Chapter 11 Department of Agriculture and Food

11.1 Arrangements for Disposal of Meat and Bone Meal

Background

My Annual Report for 2001 outlined details of an audit carried out on the BSE Eradication Programme administered by the Department. The report referred to the various controls introduced in Ireland for managing and eradicating BSE including a ban on the feeding of meat and bone meal to all animals intended for human consumption. The report also referred to certain support measures including State funding for the rendering industry that were put in place to sustain the domestic and foreign markets for Irish beef during the BSE crisis.

Animal by-products are the parts of a slaughtered animal, mainly offal and bones, that are not directly consumed by humans and also animals that die on farms. Each year the meat processing industry produces approximately 550,000 tonnes of animal by-products, from the slaughter at meat plants and butchers' premises of some 1.8m cattle, 4m pigs, 3.5m sheep and 60m poultry, together with the carcases of the approximately 180,000 animal deaths on farms. The material is removed from animals at slaughter and disposed of by sending it to rendering plants where, through a controlled pressurised cooking process, it is converted into about 150,000 tonnes of Meat and Bone Meal (MBM) and approximately 60,000 tonnes of tallow. Prior to the BSE crisis, about 90% of the MBM produced in Ireland was exported for use in animal feed.

Following the detection of BSE in cattle herds in certain Member States, where the disease had not previously been confirmed, the EU, in November 2000, introduced a total ban on the feeding of MBM, which up to then could be included in animal feed for certain species and under certain conditions, to any farmed animals kept for food production.

In order to eradicate and prevent cattle acquiring BSE it is essential to prevent the material thought to contain the infectious agent from being fed to cattle. This material has been designated in Ireland as Specified Risk Material (SRM) and is separated and converted into MBM at four rendering plants designated for this purpose. MBM is also produced from low risk (non-SRM) material at five other rendering plants.

As there are no domestic disposal facilities available in Ireland, the only means of disposing of MBM has been by way of export, under contract, for incineration in the UK or Germany.

Assistance to the Rendering Industry

The immediate effect of the November 2000 EU ban on the use of MBM in animal feed was to transform what had been a valuable product making a positive contribution to the economics of livestock production into a waste product with significant disposal costs. In the aftermath of the ban, most EU Member States provided financial aid to maintain essential rendering and disposal of animal by-products in order to allow the continued operation of the livestock and slaughter sectors.

In January 2001, to address the situation faced by the Irish meat processing industry, the Department introduced a scheme of financial assistance to the industry. The original subsidy scheme paid approved rendering plants a fee per tonne of raw material rendered together with the cost of handling, transporting

and storing the MBM produced. In May 2002 the scheme changed to a production based payment system whereby the renderers were paid on tonnes of MBM produced. A new modified scheme which, inter alia, incorporated a subsidy towards disposal costs was introduced in December 2002 to run to 2 March 2003. This was subsequently extended to 31 May 2003 when the scheme was finally terminated. Since then all costs relating to production, storage and disposal of MBM are borne by the meat industry. The Department supervises the renderers' operations under BSE eradication measures. The cost of production, storage and destruction is spread across the livestock sector. The renderers pay for storage and destruction. They pass the charges to the meat plants and butchers and the charges are reflected in the prices paid to farmers.

A total of €145 million was spent by the Department in the three year period 2001 to 2003 comprising €117 million on rendering and €28 million on the disposal of MBM.

Storage of Meat and Bone Meal Stocks

Under the modified scheme introduced in December 2002, the renderer at all times would retain ownership of and responsibility for and risk in respect of all MBM from the time of production to the time of destruction by incineration. For MBM produced prior to December 2002 the Department retained responsibility for its storage and ultimate destruction. In the absence of approved disposal facilities in the State and the high cost of disposal outside the State, stocks of MBM steadily increased to over 172,000 tonnes by November 2002. This was stored at 32 stores throughout the State.

The annual storage charges for the stocks that the Department had responsibility for amounted to approximately €3.75 million.

Storage of BSE Carcases

The Department has been storing the carcases of BSE positive animals in a cold store in Co. Tipperary since October 2000, when the on-farm burial of such carcases was outlawed. The Department purchased the facility in 2000 at a cost of approximately €1.2m. The running costs of the store amount to approximately €90,000 per annum. There are over 900 carcases in store at present. The Department estimates that with declining BSE numbers the store has capacity to the end of 2005. Efforts to dispose of the carcases have been unsuccessful to date.

Interdepartmental Committee

An Inter-Department/Agency Committee established by the Government in April 2002 to consider the options for disposing of MBM reported on 4 December 2003. The Committee concluded that several disposal options are acceptable in Ireland including co-incineration of MBM by the cement manufacturing industry, co-incineration of MBM in the generation of electricity, incineration, and the manufacture of certain categories of pet food. The Committee recommended that certain other disposal outlets for MBM including use of landfill and incorporation of MBM in fertiliser be kept under review especially in light of developments in relation to BSE in the future.

Contracts for the Disposal of Meat and Bone Meal Stocks

The Department commenced a tender competition for the disposal of approximately 172,000 tonnes of MBM on 7 October 2003. This volume was reduced to 164,000 tonnes, when following a fire at a store in Co. Louth, the Department had to quickly dispose of 8,000 tonnes of material in the interests of health and safety. The deadline for the receipt of tenders for the 164,000 tonnes was 28 November 2003 and 18 tenders were received by that date.

Table 45

Contractor	*Tonnage of MBM*	*Contract Amount €*	*Contract Signed*	*Start Date*	*Finish Date*
Company A	89,284	12,796,793	1/3/ 2004	14/6/2004	July 2006
Company B	57,779	7,847,837	10/2/ 2004	17/2/2004	February 2005
Company C	17,062	2,341,770	30/4/2004	5/5/2004	December 2004
Total	**164,125**	**22,986,400**			

Following a tender evaluation process, three successful tenderers were selected and contracts were signed. Contract details are in Table 45.

The 2003 Estimates did not provide for the funding of the disposal contracts. During 2003 the Department identified sufficient savings within the Vote, mainly in regard to BSE compensation to herdowners, to meet the estimated €25m cost of disposing of the MBM. The availability of savings, together with declining incineration costs abroad, the risks associated with MBM storage (e.g. fire hazard) and the cost of continuing storage were the factors which led the Department to initiate the destruction of the MBM stocks under their responsibility.

The Department received sanction from the Department of Finance on 3 October 2003 for a proposal to invite tenders with a view to placing contracts for the destruction of MBM stocks and to make payment by escrow. This would involve payment being made to a nominated intermediary, who would hold the payment in trust for the contractor and only release the payment on foot of evidence that the MBM had been incinerated to the satisfaction of the Department. The sanction was granted on condition that before any payment was made the Department was satisfied that the terms and conditions of the contract resulted in a liability being incurred by the Department which constituted a matured liability under the provisions of *Public Financial Procedures.*

Funding Arrangement

In November 2003 the Department sought expressions of interest from three leading banking institutions regarding their terms and conditions for operating the proposed escrow accounts. Following an evaluation by the Department of the terms and conditions submitted by the three banks separate tri-partite escrow agreements were concluded on 24 December 2003 between the Department, the selected bank (the escrow agent) and the three proposed disposal contractors. It was also noted that three payments totalling €22,979,232 were made to three escrow accounts in the bank on 31 December 2003 representing the value of the contracts to the intended contractors. An additional amount of €7,168 was transferred on 9 March 2004 bringing the total transferred to €22,986,400.

Timescale of Agreements with Disposal Contractors

- Ownership, responsibility and risk in regard to the MBM stocks did not pass from the Department to the three successful contractors until the disposal contracts were signed in February, March and April 2004
- Storage charges continued to be paid by the Department up to the date of the signing of the contracts
- Work did not commence on the destruction of the MBM until 2004 and the first payment from the escrow accounts was made on 4 May 2004. As of 28 May 2004 only one of the contractors has received payments, totalling €1,003,722 from the escrow accounts
- Contracts specify a timetable for the removal from storage and destruction of the MBM. The final batch is scheduled to be destroyed in July 2006.

Audit Concerns

As it appeared to me that the escrow arrangement entered into contravened the principle of matching expenditure to the accounting period in which the service provided is paid for I sought the views of the Accounting Officer.

Accounting Officer's Response

The Accounting Officer stated that the escrow arrangement was entered into in order to protect the interests of the Exchequer while dealing with the need to dispose of the MBM in the hands of the State as rapidly and safely as possible. The escrow mechanism was suggested in discussions with legal advisers. It was a key element in a legally unified contractual arrangement that provided for the contractors to assume responsibility for the meal, including full liability for transport, storage and risks, immediately on execution of the contracts. At the same time it ensured that the Department retained sufficient leverage to ensure that the product was subsequently disposed of properly and on schedule.

In this process the Department was conscious at all times of the need to respect the *Public Financial Procedures*. There is no provision in the Procedures that forbids the use of escrow accounts. The requirement in the Procedures to pay matured liabilities was met by the mechanism used. The Department consulted fully prior to entering into these arrangements and received no indication from any source that escrow arrangements were not acceptable. The arrangement was sanctioned by the Department of Finance.

At the start of 2003, the Department was faced with significant difficulties in relation to the prolonged storage of over 170,000 tonnes of MBM at 32 stores around the country. There were particular concerns about the threat to food and feed security, the fire risk (a number of fires had occurred) and the ongoing financial and resource costs associated with storage and supervision.

Therefore, the disposal of the stocks of MBM became an increasing priority. The necessity to provide for the destruction of the stocks was raised in the context of the estimates for 2004 and subsequently in the light of savings which emerged on the relevant subhead in 2003, mainly due to improvements in the BSE situation.

Fortunately, 2003 also saw a fall in the price of incineration. Prices available were about half of those paid in previous years. It was in this context, and in view of the storage difficulties and the available savings on the subhead, that the Department concluded that the time was right to contract for the removal and destruction of all remaining MBM stocks. The Department consequently gave consideration to the options available to progress the matter. The following were among the options examined

- Deferred payment
- Payment in advance against a secured bond for 110% of contract value
- The escrow option.

Having considered the options open to the Department, an application was made to the Department of Finance for approval to issue the Request for Tender incorporating one of two of the payment options i.e. payment in advance or the escrow option. The deferred payment option was discounted on the basis that it would cost the Exchequer more. The Department of Finance granted sanction in respect of the tender competition and indicated that it had no objection to either payment methodology. It was decided that the escrow option was the best and most suitable business arrangement. A deciding factor was that

escrow was considered by the Department to afford a much greater level of protection and security for Exchequer funds in the event of underperformance by a contracted company.

Eighteen companies tendered from which three were selected. The Department allocated each of the successful companies specific stores for which they would assume full responsibility up to the point of the destruction of the meal. These allocations formed the basis for calculating the precise amount of money that needed to be transferred into the escrow account. Once the contractors had accepted the allocation, and signed up to the escrow agreement, the required moneys were transferred into the escrow account. A liability to lodge these funds to the escrow account arose when the escrow agreements were signed with the escrow agents and contractors in December 2003. This aspect of the arrangement was recognised by the Department of Finance in their letter of sanction[23] and was notified in the Request for Tender issued in October 2003 as the basis upon which the contracts would be funded.

Following the evaluation of tenders, and subsequent announcement of the successful tenderers, three separate escrow agreements were drawn up between the successful companies, the escrow agents and the Department. These agreements include the following provision: "The Minister agrees to transfer to the Escrow Account the sum of [x] (including VAT), being the amount based on the estimated quantity of Materials as of the date of the contract which the Minister agrees to pay to the Contractor for the provision of the services in accordance with the terms of the Contract." The escrow agreements were signed by all relevant parties on 24 December 2003 and arrangements were made immediately to transfer funds to the escrow account.

The signing of the escrow agreement, and consequent establishment of the escrow account, was a necessary step before the signing of the removal, transportation and incineration agreements which inter alia provided that: "The Contractor acknowledges that the Minister has pursuant to the Escrow Agreement, lodged the sum of [x] to the Escrow Account being the quantity of materials estimated to be in storage at the location of the Materials (and set out in Part A of Schedule 3), and which are the subject of this Agreement, by the relevant price per tonne, plus VAT".

The Department's view was that the escrow arrangement represented the best option given the scale and complexity of the operation. It allowed the Department through a precise legal arrangement to disengage fully from responsibility for the stock of MBM, and it provided the best protection for the Exchequer and was consistent with the *Public Financial Procedures.*

11.2 Dublin and Cork District Milk Boards – Redeployed Staff

Background

I referred in my Annual Report for 1997 to the abolition of the Dublin and Cork District Milk Boards in 1994 and the sale of their businesses to two private companies in 1995.

The Report also outlined details of a rationalisation agreement concluded with trade union representatives to protect the interests of the staff of the former Boards. The agreement provided that some 50 staff were to be granted voluntary early retirement and that the remainder would transfer to the employ of the new owners on the sale of the businesses. The 69 staff who were in full time employment with the

[23] *"Such mechanisms under consideration include…making payment by escrow with the payment being made to a nominated intermediary who would hold the payment in trust for the contractor and only release the payment on foot of evidence that the MBM had been incinerated to the satisfaction of the Department."*

Boards were guaranteed the option of redeploying to the public service at a salary level analogous to their previous Milk Board salary in the event of their subsequently being made redundant by the new owners.

As part of the conditions of sale the new owners were required to pay redundancy compensation at the going rate (as opposed to the statutory minimum entitlement) to any staff they might make redundant and who opted for redeployment. The staff, as part of the agreement undertook to hand this money over to the Exchequer as one of the conditions of their redeployment back into the public service.

The new owners began to make staff redundant from mid-1995 and staff exercised their right to redeploy to the public service. By the end of 1997, 22 such staff (20 in the Dublin company and 2 in the Cork company) had received only statutory minimum redundancy payments which they handed over to the Department upon redeployment. The Interim Board, which was established to sell the Milk Boards' businesses and property and discharge their liabilities, formulated a claim for over €1.27m against the new owners for redundancy compensation and took steps to initiate legal action against the two private companies for the recovery of this money.

Developments since 1997

Redundancies

During the course of audit it was noted that an additional 28 staff had been made redundant by the Dublin company. All received redundancy payments in the region of €12,697. All of the Dublin company's employees opted for redeployment to the public service and handed over their redundancy payments to the Department.

Legal case

The Interim Board initiated legal action against the two companies on the basis that they had not paid redundancy compensation at the going rate as had been set out in the rationalisation agreement. The Interim Board interpreted "the going rate" as the same rate that the Department paid to the former Milk Boards' staff who had opted for voluntary early retirement under the agreement, i.e. statutory entitlement plus four weeks pay per year of service. In the case of the 47 employees made redundant by the Dublin company at that time (one staff member was made redundant in 2002) this would amount to approximately €2.8m while in the case of the two former staff of the Cork company the amount would be €66,000.

High Court proceedings for the recovery of these sums commenced when a Plenary Summons was served on the defendants on 10 August 1998 and a Statement of Claim was served on 23 October 1998. The solicitors for the defendants responded on 27 November 1998, with a Notice of Particulars.

The Interim Board was abolished in 1999 and the case became the responsibility of the Department acting through the Chief State Solicitor's Office. The Department did not respond to the Notice of Particulars because of difficulties it had in substantiating points made in the Interim Board's Statement of Claim regarding

- Establishing how redundancy entitlements based on 4 weeks pay per year of service together with statutory entitlements is the redundancy rate usually applied in the sector operated in by the defendants

- Providing the names and addresses of all employers involved in the sector operated in by defendants who had paid redundancy payments at that rate.

Settlement of Legal Case

On 22 August 2001 the Chief Executive of the Dublin company submitted a proposal (having had previous discussions with the Department), without prejudice to settle its differences with the Department whereby the company would be prepared to pay €12,697 per redeployed employee to the Department. This would amount to a total of €596,759 in respect of the 47 redeployed employees less the amount of €342,974 already refunded by the redeployed employees to the Department. The Dublin company proposed to pay the balance in two instalments.

Following consultations with the Attorney General's Office and the Chief State Solicitor the Department concluded a legal agreement on this basis with the Dublin company on 12 January 2002. Both parties would bear their own legal costs. The first instalment of €126,973 was received in January 2002 and the second and final instalment of €126,855 was received by the Department in April 2003. The total amount received represented a shortfall of approximately €2.2m on the amount estimated by the Department to be due to the Department under the terms of the rationalisation agreement.

The case against the Cork company remains outstanding. The Department received the redundancy cheques from the employees made redundant but did not cash the cheques.

Redeployment of Staff

I also referred in my Annual Report for 1997 to the constraints on the Department's ability to find positions for the then 22 former Milk Board staff that had opted for redeployment on being made redundant. Constraints arose because under public service regulations the redeployed staff could not be appointed by a Department of State unless they were deemed qualified by the Civil Service Commissioners or were covered by a relevant Excluding Order or were appointed by the Government in the public interest.

Of the 50 staff in all that exercised the redeployment option, 44 who were in the equivalent of recruitment grades in the Civil Service were redeployed under an Excluding Order issued by the Civil Service Commissioners. However, their redeployment was not immediate. The 6 remaining staff, in grades equivalent to Executive Officer/Higher Executive Officer (EO/HEO), though on the Department's payroll, were not appointed to positions for a significant period of time.

Payments to staff while not working

The total amount paid to the 6 officers at EO/HEO level between the date of their redundancy and their retirement or taking up a position in the Department amounted to €1,063,972 and is detailed in Table 46.

Table 46

Date of Redundancy	*Date employed in Department*	*€* *Payment*
30 June 1996	2 September 2003	260,332
31 August 1996	29 September 2003	214,460
28 November 1997	14 April 2003	186,761
28 November 1997	24 April 2003	165,026
31 August 1996	Retired 29 January 2001	129,030
25 August 2000	14 April 2003	108,363
		1,063,972

The total amount paid to the remaining 44 staff employed by the Department from the date of the redundancy to their appointment to departmental posts was €751,271. Only 17 of the 44 staff received payments with the 2 highest payments being €143,339 (from 21 July 1995 to 31 March 2002 when the officer was taken off the payroll for refusing to take up any offers of employment) and €135,115 (from 21 July 1995 to 11 February 2002 when the person concerned took up the Department's offer of employment).

Accounting Officer's Response

Legal case

Negotiating a rationalisation programme for the Dublin and the Cork District Milk Boards' staff and subsequently arranging for the sale of the businesses as going concerns was a complex and difficult process which, by its nature, took a considerable time. It was much more than merely privatising the business of a State body.

The guarantee of redeployment to the Public Sector in the event of staff being made redundant was part of the Staff Rationalisation Agreement between the Department, the Department of Finance and SIPTU and was put in place before the sale of the milk board businesses. The Interim Board inserted a requirement in the tender document that the purchaser would pay redundancy at the going rate, as opposed to the statutory minimum entitlement, in the event of redundancies ever arising. This was intended as a disincentive to the purchaser making the staff redundant in the knowledge that they would have an automatic right to be re-employed in the public service.

The Interim Board engaged the services of a firm of legal advisors and they had an input into drawing up the documentation for the sale of the businesses. The tender document did not include any definition of the "going rate", and at the time the businesses were being sold the Interim Board did not have any specific legal advice as to what constituted the "going rate" for the industry. When the purchaser began to make staff redundant, thereby activating their option of returning to the public service, the Interim Board at that stage decided to define "going rate" as that which was paid to temporary staff availing of Voluntary Early Retirement under the Rationalisation Agreement. The Board initiated legal action to enforce this in the light of the refusal of the purchaser to engage in negotiations on the level of redundancy payments.

The Department, having assumed responsibility for all outstanding business of the dissolved Interim Board, received strong legal advice, both from the Attorney General and from private counsel that the best option was to settle on the best terms available. The advice was based to a large extent on difficulties experienced by the Department in substantiating points made in the Interim Board's Statement of Claim equating the "going rate" with that paid under the original rationalisation agreement.

The Dublin company owns a one third share of the Cork company. Senior management in the Dublin company have undertaken to explore the possibility of the Cork company too being prepared to settle on the same basis as themselves. Their response is awaited. The claim against the Cork company is for some €66,000. A settlement on the same basis as that with the Dublin company would yield about €25,400. If the Cork company was not to settle, then the question of disengaging the Dublin company from the proceedings and continuing against the Cork company alone will have to be considered.

Redeployed Staff

All staff redeployed from the former Milk Boards have been appointed to posts in the Department.

This Department requested sanction for the issue of Excluding Orders by the Civil Service Commissioners, to cover all former milk board staff from the Department of Finance in April 1997.

An Excluding Order was issued by the Civil Service Commissioners in April 1998 in respect of staff of the former Milk Boards including technical grades and clerical staff. Appointments were made in June, July and August 1998. This brought the number of staff officially assigned to relevant posts in the Department to 44.

The Department of Finance were reluctant to sanction the issue of an Excluding Order for the remaining 6 staff as they were at levels above the normal Civil Service recruitment grades and it was not immediately clear that they were qualified for the full range of duties appropriate to their level. In the absence of the Excluding Order it was not possible to employ them or to request them to go to work.

An alternative policy recommended by the Department of Finance was to hold a confined recruitment competition for both grades. Two competitions were organised but proved unsuccessful as the majority of the staff in question maintained their opposition to such a course as they had no experience of undertaking such competitions.

The issue of an Excluding Order was sanctioned by the Department of Finance in 2003. The staff were then interviewed and allocated appropriate duties.

These staff were not paid any allowances other than basic pay in the period from redundancy to appointment to post. In regard to increments, all of the staff except one were on the maximum of the scale when redeployed. That officer was paid increments by the Department under the agreement which provided for the maintenance of conditions.

In the absence of an Excluding Order, which the Department had no option but to await, the redundant staff could not be officially assigned duties and therefore the questions of reporting for work or supervision did not arise. At the time, it was not possible to apply another mechanism to take the staff into the Department.