



**Submission**

**by**

**The Sheriffs' Association**

**to**

**The Review Group established by the Department of Justice  
and the Office of the Revenue Commissioners**

**22<sup>nd</sup> March 2023**

## 1. Introduction

- The statutory responsibility for enforcement and collection of taxes, private debt collection and executing orders for possession of property in Ireland is divided between Sheriffs on the one hand, and County Registrars acting as Sheriffs, on the other.
- Sheriffs are independent officers of State appointed on a permanent basis by government under Section 12 of the Court Officers Act 1945.
- Originally, there were 16 Sheriffs appointed by the State in the late 1980s. There are **13** Sheriffs currently in operation in the State.<sup>1</sup> (See maps attached).
- In addition to the 13 Sheriffs, there exists an important and essential support industry around the business of Sheriffs e.g. Sheriff Office staff, Court Messengers, Bailiffs and the wider enforcement machinery, which provides vital support to Sheriff operations (e.g. auctioneers, security personnel, locksmiths, car towing, removal trucks etc).

## 2. Current Position

The current position in Ireland as regards Sheriff tax/debt recovery and enforcement is as follows: -

- Four Sheriffs in the four bailiwicks of Cork County, Cork City, Dublin County and Dublin City respectively are responsible for the collection of Revenue taxes **and** private judgement debt in their respective bailiwicks. These four Sheriffs are informally known as “Full Sheriffs” and have additional statutory responsibilities such as executing orders for possession of property and acting as Returning Officers in electoral events, such as Referenda, Dáil, Local & European and Presidential elections.
- Nine other Sheriffs, outside of the four bailiwicks in Dublin and Cork, collect taxes only, but not private debt and nor do they execute orders for possession of property. These Sheriffs are known colloquially as “Revenue Sheriffs”.
- The County Registrars in the counties outside the four Dublin and Cork bailiwicks have responsibility for the collection of private debt and executing orders for possession of property, but not tax collection. These County Registrars also act as Returning Officers in electoral events.
- The Full Sheriffs and Revenue Sheriffs also have responsibility, as statutorily appointed Receivers of Fines, for the collection of outstanding court-levied fines under the Fines (Payment and Recovery) Act 2014. Defaulting court-fines debtors are liable to have their goods (as well as real property) seized by the Sheriff if they

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<sup>1</sup> Six of the State’s 13 Sheriffs operate as full-time Sheriffs.

fail to discharge a fine levied against them by a court. In terms of value for money, Sheriffs remain ready and willing to carry out their statutory duties as regards the collection of fines.<sup>2</sup>

- The Full Sheriffs and Revenue Sheriffs also assist the Criminal Assets Bureau in their activities.
  
- The Full Sheriffs specifically enforce the following Court Orders:
  - a. Orders obtained by individuals or corporate entities in civil litigation before the Courts,
  - b. Orders obtained by individuals or corporate entities before the Small Claims Court,
  - c. Orders in favour of Local Authorities in respect of Rates,
  - d. Orders in favour of National Toll Roads in respect of Tolls,
  - e. Local Authority possession Orders,
  - f. Residential Tenancy Board Landlord execution orders for possession of property,
  - g. Financial Institution possession Orders.
  
- Whilst the Review Group has requested that focus should specifically be on “State work only”, it is important to note that Sheriffs are only authorised to operate on foot of Revenue Certificates and Court Orders. Accordingly, all work conducted by Sheriffs, including Orders made in favour of private entities, effectively constitutes “State work” on the basis that Sheriffs are only permitted to act on foot of statutory Revenue Certificates (Warrants) and Orders from the State’s Courts. Sheriffs operate to enforce such Certificates and Orders. It is not open to a private entity to direct a Sheriff to act without a Court Order.

### **3. Revenue Sheriffs**

- In 1986 and 1987, the County Registrars outside Dublin and Cork were relieved of their tax enforcement duties and their duties and powers in terms of tax enforcement were transferred by Ministerial Order on a county-by-county basis, to newly appointed commercially incentivised “Revenue Sheriffs” whose sole responsibility was to engage in tax collection and enforcement.<sup>3</sup>

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<sup>2</sup> A separate Working Group is reviewing the Fines System and the Association awaits hearing of progress in this regard.

<sup>3</sup> For example, Court Officers Act 1945 (Section 12(2)) (County of Cavan) Order, 1987 and Court Officers Act 1945 (Section 12(2)) (County of Monaghan) Order, 1987.

- Sheriffs earn a commission known as “poundage”. Poundage charged by Revenue and Full Sheriffs is a percentage of the value of the tax warrant received from the Revenue Commissioners. Sheriff costs are governed by SI 644 of 2005.<sup>4</sup>
- The Sheriff system operates on the principle that the defaulter pays. This means that Sheriff costs are collected from the defaulting tax debtor. These costs are used to finance the running of the Sheriff’s office and go towards discharging the Sheriff’s business overheads. The Sheriff’s source of income is derived from statutory poundage.<sup>5</sup>
- The reason for the appointment of Revenue Sheriffs in the late 1980s arose from the fact that the system for the administration of tax in Ireland had ‘virtually broken down’,<sup>6</sup> with non-compliance being described by the Commission on Taxation in its Fifth Report in 1985 as a ‘major problem’.<sup>7</sup>
- Tax evasion, according to the Commission (whilst by definition immeasurable), was such that it led to ‘serious revenue losses’ being incurred by the State.<sup>8</sup> Effective tax enforcement was practically non-existent, with County Registrars being unable to properly fulfil their tax collection responsibilities owing to their other responsibilities being afforded priority. County Registrars also sat in the County Registrar’s Court, dealt with the enforcement of private judgements and acted as returning officers in elections. The Commission noted that the County Registrars were ‘unable to cope with the volume of Revenue enforcement work.’<sup>9</sup>

#### 4. County Registrar Debt Recovery

- As against the commercially incentivised Revenue Sheriffs who collect taxes, the state-salaried County Registrars exercise Sheriff functions in the collection of private debt judgements in the counties outside Dublin and Cork. County Registrars are not financially incentivized to collect debt in the way that the Full Sheriffs and Revenue Sheriffs are, as their state salary remains the same regardless of whether they collect on judgements or not.
- The effectiveness of County Registrar debt-collection generally has been the subject of comment over the years. It was noted as far back as 1988 by the Law Reform Commission that ‘...County Registrars ... were unable to cope with the volume of work’ received.<sup>10</sup>

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<sup>4</sup><https://www.irishstatutebook.ie/eli/2005/si/644/made/en/print#:~:text=Fee%20to%20be%20paid%20a%20t,session%20of%20land%20or%20premises.>

<sup>5</sup> Ibid.

<sup>6</sup> Commission on Taxation *Tax Administration* (Fifth Report, 1985) Section 2.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid Section 25.

<sup>9</sup> Commission on Taxation *Tax Administration* (Fifth Report, 1985) Section 39.

<sup>10</sup> Law Reform Commission, *Report on Debt Collection: The Law Relating to Sheriffs* (LRC 28-1988)

- The Commission accordingly recommended in its 1988 Report that ‘the present responsibilities of County Registrars in the enforcement of judgments in civil cases should be ended and the Sheriff system in Dublin and Cork extended to the entire country’<sup>11</sup> (effectively paving the way to permit Revenue Sheriffs to be assigned the additional responsibility for the collection of private debt, such as is the case in Dublin and Cork). This recommendation has not been implemented to date.

## **5. Powers**

- Sheriffs have significant powers of seizure and entry (including forced entry, if required) in the exercise of their functions. These powers derive directly from Statute and do not require the independent sanction or approval of a third party. This is in contrast with the Gardai who usually require a warrant to be first approved by a Peace Commissioner or other independent officer.
- Sheriffs exercise these wide-ranging powers in a careful, considered and reasonable manner and only consider using the powers of seizure and sale only where considered necessary and/or as a last resort.

## **6. Interpleader**

- The Interpleader process is a unique feature available to Sheriffs that is useful in the context of disputed assets. The Sheriff can institute Interpleader Court proceedings, where appropriate, to obtain a Court order to ascertain legal ownership of disputed seized assets.

## **7. Officers of the Court**

- All Sheriffs are Officers of the Court by virtue of their appointment under statute<sup>12</sup> and are answerable to the Court for their activities. In addition, as agents of the State, Sheriffs are susceptible to Judicial Review. By virtue of the foregoing and arising from the fact that Sheriffs are (currently) all Solicitors by profession, Sheriffs are vastly experienced in operating within a tightly regulated environment. As regulated entities, Sheriffs act in accordance with the laws governing their office, and in compliance with the Code of Practice for Sheriffs as agreed between the Revenue Commissioners and the Sheriffs. To date, there has been no successful litigation action against a Sheriff. Nor has there been any adverse finding against a Sheriff in relation to complaints submitted under the Code of Practice for Sheriffs.
- The title “Sheriff” and the powers of the Sheriff’s office, as referred to above, represent a strong deterrent against tax evasion. The term is distinctive and enjoys a powerful rhetorical resonance among taxpayers. It is widely known what the Sheriff

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<sup>11</sup> Law Reform Commission, *Report on Debt Collection: The Law Relating to Sheriffs* (LRC 28-1988) 55.

<sup>12</sup> Court Officers Act 1945.

does and that the office of Sheriff has far-reaching and wide powers. For these reasons, the threat of Sheriff enforcement is often sufficient to have tax defaulters return to compliance.

## **8. Independent Statutory Officeholders**

- Sheriffs are independent statutory officeholders and operate independently of Revenue and judgement creditors. Where the State has legislated for the impingement of the property rights of individuals (via the powers of entry/forced entry and property seizure by a Sheriff), it is crucial that these powers are only given to independent statutory officeholders who operate in a regulated fashion. In this way, Sheriffs must be distinguished from privately operating debt collectors, who have been known to operate in an unregulated manner. Private unregulated operators have been the subject of negative publicity and public controversy (e.g. North King Street Dublin Evictions).

## **9. Risk**

- Arising from the contentious nature of the work carried out by Sheriffs, their activities are not without risk. Sheriffs and Court Messengers/Bailiffs operate at the coalface, and are often placed in dangerous situations necessitating, at times, the presence of gardai, armed gardai and security personnel. Sheriffs have been the subject of personal vilification, in person and on social media, and have received threats to their own personal safety and that of their families.
- Sheriffs hold Professional Indemnity Insurance, the cost of which is discharged by the Sheriffs, in respect of their enforcement activities.
- Sheriffs and Court Messengers/Bailiffs are afforded special status in law and are exempt from the requirements of the Private Security Acts.

## **10. Amalgamation**

- Amalgamation of bailiwicks has occurred on three occasions since the onset of the COVID 19 pandemic where the Sheriff of an adjoining bailiwick has been appointed as Sheriff of the bailiwick of a retiring Sheriff. Amalgamation, once it was implemented, has worked well in terms of the collection of taxes for the State.
- For example, the Sheriff for the bailiwick of Wicklow and Wexford retired in 2020 and the Sheriff for Waterford and Kilkenny was appointed thereto. The Sheriff for Tipperary, Laois and Offaly was appointed to the bailiwick of Limerick and Clare in 2021 on the retirement of the Sheriff thereof. The Sheriff for Sligo-Roscommon was appointed in 2022 to the bailiwick of Leitrim- Longford-Cavan -Monaghan on the retirement of the Sheriff thereof.

- Each of the foregoing appointments leading to the amalgamation of Bailiwicks required a Cabinet decision based on Departmental submissions.

## 11. Viability

- So long as Sheriffs are in receipt of a viable workflow from Revenue, Sheriffs' Offices are viable business entities. If viability becomes an issue, the appropriate response is an increase in fees. Any such increase will be borne by the defaulting taxpayer. Fees were last increased in 2005 and in any event, an increase is overdue (in line with the increases seen in the Civil, Public and Courts Services over the past decade).<sup>13</sup>

## 12. Efficiency and Cost Effectiveness

- The Sheriff system is a highly efficient and effective method of tax enforcement. Sheriffs have a high-profile presence in every county in Ireland and have an ultimate deterrent effect, contributing to the current high level of tax compliance. The Sheriff system is funded by tax defaulters through a steady flow of work to collect from non-compliant taxpayers. Sheriff enforcement delivers strong financial returns at a very low cost to the State. The fees from Revenue work supplements the work carried out by the Full Sheriffs in terms of civil debt enforcement and executing orders for possession of property as, but for the fee income earned from Revenue work, these two work streams would not be viable.
- In 2019 the newly introduced Revenue Debt Management System (DMS) provided for full coverage of the tax base and opened a wider pool of debtors enabling unpaid tax debts to be forwarded for collection more swiftly to Sheriffs resulting in earlier payment of such debts and impacting positively on overall tax compliance.<sup>14</sup> As a consequence of the introduction of DMS, this wider pool of debtors became subject to enforcement much earlier than before DMS was introduced. It is worth noting that Sheriffs updated their internal IT systems to become compatible with DMS. The level of technical capability in Sheriffs' offices is to the highest standard. This demonstrates that Sheriffs' offices are well placed to keep up with any developments in the Revenue IT systems.
- Sheriff enforcement leads to wider compliance than the Sheriff collection statistical figures show. For example, VAT estimate warrants will often lead to the defaulter filing returns and falling back into compliant practice. Moreover, this will often result in more funds ending up being paid to Revenue exclusive of the actual face value of the warrant. The mere warning by Revenue to a customer of the option of Sheriff

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<sup>13</sup> <https://www.gov.ie/en/press-release/0d8a7-minister-mcgrath-notes-final-instalment-of-current-building-momentum-pay-deal-due-on-1-october-2022/#>

Also see: <https://www.courts.ie/content/general-information>

<sup>14</sup> The DMS can monitor a high volume of businesses simultaneously, thereby increasing Revenue's capacity for compliance and enforcement activity.

enforcement (for example, via the issuance of a Final Demand) often leads, of itself, to increased compliance levels.

- Upon their appointment, each Sheriff is obliged to establish, supply and finance their own office and by order of the Minister for Justice, the 'Revenue Sheriffs' have sole responsibility for the execution of certificates under Section 960L of the Taxes Consolidation Act 1997 (replacing Section 485 of the Income Tax Act 1967). Not only are Sheriffs obliged to introduce Revenue Enforcement System compatible software, but upgrades to the software are frequently required, at a cost to the Sheriff. Sheriffs are also required to pay an annual fee to their software providers.
- Sheriffs operate on a commercial basis and the ongoing running of offices is dependent on "commission" in the form of fees and expenses in relation to collection of tax debts and/or seizure of goods. Fees are not paid where the tax and/or interest is not paid. Once a warrant relating to unpaid debt has been issued to a Sheriff, the **defaulting taxpayer** becomes liable for payment of the associated Sheriff's fees and expenses. The current fees and expenses payable to Sheriffs are set out in a Statutory Instrument, the Sheriff's Fees and Expenses Order S.I. 644 of 2005.
- Sheriffs are entitled to a lodgement fee, currently €19, for each Revenue warrant sent to them. They are entitled to "poundage" (similar to commission) as referred to above. They are also entitled to travelling expenses and any actual or necessary expenses incurred in relation to seizure, storage and sale of goods or in executing orders by bailiffs.

### 13. Retainer

- Sheriffs receive an annual retainer from the Department of Justice to, *inter alia*, assist with the costs of running the Sheriff's office. The retainer currently is €33,130 and is subject to taxation in the normal course of almost 50%. Accordingly, the net payment of €17k is wholly inadequate to assist with office running costs. This is exacerbated at present by the higher-than-normal energy costs and inflationary pressures associated with business administration.

### 14, Enforcement Methods

- The Revenue Commissioners have three methods of external enforcement – external Solicitors, Sheriffs, or Attachment. In the case of Sheriffs, once final demands have not been satisfactorily addressed by the defaulting taxpayer, warrants are issued electronically by the Collector General to the Sheriffs on a daily basis (the computer system that facilitates this efficiency was installed by Sheriffs at their own expense, and at the request of Revenue, in the year 2000).
- In terms of efficiency, Sheriff enforcement is far more efficient than external Revenue Solicitor Court Debt Recovery enforcement and a lot more cost effective, both in terms of upfront cost and the return obtained by Revenue. Sheriffs cost Revenue annually a



few hundred thousand euros (in terms of lodgement fees, which are refundable to Revenue when recovered by the Sheriff from the defaulter) in return for €270m in collections (for 2019). Contrast this with the more expensive, less efficient and lengthier Revenue external Solicitor court debt collection process which yields a far lower return at a higher cost.<sup>15</sup>

- Sheriffs have in the past worked with other Revenue divisions other than the CG Division. Business Division and Customs cases have found their way to Sheriff enforcement owing to time limits being up or certain developments in those divisions (a contentious debt being admitted) rendering it more appropriate and easier for Sheriffs to collect.
- Sheriffs provide a highly efficient method of enforcement, a fact which is borne out by the collection figures. In 2019, there were 63,722 cases<sup>16</sup> referred comprising 88,782 referrals<sup>17</sup> by these three methods, of which 51,169 cases (88,782 referrals) were sent to the Sheriffs (80% of cases and 82% of referrals went to the Sheriffs.)
- The total value of referrals to enforcement was €695.80M. The total amount recovered was €274.2M, of which €190.2M was recovered by Sheriffs (69%).<sup>18</sup> (See Table 1 below)
- In a report to the EU and International Tax Collection News in 2016<sup>19</sup>, the Revenue Commissioners stated:

*“The Sheriff is the Revenue’s preferred external enforcement option because it can be quickly activated in comparison to the Courts’ process and because it is the more cost effective for the Exchequer, in that all fees/costs are levied on the defaulting taxpayer.”*

- In the current Guidelines for Sheriff Enforcement<sup>20</sup> by Revenue, it is stated that Sheriff enforcement is quick and cost effective.

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Revenue Commissioners Annual Report 2020 chrome-

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.revenue.ie/en/corporate/press-office/annual-report/2020/ar-2020.pdf

<sup>16</sup> A case means the liabilities of one taxpayer referred to a Sheriff for collection, whether the liabilities relate to one taxable period or many, or to one taxhead or many, or whether the liabilities have been referred together or separately over a period of time.

<sup>17</sup> A referral means the total tax and interest liabilities transmitted to a Sheriff for collection on one occasion. One referral may contain all the outstanding liabilities of the taxpayer (provided these have been duly demanded). Consequently it may not be possible to confine a referral to one document.

<sup>18</sup> Revenue Commissioners Annual Report 2019, p.93, Table 7

<sup>19</sup> Public/private co-operation for the recovery of taxes: Ireland – outsourcing debt collection. Report by Lucy Mulqueen, EU and International Tax Collection News 2016-2

<sup>20</sup> Tax and Duty Manual, Collection Manual – Guidelines for Sheriff Enforcement. Document updated July 2022. Available at [Guidelines for Sheriff Enforcement - When a tax is referred to the Sheriff \(revenue.ie\)](https://www.revenue.ie/en/corporate/documents/statistics/registrations/sheriff-solicitor-enforcement.pdf)

- **Table 1** below sets out the relevant statistics in respect of tax collection by Sheriffs between 2009-2020.

**Table 1: Debt Collection Referrals to Sheriffs for Revenue Commissioners<sup>21</sup>**

YEAR	NUMBER OF REFERRALS	VALUE OF REFERRALS (€M)	YIELD (€M)	% RECOVERY
2009	38,790	697.4	214.3	30.7%
2010	32,964	529	173.9	32.9%
2011	34,466	474.3	172.1	36.3%
2012	31,065	373.6	151.3	40.5%
2013	28,795	312	150.3	48.2%
2014	30,927	283.5	148.9	52.5%
2015	28,477	254.9	152.7	59.9%
2016	36,632	268.6	148.6	55.3%
2017	40,038	297.1	151.7	51.1%
2018	34,373	270.7	151.9	56.1%
2019	72,697	421	190	45.1%
2020	20,162	95	84	88.4%

<sup>21</sup> Source Revenue Commissioners

**Sheriff Review Group – Questions Document to issue to Sheriffs Association (to include, but not limited to information as outlined in the Terms of Reference)**

- **Information on the role of Sheriffs, as currently constituted, in respect of State work, with a view to establishing if the nature of the role is currently in line with best international practice.**

The Association has set out above the information considered relevant on the role of Sheriffs, as currently constituted.

The Association considers not only that the Sheriff's role is currently in line with best international practice, but that the current model of Revenue collection in Ireland constitutes an example of international best practice. The Revenue DMS and electronic Certificate system is unique and ensures maximum efficiency. Once a Warrant issues to a Sheriff, it is acted on immediately by the Sheriff leading to the collection of otherwise uncollectable ("stubborn") debt whereby the costs are borne by the defaulting taxpayer/debtor.

Our nearest neighbouring jurisdiction (UK) operates a system of confiscation and seizure of assets akin to Ireland's, but the success of this system is dependent on a Court Order (including in the collection of taxes) to mandate the relevant Enforcement Officials to act. There is therefore a lengthy process to be followed prior to an Order being issued to the Sheriff. This is to be contrasted with the Revenue Commissioners' power to issue a Certificate directly to the Sheriff. A Revenue Certificate has the full force of law as a High Court *Fi-Fa* (Execution Order).

Other jurisdictions on the continent empower their tax authorities to confiscate goods directly. However, as the Sheriffs operate independently of Revenue/the Creditor, this affords a flexibility in terms of collection which is otherwise unavailable to Revenue/the Creditor directly.

It is to be noted that the Revenue Certificate and Sheriff tax enforcement system has successfully withstood legal challenge, as established in the *Deighan v Hearne & ors*<sup>22</sup> case.

- **Consideration and observations by the Association on potential reforms that could improve the efficiency and effectiveness of the role, taking into account experience of other jurisdictions.**

The current significant powers afforded to the Sheriffs under the Fines Acts, including the seizure of bank accounts and real property, should be given to Sheriffs regarding the collection of taxes and private debt.

The Sheriffs await the outcome of the ongoing Departmental review in relation to the collection of fines and subject to the appropriate systems and costs structures being put in place, would welcome the proper implementation of the existing legislation. For example, in order to maximise the efficiency and efficacy of the Sheriff fines collection systems (which each Sheriff already has in place in their offices), thought needs to be given to data and information availability to the Sheriff which would allow the Sheriff to access details relating to the fines defaulter, what the fine relates to and so forth.

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<sup>22</sup> *Deighan v Hearne* [1986] IR 603

The Sheriffs' Association was not invited to be part of the foregoing Departmental review. The Association requested to be part of this review, but this was declined. The Association remains at the disposal of this Departmental review group to provide any assistance considered necessary or otherwise appropriate.

The Sheriffs would welcome a statutory indemnity being put in place for Sheriffs (conducting their duties in good faith) which would protect against litigation suits and deter legal actions being brought against a Sheriff. This would copper fasten the current statutory immunity from suit as set out in Section 12 of the Enforcement of Court Orders Act 1926.

The Association is keen to align itself with Revenue and any other relevant State body in terms of modernisation, as demonstrated previously with the adoption of the electronic Revenue system and stands ready to implement whatever electronic and IT systems are considered necessary in this regard.

- **Views of the Association on all aspects of the role of Sheriff and services provided in light of the Covid Pandemic, including implications for:**
  - **tax enforcement and debt collection on behalf of the Office of the Revenue Commissioners;**
  - **civil debt enforcement and fines collection on behalf of the Department of Justice;**
  - **Electoral/Returning Officer role on behalf of the Department of Housing, Local Government and Heritage; and**
  - **any other services or functions undertaken by Sheriffs on behalf of the State.**

The Covid Pandemic constituted an exceptional occurrence in the context of Sheriff tax enforcement which saw the cessation of tax enforcement by Revenue leading to the near collapse of the Sheriff enforcement in Ireland.

Whilst certain financial reliefs were available to Sheriffs as business owners (e.g. EWSS, TWSS, Tax Warehousing, council grants), other crucial forms of financial assistance, available to other businesses (e.g. CRSS) were not available to Sheriffs.

The Sheriffs would welcome the introduction of an emergency compensation fund in the event of the recurrence of a pandemic-like event leading to the cessation of tax enforcement in the future. This would allow Sheriffs to access the necessary funding to ensure that offices remain open in order that Sheriffs would retain the capacity to discharge their statutory enforcement obligations.

Broadly speaking, the Revenue Sheriffs are open, subject to the appropriate systems and costs structures being put in place, to collect debt and execute orders for possession of property as was recommended by the Law Reform Commission in its 1988 Report *"Debt Collection: the law relating to Sheriffs"*.

The Sheriffs are likewise open to the collection of other State debt, e.g. commercial rates, TV licence fees and outstanding hospital charges. As stated above, the Sheriffs await the outcome of the fines review and would welcome the opportunity to collect fines in more substantive a manner than they are currently.

It is noteworthy that had Revenue Sheriffs been empowered to collect fines and private debt, this would have had the potential to alleviate some of the worst effects of the cessation of tax enforcement during the pandemic.

The Full Sheriffs would like to continue to conduct their current roles as Returning Officers as they have proven that they can effectively carry out their electoral duties in tandem with their debt enforcement and executing orders for possession of property duties.

- **Data on the following:**

- **volume and scale of business conducted by Sheriffs in each bailiwick;**

This information can be sourced from Revenue, who collate this data. It is not collated by the Sheriffs' Association.

- **the amount of income generated for the State; and**

See **Table 1** above in respect of Revenue collected by Sheriffs between 2009-2020.

- **the cost of maintaining operations.**

The individual costs of running an individual Sheriff's Office changes from bailiwick to bailiwick and constitutes commercially sensitive information. The costs range from €110,000 per annum for a smaller Sheriff to €600,000 for a larger Sheriff operation.

- **Consideration of the future role of Sheriffs in relation to services provided for, and on behalf of, the State, and to identify any issues to be addressed including:**

- **the nature of services to be delivered, and how they are delivered;**

- **the extent to which debt collection can be modernised;**

- **examine the potential for consolidating the Sheriff bailiwicks; and**

- **implications for other ancillary services.**

In addition to the points raised by the Association above, the issuing of Civil Orders electronically to Sheriffs would be welcomed by the Full Sheriffs.

Co-operation with other Statutory agencies, as and when appropriate, would be welcome, for example access to data from the Motor Taxation office, Property Registration Authority, Department of Agriculture (in respect of the seizure of animals) etc.

Consolidation of Sheriff bailiwicks has occurred during the pandemic on three occasions. Consolidation appears to be operating well to date. There would appear to be potential for further amalgamation/consolidation in the short to medium term. The Association would welcome the consolidation of existing bailiwicks as and when existing Sheriffs retire, subject to geographical considerations and only to the extent that there is no negative impact on the efficacy of Sheriff collection (e.g. by the loss of local knowledge etc.).

- **Information on the Sheriff's bond including;**

- **do all Sheriffs hold such a bond and is this monitored/should it be;**

Not all Sheriffs carry a bond. Sheriffs appointed in the past 10 years or so do not carry a bond. Bonds are no longer available in the market to new entrants and are now only carried by those Sheriffs who were appointed in the late 1980s and shortly thereafter.

The experience of more recently appointed Sheriffs is that communications to the CSSO and/or the Department of Justice on this issue have not gained traction.

The Association is of the view that the bond is outdated and obsolete and should no longer be a requirement, particularly given the speed of electronic transmission of monies between the Sheriff's office and Revenue.

- **what risks does the bond cover;**

The risk of the Sheriff inappropriately taking Revenue client funds.

- **how is the amount of the bond calculated and is the calculation in order given the potential risks;**

Unknown.

- **Qualifications;**

- **Do the existing qualification thresholds remain relevant in light of changing nature of the work (increased litigation, data protection, systems security etc);**

The Association is of the view that the appointment to the Office of Sheriff should preferably be limited to Solicitors of not less than 5 years standing (as a minimum) for the following reasons:

1. Solicitors operate in a regulated environment.
2. Solicitors in practice handle clients' monies and operate a client account.
3. Solicitors are trained lawyers and have due regard for litigation risk/threats in the conduct of their business.
4. Solicitors carry PII insurance.
5. Solicitors are accustomed to dealing with staff and running offices.
6. Solicitors, like Sheriffs, are officers of the Court and are fully cognisant of the associated obligations.
7. Solicitors are fully aware of other legal considerations applicable to the role, e.g., the role of the Insolvency

Service of Ireland in debt recovery, (e.g. PIPs), GDPR and judicial review.

8. Solicitors will be aware of the primacy of the role of the creditor in enforcement, and the overlap and legal ramifications of the appointment of certain company officers in insolvency situations i.e. Liquidators and Examiners.

- **Manner of appointment and tenure, dealing with non-performance/complaints;**

- **Staffing of Sheriff Offices, including selection and appointment;**

Sheriffs are appointed by the Government on a permanent basis under Section 12 of the Court Officers Act 1945 with a statutory retirement age of 70.

The office of Sheriff is held “at the will and pleasure of the government” under S12(6)(a).

Sheriffs have a legitimate expectation of a viable workflow, given, *inter alia*, the permanent nature of their appointment, in addition to contractual considerations arising from the Sheriffs’ Agreement in place between Revenue and the Sheriffs.

The current manner of appointment of new Sheriffs by Cabinet, following an open competition through the Public Appointments Service (PAS) should remain. The fact that PAS operates the competition for Sheriff appointments demonstrates the importance of the role. Appointment of Sheriffs is already legislatively provided for and the PAS system is rigorous, transparent and attracts the best possible candidates for the Sheriff’s appointment by Government.

Sheriffs’ staff are a matter for the Sheriff and operate under the direction the Sheriff.

Court Messengers are appointed by the Minister for Justice and Bailiffs, who are governed by Common Law, are retained by the individual Sheriff. Revenue is notified by the Sheriffs of the Court Messengers and Bailiffs retained by the Sheriffs, and a separate GDPR Agreement exists between the Sheriffs and Revenue as part of the Sheriffs’ Agreement (MoU) between Revenue and the Sheriffs, governing the relationship between the parties with regard to GDPR and the sharing of data. Sheriffs, Court Messengers and Bailiffs are afforded special status and are exempt from the licencing requirements of the Private Security Acts.

Sheriffs operate under the Sheriff’s Code of Practice with regard to Revenue collection. Under this Code and Revenue’s Agreement with the Sheriffs, a written complaints process is in place for an aggrieved party which can result in the complaint being referred to a Joint Standing Committee comprising two members of Revenue and two members of the Association and one member of the Department of Justice (who acts as chair). Sheriffs are also susceptible to Judicial Review proceedings which may be brought by any aggrieved party with the appropriate standing.

- **Staff Management;**

Staff management is a matter for the Sheriff. Staff operate under the direction the Sheriff.

**- Do staff have Garda Clearance, if not should this be considered?**

All Sheriffs are Garda vetted prior to their appointment. As staff operate under the direction of the Sheriff, and as staffing is a matter for the Sheriff, Garda clearance is not necessary and would add an unnecessary administrative burden. In any event, TUPE regulations<sup>23</sup> apply to all Sheriff office staff transfers resulting in the transfer of the staff from a retiring Sheriff's office to the newly appointed Sheriff's office (or redundancy payment as appropriate).

Court Messengers are appointed by the Minister for Justice.

**Conclusion**

As Solicitors, and as Sheriffs, officeholders have an intimate knowledge of debt collection and an awareness of legal due process. When combined with local knowledge, Sheriffs act as highly effective debt and tax enforcers. As Sheriffs give effect to Revenue Certificates and Court Orders, they are essential to the effective administration of justice and to the upholding of the rule of law.

As demonstrated by the ability of Sheriffs to adapt quickly to evolving Revenue IT systems, in particular the DMS system, Sheriffs have demonstrated an openness and the capacity to implement change in terms of efficient modernisation.

Sheriffs, broadly speaking, are willing to take on new debt types for enforcement and collection. e.g. private debt, rates, possession order enforcement, illegally obtained pandemic supports, etc. Sheriffs are cognisant of the sensitivities surrounding certain categories of tax enforcement e.g. Local Property Tax enforcement, and adapt their approach accordingly.

Sheriffs have demonstrated a capacity to deal with high and low value debt, in particular debt that would otherwise be unrecoverable.

Sheriffs operate independently of Revenue and Creditors. This affords an important level of independence and flexibility that is otherwise unavailable to the individual creditor.

The Association would welcome a review of the Sheriffs' Fees and Expenses Order (SI 644 of 2005) which has not been updated in line with other public and civil service remuneration increases. Sheriffs would then be better placed to maintain their operations and deal with current and future challenges e.g. increasing energy costs etc. In this regard, the Association would welcome the establishment of a working group (involving for example, Revenue, the Department of Justice and the Sheriffs' Association) to engage in contingency planning to deal with any future crises such as the crisis Sheriffs faced during the Covid-19 pandemic and cessation of tax enforcement which led to the near-collapse of the Sheriff enforcement system in the State.

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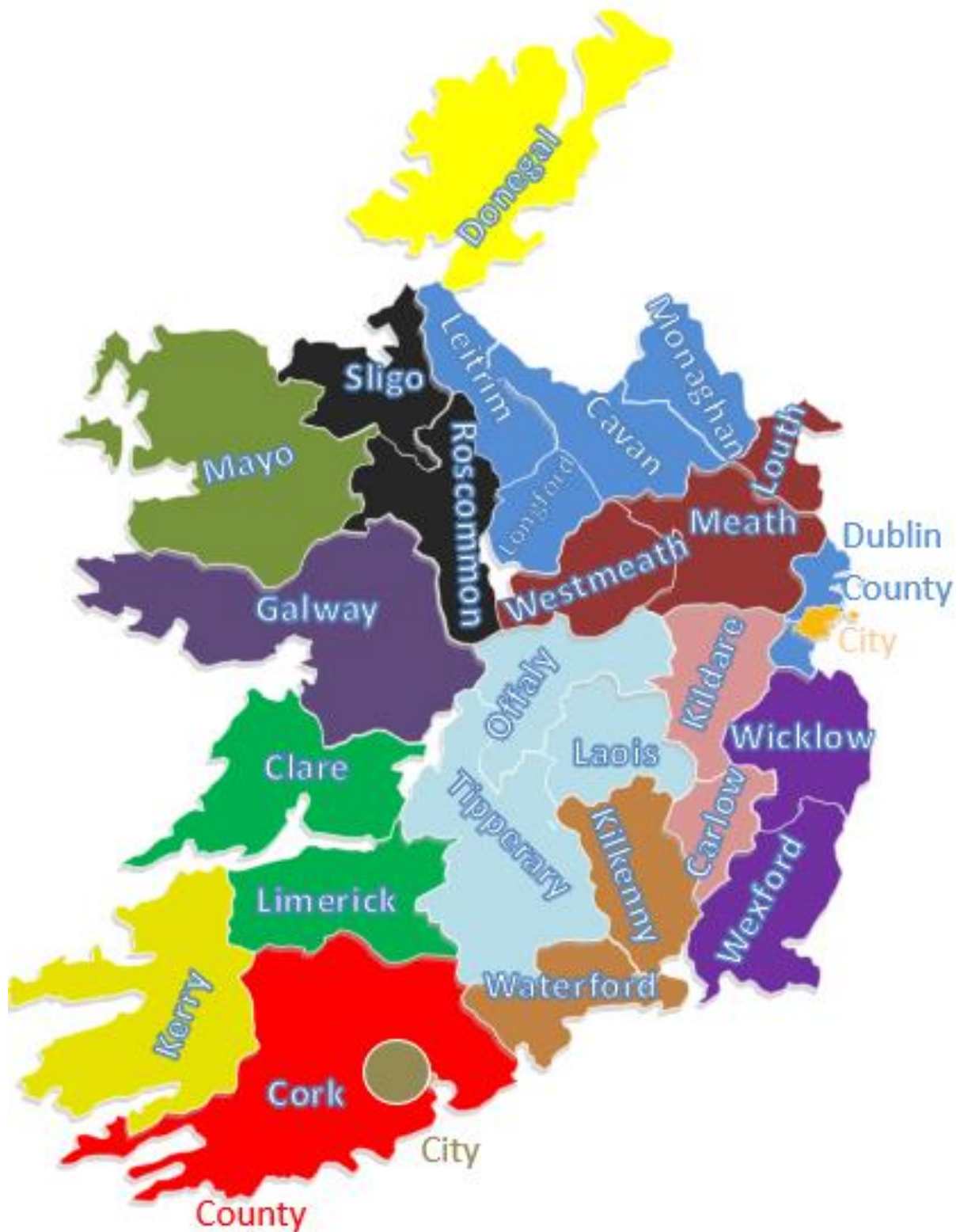
<sup>23</sup> European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.



In summary, the office of Sheriff has served the State well to date and represents an effective and efficient service at minimal cost to the State. The powers of the Sheriff are utilised proportionately and are such that they can be effected speedily and with demonstrable results. Accordingly, the Sheriff system in Ireland (as regards the enforcement of taxes) represents, in the Association's view, a model of best international practice.

# 16 Bailiwicks Pre Covid

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# 13 Bailiwicks Post Covid

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