



DPE 022/002/2018

31st May 2019

To: Accounting Officers

DPER Circular: 14/2019

Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Report No. 5 Sept - Nov 2018

A Dhuine Uasail,

I am directed by the Minister for Finance and Public Expenditure and Reform to circulate, for your attention, guidance and any necessary follow up actions a copy of the Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Meetings Report published in March 2019.

Issues raised

The PAC Report contains 25 recommendations relating to a wide range of Public Bodies and Departments including issues regarding the National Asset Management Agency; The Department of An Taoiseach (Presidents Establishment); Teagasc; The Office of Public Works; The Department of Public Expenditure and Reform; The Higher Education Authority; The Office of the Revenue Commissioners; and the Department of Employment Affairs and Social Protection.

Enquiries

Enquiries in relation to this Circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571 or email: govacc@per.gov.ie.

Mise le Meas,

Robert Watt
Secretary General

Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Report No. 5, March 2019

The Minister for Finance and Public Expenditure and Reform has examined the Committee's Report and has taken account of its recommendations and conclusions.

The Committee's recommendations, which are outlined below, have been grouped with regard to the organisations the Committee met between Sept and November, 2018, following up on matters arising from previous meetings and examining issues emerging from financial statements audited and matters reported on, by the Office of The Comptroller & Auditor General. The Minister's response is as follows:

Recommendation A.1.

NAMA's lack of systematic and routine verification of Section 172 declarations was unacceptable. The Committee recommends that NAMA puts in place a system to verify Section 172 declarations it receives for the remainder of its operation.

The Minister for Finance and Public Expenditure and Reform rejects this recommendation.

The Minister for Finance has been informed by NAMA that it has considered the PAC recommendation and concluded that, if adopted, it would give rise to a number of serious practical difficulties which could have an adverse commercial impact on its sales activities:

1. Proving purchaser compliance with Section 172(3) would necessitate undertaking a comprehensive asset search for every purchaser of a NAMA-secured asset. This would be an expensive and time-consuming process with a requirement to retain external service providers, potentially in multiple jurisdictions. In some jurisdictions, there is no certainty that the identity of the Ultimate Beneficiary Owner (UBO) could be established. The UBO in all likelihood would never have had any connection to NAMA.
2. Any resulting delay in the completion of ongoing transactions by pursuing step 1 would potentially result in renegotiation of price by potential purchasers or, in sales falling through.
3. It should be noted that the Section 172 policy which has been adopted by NAMA Board – and the associated requirement to obtain confirmations – is broader in scope than the wording of Section 172(3) of the NAMA Act. NAMA cannot legally prevent a sale from proceeding if the buyer is not otherwise prevented from acquiring the asset by Section 172(3) of the NAMA Act 2009.
4. A process which would involve a comprehensive verification of purchaser confirmations would appear to imply that NAMA does not regard the purchasers' written confirmations as having much standing and that, instead, it operates on the

presumption that many purchasers of NAMA-secured assets are wilfully breaking the law, in particular Section 7(2) of the NAMA Act 2009 (see above). This creates risk of legal proceedings against NAMA by such persons, as well as potentially undermining the useful deterrent effect of this legislative provision.

5. NAMA considers that these considerations could seriously impede its ability to achieve the best possible financial return for the State, as required by Section 10(2) of the NAMA Act.

Notwithstanding the above considerations, the Minister notes that NAMA has proposed a number of additional measures in relation to NAMA's sales process in order to ensure the integrity of its transactions. NAMA are proceeding to take steps to seek confirmation that either:

- a) the party that completes a sale as purchaser is the same as the party that executed the Contract for Sale; or
- b) the party that completes the sale and the party that executes the Contract for Sale, if different, have each provided written confirmations for the purposes of Section 172(3) of the NAMA Act 2009.

In addition, The Minister notes that, following the enactment in March 2019 of the **European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019**, a **Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies** is in the course of being set up and is expected to be operational on or by 22 November 2019. The objective of this is to allow easier identification of the ultimate beneficial owner (UBO) of companies incorporated in Ireland through a publicly accessible register of beneficial ownership. It is proposed that, once such a register is operational, NAMA would carry out a sampling exercise in relation to Irish corporates who have completed purchases of NAMA-secured assets to ascertain UBO details. This will add a further layer of verification of Section 172(3) NAMA Act 2009 confirmations given by such entities.

Recommendation A.2.

The acceptance by Local Authorities of just 40% of the 7,000 residential units and sites suitable for housing requires re-examination given the current housing crisis. The Committee recommends that those housing units and sites suitable for housing, still available to NAMA, be re-offered and reconsidered by Local Authorities.

The Minister for Finance and Public Expenditure and Reform rejects this recommendation.

These units were offered from 2012 onwards and the residential units and sites which were rejected by local authorities are no longer available. These properties have been sold on the open market by their owners or receivers in order to repay associated debt. As these properties are no longer available NAMA is not in a position to re-offer them to Local Authorities.

Recommendation A.3.

It is unacceptable that the internal audit committee for the President's Establishment, which was established in 2014, did not meet prior to 2018. The Committee recommends that the audit committee for the President's Establishment develops a schedule of regular meetings each year.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of the Taoiseach that it accepts this recommendation. The Minister is further informed by the Department that the Audit Committee which was established for the President's Establishment did not meet, as the Chairman was indisposed. A new chairman was appointed in February 2018 by the Accounting Officer and that the Audit Committee for the President's Establishment had met four times, since February 2018.

The Minister notes that the Audit Committee for the President's Establishment also has a schedule of meetings planned for 2019, along with a planned programme of work relating to audits covering the period up to 2021.

Recommendation A.4.

There is no statutory audit in relation to the €317,000 Presidential allowance paid from the Central Fund, which is granted under the Presidential Establishment Act and S.I. No. 67/1998. The Committee recommends that consideration be given to including the €317,000 Presidential allowance under Vote 1 and therefore making it subject to audit by the C&AG.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of the Taoiseach that it notes this recommendation, which relates to non-voted expenditure from the Central Fund which is administered by the Department of Finance. The Oireachtas has declared by law that monies from this Central Fund are to be paid without annual reference to the Dáil. In addition to the President's Allowance, the Central Fund also includes analogous payments to the Judiciary and the Comptroller and Auditor General.

The Minister is further informed that while the amount of the President's Allowance is established by S.I. No. 67/1998, the principle of paying the Allowance from the non-voted Central Fund is established by the Presidential Establishment Act 1938. Any amendment to this would require a primary legislative change.

It is also worth noting that the President has separately established an independent committee to provide oversight of the 1938 Allowance.

Recommendation A.5.

€1.35 million of Teagasc's expenditure in 2017 was non-compliant with public procurement guidelines. The Committee recommends that Teagasc ensures its procurement processes complies with all guidelines in future.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Agriculture, Food and the Marine that it accepts this recommendation. Management of the Teagasc procurement function is an operational matter for the Teagasc executive, its governing Authority, the Internal Audit Function and the Teagasc Audit and Risk Committee. They are collectively responsible for ensuring compliance with procurement procedures in line with best practice etc.

Teagasc takes procurement extremely seriously and it is a standing item on its Audit and Risk Committee's agenda. It is committed to taking appropriate corrective measures where any instance of non-compliance arises and works closely with the OGP in relation to national procurement arrangements.

It has also developed a "Corporate Procurement Plan" that is aligned with public sector procurement strategies as required by the Code of Practice for the Governance of State Bodies (2016).

Recommendation A.6.

Teagasc is attempting to create and save surpluses year-on-year as the opportunity presents to maintain a rainy day fund. Infrastructural needs are also sometimes met by the sale of assets. The Committee recommends that a more sustainable method for establishing funds for both (a) infrastructural maintenance and (b) longer term capital projects be developed by Teagasc, in consultation with relevant Government Departments.

The Minister for Finance & Public Expenditure and Reform is informed by the Department of Agriculture, Food and the Marine that it accepts this recommendation. Ministerial approval (DAFM & DPER) is required for Teagasc to carry out capital investments in accordance with the Act governing Teagasc - the Agriculture (Research, Training and Advice) Act, 1988. Approvals can only issue in respect of projects that have identified sources of funding.

DAFM is committed to supporting the Teagasc Capital Programme having regard to the availability of funds in its capital budget. Over €3m is being provided annually in Grant in Aid to support maintenance and refurbishment of its capital stock. Significant additional funding is being made available under Project Ireland 2040 through the Department's Capital Budget to support a number of new capital investments.

It includes €8.8m for the construction of a new National Food Innovation Hub in Moorepark, Cork and €10m for the establishment of a Prepared Consumer Food Centre in the Teagasc Food Research Centre, Ashtown.

However support for multi-annual projects must operate within the constraints of the annual estimates process and the requirements on retention of grant funding by state bodies under DPER Circular 13/14 on the Management and Accounting for Grants from Exchequer Funds.

Recommendation A.7.

The delay in occupation of the Miesian Plaza, Baggot Street, Dublin 2 premises resulted in the ineffective expenditure of €11m. This delay was partly due to a lack of staff engagement regarding changes to the working environment in the Department of Health that were necessary to facilitate the move. The Committee recommends that in future, a programme of engagement and consultation with staff takes place at an early stage as an intrinsic part of any departmental or public body office move.

The Minister for Finance & Public Expenditure and Reform is informed by the Office of Public Works (OPW) that it accepts this recommendation.

The Minister is informed by the OPW that they are actively exploring ways to enhance client engagement processes to ensure that the most appropriate accommodation solutions are identified. He is further informed by the OPW that they engage with senior management in a client Department at a very early stage in a relocation project and on larger projects the client may be part of the team that carries out the options appraisal.

The Minister is further informed by the OPW that they intend to pilot a change management consultancy approach for certain large scale relocation projects that will assist a client Department in assessing their own requirements and ensuring a clear line of communication with OPW during the project.

Recommendation A.8.

The method of calculation of the measurement used by the Office of Public Works to determine the rent of Miesian Plaza, Baggot Street, Dublin 2 was a serious error and could result in a projected over-payment of €10m during the lifetime of the lease. The Committee recommends that all Office of Public Works leases are calculated using the appropriate measurement method and are rigorously checked before a final lease is signed.

The Minister for Finance & Public Expenditure and Reform is informed by the Office of Public Works (OPW) that it accepts this recommendation. The Minister is informed by OPW that this issue arose as a result of the advent of a new international measuring standard at the time that the lease was being finalised.

The Minister is further informed by OPW that a complete update of Property Management processes and procedures has commenced and these will be improved and strengthened as necessary. This will ensure that all procedures are fit for purpose in relation to the new organisational structure, corporate governance, the approvals process and decision points and supported by key documentation. Consultation with the relevant internal stakeholders is ongoing in this regard.

The Minister is further informed that an independent review of all final engrossed leases against what was agreed in the Heads of Terms, prior to lease completion, has already been implemented for all new leases. It is intended that this will prevent similar confusion arising regarding building measurement and any other headline items in the agreed Heads of Terms.

Recommendation A.9.

The business case presented to the Office of Public Works' Board of Management regarding Miesian Plaza, Baggot Street, Dublin 2 did not follow best practice and alternative options to Miesian Plaza were omitted. The Committee recommends that the development of business cases by the Office of Public Works in relation to major projects include a robust analysis of key options and alternatives, plus associated costs, as required under the public spending code.

The Minister for Finance & Public Expenditure and Reform is informed by the Office of Public Works (OPW) that it accepts this recommendation.

The Minister is further informed by OPW that measures have been put in place to ensure that the requirements of the Public Spending Code are adhered to when considering a property for lease. For example, in recent months OPW carried out Cost Effectiveness Analysis (CEA) for two large-scale leasehold premises in which multiple options were assessed against predetermined criteria. These were submitted to the Department of Public Expenditure and Reform as part of the sanction process and the technical aspects of the CEAs were reviewed by the Department prior to sanction been given. The buy / build option was also considered as part of the capital appraisal for these leases.

The Minister is further informed that the previously mentioned update of property management processes and procedures will reflect the requirements of the Public Spending Code.

Recommendation A.10.

Given the fact that legislation was put in place in 2013 regarding the Single Public Service Pension Scheme, it is unacceptable that the Department of Public Expenditure and Reform failed to give effect to the provision in the legislation regarding employer contributions until 2016, due to a lack of advanced preparatory work. This has resulted in the Department of Public Expenditure and Reform requesting back-dated payments which is causing financial difficulty for certain public bodies. The Committee recommends that legislation should be implemented in a timely manner, as soon as is practical, and following all necessary preparatory work.

The Minister for Finance & Public Expenditure and Reform fully accepts this recommendation. The Department notes that:

- The Single Scheme was introduced in 2013 as a key reform measure in the context of the grave financial emergency faced by the State, to support the future sustainability of the public service pension system. Its introduction occurred at a time when recruitment and membership of the scheme in the public service was greatly restricted and when, due to other pressures, the resources available to support implementation of the Scheme were limited.
- The Department of Public Expenditure and Reform undertook a comprehensive analysis of public service bodies to determine their liability for Single Scheme employer contributions in 2018.
- Having completed that review, DPER submitted a [Report to the PAC](#) in February 2019, confirming that 24 bodies were identified as being liable for employer contributions, of which 17 bodies had made payments to end-January 2019, totalling €5.8 million.
- Of the 24 bodies identified, four expressed concerns in meeting an arrears liability for employer contributions due to end-2018. These are the Residential Tenancies Board (RTB), the Health Products Regulatory Authority (HPRA), the Dental Council and the National Standards Authority of Ireland (NSAI).
- In response to business cases made, a Ministerial Direction has been given under section 16(5) of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, in respect of three of those bodies (RTB, HPRA, NSAI), that monies owed in respect of the period prior to 1 January 2019 may be retained by the bodies concerned and used for the benefit of the Exchequer.
- As provided under section 44 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, the payment of all Single Scheme benefits will be met by funds provided by the Oireachtas for that purpose. The Department has confirmed this legislated position to the Dental Council in response to the concerns raised regarding the financing of benefits under the Scheme.

Recommendation A.11.

It is unacceptable that pension contributions under the Single Public Service Pension Scheme are not going to a fund similar to the National Pension Reserve Fund. This defeats the purpose of the contributions made by employees and their employers. The Committee recommends that consideration should be given to investing these funds in a fund similar to the National Pension Reserve Fund.

The Minister for Finance & Public Expenditure and Reform fully accepts this recommendation. The Department notes that:

- The establishment of such a fund would represent a significant change in policy and as such, requires detailed consideration, which the Department is undertaking at present.
- The vast majority of public service pension arrangements operate on a pay-a-you-go basis. The pre-funding of pension obligations under the Single Public Service Pension Scheme is a complex matter and would represent a very significant and long term change in the Government's approach to the financing of public service pensions. The Department is currently considering this matter and its preferred treatment of contributions received in respect of the Single Public Service Pension Scheme.
- Given the complexity of the matter, a substantial time and resource investment is required in order to ensure that the correct approach is arrived at. Accordingly, while this matter is progressing, it will not be concluded in the short term. The Department can update the PAC on progress, as required.

Recommendation A.12.

It is unclear whether the appropriate balance between leasing and property acquisition on behalf of the State is being achieved. The Committee recommends that the Department of Public Expenditure and Reform completes a detailed assessment of the relative merits and long-term implications of property leasing and property acquisition.

The Minister for Finance & Public Expenditure and Reform accepts this recommendation.

The Department of Public Expenditure and Reform published a Spending Review Paper on State Rents in 2018. The Review recommended further research into the balance between capital and current expenditure (long term value for money of construction/acquisition/retrofitting/refurbishment versus leased options).

This research is being carried out in the first instance by the Office of Public Works (OPW) with input from the Department of Public Expenditure and Reform and will address the issue raised by the Committee. The results of the research currently underway will be published as a Spending Review Paper. There have been meetings between OPW and the Department on this issue and as a result terms of reference for the research for the report have been drawn up. It is envisaged that the work involved will be completed over the coming months.

Recommendation A.13.

Repeated and regular overruns undermine the credibility of the annual Estimates. The Committee recommends that the Department of Public Expenditure and Reform works closely with each of the Departments with a history of requesting supplementary estimates to ensure that estimates presented to the Oireachtas are accurate from the outset.

The Minister for Finance and Public Expenditure and Reform notes this recommendation.

The annual budgetary cycle begins in April with the publication of the Stability Programme Update and is followed by a number of steps including the Summer Economic Statement, the National Economic Dialogue, the Mid-Year Expenditure Report, the suite of documents published on Budget Day in October and the Revised Estimates (REV) at the end of the year.

As part of this budgetary cycle, there is on-going engagement between Vote Sections in DPER and relevant Departments related to budgetary issues and performance. This involves the collation of data on performance for the REV and annual Performance Report, the ad-hoc assessment of data and analysis provided to DPER and the assessment of material submitted as part of budgetary proposals. Performance levels and existing analysis may be used in the consideration of proposals as part of the annual estimates process.

In relation to Departments with a history of requesting supplementary estimates the Department in the course of engagement will determine on a case by case basis. However, enhanced reporting requirements are often implemented in cases where Departments have not managed within budget in the previous year. For example, such arrangements were put in place this year for the Department of Health, and involve:

- The creation of a new oversight group chaired by the Department of Public Expenditure and reform, to monitor spending and act as an early warning mechanism.
- Monthly spending reports from Health to be submitted to the Cabinet Committee on Health each month, and
- A quarterly health financial management memo to Government, to update Government on the overall health position.

Recommendation A.14.

It is not acceptable that it can take approximately six months for the Estimates to be dealt with by the Dáil despite the fact that the Budget Statement is announced every year before the 15 October in accordance with the fiscal rules. The Committee recommends that the Department of Public Expenditure and Reform takes all necessary steps to ensure that the Estimates are approved by the Oireachtas before the beginning of the calendar year to which they relate.

The Minister for Finance and Public Expenditure and Reform notes this recommendation.

In accordance with Ireland's obligations under the Stability and Growth Pact the Estimates for 2019 were published before the end of 2018, 19 December 2018. The Revised Estimates Volume (REV) includes significant additional information, over and above the information provided on Budget day, in relation to key performance information regarding Programme outputs and impacts.

The publication date under the revised Budgetary timetable introduced at European level allows for earlier publication than previously, for example in 2012, the REV was published on 23 February.

Since the change to the new budgetary timetable the dates on which Estimates for the year have been approved by Dáil Éireann have varied. For example in 2014, the first year of the new budgetary timetable, the Estimates for 2014 were approved by Dáil Éireann on 30 January 2014.

As the Estimates for the year are dealt with by way of financial resolution, and given the requirement that the legislation required to give effect to the financial resolutions of each year shall be enacted in that year, this places limitations on the timing of approval of the Estimates. However, the Estimates are available for consideration as soon as published.

Recommendation A.15.

The Higher Education Authority may not have the appropriate powers to oversee the third level sector and ensure that public monies are expended appropriately and in accordance with good governance standards. The Committee recommends that, when drafting Higher Education Authority legislation, the Department of Education and Skills ensures that the Higher Education Authority is granted sufficient powers to allow it to provide effective oversight of the third level sector.

The Minister for Finance and for Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The Higher Education Authority Act, 1971 established the Higher Education Authority (HEA), set out the functions of the HEA and provided for the governance of the HEA. The Act also provided that the HEA is the statutory funding authority for the universities, institutes of

technology and a number of other designated institutions and provided for the financial monitoring of the designated higher education institutions by the HEA.

In addition to meeting its statutory responsibilities under the HEA Act relating to the allocation of public funds to Higher Education Institutions (HEIs), the HEA has a crucial responsibility in providing assurance to the Accounting Officer of the Department of Education and Skills in relation to this funding in the performance of the Accounting Officer responsibilities as set out in the Comptroller and Auditor General Act 1993, the Public Service Management Act 1997 and Public Financial Procedures.

While it has been identified that there are areas in which the legislation requires updating to fully reflect the functions, governance and authority of a modern oversight / regulatory body for the higher education sector, the existing legislation does confer a number of powers to the HEA in relation to its statutory functions, specifically in respect of the oversight of the expenditure of public monies. In that respect, Section 12(2) of the HEA Act enables the HEA to attach conditions to funding allocated by it to HEIs. The HEA has established and currently operates a detailed and comprehensive Governance Framework for the Higher Education system, compliance with which is a condition for the provision of funding by the HEA to HEIs. This framework comprises a comprehensive programme setting out the statutory and administrative rules and requirements in relation to reporting placed on HEIs. Additionally, the framework reinforces compliance by HEIs with their sectoral Codes of Governance i.e. Code of Governance for Institutes of Technology (published January 2018) and Code of Governance of Irish Universities (to be published imminently), both of which are predicated on the broader public sector code of governance. Furthermore, HEIs are required to submit Annual Governance Statements to the HEA since 2014/2015 confirming compliance with these rules and requirements.

The Act also established the HEA as the advisory body to the Minister for Education and Skills in relation to the higher education sector. Additional functions have been conferred on the HEA under other legislation such as the Universities Act 1997, the Institutes of Technology Act 2006, the Qualifications and Quality Assurance (Education and Training) Act 2012, and the Technological Universities Act 2018.

Additionally, there have been numerous changes since 1971 in the responsibilities of the HEA in relation to the higher education sector. The current legislation does not fully reflect the functions, governance and authority of a modern oversight / regulatory body for the higher education sector. In that context, the Action Plan for Education 2019 includes a commitment to update the Higher Education Act, 1971 (Action 50.1).

Work has now commenced on updating the Higher Education Act, 1971. The updated legislation is intended to provide the HEA with any necessary authority in relation to revised functions, governance, oversight and other related matters which more fully reflect its current central role and responsibilities in relation to higher education.

The development of a revised legislative framework also provides an opportunity to examine changing and/or expanding the role of the HEA in the future and addressing other areas within higher education which may need a clearer statutory underpinning.

To that end, the HEA and DES have consulted regularly regarding the replacement of the Higher Education Authority Act. In 2018, the DES hosted a consultation process¹ with stakeholders, including the HEA, to consider the requirements and impact of the proposed legislation. This process included the publication of a consultation document, a request for written submissions and a consultation forum with key stakeholders.

It is proposed that key functions of the HEA will be included in the new legislation as well as the provision of specific oversight and regulatory requirements and a review power for the HEA. The legislation is intended to provide a strong statutory basis for a performance and regulation model for higher education institutions which balances strong internal governance of the higher education institutions with a robust regulatory and oversight role of the HEA.

In light of the need to maintain the national and international reputation of the higher education system in Ireland and safeguard the interests of students, it is also proposed in due course, subject to approval by the Minister, Government and the Oireachtas, to provide for appropriate regulation of private and not-for-profit higher education providers not in receipt of core public funding from the HEA.

Currently, a Memorandum for Government is being drafted with the aim of submitting this for approval in June 2019. This Memorandum will seek approval for:

- the updating of the Higher Education Act, 1971 and the broad policy approach being adopted,
- the inclusion of a review power for the HEA in the legislation,
- the publication of the consultation report.

Once approval is received, work will commence on drafting the Heads of Bill. Further consultation will be undertaken with the relevant stakeholders as part of this process.

¹ <https://www.education.ie/en/The-Education-System/Higher-Education/update-of-the-higher-education-authority-act-1971-public-consultation.html>

Recommendation A.16.

The primary responsibility for governance of third level institutions lies with the institutions themselves. The Committee recommends that the governing bodies of third level institutions acquire and maintain the appropriate skills and knowledge balance to ensure that these institutions are managed appropriately and to take action when deviations from expected standards occur.

The Minister for Finance and for Public Expenditure and Reform is informed by the Department of Education and Skills that it accepts this recommendation.

The governing authority of each higher education institution (HEI) is primarily responsible for ensuring that its activities comply with legislative and codified governance requirements.

Much progress has been made on specific facets of the governance requirements for higher education, including the development of skills and knowledge. To support the development of HEI leadership capability in 2018, the HEA agreed an upskilling programme with the Technological Higher Education Association (THEA). Priority actions for 2019 include putting a counterpart universities' programme in place in agreement with the Irish Universities Association (IUA). The focus is on governance for the Governing Bodies' Chairs and Secretaries, and leadership for the Presidents.

Additionally, there are overarching Codes of Governance which complement the broader public sector code of governance, in respect of the Institute of Technology sector and the University sector. The Code of Governance for the Institutes of Technology was launched in January 2018. The launch of the Universities' Code of Governance is expected imminently.

The objective of these Codes is to standardise governance structures, standards and best practice across the sector in line with the provisions of the Department of Public Expenditure and Reform's Code of Practice for the Governance of State Bodies (2016) which contains provisions which state that –

- (i) Governing body members should have the appropriate skills and knowledge to enable them to discharge their duties and responsibilities effectively;
- (ii) Governing bodies should identify gaps in competencies and ways in which these skills gaps can be addressed through future appointments;
- (iii) Governing bodies should undertake a self-assessment annual evaluation of its own performance and that of its Board committees to include an assessment of the balance of skills and experience amongst governing body members.

As part of a Governance Framework for Higher Education, the HEA has a significant governance programme in place which includes the submission of annual governance statements by higher education institutions. The annual governance statements include a

confirmation that the higher education institutions have complied with the provisions of the relevant sectoral Code of Governance.

In the Technological Universities Act 2018, greater emphasis has been placed on the identification of the necessary skills required to allow the Governing Body of a technological university to effectively carry out its statutory duties and responsibilities. Section 12(4) states that *“the governing body shall agree with An tÚdarás the competencies required of such members relating to areas such as business, enterprise, finance, law, corporate governance, human resources, community organisation or other areas relevant to the functions of the technological university.”*

Recommendation A.17.

The threshold for inclusion in the High Wealth Individual category is too high and should be more closely aligned to international averages. The Committee acknowledges that Revenue is examining this matter. The Committee recommends that Revenue completes its examination by the end of March 2019 and implements a reduced threshold for the High Wealth Individual category as soon as possible.

The Minister for Finance and Public Expenditure and Reform is informed by Revenue that it accepts this recommendation.

Following Revenue’s review, a report, which included recommendations on a lowering of the threshold to a wealth of greater than €20m for inclusion in the High Wealth Individual (HWI) category, was agreed by the Revenue Board. The implementation of this threshold will result in an additional 475 cases being managed by Revenue’s Large Cases -High Wealth Individuals Division. This is part of an on-going process, in Revenue, on the identification and expansion of the HWI case base.

Revenue informed the Committee of its decision and provided a copy of the report to the Committee and to the Office of the Comptroller and Auditor General on 27 May 2019.

Recommendation A.18.

Guidelines do not appear to exist regarding out of court settlements for tax avoidance schemes. The Committee recommends that Revenue investigates the possibility of developing guidelines regarding out of court settlements for tax avoidance schemes in order to ensure a level of consistency in reaching such settlements in future.

The Minister for Finance and Public Expenditure and Reform is informed by Revenue that its *Code of Practice for Revenue Audit and Other Compliance Interventions* provides comprehensive guidelines on out of court settlements. This Code includes a dedicated chapter (Chapter 8) on tax avoidance settlements and deals with, inter alia, the application of interest and the tax avoidance surcharge, qualifying avoidance disclosures, self-corrections without a penalty, mandatory disclosures, and protective notifications

Recommendation A.19.

There is insufficient clarity in relation to statements of assets by High Wealth Individuals. The Committee recommends consideration is given to requiring High Wealth Individuals to provide Revenue with an annual statement of assets held in Ireland.

The Minister for Finance and Public Expenditure and Reform is informed by Revenue that this is a policy matter that would require legislative change.

The Minister is further informed by Revenue that while there are obligations in place whereby individuals are required to include details of chargeable assets acquired, including gifts or inheritances, in their annual tax return, a change in the law governing the assessment of individuals to income tax and capital gains tax would be required in order to oblige self-assessed individuals, who are classed as being in the High Wealth Individuals' category, to make a full annual return of their asset portfolio, whether domestic or foreign-based.

Recommendation A.20.

Current deterrents to the illegal tobacco trade are grossly inadequate. The Committee recommends that Revenue investigates, in consultation with relevant Departments, the possibility of introducing a suite of measures to deter individuals from entering the illegal tobacco trade, including increasing penalties.

The Minister for Finance and Public Expenditure and Reform is informed by Revenue that it accepts this recommendation.

The Minister is informed by Revenue that its tobacco enforcement plan represents a framework for robust enforcement action against all stages (smuggling, distribution and sale) of the supply chain for illegal tobacco products and that the implementation of that plan, which is a key Revenue priority, will act as a significant deterrent to involvement in the illegal tobacco trade. Revenue has advised also that it will engage, as appropriate, with other relevant public bodies in the implementation of the plan.

The Minister is further informed that penalties for offences relating to the illicit trade in excisable products, including tobacco products, have been increased significantly in recent years. Penalties on summary conviction can include a fine of €5,000 or, at the discretion of the Court, imprisonment for a term not exceeding 12 months, or both. Fines for summary offences are set at the maximum level that may be applied in accordance with the District Court Guidelines. On conviction on indictment, penalties include a fine not exceeding €126,970 or imprisonment for a term not exceeding 5 years, or both. Where a person is convicted following prosecution on indictment for the offence of smuggling tobacco and where the value of tobacco products concerned (inclusive of any tax or duty payable on them) is greater than €250,000, a fine of up to three times the value of the tobacco products may be imposed by the courts, together with a term of imprisonment not exceeding 5 years, or both a fine and imprisonment. The imposition of these penalties in individual cases is a matter for the Courts. Revenue also has the power to seize and forfeit the illicit goods concerned.

These legal provisions are kept under review as part of the annual Finance Bill process, in conjunction with the Department of Finance.

Recommendation A.21.

There is currently no legal basis to allow Revenue, in relation to Corporation Tax, to separately record trading losses carried forward and capital allowances carried forward. The Committee recommends that the Minister considers whether separate identification of trading losses forward and capital allowances can be provided for in future legislation.

The Minister for Finance and Public Expenditure and Reform notes this recommendation and will consider whether it is possible to introduce legislation that would allow, in the future, trading losses carried forward to be separately identified from capital allowances carried forward without causing undue complexity for taxpayers. In this regard, the Minister would point out:

- Under the scheme of corporation tax, capital allowances relating to a trade are generally treated in the same way as any other trading expense in computing the amount of any profit or loss of the trade in an accounting period. A company will incur a trading loss in a period where its total expenses of the trade, including capital allowances, exceed its income from the trade in that period. The law allows the trading loss to be offset against certain income, including against income from the same trade in future accounting periods.
- The amount of any trading losses used to offset income in an accounting period, or carried forward for offset against trading income in a future accounting period, is not broken down between that which relates to capital allowances and that which relates to other trading expenses.

The Minister for Finance and Public Expenditure and Reform would also like to point out that in 2018 the Department of Finance prepared a detailed technical note for the Committee on Finance, Public Expenditure and Reform and Taoiseach on the potential consequences of changes to the treatment of Corporation Tax Loss Relief in respect of Banks which is relevant to all corporate entities. <https://www.gov.ie/en/publication/436ff7-technical-note-on-the-potential-consequences-of-changes-to-the-treat/>

Recommendation A.22.

The Department of Employment Affairs and Social Protection previously failed to implement proper controls in relation to jobseekers payment for under 25s. The Committee acknowledges the new controls the Department has implemented to reduce excess payments for jobseeker's under 25. The Committee recommends that an annual review takes place to ensure the new controls regarding overpayments to jobseeker's under 25 are working effectively.

The Minister for Finance is informed by the Department of Employment Affairs and Social Protection that it accepts this recommendation.

The Minister is further informed that:

- To raise awareness and ensure consistency the rules governing the award of reduced rates of Jobseekers Assistance (JA) were brought to the attention of all relevant Intreo Centre staff in November 2018.
- To reduce the possibility of error due to unfamiliarity with qualifying circumstances, decisions on under-26 JA cases are now confined to designated Deciding Officers in each Intreo Office. All designated officers attended one of a series of workshops where direction and clarity was provided in relation to the under-26 JA rules.
- In addition a revised and updated Circular - ref. 63/18 - was issued to all staff.
- Changes to relevant management reports were put into effect in November 2018 to facilitate local generation of a random selection of 10% of all under-26 JA cases for review and appropriate action.
- To ensure that all staff were applying the under-26 JA rules correctly - Intreo Centre managers were requested to run and examine these cases on a weekly basis. The frequency of these reviews has been reduced as compliance levels were confirmed as satisfactory.
- The most recent review was conducted in early February 2019 and all cases reviewed were confirmed as being correctly rated.
- A further review is being planned and thereafter, subject to the outcome being satisfactory and in line with the recommendations of the PAC, it is proposed to schedule further reviews on an annual basis.
- The overall findings from these reviews are also monitored centrally within the Department for appropriate follow-up action, as required.

Recommendation A.23.

The processing of applications by the Department of Employment Affairs and Social Protection requiring medical assessments is unduly slow. The Committee recommends that the Department of Employment Affairs and Social Protection completes its examination of the possibility of contracting nurses to carry out medical assessments promptly. Should it not be viable, other alternatives should be actioned to improve processing times?

The Minister for Finance and Public Expenditure has been informed by the Department of Employment Affairs and Social Protection that it accepts this recommendation.

The Minister is further informed that:

- Overall, the numbers of medical opinions provided have been maintained over the two years - 2017 and 2018 - at 87,908 and 87,603 respectively. Currently the numbers awaiting a medical opinion at claim stage are below 1,000, with an average waiting time of less than 2 weeks for most schemes, 3 weeks for Domiciliary Care Allowance and 4 weeks for Disability Allowance.
- Following the recent recruitment competition for medical assessors, seven candidates have been successfully placed on a panel and the first placements commenced in early March 2019.
- The Department is currently considering the option of employing registered clinical nurse practitioners in the role of nurse assessors and has been in consultation with the Department of Health in this regard.
- The completion of a medical assessment is one stage in the process. Other factors such as means, social insurance history, care requirements, residence, family circumstances are also assessed. These are complex issues and in many cases require a considerable amount of back and forth correspondence with claimants. This is reflected in overall processing time to claim award for medical based schemes. Steps continue to be taken to reduce these processing times including, in association with stakeholders, the redesign of claim forms, ongoing process and resource review, and stakeholder information sessions. It is hoped that these measures will contribute to reduced processing times over the next year.

Recommendation A.24.

It is unclear to the Committee that the numbers achieving long-term full employment as a result of the JobPath programme represents value for money. The Committee recommends that the JobPath programme is reviewed on a value for money basis to determine whether the programme should continue.

The Minister for Finance is informed by the Department of Employment Affairs and Social Protection that it accepts the recommendation that the JobPath programme is reviewed on a value for money basis to determine whether the programme should continue.

The Minister is further informed that:

- The Department of Employment Affairs and Social Protection has published a working paper examining the impact of the JobPath service. This was based on an econometric evaluation which was prepared as part of a collaboration between the Department's Statistics and Business Intelligence Unit (a part of the Irish Government Statistical Service which is headed by the CSO), and the Directorate for Employment, Labour and Social Affairs of the Organisation for Economic Co-operation and Development (OECD). It is the most authoritative source of information to date on the effectiveness and impact of JobPath.
- The evaluation indicates that JobPath has been successful in helping jobseekers not only to secure employment but to improve earnings in employment. The evaluation shows that:
 - Participants improved their employment outcomes by **20%** compared to a matched group of non-participants;
 - Participants who secured employment with the support of JobPath increased their average weekly earnings by **16%** compared to a matched group of non-participants who also secured employment;
 - The overall impact was that people on JobPath increased employment earnings by **35%** compared to the matched group of non-participants; and
 - The impacts were positive not only on an overall basis but for each of seven different clusters of jobseekers, with the positive employment earnings impact ranging from **24%** for people with a prior history of being very long-term unemployed to **100%** for those people with prior history of intermittent employment.
- The study indicates that the JobPath service helps gets people into work and at higher earnings than they would otherwise have received if they had secured employment without the support of JobPath. This provides strong evidence that the service works in not only improving employment outcomes but in also improving earnings.
- As well as this initial report, an OECD working paper will be published later this year. This OECD working paper will include additional outcomes and further analysis on the impact of JobPath, including comparing the additional revenue accruing to the State

as a result of JobPath (higher PRSI, USC and income tax payments) or expenditure forgone as a result of JobPath (lower social welfare payments).

- By comparing the wider fiscal benefits in the short-term, this analysis will set in context the net cost of providing a service such as JobPath and point towards an estimate of the fiscal cost of realising broader societal benefits (greater likelihood of participants being in employment at later points and higher employment rates.)

Recommendation A.25.

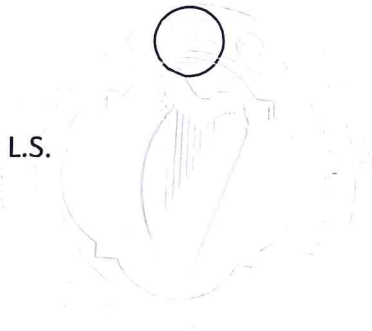
The Department of Employment Affairs and Social Protection did not conduct enough PRSI inspections in 2018. The Committee recommends that annual targets are developed to ensure the number of PRSI checks remains consistent.

The Minister for Finance and Public Expenditure has been informed by the Department of Employment Affairs and Social Protection that it accepts the recommendation that annual targets are developed to ensure the number of PRSI checks remain consistent.

The Minister is further informed that:

- The Department recognises that the number of PRSI and employer inspections has been low in recent years due to the need to concentrate on scheme claims during the financial crisis, given the significant volume of claimants and level of expenditure involved.
- Employer inspection work can be challenging and time-consuming because of the variance and complexities of company structures and employment arrangements. In recognition of this, the Department is engaged in a training programme to enhance the knowledge and skills of Social Welfare Inspectors (SWIs) in undertaking and managing employer inspections. This programme included a special Employer Inspection Conference that took place in early April 2019 and was attended by approx. 200 Inspectors. In addition, the Department is establishing a specialised unit of SWIs which will be focussed solely on employer inspections.
- Arising from this, and as part of its 2019 control plan, the Department has now set a target of 8,000 employer inspections for this year. In 2018, the Department carried out just over 2,050 employer inspections.

Given under the Official Seal of the Minister for
Finance and Public Expenditure and Reform on this
the 2nd day of May, 2019.



A handwritten signature in black ink that reads 'Robert Watt'.

Robert Watt

Secretary General

Department of Public Expenditure and Reform