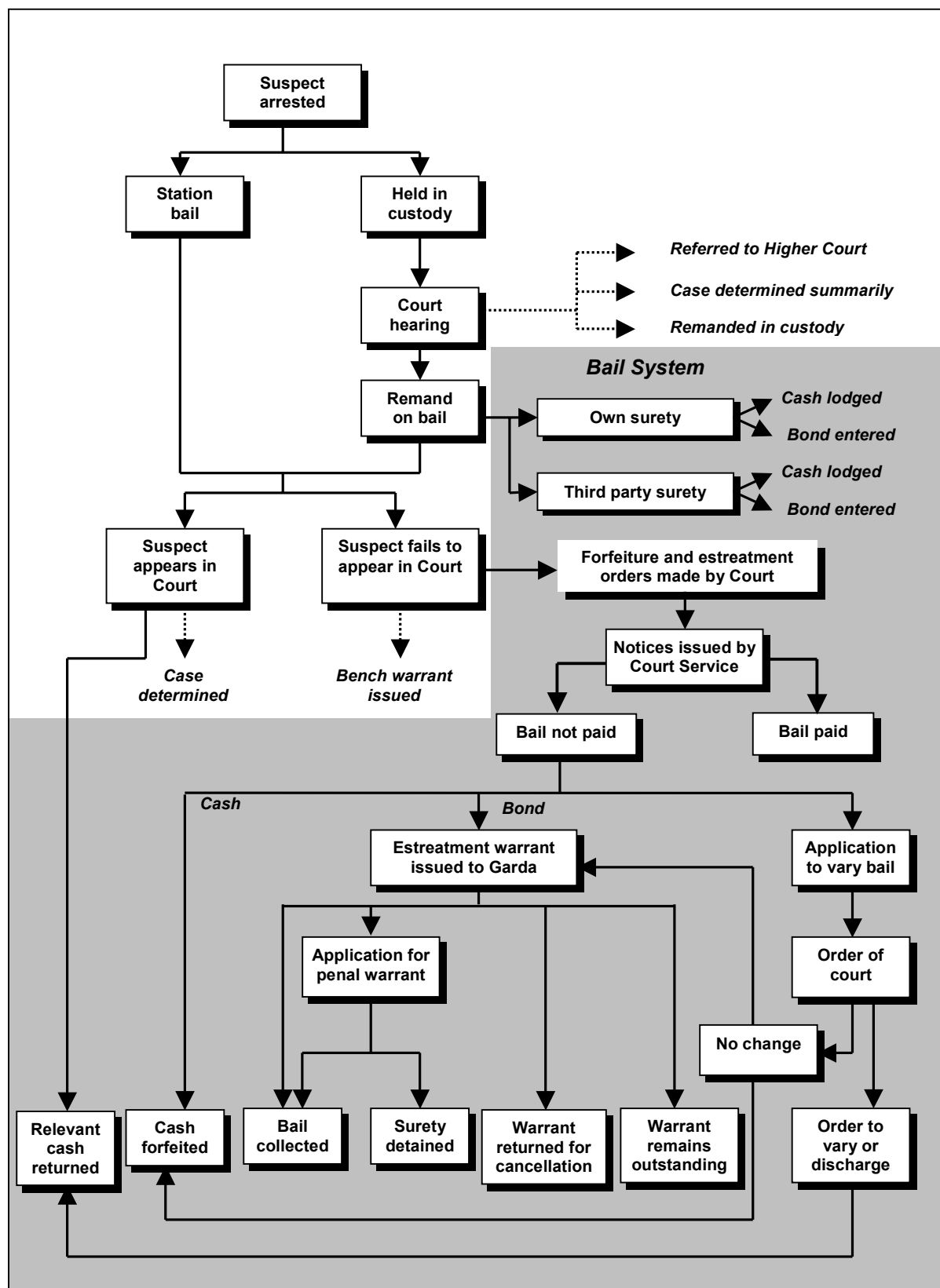
Where the person charged appears in Court in line with the Court's direction, any cash paid when bail was set will be refunded on discharge, held as continuing bail or transferred to another court where the case is moved to a higher jurisdiction.

If the person charged fails to appear as scheduled, the Court instructs the Gardaí<sup>2</sup> to arrest the person and bring him or her before the court at the earliest opportunity. At the same time, the Bail Act, 1997 requires the Court to order that any cash lodged under the terms of the bail is to be forfeit to the State and to estreat, i.e. collect, the remainder of the bail. Where the Court makes such an order, the Courts Service institutes proceedings to collect any balance of the bail not already paid over in cash.

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<sup>2</sup> By means of a bench warrant issued on the order of the Judge.

Figure 3 - Overview of the Bail System



All bail cases arise in the first instance in the District Courts. Serious cases are subsequently transferred to the local Circuit Court or to the Central Criminal Court. When this occurs, the cash bail lodgments associated with these cases are also forwarded to the relevant Court office.

## **Audit Objectives and Scope**

The principal objectives of the examination were to

- Examine the contribution of the bail system in enforcing attendance in court by persons charged in the Dublin Metropolitan District Courts (DMD) and the Dublin Circuit and Central Criminal Courts.
- Determine the extent to which the authorities enforce the monetary penalties arising from failure to attend court by persons charged.

Courts Service database records were sampled and analysed in cases where bench warrants had been issued and estreatment proceedings had been taken.

Due to limitations on the availability of data stored electronically, the examination confined itself generally to the two-year period 2000 to 2001, with some references outside this period where data was available. Records, statistics and information generally relating to prior years are not easily recoverable due to the manual nature of the process and because of the impracticality of retrieving information from earlier computer systems.

The examination included a review of material provided by the Garda Síochána at the Bridewell Dublin and the Garda Computer Centre, Templemore.

## **Audit Findings**

### ***The District Court***

#### ***Bail Bonds***

When a judge sets bail, the person charged, if he or she does not remain in custody, enters into a Bail Bond which in effect is a promise to pay the amount of bail set if he or she fails to attend court as directed by the judge. In addition to setting bail for the person charged, the judge may also require an independent surety or sureties to be provided. The value of bail entered into can be established by means of the Court Service's Criminal Case Tracking System which is in operation in most of the DMD. The Courts Service has determined that in 2001 18,121 Bail Bonds were entered into with a bail value of €4,433,880. Of these, 836 Bail Bonds (5% of the total) involved a surety with a value of €1,121,098 (25% of the total Bail Bond amount).<sup>3</sup>

Before accepting independent sureties as guarantors, the court requires them to provide evidence of ability to pay should that become necessary. It does not normally apply the same requirement to persons charged who are released on their own bail.

#### ***Bench Warrants***

If the person charged fails to attend the court at the appointed time a bench warrant for the arrest of the person is issued on the direction of the presiding judge. Since October 1999, the Courts Service's Criminal

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<sup>3</sup> Bail Bonds entered into in areas of the DMD which are not yet covered by this computer system are not readily available from the Courts Service and are not included in these figures.

## Courts Service

Case Tracking system maintains on computer a record of bench warrants issued for most of the DMD and Limerick regions. The issue of bench warrants for all other areas of the country is recorded manually and thus not readily available for statistical analysis.

In 2001 the Courts Service computer system recorded a total of 6,132 bench warrants issued. When account is taken of areas of the DMD not included in the computer system, this figure rises to 10,121. In the same year, 5,787 bench warrants were executed i.e. the person in respect of whom the bench warrant was issued was served with the warrant and brought before the relevant court by the Gardaí.

Bench warrants identified as executed by the Courts Service in 2001 do not necessarily all relate to warrants issued in that year. However, the Gardaí have, since August 1998, centralised the management of bench warrants received from the Courts Service and maintain an independent computer record of these (as an interim solution pending the introduction of a facility on the Garda PULSE system that will eventually interface with the Courts and Prison Services' computers). Therefore, in order to establish the trend in the ratio of bench warrants executed to those issued, it is useful to examine Garda statistics in this area.

**Table 19 - Garda Statistics of Bench Warrants Issued, Executed and Returned for Cancellation**

Year	Received	Executed	Returned for Cancellation	Cumulative Balance Unexecuted
1998 (from August to December)	2,106	1,747	17	342
1999	9,314	7,665	179	1,812
2000	8,476	6,046	124	4,188
2001	9,300	6,996	172	6,250

There are minor differences between the records of the Gardaí and the Courts Service both for bench warrants issued and executed but these can be reconciled.

While the figures shown in Table 19 only provide a snapshot of activity in each year they do give an insight into the capacity of the Gardaí to keep up with warrants issued. Over the three and a half years shown there has been an upward trend in the number of warrants remaining unexecuted. These figures take no account of warrants issued before the commencement of the Garda computerised monitoring system in August 1998 and may mask an inevitable carry forward of unexecuted warrants prior to that time.

The Garda Síochána point out that some 1750 outstanding warrants have since been executed or cancelled so far in 2002 demonstrating that eventually most warrants are dealt with. In practice, an execution rate of 100% is regarded as unattainable in the foreseeable future. This is due to the fact that a significant number of bench warrants are issued for individuals, including foreign nationals, who are believed to have left the jurisdiction. These are retained on the system and are not cancelled on that basis alone.

### *Pre 1999 cases outstanding*

Very limited statistical information is available from either the Courts Service or the Gardaí in respect of the execution of bench warrants prior to 1999. A recent exercise carried out by the Garda Síochána has identified as outstanding over 5,500 cases which arose between 1988 and 1998. The Courts have not disposed of these cases because in the majority of cases the original bench warrants cannot be traced and the Gardaí cannot therefore bring the charged person before the court. The Gardaí have identified 17 of 1200 cases outstanding for 1998 as relating to serious crime.



The Courts Service has provided the original court records for these 5,500 cases to the Gardaí. The amount of bail originally set for these cases has not been quantified, nor has the amount, if any, of cash bail forfeited been identified. It has also not been determined if the non-cash element of the bail involved has been estreated and pursued by the Gardaí for collection.

The Gardaí point out they have sought and received the directions of the Director of Public Prosecutions on how to proceed in respect of the 1998 outstanding cases.

### *Type of Offences*

The Courts Service computer system also records most of the offences involved where a bench warrant issues. While about 10% of the entries are not specific in relation to an offence, and cannot be analysed, the remaining records for 2000 and 2001 show, in Table 20, that certain types of offences were predominant.

**Table 20 - Most Common Offences where Persons Charged failed to attend Court (2000 and 2001)**

Offence	% of Total Offences
Larcenies	38
Assaults	23
Road and Road Traffic	9
Criminal Damage	7
Burglaries	7
Drug Related	3
Begging	3
Soliciting/ Loitering	3
Other Offences	7
<b>Total</b>	<b>100</b>

### *Forfeiture and Estreatment of Bail*

The Bail Act, 1997 provides that, where persons who have been admitted to bail, with or without sureties, and the court has issued a bench warrant for their arrest, the court shall order estreatment of the value of the Bail Bond and the forfeiture of any amount already paid into court by the person and their sureties on foot of this Bond.

Where a judge has ordered the issue of a bench warrant and the forfeiture and estreatment of bail under the 1997 Act, it is the responsibility of the Courts Service to issue a Notice of Forfeiture and Estreatment to the person charged and/or their sureties, giving 21 days for an application to the Court seeking discharge or variation of the order. A person charged or their surety may make payment during this time.

There were 5,044 forfeiture and estreatment notices issued in 2001, 4,398 of which are recorded on the Courts Service computer system with the balance issued manually. The Courts Service does not collate statistics on applications to judges against Court orders in relation to bail forfeiture and estreatment, and therefore it is not possible to state what effect such applications had on the amounts finally due in respect of these notices. However, in respect of the 4,398 notices recorded on the computer system with an estreatment value of €638,125 just under €20,000 was paid.

Where an application fails, or none is made, and the Court makes an order for estreatment, the Courts Service prepares and dispatches an estreatment warrant for recovery of the amount, or goods to the value of the

amount, not already subject to forfeiture in Court. The Courts Service issues the estreatment warrant to the Gardaí for enforcement.

Of 10,121 bench warrants issued in 2001, some 1,810 are estimated not to have involved a cash bail amount. However, in 3,267 of the remaining 8,311 cases there was a failure to pursue estreatment. The Courts Service states that the reason estreatment was not pursued in a proportion of these cases is that orders for forfeiture and estreatment had not always been made by the Courts when bench warrants were issued. For example, some 650 bench warrants were issued in the Children's Court in 2001 where no estreatment orders were made by the Court although cash amounts had been lodged. The Courts Service is unable to establish the precise number of cases in which estreatment orders had not been made by the Courts.

Computerised records of bail forfeited and estreated bail collected are available from the Courts Service since October 2000. They show that €116,285 bail was forfeited in 2001.

The low monetary value of forfeitures is largely due to the low levels of bail set as a result of the operation of mandatory cash bail following implementation, in May 2000, of the 1997 Act. In addition to the bail forfeited, 4,214 estreatment warrants to a value of €640,277 were issued to the Gardaí in 2001 while only €55,040 was collected.

### *Analysis of cases where estreatment should have occurred*

There is a considerable amount of bail which the Court and the Courts Service is failing to estreat. Moreover, where estreatment has been ordered enforcement success rates by the Gardaí are poor.

A sample audit test was carried out on 87 cases where bench warrants had been issued and where bail had been set in each case. The results showed that

- bail money had been collected on estreatment in 5 cases
- in one case where bail consisted of cash only there was no requirement to estreat
- no money was collected in 30 cases (although the Court Services has stated that estreatment warrants had been issued to the Gardaí in these cases)
- in 2 cases the Gardaí had returned the warrants stating that there were no amounts to be collected
- in the remaining 49 cases the Courts Service was unable to definitively match these cases with records on its estreatment warrant computer system and consequently was unable to state whether or not the amounts had been collected or goods to the value of these amounts seized.

The Courts Service acknowledges that there may have been a small amount of "slippage" insofar as the Court Service was concerned in the processing of estreatment orders. The main reason for this is where a case is re-entered in court very shortly after the issue of the bench warrant, for example, if the accused is arrested within a very short space of time. This would mean that the charge sheet was required back in Court before the Notice of Forfeiture and Estreatment had been issued. Also there was some confusion originally about whether Station Bail cases<sup>4</sup> were covered by the forfeit and estreatment provisions of the Bail Act but it has since been clarified that they are.

The Courts Service points out that the commencement of the Bail Act imposed considerable extra work on court offices and on the District Court office in Dublin in particular in that large numbers of cash amounts

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<sup>4</sup> Granted in some cases by the Gardaí prior to attendance in Court.

had to be receipted, processed and accounted for. The estreatment procedures introduced by the Act also imposed considerable extra work on court offices in that a Judge would now order estreatment when issuing a bench warrant whereas previously estreatment could only take place after an application on notice to the Court. This extra work had to be undertaken within the existing staff complement.

### *Estreatment Warrants returned for Cancellation*

The Gardaí return estreatment warrants for cancellation to the Fines Office for a variety of reasons. Under a long-standing practice, approved by a former President of the District Court, the Fines Office of the Courts Service cancels these estreatment warrants on their return.

An analysis of a sample of returned estreatment warrants shows that the overwhelming reason for the lack of success in enforcing them is that the persons charged have no goods or assets which may be levied, as shown in Table 21.

**Table 21 - Estreatment Warrants returned by Gardaí to the Courts Service for Cancellation (A two-week period in May 2002)<sup>5</sup>**

Reasons	Number
There are no goods or assets which can be levied	149
The Gardaí are unable to locate the person charged	39
The estreated amount has already been paid	8
The person charged is currently serving a custodial sentence	6
The person charged has no assets and is homeless	4
The person charged is deceased	4
The Gardaí suggest conversion of the estreatment warrant to a penal warrant	4
The Gardaí state that there is no such address as stated in the warrant	3
The person charged is residing outside the jurisdiction	3
The case is under appeal	1
<b>Total number of estreatment warrants returned in the period</b>	<b>221</b>

It can be seen from Table 21 that in 4 of the 221 estreatment warrants returned for cancellation, the Gardaí suggested conversion to a penal warrant. In the case of a penal warrant, the Gardaí are required to lodge the person named in it in prison in default of payment of the bail amount stipulated in the warrant. A judge may convert estreatment warrants into penal warrants on application by a Garda Superintendent, whereupon the estreatment warrant is cancelled. However, while the Gardaí have a right to ask for such conversions, there is no evidence that they are doing so to any significant extent.

### *The Dublin Circuit and Central Criminal Courts*

In the period 1997 to 2001 inclusive, the District Court transmitted a total of €2,645,000 bail lodgments to the Dublin Circuit and Central Criminal Courts in respect of cases transferred.

During the same period, bench warrants were issued by the Dublin Circuit Criminal Court to the Gardaí for action for non-compliance with bail conditions as shown in Table 22.

<sup>5</sup> Source: Courts Service.

**Table 22 – Bench Warrants issued for non-compliance with bail conditions.**

Year	Number of Warrants
1997	196
1998	262
1999	264
2000	357
2001	242
<b>Total</b>	<b>1,321</b>

The Courts Service does not collate information on the numbers of these warrants executed and outstanding nor does it maintain a centralised log of bail set or lodged for cases referred to it. Therefore, it is unable to state how much bail money was involved in those cases where bench warrants issued.

In the Central Criminal Court very few bench warrants are required and there are at present 3 outstanding cases where bench warrants were issued. Forfeiture and estreatment orders were made in these cases, which are still under review by that Court.

The Dublin Circuit Criminal Court made no orders for forfeiture or estreatment for non-compliance with bail conditions during the period 1997 to 2001.

The Courts Service points out that the making of forfeiture and estreatment orders is a judicial matter and that it has no function other than to implement the decisions of the judges.

## Conclusions

- There is a dearth of management information on the effectiveness of the bail system.
- While a revised system for the distribution and control of bench warrants issued by the District Court, introduced in August 1998 by the Gardaí, has led to an improvement in the overall long term execution rate, statistics for the years 2000 and 2001 show that unexecuted bench warrants are still increasing at an annual rate of about a quarter of the number issued.
- The existence of 5,500 pre-1999 undischarged cases in the system reflects historical lapses in co-ordination between the two services.
- Courts Service procedures for putting the estreatment process in train need to be improved.
- Estreatment warrant enforcement is poor - where estreatment warrants have been issued less than 10% of the amount collectable is recovered.
- There is a need to try to establish a charged person's means before the amount of bail is set. Failure to do so inevitably results in wasted Garda Síochána time in trying to enforce estreatment warrants where there is little or nothing to estreat.
- The enforcement of estreatment warrants should be prioritised by reference to monetary value and collectability. There may be a case for dispensing with estreatment altogether where the amount involved is not material.
- In the Dublin Circuit and Central Criminal Courts no order for forfeiture or estreatment of bail moneys has been made in the five year period 1997 – 2001 although 1,321 bench warrants have been issued during the same period for non-appearance in those Courts.

## Observations of the Courts Service

The system of bail reflects the principle that persons should not be deprived of their liberty except when justice requires it. The best way to ensure that the system operates satisfactorily is to make sure that defendants realise that if they do not appear in court a warrant for their arrest will be promptly issued and executed. In that regard very significant improvements have been made in the time taken to issue bench warrants and also in the execution rate of bench warrants in the last number of years. This progress has only been possible because of the close cooperation between the Courts Service and the Garda Síochána. The time for this process has been reduced from 16 weeks in late 1999 to 2 weeks in 2002.

Computerisation in court offices when the new Service was established 2½ years ago was almost non-existent. Offices such as the Dublin District and Circuit Courts had to cope with very large volumes of data and case processing manually. Considerable progress has been and continues to be made in computerising court offices.

The following actions have been taken in relation to the administration of bail:

- *Management Information.* While the Criminal Case Tracking System does not deal with the estreatment process, it deals with the issue of bench warrants and whether they have been executed or not. The Criminal Case Tracking System will be implemented in all District Court offices and it is hoped to have this programme completed in 2003. In addition an Interim Case Tracking system is being introduced in the Dublin Circuit Criminal Court this year. This system will be extended to all Provincial Circuit Court Offices later this year and during early 2003. Enhancement of the Criminal Case Tracking System, requested by staff of the Dublin Metropolitan District Court, is under consideration. However, the future of the remaining sections of the Bail Act needs to be ascertained before incurring significant system re-development costs.
- *Estreatment Warrants.* The introduction of the Bail Act caused some difficulties. However steps are being taken to ensure as far as is possible that where an estreatment order is made, that the required notice and warrant will issue, if necessary. Also unexecuted estreatment warrants are being increasingly returned to the Garda Síochána, referring to the option of applying for a penal warrant. It is a matter for the Gardaí to decide if they will apply to the judge for an order allowing imprisonment for default in estreatment cases.
- There is a difficulty in establishing the means of charged persons in the context of the volume of cases dealt with in any one day in the Dublin District Courts or indeed in provincial District Courts. On a typical day the Dublin District Courts deal with more than 1,000 cases, of which 750-800 are criminal cases. Judges do seek to establish as best they can the means of sureties and in doing so rely heavily on evidence from the Gardaí.

## Observations of the Garda Síochána

The Garda Síochána made the following points in relation to their role in the administration of the bail system.

### *Bench Warrants*

The Gardaí draw attention to the difficulties experienced by members when executing bench warrants against persons whose identity cannot be established at the time. The inclusion of photographs/fingerprints or other particulars on the warrants would be a very helpful tool in this area and would help prevent delays. The attempts to execute bench warrants are manually recorded on the rear of a duplicate only and not reflected in

statistical terms on the system. This work is not inconsiderable in terms of effort.

### *Forfeiture and Estreatment of Bail*

The main difficulty in respect of the enforcement of estreatment warrants is that frequently there are no goods or assets that can be levied. In many cases it is evident that the individual is of little or no means at the time of the arrest. The Gardai agree that this matter should be taken into account in advance of the initial court hearing. The cost to An Garda Síochána of estreating warrants does not appear to represent value for money given that many warrants are issued for negligible sums of money. The engaging of debt collection agencies may be an alternative to the Gardai.

There is no clear procedure set out for the conversion of estreatment warrants to penal warrants, although such an avenue is subject to the decision of a judge. The initiation of any charges would be by nature discriminatory. The Gardai consider that perhaps estreatment warrants should incorporate a custodial sentence as a penalty and therefore operate as a penal warrant.

It is likely that the true percentage of unexecuted bench warrants in the long term is in the region of 10%. This does not indicate that attempts were not made to execute such warrants. The job of enforcing warrants is not made any easier by the lack of accessibility to information on computer systems of other State Bodies *e.g.* Department of Social and Family Affairs, Health Boards *etc.* and current lack of an interface with the Courts and Prison Service Systems.

The problem relating to the pre-1999 cases outstanding is being addressed and is more indicative of how both services lacked in the past as opposed to the present. The Courts Service has been informed of the procedures being adopted in dealing with these matters.

In many of these cases the original bench warrant may have been executed as both the Gardai and the Court Administration may not have brought many of the outstanding charge sheets before a Court due to ineffective practices and procedures, *i.e.* lack of system alerts, time delay in issuing and transmission of warrants *etc.*

## Chapter 7 - Department of Education and Science

### 7.1 Examinations Branch

#### Introduction

The Examinations Branch of the Department of Education and Science is responsible for administering all second level examinations in the State, including those leading to the award of Junior and Leaving Certificates. Other examinations catered for by the Branch include those covering Leaving Certificate Applied, Leaving Certificate Vocational Programme, National Council for Vocational Awards, Ceard Teastais, other teacher training and PLC courses (on an agency basis).

The Branch's work includes organising the setting and distribution of examination papers, co-ordinating the set-up of examination centres, organising marking, issuing results and dealing with queries and appeals.

Table 23 illustrates the diversity and scale of the work undertaken by the Branch for the main examinations in 2001. Students from some 800 post-primary schools sat the Junior and Leaving certificate examinations in over 4,400 centres. In all, over 2 million examination components (written, aural/oral, practical and project) were marked

**Table 23 - Throughput for the Main Examinations in 2001<sup>6</sup>**

	Junior Certificate	Leaving Certificate	Total
Examination Centres	-	-	4,415
Examination Superintendents Employed	-	-	4,434
Examiners Employed	-	-	5,682
Chief Examiners	44	62	106
Advising Examiners	197	197	394
Assistant Examiners	1,730	1,477	3,207
Oral Examiners	-	1,033	1,033
Practical/Project Examiners	-	-	942
Candidates	60,124	56,670	116,794
Subjects Examined	26	40*	66
Examination Papers	126	203	329
Grades Issued	582,765	390,371	973,136
Appeal Applications	1,712	8,974	10,686
Upgrades Granted	609	2,432	3,041

\*Includes 8 non curricular subjects

The successful operation of the Public Examination System cost some €27 million in 2001 after taking examination fee receipts of €6.4million into account.

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<sup>6</sup> Source: Examination Branch.

The direct costs incurred in running the 2001 examinations are summarised in Table 24.

**Table 24 - Costs of the 2001 examinations**

<b>Expenditure Table</b>	<b>€m</b>
Examinations Branch Payroll	4.3
Superintendent and Examiner Fees	16.2
Travel and Subsistence	8.2
Attendants Fees	0.8
Incidentals	4.1
<b>Total</b>	<b>33.6</b>

***Review of the Branch's operations***

In August 1995, following operational failures in that year's Leaving Certificate Art examination, the Departments of Finance and Education and Science agreed that the Centre for Management and Organisational Development (CMOD) of the Department of Finance and the Organisation Unit of the Department of Education and Science should undertake a joint review of the operations of the Examinations Branch "to make whatever recommendations are necessary for the future conduct of examinations".

At about the same time consultants were commissioned to carry out a specific review of the Arts Examination in 1995. The resultant report issued in 1996 recommended an extensive and comprehensive programme of change in this area. The joint Department of Education and Science/CMOD review (the Joint Review) took cognizance of the recommendations in this report.

The review team, which started its work in April 1996, concentrated on work practices, systems and procedures of the Branch. Areas covered were work volumes, the allocation of staff to different tasks, the incidence of overtime and the use of temporary staff by the Branch. It also covered the internal structure of the Branch, the level of supervision and the relationship between the Branch and the Inspectorate.

The Joint Review, published in January 1998, contained thirty-three recommendations, all of which were accepted by the Department. Implementation of the recommendations was delegated to the Branch. A further review of operational systems in the Department of Education and Science was carried out in 2000 - 2001 by a former Secretary of the Department of Finance, at the request of the Minister for Education and Science. This review concluded that the Examinations Branch was heavily overburdened and that, while the Branch has successfully drawn on new technology to enhance the efficiency and transparency of the system, additional benefits may arise from further outsourcing of specialist tasks including printing and logistics management. The review noted that there was on-going consideration by the Department of the desirability of achieving a better balance in the Junior Certificate by introducing elements of school certification rather than placing over-reliance on terminal written assessment, as at present. The review involved publication of a discussion paper and a countrywide consultation process. Such a rebalancing of the Junior Certificate to school certification would reduce the workload of the Branch.

The report by the former Secretary favoured a 'more radical solution', originally proposed in an earlier externally commissioned report, that a specialist body outside the Department manage the State Examinations. This suggestion has since been taken up by the Minister who announced in June 2001, that a State Examinations Commission with operational responsibility for the running of the examinations was being set up. This will bring the Department into line with best practice internationally. The new body is expected to come into being in October 2002.



## **Objectives and Scope of Audit**

The principal objectives of the examination were to establish the extent to which the Department has implemented the Joint Review Group's recommendations and the effects of their implementation on overtime and staffing levels and on general operation of the Branch.

The scope of the audit included a review of files, analysis of statistics and financial data and discussions with senior officials in the Examinations Branch.

## **Audit Findings**

### ***Implementation Status***

The Department did not set out a list of priorities or a timetable for their implementation. In the light of the 1995 Arts Examination crisis the Branch, under the direction of the Examinations Management Group, chose to implement those recommendations which impacted most on the public perception of the Branch, followed by technology measures to reduce the burden on the Branch. Issues impacting on industrial relations within the Branch have not yet been resolved.

While many of the recommendations have been wholly or partially implemented in the last four years some important areas have yet to be fully addressed which have the potential to improve the efficiency of the Branch.

These include cutting overtime, the development of a management information system and better organisation of workflows. These issues are considered in the following paragraphs.

### ***Overtime***

The review team considered that the level of overtime worked in the Branch was unacceptably high and that a radical revision of arrangements needed to be implemented, including increasing the number of permanent staff in the Branch.

The review team recommended an increase in staffing in the Branch, which it deemed was necessary to administer the examinations system. By February 2002, the total permanent staffing of the Branch was 90 officers compared with 73.5 in 1996. This staffing level is somewhat higher than the review team's recommendations and is attributed to the heavier workload since 1996.

Table 25 illustrates the trend in the overall level of overtime worked in the Branch from 1996 - 2001 in monetary and hourly terms. While this trend is currently downward, from a high in 1997, the total number of hours worked in the Branch in 2001 was 16% higher than in 1996. Costs incurred on overtime continue to be significant.

Table 25 - Salary and Overtime Costs 1996 - 2001<sup>7</sup>

Year	Salaries €'000	Overtime €'000	Overtime as % of basic salary	Normal hours	Overtime hours*	Overtime as % of normal hours
1996	1,864	536	29	157,244	47,120	30
1997	2,145	750	35	157,244	61,412	39
1998	2,383	907	38	189,335	59,823	32
1999	2,631	762	29	189,335	52,106	28
2000	2,952	769	26	189,335	55,290	29
2001	3,512	785	22	189,335	48,076	25

The review suggested that it should be feasible to eliminate the overtime worked between October and end-May if a concerted effort was made to substantially shift forward the cycle of preparation for the examinations. It also believed that a significant reduction in costs could be achieved by employing, in the period June to September each year, less expensive temporary clerical officers (TCOs) in place of overtime working by non-Examinations Branch permanent staff. There are insufficient volunteers from Examinations Branch willing to do overtime and, as a consequence, staff from other Departmental areas have to be deployed on overtime working. Industrial relations issues limit the TCO input to the Branch to 65 persons, working a maximum of 1,100 weeks during a 28 week period. Of the temporary staff deployed only porters may carry out paid overtime duties. These restrictions limit the Branch's scope to achieve payroll savings.

Since the Joint Review report the workload of the Branch has expanded through

- increases in the number of examinations
- candidates getting the right to view their original scripts
- internet access to results
- introduction of dial-up examination results.

Overtime has not been eliminated in the October to May period and there was no significant reduction of overtime in the June-September 2001 period. 127 officials were involved in the overtime roster over the period April to mid-October 2001. Twelve of these worked in excess of 600 hours in this period (an average weekly rate of 28 hours).

The Department is fully committed to reducing the Branch's reliance on overtime working and points to a substantial reduction (about 22%) in overtime hours between 1997 and 2001, despite a considerable increase in the Branch's workload.

It notes that the work cycle and tight timescales between holding examinations and providing results and the manual nature of some of the processes will always generate a need for overtime working. The use of shift-work for TCOs was tried in the Branch in the mid- 1980s but was found to be not satisfactory and was not pursued thereafter.

The Department considers that a formal agreement on the use of TCOs negotiated with the union representing the majority of staff in the Branch is a considerable achievement in view of the strong reservations of the union nationally. Recent legislative change and the establishment of the standalone State

<sup>7</sup> Source: Examinations Branch, and Personnel and Salaries Sections, Department of Education and Science.

Examinations Commission will provide new avenues for progressing the issue of greater flexibility with the union in question.

### ***General Operation of Branch***

Aspects of the recommendations which impact on the general operation of the Branch may be considered under the following headings.

#### *Management Information Systems*

The review team was critical of the effort required of the Branch to provide it with basic management information relating to workflows, volumes of work, allocation of staff and overtime payments. In what is essentially a production line operation, it considered that the information it had sought to conduct its review was crucial to knowing the state of progress of work being undertaken at any point in time. It was unaware of any norms that had been set for staff which would help indicate productivity levels and highlight incidences of unevenness of workloads or less than full productivity. The report called for improvements in the management information available to the management of the Branch.

The Department accepts that while it has considerable informal information systems available on workflows, allocation of staff, progress of operations etc. there is a need to formalise these systems. It is intended that this will form part of the State Examinations Commission's agenda.

#### *Examination stationery*

The review team recommended that examination materials such as graph and tracing paper, answer sheets etc. should be sent directly to examination centres from suppliers in quantities agreed by Examinations Branch. This recommendation has not been acted on because of industrial relations issues involving the work of temporary porters. However, the Department has created a new examinations aide function and authorised the deployment of this resource for up to 15 days per examination year in each school.

The Department states that the objective of this new function is to provide for a greater role for schools in examinations delivery, to decentralise the current system, and to provide opportunities for the Department to improve the efficiency of examinations delivery. The new model also opens up the possibility of greatly reducing the Department's vulnerability in the area of examination paper security and non co-operation by teachers in supervising the state examinations.

While the approval of the Department of Finance has been obtained for the expenditure involved, the impact of the additional expense in the overall context of the examination system has not been computed.

The Department decided to defer further action on the examination stationery issue until agreement was reached with the unions on bringing into effect those elements of the 2001 Report<sup>8</sup> approved by the government for implementation. Agreement has now been reached with the unions in that respect. It is now open to the State Examinations Commission to pursue outstanding issues relating to examination stationery. The introduction of the examination aide for schools was also a key dimension in ensuring school acceptance and positioning the external elements of the system for further internal change.

#### *Production of question papers*

The review group noted that as the Inspectorate saw no significant reasons to delay the setting of examination

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<sup>8</sup> Report prepared by a former Secretary of the Department of Finance.

papers, these should be prepared before 1 April of the year preceding an examination. This would allow finalisation by the Inspectorate by the following 1 September and enable all printing work on these to be completed before end January when the demands on the Branch are normally low.

The review team felt that if printing of examination papers was completed by this deadline, the Branch would have sufficient time to have these packed before the end of May, as part of its routine operations. Bottlenecks continue to occur at the point of moving papers from draft to proof stage at Inspectorate level and as a result bulk printing is not being completed by the end of January. The Branch strives to meet this time frame but sees the role of the Inspectorate as vital to achieving the objective.

According to the Department there has been a strong improvement in the flow of examination papers to the printing stage in the past few years and further improvement is anticipated with the establishment of the State Examinations Commission. This improvement is due, in the main, to the introduction of Chief Setters at Junior Certificate and Leaving Certificate Applied level and improved schedules by the Inspectorate in dealing with draft examination papers. The Commission will have a dedicated professional/assessment cadre. Currently inspectors' work as chief examiners is always competing with other Department wide pressures.

#### *Collating data on pupils' candidacy intentions*

The Examinations Branch needs to get accurate information on the number of pupils sitting the various subjects, the levels being taken by each and the examination centre at which the pupils will sit the examination. The Branch relies on the Department's Post Primary pupil Database for most of this information but must seek confirmation from schools of any changes in the choices made. In order to do this the Branch uses what are referred to as 'turnaround documents' to obtain updated information from schools and candidates.

The review team recommended that these documents be simplified for ease of input to the databases and that they be returned from the schools before Christmas for the Leaving Certificate and by the end of February for the Junior Certificate.

For the 2001 examinations, the Leaving Certificate documents were issued in the period 1 December 2000 to 29 January 2001 to be returned within 2 weeks, while the Junior Certificate documents were issued on 28 February to be returned by the 30 March 2001.

The Department states that the Branch is dependent on the flow of examination candidate information through the collection of pupil data by the Post Primary Pupil Database process. This process piggybacks on the capture of other data from schools each October. It is of the view that there would be considerable opposition at school level to a separate earlier process. Furthermore, Junior Certificate candidates have until the end of March to decide on the level at which they will sit their examinations. It has not been possible to achieve an earlier date because of the opposition of schools, teachers, parents and pupils, who argue that a decision on the level to be taken must be left until as late as possible.

This impairs the Branch's capacity to have a more even schedule and work in this area tends to be concentrated in the late April/May period.

### **Conclusions**

While the Department has been active in implementing the Joint Review Group's recommendations, some key actions still remain to be taken four years on.

Over and above the actions recommended by the Joint Review Group, the Department has taken positive steps in improving customer service in this area through the use of modern technologies in particular.

The continued absence of a proper management information system in the Branch is a hindrance to its efficient operation.

The proposed State Examinations Commission will need to have a clearly enunciated strategy for addressing the human resource issues which presently constrain the efficiency of the operation of the examination system.

### **Observations of the Department of Education and Science**

Following the difficulties with Leaving Certificate Art in 1995 the Department was dealing with a fluid and volatile examination landscape and chose to prioritise measures which were designed to re-build public confidence in the examination system. This approach was best suited to the unprecedented circumstances that applied at that time. On that basis new processes and measures were introduced which were not features of the examination process at the time of the review or identified by the review team as warranting implementation. Some of these flowed from reports produced by consultants in relation to the problems encountered in the 1995 Art examination and from a subsequent report by the same consultants on the Leaving Certificate Appeal system. Others were conceived by the Department itself. These included the introduction of bar-coding, alternative collection arrangements for examination material, introduction of examination appeal commissioners, automated dial-up and internet access to results and the mould breaking initiative to return marked scripts to candidates. All of these measures were implemented without additional permanent staff. Their introduction placed a heavy burden on an already heavily stretched IT resource in particular. The Examinations Branch has placed a heavy emphasis on finding IT driven solutions to problems because of the constant tension between the demands of the examination system and the availability of human resources. Some were part of an integrated approach to development. For example the huge logistical challenge posed in re-sorting scripts for return to candidates in August is enabled by use of sort codes to facilitate tracking of scripts from examination centres to the Department and to examiners throughout June and July. It is the firm view of the Department's top management that those measures with a quality assurance and customer service focus and supported by innovative IT solutions were a greater priority than some of the measures identified by the review that might have appeared to hold out the prospect of reducing the resources required. In essence, the Department chose to extract more and increase its services from within existing resources rather than maintain services with reduced resources.

The costs of the Public Examination System in Ireland are not out of line with those for broadly comparable examination systems, for example, those in Scotland and New Zealand. The review identified the human resources available to the Scottish Qualifications Authority (SQA) and compared activity volumes but its recommendation on permanent staffing fell well short of bringing the Examinations Branch to the level of permanent staffing in the SQA without any indication of how the gap that had been identified was to be otherwise covered. In the comparison with the Scottish model the review furthermore did not factor in the greater degree of devolution to schools in Scotland in relation to examination administration. For example, the entire process of appointing examination superintendents there is school based and does not usually involve teachers. Here because of the historical involvement of teachers in supervision, which they guard closely, the Department is forced into recruitment, appointment, assignment and payroll functions. Furthermore, in relation to the cost of running the examinations, it is worth pointing out that travel and subsistence costs account for €8.2m (25% approximately of overall budget) in 2001. These costs arise from supervisory duties performed by teachers who travel to out-of-town centres and the insistence on the almost exclusive use of an external visiting examiner model for oral and practical examinations. These are not

features of examination systems in other countries.

The public consultation process seeking a better balance in the Junior Certificate involved countrywide public meetings, at which teachers' union representatives, articulated with regularity, the continued opposition of the union to any movement to school certification.

While the Examinations Branch would have wished to be further advanced there has been some progress in the area of procedure manuals and form design. Procedural manuals have been compiled recently for the Leaving Certificate Applied operations. In the case of efficacy of forms the Branch has, for example, reviewed the use and effectiveness of its forms and, as a result, has developed generic forms for use on processes that are broadly similar. The agenda is moving swiftly along and the issues now are how, through the use of web enabled technologies, all interactions with schools, students and examiners can be improved. At time of writing for example candidates have been given Internet capacity to lodge appeal applications and to pay on-line by credit card.

## Chapter 8 – Department of Agriculture, Food and Rural Development

### 8.1 BSE Eradication Programme

#### Background

Bovine Spongiform Encephalopathy (BSE) is a progressive and invariably fatal degeneration of the central nervous system in cattle. It is one of a family of similar diseases, which occurs in humans and in animals known as Transmissible Spongiform Encephalopathies (TSEs) and includes scrapie in sheep and goats and Creutzfeldt-Jacob Disease (CJD) in humans. TSEs may be either infectious or genetically determined, and are also known as '*prion diseases*' as they involve the accumulation of abnormal prion protein in the brain, which is the main component of the agent believed to be responsible for the production and transmission of the disease.

BSE was recognised in the UK for the first time in 1985. After considering possible causative factors it emerged that exposure to the agent of a TSE in feed containing ruminant-derived meat and bone meal was the most likely source of the disease. As BSE was a newly recognised animal TSE and the possibility of transmission to humans was unknown, surveillance programmes for human TSEs were put in place in the UK and in the EU.

The first case of BSE discovered in Ireland was in 1989 and was regarded with the greatest seriousness by the Department of Agriculture, Food and Rural Development (the Department) because of the threat it might pose to the cattle industry. The disease was classified as a notifiable disease under the Diseases of Animals Act 1966 and the feeding of meat and bone meal to cattle was banned. However, the threat to the industry and consumers became much more serious in 1996 when British scientists found evidence that a new disease, variant CJD (vCJD) appeared to be caused by the same agent as was responsible for BSE in cattle. As a result of this, comprehensive additional national controls which provided extra safeguards to consumers of Irish beef at home and abroad were put in place in 1996 and 1997.

The estimated number of cattle in Ireland is 7.5 million, which are contained in approximately 138,000 herds. Beef production is predominantly grass-based, with cattle grazing pasture for most of the year. When housed during winter they are fed primarily on silage and/or hay, supplemented by food compounds, which up until 1990 could contain meat and bone meal. Approximately 1.5 million cattle are slaughtered each year, with nine out of every ten carcasses destined for export.

#### Objectives and Scope of Audit

The objectives of the audit were to:

- Determine the extent to which the Department has set objectives for managing and eradicating BSE
- Review and evaluate the strategies and procedures put in place to manage and operate the programme to control and/or eradicate the disease, and the degree to which the programme has achieved its objectives
- Ascertain the involvement of the Department in research into the origins and transmission of the disease and the threat it poses to human health

- Review the systems, controls and procedures in place in relation to expenditure incurred on the eradication programme, and ascertain the level and funding of such expenditure.

The strategies, policies and practices adopted by the Department in operating the programme were ascertained and their implementation reviewed during the course of the audit, including the objectives of the programme and the extent to which they are being achieved. A sample of case files was examined to verify that the established controls and procedures were observed. A rendering plant was visited to ascertain the controls in operation in relation to the production of meat and bone meal, and a number of Departmental and independent reports into the operation of the programme were also reviewed.

### Audit Findings

#### *Policies and Strategies*

The Department's 'Statement of Strategy 2001 – 2004' outlines nine high-level goals, one of which is to

*'Ensure the highest standards of food safety, animal health and welfare and plant health'.*

Eighteen strategies and appropriate performance indicators are set out to ensure the achievement of this goal, including the following which relate directly to BSE eradication:

**Table 26 - Strategies and Indicators relating to BSE Eradication**

Strategy	Performance Indicators
Monitor compliance by producers and processors with requirements on feedstuffs, to detect unacceptable practices, residues and other risks, including disease risks	Number of tests carried out, level of non-compliance/unacceptable level of residues and actions taken
Implement and review systems for preventing and dealing with Class A diseases	Organisation International des Epizooties (OIE) status Results of monitoring/surveillance programme
Implement the BSE monitoring and control programme with the aim of eliminating the disease	Incidence of BSE in Cattle herd

The Department indicated during my audit that the aim of the programme is to eliminate BSE from the national herd and that it expects that the number of cases will decline significantly over the next two to three years. However, it also stated that due to the duration of the incubation period and other uncertainties, some cases will continue to be identified beyond that.

#### *Disease Surveillance*

Up to June 2000, surveillance was of a passive nature, whereby farmers and veterinarians were obliged by law under the Diseases of Animals Act 1966, to disclose details to the Department of animals showing clinical signs of the disease. In the years prior to 2000 and the approval of the so called 'rapid tests' for BSE, animals showing clinical symptoms, were put down where BSE could not be ruled out, and their brains were subjected to laboratory examination. In 1996, this examination was extended to all adult animals in herds depopulated for BSE as well as the birth cohorts and progeny animals of the BSE infected animal. Birth cohorts are, broadly speaking, animals in or about the same age and in the same herd as the diseased animal at the time of birth.

In July 2000 a targeted active surveillance programme was put in place whereby a proportion of fallen animals (animals which die on farms) and a random sample of slaughtered cattle eligible for human consumption were



tested. In January 2001 testing was extended to cover all cattle over 30 months slaughtered for human consumption, all casualty animals over 24 months (animals which are injured on farms and are considered suitable for slaughter), and a random sample of fallen cattle over 24 months of age using a 'rapid test' approved by the Scientific Steering Committee of the European Commission. Since July 2001 all fallen cattle over 24 months are tested.

The testing regime in force is in accordance with directions issued by the EU on the disease. However the testing regime in place in Ireland since January 2001 exceeds EU requirements in so far as the Department tests all animals over 30 months of age in depopulated herds, birth cohorts and progeny animals.

The purpose of passive and active surveillance for the disease is to further protect consumers of Irish beef at home and abroad by preventing diseased animals getting into the food chain and to provide information on the incidence of the disease in the cattle herd to evaluate the effectiveness of the measures being taken to eradicate it.

Details of the numbers of cattle diagnosed as having the disease are shown in Table 27 below.

**Table 27 – BSE Cases in Ireland analysed by Method of Identification**

Year	Passive Surveillance		Active Surveillance		Testing of Animals over 30 months of age in herds depopulated for BSE, birth cohorts and progeny animals		Totals	
	Number Tested	Number Positive	Number Tested	Number Positive	Number Tested	Number Positive	Number Tested	Number Positive
1989	25	15	-	-	-	-	25	15
1990	46	14	-	-	-	-	46	14
1991	32	17	-	-	-	-	32	17
1992	30	18	-	-	-	-	30	18
1993	40	16	-	-	-	-	40	16
1994	36	19	-	-	-	-	36	19
1995	35	16	-	-	-	-	35	16
1996	134	73	-	-	3,230	1	3,364	74
1997	188	77	-	-	5,043	3	5,231	80
1998	176	79	-	-	2,557	4	2,733	83
1999	198	91	-	-	3,260	4	3,458	95
2000	354	138	1,747	7	3,305	4	5,406	149
2001	484	123	662,403	119	12,196	4	675,083	246
2002	322*	66	324,944**	143	10,992*	2	336,258	211
<b>Total</b>	<b>2,100</b>	<b>762</b>	<b>989,094</b>	<b>269</b>	<b>40,583</b>	<b>22</b>	<b>1,031,777</b>	<b>1,053</b>

\* to end July 2002

\*\* to 24 July 2002

A total of 1,053 (including 22 cohort animals) cases of BSE had been diagnosed up to the end of July 2002. As can be seen the numbers of cattle tested have been steadily increasing over the years as the level of testing was extended. The huge jump in the numbers tested in 2001 is due to the introduction of testing for all animals slaughtered for human consumption over 30 months under the targeted active surveillance programme. The greater number of animals tested in 2001 under the active surveillance programme, in particular the testing of all fallen stock over 24 months of age is responsible for the increase in the number of cases identified in 2001. The figures have continued to increase in the first six months of 2002 but again this is attributed by the Department to the extension of testing to all fallen cattle from 1 July 2001, and that when this factor is taken into account no significant increase in disease levels is indicated in 2002.

The sharp increase in the figures in 1996 is felt by the Department to be due in large part to a greater

awareness of the disease by farmers and veterinarians with the establishment in 1996 of a definite link between it and vCJD in humans and better reporting of suspect cases to the Department.

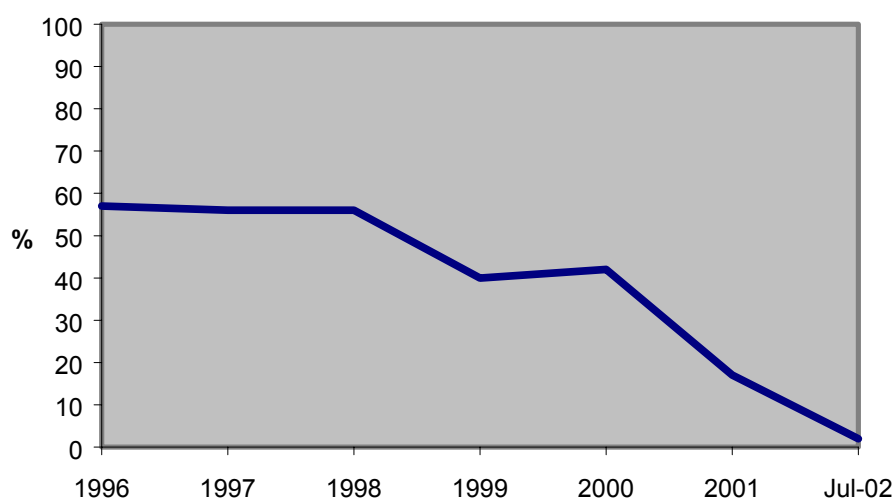
Table 28 shows the age profile of the animals, excluding the 22 cohort animals, diagnosed as having the disease in the years 1989 to 2001.

**Table 28 - Age Profile of Detected BSE Cases 1989 to 2001**

Age Category	Number	%
0 to 4 Years Old	70	9
5 Years Old	240	29
6 Years Old	292	35
7 Years Old	133	16
8 Years Old	46	6
9 Years Old	17	2
10 Years Old	14	2
> 10 Years Old	10	1
<b>Total</b>	<b>822</b>	<b>100</b>

The percentage of animals aged under 6 years detected as having the disease for the period 1996 to 2002 is shown in Figure 4.

**Figure 4 - % of BSE infected animals less than 6 years old**



The Department is confident that the trend shown in the graph indicates that the additional controls introduced in 1996/1997 have been effective in preventing the exposure to the infectious BSE agent of animals born after this time. However, as 64% of all BSE cases in Ireland are diagnosed in animals, which are 5 or 6 years of age at the time of diagnosis, the Department does not expect a significant drop in the number of cases identified until 2003 and 2004. However after this time, the Department is confident that as animals born prior to the introduction of the additional controls are slaughtered or die, the number of cases identified will decline towards zero.

The Department feels that its view is reinforced by the fact that to date only 2 cases have been diagnosed in animals born after 1996.

## **Control Measures**

Control measures introduced in Ireland can be broadly divided into two phases, those that preceded the announcement in March 1996 in the UK of a link between BSE in cattle and vCJD in humans and those which were subsequently introduced.

The main control measures put in place by the Department following the discovery of the disease are as follows:

- In 1989 BSE was declared to be a Class A disease under the Diseases of Animals Act, 1966. This imposed obligations on farmers and veterinarians to report animals showing symptoms of the disease and gave legal powers to the Department to restrict cattle movements and sales, and to slaughter animals and depopulate herds in order to contain the disease.
- The feeding of meat and bone meal (which is thought to be the source of the disease) to ruminant animals, either directly or through feedstuffs was banned in 1990. In January 2001, this ban was extended to all animals intended for human consumption.
- Meat and bone meal produced by the seven rendering plants operating in the State is processed to EU standards and securely stored pending disposal, (mostly by incineration) and since 1996 all mills involved in the manufacture of animal feedstuffs are under the supervision of full-time Agricultural Inspectors of the Department. Regular inspections are carried out and the feed is monitored and regularly tested by carrying out a microscopic examination for bone fragments.
- Under the Designated Bovine Offal Order, regulations prohibiting the utilisation of the brain, spinal cord and intestines of bovine animals for human consumption were introduced in early 1996, with the purpose of protecting consumer health on foot of the revelation that BSE and vCJD could be caused by the same agent. The animal tissues defined under the regulations were those in which, on the basis of animal transmission studies, the BSE agent could be found and the exclusion of those tissues is regarded as an essential consumer health protection measure.
- The Specified Risk Material (SRM) is isolated, permanently stained and removed directly to an approved plant, where it is rendered and the resultant products stored pending destruction by incineration.
- In 1989, the import of animals from the UK, other than animals for slaughter under 6 months, was banned, and in March 1996, under EU Regulations, the ban was extended to cover the importation of all cattle and bovine products from the UK. Procedures have been put in place to trace and slaughter animals imported prior to the prohibition. Such slaughtered animals are rendered and excluded from the human and animal food chains.
- In abattoirs and meat plants Departmental veterinary officers carry out visual checks on animals before slaughter for signs of diseases including BSE. These staff also inspect carcasses for SRM removal and the proper staining of such material.
- All cattle slaughtered over 30 months of age are screened for BSE using an EU approved test. Local abattoirs are precluded from slaughtering cattle over 30 months of age since January 2001 and the Food Safety Authority of Ireland (FSAI) carries out audits of the effectiveness of controls at abattoirs and retail outlets.

The following control measures are in place where animals are suspected of or confirmed as having the disease:

- Suspect animals are inspected by a veterinary inspector from the Local District Veterinary Office. Where BSE cannot be ruled out the suspect animal is put down, and a sample of brain tissue is sent for testing. The herd in question is immediately placed under official restriction.

- The carcase of the suspect animal is transported to a designated Department-owned cold storage plant, pending the test result. (Previously the carcasses, except for the head, were buried on the farms of the herdowners, but following public controversy this practice has ceased). Carcasses relating to animals which test negative for BSE are sent for rendering to a plant designated for SRM destruction. There is currently no method of disposal for the carcasses of animals which test positive for BSE, and hence such carcasses are currently being held in indefinite cold storage.
- The remaining animals in the herd are slaughtered and destroyed, and compensation paid to the farmer at full market value. The birth cohorts and progeny of the diseased animal are traced and are also destroyed. The slaughter of animals is carried out at a dedicated meat factory, and the carcasses are then rendered into meat and bone meal at a designated rendering plant. The meat and bone meal derived from the rendering of these carcasses is sent directly abroad for incineration and the tallow by-product is burnt on site in the rendering plant. The collection, transport, slaughter and destruction of the animals take place under the direct control of the local District Veterinary Office.
- When an animal is confirmed positive for BSE, a full epidemiological investigation is carried out on all farms on which the positive animal had been resident throughout its life. The epidemiological investigation includes a review of clinical history and feeding practices on the farm. In addition, birth cohorts and progeny of positive animals are traced, slaughtered at a designated plant and their carcasses are destroyed.
- The infected farm is disinfected with an approved disinfectant and left vacant for at least 30 days.
- In 1998 a computerised monitoring system was introduced which tracks the location of animals in the national herd. Animals presented for slaughter are validated against this system at slaughter and are only allowed into the food chain when they meet certain validation criteria. The system is also used to trace birth cohorts and progeny of BSE cases and to deter illegal imports of cattle.

The purpose of the control programme is to protect human health by maintaining high standards of food safety and animal health and welfare, to safeguard the economically important beef industry, and in the longer term to eradicate the disease from the national herd.

Penalties for breaches of BSE regulations involve fines and/or imprisonment on foot of criminal convictions and loss or reduction of compensation for culled herds. Three prosecutions have been taken by the Department on charges of intent to defraud the Minister for Agriculture, Food and Rural Development. One case resulted in a five year custodial sentence, while the other two resulted in two year sentences. Five cases have been prosecuted involving eighteen offences for breaches of meat and bone meal regulations. A custodial sentence of five months was imposed in one case while fines ranging from €635 to €1,587 were imposed in the others.

### **Herd Depopulation and Compensation for Slaughter of Animals**

When a BSE case is confirmed the herdowner is notified immediately and it is the policy of the Department to slaughter and destroy all of the animals in the affected herd within six weeks of the date of the notification. Birth cohorts of diseased animals are also traced, slaughtered and destroyed. Compensation is paid to the herdowners in respect of the slaughtered animals.

The amount of compensation is determined by Departmental Valuers based on an assessment of the current market value of the animals. Consequential losses, loss of income, out of pocket expenses etc., are not payable. If the herdowner does not agree with the valuation, an independent valuer is appointed to value the animals and this may be higher or lower than the Department's valuation. Should agreement still not be reached an arbitrator is appointed whose decision is binding on both the herdowner and the Department.

Again the arbitrator's valuation may be higher or lower than the Department's or that of the independent valuer.

During the course of the audit a sample of case files were reviewed. It was found that the procedures and controls put in place by the Department relating to testing, notification, herd depopulation, valuations and payment of compensation had been operated in accordance with the official procedures in the cases reviewed.

Between 1989 and 2001, almost €83 million has been paid to herdowners in respect of over 85,000 animals, slaughtered under the eradication programme. Table 29 details the outturn for the five years to 31 December 2001.

**Table 29 - Herd Depopulation and Compensation for slaughter of animals 1997 to 2001**

Year	No. of Animals in Herds	Amount of Compensation - €	Average cost per animal - €
1997	8,321	7,582,384	911
1998	8,481	6,984,843	824
1999	9,983	8,717,138	873
2000	14,748	13,528,596	917
2001	23,399	21,506,937	919

The Department carried out tests for BSE on all of the above animals over 30 months and Table 30 details the results. All of the BSE positive animals were cohorts of the original confirmed cases. The disease incidence while low was many times greater than the rate in the general cattle population.

**Table 30 - Results of Tests on Depopulated Herds and Cohorts**

Year	No. of Animals Tested	BSE Positives
1996	3,230	1
1997	5,043	3
1998	2,557	4
1999	3,260	4
2000	3,305	4
2001	12,053	4

## **Manufacture and Control of Meat and Bone Meal**

Meat and Bone Meal is manufactured from the waste product of animal carcasses and from the carcasses of animals considered unfit for human consumption. It was considered to be a good source of protein and for this reason used to be incorporated in animal feed.

From a very early stage following the discovery of BSE in cattle, animal feed containing meat and bone meal was suspected as being the most likely source of the disease. Following the completion of extensive research it is now almost universally accepted among the scientific and medical community that cattle acquire the disease mainly as a result of ingesting the infectious agent thought to be contained in meat and bone meal. Maternal transmission is also theoretically a possible method of transmission, but while there is some statistical support for low levels of maternal transmission, no plausible transmission mechanism has yet been identified. More particularly the infectious agent if present in the animal is thought to be present in the animal's nervous system which comprises mainly the brain and spinal column.

In December 2001 the Scientific Steering Committee (SSC), which advises the European Commission on BSE and other issues published its opinion on the origin of BSE. It stated that

*The origin and transmission routes for BSE mainly confirms the standing scientific consensus hypotheses of a prion of unknown origin as the agent for transmitting the disease via feed and cross-contamination of feed mainly, and via maternal transmission to a lesser extent. The SSC considers that not one of the alternative hypotheses about a third transmission route has so far been substantiated by scientific evidence'. (Source: EU Institutions press release 5 December 2001).*

It was recognised that in order to eradicate and prevent cattle acquiring the disease, it was essential to prevent the material thought to contain the infectious agent that causes BSE from being fed to cattle. This material was designated as Specified Risk Material (SRM) and includes mainly the spinal column and brain of all bovine carcasses.

SRM is converted into meat and bone meal at three designated rendering plants. This meat and bone meal is classified as high risk by the Department, is banned as an animal feed and must be disposed of by incineration.

Meat and bone meal is also manufactured from low risk material (non-SRM waste from all slaughtered animals) by seven rendering plants. While this is also banned as a farm animal feed it can be used under licence by pet food manufacturers. No licences have been issued to pet food manufacturers in Ireland. Instead they obtain their raw material, which is the low risk carcase material such as trimmings, directly from meat plants and abattoirs.

The following controls are in operation in relation to the manufacture storage and disposal of meat and bone meal:

- Rendering plants are licensed by the Department under the provisions of the Diseases of Animals (BSE) (No. 2) Order, 1996, and in accordance with EU Council Directive 90/677/EEC and EU Commission Decision 94/382/EC. Their manufacturing processes and operations are supervised on a full-time basis by staff of the Department and must operate to standards laid down by the EU with regard to such matters as temperature, pressure and time.
- The storage and movement of meat and bone meal are carried out under the direct supervision of the Department, and as part of the licensing system, rendering plants must keep records of sales for up to 8 years. Officers of the Department inspect these records on a regular basis.
- Sales can only be made to those holding a valid licence to purchase meat and bone meal under the 1996 BSE Order, (e.g. Pet Food Manufacturers and Home compounders) and meat and bone meal can only be moved from a rendering plant on foot of a movement permit approved by an officer of the Department.

The veterinary and inspectorate staff assigned to each meat and bone meal manufacturing plant are required to carry out their work in accordance with detailed, standard, written procedures. As part of this audit these procedures were reviewed and their application was observed on a test basis on-site with satisfactory results.

In 2000 and 2001 rendering plants produced 136,648 and 134,898 tonnes respectively of meat and bone meal and stocks of the material totalling 196,720 tonnes were held at 31 December 2001. A large proportion of the high stocks were due to the market support measure introduced by the EU in 2001, whereby farmers could opt to have their cattle slaughtered and the meat destroyed so that it would not come on to the market, while being guaranteed prices almost equal to full market value.

The current cost to the State of incinerating meat and bone meal abroad ranges from €250 to €320 per tonne. At the time of my audit the Department was negotiating a series of contracts for the disposal of 89,000

tonnes of meat and bone meal mainly by incineration in Germany. The estimated cost of disposing of the stocks of the material held in store at 31 December 2001 is €60m.

### **Animal Feedstuffs**

The ban on the feeding of meat and bone meal to ruminant animals in 1990 had a dramatic effect on the spread of the infection but did not fully address the potential for cross-contamination to ruminant animals, due in particular to the fact that many animal feed manufacturers did not have segregated manufacturing facilities for the production of cattle feed and pig and poultry feed.

Procedures were strengthened by the introduction of the 1996 Order which established a licensing system for the manufacture, purchase and use of meat and bone meal. In effect this confined the use of the material to licensed dedicated monogastric feedmills and specialised pig units where Department Inspectors could conduct checks on its use. These controls greatly reduced the possibility of cross-contamination of ruminant feedstuffs. For analogous reasons, similar provisions were introduced for poultry offal meal in 1997.

The legislation and procedures in Ireland allow no tolerance for the presence of bone fragments in ruminant feedstuffs, and are more stringent than that recommended by the EU Scientific Steering Committee which proposed that only feedstuffs containing a cross-contamination level exceeding 0.5% should be banned.

The EU, in late 2000, following the appearance of BSE in continental Europe, banned the feeding of processed animal proteins to any farmed animals kept for food production. Processed animal proteins cover virtually all products derived from mammals, poultry and fish that can be used in animal feedstuffs and also includes additives, pre-mixtures and compound feeds containing these products. The main products within this category in Ireland are meat and bone meal, poultry offal meal, feather meal and fish meal. Products not covered are animal fats and fish oils. Feedstuffs for pets and mink are excluded from the ban but horse feeds are included.

The EU Commission and the EU Food and Veterinary Office are responsible for prescribing and monitoring controls and standards in relation to animal feedstuffs imported into the EU. The importing of meat and bone meal into the EU is banned. According to the Department no compound feedstuffs are imported into Ireland other than from the UK. Imports from Third Countries are confined to ingredients such as corn gluten and citrus pulp which are subsequently compounded. The Department routinely samples all such imports to ensure that they do not contain any processed animal proteins.

In 2001, 1,231 feedstuff samples were taken. Ten samples tested positive for meat and bone meal, all of which were traced back to one consignment of maize gluten which was imported from the USA.

The Department points to the dramatic decrease in the frequency of positive bone samples since 1996 (from 24% to 0% of samples tested) and also to the improvement in the age profile of animals diagnosed as having BSE, as demonstrating the success of the controls introduced in 1996 in greatly reducing the risk of exposure of cattle to the infectious agent which is thought to cause BSE.

### **Cost of Eradication Programme**

Up to the end of 2001 the cumulative direct costs of the eradication programme amounted to nearly €127 million excluding the Department's administration costs. Table 31 shows an analysis of these costs for the

period 1997 to 2001.

As can be seen there was a substantial increase in costs in 2001 due to the vastly increased level of testing for the disease and increased compensation to farmers due to a greater rate of detection.

2001 was the first full year of a new regime of testing introduced under the Targeted Active Surveillance Programme. The testing of large numbers of carcasses became feasible because of the development of a number of new faster tests for BSE, which took as little as four hours to complete compared to the earlier traditional tests which take about fourteen days, and makes testing on carcasses in abattoirs feasible. The tests are carried out under contract for a fixed fee per test by two private laboratories. There is no recognised test to detect BSE in live animals.

**Table 31 – Direct Costs of BSE Eradication Programme 1989-2001**

	1989-96	1997	1998	1999	2000	2001	Total
	€'000	€'000	€'000	€'000	€'000	€'000	€'000
Compensation to Farmers and Herdowners	24,404	7,583	6,985	8,717	13,528	21,150	82,367
Haulage Costs	-	229	226	290	367	521	1,633
Factory Slaughter	-	820	623	729	1,116	1,771	5,059
Storage and Disposal of Meat and Bone Meal*	-	336	423	551	669	880	2,859
Rendering Costs*	-	1,827	1,316	1,774	2,289	3,300	10,506
Surveillance Programme (Testing)	-	-	-	-	396	23,295	23,691
Total	24,404	10,795	9,573	12,060	18,366	50,916	126,114
Less Costs recouped from EU							43,806
Net Cost to Exchequer							82,308

\*These costs refer to the rendering of and manufacture storage and disposal of meat and bone meal from animals slaughtered through having been in contact with BSE infected animals i.e. depopulated herds and cohorts

70% of compensation costs are recoupable from the EU. As at 31 December 2001 a total of €43.8m has been received from the EU, out of total compensation paid of €82.4m. In 2002 the EU agreed to fund a portion of the test fee costs incurred under the active surveillance programme. No contributions towards costs were sought or received from farmers or meat processors.

## Industry and Market Support Measures

As stated previously the significance of BSE lies in the threat it poses to human health and to the economically important beef processing industry, by undermining consumer confidence in beef products. The control measures put in place to contain and eradicate BSE have as their twin and complementary objectives the protection of human health and the sustenance of the domestic and foreign markets for Irish beef, in the face of the periodic crises posed by the emergence of the disease.

The discovery of the disease in Ireland led to closure or restricted access to many of the traditional markets for Irish beef particularly non-EU markets such as Egypt, Libya and Russia in the early 1990s.

Furthermore the discovery in Autumn 2000 of BSE in countries which had up to then claimed not to have had it, such as Spain and Germany, resulted in a collapse of consumer confidence and in a significant reduction in beef consumption across the EU during 2001. It led also to the closure of most major third country markets for EU beef generally. Ireland was particularly affected given its dependence on both EU and non-EU markets.

A range of measures was adopted in late 2000 at EU level to increase consumer protection, to restore



consumer confidence in beef and to provide support for the market. These included the banning of meat and bone meal as a farm animal feed, the testing for BSE of all cattle slaughtered over 30 months and fallen animals over 24 months, and the introduction of partly EU funded cattle destruction schemes (Purchase for Destruction and Special Purchase Schemes), whereby farmers could opt to have their cattle slaughtered and the meat destroyed so that it would not come on to the market, while being guaranteed prices almost equal to full market value. The cattle destruction schemes applied for 2001 only.

€312m was paid out to farmers under the cattle destruction schemes by the Department of which €208m was funded by the EU. The costs of slaughtering the animals and destroying the meat by rendering the carcasses and their conversion into meat and bone meal, are estimated to be about €76m. The cost of storing the meat and bone meal in 2001 was €0.9m resulting in total net scheme costs of about €182m to the Exchequer in 2001. Pending the destruction of the meat and bone meal ongoing storage costs will continue to arise.

Prior to its being banned as a farm animal feed, over 90% of meat and bone meal production was exported, mostly to non-EU countries. The imposition of EU temperature, pressure and time standards in relation to the rendering process in 1997 gave rise to significant extra costs to renderers in the form of expenditure on new equipment which could meet the more demanding standards. The difficulties being experienced by renderers were exacerbated by the banning of the feeding of meat and bone meal to all farm animals in January 2001 which transformed the product from having some commercial value to being a waste product having a negative economic value because of the cost of safely disposing of it.

To avert a possible collapse of some if not all rendering operations in the State which would in turn have been likely to bring the beef processing industry to a standstill, the Department supported by Government felt that intervention was essential. Accordingly, in late 2000 it entered into an agreement with renderers and beef processors whereby it agreed to underwrite a large portion of the renderers' costs, including the cost of rendering low risk carcase material such as trimmings and carcasses unfit for human consumption, as well as the costs of storage and disposal of the meat and bone meal. However the costs of rendering the Specified Risk Material continued to be borne by the beef processors. The costs incurred by the Department in funding rendering operations and the storage and destruction of meat and bone meal was €5m and €66m in 2000 and 2001 respectively. These costs can be analysed on an estimated basis as shown in Table 32.

**Table 32 - Funding of Rendering Operations**

	2000	2001
Rendering	€4.9m	€53.7m
Storage	€0.1m	€1.3m
Disposal	-	€11m

According to the Department the present position in relation to beef markets is as follows:

- While consumption of Irish beef has improved considerably within the EU since its low point following the 2000/2001 crisis, Ireland continues to be without access to some of its important export markets.
- The Egyptian authorities have recently reopened their market to Irish beef from young cattle.
- The Gulf States markets remain closed but efforts are ongoing to have them re-opened by the Department.
- The Russian market is open but adheres to its policy of taking beef only from selected counties.
- The current improved prices for cattle are based to a large extent on increased demand in the UK as a result of Foot and Mouth Disease de-stocking.

## Agriculture, Food and Rural Development

The increased number of BSE cases in 2001 and 2002, albeit resulting mainly from increased levels of testing, brings with it further risks of market restrictions in the future.

Table 33 and Table 34 show details of beef exports and sales into Intervention for the years 1995 to 2000 and cattle prices (Table 35) obtained during the same period. Approximately 90% of Irish beef produced is exported.

**Table 33 - Beef Export Trade 1995 to 2001<sup>9</sup>**

	1995	1996	1997	1998	1999	2000	2001
Live Cattle Exports – '000 head							
UK	18	10	27	5	18	27	50
EU	89	41	23	137	324	311	40
Other Countries	263	139	7	29	74	65	11
Total	370	190	57	171	416	401	101
Processed Beef Exports '000 tonnes (carcase weight)							
UK	100	60	95	85	95	125	210
EU	158	100	90	130	150	135	75
Other Countries	183	265	265	295	309	255	95
Total	440	425	450	510	554	515	340
Cattle Slaughtering at Meat Export Premises – '000 head	1,363	1,508	1,675	1,753	1,950	1,755	1,783

**Table 34 - Beef Bought into Intervention (Tonnes Carcase Weight) 1996 to 2001**

1996	1997	1998	1999	2000	2001
51,807	54,215	17,364	9,612	0	8,123

In addition, during 2001, 277,860 animals representing a total tonnage of 90,523 were slaughtered under the Purchase for Destruction Scheme, and some 61,000 tonnes of beef, representing an estimated 215,000 animals (mainly in the form of cow beef) was taken in under the Special Purchase Scheme.

**Table 35 - Cattle Prices 1996 to 2001<sup>10</sup>**

	1996 €/kg	1997 €/kg	1998 €/kg	1999 €/kg	2000 €/kg	2001 €/kg
R3 Steers	247.0	230.5	231.5	225.6	248.6	230.8
R3 Heifers	245.9	233.1	229.3	218.5	244.3	233.6
O3 Cows	194.1	188.3	180.3	160.1	183.4	167.5

### Committee Enquiries

In April 1996 the Minister for Agriculture, Food and Rural Development established an expert advisory committee with the following terms of reference:

*‘To report in the first instance on the transmissible spongiform encephalopathy (TSE) situation in ruminants in Ireland, and in particular to establish options in the light of the current state of scientific knowledge for an enhanced programme for the elimination and prevention of the disease in this State’.*

The Committee reported in July 1999 and stated that the BSE controls in place were adequate provided that they were stringently implemented as evidenced by independent auditing procedures and total transparency

<sup>9</sup> An Bord Bia Annual Meat Review and Outlook 2001/02 (2001 figures are estimated).

<sup>10</sup> An Bord Bia, Annual Meat Review and Outlook 2001/02 (2001 figures are estimated).

regarding their enforcement.

However, the Committee did recommend a number of additional procedures to prevent the transmission of the BSE agent, including

- Burial of BSE suspect animals on farms should cease.
- Effective incineration facilities for BSE carcasses should be provided as a matter of priority.
- The mandatory veterinary anti mortem examination, provided for in EU Regulations, should be rigorously implemented at all meat plants and abattoirs. The efficacy of the procedures should be continuously reviewed and externally audited.
- All cattle movements should be controlled and recorded and the records made available for inspection.
- Research within Ireland into BSE and related conditions was considered to be essential in order to develop local expertise in this field. The State should not be solely dependent on research conducted elsewhere.

On farm burial of BSE infected animals ceased in October 2000. Since 1996 BSE and scrapie controls are independently audited on an annual basis and sometimes bi-annually by the Food and Veterinary Office of the European Commission. The Food Safety Authority of Ireland also carries out periodic reviews.

The Scientific Steering Committee of the European Commission carried out a risk-based assessment of BSE controls in 25 countries in May 2000, including Ireland. It assessed Irish controls as being 'optimally stable' from 1 January 1998, stating that all three main stability factors (feeding, rendering, SRM removal) were in place, well controlled, implemented and evidenced, and the procedures should fully prevent propagation of BSE infectivity.

## **Research**

As BSE is a disease which originated in the UK and since the UK has had far more cases than any other country (over 180,000), that country became the logical site of primary research in relation to the origin, transmission and pathogenesis of the disease. Over the years, the UK has undertaken a number of lengthy, complex and very costly experiments, the results of which have been used by the international scientific community in understanding BSE. The Department's approach has been to concentrate resources on a number of projects designed to add to current scientific knowledge taking account of research findings generated elsewhere, and to build epidemiological and practical expertise both at central and local level. Research into BSE in Ireland, under the aegis of the Department, can be divided into four main categories:

- Projects carried out on behalf of the Department under the EU Food Sub-Programme
- TSE projects funded under the EU Food Research Measure
- Projects funded by the Department carried out as part of the Department's involvement in committees such as the BSE Scientific Advisory Committee, the BSE Sub-committee and CJD Committee of the Food Safety Authority of Ireland
- Other Research – collection and monitoring of epidemiological information in relation to each case of BSE including a number of projects undertaken by both laboratory and headquarter staff.

Some of the projects carried out under the above categories were in relation to scrapie disease in sheep, which may act as a possible masking agent for BSE. Because of the hypothetical risk that BSE may occur in sheep, the Department has implemented a control policy with a view to eradicating TSEs in the sheep population as soon as possible.

The Department expended approximately €2.4m since 1997 on TSE related research.

### Conclusions

- The Department, based on the opinion of the international scientific community that contaminated animal feed is the prime cause of BSE in cattle, is confident as a result of the measures it has taken to cut off the supply of contaminated feed, that the number of cases will decline substantially within the next 3 to 5 years. However, in terms of complete eradication, it may be the case that, as in other diseases, as yet unidentified factors may have an influence on whether the disease can be fully eradicated and the time span over which this may occur.
- The limited checks carried out on audit would tend to confirm that the surveillance and control measures in place in terms of testing of carcasses, removal of specified risk material, control of meat and bone meal, depopulation of infected herds and the tracing and slaughtering of infected animals cohorts and progeny, are being applied.
- On the assumption that the Department's confidence on the future epidemiology of the disease is well founded, some of the costs of controlling and eliminating the disease, such as compensation for herd depopulations should decrease substantially over the next two to five years. However testing for the disease is likely to continue at a significant level for a longer period in order to reassure consumers and monitor the disease levels. The restrictions in relation to meat and bone meal are also likely to continue and to result in increased rendering costs of waste animal material which will have to be borne by the Exchequer and/or the industry, unless a cheaper method of safe disposal can be found. In this regard the level of Exchequer subsidy for rendering operations and the storage and disposal of meat and bone meal, which cost €66m in 2001, should be kept under review.
- In the event of the subsidising of rendering operations continuing in the longer term it would seem prudent that the subsidy be directed towards the rendering of the high risk SRM rather than, as at present, the low risk carcase material to remove any possible financial incentive which might exist to dispose of it illegally.
- The review indicated that the controls and procedures in place in relation to expenditure incurred on the programme were satisfactory.
- The effort to retain and sustain markets would appear to have had reasonable success. However it would seem that confidence in beef will only be fully restored with the elimination of the disease and the belief by consumers that beef is not a causative factor in vCJD or in any other human disease. In this regard it is likely that resources prudently invested in ensuring the highest standards of safety and quality in beef and in food products generally will yield economic as well as health benefits.

## 8.2 FEOGA Guarantee Expenditure - Ewe Premium Scheme

Under the Ewe Premium Scheme, farmers holding a Ewe Premium quota are entitled to receive payments on the number of eligible ewes applied for, up to the limit of that quota, subject to their compliance with the terms and conditions of the scheme.

The scheme is operated in Ireland by the Department of Agriculture Food and Rural Development on behalf of the EU, which funds the scheme. The EU determines the rules regarding eligibility, rates and timing of payments, etc. and has also set down control procedures which the Department is obliged to follow to ensure that payments are only made for eligible sheep.

The Department paid €59.08m under the 2001 scheme to 37,692 applicants in respect of 4,066,802 sheep.

All applications for Ewe Premium are subject to administrative controls. In addition a selection of applicants' flocks are physically inspected. Farmers are also obliged to maintain flock registers and details of ewes purchased and sold to provide documentary evidence as to numbers of ewes which they own and these may also be inspected by the Department, particularly if there is doubt following the physical inspections as to the numbers of sheep eligible for payment. The flocks which are physically inspected each year are selected following a risk analysis of the applications for premia. EU rules require that a minimum of 10% of flocks be physically inspected each year.

Farmers are penalised if found to have claimed for more than the eligible number of animals in their possession. A sliding scale is in operation in relation to penalties. For flocks of over 20 ewes the penalties vary from the actual amount over-claimed where the discrepancies are less than 5% to the disallowance of the total premium claimed where the discrepancy is greater than 20%. Slightly different rates of disallowance apply for flocks of under 20 ewes. Applicants found to have made false declarations are excluded from the scheme for one year if found to have done so through serious negligence, and for two years if found to have done so intentionally.

The EU carries out various audits each year on an ongoing basis to ensure that EU schemes including the Ewe Premium Scheme, have been administered by the Department in accordance with EU standards, and if deficiencies are found it may impose penalties on the Department.

Following the discovery of a Foot and Mouth infected animal in the Cooley area of County Louth in March 2001, a cull of all farm animals in the area was undertaken to prevent the spread of the disease. The culling exercise presented an opportunity to the Department to ascertain and verify the number of sheep owned by farmers in the area and to compare these numbers to the numbers on which ewe premia had been claimed. Such an exercise was commenced by the Department in March 2001.

Following the cull, an interim assessment of Ewe Premium applications in Cooley in April 2001 relating to 37,165 sheep, indicated that the number of ewes on which premia had been applied for was 6,625 greater than the total number of ewes culled that were entitled to premia.

The interim assessment indicated that of the 257 farmers who had applied for ewe premia in the Cooley area, 107 had deficits. Of these 51 had deficits of 20% or more accounting for 5,848 of the difference of 6,625, while the remaining 56 had deficits of less than 20% accounting for the remaining 777 difference. These 107 cases were investigated by the Department.

The Accounting Officer supplied me with the following information in relation to the investigation and the administration of the scheme generally:

- Up to the end of July 2002 investigations were completed in 92 cases. 27 were excluded from the scheme for two years, 7 were excluded for one year and 2 had their claim disallowed in full. A further 35 had their claims reduced, while 21 were paid in full. Investigations have not been completed in another 14 cases and one applicant has died and probate is awaited.
- 24 cases are being investigated by the Gardaí and Department officials have provided the Gardaí with statements and are assisting the investigation. The Department has been informed that a file is being prepared by the Gardaí for submission to the Director of Public Prosecutions.
- A detailed breakdown of the 71 cases on whom penalties have been imposed is shown in Table 36.

**Table 36 - Cases in which Penalties were imposed**

No of applicants	Number of Ewes claimed	Amount claimed €	Penalties Imposed	Penalties as % of amounts claimed	Amount Paid after Penalties €
14	2,992	47,055	1,479	0% to 10%	45,576
12	1,643	25,839	3,329	10% to 20%	22,510
7	603	9,483	2,446	20% to 30%	7,037
2	140	2,056	765	30% to 40%	1,291
2	75	1,180	1,180	100%	Nil
7	511	8,036	8,036	100% - one year exclusion	Nil
27	2,504	39,380	39,380	100% - two year exclusion	Nil
<b>71</b>	<b>8,468</b>	<b>133,029</b>	<b>56,615</b>		<b>76,414</b>

- The Accounting Officer supplied the following details in relation to the level of serious irregularity detected from Departmental checks and inspections carried out in previous years, of cases where the sheep deficits exceeded 20% of the numbers claimed and where the full amounts of the premia claimed were disallowed:

**Table 37 - Cases in which Premia were disallowed**

	Number of Applicants	One year exclusion	Two year exclusion	Deficit greater than 20% - Full claim disallowed
1999	43,704	80	98	61
2000	41,209	97	101	81
2001	38,630	135	118	72

As to whether there were particular circumstances existing in the Cooley area which might account for the high rate of excess claims, relative to the rates indicated as a result of Departmental inspections, the Accounting Officer stated that Cooley was the only area in Ireland in which mountain commonage land straddles the border.

He went on to state that following the Cooley findings the Department had carried out detailed checks of ewes on commonages in Counties Kerry, Galway, Mayo, Sligo and Kildare. The overall level of non-compliance found following these checks was generally in line with normal inspection findings.

- As to whether, in view of the Cooley findings, he was satisfied that the checks, inspections and penalty regime in place were generally effective in detecting excess claims and were a sufficient deterrent against non-compliance with the scheme rules, the Accounting Officer stated that all applications for premia were subject to administrative controls, and that under EU Regulations a minimum of 10% must be selected for on-farm inspection using risk analysis. The percentage of applications subjected to on-farm inspection in Ireland had, apart from the exceptional situation in 2001, always exceeded the minimum 10% and stood at 14% in 2002. In addition, extensive use was made of risk analysis in selecting cases for on-farm inspection. Well in excess of 70% of on-farm inspections were unannounced except in mountain commonage areas where a maximum of 48 hours notice (as provided for in EU Regulations) was given, because of the difficulty in assembling sheep for inspection in these areas. All controls both administrative and on-farm inspections were carried out during the 100-day retention period.

- The application and retention periods for the scheme were the same on both sides of the border, and where appropriate, simultaneous inspections were carried out.
- The Department was satisfied that the checks, inspections and penalty regime in place were generally effective and that the introduction of individual sheep tagging in 2001 would further enhance compliance. From the experience gained in 2001 in checking supporting documentation, greater emphasis would be put on authenticating supporting documentation in cases where it was believed that the applicant had made an intentional false declaration.
- While the European Commission has been kept informed of the findings in Cooley and of the control arrangements applied generally in 2001, it had not reviewed the findings to date. However a final report would be made to the Commission when processing of all remaining Cooley cases had been completed.
- There had been no negative findings and consequently no financial corrections following European Commission audits on the implementation of the Ewe Premium Scheme in Ireland over the past 5 years.

### **8.3 Interest Payments under the Prompt Payment of Accounts Act, 1997**

The Prompt Payment of Accounts Act, 1997, obliges public bodies to pay their suppliers on time. Invoices must be paid within the period stated in the related contract or, if a contract does not apply, within 45 days. The Act also obliges bodies to pay interest where payments are not made within the time limits specified in the Act.

Penalty interest payments totalling €707,735 were incurred in 2001 by the Department under the Act. The penalties were incurred by most divisions of the Department and were in respect of some 3,469 invoices totalling €73,316,268, which represented approximately 25% of the value of all payments falling within the terms of the Act. The average payment delay in excess of the 45 day statutory limit was 38 days.

I enquired from the Accounting Officer as to the reasons for incurring such a significant amount of penalty interest and if he was satisfied that the payment of the interest could not have been reasonably avoided. I also enquired if the late payments were due in any way to deficiencies in the processing of payments and if so had such deficiencies been corrected, and if he was satisfied as to the ability of the Department to comply with the Act in future.

The Accounting Officer informed me that the following exceptional factors impacted on the Department's payment systems in 2001:

- The outbreak of foot and mouth disease in Co. Louth required the implementation of a wide range of emergency measures. In addition to the exceptional payments directly arising from these measures, many staff members were diverted to control duties relating to the disease outbreak and this unavoidably disrupted the normal processing of payments in many divisions of the Department.
- The introduction at short notice of a number of new and large schemes in 2001, and the reopening of beef intervention in September 2001, due to major difficulties being experienced in the beef market. In particular, the Purchase for Destruction Scheme was introduced in January 2001 with only two weeks notice. It took some time to put adequate staff in place to operate the scheme, which proved to be very complex to operate and consequently presented many difficulties in the timely authorisation of payments. The complexity and scale of the scheme gave rise to the need for detailed veterinary control documents, which generated many queries before payment could be authorised by a limited number of staff. The value of invoices under this scheme amounted to some

€36.6m, with many individual invoices for substantial amounts. Invoices for sums in excess of €300,000 were not uncommon and consequently significant interest penalties were incurred for relatively small delays in processing payments.

- At the start of 2001, a scheme to support the rendering industry was introduced following the ban on the feeding of processed animal proteins to farmed animals. Implementation of this scheme put a strain on an already stretched Department, and it took time to put procedures in place to efficiently process payments, which was also hampered by staff turnover.
- The Department introduced a new accounts system in July, which increased workloads in line divisions and in the Accounts Division. The new system necessitated the production of a separate payment authorisation for each invoice whereas in the old system many invoices could be processed on one such authorisation. The new system also gave rise to delays in processing payments as staff familiarised themselves with it.

The Accounting Officer pointed out that the late interest paid by the Department in 2001 was mostly incurred in the second and third quarters of 2001 while the Department was responding to the difficulties presented by the above events. Efforts had been made to expedite payments and the levels of interest incurred has also been the subject of detailed ongoing management review which has led to a steady reduction in such interest payments.

He stated that the difficulties which resulted in late payment penalties continued at a declining level into the early months of 2002 and had now been largely resolved, and that all Divisions had been advised of the need to ensure strict compliance with the Act.

### **8.4 Ballaghaderreen Fire Case Settlement**

I referred in my Annual Report for 1999 to the Department's involvement in litigation since 1992 arising from a fire, which broke out at a cold store in Ballaghaderreen, Co. Roscommon in January 1992. About seven thousand tonnes of intervention beef with an approximate value of €25.2m, which had been stored there on behalf of the Minister for Agriculture, Food and Rural Development was completely destroyed.

Intervention beef is the property of the EU, but the Department, as the intervention agent in Ireland for the EU, is responsible for its safe custody and is obliged to compensate the EU for any loss, which may occur. Thus, the Minister was obliged to refund €25.2m to the EU in respect of the beef destroyed. The cost of the refund was added to the Department's ongoing borrowings from which it funds all FEOGA expenditure until EU funds are drawn down. Further costs sustained involved clean-up expenses of €1m. The Commission has proposed a further correction of €11.4m to convert the intervention price for carcase weight into boneless yield. This arises from the retrospective application of a regulation introduced in 1993, one year after the fire.

Since 1990 the Department had insured against the risk of financial loss in regard to intervention beef, through a broker based in Ireland. However, following the fire, the principal insurers repudiated liability and initiated legal proceedings to establish that they were not on cover. A complex series of legal issues relating to liability, value and jurisdiction gave rise to 16 independent High Court actions involving over 70 insurers and brokers based in Ireland and abroad.

Without prejudice settlement negotiations between the legal representatives of the Department and of all parties to the litigation commenced in October 2001. In April 2002 a written settlement was concluded by



agreement between all of the parties. Following advice received from the Department's legal counsel and the Attorney General, and consideration by the Government, the Minister decided to accept the settlement, under which:

- The insurers and brokers pay the Minister €21.93m in respect of the destroyed beef.
- All legal actions between all parties will be struck out by joint request.
- All parties to litigation will bear their own costs.

In addition to the compensation paid to the EU and the clean-up costs at the site, the Department has to date incurred loan interest costs of €15.5m. Legal fees amounting to €2.9m had been paid up to July 2002 but this is likely to increase substantially when the final fees have been determined. Negotiations with the EU in relation to the revaluation of the beef have not yet been concluded, but the Department may incur an extra cost of up to €11.4m in this regard.

## Chapter 9 – Department of Health and Children

### 9.1 Extension of Medical Card Eligibility to Persons aged 70 and over

In his 2001 Budget speech in December 2000, the Minister for Finance announced the extension of the medical card scheme to cover all persons aged 70 years and over, irrespective of means, to take effect from 1 July 2001. This was given legislative effect through the Health (Miscellaneous Provisions) Act 2001 enacted in late May 2001. The Health Boards were formally advised of the Budget measure in January 2001 and were instructed to make ready their administration procedures in preparation for implementing the initiative by 1 July.

My staff examined departmental files which indicated that the original forecasted additional annual cost of providing medical cards under these new arrangements was €19m based on an estimated extra 39,000 persons becoming eligible.

More recent papers on the files suggested that the databases, on which the original estimate of 39,000 potential applicants was based, were inaccurate and not up to date and that the number of new applicants under the arrangement was set to exceed 70,000. By April 2002 it was estimated that the additional annual cost would be in the region of €51m.

The Central Statistics Office (CSO) estimate for persons aged 70 or over in the State in 2001 was 299,000. At end February 2002, the General Medical Services (Payments) Board (GMS) had registered some 327,251 persons in that category and indicated that there were up to 5,000 yet to register, while a further 5,000 were estimated to be in institutional care. The GMS also advised that there were 8,000 potential duplicate registrations and 28,000 persons who had no pharmacy claim over a 21-month period in 2000/2001.

Given the serious financial implications for the Exchequer resulting from the underestimation of the number of applicants eligible for the extension of the medical card scheme I sought the views of the Accounting Officer.

In response to my enquiries the Accounting Officer informed me that

- The Department of Finance made his Department aware, a few days prior to Budget day in December 2000, of the decision to introduce automatic medical card eligibility for persons aged 70 and over. Informal oral contacts took place between officials of both Departments in relation to the cost implications of this initiative. The Department supplied such data as was readily available to it in the extremely short time involved in order to assist the Department of Finance in determining the likely cost of implementing the scheme in 2001. However, a clear marker was put down at the time that the implementation of the initiative would require the agreement of the Irish Medical Organisation (IMO) and the Irish Pharmaceutical Union (IPU), that the negotiating position of both unions would be greatly strengthened by the fact the measure was going to be announced as part of the Budget day package with a set date for its introduction, and that this would inevitably drive up the cost of the initiative.
- Following protracted and difficult negotiations between the Department of Health and Children and the IMO, a deal estimated to cost €19 million annually was agreed in late June 2001. Central to this deal was (a) a capitation rate of €438 per annum for newly eligible persons aged 70 and over, and (b) a capitation rate of €635 per annum for such persons in private nursing homes. This component of the deal with the IMO was estimated to cost €17.7 million in a full year, on the basis that there would

be 39,000 newly eligible persons in total. The balance (€1.3million approximately) was in respect of an increase in the rural practice allowance and an enhancement of arrangements for payment of practice nurse/secretary allowances.

- The Department is still engaged in ongoing negotiations with the IPU in relation to the implementation of the scheme by community pharmacy contractors and it is estimated that the eventual cost of the deal to be finalised with the IPU would be in the region of €24 million.
- The nature of inaccuracies in the Health Board/GMS databases was attributed to duplicates and to the non-removal from the lists in a timely manner of persons who have either died or moved away. A cleansing exercise concentrating on identifying patients in the over 70 category had recently been completed. As a result of this exercise in excess of 14,100 medical cards had been identified as surplus and were in the process of being removed from the system. It was planned to extend the cleansing exercise to the full over 70 medical card population and latterly to the full GMS list. The last major GMS list cleansing exercise had taken place at the time of the introduction of the plastic medical card in 1998.
- The Department maintains no independent records in this area. Under the 1970 Health Act a Chief Executive Officer of a Health Board is authorised to issue a medical card. The Minister for Health and Children has no authority or responsibility in the issuing of a medical card.
- The significant increase in the capitation costs to the Department of medical cards issued to persons aged 70 and over since July 2001 arose because this new category attracts a capitation rate which is a multiple of the rate for existing over 70s medical card holders.

Annual capitation rates for previously eligible persons over 70 years of age as at 31 December 2001 are shown in Table 38.

**Table 38 – Capitation rates for previously eligible persons over 70 years of age**

Distance to Surgery from Home of Medical Card Holder	Male	Female
	€	€
0 – 3 Miles	95.43	106.11
3 – 5 Miles	106.71	117.44
5 – 7 Miles	123.56	134.24
7 – 10 Miles	140.06	150.79
Over 10 Miles	160.58	171.33

- Health Boards were being particularly vigilant to ensure that new applicants had not already been in the system on a means-tested basis to avoid the possibility of the higher capitation rate being unnecessarily paid.
- No analysis had been carried out of the reasons for cancellation of existing cards on issue to persons in the aged 70 and over category.
- The GMS had done some work in assessing the potential overpayment arising from the inaccuracies in the databases used to determine the capitation payments to doctors and pharmacies. On the basis of research carried out in a number of Health Board areas the inflated figures could be resulting in overpayments of €12m annually.
- Given what had emerged in relation to the over 70s, it would be reasonable to expect a certain amount of inaccuracy in the GMS list in all age categories of the medical card schemes. However, with the higher mortality rates associated with the over 70s, it was expected that the level of inaccuracies in the list would be less in the under 70s category. It was planned to extend the current cleansing exercise to the entire GMS list in time. The planned rollout of the GMS Central Client

Eligibility Index, an IT based eligibility system, would also address this issue. It was also pointed out that some years ago Health Boards relaxed the regime in relation to reviewing medical cards for the elderly with the result that the over 70s were reviewed less frequently than other card holders.

- A GMS Information Project, funded by the Department, would address a range of GMS information deficits and would provide, in part through a national survey of 2000 persons (half of whom will be medical cardholders) an independent basis for estimating numbers of persons in each Health Board who have or should have medical cards and the basis for having such cards. It would address visitation rates (across age categories and specific categories of persons and illnesses), ascertain medical card review procedures used in Boards and the issue of so called discretionary medical cards. It would also identify the information collected by Health Boards for GMS Scheme purposes, the linkages that exist or should be created and through small sample studies it would be able to ascertain the reliability of the information arrangements currently in place.

The revised costings for the scheme for 2002 are shown in Table 39.

**Table 39 – Revised Costing for 2002 Scheme**

	Doctors	Pharmacists	Total
	€m	€m	€m
Pharmacy Lump sum and Enhanced Fees	-	17.78	17.78
Pharmacy Ingredient Cost	-	22.00	22.00
Doctors Capitation re New Over 70s	33.00	-	33.00
Other	10.15	-	10.15
<b>Total</b>	<b>43.15</b>	<b>39.78</b>	<b>82.93</b>

The GMS estimates consequential savings on the Drugs Payment Scheme on the basis of 69,068 patients at €28.06m. The net additional estimated cost for 2002 is therefore €54.87m.

## 9.2 Drugs Payment Scheme

The Drugs Payment Scheme (DPS) was introduced on 1 July 1999 and replaced both the Drug Refund Scheme and the Drugs Cost Subsidisation Scheme.

Under the new scheme, individuals or family units would meet the first €53.33 per month of the cost of approved prescribed drugs, medicines and medical and surgical appliances. Pharmacists, by agreement, claim the balance of cost over this amount from relevant Health Boards through the General Medical Services (Payments) Board.

Under the old Drug Refund Scheme, patients were required to pay, in full, the cost of prescribed drugs etc. at the pharmacy and at the end of each calendar quarter seek a refund from the relevant Health Board of their expenditure in excess of the threshold amount of €114.28.

The Drugs Cost Subsidisation Scheme subsidised expenditure of patients, certified by their doctors as having a long-term condition requiring regular and continuous use of prescribed drugs. The scheme met the patients' monthly expenditure in excess of €40.63.

The DPS was introduced administratively in July 1999. This method of introduction did not comply with statutory requirements and therefore the scheme could not be said to have come into operation legally until the introduction of amending regulations in March 2001.

The delay in the making the regulations to give legal authority to the new scheme has resulted in either overpayment or underpayment of subsidy to persons availing of the schemes depending on individual circumstances and expenditure levels.

I sought the views of the Accounting Officer as to

- the reason for the delay in making regulations to give the new scheme legal effect
- the estimated amount of subsidy denied to participants under the scheme as a result of the delay for the same period and whether the Department intends to refund these amounts to the individuals involved
- the estimated amount of overpayments arising because of this delay in the period July 1999 to February 2001 and whether the Department intends to seek to recover these overpayments.

In his response the Accounting Officer stated that regulations fixing the threshold for the new scheme at €53.33 per month could have been made in July 1999 under Section 59 of the Health Act 1970 but, as Government approval had been obtained to amend that section, it was decided to defer making the regulations until the Act was actually amended. At the time it was envisaged that the amending provision would be enacted very quickly. Subsequently, however, difficulties and delays arose in securing drafting time and parliamentary time for the new legislation. Following further consideration and legal advice obtained from the Office of the Attorney General in October 2000, regulations to fix the threshold at €53.33 per month were put in place under the existing Section 59 of the 1970 Act in March 2001.

The Department of Health and Children considered that DPS provided a fairer and more user friendly system than the schemes it replaced, especially for monthly budgeting for families, and has produced significantly greater overall benefit for patients. The total benefit to patients under the Drug Refund Scheme or Drug Cost Subsidisation Scheme in 1998 was €95m (the last full year of operation). In contrast, the DPS subvention to patients was €140m in 2000 (the first full year of operation) and rose to €177m in 2001, an increase of 87% in 3 years.

While the overall level of benefit to all patients increased to the extent indicated, there would have been individual cases where the level of benefit was either under or over stated under the new DPS as compared to the entitlements under the Drug Refund Scheme or the Drug Cost Subsidisation Scheme. The General Medical Services (Payments) Board estimates that the overall cost of potential claims arising from the increased threshold during the period concerned is in the region of €18 million. The potential claims involve some 175,000 households and cover approximately 4.75 million transactions relating to 11.86 million items. The administrative cost of processing claims for potential refunds on such a large scale is estimated at a further €2 million. The Accounting Officer pointed out however, that in accordance with an Informal Government Decision dated 17 July 2002, it was not intended to make refunds.

The estimated amount of overpayments arising is not known. The Department has not asked the General Medical Services (Payments) Board to devote the resources needed to calculate this amount in light of the legal advice received from the Office of the Attorney General in April 2002 that the Department cannot recover overpayments made to persons who may have benefited financially from the non-statutory scheme.

## **Chapter 10 – Department of Defence**

### **10.1 Building Maintenance**

#### **Background.**

The Department of Defence (the Department) owns a substantial portfolio of land and buildings in various locations throughout the country, for use by the Defence Forces.

The land, including a Naval Base and an Aerodrome, measures about 8,500 hectares whilst the buildings comprise 28 permanently occupied barracks, married quarters, a number of rifle ranges and FCA premises, and miscellaneous training areas. The state of repair of the buildings varies significantly because of their age, past use and upkeep. No estimate is available as to the total area of the buildings.

Responsibility for the maintenance and upgrading of all military facilities lies with the military Corps of Engineers. The Corps supervises capital works such as the provision of new buildings and major upgrading of existing facilities, major maintenance projects such as rewiring and re-roofing and routine minor maintenance.

Outside contractors are employed to carry out capital works and major maintenance projects. Minor maintenance jobs are carried out by either civilian employees under military direction or by outside contractors. The trend over the past 10 years has been to make more use of external contractors and to reduce the numbers of directly employed civilians engaged in maintenance work.

In 2001 €54.6m was spent on capital works while €22.9m was spent on maintenance. Expenditure on maintenance comprised payroll costs of €12.7m for civilian employees, €0.9m on materials and €9.3m for outside contractors.

#### **Objectives and Extent of Audit**

The objectives of the audit were to establish

- The extent to which the effectiveness of the building maintenance programme is assessed.
- The procedures in place for ensuring that all maintenance work is carried out efficiently and economically.
- If the costing and accounting systems in place provide the requisite information for both the day to day management of the civilian staff and to make long term planning and strategic decisions.
- The extent to which building maintenance work is contracted out and the procedures followed in arriving at and authorising the decision to contract out work.

During the course of the audit three locations were visited – Curragh Camp, Naval Base Haulbowline and Custume Barracks, Athlone.

Discussions also took place with Department of Defence and Defence Forces personnel.

### ***Management and Organisation***

The costs of running the Defence Forces, including the maintenance of military buildings are funded from the Defence Vote. The Secretary General of the Department, as Accounting Officer for the Defence Vote, is responsible for the proper expenditure of all money from the Vote. The overall military buildings maintenance budget is decided as part of the annual provision of resources for different areas within the Defence Forces.

Since 1990 the Secretary General of the Department has delegated to the Chief of Staff of the Defence Forces a considerable degree of control and authority in relation to expenditure and agreed budgets are allocated by the Department to the Defence Forces in respect of the functions delegated to them.

In regard to the maintenance function, at present only contracts over €75,000 for maintenance work and over €25,000 for materials are administered by the Department while contracts below those values are administered by the Defence Forces. Contract documents and specifications are drawn up by the Corps of Engineers who also evaluate the tenders received from prospective contractors and supervise the completion of the work.

The Department retains responsibility for determining the numbers of civilian employees and making decisions on termination of employment and replacement of departing employees, following consultation with the Defence Forces. The costs of civilian employees are charged to subhead F of the Defence Vote which is controlled and operated by the Department. However responsibility for the day to day management and supervision of these employees as well as the allocation of tasks to them is exercised by military management.

### ***Planning and Budgeting***

Maintenance work is defined by the Department as work, not involving capital expenditure, having as its objective the keeping in good condition and repair of buildings, works, plants, installation and lands under its control. It mainly involves the refurbishment, repair and painting of buildings, and the servicing of heating and electrical equipment.

Formerly the budget had been based to a high degree on historical expenditure in the area rather than on a defined quantum of work properly costed. However, in recent years following a realisation that the standards of upkeep of some buildings had deteriorated to an unacceptable level the budget has been increased and it is felt that the increased amounts have brought standards up to a generally acceptable level taking account of competing priorities within the Defence Forces and the overall limits on funding for the Defence Forces provided by the State.

A Maintenance Works Programme is drawn up annually by the Director of Engineering in the Defence Forces in conjunction with the Contracts Manager of the Department based on the priorities identified by the military. This programme covers the larger maintenance contracts costing in excess of €75,000 which are awarded to outside contractors following competitive tendering. A list of smaller more routine jobs for completion in the year is also drawn up and, depending on the number and grades of staff available, decisions are made as to which will be contracted out and which will be completed in-house. Generally speaking, specialised work such as servicing equipment would be contracted out whereas small roof repairs and minor painting projects would be done in-house.

Monthly progress reviews are carried out between the Director of Engineering and Contracts Section of the Department to ensure that both monetary and work targets are being met in relation to the work being

carried out by external contractors. Contract expenditure is monitored against a budget profile throughout the year to ensure compliance with budget limits. Expenditure on materials and pay is also monitored to ensure compliance with budget provisions.

In 2001 €5.9m was expended by the Military from its delegated budget comprising €5m on external contractors and €0.9m on materials. The Department expended €4.3m on external contractors from the portion of the budget administered by it, and a further €12.7m on pay from the civilian pay budget.

### ***Cost Control***

Good management systems should have procedures in place to ensure that the cost of inputs used in delivering work or outputs is reasonable and competitive. While management systems to ensure this are in place in relation to work done by external contractors, the position in relation to the work carried out by the civilian employees is less satisfactory. For external contractors records kept by the military for each contract show the type of work, the location of the work, the cost including details of competitive tenders obtained, and contractor details. However, while records in relation to jobs undertaken by employees are maintained showing commencement and completion dates for jobs as well as the quantity of materials used, they do not show the number of labour hours taken to complete the jobs. No use is made by management of these records and it would appear their main purpose originally was to control the usage of materials.

For this reason no records are available to show the proportion of time employees were engaged in carrying out work and the level of downtime which there may have been between jobs, and information is not available to enable the labour input of jobs carried out by civilian employees to be costed.

Furthermore when jobs are allocated to employees, planned or target times are not specified or recorded, and jobs are allocated on a day to day basis rather than being scheduled in advance. While this might not be worthwhile or feasible for minor jobs of short duration, many of which might be urgent, it would be worthwhile for larger jobs of longer duration, which an analysis of the jobs book indicated constituted a high proportion of the total time.

Employees are given a standard quantity of materials in carrying out different tasks allocated to them. However no standard is set as to the length of time which the employees should spend in carrying out the task, even though pay is a significantly greater cost than materials. In fact, the Internal Audit Section in a 1997 report commented on the high ratio of labour costs to materials, which was then 10:1, as an area requiring attention. It was also noted that while the Department has issued instructions to the military on the importance of using materials and outside contractors in a way which ensures that value for money is obtained, no such instructions have been issued in relation to the use of directly employed labour.

In my Value for Money Report No. 27 on Defence Property (December 1998) I found that there was insufficient information available to monitor the economy and efficiency achieved from property maintenance and in particular from the work activities and output of the civilian maintenance staff.

Table 40 below shows the costs incurred in carrying out the maintenance programme for 2001 compared to 1990.



Table 40 - Cost Comparisons 1990 - 2001

	1990 Actual €	1990 costs at 2001 Prices (Estimate) €	2001 Actual €	Increase/Decrease €
Labour	11,305,246	20,232,394	12,478,662	(7,753,732)
Materials	1,364,996	1,668,443	905,323	(763,120)
Contractors	3,755,857	6,362,423	9,299,446	2,937,023
<b>Total</b>	<b>16,426,099</b>	<b>28,263,260</b>	<b>22,683,431</b>	<b>(5,579,829)</b>

The figures show a decrease of €7.8m in real terms in the cost of civilian employees, a decrease of €0.8m in the cost of materials and an increase of €2.9m in the cost of works contracted out. This reflects a trend away from using civilian employees coupled with a move to allocating more work to outside contractors.

The overall reduction in cost in real terms would suggest that significantly less maintenance work is being done compared to 10 years ago. However, account must be taken of the fact that a number of barracks have been closed in this period and that there have been internal administrative staff transfers which affect the costs. According to the Department the volume of work done pro rata has actually increased over the period. However, information that would underpin this view is not maintained.

#### *Civilian Employees*

The number of civilian employees has been decreasing steadily in the past twenty years or so. In 1980 there were 1150 maintenance employees, by 1990 this had reduced to 835 and at May 2002 the figure stood at 515.

The figures would suggest that there is a policy to reduce the reliance on direct hiring of staff to carry out the function and to rely more on external contractors. However no formal policy has been determined by the Department as to the level of civilian employees it wishes to employ. Similarly no evidence was found of any systematic evaluation of the mix (of employees and external contractors) necessary to carry out the programme of maintenance work in the most effective manner taking account of factors such as cost, reliability and quality of work.

The Department's internal audit section in 1997 recommended "*that a strategic policy decision is taken by the Secretariat in relation to the recruitment and retention of civilian employees*" because the Department does not have a stated policy on the level of directly hired staff there is little to guide managers in making decisions on a day to day basis on the retention and replacement of staff, and for this reason decisions tend to be made on a rather ad hoc basis which is not conducive to efficient and effective management in the long term, and has according to the military given rise to a sub-optimal mix of skills in the work force. In response the Department stated that all requests to fill vacancies are carefully considered on their individual merits in consultation with the military authorities.

#### *Absenteeism*

Absenteeism due to illness among the civilian employees has been high for a number of years. An absence control programme was introduced in 1990 to address the problem whereby the responsible military officer reported excessive or consistent absenteeism of employees to the Department, who in conjunction with the relevant military officer would take appropriate disciplinary action. However, the examination revealed that the control of absenteeism programme had ceased to operate in four of the six functional areas of the Defence Forces, even though according to the Director of Engineering it was effective in reducing absenteeism. Similarly the Department is of the view that the programme has reduced absenteeism in the two functional areas where it continues to operate. The absence of any quantification of the claimed

improvement is attributed to the lack of absenteeism statistics. No explanation was given as to why the absenteeism programme had been allowed to lapse in the other four functional areas.

The results of a random test check carried out during the audit in respect of 44 maintenance employees for the years 1998 to 2001 together with an analysis of absenteeism statistics held in two of the three locations visited are set out Table 41. The third location visited was not operating the absenteeism control scheme.

**Table 41 - Absenteeism**

	Random Sample 44 Employees	Location 1 18 Employees	Location 2 102 Employees
<b>Trades/Operatives</b>			
Average number of days absent per year	28 days	68 days	29days
Up to 20 days	12 (43%)	2 (15%)	46 (58%)
21 – 40 days	10 (36%)	3 (23%)	13 (16%)
Over – 40days	6 (21%)	8(62%)	21 (26%)
Sub - total	28 employees	13 employees	80 employees
<b>Admin/Tech/Supervisory</b>			
Average number of days absent per year.	8 days	8 days	15 days
Up to 20 days	14 (88 %)	5 (100%)	15 (68%)
21 –40 days	0	0	4 (18%)
Over – 40 days	2 (12%)	0	3 (14%)
Sub total	16 employees	5 employees	22 employees

The results from the random test indicate absenteeism of 21 days per annum among civilian employees generally, with a much higher rate of absenteeism in the Trades and Operative category when compared with the Administrative/Technical/Supervisory category. The analysis of statistics in the two selected locations confirms this trend as well as highlighting a stark difference in absenteeism levels between the two locations.

## Conclusions

- Contracted out maintenance work would appear to be generally well managed and supervised. The increased emphasis in latter years of basing budgets on the amount of work perceived as being necessary has given rise to increased funding. This has allowed the programme to be operated in a more planned and systematic way leading to improved maintenance with resultant benefits to the personnel working in and occupying military buildings.
- There is a need to improve the way and the means by which the work of civilian employees is managed. The lack of standard times for jobs and information on time spent on jobs is a serious hindrance to effective management in this area.
- Absenteeism should be systematically recorded and actively managed in all cases. The absence control programme should be reintroduced where it is no longer operating.
- The relative costs of undertaking the different elements of the maintenance programme by contract or using direct employees should be assessed taking into account factors such as continuity of supply and quality. This information should be used to inform policy choices as to the optimum mix of internal and external resources to be used to provide an effective maintenance service for military establishments.

## Chapter 11 – Department of Social and Family Affairs

### 11.1 Overpayments

The Department of Social and Family Affairs administers some 50 welfare schemes paid through Vote 40 and the Social Insurance Fund. Expenditure on assistance and insurance schemes was €3.98bn and €3.52bn respectively in 2001.

Table 42, Table 43 and Table 44 outline overall expenditure on various schemes over the period 1997 to 2001, and for the same period, the amounts recorded as overpayments, the amounts of overpayments attributed to fraud or suspected fraud and the Department's cumulative record of recovery since 1997.

**Table 42 - Scheme Expenditure**

	1997 €m	1998 €m	1999 €m	2000 €m	2001 €m
Social Insurance	2,339	2,518	2,681	2,993	3,517
Social Assistance	3,162	3,260	3,320	3,425	3,983
<b>Total</b>	<b>5,501</b>	<b>5,778</b>	<b>6,001</b>	<b>6,418</b>	<b>7,500</b>

**Table 43 - Number and Amount of overpayments recorded for recovery (Numbers shown in brackets)**

	1997 €m	1998 €m	1999 €m	2000 €m	2001 €m
Social Insurance	5.69 (12,925)	5.26 (13,897)	7.66 (18,080)	6.39 (15,252)	6.79 (15,786)
Social Assistance	20.70 (21,759)	22.96 (22,054)	20.79 (21,346)	20.59 (18,110)	19.26 (14,274)
<b>Total</b>	<b>26.39 (34,684)</b>	<b>28.22 (35,951)</b>	<b>28.45 (39,426)</b>	<b>26.98 (33,362)</b>	<b>26.05 (30,060)</b>

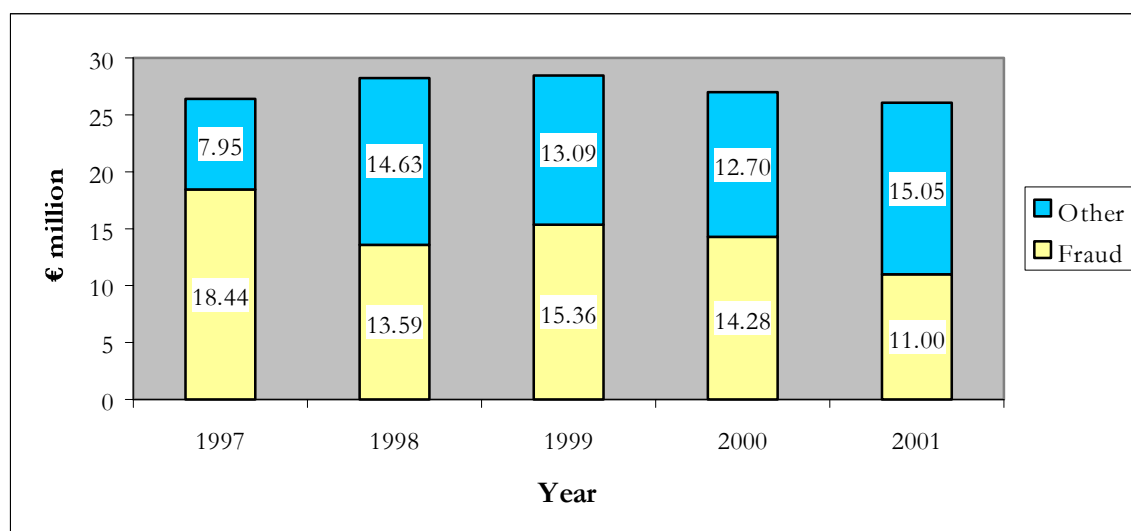
**Table 44 - Number and Amount of overpayments attributed to fraud or suspected fraud (Numbers shown in brackets)**

	1997 €m	1998 €m	1999 €m	2000 €m	2001 €m
Social Insurance	2.56 (3,271)	2.75 (4,810)	3.22 (5,821)	3.39 (5,159)	3.27 (5,321)
Social Assistance	15.88 (7,914)	10.84 <sup>11</sup> (9,383)	12.14 (9,273)	10.89 (7,466)	7.73 (5,350)
<b>Total</b>	<b>18.44 (11,185)</b>	<b>13.59 (14,193)</b>	<b>15.36 (15,094)</b>	<b>14.28 (12,625)</b>	<b>11.00 (10,671)</b>

The amount of overpayments attributed to fraud or suspected fraud compared to total overpayments since 1997 is summarised in Figure 5.

<sup>11</sup> This fall of over €5m was principally due to a change in the way the Department classified overpayments arising from the estates of recipients of non-contributory social welfare scheme payments. Prior to 1998 such overpayments were deemed to be attributable to fraud or suspected fraud.

Figure 5



The Department's record of recovery of overpayments during the period 1997 – 2001 is shown in Table 45.

Table 45 - Departments record of recovery of overpayments 1997 to 2001

	1997 €'000	1998 €'000	1999 €'000	2000 €'000	2001 €'000
Overpayments not disposed of at 1 January	44,545	47,716	53,619	60,581	64,374
Overpayments recorded for recovery	26,387	28,215	28,448	26,982	26,049
<b>less</b>					
overpayments recorded in prior years cancelled	(382)	(480)	(292)	(447)	(668)
sums recovered in cash	(5,889)	(6,775)	(5,154)	(7,464)	(9,873)
sums withheld from current entitlements	(5,428)	(4,927)	(4,198)	(4,999)	(5,185)
net amounts written off as irrecoverable	(11,517)	(10,130)	(11,842)	(10,279)	(9,245)
<b>Overpayments not disposed of at 31 December</b>	<b>47,716</b>	<b>53,619</b>	<b>60,581</b>	<b>64,374</b>	<b>65,452</b>

Of the €65,452,289 overpayments outstanding at 31 December 2001 - €16,799,088 dates from 2001; €17,650,370 from 2000; €16,941,424 from 1999 and €14,061,407 from earlier years.

## Prosecutions

Cases involving abuse of the system are considered 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 either be by summary or indictment proceedings. Civil proceedings are taken to facilitate the recovery of scheme overpayments or the collection of PRSI arrears. Such cases are only taken where it has been established that the debtor has sufficient means to discharge the debt.

During 2001, 163 criminal cases (2000- 263 cases) were forwarded to the Chief State Solicitor's Office for prosecution as shown in Table 46.

**Table 46 - Criminal cases forwarded to the Chief State Solicitor**

	2000	2001
Unemployment Assistance	164	98
Unemployment Benefit	56	43
Disability Benefit	8	9
Invalidity Pension	1	1
One Parent Family Payments	8	1
Other Schemes	4	2
Offences Committed by Employers	22	9
<b>Total</b>	<b>263</b>	<b>163</b>

A total of 192 prosecutions (2000 - 185 prosecutions) involving social welfare recipients were finalised in court in 2001. The total amount of overpayments assessed in cases of persons who attempted to or obtained benefits/assistance fraudulently was €915,471 (2000 - €846,609). The results of these 192 court cases and the penalties imposed are given in Table 47.

**Table 47 - Results of Court Cases involving Social Welfare Recipients**

	Fines Imposed <sup>12</sup>	Community Service	Imprisoned <sup>13</sup>	Probation Act	Proven No Penalty	Adjourned /Liberty to Re-enter	Bound to peace
Unemployment Assistance	62	1	27	22	11	1	2
Unemployment Benefit	22	-	7	8	7	2	1
Disability Benefit	4	1	-	3	2	-	-
Invalidity Pension	-	-	-	-	-	-	-
One Parent Family Payments	4	1	-	1	1	-	-
Other Schemes	-	-	2	-	-	-	-
<b>Total</b>	<b>92</b>	<b>3</b>	<b>36</b>	<b>34</b>	<b>21</b>	<b>3</b>	<b>3</b>

Prosecutions of 7 cases involving employers (2000 - 28 employers) were also finalised with 4 being fined<sup>14</sup> and 3 recorded as proven/no penalty.

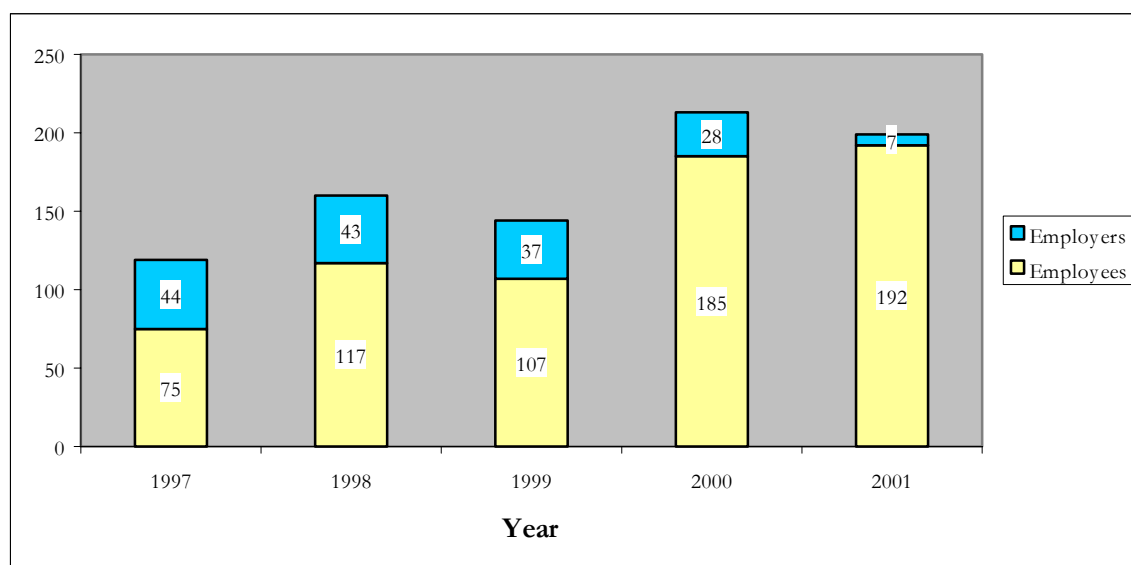
The number of prosecutions finalised in the courts since 1997 is summarised in Figure 6.

<sup>12</sup> Fines to a value of €30,588 were imposed by the courts (€34,624 in 2000 in 100 cases)

<sup>13</sup> 33 subsequently suspended.

<sup>14</sup> Fines to the value of €2,095 were imposed by the courts (2000: €10,044 in 22 cases).

Figure 6



A total of 52 civil cases have been forwarded to the Chief State Solicitor's Office since 1997. Table 48 details the history of civil cases forwarded and the cases still pending with the Chief State Solicitor's Office and Table 49 details the outcome of the 28 civil cases finalised.

Table 48 - Civil cases sent to the Chief State Solicitor's Office

	1997	1998	1999	2000	2001	Total
To CSSO	14	9	9	6	14	52
Finalised	11	8	3	1	5	28
Pending	3	1	6	5	9	24

Table 49 - Results of civil cases finalised

	Total
Settlement reached without going to court <sup>15</sup>	18
Finalised in the Supreme Court	1
Not pursued due to the circumstances of the debtor	5
Case statute barred	1
CSSO unable to serve summons	2
Recovered by instalments	1
	28

<sup>15</sup> €240,765 in overpayments were recovered in these cases out of a total overpayment €302,784 recorded.

## Chapter 12 – An Roinn Ealaíon, Oidhreachta, Gaeltachta agus Oileán

### 12.1 State Subsidised Transport Services to the Aran Islands

#### Introduction

The State currently subsidises ferry services to the Aran Islands (the Islands) from Galway City and Ros a Mhil and an air service from Galway/Aerphort na Minna. Connecting bus services from Ros a Mhil and from Galway/Aerphort na Minna to Galway City form part of the Aran Islands subsidised services. In addition there has been a limited State investment in a private company providing a ferry service from Doolin, Co. Clare since the early 1990s.

#### *Legislative Background*

The Aran Islands Transport Act 1946 makes provision for promoting the maintenance of an efficient shipping service between the City of Galway and the Aran Islands and authorises the payment of subsidies to persons providing such a service.

The Minister for Arts, Heritage, Gaeltacht and the Islands (Powers and Functions) Act, 1998 provides that, without prejudice to the Aran Islands Transport Act 1946, the Minister may, at his or her discretion and subject to such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine, finance the building, acquisition, overhaul or repair of vessels suitable for the operation of ferry services to inhabited offshore islands in the State, and pay subsidies for the operation of such ferry services.

Responsibility for the ferry service contract for the period 1 September 1992 to 31 August 1997, between the City of Galway and the Islands, lay with the Department of Transport, Energy and Communications [DoTEC]<sup>16</sup> until transferred to the Department of the Taoiseach in March 1996. These functions were vested in the Minister for Arts, Heritage, Gaeltacht and the Islands with effect from late July 1997.

There is no specific legislation in place regarding the subsidisation of the air service to the Aran Islands.

#### *Ferry Services to the Islands*

##### *City of Galway*

A subsidised passenger and goods service plies between the City of Galway and the Islands<sup>17</sup> under a contract awarded by the Department of Arts, Heritage, Gaeltacht and the Islands (DoAHGI). The subsidy payable under the contract is €4,221,879 for the seven year period 1 January 1998 to 31 December 2004. The contract provides for three sailings per week every month, with an additional sailing each week during June, July and August. The provision of at least one direct sailing a week to each of the three islands all year round is also required.

##### *Ros a Mhil*

Daily passenger services between Ros a Mhil and the Islands are currently provided under an agreement between the DoAHGI and a second operator covering the three year period 1 September 1999 to 31 August

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<sup>16</sup> Formerly Department of Tourism and Transport.

<sup>17</sup> Being the Islands of Inis Mór, Inis Meáin and Inis Oírr.

2002. The value of the agreement is €684,459. The agreement covers the provision of two return trips per day, seven days a week in the case of Inis Mór and Inis Meáin/Inis Oirr.

### *Doolin*

Shannon Free Airport Development Co. Ltd. (SFADCo) approved an equity investment of €92,691 by way of preference shares in 1990 to assist the expansion of the Doolin/Aran Ferry Service operated by a third operator. €60,947 of this investment has been drawn down.

### ***Air Service to the Islands***

#### *Aerphort na Minna*

Air services to the Islands have been provided since 1970. This service had been supported by funding from Údarás na Gaeltachta (Údarás) over a number of years. In 1999, direct responsibility for the service passed to DoAHGI. The current contract for the provision of the air service covers the three year period 1 February 2002 to 31 January 2005 at a subsidy cost of €2,234,855.

At least six return trips per day are to be provided Monday to Friday, and at least three return trips on Saturdays and Sundays throughout the year.

Table 50 outlines the payments made in respect of the ferry services and the air service to the Islands by the DoAHGI and Údarás during the period 1997 to 2001.

**Table 50 - Subsidy Payments<sup>18</sup>**

Year	City of Galway €	Ros a Mhil €	Aerphort na Minna €
1997	698,355	82,533	190,461
1998	603,126	177,763	196,809
1999	603,126	228,153	209,507
2000	793,586	228,153	232,362
2001	603,126	228,153	279,765
<b>Total</b>	<b>€3,301,319</b>	<b>€944,755</b>	<b>€1,108,904</b>

### **Objectives and Scope of Audit**

The principal objectives of the examination were to review the contracts in place with the providers of state-subsidised transport services to the Islands to

- determine if correct tendering procedures had been followed in the awarding of contracts in the period 1997 to 2001
- verify that the services contracted for are actually being provided
- establish that adequate financial management and control procedures are being exercised by the funding organisations.

The scope of the audit included a review of files held by DoAHGI, Údarás, and SFADCo. Meetings were held with officials from Údarás, SFADCo, the Marine Survey Office, in addition to discussions with personnel in the Department of Marine and Natural Resources and the Department of Public Enterprise (DoPE). Questionnaires were issued to the DoAHGI and to Údarás to clarify and substantiate information contained in the files reviewed for completeness purposes.

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<sup>18</sup> Source: DoAHGI payment records and summary information received from Údarás na Gaeltachta.



## **Audit Findings**

### ***Contracting Arrangements***

#### ***City of Galway to the Islands***

##### *Initial Contract*

The contract for the shipping service between the City of Galway and the Islands covering the period 1 January 1998 to 31 December 2004 is an extension of an earlier contract awarded in 1992.

In April 1990, the Department of Tourism and Transport invited tenders for the provision of a new year round ferry service to the Islands.

Following detailed evaluation of ten tenders submitted consultants engaged by that Department advised that one of the offers involving the building of a purpose built vessel for inter island use was “head and shoulders” above the other proposals.

The Government approved a contract, for the provision of an improved ferry service to the Islands at an annual cost to the Exchequer of €603,126. This contract was to cover the period December 1992 to August 1997.

As an acknowledgment of the considerable investment in the new service required from the operator, the Department agreed to the insertion of a clause in the contract allowing for an extension of the contract for the main shipping service for a further five years after 31 August 1997, provided agreement could be reached between the parties to this contract. It is not evident from Departmental papers whether further Government or Department of Finance approval was received to the inclusion of this clause into the contract.

##### *Request for additional funding*

In early 1994, following a request from the operator for additional financial resources to meet shortfalls in the operation of the service, the DoTEC agreed to make a once-off payment of €126,974 and to increase the annual subsidy payment by €95,230 to €698,356 from 1994 for the remainder of the contract period. This decision took account of the fact that, in the drafting of the contract, a request by the operator to have an inflation clause inserted was rejected.

##### *Current contract*

On expiry of the original contract term and on advice from the Chief State Solicitor’s Office (CSSO), the DoAHGI - now responsible for these services - entered into negotiations with the operator to extend the contract in compliance with the original contract terms.

Advice from the Attorney General’s Office confirmed that the arrangement did not contravene Services Directive 92/50/EC of the EU relating to tendering procedures. Nonetheless, the CSSO advised that the new contract should not provide for renewal as the Services Directive might apply to Water and Transport Services on the next occasion perhaps necessitating the award of any further contract by open tender.

An extension of the contract for seven years, from 1 January 1998 to 31 December 2004, was agreed at an annual subsidy of €603,126. The approval of the Government Contracts Committee (GCC) and the Department of Finance were obtained for the renewal of the contract in December 1997.

*Request for additional funding under the extended contract*

In early 2000, the operator applied to the DoAHGI for an increase in its subsidy due to severe financial difficulties being experienced by it. In April 2000, the Department made an advance payment of €201,041 (four months subsidy) to the operator on condition it would come back to the Department within four weeks with a restructuring plan so that its business would not continue to incur losses. Subsequent to this payment, it transpired that the advance payment contravened a 1994 agreement between the DoTEC and the Bank of Scotland whereby subsidy payments to the operator were to be paid directly to the bank. The bank demanded payment of the subsidy for the months of May and June. The Department paid an amount of €85,855 to the bank. Efforts to recoup the money from the operator were rebuffed.

Following further correspondence and communication with the operator, the DoAHGI proposed a once-off payment of €190,461 to the operator to meet capital outlay incurred by it for the provision of special facilities. The Department of Finance agreed to the payment on condition that DoAHGI satisfy itself, following its critical analysis of the report of the accountants employed by it to examine the operator's books, as to the veracity and accuracy of the expenditure incurred in providing the special facilities.

The DoAHGI was advised by the operator's accountants that its parent company<sup>19</sup> had the capacity to fund the company over the remaining years of the contract. This in their view would be adequate to secure the fulfilment of the contract. In contrast the accountants commissioned by the DoAHGI concluded, that based on calculations made by them, a cash injection of €473,612 over the remaining years of the contract would be required.

Following submission of an undertaking by the Company's Directors that they would fund from within their own resources any future losses incurred by the Company over the remainder of the contract, the DoAHGI agreed the cash injection of €190,461 to cover the additional capital expenditure incurred on the provision of the special facilities. The extra subsidy payment advanced to the Bank of Scotland was deducted and a payment of €104,606 was made to the operator in December 2000.

In November 2001, the operator again wrote to the Department regarding financial difficulty being experienced. No further funding has been granted. The Department informed the operator in March 2002 that if it felt it could not continue to provide the service the Department had no objection to operating strictly to the terms of the contract -the company had been sailing seven days a week during the summer months. It has also indicated that it is amenable to a mutual set-aside of the contract.

The Marine Survey Office of the Department of Communications, Marine and Natural Resources is responsible for the issuing of statutory safety certificates and licences for vessels in Ireland. It is a legal requirement that all passenger vessels that carry more than 12 passengers hold a valid Passenger Vessel Safety Certificate. Vessels that carry cargo must also hold a loadline certificate. All licensed vessels are subject to inspection by the Marine Survey Office.

Enquiries made in the Marine Survey Office indicate that the stand-by vessel nominated for the City of Galway service does not have a loadline certificate for the carriage of cargo. Accordingly it would appear that this vessel has not been operating in full compliance with the terms of the contract. It is understood that an application for a loadline certificate has recently been made by the operator in respect of this vessel.

Until recently the DoAHGI had not carried out a systematic review of the performance of the operator of

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<sup>19</sup> This company operates the service between Doolin and the Aran Islands.

this service since the contract was renewed. Although sailing logs are provided no comparison had been made with the terms of the contract. The Department has informed me that it has now instigated a system of regular comparisons between monthly sailing logs and the number of sailings provided for under the terms of the contract.

Under the contract, the Department is entitled to reduce the subsidy payable where the number of contracted sailings is not provided. In the period under review, there have been no instances of a reduction in subsidy payments despite the shortfall in sailings in ten months during 2001 as shown in Table 52. The Department is not in a position to give data on the operator's performance under contract for any year prior to 2001. A system has now been introduced by the Department whereby the Company's monthly subsidy payments are reduced if sailings contracted for are not provided.

The Department renegotiated a seven-year extension to the City of Galway contract despite being aware of the shortcomings of the service – through the monitoring committee - and without evaluating the operator's performance or use of the service. The Department was satisfied that the new contract was the best deal it could arrange in the prevailing circumstances and that it would yield annual savings of €95,230 over the outgoing contract. The additional two years negotiated would result in further savings to the Department.

In its ongoing negotiations with the operator on further additional funding, the Department's indication that it is amenable to set-aside the contract, raises fundamental questions as to why the contract had been extended in 1997. However, the Department is of the view that if additional funding were required to run the service, the appropriate mechanism to ascertain this would be to re-tender. Also in view of the improved level of passenger service from Ros a Mhil since 1999, the ongoing need for a passenger service from Galway City needed to be reviewed in order to ensure value for money to the Exchequer which might best be achieved in the new circumstances by re-tendering for a cargo service only from Galway.

While the Department had tied its additional payment of €190,461 to the provision of special equipment by the operator, these facilities had already been provided without the approval of the Department. This effectively lessened the Department's control over its subsidy payments.

There is a need for formal communication channels to be set up and agreed with the Department of Transport and the Department of Communications, Marine and Natural Resources regarding the compliance of vessels and buses with the requirements set by those authorities. The Department informs me that although regular contact takes place with both Departments a process has already been put in train to strengthen these contacts. The Department will also shortly begin carrying out regular spot-checks on the standard of customer service provided by subsidised ferry operators.

### ***Ros a Mhil to the Islands***

In December 1990, the Government approved the provision of a passenger service between Ros a Mhil and the Islands. The contract was awarded annually from 1991 to 1999. Since 1995 the same operator has provided the service.

The annual contract was extended by three months in 1997 to enable a review of subsidised transport services to the Aran Islands to be undertaken by the Department of the Taoiseach. (There is no evidence that the review was ever carried out). This extension was followed by a short-term contract from April 1997 to end August 1997 following a tender competition. This contract, costing €82,533 per annum, was subsequently extended up to the end of May 1998 after the DoAHGI took over responsibility for these services. The DoAHGI had hoped that savings would be achieved during its renegotiation of the City of Galway contract

which could be applied to improving the service from Ros a Mhil particularly to the two smaller islands Inis Oirr and Inis Meáin.

#### *1998 Tender competition*

Tenders were invited in February 1998 for the provision of an enhanced daily scheduled passenger ferry service from Ros a Mhil to Inis Mór, Inis Meáin and Inis Oirr with a connecting bus service to Galway City.

Only the current operator tendered for the service offering a number of options. Following negotiations on these offers, the DoAHGI accepted a proposal for the provision of a daily return service in the winter and a twice daily return service in the summer using two boats, to Inis Meáin and Inis Oirr and a twice daily service all year round to Inis Mór using a third boat at a total cost of €177,763 a year.

While the approval of the GCC was received on 9 June 1998 to issue a Letter of Intent to the operator awarding the contract, there is no record of approval from the Department of Finance. A signed contract does not exist in respect of the service provided following this negotiated agreement.

In September 1998, the CSSO advised that the DoAHGI would appear to be acting “ultra vires” the Minister for Arts, Heritage, Gaeltacht and the Islands [Powers and Functions] Act, 1998, by including in the contract the requirement to provide a bus service between Ros a Mhil and Galway. The Department is currently considering the most effective means of addressing this issue.

#### *1999 Tender Competition*

The Department of Finance approved a proposal to invite tenders for a three year contract for this service from 1 June 1999 to 31 May 2002. In giving its approval the Department asked that DoAHGI place an advertisement in the EU Official Journal (OJ) noting the placing of the contract – even though they considered it was not necessary to do so. Only one tender was received – from the existing operator. Following negotiation with the tenderer, the tender was re-submitted using the same date at a lower total cost. The Department of Finance approved the placing of the contract in August 1999 at a cost of €228,153 per annum subject to the Department’s compliance with the relevant national and EU public procurement requirements. GCC approval was obtained but the advertisement advising of the placing of contract was not entered in the EU Official Journal as requested by the Department of Finance. To date, a contract has not been signed in respect of the service being provided under this negotiated agreement.

The Ros a Mhil service has been funded since mid 1997 by the Department without a contract in place. The Department has failed to ensure the operator formally accepts its conditions of service. Although the letter of offer states the number of sailings to be undertaken, as no contract is in place, the Department is therefore not in a position to reduce the subsidy should there be a shortfall in the sailings agreed to. In fact, the Department does not monitor the frequency of the service actually provided before making payments.

#### *Air Service to Aran Islands*

Council Regulation (EEC) No 2408/92 empowers Member States to impose a public service obligation in respect of scheduled air services on ‘a thin route’ to any regional airport in its territory considered vital for the economic development of the region in which the airport is located. The regulation allows governments to pay to the operator the compensation necessary to ensure, on that route, the adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing standards air carriers would not assume if they were solely considering their commercial interest. The Government designated the Aerphort na Minna to the Islands service as a Public Service Obligation Route (PSOR) in November 2000.

Prior to its designation as a PSOR, an air service had been provided between Aerphort na Minna and the Islands by a private operator which made an annual funding submission to Údarás to subsidise fares applicable to Islanders. The subsidy agreement has been governed by the operator's acceptance of the terms and conditions proposed each year by the Board of Údarás. The agreements up to March 2000 provided for a twice daily return service to each of the Islands and imposed restrictions on the price of tickets.

The designation of the route as a PSOR arose following a request for a significant increase in the rate of subsidy needed – from an average of €196,809 for the years since 1996 to €336,481 for the year April 2000 to March 2001. The DoAHGI and Údarás were concerned that it was difficult to properly evaluate the subsidy needed in the absence of competition on the route. In the event, agreement was reached to increase the subsidy to an annual rate of €279,342 with an increase in the service frequency to three return trips per day. The arrangement was extended until end January 2002 when the first PSOR contract was to come into being.

### ***PSOR Contract***

In October 2001 tenders were invited for the provision of a PSOR service for a three year period. Notice of tender was inserted in the OJ of the European Communities. One tender was received from the existing operator. On advice from the DoPE, the DoAHGI employed an independent consultant to evaluate the tender submitted. The total value of the compensation sought was €2,971,188 (see Table 51).

Following negotiations with the tenderer – involving the use by the DoAHGI of a second consultant - an agreement was reached in March 2002 for compensation payments for the three years to 31 January 2005 of €2,234,855 (see Table 51). Department of Finance sanction received in April 2002, required that costs be monitored and that the air operator would have to justify the subsidy (compensation) sought on an ongoing basis. Oral approval from the GCC was received 24 April 2002. The contract was signed on 30 April 2002.

**Table 51 - PSOR Compensation 2002 - 2005**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Compensation sought	€952,304	€952,304	€1,066,580
Compensation agreed	€621,866	€745,016	€ 867,973

Although the contract does not include a requirement to provide a bus service to Galway City it was specified in the call for tender document and forms part of the compensation cost of the service being provided. Legal advice was not sought by the Department with regard to this as the Minister's power in regard to 'essential bus connecting services' is being followed up in relation to the Ros a Mhil and the Islands service.

The airline operator also received an ERDF grant of €201,730 in December 2000, through Bord Fáilte, towards the purchase of one new aircraft at Aerphort na Minna. A loan had been sought from Údarás but was not approved.

### ***Use of Subsidised Transport Services***

The population of the Islands, about 1,300, has remained virtually static between 1991 and 1996. Official statistics for the numbers now living on the Islands will not be available until analysis of the 2002 census is complete.

The DoAHGI was unable to provide either detailed or summary annual statistics regarding passenger use of the ferry services between Ros a Mhil and the Islands and Galway City and the Islands as sailing logs are not generally reviewed.

***Service out of City of Galway***

A recent analysis, carried out by the DoAHGI, of the number of sailings actually provided during 2001 on the City of Galway/Aran Islands route compared with the contract and of passenger usage of the service is summarised in Table 52 and Table 53 below.

**Table 52 - Sailings undertaken compared with contract requirements for 2001**

Month	Contracted	Actual	Deficit/Surplus	Percentage	
January		39	32	-7	82%
February		36	32	-4	89%
March		42	33	-9	79%
April		36	33	-3	92%
May		42	39	-3	93%
June		54	42	-12	78%
July		51	63	12	124%
August		54	69	15	128%
September		39	33	-6	85%
October		39	20	-19	51%
November		39	30	-9	77%
December		39	33	-6	85%
Total		510	459	-51	90%

**Table 53 - Passenger Usage\* ex City of Galway 2001**

Month	Galway to the Islands		The Islands to Galway	
	Islanders	Other	Islanders	Other
January	15	6	9	3
February	7	13	4	12
March	4	5	4	3
April	4	8	2	4
May	12	62	5	58
June	29	525	16	282
July	127	1,784	104	1,694
August	116	3,278	122	3,107
September	33	149	16	152
October	4	2	0	2
November	0	0	0	0
December	0	6	0	8
<b>Total</b>	<b>351</b>	<b>5,838</b>	<b>282</b>	<b>5,325</b>

\* one-way journeys.

Table 52 illustrates that, with the exception of the summer months, the company did not provide the number of sailings contracted for during the year 2001 while Table 53 shows that very little use is made of the passenger service outside of the summer months. Of the passengers carried on the service only 5-6% were Islanders.

The Department is unable to provide statistics on the amounts of cargo on the service throughout each year. In the absence of such statistics and given the very low level of passenger usage for ten months of the year it is impossible to evaluate the justification for the levels of service contracted for.

### *Service out of Ros a Mhil*

Summary annual statistics, compiled by the ferry operator, have been provided by the DoAHGI in relation to the Ros a Mhil/Aran Islands service. Statistics are not available for 1997 and the statistics provided for 2001 cover the period up to October only. It was not possible to obtain a breakdown of usage of the service between Islanders and others. The Department has not carried out any independent analysis of the usage of the service in the period 1997 to 2001. Table 54 summarises the annual position regarding the usage of this service.

**Table 54 - Passenger Usage ex Ros a Mhil 1997 - 2001**

Year	Inis Mór	Inis Meáin	Inis Oirr	Total
1998	92,806	4,985	3,934	101,725
1999	123,297	7,162	7,174	137,633
2000	133,967	6,464	9,117	149,548
2001	113,316	8,021	8,321	129,658
<b>Total</b>	<b>463,386</b>	<b>26,632</b>	<b>28,546</b>	<b>518,564</b>

Usage of this service is growing on an annual basis. Although usage by Islanders alone cannot be gauged from these statistics, it is understood that the service is popular with the Islanders.

### **Privately funded service provided by the Islanders**

During 2001, a company set up by the Islanders commenced the operation of an independent ferry service between the Islands and Ros a Mhil. The company does not receive a subsidy from the State for the operation of the service but enquiries were made by the company towards the end of 2001 in relation to any financial aid that may be available towards the provision of the service. The company was advised that a service is already being subsidised between Ros a Mhil and the Islands but that it will be open to the company to submit a tender for the service when the current contract ends on 31 August 2002.

An intermittent cargo service is also being provided by a private operator between Ros a Mhil and the Islands. A state subsidy is not paid in this particular case.

### *Air Service*

Summary statistics received from Údarás for the air service are shown in Table 55 below. These statistics were compiled by the airline operator.

**Table 55 - Air Service Usage 1997 - 2001<sup>20</sup>**

Year	Inis Mór		Inis Meáin		Inis Oirr		Total	
	Islander	Other	Islander	Other	Islander	Other	Islander	Other
1997 <sup>21</sup>	1,855	10,309	2,629	3,317	2,994	3,881	7,478	17,507
1998	2,398	10,570	2,927	2,754	3,297	3,953	8,622	17,277
1999	3,693	11,697	2,829	3,416	2,986	4,374	9,508	19,487
2000	4,550	17,176	3,289	2,824	3,332	3,905	11,171	23,905
2001	4,259	17,101	3,318	3,415	3,267	4,033	10,844	24,549
<b>Total</b>	<b>16,755</b>	<b>66,853</b>	<b>14,992</b>	<b>15,726</b>	<b>15,876</b>	<b>20,146</b>	<b>47,623</b>	<b>102,725</b>

Islander use of the air service is quite high and growing when compared with their use of the ferry service between Galway and the Islands. This factor should be taken into consideration by the DoAHGI when the ferry service contract is up for renewal in 2004.

The controls adopted by Údarás did not provide for a day to day involvement in the operation of the air service. Although payment procedures appeared reasonable, formal checks were not undertaken to ensure that the air service provided was in line with the conditions attached to the annual letter of agreement. In addition, there was no requirement on the operator to forward logs of the trips undertaken or details of the numbers of passengers carried.

### Monitoring Committee

A general purposes monitoring committee comprising representatives of the DoAHGI, the three islands, and when necessary, the ferry companies provides a forum to discuss and attempt to resolve any difficulties with the Aran Island Ferry services. A review of minutes of recent meetings held by the DoAHGI highlighted the following main concerns of the Islanders

- The City of Galway /Islands service does not run as scheduled
- Problems with the transportation of cargo
- Delays associated with the Ros a Mhil bus service
- Dissatisfaction with standard of vessels on occasion.

The DoAHGI endeavours to follow up on the issues raised and bring them to a satisfactory conclusion.

### Reports Commissioned

#### 1995

In April 1995, the DoTEC commissioned a consultant to evaluate and report on the passenger ferry service requirements of the Islands to/from Ros a Mhil with a view to establishing the need, the frequency of direct/indirect sailings to the islands, especially the two smaller islands and the cost of the services required. The consultant found that

<sup>20</sup> Airline Operator.

<sup>21</sup> Numbers exclude the month of January.



- it was absolutely clear that the Islands in comparison to other off-shore islands and isolated rural communities were well provided for in terms of state subsidised transport
- it could be argued that the subsidy paid to ferry operators could also be helping to subsidise summer tourist traffic
- there was no need to increase the subsidy to ferry operators
- if the DoTEC wished to guarantee the continued provision of a ferry service to the two small islands, a subsidy in the order of €126,974 would be required.

The Consultant also recommended that the subsidy paid to the ferry operators to operate a winter service out of Ros a Mhil to the two small islands be transferred to the air service operator.

No action was taken by the DoTEC on foot of this study in view of the imminent transfer of responsibility to the Department of the Taoiseach.

### **2001**

The DoAHGI is currently considering a report by consultants in October 2001 on the proposed development and day-to-day management of island airstrips and associated air services. The report provides for wide ranging development of airstrips on a number of inhabited offshore islands.

Údarás own the airstrips on each of the Aran Islands: the air operator was responsible for the maintenance of the air strip on Inis Mór until this responsibility transferred to Údarás on the introduction of the current public service obligation contract, while co-operatives on Inis Meáin and Inis Oirr look after the airstrips on these islands.

### **Conclusions**

- A more strategic co-ordinated approach is needed to managing the delivery of travel services to the Aran Islands if value for money is to be obtained.
- Analysis of information on usage should be an ongoing feature of monitoring the services and form the basis of future decision making on the optimum level and mix of services.
- The need for a subsidised cargo/passenger service out of the City of Galway needs to re-evaluated in the light of the out of season passenger usage of the service, the significant development of the facilities at Ros A Mhil and the fact that Ros a Mhil appears to be the Islanders port of choice.
- Formal contracts, with enforceable performance clauses should be drawn up to cover all the subsidised travel services to the islands.

### **Observations of the Department of Community, Rural and Gaeltacht Affairs**

The Department is currently actively considering carrying out a study of the type of service and infrastructure and level of subsidy required to provide proper access to all the main islands. This will be the first step aimed at implementing the recommendation regarding a more strategic co-ordinated approach to managing the delivery of the travel services to the Islands.

Sailing logs will be sought from all operators as a condition of any new contracts agreed. In addition, the Department has now employed the services of an IT consultant in order to set up a database suitable for the

analysis of information on usage and the monitoring of the services.

The Department points out that while there is no difficulty in relation to formal contracts with enforceable performance clauses for ferry services, there is an issue in relation to road transport which the Department is currently considering how to most effectively address.

## Chapter 13 -National Treasury Management Agency

### 13.1 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 €9.7m on administration in 2001 (€8.0m in 2000).

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 2001 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 2001 and its balances at year end.

Table 56 shows the outturn for the National Debt in the five year period 1997-2001.

**Table 56 - National Debt 1997 – 2001**

	National Debt Outstanding €m	Debt Service Cost €m
1997	38,967	3,498
1998	37,509	3,060
1999	39,849	2,800
2000	36,511	2,575
2001	36,183	2,379

The composition of the National Debt<sup>22</sup> at 31 December 2001 is shown in Table 57.

**Table 57 - Composition of National Debt as at 31 December 2001**

	€m
Medium/Long term Debt	24,412
Short term Debt	9,810
National Savings Schemes	4,328
Less: Domestic Liquid Assets	(2,367)
<b>National Debt</b>	<b>36,183</b>

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

<sup>22</sup> The National Debt is stated on the basis of nominal amounts of principal originally borrowed.

management in the year amounted to €18.3m.

## 13.2 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 a further audit tests which I consider necessary.

In 2002 they reported to me on their audit of the 2001 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. The Exchequer is responsible for the repayment to the Bank of all such funds and for meeting interest charges thereon.

The state of affairs of the fund at year end is shown in Table 58.

**Table 58 - Post Office Savings Fund**

	2001 €m	2000 €m
Liability in respect of funds due to depositors and creditors	814	691
Value of related investments held by Post Office Savings Bank Fund (at cost prices) <sup>23</sup>	823	700
<b>Surplus at 31 December</b>	<b>9</b>	<b>9</b>

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<sup>23</sup> The market value of the investments held by the Fund was €3.8m more than their cost price.