



Oifig an Ard-Reachtair Cuntas agus Ciste
Office of the Comptroller and Auditor General

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Ted McEnery
Clerk to the Committee
Committee of Public Accounts
Leinster House
Dublin 2.

Dear Ted,

I refer to the Committee of Public Accounts meeting of 4 October and to the request for information regarding the accountability for State funding allocated to CIE group companies.

I have set out information in response to the Committee's request in the attached note. Should you require any further information, please do not hesitate to contact me.

Yours sincerely,

Andrew Harkness
Secretary and Director of Audit

Accountability for State Funding Allocated to CIE Group Companies

The Committee of Public Accounts asked for a note on accountability for Exchequer-sourced payments to the CIE group of companies. This note has been prepared by the Office of the Comptroller and Auditor General in response to that request.

State Allocations to CIE Group Companies

The main components of public funding provided to the CIE group of companies are

- public service obligation (PSO) compensation payments to each company
- capital investment grants, payable on a project basis on foot of approved business cases
- payments in respect of the provision of school transport.

The total sums provided for CIE companies under each heading for 2011 are shown in the following table.

Exchequer-sourced payments to CIE, 2011

	2011 €m
PSO compensation	265
Capital investment grants	276
School transport	152
Total	693

Public Service Obligation Compensation

PSO grant funding is provided from the Vote of the Department of Transport, Tourism and Sport to the National Transport Authority (NTA). On its establishment in December 2009, the NTA took over responsibility from the Department for providing and overseeing PSO funding to the CIE group.

Under the Transport Regulation Act 2009, a revised framework was introduced for regulating the award of exclusive rights and paying compensation for PSO services. The change in legislation and approach stemmed from EC Regulation 1370/2007, which sets out how EU Member States should regulate the award of PSO compensation payments.

In accordance with the legal framework, the three CIE companies provide certain PSO services which are defined as '*socially necessary but financially unviable public transport services*', under contract to the NTA. The contracts set standards of operational performance and customer service and contain penalties for under-performance. The current service contracts were signed in December 2009 and are for a period of five years in the case of bus services and ten years in the case of rail.

The amount of financial assistance payable to the companies for PSO is determined in the context of the annual estimates process. The NTA is notified of the amount available in respect of PSO funding by the Department. Following that notification, the NTA consults with the service providers on any amendments that may be required to the agreed services set out in the contracts as a result of changes in the funding profile.

Details of the 2011 PSO grants to the three CIE companies are set out below.

**NTA's Public Service Obligation Compensation
Payments to CIE companies, 2011**

	€m
Iarnrod Éireann	149
Dublin Bus	73
Bus Éireann	43
Total	265

Capital Investment Grants

Capital investment grants paid to CIE companies are provided from the Vote for Transport, Tourism and Sport. About 47% of the total provided was routed to the companies through the NTA. The remainder was provided directly to the CIE companies by the Department. The funding routed through the NTA is for investment within the greater Dublin area; the direct funding is for investment in other areas.

The NTA also administers two grant programmes on behalf of the Department i.e.

- the Regional Cities Public Transport Programme
- the Accessibility Programme.

An analysis of capital grants issued to the CIE companies in 2011 is set out below.

Capital investment payments to CIE companies in 2011, by source

	NTA	Department	Total
	€m	€m	€m
Iarnrod Éireann	105	146	251
Dublin Bus	6	—	6
Bus Éireann	19	—	19
Total	130	146	276

Source: NTA, Department of Transport, Tourism and Sport

€122 million of the capital investment grants paid directly by the Department to Iarnrod Éireann in 2011 was in respect of the Railway Safety Programme 2009-2013¹ aimed at reducing the level of risk on the rail network and thereby improving rail safety.

School Transport Scheme

The School Transport Scheme (primary and post primary) is operated by the Department of Education and Skills and currently supports over 107,000 pupils each day. The total cost of the scheme in 2011 amounted to €171 million. €152 million of this was paid to Bus Éireann.² The remaining €19 million was in respect of direct school transport grants and school bus escort payments to parents/schools.

¹ This is the third five-year safety programme.

² The payment to Bus Éireann is net of receipts from charges for the service, which amounted to around €11 million in 2011.

Bus Éireann administers the standard national school transport system on behalf of the Department.³ It employs external providers in the delivery of the service, with 85% or about 3,300 of the vehicles used, owned by private operators. Some pupils are carried on scheduled CIE services.

The scheme has operated based on an administrative arrangement in place between the Department and Bus Éireann since 1968 (updated in 1975). The Department is charged the cost to the company of providing school transport, including an administration charge.⁴

The 1975 agreement sets out the agreed accounting arrangements for the computation and presentation of the cost incurred by Bus Éireann in supplying, supervising and administering the schemes on behalf of the Department. An annual statement of account is prepared by Bus Éireann and audited by a commercial firm of auditors.

Departmental Supervision of State Bodies

The extent of the responsibilities of a department's Accounting Officer in relation to spending of State bodies under his/her aegis is not precisely defined. The *Report of the Working Group on the Accountability of Secretaries General and Accounting Officers* noted that this issue presented challenges to accountability, particularly in regard to achieving a balance between allowing the body concerned the freedom to perform its functions effectively while at the same time meeting accountability requirements for public funds.

The Accounting Officer's role in relation to the supervision of bodies under the department's aegis will usually involve satisfying him/herself through the reporting arrangements that

- there are systems in place to provide relevant, accurate and timely information to the parent department
- the governance arrangements set out in the Code of Practice for the Governance of State Bodies are being implemented, and that, if reports indicate a problem has emerged, appropriate corrective action is taken by the body concerned as soon as possible.

In practice, the supervisory process established by a department (or by an intermediate funding agency) normally goes beyond the financial entitlement or 'regularity' of the payments from the Vote and encompasses the safeguarding of public money, the proper conduct of public business and the performance of the body.

The manner in which the supervisory process operates varies from body to body due to the legal framework, the nature of the body's activities and the conditions attaching to the assistance provided. An effective grant-funding supervision regime put in place by a department or funding body in respect of a body under its aegis, or providing agreed services should reflect the reasons for the provision of funding and may involve

- formal agreements such as service level agreements which should specify performance targets
- documentation evidencing entitlement in support of claims (e.g. for capital grants) such as certification by senior officials that agreed milestones have been achieved, invoices, expert reports, etc

³ Judicial review proceedings recently ended in the High Court resulted in a judgement that the administrative arrangement between Bus Éireann and the Department does not constitute a contract or service provision that is subject to EU procurement rules.

⁴ The 1975 agreement provided for an administration charge of 13%. By agreement, the sum payable was capped for 2011 at €16.7 million.

- inspections or audits carried out by the Department's/funding body's internal audit or officials (e.g. on capital projects)
- financial reporting arrangements including expenditure profiles, cash profiles, regular management accounts and annual audited accounts
- regular performance reports
- other monitoring arrangements such as regular meetings by officials and day-to-day communications where material matters arise (for example emergence of major contingent liability, working capital deficiency, major litigation, significant fraud)
- annual formal confirmation by the Chairperson of the Board of the State body that it is in compliance with specific governance requirements set out in the Code of Practice.

Previous Report of the Comptroller and Auditor General

A report of the Comptroller and Auditor General published in September 2010 reviews the state of development of the framework for supervision of State funded bodies (by department's and/or by intermediate funding bodies).⁵ The overall conclusions were

- There is a consensus that a performance management framework for State bodies should be in place.
- Wider aspects of performance now need to be addressed and a framework developed that balances the operational independence of State bodies with the need for focused delivery. It may be useful to focus attention on achievement of outcomes in formulating this framework.
- The nature of the framework to be implemented will need to be adjusted to the circumstances of each State body. Different levels of oversight may need to be considered according, for example, to whether the State body is in the commercial or non-commercial sector, the risk levels associated with the sector, previous experience and whether the body appears before the Committee of Public Accounts in its own right. In addition, independent sectoral regulators have specific features which mean that this recommendation would need to be tailored to the specific circumstances. The recent legislative proposals dealing with financial regulation could provide a framework for greater public scrutiny of such functions including the provision of three-yearly strategic plans and annual regulatory performance statements.
- More generally, performance statements should be sufficiently comprehensive to allow the identification of objectives, enable progress tracking to take place through regular reporting and review, and facilitate corrective action where planned progress is not being made.
- In general, good progress has been made in creating a regime that gives assurance in regard to State body compliance in the area of governance and its association with the accountability process helps ensure that all conformance matters are on Boards' agendas.
- Departments should consider requiring State bodies under their aegis to apply for and achieve certification under the 2010 NSAI assessment code within a reasonable period of time. This would give assurance to board members that there is a reasonable evidence base to support the assertions set out in annual statements on internal financial control.

Exclusion of Commercial State Bodies from Comptroller and Auditor General Remit

Many government departments administer grants or otherwise provide financial assistance to bodies outside their day-to-day control. Some of the bodies funded in this way are State bodies while others are private/voluntary bodies (e.g. some of the large hospitals).

⁵ See chapter 9 of the Report on the Accounts of the Public Services 2009 (September 2010)

State bodies fall into two main classes with implications for their accountability.

- Commercial State bodies enjoy a degree of freedom in the pursuit of their objectives. They generally generate a substantial part of their income from charges for services.
- Non-commercial bodies in the main carry out core functions of the State.

Most non-commercial State bodies are audited by the Comptroller and Auditor General. They are accountable to Dáil Éireann through the Committee of Public Accounts.

The Comptroller and Auditor General (Amendment) Act 1993 (the 1993 Act) specifies that certain bodies (mainly commercial State bodies, and including CIE) listed in Schedule 2 of the Act are not subject to audit of their annual financial statements by the Comptroller and Auditor General.⁶ Among the reasons given for the exclusion of commercial bodies from the scope of the Comptroller and Auditor General's mandate were that⁷

- The specified bodies are intended to enjoy a certain degree of autonomy and freedom to operate in a commercial way (as compared to the level of controls exercised over non-commercial State bodies)
- The specified bodies could be held sufficiently accountable to the Oireachtas through the responsible Minister and the presentation of annual reports and accounts. Adding a further layer of control could be wasteful and could inhibit commercially-focused decision-making.
- There already existed a parliamentary review process in respect of the bodies concerned via the relevant Oireachtas committees.

C&AG Inspection Rights

Section 8 of the 1993 Act provides that the Comptroller and Auditor General may carry out an inspection of the accounts, books and records of a body that receives more than half of its funding from State sources, to address certain specified concerns. This includes ascertaining whether money received from a person or fund whose accounts are audited by the Comptroller and Auditor General has been expended for the purposes for which it was authorised and in accordance with any conditions specified in relation to such expenditure. However, the bodies listed in Schedule 2 are specifically excluded from this remit.

Likewise, the bodies listed in Schedule 2 are excluded from the Comptroller and Auditor General's mandate to carry out value for money examinations (provided for in Section 9 of the Act).

⁶ The list of exclusions from the audit remit also includes the local authorities.

⁷ See White Paper on the Role of the Comptroller and Auditor General, 1992