

Minute of the Minister for Finance
on the Committee of Public Accounts – Fourth Interim Report on Special Report 10
of the Comptroller and Auditor General and FÁS 2007 Accounts

The Minister for Finance has examined the Committee's Fourth Interim Report on Special Report 10 of the Comptroller and Auditor General and FÁS 2007 accounts and has taken account of its conclusions. In relation to the Committee's recommendations, his response is as follows:

Recommendation No. 1

All staff involved in procurement of goods and services should be familiar with the risks that arise where public service guidelines are ignored. In particular, chief executive officers of State agencies should take steps to ensure that access to expert advice is available, whether through outsourcing or developing in-house that advisory capacity.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted by FÁS and that FÁS has an existing set of Financial Authority Levels and Procurement Procedures which have been updated and were approved by the FÁS Board in March 2009;
- a series of familiarisation programmes/seminars on the revised procurement procedures and authority levels has commenced for all managers and relevant staff and will be completed by mid-August 2009;
- the importance of adhering to proper procedures and risks involved are being emphasised;
- the procedures and briefings have been set in the context of the Public Financial Procedures prepared by the Department of Finance and include all aspects of the national and European legislative and regulatory environment; and
- there is access to expert and specialist advice either in-house through the FÁS Procurement Unit and Legal Department or externally through the National Public Procurement Policy Unit of the Department of Finance.

The Minister also notes that, under Guidelines on public procurement and on corporate governance of State Bodies prepared by his Department, the Board of FÁS is responsible for ensuring that procurement of goods and services is properly managed and staffed and that personnel engaged in procurement have the necessary qualifications, skills and training. The Minister has been informed by the Department of Enterprise, Trade and Employment that all contracts in excess of €50,000, and most in excess of €20,000, are now placed centrally by a special procurement section within the Finance Unit in FÁS.

Recommendation No. 2

Major items of expenditure, such as advertising and ICT investments in the case of FÁS, should be based on medium to long term strategies so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. In addition a performance measurement system should be put in place to assess the effectiveness/ outcome of such expenditure and this should be reported to the Board.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted by FÁS and that FÁS has an ICT Strategy in place and an internal cross-divisional ICT Strategy Group to manage the implementation of this strategy through the annual business planning process;
- FÁS is currently assessing whether it has the internal resources to develop a new ICT Strategy. If not, FÁS will request the Department of Finance to approve the expenditure, if intending to use external resources;
- recent control directives and guidelines issued by the Department of Finance and covering all ICT expenditure are being implemented; and
- a Communications and Marketing Strategy Group which had been established in 2007 is being reactivated to develop a new communications strategy which takes account of the current budgetary environment and this will be presented to the FÁS Board by the end of 2009. This strategy will include performance measurement and value for money criteria and will be informed by the new FÁS Strategy Statement covering the period 2010 – 2013.

The Minister for Finance would point out that:

- in relation to ICT investment strategies his Department has issued a new Circular 02/09 “*Arrangements for ICT Expenditure in the Civil and Public Service*” which advises Departments, Offices, Bodies and sectors of updated arrangements for ICT spend. It requires that ICT spending is conducted within the business and ICT strategy and associated priorities of the organisations. Arrangements and relevant details including the approval process and required reporting are set out on an internal web site at www.ict.gov.ie; and
- a revised and updated version of the Code of Practice for the Governance of State Bodies was issued by his Department on the 15th of June 2009 of which Paragraph 2.5 (covering Matters for Decision by the Board) provides that:
“*Decisions on major items of expenditure should be aligned with medium to long-term strategies so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. A performance measurement system should be*

put in place to assess the effectiveness/outcome of such expenditure and this should be reported to the Board.”

Recommendation No. 3

The capacity of the audit function in FÁS needs to be enhanced so that it incorporates both investigation and risk based audit approach. Combined with this, FÁS needs to undertake a comprehensive analysis of risk which can be used to target its internal audit programme. Finally, FÁS should collect data on procurement in respect of all contracts awarded without competitive tendering and report these to the Comptroller and Auditor General when signing off the annual accounts.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted by FÁS and that Price Waterhouse Coopers has recently completed a review of FÁS Internal Audit. The review has identified over 30 specific recommendations to enhance the audit function including the approach to both investigation and risk based audits. An action plan taking into account how each of the recommendations will be implemented has been approved by the FÁS Board;
- the current audit programmes have been reviewed to enhance their effectiveness, including the increased use of Computer Assisted Auditing Techniques and including measures that ensure that all sections within FÁS will be audited within an agreed timescale. These new programmes covering all FÁS activities will be fully implemented by summer 2011;
- FÁS is examining the potential to enhance the resource requirements of Internal Audit and, in the interim, additional resources have been made available through the temporary secondment of staff; and
- data on procurement in respect of all contracts awarded without competitive tendering will now be collected for reporting purposes.

The Minister for Finance agrees with the general point regarding the collection of data on procurement in respect of contracts awarded without competitive tendering and the reporting of these to the Comptroller and Auditor General when signing off annual accounts. The Department of Finance will implement this recommendation through a suitable amendment of Department of Finance Circular 40/02 (relating to Public Procurement guidelines).

Recommendation No. 4

In cases where an audit investigation is initiated and where there is *prima facie* evidence of a material breach of procedures and a risk of further loss, the need to adhere to fair procedures in investigating wrongdoing can still be achieved whilst removing the individual implicated in any wrongdoing to another area or by putting additional controls in place. Such steps should be taken without prejudice and in the interest of protecting both the individual that the allegation is made against and the organisation which must be protected from the risk of further loss.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that this recommendation is accepted by FÁS and it will be assessed and applied on a case by case basis.

The Minister points out that this is clearly a matter for individual management to ensure that there are adequate controls in place to detect or prevent breaches of procedure or the risk of financial loss. However, such measures must not prejudice subsequent disciplinary or other proceedings by preventing a fair investigation of allegations or by imposing penalties in advance of a properly conducted investigation. In addition, Section 9 of the Civil Service Regulation (Amendment) Act 2005, the Civil Service Disciplinary Code provides that, in cases of suspected serious misconduct or underperformance, an officer may be suspended on "ordinary remuneration" pending the conclusion of disciplinary proceedings, rather than being moved to another area of the organisation.

Recommendation No. 5

The disciplinary code in FÁS is not comprehensive and requires to be reviewed. The comprehensive code that applies to civil servants should be used by FÁS and, where necessary, by all State agencies.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted by FÁS;
- discussions have commenced with staff representatives in relation to the review of the disciplinary code with a view to securing agreement by end September 2009; and
- the FÁS *Employee Code of Ethics* will be reviewed in light of these discussions.

The Minister for Finance, in agreeing with this recommendation, would point out that:

- the Civil Service Disciplinary Code (Circular 14/2006) was prepared with a view to meeting best practice standards and applicable legal requirements, including those under the Civil Service Regulation (Amendment) Act 2005, where disciplinary procedures are being pursued against civil servants;
- it is important that management of every State agency, including FÁS, review their disciplinary procedures on an ongoing basis to ensure that they meet best practice standards; and
- the Civil Service code, or any other modern code, could be used by State agencies as a basis to develop their respective disciplinary codes.

Recommendation No. 6

Inv 137 should be referred by FÁS to the Director of Corporate Enforcement and to any other relevant regulatory authority for investigation and follow up action against third parties identified in that Report.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted by FÁS;
- INV 137 has been sent to the Director of Corporate Enforcement for any action he considers appropriate; and
- information in respect of certain other matters arising has been passed to the Chartered Accountants Regulatory Board for consideration.

Recommendation No. 7

There is a need to review the practices and procedures so as to build in early warning mechanisms in order that non-executive boards of State Companies are kept fully informed on developments relating to audits where there is a risk of material loss or where issues that fall within the responsibility of the board, as outlined in the Code of Corporate Governance for State Bodies, arise.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- that this recommendation is accepted by FÁS;
- the minutes of meetings of the FÁS Board Audit Committee are circulated on a quarterly basis to the Board; and
- in addition, the Audit Committee, which currently meets approximately six times each year, will now report on its work at the Board meeting following each Committee meeting.

As noted in recommendation 2 above, the Minister for Finance is informed by his Department that:

- a revised version of the Code of Practice for the Governance of State Bodies was issued by his Department on the 15th of June 2009;
- in the provisions relating to a State body's Audit Committee (Section 10 of the Code of Practice), new text provides that:
“Any internal audit/audit items that relate to the Board's areas of responsibilities should be communicated to the Board as soon as they are identified.”; and
- where this is not currently the case in individual State bodies, the Code of Practice requires that procedures will have to be revised to comply with this provision.

Recommendation No. 8

Boards of State companies must engage actively where issues such as the violation of internal controls arise in order that they can satisfy themselves as to the adequacy of control structures when signing off on the statement on the systems of internal financial control in the annual reports.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted by FÁS;
- issues of control will now feature more prominently as part of the work of Board through its interaction with management and through the work of the Board Audit Committee;
- in addition, detailed financial procedures are in place which take into account the internal control and internal check requirements of all FÁS financial systems; and
- these procedures, which were recently updated by management and approved by the Board, are subject to regular review by the Internal Audit unit.

The Minister for Finance agrees with this recommendation and notes that:

- in addition to requirements that State Bodies publish an Annual Report, his Department's Code of Practice for the Governance of State Bodies obliges Chairpersons to provide their relevant Minister with a comprehensive report covering the Group (the parent body and all its subsidiaries); and
- this comprehensive report includes a statement on the systems of internal financial control and, in "*cases where a breach of this system has been identified, an outline of the steps that will be taken to guard against such a breach occurring in future*" (Section 13 of the revised Code as issued on 15 June, 2009).

Recommendation No. 9

The Labour Services Act 1987 should be amended to make the Director General the accountable person and so as to enable the board of FÁS to be restructured.

The question of the amendment of this legislation is a policy matter for consideration by the Minister for Enterprise, Trade and Employment in the first instance.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that its Minister accepts that the Director General of FÁS should be an accountable person. The Minister for Enterprise Trade and Employment, taking account of the findings of the Special Investigation into FÁS by the Comptroller and Auditor General (2009), will determine the appropriate proposed amendments to the Labour Services Act, 1987.

As regards the restructuring of the board of FÁS, the Minister for Finance is informed by the Department of Enterprise, Trade and Employment that the Minister for Enterprise, Trade and Employment intends to carry out a review of the structure of the board of FÁS, before the end of the term in office of the current board (2010), in order to determine the appropriate composition of the board.

Recommendation No. 10

Governing legislation should be amended so as to provide expressly that any director's fiduciary duties to a State agency must not be understood, in the case of a director duly appointed by the Minister to represent the public interest, as preventing the director in question from reporting to the Minister when key issues of governance regularity, probity, financial performance and general organisational matters within the agency arise.

This is a legal and policy matter for the Minister for Enterprise, Trade and Employment in the first instance.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that the recommendation is accepted in principle by its Minister, subject to the advice of the Attorney General on this complex matter.

Recommendation No. 11

The Freedom of Information Acts should be amended expressly so as to provide that a request pursuant to Dáil Standing Order 85 by an Oireachtas Committee would have the same status as a request under the Freedom of Information Act and must be treated accordingly by the public body concerned. To this end, it would also be necessary to have a specific provision which provided that the release of information in such circumstances would be deemed to be pursuant to a statutory enactment, so that the public body concerned could not rely on the provisions of the Data Protection Acts 1988-2003 to withhold relevant information where it concerned individuals. In such circumstances the release would be regarded as being "pursuant to an enactment" and, hence, the public body producing the information would benefit from the exemption contained in section 8(e) of the Data Protection Act 1988.

Recommendation No. 12

Public bodies submitting documentation containing personal data pursuant to a request under Dáil Standing Order 85 by an Oireachtas Committee should be given the same protections of privilege as if they were producing the same documentation on foot of an actual compellability request.

The proposed legislative changes are policy matters for the Minister for Finance in the first instance.

The Minister for Finance would point out that the arrangements for conferring the protection of privilege for public bodies submitting documentation to Committees of the Oireachtas are already provided for under the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997.

The Minister would also point out that the introduction of a separate procedure in relation to documentary evidence, as recommended by the Committee, could give rise to uncertainty and duplication of procedure, with a concomitant risk of serious legal and cost implications. Accordingly, the Minister is not convinced that such a separate procedure is advisable at this time.

Under its Orders of Reference from Dáil Éireann, the Committee has powers to “send for persons, papers and records” – thus giving the members considerable scope to enquire in detail into public spending and related matters of public interest. The Minister would expect all concerned to respond positively to such requests from the Committee.

Recommendation No. 13

Legislation providing for the appointment of designated officer holders in State agencies as accountable persons in relation to the accounts of that agency should make it an obligation on such office holders to appear before the Committee of Public Accounts in relation to matters which happened while they were still office holders even though they have subsequently resigned.

The question of the amendment of legislation regarding State agencies is a policy matter for consideration by the relevant Ministers in the first instance.

While the Minister for Finance is in agreement with the intent of the recommendation, he is not convinced that it is necessary, at this point, to introduce legislation to achieve the objective of the recommendation. Under its Orders of Reference from Dáil Éireann, the Committee has powers to “send for persons, papers and records” – thus giving the members considerable scope to enquire in detail into public spending and related matters of public interest. The Minister would expect all concerned to respond positively to such requests from the Committee. This expectation has been borne out by the appearance before the Committee at sessions in December 2008 of former and current Chairmen, a former Director General as well as a former assistant director general of FÁS. The Minister has seen no evidence that the Committee’s existing powers are inadequate and can see no reason at this time to introduce the new legislation proposed in the

recommendation. He will, however, keep the matter under review and would generally agree that, as legislation relating to individual State agencies is renewed, the question of formally designating CEOs as accountable persons should be considered.

Recommendation No. 14

The Department of Finance should have clear guidelines on the way any enhanced financial arrangements are made in respect of civil and public servants who resign their positions.

The Minister for Finance agrees with this recommendation and would point out that:

- his Department deals with early retirement and/or redundancy schemes in the civil service;
- the policy is set out in administrative circulars and letters;
- the Department may also be involved in similar issues in relation to other public service or public sector organisations, beyond the civil service itself, but in such cases will not be involved in the direct administration of the relevant schemes; and
- the current policy with regard to severance and early retirement for Chief Executives of State sponsored bodies is set out in a letter from the Secretary General, Public Service Management and Development, to Heads of Departments of 26 May 1998. A copy of this letter is attached at Appendix 1.

Recommendation No. 15

All Government Departments should now ensure that the travel policy of the Department of Finance is adhered to by bodies under the aegis of their Departments and should request a positive statement of compliance from the Chairperson of each such agency within three months. The Department of Finance should examine whether the policy can be strengthened by incorporating this requirement into the annual report of the chairperson of each agency under the Code of Practice for the Governance of State Bodies.

The Minister for Finance is informed by the Department of Enterprise, Trade and Employment that:

- this recommendation is accepted; and
- the Department of Enterprise, Trade and Employment issued a request to the Chairman of FÁS requesting clarification on this matter and, on 15th December

2008, received a positive statement of compliance from the Chairman in relation to adhering to Department of Finance travel policy in FÁS.

The Minister for Finance is informed by his Department that:

- section 17 of the revised and up-dated Code of Practice for the Governance of State Bodies, as issued by his Department on 15 June 2009 covers State body travel issues and provides that:

“Non-commercial State Bodies should adopt and comply in all respects with the circulars issued from time to time by the Department of Finance regarding travel and subsistence” and that *“Commercial State Bodies should also be cognisant of the need to achieve economy and efficiency in expenditure on official travel.”*

It goes on to state that:

“Boards of State Bodies that incur significant annual expenditure on foreign travel by members of the staff or the Board should put appropriate procedures in place to monitor, report, and enforce the relevant rules and requirements.”;

- the revised Code of Practice also contains, as an Appendix, a Framework Travel Policy, intended as a guide to State bodies; and
- finally, in regard to the specific recommendation on the Code of Practice for the Governance of State Bodies, Section 13 (*Additional Reporting Requirements*) of the revised Code now obliges Chairpersons to provide their relevant ministers with a comprehensive report covering the Group which includes a certification that Government travel policy requirements are being complied with in all respects.

Furthermore, the Minister would point out that new guidelines on foreign travel issued on 1 July 2009 from his Department to all Departments, with an instruction that the guidelines are brought to the attention of all bodies under their aegis. A copy of these Guidelines has been forwarded to the Clerk of the Committee.

Recommendation No. 16

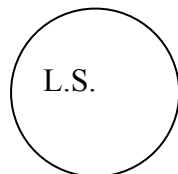
The Committee has already recommended to the Comptroller and Auditor General that the comprehensive audit that his office is now undertaking, into internal controls, governance arrangements and oversight management include:

- a. The decision to move the Opportunities Fair to Croke Park from the RDS;**
- b. The extent to which FÁS was charged for first class flight tickets and the number of occasions where a business class flight was taken when a first class ticket was purchased;**

- c. A review of advertising expenditure;**
- d. A review of foreign travel and subsistence and entertainment expenditure;**
- e. A review of the Competency Development Programme;**
- f. A review of the Discover Science Programme;**
- g. A review of capital expenditure, with specific regard to whether value for money was obtained on the lease of office space;**
- h. Procurement processes for the period since 2000 that were undertaken by the Procurement directorate in FÁS.**

The Minister for Finance notes the content of this recommendation which is a matter for the Comptroller and Auditor General.

Given under the Official Seal of
the Minister for Finance on this
27th day of July, 2009



David Doyle
Secretary General
Department of Finance