



**Comptroller and Auditor General**

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**Report on the  
Accounts of the Public Services 2015**

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**September 2016**



# Report of the Comptroller and Auditor General

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## Accounts of the Public Services 2015

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

### *Statutory Reporting Provisions*

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

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

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

Separately, section 11 of the 1993 Act provides for the preparation by me of special reports, dealing with any general matters I wish to report arising from my audits of the financial statements of any of the bodies within my audit remit, or where I decide to present the findings of 'value for money' examinations or inspections undertaken under relevant provisions of the 1993 Act. Such special reports are submitted formally by me to the relevant Minister of the Government, who is then required to cause a copy of the report to be presented to Dáil Éireann within three months.

### ***Presentation of this Report***

This is my report under Section 3 (10) of the 1993 Act relating to the 2015 financial year. The report is set out in four parts.

- Part 1 deals with matters relating to the Central Fund and Government debt.
- Part 2 outlines certain matters related to voted expenditure in 2015.
- Part 3 deals with matters arising out of the audit of the Revenue Account and the examination of Revenue systems.
- Part 4 comprises statutory reports on the audits of the accounts of the National Treasury Management Agency, and of the Irish Fiscal Advisory Council.

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

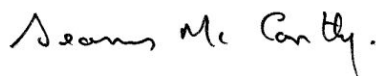
The report is concerned with the accountability of departments and offices in respect of their administration of public funds. References to third parties should be read only in that context.

I hereby present my report for the year ended 31 December 2015 to Dáil Éireann in accordance with Section 3 (11) of the 1993 Act.

### ***Presentation of Appropriation Accounts 2015***

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

I have certified each appropriation account for the year ended 31 December 2015 and, in an associated volume, submit those accounts, together with my audit certificates, to Dáil Éireann.



**Seamus McCarthy**  
**Comptroller and Auditor General**

28 September 2016

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## Central Government

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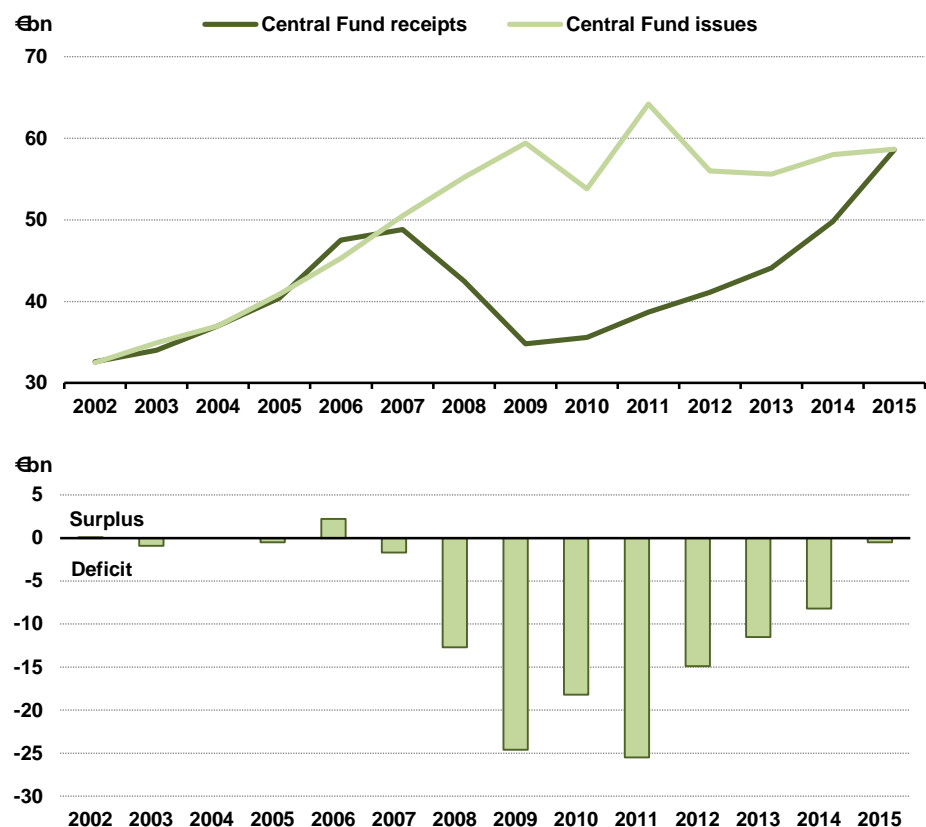
# 1 Exchequer Financial Outturn for 2015

- 1.1** All revenues of the State are paid into the Central Fund of the Exchequer unless otherwise determined by law.<sup>1</sup> Central Fund receipts include tax revenues and the proceeds of borrowing undertaken on behalf of the State by the National Treasury Management Agency (NTMA). Issues from the Central Fund are used mainly to fund expenditure on State services, and to service State debt.
- 1.2** The annual Finance Accounts present the receipts into and issues from the Central Fund together with details relating to NTMA borrowing and information about certain liabilities and assets of the State. This report summarises the transactions on the Central Fund and highlights some key trends. Because the Finance Accounts do not include a balance sheet, the summary position in relation to key assets and liabilities at year end is also set out.

## Exchequer deficit

- 1.3** Excluding borrowing, the movement in the Central Fund receipts and issues over the period 2002 to 2015 and the surplus or deficit for each of those years is set out in Figure 1.1. In 2015, the deficit was €64 million. This compares to a deficit of €8.2 billion in 2014.

**Figure 1.1 Central Fund receipts and issues and surplus/deficit, 2002 to 2015**



<sup>1</sup> Examples of State revenue, which is not paid directly into the Central Fund, include Pay Related Social Insurance receipts, which are paid into the Social Insurance Fund and the proceeds of motor tax, which are paid into the Local Government Fund.

Source: Finance Accounts 2002 to 2015

**Figure 1.2 Composition of Central Fund receipts and issues, 2011 to 2015<sup>a</sup>**

<b>Receipts</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
	€m	€m	€m	€m	€m
<i>Current receipts</i>					
Tax revenue	34,027	36,646	37,806	41,282	45,601
Transfer from Local Government Fund	–	–	–	520	481
Other current revenues <sup>b</sup>	2,520	2,765	2,676	2,446	3,035
<i>Capital receipts</i>					
Loans/advances repaid <sup>c</sup>	986	1,077	1,098	4,987	5,402
National Pensions Reserve Fund withdrawal	1,018	–	–	–	–
Banking stabilisation measures	–	–	2,311	–	3,682
Sale of mobile phone licences	–	450	60	–	–
National Lottery licence receipts	–	–	–	405	–
Aer Lingus share capital disposal	–	–	–	–	335
Other capital receipts	116	150	113	131	106
<b>Total receipts</b>	<b>38,667</b>	<b>41,088</b>	<b>44,064</b>	<b>49,771</b>	<b>58,642</b>
<b>Issues</b>					
Issues for voted expenditure	45,711	44,950	43,072	42,224	42,863
Service of national debt	4,736	5,823	7,459	7,579	7,107
Contribution to EU budget	1,350	1,393	1,726	1,685	1,952
Oireachtas Commission	130	105	101	101	106
Loans/advances <sup>c</sup>	1,199	1,485	1,444	4,929	5,207
Banking stabilisation measures	10,653	1,325	1,060	100	30
Credit Union Fund	–	250	–	–	–
Capital contribution to Irish Water	–	–	–	407	–
Share capital acquired in Irish Water	–	–	–	–	54
Transfer of Local Property Tax receipts to Local Government Fund	–	–	–	484	461
European Stability Mechanism capital contribution	–	510	510	255	–
Securities market programme related payment	–	–	–	31	–
Payments to DSP in respect of Waterford Crystal pensions	–	–	–	–	43
Issues to Ireland Strategic Investment Fund	–	–	–	–	335
Payments to local authorities to repay HFA loan	–	–	–	–	427
Other payments	406	139	195	165	121
<b>Total issues</b>	<b>64,185</b>	<b>55,980</b>	<b>55,567</b>	<b>57,960</b>	<b>58,706</b>
<b>Deficit for the year</b>	<b>25,518</b>	<b>14,892</b>	<b>11,503</b>	<b>8,189</b>	<b>64</b>

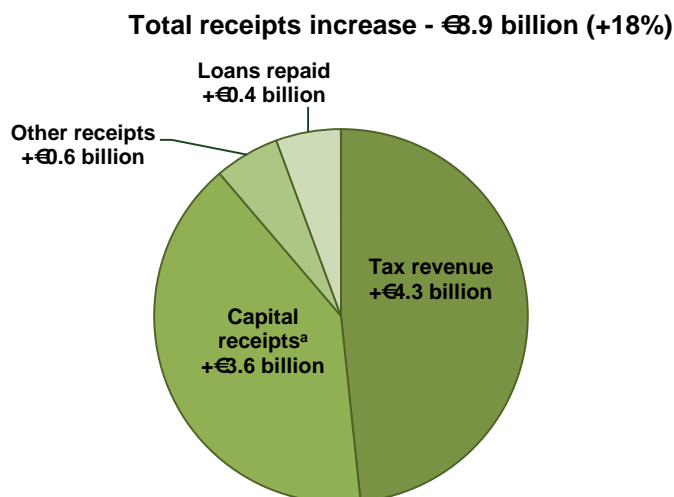
Source: Finance Accounts 2011 to 2015

- Notes:
- a Transactions of the Exchequer Account and the Capital Services Redemption Account are consolidated. The latter account is maintained by the National Treasury Management Agency for servicing national debt and transactions of a normal banking nature.
  - b Includes current element of receipts from banking stabilisation measures.
  - c See Annex A for further details.

## Central Fund receipts

- 1.4** Receipts into the Central Fund in 2015 totalled €58.6 billion. This represented an increase of €8.9 billion (18%) relative to 2014 receipts. The main items contributing to the increase are shown in Figure 1.3.

**Figure 1.3 Increases in Exchequer receipts between 2014 and 2015**



Source: Office of the Comptroller and Auditor General

Note: a Increase in capital receipts excluding loans repaid.

- 1.5** Total tax revenue in 2015 was €4.3 billion higher than in 2014. This was largely due to increases in corporation tax receipts of €2.3 billion or 49%, in income tax receipts of €1.2 billion or 7% and in VAT receipts of €790 million or 7%.

- 1.6** Current non-tax revenues of the Central Fund in 2015 amounted to €3.5 billion. Significant components were

- €1.7 billion in Central Bank surplus income arising in 2014 and paid into the Central Fund in 2015. The high level of receipts since 2014 was due to additional Central Bank income associated with banking stabilisation measures.
- €551 million (€475 million in 2014) in dividends from State shareholdings in a range of bodies. The most significant were paid by the ESB (€259 million), Ervia (€151 million) and AIB (€102 million).<sup>1</sup>
- €481 million paid to the Exchequer from the Local Government Fund, as provided for under the Local Government Reform Act 1998.<sup>2</sup>
- €191 million in interest received on contingent capital notes held in banks.
- €254 million in extra exchequer receipts (EER) collected by departments and surrendered to the Central Fund.<sup>3</sup>
- €76 million from credit institutions in respect of fees under the Eligible Liabilities Guarantee scheme. This was down from €179 million in 2014, due to the closure of the scheme to new liabilities during 2013.

1 In late 2015, 61% of the 2009 preference shares held by the State in AIB were converted into ordinary shares. The remaining 39% were redeemed resulting in a capital receipt. All accrued dividends on the conversion and redemption of the shares were paid to the Government by the end of 2015.

2 The Local Government Reform Act 1998 as amended, provides for the transfer of up to €540 million from the Local Government Fund to the Exchequer, on the request of the Minister for Finance, on or before 31 December 2015.

3 A further €8 million in capital EER was surrendered by departments.

**1.7** The increase in capital receipts was mainly due to transactions of a one-off nature. Significant capital receipts in 2015 were

- €1.63 billion in respect of the transfer from the Irish Strategic Investment Fund of some of the proceeds from the sale in 2013 of Bank of Ireland preferences shares.
- €1.54 billion from the proceeds of the partial redemption of AIB preference shares held by the State.<sup>1</sup>
- €411 million, including a premium on the issued value, from the repurchase by Permanent TSB of contingent capital notes held by the State. In addition, the State reduced its shareholding in Permanent TSB from 99.2% to 74.9%, receiving €97 million in proceeds.
- €335 million from the proceeds of the disposal of the Government's shareholding in Aer Lingus. In October 2015, Dáil Éireann approved the transfer of the proceeds from the Central Fund to the Connectivity Fund, a sub-portfolio of the Ireland Strategic Investment Fund (ISIF).

### Central Fund issues

**1.8** Issues from the Central Fund in 2015 amounted to €58.7 billion, which represents an increase of €746 million, or 1%, on 2014. Significant components were

- Issues from the Fund for voted services were up by 1.5% when compared with 2014.
- Payments related to servicing of borrowing undertaken by the NTMA were €7.1 billion in 2015, 6% lower than 2014.
- Payments of €427 million were made to local authorities in relation to repayment of borrowing (including interest) from the Housing Finance Agency, for historic local authority water supply and/or treatment projects.
- €4.5 million was paid from the Central Fund under the Credit Institutions (Financial Support) Act 2008, arising from the winding up of the Irish Bank Resolution Corporation. The total paid out, over the years 2013 to 2015, in relation to its winding up was €1.1 billion.

<sup>1</sup> The payment represents the proceeds from the part redemption of AIB preference shares along with accrued dividend, net of the cost of redeeming the outstanding EBS promissory note.

A €54 million convertible debt instrument issued by Irish Water in 2014 and held by the Minister for Finance was converted into an equity holding in Irish Water in September 2015. In addition, a working capital loan of €96 million was issued in December 2015 to Irish Water.

### ***Local Property Tax transfer***

- 1.9** Local Property Tax (LPT) is collected by the Revenue Commissioners and remitted to the Exchequer as part of the tax revenue receipts. From 2014, the Minister for Finance is required to pay an amount equivalent to LPT so remitted, including any interest paid by taxpayers during the year, from the Central Fund to the Local Government Fund. Of the €469 million LPT receipts remitted to the Exchequer in 2015, €461 million was paid to the Local Government Fund in 2015. The balance was paid in January 2016.

### ***European Stability Mechanism***

- 1.10** The European Stability Mechanism (ESM) has approved 'paid-in' capital of €80.5 billion, of which Ireland was required to contribute a share amounting to €1.274 billion.<sup>1</sup> Ireland contributed all of its share in five instalments between October 2012 and April 2014.
- 1.11** The Central Bank holds Greek government bonds as part of its Securities Market Programme. Under the Central Bank Act 2014, Ireland is to pay an amount equivalent to the income earned by the Central Bank on this portfolio to an account established by the ESM. The funds will be paid to Greece as financial assistance. Following the expiry of the Greek financial assistance programme on 30 June 2015, the euro area member states suspended the 2015 transfer of income from Securities Market Programme portfolios to the account established by the ESM.

<sup>1</sup> The ESM capital structure has two levels. This comprises €80.5 billion of 'paid-in' capital and a further €624 billion in committed callable capital.

### ***Exchequer borrowing***

- 1.12** Exchequer borrowing is considered in Chapter 2, Government Debt.

**Cash and financial assets**

- 1.13** The 2015 deficit of €64 million and net debt repayments in the year of €1.14 billion resulted in a reduction in cash and other financial assets of just over €1.2 billion or 8% at the end of 2015 (see Figure 1.4).
- 1.14** The balance on the Central Bank Exchequer account was €8 billion at the end of 2015, an increase of €3.9 billion on the balance at the end of 2014. The balance of Exchequer deposits in commercial banks (including collateralised deposits and tri-party repurchase agreements) fell by €3.8 billion during the year, and the value of other financial assets fell by €1.3 billion.<sup>1</sup>

**Figure 1.4 Movements in Exchequer cash and financial asset balances, 2011 to 2015**

<b>Movement in year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
	€m	€m	€m	€m	€m
<b>Balance at 1 January</b>	<b>16,164</b>	<b>17,692</b>	<b>23,850</b>	<b>23,601</b>	<b>14,759</b>
Net Exchequer borrowing/ (repayment) in year <sup>a</sup>	27,046	21,050	11,254	(653)	(1,141)
Exchequer (deficit)	(25,518)	(14,892)	(11,503)	(8,189)	(64)
<b>Balance at 31 December</b>	<b>17,692</b>	<b>23,850</b>	<b>23,601</b>	<b>14,759</b>	<b>13,554</b>

<b>Composition of cash and financial assets at 31 December</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
	€m	€m	€m	€m	€m
Central Bank Exchequer account	13,099	15,280	4,432	4,089	7,964
Bank deposits <sup>b</sup>	30	3,020	11,068	5,540	1,779
Non-Irish treasury bills	–	1,045	3,041	1,474	1,184
Loans to Housing Finance Agency	3,848	3,982	3,704	3,145	2,424
Collateral funding	715	523	1,356	511	203
<b>Balance at 31 December</b>	<b>17,692</b>	<b>23,850</b>	<b>23,601</b>	<b>14,759</b>	<b>13,554</b>

Source: Finance Accounts 2011 to 2015

- Notes: a 2012 and 2013 exclude Government bonds to the value of €3.5 billion issued, to meet the cost of the promissory note payment of €3.06 billion to Irish Bank Resolution Corporation, and floating rate bonds of just over €25 billion issued to replace Irish Bank Resolution Corporation promissory notes.
- b Includes collateralised deposits and tri-party repurchase agreements.

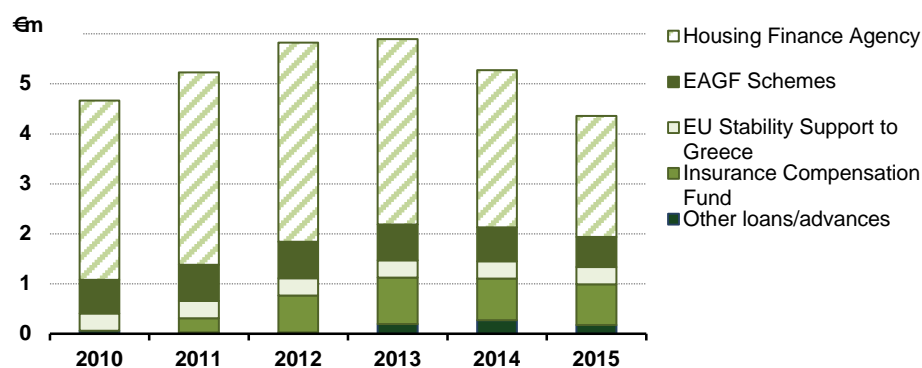
<sup>1</sup> See Chapter 2 on Government Debt for further details regarding tri-party repurchase agreements.



### Exchequer loans and advances

- 1.15** Loans and advances provided from the Central Fund, and outstanding at the end of 2015, comprised lending of €2.4 billion to the Housing Finance Agency and other loans totalling €1.93 billion. The outstanding balances for the major categories of loans and advances at year end are shown in Figure 1.5.

**Figure 1.5 Year-end balances on Central Fund loans and advances, 2010 to 2015**



Source: Finance Accounts 2010 to 2015

- 1.16** Other loans and advances include

- Social Insurance Fund - funds are advanced on a monthly basis to the Social Insurance Fund and subsequently repaid to the Central Fund. Advances in 2015 totalled €4.4 billion all of which were repaid in the year. Therefore at end 2015 there was a nil balance outstanding.
- PMG Supply Account - due to the unavailability of bank clearing systems on 1 January 2016, provision was made under Section 3 of the Appropriation Act 2015 for advances to be made from the Central Fund to the Paymaster General (PMG) supply account in order to fund commercial bank accounts in respect of weekly salaries due to be paid from voted monies on that date. Advances of €68 million made in December 2015 were repaid to the Central Fund in January 2016.
- Insurance Compensation Fund - €833 million in advances to the Insurance Compensation Fund were outstanding at end 2014. A further €79 million was advanced to the Fund during 2015.<sup>1</sup> €100 million was repaid to the Central Fund in 2015, following a determination by the Minister for Finance that the Fund was in a position to repay this amount, leaving a balance outstanding of €812 million.

<sup>1</sup> The Fund is financed through contributions of 2% of the gross written non-life insurance premiums received in respect of risk in the State. Section 5 of the Insurance Act 1964 allows the Minister for Finance to provide advances to the Fund in the form of a repayable loan if there are insufficient monies to enable payments out of the Fund.

**Annex A Loans and advances, 2011 to 2015**

	2011 €m	2012 €m	2013 €m	2014 €m	2015 €m
<b>Lending by the NTMA:</b>					
<b>Housing Finance Agency</b>					
Opening balance	3,585	3,848	3,982	3,704	3,145
Net movement in the year	263	134	(278)	(559)	(721)
Closing balance	3,848	3,982	3,704	3,145	2,424
<b>Loans and advances by the Central Fund:</b>					
<b>European Agricultural Guarantee Fund</b>					
Opening balance	673	720	730	715	677
Repayments	(673)	(720)	(730)	(715)	(677)
Loans issued	720	730	715	677	599
Closing balance	720	730	715	677	599
<b>Social Insurance Fund</b>					
Opening balance	110	55	–	15	–
Repayments	(254)	(355)	(285)	(4,015)	(4,365)
Advances	199	300	300	4,000	4,365
Closing balance	55	–	15	–	–
<b>Insurance Compensation Fund</b>					
Opening balance	–	280	735	933	833
Repayments	–	–	–	(100)	(100)
Loans issued	280	455	198	–	79
Closing balance	280	735	933	833	812
<b>EU Stability Support to Greece</b>					
Opening balance	346	346	346	346	346
Repayments	–	–	–	–	–
Loans issued	–	–	–	–	–
Closing balance	346	346	346	346	346
<b>Irish Water</b>					
Opening balance	–	–	–	–	54
Loan conversion to equity	–	–	–	–	(54)
Loans issued	–	–	–	54	96
Closing balance	–	–	–	54	96
<b>Other<sup>a</sup></b>					
Opening balance	61	32 <sup>b</sup>	30	178	219
Repayments	(59)	(2)	(83)	(157)	(206)
Loans issued	–	–	231	198	68
Closing balance	2	30	178	219	81

Source: Finance Accounts 2012 to 2015

- Notes:
- a Other includes the Local Loans Fund and advances to PMG supply account to facilitate salary payments at the start of the year. Prior year balances have been restated to include an Exchequer loan to CIE of €12.5 million previously omitted.
  - b The opening balance relating to the Local Loans Fund was restated for 2012 due to the dissolution of Ulysses plc, the securitisation vehicle in relation to local loans.

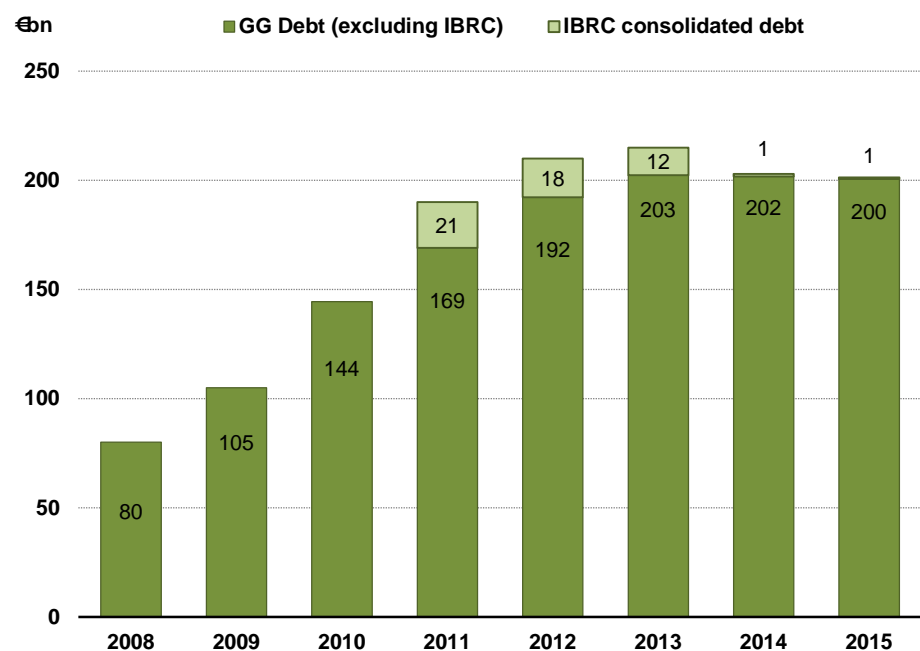
## 2 Government Debt

- 2.1** Revenues from taxation and other charges represent the primary source of State funding. However, the State has borrowed substantially to supplement its income from those sources. This report outlines the trend and composition of the government debt and the cost of debt service.

### General Government Debt

- 2.2** The most comprehensive measure of government debt is general government debt (GGDebt), an internationally standardised measure of debt which all EU countries are legally obliged to use for their twice-yearly reporting of government deficit and debt under the Maastricht Treaty. The GGDebt is defined by EU regulations as the total gross debt at nominal value outstanding at year-end for the consolidated general government sector – that is, the total gross debt owed by all government bodies to third parties outside government.<sup>1</sup> Debt that one government body owes another does not count towards the GGDebt. In Ireland, the general government sector includes most public sector bodies, but not publicly owned banks, NAMA Investment Ltd., and those commercially-operated State companies which cover a majority of their operating costs through sales.<sup>2</sup>
- 2.3** Ireland's GGDebt at the end of 2015 is estimated at approximately €201 billion – a decrease of 1% year on year, as shown in Figure 2.1.

**Figure 2.1 Trend in general government debt, 2008 to 2015<sup>a</sup>**



<sup>1</sup> Specifically, GGDebt is defined as the consolidated liabilities of the general government sector in the following European System of Accounts (ESA2010) categories: currency and deposits; debt securities; and loans.

<sup>2</sup> CSO Register of Public Sector Bodies can be viewed at <http://www.cso.ie/en/media/csoie/surveysandmethodologies/documents/pdfdocs/RegofPublicSectorBodiesinIreland2016April.pdf>.

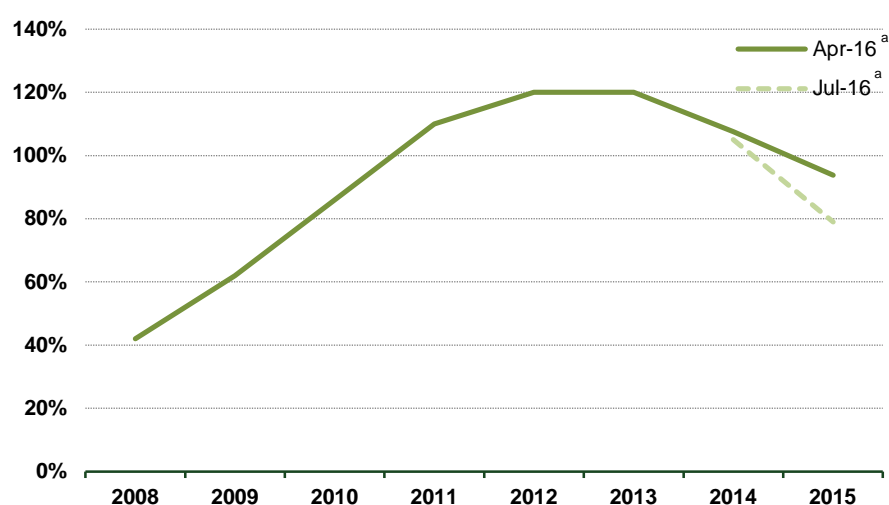
Source: Annex A, Figure A1

Note: a The GGDebt calculation is a statistical process. Consequently, amounts are subject to revision.

**2.4** The ratio of GGDebt to gross domestic product (GDP) is a standard sustainability measure applied for the purposes of comparison across the EU. The GGDebt as a proportion of GDP rose from 42% in 2008 to a peak of 120% in 2012 and 2013.

**2.5** In July 2016, the Central Statistics Office (CSO) published revised estimates of the 2015 GDP figures.<sup>1</sup> This indicated an exceptional increase in the estimated value of Ireland's GDP in 2015. As a result, the GGDebt ratio for end 2015 dropped to 79% as shown in Figure 2.2. The European Statistics Office (Eurostat) stated that the substantial upward revision to GDP for 2015 reflects the activities of a small number of large multinational firms and this is primarily due to the relocation to Ireland of a limited number of big economic operators.

**Figure 2.2 GGDebt as a proportion of GDP, 2010 to 2015**



Source: Annex A, Figure A2

Note: a Date of CSO publication.

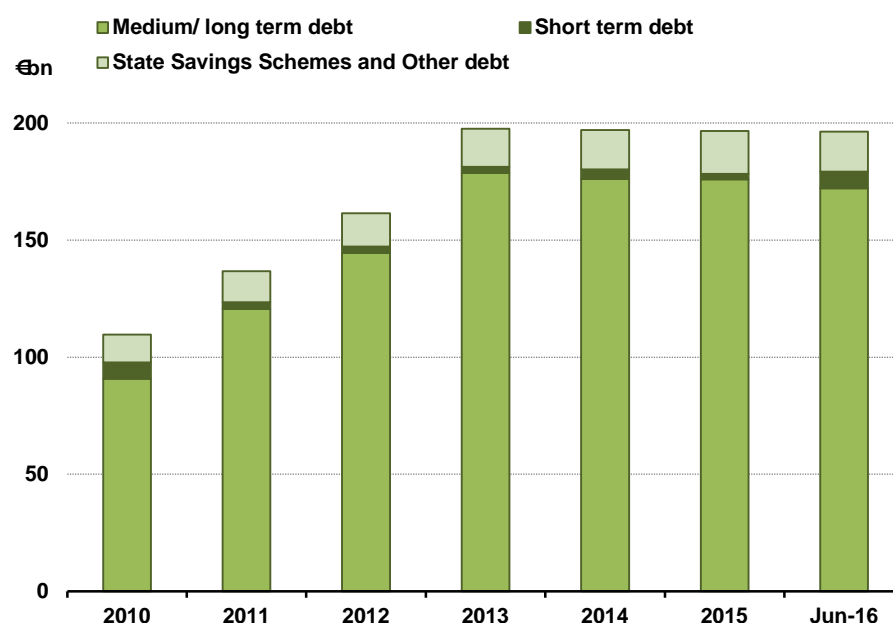
<sup>1</sup> CSO July 2016 publication 'Quarterly National Accounts Quarter 1 2016'.

**2.6** The CSO is to form a group of experts to provide guidance on how a broader or more detailed suite of indicators could be produced and published alongside this data in the future.

## Gross National Debt

- 2.7** The largest component of Ireland's GGDebt is the gross national debt. This is debt arising from Exchequer borrowings undertaken by the National Treasury Management Agency (the NTMA).
- 2.8** Gross national debt stood at €196.6 billion at the end of 2015, the second consecutive year of marginal decline (see Figure 2.3). By end-June 2016, gross national debt stood at €196.3 billion.<sup>1</sup>

**Figure 2.3 Gross national debt at redeemable par values, 2010 to 2015 (year-end) and at end-June 2016**



Source: Annex A, Figure A3

### Short-term debt

- 2.9** Short-term debt is debt with an original maturity of less than one year. It accounted for €2.3 billion of gross national debt at end-2015 compared with €4.1 billion at end 2014 (Annex A, Figure A6).<sup>2</sup> Short-term instruments are used to provide liquidity and flexibility in the timing of long-term funding operations.
- 2.10** The main forms of short-term borrowings are treasury bills, exchequer notes and the euro commercial paper programme. Three treasury bill auctions took place during 2015. Exchequer notes and euro commercial paper are sold through reverse enquiry.

<sup>1</sup> End-June 2016 figures are not audited.

<sup>2</sup> This excludes borrowing by the NTMA from other State funds e.g. overnight balances.

### ***Medium and long term debt***

- 2.11** Medium and long-term debt at end-2015 accounted for 90% (€176 billion) of the gross national debt. It comprised mainly borrowings in the form of government bonds, and loans received under the EU-IMF Programme of Financial Support for Ireland.

#### ***Fixed rate treasury bonds***

- 2.12** Of the €125.1 billion in government bonds outstanding at end-2015, fixed rate treasury bonds accounted for €101.5 billion or 81%.
- 2.13** Included in the €13 billion<sup>1</sup> (nominal) of bond market funding raised by the NTMA during 2015 were the following significant transactions
- €4 billion raised in January from the syndicated sale of a new seven year benchmark bond, at a yield of 0.87%
  - €4 billion raised in February from the syndicated sale of the first 30-year benchmark bond, at a yield of 2.09%
  - six scheduled auctions were held for tranches of the 2022, 2030 and 2045 treasury bonds which raised a total of €5 billion – yields ranged from 2.22% in the June auction of the 2030 bond to 0.81% in the May auction of the 2022 bond.
- 2.14** In March 2016, the NTMA issued Ireland's first ever 100-year note selling €100 million of the note, at a yield of 2.35%.
- 2.15** The register of holders of Irish government bonds is maintained by the Central Bank of Ireland. Irish residents held 41% of government bonds at end-2015, down from 44% at end-2014.

#### ***Floating rate government bonds***

- 2.16** During 2015, the NTMA bought back from the Central Bank and cancelled €2 billion of the 2038 and 2041 floating rate government bonds, reducing the aggregate balance outstanding across the entire floating rate bonds to €22.5 billion at end-2015, from the €25 billion originally issued in February 2013. Given the increase in market value of the bonds since issuance, the NTMA paid just under €2.8 billion to the Central Bank. Between March and July 2016, the NTMA bought back and cancelled a further €1.5 billion of the 2041 bond. The NTMA paid close to €2.1 billion to the Central Bank. The Central Bank distributes a percentage of profits back to the Exchequer and holds the remainder as reserves.<sup>2</sup>
- 2.17** On 20 November 2015, an EBS promissory note termination agreement was entered into between the Minister for Finance, the NTMA, EBS and AIB which provided for the redemption and subsequent cancellation of the EBS promissory note. The promissory note was redeemed from the EBS<sup>3</sup> at its carrying value of €225 million on 17 December 2015 and subsequently cancelled.<sup>4</sup>

<sup>1</sup> This figure excludes funding raised in non-competitive auctions.

<sup>2</sup> SI No. 93 of 1943 Central Bank of Ireland (Surplus Income) Regulations provides that the Central Bank may retain up to a maximum of 20% of its profit each year.

<sup>3</sup> EBS merged with AIB in July 2011.

<sup>4</sup> See Chapter 17 for further details regarding the redemption of the promissory note.

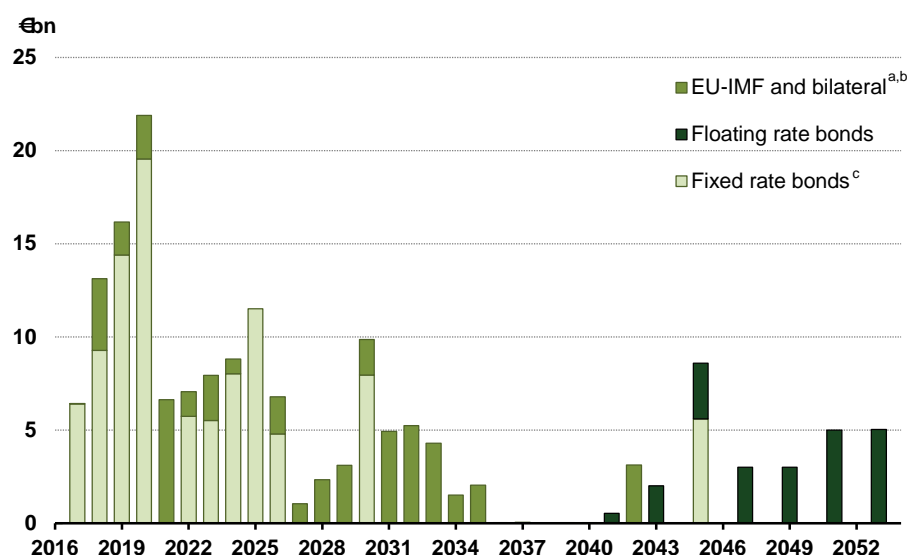
### *EU-IMF programme of financial support*

- 2.18** Ireland's EU-IMF programme provided for loan funding from EU lending facilities and the IMF, and for bilateral loans from the UK, Sweden and Denmark. The outstanding EU-IMF programme loan balance totalled €49.7 billion at end-December 2015.
- 2.19** Ireland made early repayments, over the period December 2014 to March 2015 totalling just over €18 billion or 81% of the original €22.5 billion IMF loan facility granted under the EU – IMF Programme.<sup>1</sup> The repayment was of the more expensive portion of the IMF facility. The NTMA has estimated that the early repayments will generate interest savings in excess of €1.5 billion over the original life time of the loans. These repayments were made with the agreement of the IMF and no penalties or charges were incurred.
- 2.20** The terms of the EU-IMF funding have been amended several times since the first drawdowns were made to reduce interest margins on bilateral, European Financial Stability Facility (EFSF) and European Financial Stabilisation Mechanism (EFSM) loans and to extend maturities for loans granted by the EFSF and EFSM.

### *Maturity profile of debt*

- 2.21** Figure 2.4 shows the maturity profile of government bonds and EU-IMF programme debt (totalling €171 billion) at end-June 2016. Almost 34% of outstanding debt at end-June 2016 is scheduled to mature in the period 2017 to 2020.

**Figure 2.4 Maturity profile of government bonds and EU-IMF programme funding held at end-June 2016<sup>a</sup>**



Source: Annex A, Figure A4 and Figure A5

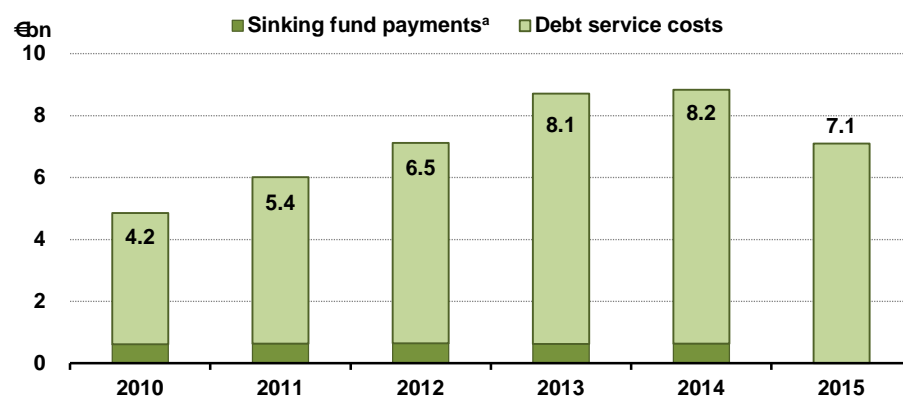
- Notes:
- a The EU-IMF programme balances are shown net of currency hedging transactions where relevant.
  - b Maturity extensions to EFSM loans were agreed in 2013 but the revised maturity dates will be determined as they approach their original maturity dates. The residual maturity reflects only the maturity extensions agreed to date. It is not expected Ireland will have to refinance any of these loans before 2027.
  - c Includes amortising bonds.

<sup>1</sup> These repayments discharge IMF principal repayment obligations that were originally to fall due from July 2015 to January 2021.

## Debt service costs

- 2.22** The debt service cost disclosed in the NTMA's accounts for 2015 was just over €7.1 billion when measured on a cash basis, down 13% year on year (see Figure 2.5). This is net of €37 million interest and other income received and includes fees and expenses of €128 million.

**Figure 2.5 Debt service costs and sinking fund payments, 2010 to 2015 (cash basis)**



Source: National Treasury Management Agency

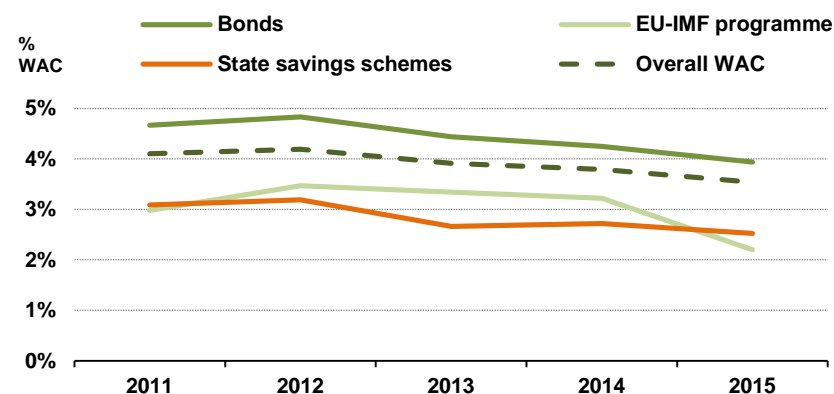
Note: a The sinking fund payment ceased from 2015 in accordance with section 99 of the Finance Act 2014. This was previously used to repay debt.

- 2.23** When the debt service cost is measured on an accruals basis, the servicing cost for 2015 was €6.9 billion.<sup>1</sup> The equivalent cost for 2014 was €7.6 billion – 9% decrease year on year.

## Average cost of borrowing

- 2.24** At end-2015, the overall weighted average cost of servicing the gross national debt was estimated at 3.5% (end-2014: 3.8%), as shown in Figure 2.6. The NTMA estimates the overall weighted average cost of servicing the gross national debt at 3.4% at end-June 2016. At end-June 2016, around 92.5% of gross national debt was at fixed rates, including debt where hedging had been undertaken.<sup>2</sup> The balance of the debt was at floating interest rates.

**Figure 2.6 Weighted average cost (WAC) of borrowing 2011 to 2015**



<sup>1</sup> The accruals basis recognises the debt service costs incurred in the year, rather than those paid and excludes sinking fund movements up to 2014.

<sup>2</sup> Fixed rate debt also includes EFSF loans disbursed as part of the EFSF's pooled funding mechanism. The cost of these EFSF pooled loans is related to the EFSF's cost of funds in managing the pool and can change from time to time.

Source: National Treasury Management Agency



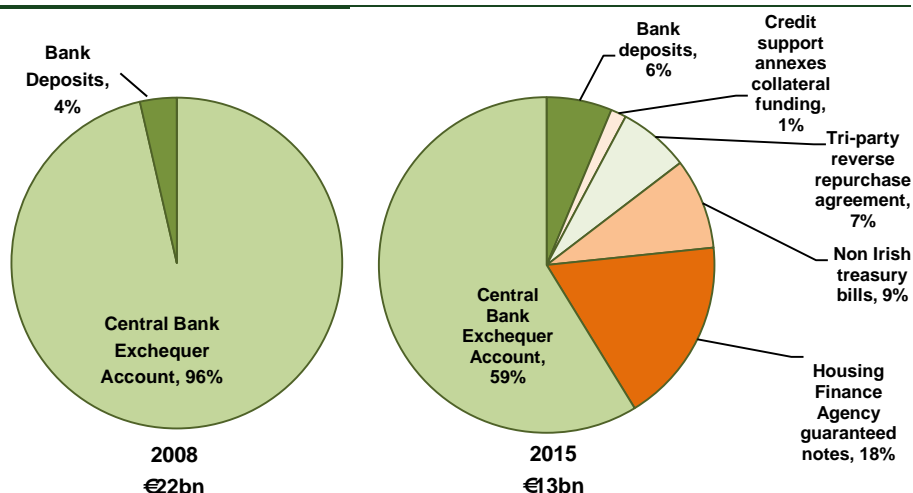
## Cash and other financial assets

- 2.25** The NTMA defines the 'net national debt' as gross national debt incurred by the Exchequer, less cash balances and other financial assets held.

### Composition of financial assets

- 2.26** The NTMA has held significant balances of cash and other financial assets over the past number of years. At end-2015, a total of €13.6 billion (2014: €14.8 billion) was held. This had decreased by 15% to €11.5 billion at end-June 2016.
- 2.27** The composition of the Exchequer's cash balances and financial assets has changed significantly in recent years. Prior to the financial crisis, almost all were held in the form of deposits at the Central Bank (see Figure 2.7). At end-2015, 59% of overall cash and financial assets was held in the Central Bank. This represented an increase of 95% when compared to end-2014.

**Figure 2.7 Cash and other financial assets, 2008 and 2015**



Source: Annex A, Figure A7

1 This is the net of collateral posted of €986 million and collateral received from NAMA (€256 million), IBRC (€36 million) and other counterparties (€491 million).

2 In order to manage counterparty credit risk, the NTMA receives collateral such as Government bonds for cash placed on deposit.

3 A reverse repurchase agreement is where one party buys an asset from another party and commits to sell the asset back to the second party at a future date.

4 This applies to government deposits exceeding the higher of either €200 million or 0.04% of gross domestic product.

- 2.28** Around 80% (€10.9 billion) in cash and other financial assets held at end-2015 was available to the State immediately or at short notice. The remainder is not readily realisable. It comprises

- Housing Finance Agency (HFA) guaranteed notes of €2.4 billion
- €0.2 billion deposited with derivative counterparties as collateral under credit support agreements.<sup>1</sup>

- 2.29** Since 2012, the NTMA has invested available cash balances in short-term bank deposits (including collateralised deposits,<sup>2</sup> tri-party reverse repurchase agreements<sup>3</sup> and in non-Irish Treasury Bills). These investments earn a higher rate of return than cash held at the Central Bank but may also carry a higher risk.

- 2.30** In June 2014, following a decision of the European Central Bank, all Government deposits held in the Central Bank are remunerated at zero per cent or at the deposit facility rate, whichever is lower.<sup>4</sup> The deposit rate was reduced to minus 0.2% from September 2014 until December 2015 when it reduced further to minus 0.3%. In March 2016, it was reduced further to minus 0.4%.

***Post Office Savings Bank Fund surplus***

- 2.31** Under guidelines issued by the Minister for Finance to the NTMA, the accumulated surplus of the Post Office Savings Bank (POSB) Fund (the Fund) must be kept above €5 million. The accumulated surplus does not form part of the financial assets of the Exchequer. However, under section 19 of the Finance Act 1930, an accumulated surplus of the Fund can be appropriated to the Exchequer, once appropriate provision has been made for depreciation in the value of the Fund's assets available to meet the liabilities to the depositors.
- 2.32** In the period 2000 to 2011, the Fund's accumulated surplus ranged in value between €7 million and €13 million. Over the period 2012 to 2014, the surplus increased significantly, rising to €67 million in 2012, €96 million in 2013 and €190 million in 2014. The POSB had an accumulated surplus at 31 December 2015 of €165 million, a decrease of around 13% on the prior year. This decrease reflects a decline in investment income due to both a reduction in bond holdings and bond yields.
- 2.33** Currently, the NTMA does not plan to transfer any of the surplus to the Exchequer.

## Annex A

Figure A1 Composition of General Government Debt at year-end, 2010 to 2015<sup>a</sup>

	2010	2011	2012	2013	2014	2015
	€m	€m	€m	€m	€m	€m
<b>Central Government – Exchequer</b>						
Gross national debt	109,609	136,774	161,482	197,547	197,069	196,618
Less liabilities to other central government bodies, local authorities and ETBs	(2,472)	(2,635)	(2,330)	(2,346)	(2,551)	(3,362)
Adjustment for nominal value of debt <sup>b</sup>	72	4	6	4	2	8
European Financial Stability Fund prepaid margin	–	530	530	530	530	530
Liability for coinage in circulation	673	694	670	675	693	701
Accrual adjustment <sup>c</sup>	368	464	548	604	599	504
Other adjustments <sup>d</sup>	(10)	153	1440	996	1,042	808
National loans advance interest	64	12	12	5	49	24
Promissory notes	30,850	28,333	25,261	215	201	–
<b>Exchequer contribution</b>	<b>139,154</b>	<b>164,329</b>	<b>187,619</b>	<b>198,230</b>	<b>197,634</b>	<b>195,830</b>
<b>Other Central Government</b>						
IBRC consolidated debt	–	20,927	17,797	12,660	1,237	735
Post Office Savings Bank Fund deposits	2,328	2,506	2,774	2,646	2,672	2,747
Other State bodies <sup>e</sup>	545	535	456	381	519	1,088
Westlink buy-out	460	410	360	310	260	221
<b>Other central government contribution</b>	<b>3,332</b>	<b>24,377</b>	<b>21,387</b>	<b>15,997</b>	<b>4,688</b>	<b>4,792</b>
<b>Housing Finance Agency</b>						
Gross debt	4,512	4,414	4,501	4,423	4,209	3,609
Less liabilities to central government bodies and local authorities	(3,833)	(4,030)	(4,106)	(3,997)	(3,796)	(3,389)
<b>Housing Finance Agency contribution</b>	<b>679</b>	<b>384</b>	<b>394</b>	<b>427</b>	<b>413</b>	<b>221</b>
<b>Local Government</b>						
Gross debt	5,617	5,054	5,106	4,920	4,984	4,150
Less liabilities to Housing Finance Agency and other central government bodies	(4,556 )	(4,437 )	(4,521)	(4,276)	(4,424 )	(3,727)
<b>Local government contribution</b>	<b>1,062</b>	<b>617</b>	<b>585</b>	<b>644</b>	<b>560</b>	<b>423</b>
<b>Total<sup>f</sup></b>	<b>144,227</b>	<b>189,707</b>	<b>209,986</b>	<b>215,298</b>	<b>203,296</b>	<b>201,266</b>

Source: Central Statistics Office

- Notes:
- a Information for the years 2010 to 2015 sourced from the CSO April 2016 publication 'Government Finance Statistics Annual results'.
  - b GGDebt reported to the EU is stated at nominal values. Certain debt, such as commercial paper, is issued at a discount to its nominal value, but the nominal value is reported for GGDebt purposes.
  - c Savings Bonds, Savings Certificates and Instalment Savings interest.
  - d Repurchase agreements, collateral and OPW contracts.
  - e Includes voluntary hospitals, HSE, National Oil Reserve Agency.
  - f This excludes other exchequer liabilities including commitments in respect of public private partnership contracts in place at year-end and accrued pension entitlements.

**Figure A2 GGDebt as a proportion of GDP, 2010 to 2015<sup>a</sup>**

Ratio	2008	2009	2010	2011	2012	2013	2014	2015
	€m	€m	€m	€m	€m	€m	€m	€m
GGDebt	79,604	104,667	144,227	189,707	209,986	215,298	203,295	201,266
GDP	187,687	169,704	167,124	173,070	175,754	180,209	193,160	255,815
GGDebt:GDP	42%	62%	86%	110%	120%	120%	105%	79%

Source: Central Statistics Office

Note: a Information for the years 2010 to 2015 sourced from the CSO July 2016 publication 'Quarterly National Accounts Quarter 1 2016'.

**Figure A3 Cumulative borrowing at redeemable par values, at year-end 2010 to 2015 and end- June 2016<sup>a</sup>**

	2010	2011	2012	2013	2014	2015	End June 2016
	€m	€m	€m	€m	€m	€m	€m
<b>Medium/long-term debt<sup>b</sup></b>							
Government bonds	90,102	85,310	87,853	111,007	116,339	125,086	120,916
EU-IMF programme funding <sup>c</sup>	–	34,629	55,898	66,942	58,793	49,747	49,765
Other medium/long-term	673	673	772	772	927	1,168	1,468
<b>Short-term debt<sup>d</sup></b>							
Short-term debt	6,972	2,920	2,690	2,645	4,102	2,347	5,035
<b>Other debt</b>							
Borrowings from other State funds <sup>e</sup>	1,524	1,696	786	676	523	1,579	2,087
Government savings schemes <sup>f</sup>	10,338	11,546	13,483	15,506	16,384	16,692	17,077
<b>Gross national debt</b>	<b>109,609</b>	<b>136,774</b>	<b>161,482</b>	<b>197,548</b>	<b>197,068</b>	<b>196,619</b>	<b>196,348</b>

Source: National Treasury Management Agency

Notes: a End-June 2016 figures have not been audited.

b Original maturities of more than one year.

c The balances are stated net of currency hedging transactions.

d Original maturities of one year or less.

e The main element of this borrowing relates to the Post Office Savings Bank Fund.

f Maturities up to ten years.

**Figure A4 EU-IMF programme of financial support for Ireland, December 2015 and end-June 2016<sup>a</sup>**

Lender	December 2015		End-June 2016	
	€m	Residual maturity (years) <sup>b</sup>	€m	Residual maturity (years) <sup>b</sup>
IMF	4,348	6.0	4,354	5.5
EFSF <sup>c</sup>	17,881	17.1	17,881	16.6
EFSM <sup>d</sup>	22,500	11.1	22,500	10.6
Bilateral loans <sup>e</sup>	5,018	4.4	5,030	3.7
<b>Total</b>	<b>49,747</b>		<b>49,765</b>	

Source: National Treasury Management Agency

- Notes:
- a The liability outstanding at end-June 2016 differs from the drawdown amount due to repayments, the effects of hedging instruments to hedge currency risk, exchange rate movements and adjustment for below par issuance. The balances are stated net of currency hedging transactions.
  - b Weighted average term to maturity.
  - c The EFSF figures are shown net of a prepaid margin of €530 million. Following the rebate in July 2016 of the pre-paid margin deducted from the EFSF drawdown of February 2011, the total aggregate liability increased to €50.3 billion.
  - d Maturity extensions to EFSM loans were agreed in 2013 but the revised maturity dates will be determined as they approach their original maturity dates. The residual maturity reflects only the maturity extensions agreed to date. It is not expected Ireland will have to refinance any of these loans before 2027.
  - e The bilateral loans are with the United Kingdom, Denmark and Sweden.

**Figure A5 Maturity profile of government bonds, at year-end 2010 to 2015 and end-June 2016<sup>a</sup>**

	Under 5 years	5 to 10 years	Over 10 years	Total
	€m	€m	€m	€m
2010	28,298	53,520	8,284	90,102
2011	33,670	43,356	8,284	85,310
2012	30,548	44,733	12,572	87,853
2013	32,490	40,656	37,861	111,007
2014	40,659	34,653	41,027	116,339
2015	58,314	30,450	36,322	125,086
End-June 2016 <sup>b</sup>	49,642	30,817	40,457	120,916

Source: National Treasury Management Agency

- Notes:
- a End-June 2016 figures have not been audited.
  - b Maturity refers to the position at the end of the calendar year.

**Figure A6 Maturity profile of short-term paper, at year-end 2010 to 2015 and end-June 2016<sup>a</sup>**

	Less than one month	One to three months	Three to six months	Over six months	Total
	€m	€m	€m	€m	€m
2010	2,186	3,286	1,392	108	6,972
2011	2,796	106	18	–	2,920
2012	1,147	1,417	93	33	2,690
2013	445	747	1,428	25	2,645
2014	1,114	1,554	1,074	360	4,102
2015	1,300	429	134	484	2,347
End-June 2016	2,307	1,650	1,069	10	5,036

Source: National Treasury Management Agency

Note: a End-June 2016 figures have not been audited.

**Figure A7 Cash and other financial assets, at year-end 2010 to 2015 and end-June 2016<sup>a</sup>**

	2008	2009	2010	2011	2012	2013	2014	2015	End-June 2016
	€m	€m	€m	€m	€m	€m	€m	€m	€m
Exchequer account	21,269	21,026	11,399	13,099	15,280	4,432	4,089	7,964	8,018
Capital services redemption account	–	–	600	–	–	–	–	–	7
Housing Finance Agency guaranteed notes	–	–	3,585	3,848	3,982	3,704	3,145	2,424	2,312
Bank deposits	790	790	580	30	2,680	3,679	2,984	853	403
Collateralised deposits	–	–	–	–	339	7,389	–	–	–
Non Irish treasury bills	–	–	–	–	1,046	3,041	1,474	1,184	50
Credit support agreements collateral funding	–	–	–	715	523	1,356	511	203	679
Tri-party reverse repurchase agreements	–	–	–	–	–	–	2,556	925	–
<b>Total cash and financial assets</b>	<b>22,059</b>	<b>21,816</b>	<b>16,164</b>	<b>17,692</b>	<b>23,850</b>	<b>23,601</b>	<b>14,759</b>	<b>13,553</b>	<b>11,469</b>

Source: National Treasury Management Agency

Note: a End-June 2016 figures have not been audited.

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## **Voted Expenditure**

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### 3 Vote Accounting and Budget Management

- 3.1** Dáil Éireann provides money for the services of government departments and offices by
- approving estimates of receipts and expenditure for those services in the course of each year
  - giving statutory effect to the estimates in an annual Appropriation Act.
- 3.2** Expenditure is provided for under 'votes', with one or more votes covering the functions of each department or office. The first part of the estimate for each vote (referred to as the ambit) provides an outline of the services to be financed. The ambit is incorporated in the annual Appropriation Act and so represents the purposes for which funds have been authorised by Dáil Éireann.
- 3.3** At the end of each financial year, each department and office is required to prepare an account, known as the appropriation account, for each voted service administered by it. The statutory requirement is for the appropriation account to report the outturn for the year compared with the amount provided by Dáil Éireann.
- 3.4** In addition to voted services, some government departments administer statutory funds. Generally, these are funded from sources other than the Central Fund and therefore, that funding is not 'voted' by Dáil Éireann. Examples of such funds and their main income sources are
- Social Insurance Fund (PRSI)
  - Local Government Fund (motor tax and local property tax)
  - National Training Fund (Training Fund Levy and EU)
  - Environment Fund (plastic bag and landfill levies)
- 3.5** In presenting estimates and expenditure reports, the Department of Public Expenditure and Reform include the Social Insurance Fund (€8.5 billion) and the National Training Fund (€362 million) in total gross expenditure. The Department advises that this is in recognition of the significant expenditure funded by PRSI contributions, the role of the relevant departments in relation to the expenditure incurred by those funds and that, where there is a shortfall in these funds in any financial year, the amount involved may be paid into the funds from moneys provided by Dáil Éireann.

#### Results of 2015 audits of appropriation accounts

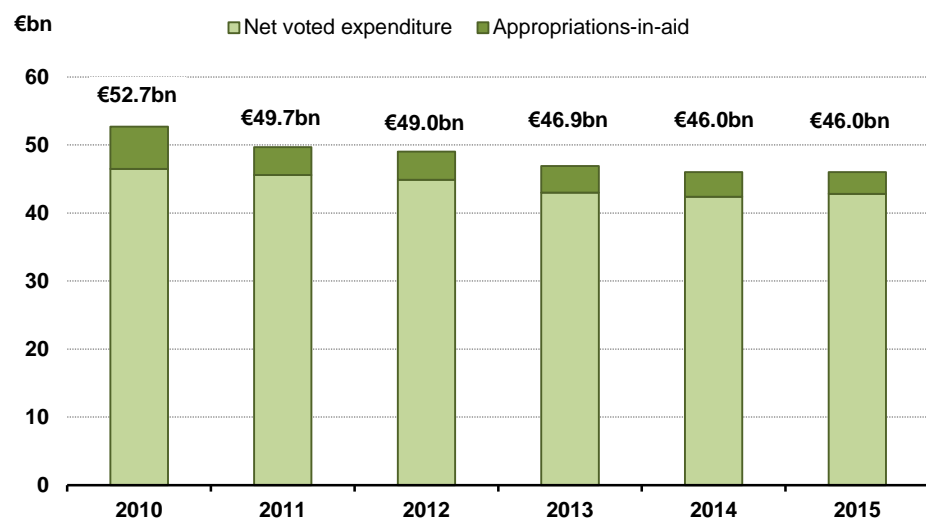
- 3.6** Audits of the 2015 appropriation accounts for all votes have been completed. Each account, together with the related audit report, is being presented to Dáil Éireann with this report.
- 3.7** A summary of the amounts appropriated in 2015 for voted public services is included in Annex A (Figure A1). The outturn for the year is also shown, together with the surplus of appropriations over expenditure.

- 3.8** The final amount appropriated for public services in 2015 was €46.4 billion. This comprised supply grants of €43.1 billion, capital funding carried over from 2014 totalling €79 million and appropriations-in-aid of €3.2 billion.

### Vote outturn

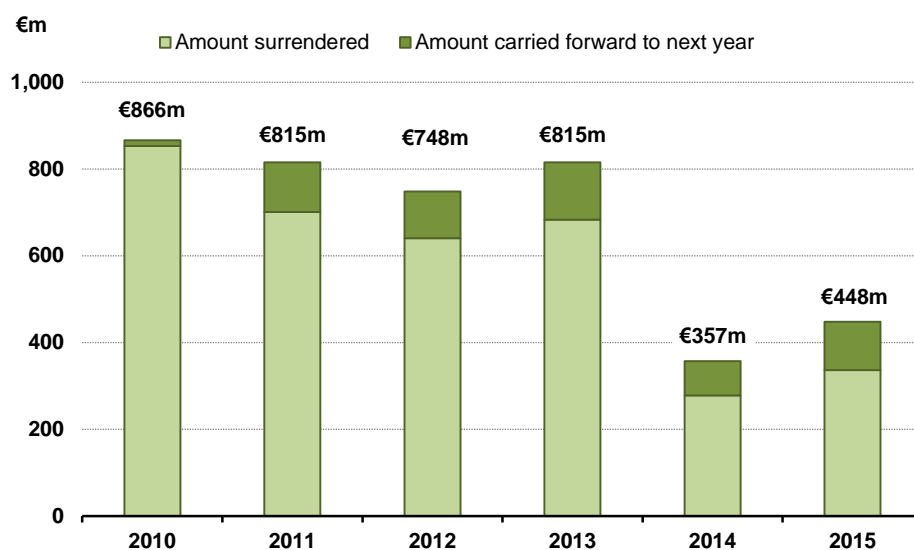
- 3.9** Aggregate expenditure and appropriations-in-aid of all votes for the years 2010 to 2015 are summarised in Figure 3.1. The total amount spent by departments and offices in 2015 was €46 billion. After deduction of realised appropriations-in-aid totalling €3.2 billion, the net expenditure in the year was €42.8 billion.

**Figure 3.1 Vote outturn, 2010 to 2015**



Source: Reports on the Accounts of the Public Services, 2010 to 2015, Annex A

- 3.10** Departments and offices are not permitted to spend more than the amount appropriated for each vote. When the expenditure in the year is less than the amount provided, the surplus is liable to be surrendered to the Exchequer.
- 3.11** All departments and offices managed within their overall voted allocations in 2015 and surpluses were recorded by all votes. Consequently, no excess vote occurred in 2015.
- 3.12** The 2015 surpluses amounted to €448 million (see Figure 3.2). Of that amount, a total of €112 million was approved for carry over to 2016. The balance of €336 million was due for surrender. The sums liable for surrender or carried over to 2016 for each vote are shown in Annex A (Figure A2).

**Figure 3.2 Surplus appropriations, 2010 to 2015**

Source: Reports on the Accounts of the Public Services, 2010 to 2015, Annex A

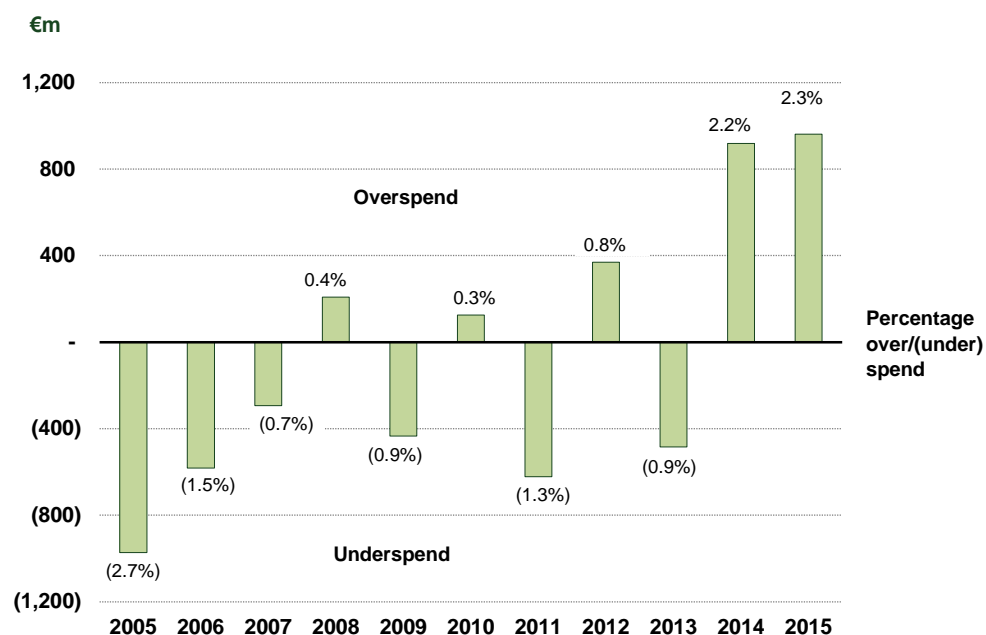
### Exchequer extra receipts

- 3.13** Certain sums collected by departments and offices are directed by the Department of Public Expenditure and Reform to be credited to the Exchequer, and not treated as appropriations-in-aid. This includes court fine receipts, and Property Registration Authority fee receipts. Windfall receipts are also usually brought to account in this way, including proceeds of significant sales of property, receipts on foot of surplus income or profits of State companies, interest, dividends or capital repayments, compensation payments and voluntary surrender of salary. Where Exchequer extra receipts arose in 2015, the amounts are shown in notes to the relevant appropriation accounts. The total Exchequer extra receipts recorded by departments and offices in 2015 was €157 million (2014: €125m). The aggregate amount of those receipts reported in each account is set out in Annex A (Figure A3).

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

### Budget variance

- 3.14** The original estimate amount approved represents the forecast of the amount required to meet the cost of the services to be provided from each vote. The budget variance is therefore the difference between the original estimate of net expenditure and the actual outturn in a year.<sup>1</sup> Figure 3.3 sets out the budget variance for all votes combined, for the years 2005 to 2015.

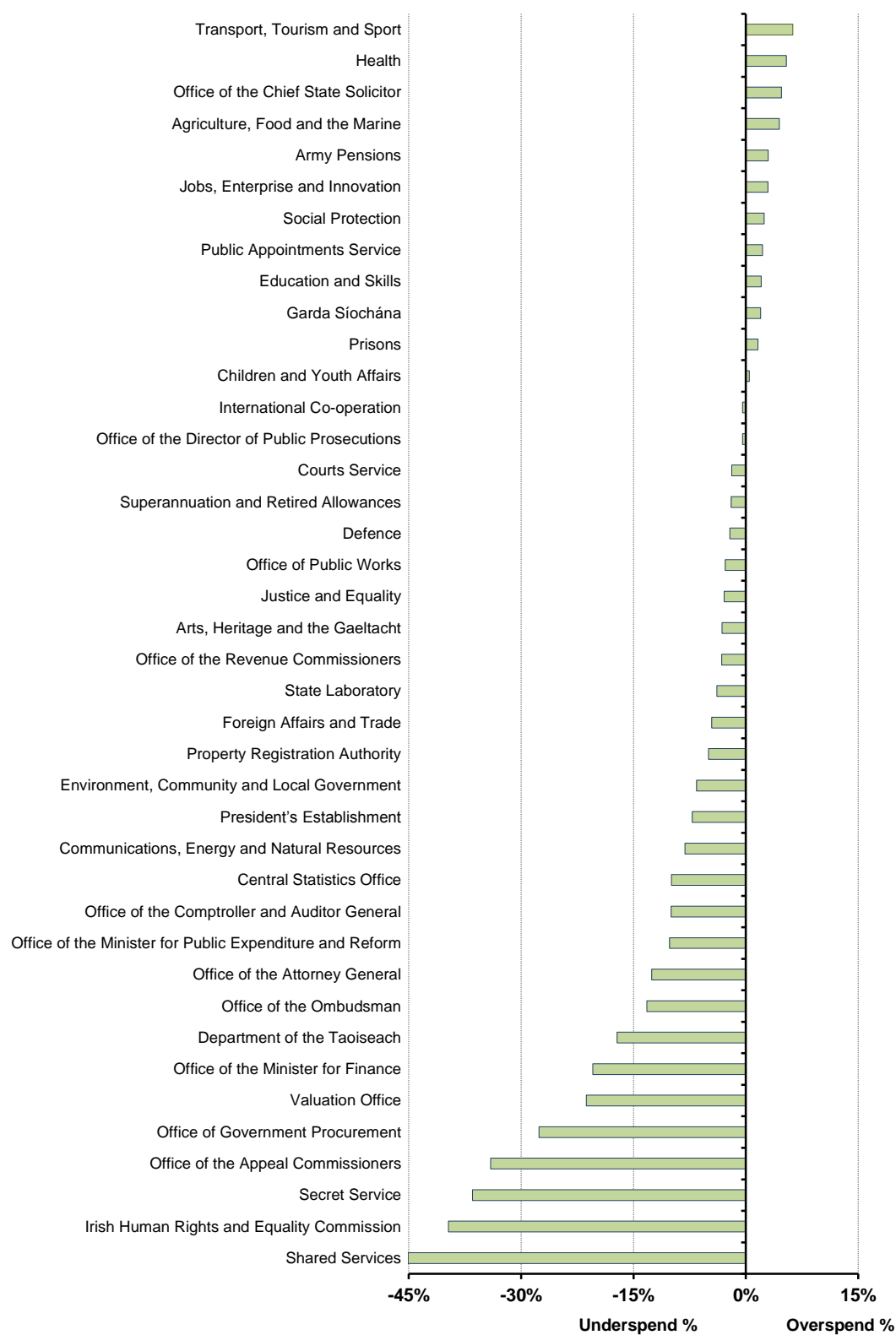
**Figure 3.3 Net expenditure variance from original budget, all votes, 2005 to 2015**

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

- 3.15** Between 2005 and 2007, net voted expenditure was less than originally estimated each year. Since 2008, there has not been a consistent pattern of variances. In 2015, net expenditure was €1 billion greater than the original forecast.

### ***Budget variance by vote***

- 3.16** The three votes with the largest monetary net variance in 2015 were Health (€592 million), Social Protection (€247 million) and Education and Skills (€166 million).
- 3.17** Figure 3.4 sets out, for each vote, the proportionate variance between actual expenditure and the original estimate in 2015.
- There were 12 votes where the net expenditure outturn was greater than the original estimate. Transport, Tourism and Sport, at 6%, had the largest percentage overspend compared with its original estimate.
  - The remaining 28 votes incurred net expenditure less than originally anticipated in the revised estimates.

**Figure 3.4 Net expenditure variance by vote, as a proportion of the original budget, 2015**

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

### ***Supplementary estimates***

**3.18** When the Dáil approves a vote estimate, it does so at the aggregate level. Departments are allowed some scope to manage budgets by moving allocations between programmes and subheads, but only if the Department of Public Expenditure and Reform agrees. This reallocation process is referred to as virement.

1. The HSE Vote was disestablished in line with the provisions of the Health Service Executive (Financial Matters) Act 2014 and its expenditure met through a grant from the Health Vote. Between 2010 and 2014 the HSE Vote required substantive supplementary estimates and, in 2015, the Health Vote required a substantive supplementary estimate.

**3.19** If large adjustments to the budgets for programmes or subheads are required as the year progresses, formal approval must be sought from the Dáil. This is done through the 'supplementary estimate' process. This process may also be used, if required, to increase the cash limit for a vote for the year. Details of supplementary estimates requested are discussed at the relevant Dáil committees before approval is sought from the Dáil itself.

**3.20** In 2015, 13 votes required substantive supplementary estimates to increase the overall amount available (see Figure 3.5). These included three votes which have required substantive supplementary estimates each year since 2010.<sup>1</sup>

**Figure 3.5 Votes with supplementary estimates, 2010 to 2015<sup>a</sup>**

	2010	2011	2012	2013	2014	2015
Health <sup>b</sup>	●	●	●	●	●	●
Garda Síochána	●	●	●	●	●	●
Army Pensions	●	●	●	●	●	●
Transport, Tourism and Sport	○		●	●	●	●
Social Protection	●		●			●
Jobs, Enterprise and Innovation	○	○	○		○	●
Superannuation and Retired Allowances			●		●	●
Education and Skills	○				●	●
Agriculture, Food and the Marine					●	●
Public Appointments Service					●	●
Prisons					●	●
Children and Youth Affairs					○	●
Office of the Chief State Solicitor						●
Environment, Community and Local Government	○	○	○		●	
Courts Service	○	●	●		○	
Arts, Heritage and the Gaeltacht	●				○	
Department of the Taoiseach					●	
Foreign Affairs and Trade	●					
Justice and Equality	○	○		○		
Communications, Energy and Natural Resources						○
Office of the Minister for Finance						○
Defence					○	
Shared Services				○		
Public Expenditure and Reform		○				

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

Notes: ● Indicates an increase in the net expenditure estimate i.e. a substantive supplementary estimate.  
○ Indicates that the increase in net expenditure was a token €1,000 i.e. a technical supplementary estimate.

a Vote titles are as per the 2015 Revised Estimates for Public Services. For some votes, different titles may have applied in earlier years in which a supplementary estimate was approved.

b Between 2010 and 2014 the HSE Vote required substantive supplementary estimates, and in 2015 the Health Vote required a substantive supplementary estimate.





## Annex A Vote financial outturn

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

Figure A1 provides a summary of the outturn on expenditure and receipts relative to the amounts appropriated for public services in 2015.

Figure A2 shows how surplus appropriations in 2015 were applied – either through deferral of expenditure to 2016, or by surrender to the Exchequer.

Figure A3 shows estimated and realised Exchequer extra receipts.

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

<b>Supply grant</b>	The money granted (or voted) by Dáil Éireann for each of the public services.
<b>Deferred from 2014</b>	Amount of capital funding not spent in 2014 and carried over for expenditure on capital services in 2015. The carry over of these sums was approved by Dáil Éireann in the Appropriation Act 2014.
<b>Appropriations-in-aid</b>	Departmental receipts which, with the agreement of Dáil Éireann, may be retained to defray the expenses of the vote to which they relate.
<b>Total appropriations</b>	Sum of the supply grant, deferred 2014 capital moneys (if any) and appropriations-in-aid.
<b>Surplus for the year</b>	The excess of total appropriations by Dáil Éireann over the gross expenditure together with any surplus on appropriations-in-aid. The surplus for the year is liable for surrender back to the Exchequer.
<b>Deferred surrender</b>	Amount of capital funding not spent in 2015 which was carried over for expenditure in 2016. These carry overs were approved by Dáil Éireann in the Appropriation Act 2015.
<b>Surplus to be surrendered</b>	Amount of money appropriated in 2015 but not spent in the year or deferred to 2016, and so required to be surrendered to the Exchequer.
<b>Exchequer extra receipts</b>	Departmental receipts that are not appropriated-in-aid of the vote, but are paid directly into the Exchequer.

**Figure A1 Summary of appropriations for public services in 2015, by vote**

Vote	Service	Amount appropriated				Outturn			Surplus/deficit		
		Supply grants	Deferred from 2014	Appropriations -in-aid	Total	Gross expenditure	Appropriations -in-aid	Net expenditure	Gross surplus	Excess/ (deficit) in receipts	Net surplus for the year <sup>a</sup>
		€000	€000	€000	€000	€000	€000	€000	€000	€000	€000
1	President's Establishment	3,444	-	106	3,550	3,298	100	3,198	252	(6)	246
2	Department of the Taoiseach	27,022	-	870	27,892	23,288	909	22,379	4,604	39	4,643
3	Office of the Attorney General	15,030	-	815	15,845	13,995	854	13,141	1,850	39	1,889
4	Central Statistics Office	52,836	-	1,889	54,725	49,872	2,287	47,585	4,853	398	5,251
5	Office of the Director of Public Prosecutions	37,834	-	1,005	38,839	38,622	953	37,669	217	(52)	165
6	Office of the Chief State Solicitor	28,466	-	1,860	30,326	29,925	1,672	28,253	401	(188)	213
7	Office of the Minister for Finance	30,618	-	1,350	31,968	26,301	1,935	24,366	5,667	585	6,252
8	Office of the Comptroller and Auditor General	6,682	-	5,875	12,557	12,141	6,124	6,017	416	249	665
9	Office of the Revenue Commissioners	329,481	-	76,156	405,637	401,440	82,512	318,928	4,197	6,356	10,553
10	Office of the Appeal Commissioners	775	-	48	823	543	32	511	280	(16)	264
11	Office of the Minister for Public Expenditure and Reform	40,610	-	3,880	44,490	40,777	4,309	36,468	3,713	429	4,142
12	Superannuation and Retired Allowances	386,770	-	124,230	511,000	499,175	136,404	362,771	11,825	12,174	23,999
13	Office of Public Works	369,848	-	27,526	397,374	390,076	30,408	359,668	7,298	2,882	10,180
14	State Laboratory	8,049	-	851	8,900	8,626	888	7,738	274	37	311
15	Secret Service	1,000	-	-	1,000	635	-	635	365	-	365
16	Valuation Office	9,145	-	1,249	10,394	8,522	1,325	7,197	1,872	76	1,948
17	Public Appointments Service	8,584	-	321	8,905	8,802	414	8,388	103	93	196
18	Shared Services	39,033	998	4,860	44,891	26,183	4,193	21,990	18,708	(667)	18,041
19	Office of the Ombudsman	8,738	-	402	9,140	7,946	362	7,584	1,194	(40)	1,154
20	Garda Síochána	1,383,473	-	128,474	1,511,947	1,503,468	128,485	1,374,983	8,479	11	8,490

	€000	€000	€000	€000	€000	€000	€000	€000	€000	€000
21 Prisons	316,540	-	15,642	332,182	331,203	15,922	315,281	979	280	1,259
22 Courts Service	60,150	-	47,815	107,965	107,112	48,097	59,015	853	282	1,135
23 Property Registration Authority	30,311	-	976	31,287	29,924	1,125	28,799	1,363	149	1,512
24 Justice and Equality	311,126	-	61,966	373,092	366,336	64,225	302,111	6,756	2,259	9,015
25 Irish Human Rights and Equality Commission	6,190	-	144	6,334	3,954	222	3,732	2,380	78	2,458
26 Education and Skills	8,187,125	-	561,152	8,748,277	8,726,712	548,816	8,177,896	21,565	(12,336)	9,229
27 International Co-operation	475,473	-	1,150	476,623	475,028	1,557	473,471	1,595	407	2,002
28 Foreign Affairs and Trade	164,958	-	45,048	210,006	208,907	51,482	157,425	1,099	6,434	7,533
29 Communications, Energy and Natural Resources	173,134	4,600	245,417	423,151	399,962	236,652	163,310	23,189	(8,765)	14,424
30 Agriculture, Food and the Marine	876,579	18,000	430,489	1,325,068	1,264,640	438,683	825,957	60,428	8,194	68,622
31 Transport, Tourism and Sport	1,315,932	29,105	410,756	1,755,793	1,728,633	405,663	1,322,970	27,160	(5,093)	22,067
32 Jobs, Enterprise and Innovation	790,412	20,000	49,774	860,186	834,845	51,925	782,920	25,341	2,151	27,492
33 Arts, Heritage and the Gaeltacht	272,829	6,216	4,605	283,650	276,937	6,788	270,149	6,713	2,183	8,896
34 Environment, Community and Local Government	1,281,399	-	47,558	1,328,957	1,243,298	45,920	1,197,378	85,659	(1,638)	84,021
35 Army Pensions	222,090	-	5,400	227,490	227,442	5,376	222,066	48	(24)	24
36 Defence	639,404	-	37,887	677,291	670,539	44,819	625,720	6,752	6,932	13,684
37 Social Protection	11,367,263	-	264,375	11,631,638	11,585,753	270,552	11,315,201	45,885	6,177	52,062
38 Health	12,821,200	-	520,721	13,341,921	13,340,748	527,975	12,812,773	1,173	7,254	8,427
39 Office of Government Procurement	18,974	125	500	19,599	14,320	498	13,822	5,279	(2)	5,277
40 Children and Youth Affairs	1,015,011	-	25,012	1,040,023	1,029,373	24,598	1,004,775	10,650	(414)	10,236
<b>Total</b>	<b>43,133,538</b>	<b>79,044</b>	<b>3,158,154</b>	<b>46,370,736</b>	<b>45,959,301</b>	<b>3,195,061</b>	<b>42,764,240</b>	<b>411,435</b>	<b>36,907</b>	<b>448,342</b>

Source: 2015 appropriation accounts

Note: a The net surplus is comprised of the excess of total appropriations by Dáil Éireann over the gross expenditure together with the excess/deficit on appropriations-in-aid. Any apparent differences in totals are due to rounding.

**Figure A2 Application of surplus 2015 appropriations, by vote**

<b>Vote</b>	<b>Service</b>	<b>Surplus for the year</b>	<b>Deferred surrender (for 2015)</b>	<b>Surplus for surrender</b>
		<b>€000</b>	<b>€000</b>	<b>€000</b>
1	President's Establishment	246	-	246
2	Department of the Taoiseach	4,643	-	4,643
3	Office of the Attorney General	1,889	-	1,889
4	Central Statistics Office	5,251	-	5,251
5	Office of the Director of Public Prosecutions	165	-	165
6	Office of the Chief State Solicitor	213	-	213
7	Office of the Minister for Finance	6,252	115	6,137
8	Office of the Comptroller and Auditor General	665	-	665
9	Office of the Revenue Commissioners	10,553	2,000	8,553
10	Office of the Appeal Commissioners	264	-	264
11	Office of the Minister for Public Expenditure and Reform	4,142	-	4,142
12	Superannuation and Retired Allowances	23,999	-	23,999
13	Office of Public Works	10,180	7,000	3,180
14	State Laboratory	311	-	311
15	Secret Service	365	-	365
16	Valuation Office	1,948	-	1,948
17	Public Appointments Service	196	-	196
18	Shared Services	18,041	1,248	16,793
19	Office of the Ombudsman	1,154	-	1,154
20	Garda Síochána	8,490	6,644	1,846

**Figure A3 Exchequer extra receipts 2015, by vote**

<b>Vote</b>	<b>Service</b>	<b>Extra receipts realised</b>
		<b>€000</b>
1	President's Establishment	—
2	Department of the Taoiseach	—
3	Office of the Attorney General	—
4	Central Statistics Office	—
5	Office of the Director of Public Prosecutions	246
6	Office of the Chief State Solicitor	9
7	Office of the Minister for Finance	2
8	Office of the Comptroller and Auditor General	—
9	Office of the Revenue Commissioners	1,780
10	Office of the Appeal Commissioners	—
11	Office of the Minister for Public Expenditure and Reform	—
12	Superannuation and Retired Allowances	—
13	Office of Public Works	4,400
14	State Laboratory	—
15	Secret Service	—
16	Valuation Office	—
17	Public Appointments Service	—
18	Shared Services	—
19	Office of the Ombudsman	—
20	Garda Síochána	3,409

21	Prisons	1,259	-	1,259
22	Courts Service	1,135	-	1,135
23	Property Registration Authority	1,512	-	1,512
24	Justice and Equality	9,015	-	9,015
25	Irish Human Rights and Equality Commission	2,458	-	2,458
26	Education and Skills	9,229	-	9,229
27	International Co-operation	2,002	-	2,002
28	Foreign Affairs and Trade	7,533	475	7,058
29	Communications, Energy and Natural Resources	14,424	5,250	9,174
30	Agriculture, Food and the Marine	68,622	12,000	56,622
31	Transport, Tourism and Sport	22,067	16,100	5,967
32	Jobs, Enterprise and Innovation	27,492	10,000	17,492
33	Arts, Heritage and the Gaeltacht	8,896	6,158	2,738
34	Environment, Community and Local Government	84,021	41,078	42,943
35	Army Pensions	24	-	24
36	Defence	13,684	-	13,684
37	Social Protection	52,062	-	52,062
38	Health	8,427	-	8,427
39	Office of Government Procurement	5,277	200	5,077
40	Children and Youth Affairs	10,236	3,500	6,736
<b>Total</b>		<b>448,342</b>	<b>111,768</b>	<b>336,574</b>

Source: 2015 appropriation accounts

21	Prisons	-
22	Courts Service	11,045
23	Property Registration Authority	57,350
24	Justice and Equality	-
25	Irish Human Rights and Equality Commission	-
26	Education and Skills	2,684
27	International Co-operation	-
28	Foreign Affairs and Trade	-
29	Communications, Energy and Natural Resources	-
30	Agriculture, Food and the Marine	242
31	Transport, Tourism and Sport	4,034
32	Jobs, Enterprise and Innovation	5,516
33	Arts, Heritage and the Gaeltacht	9
34	Environment, Community and Local Government	54,723
35	Army Pensions	-
36	Defence	-
37	Social Protection	25
38	Health	-
39	Office of Government Procurement	11
40	Children and Youth Affairs	11,053
<b>Total</b>		<b>156,538</b>

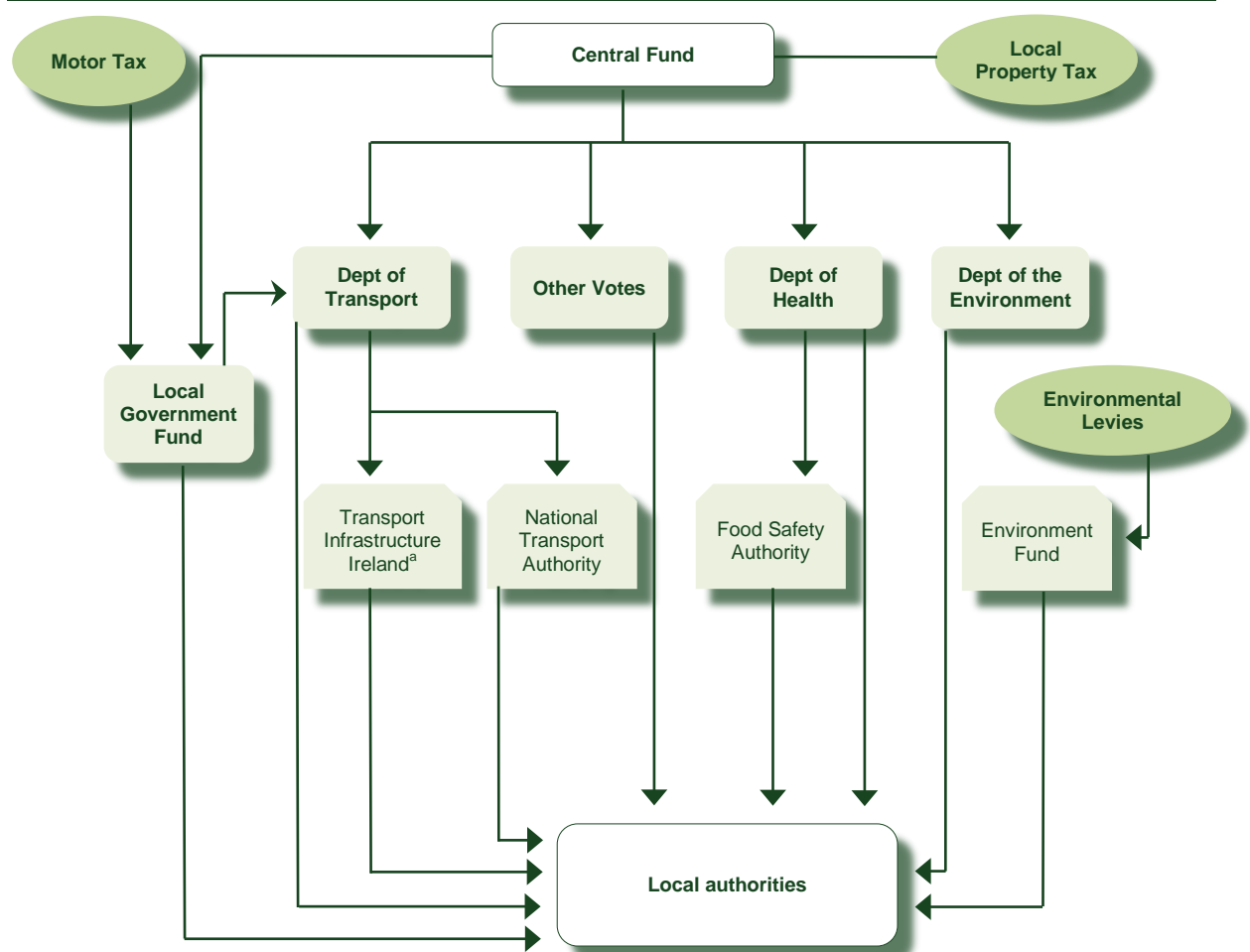
Source: 2015 appropriation accounts



## 4 Central Government Funding of Local Authorities

- 4.1 Local authorities receive a substantial part of their annual funding from a range of central government departments and agencies, as indicated in Figure 4.1. The primary objective of this report is to provide an overview of the funds flowing from and through central government sources to local authorities, and of the purposes for which funds have been provided.

Figure 4.1 Flow of central government funding to local authorities in 2015



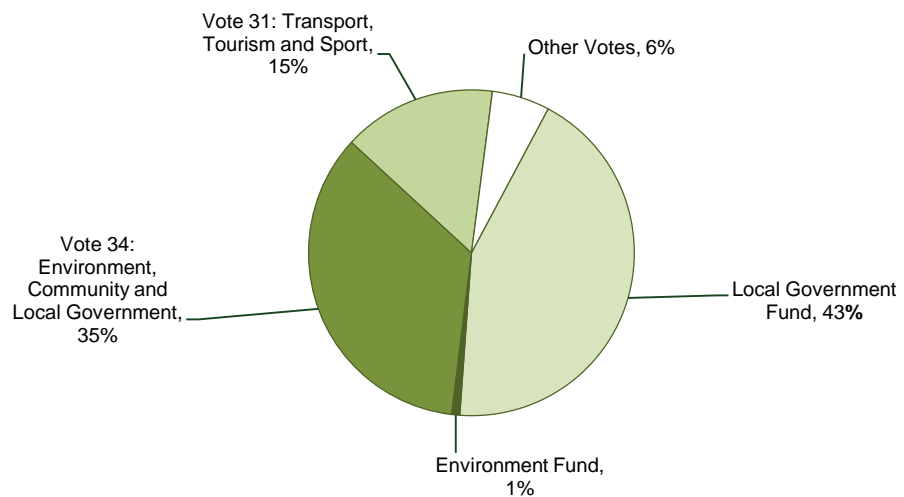
Source: Office of the Comptroller and Auditor General

Note: a Transport Infrastructure Ireland was established in August 2015 through a merger of the National Roads Authority and the Railway Procurement Agency.

## Central Government transfers

- 4.2** In 2015, funding to local authorities from central government sources totalled €1.99 billion which represents an increase of 16% on 2014.<sup>1</sup> Some 56%<sup>4</sup> of this total originated as Exchequer funding. The balance was provided through the Local Government Fund and the Environment Fund (see Figure 4.2) both of which are administered by the Department of the Environment, Community and Local Government (the Department).<sup>2</sup>

**Figure 4.2 Sources of central government financing for local authorities, 2015**



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

## Local Government Fund

- 4.3** In 2015, the Local Government Fund was mainly financed by the proceeds of motor tax (€1.1 billion), local property tax (LPT) receipts (€469 million) and a contribution of €241 million from the Exchequer, via the Vote for Environment, Community and Local Government.<sup>3</sup> An amount of €481 million (2014: €520 million) was paid to the Exchequer from the Local Government Fund at the request of the Minister for Finance under Section 6 of the Local Government Act 1998 as amended by Section 44 of the Environment (Miscellaneous Provisions) Act, 2015.

- 4.4** In 2015, Irish Water received €399 million from the Local Government Fund in respect of the cost of water related services previously provided by local authorities. The Department provided local authorities with grants totalling €15 million from the Local Government Fund in 2015 in respect of the cost of certain water services capital loans held by local authorities that did not transfer to Irish Water.

## Environment Fund

- 4.5** The Environment Fund is used primarily to support environmental initiatives, campaigns and programmes, many of which are organised at local or regional level under the auspices of local authorities. The Environment fund is comprised of the proceeds of the plastic bag levy, which is paid by consumers and collected from retailers by the Revenue Commissioners, and receipts from the landfill levy. Disbursements from the Fund are ring-fenced to assist projects that aim to protect or enhance the environment.

<sup>1</sup> Includes identified transfers of greater than €1 million. There may be some additional smaller transfers that have not been included.

<sup>2</sup> In July 2016, the name of the Department was changed to the Department of Housing, Planning, Community and Local Government.

<sup>3</sup> Local Property Tax is administered by the Revenue Commissioners. LPT receipts are paid into the Central Fund initially and then paid over to the Local Government Fund.

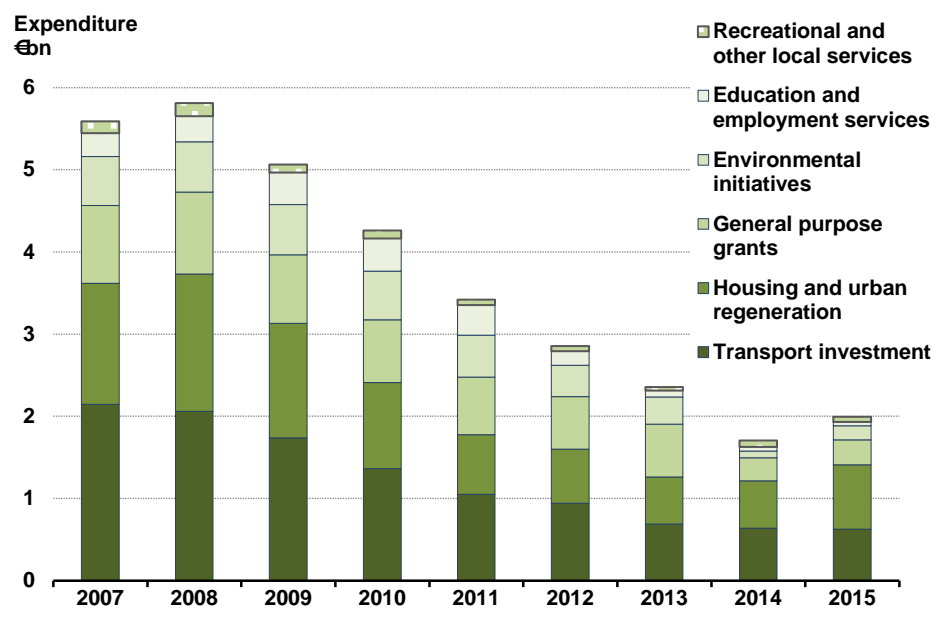
<sup>4</sup> **Correction:** The original published figure was incorrectly stated as 76%. The figure now shown is correct.



## Application of central government funding

- 4.6** Most of the funding sourced from central government and provided to local authorities must be used for specified local authority services. These can be grouped into six broad programme categories. Figure 4.3 presents a breakdown of the transfers to local authorities for 2007 to 2015 showing the programmes being supported (a detailed breakdown is at Annex A).
- 4.7** In 2015, around 70% of the total provision from central government to local authorities was accounted for by two categories. These were housing and urban regeneration programmes (39%), and transport (31%).

**Figure 4.3 Central government transfers to local authorities, by expenditure programme, 2007 to 2015**



Source: Annex A

## Local Property Tax allocations to local authorities

- 4.8** Up to 2014, the Local Government Fund provided funding to local authorities mainly for their day to day activities through 'general purpose grants'. From 2015, general purpose grants are no longer paid and have been replaced by LPT allocations.
- 4.9** In September 2014, the Government decided that LPT allocations to local authorities for 2015 would be allocated on the following basis
- 80% of receipts in a local authority area are retained locally
  - the remaining 20% is re-distributed to provide top-up funding to certain local authorities that have lower property tax bases, ensuring that LPT allocations would be at least equal to 2014 general purpose grant funding level
  - the allocation will take into account any decisions taken by elected members of local authorities to vary LPT rates in the local authority area in accordance with the Finance (Local Property Tax) Act 2012.

- 4.10** In analysing the impact of the LPT funding allocation, local authorities were classified between the 12 authorities in a surplus funding position when compared to their 2014 general purpose grant allocations (mainly large urban centres and commuter belt counties) and the remaining 19 authorities who required additional funding to bring them up to their previous funding level (authorities requiring equalisation), see Figure 4.4.

**Figure 4.4 Allocation of LPT to local authorities for 2015**

	Classification of local authorities		All
	Authorities in a surplus position	Authorities requiring equalisation	
	€m	€m	€m
Local retention (80%) <sup>a</sup>	282	118	400
Equalisation funding (20%) <sup>b</sup>	–	102	102
Reduction for decreases in LPT rate	(43)	(1)	(44)
<b>LPT allocations for 2015</b>	<b>239</b>	<b>219</b>	<b>458</b>
<b>General purpose grant 2014</b>	<b>62</b>	<b>220</b>	<b>282</b>

Source: Department of the Environment, Community and Local Government

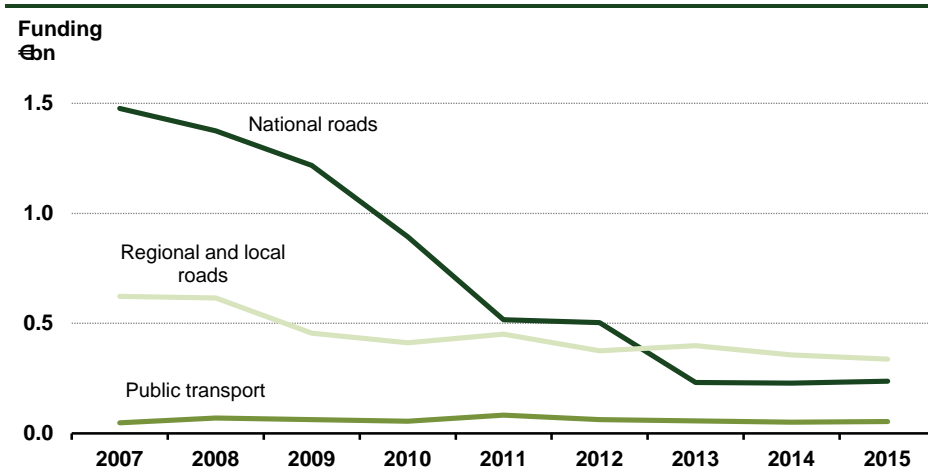
- Notes:
- a The allocations were determined based on the latest projections of LPT income in 2015 at that time of €500 million (pre-variation). LPT of €469 million (post-variation) was collected and remitted to the Local Government Fund in 2015.
  - b The 20% of LPT not retained locally yields an equalisation fund of €100 million which represents a shortfall of €2 million to equalise the position for all local authorities.

- 4.11** Local authorities have discretion to vary the LPT rates in their area of operation by up to 15% in accordance with the 2012 Act. For 2015, six local authorities decided to decrease the LPT by the maximum 15% at a cost of €35.4 million. Another eight local authorities reduced the LPT by between 1.5% and 10%, at a cost of €8.2 million. No local authority opted to increase the LPT rate in 2015.
- 4.12** For the 12 authorities in a surplus funding position, the Government decided that the surplus should be applied as follows
- a portion available for the authority's discretionary purposes (this was to equal 20% of the total expected LPT income in the relevant local authority area (before any decision to vary rates) or, in the case where the surplus will be less than 20%, the full amount)
  - the remainder, if any, to fund some local services in the housing and roads areas for which it was due to receive central government funding.
- 4.13** In the case of the 12 authorities in a surplus funding position, the amount of LPT funding provided (€239 million) was €177 million more than the 2014 general purpose funding. Those authorities were directed to apply the funding as follows
- €131 million for housing services
  - €22 million for road services
  - €86 million for general/discretionary purposes.

### Transport investment

- 4.14** Improvement and maintenance of national roads is the responsibility of Transport Infrastructure Ireland, operating under the aegis of the Department of Transport, Tourism and Sport. Transport Infrastructure Ireland normally uses local authorities as its agents to deliver roads projects, and channels expenditure through them.
- 4.15** The Department of Transport, Tourism and Sport receives an allocation for the upkeep of regional and local roads from the Local Government Fund. It provides funding to local authorities using Transport Infrastructure Ireland's payment system.
- 4.16** The National Transport Authority, also operating under the aegis of the Department of Transport, Tourism and Sport, funds local authorities for certain improvements in the public transport system. Funding objectives include increased accessibility to public transport for older people, improved traffic flows, more routes for cyclists and pedestrians and better access for buses and taxis.
- 4.17** Figure 4.5 shows the trend in the level of funding from central government sources provided to local authorities in respect of the key transport areas.

**Figure 4.5 Funding to local authorities for transport infrastructure, 2007 to 2015**

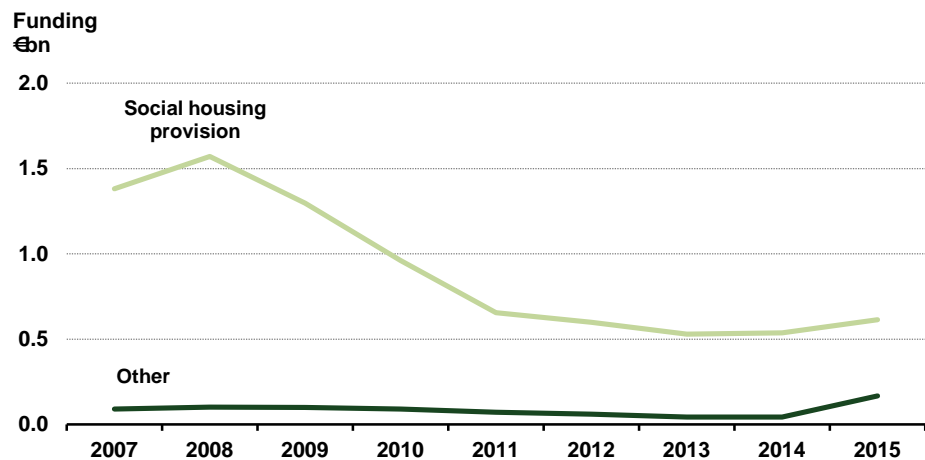


Source: Annex A

### Housing and urban regeneration

- 4.18** The Department provides the bulk of the funding for housing and urban regeneration directly to local authorities with a number of local authorities (currently ten) required to self-fund housing services, from surplus LPT receipts, to a monetary value notified to the authority by the Department. The funding is used by the local authorities to support the provision of social housing including through the local authority build and acquisitions programme, regeneration and remedial work, returning empty units to productive use, provision of traveller accommodation, voluntary and cooperative housing, the Rental Accommodation Scheme, Social Housing Current Expenditure Programme, Housing Assistance Payment, housing adaptation grants, and accommodation for homeless people. Figure 4.6 indicates the trend in the level of funding for housing provision.

**Figure 4.6 Funding to local authorities for investment in housing and urban regeneration, 2007 to 2015**

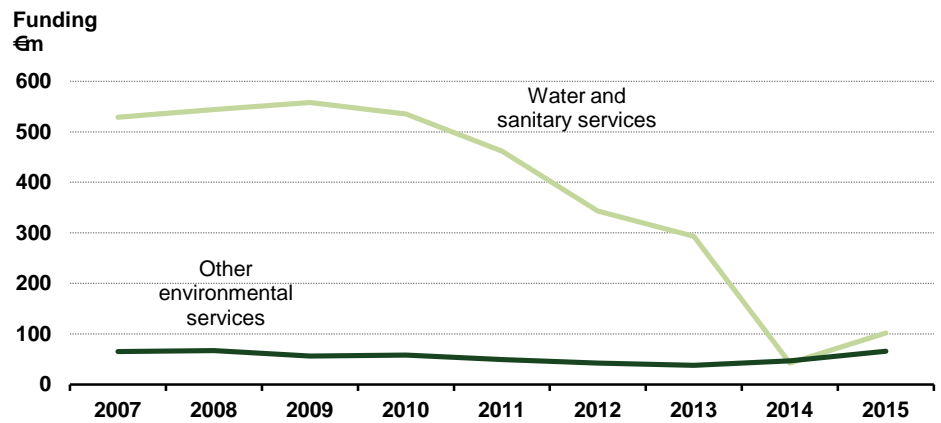


Source: Annex A

### *Environmental initiatives*

- 4.19** Figure 4.7 shows the trend in the level of funding from central government sources provided to local authorities in respect of environmental initiatives. Funding for water and sanitary services investment projects decreased significantly from 2014 due to the transfer of these functions from local authorities to Irish Water.

**Figure 4.7 Funding to local authorities for environmental initiatives, 2007 to 2015**



Source: Annex A

- 4.20** Funding for environmental initiatives in 2015 include funds for flood relief works provided by the Office of Public Works. The Local Government Fund provided funding to local authorities for storm damage repairs after a series of major storms which caused flooding at the end of 2015.

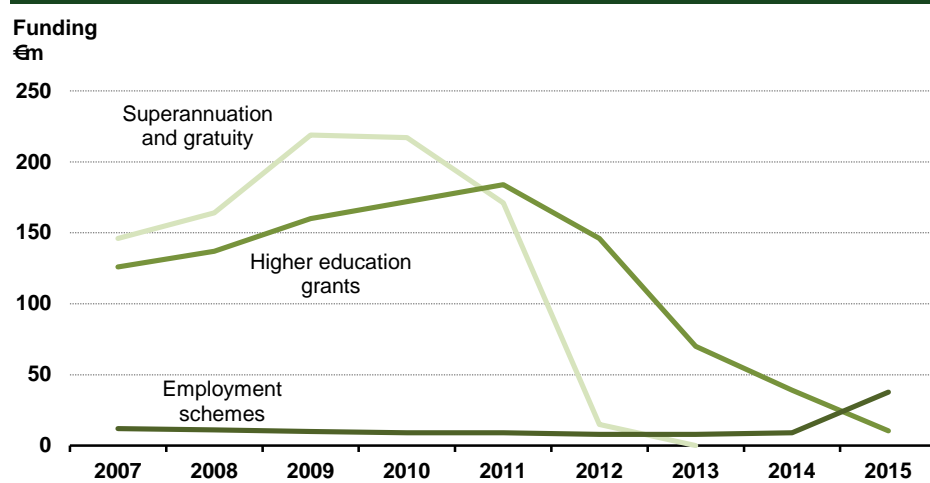
### *Education and employment services*

- 4.21** In 2015, the Department of Jobs, Enterprise and Innovation (DJEI) began to provide funding to local authorities to cover the costs associated with providing local enterprise development supports to the micro-enterprise sector via the Local Enterprise Offices (LEOs).

- 4.22** In 2014, legislation provided for the establishment of the LEOs; the dissolution of the County Enterprise Boards (CEBs) and the transfer of their functions to Enterprise Ireland (EI); and for the performance of those functions by the LEOs on behalf of EI.<sup>1</sup> The responsibility for policy and funding remains with DJEI. The objective is that the LEOs will become first stop shops providing support and services to start, grow and develop micro and small businesses in each local area. It is envisaged that the LEOs will be the channel through which all information in relation to State supports for micro and small businesses can be accessed.
- 4.23** EI, through its newly formed Micro and Small Business division, provides a range of supports to the LEOs including strategic, administrative, technical and financial support. Financial support includes administering the distribution of the DJEI funding to each local authority in accordance with agreed procedures.
- 4.24** The LEOs provide a wide range of services to local entrepreneurs and businesses including direct financial supports to eligible micro businesses and advisory services on a range of issues such as local property solutions, local authority regulations, planning, accessibility, environment and procurement. The LEOs also provide mentoring for entrepreneurs and businesses and training on areas such as starting and managing a business.
- 4.25** The Department of Social Protection reimburses local authorities for expenditure incurred on certain community employment and jobs initiative projects.
- 4.26** In the past (as shown in Figure 4.8), the Department of Education and Skills reimbursed local authorities for significant expenditure they incurred in relation to
- payment of student grants
  - payment of pensions to retired employees of vocational education committees and institutes of technology.
- 4.27** Under revised arrangements
- all new applications for student grants must be submitted to Student Universal Support Ireland (SUSI)
  - pensions payments are, since 2013, made by the PMG Pension Section of the Department of Finance. The pension costs are a charge on the Education and Skills vote.

<sup>1</sup> The County Enterprise Boards (Dissolution) Act 2014.

**Figure 4.8 Funding to local authorities for education and employment services, 2007 to 2015**

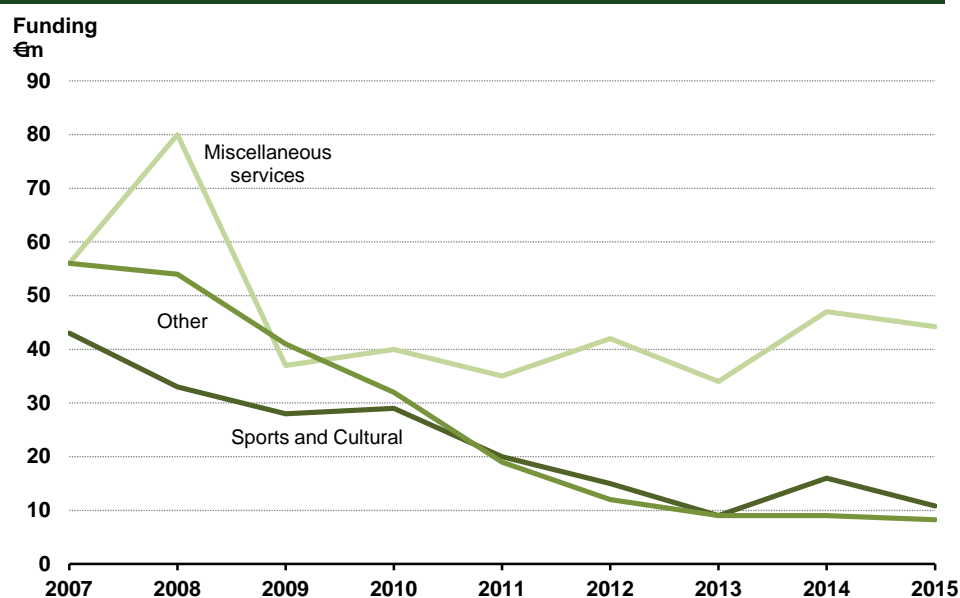


Source: Annex A

### ***Recreation and other local services***

- 4.28** Central government bodies also fund local authorities to assist in providing services such as sports and cultural projects, fire and emergency services, heritage services and library and archive services. Figure 4.9 shows the trend in the level of funding in respect of such services.

**Figure 4.9 Funding to local authorities for recreation and other local services, 2007 to 2015**



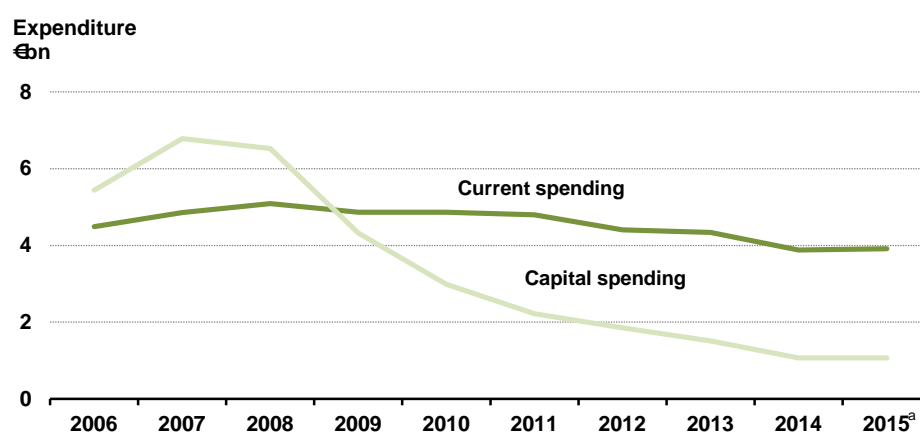
Source: Annex A

Note: Other category includes fire and emergency services, library service and disability services.

## Trends in local authority expenditure, 2006 to 2015

- 4.29** Aggregate expenditure by local authorities in 2014 (the last year for which full audited information is available) was €5 billion.<sup>1</sup> This comprised around €1.1 billion in capital expenditure, and around €3.9 billion in current expenditure (see Figure 4.10). Estimated expenditure for 2015 is expected to be unchanged on 2014 levels.<sup>2</sup>
- 4.30** As shown in Figure 4.10, capital expenditure by local authorities has been declining year on year since reaching its peak level of €6.8 billion in 2007. In 2014 capital expenditure decreased by 29% from the previous year, while local authority current expenditure has also reduced in recent years.

**Figure 4.10 Local authority expenditure by type, 2006 to 2015**



Source: Department of the Environment, Community and Local Government

Note: a Figures for 2015 are estimates. For all earlier years, audited figures are used.

## Central oversight of local authorities

- 4.31** There are two main mechanisms for general central government oversight of local authority expenditure, the Local Government Audit Service and the National Oversight and Audit Commission.

### Local Government Audit Service

- 4.32** The financial statements of each local authority are audited by the Local Government Audit Service (LGAS). The audit opinion and any matters arising from the audit are reported to the relevant local authority. A copy of each audit report is sent to the Minister and published on the Department's website. The Department identifies sector wide issues in audit reports for follow up, and engages with relevant local authorities in the event it requires information on a particular issue.
- 4.33** The LGAS also carries out value for money audits of local authority operations. The results of those audits are reported to the Minister.

<sup>1</sup> Includes expenditure by the 26 county councils, three city councils and two city and county councils.

<sup>2</sup> Collation of local authority expenditure outturns for 2015 had not been finalised by the Department of the Environment, Community and Local Government at the time of this report.

- 4.34** An LGAS activity report is published annually. It summarises the audit findings in respect of the annual financial statements of each local authority. The latest annual activity report was published in March 2016 and includes the results of the audits of the 2014 financial statements.<sup>1</sup> The report highlights both sectoral and authority specific issues such as income and expenditure for the sector, the cumulative revenue position of each local authority, and revenue collection performance.

### National Oversight and Audit Commission

- 4.35** The National Oversight and Audit Commission (the Commission) was established in July 2014.<sup>2</sup> The Commission has a wide range of functions focused on the scrutiny of local government performance, including their financial performance.
- 4.36** The Commission's annual report for 2015 sets out its strategy and reports on its activities for 2015.<sup>3</sup> The Commission has stated in its strategy that it will independently scrutinise local authority performance by means of thematic reports and, where warranted, oral hearings, on matters within its remit. Its key outputs will be published reports which will also be submitted to relevant Oireachtas Committees. It intends to monitor the outcome of its work in terms of the implementation of its recommendations.

As at June 2016, the Commission has published eight reports

- Local Authority Corporate Plans 2015 - 2019
- Performance Indicators in Local Authorities 2014
- Local Authority Tenants Satisfaction Survey
- Public Spending Code Local Authority Quality Assurance Report 2014
- Local Government Efficiency Review Reforms
- Local Government Shared Services Projects
- Local Authority Rates Collection 2013 - 2014
- Financial Performance of Local Authorities 2013 – 2015: Deficits, Audit Opinion and Financial Statements.

<sup>1</sup> Local Government Audit Service, Overview of the Work of the Local Government Auditors, March 2016.

<sup>2</sup> The Local Government Reform Act 2014 provided for the Commission which was formally established by Statutory Instrument 297 of 2014.

<sup>3</sup> National Oversight and Audit Commission Annual Report 2015 (April 2016).

- 4.37** The Commission's current workload includes projects on
- maintenance and management of local authority housing stock
  - local authority performance of their statutory functions in relation to the private rented sector
  - performance indicators in local authorities in 2015.



- 4.38** The Commission's work is funded by the Local Government Fund. Expenditure in 2015 was €114,000 (2014: €47,000) and mainly comprised member fees. Its allocation for 2016 is €200,000. The Commission secretariat comprised two staff (2014: three staff) provided by the Department. The cost of these staff, which is met from the Department's vote was €115,000 (2014: €88,000).

## Conclusions

- 4.39** Central government funding to local authorities presents a highly complex picture, with transfers coming from a number of departments and for a wide variety of purposes. Some streams of funding are delivered directly from funding departments to local authorities, while others are routed through departmental agencies.
- 4.40** Transfers of funding from central government sources to local authorities in 2015 totalled just under €2 billion. This compares with transfers of €5.8 billion in 2008. A substantial part of the fall in funding levels has occurred as a result of the transfer of responsibilities from local authorities to other agencies.

### Annex A Central government transfers to local authorities, by expenditure programme, 2007 to 2015

Expenditure Category	2007	2008	2009	2010	2011	2012	2013	2014	2015
	€m	€m	€m	€m	€m	€m	€m	€m	€m
<b>Transport investment</b>									
National roads improvement	1,476	1,374	1,218	893	516	503	232	228	236
Regional and local roads improvement	622	616	455	412	451	376	399	357	337
Public transport (capital payments)	48	70	63	56	83	62	57	51	54
	<b>2,146</b>	<b>2,060</b>	<b>1,736</b>	<b>1,361</b>	<b>1,050</b>	<b>941</b>	<b>688</b>	<b>636</b>	<b>627</b>
<b>Housing and urban regeneration</b>									
Social housing provision	1,382	1,571	1,297	961	655	598	529	536	614
Affordable housing, etc.	64	89	94	84	68	58	43	39	3
Other housing supports	6	7	4	6	4	3	1	5	114
Urban regeneration	20	5	1	–	–	–	–	–	50
	<b>1,472</b>	<b>1,672</b>	<b>1,396</b>	<b>1,051</b>	<b>727</b>	<b>659</b>	<b>573</b>	<b>580</b>	<b>781</b>
<b>Environmental initiatives</b>									
Water and sanitary services	529	544	558	535	462	343	293	42	102
Flood relief works	14	3	5	17	8	22	10	27	43
Waste management	28	27	8	11	11	5	9	5	3
Recycling	12	22	14	14	12	4	8	2	–
Other environmental measures	11	15	29	16	18	11	11	13	20
	<b>594</b>	<b>611</b>	<b>614</b>	<b>593</b>	<b>511</b>	<b>385</b>	<b>331</b>	<b>89</b>	<b>168</b>
<b>Education and employment services</b>									
Higher education grants	126	137	160	172	184	146	70	39	11
Superannuation and gratuity costs	146	164	219	217	171	15	–	–	–
Employment schemes	12	11	10	9	9	8	8	8	36
	<b>284</b>	<b>312</b>	<b>389</b>	<b>398</b>	<b>364</b>	<b>169</b>	<b>78</b>	<b>47</b>	<b>47</b>
<b>Recreation and other local services</b>									
Swimming pools	28	20	11	3	10	8	5	–	1
Fire and emergency services	24	24	20	19	12	6	5	7	6
Library service	17	15	9	6	7	6	4	2	2
Sports grants, playgrounds and cultural projects	8	5	11	21	9	6	3	11	9
Heritage services (architectural heritage)	7	8	6	5	1	1	1	5	1
Disability services	15	15	12	7	–	–	–	–	–
Miscellaneous capital services	24	40	14	18	11	16	11	9	14
Miscellaneous services <sup>a</sup>	32	40	23	22	24	26	23	38	32
	<b>155</b>	<b>167</b>	<b>106</b>	<b>101</b>	<b>74</b>	<b>69</b>	<b>53</b>	<b>72</b>	<b>65</b>
General purpose grants	948	999	833	763	700	638	642	281	–
LPT allocations - general purpose/discretionary <sup>b</sup>	–	–	–	–	–	–	–	–	306
<b>Total funding provided to local authorities</b>	<b>5,599</b>	<b>5,821</b>	<b>5,074</b>	<b>4,267</b>	<b>3,426</b>	<b>2,861</b>	<b>2,365</b>	<b>1,705</b>	<b>1,994</b>

Source: The Office of Public Works; Department of the Environment, Community and Local Government; Department of Education and Skills; Department of Transport, Tourism and Sport; Department of Arts, Heritage and the Gaeltacht; Department of Health; Department of Children and Youth Affairs; Department of Justice and Equality; Department of Agriculture, Food and the Marine; Department of Social Protection; Department of Communications, Energy and Natural Resources; Department of Defence; Department of Jobs, Enterprise and Innovation; Local Government Fund and Environment Fund financial statements (2015 unaudited).

Note: a Adjustments were made in 2014 to previously reported pre-2014 amounts to reflect amounts not previously included.  
b The total LPT allocation from the Local Government Fund in 2015 was €459 million, this was allocated as follows; Housing €131 million; Roads €22 million; General purpose/discretionary €306 million.

## 5 Progress under the Land Aggregation Scheme

- 5.1** The Department of the Environment, Community and Local Government (the Department) supports the acquisition by local authorities of land for social and affordable housing.<sup>1</sup> In previous years, this included the authorisation of borrowing by local authorities for this purpose from the Housing Finance Agency (HFA).<sup>2</sup> The total value of land acquisition loans drawn down by local authorities from the HFA in the period from 1999 to 2013 was €821 million. The total outstanding principal in respect of all HFA local authority land loans at the end of 2015 was €468 million.

### Land Aggregation Scheme

- 5.2** A land audit conducted by local authorities in 2010 to identify land purchased for residential development but where there was little prospect of development in the next ten years indicated that there were 259 sites covering 775 hectares. The total loan value (capital and interest accumulated by 2010) owed by local authorities on these sites was €500 million.
- 5.3** Following the difficulties experienced by local authorities due to rapid falls in the housing market and a collapse in land values, the Land Aggregation Scheme (LAGS) was established in 2010. The purpose of the scheme was to alleviate the financial burden on local authorities of redeeming loans from the HFA, where development had not proceeded and where loans had fallen due for payment.
- 5.4** Under the scheme, local authorities could for a nominal fee transfer residential development land on which there were outstanding HFA loans to a special purpose body called the Housing and Sustainable Communities Agency (the Housing Agency).<sup>3</sup>
- 5.5** The scheme closed in December 2013 and at that time the Department had approved 73 sites with a total area of 247 hectares in the scheme.<sup>4</sup>

### Progress in transferring land under the scheme

- 5.6** Progress in transferring land to the Housing Agency since 2014 is shown in Figure 5.1.

**Figure 5.1 Summary of land transfer status, June 2014 and July 2016**

	Number of sites	Area in hectares	Number of sites	Area in hectares
	June 2014 <sup>a</sup>	June 2014	July 2016	July 2016
Transferred	41	105	67	224
Contracts exchanged (outstanding issues)	8	33	3	6
Contracts received and under review	7	38	1	2
Transfer process in progress	17	71	2	15
<b>All accepted sites</b>	<b>73</b>	<b>247</b>	<b>73</b>	<b>247</b>

Source: Department of the Environment, Community and Local Government

Note: a Chapter 6 of the Report on the Accounts of the Public Services 2013.

<sup>1</sup> In July 2016, the name of the Department was changed to the Department of Housing, Planning, Community and Local Government.

<sup>2</sup> The HFA was established to provide finance for housing development to local authorities.

<sup>3</sup> A company called the Housing and Sustainable Communities Limited (HSC Ltd) was established for the purpose of managing lands transferred under the scheme. This body was placed on a statutory footing in 2012 and called the Housing and Sustainable Communities Agency.

<sup>4</sup> The Land Aggregation Scheme was previously examined in the Report on the Accounts of the Public Services 2013.

- 5.7** The Department stated that the Housing Agency is responsible for managing the transfer process including technical and legal aspects and that the relevant local authorities and the Housing Agency continue to prioritise the work to resolve all outstanding matters affecting the remaining transfers. Each local authority must ensure that transfer conditions are met and the Housing Agency must satisfy itself that any required actions have been satisfactorily undertaken prior to any land transfer taking place.
- 5.8** The Department stated that it maintains regular contact with the Housing Agency regarding progress made on land transfers and has asked it to prioritise the finalisation of the small number of remaining sites with the local authorities concerned.

### ***Accounting for sites***

- 5.9** Each site accepted into the scheme is transferred to the ownership of the Housing Agency for a nominal fee of €1 per site. The Housing Agency is responsible for the management and maintenance of the lands transferred under the scheme. However, the Housing Agency does not have the authority to dispose of or develop a site without ministerial sanction. The Housing Agency's financial statements report the sites at a nil value. While the Housing Agency retains any proceeds arising from the disposal of a LAGS site, the intention is that the sites will be used primarily for public housing purposes rather than being sold.
- 5.10** The sites are not recorded as assets in the Department's Appropriation Account.
- 5.11** Legal advice has been sought from the Chief State Solicitor's Office regarding the accounting treatment of the LAGS sites given the conditions of the scheme and, in particular, the restrictions placed on the Housing Agency in respect of how it may use or dispose of LAGS lands. The Chief State Solicitor's Office is currently examining the issues raised.

### ***Changes in LAGS funding mechanism***

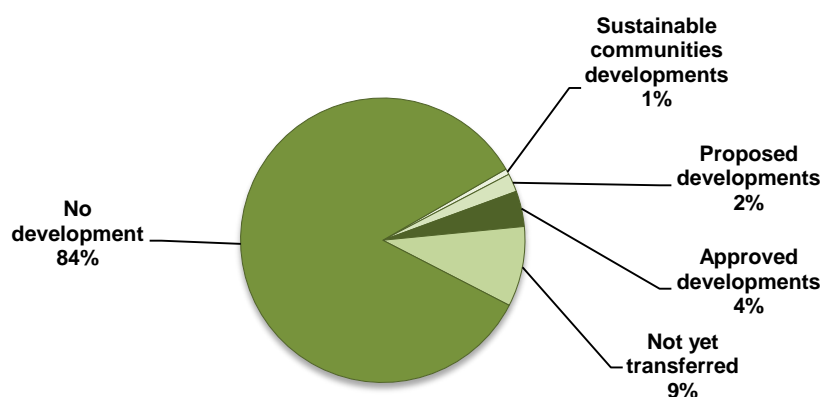
- 5.12** The Department incurred costs of €111 million in 2010 and 2011 to redeem the loans related to the 47 sites which were initially agreed for transfer under the LAGS. Under the first iteration of the scheme, the Department made funds available to the relevant local authority to redeem the maturing loan in full. Such recoupment of a loan payment by a local authority could occur prior to the transfer of lands to the Housing Agency. Annex A gives details, as of July 2016, of the sites transferred to the Housing Agency under the initial arrangements of the scheme.
- 5.13** In 2012, revised arrangements were introduced whereby the loan from the HFA was converted to a mortgage of up to 25 years. In 2014, the value of the annuitised loans of the remaining sites to be transferred was estimated at €52 million and it was anticipated that there would be an ongoing funding requirement by the Department of €2.68 million per year, depending on the interest rates in force. Under the revised arrangements, capital and interest payments made by the local authority to the HFA can be recouped by the local authority from the Department, subject to the transfer of the land to the Housing Agency. Annex B gives details, as of July 2016, of the sites transferred to the Housing Agency under the revised arrangements of the scheme.
- 5.14** From 2013 to 2015, the Department paid a total of €2.2 million in respect of annuitised loans. Payments made in this period were lower than anticipated because of the delay in transferring sites to the Housing Agency.

- 5.15** In line with the principles governing the self-funding of housing services from surplus Local Property Tax (LPT) receipts and the delegated expenditure sanction from the Department of Public Expenditure and Reform, each local authority's LPT self-funding obligation must be met before Exchequer funding can be provided under relevant programmes. Surplus LPT receipts can only be applied to programme costs that would otherwise have qualified for central Exchequer funding.<sup>1</sup>
- 5.16** Consequently, the expected outturn of €2.68 million Exchequer funding per year may not always be expended as certain local authorities may have an outstanding LPT capital self-funding requirement when claims are received in the Department.<sup>2</sup>
- 5.17** In the period January to September 2016, claims for €1.72 million under LAGS have been made by local authorities with €0.85 million being designated as being funded by LPT, leaving a net amount of €0.87 million charged to the Department's vote.

### *Development of land after transfer to the Housing Agency*

- 5.18** Following the transfer of the land from local authorities, the Housing Agency is required to prepare a report and implement a strategy for the management, utilisation and ultimate development of the land in question, including valuation in the event of proposed land disposal. The Housing Agency seeks input from the relevant local authority and other interested bodies in respect of the land in question when preparing this report. The progress of development on land included in LAGS is set out in Figure 5.2 below.

**Figure 5.2 Progress in developing residential housing sites on land acquired under the LAGS, July 2016**



Source: Department of the Environment, Community and Local Government

- 5.19** In relation to the progress being made on sites for housing development, ten hectares of land on seven sites have been approved for delivery of 185 housing units. Another two hectares of land on four sites are being progressed with the potential to deliver over 30 housing units.

<sup>1</sup> See Chapter 4 on Central Government Funding of Local Authorities for further details of LPT allocations to local authorities.

<sup>2</sup> In 2016, ten local authorities were required to self-fund housing services from surplus LPT receipts.

- 5.20** The Department has stated that a LAGS site has been selected as the location for a key Path Finder project under the Government's Rebuilding Ireland Housing Plan published in July 2016. The project will deliver 150 homes in a mix of social and affordable houses/apartments. The Housing Agency is working on a joint venture basis with an approved housing body and Dún Laoghaire-Rathdown County Council to develop the project.
- 5.21** Two LAGS sites have been approved for sustainable communities' purposes
- a portion of a site (1.6 hectares) was transferred to the Department of Education and Skills for the development of a major school building project in Cork
  - a small site was transferred to a community council in Limerick for the development of a playground.
- 5.22** The Department stated that a key goal of LAGS is to contribute to the social capital of the State by making land available as appropriate to facilitate the development of sustainable communities. While the focus of the scheme is the development of land for social housing purposes, consideration can also be given under the scheme to initiatives and projects that support the formation and development of sustainable communities.
- 5.23** The Department also stated that the focus of the scheme was initially on the transfer of the sites from the ownership of the local authorities concerned to the Housing Agency. This focus has now shifted to the management, maintenance and development of these lands. Since January 2016, teams from the Department have visited and met with local authorities to progress housing developments and, as a result, the Department expect to see a more efficient passage of projects through stages of the approval process in the coming months.
- 5.24** The Department stated that the process for delivery of social housing units on LAGS lands is no different from the process with regard to local authority owned lands. The delivery of housing on scheme sites and other State owned sites is a key priority under *Rebuilding Ireland: An Action Plan for Housing and Homelessness*, which was published in July 2016. In addition to the LAGS sites that are already being actively developed, under Action 2.7 of this action plan, the Housing Agency, working with the Department and the relevant local authorities, will develop a "Strategic Management Plan" for each LAGS site to advance them to housing development stage at the earliest opportunity. This action is timetabled for delivery in the first quarter of 2017.

### Utilisation of local authority land bank for housing

- 5.25** In relation to the progress on the development of sites by local authorities identified in the land bank audit, the Department stated that following on from the audit, the Housing Agency, in conjunction with the Department and the County and City Management Association, prepared a database of local authority owned lands and LAGS lands. The database of local authority sites is also being used to generate an interactive map of local authority and LAGS sites showing their location, size, boundaries and other information. The Housing Agency is currently gathering detailed location and boundary data for any non-LAGS sites which are not already mapped in detail. It is envisaged that this work will be completed later in 2016.

- 5.26** The Department stated that the Housing Agency has used the data gathered to prepare an updated national level overview of all local authority lands with potential for housing development and this in turn has fed into the development of the Social Housing Strategy 2020. In addition, *Rebuilding Ireland: Action Plan for Housing and Homelessness* focuses on increasing the supply of homes for all tenures. The potential for housing development from lands in State ownership is a specific area that will be actioned. The action plan contains specific measures with regard to the active land management of State-owned sites, including those held under the LAGS.

## Conclusions

- 5.27** Although the LAGS was established to support local authorities by alleviating the financial burden in servicing loans taken out from the HFA where land acquired for social and affordable housing had not yet been developed, the focus has now shifted to the management, maintenance and development of these lands. The delivery of housing on scheme sites and other State owned sites is a key priority under *Rebuilding Ireland: An Action Plan for Housing and Homelessness*, launched by the Department in July 2016.
- 5.28** Since 2012, the Department had annual funding obligations estimated at over €2 million per year for up to 25 years in respect of annuitised loans. In line with the principles governing the LPT self-funding framework, no Exchequer funding is to be provided to a local authority with a self-funding requirement unless that authority has applied the full extent of its self-funding requirement across all relevant self-funding programmes. The Exchequer requirement for LAGS may be reduced where certain local authorities have not achieved the full extent of their self-funding requirement at the time of the claim, as the claim must then be offset against outstanding LPT obligations.
- 5.29** The transfers of six of the 73 sites accepted into LAGS have not been finalised more than two years after the scheme closed for further applications.
- 5.30** To date no housing units have been completed on LAGS sites although a number of sites are currently being developed. Development has been approved in respect of 185 homes on seven LAGS sites and proposals are being worked up in relation to another 180 homes across five sites.
- 5.31** Over 1.6 hectares of land on two sites has been transferred to the Department of Education for a school and to a community organisation for a children's recreational facility to promote sustainable communities.

**Annex A Local Authority sites transferred under the LAGS by area, July 2016**  
**Approved for transfer under initial arrangements**

Local Authority	Year of purchase	Hectares purchased	Hectares approved for transfer	Transfers completed July 2016
Carlow County Council	2001	3.20	1.89	1.89
Carlow County Council	2001	4.04	3.23	3.23
Clare County Council	2007	4.40	4.41	4.41
Cork County Council	2000	0.82	0.50	0.50
Cork County Council	2000	2.03	1.31	1.31
Cork County Council	2000	3.28	2.02	2.02
Cork County Council	2001	3.46	2.26	2.26
Cork County Council	2001	15.26	13.48	0
Cork County Council	2002	1.65	1.65	1.65
Cork County Council	2002	2.76	1.34	1.34
Cork County Council	2007	5.26	5.26	5.26
Dun Laoghaire-Rathdown County Council	2001	3.20	2.80	2.80
Fingal County Council	2000	24.21	24.21	24.21
Galway County Council	2002	5.44	2.50	2.50
Kildare County Council	2000	8.76	7.93	7.93
Kildare County Council	2002	8.49	8.49	8.49
Kildare County Council	2003	4.04	4.04	4.04
Kildare County Council	2003	4.16	4.16	4.16
Naas Town Council	2001	5.66	5.66	5.66
Laois County Council	1999-2001	1.98	1.98	1.98
Laois County Council	1999	5.62	1.50	1.50
Laois County Council	2000	3.10	3.10	3.10
Laois County Council	2001	1.25	1.25	1.25
Laois County Council	2003	3.56	1.72	1.72
Limerick County Council	2000	4.17	3.46	3.46
Limerick County Council	2001	1.71	0.52	0.52
Limerick County Council	2001	1.67	1.21	1.21
Limerick County Council	2002	2.34	1.48	1.48
Limerick County Council	2002	2.37	2.07	2.07
Meath County Council	2001	4.39	4.39	0.00
National Building Agency	2001	2.20	2.20	2.20
National Building Agency	2001	3.30	3.30	3.30
National Building Agency	2003	1.96	1.96	0.00
Offaly County Council	2002	3.67	2.87	2.87
Sligo County Council	2001	1.31	1.31	1.31
Sligo County Council	2001	1.66	0.22	0.22
Sligo County Council	2003	13.00	11.80	11.80



Local Authority	Year of purchase	Hectares purchased	Hectares approved for transfer	Transfers completed July 2016
<b>Tralee Town Council</b>	2001	14.33	8.28	8.28
<b>Waterford County Council</b>	2000	6.40	4.30	4.30
<b>Waterford City Council</b>	2002	2.93	2.93	2.93
<b>Wexford County Council</b>	2000	2.86	0.95	0.95
<b>Wexford County Council</b>	2000	5.00	4.39	4.39
<b>Wexford County Council</b>	2001	2.30	0.71	0.71
<b>Wexford County Council</b>	2001	3.15	0.52	0.52
<b>Wexford County Council</b>	2002	10.88	0.73	0.73
<b>Wexford County Council</b>	2002	4.21	3.40	3.40
<b>Wicklow Town Council</b>	2000	6.03	2.90	2.90
<b>TOTAL</b>		<b>227.47</b>	<b>172.59</b>	<b>152.76</b>

Source: Department of the Environment, Community and Local Government

**Annex B Local Authority sites transferred under the LAGS by area, July 2016**  
**Approved for transfer under revised arrangements**

Local Authority	Year of purchase	Hectares Purchased	Hectares approved for transfer	Transfers completed July 2016
<b>Carlow County Council<sup>a</sup></b>	2002	2.20	2.20	2.20
<b>Cork County Council</b>	2000	2.46	2.46	2.46
<b>Cork County Council</b>	2000	1.40	1.40	0.00
<b>Cork County Council</b>	2001	3.63	3.63	3.63
<b>Cork County Council</b>	2001	3.98	3.98	3.98
<b>Cork County Council</b>	2000	13.35	8.59	8.59
<b>Cork County Council</b>	2002	1.30	1.29	1.29
<b>Cork County Council</b>	2003	1.16	1.16	0.00
<b>Cork County Council</b>	2003	0.13	0.13	0.13
<b>Dundalk Town Council</b>	2005	3.09	3.09	3.09
<b>Fingal County Council</b>	2001	7.30	7.30	7.30
<b>Fingal County Council</b>	2002	3.34	2.77	2.77
<b>Laois County Council</b>	2002	1.49	1.49	1.49
<b>Laois County Council</b>	2002	0.92	0.92	0.92
<b>Laois County Council</b>	2005	1.03	1.03	1.03
<b>Laois County Council</b>	2005	1.03	1.03	1.03
<b>Laois County Council</b>	2005	0.74	0.74	0.74
<b>Laois County Council</b>	2005	2.13	2.13	2.13
<b>Limerick County Council</b>	2001	2.50	1.25	1.25
<b>Offaly County Council</b>	2004	1.42	1.22	1.22
<b>Tullamore Town Council</b>	2005	5.79	4.34	4.34
<b>Sligo Borough Council</b>	2001	15.18	15.18	15.18
<b>Wexford County Council</b>	2001	2.99	0.76	0.76
<b>Wexford County Council (2 sites)</b>	2001	10.64	5.96	5.96
<b>TOTAL</b>		<b>89.20</b>	<b>74.05</b>	<b>71.49</b>

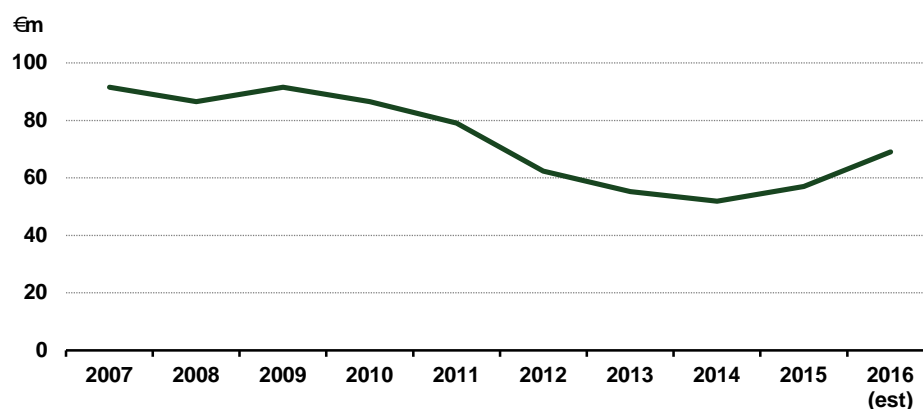
Source: Department of the Environment, Community and Local Government

Note: a A loan on a further site in Carlow (not included) was redeemed in full due to its low value (€50,000).

## 6 Procurement and Management of Contracts for Direct Provision

- 6.1 International and European law provides for the granting of international protection to those who cannot return to their country of origin because they have a well-founded fear of persecution or are at risk of being ill treated or subjected to other serious harm. Individuals who apply for international protection and are awaiting a decision on that application are referred to as asylum seekers.
- 6.2 There are two types of international protection in the EU
- **refugee status** is given to persons who demonstrate a fear of persecution in their home country due to certain aspects of their identity, such as religion or political opinion
  - **subsidiary protection status** derives from European law and is given to persons who do not qualify as refugees but who, nevertheless, cannot return home because they risk facing serious harm, such as torture or inhuman or degrading treatment or punishment, or generalised violence in a war.
- 6.3 The possible outcomes of an application for international protection are
- grant of **refugee** or **subsidiary protection status**
  - refusal of refugee or subsidiary protection status but the applicant is granted **leave to remain** in Ireland on other grounds
  - a **deportation** order is issued.
- 6.4 The State is obliged to make provision for the material needs of asylum seekers while their applications and appeals of decisions are being processed. Direct provision is the means by which the State meets that obligation.<sup>1</sup> This involves the provision of accommodation and food as well as a weekly cash allowance. While all asylum seekers are entitled to avail of direct provision, there is no obligation to do so. It is estimated that just over half of all asylum seekers live in direct provision.
- 6.5 There are 35 direct provision centres located around the country. At end December 2015, there were 4,696 people accommodated in direct provision centres. In 2015, the Department of Justice and Equality (the Department) incurred expenditure of €57 million on direct provision (see Figure 6.1).

<sup>1</sup> Direct provision centres also provide accommodation to victims of suspected human trafficking and to certain destitute EU citizens.

**Figure 6.1 Expenditure on asylum seekers' accommodation, 2007 to 2016**

Source: Department of Justice and Equality

**6.6** In addition to asylum seekers accommodated in direct provision centres, two emergency reception and orientation centres cater for

- refugees relocated to Ireland directly from refugee camps under the United Nations Resettlement Programme
- refugees relocated in response to the migration crisis in central and southern Europe.

**6.7** This report

- reviews demand for direct provision accommodation
- examines whether contracts in relation to direct provision centres were awarded in accordance with public procurement rules
- examines the management of those contracts.

### Requirement for direct provision places

**6.8** The level of direct provision accommodation required is demand-led and difficult to predict. Demand is influenced by a number of factors including

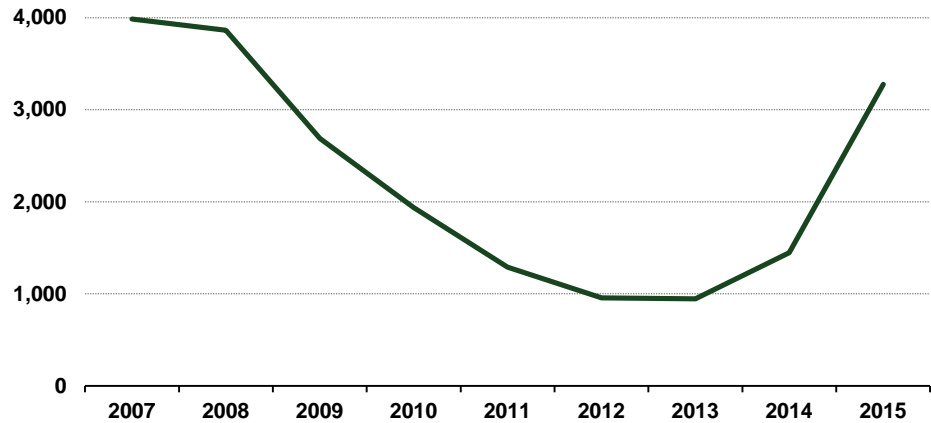
- the number of asylum seekers who may come to Ireland
- the number who avail of direct provision at any given time
- the length of stay in direct provision, which is mainly dependent on the time taken to process an asylum seeker's application and regularise their status, and on their ability to move on to alternative accommodation when refugee or subsidiary protection status, or leave to remain, is granted.

Of these, the length of stay in direct provision is the factor over which the State can exercise most control.

**6.9** The Department has stated that dealing with a demand-led, unpredictable volume of service users is particularly challenging where the provision of accommodation can quickly become politically fraught and contested.

- 6.10** The number of people seeking asylum in Ireland fell from just under 4,000 in 2007 to just under 1,000 in 2013. The number of applications has risen swiftly since then increasing to over 3,200 in 2015 (see Figure 6.2).

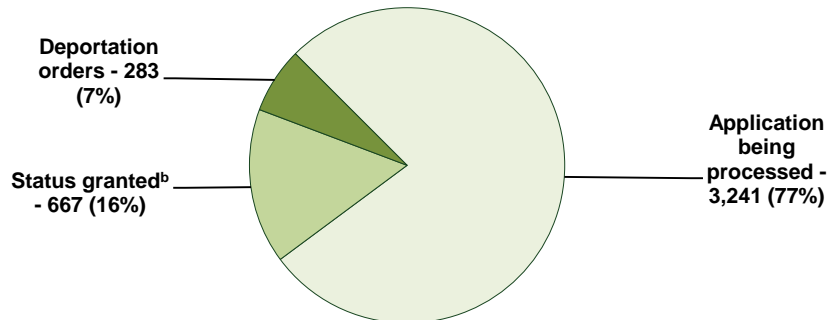
**Figure 6.2 Number of asylum applicants, 2007 to 2015**



Source: Department of Justice and Equality

- 6.11** It should be noted that not all of those in direct provision are awaiting decisions. As at August 2016, 23% of residents had either been granted refugee status, subsidiary protection status or leave to remain, or were subject to deportation orders (Figure 6.3).

**Figure 6.3 Status of direct provision residents, August 2016<sup>a</sup>**



Source: Department of Justice and Equality

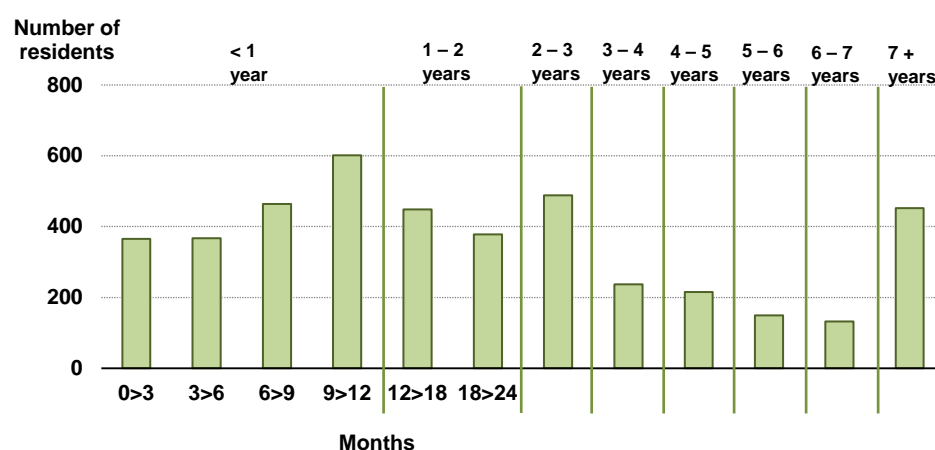
Notes: a Does not include children who are resident in direct provision but have not applied for protection.

b Granted refugee status, subsidiary protection status or leave to remain.

- 6.12** One in six residents in direct provision has been granted refugee or subsidiary protection status, or leave to remain. While firm information is not available as to why they continue to reside in direct provision centres, difficulties in accessing accommodation outside of direct provision is likely to be a significant factor.

- 6.13** The Department has stated that finding accommodation in the housing market is currently very challenging, particularly for those who are vulnerable. There is no value in forcing individuals or families to leave direct provision accommodation. Such people continue to reside in direct provision and are supported in the process of obtaining permanent accommodation. In his reply to this examination, the Accounting Officer reported that an analysis in 2015 of those granted leave to remain found that 87% had left direct provision within six months of the decision.
- 6.14** A deportation order requires a person to leave Ireland by a specified date. Where they do not do so, they are required to present themselves to An Garda Síochána, generally monthly, until such time as they leave or are removed. The Department has stated that there are multiple reasons why persons served with deportation orders continue to reside in centres.
- 6.15** At July 2016, the average length of stay of those in direct provision was 38 months. Some 450 people — 10% of the total — have been residents of direct provision for more than seven years (Figure 6.4).

**Figure 6.4 Length of stay in direct provision at July 2016<sup>a</sup>**



Source: Department of Justice and Equality Reception and Integration Agency, monthly statistics report, July 2016

Note: a The length of stay is calculated by the Department based on each resident's latest entry date into a direct provision centre.

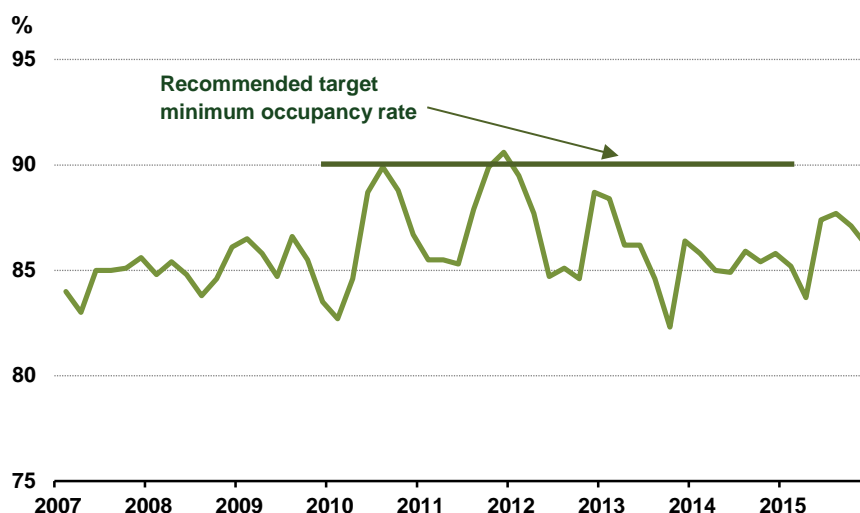
- 6.16** An IT system — the asylum and immigration strategic integration programme — became operational in 2012. This examination sought to use data from that system to analyse the processing of asylum applications over the last ten years to identify issues affecting length of stay in direct provision. From the introduction of the new IT system in 2012, each asylum seeker is given a unique identification number for all stages of their application, including appeals and judicial reviews. Prior to that, the different systems used for some stages of each application assigned different identification numbers to the same applicant, and so, the information before 2012 from the different systems cannot be linked. As a result, an analysis of system data would not provide an accurate indication of processing times because the majority of applications for which full information is available are at the early stages of the application process.

- 6.17** The Department stated that it recognises that the sequential processing of cases leads to delay and increases the time spent by applicants in direct provision. Streamlining the application process was the core objective of the single application procedure provided for in the International Protection Act 2015 which will be implemented later in 2016.
- 6.18** The Department has pointed out that there are other reasons for the length of time spent in direct provision. For example, where possible, the applications of all family members are processed together but in a number of cases individual family members may lodge an appeal or a judicial review. This delays the processing of the applications of remaining family members. In other cases, parents may not make an application for a child until their own applications have been decided, resulting in the process starting over again. Other reasons include delays in responding to correspondence by applicants and judicial reviews being taken.
- 6.19** The Department stated that a concerted effort was made, in line with the recommendations of a working group report in 2015, to process cases over five years in the system.<sup>1</sup> It further stated that almost all of these cases have now been dealt with and have either been granted leave to remain, are party to an ongoing judicial review or have been served with a deportation order.

### Occupancy rates

- 6.20** The Department faces a significant challenge in ensuring accommodation is available for those who need it while at the same time minimising unnecessary expenditure on accommodation that is not used.
- 6.21** The rate of occupancy of direct provision accommodation between 2007 and 2015 is shown in Figure 6.5. The average rate of occupancy over the period was 86%. A 2010 value for money and policy review of the direct provision programme recommended that the occupancy rate should be in excess of 90%.<sup>2</sup> This would provide a reasonable level of spare capacity to cope with sudden increases in demand.

**Figure 6.5 Direct provision accommodation, occupancy rate, 2007 to 2015<sup>a</sup>**



<sup>1</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015.

<sup>2</sup> Value for Money and Policy Review, Asylum Seeker Accommodation Programme, Department of Justice and Equality, May 2010.

Source: Department of Justice and Equality

Note: a The data above represents the occupancy rate as reported every two months.

### Contracts for direct provision centres

- 6.22** The Department has stated that the 2010 value for money review considered a number of alternatives to direct provision — allowing asylum seekers to claim social welfare, accommodating asylum seekers in self-catering and allowing asylum seekers to apply for local authority housing. The review found that those alternatives would be more expensive than direct provision.
- 6.23** At December 2015, there were 35 direct provision centres with capacity to accommodate over 5,400 people.
- 6.24** Summary details of the 35 centres are set out in Annex A. Seven are State-owned with two companies contracted to provide services. The other 28 centres are owned and operated by 22 commercial suppliers.
- 6.25** One of the centres (Balseskin) is a reception centre where asylum seekers who have opted for direct provision are accommodated temporarily (a number of weeks) before being dispersed to one of the other centres. The majority of the centres are premises that were originally designed and used for other purposes and include former hotels, boarding schools and hostels. Three were purpose built. Food is provided by the centre operators on a full board basis in almost all the centres — just two are self-catering.
- 6.26** Commercial providers of centres have been paid a total of €251 million over the five years to 2015. Providers of services in State-owned facilities have been paid €36 million over the same period (Figure 6.6).

**Figure 6.6 Payments to direct provision contractors, 2011 to 2015**

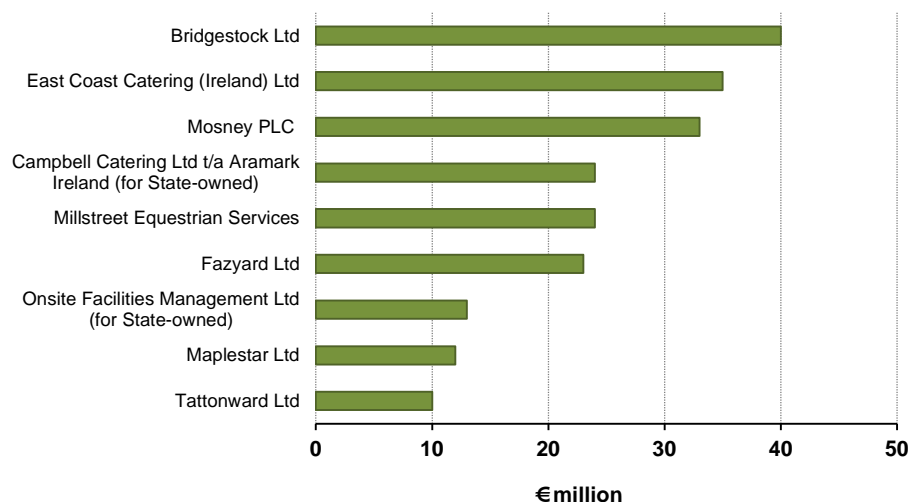
Year	State owned €million	Commercial €million	Total €million
2011	8.3	59.5	67.8
2012	7.0	53.0	60.0
2013	6.9	46.4	53.3
2014	6.9	44.2	51.1
2015	7.0	47.9	54.9

Source: Department of Justice and Equality

- 6.27** Over the five years to 2015, nine companies have each been paid in excess of €10 million (Figure 6.7).



**Figure 6.7 Commercial suppliers of direct provision services paid in excess of €10 million each in period 2011 to 2015**



Source: Department of Justice and Equality

### **Procurement issues**

- 6.28** It is a basic principle of public procurement that a competitive process is used. This is intended to ensure that goods and services acquired by public bodies are procured in an open, objective and transparent manner and in a way that achieves best value for money. Contracts above certain value thresholds must comply with EU procurement rules which also stipulate the use of a competitive process and, in particular, widespread advertising of the competition throughout the EU.
- 6.29** The procurement methods used differ between the engagement of contractors to provide services for State-owned centres, and the award of contracts for commercially owned and managed centres. Competitive processes were followed for service contracts for State-owned centres with the two current contracts in place both advertised on eTenders.<sup>1</sup> The Department has stated that, in association with the Office of Government Procurement, it is currently involved in an EU wide competitive process for the provision of services for State-owned centres.
- 6.30** The Department does not use formal competitive processes, as set out in public procurement rules, for suppliers of commercial centres. It uses its website to seek 'expressions of interest'. Advertisements were also placed in national newspapers. The notice stated
- that the Department is drawing up a list of suppliers interested in providing accommodation and services
  - the type of premises required includes "hotels, hostels, guesthouses, etc. which can accommodate upwards of fifty persons and which should be reasonably close to all services e.g. shops, schools, transport, etc."
  - that suppliers who expressed interest would be contacted if they were needed.

<sup>1</sup> eTenders is a website managed by the Office of Government Procurement and is a central facility for all public sector contracting authorities to advertise procurement opportunities and award notices.

- 6.31** The Department did not provide evidence to show how it evaluated those who responded to the notice. However, the Department has indicated that it evaluated expressions of interest received based on the following criteria
- the minimum standard of accommodation as detailed in the Housing Act 1966
  - a site visit which includes checks on toilet facilities, cooking facilities, recreation facilities, play rooms, outdoor play areas, and location of and proximity to services.
- 6.32** The Department then negotiates a price with selected providers and agrees a contract. Contracts are typically agreed for a one year period.
- 6.33** The Department has pointed out that the notice does not state that there is an on-going need for accommodation but that accommodation may be required. Neither does the notice seek the offer of specific property as that would be unreasonable because there may be no requirement for accommodation. It has pointed out that there were 27 responses to the most recent call for expressions of interest.
- 6.34** The Department considers that the procurement procedure used has been appropriate in the circumstances. It considers that its procurement method equates to the 'negotiated procedure' provided for in EU procurement rules. However, it has not complied with key requirements of the negotiated procedure, including publication of award criteria and award notices.
- 6.35** In a negotiated procedure, the contracting authority negotiates directly with suppliers to agree a contract. Under EU rules, negotiated procedures can only be used in limited circumstances, mainly where
- no tenders or no suitable tenders were submitted in response to a request for tenders
  - there is only one supplier
  - because of extreme urgency not attributable to the contracting authority and brought about by events unforeseeable by the contracting authority, and where there is insufficient time for an open competition or one of the other competitive procedures permitted.
- 6.36** The procurement of direct provision centres does not fall within these limited circumstances. A request for tender has never been issued, there are many potential suppliers and the Department has been procuring these services continuously over a 15 year period which by any reasonable interpretation gave sufficient time to hold an open competition. In relation to urgency, the Department has stated that because of the demand-led nature of direct provision, it is not economically efficient or feasible to retain a stock of unused accommodation in anticipation of an increase in demand.
- 6.37** The Department stated that it had detailed discussions with the Office of Government Procurement (OGP) during 2015. To date, no procurement methodology has been identified which would replace the current procedure. Taking account of the issues set out by the Department and OGP's procurement expertise, it has not been possible to pursue the prospect of delivering a successful open tender.

### ***Reporting of non competitive procurement***

- 6.38** Government departments are required to prepare an annual statement of contracts awarded without a competitive process where the value of the contract exceeded €25,000 (excluding VAT), and to submit the statement to the Office of the Comptroller and Auditor General, and to the Department of Public Expenditure and Reform. The Department has not included the contracts with commercial suppliers of accommodation in this return.
- 6.39** The Department does not accept that these contracts should have been included in the annual return as it considers that the procurement method used equates to the negotiated procedure provided for in EU procurement rules.

### ***Extension of contracts***

- 6.40** Since 2005, the key changes to contracts have been as a result of negotiation one month in advance of the end of an expiring contract. Changes negotiated generally related to bed capacity and payment rates. Since 2010, contracts with ten commercial providers were not renewed.
- 6.41** For some centres, new contracts were agreed with a different company. However, in a number of those cases, at least one director was common to both companies. Annex A indicates cases where a number of companies providing different centres are linked by common directors, and cases where successive contractors providing individual centres have common directors.
- 6.42** The Department has stated that it is not currently aware of any contentious issue on the part of any director or company associated with contracts for the provision of services for persons seeking international protection. Changes in companies providing services may occur where, for example, a director dies, or where business partners decide to go their separate ways. The Department has also stated that there are sound business and logistical reasons, as well as humanitarian reasons such as linkages to education, health and other social services, why it seeks to ensure that established centres continue in use. The Department continues to ensure that the highest standards apply in all of its dealings with companies and directors, and will examine, and where possible, improve due diligence in this area. The Department noted that all payments are subject to appropriate tax clearance procedures.

### ***Contract payment terms***

- 6.43** The contracts for commercially-owned centres provide for payment based on the agreed centre capacity, regardless of the level of occupancy. Most contracts set out a rate per person per day for the spaces provided and a lower daily rate for the availability of a small number of additional spaces, if required. This gives an overall daily rate for each centre. Payment is made every four weeks in advance, based on this rate.
- 6.44** The contractor is required to ensure that the stipulated capacity is available at all times. Where this is not the case, the contractor can be penalised at a rate of €50 for each space less than the capacity for each day. The Department has stated that there were no instances of such payments being required in the last five years.

- 6.45** The effective daily rate for commercial centres varies between €20.70 and €35.50 per contracted space. The Department has pointed out that the lower rate relates to a self catering-facility where meals are not provided by the contractor as residents receive financial supports to allow them to cater for themselves. Excluding self-catering facilities, the effective daily rate ranges from €27.00 to €35.50.
- 6.46** The daily rate for the provision of services in State-owned centres is less because it does not include the costs associated with the provision of the accommodation itself. That rate varies between €11.27 and €17.37 per person.
- 6.47** Some centres have on occasion accommodated more people than was contracted for by the Department with no additional payment.

### ***Setting performance standards***

- 6.48** One of the most critical elements of any contract is the definition of the services to be provided. It is essential that a contract clearly specifies what should be delivered, to what standard, in what timeframe and/or with what frequency.
- 6.49** Direct provision contracts require that accommodation and services shall be provided “to a standard which is reasonable having regard to the daily needs of asylum seekers”. The contract does not define what is considered to be reasonable.
- 6.50** The contracts refer to the accommodation, catering and other services that should be provided. Just over half of these deliverables are stated in such a way that they are measurable, usually by defining a standard and frequency. However, the remaining deliverables are set in less concrete terms - such as ‘appropriate’, ‘adequate’ or ‘as required’ - that make measurement difficult, or are stated in such a way that the matter is left to the discretion of the contractor. Examples of the deliverables referred to in the contracts are shown in Figure 6.8.

**Figure 6.8 Examples of specification of contract deliverables – commercial providers**

<b>Specific deliverable</b>	<b>Non-specific/vague deliverable</b>
The contractor agrees that the centre shall be reserved entirely for the reception and care of asylum seekers.	The contractor will ensure that the accommodation is provided with adequate heating.
Each resident shall be supplied with 2 towels on arrival, which will be replaced as required, but at least on a weekly basis.	When a unit is vacated, it must be deep cleaned and painted, where required, by the contractor before being assigned to a new resident.
It shall be the responsibility of the contractor to ensure that a food safety management system incorporating the principles of Hazard Analysis and Critical Control Points (HACCP) is in place in keeping with the European Community (Hygiene of Foodstuff) regulations, 2000 (SI no 165 of 2000).	The menus offered shall reflect (i) the reasonable needs of the different ethnic groups accommodated at the centre and (ii) the reasonable prescribed dietary needs of any person accommodated at the centre.
	The contractor will also ensure that a reasonably adequate supply of soap, shampoo, toothpaste and toilet paper is available in each room and that these are replenished as necessary.

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

- 6.51** The contracts do state that the centre should comply with all relevant statutory requirements giving examples of those requirements such as planning, building regulation, hygiene and industrial relations.
- 6.52** A contract should also contain provisions for monitoring performance. The contract should set out who is responsible for collecting and analysing performance data, who will monitor performance, the frequency of monitoring and the reporting arrangements.
- 6.53** References to performance information and monitoring in the contracts for the commercially owned centres are limited to
- a requirement to maintain a daily register of residents with a copy to be submitted to the Department each week
  - the Department's right to inspect the centre at all times
  - the submission to the Department of a 28 day menu cycle when requested
  - a requirement to provide the Department with details of staffing arrangements and any changes to those arrangements
  - provision for quarterly service delivery meetings.
- 6.54** Other than this, the contracts do not specify the nature and frequency of management information to be provided. No performance measures are set in the contracts and there is no provision in the contract for penalties for under-performance, other than failure to provide the contracted capacity.

### Monitoring service delivery

- 6.55** Service delivery is monitored in a number of ways — physical inspection of centres, information clinics held in centres, and review of complaints by residents. The Department has stated that it is actively working towards improving the living conditions of those in direct provision by providing increased living space, and self or communal catering facilities where possible, especially for families. This work is ongoing and will be completed as soon as possible.

### Inspections

- 6.56** Inspections seek to record a 'snapshot' of the physical conditions of a centre and to ensure the services contracted for are being delivered. The Department's aim is to inspect each centre three times annually — twice by departmental staff and at least once by an independent company with expertise in fire and food safety. Reports on all inspections carried out since late 2013 are published.<sup>1</sup>
- 6.57** The total number of inspections decreased from 100 in 2013 to 89 in 2015. All centres were inspected at least once in each year. In 2015, 22 of the 35 centres were inspected three times. This is a decline in the inspection coverage achieved in 2013. (Figure 6.9).

<sup>1</sup> Inspection reports are published on the Reception and Integration Agency's website — [www.ria.gov.ie](http://www.ria.gov.ie).

**Figure 6.9 Inspections of direct provision centres, 2013 to 2015**

Number of inspections in year	2013	2014	2015
<b>Number of centres</b>			
Four inspections	5	1	–
Three inspections	24	18	22
Two inspections	3	14	10
One inspection	2 <sup>a</sup>	1	3
<b>Number of centres</b>	<b>34</b>	<b>34</b>	<b>35</b>

Source: Department of Justice and Equality

Note: a One of these centres was closed for renovations during 2013.

- 6.58** The results of the inspections are communicated in writing to the supplier who is requested to respond to any matters raised within two weeks. However, no timescales are set in the contracts for the completion of required actions. The Department has stated that setting timescales in the contract would not work as the timescale would be dependent on the actions necessary to address the particular issue. However, the Department will consider including in the contract a provision that deadlines will be agreed between the Department and contractor.
- 6.59** A sample of five inspection reports were reviewed as part of this examination. The majority of findings related to maintenance issues and there was evidence that such matters were remedied by suppliers. Other issues included fire safety (which were dealt with on the day of the inspection) and issues in relation to how tidy rooms were. The Department has stated that the tidiness of a room is a matter for the resident once it is not a health and safety, or a fire risk.
- 6.60** On occasion there was a difference of opinion between the Department and the supplier. For instance, one inspection identified a need to change the floor covering in a room. However, the supplier was of the opinion that it was of a satisfactory standard and did not change it.
- 6.61** In the sample examined, the inspections did not identify issues with the food provided. However, in the development of a working group report which was published in June 2015, residents reported a number of concerns in relation to food, including a lack of healthy food choices, lack of consultation in relation to menus and hygiene standards.<sup>1</sup> Contracts require that the menus offered reflect dietary requirements as well as the needs of different ethnic groups. There is also a requirement in the contract for the contractor to meet with residents in relation to the food provided.

### ***Information clinics***

- 6.62** The objective of information clinics is to allow residents to discuss issues directly with departmental staff. They also provide an opportunity to examine the centre and its general operation.
- 6.63** The Department aims to conduct information clinics at least twice a year in each centre. In 2015, this objective was achieved, and three clinics were held for the majority of centres. In the case of the largest centre, at Mosney, clinics were held on a monthly basis.

<sup>1</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015.

- 6.64** Management information on the issues raised by residents or identified by departmental staff is not formally maintained and analysed.

### **Complaints**

- 6.65** The standard rules and procedures for direct provision centres include the provision of a local complaints procedure. This involves residents initially seeking to resolve the issue with the centre manager, either informally or in writing. If not satisfied, the resident can refer the matter to the Department in writing. The resident can bypass the centre manager in the first instance in “very exceptional and serious circumstances”, and bring a complaint directly to the Department.
- 6.66** There is a very low level of complaints to the Department. Over the four years to 2015, there were just 38 such complaints in total.
- 6.67** The Department’s complaints procedure — revised in 2015 — provides for an appeal to an independent appeals officer if the complainant believes that the complaint has not been handled satisfactorily.<sup>1</sup>
- 6.68** An independent appeals officer has not been appointed yet. The Department has stated that in attempting to identify an independent person, discussions were held with the Irish Prison Service where the complaints procedure was being reviewed and there was a likelihood that an independent final arbiter would be introduced. Prior to the Prison Service review being concluded, the Tánaiste and Minister for Justice and Equality agreed that both the Ombudsman and the Ombudsman for Children should have their remit extended to include persons living in direct provision. The implementation of this will require an order to be signed by the Minister for Public Expenditure and Reform. The Department is in advanced discussions with the Department of Public Expenditure and Reform, and the Office of the Attorney General in relation to such an order. It is envisaged that the relevant ombudsman will become the independent appeals officer.
- 6.69** Consultation with residents conducted as part of the 2015 working group review, identified a wide range of concerns. Most were related to the length of the application process and the fact that they were living in direct provision. However, a number of concerns were expressed about the standard of services provided in direct provision centres. The consultation process also identified a lack of confidence on the part of residents in the complaints procedure and the inspection process.

### **Conclusions and recommendations**

- 6.70** Asylum seekers can avail of accommodation and services in direct provision centres. Many residents remain in direct provision centres for prolonged periods while their applications are being processed. However, data prior to 2012 cannot be readily analysed to identify the causes of delay (they can be identified by manual review of individual files). The introduction of a new IT system in 2012 should allow for better analysis of the processing of applications and identification of causes of delays.

<sup>1</sup> Direct Provision Reception and Accommodation Centres, House Rules and Procedures, 2015.

### ***Accommodating persons granted status***

- 6.71** At August 2016, a significant number of people whose cases have been finalised continue to reside in direct provision centres. One in six direct provision residents have been granted status permitting them to remain in Ireland. It is not clear that using direct provision accommodation for such individuals is in the best interests of the State, the individuals or the intended users of direct provision. The Department has pointed out that its analysis found that of those granted leave to remain, 87% move out of direct provision within six months.

#### **Recommendation 6.1**

The Department should engage with other stakeholders to assess the most appropriate way to accommodate those granted status permitting them to remain in Ireland.

#### **Accounting Officer's response**

Agreed. While it is not the responsibility of the Department to provide housing for those legally entitled to remain in the State, the Department will continue to provide whatever assistance it can to help persons move to permanent accommodation.

### ***Procurement of direct provision services***

- 6.72** Competitive procurement processes were used for the provision of services at State-owned centres and the Department is currently engaged in an EU wide competition for these services. The majority of direct provision accommodation is in commercially owned and operated centres. Suppliers of such accommodation have been paid €251 million over the five years to 2015. Formal competitive procurement processes were not used for the award of these contracts. This increases the risk that the best price and quality of accommodation and services is not being obtained. While it is the Department's view that the procurement method used was equivalent to the negotiated procedure provided for in EU rules, the circumstances permitting recourse to that procedure do not appear to exist and certain procedural requirements were not observed. This could potentially leave the Department open to claims.

#### ***Views of the Accounting Officer***

- 6.73** The Department accepts that in an ideal world there would be more open procurement. In the Department's view, the advertising for expressions of interest and subsequent evaluation methodology used for commercial suppliers of accommodation equates with the negotiated procedure provided for in EU procurement rules. Due to a decrease in demand, no new advertisements were published between 2009 and July 2015. At that stage, demand was such that there was a real danger that the existing stock of places in direct provision would not meet requirements. For example, the number of asylum seekers increased by 1,000 in the four month period from April to August 2015, and by a further 400 in September 2015. This increase demanded an urgent response which resulted in the Department opening a new centre and managing its bed capacity across all other centres.
- 6.74** The alternative to this negotiated process is to leave asylum seekers who by definition are vulnerable persons, homeless while the Department goes through a lengthy procurement process.



- 6.75** The procurement procedure used affords flexibility compared to the rigidity of an open tender process which leaves little or no scope to make reductions in costs when a critical downturn in the economy takes place. Rates paid to contractors compare very favourably with those paid historically. Indeed, it is understood that these are at a substantial discount compared to what other State authorities are paying for broadly similar services for the homeless. There are also particular challenges that would be difficult to capture in an open tender — unpredictability of demand, dispersal, local opposition, children settled in schools, availability of school places, etc.
- 6.76** The experience gained during the current EU wide competitive process for the procurement of services for State-owned centres will inform the Department's considerations in the procurement of commercial centres. The objective will remain that proper procedures are followed at all times and that best value for money is obtained taking into account the particular nature of the services at direct provision centres.

### ***Contract management***

- 6.77** Effective management of direct provision contracts is difficult because quantified or measurable standards and timelines have not been set for many of the contract deliverables. This increases the risk that the standard of accommodation and services provided will not meet the needs of asylum seekers. It also creates the risk that different standards of services are provided in different centres.

### **Recommendation 6.2**

The Department should review the standard contract and ensure that

- standards and timelines are set for all deliverables
- performance information necessary to assess whether the deliverables contracted for have been provided is clearly set out
- the implications of failure to provide deliverables are specified.

### ***Accounting Officer's response***

Agreed. All contracts are reviewed and updated as necessary in light of experiences and the provisions of this recommendation will feed into that process with immediate effect.

This issue has also arisen in the context of the implementation of the recommendations of the working group report. The Department is in discussion with EU partners and non government organisations about how best this issue can be addressed in a way which ensures the continued delivery of the highest possible standard of service while at the same time providing sufficient flexibility to meet the individual needs of persons seeking protection.

Care is needed not to set standards or requirements that may be counterproductive having regard to human rights and individuals' preferences. At all times, it must be remembered that individuals' specific needs and requirements cannot always be met with a 'one-size-fits-all' solution. It is to the advantage of the individual concerned that some standards are less prescriptive and more adaptable to the specific needs of that person. This includes issues such as the nature and supply of food or flexibility of meal times around religious observance.

### ***Assessing service delivery***

- 6.78** Information from inspections, clinics and complaints by residents is a potentially useful source of information to assess service delivery. However, this information is not formally collated and used to assess the performance of individual centres or suppliers. There is a low level of complaints by residents to the Department. While this may indicate satisfaction with the service being delivered or with the resolution of issues by local centre management, information from other sources, including the results of a public consultation by a working group, suggests there is a significant level of dissatisfaction among residents.

#### **Recommendation 6.3**

The Department should collate the results of inspections and information clinics, and details of complaints by residents. The information should then be used to inform an assessment of the performance of individual centres as well as suppliers who are delivering services across a number of centres.

##### **Accounting Officer's response**

Agreed. At present the results of inspections and clinics feed into general knowledge of the operation and management of centres which in turn informs contract discussions, inspection preparations and overall policy development. Formal procedures will be implemented in the future so that learning from inspections and clinics will be recorded against each centre and will in turn inform subsequent discussions with centre managers and owners.

#### **Recommendation 6.4**

The Department should review the complaints process and identify whether there are factors which may prevent residents from raising issues.

##### **Accounting Officer's response**

Agreed. This recommendation has in fact already largely been implemented. A new complaints procedure was implemented in 2015. The Department will also examine ways in which the complaints process can become more open and transparent.

**Annex A Direct provision centres**

Contractor	Centre	Capacity	Direct provision centre since
Commercial suppliers of accommodation and services			
Mosney PLC	Mosney	600	December 2000
Bridgestock Ltd	Old Convent, Abbey Street, Ballyhaunis	267	August 2001
	Globe House, Chapel Hill, Sligo	226	August 2004
Old George Ltd/Fazyard Ltd/Mint Horizon Ltd <sup>a</sup>	The Towers, Clondalkin	225	October 2006 <sup>b</sup>
	Georgian Court, Dublin 1	110	January 2005 <sup>b</sup>
	The Montague, Emo, Co Laois	202	October 2007
	The Richmond Court, Co Longford	80	July 2015
Barlow Properties/Bideau Ltd/Stompool Investments Ltd/Baycaster Ltd/D and A Ltd <sup>a</sup>	Ashbourne House, Glounthane	95	June 2000
	Glenvera, Wellington Rd, Cork	107	December 2001 <sup>b</sup>
	Birchwood, Ballytuckle Rd, Waterford	125	May 2001
	Mount Trenchard, Foynes, Co Limerick	85	January 2007
	Clonakilty Lodge, Clonakilty, Co Cork	108	November 2007
East Coast Catering (Ireland) Ltd	Balseskin, St Margaret's, Co Dublin	310	December 2001
	Hatch Hall, 28A Lower Hatch St, Dublin 2	175	February 2005
	Carroll Village, Dundalk (SC)	60	April 2005
Millstreet Equestrian Services	Millstreet	237	November 2000
	Bridgewater House, Carrick-on-Suir	95	December 2001
	Viking House, Waterford	82	May 2001
Tattonward Ltd/Mo Bhaile Ltd <sup>a</sup>	Staircase, 21 Aungier St, Dublin 2	33	May 2012
	St. Patricks, Monaghan	200	December 2001
Maplestar Ltd	Eglinton, Salthill, Galway	200	January 2000
Shaun Hennelly	Great Western House, Galway	152	September 2000
Birch Rentals Ltd	Hanrattys, Glentworth St, Limerick	112	June 2009 <sup>b</sup>
Westbourne Holiday Hostel Ltd	Westbourne, Dock Rd, Limerick	90	June 2001
Peachport Ltd	Eyre Powell, Newbridge	90	April 2003
Maison Builders Ltd	Watergate House, Dublin 8 (SC)	68	April 2003 <sup>b</sup>
Ocean View Accommodation Ltd	Ocean View, Tramore	65	April 2007
Atlantic Blue Ltd	Atlantic House, Tramore	80	May 2007
State-owned centres managed by facilities management providers			
Campbell Catering Ltd t/a Aramark Ireland	Kinsale Road	275	April 2000
	Knockalisheen	250	October 2001
	Athlone	300	May 2000
Onsite Facilities Management (OFM)	Johnson Marina	90	April 2001
	Atlas Tralee	110	August 2001
	Atlas Killarney	90	January 2002
	Park Lodge	55	April 2001

Source: Department of Justice and Equality and analysis by Office of the Comptroller and Auditor General

Notes: a One or more directors common to the companies, according to Companies Registration Office records.

b Change in company providing centre since 2010, but with one or more common directors, according to Companies Registration Office records.



## 7 EU Refunds and Levies in the Agriculture Sector

- 7.1** The Department of Agriculture, Food and the Marine (the Department) administer EU funds that focus on supporting the agriculture sector and rural life in Ireland. The EU Common Agricultural Policy provides funding for
- the European Agricultural Guarantee Fund (EAGF) which finances direct payments to farmers (such as the single payment scheme) and measures that regulate or support agricultural markets
  - the European Agricultural Fund for Rural Development (EAFRD) which supports rural development programmes.
- 7.2** The Department was also responsible for the administration of the milk quota scheme in Ireland which ended in March 2015. Milk quota levy receipts were used by the EU to fund the EAGF.
- 7.3** EAGF and EAFRD funding administered through the Department in 2015 comprised
- EAGF funding of €1,210 million
  - EAFRD funding of €382 million.
- 7.4** This report examines
- a refund of €68 million from Ireland to the EU in 2015 for non-compliance with EAGF and EAFRD scheme regulations<sup>1</sup>
  - the payment to the EU by the Department of €71 million in 2015 as a result of Irish milk production exceeding the national milk quota, and the recovery of those funds from milk producers.

### EAGF and EAFRD compliance issues

- 7.5** The Department is obliged under EU regulations to conduct compliance checks as part of its role as the administrator of the EAGF and EAFRD.<sup>2</sup> In the period 2010 to 2015, the Department conducted, on average, 15,500 inspections each year and imposed penalties of €937,000 each year on average. The European Commission (Commission) also conducts routine audits of the application and administration of the funds.
- 7.6** The EU requires each member state to have a land parcel identification system (LPIS) for the administration of grants. The LPIS uses satellite imagery to calculate the area of each land parcel and is the foundation for the administration of land based grants.
- 7.7** The Commission conducted reviews in 2009, 2010 and 2012 of the management of, and control systems for, EAGF and EAFRD funds in Ireland.
- 7.8** After each review, the Commission informed the Department of its view that Ireland had not fully complied with the regulations and that corrective measures were necessary to ensure compliance (Figure 7.1). Each year, the Department contested most of the issues raised.

<sup>1</sup> The EU refers to such refunds as financial corrections.

<sup>2</sup> Each year, 5% of Single Payment Scheme applications must be inspected, including the on-farm inspection of 1% of farms. The Department met these requirements each year and reported annual statistics to the Commission.

- 7.9** To address issues arising, the Department conducted a review of commonage areas in 2009 and an initial LPIS review in 2010. The Department noted that the protracted timeframe to resolve issues raised by the Commission was exacerbated by a change in Commission audit personnel in 2011, which meant that a new audit was required in 2012.

**Figure 7.1 Main Commission findings, by year**

Issues	2009 audit	2010 audit	2012 audit	2013 clearance issues <sup>a</sup>
LPIS - ineligible features not recorded, such as farmhouses and yards	✓	✓	–	✓
LPIS - imagery too old, with some imagery eight years old	✓	✓	✓	✓
LPIS - file updating process and audit trail	✓	✓	✓	✓
Common land registration	✓	✓	–	✓
Eligibility co-efficient	–	–	✓	✓
Administrative procedures	✓	✓	–	–
On-the-spot checks	✓	✓	✓	✓
Application of sanctions and deductions	✓	✓	✓	✓

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

Note: a The 2013 'conformity clearance' process collated unresolved issues from 2009, 2010 and 2012

### ***Expenditure disallowance proposed by the Commission***

1 A higher flat-rate disallowance (up to 100%) can be applied when weaknesses are so serious that they constitute a complete failure to comply with EU regulations.

2 Key controls are those physical and administrative checks required to verify substantive elements, in particular the existence of the subject of the claim, the quantity, and the qualitative conditions including respecting time limits, harvesting requirements, retention periods, etc. They are performed on-the-spot, and by cross-checks to independent data such as a land register.

3 Ancillary controls are those administrative operations required to correctly process claims, such as verification that time-limits are respected for the submission of claims, identification of duplicate claims for the same subject, risk analysis, application of sanctions and appropriate supervision of the procedures.

- 7.10** In cases where compliance issues are identified, the Commission may seek a refund of grants previously paid. This is calculated by assessing the risk to the total funds or by applying flat-rate disallowances as follows

- 25% disallowance when the control system is completely absent or gravely deficient and there is evidence of widespread irregularity<sup>1</sup>
- 10% disallowance when key controls are completely ineffective in determining the eligibility of the claim or preventing irregularity<sup>2</sup>
- 5% disallowance when all key controls are applied, but not in the number, frequency or depth required by the regulations
- 2% disallowance when the key controls are adequately performed, but one or more ancillary controls have completely failed to operate.<sup>3</sup>

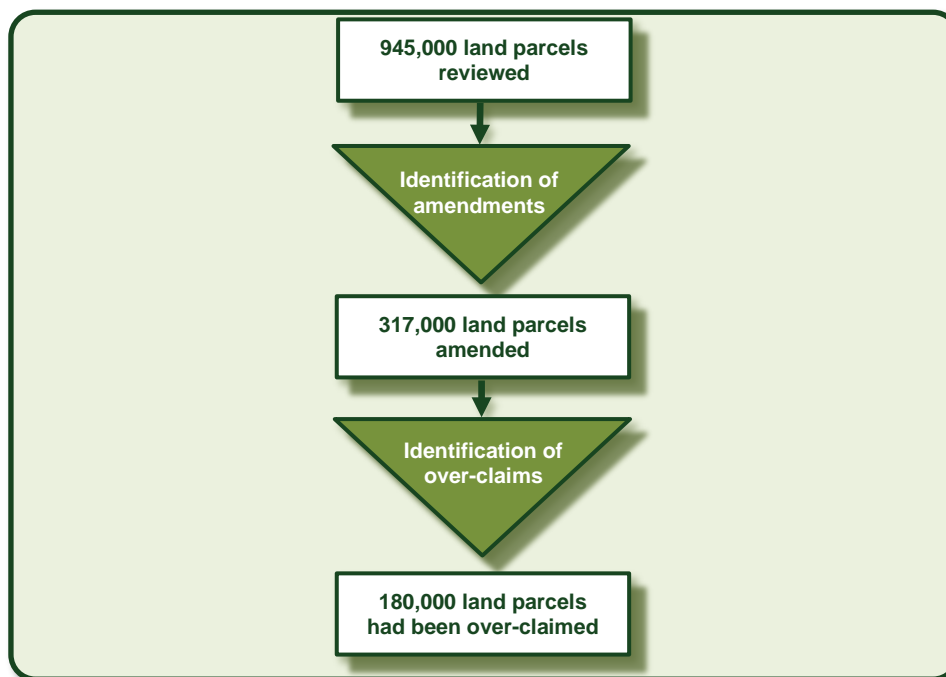
- 7.11** In May 2013, the Commission notified the Department that the exclusion of certain expenditure was proposed and in July 2013 indicated that a flat-rate disallowance of 5% – equivalent to around €450 million – was being considered for the period 2008 to 2012. It considered the weaknesses in the Irish implementation of EU regulations to be “persistent and of a recurrent nature”, as deficiencies noted in the 2009, 2010 and 2012 audits had not been fully remedied.

- 7.12** EU regulations allow member states to provide a reasoned calculation of the risk to EU funds rather than pay a flat-rate disallowance. The Department pursued this option and, in August 2013, the Commission set out its requirements for a review of the level of risk to EU funds, with the Department to complete the review by mid-December 2013.

### *Review of land parcels by the Department*

- 7.13** To identify the risk to EU funds, the Department conducted a desk-based review of each of the 945,000 land parcels on the LPIS. This examination was enabled by high-resolution imagery acquired by Ordnance Survey Ireland in 2012. The review found 40,000 cases (comprising 180,000 land parcels) where an individual had over-claimed for their holding (Figure 7.2).

**Figure 7.2 Analysis of land parcels, 2013 review**



Source: Department of Agriculture, Food and the Marine

- 7.14** The Department finished the review in December 2013 and completed its analysis in February 2014, estimating the risk to EU funds at €33.4 million for 2009 to 2012.

### *Negotiation of expenditure disallowance*

1 A 5% rate was applied to expenditure on common land in 2010. The Commission subsequently agreed that the figure of €182 million was overstated by €28 million due to double counting of some figures.

2 An ineligibility coefficient is applied where some of the land has ineligible features, for example scrub. Cross-compensation occurs where reductions in the area of one land parcel were balanced with unclaimed but eligible areas in another land parcel owned by that farmer.

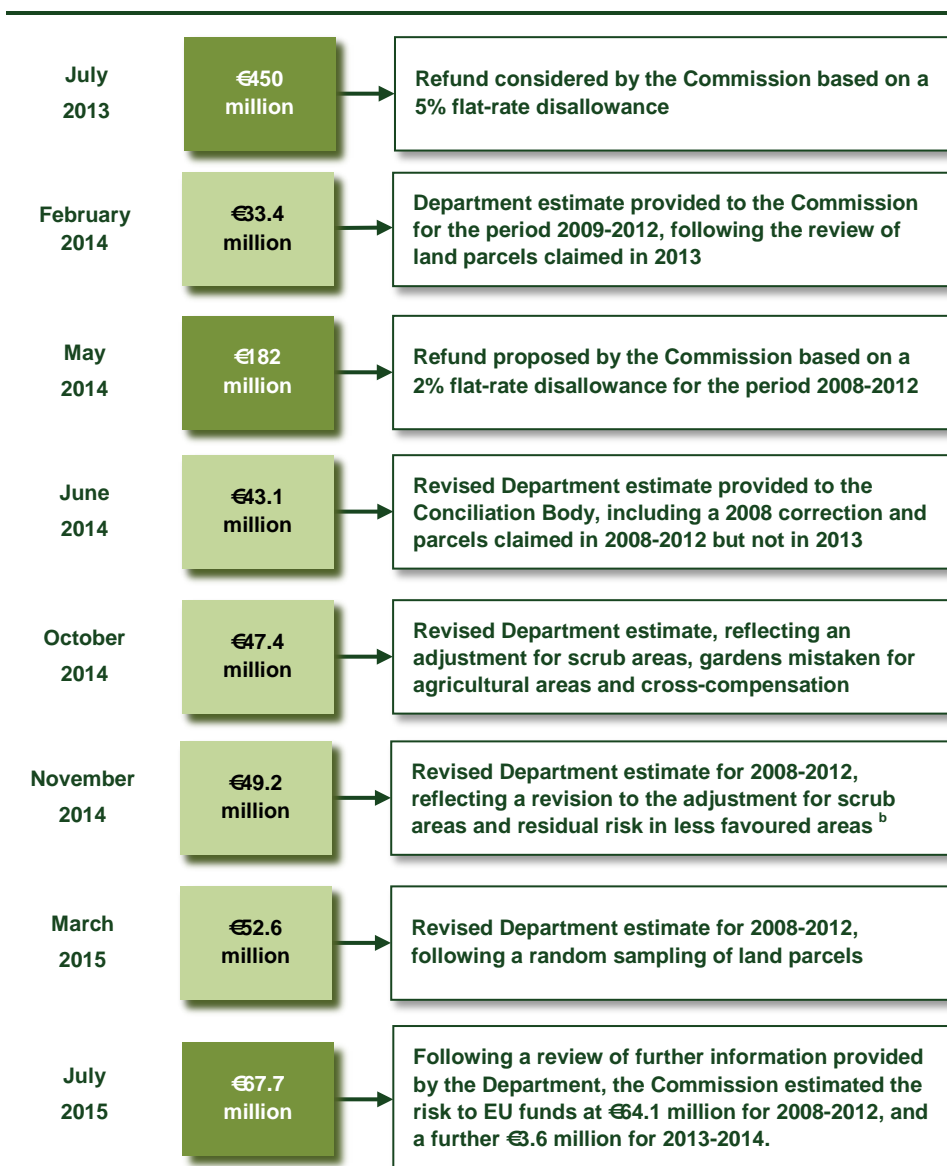
- 7.15** In May 2014, the Commission advised the Department of its proposed disallowance of €182 million, based on a flat-rate disallowance of 2% of expenditure in the period 2008 to 2012.<sup>1</sup> The Commission did not accept the estimate of ineligible expenditure provided by the Department as

- field visits to verify findings were not part of the 2013 review by the Department
- deficiencies in relation to the 2008 claim year had not been quantified
- there were inconsistencies in the reported level of errors in relation to common land
- it did not agree with the application of ineligibility coefficients (of more than 80%) and cross-compensation<sup>2</sup>
- five of seven land parcels visited in 2014 by the Commission identified incorrect exclusions (the sample was chosen from 27 parcels where a desk-based review identified potential issues).

- 7.16** EU regulations provide an opportunity for member states to commence a mediation process using the EU Conciliation Body, the results of which are not binding on the Commission. The Department initiated this process.
- 7.17** In June 2014, the Department submitted a case to the Conciliation Body, arguing that the LPIS review fully established the risk to EU funds. In December 2014, the Conciliation Body reported that while it was not possible to negotiate an agreement between the Department and the Commission, conciliation did not seem out of reach and encouraged further discussion between the Department and the Commission.
- 7.18** In July 2015, the Commission proposed a settlement of €64.1 million for the period 2008 to 2012. A further correction of €3.6 million in relation to low eligibility coefficients was proposed for the period 2013 to 2014.<sup>1</sup> The proposal was accepted by the Department. The settlement was deducted from EU funding to Ireland in 2015. The settlement negotiation process is summarised in Figure 7.3.
- 7.19** Measures introduced to address the issues that led to the disallowance include
- a review of commonage areas that commenced in 2009
  - the acquisition of high-resolution imagery in 2012 resolving concerns about the age of imagery
  - the 2013 review which updated the LPIS for ineligible features that had not been recorded
  - the introduction by the Department in 2012 of more precise guidance for inspectors when calculating eligibility coefficients
  - the introduction of revised procedures to improve the audit trail.

<sup>1</sup> The Department state that eligibility coefficients are the only unresolved issue from the 2008 to 2012 Commission reviews.



Figure 7.3 Negotiation of disallowance amount <sup>a</sup>

Source: Office of the Comptroller and Auditor General

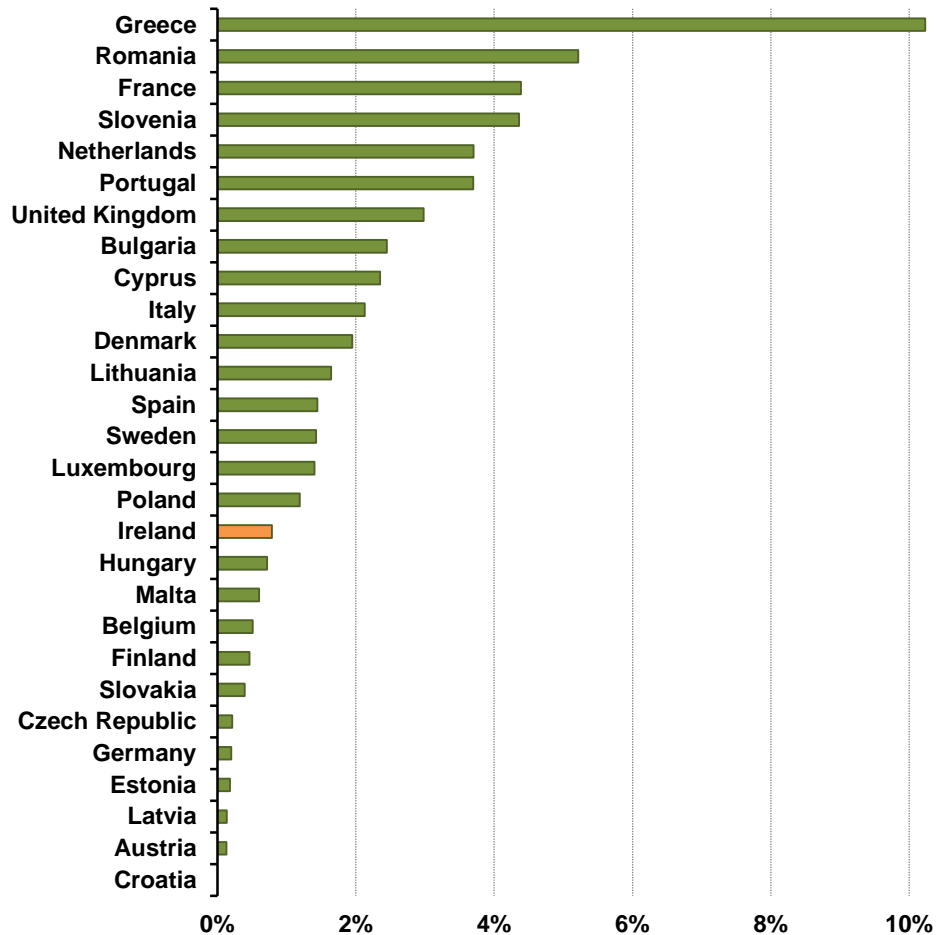
Notes: a Quoted figures exclude €0.95 million recovered from farmers and refunded to the EU, following the 2013 review. This refund was subtracted from the settlement agreed in 2015.

b A less favoured area is where agricultural production or activity is more difficult because of natural handicaps, such as steep slopes or low soil productivity.

### International comparison

**7.20** In the period 2008 to 2015, Ireland had a relatively low rate of disallowance (Figure 7.4).

**Figure 7.4 EAGF and EAFRD disallowance rates in EU countries, 2008 to 2015**



Source: Department of Agriculture, Food and the Marine

**7.21** In the period 2008 to 2015, the average disallowance each financial year was 2.4% on an EU-wide basis. Ireland has performed better than most, with an average disallowance in the region of 0.8%. A disallowance imposed by the Commission can have significant cost. For example, in 2014, a disallowance of more than €1 billion was imposed on France, related to the period 2009 to 2013. Like Ireland, most of the correction related to weaknesses in its LPIS, with flat-rate disallowances ranging from 2% to 100%.

### ***Other costs***

**7.22** The review conducted by the Department required internal and external staff resources and utilised new software. In addition, the Department obtained legal support in advance of the conciliation process. The Department has indicated the total cost of the review to be €3.2 million, comprising

- €960,000 of internal staff costs
- €450,000 for new software
- €840,000 for the revised imagery
- €920,000 for the services of a contractor to review imagery
- €10,500 for legal services engaged as part of the conciliation process.

### ***Recovery of overclaims***

**7.23** In its submission to the Conciliation Body, the Department noted that a flat-rate disallowance made it very difficult for member states to recover over-payments. Funds of €0.95 million were recovered from land owners as a result of the 2013 review.

**7.24** The Department did not pursue farmers for further overpayments. It has advised that key factors in its decision were

- the complexity of the administrative and technical verification processes involved and the likelihood of significant appeals and challenges
- the normal practice in other member states where the national exchequer pay such financial corrections.

### **Conclusions**

**7.25** The Department was involved in a protracted process with the Commission, in an attempt to resolve the deficiencies noted by the Commission in its review of agriculture funds in 2009, 2010 and 2012. Ultimately, this resulted in the EU imposing a disallowance on Ireland.

**7.26** The Department actively engaged with the Commission on the issue of how much should be repaid. It succeeded in reducing the repayment from €182 million to €64.1 million for the period 2008 to 2012, with a significantly reduced rate of disallowance, of €3.6 million, for 2013 and 2014.

## Milk quota and levy

- 7.27** A milk quota system was introduced in the European dairy sector in April 1984, to address overproduction in the dairy market and a related increase in the cost of market intervention measures to support dairy prices. National milk production quotas were allocated to each member state. In Ireland, the quota was divided between individual milk producers based on their production in 1983.<sup>1</sup> The quota of a milk processor is the total of the quota of individual producers supplying that processor.<sup>2</sup>
- 7.28** In 2003, the EU decided to abolish milk quotas in 2015. The decision to end the quota system was influenced by growing demand for dairy products on the world market, which EU producers were unable to benefit from without incurring a levy. The milk quota regime was abolished on 1 April 2015.
- 7.29** A milk producer was liable for a surplus levy (commonly referred to as a 'super levy') only when the producer exceeded his/her quota, the processor of that milk exceeded its production quota and the Member State exceeded its quota. The quota was based on the quantity of milk produced and adjusted to reflect the butterfat content of the milk.
- 7.30** The levy and quota were set by agreement between EU ministers. In 2015, the levy was 28.66 cents per litre of milk in excess of the quota.
- 7.31** In 2015, the Irish national quota was 5.78 million tonnes, up from 5.40 million tonnes in 2008.<sup>3</sup> Measures introduced in 2008 to initiate a "soft landing" for the sector included
- a 2% increase in the quota for 2009
  - a 1% increase in the quota each year for the period 2010 to 2014
  - an amendment in 2010 to the butter fat correction factor which was equivalent to a 1% increase in the quota
  - quota trading schemes to increase producer flexibility.

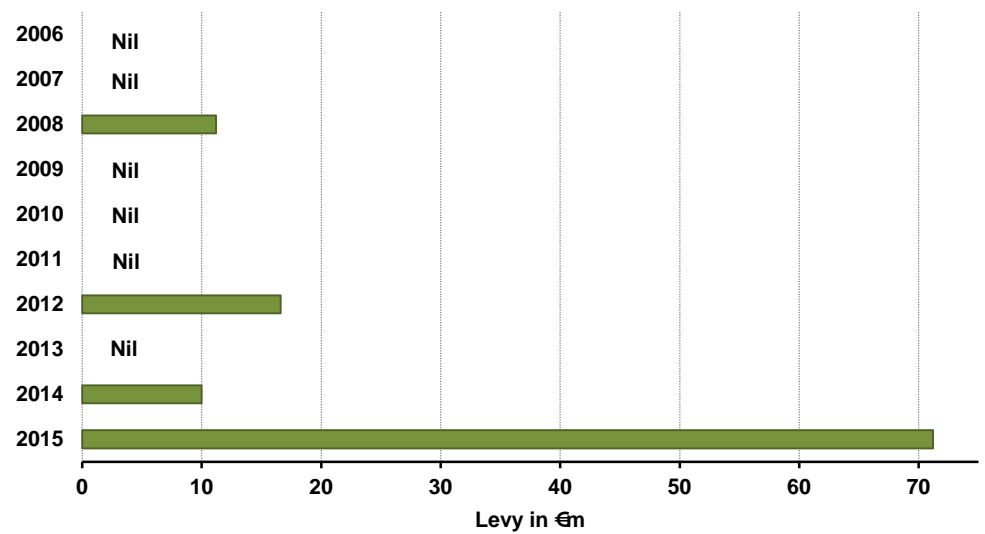
<sup>1</sup> The milk quota year ends on 31 March each year. In this report section, reference to a year refers to the year ending 31 March.

<sup>2</sup> Where a producer supplies more than one processor, their quota is allocated between the processors.

<sup>3</sup> In the period 1985 to 2008, the quota fluctuated between 5.150 and 5.599 million tonnes.

## Levy payable

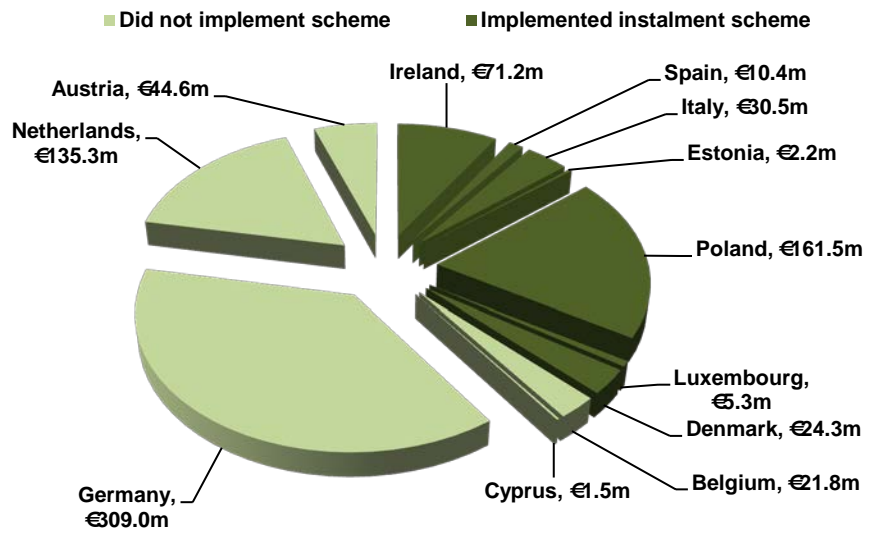
- 7.32** The levy incurred by Ireland in recent years is shown in Figure 7.5.

**Figure 7.5 Irish milk levy, 2006 to 2015**

Source: Department of Agriculture, Food and the Marine

- 7.33** The total EU milk quota levy in 2014 was €408 million for eight countries, of which the levy for Ireland was €10 million.
- 7.34** Many EU milk producers increased their output in 2015 in preparation for the ending of the quota regime, with milk production 2.7% higher in 2015 than in 2014. Twelve countries exceeded their quota in 2015, incurring a levy of €818 million, despite the EU producing 2.1% less milk than the total of individual country quotas. Ireland exceeded its milk quota by 4.4%, resulting in a levy of €71 million.
- 7.35** In early 2015, milk prices fell and some milk producers experienced consequent cash-flow difficulties. On 26 March 2015, days before the end of the milk quota regime, the EU approved a scheme whereby a milk quota levy incurred by producers in 2015 could be paid over three years without interest. Each member state was obliged to settle the liability in full in 2015 and had discretion over whether to implement the scheme.
- 7.36** Ireland was one of seven countries that implemented the instalment payment scheme. Where the instalment scheme was not implemented, all producers were required to pay the levy by 1 October 2015. Figure 7.6 shows the levy incurred by each country and whether they implemented the instalment scheme.

**Figure 7.6 EU Milk quota levy by country and levy incurred, 2015**

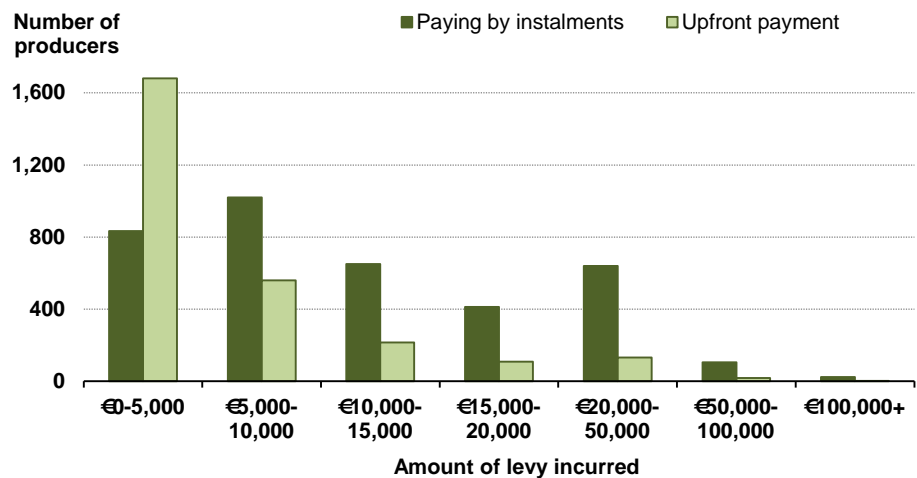


Source: Department of Agriculture, Food and the Marine

- 7.37** The Department paid the milk levy to the EU in November 2015, of which<sup>1</sup>
- €35.6 million had been collected from producers
  - the remainder was sourced from funds the Department had on deposit.<sup>2</sup>

- 7.38** Just over 2,700 producers opted to pay the levy (€16.7 million) to the Department upfront by 1 October 2015. The remaining 3,700 producers paid €18.9 million to the Department by 1 October 2015 and are repaying the balance of €35.6 million in 2016 and 2017. As Figure 7.7 shows, those incurring smaller levies were more likely to opt for upfront payment.

**Figure 7.7 Profile of producers by amount of levy incurred**



Source: Department of Agriculture, Food and the Marine

<sup>1</sup> The Department paid €70.4 million as Milk Quota Regulations allow member states to retain 1% of the levy owed for cases of default and error.

<sup>2</sup> The Department estimates that it will incur interest costs of around €22,000 in 2016 as a result of the levy payment, as it will be required to borrow more funds to make EU Direct Payments due to farmers. Borrowing will be reported in the EAGF, EAFRD and European Fisheries Fund - Irish Operations account.

- 7.39** The Department and processors will continue to operate existing arrangements for the recovery of the milk quota levy.<sup>1</sup>
- 7.40** The Department required producers to sign a legal agreement to avail of the scheme. Key terms of the legal agreement are
- producers must pay at least 10% of the deferred amount in each of the five months from May to September, in 2016 and 2017
  - in the absence of a new payment agreement with the Department, the liability must be repaid early if the terms of the scheme are broken or there is a material change in farming arrangements
  - the full amount of the levy and interest must be immediately paid by the producer where repayments are not made on time
  - where payments have not been made on schedule, the agreement allows the Department to deduct any outstanding amounts from subsequent payments due from the Department.
- 7.41** There was an established practice of milk processors withholding the milk quota levy from payments to producers during the peak production months. This practice avoided the imposition of a large one-off levy on producers and the potential for consequent cash-flow difficulties. Therefore, some producers may have already paid the entire levy to their processor.
- 7.42** Where a processor withheld payment from a producer during the year ended 31 March 2015, the introduction of the instalment scheme may have entitled the producer to a rebate of the payments withheld. The Department stated that levy withholding arrangements are solely a matter between producers and processors. The Department does not have details of the number or value of those arrangements or details of the release of payments withheld by processors after the introduction of the instalment scheme.
- 7.43** The first instalment payment was due in May 2016. In total, over 99% of the €14.2 million payment expected by end-August was received. Thirteen producers have fallen behind in their repayments, totalling €60,000. The Department anticipates that the outstanding monies will be recouped from payments due to eleven producers in late October 2016. The Department has established contact with the other two producers to arrange their repayments.

## Conclusions

- 7.44** The ending of the milk quota regime resulted in a significant levy being incurred by Irish producers resulting in a payment of €71 million by the Department to the EU in 2015. While the Department did publicise the potential magnitude of the levy, it could not control the level of production. The liability for the payment rests with milk producers.
- 7.45** Half the liability was recovered from producers in 2015, and arrangements are in place for the balance to be recouped in 2016 and 2017. Indications are that the systems implemented to collect levy payments from producers are effective.

<sup>1</sup> The Department estimate staff costs to manage the recovery of the levy from producers will be €2,500 per annum in 2016 and 2017.





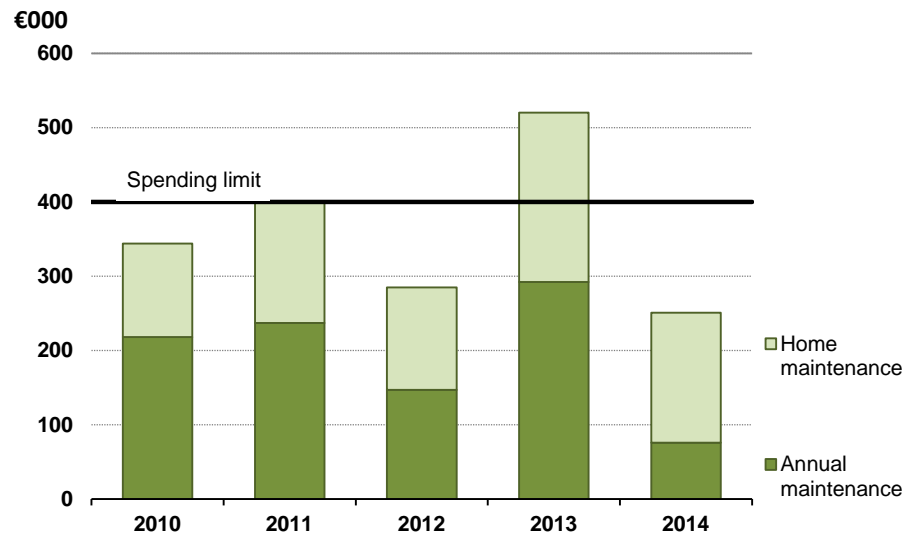
## 8 Disposal of Government Jet

- 8.1** The Air Corps in the Defence Forces provides air transport for the Government and for the President for official engagements at home and abroad. This is known as the Ministerial Air Transport Service. The service is primarily provided by a seven-seater Learjet 45 aircraft. Up to July 2014, a 14-seater Gulfstream IV jet, which went into service in 1992, was also used.
- 8.2** An inter-departmental group was established, following a Government decision in July 2014, to review the options for the future provision of the service.
- 8.3** The Gulfstream IV jet was flown to the manufacturer in the United States of America (USA) for its annual planned maintenance inspection and service in July 2014. During the inspection, it became apparent that the servicing and repair cost would be significantly higher than originally anticipated. Following discussions with the Taoiseach, the Minister for Defence (the Minister) directed in August 2014 that all work on the aircraft should cease and that the jet should be disposed of. The Gulfstream jet was sold in January 2015.
- 8.4** This report examines
- the circumstances that gave rise to the decision to sell the aircraft
  - the process used to sell the aircraft and spare parts
  - the progress on the review of ministerial air transport services.

### Maintenance costs

- 8.5** Like all aircraft in the Air Corps fleet, the Gulfstream jet was maintained in accordance with the original manufacturer's recommended maintenance and overhaul cycle. This involved routine maintenance carried out by Air Corps personnel (home maintenance) and an annual maintenance inspection by Gulfstream in the USA (annual maintenance).
- 8.6** The Department of Defence (the Department) has stated that in 2010, the Minister decided that if any costly non-routine maintenance or major structural repair was required, the jet should be grounded and the Government would decide, at such time, on its future. A total maintenance cost of €400,000 in any year was deemed by the Department to represent the upper limit that should be incurred.
- 8.7** Costs significantly in excess of the €400,000 threshold were incurred in 2013, (see Figure 8.1), due to the repair of a fire detection system and the overhaul of a brake unit, and to treat corrosion. The corrosion was identified during the course of the annual maintenance inspection.

**Figure 8.1 Maintenance costs of Air Corps Gulfstream jet, 2010 to 2014**



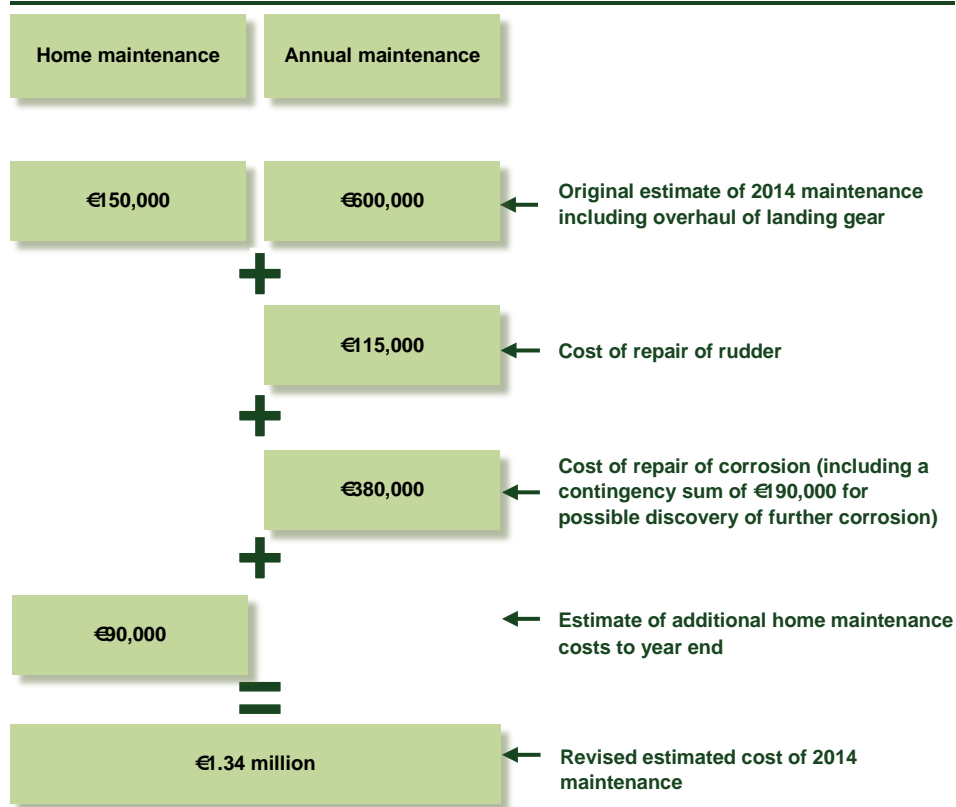
Source: Department of Defence

### **2014 maintenance and repair costs**

- 8.8** Prior to the 2014 annual maintenance inspection, it was known that an overhaul of the aircraft's landing gear was necessary. Therefore, Government approval was obtained for increased expenditure up to a total of €750,000 to cover home maintenance (€150,000), annual maintenance (€350,000), and the required overhaul of the landing gear (€250,000).
- 8.9** A memorandum to Government in July 2014 noted that the aircraft would require an overhaul of both engines by 2018/2019 at an estimated cost of €2.5 million and therefore retention of the aircraft beyond that date would be unsustainable given its age.

- 8.10** The 2014 annual maintenance inspection identified additional necessary repairs. The original estimated cost for home maintenance also increased by €90,000. Overall, the estimate for repairs and maintenance in 2014 increased to €1.34 million (see Figure 8.2).

**Figure 8.2 Increase in estimated cost of 2014 maintenance and repairs**



Source: Department of Defence

- 8.11** The Department did not conduct a formal analysis of the projected 'remaining life' costs and benefits associated with the operation of the jet in either 2013 or 2014, when faced with costs exceeding the €400,000 threshold. Such an analysis would estimate expected future economic costs and benefits associated with the jet, and discount these in order to recognise the 'time value' of money. This would allow the Department to assess quickly whether incurring unforeseen additional costs was economical. An illustrative framework for such a cash flow analysis is shown in Figure 8.3 below.

**Figure 8.3 Illustrative framework for discounted cash flow analysis of aircraft life cycle**

	Year 0	Year 1	Year 2 ....	Final year
<b>Costs</b>				
Home maintenance	€	€	€	€
Annual maintenance	€	€	€	€
Operational expenses	€	€	€	€
Scheduled repairs	€	€	€	€
Contingency for repairs	€	€	€	€
<b>Benefits</b>				
Disposal value (aircraft and parts)				€
<b>Net cash flow</b>	€	€	€	€
<i>Discount rate x%</i>				
<b>Net present value (NPV) of cash flow</b>	€	€	€	€
<b>Projected NPV of alternative service</b>	€	€	€	€

Source: Office of the Comptroller and Auditor General

- 8.12** The Department is of the view that it would have been highly speculative to produce contingency cost projections that might arise from unidentified or unforeseen problems. It stated that the only maintenance and repair figures that could be relied upon were the minimalist projections referred to in the memorandum to Government in 2014 when increased expenditure amounting to €750,000 was sought.
- 8.13** The Department also commented that there would have been no basis for calculating a projected cost of an undetermined alternative service in the absence of a Government decision on what that would be, for example, the acquisition of a replacement aircraft or some other service model.

## Disposal decision

- 8.14** On foot of the escalating costs, the Department sought the recommendation of the General Officer Commanding the Air Corps as to whether the additional expense to repair the aircraft should be incurred. In his response dated 8 August 2014, he noted that in considering whether to conduct the repair, due cognisance must be taken of the age of the aircraft and the likelihood that other corrosion or fatigue issues may arise. The maintenance programme takes into consideration the high number of flights and flying hours, and calls for deeper and more extensive investigative maintenance processes annually. He recommended that the aircraft should be repaired. The Deputy Chief of Staff (Operations) also recommended that the aircraft be returned to service. No formal discounted cash flow analysis underpinning the recommendation was conducted.
- 8.15** The Department made informal contact with an Irish aviation consultant company in August 2014 who advised that
- the necessary repairs could be carried out and the aircraft kept for another few years but it seems to 'have had its day'
  - an immediate sale would likely be to a parts dealer, in which case it would be worth in the 'sub \$1 million range' – i.e. less than €750,000 at the prevailing exchange rates
  - the jet could be used as a deposit against another aircraft.
- 8.16** Department officials prepared briefing notes for the Minister outlining the sequence of events, the accumulating costs and the options. The Department has stated that a formal analysis of the costs and benefits of repairing and retaining the aircraft compared to those arising from a disposal had not been prepared as an immediate decision was demanded. This was because
- the aircraft was in a stripped down state blocking a busy scheduled production line
  - any further delays were likely to incur substantial charges and the full cost of the contracted maintenance inspection.
- 8.17** On 15 August 2014, the Minister directed that no further work should be carried out on the aircraft and it should be disposed of for the best possible price.

## Disposal of the aircraft

- 8.18** Officials from the Department and Air Corps officers travelled to the Gulfstream facility in the USA in August 2014 to finalise the maintenance costs already incurred and any further liabilities accruing. The options for sale were also discussed.
- 8.19** The Department has stated that the costs for the contracted maintenance inspection could have been up to €425,000. Following negotiation, the costs were agreed at labour costs already incurred and a small element of costs relating to parts that had been removed and sent for refurbishment. The amount agreed was €76,000.
- 8.20** Additional costs to put the aircraft into a serviceable condition prior to a sale were estimated by Gulfstream at a further €710,000. This comprised an estimated €600,000 to transfer the aircraft to the civil register and a further €110,000 in contingency for possible further corrosion. Together with the previous estimate of repairs, this would bring the maintenance bill with Gulfstream to €1.8 million.

- 8.21** The Department has stated that it considered the most viable option was to dispose of the aircraft for salvage and that this decision was based on
- the costs involved in repairing it to a serviceable condition
  - the depressed market conditions for executive jets
  - charges for its continued retention in the USA
  - the absence of any guarantee as to the future serviceability of the aircraft.
- 8.22** The Department has stated that, despite its best efforts, Gulfstream declined an invitation to submit an offer to acquire the jet for salvage and to buy back spare parts held in Baldonnell. The original manufacturer of the engines was not willing to make an offer for the engines and this contributed to Gulfstream's decision.
- 8.23** The Department decided not to use a USA-based broker to handle the disposal. This was considered to be a time consuming and difficult process especially as the aircraft was in a stripped down state. In the event, Gulfstream agreed that it would use its knowledge of the market to see if there was any interest from potential purchasers.
- 8.24** The Department has stated that while the normal process for the disposal of major assets is to conduct a public tender competition or a public auction, it would have been impossible to do so in the case of the jet as
- the aircraft was in a stripped down state in a facility where very high standards of security apply
  - Gulfstream would not have allowed prospective buyers, responding to a public sale or auction process, to view the aircraft on its premises and
  - boxing the aircraft up in parts for sale elsewhere would have been completely untenable.
- Therefore, it considered that it had no choice other than to execute a sale in the circumstances that occurred.
- 8.25** In early December 2014, the Department received a letter of intent through Gulfstream from a USA based company (Journey Aviation) who offered to buy the aircraft for €836,000 on condition that it was brought back into a serviceable state. The Department declined this offer as the aircraft was for sale on an 'as seen' basis and it had no ministerial or Government sanction for any further expenditure on the aircraft. The company then offered €418,000 to purchase the aircraft 'as seen'. This offer was accepted by the Department in January 2015.
- 8.26** The Department has stated that Journey Aviation arranged for the aircraft to be repaired, through the use of the company's own resources and stock of spare parts, registered on the civil register and brought back into use.

### Disposal of spare parts

- 8.27** The Air Corps had 87 spare parts for the jet in stock with an original acquisition cost of €1.4 million. This was the value at which they were recorded on the stock management and control system, and in the appropriation account. Just over half of the parts held were used parts, and some of those could only be used as a trade in for a replacement. At 30 October 2014, the Air Corps estimated that the value of the parts was €405,000.

- 8.28** The Department has stated that its normal practice is to include any aircraft spare parts as part of the sale of an aircraft and this is usually done by way of a public tender competition. However, given the status of the aircraft in the USA and the complexities involved, it decided to complete the sale of the aircraft in the first instance and to deal with the issue of the spare parts, with the buyer of the aircraft, at a later date.
- 8.29** Journey Aviation was invited to make an offer for the spare parts. The parts were sold to Journey Aviation 'as seen' in February 2015 for €53,000 and dispatched in July 2015. The Department considers that the sales price was reasonable given the nature of the spares, their age and the 'as seen' sales condition.
- 8.30** Journey Aviation informed the Department in October 2015 that 55 of the 87 spare parts did not have certification documentation attached. Such documentation validates the parts as being in conformance with the design specification for the aircraft, serviceable and fit for use. The documentation was not available. The Department has stated that it relied on the 'sold as seen' condition in the sales agreement, under which no warranties or guarantees were given to the purchaser, and consequently, certification was not an issue.

### Accounting treatment

- 8.31** The Gulfstream jet entered service in 1992. The total cost of acquiring the aircraft was approximately €45 million. This included lease payments for the first ten years.
- 8.32** The aircraft was recorded on the Department's asset register in 2005 at an historical cost of €19 million. The Department has stated that this was an estimate applied for accounting purposes when it was implementing a new management information system, and did not necessarily represent an accurate market valuation of the aircraft at the time.
- 8.33** The Department's accounting policy is to depreciate military assets over their planned useful lives to projected residual values. The Department has stated that the projected residual value of a military asset is a nominal amount, used to show that the asset may still have a value in use, rather than an intention to reflect the market value of the asset at the end of its planned life.
- 8.34** In this case, the depreciated value of the jet had been its residual value of €952,000 since 2012. As the sales proceeds amounted to €418,000, a loss on disposal of €534,000 is reflected in the Department's operating cost statement in the 2015 appropriation account.
- 8.35** The cost of the spare parts disposed of (€1.4 million) is included in stock write-offs in the 2015 appropriation account (note 2.5). The disposal proceeds (€53,000) are included in appropriations-in-aid.

### Review of ministerial air transport services

- 8.36** In July 2014, prior to the emergence of the problems with the jet, the Government decided to establish an inter-departmental group, chaired by the Department, to review the options for the future provision of ministerial air transport services in the medium to long term. The group includes representatives from the Departments of the Taoiseach, Public Expenditure and Reform, and Transport, Tourism and Sport.

- 8.37** The group's review includes an examination of how other countries, particularly island nations, arrange ministerial air transport. The option of seeking independent aviation expert advice on operational and cost implications is currently under consideration.
- 8.38** To support the work of the inter-departmental group, an internal working group within the Department was established including representatives from the Air Corps.
- 8.39** The inter-departmental group is currently in the process of preparing a report for submission to Government.

## Conclusions and recommendation

- 8.40** Formal analysis of costs and benefits associated with different potential courses of action is a key aid to decision making. In the case of the Gulfstream jet, the Department did not formally appraise the economic case for increased maintenance costs in 2013 or 2014, nor did it formally appraise the costs of returning the jet to a serviceable condition against the benefits that would accrue from its use.

### Recommendation 8.1

The Department should ensure that discounted cash flow analysis of life cycle costs is undertaken for all major items of equipment, as a framework to assist decision making. Decisions for retention or disposal of major assets should be informed by such assessment of continued versus alternative service delivery options to ensure the maximisation of net benefits to the State.

#### Accounting Officer's response

Not agreed in this case. Notwithstanding the recommended approach to decision making for major equipment items, particular and extenuating circumstances applied which were not conducive to carrying out a formal discounted cash flow analysis of life cycle costs in this case. A cost benefit analysis was carried out in an informal manner, taking account of the broader considerations which uniquely applied in this case. I am satisfied that there was sufficient relevant information available to ensure the most prudent decision was made.

In any event, in light of the escalation in costs to over €1.3 million, it was clear that any future benefits that might accrue, over a maximum five year remaining life span, would not have outweighed this level of increased costs and the risk of further unforeseen costly maintenance and repair issues arising at any time.

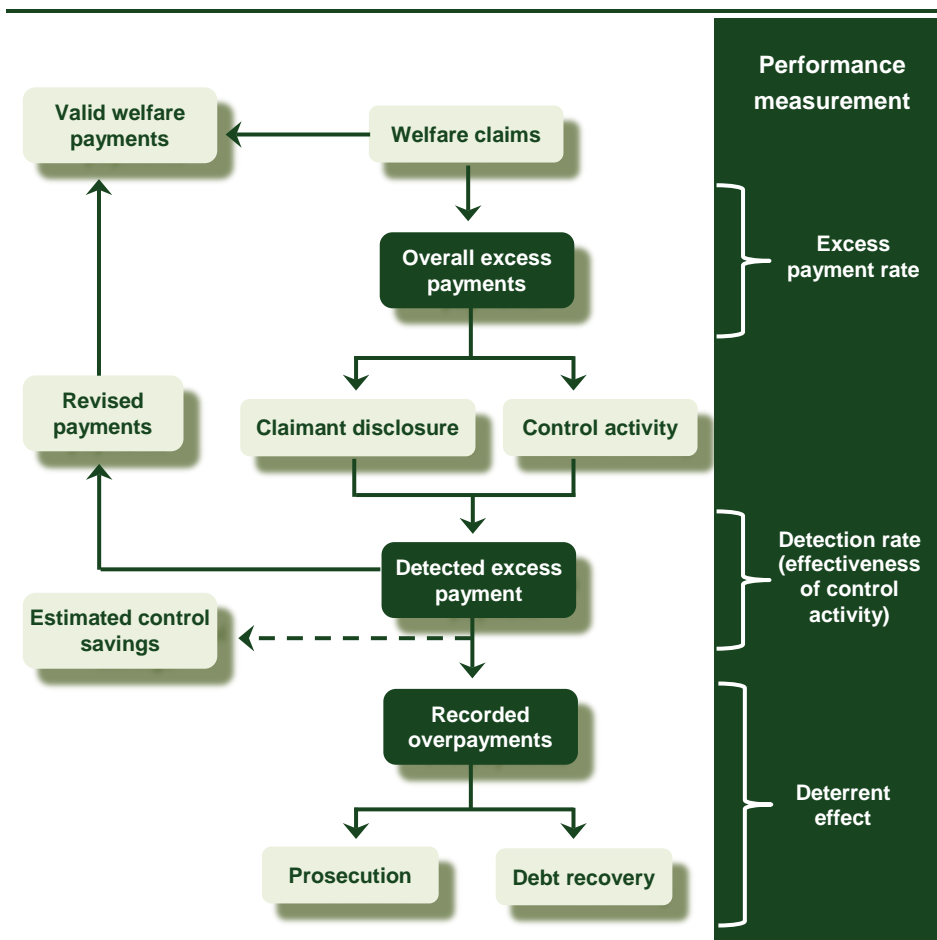
- 8.41** A competitive sales process or auction should normally be used for the disposal of State assets with a significant market value. Such a process helps to ensure transparency and is more likely to achieve the fair market price. In the circumstances, the Department found itself with few alternatives and decided that a competitive tendering process would have been impossible. However, the rationale for this decision should have been documented at the time.
- 8.42** An informal valuation of the aircraft estimated that its value without repair could be below €750,000. The Air Corps estimated the value of the spare parts at just over €400,000. The aircraft was sold for €418,000 and the spare parts for €53,000. In the absence of a competitive sales process, it is difficult to conclude on whether best value was obtained. The Department has stated that it is fully satisfied with the value achieved in the sale of the aircraft and spare parts, given the extenuating circumstances involved.



## 9 Regularity of Social Welfare Payments

- 9.1** The Department of Social Protection (the Department) is required to ensure that the expenditure it incurs has been applied for the purposes for which the money was made available by Dáil Éireann, and that its financial transactions conform with the authorities under which they purport to have been carried out. Financial transactions are considered to be 'regular' when both of these conditions are satisfied.
- 9.2** I have referred in my audit certificates on the 2015 Appropriation Account for Vote 37 Social Protection and the 2015 Account of the Social Insurance Fund to the level of irregularity of scheme payments, which I consider to be material in the context of each account.
- 9.3** Payments in excess of entitlement under the terms of welfare schemes are 'irregular'. Such payments can arise due to
- **claimant fraud** – where the claimant intentionally provides incomplete or inaccurate information in order to receive benefits, or deliberately fails to inform the Department of relevant changes in circumstances
  - **claimant error** – which arises when the claimant has provided inaccurate or incomplete information, or failed to report a relevant change in circumstances (such as an increase in means or a change in medical condition), but there is no clear fraudulent intent on the claimant's part
  - **departmental or administrative error** – where benefits are paid incorrectly due to inaction, delay or mistakes made by the Department's staff.<sup>1</sup>
- 9.4** Where excess payments arise, the Department's objective is to identify promptly the excess payment and to adjust the payment level accordingly. Where a departmental deciding officer determines that an overpayment has occurred, the Department seeks to recover the amount of the overpayment from the claimant.
- 9.5** The Department's performance in managing the risk of excess payment can usefully be considered from three perspectives, as outlined in Figure 9.1,
- the **overall level of excess** payments across welfare schemes
  - the Department's **success in detecting cases of excess payment**, relative to the underlying problem and
  - the **deterrent effect** of the Department's response to cases of excess payment it detects, including recovery of overpayments.

<sup>1</sup> In some cases, claimant and departmental error can also result in claimants receiving less than they are entitled to.

**Figure 9.1 Managing and measuring excess welfare payments**

Source: Office of the Comptroller and Auditor General

**‘Fraud and Error’ surveys**

- 9.6** The Department undertakes fraud and error surveys of social welfare schemes. These are point-in-time measurements of fraud and error in schemes. The surveys involve reviews of random samples of claims in payment to establish if the claimants are entitled to the payments they are receiving and if so, whether the correct amounts are being paid. The surveys assist the Department in identifying scheme risks and the need for any changes to the control measures in place.
- 9.7** The programme of fraud and error surveys to be carried out is set out in the Department's Compliance and Anti-Fraud Strategy 2014 – 2018 which was published in April 2014. Since then, it has reviewed and revised the schedule. The complete schedule of planned surveys (as at August 2016) is set out at Annex A.

## Estimates of level of fraud and error

**9.8** Welfare schemes are funded through the Vote for Social Protection and the Social Insurance Fund (SIF). Vote funded schemes are mainly in the nature of social assistance, often based on means tests. SIF schemes are based on social insurance, where eligibility is dependent on the level of the claimant's PRSI contributions. The nature of schemes and their eligibility criteria affects the potential for excess payments to arise.

**9.9** Because fraud and error surveys are focused on randomly selected claims in payment, the survey results provide a basis for estimating the underlying level of payments in excess of entitlement for each scheme surveyed. Figure 9.2 sets out estimates of the scale of excess payments identified for schemes where surveys have been carried out.

**Figure 9.2 Estimated level of excess payments in surveyed schemes**

Account and scheme	Year of survey <sup>a</sup>	Estimated level of excess payments		Scheme cost 2015
		Scheme <sup>b</sup>	Department <sup>c</sup>	€m
Vote schemes				
Farm Assist	2015	10.6%	10.4%	88
Household Benefits Package <sup>d</sup>	2015	6.4%	5.4%	75
Rent Supplement	2013	6.0%	5.0%	311
Child Benefit	2012	0.5%	0.5%	1,990
Jobseeker's Allowance	2012	4.6%	3.1%	2,743
One-Parent Family Payment	2011	7.1%	2.7%	671
Disability Allowance	2010	18.4% <sup>e</sup>	4.1% <sup>e</sup>	1,282
State Pension (non-contributory)	2007	1.9%	n/a	972
Family Income Supplement	2005	3.3%	n/a	368
Social Insurance Fund schemes				
Household Benefits Package <sup>d</sup>	2015	6.4%	5.4%	146
Illness Benefit	2014	13.3% <sup>e</sup>	5.9% <sup>e</sup>	620
Invalidity Pension	2014	2.8% <sup>e</sup>	1.5% <sup>e</sup>	649
Widow's/Widower's/Surviving Civil Partner's Contributory Pension	2013	0.8%	0.7%	1,422
Jobseeker's Benefit	2011	2.5%	1.6%	387
State Pension (contributory/transition)	2008	1.1%	n/a	4,477

Source: Department of Social Protection

- Notes:
- a Base year for latest scheme survey. More than one survey has been undertaken for some schemes.
  - b Includes cases which were subsequently successfully appealed.
  - c Net loss to welfare system taking account of cases where disallowed scheme claims are succeeded by valid claims/dependent payments on other schemes or where appeals are successful. The survey reports do not disaggregate these two categories.
  - d Household benefits are paid from the Vote and the Social Insurance Fund, the results of the survey have not been disaggregated.
  - e Includes cases deemed medically ineligible.

### Vote funded schemes

- 9.10** There is wide variation in the level of excess payments found by surveys of Vote funded schemes. Apart from child benefit which is a universal payment (i.e. not means-tested), the estimates range from 1.9% of scheme expenditure in the case of the non-contributory State pension to 18.4% for the disability allowance scheme (including medical ineligibility).
- 9.11** Surveys in more recent years include an adjustment to the estimate to take account of cases successfully appealed or found to be ineligible for the scheme surveyed but entitled to a payment under another scheme, either as the claimant or as another claimant's dependant. In the case of the disability allowance scheme, this adjustment reduces the estimate to a net excess payment rate of 4.1%.
- 9.12** The surveyed Vote schemes account for expenditure of €8.5 billion in 2015. The extent of fraud and error in schemes that have never been surveyed and which account for a further €2.4 billion of expenditure, is not known.

### SIF funded schemes

- 9.13** There is also variation in the level of excess payment in the SIF schemes surveyed. Estimates range from 0.8% for widows'/widowers'/surviving civil partners' contributory pension to 13.3% for illness benefit (including medical ineligibility). The surveyed SIF schemes with estimated levels of excess payments over 1% of expenditure accounted for 75% of the €8.3 billion SIF scheme expenditure in 2015.

### Latest survey results

- 9.14** The Department completed fraud and error surveys of three schemes in 2016 – see Figure 9.3.

**Figure 9.3 Fraud and error surveys commenced and completed**

Scheme	Commenced	Completion	
		Planned	Actual
Farm Assist	Q4 2015	Q2 2016	Q3 2016
Household Benefits Package	Q4 2015	Q2 2016	Q3 2016
Family Income Supplement	Q4 2015	Q2 2016	Not available

Source: Office of the Comptroller and Auditor General

- 9.15** The survey findings and report for the family income supplement scheme was not available at the time of drafting this report. The results of the farm assist and household benefits surveys were received in July 2016 which was too late for the examination of the survey results. A separate exercise will be carried out later in 2016 to verify the survey results of all three schemes, and may be reported on separately.
- 9.16** An analysis of the results of the surveys for farm assist and household benefits schemes is set out in Figure 9.4.

**Figure 9.4 Estimated level of payments in excess of entitlement, farm assist and household benefits package, August 2016**

	Percentage of claim payments found to be in excess of entitlement		
	Scheme rate	Reinstated or transferred claims	Net department rate
<b>Farm assist</b>			
Due to fraud	6.2%	0.2%	6.0%
Due to error on the part of			
– <i>Department<sup>a</sup></i>	1.7%	–	1.7%
– <i>Claimant</i>	2.7%	–	2.7%
<b>Total</b>	<b>10.6%</b>	<b>0.2%</b>	<b>10.4%</b>
<b>Household benefits package</b>			
Due to fraud	0.6%	–	0.6%
Due to error on the part of			
– <i>Department<sup>b</sup></i>	4.6%	0.6%	4.0%
– <i>Claimant</i>	1.2%	0.4%	0.8%
<b>Total</b>	<b>6.4%</b>	<b>1.0%</b>	<b>5.4%</b>

Source: Fraud and Error Survey Reports, Department of Social Protection, August 2016

Notes: a Overpayments and underpayments were netted against each other in arriving at the overall rate of departmental error.

b There were no underpayments identified in the survey.

## Conclusions

- 9.17** Fraud and error surveys are a key element within the Department's control systems. The two surveys completed to the end of July 2016 took in excess of eight months to complete. It is important to ensure that surveys are completed as expeditiously as possible to ensure the reliability and usefulness of the survey results. The Department has stated in relation to the timeliness of surveys that each survey presents its own methodology issues which take time to resolve.
- 9.18** Three fraud and error surveys were due for completion before the end June 2016. Two surveys were completed and provided to the examination team in July and one had not been received at the time of this report. A separate exercise will be carried out by the examination team to review the surveying methodology and verify the figures later this year.
- 9.19** The fraud and error survey result for the household benefits package targeted what was identified as a riskier sub-group of recipients within the scheme and comprised only 7% of the total number of scheme recipients. Surveys of other sub-groups within the scheme will take place at later dates which may change the overall rate of fraud or error for this scheme.

**Annex A Schedule of fraud and error surveys, 2016 to 2018<sup>a</sup>**

Planned survey timing		Scheme	Previous survey year
Commence	Planned Completion		
Q4 2015	Q2 2016 <sup>b</sup>	Family Income Supplement	2005
Q1 2016	Q4 2016	State Pension (contributory)	2008
Q1 2016	Q2 2017	Carer's Allowance <sup>c</sup>	–
Q3 2016	Q3 2017	Supplementary Welfare Allowance	–
Q1 2017	Q4 2017	Back to Work Enterprise Allowance	–
Q1 2017	Q1 2018	State Pension (non-contributory)	2007
Q4 2017	Q1 2019	Disability Allowance	2010
Q1 2018	Q2 2019	One-Parent Family Payment	2011

Source: Department of Social Protection

Notes: a as planned at August 2016

b not received at date of this report

c medical eligibility will also be reviewed as part of this survey

## 10 Roll-out of the Public Services Card

- 10.1** The project to develop a public services card (PSC) was identified in 2004 as an important component for modernising public service delivery by standardising the framework through which public services are accessed and developing the PSC to replace some or all of the existing cards in use.
- 10.2** The key advantage identified for using a single card-based access to public services was that delivery of services becomes substantially more efficient when the means for identifying and authenticating the user are standardised across all government agencies. In addition, the use of a PSC would reduce the rates of fraud and errors caused through incorrect identification and authentication of users of public services.
- 10.3** The Department of Social Protection (DSP) led the project to develop the PSC. The Department of Public Expenditure and Reform (DPER) provided support in terms of policy development, sanctioning of the required project resources and project oversight.<sup>1</sup>
- 10.4** This report examines the extent to which the project objectives have been achieved, the project costs, and the manner in which the project was managed.

### Project approval

- 10.5** One of the initial significant challenges for the project was to identify and develop a framework for establishing and authenticating the identity of (potential) service users which could be used as a basis for issuing a PSC.
- 10.6** The Government gave approval in June 2004 for the development of a framework and a steering group was established comprising a range of government departments to develop the standard.
- 10.7** Following submission of a joint memorandum by the Ministers for the two Departments, in July 2005, the Government approved, inter-alia, the development of a detailed technical specification required for the procurement of cards/tokens supporting primarily the establishment and authentication of identity for access to public services; and the development of proposals for a comprehensive identity management and privacy policy (IMPP).

1. DPER was part of the Department of Finance when the project commenced. For simplicity, reference throughout the chapter is to DPER.

2. A budget of around €1 million was approved by Government in 2005 for the initial phase of the project to develop the SAFE standard. This was to cover the costs of the standard design, public consultation and communications and research and was to be funded from within the existing resources of DSP and DPER.

### Development of the SAFE programme

- 10.8** In 2005, the Standard Authentication Framework Environment (SAFE) programme was initiated to progress the development of a security standard for the PSC.<sup>2</sup>
- 10.9** The decision to develop a PSC envisaged that it could be used for all existing and future card-based public services over time using the SAFE standard (see Figure 10.1). Even where agencies might need to issue specific cards for their services for operational or legal reasons, the development of the SAFE standard would provide benefits through secure identification and authentication of the user.

**Figure 10.1 Summary of Standard Authentication Framework Environment (SAFE)**

Level	1 (SAFE1)	2 (SAFE2)	3 (SAFE3)
Level of assurance as to identity	Balance of probabilities	Substantial assurance	Beyond reasonable doubt
<b>Requirements</b>			
Has a Personal Public Services Number	✓	✓	✓
Photo ID e.g. passport, national ID card, driving licence etc.		✓	✓
Signature		✓	✓
Evidence of name, date of birth, sex, mother's birth surname, place of birth and nationality		✓	✓
Documentary evidence of address e.g. utility bill		✓	✓
Biometric data e.g. fingerprint, iris scan			✓
Associated card type	No card	Card with photo and signature	Card with photo, signature and biometric data

Source: Office of the Comptroller and Auditor General

Note: All registrations by DSP are to SAFE level 2, i.e. SAFE2.

## Project expenditure

**10.10** DSP commenced development of the PSC based on the SAFE standard and compatible with the IMPP, to replace the existing social welfare card with a view to issuance commencing in 2007.

**10.11** The PSC was delivered through a combination of external providers and internal DSP resources with the cost currently expected to be around €60 million, as set out in Figure 10.2.



**Figure 10.2 Expenditure to end 2015 and projected costs to end 2017 (incl. VAT)**

Cost	Budget at July 2012 €m	Expenditure to 2015 €m	Commitments/ estimates €m	Total to end 2017 €m
<b><i>Managed service contract</i></b>				
Development costs	1.8	1.8	–	1.8
Card production	20.3	13.2	9.1	22.3
Helpdesk <sup>a</sup>	1.8	2.5	–	2.5
Change requests	1.0	1.0	–	1.0
<b>Total payable to supplier</b>	<b>24.9</b>	<b>18.5</b>	<b>9.1</b>	<b>27.6</b>
Department staff <sup>b</sup>	27.5	16.8	12.0	28.8
Consultancy and other software development/implementation	1.6	1.3	0.1	1.4
Hardware and maintenance	1.2	0.9	0.1	1.0
Software support and maintenance	0.1	0.4	–	0.4
Administration	–	0.4	0.1	0.5
<b>Total</b>	<b>55.3</b>	<b>38.3</b>	<b>21.4</b>	<b>59.7</b>

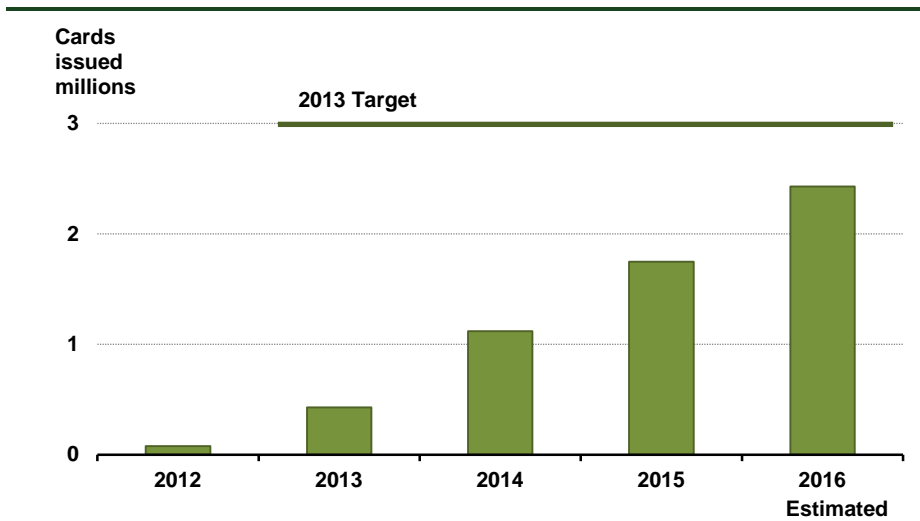
Source: Department of Social Protection

Note: a Helpdesk figures include costs associated with calls from customers to request activation.

b The estimate of staff costs is based on DSP's request for 200 additional staff for a four year period. Staff cost covers only those directly involved in the PSC project and does not include other DSP staff costs e.g. staff involved in the internal upgrade of the ICT systems.

### Card production targets

- 10.12** In December 2009, DSP entered into a contract with a supplier at a fixed price of €19.7 million plus 21% VAT to produce 3 million cards by end 2013 - 2,095,000 standard cards and 905,000 free travel variant cards. Included in this price was €1.46 million for initial set-up costs, postal fees of €2.64 million for issuing the card and a personal identification number (PIN) and €1.8 million for helpdesk query handling.
- 10.13** The total number of PSCs produced at end of June 2016 was 2.06 million comprising 1.37 million standard cards and 693,000 free travel variants. This represents 65% and 77% of the respective total of cards to be produced for each category.

**Figure 10.3 Cumulative public services card production**

Source: Office of the Comptroller and Auditor General

Note: The figure for 2016 is as estimated in the revised 2016 agreement.

#### **10.14 DSP outlined a number of measures put in place to support PSC production**

- 160 registration stations are operating at 100 locations each with a capacity to handle 100 registrations per week. This gives sufficient capacity nationwide to register 16,000 per week, and, based on a year of 50 working weeks, 800,000 annually.

DSP has stated that this level of registration is rarely achievable due to a number of factors, including

- clients failing to attend without prior notice
- registrations not being straightforward, e.g. where clients do not have a Personal Public Service Number (PPSN), do not possess a photo ID or may require additional time.
- A mobile SAFE registration solution was in place. Each mobile unit comprises a laptop, high resolution scanner, camera and screen. Use of the mobile units enables registrations to take place mostly in community/congregated settings and (in exceptional circumstances) at the registrant's place of residence. There are currently 19 units in operation with 1,082 individuals registered for the PSC in twelve locations by end August 2016.
- DSP developed a website for accessing public services<sup>1</sup>. As of August 2016, services available from the website relate only to DSP, such as appointment services for PPSN and PSC registration, applications for Paternity Benefit, access to the JobsIreland website and jobseekers services.

DSP has stated the discussions are ongoing with other public bodies providing services online, with a view to providing a secure customer verification process for such bodies. It is expected that the first services from Revenue will come on stream before the end of 2016.

<sup>1</sup> [www.mygov.ie](http://www.mygov.ie)

- 10.15** Following issuance of the card to the address verified during the SAFE registration process, holders were requested to activate the card by making a phone call to the helpdesk. DSP explained that, in order to satisfy a requirement from the Office of the Data Protection Commissioner, a process was introduced which required the card recipient to activate the card on receipt by telephoning the helpdesk and answering security questions. While the card activation process confirmed receipt of the card by the correct individual, it does not initiate any functionality of or on the card. Of the 2.06 million cards produced at the end of June 2016, only 1.2 million (58%) had been activated.
- 10.16** DSP has stated that as PSCs are utilised by more service providers, the opportunities for confirmation that cards have been received by the correct person (e.g. by manual inspection or online) have increased. Accordingly, DSP has now removed the requirement for customers to activate the cards.

## **Project management**

### ***Project planning and financial oversight***

- 10.17** A key element in project planning is the development of a business case setting out the objectives to be achieved and explaining the basis for the decision to proceed. There is no single business case document for the PSC, setting out at a high level all of the information needed to get the project started (scope, justification, funding, roles and responsibilities), and which communicated this key information to the project's stakeholders. The examination reviewed key project documents supplied by DSP and DPER and assessed the content against a standard business case model the results of which are set out in Figure 10.4.

**Figure 10.4 Assessment of project plan against good practice business case**

Good practice contents of business case	Issues covered in at least one document
<b>Project specification</b>	
Problem definition	●
Project objectives/scope	●
Key stakeholders	●
Assessment of organisation capacity to undertake project	○
Dependencies	●
Procurement	●
Consequences of not proceeding with project/alternatives	●
Information security/data protection	●
Timeline and work plan	●
Risks	●
<b>Costs and resources</b>	
Staff resources required to support project	●
Projected costs	●
<b>Benefits</b>	
Qualitative and quantitative benefits to the Department	●
Qualitative and quantitative benefits to the customer	●
<b>Project governance and management</b>	
Project structure	●
Project roles	●
Project initiation document	●
Benefits realisation plan	○
<b>Conclusions and recommendations</b>	●

Source: Analysis by the Office of the Comptroller and Auditor General of the consultant study 2003, Memorandum to Government 2004, SAFE Business Requirements - 2005, Memorandum to Government 2005, DSP papers and correspondence to DPER in 2009 seeking sanction to proceed with the project and paper on deployment of PSC 2011.

Notes: ● - included  
○ - not included  
● - partially covered

**10.18** Elements of a good practice business case were included in several documents examined. However, there were a number of omissions or partially addressed matters

- A comprehensive estimate of the total projected project costs including the allocation of existing DSP staff was not prepared. The initial estimate of the project cost was developed in September 2009 after the procurement process for a managed service provider had commenced. This covered the expected cost of managed service provider of €24 million<sup>1</sup> and the development of new technical systems estimated at between €1.5 million to €2 million. The first estimate of other project costs such as DSP staff and internal ICT systems upgrades was outlined in a sanction request to DPER in December 2011 following the completion of the pilot to test technical facilities and card registration.<sup>2</sup>
- There was no initial assessment of DSP's capacity to deliver the project or a formal assessment of the project risks. It is noted that an assessment of risks and capacity was made in the context of a request for staff resources prior to the deployment of the PSC in late 2011.

<sup>1</sup> The budget for the managed service provider element was increased by €2 million to €26.4 million in 2012 to take account of changes to the contract as a result of delays and card enhancements.

<sup>2</sup> DPER approved 150 clerical posts for the project up to the end of 2013. A subsequent request was made by DSP in February 2014 to seek further staff resourcing and DPER approved an additional 68 temporary staff (i.e. a total of 218 staff) until the end of June 2015.

- Key dependencies were only partially assessed with the capacity of the existing IT infrastructure to deliver the project not evaluated.
- There was no plan setting out how and when the project's benefits would be measured, and who was responsible/accountable for their delivery.
- A single project initiation document (PID) was not prepared at the outset of the project.

### ***Views of the Accounting Officer DSP***

#### **10.19** The Accounting Officer has stated in relation to project planning and financial oversight

- It was generally accepted at the time that, given the relatively innovative nature of the project (mass registration of the population to a specific standard and the production and issuance of a sophisticated multi-purpose smart card) and the lack of comparable references (in that no other public or private body had undertaken anything even close to similar), it was not possible to properly estimate any cost until market testing via the procurement process had taken place.
- Prior to 2004 and 2005 Government decisions, DSP had identified the need to replace its Social Security Card and Free Travel Pass and had initiated an internal process to achieve same. The extension of the PSC project to this initiative was mandated by the Government in the decisions mentioned above. A formal project management structure was put in place and associated processes implemented. As required, internal resources were redeployed and requests for additional resources were submitted to DPER. DPER accepted that additional staff would be required at various times to deliver the project and sanctioned these.
- The benefits associated with the project were identified and set out at a high level in the 2004 and 2005 Memoranda for Government and associated papers (including the Account Study into the PSC and the SAFE Business Requirements etc.). The benefits of the PSC and associated services will eventually be accrued across the public service rather than solely by DSP. It was always the case that other public bodies would only start using/requiring the PSC once a significant number of their customers were in possession of one. Therefore, the full identification and realisation of the benefits of the project can only be assessed once other public bodies identify their uses for the PSC and implement these in practice. Accordingly, it was not possible in the early years of the project to produce a plan detailing full benefits potential and means for measuring the achievement of these.
- While a single document PID was not produced in the early 2000s, the constituent elements of a PID are set out in the 2004 and 2005 Memoranda for Government, the Government decisions that resulted from these, and various associated papers (including the Account Study into the PSC and the SAFE Business Requirements). From July 2005 to July 2007 DSP concentrated on the development of the detailed functional specification required for the PSC. It also developed a project proposal for the development and deployment of the PSC, and associated infrastructure. This work was concentrated in and managed by the Client Identity Services division of the Department. This led to a submission on 23 July 2007 to the DSP Management Board which gave its approval to proceed with a project proposal, structure and membership, and with the preparation of a request for tender for an outsourced card management service.

### ***Project delays***

- 10.20** DSP developed and advertised a competition for the procurement of a managed service provider for PSC production in 2007 and a preferred supplier was selected in June 2008. However, as the public finances deteriorated, the competition was suspended pending completion of the annual estimates process for 2009.
- 10.21** Subsequently DSP proceeded with the procurement and signed a contract with a managed service provider in December 2009. Under the contract, it was envisaged that production of the cards would commence by autumn 2010 but no later than April 2011. However, pilot production of cards commenced in October 2011 and around 4,000 cards were produced by the year end.
- 10.22** DSP stated that at that time, it incurred an unprecedented and rapid increase in customer numbers and consequent demand for services. It was also required to undertake the integration of two other organisations and introduce significant new processes. All of this led to a significant increase in staffing requirement. In this context, DSP concluded that its central technical infrastructure required significant upgrade and expansion, and had to have priority over all other technical projects. As a consequence, the Department devoted the first half of 2011 to building up the underlying technical infrastructure – this was mainly central server related (throughput, fault tolerance and management capability). This meant that the new PSC functionality could not go live until the autumn 2011.
- 10.23** Initial plans for the PSC included a free travel variant requiring integration with the integrated ticketing system for the public transport network which was simultaneously being developed. The variant was delayed pending the availability of a suitable specification from the Railway Procurement Agency<sup>1</sup> for the integration of the PSC on the ticketing system.

### ***Project costs and variations***

- 10.24** The sanction conveyed by DPER in October 2009 included a recommendation that the contract with the supplier should allow for a contract review on an annual basis, and for termination/suspension without penalty in certain circumstances, such as substandard production quality, non-adherence to agreed standards or the availability of the requisite funding. Under the terms of the contract with the service provider, DSP reserved the right to terminate the contract at any stage on payment of reasonable costs accrued to the date of termination.
- 10.25** In mid-2012, the contractor requested a revision of the contract to address commercial implications which it asserted had arisen due to the delays in the development of the PSC by DSP. DSP agreed to amend the price terms of the contract due to the lower than anticipated card production volumes.
- 10.26** During 2015, it was apparent the completion of the contracted 3 million cards by end 2016 was not going to be achieved. In December 2015, DSP received the approval of DPER to negotiate the contract with the managed service provider. Figure 10.5 summarises the changes in contract terms.

<sup>1</sup> This responsibility has since transferred to the National Transport Authority.

**Figure 10.5 Summary of changes in managed service contract**

	2009	2012	2016	Comment
<b>Unit Cost per card</b>	€	€	€	
Standard card	4.221	4.961	5.375	Rates in 2012 and 2016 are averaged to take account of front-loading of payments due to delays and DSP requested changes.
Free travel variant	5.520	5.901	6.363	
<b>Production costs</b>	€m	€m	€m	
Standard	8.8	10.4	11.3	
Free travel	5.0	5.3	5.7	
<b>Total production costs</b>	<b>13.8</b>	<b>15.7</b>	<b>17.0</b>	
<b>Other costs</b>				
Technical setup	1.5	1.5	1.5	Initial setup costs
Other fixed charges	–	1.3	0.7	Additional software development for free travel variant due to delays with and changes in specification for compatibility with the integrated ticketing system; and phase 2 development and testing.
Postage	2.7	1.8	1.8	Postage cost reduced 50% due to not using PIN.
Helpdesk	1.8	2.1	2.1	Additional costs due to provision of activation procedure through the helpdesk.
<b>Total other costs</b>	<b>6.0</b>	<b>6.7</b>	<b>6.1</b>	
<b>Total</b>	<b>19.8</b>	<b>22.4</b>	<b>23.1</b>	

Source: Office of the Comptroller and Auditor General

**10.27** The cost of the contract with the managed service provider has increased by €3.3 million (16%) from the 2009 figure due to contract changes and revisions including

- extension of contract to 2017 at an extra €0.737 per card – €1.28 million
- a kinegram<sup>1</sup> was added after the 2009 contract was signed at a cost per card of €0.38 – €1.14 million
- delays and amendments in relation to free travel card – €0.72 million.

**10.28** The 2016 contract provides for an advance payment by DSP in January 2017 of 50% of the cost of the outstanding balance of 3 million cards. The cost of cards produced in 2017 is to be deducted in full from the advance. Also, should the target of 3 million cards not be reached by the end of 2017, the cost of cards not produced will become payable in full.

**10.29** In the event that in excess of 3 million cards are produced by 31 December 2017, a discount of 5% will be applied, resulting in a cost per card as follows

- standard PSC €4.3804
- free travel €5.6154.

<sup>1</sup> A kinegram is a diffractive security device embossed into a substrate. It is intended both as a security feature and for visual appeal and introduces increased security to the card to prevent duplication.

*Views of the Accounting Officer DSP*

- 10.30** DSP has stated that it is satisfied that the revised deadline for the delivery of 3 million cards will be achieved and that payments for the non-delivery of cards will not arise. It also stated that the contract with the managed service provider will come to an end in December 2017 and that it plans to seek tenders for production of PSCs from 1 January 2018.
- 10.31** The Accounting Officer stated that the PSC project is a major piece of public service infrastructure that will in time be leveraged by all public bodies. She stated that the main benefit of PSCs and the SAFE programme relates to the saving in the time spent re-verifying an individual's identity each time a member of the public tries to access a public service – small savings for each interaction with multiple cardholders will represent a considerable overall saving.

*Views of the Secretary General DPER*

- 10.32** In relation to the extent of the business case, the Secretary General stated that it was important to note, that the issuing of the sanction in October 2009 was the culmination of a five-year process, involving detailed consideration by Government, beginning in June 2004 when the Government approved the development of a standards-based framework for the PSC and the establishment of a Steering Group to oversee the task. A further Government decision issued in July 2005, which included the noting of progress made in developing the SAFE programme, the approval of the development of a technical specification required for procurement of cards and the approval of the development of proposals for a comprehensive national identity management and privacy protection policy. He stated that the sanction which issued in October 2009 was for the development of the card in line with the aforementioned Government decisions and following the development of the SAFE programme, the tendering process and the selection of the preferred bidder.
- 10.33** He stated that DPER accepted that additional staff would be required to deliver the project and that this allocation was sanctioned by DPER in February 2012. The allocation of existing DSP staff to the project was to be met from existing DSP resources.
- 10.34** DPER has also stated that while staffing costs have been estimated to end 2017, sanction is currently only in place to retain the temporary clerical officers until the end of 2016. DSP will be required to engage with DPER in relation to the number of temporary staff needed for 2017. Depending on the outcome of that process, sanction may, for example, be conveyed for a lower number of staff than assumed, with a consequent impact on future costs.

**Project benefits***Savings achieved*

- 10.35** DSP stated that the main benefit of the PSC is in the saving of time previously spent re-verifying identity when a member of the public accesses a public service. DSP considers the reduction in the number of people who fraudulently claim to be someone else and a reduction in the potential for forgery as ancillary benefits. DSP did not set a savings target in this area given the difficulties in assessing how many people have been or are engaged in identity fraud.



- 10.36** DSP calculates savings from controls implemented by combining the amount of actual overpayments raised and future payments which it will not be making.
- 10.37** Savings are recorded in respect of persons in receipt of a welfare payment where a person invited to make a SAFE registration does not complete the process, and the payment ceased or was suspended. Savings are not recorded in cases where a new claim made for assistance is abandoned or withdrawn because of failure or inability to complete SAFE registration.
- 10.38** DSP control processes estimate savings by scheme heading and it has estimated that up to end July 2016, savings of €2.5 million were achieved due to the introduction of the PSC.

**Figure 10.6 Recorded SAFE registration savings as at end July 2016**

Scheme	Fraud and error survey	No of cases with savings	Savings €000	Proportion of scheme recipients registered
Jobseekers Assistance	3.1%	204	1,217	90%
Jobseekers Benefit	1.6%	87	428	84%
Supplementary Welfare Allowance	–	5	11	–
One-parent Family Payment	2.7%	16	334	89%
State Pension Non-Contributory	n/a	2	60	72%
Child Benefit	0.5%	1	5	65%
Household Benefit and Free Travel	–	1,540	447	– <sup>a</sup>
<b>Total</b>		<b>1,855</b>	<b>2,502</b>	<b>66%</b>

Source: Department of Social Protection

Note: a 69% of Household Benefit recipients are registered while 63% of Free Travel recipients are registered.

- 10.39** Included in the above saving of €2.5 million are 131 cases (€1.7 million) of suspected fraud, detected via the facial image matching software that have been referred to DSP's special investigation unit and/or An Garda Síochána. Figure 10.7 gives the status of these 131 cases.

**Figure 10.7 Cases of suspected fraud as at July 2016**

Status	Number
Concluded - no issue arising in relation to identity fraud	11
Finalised in court, custodial sentence	9
Finalised in court, non-custodial sentence	4
Legal proceedings initiated <sup>a</sup>	22
Investigation underway	70
Not proceeded (mainly due to person leaving the jurisdiction)	15
<b>Total</b>	<b>131</b>

Source: Department of Social Protection

Note: a In one case an international arrest warrant has been sought.

*View of the Accounting Officer DSP*

- 10.40** The Accounting Officer pointed out that the savings recorded relate to the cases where DSP actually caught the person using a false identity. The Department cannot assess the actual savings that have been made in cases where a person signed off or claimed they no longer needed social assistance/benefit instead of going through the SAFE registration process.

*Use of PSC and future developments*

- 10.41** In addition to the use by DSP, the PSC and SAFE2 process is being used as follows
- the free travel variant is operational on the public transport network including participating private bus operators
  - first time adult passport applicants must in future possess the PSC
  - the PSC has been added to the list of acceptable forms of ID for external candidates sitting State examinations, electoral purposes, receipt of housing assistance payments, and prison visits.
- 10.42** Use of the card is being piloted or is to commence shortly in the following areas
- as part of driver licence application by the Road Safety Authority, including theory test applications and driver licence renewals
  - a trial issue of PSC to transition year students was completed in May 2016 and an initiative has commenced to roll-out to all transition year students in the 2016/2017 school year.
- 10.43** It was envisaged in a June 2004 Memorandum for the Government, that a central group would examine
- the need for primary legislation on identity management
  - use of the PPSN and PSC in the justice and private health sectors and in the private sector generally
  - the need to create an organisational structure to manage central identity management services nationally.
- 10.44** One of the challenges in extending the use of the public service card infrastructure to other agencies is the need to implement identity access management (IAM) measures. DSP launched the IAM system in February 2016 which is available to other public bodies to authenticate their customers online, based on the PSC and the SAFE2 registration process.<sup>1</sup>
- 10.45** In June 2016, the Civil Service Management Board<sup>2</sup> (CSMB) approved a project to support a broader identity management initiative which would enable other public bodies to utilise the PSC and SAFE process. The project will be jointly led by DSP and DPER through the Office of the Government Chief Information Officer (OGCIO).

<sup>1</sup> [www.mygovind.ie](http://www.mygovind.ie)

<sup>2</sup> The Civil Service Management Board (CSMB) is made up of all Secretaries General and Heads of major offices and is chaired by the Secretary General to the Government. Its role includes the management and accountability of cross-cutting projects that involve multiple departments and agencies.

- Public service bodies will be encouraged to use the PSC for identity management and to ensure the identity management programme, encompassing the SAFE2 programme, and the IAM system is fully rolled out and is implemented in a sustainable way. In this regard, it will be mandatory for all new processes being delivered online or digitally to use SAFE2 and the IAM system and a plan should be developed to migrate existing services/processes over time.
- Personal identification processes in the public service will be mapped, with a view to migrating to the broad identification management system.
- Public bodies will be encouraged to require their clients to register to SAFE2 level and use the PSC.
- A public communications programme will be developed and implemented to raise awareness of the benefits of using the IAM system and PSC.

### *Views of the Secretary General DPER*

- 10.46** DPER undertook an in-depth research and consultation exercise on the development of a comprehensive national identity management and privacy protection policy following the Government decision in 2005 which involved a number of discussion papers and consultation with a range of departments and agencies. This led to the development of a draft proposal in 2009 which recommended the centralisation of the management of identity for the public service. Industrial relations concerns were raised regarding the transfer of functions. Further consideration in 2011 noted that it may not be suitable to centralise the function in one line department and that the correct 'home' for identity management was not likely to be clear for some time.
- 10.47** The Secretary General stated that the focus subsequently was to progress the development of the PSC and develop protocols to maximise the use of high-quality data collected during the PSC registration process. DPER worked with DSP to develop a single customer view which takes data from various repositories across the public service and links them. The single customer view has become the next best solution to a single trusted repository of identity information.
- 10.48** He also stated that in line with the development of those protocols, his Department commenced work on issues around data sharing, governance and the security of data which will be key elements of legislation currently being developed. This legislation will provide for the regulation of data sharing between public bodies and for applicable safeguards and conditions. It will also provide for the completion of a privacy impact assessment by those involved in a proposed sharing of data. This will form part of information governance assuring that individuals' rights to privacy and confidentiality are appropriately protected.
- 10.49** Finally, he noted in relation to the 2004 Government decision regarding an identity access management policy that while a general policy might prove beneficial he did not believe that the adoption of the PSC was restricted by the absence of such a policy.

## Conclusions

- 10.50** It was originally intended that 3 million public service cards would be produced by the end of 2013. At the end of June 2016, over 2 million cards have been produced. A number of factors including the need to update IT infrastructure have led to the delay. DSP expects that the target of 3 million cards will be delivered by the end of 2017 under revised arrangements with the managed service provider.
- 10.51** DSP expects to incur costs of up to €60 million on developing and issuing PSCs to the end of 2017. The cost of the managed service provider contract increased by over €3 million (16%) due to contract changes and revisions arising from delays in the project and additional security features.
- 10.52** DSP has spent €2.2 million on card activation by June 2016. Just under 60% of cards issued have been activated at the end of June 2016. Activation did not enable or add any functions on the card, it only confirmed receipt of the card by the individual.
- 10.53** Government made a number of decisions in 2004 and 2005 which formed the basis of the PSC project. A business case or project plan was not developed at that time. Business cases should quantify and compare the total costs of a project against the benefits expected in order to inform the decision-making process. In addition, the business case for a project facilitates ongoing review to ensure that continued expenditure represents best value and is affordable, and that the project is capable of being delivered successfully.
- 10.54** In relation to the absence of a business case at the inception of the project or during the implementation phase the Accounting Officer stated that at the time of its inception in the early 2000s, the SAFE/PSC project was a brand new, innovative approach to smart-card usage and identity management which had not been used anywhere else in Government. Similar initiatives in the private sector were in their infancy. Accordingly, it was not possible to build a single detailed business case of the sort envisaged in advance. The Accounting Officer also stated that while a business case had not been developed, the project has been coherently planned and implemented in conjunction with DPER and with the support of relevant decision makers and stakeholders.
- 10.55** Specific costings were only developed in 2009 after the procurement process for the managed service provider commenced and, in 2011, in relation to DSP's required staffing component. It was not evident that a comprehensive risk evaluation and assessment of key dependencies such as reliance on IT systems and organisation capacity was conducted.
- 10.56** DSP did not set a target in relation to savings that were expected to accrue from the introduction of the card as a result of administrative or customer savings in the time spent re-verifying an individual's identity. It also did not set a target for savings that could be expected from the reduction in identity fraud that would be expected to accrue on the introduction of the card.
- 10.57** At July 2016, DSP estimates savings in payments of €2.5 million since the introduction of the PSC, based on the suspension of welfare payments in instances where an individual invited to make a SAFE registration did not do so.

- 10.58** Progress has been made in developing a comprehensive identity management and privacy policy. In 2016, DSP launched an online system whereby other public bodies can authenticate their customers online. In addition, DPER has stated that it is working on the development of legislation for the regulation of data sharing between public bodies and for applicable safeguards and conditions.



# 11 Guardian *ad Litem* Service

- 11.1** Article 42A of the Constitution of Ireland provides that, in the resolution of all proceedings involving children, the best interests of the child must be the paramount consideration, and the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.<sup>1</sup> The appointment of a guardian *ad litem* is one of the mechanisms used by the courts to ensure that the best interests, and the views of the child, are heard in public family law proceedings.<sup>2</sup>
- 11.2** Section 26 of the Child Care Act 1991 as amended (the Act) provides that, if the child at the centre of child care proceedings<sup>3</sup> is not a party to those proceedings, the court may, if it is satisfied that it is necessary in the interests of the child and in the interest of justice to do so, appoint a guardian *ad litem* for the child. The guardian *ad litem* may, in turn, engage legal representation if they feel that it is in the child's interest to do so.
- 11.3** A guardian *ad litem* is also appointed in all applications to the High Court for special care orders. Special care involves the detention of a child for his or her own welfare and protection in a Special Care Unit with on-site educational and therapeutic supports. In the absence of primary legislation, special care has operated under the High Court's inherent jurisdiction since the 1990s.<sup>4</sup>
- 11.4** The Department of Children and Youth Affairs (the Department) was established in June 2011 to consolidate key areas of policy and provision for children, young people and their families. Although the Department became responsible for policy relating to guardian *ad litem* arrangements at this time, the responsibility for discharging the costs associated with the service rested with the Health Service Executive (HSE) until 2014 when the Child and Family Agency – Tusla was established.<sup>5</sup>
- 11.5** The Act provides that any costs incurred by a person in acting as a guardian *ad litem* shall be paid by Tusla. However, Tusla do not have a role in the management or monitoring of the service. Through the annual estimates process, the Department provide funding to Tusla which includes a budget for discharging legal costs including guardian *ad litem* costs.
- 11.6** Until the end of 2013, the costs associated with this service were reported by the HSE in their annual financial statements as professional services. Due to cost classification methods used in the HSE, comparative guardian *ad litem* costs for earlier years could not be reliably isolated from other professional service costs.

1 Following from the Children Referendum in November 2012, the Thirty-First Amendment of the Constitution (Children) Act 2012 inserted section 42A into the Constitution of Ireland. The Act was signed into law in April 2015.

2 The term 'guardian *ad litem*' literally translates as 'guardian for the suit'. It refers to the court appointed guardian in place for the duration of the court case.

3 In the context of public family law, the term 'child care proceedings', refers to the application to the courts, on behalf of the State, for an order concerning the care of a child.

4 Section 10 of the Child Care (Amendment) Act 2011 establishes special care on a statutory basis, and provides for the High Court as the appropriate court to consider matters of special care. Section 10 has not been commenced to date. In the interim, the High Court relies on its inherent jurisdiction in the granting of special care orders.

5 Tusla was established as an independent legal entity on 1 January 2014, comprising the HSE Children and Family Services, the Family Support Agency and the National Welfare Board.

**Figure 11.1 Summary of guardian *ad litem* costs**

	2014	2015
	€m	€m
Professional fees	9.1	8.2
Legal costs	7.4	5.9
<b>Total</b>	<b>16.5</b>	<b>14.1</b>

Source: Annual Financial Statements of the Child and Family Agency

### ***The role of the guardian ad litem in Ireland***

- 11.7** While the Act provides for the appointment of guardians *ad litem*, it is silent on the role. Furthermore, the legislation does not contain any guidelines on the eligibility criteria and qualifications of a person to be appointed as guardian *ad litem*, or their duties to the Court.
- 11.8** The role of the guardian *ad litem* was considered in the context of a special care case in 2007.<sup>1</sup> The judgement describes the function of the guardian *ad litem* as being twofold; firstly to place the views of the child before the court and secondly, to give the guardian's view as to what is in the best interests of the child.
- 11.9** The Children Acts Advisory Board (CAAB) was established under Section 20 of the Child Care (Amendment) Act 2007 to provide advice on policy issues relating to the co-ordinated delivery of services to children and young people at risk. One of the statutory functions of CAAB was to publish guidance on the qualifications, criteria for appointment, training and role of any guardian *ad litem* appointed for children in proceedings under the Child Care Act 1991.
- 11.10** In May 2009, CAAB published guidelines under the title "Giving a voice to children's wishes, feelings and interests".<sup>2</sup> The guidelines define the role of the guardian *ad litem* as to "independently establish the wishes, feelings, and interests of the child and present them to the court with recommendations". However, CAAB was dissolved with effect from 8 September 2011, and notwithstanding that they are widely accepted as best practice, the guidelines were never given a statutory footing.
- 11.11** Currently, there is no national management structure or body charged with oversight of the guardian *ad litem* service. The arrangements in place have evolved over time in order to meet the demand for the service. There are currently around 65 guardians *ad litem* operating in the State, either working alone, as part of a group or under a service provider umbrella (see Figure 11.2).
- 11.12** In October 2015, the Department launched a consultation paper on policy reform of the guardian *ad litem* service.<sup>3</sup> The paper acknowledges that reform of the current service is necessary to establish an accountable national system for service management and delivery. At the time of writing, the consultation process has been completed and the Department are preparing proposals for reform.

1 The judgement was delivered by Mr Justice MacMenamin in the case of HSE v K (a minor) 2007. An extract from this judgement has been set out at Annex A.

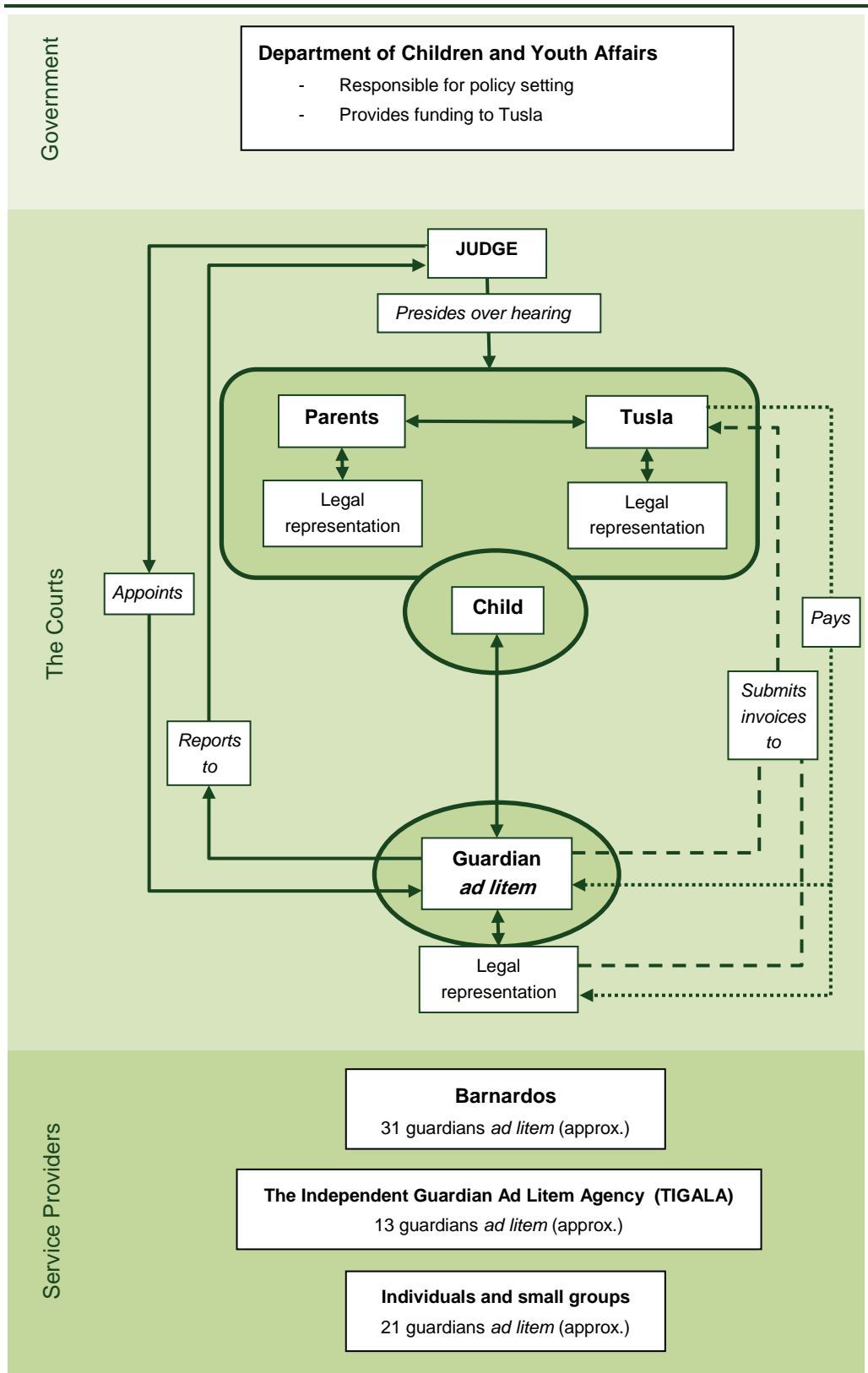
2 An extract from the CAAB guidelines has been set out at Annex B.

3 The National Strategy for Children and Young People's Participation in Decision-making 2015 – 2020 commits that the Department of Children and Youth Affairs will bring forward proposals to significantly reform the provisions of the Child Care Act 1991 relating to guardians *ad litem*.

### **Focus of this examination**

- 11.13** This examination reviewed
- the process by which a guardian *ad litem* is appointed in public proceedings
  - the costs associated with operating the service
  - the benchmarking of the service against the equivalent service in other common law jurisdictions.
- 11.14** In order to develop an understanding of the operation of the guardian *ad litem* service, the examination team met with Barnardos, the largest service provider of guardians *ad litem* in Ireland. They work with 31 of the estimated 65 guardians *ad litem* operating in the State, who represent approximately 800 children per year.



Figure 11.2 Overview of the guardian *ad litem* service

Source: Office of the Comptroller and Auditor General

Notes: Barnardos have been providing a guardian *ad litem* service to the courts since 1997.

TIGALA was formed over the period 2014-2015 by a number of guardians *ad litem* who had previously operated on an individual basis.

**11.15** In order to benchmark the service, the examination team researched the equivalent service in a number of other common law jurisdictions.

- Northern Ireland — the guardian *ad litem* service is managed by an independent State agency funded by the Department of Health, Social Services and Public Safety, known as the Northern Ireland Guardian Ad Litem Agency (NIGALA).
- England and Wales — the children's guardian service is managed by a non-departmental public body, accountable to the Secretary of State in the Ministry of Justice, known as the Children and Family Court Advisory and Support Services, (CAFCASS).
- Scotland — the person appointed to represent the interests of the child at a children's hearing is referred to as a safeguarder. The Scottish government has outsourced the operation and management of the national safeguarder panel to a national children's charity, Children 1<sup>st</sup>.

**11.16** This examination does not review or comment on

- guardian arrangements in private family law proceedings relating to children<sup>1</sup>
- the direct legal costs incurred by Tusla in child care proceedings
- the outcome of any legal proceedings or judicial actions
- the quality of the service provided by guardians *ad litem*.

### Appointment of a guardian *ad litem*

**11.17** In England, Wales and Northern Ireland, the legislation around child care cases states that the court shall appoint a guardian *ad litem* for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his/her interests. This usually results in an automatic entitlement to a guardian *ad litem* in child care cases in these jurisdictions.

**11.18** In Ireland, in cases heard under the Child Care Act 1991, the presiding judge is responsible for deciding if a guardian *ad litem* should be appointed in the case. The legislation states that when the court appoints a guardian *ad litem*, it must be satisfied that to do so is necessary in the interests of the child and in the interests of justice.<sup>2</sup>

**11.19** The legislation does not expand on this, but the CAAB guidelines include the following considerations which may affect the decision to appoint a guardian *ad litem*

- the complexity of the case
- the ability of the child concerned to express his/her wishes and feelings
- the nature of the care proceedings and the implications for the child and family.

**11.20** The CAAB guidelines also outline that the decision to appoint a guardian *ad litem* to a specific case may be influenced by the particulars of the case, such as when

- there is reduced or no parental support
- there are issues about a child's identity
- a child's liberty is at issue
- the child had been represented by a guardian *ad litem* in previous proceedings.

<sup>1</sup> Private family law proceedings relating to children are legislated for under the Guardianship of Infants Act 1964, as amended, and are concerned with such issues as custody, access and guardianship of children. Section 63 of the Children and Family Relationships Act 2015 inserts Part V, concerning the best interests of the child, into the Act of 1964.

<sup>2</sup> In practice, a guardian *ad litem* is always appointed to special care cases.

- 11.21** Barnardos has stated that, in its experience, when selecting a guardian *ad litem* for appointment, the court may request
- a list of persons currently available to take on additional cases
  - a number of persons' curricula vitae
  - a service provider, such as Barnardos, to nominate a person for appointment as a guardian *ad litem*
  - the parties involved in the case to agree between themselves and nominate a person for appointment as a guardian *ad litem*.
- 11.22** The Courts Service has stated that, in the Dublin Metropolitan District, it is practice to accept curricula vitae from persons who are available for appointment, and maintain this information on a database which can be accessed by the judiciary. The regulatory body, experience and qualifications of such persons are set out in their curricula vitae.<sup>1</sup> The Courts Service advised the examination team that all such persons on the database are Garda vetted and suitably qualified.
- 11.23** The examination team found that there is no national panel of persons or complete list of practitioners, available to the court when selecting a guardian *ad litem* to be appointed. As such, the method by which persons are selected for appointment may vary from judge to judge and case to case.
- 11.24** As previously stated, the legislation is silent on the eligibility criteria and qualifications necessary for a person to take on the role of a guardian *ad litem*. The CAAB guidelines recommend that candidates should
- be vetted by the Garda Síochána
  - have a third level qualification in social work, psychology or another third level qualification relevant to the role
  - have at least five years' postgraduate experience of working directly in the child welfare or protection system
  - have an understanding of child care and family law, and knowledge and experience of the courts system
  - have a skills set which includes analytical capability, well developed interpersonal skills, report writing skills, communication skills, and an ability to assess and understand complex family relationships
  - be independent of all other professionals and agency staff involved with the child and family.
- 11.25** Barnardos has informed the examination team that guardians *ad litem* recruited by them are selected, referenced and vetted in accordance with the CAAB guidelines.
- 11.26** The examination team found that, due to the nature of the appointment process described above, and the fact that the CAAB guidelines have no binding legal effect, it falls to the judge to consider the eligibility criteria when selecting a guardian *ad litem*. The Courts Service noted that each judge is independent in the exercise of his or her judicial functions and the choice of the guardian *ad litem* is one for the presiding judge.

<sup>1</sup> CORU is the regulatory body for health and social care professionals. The Psychological Society of Ireland is the regulatory body for psychologists.

- 11.27** The examination team sought data on the number of guardians *ad litem* appointed to child care cases. This information is not recorded by the Courts Service and could not be retrospectively collated. The Courts Service informed the examination team that the number of care orders granted by the District Court in 2015 was 7,771, (2014: 7,332). However, the data is not recorded using unique identifiers for individual children. Consequently, it is not possible to identify the number of children involved in these proceedings, as any one child could have been the subject of a number of orders or reviews of orders during the course of the year.
- 11.28** The most recent relevant information on the frequency with which guardians *ad litem* are appointed in child care cases comes from the Child Care Law Reporting Project.<sup>1</sup> This is an independent project supported by the Department of Children and Youth Affairs. It was established under Section 3 of the Child Care (Amendment) Act 2007, to examine and report on child care proceedings in the courts. The project collected data obtained by attending 1,194 District Court child care cases over the period December 2012 – June 2015, and observing and recording the particulars of the case.<sup>2</sup> The report estimated that a guardian *ad litem* was appointed in 53% of the District Court cases observed (636 cases).
- 11.29** However, the Child Care Law Reporting Project notes that this estimate may not be complete as it relates to a single point in time for each of the cases observed. It is possible that a guardian *ad litem* could have been discharged prior to the hearing or appointed after the hearing and the report would not have captured this. As a result, it is not possible to extrapolate a figure in order to estimate the level of demand for the guardian *ad litem* service.

### Cost of the professional service

- 11.30** Under Part IV of the Child Care Act 1991, as amended, Tusla has a duty to initiate care proceedings for children who are deemed unlikely to receive adequate care and protection in the absence of a court order. The CAAB guidelines highlight the need for the guardian *ad litem* to be independent of all other professionals and agency staff involved with the child and the family. However, under the current structure, the guardian *ad litem* is dependent on Tusla to meet their costs. The position of Tusla as the party initiating the proceedings, and as paymaster of the guardian *ad litem* costs, may lead to a perceived conflict of interest.
- 11.31** Tusla is the only State body in a position to gain an insight into the activity levels of the guardian *ad litem* service. However, as Tusla do not have a role in the management or monitoring of the service, the information they capture is purely for the purpose of financial control.
- 11.32** The examination team sought to establish an average caseload per guardian *ad litem*. In order to collate this information, Tusla contacted each service provider known to them as at 21 April 2016 and requested that they provide details on the current caseload of each of their guardians *ad litem*. As outlined in Figure 11.2, the guardian *ad litem* service is provided by Barnardos, TIGALA, and individuals and small groups. The responses for 65 guardians *ad litem* were received over a period of two months. Figure 11.3 summarises the information submitted by the guardians.
- 11.33** The examination team found that, notwithstanding that the information is self-reported and cannot be verified, the average caseload per guardian *ad litem*, across each service provider type appears to be consistent.

<sup>1</sup> The final report of the Child Care Law Reporting Project was published by Dr. Carol Coulter in November 2015. [www.childlawproject.ie](http://www.childlawproject.ie)

<sup>2</sup> The Child Care Law Reporting Project also attended 78 High Court cases relating to the Minors List over the period October 2014 to March 2015. A guardian *ad litem* was in place in 100% of these cases. The Minors List details minors detained under special care orders and their discharge arrangements. It is reviewed by the High Court on a weekly basis.

**Figure 11.3 Service providers' caseload, April 2016 to June 2016**

Service providers	Number of guardians <i>ad litem</i> identified	Number of cases on hand	% Share of caseload	Number of children represented	Average caseload per guardian <i>ad litem</i>
Barnardos	31	316	50%	541	10
TIGALA	13	113	18%	225	9
Individuals and small groups	21	200	32%	318	10
<b>Total</b>	<b>65</b>	<b>629</b>	<b>100%</b>	<b>1,084</b>	

Source: The Child and Family Agency

**Guardian *ad litem* professional fees and expenses**

**11.34** As shown in Figure 11.1, guardian *ad litem* professional fees paid in 2015 amounted to €8.2 million (2014: €9.1 million).<sup>1</sup> From a review of the Tusla payments, the examination team identified the main cost drivers impacting on the amounts being invoiced by the guardians *ad litem* as follows

- the number of professional hours billed per case
- the professional rate paid to a guardian *ad litem*
- the number of cases in which guardians *ad litem* are appointed.

**11.35** The examination noted that factors such as the complexity of the case, the number of times the care order is scheduled for review, and the length of time that the case is before the courts, can have an impact on the number of professional hours billed by the guardian *ad litem*.

**11.36** Tusla has no legislative authority to set the fees charged by guardians *ad litem*. Up to the end of 2014, there were no agreed standard hourly rates in place. Tusla informed the examination team that fees paid for representing a child could vary from anywhere between €85 and €111 per hour, and payment rates for related travel time could vary from €40 to €46 per hour.

**11.37** With effect from 1 January 2015, Tusla fixed the professional fee rate at €125 per hour and ceased payment for time spent travelling. The professional rate is applied to time spent attending court, writing court reports, meeting with the child, interviewing and meeting people central to the child and observing the child's interaction with them, as well as dealing with all relevant correspondence. Reimbursement of allowable motoring expenses is paid by way of a flat rate mileage allowance per kilometre in line with civil service rates.<sup>2</sup>

**11.38** Tusla informed the examination team that the new hourly professional fee set for 2015 onwards was agreed following an informal consultation process with a number of guardians *ad litem*. They stated that the rate determined takes account of the existing rates paid up to the end of 2014, the qualifications and experience required to fulfil the role, the hourly rates for other self-employed professionals, and the fact that travel time was no longer being paid. However, Tusla were unable to provide documentary evidence of this analysis to the examination team.

<sup>1</sup> **Correction:** the costs for 2014 and 2015 were incorrectly transposed in the originally published report. The correct figures are now shown.

<sup>2</sup> Civil service motor mileage rates vary from 21.22 cent per kilometre to 59.07 cent per kilometre depending on the engine capacity of the car and the cumulative number of miles travelled in a calendar year.

- 11.39** Barnardos informed the examination team that in 2014 they notified Tusla that the new standardised fee structure could lead to an increase in costs, as it would result in an increase in earnings for guardians *ad litem* who had a higher professional time to travel time ratio.
- 11.40** Tusla conducted an analysis to evaluate the impact of the revised fee structure. The analysis was conducted on the basis of re-calculation of invoices submitted for 27 individual guardians *ad litem* over the period January to June 2015 using the old fee structure. This analysis indicated a marginal savings rate of 2%.
- 11.41** While the analysis was limited to a comparison of invoices for six months of 2015 for about half of the guardians *ad litem* paid by Tusla, it does give an indication of the effect of revising the fee structure.

*Comparison of fee structure in common law jurisdictions*

- 11.42** The examination reviewed the fee structure in place in the other common law jurisdictions. As part of the review, the examination team established that the tasks associated with the role of guardian *ad litem* in each jurisdiction were broadly similar. In all of the common law jurisdictions, the service provided by the guardian *ad litem* includes
- liaising with the child and family members in order to establish the best interests of the child
  - engaging with the social work department and other professionals involved in the child's care plan
  - conducting a thorough assessment into the child's circumstances
  - providing independent recommendations and a written report to the court.
- 11.43** The Scottish fee structure system works on a flat fee basis. The initial appointment fee covers all preparatory work from appointment as guardian *ad litem*, and writing of the report through to court attendance, irrespective of the amount of time taken to perform these tasks. There is an additional flat fee paid for attendance at court and some further fees are payable depending on the particulars of the case, for example, the number of siblings involved in the case.
- 11.44** In Northern Ireland, and England and Wales, where the guardian *ad litem* service is managed by an independent State body, the role of a guardian *ad litem* is predominantly fulfilled by staff directly employed by those bodies. Both bodies also use a panel of self-employed qualified practitioners in times of increased demand for the service. An hourly rate applies to the self-employed workers and the employees are paid according to a set salary scale.
- 11.45** Figure 11.4 shows the results of the examination's comparison of rates paid to self-employed staff fulfilling the role of guardian *ad litem* in the common law jurisdictions. The rate paid in Ireland appears to compare unfavourably to the contracted hourly rate in other common law jurisdictions.
- 11.46** However, the examination team noted that in each of the other common law jurisdictions, in addition to the amounts paid to the guardian *ad litem* to provide the service, costs associated with the administration, operation and management of the service are also incurred by the governing bodies.

- 11.47** The examination team noted that, although there is a standard rate per hour paid in Ireland, there is not a standard service delivered. This is due to the variety of organisation structures providing the service. For example a guardian *ad litem* operating under Barnardos is supported by administration, management, training and supervision functions, whereas a guardian *ad litem* operating individually is less likely to have access to such support.

**Figure 11.4 Irish fee structure compared with other common law jurisdictions**

Fee structure <sup>a</sup>	Ireland	Northern Ireland	England and Wales	Scotland
Fee base	Per hour	Per hour	Per hour	Piecework
Fee rates for professional time – preparatory work, liaising with child and family and report writing	€125 p/h	€40 p/h	€42 p/h	€333 flat fee
Fee rates for professional time – attendance at court	€125 p/h	€40 p/h	€42 p/h	€167 flat fee
Fee rates - travel and waiting time	€0 p/h	€24 p/h	€42 p/h	Exceptional basis only <sup>b</sup>

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

Notes: a Sterling rates have been converted to € equivalent using the Central Bank exchange rate as at 8 June 2016.

b Under the Scottish fee structure, travel time is built into the flat fee payments for appointment and attendance at court. Return trips over 4 hours are classed as exceptional travel and attract an additional fixed fee of €83 for 4-6 hrs and €167 for round trips in excess of 6 hrs.

### **Financial controls over guardian *ad litem* costs**

- 11.48** As there is currently no governing body assigned with the responsibility to monitor or supervise the work performed by a guardian *ad litem*, Tusla, in its capacity as paymaster, has no means of verifying the accuracy of the hours invoiced. In order to determine whether the hours being claimed appeared reasonable and were consistent with other guardians *ad litem* invoices, Tusla applied additional control checks in 2015 which were further enhanced in 2016. Figure 11.5 outlines the financial controls applied and the timeline of implementation.

#### **Reasonableness checks**

- 11.49** Tusla has assigned responsibility for the reasonableness checks and retrospective reviews to a senior staff member with professional expertise of both the legal and child care systems. These checks are completed by visual inspection and examination of invoices submitted for payment by reference to the staff member's knowledge of the content of other invoices and the child care legal system.
- 11.50** The current system for conducting reasonableness checks, where reliance is placed on one staff member's knowledge of the system and previous invoicing by guardians *ad litem* increases the risk that potential over claiming would not be detected.

**11.51** The examination team noted that the reasonableness checks were not applied to invoices received from Barnardos, equating to 43% of the 2015 spend, until October 2015. Tusla informed the examination team that, due to the resources available, the implementation of the reasonableness checks was prioritised according to risk. Tusla gained some assurance from the internal procedures in place in Barnardos and therefore the reasonableness checks for these invoices were not introduced until the latter phase of the process.

**11.52** The examination team also found that when adjustments are required as a result of the reasonableness tests, the original invoice is withdrawn and a revised invoice is submitted by the guardian *ad litem*. There is no record of original and revised billing amounts maintained, and so the level of adjustment obtained as a result of the reasonableness checks cannot be measured. Tusla advised the examination team that this information has been captured for guardian *ad litem* invoices received from June 2016 onwards.

**Figure 11.5 Financial controls implemented by Tusla**

Financial controls applied to Guardian <i>ad litem</i> invoices					
Type of control	Details	Timeline of implementation			Outcome
		2014	2015	2016	
Standard control checks	Checks carried out to ensure invoice is valid and totals are correctly calculated. Invoice batches and payment files authorised at appropriate level within Tusla.	●	●	●	Tusla pays the approved guardian <i>ad litem</i> invoices.
Reasonableness checks	<b>Conducted at invoice level</b> Determine if hours claimed relate to guardian <i>ad litem</i> tasks. Ensure no duplication of claims for professional hours, mileage and expenses. Determine if the hours claimed appear reasonable based on Tusla's knowledge and understanding of the courts system and child care process. Determine if the level of hours claimed appears to be consistent with other guardians <i>ad litem</i> invoices.	◐	◐	●	Tusla issues queries to guardians <i>ad litem</i> on any anomalies noted and withholds payment of the invoice until the query has been resolved.
Retrospective reviews	<b>Conducted at guardian <i>ad litem</i> level</b> Informed by trends identified by the reasonableness checks at invoice level. Review of hours claimed and tasks completed on a cumulative level over an extended period of time.	○	◐	◐	Tusla identifies instances whereby potential refunds may be due.

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

Notes:

- Applied to all invoices
- ◐ Applied to a subset of invoices
- ◑ Carried out on an ad-hoc basis
- Not applied



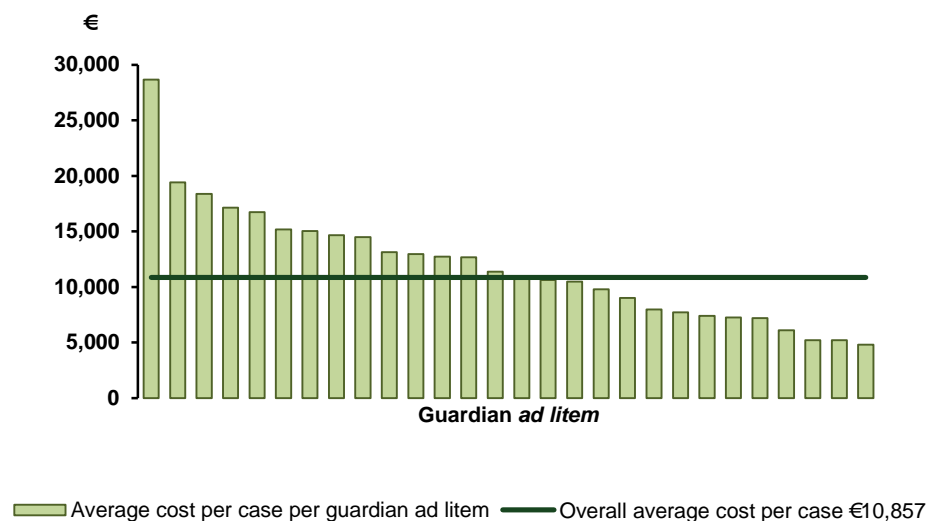
### Retrospective reviews

- 11.53** With effect from January 2015, Tusla began capturing the professional hours billed per guardian *ad litem*, excluding Barnardos, on a per case basis. This information along with the staff member's retained knowledge is used to identify trends and inform retrospective reviews.
- 11.54** A retrospective review involves a detailed examination of an anomaly identified, over an extended period of time. For example, Tusla may carry out a review of the cumulative hours billed per day by a guardian *ad litem*, spanning a number of cases, to ensure the aggregate hours claimed per day appear reasonable.
- 11.55** As guardians *ad litem* submit their invoices on a 'per case per month' basis, the tasks involved in collating the cumulative data and carrying out the retrospective reviews are resource intensive. Consequently, Tusla is restricted in how frequently its staff can perform these reviews.

### Average cost per case

- 11.56** As outlined earlier, the data captured by Tusla in relation to guardian *ad litem* costs is for the purpose of financial control. As a result, it does not use this data to develop and monitor performance measures such as the average cost per case by guardian *ad litem*. Analysis of trends in these measures would allow Tusla to develop a better understanding of how factors such as the complexity of the case, or the length of the case, impact on the overall costs.
- 11.57** For the purpose of this examination, Tusla provided the examination team with an analysis of information they had captured in relation to hours billed by 28 guardians *ad litem* for the period January to December 2015, by case and the average cost per case by guardian *ad litem*. The results of this analysis are shown below in Figure 11.6.

**Figure 11.6 Analysis of average cost per case by guardian *ad litem*, 2015**



**11.58** This does not present a full picture of the average cost per case, since an individual case may span a number of years and this data is limited to costs incurred in 2015. Notwithstanding these limitations, it shows a high level of variation in the average cost — from a low of €4,800 to a high of €28,700.

**11.59** Tusla informed the examination that the factors affecting the difference in average costs are numerous and varying and could include

- the approach taken by each guardian *ad litem* in carrying out their duties
- the nature and complexity of the specific case in question
- the number of children involved in each case
- the number of court attendances required throughout the duration of the case.

**11.60** The data above indicates how analysis of metrics such as the average cost per case and the factors giving rise to changes in the average cost could be used to assess the cost effectiveness of the service.

### *Resolution of queries*

**11.61** The examination team noted that Tusla negotiates with the guardian *ad litem* to resolve queries or issues arising from their control checks. As there is no legislative basis for doing so, this process is dependent on the guardian *ad litem* engaging with Tusla.

**11.62** The Child Care Act 1991 provides for Tusla to apply to the courts to have guardians *ad litem* costs or expenses measured or taxed.<sup>1</sup> To date, Tusla has not exercised this option. It informed the examination team that, for the most part, anomalies are identified when guardian *ad litem* invoices are reviewed at a cumulative level, covering multiple cases. An application for measurement or taxation of costs can only be made on a case by case basis and can only be heard by the judge who appointed the guardian *ad litem*. It is not possible for Tusla to resolve queries that span a number of cases by means of measurement or taxation.

### **Cost of legal services**

**11.63** The CAAB guidance acknowledges that the guardian *ad litem* may need to appoint a legal representative to ensure that the child's wishes, feelings and best interests are adequately represented to the court. The guidelines also suggest that the guardian *ad litem* should seek the approval of the court when engaging legal representation.

**11.64** Under the current provisions of the Child Care Act 1991,<sup>2</sup> a child cannot be represented directly by both a solicitor and a guardian *ad litem*.<sup>3</sup> This has led to a practice whereby, when the guardian *ad litem* feels that legal representation is necessary, they engage, instruct and direct a solicitor to act on their behalf. This contrasts with the system in place in England, Wales and Northern Ireland whereby the child can be directly represented by both a solicitor and a guardian *ad litem*.

**11.65** There is no data collected on the number of guardians *ad litem* who engage legal representation. However, the Child Care Law Reporting project found that in the 636 cases observed in the District Court, the guardian *ad litem* was represented by a solicitor in 82% of the cases and a barrister in 7%. This would suggest that legal representation is sought in the majority of cases.

<sup>1</sup> Taxation and measurement of costs is designed to be an independent and impartial process of assessment of costs which endeavours to achieve a balance between the costs involved and the services rendered. Costs associated with cases heard in the District Court can be referred back to the relevant District Court judge to be measured. In cases heard by the High Court, the judge can either measure the costs or make an order to have the costs taxed by the Taxing Master.

<sup>2</sup> Section 25 of the Child Care Act provides for the court, having regard to the age, understanding and wishes of the child, to make the child a party to the proceedings, and if the court sees fit, to appoint a solicitor to represent the child. Section 26 (4) provides that if a child is made a party to proceedings the order to appoint a guardian *ad litem* shall cease to have effect.

<sup>3</sup> In Special Care cases heard under the inherent jurisdiction of the High Court the child may be represented directly by a guardian *ad litem* and a solicitor or barrister.

- 11.66** Barnardos have provided their guardians *ad litem* with guidelines to be considered when deciding whether legal representation is necessary. The guidelines cover factors such as the complexity of the case, the number of other parties to the proceedings, and the significant issues of the case which require legal representation. The guidelines also state that the guardian *ad litem* should consult with their supervisor as to the necessity of legal representation.
- 11.67** Guardian *ad litem* legal representation costs in 2015 amounted to €5.9 million (2014: €7.4 million), comprising solicitors' fees of €5 million and counsel fees of €0.9 million. Figure 11.7 gives an overview of the distribution of the total spend on legal representation across the number of suppliers paid in the period. Payments may be to individual solicitors, barristers or firms.

**Figure 11.7 Guardian *ad litem* solicitor and counsel fees, 2014 and 2015**

Payment bands (in year)	2014	2015
0 – €50,000	46 <sup>a</sup>	56
€50,001 – €100,000	5 <sup>a</sup>	9
€100,001 – €200,000	10	5
€200,001 – €400,000	6	5
€400,001 – €600,000	3	3
Payments greater than €600,001	2	1
<b>Total</b>	<b>72<sup>a</sup></b>	<b>79</b>

Source: The Child and Family Agency

Note: a **Correction:** The number of payees for 2014 was originally overstated due to data matching difficulties. The correct figures are now shown.

- 11.68** As set out in the Department of Public Expenditure and Reform (DPER) circular 05/2013,<sup>1</sup> public bodies are required to use a competitive process when procuring legal services. The circular outlines that public authorities with a frequent need for legal services have the option of setting up panels consisting of suitable qualified legal practitioners. The circular also notes that services which attract an estimated cost in excess of €25,000 should be subject to a competitive tendering process.
- 11.69** While Tusla – a State body – has a responsibility to pay the guardian *ad litem* legal costs, it has no involvement in the appointment or selection of guardians *ad litem* or their legal representatives. The selection and appointment of legal representation is usually a matter for each individual guardian *ad litem*.<sup>2</sup> As a result, because guardians *ad litem* are not employed or managed by a public body, the procurement of their legal services does not come under the scope of DPER's guidance in that regard. Significant expenditure incurred in relation to legal services associated with the guardian *ad litem* service has therefore not been subject to competitive tendering.
- 11.70** The examination team found that 36 of the 79 solicitor firms received payments in 2015 in excess of the public procurement threshold for competitive tendering of €25,000, at a total cost to Tusla of €5.6 million.
- 11.71** Barnardos informed the examination team that they encourage their guardians *ad litem* to be cost effective when selecting legal representation. They also request that their guardians *ad litem* use a varied group of solicitors.

1 Circular 05/2013 Procurement of Legal Services and Managing Legal Costs.

2 In the case of special care orders heard by the High Court the selection and appointment of a solicitor may not always fall to the guardian *ad litem*.

- 11.72** Tusla has no oversight of the level of legal expenditure that the guardian *ad litem* incurs until the invoice is presented for payment. Equally, the guardian *ad litem* has no oversight of the fees charged by their own legal representatives as these are submitted directly to Tusla.
- 11.73** It is open for Tusla to challenge the costs of the guardians *ad litem* legal representation when the bill of costs is presented, unless the costs have been fixed by the court. In order to gain some assurance over the costs incurred, Tusla asks its own solicitors involved in the same proceedings to review the bill of costs and assess for reasonableness. Where Tusla's solicitor is of the view that the bill of costs may be too high in the circumstances of the case, they will negotiate — on Tusla's behalf — a reduction in the costs. Tusla's solicitors bill at their hourly professional rate for providing this service. Tusla estimates the costs associated with the fee negotiation service in 2015 to be €123,750.
- 11.74** The examination team analysed a sample of 37 legal invoices with a total original claim value of €358,816, paid in 2015. Reductions were negotiated in 81% of the invoices tested, resulting in savings of €94,023 or 29% of amounts originally billed.
- 11.75** Further high level analysis by Tusla of all legal invoices sent for payment in 2015 indicated that reductions were secured in 71% of cases amounting to €1.89 million which equated to 24% of the amounts originally billed.
- 11.76** Tusla does not record the basis for the reduction in legal costs, and the examination team was unable to extract this information directly from the detail recorded on the legal invoices. In order to inform the examination, Tusla requested this information from two of their solicitor firms. The responses received indicate that reductions may be secured based on
- the overall fee charged by the solicitor for taking instructions from their client throughout the case
  - the time spent in attendance at court
  - costs and outlays associated with administrative tasks
  - overall professional time billed to the case.
- 11.77** In 2016, when Tusla began accepting guardian *ad litem* legal invoices through an electronic system, it ceased capturing the original invoiced amounts. On foot of the examination team's concerns regarding the loss of this information, and the impact that this would have on Tusla's ability to measure the effectiveness of the fee negotiation process, Tusla informed the examination team that it has recommenced manually recording original invoiced amounts with effect from June 2016.
- 11.78** Similar to guardian *ad litem* professional fees, Tusla has the option to refer the guardians *ad litem* legal costs to the courts for taxation or measurement, in cases where agreement cannot be reached. However, prior to initiating this process, Tusla engages the services of a legal cost accountant to further examine the costs and negotiate on their behalf. Tusla informed the examination team that, since 2014, four cases have been referred to the legal cost accountants at a cost of €39,290, resulting in reductions in the region of €693,000, from original invoices amounting to €1,366,980. No cases have progressed to taxation.

## Benchmarking of the service

- 11.79** As previously outlined, the examination attempted to benchmark the service provided in Ireland with the equivalent service in other common law jurisdictions. In doing so, the examination team reviewed the key statistical information on the demand for the service, and the key features of a model service.
- 11.80** The examination team obtained key statistics on the guardian *ad litem*, or equivalent, service in each of the other common law jurisdictions, from NIGALA, CAFCASS and Children's 1<sup>st</sup>. These statistics are based on the financial reporting period 1 April 2014 to 30 March 2015. The examination team used the mid-2014 population estimates as published by the Office for National Statistics to establish the child population for each of the common law jurisdictions in the United Kingdom. The figure for the child population in Ireland was extracted from the annual population estimates collated by the Central Statistics Office. These statistics form the basis of the comparison in Figure 11.8.

**Figure 11.8 Demand in Ireland compared to other common law jurisdictions 2014/2015**

Key statistics on the demand for the service	Ireland	Northern Ireland	England and Wales	Scotland
Number of guardians <i>ad litem</i> in operation	65 <sup>a</sup>	53	770 <sup>b</sup>	196
Number of appointments of guardians <i>ad litem</i> to public care proceedings	Unknown	704	11,159 <sup>c</sup>	1,586
Average number of cases per guardian <i>ad litem</i>	10 <sup>a</sup>	13	14.5	8
Number of children represented by guardians <i>ad litem</i> in public care proceedings	Unknown	1,052	19,420	2,287
Estimated child population aged 0-17 years in 2014	1,194,462	433,161	12,221,310	1,032,698
Average number of guardians <i>ad litem</i> per 10,000 child population	0.54	1.22	0.63	1.90

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

- Notes:
- a This figure is estimated based on a review of the financial information collated by Tusla (see Figure 11.3).
  - b This figure is estimated based on the total number of practitioners in operation in the period (1,400) and the percentage assigned to public law cases (55%) as determined by CAFCASS.
  - c This figure is estimated based on the care level demand. The actual number of appointments is not separately recorded by CAFCASS. CAFCASS have confirmed that any variance between the care level demand and the number of appointments is likely to be marginal.

- 11.81** As previously stated key statistics, such as the number of court appointments of guardians *ad litem* in Ireland, are unknown. The examination team noted that the statistics collected in the other common law jurisdictions are used to provide key performance indicators, to assess demand for the service, to forecast and budget for expected costs and to measure trends in the delivery of the service over periods of time.

- 11.82** The examination attempted to identify the key features of the service, as informed by the CAAB guidelines, and the examination team's research into the operation of the service in other common law jurisdictions. The examination team used these key features to benchmark the service in Ireland against that in other common law jurisdictions. Figure 11.9 presents the result of the benchmarking exercise.
- 11.83** The examination team noted that Barnardos has developed its own internal practice manual based on the CAAB guidelines, its own internal working policies and experience in the role. Barnardos has informed the examination team that it has internal structures in place for the training, supervision, support and management of their guardians *ad litem*. As such, the examination team found that at least 50% and possibly more of the guardians *ad litem* in Ireland are operating in a structured environment, albeit one that is not currently regulated or monitored at a national level.

**Figure 11.9 Key features of the service in Ireland compared to other common law jurisdictions.**

Key features of the service	Ireland	Northern Ireland	England and Wales	Scotland
The role of the guardian <i>ad litem</i> is clearly defined.	●	●	●	●
The service is managed by a body, independent of the parties involved in the legal proceedings.	○	●	●	●
There is a national panel, or complete record of people who can be appointed to the position of guardian <i>ad litem</i> .	○	●	●	●
Guardians <i>ad litem</i> are vetted against minimum eligibility criteria prior to appointment.	●	●	●	●
Structured arrangements are in place for monitoring and supervising of guardian <i>ad litem</i> activities	●	●	●	●
Structured arrangements are in place for the training of guardians <i>ad litem</i>	●	●	●	●
Clearly defined key performance indicators are in place.	○	●	●	●

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

- Notes:
- Feature applies throughout the service at a national level
  - Feature is adopted to varying degrees by the service providers
  - Feature is not currently applied to the service

## Conclusions and recommendations

- 11.84** Regulation of the guardian *ad litem* service could help to ensure that a quality standardised service is available. Although the CAAB guidelines, published in May 2009, attempted to address the lack of practice standards in place, they cannot be enforced without a legislative basis. As a result, there is a lack of transparency surrounding the selection, registration and vetting of practitioners who fulfil the role of guardian *ad litem*.

The Accounting Officer of the Department of Children and Youth Affairs has stated that his department is currently in the process of finalising policy proposals for substantial reform of statutory provisions governing guardian *ad litem* arrangements in proceedings under the Child Care Act 1991. Subject to the approval of proposals by the Minister and the Government, the Department aims to have the General Scheme and Heads of Bill prepared by the end of 2016 for consideration by Government. As a first step, the Minister recently obtained the agreement in principle of Government to a proposed policy approach to key aspects of guardian *ad litem* reform.

While the detailed reform proposals will be subject to Government approval, it is envisaged that reform measures will provide a clear statutory framework for the management and delivery of a national guardian *ad litem* service, including vetting and qualification standpoints formulated having had regard to the CAAB guidelines. The intention is to enable the courts to be provided with clear and full details of all those who may be appointed as a guardian *ad litem* in child care proceedings.

- 11.85** Tusla, in its current position as paymaster, is responsible for ensuring that adequate financial controls over payments to guardians *ad litem* continue to be applied. There is no complete record of the number of cases guardians *ad litem* are appointed to, or the average hours worked per case. As a result, Tusla is limited in its ability to monitor metrics such as the average cost per case, or identify and review cases with higher than average costs.

### Recommendation 11.1

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

#### Tusla Chief Executive Officer's response

Agreed. The Agency will seek to further develop methods of identifying and measuring guardian *ad litem* costs in order to identify outliers and gain assurance that costs over and above average are appropriate.

#### Accounting Officer's response

I fully accept this recommendation which is addressed to Tusla. The Department will engage with Tusla with a view to enhancing the approach to reasonableness checks and retrospective reviews already in place, as well as the development of a range of performance metrics.

- 11.86** The responsibility to monitor and manage the guardian *ad litem* service has not been assigned to any State body. As a result, there is a lack of reliable information available on the operation of the service. There are no processes in place to measure demand for the service, assess performance, or deal with complaints. Furthermore, key metrics are not available to the Department in order to forecast and budget for expected costs. In addition, Tusla's responsibility to discharge the costs of guardians *ad litem* appears to be contrary to the CAAB guidelines on independence.

### Recommendation 11.2

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

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

#### Accounting Officer's response

Agreed. Subject to Government approval, legislative reforms will seek to assign responsibility for the management and supervision of a reformed service to a single entity that is independent of the parties to the proceedings. The statistical information to be gathered and the identification/application of appropriate key performance indicators will form part of the arrangements to be made with the national service provider.

Until such time as a national service provider is in place, the Department will continue to engage with Tusla to obtain necessary insight to the processes, practicalities and timelines involved.

- 11.87** Of the €5.9 million guardian *ad litem* legal costs paid in 2015, €5.6 million involved payments to individuals or firms in excess of €25,000 — the normal level at which an open competitive public procurement is required. The method of recruitment of legal representation by the guardian *ad litem* means that no single entity is responsible for procuring services, and accordingly the services are not subject to competitive procurement.

### Recommendation 11.3

The Department of Children and Youth Affairs should examine the options for engagement of guardian *ad litem* legal representatives by way of a competitive tendering process.

#### Accounting Officer's response

Agreed. Subject to Government approval, reform measures will include provision in legislation to address the provision of legal services for guardians *ad litem*. A number of options, including the possibility of a competitive tendering process, will be examined with a view to introducing a standard basis for engaging such services that is as transparent, cost effective, stable and predictable as possible.



## **Annex A Judgement of Mr Justice MacMenamin in the case of HSE v K (a minor), 2007**

### ***Context of the judgement***

This judgement of Mr Justice MacMenamin in the case of HSE v K (a minor) 2007 was made in the context of a special care case.

Special care is short term care in a secured therapeutic environment known as a special care unit. A child who is taken into care under a special care order is placed in a special care unit and detained for his or her own welfare and protection. Given the restriction on the child's liberty, special care placements can only be made pursuant to an Order of the High Court.

Although the role of the guardian *ad litem* outlined in this judgement is specific to special care cases, the functions described apply to the role of the guardian *ad litem* in care proceedings in general.

The judgement below was delivered when the HSE was responsible for the care and welfare of the child. Since 2014, that responsibility now lies with Tusla.

### ***Extract from the judgement***

#### **59. 6. The role of the guardian *ad litem***

It has been pointed out:-

(a) Unless there are exceptional circumstances only suitably qualified guardians *ad litem* will be used in High Court proceedings in the Minors List.

(b) The function of the guardian should be twofold; firstly to place the views of the child before the court, and secondly to give the guardian's views as to what is in the best interests of the child.

(c) A guardian *ad litem* should bring to the attention of the Health Service Executive any risks which he or she believes may adversely affect the best interests of the child, and if not satisfied with the response may bring the matter to the attention of the court. The guardian *ad litem* should take steps where necessary to co-operate with, and where possible share relevant information with, other care professionals engaged with the minor.

(d) A duty of a guardian *ad litem* is to ensure compliance with the constitutional rights of a minor. For this purpose, the guardian should ensure that there is provided to the minor a means of making his or her views known.

(e) A guardian *ad litem* may fulfil the dual function of reporting to the court regarding the child's care and also by acting as the child's representative in any court proceedings and thereby communicating to the court the child's views.

- (f) On an application for detention, and for the appointment of a guardian *ad litem* the court should be afforded such basic information as would suffice to satisfy it that the said person was an appropriate candidate to act as a guardian *ad litem*. In particular, the court should be furnished with the qualifications of the guardian *ad litem* and also details of any vetting of such person by An Garda Síochána.
- (g) The guardian *ad litem* should meet the minor as often as necessary in order to be satisfied that the minor's wishes and views are adequately represented regarding his or her detention and care.
- (h) The guardian *ad litem* should meet with the minor's family or carers in the community and be familiar with their views and desires regarding the minor's detention and care.
- (i) The guardian *ad litem* should make himself/herself aware of the minor's history and the minor's interaction with the various social service agencies.
- (j) The guardian *ad litem* should seek to interact in a positive way with the staff of the Health Service Executive charged with the minor's care while in detention. The guardian should ensure that their views concerning the minor's welfare are expressed at each case conference meeting held by the H.S.E. to discuss the minor's care, and should be familiar with the outcome of decisions reached at such meeting.
- (k) When proceedings are listed before the court, the guardian *ad litem* should, where necessary, prepare a report specifically addressing the issues set out above. Additionally, where an issue arises from the contents of any other reports are prepared for the court by other parties to the proceedings, the guardian *ad litem* should, where necessary, address those issues in the report. This can only be done where such reports are available to the guardian *ad litem* in sufficient time.
- (l) When the Health Service Executive moves to have a minor discharged from secure care, the guardian *ad litem* should apprise the court of the child's view regarding his onward placement. In addition, the guardian *ad litem* should inform the court of his or her professional opinion regarding such a move and the proposed onward placement.
- (m) Where a divergence of opinion as to the care of the minor exists between the Health Service Executive and the guardian *ad litem*, the guardian should first attempt to resolve this issue with the H.S.E. However, where this is not possible, the guardian *ad litem* should inform the court as soon as practicable of their concerns.
- (n) Where a minor has absconded from secure care and the guardian *ad litem* is aware of this, the guardian *ad litem* should be satisfied that steps are being taken to address the problem. If the issue persists, then the guardian *ad litem* should take steps to inform the court of the minor's absence having first informed the H.S.E. that they are about to do so.
- (o) The guardian *ad litem* should express a view to the court as to how a case is best kept under review after a minor is discharged from secure care. When a minor is discharged from such care the guardian *ad litem* should confirm with the court whether they are to continue to remain involved in the proceedings.

## Annex B Section 1 of the Children's Act Advisory Board guidelines - "Giving a voice to children's wishes, feelings and interests," May 2009

### Section 1: Guidance for the Role, Appointment, Qualifications and Training of Guardians *ad Litem*

#### 1.1 Role

Following the CAAB's consultation with national stakeholders it was agreed that the role of the guardian *ad litem* should be to "**independently establish the wishes, feelings and interests of the child and present them to the court with recommendations**".

The guardian *ad litem* has a dual role, to inform the court of the child's wishes and feelings and to advise on the child's best interests.

This role informs – or at the very least influences – the appointment, qualifications and specific training of candidates for the role of guardian *ad litem*.

In this light, Section 1 is the core of the document, setting the tone for what follows in Sections 2 and 3. Section 1 looks at good practice standards for the role, appointment criteria, qualifications, and finally training.

#### 1.2 Standards for Good Practice

##### 1.2.1 Summary of Standards

In providing independent representation to a child who is the subject of child care proceedings under the Act of 1991, the guardian *ad litem* must recognise the Health Service Executive's responsibility for management of any case in which s/he is involved. The following standards are applicable to the various aspects of the role of a guardian *ad litem*:

- (a) **Independence:** the guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.
- (b) **Inclusiveness:** the guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.
- (c) **Inquiry into the child's circumstances:** the guardian *ad litem*'s approach to the task shall be planned, focused, and flexible. Avoiding delay, other than planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the

Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

- (d) **Interests of the child:** the guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are ascertained and adequately represented to the court.
- (e) **Evaluation and report:** the guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.
- (f) **Attendance at court:** the guardian *ad litem* shall attend on all court dates unless excused by the court.
- (g) **Closing the case:** when proceedings have concluded, the guardian *ad litem*'s involvement in the case ceases. However, if the case is scheduled for further review, s/he shall seek clarification from the court regarding its expectations of his/her further involvement.

These standards are now examined in more depth.

##### 1.2.2 Independence

The guardian *ad litem* is independent of all other professionals and agency staff involved with the child and family.

To achieve this, a guardian *ad litem* shall:

- (a) Avoid cases where there may be a conflict or a perceived conflict of interest for him/her and notify the court of any possible conflict that may arise in the course of proceedings.
- (b) Take professional responsibility for his/her assessment and recommendations in each case and be accountable to the court.
- (c) Seek to achieve an appropriate outcome based on the wishes, feelings and interests of the child through adopting a partnership approach and consulting and involving all parties.

### 1.2.3 Inclusiveness

The guardian *ad litem* shall ensure that the views of all parties and others of significance are taken into account.

To achieve this, a guardian shall:

- (a) Ensure the child is aware of what is happening throughout the proceedings and of the outcome.
- (b) Taking into account the age and/or level of maturity of the child and using professional judgment, consider sharing some or all of the contents of his/her report with the child.
- (c) Ensure his/her report is made available to all parties, via their legal representatives where appropriate, and that recommendations are included.
- (d) Explain the nature and purpose of expert assessments and examinations which s/he recommends and seek the agreement of all parties on such provision.

### 1.2.4 Inquiry into the Child's Circumstances

The guardian *ad litem*'s approach to the task shall be planned, focused and flexible. Avoiding delay, other than that which is planned and purposeful, will be a priority. The inquiry shall comply with the provisions of the Freedom of Information Acts, 1997 and 2003, and the Data Protection Acts, 1998 and 2003.

In conducting an inquiry a guardian *ad litem* shall:

- (a) Address areas relevant to the particular court proceedings.
- (b) Record initial and updated plans throughout the investigation and retain these together with notes and other documentation acquired throughout the inquiry.
- (c) Inform the child of the nature and purpose of the guardian *ad litem*'s role.
- (d) Be aware of the duty of confidentiality under the provisions of Children First National Guidelines 1999 whether updated, amended or replaced, professional confidentiality, the limitations of confidentiality in certain circumstances and the rights to privacy.
- (e) Comply with the requirements of the Data Protection Acts, 1998 and 2003 and the Freedom of Information Acts, 1997 and 2003 together with the rights to privacy of all individuals.

### 1.2.5 Interests of the Child

The guardian *ad litem* shall meet the child as often as necessary to be satisfied that his/her wishes, feelings and interests are adequately represented to the court.

To achieve this, a guardian *ad litem* shall:

- (a) Regularly analyse, review and assess any risks to the child.
- (b) Continually focus on the need to arrive at specific decisions that are in the child's interests and evaluate all information obtained throughout the inquiry taking account of the rights of the child and his/her parent(s), guardian(s) or carer(s).
- (c) Report on any other issues as appropriate as directed or requested by the court.
- (d) State for the court's assistance, key areas of agreement and disagreement between the relevant parties including the child, to the proceedings.
- (e) Comment on the criteria for making an order for the proceedings in question.
- (f) Consider whether it is in the child's interests to seek the appointment of a legal representative to represent the child in the proceedings.
- (g) Consider seeking the approval of the court regarding:
  1. The appointment of a legal representative for the guardian *ad litem*.
  2. Consulting where necessary, with a legal professional regarding legal issues in the proceedings.
- (h) In particular, when representing children in special care or civil detention, a guardian *ad litem* shall:
  1. Keep in mind the constitutional rights of the child and his/her parents.
  2. Inquire into the circumstances in which the child is placed in a special care unit or civil detention by High Court Order, reporting to the court on the suitability of the placement, the appropriateness of the care plan and any alternatives.

### 1.2.6 Evaluation and Report

The guardian *ad litem* shall complete a written report for the court, unless the exceptional nature of the case requires otherwise.

To achieve this, a guardian *ad litem* shall:

- (a) Systematically analyse all the material gathered before writing the report.
- (b) Address significant differences in views and incorporate these into the report.
- (c) Focus on a well-argued independent case analysis containing clear recommendations to help the court make appropriate decisions for the child.
- (d) Consider and report on all options open to the court and indicate the suitability or otherwise of each.
- (e) Be familiar with all work undertaken together with its relevance and refer to relevant professional knowledge and research findings in support of recommendations.
- (f) Not duplicate work done elsewhere.
- (g) Not take on the responsibilities of other service providers or agencies.
- (h) Highlight any issues regarding the services available to the child.
- (i) Ensure that where interim reports are requested by the court, each report contains up-to-date information.
- (j) Make reports available to all parties involved before the next court date, the timetabling for which should be agreed at previous hearings.

### 1.2.7 Attendance at Court

The guardian *ad litem* shall attend on all court dates unless excused by the court.

The purpose of attending will be to:

- (a) Present a report to the court and be available to give evidence.
- (b) Bring to the court's attention any urgent matter affecting or likely to affect the child's rights, well-being and interests.

- (c) Assist in the overall court management of the case by contributing at court hearings relevant views which focus on the child's needs.
- (d) Alert the court to issues of avoidable delay in decision-making for the child.

### 1.2.8 Closing the Case

When proceedings have concluded, the guardian *ad litem*'s involvement in the case ceases. If the case is scheduled for further review, the guardian *ad litem* shall seek the court's clarification on its expectations of his/her further involvement.

In addition:

- (a) When proceedings conclude, the guardian *ad litem* shall advise the child of the outcome of the case and of the termination of his/her involvement.
- (b) S/he shall inform other relevant individuals, for example expert witnesses, of the outcome of the court hearing and that the guardian *ad litem*'s involvement has concluded.
- (c) At the close of proceedings the guardian *ad litem* shall ensure that appropriate security measures are taken against unauthorised access to, or alteration, disclosure or destruction of any data gathered during the course of the case and against their accidental loss or destruction in accordance with the provisions of Section 2(1)(d) of the Data Protection Act, 1988.

## 1.3 Appointment Standards

### 1.3.1 Interpretation of the Term 'Criteria for Appointment'

It was further acknowledged during the consultative process that the term 'criteria for appointment' could have two meanings. Firstly that those wishing to become guardians *ad litem* shall comply with the eligibility criteria set out in 1.3.2 below; and secondly, that the court may consider the guidance suggested by the CAAB in deciding to appoint a guardian *ad litem* to a specific case as described in 1.3.3.



### 1.3.2 Eligibility for Appointment to the Role of Guardian *ad Litem*

To be eligible for appointment to the role of guardian *ad litem*, the following criteria shall be adhered to:

- (a) Candidates for the role of guardian *ad litem* must be vetted by An Garda Síochána.
- (b) Candidates must be prepared to provide a self-declared statement of fitness to practice every three years.
- (c) If a candidate has lived in any country other than Ireland for longer than three months, s/he must be vetted by the police of that country.
- (d) Candidates must supply the required number of references.
- (e) Candidates must have a third level qualification in, social work recognised by the National Social Work Qualifications Board, psychology or other third level qualification relevant to the role.
- (f) Candidates must have at least five years' postgraduate experience of working directly in child welfare/protection systems.

### 1.3.3 Guidance on the Appointment of a Guardian *ad Litem* by a Court in a Specific Case

Areas of consideration that may influence the appointment of guardians *ad litem* to specific cases shall include:

- (a) Only suitably qualified persons, as outlined at 2.4 shall be appointed as guardians *ad litem*.
- (b) The complexity of the case, for example where there is a difficulty in identifying an appropriate placement for the child.
- (c) The ability of the child concerned to express his/her wishes and feelings.
- (d) The nature of the proceedings and the implications for child and family, for instance in some circumstances, there may be the possibility of long-term separation from parents, siblings or extended family.
- (e) Cases, where there is reduced or no parental support or where parent(s)/guardian(s) are absent.

- (f) Cases where there are issues about a child's identity, nationality or entitlement to residence in the jurisdiction. S/he may be separated from his/her family or be an unaccompanied minor.
- (g) Cases where a child's liberty is at issue, for example where the young person's emotional and behavioural needs can only be met at that time by a secure placement in a special care unit and where the HSE seeks a special care placement for the child.
- (h) Cases where other circumstances exist as determined by a court, such as the effects on the child of an out-of-state placement due to the unavailability of an appropriate placement nationally.
- (i) A guardian *ad litem* who has been appointed to represent a child in previous proceedings may be appointed in new proceedings.

### 1.3.4 Interests of the Child, Justice and Benefit to the Court

#### Overview

In addition to 1.3.3 above, legislation states that when a court appoints a guardian *ad litem* it must be satisfied that to do so is in the interests of the child and justice. Additionally, there should be a benefit to the court in making such an appointment. The interests of each of these may and sometimes do overlap. The following are examples of how the interests of the child and justice can be served and benefits to the court can be achieved.

#### 1.3.4.1 Interests of the Child

Appointing a guardian *ad litem* can serve the child's interests by:

- (a) Examining the nature of proceedings and the implications of the proceedings for the child, his/her family, parent(s), guardian(s) or carer(s).
- (b) Ensuring the complexity of the case does not prevent achieving an appropriate outcome to the proceedings.
- (c) Assessing the child's ability to express his/her wishes and feelings and ensuring these are communicated to the court.

- (d) Ensuring the child's circumstances are considered in every case.
- (e) Considering and addressing areas of disagreement between parties and the possible implications of any disagreement for a child who is the subject of care proceedings.

#### 1.3.4.2 Interests of Justice

Appointing a guardian *ad litem* can serve justice by:

- (a) Determining the nature of the proceedings before the court.
- (b) Assessing the complexity or otherwise of the case.
- (c) Identifying possible areas of disagreement between parties that can affect the outcome of the case.

#### 1.3.4.3 Benefit to the Court

Appointments may be made by a court of its own motion or following an application by a party to the proceedings.

A guardian *ad litem* can be of benefit to the court by:

- (a) Ensuring that the wishes, feelings and interests of the child are made known to the court.
- (b) Assisting the court with independent professional advice.

In addition, during the consultative process, stakeholders acknowledged that independent appointments made by the court ensured that guardians *ad litem* were seen to be and were in effect independent.

The following are important in maintaining the independent role of the guardian *ad litem*:

- (c) The court of its own motion appointing a guardian *ad litem*.
- (d) The court appointing a guardian *ad litem* based on the application of any party to the proceedings.
- (e) The court independently appointing a guardian *ad litem*.

## 1.4 Standards for Qualification

Guardians *ad litem* shall meet certain standards in order to qualify for the role namely:

- (a) Possess a third level qualification in, social work recognised by the National Social Work Qualifications Board, psychology or other third level qualification relevant to the role.
- (b) Have a minimum of five years postgraduate direct experience in child welfare and/or protection work.
- (c) Have an understanding of child care and family law.
- (d) Have knowledge and experience of the courts system.
- (e) Possess analytical capability.
- (f) Possess the ability to assess and understand complex family relationships.
- (g) Have well-developed inter-personal skills.
- (h) Be skilled in communicating with children of different ages and circumstances.
- (i) Have relevant report writing skills.

## 1.5 Standards for Training

During the consultation process, stakeholders broadly agreed that training was important for guardians *ad litem*. The child care and legislation landscapes are constantly changing and guardians *ad litem* must keep up with these changes if they are to play an effective role in representing children. Training can help them to be properly briefed in all areas in which they operate. This is covered in more detail in 2.5.

With this in mind, any training undergone shall:

- (a) Be directly related to the consistent provision of a guardian *ad litem* service.
- (b) Enhance existing knowledge, skills and values.
- (c) Ensure continuous professional development.
- (d) Develop new relevant skills and knowledge.
- (e) Help to improve performance and service delivery.





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## Revenue

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## 12 Tackling Fuel Laundering

- 12.1** In 2015, €2.6 billion was collected by the Revenue Commissioners (Revenue) in excise duty on mineral oils in the form of mineral oil tax and carbon tax. This represents almost half (47%) of the total excise duty of €5.5 billion collected by Revenue in that year.
- 12.2** All taxes are subject to risk of fraud and evasion. In the case of mineral oils, fuel 'launderers' use techniques to remove markers from the fuel making the use of sight tests ineffective for detecting the illegal use of fuel. By removing the marker, fuel that is subject to a lower rate of excise duty and VAT can be sold on as fuel with a higher sale price.
- 12.3** Revenue has introduced a number of initiatives as part of a Mineral Oils Strategy implemented in 2011 to combat the illicit fuel market and fuel laundering in Ireland.
- 12.4** This report examines
- the actions taken by Revenue in recent years to tackle the issue of fuel laundering
  - the cost to the State in taxes forgone as a result of fuel laundering.

### Excise duty

- 12.5** There are three categories of excisable products - mineral oils, alcohol and alcoholic beverages, and manufactured tobacco products. Excise duties are also chargeable on certain premises or activities (for example, betting and licences for retailing of liquor).<sup>1</sup> Figure 12.1 shows the excise receipts related to mineral oils as a proportion of the total excise duty collected for the period 2010 to 2015. Annex A provides a detailed breakdown of the excise duty collected between 2010 and 2015.

**Figure 12.1 Excise duty collected, as a proportion of total excise receipts, 2010 to 2015**



<sup>1</sup> The rates of duty are available at [www.Revenue.ie](http://www.Revenue.ie).

Source: Office of the Revenue Commissioners

Note: The 'excise mineral oils' figures comprise excise duty on oil and carbon tax.

## Fuel laundering

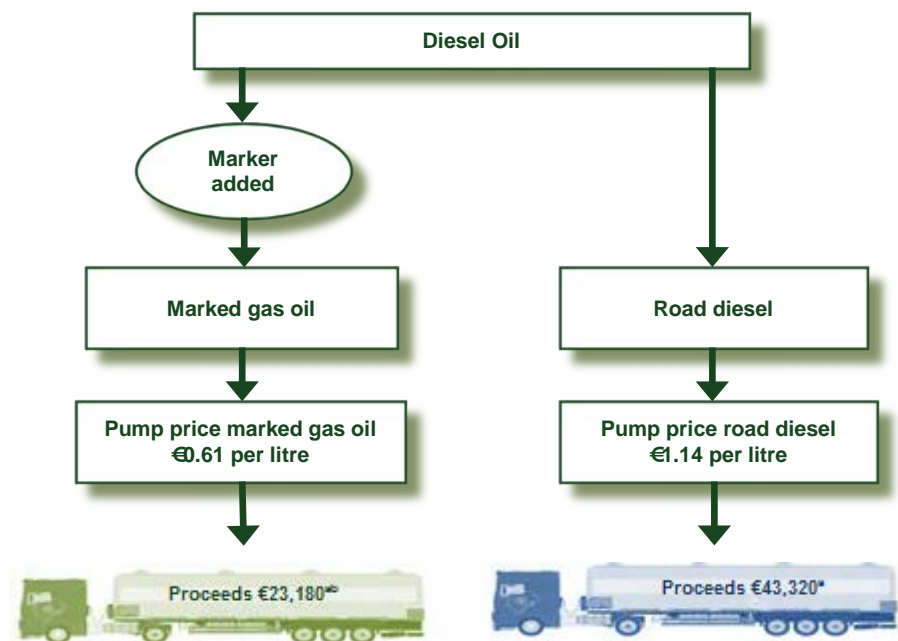
**12.6** There are two main types of diesel oil – road diesel and marked gas oil

- **road diesel** is used as a fuel for transport and passenger vehicles
- **marked gas oil** is intended for use in industry (for example in construction equipment such as forklifts, compressors, portable generators), agricultural equipment (such as tractors) and home heating systems.

**12.7** Marked gas oil is subject to a significantly lower rate of excise duty and VAT than road diesel.<sup>1</sup> It is marked with fuel dyes and chemicals in order to differentiate it from road diesel. Fuel laundering is an illegal process to remove the markers, with the laundered fuel then sold on for use in road vehicles.

**12.8** The key driver for fuel laundering is the price differential between marked gas oil and road diesel. Once the marker is removed from marked gas oil, it can be sold on as road diesel taking advantage of the resulting higher prices achievable for road diesel. Figure 12.2 sets out an estimation of the price differential between a tanker of marked gas oil and a tanker of road diesel.

**Figure 12. 2 Price differential between marked gas oil and road diesel**



<sup>1</sup> Road diesel is subject to 23% VAT and 48 cent excise duty per litre; marked gas oil is subject to 13.5% VAT and 10 cent excise duty per litre.

Source: Fuel prices taken from Irish Farmers' Association fuel survey (national average), June 2016. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a Assumes a tanker of oil is approximately 38,000 litres.
  - b A submission to the Joint Committee on Environment, Transport, Culture and the Gaeltacht in January 2012 by the Irish Petrol Retailers Association included an estimate of €20,000 for the tax loss to Revenue for each tanker of laundered fuel.

## Initiatives to tackle fuel laundering

- 12.9** In 2011, an EU Directive came into force which required the sulphur content of marked gas oil marketed for use in non-road mobile machinery to be reduced to the same level as road diesel.<sup>1</sup> This made laundered fuel more difficult to detect, thus increasing the risk of greater fuel laundering.
- 12.10** In response to this, Revenue developed a strategy for combatting the illegal trade in mineral oils. This set out eight objectives with a number of associated actions for each objective. Figure 12.3 sets out the strategic objectives and an assessment of the progress in implementing each one to date.

**Figure 12.3 Implementation of Revenue's Mineral Oils Strategy**

Strategic objective	Progress made
Rigorous enforcement	●
Increase prosecutions	●
Maintain compliance of legitimate trade	●
Enhance cooperation	●
Enhance IT capability	●
Strengthen the law	●
Improve marking of mineral oils	●
Reduce demand for illegal mineral oils	●

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

Notes: ● Significant progress made  
● Some progress made

<sup>1</sup> Non-road mobile machinery includes tractors, agricultural equipment, construction equipment, portable generators and forklifts. Gas oil intended for use in home heating systems, stationary equipment or marine fuel continues to have a higher specification of sulphur.

- 12.11** The key measures introduced to tackle fuel laundering, and the dates they were implemented, are set out in Figure 12.4.

**Figure 12.4 Revenue's measures to tackle fuel laundering**

<b>2011</b>	<b>Revenue's Mineral Oils Strategy</b>	
<b>2012</b>	<b>July</b> Annual auto fuel trader's licence required by traders for each premises that produces, sells, delivers or deals in, mineral oils for use in motor vehicles. For 2015/2016, there were 2,269 such licences listed.	<b>October</b> Annual marked fuel trader's licence required by traders for each premises that produces, holds, deals in, or delivers marked gas oil or marked kerosene. For 2015/2016 there were 1,403 such licences listed.
<b>2013</b>	<b>January</b> Introduction of a supply chain reporting system which includes a mandatory monthly Return of Oil Movements form (ROM 1) providing details on the inward and outward movement of stock. Average compliance rate for submission of return is 98% for 2013 to 2015.	<b>December</b> Marked fuel traders made liable for tax evaded, if recklessly supplying marked fuel.
<b>2014</b>	<b>December</b> Grounds to refuse or revoke licence extended. Increased Revenue powers to request information in relation to a licence application.	
<b>2015</b>	<b>January</b> Commencement of the national mineral oil compliance project.	<b>September</b> Phased introduction of portable analysers. National risk based sampling programme implemented. Up to July 2016, 1,515 samples taken.
	<b>April</b> New fuel marker introduced in Ireland and the United Kingdom (UK).	
<b>2016</b>	<b>January</b> <ul style="list-style-type: none"> <li>Code of business conduct regarding the supply of marked fuels published by the Irish Petroleum Industry Association in consultation with Revenue.</li> <li>A random sampling exercise of fuel licence holders was carried out in January 2016. 197 samples were tested and there was no evidence of the new marker found.<sup>a</sup></li> </ul>	<b>May</b> Report on the national mineral oil compliance project.
<b>2017</b>	<b>February (planned)</b> Integration of mineral oil tax into Revenue's mainstream IT system for collecting and reporting tax. <sup>b</sup> This will lead to enhanced risk analysis.	

Source: Office of the Comptroller and Auditor General

Notes: a This exercise forms part of the national risk based sampling programme introduced in September 2015.

b Excise duty is currently not incorporated into Revenue's mainstream IT systems.

**12.12** Figure 12.5 sets out the results of the various compliance activities for the period 2010 to 2015.

**Figure 12.5 Results of Revenue compliance activity, 2010 to 2015**

Year	Filling stations closed	Commercial seizures		Laundry detections	Convictions/settlements for oil offences
		Number	Litres		
2010	— <sup>a</sup>	40	138,484	4	11
2011	32	88	718,181	9	12
2012	57	86	914,087	11	19
2013	30	67	771,232	9	14
2014	15	32	150,800	2	9
2015	15	47	215,132	—	2
<b>Total</b>	<b>149</b>	<b>360</b>	<b>2,907,916</b>	<b>35</b>	<b>67</b>

Source: Office of the Revenue Commissioners

Note: a Revenue began taking action from mid-2011 against service stations that were unlicensed and also against stations that had failed to adhere to the conditions of their licences.

**12.13** Revenue implemented a national sampling programme in September 2015. 1,515 samples were taken and processed by the portable analysers. The results of the samples taken are set out in Figure 12.6.

**Figure 12.6 Results of national sampling programme, September 2015 to July 2016**

Revenue region	Samples tested <sup>a</sup>	Positive detections certified by State Laboratory	Positive detections as % of samples tested	Prosecutions initiated <sup>b</sup>
Border, Midlands and West	638	31	4.9%	6
East and South East	286	11	3.8%	3
South West	349	—	—	—
Dublin	242	2	0.8%	1
<b>Total</b>	<b>1,515</b>	<b>44</b>	<b>2.9%</b>	<b>10</b>

Source: Office of the Revenue Commissioners

Notes: a The 1,515 samples tested includes the samples tested in January 2016 as part of the random sampling exercise carried out on fuel licence holders.

b Results to 15 August 2016

**12.14** As can be seen in Figure 12.6, 2.9% of the samples tested resulted in positive detections of laundered fuel. Revenue stated that the majority of these detections occurred in the early months of the national sampling programme with evident decreases in detections in the later months.

**12.15** Revenue will usually detain or seize suspect fuel following its detection by a portable analyser and pending a full investigation. However, prosecutions are only initiated following formal testing and certification of the presence of the marker by the State Laboratory and where the investigation supports this course of action. Revenue explained that while 44 samples were certified as positive by the State Laboratory, there are a number of reasons why prosecutions could only be initiated for 10 of those samples. The reasons include

- multiple samples taken at one premises
- trace elements of the new marker which are too low to sustain a prosecution
- covert samples (taken in advance of further overt sampling)
- contaminations.

### **Report on National Mineral Oil Compliance Project**

**12.16** Revenue undertook a national mineral oil compliance project in 2015, with a final report produced in May 2016. The project focused on ensuring inclusion of excise risk in Revenue audit programmes and developing the capability of Revenue auditors to identify and address excise risk. The project involved the initiation of 205 compliance interventions by Revenue – 167 have been closed to date. Total yield for all closed interventions is €3.3 million – €1.2 million (36%) of which related to excise duties. Figure 12.7 provides a breakdown of the cases and resulting yield, by Revenue region.

**Figure 12.7 Revenue's National Mineral Oil Compliance Project**

Revenue Region	Number of closed cases	Number of yielding cases	Yield		
			Excise €	Other €	Total €
Border, Midlands and West	54	14	—	278,923	278,923
Dublin	21	17	6,658	700,171	706,829
East and South East	43	12	8,121	321,684	329,805
South West	35	11	—	662,518	662,518
Large Cases Division	14	4	1,164,407	118,838	1,283,245
<b>Totals</b>	<b>167</b>	<b>58</b>	<b>1,179,186</b>	<b>2,082,134</b>	<b>3,261,320</b>

Source: National Mineral Oil Compliance Project – Final Report, National Mineral Oil Steering Group, May 2016.

<sup>1</sup> REAP is a computerised risk profiling system in use since 2008. It rates taxpayers, relative to one another, using Revenue's other systems as well as information from third parties such as the Health Service Executive, the Department of Housing, Planning, Community and Local Government and the National Transport Authority.

**12.17** One of the main aims of the project was to inform policy and practice on risk identification for mineral oil cases. The cases included in the project were centrally selected using a set of risk criteria that was specifically designed for this project. The risk criteria was scored, in order of perceived significance, and an overall risk score was then generated for each trader. One of the recommendations from the project group is that proposals should be developed for the systemisation, within Revenue's Risk Evaluation and Profiling System (REAP), of the risks that were deemed to have had a high impact.<sup>1</sup>



- 12.18** The project also highlighted that the auditors involved in the case reviews had little or no knowledge of excise duty and its related risks prior to taking part in the project. The project report noted that this was not unexpected given the traditional separation between excise and other tax compliance functions. Revenue's formal audit training programme does not incorporate the key learning objectives necessary for an excise audit. The project report indicated that the full integration of excise taxes under the whole case management system could not occur until the training needs associated with those taxes are fully incorporated into the audit training programme.

## Results of review

- 12.19** When the ROM 1 returns are submitted to Revenue, the data is collated and used to generate specific monthly reports by region. These reports identify anomalies or irregular behaviour for each mineral oil trader that provide the basis for follow-up queries by Revenue officers. The reports generated and the issues they highlight are set out in Figure 12.8 below.

**Figure 12.8 Revenue's analysis of Return of Oil Movements (ROM 1) data**

Report focus	Issue highlighted
Trader to trader mismatch report	All trade mismatches between traders declared on ROM 1
Inactive licence number report	Trades by active licence holders with inactive licence holders
Unknown licence number report	Traders that are unknown to Revenue
Nil return per licence report	No inward or outward movements noted on the ROM 1
Oil movement report	Allows Revenue to view oil movements between traders
Balance mismatch report	Balance mismatches in declarations made by inter-trading entities
Non-return per licence report	Traders that have not made a return for a specific period

Source: Office of the Comptroller and Auditor General

- 12.20** As part of this examination, the examination team randomly selected a sample of 50 anomalies that arose in four of the mineral oil reports – trader to trader mismatch, inactive licences, nil returns and unknown licences to assess how they were dealt with. The sample included cases from three Revenue districts – Louth, Galway and Cork.

### *Timely follow-up*

- 12.21** Revenue's staff manual for mineral oils sets out the action that should be taken when anomalies arise but it does not provide any guidance on the timeframe within which follow-up action should be taken.
- 12.22** Of the 50 exceptions selected, there was evidence to show that five were checked at the time the mineral oil report was generated. For the remaining 45 anomalies, there was no evidence to show that they were followed up at the time the exception report was generated. A number of the anomalies were only followed up by Revenue when the examination team raised the query as part of this review. One weakness noted generally on the follow-up of issues is that there seems to be a lack of communication between Revenue districts when anomalies arise. Instances were noted as part of this review where one district would satisfy itself that the error was not with the trader in its district but would not follow up with the other district to confirm the reason for the error.

### Quality of data

**12.23** The review found that there are issues with the accuracy of the information being provided by traders via the ROM 1 which is distorting the anomalies being generated in the mineral oil reports. Some anomalies are also caused by IT issues, both on the part of Revenue and the traders submitting the ROM 1 returns. Revenue was unable to explain the cause of five (10%) of the anomalies. For the remaining 45 anomalies

- 15 (33%) were appropriately raised
- 16 (36%) arose as a result of inaccurate information being provided by the trader submitting the ROM 1, for example incorrect licence numbers being provided
- 14 (31%) of the anomalies were generated as a result of IT issues.

**12.24** While these anomalies are likely to be innocent in nature, they affect the quality and the usefulness of the data being collated by Revenue.

### Outcomes

**12.25** Regarding the outcomes of the 50 anomalies reviewed

- One case resulted in a 'reckless trading' letter being issued requesting information on oil supplies reportedly made to a particular company. This action was taken on foot of the anomaly being appropriately highlighted in the inactive licences report.
- A second case resulted in a visit from Revenue officers who established that the business was selling auto fuel and marked fuel without the relevant licences. While this case was highlighted by an inactive licence report, action was not taken at the time the report was generated. The anomaly was only followed up on foot of the query raised by the examination team as part of this review.

### Estimating the cost of illicit activity

**12.26** Revenue does not estimate the loss to the Exchequer as a result of fuel laundering. A report published in May 2016 estimated the loss to be €239 million in 2015.<sup>1</sup>

### Ireland

**12.27** Revenue notes that while it does not measure the shadow economy or the overall tax gap in Ireland, it does conduct a number of targeted analysis projects in particular areas or sectors, including fuels.<sup>2</sup> For example

- Revenue carried out an analysis of the oil market in Ireland to assess the impact of Revenue's initiatives to tackle fuel laundering.<sup>3</sup> The report included an analysis of the trends in the amount of road diesel and marked gas oil leaving oil warehouses (pre and post 2013). The report concluded that Revenue's compliance activities may be responsible for reducing the amount of marked gas oil and increasing the amount of road diesel leaving oil warehouses.
- The national random sampling exercise carried out in January 2016.

<sup>1</sup> Illicit Trade 2015-2016 – Implications for the Irish Economy, Grant Thornton, May 2016.

<sup>2</sup> The 'tax gap' is the difference between the amount of tax that should, in theory, be collected against what is actually collected. See Chapter 15 on Taxpayer Compliance for further consideration of this issue.

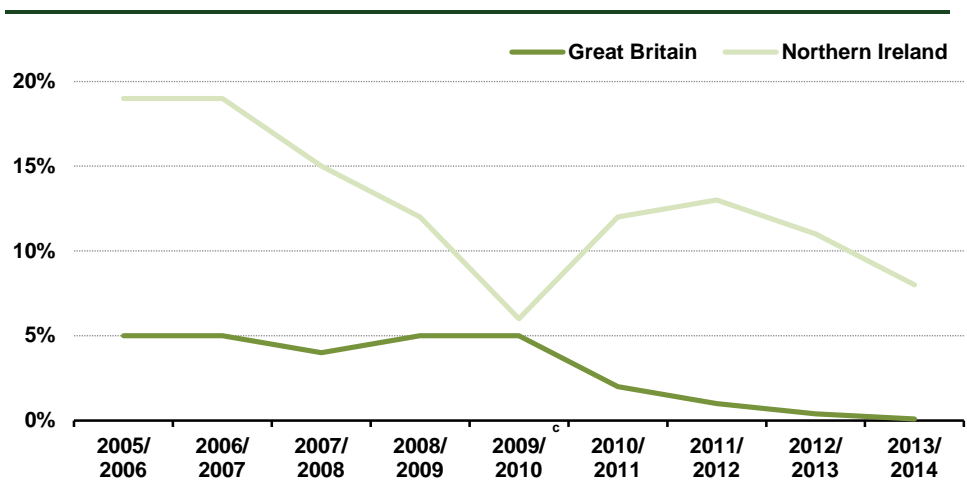
<sup>3</sup> The Oil Market in Ireland: Duties, Prices and Consumption, Statistics and Economic Research Branch, December 2014.

- 12.28** While Revenue believes that all methods that purport to estimate the shadow economy or a tax gap are subjective and limited by the data available, it has stated that these types of analysis are effectively the same as gap analysis in terms of improving Revenue's understanding of its effectiveness. Revenue added that it does not quantify the tax gap based on that analysis as it cannot be confident that such a gap estimate is robust or accurate.

### United Kingdom

- 12.29** HM Revenue and Customs (HMRC) in the UK produce a report each year which provides information on the size of the tax gap in the UK. HMRC measures the tax gap in order to quantify the level of non-compliance and also to help understand the reasons for losses in the tax system. HMRC stated that measuring the tax gap, while not sufficiently timely or precise enough to set performance targets, is useful in understanding long-term performance.
- 12.30** HMRC provides estimates of the illicit market for both diesel and petrol in Great Britain and Northern Ireland. Figure 12.9 shows the HMRC estimate of the illicit market share for diesel in Great Britain and Northern Ireland for the period 2005/2006-2013/2014. The estimated illicit market share for fraudulent diesel in Northern Ireland was 8% in 2013/2014, with an estimated tax gap of £50 million.

**Figure 12.9 Illicit market share for diesel in Great Britain and Northern Ireland<sup>a,b</sup>**



Source: HM Revenue and Customs, Measuring Tax Gaps

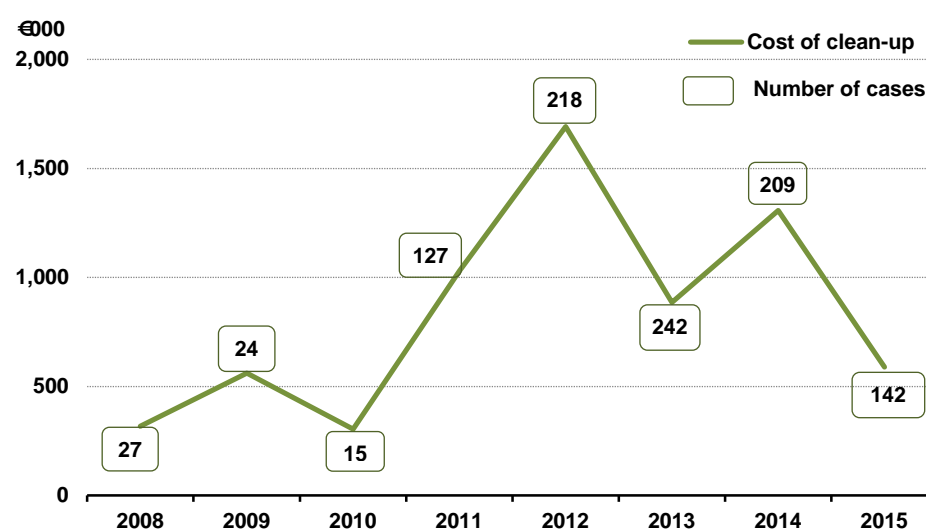
- Notes:
- a HMRC provide the upper and lower confidence level and also the central estimate. For the purposes of the graph above, the central estimate has been used.
  - b Exploratory modelling carried out by HMRC in recent years has given an indication of the level of cross border purchases. Prior to this it was not possible to estimate it. HMRC recognises that this work is not yet fully robust.
  - c According to HMRC, the low level in 2009/2010 may be predominantly due to a reduction in the amount of cross-border purchases by Northern Ireland residents in the Republic of Ireland due to the smaller price differential in that year.

### Environmental cost of fuel laundering

**12.31** The fuel laundering process results in a waste by-product ('sludge') being produced that is usually dumped by fuel launderers. As the designated competent authorities under waste legislation, it is the responsibility of the relevant local authority to ensure that any waste dumped by diesel launderers is disposed of without endangering human health and without harming the environment. The local authority is then reimbursed by the Department of the Environment, Community and Local Government (the Department) from the Environment Fund.<sup>1</sup>

**12.32** Since 2008, there have been over 1,000 cases of waste dumping as a result of diesel laundering with the total clean-up cost amounting to €6.7 million. The majority of the clean-up operations have taken place in Louth (539 cases) and Monaghan (459 cases). Figure 12.10 sets out the amounts provided by the Department to local authorities between 2008 and 2015, and the number of cases by year.

**Figure 12.10 Cost of environmental clean-up, 2008 to 2015<sup>a</sup>**



Source: Department of the Environment, Community and Local Government

Note: a The costs incurred relate to the removal of the waste from the site, transporting and exporting it to an authorised waste facility to be treated.

**12.33** Data collated by Revenue from Monaghan and Louth County Councils indicate a significant reduction in the number of containers dumped containing diesel sludge between the first half of 2015 and the first half of 2016. Figure 12.11 sets out the results.

**Figure 12.11 Number of containers removed containing diesel sludge**

	Monaghan County Council	Louth County Council
January to July 2015	186	239
January to July 2016	11	69

Source: Office of the Revenue Commissioners

<sup>1</sup> Responsibility for the Environment Fund transferred to the Department of Communications, Climate Action and Environment in July 2016.

- 12.34** Some sources have used the volume of waste dumped by fuel launderers to estimate the volume of fuel laundering. For example, in a submission to the Joint Committee on Environment, Transport, Culture and the Gaeltacht in February 2012, Monaghan County Council quoted an example of sulphuric acid wash and stated that it had been estimated that 1,000 litres of wash found would represent 100,000 litres of washed diesel on the market.

### Views of the Accounting Officer

- 12.35** The introduction of the new licensing regime and the comprehensive supply chain reporting system in conjunction with increased compliance activity and direct engagement with industry representative bodies has contributed to increasing compliance in the legitimate trade.
- 12.36** The successful joint exercise undertaken by Revenue and HMRC to source and implement a new marker in both jurisdictions during 2015 was a significant achievement.
- 12.37** The national random sampling exercise carried out in January 2016 is a key metric in relation to the impact of Revenue's strategy to combat fuel laundering. The number of licenced traders tested, 197 in total, represented 10% of licence holders and no evidence of laundered fuel was found. This provided authoritative evidence that the selling of laundered fuel is negligible and close to being eliminated.
- 12.38** Frequent consultation with trade representative groups takes place on an ongoing basis – there have been 23 formal meetings with trade representative bodies between 2012 and to date in 2016. There has also been a significant number of bilateral meetings with key companies. One of the key outcomes of this process was the development and adoption of a code of business conduct for the supply of marked fuels in 2016. It is also worth noting that the oil sector, at both representative and individual level, has provided very positive feedback to Revenue regarding the effectiveness of measures taken to address fuel laundering.
- 12.39** Cooperation at international level, particularly with the HMRC and other enforcement agencies, continues to be at a very high level. Cooperation is formally progressed through the Cross-Border Fuel Fraud Group and a new Revenue/HMRC joint group on excise fraud established in 2015. Cooperation is also ongoing at an operational level with HMRC through Revenue's enforcement units in the Border, Midlands and West region.
- 12.40** The fuel laundering problem has been effectively eliminated. The results of the random sampling project, the economic analysis contained in our 2014 report on the oil market in Ireland and the recent statistics from Monaghan and Louth County Councils on the reduction in diesel wash dumps are all clear indicators of a reduction in fuel fraud.

## Conclusions and recommendations

- 12.41** In response to an increase in the level of fuel laundering in 2011, Revenue introduced a number of strategies aimed at tackling the issue. The introduction of these initiatives by Revenue has strengthened controls over the market for mineral oils. The new licensing arrangements and the electronic reporting system have made it more difficult for fuel launderers to source marked fuel for illicit purposes. The reckless trading provisions introduced at the end of 2013 act as a further deterrent for suppliers from supplying fuel to launderers. Following a joint project with the equivalent authority in the UK, a new fuel marker was introduced in Ireland and the UK from April 2015. Revenue commenced a national risk based sampling programme in September 2015 which found that 2.9% of the samples tested resulted in positive detections of the new marker. A random sampling exercise carried out in January 2016 found no evidence of the new marker in the samples tested.
- 12.42** While controls have been strengthened, there are some areas where improvements could be made to further enhance the control environment for the mineral oils market. These are considered below.

### *Measuring the tax gap*

- 12.43** Revenue does not currently estimate the tax gap due to concerns around the accuracy of estimating the gap and concerns about its usefulness at an operational level. Figures are collated by the Department of the Environment, Community and Local Government on the cost and scale of dealing with the waste dumped by fuel launderers. This information is not used by Revenue in estimating the volume of fuel laundering, although it does carry out other analysis in this area.
- 12.44** This means that there is no Revenue estimate of the loss to the Exchequer as a result of fuel laundering. Producing estimates of the tax gap on a consistent basis, and tracking it over time, would assist Revenue in quantifying the level of non-compliance and understanding the reasons for losses in the tax system as a result of fuel laundering. It would also assist Revenue in measuring its performance as it would show the impact its initiatives are having on the illicit diesel market in Ireland.
- 12.45** The Accounting Officer has stated that the national random sampling exercise carried out in January 2016 represents an authoritative check on compliance among fuel licence holders. This random sampling exercise, conducted on a national level over a short time period, provides a powerful and robust measurement of the scale of the selling of laundered fuel in the State. If repeated in the future, this exercise provides a benchmark against which to compare later outcomes. The results of the 2016 exercise show that Revenue's overall strategy is successfully addressing the illicit trade in fuel and reaffirms the effectiveness of the various measures introduced by Revenue over recent years.

### *Integration of excise duty*

- 12.46** Excise duty is currently not incorporated into Revenue's mainstream IT systems, including its Risk Evaluation and Profiling System (REAP). Revenue has recognised the importance of integrating excise into its mainstream IT system and included it as a strategic objective in its Mineral Oils Strategy in 2011. Current plans are that the integration project for mineral oil tax will be completed by February 2017 and will be followed by the intergration of tobacco products tax and alcohol products tax.

- 12.47** Revenue's formal audit training programme does not currently incorporate the key learning objectives necessary for carrying out an audit of excise duties. The final report on the National Mineral Oils Compliance Project noted that the full integration of excise taxes under the whole case management system could not occur until the training needs associated with those taxes are fully incorporated into the audit training programme.

#### **Recommendation 12.1**

Revenue should ensure that its audit training programme is updated to include excise duties which will upskill auditors and facilitate a whole case management approach to traders dealing in excise goods.

#### **Accounting Officer's response**

Agreed. Revenue Training Branch is developing a two day excise audit module to be incorporated into the audit programme. It is scheduled to be delivered to two groups in February 2017.

#### ***Follow-up of mineral oil reporting anomalies***

- 12.48** As part of this examination, we reviewed a sample of anomalies generated from the data collated from the Return of Oil Movement (ROM 1) forms. Of the 50 exceptions reviewed, there was no evidence to show that a significant number (45) were checked at the time the exception arose, with some only being followed up on receipt of our query. One anomaly which was not followed up until it was queried as part of this review resulted in the case being referred to Revenue's prosecution section.

#### **Recommendation 12.2**

Revenue should review the procedures in place for following-up the anomalies generated by the ROM 1 data. If it is not possible to follow-up on all anomalies, a prioritisation process should be developed.

#### **Accounting Officer's response**

Agreed. Revenue will review the procedures as recommended.

- 12.49** The review noted that a significant number of anomalies (60% of those reviewed) were being generated as a result of IT issues or inaccurate information supplied by traders via the ROM 1 returns. The ROM 1 reporting system has been in operation since January 2013. However, the level of anomalies being generated by inadvertent errors such as this remains high over three years after its introduction. These errors affect the quality and usefulness of the information being collated by Revenue.

**Recommendation 12.3**

Revenue should investigate anomalies being caused by IT issues, both in its internal systems and those of the traders. Revenue should make any necessary revisions to Revenue's ROM 1 system and liaise with the traders to rectify the issues with their systems. Revenue should also communicate with traders to explain the main errors made when completing the ROM 1 returns to reduce the incidence of inaccurate information being provided.

**Accounting Officer's response**

Agreed. There are currently 13 (of 15 planned) enhancements to the ROM 1 system in train with a planned live release date of November. Compliance staff will be reminded to engage with traders with ongoing ROM 1 errors so as to reduce the incidence of inaccurate information being provided.

- 12.50** The review noted a lack of communication between Revenue districts when investigating anomalies.

**Recommendation 12.4**

Revenue should remind staff of the importance of communicating with other districts when anomalies arise in order to ensure that correct and complete follow-up action is taken by the district responsible.

**Accounting Officer's response**

Agreed. Revenue will remind staff of the importance of communicating with other relevant districts when anomalies arise.



## Annex A Excise duty collected

Figure A1 provides a breakdown of the excise duty collected by Revenue between 2010 and 2015.

**Figure A1 Excise duty collected, 2010 to 2015**

	2010	2011	2012	2013	2014	2015
	€m	€m	€m	€m	€m	€m
Excise oil	2,075	2,123	2,020	2,021	2,018	2,132
Excise alcohol	826	830	846	995	1,140	1,137
Excise tobacco	1,160	1,126	1,072	1,057	984	1,064
Vehicle Registration Tax	383	388	379	437	542	649
Carbon tax <sup>a</sup>	223	298	354	388	385	419
Betting duty	31	27	27	25	26	32
Air travel tax	105	48	34	35	10	—
Licences <sup>b</sup>	24	24	19	20	20	16
Other <sup>c</sup>	8	8	8	8	9	14
<b>Total</b>	<b>4,835</b>	<b>4,872</b>	<b>4,759</b>	<b>4,986</b>	<b>5,134</b>	<b>5,463</b>

Source: Office of the Revenue Commissioners

- Notes:
- a The carbon tax was introduced in 2010. The carbon tax applies to auto diesel, petrol, kerosene, marked gasoil, liquid petroleum gas, fuel oil, natural gas and solid fuels.
  - b This includes mineral oil licences, public dancing licences and bookmakers' licences.
  - c 'Other' includes the electricity tax, tax on bookmakers' premises and clubs.

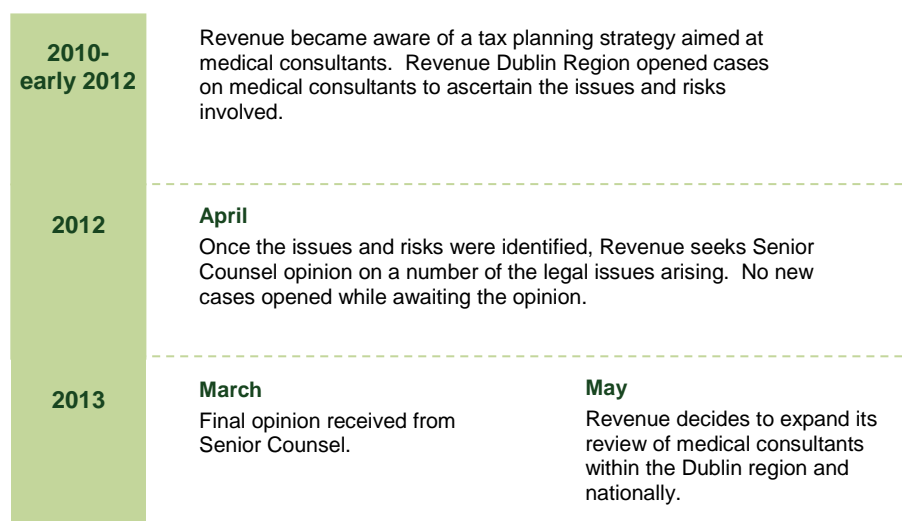


## 13 Revenue's Review of Medical Consultants' Tax Affairs

**13.1** In 2010, the Revenue Commissioners (Revenue) became aware of a tax planning strategy that was being aimed at medical consultants. The strategy centred around the incorporation of a new company by the medical consultant and the transfer of his/her business (or part of that business) to the company. Revenue was concerned about the nature of the transactions between the consultant and his/her company and the evidence to support the commercial reality and validity of those transactions. Following an initial review of a number of cases in order to ascertain the issues and the risks involved, Revenue decided to expand its review of the tax affairs of medical consultants nationally.

**13.2** Figure 13.1 sets out the timeline of events which led to Revenue's national review of the tax affairs of medical consultants.

**Figure 13.1 Timeline for Revenue's review of medical consultants**



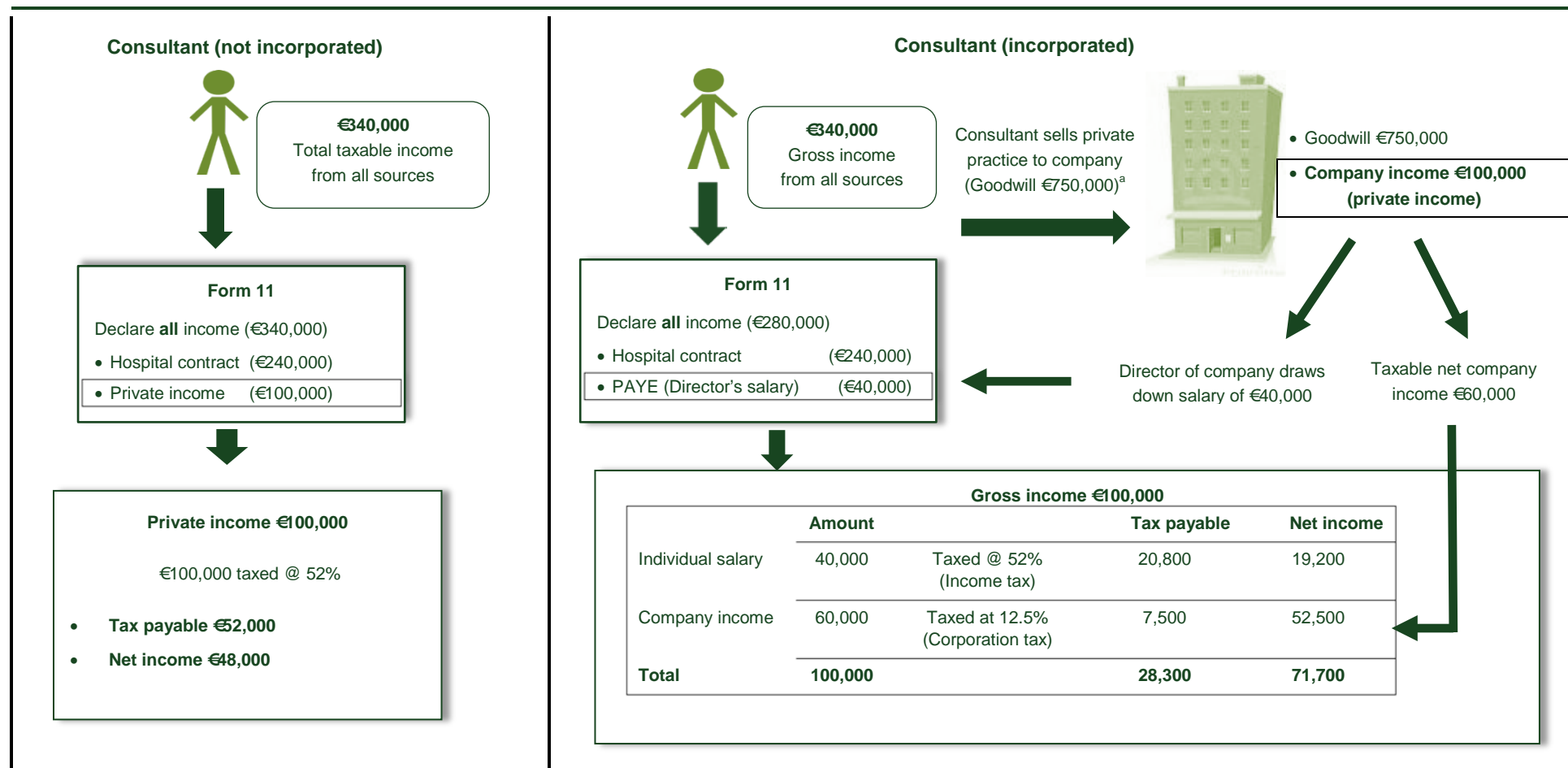
Source: Office of the Revenue Commissioners

**13.3** This examination

- looked at the results of the interventions carried out by Revenue to date
- reviewed a sample of closed cases to ascertain if a standard audit approach was being applied and
- considered whether there was a clear recorded basis for the settlements reached in the cases reviewed.

**13.4** Figure 13.2 shows how incorporation by a medical consultant affects his/her liability to tax.

Figure 13.2 Incorporation of a medical consultant's practice – illustrative example for a consultant aged 55 years (or over)



Source: Office of the Comptroller and Auditor General

Note: a When the goodwill is transferred it creates a liability to Capital Gains Tax, however, this liability is often offset in full using reliefs e.g. if the consultant is over 55 years of age, retirement relief can be used to offset the liability to Capital Gains Tax.

## Types of interventions

- 13.5** The aim of Revenue's compliance programme is to promote voluntary compliance and deter non-compliance. Revenue carries out four main types of compliance interventions. When deciding on the type of intervention for a particular case, Revenue assesses the risk involved and decides which intervention would be the most efficient in terms of the time and resources available, while also addressing the perceived risk. The intervention types are set out in Figure 13.3. The figure also shows a breakdown of the interventions closed to 30 June 2016 as part of Revenue's medical consultants review.

**Figure 13.3 Types of compliance interventions closed by 30 June 2016**

Type of intervention	Description	Cases closed in medical consultants review	
		Number	%
Aspect query	A short, targeted intervention to check a particular risk. It can be carried out by telephone, secure email, letter or visit and escalated to a profile interview or audit, if necessary.	190	47%
Profile interview	Revenue write to a taxpayer identifying the relevant risk areas. A date is scheduled for a profile interview at which the risks highlighted will be discussed. A profile interview can be escalated to an audit or investigation if warranted.	31	8%
Audit	An examination of an individual's or a company's books, records and compliance with tax obligations in order to establish the correct level of liability. It may also involve collection of tax arrears.	182	45%
Investigation	Where Revenue believes, from an examination of the information available, that serious tax or duty evasion may have occurred or a Revenue offence may have been committed, a Revenue investigation is carried out. It may lead to criminal prosecution.	—	—
<b>Total number of cases closed at 30 June 2016</b>		<b>403</b>	<b>100%</b>

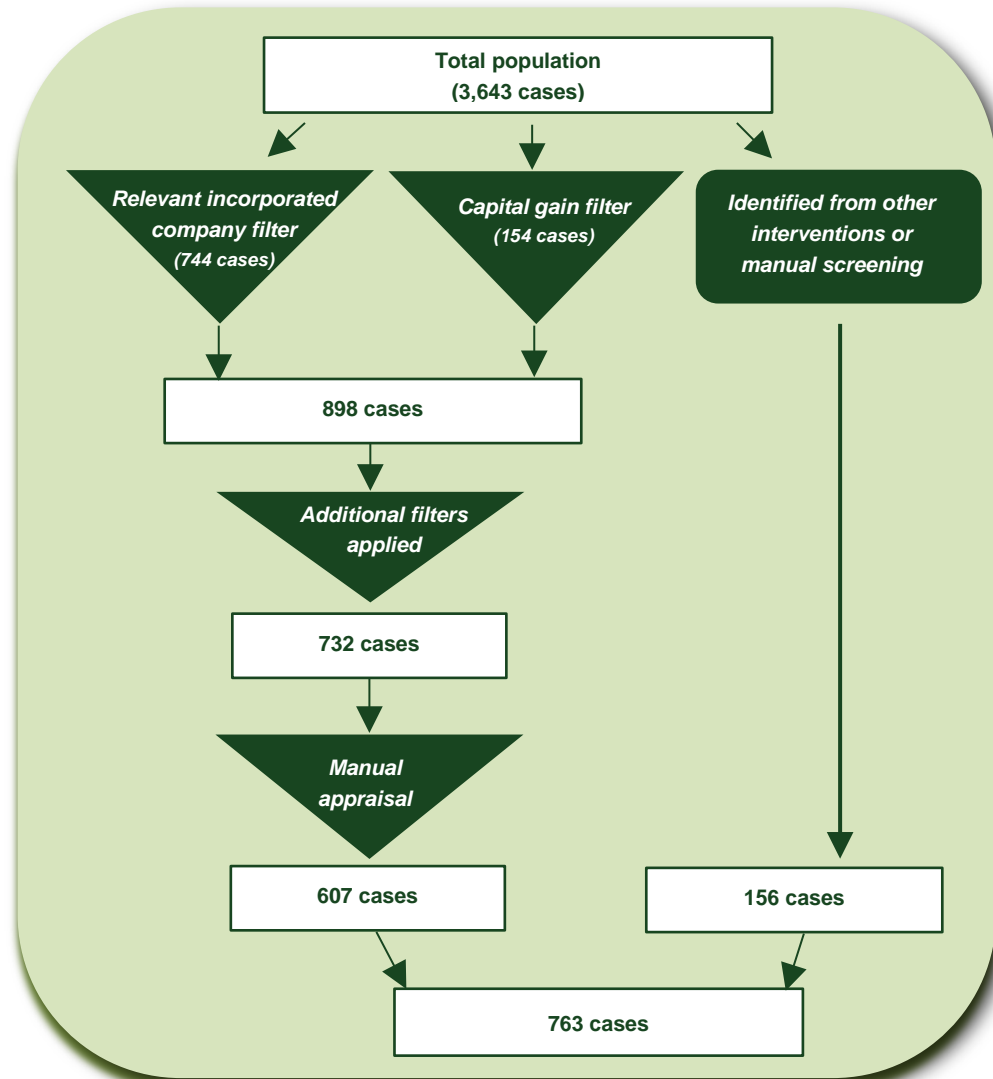
Source: Office of Revenue Commissioners

## Case selection

- 13.6** Revenue uses a number of ways to select cases for compliance interventions. One of the main methods used for selecting cases is Revenue's risk evaluation and profiling system (REAP).<sup>1</sup> REAP analyses available data and allocates a risk rating to each taxpayer which indicates the level of potential tax risk associated with that particular taxpayer. Cases are then prioritised based on the risk rating attributed by REAP which allows Revenue to target attention to cases posing the highest risk.
- 13.7** The risk rating is based on a series of business rules which are programmed within REAP. There are no specific rules built into the REAP system to assist with the selection of cases for the medical consultants review. In order to select cases, Revenue followed these steps
- First, a query was run in REAP to extract all registered taxpayers with a NACE code related to the medical profession that have an associated company.<sup>2</sup> This resulted in 3,643 cases and was regarded as the total population of possible cases.
  - Those cases were then filtered to extract the consultants who had incorporated and/or reported a capital gain.
  - The remaining cases looked at the amount of expenses being claimed and extracted cases where expenses exceeded certain thresholds.
  - A manual review was then carried out which reduced the number of cases to 607.
- 13.8** In addition to this, a number of cases (156) were identified from focused manual screening or during other interventions that were being carried out. Figure 13.4 sets out the case selection process for Revenue's review of medical consultants' tax affairs.

<sup>1</sup> REAP is a computerised risk profiling system in use since 2008. It rates taxpayers, relative to one another, using Revenue's other systems as well as information from third parties such as the Health Service Executive, the Department of Housing, Planning, Community and Local Government and the National Transport Authority.

<sup>2</sup> A NACE code is a pan-European classification system which groups organisations according to their business activities.

**Figure 13.4 Medical consultants review case selection process**

1 **Future uplift** refers to the estimated tax receipts that have been saved or will be collected in future years as a result of carrying out an intervention. Revenue includes the amount of uplift in its reported yield figures. For the medical consultants' review, of the total yield of €48.7 million, €14.5 million relates to future uplift.

2 This refers to cases published in Revenue's list of defaulters to 30 June 2016. Additional publications may arise in the next publication based on cases closed to date. Revenue's list of defaulters is published quarterly.

Source: Office of the Revenue Commissioners

### Outcomes to date

- 13.9** Revenue has initiated 763 medical consultant cases, 403 of which were closed by 30 June 2016, yielding €48.7 million, in tax (including future uplift), interest and penalties.<sup>1</sup> This yield relates to 235 consultants. 29 of the cases have been published in Revenue's list of defaulters.<sup>2</sup> Figure 13.5 sets out the yield, by region, from the 403 cases closed at 30 June 2016.

**Figure 13.5 Yield from closed interventions as at 30 June 2016**

Revenue District	No. of cases	Tax	Interest	Penalty	Agreed settlement	Future uplift	Total Yield
		€000	€000	€000	€000	€000	€000
Dublin	249	21,254	3,366	2,031	26,651	13,191	39,842
East and South East	25	550	135	45	730	270	1,000
South West	89	2,377	402	236	3,015	913	3,928
Border, Midlands and West	40	2,636	515	601	3,752	132	3,884
	<b>403</b>	<b>26,817</b>	<b>4,418</b>	<b>2,913</b>	<b>34,148</b>	<b>14,506</b>	<b>48,654</b>

Source: Office of the Revenue Commissioners

- 13.10** Of the cases closed, 70% resulted in the identification of additional liabilities. The average agreed settlement was approximately €173,000.

### *Issues arising*

- 13.11** Revenue identified concerns, mainly about the following matters, arising from its review of medical consultant cases

- **goodwill** – the existence and/or validity of goodwill in the circumstance of each case
- **capital gains charges** – the transfer of the business by the consultant to the company gives rise to a capital gains tax charge which in some cases has been mitigated (sometimes in full) by the use of capital losses or retirement relief
- **non-business expenditure** – excessive deductions which include personal expenditure in many cases, for example, wages for under age family members and non-business related employees (e.g. nannies and housekeepers), personal motor expenses and travel costs
- **deferred income** – in some cases the inclusion of deferred income was often found to be unjustified and in others the amounts involved were often over-inflated
- **inter-agency transactions** – the company invoices the consultant for services provided (usually medical support or administrative services). Revenue is questioning the commercial reality of those cross charges.

- 13.12** Revenue recognises that 'goodwill' may exist. However, it has not accepted that goodwill arose in any of the cases closed to date. The Irish Hospital Consultants Association and tax agents have asked Revenue to publish guidance on the matter. In February 2016, Revenue established an internal working group to look at the tax issues arising from incorporation of professional practices (consultants, dentists, accountancy firms etc).<sup>1</sup> The group has not yet completed its review. Revenue stated that it intends to produce some general guidance on the matter when the review is completed.

<sup>1</sup> The purpose of the group is to examine the issues arising from the incorporation of professional practices and advise on the appropriate compliance response. The group comprises members from each region, the Large Cases Division and Revenue Legislation Section. The group is chaired by a member of the Planning Division.



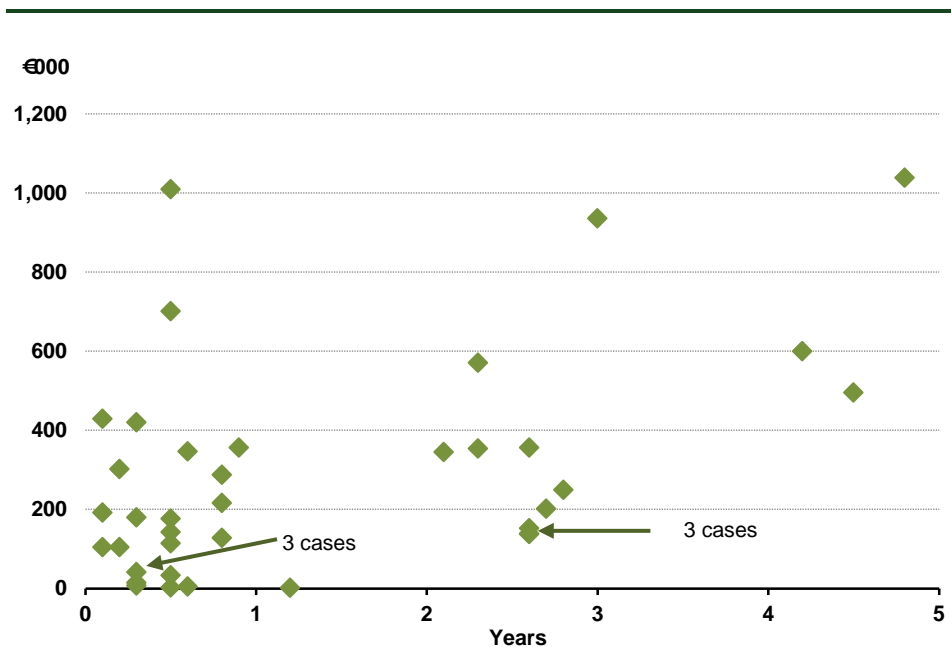
## Review of cases

- 13.13** A sample of 37 closed cases was reviewed as part of this examination. The yield from the 37 cases totalled almost €8 million in tax, interest and penalties with a further €3 million recorded as future uplift. Overall, the examination team noted that a consistent approach was taken by Revenue when carrying out the compliance interventions in this area.

### Timeliness

- 13.14** It was noted for the sample that the time taken to close the interventions varied. As shown in Figure 13.6, just under half of the cases (46%) were closed within 6 months of commencing while three high value cases took over four years to close.

**Figure 13.6 Timeliness in closing interventions<sup>a</sup>**



Source: Office of the Revenue Commissioners, analysis by the Office of the Comptroller and Auditor General

Note: a The yield figures include future uplift.

### Interest and penalties

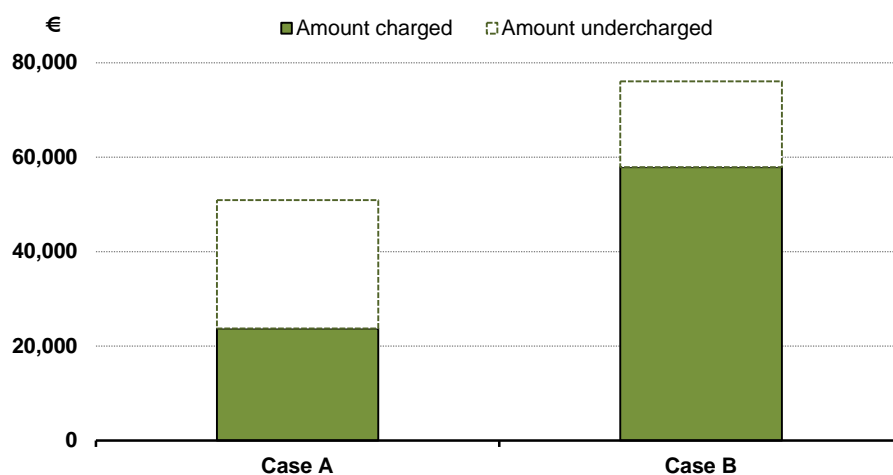
- 13.15** The Taxes Consolidation Act 1997 provides for the application of interest for the late payment of tax.<sup>1</sup> There is no provision for interest to be mitigated even after a qualifying disclosure is made.<sup>2</sup> The rates of interest to be applied are set out in various Finance Acts. Penalties may also be applicable where tax returns made were incomplete or inaccurate and associated payments have not been made on time. The level of penalty is set out in Revenue's Code of Practice for Audit and Other Compliance Interventions (see Annex A).

<sup>1</sup> Taxes Consolidation Act 1997, sections 1080 to 1084.

<sup>2</sup> A qualifying disclosure is a disclosure of complete information in relation to a tax liability. There are two types of disclosure – 'prompted' which is made once a notification of audit has been received but before the audit starts and 'unprompted' which is made before a notification of audit is issued or before the commencement of a Revenue investigation.

- 13.16** As part of this review, the interest and penalty amounts charged were recalculated for ten of the 37 cases selected. Differences were noted in two cases. Figure 13.7 sets out the estimated amount undercharged (which totalled just over €45,000) as a proportion of the total interest and/or penalties due. The tax liabilities in these cases totalled almost €725,000. For one of the cases (Case B) Revenue deducted refunds due to the consultant prior to calculating the penalties. However, such a deduction is only permitted for refunds arising as a result of related events which was not the position in this case.

**Figure 13.7 Results of the interest and penalty recalculation<sup>a</sup>**



Source: Office of the Comptroller and Auditor General

Note: a Case A refers to a miscalculation of interest and penalties, case B refers to miscalculation of penalties only.

### **Quantifying the liability due**

- 13.17** The Revenue Code of Practice for Audit and Other Compliance Interventions does not specify that the Revenue auditor must quantify the liability due when carrying out an audit. The Code states that Revenue will *'usually ... advise the taxpayer of any errors, omissions or irregularities in the tax or duty returns submitted (including those in the taxpayer's favour), determine the tax liability if it arises, request settlement and specify any action that may be required to place the taxpayer on a compliant footing.'*
- 13.18** When a disclosure is made by a taxpayer, the taxpayer must state the amount of tax and interest due. Of the 37 cases reviewed as part of this examination, there were seven audits where no disclosure was made by the taxpayer. For these cases, the review would have expected to find that the Revenue auditor calculated the liability due.
- For three of the seven cases, Revenue advised that the Revenue auditor calculated the liability due. The calculations found on the case files were not signed or dated by the caseworkers, so it was difficult to identify that they were prepared by Revenue and not the taxpayer/agent.
  - For the other four cases, the settlement was based on calculations submitted by the taxpayer's agent and verified by the Revenue auditor. Two of the cases related to negotiated settlements (see Cases C and D below). Even though the Revenue auditor is not required to calculate the liability due on completion of an audit, where it is not calculated by the Revenue auditor it is difficult to evaluate the offers being proposed by the taxpayer.

### ***Settlements agreed***

- 13.19** The review found that in two of the cases reviewed, a negotiated settlement was reached. Summaries of each case are set out below.

#### ***Case C***

- 13.20** In this case, the consultant recorded fee income of just over €2 million in the related company financial statements over a period of six years. Because a bank account had not been set up for the company all fee income, including that of the company, was held by the consultant in a private bank account.<sup>1</sup> The 'company' fee income was recorded as income in the profit and loss account with a corresponding debtor on the balance sheet. The Revenue auditor was satisfied that the fee income was the consultant's own income and not company income following the Revenue audit.
- 13.21** As part of a negotiated settlement with the consultant, it was agreed that the consultant would be paid a significantly increased salary from the reported fee income which would be taxed at the relevant income tax rates, resulting in a large cash payment to Revenue. There is an expectation that the debtor recorded in the company balance sheet will be adjusted following the settlement and that any remaining balances will be taxed appropriately in future years.

#### ***Case D***

- 13.22** In this case, the consultant recorded fee income of €1.2 million and pension deductions of €800,000 in the related company financial statements over a six year period. The fee income was recorded as income in the profit and loss account with a corresponding debtor on the balance sheet. The pension contributions were recorded as expenditure in the profit and loss account with a corresponding creditor on the balance sheet.
- 13.23** As part of a negotiated settlement with the consultant, it was agreed that a significant amount of the fee income and pension deduction balances recorded in the company accounts would be taxed at the relevant income tax rates, resulting in a large cash payment to Revenue. Similar to Case C, and as with any yielding Revenue intervention, there is an expectation that the necessary adjustments will be made to the financial statements in line with generally accepted accounting principles and that any remaining balances will be taxed appropriately in future years.
- 13.24** Adjustments to financial statements are required in subsequent years as a result of certain settlements agreed with consultants. However, details of these adjustments are not documented in the settlement agreements. As a result, Revenue is not aware if the adjustments required as part of the settlements agreed have been made. Revenue has stated that it intends to re-visit a sample of the cases where this has arisen to confirm that the relevant adjustments have been made.

<sup>1</sup> The company income was held in trust by the consultant for the company.

### **Approval of settlements**

**13.25** Revenue's formal approval levels for settlements are as follows

- Up to €50,000 – District Manager (equivalent to Principal Officer (PO) level)
- €50,001 - €100,000 – Assistant Secretary
- Over €100,001 – Revenue Commissioner

**13.26** The Revenue manual states that *"in some districts, the responsibility for approving settlements under €50,000 may be delegated by the PO."* The rules around how the delegation should be effected are not set out in the manual, nor is the delegation incorporated into Revenue's Case Management System.

**13.27** Seven of the 37 cases chosen for review related to settlement amounts which were less than €50,000. As a result, they required District Manager approval, unless responsibility was assigned to another officer. Six of the cases had been approved at grades lower than District Manager level but there was no evidence to show that formal delegation had occurred. Five of the cases were approved at Assistant Principal level and one of the cases was approved at Higher Executive Officer level.

**13.28** Since July 2013, when an audit settlement is approved, it can be automatically randomly selected and referred for further approval to Assistant Secretary or to a Board Member (including the Chairman of the Revenue Commissioners).<sup>1</sup> Where a case is chosen, it goes directly to the selected Assistant Secretary or Board Member and bypasses all other normal approval levels.

<sup>1</sup> A random audit approval algorithm is invoked to decide if the audit will be selected for further approval.

**13.29** While the review noted that settlements arising following aspect queries and profile interviews can be significant, the random selection for further approval only applies to audit settlements. It does not apply to settlements agreed following aspect queries or profile interviews.

## Conclusions and recommendations

- 13.30** In 2010, Revenue initiated a review of the tax affairs of medical consultants in the Dublin region following concerns about a tax planning strategy being promoted within the medical profession. Following review of a number of cases, Revenue was satisfied that the matter warranted further examination so the review was extended nationally in 2013. Revenue has opened 763 medical consultant cases, 403 of which were closed by 30 June 2016, yielding €48.7 million, in tax (including future uplift), interest and penalties.
- 13.31** A sample of 37 closed cases was reviewed as part of this examination. Overall, it was found that a consistent approach was applied by Revenue in carrying out those interventions. However, certain issues were identified where improvements could be made. Those issues are set out in the recommendations below.

### *Timeliness*

- 13.32** As part of the review of the 37 cases it was noted that there was a significant variance in the time taken to close cases. Just over half of the cases (20) took over six months to close, with three of those cases taking over four years to close.

### **Recommendation 13.1**

An internal review should be carried out of a sample of cases where significant variances in the time to close is noted. This review should identify both the cause of the delays and possible steps Revenue could take to avoid such delays in the future.

### **Accounting Officer's response**

Part agreed. District Managers review the reasons for delays in closing cases by consulting regularly with audit managers. Following on from recommendations previously made in Chapter 27 (Tax Audit Settlements) of the 2012 Report of the Comptroller and Auditor General, quality assurance reviews are carried out frequently and have highlighted the need to further strengthen the controls around managing the duration of audits. These increased controls are being implemented. Metrics on the duration of audits have been included on the Revenue Case Management dashboard and are constantly highlighted and discussed at Regional/Divisional management meetings and at Business Management Executive meetings.

In relation to the specifics of the medical consultants programme, the nature of the engagement in these cases meant that negotiations and settlements were particularly protracted and their duration would exceed that of a normal audit.

### ***Calculation of interest and penalties***

- 13.33** As part of this examination, the interest and penalties for ten of the 37 cases reviewed were recalculated. Variances were noted in two of the ten cases. This suggests that Revenue's process for ensuring correct calculation of interest and penalties could be improved.

#### **Recommendation 13.2**

Revenue should review the procedures it has in place to ensure that interest and penalties are quantified in accordance with legislation and its Code of Practice. To assist with this exercise, a sample of interest and penalty calculations should be reviewed. Where variances are noted, Revenue should collate the reasons for the variances and communicate the findings to staff to ensure that this does not reoccur on other cases.

#### **Accounting Officer's response**

Part agreed. More frequent quality assurance reviews have resulted in steps being taken to ensure that lessons are learned from the small number of cases where there is a deviation from the legislation and the Code of Practice in applying interest and penalties.

Revenue's audit guidelines are regularly reviewed and updated and messages are disseminated through a variety of fora, including National Compliance Seminars, Regional Conferences, Regional Management Team meetings and Compliance Networks.

### ***Quantifying the liability due and settlements made***

- 13.34** Of the 37 cases reviewed as part of this examination, there were seven cases where no disclosure and no statement of the amount of liability were made by the taxpayer. For three of those cases, the Revenue auditor quantified the liability due. However, the calculation was not signed or dated so it was difficult to confirm that it was prepared by Revenue and not the taxpayer. For the other four cases, the settlements were based on calculations submitted by the taxpayers' agents. A quantification of the liability due by the Revenue auditor on completion of an audit would provide a clear basis for the settlement agreed.

#### **Recommendation 13.3**

Revenue should ensure that the auditor has assessed/quantified the liability due and that any settlement amount agreed below that is clearly explained and recorded in the audit report.

#### **Accounting Officer's response**

Agreed. The Revenue Case Management System is an essential part of the solution. Audit reports filed on the case management system should include clear explanations on how settlements have been reached. Planning Division will re-iterate this message to staff engaged in compliance interventions.

### ***Settlements agreed***

- 13.35** In two of the 37 cases reviewed, negotiated settlements were reached but the full terms of the settlement agreements, in relation to subsequent adjustments to financial statements, were not formally communicated to the consultant. Revenue is not aware if adjustments required as part of the agreed settlements have been carried out by the consultant.

### **Recommendation 13.4**

Revenue should ensure that all of the requirements of a tax settlement, including the necessity for any adjustments to financial statements, are formally communicated to the taxpayer in writing. Revenue should also ensure that it follows up on cases where subsequent adjustments are required as part of the settlement agreement.

#### **Accounting Officer's response**

Agreed. Revenue's Code of Practice for Audit and Other Compliance Interventions explains that we conclude interventions by issuing a final closure letter. Where, as a result of the audit, adjustments to financial statements are required, this will be communicated in the closure letter. Revenue expects that in line with general accountancy principles, these adjustments to financial statements will be made in the normal course of events. But Revenue commits to following up on a sample of such cases to ensure that the relevant adjustments have been made.

### ***Approval of settlements***

- 13.36** Revenue procedures state that the approval level for settlement amounts up to €50,000 is District Manager level. While Revenue stated that a District Manager may assign responsibility to audit managers, this process is not documented and it is not incorporated into Revenue's Case Management System.
- 13.37** As part of this examination, the settlement approval for the sample of 37 cases was reviewed. Seven of the cases resulted in settlements less than €50,000. Six of those cases, ranging in value from €2,000 to €33,000 were approved at grades lower than District Manager level, without any evidence to show that formal delegation had been applied.

**Recommendation 13.5**

Revenue should review the approval levels for settlement amounts. The approval level for amounts up to €50,000 should be incorporated into the Revenue's Case Management System. If delegation to grades below District Manager level is required for amounts up to €50,000, the procedures manual should be amended to reflect how this should be recorded and the amended approval levels should be incorporated into the Revenue's Case Management System.

**Accounting Officer's response**

Part agreed. In a very significant number of cases, the Assistant Principal Audit Manager will sign off on the audit based on assigned authority from the Principal Officer District Manager. Revenue is satisfied with the current approval levels for settlements but keeps these amounts under review. The various approval levels are already built into Revenue's Case Management system and reflected in the relevant user manual. Revenue will consider if the delegation of authority to approve settlements up to €50,000 needs to be formalised in other procedures manuals and elsewhere.

- 13.38** In addition to the normal approval procedures in place for settlement amounts, when an audit settlement is approved it can be randomly selected and referred for further approval at Assistant Secretary or Board level. This is a good internal control mechanism, but it only applies to audit settlements. It does not apply to settlements agreed following an aspect query or profile interview.

**Recommendation 13.6**

The selection of settlements for further random approval at Assistant Secretary or Board level should be extended to include settlements reached following aspect queries and profile interviews.

**Accounting Officer's response**

Not agreed. It should be noted that non-audit interventions go through the formal approval process in the same way as audits, except that there are no random referrals. As the number of non-audit interventions greatly exceeds the number of audits, the level of random referrals must be balanced with identified risks and available resources. The Revenue Board is satisfied with the current arrangements. However, a review of non-audit interventions will be conducted later in the year and the introduction of random approval for these interventions will be considered in light of that.



***Project review***

- 13.39** Revenue has closed 403 cases as part of its review of the tax affairs of medical consultants and there are 360 cases currently ongoing. There has been no formal review of cases closed to date. Such a review would assist Revenue in collating the findings from the cases closed to date, highlight the main risk areas and allow Revenue to communicate those findings and risks to the staff dealing with the cases of medical consultants.

**Recommendation 13.7**

Revenue should review a sample of closed cases in this project, and should communicate any lessons learned to staff.

**Accounting Officer's response**

Agreed. As with national programmes of a similar nature, learning the findings from the caseworking carried out and imparting these in a structured way is a very important part of the overall process. In this regard, the various internal communications channels like Divisional Management meetings as well as National and Regional Compliance networks play a critical role. A knowledge of the practices adopted by medical consultants is also relevant for potential reviews of other sectors/professions.

**Annex A Penalty rates for defaults on or after 24 December 2008**

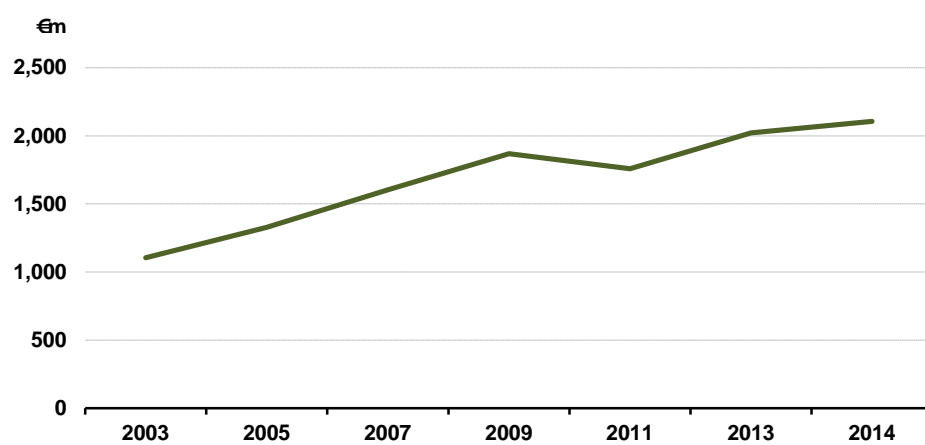
Qualifying disclosure	Category of behaviour	Full co-operation not given	Qualifying disclosure made – full co-operation given	
			Prompted disclosure	Unprompted disclosure
All qualifying disclosures in this category	Careless behaviour without significant consequences	20%	10%	3%
First qualifying disclosure in these categories	Careless behaviour with significant consequences	40%	20%	5%
	Deliberate behaviour	100%	50%	10%
Second qualifying disclosure in these categories	Careless behaviour with significant consequences	40%	30%	20%
	Deliberate behaviour	100%	75%	55%
Third or subsequent qualifying disclosure in these categories	Careless behaviour with significant consequences	40%	40%	40%
	Deliberate behaviour	100%	100%	100%
No qualifying disclosure	Category of behaviour	No co-operation	Co-operation only	
All defaults where there is no qualifying disclosure	Careless behaviour without significant consequences	20%	15%	
	Careless behaviour with significant consequences	40%	30%	
	Deliberate behaviour	100%	75%	

Note: This table refers to defaults that occurred on or after 24 December 2008 (Finance No. 2 Act 2008), where the taxpayer makes a qualifying disclosure and also to defaults where no qualifying disclosure is made. The tax geared penalty is a percentage of the underpaid tax. The penalty table for defaults that occurred before the 24 December 2008 is included in Revenue's Code of Practice for Audit and Other Compliance Interventions which is available on Revenue's website.

## 14 Research and Development Tax Credit

- 14.1** A tax credit for research and development (R&D) was introduced in the Finance Act 2004.<sup>1</sup> The credit is given at a rate of 25% of qualifying expenditure and can be claimed by companies undertaking in-house R&D within Ireland. A tax credit is also provided for expenditure on buildings and structures used for R&D. The R&D tax credit can be claimed in addition to the standard 12.5% corporation tax deduction. Therefore, the total tax benefit is 37.5%.
- 14.2** From 2009, a payable tax credit was introduced. This meant that when a company has offset the credit against its corporation tax liability for the current and preceding periods and an excess remains, the company can make a claim to have the remaining amount paid to it by the Revenue Commissioners (Revenue) in three instalments over a period of 33 months.
- 14.3** The primary objective of the tax credit is to incentivise Business Expenditure on Research and Development (BERD).<sup>2</sup> The following figure sets out the BERD from 2003-2014.

**Figure 14.1 Business expenditure on R&D, 2003 to 2014<sup>a</sup>**



Source: Central Statistics Office

Note: a The BERD survey is jointly conducted by the Central Statistics Office and Forfás biennially. The most recent data (relating to 2013) was published in June 2015. Figures for 2014 are estimated.

1 Section 33, Finance Act 2004.

2 Department of Finance Review of Ireland's Research and Development Tax Credit, October 2013.

3 R&D intensity measures R&D expenditure as a percentage of Gross Domestic Product (GDP). Ireland has set a national target of 2.5% of Gross National Product which has been estimated to equal 2.0% of GDP.

- 14.4** The BERD survey is carried out in all EU member states. In 2014, Ireland's share of R&D expenditure performed in the business sector was second highest (at 73%) in the EU. The EU Strategy 2020 sets a 3% objective for R&D intensity and most member states have adopted their national R&D intensity target for 2020.<sup>3</sup> In 2014, Ireland's R&D intensity was 1.55% while the EU average was 1.95%.

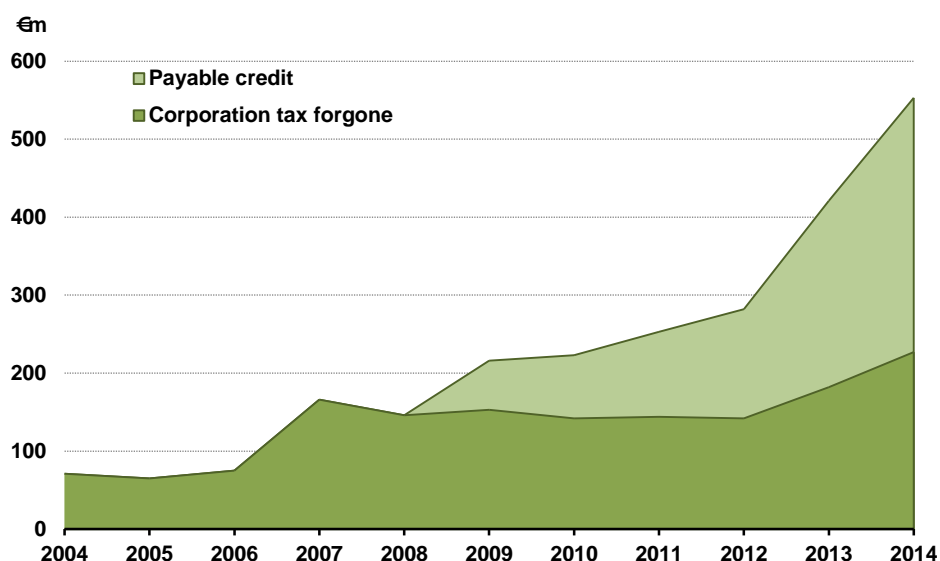
- 14.5** This chapter reviews

- the operation of the R&D credit, including the scale of non-compliance with the scheme conditions
- how Revenue systems and procedures can be improved in order to detect and deter non-compliance in this area.

## Cost of the R&D Scheme

- 14.6** The number of beneficiaries of the R&D tax credit scheme increased from 73 companies in 2004 to around 1,600 companies in 2014. Over the same period, the cost of the scheme has increased from €71 million to €553 million (see Figure 14.2). The information on the cost and number of beneficiaries of the R&D tax credit scheme is not readily available. Revenue collated it for the purposes of this examination.

**Figure 14.2 Cost of the R&D Scheme, 2004 to 2014**



Source: Office of the Revenue Commissioners

- 14.7** The cost of the R&D tax credit scheme as a proportion of the amount of BERD has risen from 12% in 2009 to 26% in 2014.

## Evolution of the R&D tax credit

- 14.8** The R&D tax credit regime has been amended and enhanced in most Finance Acts since its introduction (see Figure 14.3). The main changes include
- increase in the rate of relief from 20% to 25% in 2009
  - introduction of the payable credit
  - increases to the subcontracting limits
  - introduction of a 'key employee' provision – a company may transfer some or all of its R&D tax credit to key employee(s) engaged in R&D activities
  - removal of the base year requirement – the base year was originally set as 2003; this meant that when making a claim, the amount of R&D expenditure in 2003 had to be subtracted from the current year qualifying R&D expenditure when calculating a claim.<sup>1</sup>

<sup>1</sup> A rolling base year was envisaged, which would be updated every three years i.e. a fixed 2003 base for spending in 2004-2006 and thereafter a rolling one year base – the base for 2007 will be 2004, for 2008 will be 2005 and so on.

**Figure 14.3 Evolution of the R&D tax credit, 2004 to 2014**

Finance Act	Amendment made
2004	Introduction of the R&D tax credit – 20% credit on R&D expenditure in excess of R&D expenditure incurred in 2003 (the base year).
2006	<ul style="list-style-type: none"> <li>An apportionment of the R&amp;D related share of plant and machinery costs is eligible for the tax credit.</li> <li>Allows Revenue to consult with experts when determining if claimed expenditure was incurred in the carrying on of R&amp;D activities.</li> </ul>
2007	<ul style="list-style-type: none"> <li>Base year fixed at 2003 until 2009.</li> <li>Amendment to relief on expenditure to subcontractors (allowed the use of third parties, subject to a 10% ceiling, previously third level institutions only).</li> </ul>
2008	<ul style="list-style-type: none"> <li>Base year fixed at 2003 until 2013.</li> </ul>
No 2. 2008	<ul style="list-style-type: none"> <li>Increase in the rate of relief from 20% to 25%.</li> <li>Introduction of the payable credit.</li> <li>Proportion of expenditure on mixed used buildings and structures allowable for tax credit (subject to minimum 35% use for R&amp;D activities).</li> <li>Base year fixed at 2003 indefinitely.</li> </ul>
2010	<ul style="list-style-type: none"> <li>Amended calculation of qualifying expenditure in base year where company closes one of its R&amp;D centres on a permanent basis.</li> </ul>
2011	<ul style="list-style-type: none"> <li>Excluded expenditure on specified intangible assets from the credit where this expenditure is already covered under a separate tax relief regime.</li> </ul>
2012	<ul style="list-style-type: none"> <li>First €100,000 of R&amp;D expenditure eligible for the credit regardless of expenditure in base year.</li> <li>Key employee provision introduced.</li> </ul>
2013	<ul style="list-style-type: none"> <li>First €200,000 of R&amp;D expenditure eligible for the credit regardless of expenditure in base year (increased from €100,000 in 2012).</li> <li>Key employee eligibility criteria reduced to 50% of working time on R&amp;D activities (75% when introduced in 2012).</li> </ul>
No 2. 2013	<ul style="list-style-type: none"> <li>First €300,000 of R&amp;D expenditure eligible for the credit regardless of expenditure in base year (increased from €200,000 in 2013).</li> <li>Outsourcing limits increased.</li> </ul>
2014	<ul style="list-style-type: none"> <li>Removal of the base year with effect from 1 January 2015.</li> </ul>

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

## Review of the operation of the R&D tax credit

**14.9** In 2013, the Economic and Fiscal Division of the Department of Finance carried out a review of the R&D tax credit. The review concluded that a major overhaul of the R&D tax credit regime was not required and that the tax credit

- plays an important role in assisting Ireland in meeting its Europe 2020 target of achieving a level of expenditure on R&D of 2.5% of GNP
- is of significant importance to the R&D investment decisions of claimant companies
- stands up well in terms of international best practice
- is viewed as a very important element of Ireland's corporation tax regime in terms of attracting foreign direct investment to Ireland.

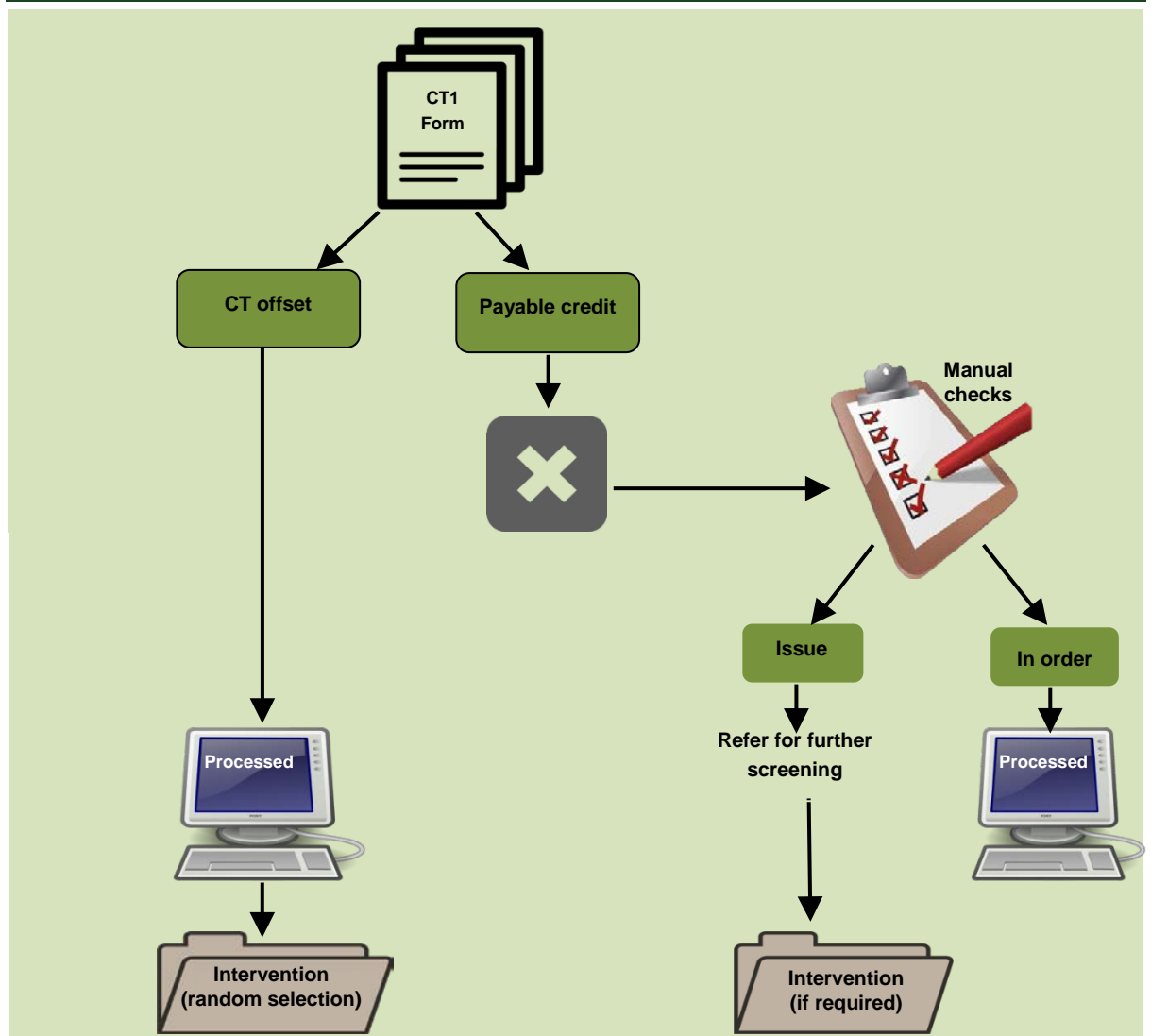
### Administration of R&D tax credit

- 14.10** Companies submit their R&D tax credit claims to Revenue as part of their annual corporation tax return (CT1 form). The tax credit is first offset against the corporation tax liability of the current period, and then of the preceding year. If an excess remains, the company can carry it forward indefinitely to offset its corporation tax liabilities in the future or can elect to have it paid to the company by Revenue in three instalments in the form of a payable credit. The total amount of payable credits in respect of R&D expenditure in any accounting period is subject to a limit which is specified in Revenue's guidelines.<sup>1</sup>

### Processing of R&D claims

- 14.11** As set out in Figure 14.4, there are two alternative processes when claims are received. If an R&D credit is to be used solely to offset corporation tax liabilities, it is processed without any manual checks.

Figure 14.4 R&D claim processing



<sup>1</sup> Revenue's Research and Development Tax Credit Guidelines, April 2015.

- 14.12** When a claim is received by Revenue for a payable credit, a 'stop' is automatically placed on the request. This generates a work item which has to be manually cleared by a Revenue caseworker before the payment is processed. Revenue stated that, in clearing the work item, the case worker will carry out certain verification checks, for example, ensure that all returns are up to date, confirm there is no compliance intervention ongoing, review the computation and check the previous claim (depending on the year of the claim). Revenue does not monitor the outcomes of the manual verification checks carried out. Revenue stated that where no issue arises normal processing continues and if an issue does arise an intervention (e.g. an audit) is opened and the result of that intervention is recorded in Revenue's case management system.<sup>1</sup>

### **Revenue interventions**

- 14.13** A Revenue intervention of an R&D claim comprises two tests
- a science test – to ensure that the activities included in the claim are consistent with the statutory definition of R&D activity
  - an accounting test – to ensure that the costs incurred in the carrying on of a qualifying activity have been properly tracked and accounted for.
- 14.14** As part of this review, we requested information on the compliance activity by Revenue in the area of R&D. Figure 14.5 presents the information provided by Revenue.

**Figure 14.5 Revenue R&D interventions, yield and number carried out, 2011 to 2015<sup>a</sup>**

Year	Number of interventions	Yield €000	Average yield per intervention €
2011	26	2,591	99,654
2012	49	5,413	110,469
2013	105	14,483	137,933
2014	162	10,106	62,383
2015	178	13,542	76,079
	<b>520</b>	<b>46,135</b>	

Source: Office of the Revenue Commissioners

Note: a Information is not available for all regions prior to 2011.

- 14.15** The information in Figure 14.5 was collated by Revenue for the purposes of this examination. Because Revenue records total audit yields under the relevant tax head, i.e. income tax, corporation tax etc, it was not possible to provide figures on the yield which is solely attributable to the R&D tax credit claims. The yield amount quoted in Figure 14.5 includes yield from other tax heads such as VAT, income tax etc. Revenue stated that since the introduction of its case management system in July 2015 all R&D interventions are recorded centrally. The case management system makes the identification of R&D intervention cases easier. However, analysis still needs to be carried out on a case-by-case basis to identify the specific R&D yield.

<sup>1</sup> Each Revenue district has a case selection process for screening cases suitable for possible compliance interventions.

## Results of review

- 14.16** As part of this examination, 17 cases involving an element of R&D yield that closed in 2015 were reviewed.

### *Yield from interventions*

- 14.17** The 17 cases selected as part of the review yielded a total of €8.8 million for collection or recoupment – of this €8.4 million (95%) related to R&D claims. Figure 14.6 sets out the total value of R&D claims submitted to Revenue and the yield from the interventions carried out on the sample of cases reviewed.

**Figure 14.6 Yield from sample of files reviewed**

Revenue region	Number of cases	Total R&D claim	Yield from R&D intervention	Yield as proportion of claim
		€000	€000	%
Large Cases Division	5	37,704	5,687	15%
Dublin	5	4,190	1,287	31%
South West	3	3,725	781	21%
East and South East	2	598	598	100%
Border, Midlands, West	2	160	21	13%
<b>Total</b>	<b>17</b>	<b>46,377</b>	<b>8,374</b>	<b>18%</b>

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

- 14.18** The main reasons for the yield in the R&D cases reviewed included

- issues with the base year
- non-qualifying expenditure being claimed
- over claiming of expenses
- insufficient supporting documentation
- incorrect apportionment of costs
- payable credit disallowed/restricted.

### *Interest and penalties*

- 14.19** For the 17 cases reviewed as part of this examination, interest and penalties were applied to the R&D yield in three cases. For the remaining cases

- interest and penalties did not apply to the R&D yield in 11 cases
- penalties did not apply in two cases (interest applied)
- interest did not apply in one case (penalties applied).

- 14.20** The main reasons provided by Revenue for interest and penalties not being applicable are set out in Figure 14.7.



**Figure 14.7 Reasons interest and penalties not applied in cases selected for review**

	Interest	Penalty
Expression of doubt <sup>a</sup>	1 case	1 case
Non-monetised amount <sup>b</sup>	11 cases	6 cases
Technical adjustment <sup>c</sup>	—	6 cases
	<b>12 cases</b>	<b>13 cases</b>

Source: Office of the Revenue Commissioners, and analysis by the Office of the C&AG

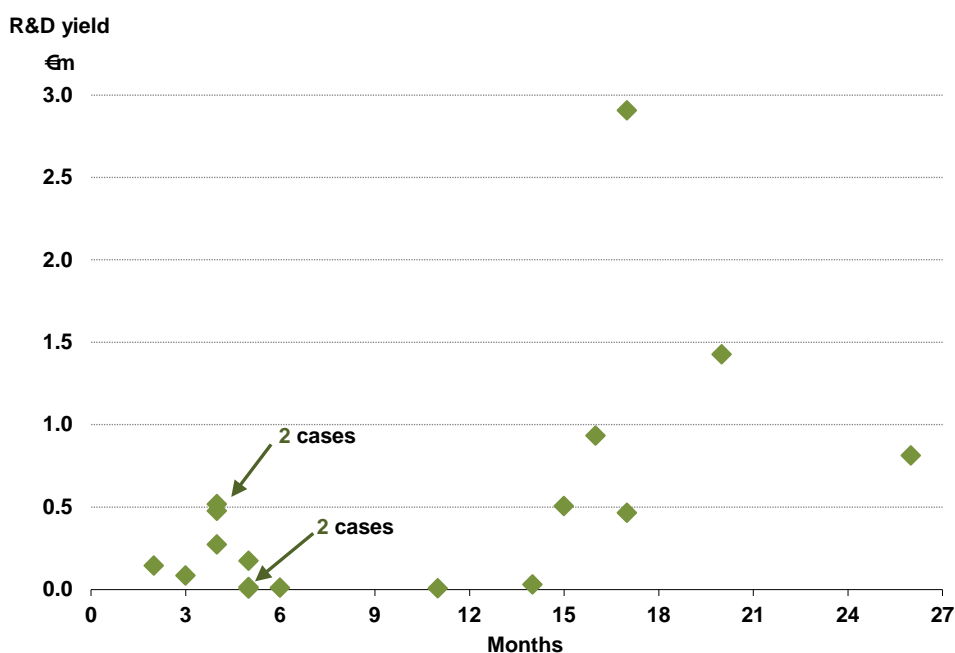
Notes: a A taxpayer who has a genuine doubt as to the taxation treatment of a certain matter may submit an expression of doubt when they file their return.

b This refers to the restriction of losses or payable credits withheld.

c Adjustments to tax or duty liability that arise from differences in the interpretation or the application of legislation. Where Revenue are satisfied that a technical adjustment arises, penalties do not apply.

### *Timeliness of closing interventions*

**14.21** For the sample of 17 cases reviewed, the time to close the cases varied. As shown in Figure 14.8, ten cases were closed in under one year and two cases took over 18 months to close.

**Figure 14.8 Timeliness in closing interventions, by value**

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

### ***Engaging experts***

- 14.22** Revenue has a panel of experts which it consults as required when completing the science test. Revenue has a centralised budget to allow for the engagement of experts to assist caseworkers when carrying out the science test. In 2015, 18 experts were engaged by Revenue at a cost of just over €140,000.
- 14.23** Revenue stated that a person can join the panel of experts at any time during the year and that in order to join the panel the applicant must
- hold a PhD in a relevant field and
  - be tax compliant.
- 14.24** Proof of academic qualifications is not requested by Revenue. Revenue stated the reason for this is because the majority of applicants are serving academics and their qualifications are published by the relevant college in their academic directory on their websites. All applicants must sign a declaration stating that their tax affairs are in order.
- 14.25** A condition of obtaining a public sector contract with a value of €10,000 or more (inclusive of VAT) within any 12 month period, is that the contractor is required to produce a tax clearance certificate or demonstrate a satisfactory level of tax compliance. Tax clearance certificates are issued by Revenue and there is an online verification facility to allow third party access to confirm the tax cleared status of an individual or company. This can only be accessed with the permission of the applicant who holds the tax clearance certificate.
- 14.26** In 2015, five experts were engaged by Revenue at a cumulative cost which was greater than €10,000 each. As part of this examination, Revenue was requested to provide evidence that the tax cleared status of the five experts was confirmed prior to making payments in excess of €10,000. While Revenue stated that the details regarding the tax compliance position of the experts was examined as part of the payments process, Revenue was unable to provide the required evidence. Revenue stated that while some did not hold a tax clearance certificate, they would have been entitled to one, or while Revenue did not hold a copy of the tax clearance certificate the taxpayer was in possession of same. For the sample of five experts selected, Revenue provided copies of the declarations stating that their tax affairs are fully in order and shall remain so for the duration of any contract that may be awarded.

## Conclusions and recommendations

- 14.27** The cost of the R&D tax credit scheme has risen substantially since its inception in 2004. In 2014, the cost was over €550 million in corporation tax foregone and payments to companies. This represents 26% of the business expenditure on research and development for that year.

### *Data availability*

- 14.28** Information on the number of R&D interventions and the specific R&D yield from those interventions is not readily available - it must be extracted on a case by case basis once an R&D case is identified. Revenue stated that the introduction of its case management system from July 2015 will allow it to more easily identify R&D cases. However, it does not change the manner in which total yield is recorded. Being able to readily identify the number of R&D interventions and the R&D related yield from those interventions would allow Revenue to assess the level of non-compliance in this area.

### Recommendation 14.1

Given the annual cost of the R&D scheme and the fact that it is increasing each year, Revenue should investigate the possibility of collating information on the compliance work it carries out on R&D specifically.

#### **Accounting Officer's response**

Agreed. Revenue is actively considering how information on R&D compliance work can be collated. A Tax and Duty Manual is currently being prepared. Consideration is being given to mandating Section 766 of the Taxes Consolidation Act 1997 rather than simply reducing the amount of the credit claimed.<sup>1</sup> If this comes to pass, full visibility on the yield from R&D interventions will be available.

### *Engagement of experts*

- 14.29** Revenue uses experts to assist caseworkers when carrying out the science test. Five of these experts received over €10,000 each in 2015. A condition of obtaining a public sector contract with a value of €10,000 or more (inclusive of VAT) within any 12 month period, is that the contractor is required to produce a tax clearance certificate or demonstrate a satisfactory level of tax compliance. However, in these five cases, Revenue was unable to provide evidence that the tax status of the experts was confirmed prior to processing payments.

### Recommendation 14.2

Revenue should review its procedures for engaging experts and ensure that where the relevant limits are exceeded, evidence is retained to show that the tax cleared status of experts was confirmed prior to processing the relevant payments.

#### **Accounting Officer's response**

Agreed. Revenue will review and strengthen our engagement processes for experts and ensure that relevant tax clearance procedures are followed particularly when individual experts are hired for additional engagements in the course of a tax year.

<sup>1</sup> Section 766 TCA 1997 provides for a specific claw back mechanism via a Case IV assessment.

- 14.30** Revenue does not request copies of qualifications from individuals applying to be included on the panel of experts.

**Recommendation 14.3**

Prior to appointing an expert to the panel, Revenue should request a copy of the educational qualifications of the person applying. This should be retained on file by Revenue.

**Accounting Officer's response**

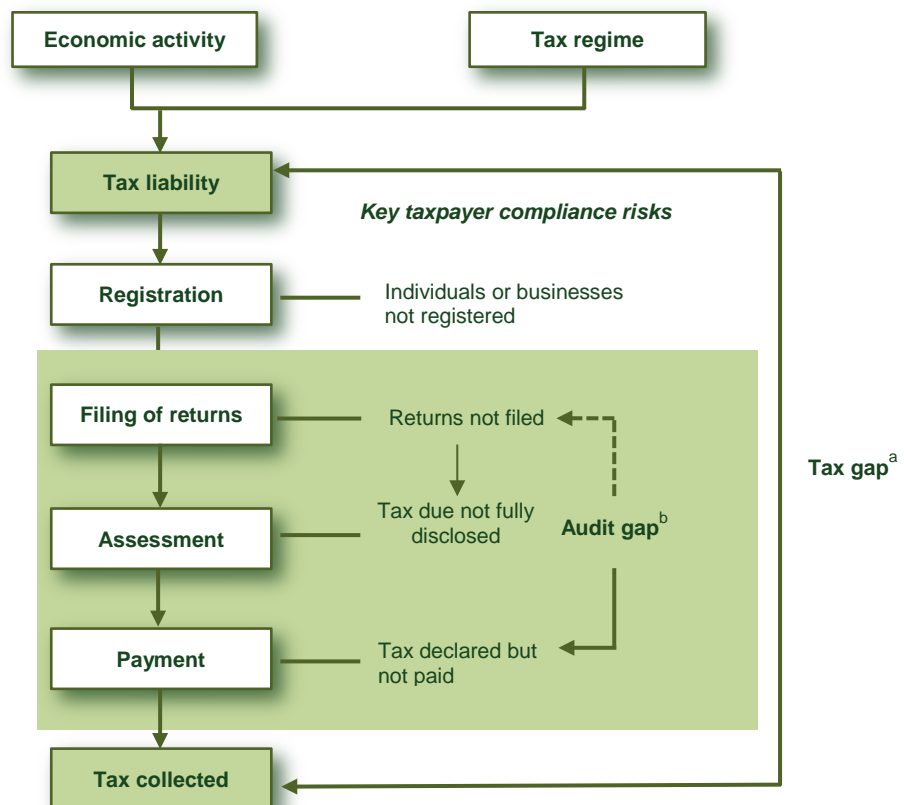
Agreed. This recommendation is being implemented. Revenue has recently implemented new procedures which entails requesting a copy of relevant qualifications when appointing an expert. Up to this, as the majority of applicants were serving academics, Revenue did not request copies of qualifications but rather reviewed the qualifications as published by the relevant college in its academic directory on its website.

## 15 Taxpayer Compliance

**15.1** Timely compliance by all taxpayers with their due taxation liabilities is important if the tax system is to be equitable and to avoid distortion of trade and business. In a tax system that is based on self-assessment, there are certain risks that tax may not be fully collected (Figure 15.1). Those risks include

- registration risk - taxpayers do not register for tax when they are required to do so
- filing risk - taxpayers do not file required returns or submit returns late
- assessment risk - tax returns filed do not fully disclose income or taxes due
- payment risk - declared taxes are not subsequently paid.

**Figure 15.1 Tax compliance framework**



Source: Office of the Comptroller and Auditor General

- Notes:
- Tax gap<sup>a</sup>** - an economic concept covering all recorded and unrecorded economic activity in the State. It is defined as the difference between tax collected and the tax that should have been collected if every liable person complied with their obligations.
  - Audit gap<sup>b</sup>** - a more immediate target for Revenue activity in that it refers to the difference between the amount of tax that would be collected if all registered taxpayers were properly audited and the amount they voluntarily pay under self assessment. Analysis of the results of cases selected at random for audit provides Revenue with useful information on trends in compliance.

**15.2** In order to manage taxpayer compliance effectively, the Revenue Commissioners (Revenue) need to

- know the underlying extent of non-compliance among taxpayers
- design and implement cost effective activities to detect non-compliance
- ensure taxes due are collected and penalties imposed on those who are non-compliant, so that there is a clear deterrent effect.

**15.3** This report reviews Revenue's approach to monitoring and managing taxpayer compliance in those key areas.<sup>1</sup> The examination included

- a review of Revenue's performance information in relation to its audit work
- an analysis of the database used by Revenue to record audit activity, and
- a review of trends in the numbers of taxpayers prosecuted and the related outcomes.<sup>2</sup>

## Assessing taxpayer compliance

### Estimation of tax gap

**15.4** Revenue does not estimate the tax gap because it has concerns both around accuracy of estimation, and about the usefulness of a tax gap estimate at an operational level. Revenue considers that the science of estimating such a gap is insufficiently developed to provide a useful reliable estimate of tax non-compliance levels.

**15.5** Revenue conducts regular research analysis on the economic environment and investigation of the potential effects of changes on tax collection. Recent examples include published reports analysing the unexpected increase in corporation tax receipts in 2015 and a summary of a random sampling programme of fuel traders that assesses compliance in the oil market.<sup>3</sup> Quarterly outlook reports are also produced for senior management examining trends between relevant economic indicators and tax collected. This research is aimed at understanding Revenue's operating environment and possible related compliance trends but is not intended to identify specific non-compliant cases.

**15.6** Revenue states that a wide variety of compliance measures are used by Revenue and by tax administrations in other countries. Gap analysis represents only part of the toolkit available. While the audit gap may inform or form part of the tax gap calculation, Revenue is not aware of its usage as a standalone measure by any tax administration. Revenue further notes that an OECD report on tax administration in 2015 reported that the majority of countries do not conduct gap analysis and less than a quarter of those that do, publish their gap results.<sup>4</sup>

**15.7** The UK HM Revenue & Customs (HMRC) annually publishes a report on measuring tax gaps. In its 2015 report HMRC estimated the UK tax gap in 2013-2014 (the latest year) to be £34 billion, which is 6.4 per cent of total theoretical tax liabilities.<sup>5</sup> This indicates that more than 93 per cent of the tax estimated to be due to HMRC in 2013-2014 was collected. Figure 15.2 shows the tax gap as a percentage of UK tax liabilities over the period 2009-2010 to 2013-2014.

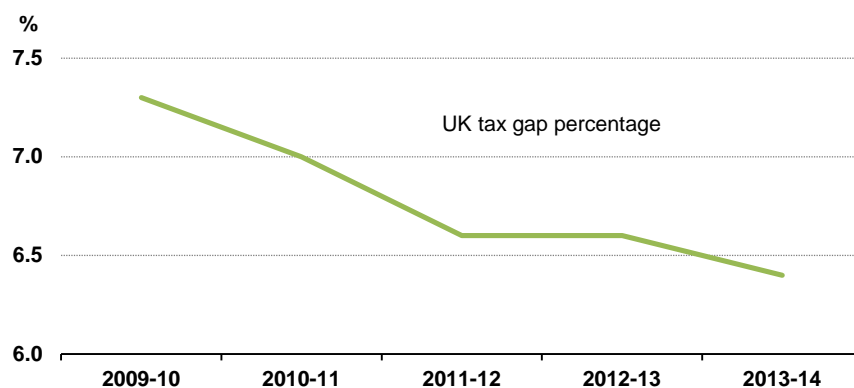
1 A similar report was published in 2013, looking at Revenue's compliance activity in 2012. Report on the Account of the Public Services 2012 – Chapter 25 Taxpayer Compliance.

2 Individual taxpayers' files were not examined.

3 See also Chapter 12 Tackling Fuel Laundering.

4 OECD's Tax Administration 2015 Comparative Information on OECD and Other Advanced and Emerging Economies Report.

5 HM Revenue and Customs *Measuring tax gaps 2015*.

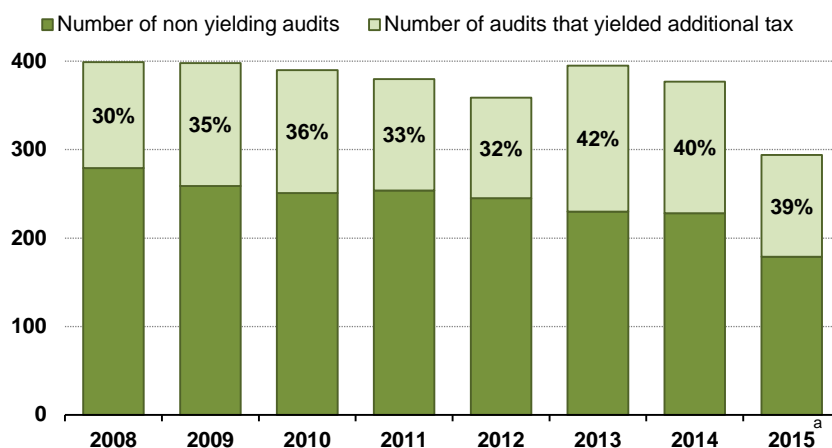
**Figure 15.2 Tax gap estimate as percentage of UK tax liabilities, 2009 to 2014**

Source: HM Revenue & Customs – *Measuring tax gaps 2015*

### Estimation of the audit gap

**15.8** The audit gap relates to tax liabilities unpaid by persons who are registered for tax purposes. Analysis of the outcome of a well designed random audit programme can provide Revenue with a sound basis for valuation of the overall audit gap. Revenue operates a random audit programme with around 400 audits of randomly selected individual taxpayers and businesses commenced annually.<sup>1</sup> Certain complex audits may take a number of years to complete.

**15.9** The outcome of the random audit programmes for 2008 to 2015 is shown in Figure 15.3. Additional taxes were levied as a result of random audits in around 40% of cases on average over the period 2013 to 2015. This reflects an increase in the percentage of random audits that were 'yielding' – by comparison an average of around one third of random audits in the period 2008-2012 resulted in an additional tax yield.

**Figure 15.3 Outcome of random audits, 2008 to 2015 (up to March 2016)**

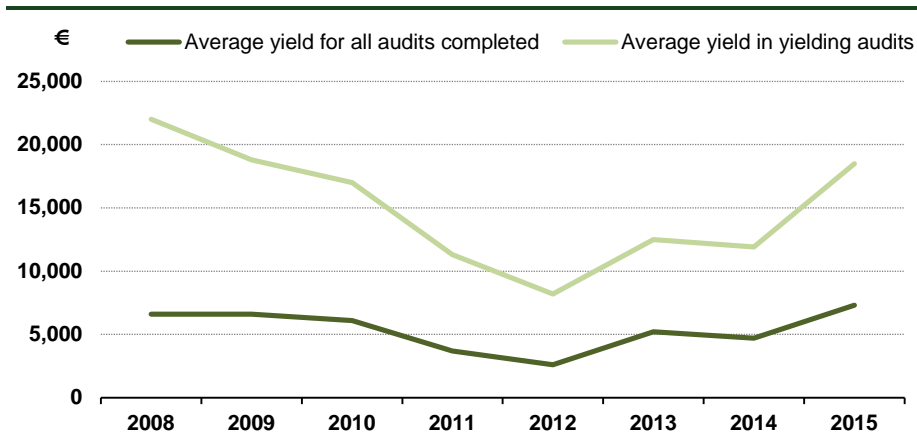
Source: Office of the Revenue Commissioners

Note: <sup>a</sup> At March 2016, 74% of the 2015 audits had been completed.

<sup>1</sup> In general, pay as you earn (PAYE) taxpayers are excluded from selection from audit under the random audit programme

- 15.10** Random audits focus initially on a particular tax year termed the base year. However, where non-compliance is discovered, Revenue may also review tax returns for earlier years and audit yield may also arise in respect of these. The audit yield from yielding random audits from 2008 to 2015 is included in Figure 15.4.

**Figure 15.4 Audit yield<sup>a</sup> from random audits, 2008 to 2015 (up to March 2016)**

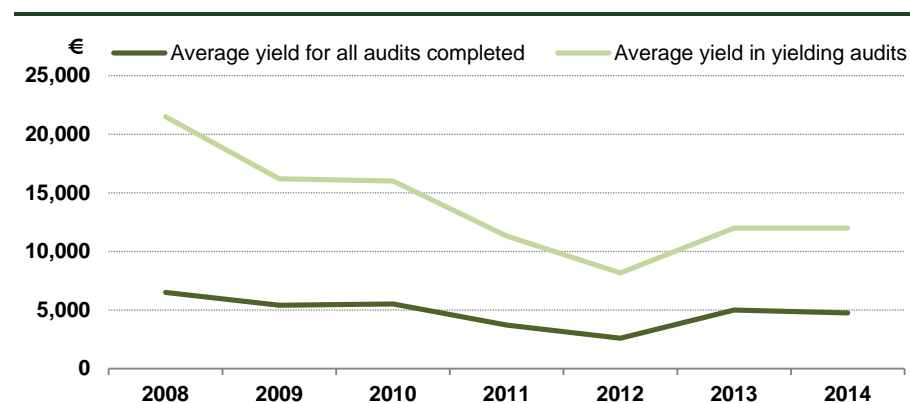


Source: Office of the Revenue Commissioners

Notes: a Yield includes tax, interest, penalties and surcharges.

- 15.11** At end March 2016, the random audit programme for 2015 was just under 75% complete. The experience in previous years has shown that the average yield from random audits increases as more audits are completed, because those that take longer to complete generally include higher value yielding cases.
- 15.12** Figure 15.5 shows the outcome for the 2008 to 2014 random audit programmes at the same stage in the cycle i.e. 15 months after the end of the programme year.

**Figure 15.5 Random audit programme, 2008 to 2014 (audit yield<sup>a</sup> at 15 months after programme year)**



Source: Office of the Revenue Commissioners

Note: a Average yield refers to mean yield and includes tax, interest, penalties and surcharges.



- 15.13** In order to estimate the audit gap, the examination compared the original declared liability with the audit tax yield for the 371 completed audits from the 2014 random audit programme (see Figure 15.6). The main results of the analysis are that
- 40% of taxpayers selected randomly had underpaid their taxes
  - the audit gap for the base year (2012) was an estimated 2% of the final assessed liability.

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**Figure 15.6 Taxpayer compliance rates based on 2014 random audit programme**

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	Total Base year 2012
Number of cases completed	371
Total assessed taxpayer liability in base year	33,107,932
Of which tax in base year as a result of audit <sup>a</sup>	675,360
Proportion of tax undeclared	2.04%

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Source: Office of the Revenue Commissioners

Analysis: Office of the Comptroller and Auditor General

Note: a Additional tax in the base year excludes interest and penalties.

- 15.14** The audit gap has been estimated using cases where audits had been completed and therefore may change upon completion of the audits in the remaining cases in the programme. Regular estimation of the audit gap would indicate whether the level of undeclared income is changing over time.
- 15.15** Revenue has not extrapolated or estimated the audit gap using the results of the random audit programme. In order to estimate the gap, the additional tax yield from random audits needs to be compared with the original liability declared by the taxpayer. Revenue confirmed that it had commenced recording this information as part of a response to a tax compliance review in 2012.<sup>1</sup> Revenue states that in the development of the new Revenue Case Management system (RCM), launched in July 2015, it was not feasible in the time available to capture details of the original declared liability. Revenue will, however, review how this information might be recorded in future releases of RCM.

### Detecting non-compliant taxpayers

- 15.16** Revenue states that a key corporate objective is to maximise voluntary compliance from taxpayers. Revenue's overall strategy is to seek to prevent non-compliance arising in the first place through a range of specific measures. The preventative measures include
- conducting real-time reviews of taxpayers' compliance records
  - pre-populating tax returns with third party income and data
  - real-time risk assessment as transactions are processed
  - 'designing' in taxpayer compliance when new taxes or reliefs are introduced.

<sup>1</sup> Report on the Account of the Public Services 2012 – Chapter 25 Taxpayer Compliance.

**15.17** For those who do not comply, however, Revenue runs a comprehensive programme of targeted interventions aimed at detecting non compliant taxpayers. This includes

- developing predictive models using advanced analytics to detect patterns of non-compliant behaviour from the extensive sources of taxpayer and third-party data available
- enhancing capacity to manage higher risk cases by further developing the organisational district structures
- continuous high-level profiling of the taxpayer register providing managers with a good overview of the make-up of their casebase, categorised, amongst other things, by trade sectors, income ranges, employee numbers and net worth
- conducting a dedicated programme of interventions for tax return and payment compliance amongst the smallest taxpayer casebase.

**15.18** Cases at higher risk of under-declaration are examined either by way of non-audit checks, through to a more intensive audit of the taxpayer's records by reference to the tax returns submitted or by way of a special investigation.<sup>1</sup> Any of these may result in additional tax and interest on late payment being levied and, in some cases, the imposition of civil or criminal sanctions.

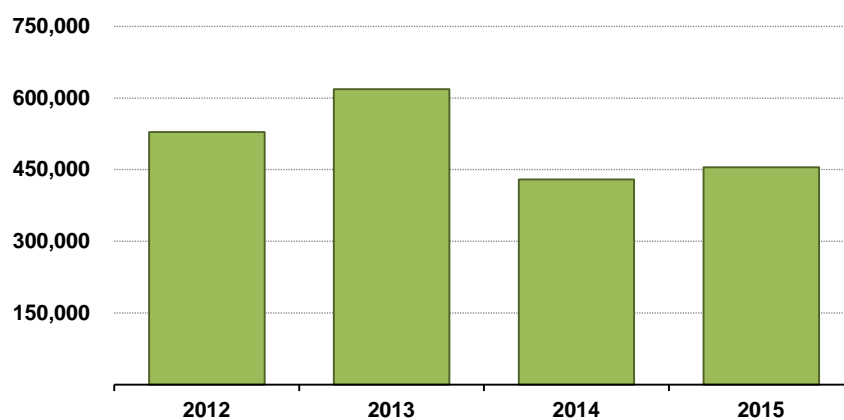
### ***Non-audit interventions***

**15.19** Rather than proceeding immediately to costly audit processes in all cases where it has identified a risk of undeclared liabilities, Revenue first seeks assurance that a customer is broadly compliant through the use of non-audit interventions. Non-audit interventions involve verifying documentation and requesting additional information in order to address a specific risk identified by Revenue. They can include

- the examination of customs declarations
- verifying the accuracy of VAT repayment claims
- following up on issues arising from suspicious transaction reports
- verifying PAYE tax credit and repayment claims and checks on potential non-declaration of additional income sources
- eligibility checks for disclosure schemes.

**15.20** Non-audit interventions can result in the levying of additional tax, interest and penalties as a result of enquiries, or in escalation of the case to a full audit. The numbers of non-audit interventions conducted in the years 2012 to 2015 are shown in Figure 15.7. The proportion of those resulting in additional yield is shown in Figure 15.8.

<sup>1</sup> DIRT and off-shore funds investigations are two examples of special investigations.

**Figure 15.7 Number of non-audit interventions carried out by Revenue, 2012 to 2015**

Source: Office of the Revenue Commissioners

**Figure 15.8 Revenue non-audit interventions and outcomes, 2012 and 2015**

	2012	2015
Number of non-audit interventions carried out	528,755	454,973
Proportion of interventions with yield	7%	15.5%
<b>Total yield</b>	€133m	€313m
Average yield per yielding case	€3,585	€4,438

Source: Office of the Revenue Commissioners

- 15.21** Revenue states that the reason for the reduction in the number of non-audit interventions for the years 2014 and 2015, is that only what were termed as “no further action” appraisals were reported, whereas for the years 2013 and prior, all appraisals were counted.<sup>1</sup> This meant that the initial appraisal was counted as well as any intervention actually carried out on the case. A decision by senior management, aimed at improved reporting and more consistent performance measurement across Revenue regions, also led to a significant reduction in the number of assurance checks reported for 2014.

### ***Risk-based audits***

<sup>1</sup> Appraisals are interventions that take place before any contact is made with the taxpayer or agent.

<sup>2</sup> REAP is a computerised risk profiling system in use since 2008. It rates taxpayers, relative to one another, using information from Revenue’s other systems as well as information from third parties such as the Health Service Executive, the Department of Housing, Planning, Community and Local Government and the National Transport Authority.

- 15.22** A Revenue audit involves examining tax returns, declarations of liability, repayment claims and the compliance of a taxpayer with tax legislation.
- 15.23** In addition to its random audit programme, Revenue targets cases for audit in a number of ways including the use of its Risk Evaluation Analysis Profiling system (REAP) which ranks taxpayers relative to one another, based on a number of specified risk factors.<sup>2</sup> Cases may also be selected for other reasons including, for example, information provided by third parties or when a particular sector or scheme has been targeted for examination.
- 15.24** Revenue carried out 6,110 risk-based audits in 2015 yielding a total of €318 million (see Figure 15.9). Figure 15.10 sets out the levels of yielding risk based audits by region in 2015.

**Figure 15.9 Revenue audit activity and outturn, 2012 and 2015**

		Revenue districts	Large Cases Division	Special investigations	All audits
Audits carried out	2012	8,116	202	255	8,573
	2015	5,948	130	32	6,110
% of yielding cases	2012	69	62	95	70
	2015	69	52	91	68
<b>Total yield (€m)</b>	<b>2012</b>	<b>270</b>	<b>56</b>	<b>29</b>	<b>355</b>
	<b>2015</b>	<b>233</b>	<b>29</b>	<b>56</b>	<b>318</b>

Source: Office of the Revenue Commissioners

Analysis: Office of the Comptroller and Auditor General

**Figure 15.10 Yielding risk based audits by region 2015 – Revenue Districts**

Region	Number	No. of Yielding	% Yielding
Border Midlands West	1,722	1,270	74%
Dublin	1,488	971	65%
East/South East	1,609	1,056	66%
South West	1,129	788	70%
<b>Total</b>	<b>5,948</b>	<b>4,085</b>	<b>69%</b>

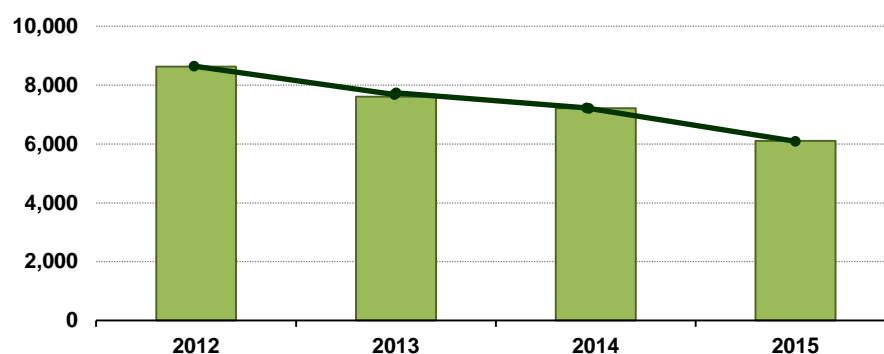
Source: Office of the Revenue Commissioners

Analysis: Office of the Comptroller and Auditor General

**15.25** There was a significant decrease in the number of audits undertaken between 2013 and 2015 (see Figure 15.11). Revenue states that one reason for the apparent reduction in audit numbers is a reclassification of Revenue's compliance interventions from mid 2012.<sup>1</sup>

**15.26** Revenue states that it continues to carry out a substantial compliance programme involving audits and other non-audit compliance interventions, notwithstanding the pressure on resources in recent years due to the loss of some senior auditing staff and the on-going rebuilding of audit capacity. While overall numbers have reduced, the yield from interventions, as reported in Revenue's annual reports, has increased from €492 million in 2012 to €642 million in 2015.

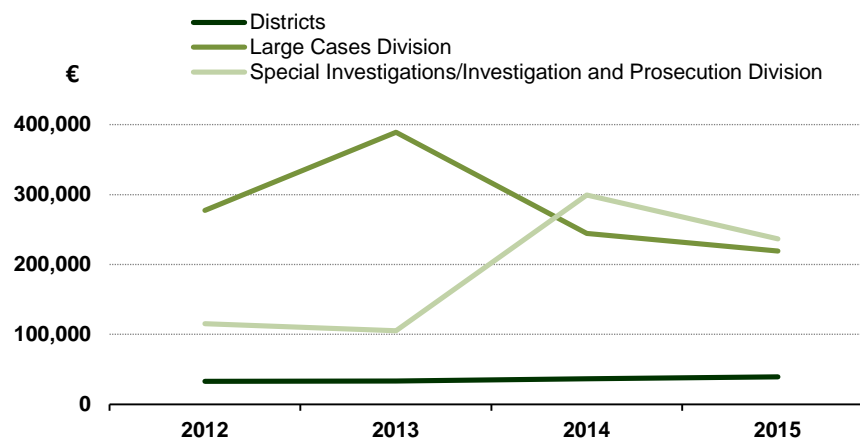
<sup>1</sup> Around this time, the concept of non-audit compliance interventions – namely aspect queries and profile interviews – was being developed and implemented. Compliance interventions that were traditionally classified as single issue or single tax head audits were re-classified in performance reporting data as an aspect query or possibly a profile interview. In addition, unprompted voluntary disclosures that were recorded as audits in the past are now more correctly regarded as aspect queries.

**Figure 15.11 Number of risk based audits undertaken, 2012 to 2015**

Source: Office of the Revenue Commissioners

**15.27** Figure 15.12 sets out the average yield per case.

**Figure 15.12 Average yield per audit case, 2012 to 2015**



Source: Office of the Revenue Commissioners

Analysis: Office of the Comptroller and Auditor General

Note: 2015 Special Investigations figure excludes the highest yielding case which was a significant outlier.

### **Deterring non-compliance**

**15.28** Those taxpayers who may consider delaying their tax returns or not paying their due taxes are likely to be deterred from doing so only if the perceived consequences outweigh the more immediate benefits. For a credible deterrent effect to exist there needs to be a high risk of the non-compliance being detected by Revenue in a timely way, and prompt collection of any outstanding taxes plus an interest charge. In appropriate cases, penalties for breaches of obligations under the tax code, including criminal prosecution in more serious cases, may add to the overall deterrent effect. Publication of the names and addresses of tax defaulters is used as an additional deterrent.

### **Recovery of detected unpaid taxes**

- 15.29** The finalisation of a Revenue audit can result in the levying of additional amounts in respect of under-declared tax, interest on late payment and penalties in relation to various offences (for example undisclosed sales, receipts income or capital gains). The total amount collected or deemed to be collectible from the taxpayer is referred to as the audit yield or tax settlement amounts.

Audit settlements can be

- paid in full when the audit is concluded
- paid over a phased basis where the taxpayer has limited access to liquid funds but continues to generate income
- unpaid where the taxpayer claims inability to pay.

### **Civil penalties**

- 15.30** Revenue can apply civil penalties for failure to file P35 or VAT returns or for various tax offences discovered on audit. The number and value of civil penalties imposed in 2012 and 2015 is shown in Figure 15.13. Penalties applied as a result of audit in 2015 represented 7% of the total audit yield. This proportion was consistent with the average for previous years.
- 15.31** In 2015, penalties were imposed in over 60% of the cases where audits resulted in yield liabilities being determined.

**Figure 15.13 Civil penalties imposed in non-compliance cases, 2012 and 2015**

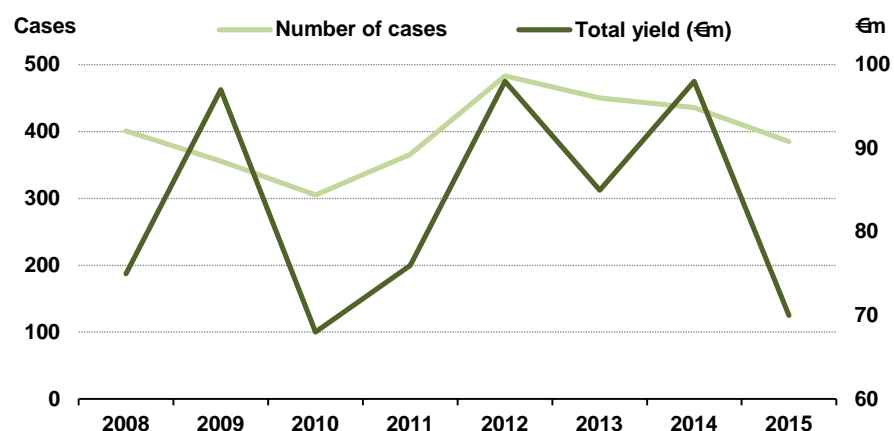
		Non-filing of P35 and VAT returns	Penalties applied as a result of audit	Total
Number of cases	2012	717	3,438	<b>4,155</b>
	2015	722	2,606	<b>3,328</b>
Value of civil penalties imposed (€m)	2012	2.8	26.1	<b>28.9</b>
	2015	2.9	22.7	<b>25.6</b>
Average civil penalty imposed (€)	2012	4,000	7,590	<b>6,950</b>
	2015	4,017	8,711	<b>7,692</b>

Source: Office of the Revenue Commissioners

### **Publication of defaulters' details**

- 15.32** Details of audit settlements are published where Revenue accepts a specified sum in excess of €33,000 in settlement of any additional liability for tax, interest and penalties.<sup>1</sup> Cases are not published where a disclosure either prompted or unprompted is accepted or the settlement is less than €33,000 or the penalty does not exceed 15% of the tax due.
- 15.33** As shown in Figure 15.14 the number of published cases has been steadily declining since its peak in 2012.

<sup>1</sup> This limit applies to liabilities arising after 1 January 2010. For liabilities arising between 1 January 2005 and 1 January 2010 the limit was €30,000. For liabilities arising prior to 1 January 2005 the limit was €12,700.

**Figure 15.14 Cases of non-compliance published, 2008 to 2015**

Source: Office of the Revenue Commissioners

Note: Yield amounts are based on settlements, and do not represent amounts collected.

- 15.34** Revenue states that legislative changes in 2008 and 2011 allowed publication where court orders were obtained for cases where penalties were not agreed and where settlements were unpaid. This gave rise to an increase in the number of publications in 2012 - 2014. The numbers achieved for 2015 are more in line with normal expectations.

### *Prosecutions for tax evasion*

- 15.35** Cases are referred to Revenue's Investigation and Prosecution Division (IPD) for investigation with a view to criminal prosecution where there is prima facie evidence of serious offences having been committed. These cases are further evaluated by an Admissions Committee before commencement of resource-intensive investigation work.
- 15.36** It can take several years before a case is presented to Court. As a result, at any point in time, Revenue has a number of serious evasion cases at various stages of the investigation and prosecution process (see Figure 15.15).

**Figure 15.15 Status of prosecution cases on hand, 2010 to 2016 (April each year)**

Status of prosecution cases on hand:	2010	2011	2012	2013	2014	2015	2016
Under investigation	50	69	87	101	106	122	107
With the Revenue Solicitor's office	14	12	23	41	43	32	23
Submitted to DPP	9	3	1	2	1	9	6
Directions issued by DPP to prosecute	26	33	23	17	16	11	15
Before the court	17	34	48	39	33	37	15
Bench warrants/European arrest warrants	—	—	—	1	1	2	1
<b>Total open cases</b>	<b>116</b>	<b>151</b>	<b>182</b>	<b>201</b>	<b>200</b>	<b>213</b>	<b>167</b>

Source: Office of the Revenue Commissioners

- 15.37** The number of convictions obtained in cases found to be suitable for prosecution between 2008 and 2015 and the associated penalties are shown in Figure 15.16.

**Figure 15.16 Prosecution for serious tax evasion, 2008 to 2015**

	2008	2009	2010	2011	2012	2013	2014	2015
<b>Convictions obtained:</b>								
Tax evasion cases	15	6	7	16	25	10	16	17
Customs and Excise evasion cases	5	9	6	14	25	25	11	11
Total convictions	20	15	13	30	50	35	27	28
<b>Penalties:</b>								
Value of fines (€000)	1,200	500	20	100	500	101	57	5
Suspended sentence	6 <sup>a</sup>	2	7	15	21	16 <sup>c</sup>	13	15 <sup>d</sup>
Imprisonment	1	4 <sup>b</sup>	1	8	19	7 <sup>ce</sup>	4	11 <sup>e</sup>

Source: Office of the Revenue Commissioners

- Notes:
- a Seven suspended sentences were imposed in 2008, but one of these was successfully appealed.
  - b Prison sentences were imposed in five cases in 2009. One of these was successfully appealed, with a €250 fine imposed after a judicial review.
  - c The DPP appealed the leniency of two sentences in 2013, both increased following appeal.
  - d The DPP has appealed the leniency of sentence in two cases. In one case, the person convicted has appealed against the severity of the sentence.
  - e Two sentences reduced in 2013 and 2015 following appeals by the taxpayers.

## Conclusions and recommendations

### *Assessing taxpayer compliance*

- 15.38** The Revenue random audit programme has consistently shown over the period 2008 to 2015 that at least one-third of taxpayers audited had under-paid their tax. Of those cases selected for audit in 2015, and where the process had been completed, 39% were found to have underpaid, and to owe a mean average of €18,500 in unpaid tax, penalties and interest.
- 15.39** The audit gap measures revenue losses in a tax year as a result of non-compliance by individuals and businesses that are registered with Revenue. This Office analysed the most recent data available. The outcome of Revenue's random audits in 2014 indicates that the audit gap was around 2% of the total liability.
- 15.40** Revenue itself does not produce estimates of the audit gap. This would be useful to allow Revenue to better assess and report on its effectiveness in managing taxpayer compliance.



**Recommendation 15.1**

Revenue should calculate the estimated audit gap annually to allow it to better assess its effectiveness in managing taxpayer compliance.

**Accounting Officer's response**

Part agreed. Revenue will review the role that audit gap measurement, including the make-up of the current Random Audit Programme (RAP), could have in assessing the effectiveness of the taxpayer compliance programme.

Revenue's Random Audit Programme is not currently designed for the purpose of estimating the audit gap. If it were, the selection of cases would be different as this is crucial to ensuring a representative sample that can be used to extrapolate up to the full population. At present, the RAP is not representative of the full population.

The opportunity cost of additional representative sampling (in terms of targeted audits foregone) will have to be considered as part of this review. In addition to simply increasing the numbers, there would also have to be much more detailed analysis of the cases to understand the behaviour that results in yields.

- 15.41** Revenue does not estimate the tax gap - a broader measure than the audit gap – due to issues around accurate estimation of the gap and concerns about its usefulness at an operational level. Revenue considers that the science of estimating such a gap is insufficiently developed to provide a useful reliable estimate of tax non-compliance levels. However, tax gap analysis could assist in further understanding the reasons for tax losses and assist Revenue in devising its strategy to mitigate the factors impacting on tax compliance.

**Recommendation 15.2**

While it is acknowledged that the tax gap is challenging to measure reliably as there are many sources of uncertainty, Revenue should investigate the possibility of implementing analysis techniques designed to highlight gaps in tax compliance rates.

**Accounting Officer's response**

Part agreed. Accurate and robust estimates of the tax gap require investment in resources. However, the benefits of doing so are likely to be limited from an operational perspective. The concerns around gap analysis rest on two main issues.

The first is the robustness or accuracy of any figures. Given the data limitations and the assumptions that are needed, any figures will, at best, be estimates. The nature of the shadow economy means it can't be measured scientifically, regardless of whether top down or bottom up (e.g. using audit data) approaches are used.

The second is around how such estimates would be used. Gap analysis does not identify individual cases for targeting risk. Nor does it measure Revenue's effectiveness (gaps change for all sorts of reasons, Revenue's actions are only part of the cause).

For the above reasons, Revenue does not see value in putting resources into developing a full suite of tax gap measurement tools. However, the tax gap is composed of a range of behaviours and arises across a range of sectors. It is important to note that Revenue does perform critical analysis of compliance risks focused on particular sectors or activities. This provides us with information similar to that which would arise from gap research with the added benefit that these research projects focus on areas where the outputs can be readily used.

As the Comptroller and Auditor General notes, the results of the random audit programme are a useful indicator of compliance and Revenue continues to review results and issues arising on an ongoing basis from the audits.

In addition, Revenue has conducted recent studies of compliance in the following areas:

- Oil market (trend analysis published in 2014 and results of national sampling programme published in 2016)
- Tobacco (annual surveys of non-Irish duty paid consumption of cigarettes and 'roll your own' as well as detailed analysis of economic factors underlying tobacco consumption)
- Analysis of the rental and construction sectors using independent data sources to benchmark Revenue compliance outcomes.

Furthermore, in certain areas, gap analysis may prove useful where it provides indicators of trends (rather than point estimates which are likely to be inaccurate) that can be compared across countries. For example, Revenue continues to support the European Commission's annual estimate of the VAT gap for each member state. Notwithstanding concerns about the variability of the figures (which can change significantly year to year with new data or new assumptions), these estimates show Ireland's VAT gap is consistently below the EU average.

***Detecting non-compliant taxpayers***

- 15.42** The results of Revenue's targeted audits indicate that its detection work is well targeted. In 2015, the proportion of risk-based audits resulting in audit yield was 68% compared with 39% for random audits. The average yield from risk-based audits is also considerably higher than for random audits. Following a change in strategy in 2012, Revenue has placed more emphasis on targeted non-audit interventions. Overall, compliance activity – comprising both audit and non-audit interventions – has resulted in an increased level of non-compliant yield being identified. It was noted however that the level of risk based audits undertaken by Revenue has fallen by almost 30% since 2012.

**Recommendation 15.3**

Revenue should consider increasing the level of risk based audits completed on an annual basis, as well targeted audits have consistently resulted in increased audit yields.

***Accounting Officer's response***

Part agreed. Essentially, the strategy now, as part of the case selection process, is for the case selector to recommend to the caseworker the type of intervention (including risk based audit) that is most appropriate to tackle the risks identified. It is also significant that the overall yield from compliance interventions is increasing year-on-year over the course of the period 2012-2015.

The numbers achieved also reflect the impact of the loss of key compliance resources through retirements, and the effects of a recruitment embargo, during the period under review.



## 16 Deferral of Tobacco Stamp Liability

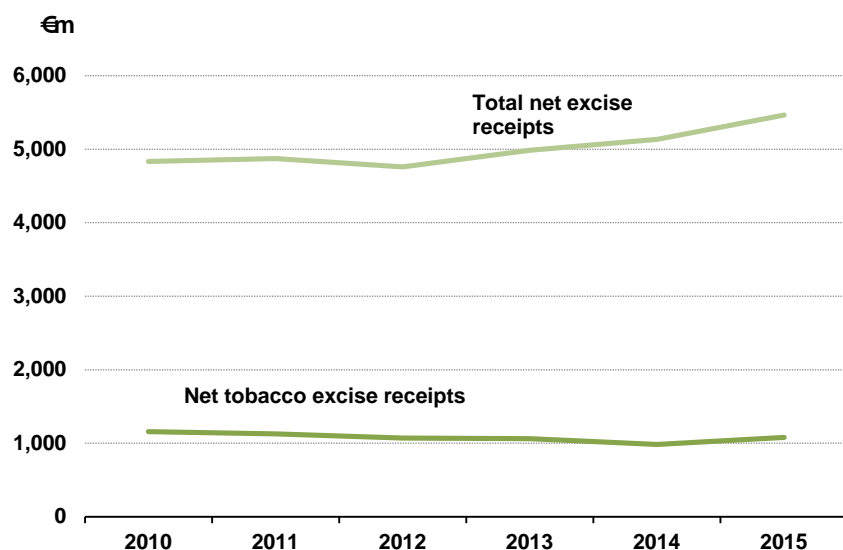
**16.1** In October 2015, the Revenue Commissioners allowed a company to defer part of a payment for tobacco stamp liability from December 2015 to January 2016. As a result, a significant amount – equivalent to 11% of the company's tobacco stamp liability for 2015 – that would normally have been due for payment on 21 December 2015 was not paid until 28 January 2016.<sup>1</sup>

**16.2** This report examines

- the tobacco products tax process
- the exceptional circumstances that gave rise to the decision by Revenue to defer the payment
- the process used to approve the deferral of the payment.

**16.3** The total net excise receipts in 2015 were €5.46 billion of which €1.08 billion, or just under 20%, related to tobacco excise (see Figure 16.1).

**Figure 16.1 Net excise receipts, 2010 to 2015**



Source: Office of the Revenue Commissioners

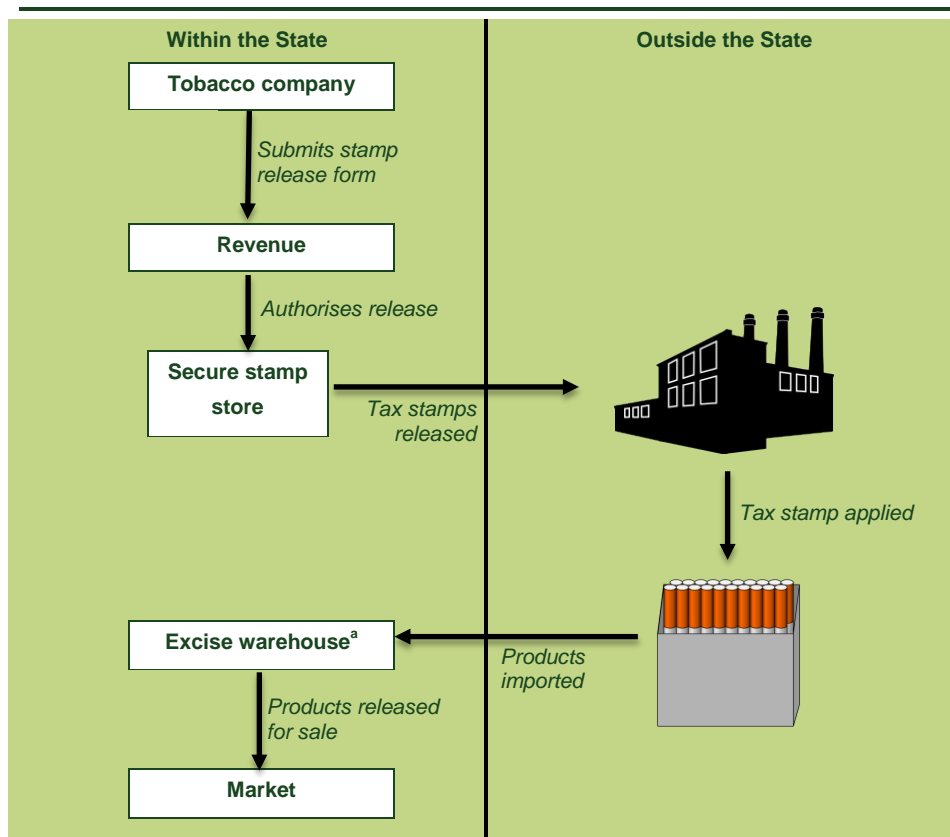
### Tobacco tax stamps

**16.4** Tobacco companies are required to place a tax stamp issued by Revenue on specified tobacco products for sale in Ireland.<sup>2</sup> The stamp is applied directly to packs beneath the cellophane wrapper. The tax stamp represents the amount of tax due on each pack of tobacco, and its presence signifies that tax has been paid on the product. Figure 16.2 summarises the tobacco tax stamp system.

**16.5** The number of companies involved in payment of tobacco products tax is very small and all cigarettes and the majority of 'roll your own' tobacco for the Irish market are produced outside the State.

<sup>1</sup> The actual amount of the deferral is not disclosed as it may lead to identification of the company.

<sup>2</sup> 'Specified tobacco products' includes cigarettes and fine-cut tobacco for the rolling of cigarettes. A tax stamp is not required on 'other tobacco products' such as cigars, pipe tobacco or other smoking tobacco, but tax is still payable on such products.

**Figure 16.2 Tobacco tax stamp system**

Source: Office of the Comptroller and Auditor General

Note: a Manufactured tobacco products are accompanied by an electronic administrative document when they are brought into the State. This is reconciled to a landed warrant submitted by the tobacco company at the end of each month.

- 16.6** Revenue staff advise the tobacco company in advance of the intended time of delivery of tax stamps and also attend to oversee the receipt of the stamps. On delivery of stamps, the authorised tobacco company official and the Revenue staff present compare the number and details of stamps received with the details contained in the delivery docket.

### Changes in legislation on tobacco products

- 16.7** New laws, regulations and administrative provisions were introduced by the European Union in 2014 relating to the manufacture, presentation and sale of tobacco and related products.<sup>1</sup> The directive provided for changes to the format of tobacco packs including an increase in the size and position of the health warning on the pack, where 65% of both the front and back of each pack must display two combined health warnings.
- 16.8** After 20 May 2016, tobacco companies can manufacture and supply only tobacco packs conforming to the new directive. Stock products manufactured prior to 20 May 2016 under the old regulations can be sold until 20 May 2017.

<sup>1</sup> EU Directive 2014/40/EU.

- 16.9** The Department of Health on 18 March 2016 announced a transitional exemption to allow the location of the tax stamp on tobacco products to remain unchanged for a period of three years. Up until that point, tobacco companies were unsure whether regulations specifying a new pack format would be introduced and what those regulations might include in relation to the placement of stamps.

### Tax payment arrangements

- 16.10** The payment of tobacco products tax in respect of specified tobacco products is by means of the purchase of tax stamps issued by Revenue.<sup>1</sup> A liability for the tobacco stamp charge is generated when the tax stamps are taken from the secure stamp store by the tobacco company.
- 16.11** A two-month standard deferral period is allowed for payment of the tax stamp liability under the legislation e.g. tax stamps purchased in May must be paid for by the tobacco company by July. An exception to the two month deferral is at year-end where all tax stamp liabilities for the period October, November and half of December are settled on 21 December.
- 16.12** In order for tobacco companies to avail of deferred payment, tobacco products tax and the tobacco stamp liability must be secured by means of a bank guarantee or bond which can be called on by Revenue in the event of a default. The guarantee specifies the amount for which the guarantor could be liable in any calendar month, with a provision that the overall potential liability of the guarantor is up to 3.2 times this amount.
- 16.13** In situations where the monthly tax stamp liability due for payment exceeds the guarantee amount, Revenue contacts the tobacco company and requests immediate payment of the excess amounts over the guarantee. The remaining balance is paid on the normal date for that monthly liability.

### Deferral of payment

- 16.14** In exceptional circumstances, Revenue can permit the producers of specified (i.e. stampable) tobacco products to avail of the provisions governing payment of tax on other tobacco products.<sup>2</sup> This potentially allows a payment for tobacco stamps obtained in October – mid December to be deferred for up to one month after the liability arises.<sup>3</sup> The exceptional circumstances provision was initially provided for in legislation in 1994 which came into full effect on 1 October 1996.<sup>4</sup> Revenue exercised this power for the first time in 2015, as set out below.

#### *Exceptional circumstances*

- 16.15** Revenue has not defined what constitutes exceptional circumstances under this legislation. Revenue noted that an attempt to define specific circumstances or events as exceptional for the purposes of the legislation could lead to cases where taxpayers create such exceptional events to seek the associated benefits.
- 16.16** Tobacco companies made a case to Revenue in October 2015 that, due to the uncertainty around the format of the new pack, they would not be in a position to produce stock compliant with the new directive at short notice. Because tobacco products for the Irish market are produced outside the State, that production makes up a very small element of the overall production run of the tobacco companies and so production slots for Ireland must be booked well in advance.

<sup>1</sup> Section 73 (2), Finance Act 2005.

<sup>2</sup> Section 73 (2) of the Finance Act 2005 states that "Payment of tobacco products tax in respect of specified tobacco products shall be by means of the purchase of tax stamps issued by the Commissioners except where the Commissioners, in exceptional circumstances, permit payment to be subject to the provisions governing other tobacco products".

<sup>3</sup> Section 74(c) Finance Act 2005 sets out the terms relating to the deferral of payments in respect of other tobacco products.

<sup>4</sup> Section 69, Finance Act 1994.

- 16.17** The tobacco companies indicated that if they did not stock pile tobacco products there could be limited or no stock available for the Irish market after 20 May 2016. Revenue identified a risk that an absence or shortage of legal tobacco product might lead to an increase in illegal tobacco sales and a consequent loss of tobacco products tax revenue.

#### *Approval of the payment deferral*

- 16.18** One tobacco company commenced stockpiling specified tobacco products in 2015 for the 2016 Irish market. As a result, the total amount that the company was liable to pay for tax stamps for the period October, November and the first half of December was nearly double that for the same period in 2014.
- 16.19** In October 2015, Revenue agreed to defer part of a payment due from December 2015 to January 2016. The deferred amount was significant, being equivalent to 11% of the company's tobacco stamp liability for 2015. The deferral was due to the exceptional nature of the uncertainty around the new pack format. The company confirmed that the associated tobacco products would not be released for sale until after the payment was received by Revenue in 2016. As a result, the amount transferred to the Exchequer in December 2015 did not include the deferred amount.
- 16.20** The approval for the deferral of the payment was by means of an oral discussion between the Large Cases Alcohol, Tobacco and Multiples District Manager and the Assistant Secretary responsible for Large Cases Division. Revenue does not appear to have formally documented the approval process.
- 16.21** Revenue noted that the oral approval was the conclusion to a number of discussions and meetings held in which the District Manager had briefed the Assistant Secretary on the case.
- 16.22** A similar deferral arrangement was extended to another company in 2016.

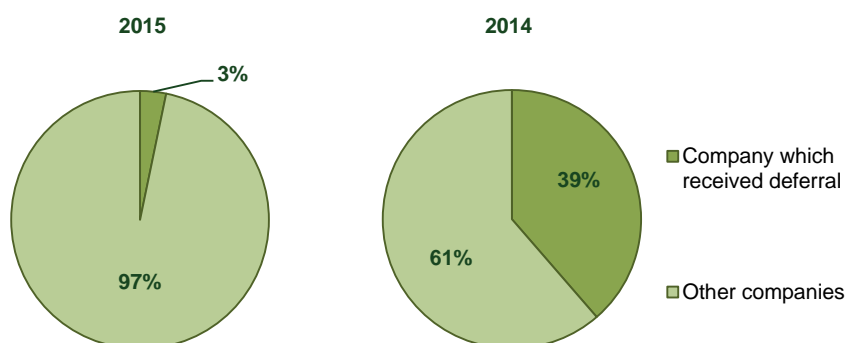
#### *Accounting treatment*

- 16.23** The liability for tobacco products tax arises at the time the specified tobacco products are released for consumption in the State.<sup>1</sup> When tobacco companies purchase and pay for tax stamps, the amounts are recorded by Revenue as deposits on the Revenue Account balance sheet. The deposit amounts are transferred to the Exchequer on a monthly basis. When the specified tobacco products are released for consumption, the deposits recorded in relation to those products are released and recorded as tobacco products tax receipts in that period.
- 16.24** Figure 16.3 shows a breakdown of the tobacco products deposits held by Revenue at year-end for the tobacco companies who avail of the tax stamp system.

<sup>1</sup> Section 73 (1), Finance Act 2005.



**Figure 16.3 Tobacco products deposits of companies availing of the tax stamp system at year-end, 2014 and 2015**



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

- 16.25** The value of year-end deposits of other participants were broadly similar over both years. The value of the 2015 year-end deposit of the company which received the deferral was just 5% of the value of its 2014 year-end deposit.

### Conclusions and recommendations

- 16.26** The company availing of the tobacco stamp liability deferral had an adequate guarantee in place at the time the payment was deferred. The conditions of the guarantee meant that in the event of a default by the company, Revenue could have called on the guarantor to pay up to 3.2 times the amount liable in any calendar month. Consequently, there was no tax at risk.
- 16.27** The legislation allowing Revenue to defer tax stamp liability payments in exceptional circumstances was first introduced in 1994. 2015 was the first time that Revenue exercised this power. Revenue has not established a written procedure for granting such a deferral.

#### Recommendation 16.1

Where Revenue is utilising powers, particularly for the first time, an appropriate approval process should be established setting out the different authorisation levels required.

#### Accounting Officer response

Agreed. As noted, this was the first time that the Large Cases Division had invoked the exceptional circumstances provision in the legislation. Whilst the authorisation process was in compliance with the relevant legislation, a procedure setting out the different authorisations required for the use of powers relevant to Tobacco Products Tax legislation will be put in place.

- 16.28** There should be a clear, written record of decisions taken by Revenue, particularly for large amounts which impact on the Exchequer return figures. In this particular case, the payment deferral should have been formally documented showing the recommending officer's business case for the deferral and the approving officer's official sign off.

**Recommendation 16.2**

Revenue should ensure that all decisions are formally documented including submission and approval of a business case, particularly for large amounts that impact on the Exchequer return figures.

**Accounting Officer response**

Agreed. Revenue had a robust approval system in place for the making of such decisions. It is acknowledged that there should be a formal process in place for documenting such decisions.

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## Other Matters

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## 17 Accounts of the National Treasury Management Agency

- 17.1** Section 12 of the National Treasury Management Agency Act 1990 (the 1990 Act) (as amended) requires the National Treasury Management Agency (the NTMA) to keep accounts of all moneys it receives or expends in the form approved by the Minister for Finance (the Minister), and to submit them for audit by the Comptroller and Auditor General. Following completion of the audit, the NTMA must submit the accounts to the Minister, who in turn must present the accounts to the Houses of the Oireachtas.
- 17.2** Separately, section 12 of the 1990 Act requires the Comptroller and Auditor General to report to Dáil Éireann with respect to the correctness of the sums brought to account by the NTMA each year. This is the report for 2015 under that section of the 1990 Act.

### Accounts of the NTMA 2015

- 17.3** The accounts audited under section 12 of the 1990 Act (as amended) are as follows
- national debt of Ireland
  - NTMA administration account
  - Post Office Savings Bank Fund financial statements
  - State Claims Agency financial statements
  - Ireland Strategic Investment Fund financial statements.
- 17.4** In accordance with section 12 of the 1990 Act (as amended), the accounts of the NTMA are required to note a record of expenses incurred in relation to its activities in respect of the
- National Pensions Reserve Fund <sup>1</sup>
  - National Asset Management Agency.
- 17.5** The accounts of the NTMA for 2015 have been audited. My reports on the audits were issued on 26 May 2016. Copies of the accounts, together with my reports on the audits, were presented by the Minister to the Houses of the Oireachtas on 14 July 2016.
- 17.6** I am satisfied that the accounts properly present the transactions of the NTMA for 2015 and its balances at year end.
- 17.7** A new accounting standard - Financial Reporting Standard 102 (FRS 102) - was introduced for the 2015 financial year. The NTMA undertook a review of the format of all accounts and has adopted FRS 102 as the reporting base for the
- NTMA administration account
  - Ireland Strategic Investment Fund.

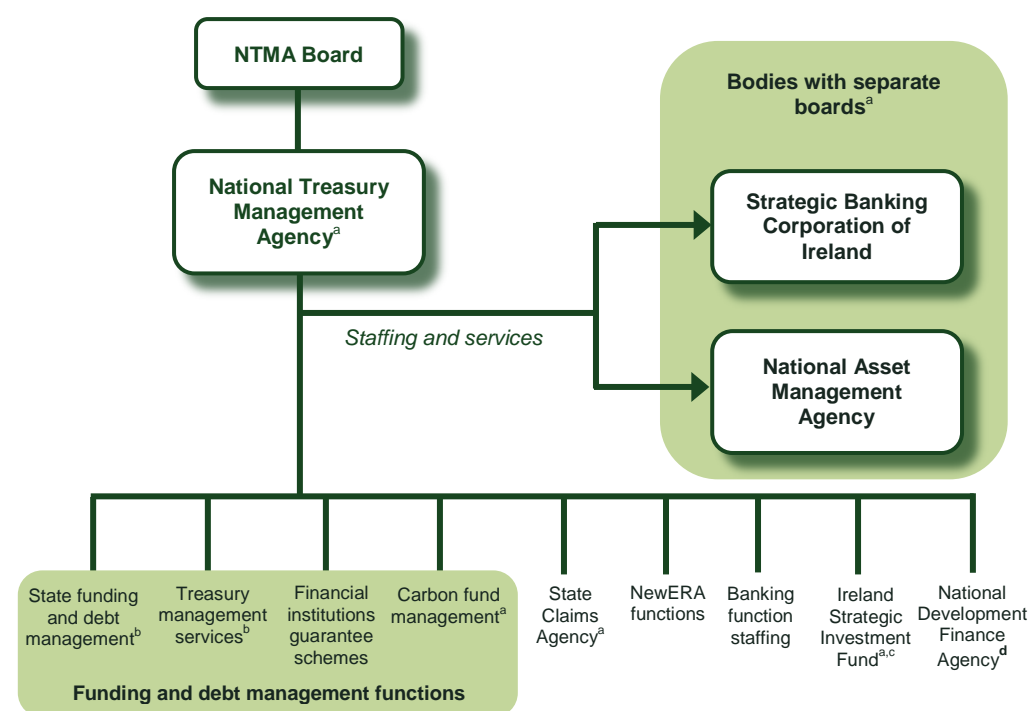
<sup>1</sup> The NTMA did not incur expenses in relation to its activities in respect of the National Pensions Reserve Fund in 2015.

There was no significant impact on the results or balances as a result of the adoption of FRS 102. The NTMA did not adopt FRS 102 for the remaining accounts as these are either reported on a cash basis or the accounting framework reflects the statutory functions.

## Functions, roles and staffing of the Agency

- 17.8** The NTMA was originally set up in 1990. It has since evolved into a complex organisation with multiple functions that extend beyond its original and core role in managing Ireland's national debt. Its functions were further expanded and reorganised under the National Treasury Management Agency (Amendment) Act 2014 (the 2014 Act).
- 17.9** The 2014 Act also streamlined the NTMA's governance structures to enable a more integrated approach to the performance of its functions. In December 2014, the NTMA was reconstituted as a board with a Chairperson and eight other members with overarching responsibility for all of the NTMA's functions. There was no change in the membership of the board in 2015.
- 17.10** The NTMA assigns staff to the National Asset Management Agency (NAMA) and the Strategic Banking Corporation of Ireland (SBCI) and also provides them with business and support services and systems. Both NAMA and SBCI have their own boards and are separately accountable to Dáil Éireann.
- 17.11** The structure of the NTMA, following the amendments effected by the 2014 Act is outlined in Figure 17.1.

**Figure 17.1 Structure of the National Treasury Management Agency**



Source: National Treasury Management Agency

- Notes:
- a Separate financial statements are prepared for the activities of each of these functions/entities.
  - b In the case of State funding, debt management and treasury management services, separate financial statements are prepared for the Dormant Accounts Fund, the Post Office Savings Bank Fund and the national debt.
  - c Financial statements for the National Pensions Reserve Fund (NPRF) will continue to be prepared until all remaining assets are legally transferred to the Ireland Strategic Investment Fund (ISIF).
  - d The National Development Finance Agency (NDFA) was dissolved with effect from 27 January 2015 as a separate statutory body. The NTMA administration account includes a disclosure note of the activities of the NDFA (previously reported separately).

### ***Funding, debt and treasury management***

**17.12** The NTMA borrows on behalf of the Exchequer and manages Ireland's national debt.

**17.13** Details of the structure of the national debt and trends in Government debt are included in Chapter 2.

**17.14** The NTMA performs a number of other debt management and treasury functions, including

- treasury operations for NAMA, ISIF, SBCI and Irish Bank Resolution Corporation Limited (in special liquidation) (IBRC)
- providing a central treasury service for State bodies and local authorities
- managing the assets of the Dormant Accounts Fund and the Post Office Savings Bank Fund.

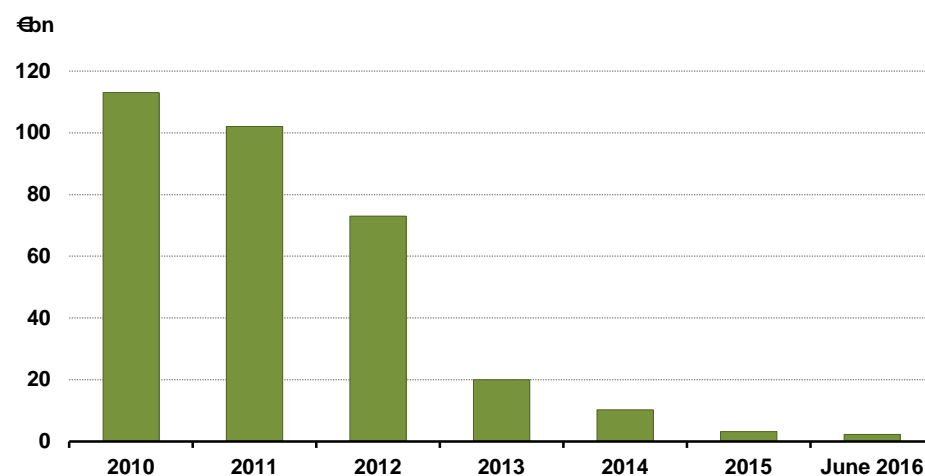
### ***Financial institutions guarantee schemes***

**17.15** Certain eligible liabilities, including deposits and debt securities of up to five years maturity in financial institutions are guaranteed by the Minister under the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 (the scheme). The NTMA was appointed as scheme operator by the Minister.<sup>1</sup>

**17.16** Each institution with liabilities guaranteed under the scheme is required to pay a fee. The amount received in 2015 was almost €76 million (2014: €179 million).<sup>2</sup> The Accounting Officer of the Department of Finance is accountable for the fees received.

**17.17** At end February 2013, the Minister announced the closure of the scheme to all new liabilities with effect from midnight on 28 March 2013. At end-2015, amounts covered by the scheme were around €3.2 billion. This had reduced to €2.3 billion at end-June 2016 (see Figure 18.2).

**Figure 17.2 Covered liabilities under the Eligible Liabilities Guarantee Scheme, 2010 to end-June 2016**



Source: Department of Finance

<sup>1</sup> SI No. 490 of 2009.

<sup>2</sup> Fees are recognised on a cash basis and received quarterly in arrears. Fees in respect of 2015 on an accruals basis were €53 million (2014: €155 million).

**17.18** Following the liquidation of IBRC in February 2013, a number of claims were made under the scheme and, in March 2013, the Minister delegated further functions to the NTMA<sup>1</sup>

- verification of claims for payment in respect of a deed of guarantee put in place on 29 November 2010 in relation to certain derivative contracts entered into by IBRC
- payment of amounts due under the deed of guarantee.

**17.19** The NTMA, as the scheme operator, continues to process payments under the scheme as claims are submitted and verified. At end 2015, the NTMA had claims on hand with a total value of €0.5 million. Payments under the scheme to end-June 2016 totalled just under €0.3 million (see Figure 17.3).

**Figure 17.3 IBRC payments under financial institutions guarantee schemes, 2013 to end-June 2016**

	2013	2014	2015	January to June 2016	Total
Payment type	€m	€m	€m	€m	€m
Deposits <sup>a</sup>	63.9	74.6	4.5	0.3	143.3
Bond holders <sup>a</sup>	933.8	–	–	–	933.8
Derivatives <sup>b</sup>	37.5	–	–	–	37.5
<b>Total payments</b>	<b>1,035.2</b>	<b>74.6</b>	<b>4.5</b>	<b>0.3</b>	<b>1,114.6</b>

Source: National Treasury Management Agency

Notes: a Payments made under the Credit Institutions (Eligible Liabilities Guarantee) Scheme.

b Payments made under the IBRC Deed of Guarantee.

**17.20** As scheme operator, the NTMA has lodged three claims with the joint special liquidators of IBRC for the repayment of amounts paid out under the scheme, estimated accrued interest and other associated costs.<sup>2</sup> The amounts claimed<sup>3</sup> were

- €933.8 million in respect of payments to bond holders
- €142.5 million in respect of payments to depositors, including expenses and outstanding scheme fees up to 30 March 2015
- €2.7 million in respect of payments to depositors, including expenses up to 30 September 2015.

<sup>1</sup> SI No. 85 of 2013.

<sup>2</sup> Interest is payable on amounts claimed from the date of each claim to the date of payment by the joint special liquidators.

<sup>3</sup> The amounts claimed from the joint special liquidators may differ from amounts paid under the schemes due to timing.

**17.21** On 30 September 2013, the Department of Finance lodged a claim with the joint special liquidators of IBRC under the IBRC deed of guarantee totalling €37.8 million, which includes accrued interest of €0.3 million up to that date.

**17.22** Additional claims will be lodged with the joint special liquidators for payments not yet reclaimed and any future payments.



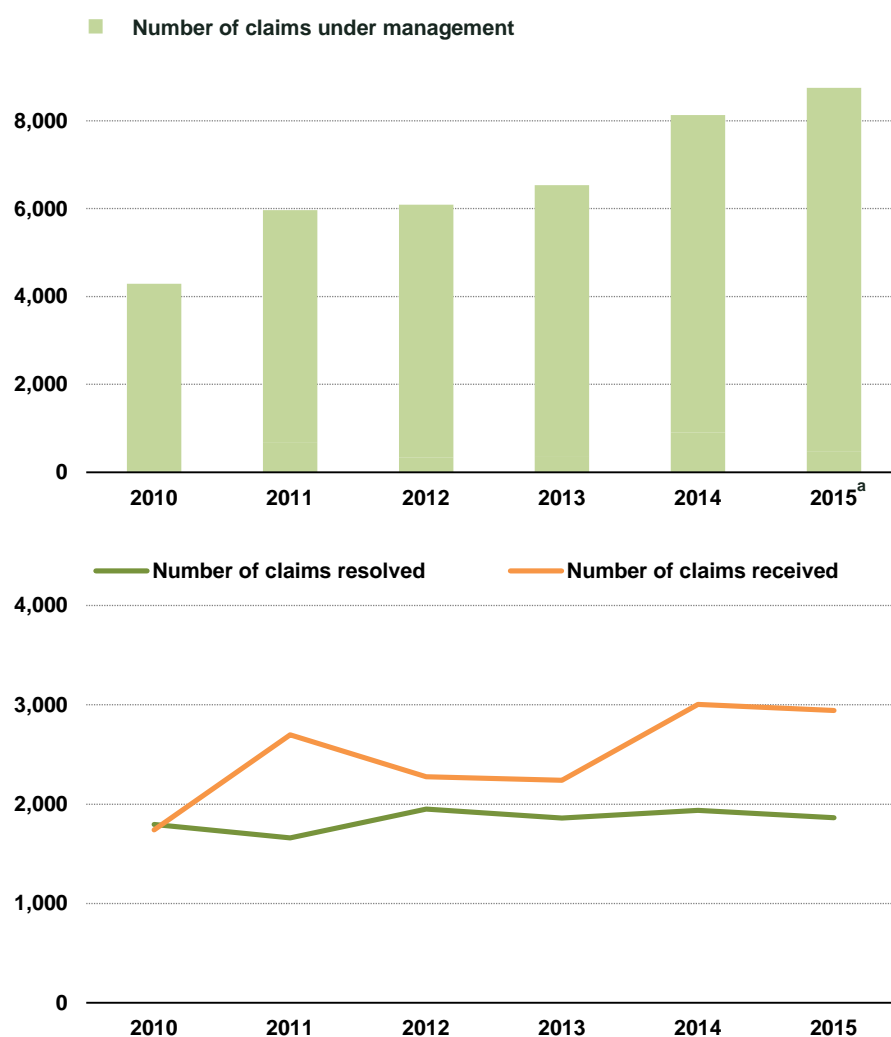
### ***Carbon Fund management***

- 17.23** The Carbon Fund was established by the Carbon Fund Act 2007. The NTMA administers the purchase of carbon credits required to meet Ireland's climate change obligations through the Carbon Fund. The purchase of carbon credits has been suspended since February 2009. At end-2015, the Carbon Fund held assets with an acquisition value of €90 million (2014: €99 million).
- 17.24** The Carbon Fund is accounted for separately and does not form part of the NTMA's accounts for the purposes of section 12 of the 1990 Act (as amended). The financial statements of the Carbon Fund are audited under the Carbon Fund Act 2007.<sup>1</sup>

### ***State Claims Agency***

- 17.25** The NTMA manages personal injury, property damage and clinical negligence compensation claims on behalf of certain delegated State authorities. In addition, it has a risk management role, advising and assisting those State authorities in minimising their claim exposures. It also considers and manages third party cost claims arising from certain tribunals of inquiry. When performing these functions, the NTMA is known as the State Claims Agency (SCA). At 31 December 2015, the SCA's remit covered 129 State authorities.
- 17.26** Awards and associated claim costs of the SCA in 2015 amounted to a total of €219.3 million (2014: €141.4 million). These costs are recoupable from the relevant State authorities availing of the SCA services. In addition, the NTMA incurred €15.7 million (2014: €13.5 million) in administrative costs in the performance of its SCA functions. These administrative costs are included in the administration expenses of the NTMA and are charged on the Central Fund.
- 17.27** The number of claims under management has increased significantly since 2010, together with an increasing volume of claims received. However, the number of claims resolved has remained fairly static (see Figure 17.4).

<sup>1</sup> The report on the audit of the Carbon Fund was issued on 26 May 2016.

**Figure 17.4 Claims received, resolved and under management, at year end 2010 to 2015**

Source: National Treasury Management Agency

Note: a Claims under management in 2015 include 1,809 mass actions.

**17.28** The SCA has advised that the rate at which claims are resolved is influenced by several factors, including the nature and complexity of the claims. One such factor is resourcing but the relationship between claims management resourcing and claims settlement is not linear. At end-2015, the SCA was managing 1,809 mass actions (non-clinical and clinical). It said that many of these actions involve important legal issues of liability and causation and require a particular legal strategy to be put in place to ensure that the State's liability is maintained at the lowest achievable level. The SCA expressed the view that if the State is successful in precedent test cases (and subject to the outcome of any appeal) that many of the mass action cases would fall away and be discontinued.

- 17.29** Over the last number of years, the estimated cost of settling claims has been steadily increasing. The cost of settling the claims that were outstanding at 31 December 2015 has been estimated by the SCA at €1.79 billion (2014: €1.47 billion). This estimated cost is based on actuarial assumptions including a real rate of return of 3%. A High Court ruling (upheld by the Court of Appeal) has ruled that a real rate of return of 1% should apply to certain court awards. The Court of Appeal ruled that in cases involving catastrophic injuries, claims for the cost of future care should be calculated at a real rate of return of 1% and claims for future pecuniary loss should be calculated at a real rate of return of 1.5%. The SCA has estimated that the cost of claims under management at 2015 would, on that basis, increase by around €300 million. The SCA has appealed this judgement to the Supreme Court.
- 17.30** In February 2013, a State legal cost unit was set up within the SCA to deal with third-party costs arising from the Mahon, Moriarty and Smithwick Tribunals of Inquiry. The 2014 Act put the SCA legal costs function on a statutory basis. In 2015, the Government extended the responsibilities of this unit to management of all third party legal costs claims against specified State entities.<sup>1</sup>

### ***NewERA***

- 17.31** The New Economy and Recovery Authority (NewERA) functions of the NTMA were established on a statutory basis in December 2014 on commencement of the relevant sections of the 2014 Act.<sup>2</sup>
- 17.32** The NewERA functions include the provision of financial and commercial advisory services on a range of issues to a relevant Minister of the Government in respect of a designated body under his/her remit.<sup>3</sup> Also, where any Minister holds shares or assets in a body that is not designated for NewERA purposes, or has general responsibility for, or has any function in relation to a body, NewERA may also provide similar services in relation to such bodies.
- 17.33** Expenditure incurred by the NTMA on NewERA activities in 2015 was around €6.2 million and is separately disclosed in the NTMA's administration account. This expenditure was mainly in relation to the provision and/or procurement of
- financial and commercial advice to relevant Ministers, on a total of 72 submissions made by commercial State bodies including
    - the reorganisation of Ervia with the establishment of Gas Networks Ireland
    - the first joint venture between Bord na Móna and Coillte in relation to a wind farm
  - financial and commercial advice to relevant Ministers on the sale of the State's shareholding in Aer Lingus to International Consolidated Airlines Group<sup>4</sup>
  - advice in relation to ownership and financing options for the National Broadband Plan.

### ***Banking system functions staffing***

- 17.34** The NTMA's Banking Unit has been seconded to the Department of Finance since August 2011.<sup>5</sup> At the direction of the Minister, costs of the Banking Unit, comprising staff costs and certain professional advisor costs, continue to be met by the NTMA. Costs incurred by the NTMA in 2015 in relation to the Banking Unit totalled €2.4 million of which €78,000 related to professional advisor costs. These costs are separately disclosed in the NTMA's administration account in 2015.

1 SI No. 505 of 2015 NTMA (Delegation of Claims for Costs Management Functions) Order 2015.

2 The New Economy and Recovery Authority (NewERA) was initially set up on a non-statutory basis following a Government announcement in September 2011.

3 Currently the designated bodies are the Electricity Supply Board, Ervia, Bord na Móna plc, Coillte Teoranta, Eirgrid plc, Irish Water and any subsidiaries or any company in which such designated body has an interest.

4 The sale of the shareholding generated proceeds for the State of €335 million.

5 SI No. 395 of 2011.

### ***Ireland Strategic Investment Fund***

- 17.35** The Ireland Strategic Investment Fund (ISIF) was established in December 2014 pursuant to the 2014 Act. On its establishment, the assets and the liabilities of the National Pensions Reserve Fund (NPRF) became the assets and liabilities of the ISIF with the exception of certain foreign assets and liabilities which legally remain assets and liabilities of the NPRF until their transfer to the ISIF in due course. At end 2015, a small number of foreign assets (valued at €1 million) had not transferred to the ISIF. The statutory mandate of the ISIF is to invest on a commercial basis in a manner designed to support economic activity and employment in the State.
- 17.36** At 31 December 2015, the ISIF held net assets of €21.9 billion (2014: €22.2 billion). The net assets comprised €7.9 billion (2014: €7.2 billion) in a discretionary portfolio and €14 billion (2014 €15 billion) in the directed investment portfolio.
- The **discretionary portfolio** consists of investments made in accordance with the relevant sections of the 2014 Act, where the NTMA holds or invests the assets of the ISIF on a commercial basis in a manner designed to support economic activity and employment in the State.
  - The **directed investment portfolio** is subject to directions given by the Minister for Finance.<sup>1</sup> Any interest or other income received in respect of deposits and/or securities held in the directed portfolio are transferred to the discretionary portfolio and are held or invested by the NTMA.
- 17.37** A resolution was passed by both Houses of the Oireachtas on 20 October 2015 to transfer the proceeds from the sale of the State's shareholding in Aer Lingus to the ISIF.<sup>2</sup> As a result, €335 million was transferred from the Exchequer to the ISIF for the purpose of a new Connectivity Fund within the discretionary portfolio. The Connectivity Fund is restricted to investment in projects that enhance Ireland's physical, virtual or energy connectivity.
- 17.38** The Minister issued the following directions in 2015
- €1.6 billion was transferred to the Exchequer (on 19 March 2015) from cash held in ISIF's directed investment portfolio at the direction of the Minister. These funds had been held since the disposal of Bank of Ireland preference shares in 2013.
  - The Minister directed the NTMA (on 20 November 2015) to enter into certain agreements, and to take certain actions, to facilitate the conversion and redemption of ISIF's shares in AIB. The Minister also directed the NTMA to take certain actions regarding the proceeds of such conversion and redemption (including the cancellation of the outstanding EBS promissory note). The ISIF received proceeds of €1.7 billion, dividends of €166 million and 155 billion ordinary shares as part of this redemption and conversion.
  - €1.9 billion was transferred to the Exchequer (on 18 December 2015) from the directed portfolio at the direction of the Minister. This amount related to the proceeds from the AIB preference shares redemption and associated dividends. Under the direction, the Minister's outstanding EBS promissory note was redeemed from the EBS<sup>3</sup> at its carrying value of €225 million (and subsequently cancelled) and the remainder was remitted to the Exchequer.
- 17.39** The NTMA incurred costs of €8.7 million (2014: €0.18 million) in its role as controller and manager of the ISIF in 2015. This excludes fund operating costs discharged directly by the ISIF.

1 Section 43 of the 2014 Act provides that the Minister may give a direction to the NTMA in relation to the holding and management of a directed investment, the exercise of any voting or other rights attaching to a directed investment, and the disposal of a directed investment.

2 Section 46 of the 2014 Act provides that a resolution must be passed by both Houses of the Oireachtas before the Minister can make payments into ISIF from the Central Fund.

3 EBS merged with AIB in July 2011.

### ***National Pensions Reserve Fund***

- 17.40** The NTMA is Manager of the National Pensions Reserve Fund (NPRF). On commencement of the relevant sections of the 2014 Act in December 2014, all remaining assets and liabilities of the NPRF were derecognised by the NPRF Commission for accounting purposes and presented instead in the ISIF financial statements.
- 17.41** From 22 December 2014, the NPRF Commission consists of a single commissioner - the Chief Executive of the NTMA – who is required by the 2014 Act to do everything that is reasonably practicable to give effect to the legal transfer of any remaining NPRF assets governed by foreign law. The legal transfer of foreign assets must be done in conjunction with the relevant counterparty. At 31 December 2015, foreign assets valued at €1 million (2014: €1.8 billion) remained in the NPRF.
- 17.42** The NPRF is accounted for separately and does not form part of the NTMA's accounts for the purposes of section 12 of the 1990 Act (as amended). The financial statements of the NPRF are audited under the National Pensions Reserve Fund Act 2000.<sup>1</sup>

### ***National Development Finance Agency***

- 17.43** Prior to 27 January 2015, the National Development Finance Agency (NDFA) was a separate statutory body that acted as the statutory financial advisor to State authorities for all public investment projects with a capital value over €20 million. It also had responsibility for the procurement and delivery of public private partnership (PPP) projects in sectors other than transport and the local authorities, the direct procurement of certain education projects, and the provision of contract management for the operation and maintenance of certain PPP schools.
- 17.44** The NDFA was dissolved with effect from 27 January 2015 pursuant to the 2014 Act and the related NDFA legislation was repealed.<sup>2</sup> Simultaneously, the relevant statutory functions were given to the NTMA and all property, rights and liabilities of the NDFA transferred to the NTMA. When performing these functions, the NTMA may describe itself as the NDFA. The NTMA Administration Account includes a disclosure of the activities of the NDFA (previously reported separately).
- 17.45** In September 2015, it was announced as part of the Government's Public Capital Programme 2016-2021 that the NDFA's PPP procurement and project management functions would be transferred to the newly established Transport Infrastructure Ireland (TII).<sup>3</sup> The NTMA is engaging with the relevant Government departments and TII to progress the transfer.

<sup>1</sup> The report on the audit of the NPRF was issued on 26 May 2016.

<sup>2</sup> The report on the audit of the final financial statements of the NDFA issued on 16 June 2015.

<sup>3</sup> In 2015, the National Roads Authority and the Railway Procurement Agency merged to form Transport Infrastructure Ireland.

### ***National Asset Management Agency***

**17.46** Similar to previous years, the NTMA assigned staff and provided services to the National Asset Management Agency (NAMA) during 2015. The NTMA incurred costs of €53.5 million (2014: €53.9 million) in that regard, which was recharged to NAMA.<sup>1</sup>

- €46.8 million (2014: €44.7 million) was incurred in respect of staff costs. This comprised €43.1 million for staff directly employed by the NTMA and assigned to NAMA (341 staff at 31 December 2015), and €3.7 million in respect of the apportioned remuneration cost of NTMA employees operating shared services including IT, human resources and finance.
- €6.7 million (2014: €9.2 million) in respect of other costs was incurred by the NTMA, including rent, office services and consultancy costs.<sup>2</sup>

1 The total administrative costs of NAMA were €112 million in 2015 (€135 million in 2014).

2 See NAMA financial statements 2015. The report on the audit of NAMA issued on 29 April 2016.

3 SMEs are defined in accordance with Article 2 of EC Recommendation 2003/361/EC (6 May 2003).

4 Section 10 of the Strategic Banking Corporation of Ireland Act 2014.

5 The report on the audit of the SBCI issued on 27 May 2016.

### ***Strategic Banking Corporation of Ireland***

**17.47** The Strategic Banking Corporation of Ireland (SBCI) was established in September 2014 as a company under the Strategic Banking Corporation of Ireland Act 2014, to make low cost credit available to Irish small and medium enterprises (SMEs)<sup>3</sup> by sourcing funds from national and international entities.

**17.48** The NTMA provides the SBCI with business and support services and systems, staff and treasury services and advice in connection with debt securities and borrowings. The NTMA incurred costs of €3.6 million for the provision of these services in 2015 (2014: €0.7 million) which were recharged to the SBCI.<sup>4</sup>

**17.49** The SBCI is accounted for separately and does not form part of the NTMA's accounts for the purposes of section 12 of the 1990 Act (as amended). The first set of audited financial statements for SBCI cover the period from its formation on 12 September 2014 to 31 December 2015.<sup>5</sup>

## Staff distribution

**17.50** Staff numbers in the NTMA increased further in 2015. At end-2015, staff numbers totalled 781 (2014: 759). The assignment of staff to the various functions and activities of the NTMA at year end for 2011 to 2015 is set out in Figure 17.5.

**Figure 17.5 NTMA staffing distribution at year end, 2011 to 2015**

	2011	2012	2013	2014	2015
<b>NTMA business units</b>					
Funding and debt management	12	14	15	19	21
Ireland Strategic Investment Fund/National Pensions Reserve Fund	10	13	15	33	36
State Claims Agency	63	69	77	91	109
NewERA	6	12	13	14	19
Banking Unit <sup>a</sup>	9	12	14	13	12
National Development Finance Agency	34	44	52	63	60
<b>Supported bodies</b>					
National Asset Management Agency	193	224	331	369	341
Strategic Banking Corporation of Ireland	–	–	–	3	9
<b>Corporate functions</b>					
Finance, technology and operations	71	73	95	112	121
Legal, compliance, HR and internal audit	21	21	24	22	33 <sup>b</sup>
Risk	9	12	15	14	18
Other	5	6	6	6	2 <sup>c</sup>
<b>Total</b>	<b>433</b>	<b>500</b>	<b>657</b>	<b>759</b>	<b>781</b>

Source: National Treasury Management Agency

Notes: a On secondment to the Department of Finance.

b The 2015 figure for this functional area includes a headcount of seven in respect of the following functions: the Freedom of Information (Fol) Unit (set up as part of the compliance function to cater for the application of the Fol Act 2014 to the NTMA with effect from 14 April 2015), Corporate Communications and Secretariat (which prior to 2015 were categorised under the "Other" heading).

c Four staff members previously assigned to this heading are now captured under another functional area. See footnote b above.

## Conclusions

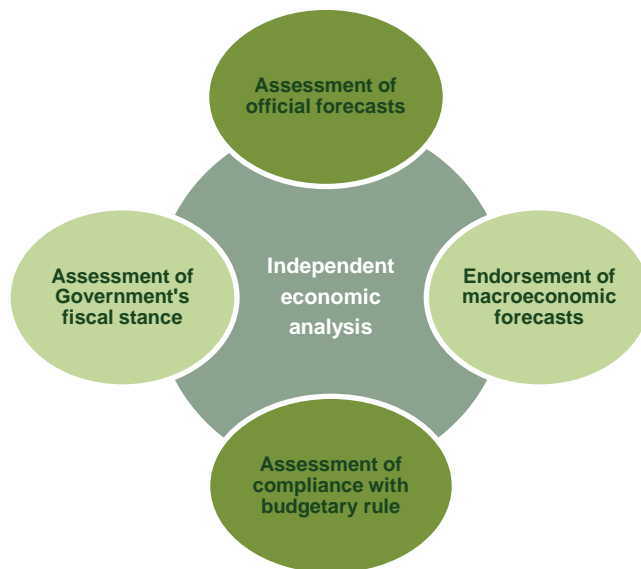
- 17.51** The 2014 Act streamlined the governance arrangements for the NTMA, and brought about significant changes to its statutory remit. The 2014 Act also resulted in a substantial reorganisation and re-orientation of functions, and presented an opportunity for the NTMA to eliminate anomalies and to streamline its financial reporting. Following the 2014 Act, the NDFA activity is now disclosed as part of the NTMA's administration account.
- 17.52** I previously recommended that the NTMA take a consistent approach to the disclosure of the overall costs associated with each of the key services and functions that it undertakes. The 2015 financial statements for the administration account include an enhanced disclosure of overall costs associated with each of the key services and functions undertaken by the NTMA.
- 17.53** The NTMA reviewed the financial reporting of all accounts and adopted FRS102 where appropriate.



## 18 Irish Fiscal Advisory Council

- 18.1** The Irish Fiscal Advisory Council (the Council) was established under the Fiscal Responsibility Act 2012 (the Act) to provide independent assessments of the Government's budgetary plans and projections and to inform public discussion of economic and fiscal matters.
- 18.2** The functions of the Council are prescribed in the Act and are summarised in Figure 18.1. The Council is required to
- assess the official forecasts produced by the Department of Finance (the Department) in spring and autumn each year<sup>1</sup>
  - assess whether the fiscal stance of the Government is conducive to prudent economic and budgetary management including by reference to the EU Stability and Growth Pact<sup>2</sup>
  - monitor and assess whether the general government budgetary position is either in balance or in surplus, or is moving at a satisfactory pace towards that condition (the 'budgetary rule' as set out in the Act), and assess whether any non-compliance is as a result of exceptional circumstances<sup>3</sup>
  - endorse, as it considers appropriate, the macroeconomic forecasts prepared by the Department, on which the budget and stability programme updates are based.

**Figure 18.1 Functions of the Irish Fiscal Advisory Council**



<sup>1</sup> In accordance with the Act, official forecasts are the macroeconomic and budgetary forecasts published by the Department of Finance for the purposes of fiscal planning.

<sup>2</sup> The Stability and Growth Pact is a rule-based framework for the coordination of national fiscal policies in the EU.

<sup>3</sup> Under the Act, exceptional circumstances reflect a period of severe economic downturn or an unusual event (outside the control of the Government) which has a major impact on the budgetary position of the Government.

## Accounts of the Irish Fiscal Advisory Council

- 18.3** The Chair of the Council is the officer accountable for the preparation and presentation of the financial statements for audit. Under the Act, the Council is required to keep accounts of receipts and expenditure in the form approved by the Minister for Finance, and to submit them for audit by the Comptroller and Auditor General within three months after the end of the accounting period to which they relate.<sup>1</sup> On completion of the audit, a copy of the accounts and of the audit report must be given to the Minister, who in turn must lay them before the Houses of the Oireachtas.
- 18.4** Separately, the Act requires the Comptroller and Auditor General to report to Dáil Éireann with respect to the correctness of the sums brought to account by the Council each year. This is the report for 2015.
- 18.5** The accounts of the Council for 2015 have been audited. My report on the audit was issued on 30 June 2016. The accounts and report were laid before both Houses of the Oireachtas on 12 July 2016.
- 18.6** I am satisfied that the accounts give a true and fair view of the assets, liabilities and financial position of the Council at end 2015 and of its income and expenditure for the year.

## Membership and staffing

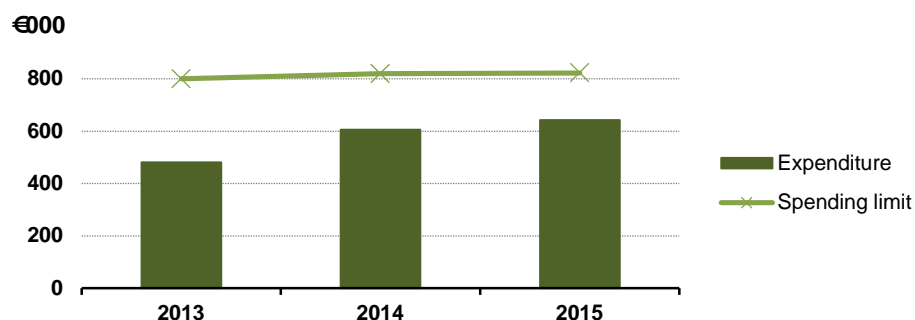
- 18.7** The Act sets out that the Council shall consist of five members, including the Chair. Appointments are made by the Minister for Finance with the term of office generally being four years. Council members may not serve for more than two consecutive terms.
- 18.8** One council member resigned in May 2015 and the term of a second council member ceased at the end of December 2015. Each of the vacancies was advertised on Stateboards.ie. Under the Act, vacancies should be filled within six months (where practicable). Both vacancies were filled within this timeline.
- 18.9** The Council is currently supported by six staff, comprising five economists and an administrator. In 2015, three of the staff were seconded from other organisations.

## Funding

- 18.10** The Council is funded from the Central Fund of the Exchequer, subject to an inflation-indexed annual ceiling amount.<sup>2</sup> The funding ceiling for 2015 was €823,360 (2014: €820,080).
- 18.11** Expenditure of the Council totalled around €643,000 in 2015 (2014: €606,000), of which 62% related to salary costs. The largest element of the Council's non-pay administration expenditure related to an Economic and Social Research Institute (ESRI) administration fee in respect of accommodation costs and support services which totalled around €101,000 (2014: €101,000).
- 18.12** A summary of the Council's budget and related expenditure for the period 2013 to end 2015 is shown in Figure 18.2.

<sup>1</sup> The Council's financial statements for 2015 have been prepared in accordance with FRS102, the Financial Reporting Standard applicable in the UK and Ireland effective for accounting periods beginning on or after 1 January 2015.

<sup>2</sup> Section 9 of the Schedule to the Act provides for the funding source and limit.

**Figure 18.2 Financial summary of the Irish Fiscal Advisory Council, 2013 to 2015**

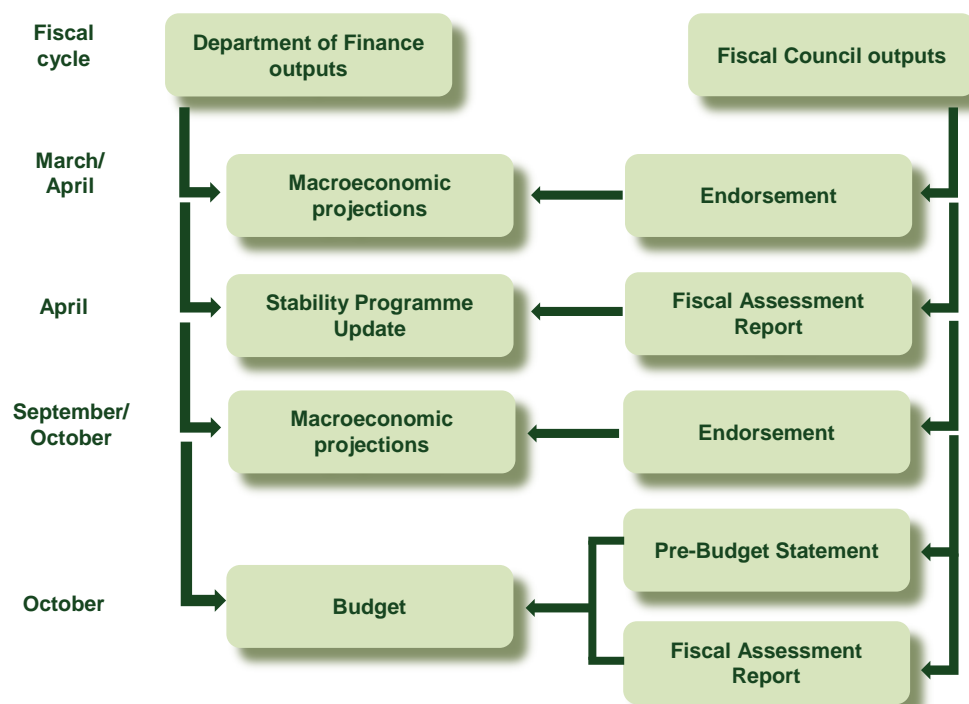
Source: Analysis by the Office of the Comptroller and Auditor General and IFAC's annual financial statements

Note: The number of staff increased from three in 2013 to six in 2015.

- 18.13** Fees and expenses incurred in relation to Council members for 2015 totalled just over €62,500 (2014: €64,000). Expenses incurred by Council members mainly reflect travel and subsistence costs incurred by international and non-Dublin based members attending Council meetings, which are held in Dublin. Payments totalling almost €24,500 were also made in 2015 (2014: €32,000) to the full-time public sector employers of the Chair and one Council member for costs incurred due to their absence on Council business.

### Activity of the Council

























- 18.14** The Council produces a number of annual outputs in response to outputs from the Department. Figure 18.3 outlines these outputs.

**Figure 18.3 Irish Fiscal Advisory Council outputs**

Source: Office of the Comptroller and Auditor General

- 18.15** In line with the requirements of the Act, the Council publishes the Fiscal Assessment Reports, the Pre-Budget Statement and also publishes its letters to the Minister for Finance at the conclusion of the endorsement process. In addition the Council has published a number of non-statutory reports. The breakdown of the Council's publications is set out in Figure 18.4.

**Figure 18.4 Overview of publications of the Irish Fiscal Advisory Council, 2013 to 2015**

	2013	2014	2015
Endorsement letters		 	 
Fiscal assessment reports	 	 	 
Pre-Budget statements			
Non-statutory reports		     	   

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

Note: Non-statutory reports – The Council publishes stand-alone analytical notes and working papers on themes related to its mandate. A list of reports is set out in Annex A.

## Peer review of the Council

- 18.16** In line with its Strategic Plan 2014 – 2016, the Council commissioned an external evaluation in 2015 to assess the functioning of the Council with respect to its mandate under the Act and its performance as an independent fiscal institution in support of sustainable growth in Ireland.<sup>1,2</sup>

- 18.17** The review concluded that the Council has fulfilled all the tasks that are expected from an independent fiscal institution and that it has been visible in public debate, increasing transparency and public knowledge about fiscal matters.<sup>3</sup>

The review also noted that there was scope for enhancing the output and impact of the Council and made 25 recommendations. The Council considered the recommendations and prepared an implementation plan for the 25 recommendations. It decided, following review, not to implement two recommendations and that another three are outside of its control. Of the recommendations accepted, 17 have been implemented and the remaining three are scheduled for implementation on or before the end of 2017.

<sup>1</sup> The Strategic Plan 2014-2016 is available at [www.fiscalcouncil.ie](http://www.fiscalcouncil.ie).

<sup>2</sup> The evaluation team members were Professor Lars Jonung (Chair), Professor Iain Begg and Mr Michael G Tutty (prior to his appointment to the Council).

<sup>3</sup> The review of IFAC is available at [www.fiscalcouncil.ie](http://www.fiscalcouncil.ie).

## **Annex A Irish Fiscal Advisory Council's non-statutory reports**

### **2013**

#### **Working Paper**

- The Government's Balance Sheet after the Crisis: A Comprehensive Perspective

### **2014**

#### **Analytical Notes**

- House Price Risks
- Sensitivity Analysis of the Department of Finance Approach to Potential Output Estimation under the EC Methodology
- Tax Forecasting Error Decomposition
- DIRT Forecast Methodology
- Future Implications of the Debt Rule
- Adoption of New International Standards for National Accounts and Balance of Payments

### **2015**

#### **Working Papers**

- Uncertainty in Macroeconomic Data: The Case of Ireland
- An Analysis of Tax Forecasting Errors in Ireland

#### **Analytical Notes**

- The EU Expenditure Benchmark: Operational Issues for Ireland in 2016
- Controlling the health budget: Annual budget implementation in the public health area

### **2016 (to end of August)**

#### **Analytical Note**

- Public Capital: Investment Stocks and Depreciation June 2016

