

COMMISSION OF THE EUROPEAN COMMUNITIES

# STUDIES

**Report  
on  
Irish economic law**

Volume 7

A report on the economic law of Ireland is a necessity: the finalization of the preceding study on economic policy from the standpoint of economic law is in effect the preparation for its completion and a more profound examination of its legal implications having regard to the functioning of the Common Market.

The report details the economic law of Ireland in accordance with a certain number of broad guidelines.

First of all there exists in the current phase of the development of the Common Market a growing necessity for the Member States to coordinate the objectives of their economic policies and to concert action on the instruments which may be used to achieve them.

A systematic comparative study of national economic legislations is also necessary from another important standpoint. Experience gained in the general field of approximation of laws has demonstrated that the differing framework provisions or national economic guidelines can only be understood within the general context of national economic law and that only in this functional context is it possible to determine the repercussions on the Common Market of the present differences.

**Report  
on  
Irish economic law**

by  
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Volume 7



## Foreword

This report on the economic law of Ireland is part of a larger study undertaken at the request of the Commission of the European Communities by university professors who are specialists in this field. It covers the national laws of the Member States of the Community.

Given their practical value at a time when the future of the economic and monetary union is being discussed and having regard to their great scientific significance, the separate national reports together with the comprehensive report have been made public.

Hitherto there has been no comparative study of the economic law of the Member States according to the same schema. Neither has any attempt to synthesize these laws yet been undertaken.

This volume which covers Irish economic law completes the volumes dealing with other economic laws and the comprehensive report. These works are to appear both in the original language and in the French and German languages.

As the analysis of the legal situation in the Member States of the European Communities is based on common criteria and a common schema the individual expositions and the comprehensive report therefore form a coherent whole.



## AUTHOR'S ACKNOWLEDGEMENTS

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The advice and suggestions of the General-Editor, Professor Verloren van Themaat, evoked by the author's Interim Report on the Irish position, are also acknowledged. Together with Professor Verloren van Themaat's own interim conclusions on the series (Studies: Competition - Approximation of Legislation Series No. 20, Brussels 1973), these suggestions were most helpful. Thanks are also due to the Commission's Directorate General of Internal Market and, in particular, to Mr N. Bel, who convinced the author of the need for an Irish report in the Series. To Mr J. Temple Lang, who read the Interim Report which preceded this final version and who made valuable comments, a debt is also acknowledged.

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Without the assistance of the above, the present report would contain many errors that have now been eliminated; those that remain, however, are solely due to the author himself.

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## INTRODUCTION

### 1. Object of Present Study

The establishment of the Common Market and the further aspiration of the present Market to ultimately evolve towards Economic and Monetary Union requires not only the replacement of national policies in some instances by Community policies, but also, a degree of harmonisation of the laws of the Member States. In recognition of this, and in an effort to appreciate the degree of Community harmonisation that would be required in the event of Economic and Monetary Union, separate studies of the relevant legislation of the Member States were undertaken at the request of the Commission of the European Economic Community. The present study is the Irish report in this series, and purports to deal with the law of the Republic of Ireland as it stands on 1 March 1976. The position as it exists in the North of Ireland has been included in the United Kingdom study in this series.

### 2. Definition and Background of Irish Economic Law

The basic subject matter of the study is Economic Law and, because it is both an unfamiliar term and topic for Irish lawyers, a further word needs to be said about it. For the purpose of the present study, Economic Law is defined as including "the whole body of legal regulations promulgated to serve economic policy". This definition, as might be expected when one bears in mind the object of the study, is very wide (covering areas of both public and private law) and, because the more recent Economic Programmes adopted by Irish Governments have social as well as economic dimensions, also embraces matters, such as, Consumer Protection and Protection of the Environment as well as the more obvious areas relating to Forecasting, Planning, Fiscal and Monetary Instruments, etc. Furthermore, it should be emphasised, even at this early stage, that the study is not confined to the traditional forms of restrictive regulations which are familiar State instruments, but also extends to the more recent, more sophisticated forms of regulation by incentive. Indeed, the shift in recent years in Irish policy from regulations to incentives, from kicks to kisses, is a noteworthy attempt by the Irish Government to achieve economic policy ends and, as such, merits attention in this report.

In Ireland, as in Britain, there exists no body of rules which at present is, administratively or academically, sufficiently identified to merit the title of Economic Law and, while some efforts have been made to define the term in the British context, no such efforts have as yet been made by Irish lawyers. The matters with which this report purports to deal, whenever they have been previously adverted to, have traditionally been considered separately under the more established categories of Constitutional Law, Administrative Law, Commercial (Mercantile) Law, Criminal Law, etc. Indeed, insofar as such various matters have been considered as a totality at all in Ireland, it has been done by academic economists and civil servants whose attention to the

legal aspects has been understandably incidental to their own preoccupations. The development of the concept of the Welfare State, however, and the increasing awareness by post-war governments of their ability to control and direct the economy, even through the traditional economic policy instruments, provides the unifying principle which can now be used to regroup these heretofore legally unconnected topics.

Because of the recent development of State intervention to promote and further economic policy on a large scale, most of the rules qualifying for inclusion in this study are to be found in statutory enactments since 1922 and Ministerial Orders issued thereunder. Judicial decisions, not being an available option for the execution of governmental policy, will accordingly only figure where no such legislative authority exists, or where such statutory enactments have been subjected to judicial interpretation. More particularly, the bulk of the rules mentioned in this report date from the period after World War II when governments in Western Europe felt obliged to formulate overall economic policies for their countries. (This is especially true of the matter contained in Chapter 3 infra.) Some earlier legislation, it is true, is also relevant to the present study, but having sprung from a different economic philosophy continues its precarious existence either as an anomaly or because it can now be harmonised within the new rationale of desirable State intervention. (See, in particular, some of the matter dealt with in Chapter 5 infra.)

The increase of delegated legislation in recent years is a common phenomena in Western societies and an inevitable corollary of the Welfare State concept. Much of government policy relating to economic planning is implemented by way of statutory instrument of Ministerial Order and this is unavoidable, for greater State control inevitably involves increased delegation within the present structure of government. That Ministerial regulations will continue to assume greater significance in the future, especially in the context of the European Economic Community, has been accepted by the Irish Parliament in the European Community Acts, 1972 and 1973, which provide that Community regulations, directives, etc., not directly applicable, will find their way into Irish domestic law by means of Ministerial regulations.

Since legislation will be the source of law most frequently referred to in this study the short title of the statutes will be used throughout. As reference will also be made to the number of the act - e.g., The Hire-Purchase Act, 1946 (No. 16 of 1946) - no difficulty in tracing the statute should be encountered. Statutory instruments (including Ministerial orders, regulations, etc.) will also be cited in this fashion, e.g., The Hire-Purchase and Credit Sale Order. S.I. No. 15 of 1970. Judicial decisions will be cited in the customary manner.

### 3. Characteristics of Irish Economic Law

As an introduction to the present study, it may be helpful at the outset to indicate certain features of Irish Economic Law which may be accepted as characteristic. Such an introduction, it is hoped, will not only provide a backdrop for the rest of the study but will also facilitate legal comparison with the other reports in this series.

#### (i) Historical Influence of the British System

For historical reasons, the influence of British methods, principles and institutions in this area is very strong. Until the establishment of the Irish Free State in 1922, most laws for Ireland were enacted at Westminster

and with the establishment of the new State this body of law, statutory and judicial, continued to constitute the legal reservoir for the new State except insofar as it was inconsistent with subsequent Irish legislation or the Constitution of the Irish Free State. Today, despite adopting a new Constitution (Bunreacht na hÉireann, 1937) and declaring itself a republic (The Republic of Ireland Act, 1949), Ireland remains largely in the same position: pre-1922 British statutes and judicial decisions are part of the law of Ireland except insofar as they have been repealed by subsequent Irish legislation or are inconsistent with Bunreacht na hÉireann. Needless to say, apart from this common reservoir of substantive rules, and because of interlocking histories, the Irish legal system has also been greatly influenced by British Parliamentary and administrative procedures. So, for example, the exclusive right which the Government has in Ireland to initiate public expenditure, and the rule that money bills in Ireland can only be introduced in the Dail (the Lower House of Parliament), are rules which have distinct British parentage. More generally, speaking, the entire Parliamentary procedure relating to taxation, expenditure and appropriation, while partly regulated by Bunreacht na hÉireann since 1937, also follows closely the British pattern in these matters.

(ii) Programmes: Medium-term planning

Since 1958 the need for medium-term planning has been recognised and generally accepted in the State. There have been three programmes in the period 1958-1972, and although no medium-term plan has existed since then the present Government has indicated its intention of introducing a new plan in 1976. All of these programmes are, however, of a non-legal nature: they create neither obligations for the Government nor rights for the individuals.

(iii) The Limited Participation of Parliament

Unlike other branches of Law where Parliament's role in the rule making phase tends to be considerable if not dominant, in the sphere of Economic Law Parliament's role is a distinctly limited one. Much economic regulation in this area, for example, is executed by Ministerial Order, and, while Parliament has usually control over the parent act, such control is exercised in advance and more often than not in a general way without any appreciation of the detailed problems that subsequently arise. Moreover, the increasing workload that Parliament has inherited as a result of its expanding role in the Welfare State, necessitates increased delegation of function. This is nowhere more obvious than in the sphere of Economic Law. Furthermore, apart from the growth of delegated legislation, Parliament's control in Ireland is notably restricted in such other areas as forecasting, medium-term economic programming, supervision of economic institutions (e.g., the National Economic and Social Council or the Employer/Labour Conference, infra) and the administration of grants and incentives which are frequently distributed on Departmental administrative criteria rather than on legal criteria articulated by Parliament.

(iv) Institutional Participation by Business and Workers in the Economy

To ensure an operative consensus in the running of the economy, institutional arrangements have emerged which carry representation from the various sections of the Community, including the business and labour sections. The National Economic and Social Council (1973), which advises the Government on economic and social matters, and the Employer-Labour Conference which is primarily concerned with National Wage Agreements are examples of this type of institution. Legal worker participation schemes, entitling workers to representation

on the boards of enterprises, however, although mooted have not yet found sufficient support in Ireland to justify legislation.

#### (v) State-sponsored Bodies

State-sponsored bodies is the descriptive term used in Ireland to indicate the many public bodies which feature in the Irish economic scene and in the running of which the State participates in one way or another. Some of these are trading companies in the normal sense of the word, while others are non-commercial in their functions. The legal form of these bodies varies: some being statutory corporations (i.e., established by a special act of Parliament), others being companies formed in the usual way under the Companies Acts but in pursuance of a statute of the Oireachtas. The degree of State participation varies greatly from body to body involving in some cases limited participation by the State, while in others, the State's control is total.

Only one point needs to be made about these State-sponsored bodies at this stage, however. Many of these bodies, especially in the manufacturing and services area, pre-date the era of medium-term planning in Ireland (i.e., 1958-1976) and came into being simply because private enterprise was not at that time able or willing to undertake the particular activity or service in question. The proliferation of these bodies in Ireland, therefore, should not be taken as indicating Governmental preference for a particular philosophy of State participation. In many cases the Government in Ireland reluctantly entered into the activity and has repeatedly indicated that it has no intention of entering any manufacturing field in which private enterprise is already operating successfully. Moreover, because some of these bodies originated in the early years of the State, and were inspired by a different philosophy, they are not always available as instruments of Government policy nowadays.

#### (vi) The Concept of the Constitutional State

The Constitution in force in Ireland is Bunreacht na hÉireann, which was enacted in 1937 and which replaced the Constitution of the Irish Free State (1922). The Constitution of Ireland is a formal document which indicates "the general pattern of political and legal organisational relationships" that exists in Ireland. Many of the concepts in the Constitution - the sovereign authority of the people (not the State), the separation of powers, judicial review, the fundamental rights provisions, the directive principles of social policy, etc. - represent what has been termed "a not unhappy blend of liberal democracy and Catholic social doctrine". The document, therefore, as well as controlling Government, also gives a fairly accurate, if formal, picture of Governmental structures and legal organisation as it exists in Ireland today. Like any Constitution, however, the principles enshrined therein must continue to respond to social developments and needs, and as a result a correspondingly heavy task falls on the Courts to develop, by dynamic interpretation, the principles of the Constitution. Recently, the Courts in Ireland have been responding well to this need.

Three Constitutional features, however, which distinguish the Irish from the British context must be mentioned. Firstly, the Irish Parliament, unlike its British counterpart, is subject to a written Constitution. The doctrine of absolute parliamentary sovereignty does not operate in the Irish legal system. Secondly, Bunreacht na hÉireann entrusts the judiciary with the function of



ensuring that legislation is compatible with the Constitution. Legislation which is not compatible can be struck down. Thirdly, Articles 40-44 of the Constitution contain guarantees relating to fundamental human rights, and, while these provisions have been criticised for their ineffectiveness, recent judicial activity clearly shows that they are by no means insignificant. In relation to Economic Law and in contrast to the British position, these features may mark the limits to which the Parliament or the Government in Ireland may go in their efforts to control the economy.

The concept of the Constitutional State is further characterised in Ireland by the partial provision of the economic framework within which the Government must operate and by the reference in the Constitution to the "Directive Principles of Social Policy" (Article 45) which, although not judicially enforceable, state the social principles to which Parliament must pay attention in the management of the economy. (See infra)

#### (vii) Legal Protection

Because much of the Government's action in the sphere of economic law may be legally described as administrative, little protection is given to individuals who wish to contest a decision by the authorities. The ordinary Courts (there is no separate hierarchy of Courts exclusively reserved for administrative matters) do, it is true, discharge a supervisory role of insisting on minimum procedural standards of fairness, but they are reluctant to investigate the substantive merits of purely administrative decisions. This factor, however, is balanced to some extent by two recent developments in the Irish context. Firstly, the Courts have in recent years increasingly exercised their power of reviewing Government legislation to ensure its compatibility with the Constitution. Secondly, the Fundamental Rights provisions of the Constitution, have of late received an expanding interpretation by the Courts much to the benefit of the individual. These two trends inhibit the Government's freedom of action and may indicate further limits to Government action purporting to promote economic policies. Because of their recent prominence and their tendency to evolve in an expanding way, a further word should be said at this point about these Fundamental Rights.

#### 4. Fundamental Rights in the Constitution

The Fundamental Rights provisions are contained in Articles 40-44 of the Constitution of Ireland and guarantee the following rights, subject to certain limitations: equality before the law (Article 40.1), personal and property rights (Article 40.3), personal liberty (Article 40.4), inviolability of dwelling (Article 40.5), freedom of expression (Article 40.6.1°), peaceful assembly (Article 40.6.2°), the right to form associations and unions (Article 40.6.3°), and the right to private property (Article 43). In addition, certain rights relating to education (Article 42), the family (Article 41) and religion (Article 44) are also guaranteed.

Of these, the following rights seem to be the most important for the present study: equality before the law, personal rights (including property rights) and the right to private property. A further word will, therefore, be said about these. It should, however, be remembered that some of the other rights might also have relevance for the study of economic law, even if such relevance might be described as marginal. So, for example, in National Union

of *Railwaymen v. Sullivan* ([1947] I.R. 77) the Supreme Court struck down Part III of the Trade Union Act, 1941 (which was an attempt by the Government to regulate and rationalise union structures in Ireland) as being contrary to "the right of citizens to form associations and unions" (Article 40.6.3°). Similarly, the Supreme Court has held that the Constitutional right to join a union necessarily implies the right not to join a union. (*Educational Company of Ireland v. Fitzpatrick and Others* [1961] I.R. 345). Again, in a recent Supreme Court decision (*Quinns Supermarket v. the Attorney General* [1972] I.R. 1) the Court held that a Ministerial Order made in 1948 (by virtue of a power in Section 25 of the Shops (Hours of Trading) Act, 1938) by providing an exemption for proprietors of shops which sold only meat "killed and prepared by the Jewish ritual method", contained a discrimination on the grounds of religious profession, belief or status, within the meaning of Article 44.2.3° of the Constitution, and so should be struck down.

More obviously important, however, for the present study are those provisions of the Constitution relating to equality before the law, personal rights (including property rights) and the right to private property. The Constitutional provisions on these matters are set out hereunder:

#### Article 40

1. All citizens shall, as human persons, be held equal before the law.  
This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

.....

3. 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.  
2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

.....

#### Article 43

1. 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.  
2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.
2. 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.  
2° The State, accordingly, may as occasion requires delimit by law the

exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

Some of these guarantees, it is true have qualifications attached to them and they may appear to be "giving a right with one hand and taking it back with another", but recent decisions of the Supreme Court clearly show that these guarantees are by no means meaningless platitudes. Even though the rights have sometimes to be reconciled in their exercise with "the exigencies of the common good" and may, on occasion, be forced to yield to "the principles of social justice" they are nonetheless real. The evolving pattern of the Supreme Court's attitude to such rights has in recent years been characterised by an awareness of the individual's needs and a willingness to uphold his interests against State interference. Such an approach may be illustrated by the expanding interpretation given by the Supreme Court to "personal rights", when it held that the citizen's personal rights are not exhausted by the enumeration of "life, person, good name and property rights" contained in Article 40 (Ryan v. the Attorney General [1965] I.R. 294), but are capable of expansion, and in recent years the courts have, in fact, recognised the following additional rights not specifically mentioned in the Constitution: the right to bodily integrity (Ryan v. the Attorney General [1965] I.R. 294), the right to earn a livelihood (Murtagh Properties Ltd. v. Cleary [1972] I.R. 330 (H.C.)). Moreover, "property rights" have now been held to cover a right of action (O'Brien v. Keogh [1972] I.R. 334; O'Brien v. Manufacturing Engineering Co. Ltd. [1973] I.R. 334). Furthermore, it seems that interference with such rights may now give the injured party a private right of action in such cases. (See Meskell v. C.I.E. [1973] I.R. 121.) This dynamic interpretation by the Irish Courts, which undoubtedly brings in its wake a certain degree of uncertainty, especially when one realises that the list of rights is by no means closed, assuredly acts as a check, albeit an ill-defined one, on executive action. In relation to economic law, and in marked contrast to the British position, it may mark in one direction, the limits to which Parliament or the Government in Ireland may go in their efforts to control the economy. (On the inhibiting effect which such awareness may have on legislative proposals, see, for example, Report on the Price of Building Land (Prl. 3632) (The Kenny Report, 1973 but not published until 1974) at pp. 45-57 and the minority report at p. 79 et seq.)

The right to private property is specifically guaranteed in the Constitution at Article 43 and has been quoted above. The exact degree to which this right is guaranteed, however, is difficult to state because of recent litigation on the matter. One point is clear, however: the right to private property is a natural right antecedent to positive law and, as such, no positive law can deprive the citizen of it. The exercise of this right, however, can be limited by Parliament. The remaining problems relating to the law on this matter may be stated as follows: what is the relationship between "property rights" guaranteed in Article 40.3.2° and "private property" guaranteed in Article 43?; how does one distinguish between the general abolition of private property (which is prohibited) and the "limitation" of the exercise of private property rights (which is permitted under Article 43.2.2°)?; must there be a "conflict" between the interests of private ownership and "the exigencies of the common good" before the State can appropriate?; if the State, in delimiting the exercise of private property rights decides to appropriate property does it have to compensate the owner, and, if so, on what criteria? (e.g., fair price? market price? etc.) (see, e.g., In Re Deansrath Investments [1974] I.R. 228).

A recent judicial statement of the High Court given in *Central Dublin Development Association v. the Attorney General* (decision of 6 October, 1969 and quoted in the Report on Price of Building Land (Kenny Report [Prl. 3632, at p. 491<sup>7</sup>]) may be quoted as a useful summary of the effect of the Constitution in relation to private property:

- "1. The right of private property is a personal right.
2. In virtue of his rational being, man has a natural right to individual or private ownership of worldly wealth.
3. This Constitutional right consists of a bundle of rights most of which are founded on contract.
4. The State cannot pass any law which abolishes all the bundle of rights which we call ownership or the general right to transfer, bequeath and inherit property.
5. The exercise of these rights ought to be regulated by the principle of social justice and the State accordingly may by law restrict their exercise with a view to reconciling this with the demands of the common good.
6. The courts have jurisdiction to enquire whether the restriction is in accordance with the principles of social justice and whether the legislation is necessary to reconcile this exercise with the demands of the common good.
7. If any of the rights which together constitute our concept of ownership are abolished or restricted (as distinct from the abolition of all the rights), the absence of compensation for this restriction or abolition will make the Act which does this invalid if it is an unjust attack on property rights."

In accordance with these rules the Government has empowered the Land Commission to compulsorily acquire agricultural land for its better use and distribution (see the Land Acts, 1903 and 1923; see also *Foley v. The Irish Land Commission* [1952] I.R. 118) and is itself empowered to acquire unworked minerals under the Minerals Development Act, 1940 (No. 31 of 1940) - in both cases subject to compensation being paid. Because, however, there has been some suggestion of late that the latter Act may be unconstitutional, some elements of uncertainty still exist in this area, and only further litigation (perhaps in the area of mineral acquisition) will answer all the problems. This additional uncertainty relating to the individual's right of private property may further inhibit Governmental activities in the sphere of economic regulation.

## 5. Global Objectives of Irish Economic Policy

The Irish economy may be said to be a mixed economy in three senses. Firstly, the orthodox view of the economy contemplates a judicious blend of free market philosophy and State regulation. Secondly, State participation (through the State-sponsored bodies) in the economy, although not always socialistically inspired, is high. From the point of view of the participants in the economy,

therefore, participation, not being exclusively private in nature, may also be said to be mixed. Thirdly, from the point of view of State regulation (admittedly, a less usual sense), a further mixture is obvious. State interference in the economy when it does occur combines a mixture of restrictive regulations with attractive incentives; State management occurs, therefore, through a mixture of kicks and kisses.

In Ireland, as in many other European countries, the principal global aspirations of the Government's economic policy are reasonably identifiable from the economic plans published to date. They are : Growth in national income, reduction of unemployment and involuntary emigration, concentration of public expenditure on productive projects, increased exports, and, more recently, social and regional development and the control of inflation. As in other countries, of course, emphasis changes from time to time as to which of these objectives should be given priority. In this connection the similarity in the outlook of the two major political parties in Ireland, coupled with the fact that the largest single party (Fianna Fail) held power for a total of 35 years, during the period 1932-1973, has lent a certain stability and continuity to economic developments in the State. Differences between the new Coalition Government (1973) and the previous Fianna Fail Government in terms of economic philosophy tend to be differences of emphasis rather than fundamental differences of approach and, as a consequence, agreement between Government and opposition may not be confined only to the ultimate targets and objectives listed above, but may extend also to the means and methods of their achievement. In what follows, therefore, it may be possible to discern the evolution of principles and institutions of Economic Law which are more or less generally accepted in Ireland.

No doubt, a certain amount of this consensus also derives from, and is expressed in, the unique provisions of Article 45 of Bunreacht na hÉireann which sets out for the guidance of the Oireachtas (Parliament) what are called the "Directive Principles of Social Policy". Because of the generality of Article 45 and because it provides a guideline for much of Parliament's activity in the economic sphere (although not judicially enforceable) it deserves to be fully quoted at this juncture.

#### DIRECTIVE PRINCIPLES OF SOCIAL POLICY

##### Article 45

The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution.

1. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.
2. The State shall, in particular, direct its policy towards securing
  - i. That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision of their domestic needs.

- ii. That the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to subserve the common good.
  - iii. That, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment.
  - iv. That in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.
  - v. That there may be established on the land in economic security as many families as in the circumstances shall be practicable.
3. 1° The State shall favour and, where necessary, supplement private initiative in industry and commerce.
- 2° The State shall endeavour to secure that private enterprise shall be so conducted as to ensure reasonable efficiency in the production and distribution of goods and as to protect the public against unjust exploitation.
4. 1° The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.
- 2° The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength.

## CHAPTER 1. THE LEGAL FRAMEWORK OF ECONOMIC FORECASTING

Short-term economic forecasting (up to twelve months) has been practiced in a systematic way in Ireland on a more or less regular basis since the early 1950's. Such forecasting was seen as an essential precondition for the formulation of the Minister for Finance's annual Budget and was related to the increasing realisation in Western Europe of that time, that the budget was an instrument which could profoundly influence the national economy. This was especially true of Ireland where the possibilities of manoeuvre by way of monetary policy were extremely limited. Because it was closely associated with the Budget, short-term economic forecasting was primarily seen to be, and is still exercised as, a function of civil servants, largely in the Department of Finance.

Medium-term economic programming (three to five years) was initiated formally in Ireland in 1958 with the publication of the Programme for Economic Expansion. Since then, medium-term programmes have become generally accepted by all political parties in Ireland, and two other programmes have been published since that date: The Second Programme for Economic Expansion which purported to cover the period 1963-1970 but which was effectively abandoned in the late 'sixties, and the Third Programme: Economic and Social Development 1969-1972. The work associated with the preparation of Economic Programmes (which involved medium-term economic forecasting) and their ultimate formulation is carried out in the Department of Finance.

There is no legal basis regulating the activity of economic forecasting. (Note, for example, the Government's decision in September 1975 to postpone, as an economy measure, the census of population scheduled for 1976. This census provides valuable statistics essential for forecasting in the following areas: births, marriages, deaths as well as industrial, occupational and geographical distribution of the population. It is estimated that this cut-back would save the Exchequer somewhere in the region of £1 ¼ million.) There is no express statutory (or other legal) obligation on the Department of Finance to engage in forecasting. Policy and economic judgment, executed by administrative decision, are alone the basis for it. Up to the mid-sixties short-term economic forecasts were not published and it was only from the Budget Speech of the Minister for Finance that a general view of the outlook for the year ahead came to the public. With the establishment of the National Industrial Economic Council (NIEC) the publication of those forecasts became essential if this body was to carry out its function satisfactorily, and on its recommendation these forecasts have now been regularly published. Practice, however, has not hardened sufficiently either in the method of preparation or in the system of publication to amount to a conventional rule which might obligate the Government in these matters.

Apart from the Department of Finance which publishes its short-term forecasts in recent years in the form of an annual review of the past year and a forecast for the coming year, other Governmental Departments, especially the Department of Industry and Commerce, the Department of Agriculture, and the Department of

Labour carry out their own forecasting on a less regular basis in areas which concern them. Outside of central government, too, there are other bodies which engage in short-term forecasting in Ireland. Although some of these bodies are financed from central funds and are sometimes provided with secretarial assistance from Governmental Departments, all are more or less autonomous and strive for independence and impartiality in their prognoses. The most important of these should be mentioned: The National Industrial Economic Council, which was established in 1963 and replaced recently (in 1973) by the new National Economic and Social Council; The Economic and Social Research Institute (since 1961); the Central Bank; and the OECD.

Needless to say, the activities of these bodies do not create legal obligations either in respect of the methods used in these forecasts or as to the manner of publication of their forecasts.

To be effective, however, forecasting requires a constant flow of reliable statistical data, and this need was perceived from the earliest days of the State. The Statistics Act of 1926 legally obliged individuals and companies to supply statistics and reports, when requested to do so. The task of compiling and publishing these statistics was carried out by the Statistics Branch of the Department of Industry and Commerce until 1949 when, by the order issued under the Ministers and Secretaries Acts, 1924 to 1973, this task was transferred to the Central Statistics Office, which now forms part of the Department of the Taoiseach. Although the Director of the Central Statistics Office is appointed by the Taoiseach and the Department of Finance must, as is usual, sanction new expenditure, the Director operates with maximum independence in the performance of his tasks. The functions of the office are "the collection, compilation, analysis and publication of national statistics in such a form as to assist the Government and local authorities to function more effectively and to assist other bodies and the public at large" (Report on Public Services Organisation Review Group (The Devlin Report) Prl. 792, p. 417).

In order to assist it in its task of regulating aggregate demand, the Government established in 1968 the Committee on Statistical Requirements and Priorities, which was composed of representatives of the Central Statistics Office, the Department of Finance and outside experts. Its function was "to seek ways of improving and making more timely the flow of relevant statistical information and to determine priorities in the light of available resources."

The Committee reported in November 1974, and it made several recommendations in relation to statistical requirements, frequency of publication, priorities, etc., many of which may already been implemented. In particular, it was noted that statistical improvements were required in relation to the following: The Industrial Sector, Unemployment, Building and Construction, Agriculture, and Incomes.

Finally, in this matter it should be noted that an improvement in statistical information resulted from membership of the EEC. Participation in the EEC Statistical Programme has obliged Ireland to produce required statistics on a range of topics at an earlier point than would otherwise have come about. In general, therefore, membership has provided an impetus and has meant that better and earlier statistics are now becoming available on a range of topics, thereby facilitating all forecasting and planning efforts in this area. Moreover, unlike the provision of statistics for national purposes, particip-



ation in the EEC Statistical Programme has legal implications which cannot be ignored by national authorities.

## CHAPTER 2. STATE INTERVENTION IN THE ECONOMY: GLOBAL AND INDIRECT METHOD

### 2.1. Planning: the General Framework

Although the word 'Programme' has been favoured in Ireland to describe Governmental designs in the medium-term range, it would not be wrong to describe Governmental intervention, as hitherto practiced in Ireland, as "planning". The word 'Programme' was selected to describe such medium-term designs simply because it did not have the pejorative connotations that the word 'Plan' had for some people. Despite the fact that the present coalition Government has not introduced a new Programme as yet (the Third Programme expired in 1972) and despite the fact that the Minister for Finance, in the Budget Speech of March 1974, declared that a fundamental review of planning methods would be necessary because of international uncertainties, the necessity for such a medium-term blueprint still seems to be generally accepted. It may still, therefore, be confidently asserted that a medium-term economic framework is discernible in Ireland. Indeed, the Minister for Finance of the present Government has more recently indicated his intention of introducing a new economic plan in the early months of 1976. No details of this plan are as yet available, however. For short-term economic planning, the Budgetary procedure provides the framework.

### 2.2. Co-ordination of Short-term Measures

Co-ordination of short-term measures in the State are traditionally carried out within the framework of the Dail's annual Budgetary procedure. This framework, like many of the rules associated with the financial administration of Ireland, was inherited, together with many other rules and conventions of public administration generally, from the British system. There is no legal basis governing the method by which the budget must be introduced, although the fact that income tax is granted on a year to year basis only (again like the system in Britain) effectively tied the Budget until recently to the late March/early April period. The Financial Year in Ireland up to 1975 commenced in April, but in the Budget of 3 April 1974 (which is for a nine months period only) the Minister for Finance indicated that from 1975 onwards the Financial Year will coincide with the calendar year. Legislation has now been enacted to give effect to this as and from 1 January 1975. (Exchequer and Local Financial Years Act, 1974 (No. 3 of 1974).)

The Budget is the instrument through which the various aspects of the State's finances are co-ordinated. Typically, therefore, it covers a review of revenue and expenditure for the previous year, estimates of revenue and expenditure for the present year on the basis of unchanged policies, and proposals for the financing of the present estimated expenditure. It is, however, much more than an accounting exercise, especially in that part which outlines the Minister

for Finance's programme for the new year, for here the Budget is really "a definite declaration of the policy of the Government". This expanded role of the Budget in modern times is clearly associated with the realisation that the Budget is a sophisticated instrument which, if exercised carefully, can give governments immense powers of direction and control.

Where the Budget proposes changes in taxes - as it invariably does nowadays - these proposals are immediately put to the Dáil by the Minister for Finance by way of "Financial Resolutions". These resolutions, when passed, authorise the immediate collection of the taxes imposed or varied in the Budget, pending the enactment of the necessary Finance Bill. These financial Resolutions, therefore, deal with a transitional problem caused by the inevitable delay involved in passing the Act of Parliament. These resolutions are given statutory force by the Provisional Collection of Taxes Act, 1927 (No. 17 of 1927). The Finance Act, according to Article 17.1.2<sup>o</sup> of the Constitution, must be passed within the year.

Apart from taxation matters, the Budget may announce other economic changes which may involve either separate and new legislation or merely new administrative decisions under existing legislation, and, since there may be no urgency about some of these decisions, they may be executed at times other than Budget time.

Central Government spending, although an integral part of the National Budget, is subject to a different Parliamentary procedure. The basic framework is provided for in the Constitution at Articles 11, 17 and 28. Estimates for Supply Services are submitted to the Dáil, which, on approving them, then passes the Appropriation Act, which, as its name suggests, appropriates money from the Central Fund to the approved objects. The authority of the Minister for Finance to draw this money from the Central Fund is given by the Central Fund Acts. This whole process is a prolonged one and transitional problems, to enable the State to carry on in the interim, are solved now by the Central Fund (Permanent Provisions) Act, 1965 (No. 26 of 1965).

Apart from what has already been said, there are no constitutional or legislative rules relating to the time or the form of the annual Budget. Indeed, there may be more than one Budget in any given year. This would occur, for example, where the Government, for one reason or another, felt, in the course of the year, the need to raise further revenue. In recent years, because of the increasing difficulty of accurate budgeting for long periods, Supplementary Budgets are becoming more common, the most recent being the mid-year Budget of July, 1975.

### 2.3. Co-ordination of Medium-term Measures

The first programme for economic expansion was published in November 1958. High unemployment, continuing emigration, a stagnant economy and an external payment crisis were some of the factors which dominated the Irish economy in the late fifties and which turned Irish thinking to longer term planning methods. Moreover, the fear that Irish industry would not survive the free trade conditions, that by the late fifties seemed eventually inevitable, predisposed Irish thinking to more radical solutions than had been theretofore pursued. The example of French experiments with medium-term plans was also encouraging. Further, the establishment, in 1956, of the Capital Investment

Committee to advise the Government on public investment was a significant step; as well as making a valuable distinction between productive and redistributive investment and advocating increased productive investment in future if the economy was to grow, the Committee also suggested a "broad programme of economic development". The seminal document, however, of economic medium-term programming in Ireland was written by Mr T.K. Whitaker in 1958 (then Secretary of Department of Finance), and was entitled simply "Economic Development". The immediate response to this was the publication by the Government of the First Economic Programme in 1958, purporting to cover the period 1958-1962. This was a modest programme by modern standards, but, by dynamic Government participation, it was estimated that the implementation of the programme would result in an increase in real national income of some 2% per annum for the duration of the programme. In the event, this was an underestimation. The actual average growth rate was more than 4% per annum for the period. Encouraged by this apparent success, a Second Programme was published in 1963. It was a much more ambitious document than the First Programme. It surveyed much more of the economy than the previous programme; unlike the First Programme, it specified specific targets in many instances; and, in time, it purported to deal with the period between 1964 and 1970. As matters turned out, because targets were not being achieved, it was abandoned in 1968. Kennedy and Bruton ("The Irish Economy", p. 154) attribute the failure of the Second Programme to the deflationary measures taken in 1965 and 1966, the breakdown in negotiations for EEC Membership with serious consequences for agriculture, and serious underestimations (between investment needs and output growth) and overestimations (in relation to the rate of employment generated by output growth). The Second Programme was replaced by the Third Programme in 1969, which purported to cover the period 1969-1972. This programme was entitled "Economic and Social Development". The addition of the word 'Social' in the title was of some significance. The targets in this new programme were less detailed than in the Second Programme and, although the Third Programme relied essentially on familiar policies, the new programme purported to embrace restrictive practices, incomes policy and social policy for the first time. Disappointingly, the targets of the Third Programme were not achieved, and no economic programme exists at present. The present Coalition Government is, in view of the failure to achieve planned targets in the Second and Third Programmes, and in view of international uncertainties, reviewing medium-term economic methods before formulating a new plan. Although such a plan has been promised by the Government for early 1976, no sign of its appearance exists as yet.

From a legal point of view, however, it should be mentioned that these economic programmes, and the activities associated with their preparation, cannot be considered as creating legal obligations in any sense of the word in Ireland. Such programmes do not provide legal standards to which the private sector must conform, much less legal criteria by which Governmental activity might be assessed. In legal terms, these programmes have no force. Consequently, an individual could not bring a legal action when an economic forecast is wrong or when the Government departs from its published economic programme. In the latter case, he might complain of economic or political discourtesy if such a departure were made without due notice, but he would have no legal remedy. The whole non-legal nature of these activities can be illustrated by the informal way in which economic programmes are presented in Ireland: the procedure is that they are "laid before each House of the Oireachtas" (that is, of Parliament), and this involves neither an Act of Parliament nor a Parliamentary debate.

It would also be difficult to argue that a conventional rule exists between the Government and the Oireachtas in relation to such matters. In medium-term planning, the three previous programmes were all introduced during the continuous office (1957-1973) of the major political party in Ireland, Fianna Fáil. The present Coalition Government (February 1973) seemingly does not disagree with the concept of medium-term planning, and has postponed the publication of a new plan only because of the uncertainty and instability that has characterised the international economic scene recently. It would be difficult, however, to argue from this general acceptance of the desirability of medium-term economic planning that a conventional rule exists to formulate or publish such a plan. The varying periods which the previous programmes purported to cover argues against a settled convention. These programmes, as we have seen, purported to cover a five-year, a seven-year, and a three-year period. At present, for reasons already stated, no published programme exists. Moreover, the effective abandonment of the Second Programme in the late sixties, an option which must always remain open to planners, especially where flexibility is essential in an open economy such as Ireland's, is another factor which indicates the absence of a settled convention in this matter. Nevertheless, despite some of the irregularities associated with medium-term programming in Ireland, it would be fair to suggest that, since this form of programming is accepted as desirable, if not essential, by all political parties in the country, it would represent a complete volte face for any modern Government to abandon entirely the concept of medium-term programming in Ireland today. For reasons already mentioned, however, such a turnabout, if it did occur, would not have legal consequences, although it would almost certainly have political repercussions.

What is true about the nature of the programmes themselves is also true of the official bodies (frequently representing employers and labour as well as Government) which have been established to ensure that the consultations leading up to the formulation of a programme are broad-based. All of these (N.I.E.C. and its successor N.E.S.C., the County Development Teams, etc.) are merely established by Governmental administrative decision without reference to Parliament.

## 2.4. Global Methods of Control

### 2.4.1. Budgetary Policy

Budgetary policy in Ireland aims at maintaining adequate - while avoiding excessive - demand as a basis for maximum economic advance. The realisation that the Annual Budget, current and capital, is no longer simply an accountancy exercise wherein the Government is merely obliged, firstly, to balance its expenditure with its revenue and, secondly, to determine the source of its revenue for the financial year, has had a very significant impact on budgetary policy. Acknowledgment that the major objectives of the economy, such as, growth, full employment, stability of prices, a healthy balance of payments, etc., can be promoted by fiscal policy, has led to the realisation that the budget can, in many ways, either expand or contract the aggregate demand in the economy. A "balanced budget" is no longer the sine qua non that it once was; rather is it seen as a convention which may, in some cases, even inhibit desirable change. Recent budgets in Ireland (from 1973) have been, in fact, deficit budgets, which were designed to stimulate the economy by promoting growth and employment.

It is not surprising that in an open economy such as that of Ireland, the balance of payments issue would figure largely in its fiscal policy. Indeed, at certain times (especially, 1952-1958, and 1971) it seemed to dominate all other legitimate targets, such as, growth and employment. The latter two objectives, however, received more rightful recognition from 1958 onwards (First Economic Programme), and up to recently the general thrust of budgetary policy has, on the whole, been expansionary. The public capital programme has, since the early sixties, shown a great expansion, and, because of the importance of the building and construction industry in Ireland (with its reliance on domestic raw materials and its high labour content), had great significance in maintaining demand. Even in the most recent budgets, in the teeth of rampant inflation and the general recession of the Western World, the Government has opted for a "carefully expansionary" course, "designed to preserve employment and maintain living standards". Since early 1975, however, the three budgets have been, inevitably perhaps, more a reaction to the turbulent forces of international affairs than an independent display of national ingenuity; they can be characterised as "holding operations" forced upon Ireland by international economic events. Accordingly, the principal features of the most recent interim budget of July 1975 were, firstly, the introduction of a range of Government subsidies on such goods as bread, butter, milk, gas, electricity and transport, and the removal of VAT from certain other goods in an effort to reduce the consumer price index (to which the National Wage Agreement is linked), and, secondly, the introduction of a temporary scheme of employment premia (initially £12 a week) for employers in the manufacturing industry to re-employ workers who have been laid-off in the recent past. Public capital expenditure has again been expanded. Similarly, the most recent budget of January 1976 set out to reduce the rate of inflation and to safeguard employment. By 1976, however, it seemed desirable to limit public expenditure.

The Government's balance in this area is not presented in a legislative form, but is to be found only in the Minister's Budget Speech. A mid-year budget may also be introduced if economic conditions warrant immediate action, and, in this event, a Supplementary Finance Act (see, for example, Finance Act, 1975 (No. 2 of 1975) is usually required unless the revenue can be raised by way of protective revenue duties, in which event a Ministerial Order will suffice under the Imposition of Duties Act, 1957. This latter course was taken in S.I. No. 350 of 1974, entitled Imposition of Duties (No. 214) (Mineral Hydrocarbon Light Oil) Order, 1975. This Order increased the Customs and Excise Duty on petrol by 13.3p a gallon as from 5 December 1974. Resort to the Imposition of Duties Act, 1957 by the Government to raise revenue was severely criticised by the Opposition in Parliament, who argued that the Imposition of Duties Act, 1957 (No. 7 of 1957) was never designed as a measure by which the Government should raise money. As the Government showed in this instance, however, the Act is a possible, if unorthodox, method of raising revenue.

Under the Finance Act, 1972 (No. 19 of 1972), which introduced into Ireland the system of Value Added Tax, the Minister for Finance is authorised to lower, but not raise, by Order the percentage rate of these taxes. As is usual in this type of case, such a variation in the tax rate must be subsequently approved by the Oireachtas. Accordingly, it is not available as a method by which revenue may be raised during the course of the financial year.

Underestimations of expenditure by a Department may be remedied during the course of the financial year by the Supplementary Estimates Procedure, which must, of course, be legislatively confirmed at a later date in the Central Fund Act. Such underestimates are, in a general sense, inevitable, but are also of a kind that cannot always be specifically foreseen or provided for. Until recently, these supplementary estimates were normally only a small fraction of the original estimate, but because of the effect of the current high rate of inflation on public expenditure these additions amounted to £76 million even in the short period January-June of 1975 - that is, 7,3% of the budget estimate for these expenditures. These supplementary estimates, therefore, because of inflation, have increased noticeably in recent years.

Lastly, a contingency fund of £20,000 also exists to cover unforeseen expenditure which cannot immediately, but which will subsequently, be brought to the notice of the Dail. This fund is formed by way of Grant-in-Aid and is exempted from the normal rule that money issued from the Exchequer must be spent within the current financial year.

#### 2.4.2. Public Expenditure

The impact which public expenditure has on the economy, both by virtue of its volume and its policy promotion aspects, needs no emphasis here. Since 1958, the dynamic role which the public sector has cast for itself has meant a marked increase in the volume of public expenditure in Ireland. As there has been a great deal of emphasis on "growth" as a national objective in the medium-term programmes, policy statements have favoured the allocation of public resources to productive purposes rather than unproductive activities. Such expenditure, it was felt, should be aimed at increasing the national output of goods and services which would compete successfully in the export markets.

Accordingly to Kennedy and Bruton (The Irish Economy, p. 95), public spending rose unsteadily during the period 1949-1961, but grew substantially faster, at an average annual rate of more than twice that of the earlier period (from 5,8% to 13,8%) during the period 1961-1972. "The relative importance of State expenditure in the economy is further highlighted by examination of the public sector's share in gross investment. In connection with the annual Budget, a Public Capital Programme is published, which includes capital expenditure of most State-sponsored bodies as well as of public authorities. Since 1961, the Public Capital Programme has grown slightly faster than public authority capital spending and amounted to an average of almost 52% of gross domestic fixed capital formation in the years 1961-1972." (p. 96)

The rising ratio of public expenditure to GNP in Ireland displays a pattern similar to that of other EEC Countries. In 1970, again according to Kennedy and Bruton (p. 96), the ratio of public expenditure to GNP in Ireland was among the highest of the EEC Members. "The current public expenditure ratio for Ireland was below average, but public capital spending was much larger relative to GNP in Ireland than in other countries. The latter is largely due to the major role played by the State in Ireland in encouraging economic development through capital loans and grants." On the functional composition of public expenditure "the main differences in Ireland compared to other EEC Countries are the higher proportion of public funds devoted to agriculture and the service of the public debt and the lower proportion on defence and social welfare." (id. p. 97)

Apart from Central Fund services (which mainly involve service of public debt and judicial and other salaries) public expenditure in Ireland is administratively grouped into two categories: (i) Supply Services; (ii) Capital and other issues.

Before going on to discuss these, and in order to avoid confusion in the matter of public expense procedure, the primary objects of three legislative Acts of the Oireachtas should be distinguished at this stage. The Finance Act gives the Government authority to raise money by taxation, etc. The Central Fund Act authorises the Minister for Finance to issue money from the Central Fund. The Appropriation Act approves of Central Fund money being put to specified objects which are detailed in advance in the Departmental estimates. These Acts cover the three successive stages of public finance: collection, withdrawal and expenditure. Other procedural matters of minor importance in this area find their legislative basis in the Exchequer and Audit Departments Acts, 1866 and 1921, and in the Ministers and Secretaries Act, 1924 (No. 16 of 1924).

(i) Supply Services relate to the services which are provided by the various Government Departments and, to give a random sample, include subsidies and production grants given by the Department of Agriculture, old age pensions, unemployment assistance and children's allowance given by the Department of Social Welfare, and institutional and general medical services given by the Department of Health, etc. They also include the pay of public servants. Expenditure on the Supply Services are subject to the following procedure: Each Government Department submits to the Department of Finance by 1 December the estimate of its expenditure on Supply Services for the following year. These estimates are collected in the Book of Estimates, and are submitted annually to the Dáil, which sits as a Committee on Finance and debates each estimate separately. When the estimates are approved by the Dáil the Appropriation Act is passed. This Act authorises the Government to "appropriate" money from the Central Fund for the estimates which have been approved. The terms of the estimates, however, strictly limit the purposes to which this money can be put; since the Grant is approved for very specific objects, it cannot be put to other uses. At this stage, therefore, it may be said that the Dáil has a modicum of control over public expenditure.

#### (ii) Capital Services

Capital Services amounted to about 25% of total State expenditure in recent years and according to recent authorities (Kennedy and Bruton, "The Irish Economy") "less than half of public capital spending represents physical investment carried out by public authorities themselves; about one-third takes the form of capital transfers to agriculture, industry and services by way of grants or loans; and the remainder is made up of debt repayments and other capital transfers" (at p. 95). Public expenditure under the heading of Capital Services includes advances made (a) to Local Authorities, and (b) to State-sponsored bodies.

#### (a) Local Authorities

Local authorities derive their functions and authority from the Oireachtas, and a large part of their income comes to them by way of grants and loans from Central Government. Although local authorities do have power to levy a local property tax (rates), and although the income from this source has risen

in recent years, it scarcely provides 50% of their total needs. The balance of their estimated needs generally comes from Central Government. Most of the grants from Central Government are on a percentage basis and, consequently, are accompanied by supervisory controls as to the object of expenditure and the standards to be maintained. Other controls of Central Government are to be found in the area of appointments, the powers of inspection, and the high degree of public accountability which is involved in the strict, complex and complicated audit required of local authorities. Local authorities are not empowered to carry a bank overdraft or to borrow without Central Government sanction (Local Government (2) Act, 1960 (No. 40 of 1960)). Moreover, the Minister for Local Government may remove members and dissolve councils for refusal to perform, or neglect in the performance of, their duties, a power which has been exercised as recently as 1969, in the case of Dublin Corporation, which refused to strike a rate for that year. Control by Central Departments, therefore, is through statutes, through regulations made by the Minister concerned and through financial procedures, and, because of their stringency and variety, the relationship between Central Government and local authorities in Ireland is more properly considered to be one of agency rather than one of partnership. Consequently, public expenditure, through the local authorities, is likely to be generally sensitive to, even if it is not always in perfect harmony with, Government planning in Ireland.

#### (b) State-sponsored bodies

State-sponsored bodies, which are a marked feature of the Irish economy, can be defined as public authorities set up by the Government in forms other than that of a Ministerial Department to carry out specific functions on behalf of the Government. In all, there are over eighty such State-sponsored bodies in existence in Ireland today, their range of activity covering, in the "commercial" sphere, road and rail transport (C.I.E.), electricity supply (E.S.B.), development of peat resources (Bórd na Móna), insurance (Irish Life Assurance Company, Limited), shipping (Irish Shipping, Limited), etc., and in the "non-commercial" sphere, marketing (Bórd Bainne), tourist promotion (Bórd Fáilte), etc. The multiplicity of such bodies, however, was not brought about in pursuance of a particular political philosophy but, rather, sprung up in an ad hoc fashion in areas which private enterprise had found unattractive, or unprofitable, or where there was a need to develop a natural resource or to satisfy a perceived social need. The legal forms which such bodies take vary from statutory corporations, public or private companies to unincorporated advisory committees, and this variety of structure well indicates the absence of an overall policy as to the organisational form these bodies should take.

Much of the capital requirements of these bodies comes from Central Funds, and this is true both of the "commercial" and "non-commercial" type bodies, although, insofar as the former are more or less expected to pay their own way, their dependence on Central Fund is not, generally speaking, as great. As a general observation, the control which the Government exercises over these bodies may be fairly said to increase (although not inevitably so) with their financial dependence.

With regard to legal control over these bodies (normally exercisable by the Minister to whose Department the body may be attached), the matter is complicated by the variety of statutes, establishing them, and by the absence of any overall accepted formula relating to control in these establishing Acts. It varies greatly from case to case. For example, the Minister for



Health has strong statutory powers of control over the bodies attached to his Department, whereas the Minister for Transport and Power has little or no statutory authority in relation to *Córas Iompair Éireann* (that is, the road and rail transport body). Even when a Minister's legal powers are not well defined, however, a Minister may exert control over these State-sponsored bodies in the following ways: (1) He appoints the board of these bodies; (2) The Minister formulates the basic policy of the board, which, of course, will be within the general framework of Governmental policy; (3) Before granting such bodies new capital, the Minister must approve of the Expenditure Plan. The extent to which these controls are likely to be exercised in any particular case will depend on the strength of the board in question and the degree of financial independence which such a body possesses. Some people regard a degree of tension between the Minister and the board in such cases to be not only inevitable but even desirable.

The Oireachtas, too, possesses, in theory at least, some measure of control here, if not directly over the State-sponsored body itself, because of the "autonomous corporation" theory, then indirectly over the Minister involved who is, in the final analysis, responsible for his administration to Parliament. Such bodies may also, therefore, be subjected to the haphazard Question Time procedure of the Dáil. Moreover, the Dáil (the Lower House of Parliament) would have power to debate the affairs of such a body if, for example, it was asked to vote money to it. Two factors exist, however, which make these theoretical controls less than effective. First, because of the uncertainty, both as to the exact object of many of these bodies, and as to the division of responsibilities between Minister and Board of Directors, Parliamentary control is extremely difficult. Second, the Oireachtas has neither the information nor the equipment to exercise adequate supervision in these matters. As no select committee on State enterprises exists, the Minister may, in such circumstances, be fairly said to have power without supervision. In recognition of this factor, the present Government has recently announced its intention of establishing a Parliamentary Committee to examine and investigate the whole role of the commercial type State-sponsored bodies within the economy.

Except, therefore, for the indirect influence which a Minister may exert when formulating the policy of such State-sponsored bodies and the conditions which he may attach in granting new capital to such a body, Medium-Term Programming seems hardly to have directly affected the operations of the "commercial State-sponsored companies at all, probably because, as such bodies are frequently the object of public criticism, the Government is anxious that they should operate more closely to, and be judged by, the standards of the private sector.

There certainly seems to be no consistent or coherent Government policy in relation to these State-sponsored bodies. This is probably because these bodies represent a heterogeneous group whose objects and whose forms differ greatly from each other, a fact which causes, in some cases, a general hesitancy in articulating criteria by which they should be judged. The State does, however, try in the administration of non-cash grant aids and subsidies, to influence them in some ways. For example, the requirement that the E.S.B. must in some of its power stations use turf as a fuel limits the freedom of the E.S.B., while at the same time it provides another public enterprise, *Bórd na Móna*, with a guaranteed outlet for its product. Similarly, the use by the Government of export restrictions on scrap metal, on occasions, provides

Irish Steel Holdings Ltd. with a cheap and secure supply of raw material. Moreover, the financial involvement of the State in such bodies means that these bodies (being, in many cases, State guaranteed) are most easily able to obtain credit, etc. Finally, subsidy aids (which are given to some State-sponsored bodies) frequently have conditional elements attached to them nowadays and the day of the blanket cash subsidy seems to have gone.

### 2.4.3. Monetary Policy

In keeping with the overall structure of the reports in this series, only the non-regulatory aspects of the monetary authorities will be looked at this point. The regulatory aspects will be examined at a later stage (5.2.2. infra). The division, of course, is artificial, and the comments made here may only be fully understood in the light of what is later said about the regulatory functions of the monetary authorities.

The central institutions are the Central Bank of Ireland and the Department of Finance. Although of comparatively recent arrival to the banking scene, being established only in 1942 by the Central Bank Act, in replacement of the Currency Commission, the Central Bank now occupies a significant, if not a dominant, position in monetary matters in Ireland. It performs three principal functions:

- (1) It is the authority responsible for issuing currency;
- (2) It acts as the banker for the Government;
- (3) Although not a lender of last resort in the full sense, it does act as a bank to the commercial banks in a limited fashion.

Several peculiar features of the Irish monetary position, however, require to be noted if one is to appreciate fully the position of monetary policy in Ireland. Firstly, the Currency Act, 1927 (No. 32 of 1927) requires that Irish legal tender be backed by gold, sterling, British Government securities or (since 1930) the United States dollar. Secondly, between Ireland and England there exists virtual free movement of capital. This has many consequences for the Irish market, of course, one of which is that interest rates in Ireland have generally tended to move in sympathy with those prevailing in England. Moreover, that commercial banks in Ireland operate in two jurisdictions (in the Republic and in the North of Ireland, which is part of the United Kingdom) means that there is no guarantee that central regulatory action in the Republic of Ireland will have the effects that it might have if such peculiar features did not prevail. For example, a requirement that ratio deposits with the Central Bank be increased does not automatically mean a contraction of credit in Ireland, since the commercial banks can alter the ratio themselves merely by shifting assets from one State to the other. Thirdly, the size of the active money market in Ireland is limited, existing as it does in the shadow of the London money market. This fact affects the ability of the Central Bank to control credit in Ireland by open market operations or by rediscounting. Fourthly, because of the link with sterling and because, in the early decades of the State anyway, Ireland was a net lender to the United Kingdom, Irish commercial banks enjoyed a high degree of liquidity, and a balance of payments deficit did not always cause domestic deflation; sometimes it merely caused a reduction in net external assets (i.e., the difference between assets and liabilities outside the State).

All these factors have serious implications for Irish monetary policy and should be prominently borne in mind to appreciate the following description of the development of monetary policy in Ireland.

A de facto monetary union has existed between Ireland and the United Kingdom for almost 150 years. Accordingly, during this period, currencies have been fully convertible, margins of fluctuation in exchange rates have been eliminated, parity rates have been fixed, and there has been a large measure of freedom in capital movement. Moreover, this union has continued to exist even though, in the course of the period in question, Ireland evolved from an integral part of the United Kingdom, through dominion status (1922), to finally achieve the status of a republic in 1949. Suggestions in the early years of the State that the sterling link should be broken were effectively countered by the arguments that, firstly, it was important to maintain confidence in the new State's monetary system, and, secondly, that whatever political developments took place in Ireland, Ireland would (because of trade inter-dependence) still remain within the economic sphere of influence of the United Kingdom.

The Currency Act, 1927 (No. 32 of 1927) was the legislative basis for the establishment of the Saorstát Éireann pound. As well as providing for the issue of legal tender (by the Currency Commission which generally administered the Act) and making provision for the Reserve Fund, the Act provided that the value of the Saorstát Éireann pound was to be maintained on a basis of parity with sterling. On the recommendation of a report written in 1934, the Central Bank was eventually established in 1942, and took over the functions of the Currency Commission. The link with sterling was not altered, however, and this remained the position until 1971. In the Central Bank Act of 1971 (No. 24 of 1971), however, the status of the sterling link was reduced from a statutory link to a link that could be changed by a Government Order (Section 43 of Central Bank Act, 1971). Nowadays, therefore, although the link between the Irish pound and the English pound can be more easily broken, without the need for a statute, parity is still being maintained by the Irish Government, but only as a matter of policy rather than of legal compulsion.

The principal reasons why this monetary union between Ireland and the United Kingdom should have survived for so long is usually explained in the following way. Firstly, the extreme openness of the Irish economy has, in principle, suggested that the Irish pound should be tied to a larger trade area. Moreover, trade inter-dependence between the two economies was reinforced by the fact that a high degree of integration existed in both the labour and capital markets of the two economies. Secondly, that the link should be with sterling rather than any other currency was more or less determined by the high trade inter-dependence that existed between the two economies. Interestingly, and not surprisingly, perhaps, as this trade dependence with Britain is diminishing in recent years, the call for a break with sterling has increased.

For the above reasons, therefore, it is not difficult to appreciate that the use of monetary policy as an effective policy instrument has definitional limitations in Ireland. Nevertheless, the Central Bank has recently tried to develop, within the described limitations, a monetary policy of some significance. For example, it has been possible in Ireland in recent years for interest rates to be marginally lower than those prevailing in the United Kingdom without provoking a major capital outflow. Moreover, the growth of the Dublin money market and the centralisation of external reserves in the Central

Bank since 1969 have increased the area of possible independent action in the monetary sphere. Finally, the legislative strengthening of the Central Bank's power in 1971 (Central Bank Act, 1971 (No. 24 of 1971)) has enabled it to respond more quickly and more effectively to capital inflow. It is also worth mentioning at this point that the development of a prices and incomes policy, which reflects international prices and costs, also acts partly as a substitute for an exchange rate mechanism between Ireland and the United Kingdom. Together with tariffs and export subsidies and demand management policies, this has helped, in the absence of an exchange rate variation, to maintain, until recently, a satisfactory balance of payments position.

By way of summary, it may be said that monetary policy in Ireland is aligned to the general objectives of Irish Economic Policy, such as, growth, price stability, a sustainable external payments position, etc. More specifically, the Central Bank attempts to promote these aims by influencing the volume of expenditure through intermediate targets, such as, total bank credit and money supply. By these means it is hoped to influence consumption and investment especially. Monetary policy, however, in Ireland is recognised to be a blunt instrument whose effects are frequently non-discriminatory and also subject to variable and lengthy time-lags.

The interesting lesson to be learned from the limited experience of monetary union between Ireland and England is, as Whittaker points out, that certain institutional arrangements considered essential for the success of EMU in Europe (the existence of a full customs union, the complete pooling of reserves and the coordination of economic policies) were not at all essential for the success of the Anglo-Irish monetary union. Moreover, support must be added for Whittaker's further conclusion in this matter, where he states that EMU in Europe may be a more realistic aspiration if "emphasis should be placed on those policies, such as, Regional and Structural Policy, which actively promote the economic convergence of the Member States."

## 2.5 Indirect Instruments of Policy

### 2.5.1. State-sponsored Bodies

We have already spoken of the possible ways in which the Government can directly influence economic development by way of investment in State-sponsored bodies. Indirectly too, it might be supposed that the Government can exert influence on the economy through these bodies, especially in matters relating to prices and wages. Because, however, the major State-sponsored bodies in Ireland are in monopoly positions in regard to their products, and, consequently, are not in direct competition with the private sector, they do not, in general, act as 'leaders' in their market. Regulation of prices and wages, therefore, in these bodies may not have the desired effect of influencing by example the private sector. Nevertheless, the pricing policies, etc., of these bodies may, and undoubtedly do, affect similar industries which deal in substitute products. For instance, the price of electricity, in the production of which the ESB has a monopoly, may affect the price of oil or gas where no such monopoly exists. In relation to prices, however, there is no evidence that the Government attempts to exert indirect influence on the market in this manner. Indeed, the establishing legislation of these State-sponsored bodies do not, usually, give the Government specific power over the product prices of these bodies, and although the Government has, of course, since the Prices (Amendment)

Act, 1972 (No. 20 of 1972), general powers to control prices in the State-sponsored bodies as well as in other sectors of the economy, this power can normally be exercised without distinguishing these State-sponsored bodies from the rest of the private sector. In spite of these factors, which tend to minimise the use of State-sponsored bodies as indirect instruments of Government policy, however, it should not be forgotten that the boards of such bodies are, of course, because of their composition and tenure, aware of, and sensitive to, Government economic policy. Moreover, because of the financial dependence of many of them on central funds, the Government, without resorting to the Prices legislation, may exercise indirect leverage in forestalling a price increase. This they may do, however, more by way of political persuasion than by virtue of legal powers. The success of this leverage will depend, *inter alia*, on the strength of a particular board, its degree of financial independence and whether the particular body is expected to attain the ordinary commercial standards of profit and loss that prevail in the private sector. Such an approach, based on the use of political persuasion, would certainly be more important in the matter of wage restraint. Since the establishing acts of these bodies give the Government no powers to control wages, and, since no statutory wages policy exists in the country, political leverage may assume greater importance in this matter. It is fair to conclude, therefore, that the voluntary wage agreements applicable to the entire economy (see 5.2.1. *infra*) probably play a more significant part in controlling the wages paid by State-sponsored bodies than either of the above. Finally, however, it should be noted in this regard that some statutes establishing State-sponsored bodies do place a limitation on the total expenditure of these bodies, such as, Section 2 of the Electricity (Supply) (Amendment) Act, 1954 (No. 17 of 1954), and this limit cannot be raised without the consent of Government. Such a limitation, of course, may act as a brake on expenditure in general, and on an increase of wages in particular.

Because of the absence of a coherent policy in relation to these State-sponsored bodies, therefore, and because of the diversity of their nature and legal form and principally, it must be supposed, because the arrangements on prices and wages (The Prices Acts and the National Wage Agreements) are general enough to embrace the activities of these bodies, the Government does not specifically, in any coherent or consistent manner, view them as indirect instruments for influencing the economy in these areas. All that can be said is that some of these bodies are more sensitive to Government wishes than others. It should be noted, however, that one may detect an awareness of the unsatisfactory nature of this position by the present Government, who have recently (December 1975) established a special Parliamentary Committee to investigate the operation of all State-sponsored bodies engaged in commerce and trade.

#### 2.5.2. Public Contracts

In the recent report of Public Services Organisation Review Group (1969, Prl. 792, "The Devlin Report") the position with regard to Government procurement contracts was stated to be as follows:

"A degree of centralised purchasing for the civil service is carried on at present in three locations.

- (a) Stores Branch, Department of Posts and Telegraphs who purchase such items as uniforms (because the Post Office is the greatest user of uniforms),

chemicals, motor vehicles and timber;

- (b) The Office of Public Works which purchases furniture and heavy mechanical equipment; and
- (c) The Stationery Office which purchases stationery and office equipment and looks after Government printing.

The provision of premises is undertaken by the Office of Public Works who are also responsible for maintenance and repairs. A noticeable feature of the present accommodation arrangements for Government Departments is the fragmentation of accommodation for units of individual Departments. The Government Contracts Committee, whose Chairman is the Parliamentary Secretary to the Minister for Finance, is a committee of higher officers from a number of Departments. The Committee approves the acceptance of tenders of any substantial amount. Departments obtain their requirements by requisition from the appropriate central purchasing office. The Department of Local Government operates a central purchasing system for local authorities on a different basis; a list of contractors who will supply the various items at accepted prices is supplied to local authorities who do the actual purchasing themselves as their requirements arise. The Department of Defence looks after purchasing for the Army."

The general authority relating to Central Government purchases derives under the Ministers and Secretaries Act, 1924 (No. 16 of 1924) (Section 1), and the policies and procedures relating to such purchases are to be found in internal administrative regulations issuing from the Department of Finance. Apart from the insistence that Irish materials and goods were sometimes to be preferred and the insistence that all Government contracts with suppliers must have a "fair wages clause" relating to the suppliers' employees, a "lowest price and best value" policy seems to have prevailed generally in these matters. The express preference for Irish materials had to be abandoned as and from 1 January 1975 to meet EEC requirements in this matter, and it is understood that Government practice has, on the face of it, now been adjusted to meet these EEC requirements.

The combined purchasing scheme, which is operated by the Department of Local Government, was established by the Local Authorities (Combined Purchasing) Act, 1939 (No. 14 of 1939) (replacing an earlier Act of 1925) and has been implemented by various Ministerial Orders, the most important of which are S.I. No. 37 of 1961 and No. 74 of 1969. Under this scheme (as has been briefly mentioned above) special arrangements are in operation to enable local authorities to purchase their supplies and equipment in common from approved suppliers. Contractors are, by public notice, requested to make formal application to the Minister for local Government for recognition as an official contractor. On being recognised, the contractor is included in the official list of contractors. The list is circulated to the local authorities who can then only purchase their commodities from these recognised contractors. The standards for such commodities are generally set by written specification or by sample, and the purchasing system extends to a wide range of goods. In the operation of this scheme the "lowest price and best value" policy seems to have predominated, but preference for Irish goods seems also to have operated at various times. As with Central Government's own contracts, this preference policy has now been abandoned to give effect to EEC policy on this matter. In this regard, it is probably fair to say that Government contracts in Ireland are as "open" as those in many other countries and this is probably due to the "open" nature of the economy in general.

## CHAPTER 3. FINANCIAL INDUCEMENTS PROVIDED BY THE STATE

Apart from strict regulatory action which the State may take in its efforts to guide the economy, and which shall be dealt with fully at Chapter 5, the State may encourage and promote its objectives in a more positive fashion by way of financial incentives. Such incentives may be granted through the tax system (e.g., by according certain activities general preferences and allowances, etc.) or more directly by issuing grants or loans to selected enterprises. Both forms of financial incentives are discernible in Irish economic policy.

The distinction that is made in the other reports in this series, between incentives given through the tax system on the one hand, and the more direct cash payments (grants, loans, etc.) on the other, is also worth making in the Irish context. From an economic point of view, tax concessions are less transparent than grants, etc., and, as such, their policy promotional aspects may be more difficult to trace and assess. From a legal viewpoint, however, such tax concessions are much more visible in that, generally speaking, they can only be effected on a statutory basis. The firm legislative basis for these concessions provides the affected individual with legal rights which are closely protected by the Courts. By way of contrast, grants and other direct incentives show a more visible economic picture: it is easy to trace the recipients and it is relatively easy to see, in individual industries, if the grant produces the desired economic effect. They contain however, by their very nature, a large discretionary element which is not easily subjected to legal control. Like the United Kingdom, loans and grants to industry are, in general, legally sanctioned by much more general legislation. Frequently, the legislative basis is no more than a general heading in the Annual Appropriation Act (see 2.4.2. *supra* for procedure). These general Votes in the Appropriation Acts give individual Departments great scope (provided the money is appropriated to the objectives specified in the general heading) in the detailed administration and distribution of the global sum allocated to it for this purpose. Even where specific legislative authorisation provides the legal basis for individual grants and schemes, such authorisation is normally in a manner which gives the authority almost total discretion in the matter. From a legal point of view, therefore, since many of the schemes allocating grants give the Government a discretion in the administration of these matters, it is very difficult for individuals to contest adverse decisions (see Chapter 6 *infra*). In the tax area the individual has a right which he can maintain in the Courts; in the area of grants, etc., he has a privilege which he can only contest in the Courts if there has been an abuse of process. And even in this latter case, the branch of administrative law on which he might rely has not been adequately developed as yet in Ireland.

Apart from dealing with tax incentives (3.1.) and direct assistance of a general nature (3.2.), this chapter will also examine the measures of assistance that are given, whether directly or indirectly, to specific sectors of the economy (3.3.).

Much of what follows will indicate the degree of commitment which successive Governments in Ireland have had towards the attainment of such programmed targets as encouragement of investment, increased industrial production (especially in products that are to be exported) and regional economic development. Although some of the incentives that are set out hereunder pre-date the First Economic Programme (1959) the vast majority have come into being since that date and were designed to promote the main targets of the Economic Programmes published since that date. Some of the earlier incentives have survived into the present time because essentially they were in harmony with new plans and, as such, their existence could be rationalised in terms of the new philosophy.

### 3.1. Tax Preferences, Allowances and Exemptions

Manipulation of the tax system is, of course, one of the most obvious ways of indirectly stimulating economic response. Because, however, taxation interferes with the individual's right to property and because of a strong legislative desire to keep control on taxation, such incentives tend to be subject to strict legal control. Administrative discretion in the handling of these, therefore, tends to be minimal. The principal statute in this area is the Income Tax Act, 1967 (No. 6 of 1967) which consolidates the legislation relating to income tax in Ireland. Subsequent amendments to this Act are to be found in the annual Finance Acts since that date. Corporation profits tax is still based on the Finance Act, 1920 (as amended) and, unlike income tax, which must be imposed annually, continues to be charged automatically.

A new system of company taxation is at present being introduced in Ireland. It is envisaged in the new Corporation Tax Bill, 1975, at present before Parliament, that the profits of resident companies (and most non-resident companies operating in Ireland) will be subject to a single tax structure instead of the present triple structure comprising income tax, corporation profits tax and capital gains tax. The existing corporation profits tax code (dating from 1920) will be abolished although the general principles and rules of the income tax and capital gains tax codes will continue to apply for the purposes of the new corporation tax. The new bill is based on the imputation system and is in line with the harmonization efforts of the EEC in this matter.

The generous scheme of capital allowances and other reliefs mentioned hereunder in this section, however, together with the special taxation reliefs to encourage industrial development will be preserved (with appropriate adaptations) in the new corporation tax system. Furthermore, where a distribution of profits under the new scheme is made after April 1976 (the date on which it is hoped the new scheme comes into operation) part of the new corporation tax will be imputed (credited) to shareholders in respect of that distribution: their personal income tax liability will take account of the corporation tax already paid. The shareholders position, therefore, will not in essence be changed in the new system.

#### 3.1.1. Incentives to Investment

Legislation providing for tax relief on profits from exports dates back to 1956. The basic legislation governing this is now to be found in Chapter IV, Part XXV of the Income Tax Act, 1967 (No. 6 of 1967). Basically, relief at 100% from income tax and corporation profits tax is given on profits



attributable to export trade in Irish manufactured goods for a maximum of 15 consecutive years and partial relief for a following period not exceeding five years. The Finance Act, 1969 postponed the statutory date for termination of this relief from April 1980 to April 1990. The partial relief (covering the period between the fifteenth and twentieth years of production) has now become more relevant for new industries, as from 1975 onwards the fifteen year total remission could not extend beyond the terminal date of 1990. Special tax relief is afforded to companies operating within the custom-free area of Shannon Airport on profits derived from certain export trading and servicing operations. (Finance Miscellaneous Provisions) Act, 1958 (No. 28 of 1958) and Income Tax Act, 1967 (No. 6 of 1967) (Chapter 1 of Pt. XXV) both as amended by subsequent Finance Acts.) Relief here is total up to 5 April 1990. Both of these allowances apply only to companies.

Capital allowances (i.e., allowances for the depreciation of business assets, especially machinery, plant and building) permitted in the income tax code fall mainly into three categories: initial allowances, annual allowances and balancing allowances. Initial allowances in nature of accelerated depreciation may be deducted in respect of capital expenditure at the following rates: new plant and machinery - 100%; construction of industrial buildings - 20%; construction of hotels, holiday camps, registered holiday cottages, etc. - 10%. Annual allowances in the nature of depreciation on plant and buildings, etc., while these assets are used for the purpose of the business are at the following rates: new plant and machinery - (10%; 12½%; 25% - depending on the life of the asset); other machinery and plant - no fixed rates and the allowance is based on the life of the asset; industrial buildings - 2%. Balancing allowances are given where the assets are no longer used and are sold and a deficiency occurs in the amount of the capital allowances after account is taken of the disposal price. (A balancing charge is made if the capital allowances exceed the value of the asset when the disposal price is taken into account) (See Sections 251-283 of Income Tax Act, 1967 (No. 6 of 1967) as amended by subsequent Finance Acts.) The annual plant and machinery allowance mentioned above may be augmented for new plant and machinery by a form of "free depreciation" which entitles the manufacturing company to increase its annual allowance to such an extent that it can write off 100% of the expenditure for tax purposes in the first year.

A further investment allowance is given to manufacturers who purchase new machinery or plant (other than road vehicles) for use in designated areas (formerly "underdeveloped" areas) which, broadly speaking, are located in the western part of the State. The general rule is that the total capital allowances must not exceed the cost of the asset less its disposal value, but this does not apply to the 20% allowance rate given in this instance in designated areas. Together with the "free depreciation" rule and the initial allowance, therefore, a total of 120% may be claimed in such cases for a new plant and machinery.

Furthermore, an allowance of one-third of the expenditure incurred in training or recruiting of persons, a majority of whom are Irish citizens, exists for a commencement period of three years in manufacturing enterprises. (Section 305, Income Tax Act, 1967 (No. 6 of 1967).) This allowance was supplemented in the 1968 Finance Act (No. 33 of 1968) Section 2(b), a provision which allows as a deduction in computing profits the cost of acquiring industrial know-how for use in the trade.

Rates are the local property taxes payable to local authorities. These are based on a notional rental value of the property and in practice work out at roughly between 0.3% and 1.5% of current capital cost of land and building. In areas which were formerly called 'underdeveloped' (mainly the west of Ireland) these local rates are reduced by two-thirds for industrial buildings during the first ten years after their construction.

Two other investment incentives should be mentioned. Firstly, residents in the State, who are the beneficial owners of shares in a resident Irish company, which complies with certain conditions, for the purpose of calculating income, are entitled to claim to have the dividends and interest from the shares abated by 20%. This applies mainly to manufacturing companies and is an example of an earlier incentive which has survived as being compatible with more recent economic philosophy. It was first introduced in 1932 to encourage private investors to support new manufacturing companies. It was later extended to pre-1932 securities (Sections 329 and 332 of Income Tax Act, 1967 (No. 6 of 1967)).

Secondly, where a company which is entitled to an incentive relief mentioned above (e.g., export relief or Shannon relief) pays a dividend, the company may not (as it is normally obliged to do) deduct any income tax if its profits have been wholly exempted. Accordingly, the benefit of the relief is passed on to the shareholder. The benefit will be partial if the company's profits are not entirely from exports.

Finally, the twenty year "tax holiday" which was in operation for companies engaged in the mining of non-bedded minerals has been declared to be too generous by the present Government and has been withdrawn as from 6 April 1974. It has been replaced by a new Act, the Finance (Taxation of Profits of Certain Mines) Act, 1974 (No. 17 of 1974), which embodies a new (and less generous) scheme of tax allowances for such mining companies. Consideration of this Act is postponed to a later point (see 3.3.4. infra).

It might also be stated at this stage that tax reforms in relation to corporation profits are contemplated for the near future in Ireland and a bill incorporating some reforms is at present before Parliament.

### 3.1.2. Incentives to Saving

The following are the main incentives provided by the State to encourage saving:

(a) A deduction from the assessable income of the claimant for tax of two-thirds of the premium paid on a life policy to an Irish company and of  $\frac{1}{3}$  of the premium paid to any other company (Sections 143 and 151 of Income Tax Act, 1967 (No. 6 of 1967)). There are some limits on this allowance, and since 1973 such premiums, to qualify, must be on policies for a period of at least ten years (Section 23 of Finance Act, 1973 (No. 19 of 1973)). Until recently, relief on premiums was only available at 35p in the £, but now it is based on the top tax rate being paid by the individual which may be as high as 77p in the £. Allowances are also made for premiums for insurance against expenses of illness (Section 145 of Income Tax Act, 1967).

(b) A husband and wife are each entitled to £70 exemption from income tax on

deposit interest from the post office, a trustee savings bank or specified commercial banks (Section 344 of Income Tax Act, 1967, as later amended).

(c) Investments of up to £5,000 in National Saving Certificates (9th Issue) are encouraged by provision that interest on such investments (8½% per annum compound interest for money invested for a 5 year period) is exempt from income tax. Such interest can only be paid, however, when the certificate is being cashed.

(d) Individual residents in the State who own stocks, shares or security in an Irish company can claim a repayment of 20% of the income tax applicable to dividends or interest arising from such stocks, shares or security (Sections 329-332 of Income Tax Act, 1967 and Sections 15 and 16 of Finance Act, 1970 (No. 14 of 1970)). The companies must be certified by the Minister for Finance (non-manufacturing) or by the Revenue Commissioners (manufacturing).

(e) Exemption from tax on interest on tax bonds which are issued by the Minister for Finance for payment of income tax or sur-tax (Section 345 of Income Tax Act, 1967).

(f) Exemption from tax of premiums payable on maturity of Government Securities (Finance Act, 1969 (No. 21 of 1969) Section 63).

(g) An exemption from tax on interest or bonus under an Instalment Savings Scheme provided for by the principal act of 1967 and amended in 1970 (Section 463 of Income Tax Act, 1967, and Finance Act, 1970 (No. 14 of 1970) Section 18), has recently been replaced by two index-linked saving schemes. One scheme is confined to savers over 65, and both schemes have maximum limits to the amount invested by an individual saver. The basic idea, however, is similar in both schemes: the small saver's investment is linked to the consumer price index, and interest paid to him is tax free.

(h) Special provisions as to pensions, pension schemes, retirement annuities and purchased life annuities are provided for in the Income Tax Act, 1967, Part XII).

(i) Stamp duty relief for house purchase (Finance Act, 1969 (No. 21 of 1969) and Finance Act, 1974 (No. 27 of 1974)).

### 3.1.3. Incentives to Restructuring of Industry

Apart from grants which are given to assist in the adaptation and restructuring of industry and which will be dealt with at 3.2.5., two other minor incentives may be mentioned here. First, under Section 4 of the Finance Act, 1969 (No. 21 of 1969), the State, to encourage traders to change their machinery over to the decimal system, allowed "free depreciation" for expenditure on new or converted machinery incurred before 6 April 1971, and allowed, as a business expense, capital expenditure incurred before that date on adaptations of existing plant and machinery. Second, in order to promote reasonable rationalisation and mergers, etc., between companies, a carry-over of capital allowances and relief for losses is allowed by concession where there is substantial identity in the ownership of the trade before and after the transfer. Normally, under the existing tax law, this carryover from a company which has ceased to trade to a new company cannot be effected.

#### 3.1.4. Incentives to Scientific Research

A tax allowance is given in respect of capital or non-capital expenditure on any scientific research, whether or not it relates to the trade, and includes payments made to universities to endow chairs for marketing and industrial relations (Section 244, Income Tax Act, 1967). Moreover, certain covenanted annual payments to Irish universities or colleges for research purposes (Section 439 of Income Tax Act, 1967), or, to promote the teaching of natural sciences, or, to certain bodies promoting human rights (Finance Act, 1973 (No. 19 of 1973) Section 20), are not regarded, for income tax purposes, as income of the settlor.

To encourage inventions, the Finance Act, 1973 also gave an exemption from tax on all income from royalties on patents which were first registered in Ireland in respect of any invention devised in Ireland by an inventor resident in Ireland. By way of analogy, it might also be of interest to note that resident artists can also claim exemption from tax on earnings from works of cultural or artistic merit (Section 2 of Finance Act, 1969 (No. 21 of 1969)).

### 3.2. Direct Government Expenditure

#### 3.2.1. Policy to Promote Industrial Growth and to Stimulate Exports

In recent decades, Government policy has emphasised that the main agent for economic growth in Ireland should be industry. Early realisation that the numbers engaged in agriculture would continue to fall and that agriculture's share in the GNP would continue to contract in the fifties and sixties forced the conclusion that future expansion in GNP, both by way of increased employment and increased production, would have to come from industry. From the early fifties, therefore, with the establishment of the first industrial development authority (Industrial Development Authority Act, 1950 (No. 29 of 1950)), the Government has promoted and encouraged, by various incentives and inducements, major industrial expansion. As some of the more important of these incentives are given by way of allowances through the tax system, they have been dealt with above (3.1. supra) and, consequently, they need not be repeated here. Although primary concern here, therefore, is with direct Government aids, it should be mentioned that, from the point of view of attracting new industries, the whole package of industrial incentives is important and this, of course, includes the tax concessions already mentioned. Finally, in the context of the EEC, it should be mentioned that Protocol 30 of the Treaty of Accession explicitly takes note of the Irish Government's policy of industrialisation and economic development. In this Protocol, the high contracting parties recognise that it is in their common interest that the objectives of that policy be attained and, in particular, that "in the application of Articles 92 and 93 of the EEC Treaty, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population."

##### 3.2.1.1. Industrial Development Authority and General Grant Criteria

Apart from the tax incentives, which are mentioned above, the Irish Government also acts more directly to promote programmed targets by way of grants, loans and advisory assistance. Much of this assistance is administered

through specialised agencies, which have been earlier referred to as non-commercial State-sponsored bodies. These agencies are structurally closely controlled by the Government and are financed by central funds. As most of the finance is voted en bloc, however, Parliament has less control over the spending of these agencies. Accordingly, a study of these agencies would be more likely to disclose administrative practices rather than substantive rules of law.

Of all these agencies, the Industrial Development Authority (IDA), the Government agency established, as its name implies, to promote and encourage industrial development, is the most important and must be specifically singled out as meriting separate and early treatment. The IDA, as originally set up under the Industrial Development Act, 1950 (No. 29 of 1950), was mainly an advisory and promotional body. Organisationally, it formed part of the Civil Service, since it was not empowered to recruit its own staff. It advised the Minister for Industry and Commerce on industrial development, expansion and modernisation. It also provided information and guidance to industrial promoters. It did not, at this stage, however, have power to make grants. An Foras Tionscail (Industrial Grants Authority) was established by The Underdeveloped Areas Act, 1952 (No. 1 of 1952), and its original function was limited to making grants for industrial projects in underdeveloped areas (later re-named 'designated areas'). These areas were principally situated in the poorer areas of the country, mainly those counties west of the Shannon, as well as Donegal, Kerry and West Cork. The 1952 Act specified that a grant would only be given where a competitive disadvantage attached to the location of the industry in such underdeveloped areas. It was soon realised, however, that the urgent need for increased industrial employment was not confined to underdeveloped areas but, indeed, also existed in all parts of the country, and subsequent legislation (the Industrial Grants Acts, 1956 and 1959 (No. 48 of 1956 and No. 26 of 1959)) extended the role of An Foras Tionscail to enable it to issue grants for non-designated areas. It was also empowered to develop industrial estates, and to issue grants to assist industry to adapt to free trade conditions. Like the original IDA, it too was part of the Civil Service. The Underdeveloped Areas Act, 1952 (No. 1 of 1952) was originally designed as a temporary measure (7 years), but it was continued in being until 1969, when it was replaced by the Industrial Development Act of that year, which also established the new Industrial Development Authority. The new authority was a legally independent statutory body, which took over all the functions of the earlier IDA and the old Foras Tionscail. Under Section 11 of the Industrial Development Act, 1969 (No. 32 of 1969), the new IDA had responsibility for the following activities: the furtherance of industrial development under the Minister; the provision and administration of such grants as may be authorised by the Oireachtas; the development of industrial estates; the provision of housing for employees in industry where considered necessary; and the fostering of the national objective of regional industrial development.

#### Grant Criteria

Before describing the nature and the level of grants at present available in Ireland to industry, it might be appropriate to indicate the kind of criteria

which the IDA operate in determining the suitability of a new industry and the level of grant which it should receive. The benefits of new industries to the national economy are assessed by the IDA against the following criteria:

- (a) High market growth of the product;
- (b) Long-term stability (i.e. little risk of technological obsolescence);
- (c) High "added value" when the full impact of the project on national income is taken into account;
- (d) High male skilled content in total employment;
- (e) High degree of exportability of the product in terms of physical ease of transport, storage and tariff rates;
- (f) Low capital requirement per job created, or, where the requirement is high, good potential for linkage or spin-off benefits.

In keeping with these criteria, the IDA has recently announced that no further grant assistance will be provided for the construction of oil production platforms. Developments engaged in such activities, with their highly mobile labour force, would, it was felt, have a disruptive effect on established communities and would not provide employment of a reasonably permanent nature, which the IDA is charged with providing under the Industrial Development Act, 1969 (No. 32 of 1969).

Capital investment in IDA-approved industries at present under construction is in the order of £320 million. To ensure that Irish firms get a fair chance of competing for this work, the IDA has recently (December 1975) incorporated into all IDA grant agreements the following new conditions: (1) Equipment, machinery and supplies: the company must afford at least three Irish firms an opportunity to quote. In cases where there are less than three Irish firms in a position to supply, the company must seek quotations from those who are in a position to do so. (2) At all times when placing contracts, the company must give priority to those firms which use a maximum of Irish labour and materials. (3) The company must not enter into any contract for provision of buildings, services, equipment or supplies except on the above basis without prior consent in writing from the IDA.

The criteria used in assessing grant applications for some particular industries have recently been published by the IDA, and three examples of these would undoubtedly give a reasonable flavour of the IDA's standards in these matters. The three particular industries are:

- (i) Mens and Boys Outerwear Industry;
- (ii) Structural Steel;
- (iii) Provender Milling Industry.

(i) Mens and Boys Outerwear Industry

The established criteria for this industry at present are as follows:

(a) Re-equipment grants will be approved only where companies can produce a fully integrated development plan and illustrate their ability to successfully execute it. The object of such a plan would be to achieve reasonable

economies of scale or, where this scale has been achieved, to raise productivity and reduce costs.

(b) Grants will not be approved on a piecemeal basis, where expenditure is regarded as insignificant.

(c) Special consideration will be applied to proposals to decentralise so as to bring manufacturers to the pools of labour which may exist outside the cities and large provincial towns.

#### (ii) Structural Steel

The established criteria for this industry are as follows:

(a) The capital investment for which the grant is sought must be related to a realisable overall development plan for the company.

(b) Grants should only be made to companies which have shown a consistent level of return on capital employed, or where the company is in a turn around situation.

(c) Grants will only be paid to those companies with those financial standing and management ability the IDA is satisfied - management areas of particular importance being purchasing, costing, design and financial control.

(d) Grants will not be given to companies whose investments plans would result in the creation of production capacity out of line with likely future market trends.

(e) The IDA will actively encourage the formation of stronger manufacturing units in industrial, commercial and agricultural steelwork, preferably through mergers or joint ventures among existing firms.

(f) No new entrants to the industry will be encouraged by way of grant assistance, except where a new company could demonstrate that it is specialising in a market sector not currently being served by the existing companies in the market, or where its entire output is destined for the export markets.

#### (iii) The Provender Milling Industry

The established criteria are as follows:

(a) Audited Departmental accounts must be provided in respect of the manufacture and sale of compound animal feedstuffs covering at least a 12 months' period before the expenditure is incurred.

(b) Compounders must be producing at least 5,000 tons per annum to qualify for grant assistance, or, in the case of companies producing below 5,000 tons per annum, be able to establish that proposals to increase their capacity to not less than 5,000 tons per annum can be undertaken successfully, and will secure the long-term viability of their operations.

(c) Increases in capacity should be limited to 75% over a 5 year period, except in regions which are nett importers of provender food when special consideration should be given to increases larger than 75%.

(d) No new entrants to the industry should be grant aided unless they involve proposals for integration with existing poultry, pig or beef units.

(e) Special consideration might be given to production where a special marketing situation exists due to regional considerations.

(f) A review of this industry will take place in the next two years, or earlier if necessary.

### 3.2.1.2. Measures of Aid

#### 3.2.1.2.1. New Industries

Non-repayable cash grants are available to new approved industries towards the costs of fixed assets (including new machinery and equipment). The selection criteria have been described above (3.2.1.1. supra) and the grant level is normally calculated as a percentage of the fixed asset investment. The present scales are as follows:

- in designated areas, 50% of eligible costs or £5,000 per job, whichever is the less;
- in non-designated areas (except Dublin County), 35% of eligible costs or £4,000 per job, whichever is the less;
- in Dublin County, 25% of eligible costs or £3,000 per job, whichever is the less.

For large industrial projects, where investment exceeds £1 million or £10,000 per job, grant levels are negotiated with the IDA on the basis of numbers employed, location and type of project.

In consultation with the Industrial Training Authority (AnCO), training grants are also available for new industrial programmes, and may cover cost of training workers (in Ireland or abroad), salaries, travelling expenses, etc., of training personnel, management training expenses and costs of hiring consultants where necessary. Moreover, the IDA may, in particular cases of new projects, issue interest subsidy grants on loan capital for fixed assets, and may also guarantee loans. Special terms and conditions are usually attached to such loan guarantees. On occasion, the IDA may also take equity participation in the company which it assists. It also provides an after-care advisory service for new industries. Finally, State-sponsored industrial estates have been established by the IDA in many centres throughout the country, and the facilities offered to industrialists at these locations include: factories and factory sites (which may be rented or purchased), worker training facilities and housing for workers.

#### 3.2.1.2.2. Research and Development

The following research agencies in the public service make an input to Departmental plannings: An Foras Talúntais (The Agricultural Institute); The Institute for Industrial Research and Standards; The Economic and Social Research Institute; The Medical Research Council; The Medico-Social Research Board; The National Board for Science and Technology (a statutory body); The Institute for Public Administration, and An Foras Forbartha (Physical Planning). All the above institutes are State-sponsored for the greater part, and nearly £2 million (almost half of the entire sum spent on research by the State) is allocated annually to An Foras Talúntais (The Agricultural Institute).



The IDA, as part of its function of encouraging industrial growth, operates a grant scheme (applicable to all established manufacturing companies in Ireland) to promote the development of new and improved processes and products, particularly those suited to native conditions, and to develop Irish scientific and technological manpower resources. Research and development schemes are eligible if they are aimed at reducing the cost of the product, improving the quality of the product or developing a new product or process. Although routine quality and process control is excluded, projects designed to (a) investigate the possibility of applying a method or process (e.g., operations research technique), or (b) develop a new method in a new area of production or increase competitiveness are eligible. Specifically excluded from the scheme are the exploration and prospecting for minerals, design work aimed at a small part of the market, research on style and form as opposed to research on the functional characteristics of the product, and activities catered for by technical assistance schemes or other State agencies. Grants under this heading will not normally exceed 50% of the project cost, with a maximum of £15,000, and, when granted, the bulk of the research must be undertaken within the State. Grants are also available towards the cost of establishing general research facilities within industrial concerns. The maximum grant in these cases is 35% in designated areas, and 25% elsewhere.

In addition to the above, the IDA further promotes industrial research and development by the establishment, near Dublin, of an industrial research park. The authority provides serviced landscaped sites in this park to encourage industries to engage in any kind of research and development in an amenable environment. Non-repayable cash grants (negotiable up to 35%) are available towards the cost of the fixed assets of such research centres. Recipients of the grant must, however, take a site of at least three acres with at least 250 foot frontage, and the first buildings must not be less than 10,000 sq. feet.

### 3.2.1.2.3. Re-equipment and Modernisation Grants for Home Industry and Aid for Small Industries

Apart from encouraging the establishment of new industries, the IDA also realises the need to assist existing industries, if such industries are to survive in free trade conditions. Accordingly, the IDA (Home Industry Division) offers grants to enable firms to re-equip and modernise their factories, plants and marketing procedures. Expenditure by manufacturing (or ancillary) firms on plant, machinery or buildings in accordance with a general development plan is eligible for a grant. Grants are payable on a selective basis, and may be up to 35% in designated areas or 25% elsewhere (excluding Shannon Free Airport zone) up to a maximum of £350,000 to any one firm. The applicant must have been engaged in the eligible manufacturing activity for at least one year, and must produce satisfactory audited accounts for that period. A special, widely representative, Committee (Re-equipment Grants Consultative Committee) recommends to the IDA the criteria which should be observed in applying such grants. The Home Industries Division of the IDA also runs services to promote joint ventures (between companies manufacturing for export in Ireland and overseas complementary companies which are geared to market and sell abroad), as well as a Rescue Advisory Service from firms in commercial difficulties. In some cases the IDA assists, through joint action with other agencies (especially Fóir Teoranta, which provides assistance to companies in financial difficulties, see *infra*), suitable financial aid packages.

The IDA, through its Small Industries Division, administers special assistance (advisory and financial) to small industries (less than fifty employees and fixed assets less than £100,000). The Small Industries Programme is designed "to help viable small scale manufacturing enterprises to solve problems obstructing their growth, and to facilitate the establishment of new firms." Non-repayable cash grants are available for fixed assets at the following maximum rates: 60% in designated areas; 45% in other areas. In consultation with other State-sponsored bodies (The Industrial Credit Company Ltd, and occasionally with the Commercial Banks), credit facilities are also provided and training grants, for workers and management, are also available (in consultation with the Industrial Training Authority (AnCO)). These latter grants cover the cost of training workers in skilled industrial processes for small industries, and are available at the start of production, whether the training is in Ireland or abroad. Moreover, the Department for Industry and Commerce makes available grants of up to 50% towards the cost of engaging efficiency consultants. An after-care advisory service is also provided for such newly established small industries by the IDA in cooperation with local county development teams.

A wide range of advisory services are also available now to industry in Ireland, and these are particularly useful to small industries. The IDA frequently acts as a liaison agency between the industry and the specialist agency when the advice and expertise is not provided by the IDA itself. Examples of such advisory assistance occur in the following: Technical informational advice - from the Institute of Industrial Research and Standards; export marketing - from the Irish Export Board; design services - from the Irish Export Board and Kilkenny Design Workshop; business management - from the Small Industries Division of the IDA, the Irish Productivity Centre and the Irish Management Institute.

#### 3.2.1.2.4. Service Industries

Recently, the IDA Programme has been extended to cover service industries for international markets. Although the programme is still an evolving one and definite eligibility criteria have not as yet emerged, negotiations have already been entertained from engineering consultants, plant contractors, computer consultants, credit card companies, and computer service bureaux. To approve projects, the IDA is prepared to make available non-repayable cash grants, rental subsidies, and training grants at negotiated levels related, especially in the former two, to the location of the project.

#### 3.2.1.3. Assistance in Relation to Financing

Apart from the various grants available under the above schemes, some State financing institutions should be mentioned. The Industrial Credit Corporation, a State-sponsored body, was established as far back as 1933 (Industrial Credit Act, 1933 (No. 25 of 1933), amended by No. 10 of 1958 and No. 24 of 1959). Its main function is to provide medium and long term capital for industry. Short term loans have traditionally been provided by the Commercial Banks, which have in recent years, due to reorganisation which resulted in the Banks "merging" into two consolidated groups, established special investment subsidiaries to extend the range of services to industry. The ICC provides the following services: contract loans (usually for terms 5-15 years at fixed

interest rates), direct share subscription, under-writing of public issues, industrial hire purchase, equipment leasing and the financing of mergers. Finance is also made available in appropriate circumstances through the ICC's subsidiaries: through Shipping Finance Corporation Ltd. for shipping, and through Mergers Ltd. in the case of the promotion of desirable mergers. In the agricultural sphere, the equivalent to the ICC is the Agricultural Credit Corporation, which was established in 1927 (Agricultural Credit Act, 1927 (No. 24 of 1927)) but which has been strengthened and extended considerably by subsequent legislation since then.

In 1972, Fóir Teoranta was established (Fóir Teoranta Act, 1972 (No. 1 of 1972)). This company replaced an earlier State-sponsored company, Taisci Stait Teoranta, which has come into existence in 1963. The new company provides a "fire brigade" service for firms which, although potentially viable, are in danger of going to the wall because of the inability to raise capital from commercial sources. Such financial assistance is usually given subject to restrictive conditions, for example, the insistence that a brake should be put on the issuance of dividends, that Government nominees should sit on the Board of Directors, etc.

### 3.2.2. Exports Promotion

In addition to the taxation reliefs already referred to, mention should be made here of the services provided by Córas Tráchtála (Irish Export Board - CTT) and to the schemes for export credit and export credit insurance in existence since 1971.

Córas Tráchtála, a statutory corporation financed by State grants, was established in 1959 to assist industry to find foreign markets and to promote exports generally (Export Promotions Act, 1959 (No. 20 of 1959)). Members of the Board are appointed by the Minister for Industry and Commerce, and the Board is financed by a grant in aid under the vote for the Department of Industry and Commerce (£2.4 million for 1973/1974). It provides a wide range of aids for exporters, including grants towards advertising in foreign markets, the training of design staff, and market investigation in European countries. In 1963, these grants were extended to cover market research, design study tours and cooperative export ventures. An advisory service is also provided by Córas Tráchtála. At present, the Board is prohibited by Statute from participating in direct trading.

Since January 1971, the State has also provided a scheme, through the agency of the Insurance Corporation of Ireland Ltd., of comprehensive insurance cover under a single policy for goods manufactured in Ireland and exported on credit terms. The scheme covers, inter alia, the following risks: failure of the buyer to pay within 6 months, failure of the buyer to accept the goods, insolvency of the buyer, operation of any law restricting transfer of payments from buyer's country, occurrence of war, revolution, etc. With some exceptions, importers will usually be expected to offer for insurance their entire export turnover. The premium is charged as a percentage of total annual exports and the rate, as might be expected, varies depending on the type of goods, the period of credit, the country of destination, and previous bad debt experience, etc.

An export credit scheme was established in 1971 by the Associated Banks and the Insurance Corporation of Ireland, and through it finance was made available (without State subvention) on preferential terms to Irish exporters of capital goods. Under the scheme the Associated Banks provided up to 1% of their domestic resources to finance exports of medium term capital goods. Initially, the preferential rate was 7%, but recently it rose to 8%. (The current cost of money being 13%, approx.) The scheme had been criticised by Irish industrialists as being inadequate and, in response to this criticism, the Government introduced, in May 1975, a new scheme to provide finance at preferential interest rates for capital good exports. Under this scheme, the Government will pay the difference between the Commercial Banks' interest rates and an interest rate of 8% on loans for the export of capital goods. The loan will be available for periods of between one and five years, and will be secured on an export credit insurance policy. At present commercial rates, this represents an interest rate subsidy of upwards of 3½%. The new scheme does not involve any maximum amount on the total lending for capital exports.

Finally, the Minister for Industry and Commerce has announced in Parliament, on 4 July 1975, the Government's intention of participating, with a number of prominent private business concerns, in the establishment of an Irish trading company. At present, it is envisaged that the State will have an equal share in this company with the other promoters, and "the intention is that this trading company will purchase products of Irish manufacturers, and sell them in selective overseas markets, which will bridge the gap in the marketing resources of many Irish companies and their potential, because there are export markets all over the world which the little company cannot reach." Although this development evidences a desire by the State to play a more active role in export promotion, there was no desire that such a State trading company should occupy a monopoly position. Rather it is a further example of State involvement in circumstances where private enterprises has been unable, or unwilling, to provide the necessary service.

### 3.2.3. Regional Policy

Regional policy, as it exists in Ireland at present, occurs principally in the industrial context, and springs from a belief that industrial development is the best instrument available in Ireland to correct the present regional imbalances that exist within the country. Assistance given to agriculture and to services do not usually emphasise regional aspects nowadays, and if some of the schemes of assistance in agriculture, or tourism (to instance but one of the service industries), do promote regional development, it is usually in incidental spin-off rather than a planned result. A survey of the various grants and aids available to agriculture and tourism (see below 3.3.1. and 3.3.6.) will reveal that, while in their variety some of the aids may promote regional aims, they are not primarily designed to do so.

Since 1952, the Government has tried to encourage industrial investment into what were called underdeveloped areas (i.e., areas, largely in the West of Ireland, which had higher rates of unemployment and emigration). The Underdeveloped Areas Act, commencing in 1952, and the Industrial Development Acts, which commenced in 1959, provided the main legislative basis for these activities. In 1969, the Industrial Development Authority was established and was given national responsibility for industrial development in Ireland. Apart from its main function of attracting foreign investors and of assisting home

industry to expand and develop, the IDA was also assigned the additional task of regional industrial development. The IDA continues its regional policy by keeping its capital grants for designated areas at a higher rate than for non-designated areas. Moreover, this differential is maintained throughout its scheme of incentives as far as possible.

A realisation that the objectives of the national economy (continued growth, full employment, reduction of involuntary emigration, balanced regional development and minimum of population dislocation) could only be achieved within a "sub-national framework at regional and local levels" gave rise to the commissioning of several regional planning studies, the most general of which was "Regional Studies in Ireland" (the Buchanan Report) published in 1969. This report encouraged the evolution of a national policy for regional development. According to Buchanan, the best method of achieving rapid regional economic development lay in the concentration of expansion resources in a small number of growth centres.

As the statutory authority charged with regional industrial development (Industrial Development Act, 1969 (No. 32 of 1969)), the IDA published its regional strategy in 1972: Regional Industrial Plans, 1973-1977, Part 1. In this document, the IDA opts for a policy which favours greater dispersal of resources than the "concentrated investment" suggestion of Buchanan. In particular, the IDA favoured a job location policy which could contribute to:

- (a) The limitation of population growth in Dublin to that equivalent to its natural increase;
- (b) The conscious build-up of the larger population centres other than Dublin;
- (c) Remedial action as a preliminary to active growth in areas which continue to experience population decline;
- (d) The encouragement of centres which would provide an industrial nucleus in areas largely dominated by agriculture.

New jobs were to be distributed throughout the country (outside of Dublin) so that each county would have at least as good a population performance as it did in the best quinquennium between 1961 and 1971.

To achieve these objectives, the IDA articulated screening criteria, against which applications for grants are assessed; it also began to use its range of incentives to divert and encourage investments to regions in furtherance of its own policy in this matter. In its policy, the IDA encourages the kind of industry which displays (i) commercial stability (high profitability and strong growth prospects), (ii) a dependence on a highly skilled work force, (iii) the ability to avail of natural resources and (iv) a tendency to promote economic and social values by not being too capital intensive, has a high male labour content as well as a high potential for inter-industry linkages. Companies and individuals are, of course, also assessed on their strength and their ability, by dynamic policies, to generate future investment and growth. It should be emphasised, however, that the IDA emphasises flexibility and sensitivity in the operation of its policy in this regard, and individual applications will be examined on their merits, and the above criteria are used more as guides rather than as rigid selection criteria.

In its analysis of regional problems, the IDA also recognises, however, the limits of its ability to influence the location of industry in these matters.

To mention but one example, the IDA cannot realistically force industry into areas where suitable infra-structure does not exist.

As well as operating its incentives on a selective basis, and by the maintenance of the statutory grant differential for designated areas, the IDA also promotes regional objectives by maintaining regional offices through the country and by constructing industrial sites and buildings in areas of priority. In harmony with its ideas concerning growth centres, State-sponsored industrial estates have been established in Galway, Waterford, Shannon and Limerick, and the facilities offered to industrialists at these locations include factories and factory sites, worker training facilities, and housing for workers.

Two specific regional developments should also be noted: The Shannon Free Airport Development Company (SFADCO) and the Gaeltacht.

In 1959, the Shannon Free Airport Development Company (SFADCO) was established to develop passenger and freight traffic through Shannon Airport by establishing an industrial and warehousing estate at the Airport and by developing the tourist amenities in the area. The company is financed by the State, and, as well as operating a customs free industrial zone, it provides various incentives and grants (through the IDA) to industries established at Shannon. The incentives are available for industrial and warehousing operations and internationally orientated office-type projects, and include: non-repayable cash grants (negotiable in each case, up to 100% in the case of the training workers, but with a maximum of 35% on cost of new plant and machinery); the construction of buildings at the Airport to be sold or leased to new enterprises; information and direct assistance in relation to such matters as labour recruitment, transport facilities, housing, etc.; provision of dwellings, etc., for workers employed on the estate; the provision of accomodation for leasing to companies engaged in exporting services. Industries established at Shannon are exempted until 1990 from taxes on export profits and are relieved of normal customs restrictions relating to the importation of goods (Customs Free Airport Act, 1947, amended by the Customs Free Airport (Amendment) Act, 1958). Under the 1958 Act, an industry requires a licence to carry on a business at the Airport. Since 1968, SFADCO has acted as the IDA's agent for the industrial development of the surrounding (Mid-West) region. At present, in this capacity, SFADCO is engaged in building industrial estates and advance factories throughout the region.

On the tourist side, the company actively promotes the region by the improvement of accomodation facilities, the promotion of rent-a-cottage schemes, and the development of medieval banquets and castle tours in the region.

Finally, one special regional problem may be mentioned: the problem of the Gaeltacht. The Gaeltacht areas are located, in the main, on the very tips of the Western Coastline. In these areas, 30,000 people speak the Irish language as their mother tongue. Successive Governments, to promote the fostering of the Irish language and to maintain the Irish speaking population in these areas, encouraged suitable economic activities and developments by way of various schemes. These schemes are administered principally through the Department of the Gaeltacht and through the specialised agency of Gaeltarra Eireann, but Government policy also expects other Departments and State agencies (and local authorities) to give priority to all aspects of Gaeltacht development. Some of the schemes under this heading have no counterparts outside Gaeltacht areas, while others are merely schemes already applicable to the rest of the country, but available in the Gaeltacht on more generous terms.

Of the funds voted annually for the Department of the Gaeltacht (estimated at £4.6 million for 1974/1975), the vast bulk is for the direct benefit of the Gaeltacht (80%, according to the Devlin Report). The remainder is spent on language promotional activities and on administration. The following schemes are administered by the Department of the Gaeltacht: Roads and Marine Works (full cost borne by the Department); Water Supply and Sewage (25% borne by the Department to supplement 60% from the Department of Local Government); various incentives to Agriculture on more favourable terms than, or supplementary to, schemes of the Department of Agriculture and Fisheries; Construction of Schools (85% of cost), Irish Colleges (80% of cost) and Community Halls (80% of cost); provision of Hotels, Guest Houses, etc. (grants up to 20% to supplement grants from Bórd Fáilte Éireann - Irish Tourist Board), decorating and furnishing rooms for visitors (up to 75% or £200), direction and equipment of Work Rooms (up to 80% or £200), and other amenities, for example, playing fields, tennis courts, etc. (up to 80% or £2,000). In addition, various cultural and social schemes are designed to promote the use of the Irish language (for example, incentive grants to Irish speaking families in the Gaeltacht and schoolchildren grants to cover learning holidays in the Gaeltacht). Lastly, miscellaneous aids to promote the Irish language are not all geographically confined to Gaeltacht areas, but are available to assist Irish newspapers, etc., films with commentaries in Irish, and various Irish language organisations.

Gaeltarra Éireann is a State-sponsored body established by the Gaeltacht Industries Act, 1957 (No. 29 of 1957). Its powers were extended by the Gaeltacht Industries (Amendment) Act, 1957. Its principal function is to create and develop industries in the Irish speaking areas of the country. It promotes its objectives by giving grants to industries, by participating with other enterprises in industrial ventures and by administering industrial estates in Gaeltacht areas. The grants it makes available are as follows: non-repayable cash grants up to 60% on the cost of factory premises, and a similar 60% grant on the cost of machinery and equipment; non-repayable cash grants up to 100% on the cost of training workers. In addition, Gaeltarra Éireann can provide a portion of the capital by taking an equity share in the aided company. Usually, such participation ranges from 26% to 49% of the share capital. The main industries in which Gaeltarra Éireann is involved are the Handwoven Tweed Industry, the Knitwear Industry, the Lace and Embroidery Industry and the Toy Industry.

### 3.3. Assistance to Particular Economic Sectors

#### 3.3.1. Agriculture

Although agriculture occupies a less dominant position in the Irish economy than it did in former times, its relative importance and prominence is still a noteworthy feature of the Irish economy. This may be judged by the number employed in the industry and by its contribution to the national income and to the balance of payments. It is estimated that, of the total labour force, 25% is engaged in agriculture (almost 30% of all males at work are employed in farming), and that agriculture accounts directly for about one-sixth of the total national income. Furthermore, a considerable proportion of industry is engaged in processing agricultural products or is dependent on agricultural raw materials. In relation to the balance of payments, almost 40% of all exports are agricultural exports and the agricultural content of imports is low.

Apart from the fairly typical agricultural problems that seem to plague most agricultural communities in Western Europe nowadays, special reference may be made to some problems which may be more or less peculiar to the Irish situation. Firstly, the number of small holdings in the State is considerable: 48% of the total holdings do not exceed 30 acres (12 ha.) while almost 70% do not exceed 50 acres (20 ha.). Secondly, the inability of the non-agricultural sector to absorb the surplus labour leaving the agricultural sector has resulted in a high level of emigration. Thirdly, the smallness of the home market means that any growth in agricultural output must find an export market.

Ireland's accession to the European Economic Community has meant that Ireland's agricultural policy will have to be progressively integrated into the Community's Common Agricultural Policy (C.A.P.) by 31 December 1977, according to the terms of the Accession Treaty. This adjustment, however, will primarily concern the mechanisms used to achieve agricultural objectives rather than the substance of Irish agricultural policy itself, which still remains fully relevant even after accession. Consequently, the main objects of Irish agricultural policy, as stated in the Third Programme of Economic and Social Development 1969 to 1972, are still important. These were:

- (a) increasing efficiency in the production, processing and marketing of farm products;
- (b) ensuring that agriculture makes the highest possible contribution to the economic and social progress of the nation;
- (c) ensuring that farmers who work their land fully and efficiently share equitably in the growing national prosperity and that a reasonable relationship is maintained between farm incomes and incomes in other occupations;
- (d) improving the structure of agriculture and strengthening the economic and competitive capacity of the viable family farm;
- (e) aiding the smaller and economically more vulnerable farmer to secure an acceptable level of income;
- (f) improving the conditions of access to external markets for agricultural exports.

State expenditure in relation to agriculture rose, especially in the years before accession to the EEC (i.e., 1973), and, although large in relation to the total budget, must be understood in the light of the relatively small industrial sector and the high proportion of the labour force engaged in agriculture. In relation to the income arising in agriculture, however, and in comparison with other countries, the total cost of the State of this agricultural assistance is relatively small. Moreover, State expenditure in relation to agriculture has declined since accession to the EEC. There is, however, no lack of variety in the schemes through which this assistance is given, as the following description will readily disclose. Matters of a regulatory nature affecting agriculture will be treated at a later point under the heading Economic Sectors subject to Comprehensive Regulation (6.1. infra), and in particular matters relating to prices and marketing, will be dealt with at that point. Such matters, however, must also be viewed in the context of the general remarks made above.

Most of the schemes mentioned hereunder are specifically authorised by special acts of Parliament which, generally speaking, enables the Minister (usually the



Minister for Agriculture) to implement the scheme by way of statutory instrument. Such statutory instruments may usually be annulled by Parliament within a specified time limit. In some cases the enabling statutory provision is not used at present, as a change in agricultural policy may not now favour such a scheme. Insofar as State aids are implementing EEC directives on this matter, this will normally be done by way of statutory instrument issued under the more general provisions of the European Community Acts, 1972 and 1973 (No. 27 of 1972 and No. 20 of 1973), and such ministerial regulations may also be challenged by Parliament within a period of 6 months from the date of issue. In this way, Community Directives 159/72 and 160/72 have been incorporated into Ireland by regulations issued under the European Communities Acts, 1972 and 1973.

The following are the most important schemes of assistance in existence at present:

(a) Schemes to Promote Efficiency and Productivity

A number of grant schemes (especially those relating to land improvement works, construction and farm buildings, roads, installation of water supplies, etc.) which previously provided financial assistance for farm development and which existed by virtue of special statutory authority (e.g., Arterial Drainage Act, 1945 (No. 3 of 1945) and Land Reclamation Act, 1949 (No. 25 of 1949), etc.) have now been drawn together in the Farm Modernisation Scheme which gives effect to EEC Directive 159/72. The scheme is a comprehensive one and the aids available differ, depending on whether the farm is categorised as a development farm, a commercial farm, or a farm which, at present stage of development, is in neither of the other two categories. The policy of the scheme is to promote development farms and, accordingly, development farmers get the most favourable level of aids. All farmers must, however, get written Ministerial approval for all development work for which he proposes to seek aid. The following table shows the overall range and level of State aids available under this scheme:

Development Farms

Land improvement	50% capital grant or 9% interest subsidy for a period of up to 15 years on amount borrowed.
Fixed assets	30% capital grant or 5% interest subsidy for a period of up to 15 years.
Initial purchase of extra stock for beef and mutton production	10% capital grant or 5% interest subsidy for a period of up to 5 years.
Mobile equipment	10% capital grant or 5% interest subsidy for a period of up to 5 years.
Guidance Premium for beef and sheep	First year, £8.40 per acre subject to limit of £2,080 per farm.

	Second year, £5.60 per acre subject to limit of £1,385 per farm.
	Third year, £2.80 per acre subject to limit of £695 per farm.
For keeping farm accounts	£210 over 4 years.
Priority access to lands released under the Retirement Scheme	(See 3.3.1. (d) infra)

#### Commercial Farms

Land improvement	40% capital grant or 7% interest subsidy for a period of up to 15 years.
Fixed assets	20% capital grant or 3% interest subsidy for a period of up to 15 years.
Farm accounts	£210 over 4 years.

#### Other Farms

Land improvement	50% capital grant or 9% interest subsidy for a period of up to 15 years.
Fixed assets	30% capital grant or 5% interest subsidy for a period of up to 15 years.
Farm accounts	£210 over 4 years.

Land improvement schemes for mountain areas still exist, however, in Ireland and will continue until they are replaced by proposed Community measures in this area. Cash grants are made available, especially for fencing schemes but also, in certain cases, for limited reclamation work and surface treatment.

Allowances, by way of abatements of rates, are given by County Councils to occupiers of agricultural land in rural areas. These allowances are 100% in cases where the aggregate of the land valuation does not exceed £20, but is partial for holdings whose valuation is over £20. County Councils are reimbursed from central funds for the loss of revenue involved in these abatements and the statutory basis is to be found in the Rates of Agricultural Lands (Relief) Acts (e.g., No. 35 of 1964). Lastly, in this context, new and improved farm buildings have a remission from rates for an indefinite period if they have been completed since 1959.

The following are miscellaneous examples of other aids available:

(i) The full cost of delivery of ground limestone from the quarry to the farmer's land, is covered by a subsidy, and so any farmer can have his lime-

stone requirements delivered free of transport costs. Low interest loans are also available to farmers for the purchase of fertilizers and lime. Moreover, subsidies are paid to manufacturers and importers of phosphatic and potassic fertilizers who are required to pass them on to farmers by way of reduction in the price (schemes made under Seeds and Fertilizers Supply Act, 1956 (No. 19 of 1956)).

(ii) Various breed improvement schemes are made available for livestock, and apart from regulatory schemes which, for example, require all bulls, boars, etc., to be licenced, involve such aids as the leasing of State boars, rams and bulls, to herd owners, the payment of premiums to private herdowners who maintain same for service, grants for purchase of quality livestock, productivity subsidies for lambs and foals, etc. Other schemes of minor importance also exist, but do not warrant inclusion here.

Two policy schemes which are designed to encourage farmers to switch their production efforts to more promising lines should be mentioned: The Beef Cattle Incentive Scheme and the EEC Dairy Herds Conversion Scheme. The former was introduced in 1969 to encourage the production of good quality beef. Initially, a grant was payable to herdowners in respect of each suitable cow, in excess of two, present in the herd, and accompanied by a suitable calf at two consecutive official inspections, and in milk at the first inspection. The grant rate was £21 for the first qualifying cow (the third in the herd), £19 for the second qualifying cow (the fourth in the herd), and £16 for each subsequent cow. Because the conditions which led to the introduction of the scheme no longer obtain, however, the Government has recently (February 1976) announced that it is curtailing the scheme. Payments under the scheme are to be reduced to a maximum of £300 per producer, and the level of payments per animal will also be reduced to bring the scheme into line with less generous headage payments under the EEC Handicapped Area Scheme. Farmers in the 'handicapped areas' will no longer have a choice of both schemes, but must opt in future for the EEC scheme. The second scheme - an EEC measure incorporated into Irish legislation by the European Communities (Dairy Herds Conversion Premium) Regulations, 1973 (S.I. No. 345 of 1973) - provides a premium to a producer who gives up all supply of milk for a four-year period while maintaining the same level of cattle units. Different categories of livestock have varying unit values and minimum holdings of cattle are required. The premium is 7.5 u.a. per 100 litres of milk supplied by the producer during the previous twelve months. Producers who are recipients under this scheme cannot benefit under the Beef Cattle Incentive Scheme mentioned above.

#### (b) Provision of Agricultural Credit

The Agricultural Credit Corporation was established in 1927 by the Agricultural Credit Act, 1927. It is a fairly typical State-sponsored body which are a common enough feature of the Irish economy (2.5.1. Supra) and was designed to provide farmers with credit facilities. Originally very dependent on exchequer support, the A.C.C. has, in recent times, built up its own deposits to such an extent that its reliance on Government funds nowadays is negligible. The A.C.C. makes loans for the purchase of livestock, machinery and fertilizers, for land

drainage and improvements, and for farm building programmes at favourable rates (8%-14%) and on generous repayment terms (5-35 years). In addition, to encourage livestock development projects, a £10 million loan has been granted by the World Bank to be channelled through the A.C.C. and the Associated Banks. Long term finance on favourable rates is also available for beef breeding, rearing and fattening, combined beef and dairy farms, and pig productions and enterprises.

(c) Advisory Services and Aids for Education and Training

There is in every county a Committee of Agriculture (established under the Agriculture Act, 1931 (No. 8 of 1931)) which maintains an advisory service and operates schemes designed to develop agriculture and horticulture, and to benefit rural dwellers. The funds of such committees are partly from local rates and partly from the central exchequer. The staff employed by these committees provides advisory and educational programmes and courses for the agricultural community. In solving difficult technical problems, these officers can call on the specialist expertise of the Department of Agriculture and An Foras Talúntais (The Agricultural Institute - a State-sponsored research institute established in 1958 by the Agriculture (An Foras Talúntais) Act, 1958 (No. 1 of 1958)). The Irish Agricultural Organisation Society, Limited, which receives an annual grant from the Government, gives advice and assistance to co-operative ventures.

On the educational side, Government assistance is by way of grants to privately owned colleges which provide courses in Agriculture, Rural Home Economics, Horticulture, etc. It also assists by aiding Farm Apprenticeship and Trainee Farmer schemes and part-time non-residential courses.

Under EEC Directive 161/72, an advisory service will be introduced to provide socio-economic guidance and vocational training for persons engaged in agriculture so that they can improve their farming skills and integrate into modern agriculture. In accordance with this directive, suitable schemes are being adopted in Ireland.

In April 1975 the Government published a White Paper (Prl. 4501) in which it outlined proposals to rationalise existing advisory, educational and research services in the agricultural sector. In particular, the Government proposes in the near future to establish "a unified National Agricultural Advisory, Education and Research Authority paid for out of public funds but with provision for the agricultural industry to contribute towards its cost so that farmers may influence its work and may be given an authoritative position in its operation". The Authority will be constituted as an Executive Agency of the Minister for Agriculture and Fisheries. This development is seen to be essential if persons engaged in agriculture are to develop technically and managerially, and if there is to be a closer association, as seems very desirable, especially in the EEC schemes, between advisory services "scheme services" and the research services of An Foras Talúntais (The Agricultural Institute). Legislation giving effect to this new national authority is expected to be introduced in the near future.

#### (d) Improvement of Structure

The Land Commission (established by the Land Act, 1923 (No. 42 of 1923)) is the main agency which operates State-aided programmes for structural reform in Ireland. Its principal function from the earliest days has been to create viable farm units - this involves consolidating small holdings and sub-dividing large estates - and to this end it has been vested with substantial powers of acquisition and distribution under its creating statute.

Apart from the general structural schemes of the Land Commission, the Small Farm (Incentive Bonus) Scheme was introduced in May 1968. Under this scheme, the owners of small farms which are capable of development over a 4 to 6 year period are given a special bonus grant of £500, spread over 4 years, provided the farmer carries out a farm development plan drawn up in consultation with his agricultural instructor and designed to develop production to at least a gross margin level of £1,000. The farmer is obliged to keep simple farm accounts. The policy behind this scheme, viz, to encourage farmers to develop according to a plan, is very close to the idea behind the EEC directive on Farm Modernisation (159/72 supra), and, not surprisingly, the EEC scheme has now replaced the native Small Farm (Incentive Bonus) Scheme.

Closely linked to these schemes is the Retirement Scheme for Farmers, outlined in EEC Directive 160/72 and implemented by European Communities (Retirement of Farmers) Regulations, 1974, S.I. No. 116 of 1974, and operated in Ireland by the Land Commission. Under this scheme, various financial inducements are offered to farmers whose holdings do not exceed 45 adjusted acres and who are willing to sell their land to the Land Commission or sell it or lease it (for at least 12 years) to a farmer whose approved development plan under the Farm Modernisation Scheme provides for the acquisition of additional land. The financial inducements are greater for a person over 55 years of age.

Lastly, in addition to the above schemes, special arrangements operate for Congested Districts (provided for under the Land Act, 1965 (No. 2 of 1965)) and for Gaeltacht areas. In the Gaeltacht areas, these arrangements include the provision of a number of day-old chicks, trees, plants, shrubs, grass seeds, fertilizers and lime, at greatly reduced costs. In the congested areas, provision is made for additional advisors and the opportunity of purchasing, at considerably reduced prices, good quality bulls and rams to stand for service in the congested districts.

#### 3.3.2. Fisheries

The Inland Fisheries Trust Incorporated was established by the Government in 1951 to develop brown trout fishing, and its powers were extended in 1957 to the promotion and development of all forms of angling as a tourist attraction and national amenity. Membership is open to all anglers, and the Trust is principally financed by grants from the State, as supplemented by membership fees.

The development of the Irish sea fishing industry is placed in the hands of *Bórd Iascaigh Mhara* (BIM) by the Sea Fisheries Act, 1952 (No. 7 of 1952), which gives the *Bórd* wide powers to promote the sea fishing industry. In 1963, the *Bórd* was reorganised as the development authority for the industry. The *Bórd* is

financed by way of grants and repayable advances from the Government. The estimate for all expenses in relation to sea and inland fisheries for the year ending December 1975 is £4,240,000, of which £3,840,000 goes to BIM. In the marketing sphere, the Bórd provides a market information and research service, organises sales promotion programmes, participates in food fairs and exhibitions and promotes group marketing under a common quality seal. It also promotes investment in the industry, conducts feasibility studies and liaises with other Government Departments and agencies for the provision of requisite infrastructure for the industry. It operates a more or less independent boat-building division.

More direct aid to the industry is given in the three grant schemes operated by the Bórd. The Marine Credit Plan provides aid for the acquisition of fishing craft, the replacement of engines, deck and electronic equipment, and for hull improvements. Grant terms are agreed in each individual case, but the normal level of assistance for fishing vessels of under 90 feet is as follows, and may be taken as a fair indication of the general level of assistance available under the other schemes in this area: grant - 25% of total cost; loan maximum 70% of total cost - normally repayable by fixed monthly instalments over a ten year period at the subsidised interest rate of 5%; prepayment minimum - 5% of total cost; and an incentive grant of 10% of total cost if the loan on the new vessel is cleared within 10 years or the agreed loan term, whichever is less.

Grants are also available to cooperatives and coastal distributors for new or improved distribution centres at fishing ports and also for investors in pilot fish-farming projects.

Each application for a grant under the Marine Credit Plan is considered on its merits and the BIM authorities must be satisfied in particular with regard to the credit standing of the applicant, the applicant's ability to successfully operate the vessel for which finances are sought and it must also be assured that the grant or loan-aided vessel will be operated within the Irish fishing industry. BIM must approve of the construction and design of the fishing vessel or the nature of the improvement. Capital grants under this scheme are subject to a control period of from 7 to 10 years, and, should the vessel cease to operate as a commercial sea fishing boat within the Irish fishing industry during the control period, a proportion of the grant must be repaid to BIM. As an example of the conditions that attach to other grants given by BIM, one may take as a fairly typical example, the conditions that attach to grants available for the erection of ice plants. The conditions under which such grants will be given are as follows:

- (1) A signed agreement to be entered into with BIM.
- (2) A minimum of three quotations to be received for the plant and all other work to be done.
- (3) BIM approval must be had for the placing of the order for plant and other work and also approval must be had for the quality of workmanship.
- (4) The payment of the requisite percentage of the cost of the plant must be made to the suppliers.
- (5) The plant, installation and buildings housing the plant for which the grant is sought, must be insured for the full value against fire and storm damage, and the policy must be approved by BIM.

- (6) No item for which the grant is sought must be sold without the Bórd's approval for a period of 5 years from the receipt of the grant.
- (7) Where the grant is given for building works, proof of clear title to the site is necessary.
- (8) Planning permission from the appropriate planning authority must be obtained before the commencement of any structural work.

It should be mentioned, finally, that in addition to these special grants available from BIM, shore based developments in the sea fishing industry may also qualify for the more general grants and assistances administered by the IDA (3.2. supra) and, in such applications, BIM acts as a clearing house for other Governmental agencies.

### 3.3.3. Shipbuilding

The shipbuilding industry is of very modest dimensions in Ireland, and for practical purposes is confined to one shipbuilding company, Verolme Cork Dockyard. At present, there are two types of aid available to the shipbuilding industry, namely, a shipbuilding subsidy and a shipbuilding loan.

(i) Shipbuilding subsidy: In the event of a loss occurring in the building of a ship, payment to the shipbuilders of 8% of the contract price or the loss, whichever is the lesser, may be made. Under the current EEC directive, Ireland is allowed to continue this subsidy scheme on condition that it is digressive. The only condition for qualifying for this subsidy is proof that there has been a loss by the shipbuilding company. In recent years, the amount of this subsidy has been very small as no losses have, in fact, been incurred by the shipbuilding companies.

(ii) Shipbuilding loans: The EEC directive on this matter limits loans to 70% of the contract price of the ship, the rate of interest to be not less than 8%, and the duration of the loan to be a period not exceeding 7 years. The extent of the Government's subsidy is the difference between the commercial borrowing rate and the rate charged on the loan to the buyer. This scheme is in accordance with OECD requirements, and in fact, in most cases, the loans have been less than the total committed amount.

The interest subsidy is administered through Shipping Finance Corporation Ltd. (a subsidiary of the Industrial Credit Company), and the estimate of expenditure for 1975 is £385,000.

### 3.3.4. Extraction and Processing of Minerals

The Finance (Taxation of Profits of Certain Mines) Act, 1974 (No. 17 of 1974) was designed to withdraw the 20 year tax exemption in favour of profits from the mining of non-bedded minerals provided for in the Income Tax Act, 1967 (No. 6 of 1967), and to replace the exemption by a new scheme of tax allowances. The 20 year tax holiday, which existed up to 1975, was, in recent years, considered to be over-generous to mining companies. In recent years, a greater indication of substantial mineral wealth in the country, a new realisation that

the 20 year tax holiday provisions would, in fact, mean that many mining companies would never pay any tax because of the nature of the wasting asset involved, and a change in international attitudes to the exploitation of natural resources, all argued for a reduction of the tax benefits and exemptions which accrued to mining companies up to now.

The new scheme of allowances provides for the immediate writing off of exploration and development expenditure against profits from the mining of scheduled minerals and for free depreciation of plant and machinery used in connection therewith. A special investment allowance of 20% of expenditure on exploration incurred is also provided for in the Act as an incentive to encourage further exploration. This means that 120% of such exploration expenditure will be allowed against mining profits from now on. An investment allowance of 20% of capital expenditure on new plant and machinery used in connection with qualifying mines will also be granted in future. Such an allowance is already available in the "designated areas" of the State but would apply, in future, throughout the State irrespective of where the mining operations take place. Moreover, an allowance is provided in respect of abortive exploration expenditure under certain conditions. Provision is also made for an annual mineral depletion allowance, so that the cost of acquiring a scheduled mineral asset can be written off over the life of the mine, but the net proceeds from the disposal of such assets are being charged to tax.

Finally, the Act provides that where the Minister for Industry and Commerce certifies that a mine is unlikely to be worked because of the tax chargeable on the profits of that mine (that is, a marginal mine) then the Minister for Finance, having consulted the Minister for Industry and Commerce, may direct a reduction of the tax charge on the profits to such an amount (including nil) as he may specify.

### 3.3.5. The Film Industry

The film industry in Ireland at present is undeveloped, and its recent history can be traced very briefly. In 1958, a private company set itself up for the purpose of making films at Ardmore Studios with the aid of a loan from the Industrial Credit Company Ltd. Because of the absence of an organisation to put up risk capital in Ireland between 1958 and 1960, however, there was an under-utilisation of the facilities at Ardmore and, to remedy this, the Irish Film Finance Corporation (a wholly owned subsidiary of the Industrial Credit Company Limited) was established. Between 1960 and 1962, the IFF Corporation participated in financing 15 films to the extent of £385,000, and many of these were economically unsuccessful. Ardmore Studios got into further financial difficulties, and, in 1973, it was purchased by the Government.

In 1970, plans to put the film industry on a firmer footing found expression in the Film Industry Bill of that year. This bill envisaged the setting up of a Film Board (a State-sponsored body) for the purpose of promoting and financing the development of an Irish film industry. It lapsed, however, with the change of Government in 1973. The present Minister for Industry and Commerce has now under consideration the introduction of a new film industry bill, somewhat on the lines of the 1970 measure, and, until the proposed legislation is enacted (by the end of 1976, it is hoped), there is no way by which the State can aid the film industry. Consequently, there are no specific aids available at present to film makers in this country.



### 3.3.6. Tourism

Tourism has, since 1939, been looked upon as an important industry in Ireland, and one which deserves substantial State assistance. Nowadays, this assistance is channelled by the Government through the State-sponsored body, Bord Failte Eireann. Bord Failte Eireann was established under the Tourist Traffic Act, 1955 (No. 5 of 1955) which merged two older bodies, An Bord Fáilte and Fogra Failte. Bord Fáilte Eireann, therefore, is a body corporate established by statute and financed by annual Government grant. Bord Failte is concerned with all aspects of tourist development and co-ordinates the activities of eight regional tourism companies.

To promote its objects Bord Failte gives grants and aids under various schemes, the most important of which are the following:

- (i) Development and improvement of accommodation;
- (ii) Commercial promotions;
- (iii) Development of major tourist resorts.

#### (i) Development and Improvement of Accommodation

Under this heading two major grant schemes exist at present for the improvement of hotels and guest houses. Firstly, grants are available for repairs and renewals, and, secondly, for improvements, amenities and staff accommodation. The first scheme applies to normal structural repairs, re-decorations and repairs and replacement of furnishings and equipment. Businesses spending less than 5% of aggregate turnover over the previous 3 years on eligible repairs and renewals and making adjusted profits of less than 5% of aggregate turnover for the 3 years or incurring adjusted losses of any size are eligible for the grants. Subject to certain maximum limits (50% of cost of eligible works is the normal limit now), grant levels are determined by reference to the following criteria: the nature of the proposed work and its importance in the context of tourism; the operational and management standards of the premises; and the adequacy of the existing and proposed levels of expenditure on eligible repairs and renewals in the context of the desired industry level (5% of turnover per annum). The second scheme applies to structural improvements in all existing areas of the premises and to the provision of guest recreational amenities and staff accommodation involving structural works including new installations (for example, central heating, built-in furniture, lifts, etc.. The scheme is not designed to add additional accommodation, but rather to improve existing facilities. The scheme operates on a selective basis and seeks: to make the best use of limited financial resources, to assist those premises which are of most importance to tourism, to avoid unnecessary duplication and to ensure that the standards and facilities provided are in line with market requirements. The factors which will be taken into account in assessing an application are: the existing tourist importance and potential of the premises, the nature of the proposed works, their relationship to other tourist developments in the locality, the effect of the works on the economy of the business and on the standards, operation and promotion of the premises. All work which is the subject of a grant under both these schemes must be executed to the satisfaction of the Board. Moreover, recipients are required to keep the premises registered with Bord Failte for at least 10 years after receipt of such a grant.

#### (ii) Commercial Promotions

Grants are also available in recent years to encourage commercial promotions, other than accomodation, such as, charter boats on the Shannon, horse-drawn caravans, sailing establishments, commercial golf courses, riding establishments, fishing boats, sea angling, etc. Grants, mostly of a capital nature, are for a maximum of 50% of the total expenditure. At present, the policy is to give the full grant (i.e., 50%) if the scheme is approved. As the profit making aspect assumes importance here, grants may be greater if the activity is to be carried on in an underdeveloped or lowly populated area. Apart from examining the suitability of the proposed activity, the Board will also look for the following before giving a grant here: the fitness of the applicant; the financial and operational structure of the scheme; the physical planning and environmental aspects of the proposal; and the market demand. If a grant is awarded, Bord Failte usually insist on a company being formed, to the Board of which they can nominate some directors. Moreover, all physical and structural development must conform to their standards, and, if it is a multiple unit activity (e.g. boats), each unit must be approved. Lastly, the recipient of such a grant undertakes, firstly, to cooperate with the Board and the Regional Tourist Authorities, secondly, not to insist on unreasonable charges and, thirdly, not to sell, in whole or in part, the establishment without the written approval of Bord Failte. It is normal for the Board to seek repayments if such a sale takes place out of tourism.

#### (iii) Major Resorts

In recent years, Bórd Fáilte spent up to £4 million in developing selected major resorts throughout the country. These developments involved the payment of very little private money and they were intended to provide a local facility for the community and the tourist. As no great emphasis was placed on repayments in these types of grant, the criteria and conditions of such grants were not too important. Such development schemes are being phased out now, and are of limited significance.

Bórd Fáilte also plays a role in the environmental sphere by acting as an agent in purchasing amenity areas which it transfers to other bodies (e.g., the Board of Works or local authorities), by fulfilling its role as a prescribed body under the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963), and by generally trying to improve the standard of physical planning (by promoting tidy town competitions, national garden competitions, etc.), and by encouraging scientific studies.

A regulatory function is also conferred on Bórd Fáilte by the Tourist Traffic Acts, 1939-1972 with regard to the use of certain titles of designation, such as, hotel, motor inn, motel, guest house, holiday camp, etc. Bord Failte maintains a register of such establishments and registration is required before use is made of such titles. The Acts provide penalties for wrongful use and the Board is vigilant in its enforcement of these matters. Standards in such registered establishments can be maintained by the Board by the threat of downgrading the establishment, or, in the last resort, by de-registration.

### 3.3.7. Housing

The principal objective of Government policy in relation to housing in Ireland is to provide every family with a dwelling of good standard, located in an acceptable environment, at a price or rent it can afford. To achieve this objective the Government provides, directly and through local authorities, for the purchase or building of new houses, various aids (e.g., non-repayable grants, loans, remission of local taxes (rates), etc.) which are primarily aimed at helping persons to house themselves. Various Government and other public agencies play a part in the administration of these aids, the principal role being reserved for the Department of Local Government, which, as well as being the central authority responsible for national housing policy, also discharges supervisory, co-ordinating and distributive (grants and subsidies) functions. It also promotes legislation on building standards, etc. Under the general control of the Department, a State agency, the National Building Agency Limited, operates primarily to provide houses for new and expanding industries and also to provide national public housing for local housing authorities. Other Government Departments concerned with housing include the Department of the Gaeltacht (housing in Irish-speaking areas), the Department of Industry and Commerce (housing in Shannon Free Airport) and the Department of Lands (farm housing in connection with land division and re-settlement).

Approximately 50% of the total annual investment in housing (£194 million in 1974/1975) is now financed through the Government's Public Capital Programme which indicates the high level of priority given to housing in the Programme. Because, however, of increased demand for finance for economic and social development, favourable conditions have been created to increase private investment in housing in recent years. For example, to induce building societies and insurance companies to invest in housing, the existing special tax arrangement operated by the Revenue Commissioners in respect of interest paid by building societies on shares and deposits have been restricted since March 1973 to those societies which charge a rate of interest on house purchase loans not in excess of a rate specified for the time being by the Minister for Local Government. Moreover, in 1973, the Government decided to make available, on a temporary basis, a direct payment to building societies for the purpose of enabling them to offer such a rate of interest on shares as might be determined by the Minister from time to time (initially 7%, but raised to 8% in September 1973). This subsidy was payable only to societies observing certain conditions including the following: a maximum mortgage interest rate of 11%, the restriction of new house loans to a maximum (initially) of £8,500, the restriction on loans for previously occupied houses to £7,500, the loans for second-hand houses not to exceed one-third of all loans and the curtailment of loans for non-housing purposes. The subsidy was reviewed and renewed from time to time, but, since the early months of 1976, it has been withdrawn.

It should be mentioned at this stage that most of the schemes referred to in this section are authorised by statutory instruments issued under specific statutory authority contained principally in the various Housing Acts, 1966 to 1970, and the Housing (Gaeltacht) Acts, 1929 to 1967.

Non-repayable cash grants for new houses were available up until the end of 1975 to individuals and builders in respect of new residences and to public utility societies, building houses for their own members. These grants were available at a special (more favourable) rate (i) for a person whose income

mainly derived from agriculture, who needed housing and who had a limited valuation on his property, and (ii) for needy persons of limited income (£1,950 per annum) in rural areas. To qualify for these grants, the floor area of the house could not be less than 35 sq. metres, and not greater than 116 sq. metres, and the highest grant was payable for houses with floor area between 75 and 100 sq. metres. The object here was to encourage houses for a size appropriate to the demands of people setting up home for the first time, as well as the construction of a larger number of private houses for any given amount of capital. Apart from exercising a quality control, in the distribution of grants, it was a condition of these grants that Irish materials be used as far as practicable in the construction of the house. This grant has now been abolished, but it merits mention as a notable feature of housing policy in Ireland in recent years.

The maintenance of the existing housing stock is also an important aspect of housing policy in Ireland, and to this end Reconstruction Grants (more generous for agricultural dwellers) have been available in the State for over 45 years. Loans are also available from local authorities for this purpose. To qualify for such schemes, the house must be the applicant's principal place of residence. Quality control and insistence on Irish materials are again features of these schemes. Special grants are also available for adaptations of houses for physically disabled persons, for providing extra room for tubercular patients, for essential repairs necessary to prolong the life of old houses, etc. Moreover, legislation on rent control has been amended in recent years to encourage repairs to rented property by allowing private landlords carrying out essential repairs to increase their rents.

Local authorities provide houses for persons living in unfit and crowded conditions, for persons who cannot provide accommodation for themselves, and for special categories of persons, such as, disabled persons, newly-weds, etc. To ensure that the tenants can afford the rent payable on such premises, an annual subsidy system operates. The purpose of these subsidies is, firstly, to promote the schemes of public housing and, secondly, to make up the difference between the cost of running the house and the rent which the tenant can afford to pay. Up to March 1973, these subsidies were (1) a Government contribution to loan charges incurred by local authorities, and (2) a contribution by local authorities from local taxation which kept the tenant's rent at a level which the tenant could afford. The local authorities' contribution is, however, since 1973, being phased out, so that by 1977 the special annual subsidy will consist solely of a Government contribution to meet the differences between the rent the tenant pays and the annual cost to the local authority of providing the house. The amount of the subsidy for these houses is related to the income and circumstances of the tenant, so that low income tenants pay little or nothing. Special rates of subsidies are paid for houses provided for workers who might be brought into an area for new or expanding industries. Local authorities are also empowered to provide, at a subsidised price, developed sites for private modestly-priced houses.

Two other developments are worth noting. In response to the recent energy crisis, the Minister for Local Government has directed all local housing authorities to ensure that all new local authority houses have at least one fireplace (suitable for solid fuel) as an alternative heat source to central heating. Moreover, the same condition applies, since April 1974, to new private houses for which a grant is sought. Secondly, in an effort to control the prices of new houses, a scheme was introduced by the Minister for Local

Government in 1973. The basis of the scheme is to ensure that a house purchaser obtains reasonable value when he purchases a new house for which a State grant is paid. The controls apply to new houses in schemes of four or more houses being provided for sale and for which grants are sought. Before securing a grant, a certificate that the house is reasonable value for money must issue from the Department. Moreover, a refusal of such a certificate renders such houses ineligible for all other kinds of housing aids, for example, remission of local taxes, local authority grants, etc.

A further effort made recently to control house prices should be mentioned. The realisation that land prices were the fastest growing element in house prices has led to the suggestion that the best way to control house prices is to control the price of building-land. To study this problem, a Committee was established, and reported (Prl. 3632, The "Kenny Report") in March 1973. The Government has, in 1974, approved generally the recommendations contained in the majority Report which suggests the designation of areas in which lands could be purchased by local authorities for development purposes on the basis of existing use values. The views of the public are being canvassed and no final decision has, as yet, been taken on this matter by the Government.

#### CHAPTER 4. "CONTRATS DE PROGRAMMATION" (PROGRAMME CONTRACTS)

The concept of programme contracts was developed in France in 1960, and since then has emerged as a significant instrument of Government policy in that country. As yet, of the other Member States of the Community, only Belgium has followed the French example in this matter. According to Professor Verloren van Themaat, "the need had arisen for a summary in quasi-contracts per enterprise of the various discretionary financial facilities granted (tax concessions, loans and subsidies). In this way, an even more rational relationship with the objectives of the five-year plan could be obtained than by attaching conditions to the various facilities separately." (Interim Report on Economic Law of Member States of the European Communities in an Economic and Monetary Union, Chapter III-6). Fromont, in his study on French Economic Law quotes the following definition of these type of contracts by the French Ministry for Industry as being the most helpful in this matter:

"Quasi-contracts [for the execution of the plan] are reciprocal agreements or declarations of intent between the State and an enterprise aiming, on the one hand, at the performance by this enterprise of a programme of investment, research or production and, on the other hand, the granting by the State, when the time comes, of appropriate financial aid (loans from the FDES, grants towards technical research, equipment bonuses, letters of permission, authorisation to have recourse to the financial market, etc.)." (Rapport sur le droit économique français, Vol. 2 dans Série Concurrence - Rapprochement des législations n° 20, Bruxelles 1973, p. 45, Verloren van Themaat's translation.)

Programme contracts as defined here are unknown in Ireland. It is true, of course, that in allocating grants, etc., the Industrial Development Authority does attach conditions to these grants, but these are principally aimed at merely ensuring that the grant is spent for the purposes for which it is allocated. Generally speaking, there is no effort made in such grants to insist on programmes for increasing productivity, export or research. Nor is there any attempt in these type of arrangements, within particular branches of industry to insist on price programme contracts, which are very common in the French economy nowadays. What reciprocal undertakings are required of grantees in Ireland generally relate to the specific purpose for which the grant is given and merely attempt to ensure minimum standards of accountability. Certainly, in the administration of these grants, the IDA do try to promote the objectives of current economic policy by closely examining the particular enterprise and by articulating general grant criteria to be met before a grant is given. But, once the grant is awarded, there is little effort made to tie the recipient by contract to programmed objectives. The only exception that seems to have arisen in recent years relates to mineral development, and permissions given by the Government to mining enterprises do involve the recipients in reciprocal undertakings relating to minimum annual outputs and guaranteed supply of concentrate to an Irish zinc refinery which "may be established by the Minister". (Infra conditions attaching to mining leases, 5.6.5.).

Insofar as Farm Modernisation Schemes may be viewed as programmed contracts in the agricultural sphere, they might be mentioned here also. They have, however, been more properly dealt with at 3.3.1. supra.

## CHAPTER 5. REGULATIONS OF GENERAL APPLICATION

### 5.1. Institutional Regulation

#### 5.1.1. Comprehensive Institutions

Like in Britain, no regulating institution of general application exists in Ireland. The National Economic and Social Council is a purely advisory body, having no regulatory powers. The absence of any legal basis may be seen from the informality with which it was set up (and its precursor, the National Industrial and Economic Council, dis-established) by the new Coalition Government in 1973.

The functions of the NESC can well be gleaned from the Constitution and the Terms of Reference of the Council. These state that the main task of the NESC shall be "to provide a forum for discussion of the principles relating to the efficient development of the national economy and the achievement of social justice, and to advise the Government, through the Minister for Finance, on their application." In discharging its functions, the Council must have regard to the global objectives of the Irish economy, such as, full employment, a high rate of economic growth, the equitable distribution of the wealth and income of the Nation, reasonable price stability, a long-term equilibrium in the balance of payments, regional development and the social aspects of economic growth including the protection of the environment. The composition of the present Council reflects the aspiration that inspired its establishment, namely, that a broad-based advisory committee of national dimensions was necessary if successive national economic plans were to command the minimum acceptability essential for their implementation. Consequently, at present, the Council is composed of representatives from, agriculture (ten), The Confederation of Irish Industry and the Irish Employers Confederation (ten), The Irish Congress of Trade Unions (ten), Government Nominees (ten), and six persons representing the major Government Departments. In addition, any member of Government is entitled to attend the Council's meetings and non-represented Government Departments have a right of audience.

Another institution of national significance, although it, once more, does not have regulatory powers and was merely set up by administrative decision, is the Employer-Labour Conference. Established first in 1970, the Employer-Labour Conference discusses and reviews developments and problems relating to money incomes and prices and also problems relating to industrial relations. As its name indicates, the Conference represents both the employer and labour interests, and the Government participates in the deliberations only as an employer and not as a regulator of the economy. Since 1970, all National Wage Agreements have been negotiated within the Conference and, because of the importance of the National Wage Agreement in recent years, this achievement marks the Conference's major contribution, as an institution, to the economy.



A word should also be mentioned here about the institutional role played by the Chambers of Commerce in the Irish economy. At the outset, it should be stated that the part played by these institutions in Ireland is a relatively minor one. Professor Daintith's comment on these institutions in the United Kingdom is equally apposite (with jurisdictional adaptations) to the Irish scene. "Functions associated elsewhere with comprehensive institutional regulation are, in fact, performed in the United Kingdom by unofficial voluntary bodies. The British Chambers of Commerce, unlike their European counterparts, are voluntary organisations, quite independent of the State, relying for their revenue solely on the subscriptions of their members." (Daintith, Economic Law of the United Kingdom, p. 57, U.K. Report in this series. Recently published. Many of these Chambers of Commerce are incorporated under various Companies Acts, as companies of limited guarantee, although some do exist from an earlier date by virtue of Royal Charter. These bodies discuss and consider questions concerning and affecting trade, commerce, manufacturing and shipping interests, and generally operate by way of sub-committees. For example, the Dublin Chamber of Commerce has at present committees on the following matters (and, as an indication of areas of concern, it may be assumed to be fairly typical): a Taxation Committee, a House and Finance Committee, a Trade and Commerce Committee, a Traffic and Transit Committee, and a Law, Parliamentary and Municipal Committee. All Chambers of Commerce in Ireland are affiliated to the Association of Chambers of Commerce in Ireland, incorporated under the Companies Acts, in 1923. The functions of the Association of Chambers of Commerce are to consider questions concerning trade, commerce, manufacturing and shipping interests, and to collect and disseminate information on these matters. It communicates its opinions to the Government, lobbies Parliament and promotes or opposes legislative Bills which affect its interests. Finally, the interests of industry are similarly promoted and canvassed, in matters relating to trade, finance, economics, taxation, etc., by a national organisation called the Confederation of Irish industry. Neither this nor the Association of Chambers of Commerce, however, have regulatory powers.

#### 5.1.2. Sectoral Organisations

Sectoral organisations also exist in Ireland (for example, the Apparel Industries Federation, Ground Limestone Manufacturers Association, the Furniture Industries Association, etc.) and, when these Associations relate to industrial activities, they may be affiliated to the Confederation of Irish Industries, but they exercise few, if any regulatory functions. Insofar as these Associations do attempt to regulate conduct, however, they would of course be subject to the Restrictive Practices Act, 1972, and to the guidelines for fair trading set out therein (5.5.1. infra).

Exceptions to this informal organisation of economic activity are principally to be found in the liberal professions. Many of these professions are controlled by statutory bodies, which are empowered to regulate and control the entry and/or the conduct of the profession in question. Doctors, solicitors, dentists, nurses and midwives, opticians, chemists and veterinary surgeons, are all controlled in such a way in Ireland. (For the legislation governing these professions, see 5.6.4. infra).

Finally, it should be noted that the marketing of some agricultural product is, in order to ensure adequate organisation of supply to demand, handled by

certain State-sponsored bodies, for example, An Bord Bainne (milk), the Pigs and Bacon Commission (pigs), An Bord Grainn (grain), and the Irish Potato Marketing Company Limited (potatoes). Further comment on these will be more appropriately made at 6.1.4.

## 5.2. Regulation related to Short-term Economic Policy

### 5.2.1. Prices and Incomes

#### 5.2.1.1. Prices. Permanent Controls

In the Third Programme for Economic and Social Development, 1969-1972, the Government states that the most effective way of containing price increases is price competition. Historically speaking, this was a true enough description of Government policy in Ireland up to the late sixties and early seventies. Apart from the war years when emergency legislation was in operation, the principal price controls that existed up to that time related to such basic food commodities as flour and wheaten meal (Flour and Wheaten Meal Act, 1956 (No. 40 of 1956)) and milk Milk (Regulation of Supply and Price) Act, 1936 (No. 43 of 1936)). Such interventions by the State were justified because it was felt that the normal market forces, for one reason or another, did not operate satisfactorily for these commodities. Since 1958, however, the Government has had fairly wide powers of controlling the prices of consumer goods and services. As already mentioned, however, these powers were not greatly resorted to until inflation recently took on its present ominous dimensions. The Prices Act, 1958 (No. 4 of 1958) is the principal Act in this area, and its powers have been amended and strengthened by the Prices (Amendment) Acts, 1965 and 1972 (No. 23 of 1965 and No. 20 of 1972).

During World War II, the supply, distribution, prices and charges of commodities were controlled by Government orders made under the Emergency Powers Act, 1939 (No. 28 of 1939), and, on its expiration, were continued in force in relation to prices by the Supplies and Services (Temporary Provisions) Act, 1946 (No. 22 of 1946). Earlier legislation attempting to control prices (the Control of Prices Act, 1937 (No. 26 of 1937) and the Prices Commission (Extension of Functions) Act of 1938 (No. 15 of 1938)) were considered to be unsuited to the needs of the State in 1958, and were repealed and replaced by the more comprehensive measures contained in the Prices Act of that year. The principle of the 1937 Act was to maintain machinery capable of monitoring all prices continuously and to this end it established a permanent Prices Commission and a Controller of Prices. The machinery provided for in the Act, however, had not been functioning since the introduction of the emergency measures in 1939, and as a method of price control it was considered too cumbersome and unsuited to the conditions that prevailed in the late fifties. The Prices Act, 1958, therefore, repealed the Prices Act, 1937.

Government policy, even in 1958, took full account of the fact that the most effective price regulator is competition. Where competition was active, therefore, it was envisaged that there would be no need for investigation or regulation. Where, however, competition is limited and prices are unreasonably high, the Government then ought to have power to control prices. Generally

speaking, the 1958 Act, therefore, empowers the Minister for Industry and Commerce to control prices of certain commodities and services when he is of the opinion, after an investigation, that such prices are excessive because of the existence of restrictive trade practices, or because of causes within the manufacturer's control or because of undue labour costs. The price of essential commodities (bread, butter, sugar and milk), by way of contrast, can be subject to a price control order under the Act without an investigation. Some of the commodities to which the Act applied could, it was true, be controlled independently under specific enactments, but in the interest of providing a single statutory source and uniform procedure, it was felt desirable to include them within the 1958 Act also. Certain other commodities, however, which were not the responsibility of the Minister for Industry and Commerce, and which are subject to other specific statutory control were excluded from the ambit of the Act, for example, agricultural produce, fish, etc.

The powers given by the 1958 Act could only be exercised in the limited circumstances listed above, and were in no way general or absolute. This limited approach sought to ensure that the Act was not seen to be a campaign against profits, for fear such an approach might inhibit industrial expansion and investment; rather was it intended to give the Government power to act in exceptional circumstances. Accordingly, the Act also enables the Government to declare a state of emergency in regard to any particular commodity if abnormal circumstances exist, and, in such event, the Minister may fix a maximum price for the commodity or a maximum charge for any service affecting its supply or distribution. Likewise, the Minister is also empowered to issue orders requiring the prices of certain listed goods (for example, batch bread, flour, butter, tea, eggs, etc.) to be displayed in specific areas. Finally, the 1958 Act provides for the establishment, from time to time, of prices advisory committees, whose function is to carry out investigations and to report to the Minister for Industry and Commerce on the price of any commodity or service and the methods of marketing the commodity or rendering the service. These bodies in marked contrast to the Prices Commission under the 1937 Act, are not permanent.

The Prices (Amendment) Act, 1965 (No. 23 of 1965) greatly extended Government powers in relation to prices. It provided that, whenever the Government is satisfied that the condition of the national economy is such that it is necessary to maintain stability of prices generally, the Government may by order authorise the Minister for Industry and Commerce (i) to conduct inquiries, (ii) to require manufacturers, wholesalers and importers to notify the Minister of any proposed increases, (iii) to fix by order maximum retail prices, and (iv) to require persons to furnish information in order that the Minister may be able to execute his functions under the Act. Such orders had only a maximum life of six months but could be renewed on certain conditions. Section 9 of the 1972 Act removed the temporary element attached to these orders, and, by making them permanent, eliminated the need for temporary continuance orders. General price orders have been in existence since 1965 (the Prices Stabilisation Order, 1965 (S.I. no. 208 of 1965)), and have been continued up to recently by the renewal procedure.

Ministerial orders under this amending legislation of 1965 may:

"(a) define or specify a commodity, a service, work or a process in such manner and by reference to such matters as the Minister thinks fit,

- (b) define the conditions by reference to which a maximum price or charge is fixed and fix different maximum prices or charges in relation to different conditions,
- (c) relate to the whole or to a particular area in the State,
- (d) fix a maximum price or charge by specifying it or by setting out provisions by means of which it may be ascertained,
- (e) contain all such incidental or ancillary provisions (including a requirement that the commodity to which the order relates shall be sold only in specified units of weight or measure) as shall appear to the Minister to be necessary or expedient for giving full effect to any provision inserted in the order under the powers conferred on him by virtue of this part or to secure compliance with the order."

(Section 22(c) of the Prices Act, 1958, inserted by Section 1 of the Prices (Amendment) Act, 1965.)

The Act of 1965 also enables the Minister to establish advisory bodies to advise him in relation to any powers and functions conferred on him by the Act.

The Prices (Amendment) Act, 1972 (No. 20 of 1972) strengthened Governmental power further by extending the ambit of the Acts to areas theretofore excluded (for example, to activities of road and rail transport authorities, to commodities or services already controlled by specific enactments, and to professional and insurance services) and to interest charges in relation to hire-purchase and credit sales agreements. Moreover, it gave the Minister further powers of enquiry into, and control of, certain additions to prices, such as, the maximum amount that may be added in respect of any tax on commodities. (VAT was introduced to Ireland by the Value Added Tax Act, 1972 (No. 22 of 1972).)

These considerable powers were further augmented by the establishment, towards the end of 1971, of the National Prices Commission, which, in contrast to the Prices Advisory Committees under the 1958 Act, is concerned with all aspects of prices for all commodities and services, and is a permanent body. Its task is to study, to review and, generally to advise the Minister for Industry and Commerce. It is particularly active in considering applications for price increases nowadays, but it also produces occasional papers and studies on particular industries in the economy. Because it is highly representative and was established in the wake of the First National Pay Agreement (December 1970), it facilitates the establishment of an incomes policy in that it clearly shows that prices, too, are under surveillance. Recently (October 1975), the National Prices Commission has asked the Minister for Industry and Commerce to limit its range of activities so that the Commission could concentrate on price increase applications from the larger firms and give more attention to services and the professions. The Minister, in accepting this proposal, probably felt that the reduction of tariff barriers between Ireland and Britain earlier in 1975 also meant that the increased competition from British goods would pin back Irish increases without statutory regulation. The need for wide ranging vigilance lessened, therefore, and the concentration policy proposed by the Commission seemed to be justified.

In recent years, these statutory price control powers of the Minister have increasingly been exercised. So, for example, the maximum retail prices for bottled milk and sugar have been fixed by the Maximum Prices (Milk) (No. 3) Order, 1974 (S.I. No. 242 of 1974) and by the Maximum Prices (Sugar) Order, 1974 (S.I. No. 241 of 1974), and, more generally, maximum retail prices have been fixed for a wide range of household goods under the Maximum Prices (Household Goods) (No. 4) Order, 1974 (S.I. No. 189 of 1974) and retailers' profit margins, in a wide range of goods, have been stabilised to the margin which prevailed in June 1973 by the Prices (Stabilisation of Profit Margins of Retailers) Order, 1973. (This order is, at present, being reviewed.) The Retail Price (Food) Display Order, 1972 (S.I. No. 163 of 1972) requires every person who carries on the business of selling by retail any of the commodities set out in the schedule of the order to display in a specified manner the retail price charged by him for each such commodity. Other recent measures, now enforced, include the extension from one month to two months of the period of advance notice required before prices for goods and services can be increased, the freezing of profit margins of importers, wholesalers and retailers, and the fixing of maximum retail prices for various household goods.

#### 5.2.1.2. Incomes. Permanent Controls

Incomes in Ireland are still determined by a system of free collective bargaining, and Government policy in most cases is designed to educate to what it regards as the national needs, the various parties involved in the bargaining process, and to provide them with a satisfactory institutional framework within which early agreement, with a minimum of disruption, may be achieved. In the past, the only time the Government assumed control of incomes was in the exceptional war-time conditions (1942-1946), when it introduced emergency power orders to prohibit increases in industrial wages.

Although, therefore, it has not resorted to the introduction of a statutory incomes policy in Ireland, the Government has, nevertheless, been involved, albeit in an indirect way, in promoting and influencing national wage settlements. Firstly, in recent years it has participated, as an employer, in all national negotiations for wage agreements. Accordingly, in all such negotiations, while the talks remain two-sided, the Government are, nevertheless, represented on the employers' side. The Government may not, it is true, be present at such negotiations as the regulator of the economy, but its presence as a major employer is an important factor in such negotiations.

Secondly, the Government has, at various times since the end of the Second World War, threatened to introduce a statutory incomes policy should employers and employees fail to reach voluntary wage agreements. Such threats were given as early as 1947 and as recently as 1976. In some measure, these threats undoubtedly encouraged trade unions to reach voluntary wage settlements. Conversely, in 1974, the Government has greatly induced the trade unions, it is thought by a specific undertaking in relation to taxation, to accept the National Wage Agreement of that year. In these ways, the Government has, therefore, by a judicious use of threats and promises, promoted the voluntary National Wage Agreement concept. Moreover, the Government has also occasionally (noticeably in 1950 and 1957) discharged a brokers function by successfully bringing together to the conference table both employers and employees.

Thirdly, the Government has provided the institutional framework within which incomes could be satisfactorily negotiated, namely, the Labour Court, Joint Industrial Councils, Joint Labour Committees and the Employer-Labour Conference. The function and the role of the Labour Court, the Joint Industrial Councils and the Joint Labour Committees will be sufficiently described below at 5.5.3. and suffice it to say at this stage that the Labour Court is an optional institution and is not, in this respect, a court in the full legal sense at all. In the present context, however, it is worth noting that, if collective agreements are voluntarily registered with the Court, they acquire a limited legal status.

Joint Labour Committees are statutory bodies, appointed by order of the Labour Court under authority conferred by the Industrial Relations Act, 1946 (No. 26 of 1946) (Section 35) in respect of a particular class of workers. A Joint Labour Committee can only be established by agreement between employers and employees, and, once established, it is comprised of independent members appointed by the Minister for Industry and Commerce and nominees of the Labour Court representing the employers and the employees. The decisions of such committees, if approved by the Labour Court, are legally binding on that particular industry. Consequently, Joint Labour Committees can, and do, recommend (especially in occupations where union organisation is weak) minimum wages to the Labour Court, and, if the latter approves, such recommendation may be given statutory effect by the issuance of an Employment Regulation Order (E.R.O.). Not all industries, however, have such Joint Labour Committees.

Lastly, the Employer-Labour Conference was established in 1970 for the purpose of providing a national forum for the discussion and review of developments and problems in money incomes and prices, and in all matters of major importance coming within the sphere of industrial relations. An independent chairman (appointed by the Government) presides over the Conference, which is comprised of employer representatives (selected from various employer organisations, the State-sponsored bodies and the Government as an employer) and labour representatives, which includes the entire National Executive of the Irish Congress of Trade Unions and the two full-time officers of Congress. It is within this Conference that the recent National Wage Agreements were negotiated.

Since 1946, the general scheme of wage rises has been one of a series of all-round wage increases. Such wage rounds have been described by Kennedy and Bruton as "increases in wages and salaries, which recur at reasonably regular intervals and extend to all categories of workers within a relatively short time span and at roughly similar rates." (Kennedy and Bruton, *The Irish Economy*, p. 85) These wage rounds have given way, since December 1970, to the more ambitious and more elaborate National Wage Agreements. Since the First National Wage Agreement in December 1970, there have been three further agreements, the most recent being in March 1975. "These Agreements were more elaborate than any earlier wage settlements negotiated at national level. They have attempted to improve the position of lower-paid workers by providing, in effect, a progressively declining percentage rate of increase on higher income ranges. They have included provisions designed to limit wage drift, while at the same time allowing a measure of flexibility to deal with anomaly cases and productivity bargains. Provision has also been made for automatic increases in pay in response to price changes above a certain limit during the course of the agreement. A forum for interpreting some of these detailed terms is provided by the Employer Labour Conference." (Kennedy & Bruton, *The*

Irish Economy, pp.88-89). On the expiration of the present National Wage Agreement, the Government has called for a "voluntary pay pause" to enable Ireland to cope with its present economic problems, especially inflation and unemployment. Budgetary policy, therefore, as recently manifest in the latest annual Budget (January 1976), must be seen in the present context as an effort designed to secure such a voluntary pay pause. Whether the Unions, however, will accept such a pause for the 12 month period requested by the Government remains to be seen. In order to encourage them to do so, the Government has promised legislation limiting increases in non-pay incomes, including dividends, directors' fees and rents, and it is understood that such legislation is, at present, in preparation.

The National Wage Agreements (usually covering a period of 12 to 18 months) have, however, no legal effect, and do not bind the parties to them. In reality, they are merely collective "gentlemen's agreements". Because, however, of their general acceptance by the Congress of Trade Unions, and their wide application, they do have some political significance in that they tend to lend an element of stability to employer/employee relationships, and undoubtedly have reduced the amount of industrial disputes in the country.

In spite of the fact, however, that these Agreements lack legal basis, the Government, in its role as regulator of the economy (as opposed to its role as employer), views such National Pay Agreements as binding, and has, indeed, acted to outlaw individual action in contravention of such Agreements. An example of this can be seen in the Regulation of Banks (Remuneration and Conditions of Employment) (Temporary Provisions) Act, 1973, which empowered the Minister for Labour to prohibit, by regulation, banking institutions from giving increases to their employees "when such a regulation is in the national interest and is necessary to maintain the National Pay Agreement." This power was exercised in Statutory Instrument No. 196 of 1973. Being of a temporary nature, however, the Act was allowed to expire in December 1973. The same problem arose again with the banks towards the end of 1975, and the Government re-introduced a similar Act, the Regulation of Banks (Remuneration and Conditions of Employment) (Temporary Prohibition of Increases) Act, 1975, again to prevent the Banks from paying pay increases in excess of the National Wage Agreement to its employees. Two interesting features of this Act should be mentioned. Firstly, although the Banks' staff union was not a party to the National Wage Agreement, the Government felt that it should, like many others not formally bound (e.g., the judiciary, etc.), keep its pay claims in line with the Agreement. Secondly, the Act proposed to secure its objective by imposing penalties on the Banks (not on the Unions), even though the Banks were innocent in that they were at all times prepared to withhold pay increases in accordance with Government wishes. It was felt that this method of getting the innocent party to withstand the claim (even at the risk of a strike) was better than forcing the Government to confront the Unions head-on. In any event, the Minister exercised his powers to freeze Bank salaries by order (S.I. No. 305 of 1975) under the Regulation of Banks (Remuneration and Conditions of Employment) (Temporary Prohibition of Increases) Act, 1975 (No. 27 of 1975). The Banking Unions are, at present, contesting the legality of the Act before the High Court. Further, the Unions contend that the Employer-Labour Conference has exclusive jurisdiction to determine whether Pay Agreements have been broken or not, and that the Labour Court, to whom the matter has been referred by the Minister, has no jurisdiction in the matter.

Whatever its legal status, therefore, such Government action obviously reinforces the National Pay Agreement, and gives the Agreement status and significance. Such a stance would seem to suggest that the Government whatever the formal position, may be in attendance at these wage negotiations not merely as an employer, but also as the regulator of the economy.

Apart from this general picture of incomes in Ireland, it should also be mentioned that minimum wages have also been fixed by Ministerial order for certain workers under special legislation. For example, under the Agricultural Wages Acts of 1936 and 1969, minimum wages for agricultural workers are fixed. This occurs especially with agricultural workers because they are not sufficiently well organised to press their own claims. There is, however, a proposal at present to appoint a Joint Labour Committee for agricultural workers.

In conclusion, it might be noted that the Taoiseach, in an address to the Dáil in July 1974, indicated that the Government is, at present, considering the establishment of a more formalised prices and incomes policy for the future. No signs of such policy, however, have, as yet been obvious.

## 5.2.2. Credit Control

### 5.2.2.1. Hire Purchase Terms Control

Apart from the fact that hire purchase contracts are also governed by the Prices (Amendment) Act, 1972 (No. 20 of 1972) (Section 4), specific mention may be made here to the credit controls envisaged by Part II of the Hire Purchase (Amendment) Act, 1960 (No. 15 of 1960). Part II of this Act recognises that, while the growth of hire purchase may play an important part in the development of the economy, it can give rise to serious difficulties: it may cause problems for the balance of payments if the increased demand generated by such credit is for imported goods, while, if it facilitates and encourages expenditure on consumer goods, it may reduce the volume of national savings which could be available for productive investment. For this reason, Section 6 of the Act permits the Minister for Industry and Commerce to regulate and control by order hire purchases, credit sales and lettings of goods. In particular, under Section 6(2), the Minister for Industry and Commerce may make orders regulating:

- "(a) the form of the agreements referred to in Sub-Section (1) of this Section,
- (b) the minimum deposit to be paid by a buyer or hirer,
- (c) the maximum period of payment, and the amount and frequency of instalments or rentals,
- (d) the information to be given in any visual advertisement or visual announcement published or made in any form or manner whatsoever relating to goods for sale by way of hire purchase or credit sale agreement regarding the terms upon which the goods will be sold,
- (e) the inclusion in any such advertisement or announcement of a statement of the price at which the goods will be sold for cash."



In respect of the present heading, the Hire Purchase on Credit Sale Orders, Statutory Instruments No. 225 of 1968, No. 276 of 1968 and No. 15 of 1970 are most relevant. These Orders, in an effort to weaken demand, prescribed minimum deposits and maximum periods of payment in respect of the purchase under hire purchase and credit sale arrangements of any of the goods specified in Schedule 1 of the Order. The type of goods affected were principally durable domestic goods, such as washing machines, dish washers, vacuum cleaners, etc., and also road vehicles. Statutory Instrument No. 15 of 1970 further tightened credit by increasing minimum deposits and shortening the maximum payment periods for goods already subject to the Order and by extending the range of goods to which the Order applied. A similar regime was established for simple hiring agreements by Hiring Orders, Statutory Instruments No. 224 of 1968, No. 275 of 1968 and No. 16 of 1970. The principal Order here (S.I. No. 224 of 1968) prescribed the conditions as to rentals and hiring periods which must be complied with where any of the goods specified in Schedule 1 of the Order were disposed of under an agreement to let those goods on hire. In 1970, the principal Order was amended (S.I. No. 16 of 1970) by increasing the number of weeks rental payable in advance on goods already subject to the Order and by extending the range of goods to which the Order applied.

A realisation, however, in 1971 that these 1968 Orders were not only controlling credit but were also reducing demand for the affected products (thereby increasing unemployment and causing home manufacturers to limit production) caused these Orders to be revoked (Hire Purchase and Credit Sale (Revocation) Order, 1971, S.I. No. 291 of 1971 and Hiring (Revocation) Order, 1971, S.I. No. 292 of 1971). The measure of credit control which the earlier Orders were achieving was more than offset by the adverse effect which they had on the productive potential of the economy. As this view still prevails today, no regulations of this kind are enforced at present in the State.

The more permanent regulations relating to hire purchase contracts, which were designed for consumer protection, rather than for the control of credit, are to be found in the Hire Purchase Act, 1946, as amended by Part III of the Hire Purchase (Amendment) Act, 1960, and will be dealt with *infra* at 5.7.

#### 5.2.2.2. Statutory Control of Borrowing

No statutory controls of a general nature relating to borrowing exist in Ireland, and, apart from loans from non-residents and foreign currency borrowing, both of which require exchange control permission from the Central Bank, personal borrowing is not regulated. If the Central Bank is satisfied that, in the case of a loan from a non-resident, the interest payable will be charged at a rate which is not excessive by normal commercial standards, permission will normally be forthcoming. (See Exchange Control Notice EX 13, issued by the Central Bank).

Two important exceptions should, however, be noted to the general statement that there are no statutory restrictions on borrowing in Ireland: local authorities and State-sponsored bodies are generally limited by statute as to the amount which they may borrow. Local authorities are limited by the various Local Government Acts, 1925-1971, and State-sponsored bodies by their creating statutes. These latter statutes have to be amended if the particular body wishes to borrow beyond its statutory limit. With the present rate of

inflation, it is not surprising that these creating statutes are amended fairly regularly nowadays. This, coupled with the fact that over 80 such bodies exist in Ireland, does, indeed, provide the Government with a credit control which, though real enough in fact, cannot always be exercised as such, since the limitation on borrowing provision was designed to control the individual company rather than the act, cumulatively, as a method of controlling the volume of credit in society.

Finally, an interesting development in relation to building societies ought to be noted. Recently, in an effort to prevent building societies from further increasing their mortgage rates to borrowers, the Irish Government began to subsidise, by direct payment, such building societies. The leverage of this subsidy seems to have been exercised in 1974 by the Government to control the volume of credit which the building societies were lending. Acceptance of this Government payment may, therefore, have reduced the building societies' independence in the matter of credit. This subsidy, however, was withdrawn late in 1975, and so its effect as a lever no longer exists at present. Building societies have, up to recently, enjoyed certain income tax relief by virtue of administrative arrangements between the Revenue Commissioners and themselves. The Corporation Profits Tax Act, 1975, Section 31, now proposes to recognise such arrangements as having statutory basis.

#### 5.2.2.3. Control of Bank Lending

The peculiar features of the Irish monetary system (mentioned above at 2.4.3.) meant that the status of the Central Bank in Ireland was not as high or as dominant as that of its counterpart in England. In fact, the Central Bank in Ireland, having been established only in 1942 (replacing the Currency Commission) does not have the traditional prestige which the Bank of England won for itself over the past generations. The Central Bank Act, 1942 (No. 22 of 1942), for example, scarcely gives the Central Bank any powers to control credit. Section 50(i) of that Act, it is true, does empower the Central Bank to compel the commercial banks to make deposits with it in certain circumstances, but, since this section was designed to force the banks to expand credit, it was never viewed by the Central Bank as a means by which credit could be contracted. Section 6(i) of the Central Bank Act, 1942 does impose on the Central Bank a general function in relation to currency matters and credit control, of which "the constant and predominant aim shall be the welfare of the people as a whole." Under this power, the Central Bank has, since 1965, issued directives to the commercial banks which indicate desirable limits of credit and the purposes for which it should be extended. These directives have no legal force, however, and amount to little more than advisory guidelines; notoriously, these directives are not always heeded.

The principal powers of the Central Bank are listed in Section 7(i) of the Central Bank Act, 1942. They include the following powers: to purchase or sell coin, gold or silver bullion and foreign currencies; to take deposits from Ministers of State, public authorities, banks, etc.; to rediscount bills and fix minimum rediscounting rates; to deal in quoted State, State guaranteed or public authority securities, or securities guaranteed by foreign Governments; to lend on security to banks, etc.; to keep a register of State and public authority securities, and to keep the accounts of bankers'

clearings. As has been mentioned above, Section 6 of the Act, echoing the words of Article 45 of the Constitution, declares that the Central Bank "shall have the general function and duty of taking ... such steps as the Board may from time to time deem appropriate and advisable towards safeguarding the integrity of the currency and insuring that, in what pertains to the control of credit, the constant and predominant aim shall be the welfare of the people as a whole. Noticeably absent was a power to fix a reserve ratio. The weakness of the power structure of the Central Bank under the 1942 Act meant that the Central Bank's role was, by definition, a weak one, and this was fortified by the Central Bank's own reluctance in the fifties and early sixties to resort to such powers as it did have. During this period, monetary policy in the United Kingdom was, in practice, more important than domestic regulations, which were, to all intents and purposes, non-existent.

The Central Bank's powers were greatly extended in 1971 by the Central Bank Act of that year (No. 24 of 1971). Since this Act, the Bank has the following additional powers:

- (1) The power of a licencing authority for the banking business generally;
- (2) Power to require any licenced bank to maintain with the Central Bank a specified deposit;
- (3) Power to fix by requisition liquidity ratios;
- (4) Power to require commercial banks to maintain with Central Bank additional non-interest-bearing deposits in certain circumstances;
- (5) Such other powers and functions "which, in accordance with normal banking practice, may be exercised and carried out by banks and bankers."

Some of these powers can only be exercised with the consent of the Minister for Finance.

The position of the Central Bank, therefore, has been greatly strengthened by this Act, but it should not be thought that (even though the Central Bank has raised liquidity ratios and has called for some deposits, and is beginning to display a more sophisticated rediscounting and refinancing policy) the pattern of credit control which obtained in Ireland up to 1971 has fundamentally changed. Credit control is still essentially a tripartite affair of consultation between the Government, the Central Bank and the commercial banks. A measure of this inter-relationship can be seen from the composition of the Board of the Central Bank, which not only has government nominees but which also has nominees from the commercial banks. Further illustrations of this three-sided cooperation can be noted from the facts that, firstly, the decision to introduce term-loans and higher rates for deferred borrowers in April 1972, was taken by the commercial banks themselves, and was simply "welcomed" by the Central Bank, and, secondly, in the Budget Speech of 3 April 1974, the Minister for Finance continued to deplore the fact that Central Bank's Credit Directives were still being ignored by the commercial banks. In such circumstances, with the Central Bank's role still evolving, credit control is still effected more by consultation than by legal strictures. The developing role of the Central Bank may, however, change this picture.

In conclusion, it might be mentioned that although the Central Bank acts as a licencing authority for the banking business generally, it in no way accepts legal responsibility for the solvency, etc., of these licenced banks. This was stated by the Chief Executive of the Central Bank recently (February 1976) on the occasion of the collapse of a small savings bank (The Irish Teust Bank). It is undoubtedly true that the Central Bank does not have any statutory obligation to rescue the depositors in such a collapse, but whether the Central Bank would be liable to such depositors if, as a licencing authority, it had failed to exercise reasonable care in discharging its supervisory functions, would be a question for the Courts to decide. It is difficult, however, to imagine conduct on the part of the Central Bank which would be sufficiently negligent to attract liability in these circumstances.

### 5.3. Regulation for Times of Economic Crisis

Article 28.3.3<sup>o</sup> of the Constitution makes provision for war situations and national emergencies. The Article should be quoted:

Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this sub-section "time of war" includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and "time of war or armed rebellion" includes such time after the termination of any war, or any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist.

The Emergency Powers Acts, 1939 and 1940 (No. 28 of 1939 and No. 1 of 1940) were founded on these Constitutional provisions and, although these Acts are now spent, the relevant resolutions of both Houses are still in force, which means that Emergency Powers measures similar to those in operation during World War II could, without further ado, be introduced by Parliament. This Constitutional provision, however, although of some interest to economic law, is really of more political significance in that it is used as the legal basis for legislation aimed at combatting subversive elements in society (see Offences Against the State Acts, 1939 and 1972). The provision which is of more relevance to economic law is the statutory provision mentioned in the next paragraph.

The main statutory provision dealing with national emergencies, which fall short of war situations, is contained in the Protection of the Community (Special Powers) Act, 1926 (No. 16 of 1926). This confers on the Government special powers for the protection of the community and for ensuring the due supply and distribution of the essentials of life during national emergencies. (The 1926 Act is based on the English Emergency Powers Act, 1920.) Before

extraordinary powers are conferred, however, the Government must by proclamation declare a state of national emergency. Such a proclamation shall remain in force only for one month, but may be continued from month to month. When such a proclamation is made, the Government may by order make such regulations to ensure the due supply and distribution of essentials of life to the community. It may restrict "hoarding" of undue stocks of fuel and food-stuffs and may regulate or control prices, etc. All such regulations have statutory effect and shall be laid before each House of the Oireachtas. They may be annulled by a resolution of either House and, in any event, shall expire when the proclamation pursuant to which they are made ceases to have effect.

The powers conferred under this Act have never been resorted to by the Irish Government. National emergencies which require Government control, whether they relate to strikes in sensitive industries, price rises or the supply of basic commodities, tend to be handled within special legislation passed for this purpose. General regulatory legislation is not favoured as a basis for intervention in this kind of emergency. Consequently, in relation to industrial disputes, there is no general Act requiring a 60 day "cooling-off" period before strike action can be taken, but under the Electricity (Special Provisions) Act, 1966, if a serious disruption of electricity supplies occurs, or is about to occur, the Government may by order bring into force the provisions of that Act (Section 1), which, inter alia, prohibit strikes to which the Act applies (Section 5). Such an order must be laid before each House of the Oireachtas and may be annulled by resolution within 21 days. Similarly, under Section 15 of the Prices Act, 1958, the Government may make orders if it feels that abnormal circumstances prevail in relation to a particular commodity. Such an order shall expire after a period of 6 months unless it is renewed. The Prices Act, 1958 replaces earlier legislation passed at the beginning of World War II - the Emergency Powers Act, 1939 (No. 28 of 1939), which was continued until 1958 by the Supplies and Services (Temporary Provisions) Act, 1946 (No. 22 of 1946). A similar provision in relation to the supply and distribution of gas occurs in Section 7 of the Gas Regulation Act of the previous year (No. 26 of 1957).

A more recent example of emergency legislation occurs in the Fuels (Control of Supplies) Act, 1971 (No. 3 of 1971). This Act was introduced to bring Ireland into line with the OECD drafted programme of general readiness for peace time emergency shortages, and under it the Government may declare that the exigencies of the common good necessitate the control of the supply and distribution of fuels (Section 2). Such an order is of limited duration (6 months), and will expire unless renewed within that time. When such a declaration is made by the Government, the Minister of Transport and Power may regulate and control by order the supply and distribution of fuel. Such orders have been made in the energy crisis, to give random examples, in the Electricity (Restriction of Consumption) Order, 1973 (S.I. No. 298 of 1973), in the Fuels (Control of Supplies) (Restriction on Deliveries of Motor Spirit) (No. 2) Order, 1974 (S.I. No. 84 of 1974) and Petroleum Oils (Control of Supply and Distribution) Order, 1973, (Continuance) Order, 1974 (S.I. No. 81 of 1974). It is understood that the Government was recently (April 1975) planning to resort to this legislative provision in order to maintain essential oil supplies to industry, agriculture and health services during the oil deliverymen's dispute. In the event, the dispute was settled before the Government decided to issue the order.

## 5.4. Imports, Exports and Exchange Control

### 5.4.1. Imports and Exports

Imports are controlled by the Control of Imports Act, 1934 (No. 12 of 1934) as subsequently amended by legislation in 1937 (No. 8 of 1937), 1963 (No. 13 of 1963), and 1964 (No. 20 of 1964). The general scheme of the 1934 Act permits the Government to prohibit by order (in the act referred to as a quota order) the importation of any particular description of goods. These orders are given statutory effect for a period of six months and must be confirmed within that time by each House of the Oireachtas if they are not to lapse. The quota orders are enforced by a system which involves the keeping of a register of importers and by the issuance of licences in particular cases. The scheme, therefore, is one which permits all imports unless they are specifically prohibited by a quota order or by other specific legislation mentioned hereunder. Whenever a quota order is in force in relation to particular goods, it is then unlawful for any person to import such goods without a licence issued under the Act. (Section 5) The amending legislation, since 1934, has principally concerned itself with making provision for, exemptions to such licences, etc., excluded articles, and power to import in certain prohibited cases without a licence. This last power has especially been used to permit imports under licence of certain goods which come from the Eastern or Dollar areas. Any person who makes a false statement in writing for the purpose of procuring registration or securing a licence shall be guilty of an offence under the Act and shall be liable on summary conviction to a fine of £25.

Quota orders of present exist in relation to the following goods: brushes, brooms and mops; hose, silk and artificial silk; sparking plugs; springs (laminated); certain superphosphates; textile goods; tyres and tubes. In some cases (for example, textiles) the prohibition applies to goods only when manufactured in certain countries (for example, Taiwan, Bulgaria, India, Japan, etc.), while in others (for example, tyres) the general prohibition is phrased not to apply when the goods are manufactured or produced in certain countries (for example, Algeria, Austria, Canada, Denmark, Federal Republic of Germany, France, etc.).

Motor vehicles are specifically catered for by the Motor Vehicles (Registration of Importers) Act, 1968 (No. 15 of 1968), wherein the importation of cars, etc., is prohibited, except by a registered importer under the authorisation of the Minister for Industry and Commerce.

The above restrictions on imports may, of course, be closely linked with the realisation and promotion of economic objectives and policy, but imports may also be prohibited under various other statutes which, although not primarily designed to promote economic objectives, are not irrelevant here. In all these cases, licences, permissions, or certificates may be required to secure objectives other than purely economic objectives. A few examples may be given. For the general protection of agriculture, many orders exist (under the Agricultural Products (Regulation of Imports) Act, 1938 (No. 14 of 1938)) prohibiting without licence, etc., the importation of agriculture and fishery products. Some other orders are made in an effort to ensure that animal and plant diseases, from which Ireland is relatively free, are not imported into the country. (Orders issued, for example, under the Destructive

Insects and Pests (Consolidation) Act, 1958 (No. 11 of 1958), or the Diseases of Animals Act, 1966 (No. 6 of 1966).) Concern for public health has also meant that the import of certain products - for example, butter margarine, etc. (see orders under Food and Drugs Act, 1899, and the Butter and Margarine Act, 1907, and under the various Public Health Regulations), used clothing (see Infectious Diseases Regulations, 1948 (S.I. No. 99 of 1948)), food additives and contaminants (see orders under various Health Regulations), therapeutic substances (see orders under Therapeutic Substances Act, 1932 (No. 25 of 1932)) - have also been controlled and are generally prohibited except under licence or permission. In the interest of public morals and general public policy, indecent or obscene prints, etc., and books and publications which have been subject of a Prohibition Order (under the Censorship of Publication Act, 1926-1967), drugs (Dangerous Drugs Act, 1934 (No. 1 of 1934)), contraceptives for sale (Criminal Law Amendment Act, 1935 (No. 6 of 1935)), explosives, firearms and ammunition (Explosives Act, 1875, Explosives Substances Act, 1883, and orders issued thereunder, and the Firearms Acts, 1925-1971), can also be imported only in accordance with a licence or permit. Lastly, the importation of certificates of title to any reserved security, or any coupon, is prohibited under Section 15 of the Exchange Control Act, 1954 (No. 30 of 1954), except with the permission of the Minister for Finance.

Exports (other than agricultural and fishery products, which are regulated separately (see below), are subject to a similar licensing regime established by the Control of Exports (Temporary Provisions) Act, 1956 (No. 5 of 1956) and renewed every three years since then, the most recent renewal being the Control of Exports (Temporary Provisions) Act, 1956, (Continuance) Act, 1974 (No. 5 of 1974). The general scheme is the same as that which prevails for imports, viz., all exports are permitted unless they are specifically prohibited by Ministerial order or by other specific statutory enactment. Two factors in particular become relevant in a consideration of export regulations: the nature of the goods and their destination. Consequently, orders exist totally prohibiting the export of goods when there is a need to retain national stocks and when such goods are in short supply. Such prohibitions are not common, of course, but have, in recent years, been issued, and still exist, in the case of aluminium waste and scrap, articles manufactured for use as soil fertilizers, copper waste and scrap, fabricated steel sections, fissile materials, waste and scrap metal of iron and steel, lead and manufactures thereof, railway rails and accessories and rolling stock, and zinc waste and scrap. Similarly, the destination of goods becomes important, especially when the exports are destined for countries outside the EEC, outside the sterling area and, lastly, when the country to which the goods are destined is the subject of an international embargo, for example, Southern Rhodesia (see Control of Exports (Southern Rhodesia) (No. 2) Order, 1969, S.I. No. 106 of 1969).

Under Section 2 of the 1956 Act, the Minister for Industry and Commerce may by order prohibit the exportation of goods of any specified description, save under and in accordance with a licence. Present export control orders are divided into three categories or sections: Section A lists goods the exportation of which is prohibited to all places; Section B lists goods the exportation of which is prohibited to all places other than Great Britain and Northern Ireland (including principally, arms, chemicals, electrical goods, iron machinery, ships, aircraft, vehicles (and their parts), synthetic rubber, etc.); Section C lists goods which are excepted from Sections A and B. Apart

from Section C goods, and goods for which a licence has been acquired, certain other exceptions are contemplated by the export legislation, including articles which are: (i) exported for repair and return; (ii) travellers' samples being exported after being imported temporarily; (iii) travellers' samples being exported temporarily to be subsequently reimported; (iv) exported, having been refused by the consignees; (v) containers being re-exported empty to the sender; (vi) consigned to and from airports within the State, etc.; (vii) re-exported after having been temporarily imported under an International Convention to which the State is a party.

Moreover, in order to protect Irish markets and to ensure quality control prohibitions and restrictions on the exportation of agriculture and fishery products also exist. Meat (fresh, chilled or frozen) and offals of cattle, pigs and sheep are subject to veterinary export control. Export consignments must be accompanied by veterinary health certificates (or meat inspection certificates) issued by the Department of Agriculture and Fisheries. (See Agriculture Produce (Fish-Meat) Act, 1930 (No. 10 of 1930).) In addition to the above requirement, mutton, including lamb, exported otherwise than to Great Britain, Northern Ireland or the Isle of Man must be accompanied by an export licence issued by the Minister for Agriculture and Fisheries under the Agriculture Products (Restriction of Exports) Order, 1953 (S.I. No. 234 of 1953). All the following also require a licence from the Minister for Agriculture and Fisheries before they can be exported: bacon, fish products, horse flesh, horses (live), meat products, milk and milk products, milk powder, salmon and trout, sheep, etc. Orders restricting the export of these goods are issued under various Acts, the most important of which are: the Agricultural and Fishery Products (Regulation of Export) Act, 1947 (No. 18 of 1947); the Pigs and Bacon Act, 1935 (No. 24 of 1935).

Miscellaneous export prohibitions exist in relation to archaeological objects, documents and paintings of national and historical significance, drugs and firearms. But more important than these for the present study are the restrictions on the export of gold and other certificates of title which are contained in Section 16 of the Exchange Control Act, 1954 (No. 30 of 1954). This Section prohibits, except with the permission of the Minister, the exportation of (a) any gold, (b) any certificate of title to a reserve security (including any such certificate which has been cancelled) or any document certifying the destruction, loss or cancellation of any such certificate, or (c) any coupon. Moreover, the exportation to any place not in Northern Ireland, Great Britain, the Channel Islands or the Isle of Man of any of the following is also prohibited, except with the permission of the Minister: (a) any notes issued by any bank in, or which are, or have been, legal tender in, any part of the scheduled territories, (b) any foreign currency or any document of a kind intended to enable the person to whom it is issued to obtain foreign currency from some other person on the credit of the person issuing it, (c) any policy of assurance, or (d) any postal order. Under Section 17 of the same Act, the exportation of goods to any non-scheduled territory (that is, countries other than Ireland, Northern Ireland, Great Britain, the Channel Islands or the Isle of Man) is prohibited, except with the permission of the Minister, unless evidence is produced to the Revenue Commissioners that payment for the goods has been made to a person in the State and the Revenue Commissioners are satisfied that such payment is an adequate return for the goods, or, alternatively, the Revenue Commissioners are satisfied that the payment for the goods is to be made to a person in the State within six months after the date of exportation, and the payment



represents an adequate return for such goods.

#### 5.4.2. Exchange Control

Exchange controls in Ireland are designed to safeguard Irish reserves of foreign currencies. In these controls, harmony is maintained with the controls of other scheduled territories (Ireland, Northern Ireland, Great Britain, the Channel Islands, the Isle of Man and Gibraltar), and, thus, free movement of funds within these areas is preserved. The regulating legislation is contained in the Exchange Control Acts, 1954 to 1970, and in the principal regulations issued in 1959 (Exchange Control Regulations, 1959 (S.I. No. 44 of 1959)). Other amending regulations since 1959 have had as their objects the extension and amendment of the list of schedule territories, and the list of authorised dealers for the purposes of the Act). The main object of the Exchange Control Act, 1954 (No. 30 of 1954) is to restrict dealings in gold and foreign currency, and to impose restrictions on the payments, the issuance or the transfer to persons resident outside the scheduled territories (principally, the sterling area) of money or securities. Generally speaking, in all such cases, the Act requires the permission of the Minister for Finance. In subsequent regulations, several transactions are considered exempt from the various controls specified in the main Act. The Exchange Control Act, 1954 is a temporary measure, and has to be continued every four years; the most recent continuation being in the Exchange Control (Continuance) Act, 1974 (No. 26 of 1974). The Minister for Finance, who is the central controlling figure in the 1954 Act, is empowered by Section 28 of that Act to delegate any powers he has under the Act, and he has, in fact, delegated many of these powers to the Central Bank. The Central Bank has, in turn, delegated some of its functions to designated institutions (principally commercial banks) called "Authorised Dealers" for the purpose of the Act. The Central Bank is the principal licencing authority in the scheme, and it issues numbered notices to the various parties involved in the administration of the scheme (that is, to authorised dealers and to approved agents, etc.), stipulating its requirements in relation to various matters. The general classification of being resident or non-resident is of fundamental importance for the application of the Exchange Control Regulations, as different rules of control apply to residents and non-residents.

Paragraphs 6 and 7 of the Central Bank's Exchange Control Notice EX 1 provides a good general picture of the position that prevails in Ireland, and may be quoted with profit at this juncture:

- "6. In general, no restrictions are imposed on transactions between Ireland and the other scheduled territories. Except in the case of Rhodesia, Exchange Control places no restrictions on payments to outside the scheduled territories for the importation of goods and services. These so-called current payments are supervised rather than restricted. Exchange Controls are, therefore, primarily directed at transactions of a Capital nature which involve the transfer funds either to or from countries outside the scheduled territories. The restrictions in force vary from time to time in accordance with Exchange Control policy. However, policy must of necessity be in harmony with that of other scheduled territories.

- "7. Exporters selling to outside the scheduled territories are not permitted to give trade terms longer than six months, and must repatriate foreign currency receivable without delay for sale to an authorised bank."

Under Section 4 of the Exchange Control Act, 1954, persons other than the authorised dealers are prohibited from dealing in gold or foreign currency, except with the permission of the Minister for Finance. Every person (other than non-residents (Section 7 of the 1959 Regulations)) who holds gold or foreign currency must sell it to an authorised dealer at such price as may be determined by the Minister. This price is now fixed by Section 5 of the 1959 Regulations as being the current buying price of such currency in the London Foreign Exchange Market, adjusted for normal Irish banking charges. Authorised dealers must buy this currency within the limits set out in Exchange Control No. EX 3 of the Central Bank (Paragraphs 11-16), the principle of which requires the authorised agent not to exceed (on daily calculations) a net open position of all currencies of £50,000 or a net total of spot foreign currency balances, held in cover of net forward liabilities, equivalent to £100,000.

Payments to persons outside the scheduled territories are prohibited without the consent of the Minister by Section 5 of the Exchange Control Act, 1954. Exceptions to this are created by the 1959 Regulations, the most important of which are as follows:

(i) Cash payments in the State by non-residents of the scheduled territories to non-residents, if payment is made in notes which are, or have been, legal tender in Ireland, Northern Ireland, Great Britain, the Channel Islands or the Isle of Man (Section 8(a)).

(ii) Cash payments in the State by non-residents of the scheduled territories to non-residents, if payment is made in foreign currency and is not made in consideration for the receipt by any person of Irish currency or sterling (Section 8(b)).

(iii) Cash payments in the State by a resident in the scheduled territories to a non-resident, if payment does not exceed (singly or in aggregate) £10 in value (Section 8(c)).

(iv) Certain exemptions in relation to commitments and payments (in approved manner) made by residents to non-residents in relation to the purchase of certain goods (originating in countries other than the scheduled territories or a country in the dollar area with certain limits) (Sections 9 and 10 of the 1959 Regulations), and commitments and payments made by residents to non-residents in relation to the supply of certain services or goods (Sections 13 and 14 of the 1959 Regulations). The services and goods mentioned in Sections 13 and 14 relate to transport, insurance and handling costs related to the imports and exports, and goods and services incidental to the operation by a resident of a ship or aircraft for commercial purposes.

Section 6 of the 1954 Act also prohibits, without the permission of the Minister, payments by residents to other persons within the scheduled territories where the object of such payment is the indirect evasion of Section 5 prohibitions (i.e., compensation deals). Exemptions to Section 6 are also provided for commitments and payments in Irish currency of sterling by Irish residents to residents of scheduled territories in relation to the

purchase of certain goods (provided they are dispatched within nine months) (Sections 11 and 12 of the 1959 Regulations), or in relation to commitments and payments in relation to the supply of services or goods of the kind mentioned above in (iv).

The issue of securities (shares, stocks, bonds, debts, units in unit trust schemes, etc.) and the transfer of securities, annuities and policies of assurance to persons outside the scheduled territories are also prohibited without permission of the Minister. The matter of securities is dealt with in Section 8-14 of the 1954 Act, and will be mentioned later, at 5.6.2.

Contravention of any provision of the Act is declared an offence, liability for which, on summary conviction, carries with it a maximum fine of £500 (and £10 a day in the event of a continuing offence) or six months imprisonment, or both; on conviction on indictment, the maximum fine is £5,000 (and £50 a day in the event of a continuing offence), or two years imprisonment, or both (Section 20). Moreover, continued non-compliance with obligations imposed by the Act is made an independent offence of a continuing nature, commission of which leaves the offender open to a £10 a day fine, or six months imprisonment, or both, and for which fresh proceedings may be taken from time to time. (Section 21) In relation to imports and exports prohibited under the Act, the general provisions of the Customs Act, 1956 (No. 7 of 1956) apply (Section 18), and, in addition to these powers, Section 19 provides the relevant authorities with general powers of search and seizure.

## 5.5. Regulation of Industrial Structure

### 5.5.1. Regulation of Competition. Restrictive Practices

Generally, perhaps because of the smallness of the home market, the regulation of industrial structure was not, until fairly recently, seen to be a great problem in Ireland. Perhaps it was felt that if Irish industries were to export successfully to the traditional market in Britain and compete with British manufacturers, then structural restrictions at home should be limited.

The general trend of legislation in this field in Ireland since 1953 has been one which merely reinforced competition by ensuring fair trading; its primary purpose has been to promote free but fair competition in the supply and distribution of goods. The method of the legislation, which will be described below, is not to outlaw any particular kind of restrictive trade practice but rather to establish a method of public scrutiny to examine trade practices in order to prevent abuses. Briefly, two agencies, the Examiner of Restrictive Practices and the Restrictive Practices Commission, act as the public scrutineers in this matter, and, if an unfair practice is established, it may be reported to the Minister for Industry and Commerce, who can then, under the Act, make an order outlawing that particular activity.

The main legislation, relating to competition and restrictive practices in Ireland at present, is contained in the Restrictive Practices Act, 1972 (No. 11 of 1972), which, although it repealed the earlier legislation on this matter (the Restrictive Trade Practices Acts of 1953 (No. 14 of 1953) and 1959 (No. 37 of 1959)), largely re-enacted earlier provisions and consolidated the

law. Before outlining the scope of this legislation, a couple of preliminary points should be mentioned. Firstly, the Act purports to cover the provision of services as well as the sale and distribution of goods. Secondly, the functions of the Restrictive Practices Commission may overlap with the functions of the National Prices Commission, which has been set up by the Minister for Industry and Commerce to keep under review prices of commodities and charges of services. As might be expected, therefore, close liaison exists between the Restrictive Practices Commission and the Prices Commission. Thirdly, the Act does not cover certain Types of activity, for example, banking, supply of electricity, certain forms of transport, and, contracts of employment.

The Act envisages two agencies whose function it will be to ensure that fair trade rules operate in market conditions in Ireland: the Examiner of Restrictive Practices and the Restrictive Practices Commission (formerly, the Fair Trade Commission). The Examiner and the Commission operate, within the framework of the Act, under the Minister for Industry and Commerce. The Act lays down guidelines to which the Commission and the Examiner shall have regard in the exercise of their functions. These guidelines include a description in the third schedule of unfair practices. These unfair practices include:

- "any measures, rules, agreements or acts, whether put into effect (or intended to be put into effect) by a person alone, in combination or agreement (expressed or implied) with others or through a merger, trust, cartel, monopoly or other means or device whatsoever, which -
- (a) have, or are likely to have, the effect of unreasonably limiting or restraining free and fair competition,
  - (b) are in unreasonable restraint of trade,
  - (c) have, or are likely to have, the effect of unjustly eliminating a competitor,
  - (d) unjustly enhance prices of goods or charges for services, or promote unfairly at the expense of the public, the advantage of suppliers or distributors of goods or persons providing services,
  - (e) secure, or are likely to secure, unfairly or contrary to the common good, a substantial or complete control of the supply or distribution of goods or any class of goods or the provision of services or any class of services,
  - (f) without just cause prohibit or restrict the supply of goods or the provision of services to any person or class of persons or give preference in regard to the supply of goods or the provision of services,
  - (g) restrict, or are likely to restrict, or are likely to restrict unjustly, the exercise by any person of his freedom of choice as to what goods or services he will supply or provide, or as to the area in which he will supply goods or services,
  - (h) impose unjust or unreasonable conditions in regard to the supply or distribution of goods or the provision of services,
  - (i) without good reason exclude, or are likely to exclude, new entrants to any trade, industry or business,
  - (j) secure, or are likely to secure, unjustly the territorial division of markets between particular persons or classes of persons to the exclusion of others, or
  - (k) in any other respect operate against the common good or are not in accordance with the principles of social justice."

The Examiner, who is appointed from time to time by the Minister, has extensive powers of investigation conferred on him by Sections 14 and 15 of the Act in relation to (i) the supply or distribution of goods or the provision of services; (ii) the operation of any order issued by the Minister under the Act; (iii) the supply or distribution of goods or the provision of services by persons outside the State, or (iv) any aspect of the operation of fair practice rules. As a result of his investigations, and in the exercise of his functions, the Examiner may recommend to the Commission that it establish Fair Practice Rules or that it should hold an Enquiry. To carry out his function, the Act gives the Examiner extensive powers to inspect premises and records, etc., but the intention to exercise these powers must be notified in advance to the owner, who is, under the Act, given an opportunity to oppose such inspection, etc., in the High Court. Although the Examiner's role is essentially an investigatory one, where he is primarily concerned with establishing the facts, he also, as has been described above, has certain powers of request which can set the Commission's procedure in motion.

The principal powers and duties of the Commission are as follows:

(a) A power to establish Fair Practice Rules with regard to the supply and distribution of goods or services (Section 4). Fair trade rules have, in fact, from time to time been issued by the Restrictive Practices Commission (and its predecessor, the Fair Trade Commission) in relation to the following goods: ropes, cutlery, electric light bulbs, coal, aluminium hollow-ware, and razor blades; and in relation to entry into the following trades: the retail trade in petrol, cooperative wholesale distribution of grocery goods and provisions, sale and/or repair of motor vehicles, and the wholesale trade in domestic electrical goods. (This list is selective, not exhaustive.)

(b) A general duty to study and analyse the effect on the common good of methods of competition, types of restrictive practice, monopolies, the structure of any markets, the amalgamation of, or acquisition or control of, bodies corporate, the operation of multi-national enterprises and relevant legislation (Section 12).

(c) A duty when so requested by the Minister for Industry and Commerce to hold an enquiry into the refusal by employers or employees to use particular materials or particular methods for manufacturing or constructing purposes (Section 9).

(d) A power to conduct enquiries into the supply and distribution of any kind of goods, or the conditions which obtain in regard to the provision of any service (Section 5). A report under this section should describe the conditions which obtain in regard to the supply or the distribution of the goods concerned and state whether any of these conditions involves restrictive practices, including arrangements which prevent or restrict competition or restrain trade or the provision of any service or involve re-sale price maintenance. The report should also state whether any such interference with competition, etc., or any such practice or method of competition is unfair or operates against the common good and should give reasons for the conclusion stated in the report. The report should state whether the Minister should make an order and, if so, what form the order should take (Section 7).

Consequent on a report of the Commission on a Section 5 enquiry, the Minister may issue an order which, when it is confirmed by the Oireachtas, has statutory force. (A recent example of such a confirmation act is to be found in the Restrictive Practices (Confirmation of Order) Act, 1975 (No. 20 of

1975), which confirms the Restrictive Practices (Motor Oil) Order, 1975.) Such an order may do any, or all, of the following: (a) prohibit restrictive practices; (b) prohibit unfair practices, or unfair methods of competition; (c) ensure equitable treatment of all persons in regard to the supply or distribution of goods or the provision of services, and (d) take such other measures as the Minister thinks fit in regard to these matters. Restrictive Practices Orders which have been given force of law by confirming legislation now exist, to take a few examples, in the following areas: groceries (S.I. No. 49 of 1973 and S.I. No. 287 of 1973), building materials (S.I. No. 187 of 1955), motor cars (S.I. No. 87 of 1956), cookers and ranges (S.I. No. 117 of 1962), jewellery, clocks and watches (S.I. No. 80 of 1968), electrical appliances and equipment (S.I. No. 151 of 1971 and S.I. No. 313 of 1971).

Any person who contravenes such an order (or assists at such a contravention) shall be guilty of an offence under the Act. Moreover, a court of competent jurisdiction may grant an injunction to enforce compliance with the terms of such a Ministerial order. Interference with enquiry witnesses is also declared to be an offence under the Act. The normal penalties, provided by Section 23 of the Act, are: (i) on summary conviction of an offence, a maximum fine of £200 (and £10 a day if it is a continuing offence), or six months imprisonment, or both; (ii) on conviction on indictment, a maximum fine of £5,000 (and £500 a day if it is a continuing offence), or two years imprisonment, or both.

Since January 1973 (accession to the European Communities), Community rules on competition, especially Articles 85 and 86 of the Treaty of Rome, are also relevant to the present discussion, in that they, too, apply in Ireland. This report, however, does not intend to deal with these rules except to mention their relevance in the present context.

#### 5.5.2. Mergers

The Mergers, Takeovers and Monopolies (Control) Bill, at present before Parliament, attempts, for the first time, to specifically deal with the problem of the size of enterprises in the Irish economy. Generally speaking, it provides that no proposal for a merger or takeover of a certain size is valid unless the Minister for Industry and Commerce has been notified and has approved of the merger or takeover in advance. A merger or takeover is presumed to exist in the Bill when "two or more enterprises, at least one of which carries on business in the State, come under common control." The legislation will only apply, however, to proposed mergers or takeovers where, in the most recent financial year, the value of the gross assets of any enterprise proposed to be merged or taken over is not less than £500,000, or its turnover is not less than £1,000,000. (Section 2(1))

Apart from approving the proposed merger or takeover, the Minister may refer it for consideration to the Examiner of Restrictive Practices, and, after receiving the Examiner's Report, may refer it to the Restrictive Practices Commission. The Examiner's function in this, as in other cases, is primarily concerned with establishing the facts, but, if it is referred to the Restrictive Practices Commission, the Commission must hold an Enquiry into the matter, and examine it in relation to the criteria set out in the schedule of the Act (5.5.1. supra). On receiving the Commission's report, the Minister is empowered to make an order prohibiting the merger or takeover, or, prohibiting it except on certain conditions. Such an order must give the Minister's

reasons for making it. The order is of statutory force, unless it is annulled by either House of Parliament within 21 days. The criteria to which the Examiner and the Commission must have regard are set out in the schedule of the Act, and are as follows: the extent to which the proposed merger or take-over would be likely to prevent or restrict competition, or to restrain trade or the provision of any service, or would be likely to endanger the continuity of essential supplies of services, or would be likely to affect employment and would be incompatible with national policy in relation to employment, or is in accordance with national policy for regional development, or is in harmony with any proposal or plan related to the rationalisation, in the interest of greater efficiency, of operations in the industry or business concerned, or is likely to result in benefits relating to research and development, technical efficiency, increased production and access to markets. The Commission must also take into account the interests of the shareholders and partners in the enterprises involved, and the interests of the employees.

With regard to monopolies, the general powers contained in the Restrictive Practices Act, 1972 enable monopolies which abuse their position to be penalised, and the new Bill proposes to extend these powers to enable such monopolies to be broken up, or to make their continued existence subject to conditions. Where the Examiner of Restrictive Practices, in pursuance of powers conferred upon him under the Restrictive Practices Act, 1972, investigates a monopoly, and, in his report to the Restrictive Practices Commission, states that, in his opinion, such a monopoly exists and that the Commission should hold an Enquiry, then the Commission is obliged, in its statutory report to the Minister, to state whether it agrees with the Examiner's view, whether there is a restriction on competition, and whether such a restriction is unfair or whether it operates against the common good. The new Bill further proposes that, on receipt of the Commission's report, the Minister may make an order prohibiting the continuance of the monopoly, except on specified conditions, or requiring the division of the monopoly by the sale of the assets or otherwise. Such an order must be a reasoned one, and shall not have force of law until it is confirmed by act of the Oireachtas. A "monopoly" is defined in the Bill as:

"an enterprise or two or more enterprises under common control, which supply or provide, or to which is supplied or provided, not less than one half of the goods or services of a particular kind supplied or provided in the State in a particular year, according to the most recent information available on an annual basis."

The Bill, however, will only apply to monopolies "where in the most recent financial year the monopoly's sales or purchases of goods or services exceed £500,000."

### 5.5.3. Internal Structure: the Enterprise and its Work Force

The relationship between management and its work force is still determined in Ireland by a system of free collective bargaining. The State's regulatory role is minimal in the matter, and ideas dating from the early years of the century still prevail. In general, it may be said that the State's role is seen to be one in which it merely provides the appropriate structures which facilitate the completion of agreements between employers and employees (or

their Unions acting on their behalf), and provides machinery for the speedy settlement of disputes between the parties when such disputes do arise. This role is principally evidenced in the legislative sphere in the Trade Union Act, 1941 (No. 22 of 1941) and the Industrial Relations Acts, 1946 and 1969 (No. 26 of 1946 and No. 14 of 1969). Some provisions of the Constitution may also condition the State to this modest concept of its role and inhibit it in its efforts to regulate in this area. Article 40.6. of the Constitution specifically recognises the fundamental right of individuals to form associations and unions (subject to limitations), and this has been interpreted by the Supreme Court to include the individual's right not to join a union if he so wishes (*Educational Company of Ireland v. Fitzpatrick and Others* [1961] I.R. 345). More importantly, however, an attempt by the Government in the Trade Union Act, 1941 to control inter-union rivalry by the establishment of a tribunal which would be vested with the power to determine that "a particular union should have sole right to organise employees of a particular class" was declared to be unconstitutional by the Supreme Court (*National Union of Railwaymen v. Sullivan* [1947] I.R. 77), in that it deprived citizens of the choice of persons with whom they might associate, and was, as such, contrary to Article 40 of the Constitution. Insofar as this portion of the Act was also designed to solve the problem of British unions, which are allowed to operate branches within the State, something they have done since the early 1900's, before the modern Irish State was founded, it also failed. The problem of proliferation of unions in Ireland, therefore, has had to be handled in a more gentle manner in the Trade Union Act, 1975 (brought into effect by the Trade Union Amalgamations Regulations, 1976, S.I. No. 53 of 1976). This Act is designed to facilitate amalgamations and transfers of engagements, by providing clear-cut procedures for both, and by providing financial assistance for the expenses involved.

The principal assistance given by the State to enable management and labour to secure their respective objectives within the economy relates to the sphere of collective agreements, the securing of which, in Ireland, still represents one of the main functions of trade unions. The most important example of these agreements relates to wages, and is to be found in the National Wage Agreement in recent years. This has already been described in connection with Income Policy (5.2.1.2. supra), and comments can be confined to two aspects here. Firstly, the National Wage Agreements, as such, like other collective agreements, are not, generally speaking, binding on the parties, although the Government has acted in Ireland to outlaw actions of individuals in breach of these agreements. Secondly, the Government participates in these agreements only as an employer. It does not occupy, at negotiations, an independent seat as the regulator of the economy. The agreements are, therefore, between two parties, employers and employees, and are not, save in an indirect way, tripartite in nature.

Some control, however, is exerted by the State in relation to collective agreements, by the insistence, under the Trade Union Act, 1941 (No. 22 of 1941), that only the holders of negotiating licences from the Minister for Industry and Commerce can negotiate wages and conditions of employment. Apart from some exceptions contemplated by the Act (e.g., Agricultural Wages Board, joint labour committees, etc.), only registered trade unions which have made a substantial financial deposit with the High Court will be issued with a negotiating licence. This licencing system means that dialogue in these matters between workers and employers is, therefore, confined to certain recognised parties, and that non-holders of a negotiating licence cannot subsequently



interfere to sabotage these agreements. Because, however, such collective agreements are not legally binding on the parties, they will not be enforced by the courts of the land. Their efficacy, therefore, depends on the more blunt instruments of the industrial bargaining process, such as, the strike or the lock-out weapons. To give some legal significance to these agreements, the Government has, in the 1946 Industrial Relations Act (No. 26 of 1946), made provision for the registration with the Labour Court (see infra) of these agreements when the parties desire it. Although the collective agreements are not, in themselves, legally binding, they acquire some legal significance by registration. This significance, it may be said, is twofold in nature: Firstly, the registered agreement is deemed to be contractual in nature between all employers and workers of the class to which the agreement is expressed to apply, notwithstanding that an individual worker or employer is not a party to the agreement. A breach of such a registered agreement may, therefore, be enforced by an individual by resort to his civil remedies in contract. Secondly, registration of an agreement gives certain jurisdiction to the Labour Court, which jurisdiction the parties must submit to, and which enables the Labour Court to issue directives which the parties must obey. Although the Act does not, therefore, give legal status to the agreements themselves, it does oblige the parties to submit to the jurisdiction of the Labour Court, and does provide that it is an offence punishable by fine to disregard the directives of the Labour Court on these occasions. The Labour Court will only register an agreement if certain conditions under the Act are fulfilled.

Permanent joint negotiating bodies exist in some industries, and these are of two kinds: (i) Joint Industrial Councils and (ii) Joint Labour Committees. A Joint Industrial Council is a voluntary body, comprised of representatives of employers and employees from a particular industry with an independent Chairman. The Council provides a forum for the discussion of general issues relating to the industry, but principally concerns itself with negotiations relating to wages and the conditions of employment for the industry in question. The agreements reached by such Councils are, like all other collective agreements, not legally binding. Disputes within one industry are usually referred for solution, firstly, to the Council where one exists, and then to the Labour Court. Such Joint Industrial Councils may be registered with the Labour Court, and, as an incentive to such registration, registered Councils are exempt from negotiating licence requirements. Joint Labour Committees, on the other hand, are statutory bodies, appointed by order of the Labour Court under authority conferred by the Industrial Relations Act, 1946 (Section 35) in respect of a particular class of workers. A Joint Labour Committee will be set up only if the employers and employees agree, but, once established, it will be comprised of independent members, appointed by the Minister for Industry and Commerce, and nominees of the Labour Court, representing employers and employees. The decisions of the Committee, if it is appointed by the Labour Court, are legally enforceable. This means in particular that Joint Labour Committees can fix minimum rates of pay and conditions of employment for their respective industries. If the Labour Court approves of the recommendation of the Joint Labour Committee, it issues an Employment Regulation Order, which has statutory effect and breach of which is an offence. Joint Labour Committees exist in the following industries: Boot and Shoe Repairing, Button Making, Creameries, Law Clerks, Tailoring, Hotels (outside of Dublin and Cork), etc. At present, a bill before Parliament (Industrial Relations Bill, 1975) aims at establishing a joint labour committee for agricultural workers in the State.

The Industrial Relations Act, 1946, in a further effort to promote harmonious relations between workers and employers, and to provide machinery for the speedy resolution of industrial disputes, also established the Labour Court. The Court, however, has no powers of compulsory arbitration and it functions only to the extent that the parties wish it. To this extent, it is not a court at all in the full legal sense, but rather a permanent negotiating forum available to parties in industrial dispute. The Court makes available Industrial Relations Officers to facilitate conciliation in industrial disputes, and only when the parties have failed after a genuine effort to settle, and have requested the Court to investigate, will the Court entertain the dispute. The Court can, however, in exceptional cases, investigate a dispute of its own volition. Normally speaking, the parties are not bound by a recommendation of the Labour Court, but in some cases they may agree in advance to be so bound.

Finally, the Redundancy Payments Acts, 1967 (No. 21 of 1967 and 1971 (No. 20 of 1971), and the Industrial Training Act, 1967 (No. 5 of 1967), should also be mentioned as having certain regulatory aspects not irrelevant to the present heading. The former acts attempt to cater for employees who are dismissed because of redundancy by making payable to them a certain lump-sum and weekly allowances which are calculated by reference to a scheme set out in the Act. The previous duration of the employees' employment is an important factor in these calculations. The weekly payments and rebates to employers of lump-sum payments are made out of a special Redundancy Fund, which is financed by weekly contributions by employers and employees. Under the Industrial Training Act, 1967 (No. 5 of 1967), the Industrial Training Authority (AnCO) was established, primarily to raise the levels of the skills of the Irish work force in industrial and commercial activities. It also provides for the training of unemployed and redundant workers and the initial training of apprentices. As the main functions of AnCO have already been referred to above (see 3.2.2.), suffice it to say, in this context, that its activities are financed by levy/grant schemes, which are being introduced for each industrial sector.

## 5.6. Regulation of Investment and of Access to Markets

### 5.6.1. Industrial Location

Apart from the indirect inducements of tax concessions, higher grants, etc., already described, and which, by their structure, attempt to direct industry into desirable areas, no direct regulations exist. These tax concessions and grants differentiate between "designated" (formerly, 'underdeveloped' areas) and "non-designated" areas, and industry locating itself in the former areas gets better treatment. Similar inducements exist in relation to the Shannon area, and for industries establishing themselves in the Gaeltacht areas (see 3.2.3. supra). The IDA, too, by the operation of a clearly developed Regional Industrial policy, attempts to divert industry into priority areas (see 3.2.3. supra). As these have been dealt with above, they will not be treated again at this point.

Physical planning and local development regulations, while not solely concerned with the location of individual enterprises, may also affect the

the location of industry. The principal piece of legislation in this area is the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963). Several Ministerial regulations have been issued under this Act since it was passed. The scheme envisaged under the Act to promote proper planning and development is as follows: Planning authorities are established throughout the country whose function it is to draw up a development plan for their areas. This plan, which must be reviewed at intervals, indicates the development objectives and usually reserves certain areas for certain kinds of activities (e.g., industrial, residential, etc.) (Section 19). Permission for the development of land, which is not exempted, must be sought from the Planning Authority which, in considering the application, must have regard to its development plan. The Planning Authority may permit the development, or permit it on conditions, or refuse permission. In effect, therefore, an industrial development will usually be permitted only within an area designated as an industrial area in the development plan. Permission may be granted in some cases outside such zoned areas, if clear zones exist, but in these cases, the conditions attached to the permission may be so onerous that the development becomes uneconomical. This scheme, therefore, while not amounting to a statutory prohibition in relation to industrial development, in practice, frequently, by administrative decision, dictates, within a particular area, where industry is to be established. The Act also provides that certain areas may be declared "areas of special amenity" by Planning Authorities, in which event development restrictions are more rigid. At present, an appeal against the Planning Authority decision lies to the Minister for Local Government in certain cases. This Ministerial power to overrule the Planning Authorities has been criticised and a new Act is being introduced which intends to transfer to a Planning Board this appellate function. As one would expect, certain activities are exempted from this Act, either by the Act itself, e.g., development of agricultural land, developments by county councils, etc. (Section 4), or by separate regulation issued by the Minister, e.g., to electricity undertakings (S.I. No. 260 of 1968).

#### 5.6.2. Control of Foreign Investment

In order to safeguard our official reserves, and to prevent the unauthorised transfer of Irish assets to non-residents, the issue and transfer of Irish registered and sterling securities are controlled in the Exchange Control Act of 1954. Since the exchange controls in Ireland vis-a-vis other countries are broadly the same as those operated by the United Kingdom, the following statement by Professor Daintith (The Economic Law of the United Kingdom, at p. 79, in this series) in relation to sterling security controls is equally opposite to Irish controls:

"Controls over dealings in sterling securities are mainly concerned with ensuring that:

- (i) additions to non-resident holdings of such are paid for in sterling from an external account, in funds eligible for credit to an external account, or in sterling arising from the sale of foreign currency in the official foreign exchange market, thereby obtaining the proper balance of payments benefit from non-resident investments;
- (ii) interest, dividends and capital payments on such securities are not remitted outside the scheduled territories unless the holdings

have been properly acquired by non-residents;

(iii) purchases of such securities on behalf of non-residents on stock exchanges do not frustrate the rules of inward direct investment in United Kingdom companies."

The Irish controls over securities are contained in Sections 8-14 of the Exchange Control Act, 1954 (No. 30 of 1954). Briefly, they provide that, except with the permission of the Minister for Finance ( now by delegation, the permission of the Central Bank), a person shall not:

(i) Issue any security to a person outside the scheduled territories or his nominee. (Section 8)

(ii) Transfer (or accept a transfer of) securities, annuities or policies of assurance to a person outside the scheduled territories or his nominee, or transfer any reserve security or coupon to any person. (Section 9)

(iii) Issue bearer certificates or coupons. (Section 10)

(iv) Substitute registered scheduled territory securities or bearer certificates in scheduled territories with securities registered outside the scheduled territories or bearer certificates outside the scheduled territories. (Section 11)

(iv) Pay capital monies on securities registered in scheduled territories outside the scheduled territories. (Section 12)

To enforce this scheme of prohibitions, Section 13 imposes certain duties of registration on persons who keep security registers. Moreover, certificates of reserved securities must be kept in the custody of authorised depositaries. Reserved securities are defined as: (1) Securities transferable by means of bearer certificates; (2) Securities registered outside the State on which interest on dividends are payable by coupon; (3) Securities registered outside the scheduled territories; (4) Securities registered in the scheduled territories which can be transferred to or in a register outside the scheduled territories. (Third Schedule of the Act)

General permissions are given in Exchange Control Notice No. EX 5 of the Central Bank in relation to these matters, but specific permissions are still required from the Central Bank if the security activity is not covered by this notice, or if a new issue is not to be quoted on the Stock Exchange. In relation to Irish registered or sterling securities quoted on a recognised security market, the approved agent or the authorised depositary must be satisfied of the residency of the applicant, or, if the application is from a non-resident, then it must be accompanied by payment in foreign currency of Irish pounds/sterling from an external account and presented by an approved agent or British authorised depositary who is satisfied as to the manner of payment. Proof of residency is required where transfers take place between residents, and of non-residency in the case of non-residents, and in the latter case, payment must be made in foreign currency or Irish pounds/sterling from an external account.

Transactions in foreign currency securities are governed by Exchange Control Notice EX 6 of the Central Bank, the main provisions of which are contained in paragraphs 13, 14, 18 and 19, which are reproduced here:

"13. Owners of foreign currency securities may retain them in their own custody but all transactions in such securities must be affected through an approved agent. Import of such securities is allowed but export is in general prohibited, except that approved agents may export them:

- (a) to a British authorised depository to complete a sale;
- (b) for sale outside the scheduled territories, in accordance with paragraph 16 following, and provided payment will be made in either foreign currency or Irish pounds/sterling from an external account;
- (c) for conversion, exchange, enfacement, recouping, proof of death of owner, or similar necessary purpose.

Approved agents may also export coupons in the normal course for collection of interest.

14. Residents of the scheduled territories may purchase foreign currency securities through the investment currency market only. This entails paying a premium over and above the official rate of exchange obtaining between Irish pounds/sterling and foreign currency. Where foreign currency securities are purchased on the London market, the sterling price quoted included the premium.

.....

18. The sales proceeds of a premium-worthy foreign currency security may be treated as investment currency only to the extent of 75% of the net proceeds.

19. The remaining 25% of the proceeds must be sold without delay to an authorised dealer against Irish pounds or sterling at the official market rate of exchange."

Other regulations in this notice relate to the eligibility of other funds for disposal in the investment currency market, and to foreign currency borrowing for portfolio investment. If the latter type borrowing is permitted by the Central Bank, it will only be approved on certain fixed conditions, the most important of which require that only quoted securities may be purchased, the repayment of the loan in due course must be made from foreign currency proceeds, the interest in respect of the loan must be met from the income arising from the investments, etc. (See paragraphs 28 and 30 of Exchange Control Notice EX 6.)

Direct investment into Ireland is controlled by the Exchange Control Notice No. X 13. This notice required permission for all direct investment in Ireland by non-residents of the scheduled territories. Direct investments are defined as being "(a) investments in which the investor establishes, expands or consolidates an economic enterprise in Ireland with the intention of participating in its management or operation; (b) trade investments, where the investor establishes or maintains commercial links with Irish companies to further this existing business." The distinctive characteristic of direct investment is that it involves the acquisition of a degree of control of the enterprise being invested in. By way of contrast, a portfolio investor participates in the

securities of a company without showing any desire to control the management thereof. Application for investment in new projects in Ireland must be made to the Central Bank and specific information concerning the nature of the new project must accompany the application. (See paragraph 5 of Exchange Control Notice EX 13.) Permission is usually granted for the issue of shares to non-residents of scheduled territories on the production of a certificate from an Irish bank that the monies have been paid in either foreign currency or Irish pounds/sterling from an external account. Loans from non-residents also require permission, and such permission will normally be given only when the bank is satisfied that the rates of interest are not excessive.

Where permission has been given to a non-resident to directly invest in Ireland, permission will also be readily given by the Central Bank for the remittance of dividends and profits, and for the repatriation of capital outside the scheduled territories. Banks are normally allowed to lend local currency to a non-resident-controlled Irish company for working capital requirements, but fixed asset financing would normally be expected to be contributed in the form of equity or loan capital from outside the scheduled territories. Paragraph 16 of Exchange Control Notice No. EX 13 further declares: "provided that the company is not a medium for portfolio investment, a subsidiary or branch of an EEC-controlled company may, subject to Exchange Control approval, obtain from Irish banks all the finance it requires for its operation in Ireland." Permission to borrow foreign currency for its operations in Ireland will also be readily granted by the Central Bank.

Outward direct investment also requires the permission of the Central Bank, and each application is considered on its own merits. (See Exchange Control Notice No. EX 14.)

In accordance with its commitments under the Treaty of Accession to the EEC (Article 122, 1(a)), the Irish Government has, since January 1975, formally liberalised its Exchange Control regulations in relation to direct investment by Irish residents in EEC countries, other than the United Kingdom. Sums transferred at official rates of exchange to finance such approved direct investments are not now subject to limits. Approval, it must be emphasised, however, for such investments is still required. The above regulations on foreign investment in Ireland must, however, be understood in the general context of the Exchange Control Scheme that operates in the country, and which includes restrictions on dealings in gold, foreign currencies, etc., prohibitions on the export and import of gold, certificates, currency, etc., regulations relating to the payment for exports, and general regulations regarding the payments to persons outside the country - matters which have already been dealt with above at 5.4. The main purpose of these Exchange Control rules is to safeguard Irish reserves of foreign currency and to keep the Exchange Control System in line with those in other scheduled territories.

### 5.6.3. Limiting Access to Markets: Quantitative Criteria

Under the present heading, we will discuss those circumstances (other than mining, agriculture, transport and energy, which will be discussed later at 5.6.5. and 6.1. to 6.4.) where the State, for one reason or another, wishes to confine to a limited number of persons a particular economic activity. Relevant to the present heading, the State, for example, may consider such restrictions necessary to protect a State monopoly, or the monopoly of a

State-sponsored body; or it may restrict entry into the activity because it considers that the community needs are already adequately satisfied in that particular activity by existing services. In Ireland, as examples of the former, the Post Office has a monopoly of the mail, etc., business (mainly, The Post Office Act, 1908); the Electricity Supply Board has a monopoly of generating electricity for commercial purposes (Electricity (Supply) Acts, 1927-1974); Comhlucht Siuicre Éireann has a monopoly of sugar manufacturing (Sugar Manufacture Act, 1933 (No. 31 of 1933)); and Radio Telefis Éireann has a monopoly of broadcasting (Broadcasting Authority Acts, 1960-1973). As examples of the latter, one might mention certain liquor outlets under the Intoxicating Liquor Act, 1960 (No. 18 of 1960), and amusement halls and funfairs under the Gaming and Lotteries Act, 1956 (No. 2 of 1956). Quantitative factors on their own, however, are not normally stipulated as an important factor for consideration, and are rarely stipulated as the only factor which the Licensing Authority must take into account. Instances where the number of the existing persons in the activity is important, although not explicitly mentioned, in the governing legislation, also occur in the following: liquor licences generally (Intoxicating Liquor Acts, 1924 to 1962), cinemas (Cinematograph Act, 1909), and street traders (Street Trading Act, 1926 (No. 15 of 1926)).

Local authorities are frequently the licensing authorities in some of these cases, although the District Court is the licensing authority in the case of liquor licences. The local authorities' power in these matters may be specifically given to them by particular acts of Parliament, or may derive from the more general legislation which authorises them to make by-laws "for the good government and control" of their areas. Examples of the former authority are to be found in the following: Poisons and Pharmacy Act, 1908 (poison licences); Local Government (Planning and Development) Act, 1963 (No. 28 of 1963) (Licensing Regulations, 1965 - licences for scaffoldings, hoardings, petrol pumps, etc.); The Slaughter of Animals Act, 1935 (No. 45 of 1935) (slaughter licences); Cinematograph Act, 1909 (cinema licences); Milk and Dairies (Amendment) Act, 1956 (No. 42 of 1956) (bottling licences); Street Trading Act, 1926 (No. 15 of 1926) (street traders stall licences); Petroleum Act, 1871 (petrol storage licences). Examples of the latter - i.e., matters which may be regulated by by-laws - occur in relation to theatres, newspaper vendors, etc.

Even when not specifically constituted a licensing authority in relation to certain matters, the local authorities are frequently given watchdog roles in relation to public health and safety matters. In this capacity, officers of the local authorities, principally fire officers and health inspectors, will survey buildings and premises which are the subject of a licensing application. An adverse report by one of these officers will usually mean that the licensing authority will refuse the application. Concern for public safety and health (see 5.6.4. infra) are undoubtedly the basis for the local authorities' role here, and it is particularly common in relation to licensing of dance-halls (Public Dance Halls Act, 1935 (No. 2 of 1935)), betting shops (Gaming and Lotteries Act, 1956 (No. 2 of 1956)), music and singing areas, etc.

There are, in Ireland, other controlled activities, entry to some of which may undoubtedly be partly influenced by quantitative considerations, but which are primarily subjected to a licensing system because of a desire to raise revenue, or because such a licensing system facilitates the collection of excise duties levied on particular goods and activities. So, for example,

bookmakers, liquor dealers, auctioneers and house agents, game dealers, money lenders, pawnbrokers, salmon and trout dealers, as well as the manufacturers of matches, methylated spirits, table water, tobacco and tyres, all require licenses and, no doubt, greatly facilitate the collection of excise duties levied on some of these products. In some of these cases, in addition to requiring a permit to engage in such an activity, excise duty permits may be further required in relation to each individual event (for example, individual auction and dance permits), or in relation to individual premises (for example, betting shops, each of which requires a separate permit). The most important of all these relate, of course, to liquor licenses which are required at both the manufacturing and distribution (dealers and retailers) stages of the industry. The total receipts, however, from such licenses is less than £200,000, and were it not for the fact that the licensing system also facilitates the collection of duties on beer, spirits, etc., there would be little justification for its retention. The licensing system in such cases (operated as one might expect by the Revenue Commissioners), although not primarily designed to do so, may, of course, be used to limit quantitatively the number of operators in a particular activity or in a particular area.

Finally, it should be mentioned that those activities which are restricted on qualitative criteria (5.6.4. infra), although primarily concerned with standards and safety, may similarly be used quantitatively to limit the number of operators, if this should seem desirable.

#### 5.6.4. Limiting Access to Markets: Qualitative Criteria

The State, under this heading, regulates entry into certain activities in two ways. Firstly, it attempts to secure that certain persons engaging in certain activities possess minimum qualifications: the most important example of this occurs in the liberal professions. Secondly, the State attempts to regulate certain activities in the interests of public security, public safety and health, and other reasons of public policy. Although both the personal qualifications and the nature of the activity are important here, emphasis in the first group is placed on the operator while, in the second group, primary concern is with the activity.

##### 5.6.4.1. Restrictions on Individuals

Of primary importance here are the so-called liberal professions. In Ireland, as in England, admission to these professions - medical, legal, veterinary, optical, etc. - is controlled by the governing council of each profession, which is usually entrusted by a statute with the admission, control and supervision of the profession. Usually, such bodies require applicants to undergo relevant training, and to pass appropriate examinations, which testify to their professional skill and competence before being permitted to practice. Evidence of good character also plays some role in such admissions, but quantity factors, overtly at any rate, are generally irrelevant. Once a person has been admitted to the profession, the governing council exercises continuing control over his conduct, and, in most cases, a member can be removed from the register for professional misconduct. For a person to practice such a profession, or to use a practitioner's title without being registered, is generally made an offence under the controlling legislation. Without such statutory prohibition, it seems clear that a person cannot be prevented from practising such a



profession in Ireland.

The following is a list of professions controlled in this way in Ireland: doctors (Medical Practitioners Acts, 1927-1955); solicitors (Solicitors Act, 1954 (No. 36 of 1954)); dentists (Dentists Act, 1928 (No. 25 of 1928)); nurses and midwives (Midwives Act, 1944 (No. 10 of 1944) and Nurses Act, 1950 (No. 27 of 1950) and 1961 (No. 18 of 1961)); opticians (Opticians Act, 1956 (No. 17 of 1956)); chemists (Pharmacy Acts, 1875-1962); veterinary surgeons (Veterinary Surgeons Acts, 1931 to 1960). One exception to the rule that such professions are generally controlled by a specific statute is that branch of the legal profession known as the Bar, which, as in England, is a voluntary unincorporated society (The Honorable Society of the King's Inns), which claims to be outside the control of the State. The Bar is that branch of the legal profession which had, until recently, in Ireland (and still has in England), a monopoly of audience before the superior courts of the land. The Governing Body of the Bar are the Benchers, and they have the sole power to admit new members. Having been admitted, a Bar student must undergo a prescribed education course before he is "called to the Bar". The Benchers also maintain a continuing discipline over the members of the profession.

Apart from these liberal professions, statutory qualifications for entry into an activity are unusual, but may be found in the area of transport (see 6.4. below) and in the Mines and Quarries Act, 1965 (No. 7 of 1965) which requires the manager of a mine to be of a prescribed age, and to possess such qualifications and to satisfy such conditions as may be prescribed from time to time. (Section 15. See Mines (Managers and Officials) Regulations, 1970, S.I. No. 75 of 1970.)

#### 5.6.4.2. Restrictions on Businesses

Restrictions under this heading attempt to promote public safety, public health (physical and moral) and public policy generally. The restrictive policy in this area is, as in 5.6.4.1., usually enforced by a licensing system: a person wishing to participate in any of these activities must be a holder of a licence from the appropriate authority. The licensing authority will be identified from the regulating legislation and may be the appropriate Minister for State, the local authority, the local Justice of the District Court, or some other designated authority (for example, the Central Bank in the case of banking). As already mentioned above, restrictions in this area focus on the activity, and tend to demand minimum qualifications from those entering the business, and if these are present, the licence will then issue fairly automatically. Put another way, it may be said that, normally if the applicant can show that he is a "fit person" and no disqualified (for example, by having been convicted of a criminal offence), he will usually get a licence. This is the only extent to which the applicant's qualifications are taken into account. The following activities are regulated in this fashion. By virtue of the State's interest in the stability of its financial institutions: banks (Central Bank Acts, 1942 (No. 22 of 1942) and 1971 (No. 24 of 1971)); insurance companies (Insurance Acts, 1909-1971); unit trusts (Unit Trusts Act, 1972 (No. 17 of 1972)). By virtue of the State's interest in public safety and health: dangerous substances (Dangerous Drugs Act, 1934 (No. 1 of 1934)); poisons (Poisons Act, 1961 (No. 12 of 1961)); manufacture of medicines (Health Acts, 1947-1970 and Regulations issued thereunder); firearms (Firearms Acts, 1925-1971); cinemas (Cinematograph Act, 1909); theatres (local by-laws); maternity homes (Registration of Maternity

Homes Act, 1934 (No. 14 of 1934)); adoption societies (Adoption Act, 1952 (No. 25 of 1952)); slaughter houses (Slaughter of Animals Act, 1935 (No. 45 of 1935)); immature spirits (Immature Spirits Restriction Act, 1947 (No. 12 of 1947)). Other restrictions also exist, under various subordinate legislation, under the general authority of the Health Acts, 1947-1970 and the Sale of Food and Drugs Acts, 1875-1936. As the protector of public morals, the State restricts certain activities which it considers to be immoral. Accordingly, the manufacture or sale of contraceptives is prohibited under the Criminal Law Amendment Act, 1935, and, although a prohibition on the importation of contraceptives for personal use, contained in the same Act, has recently been struck down as being unconstitutional by the Supreme Court (McGee v. A.G. and The Revenue Commissioners 1974 I.R. 284 and 293), the prohibition against sale or manufacture still stands. Under the Censorship of Publications Acts, 1929-1967, the publishing, the printing or the distribution of banned publications is likewise prohibited. Similarly, gaming and lotteries are regulated (Gaming and Lotteries Act, 1956 (No. 2 of 1956), and every film for public showing is required to have a certificate from the official censor (Censorship of Films Acts, 1923-1930). More general reasons of public policy lie at the basis of the control that exists in relation to auctioneers (Auctioneers and House Agents Act, 1973 (No. 23 of 1973)), employment agencies (Employment Agency Act, 1971 (No. 27 of 1971)), pawnbrokers (Pawnbrokers Act, 1964 (No. 31 of 1964)), and moneylenders (Moneylenders Act, 1933 (No. 36 of 1933)).

Finally, and only of historical interest nowadays, mention should be made of the Control of Manufacturers Acts, 1923-1964. These originated in the economic atmosphere of self sufficiency that characterised Europe in the early thirties, and were designed to secure that the control and ownership of Irish industry remained in Irish hands; they required all foreigners to acquire a licence before they engaged in the manufacturing process. With the change of government policy on this matter, however, these restrictions were repealed in 1964 (Control of Manufacturers Act, 1964 (No. 40 of 1964)) with effect from 1968. They represent, however, an important historical example of a qualitative restriction that did operate in Ireland at one time.

#### 5.6.5. Mining Rights

The legal position with regard to the ownership of mines in Ireland is a rather cloudy area, and is not helped by Article 10 of the Constitution, which relates to minerals and natural resources. Article 10.1 reads as follows:

"All natural resources, including the air and all forms of potential energy, within the jurisdiction of the Parliament and Government established by this Constitution and all royalties and franchises within that jurisdiction belong to the State subject to all estates and interests therein for the time being lawfully vested in any person or body."

There is also a carry-over provision, vesting in the State all minerals, etc., which belonged to Saorstát Éireann immediately before the coming into force of the Constitution, and empowering provisions which enable the State to provide by law for the management and the alienation of such mineral rights.

Apart from expressing a fundamental rule of land law, viz., that the State is the ultimate owner of all real property, and that the citizens can merely own estates in the land, the provision in the Constitution just quoted seems also to re-vest in the State property which is now found to be without an owner (*res nullius*). Although there is very little literature on the meaning of Article 10, this limited interpretation is borne out by the fact that whenever successive Governments have decided to develop the minerals of the State, they have felt obliged to pass specific legislation enabling them to do so (e.g., the Minerals Development Act, 1940 (No. 31 of 1940)).

In spite of this Constitutional provision, however, the State nevertheless owns a large proportion of all the minerals in the State at present (various estimates put the percentage at anything between 50% and 80% of total mineral wealth), with the balance remaining in private hands. The reason why the State at present owns so much of the mineral rights in Ireland can be traced to the scheme devised to enable tenant-purchasers to purchase their land under the Land Acts, 1903-1923. Under this scheme, a government agency, the Land Commission, was established to facilitate tenant-purchasers to purchase the land from the original (frequently absentee) owners. The property was transferred from the original owners to the Land Commission, which, in turn, transferred it to the tenant-purchasers subject to an annuity payable to the Land Commission. In transferring to the tenant-purchasers, however, the Land Commission, as a general rule, reserved the mineral rights in the property. The tenant-purchaser, therefore, was only granted ownership of the stone, gravel, sand and clay on his holding, while the Land Commission reserved the right to minerals. Sub-section 3 of Section 13 of the Irish Land Act, 1903 stated:

"On the sale under the Land-Purchase Acts of any land by the Land Commission, or of any land comprised in an estate by the owner of the estate, there shall be reserved, in the prescribed manner, to the Commission the exclusive right of mining and taking minerals and digging and searching for minerals on or under that land, and the said right shall be disposed of by the Commission in manner hereafter to be provided by Parliament."

Insofar as land was acquired other than through the Land Commission Scheme, the mineral rights therein, of course, vested and remained with the private owner.

Mining in Ireland is regulated nowadays principally by three Acts: Minerals Development Act, 1940 (No. 31 of 1940), the Petroleum and Other Minerals Development Act, 1960 (No. 7 of 1960), and the Continental Shelf Act, 1968 (No. 14 of 1968). The purpose of the Minerals Development Act, 1940, was to authorise the Minister for Industry and Commerce, with the consent of the Minister for Finance, to acquire compulsorily minerals in private ownership in certain circumstances and also to authorise the Minister to work mineral deposits as a State enterprise. Much of the 1940 Act was intended to amend and extend earlier legislation (Mines and Minerals Act, 1931), but it was felt desirable to proceed by way of a consolidating measure rather than by way of amendment to the 1931 legislation and, accordingly, the 1940 Act repealed completely the Act of 1931, and re-enacted many of its provisions in the new act. The scheme of the Act provides that the Minister shall have the right to allow people to enter and prospect on lands which contain unworked minerals, and also to grant prospecting licences (Part II). The Minister is empowered to develop State minerals by way of working them himself, or leasing, or otherwise

disposing of the State minerals for their development (Part IV). The Act also provides for compulsory acquisition of unworked minerals, and of ancillary mining facilities, which are the subject of private ownership. (Part III). Moreover, the Minister is given power to provide facilities for the development of privately owned minerals, and, in particular, power to grant unworked minerals licences (Articles 38 and 39) under Part VI of the Act.

Most of the licences, whether they are prospecting licences, State acquired minerals licences, or unworked minerals licences, will normally be granted only if the Minister is satisfied that the applicant possesses the technical and financial resources necessary for proper and efficient working of the minerals, and, in the case of privately owned minerals, if the private individual cannot by private arrangement obtain a right to work the minerals himself. Provisions are made for compensation in Part VII of the Act, and, where compensation is payable under this legislation, it must be in the form, and on the conditions, laid down by the Act. Compensation may be made in the event of a prospecting licence, for damage to the surface of the property, and in the event of a licence to work and extract the minerals, compensation shall be made in respect of the minerals and the ancillary rights thereto. In the absence of agreed compensation between the parties, the basis for assessment of compensation is set out in Sections 67 and 68 of the Act. Under these provisions, compensation shall be assessed by the Mining Board (established by Part V of the Act), which shall award compensation on the basis of what would be fair and reasonable as the consideration for a hypothetical bargain between a willing grantor and a willing grantee, taking into account the conditions under which the minerals were held before being acquired.

Because of encouraging explorations in recent years, and because of great public awareness of the mineral potential, private interests have recently suggested that the Act itself and orders made under it, especially relating to compulsory acquisition, may be unconstitutional in view of Article 43 of Bunreacht na hÉireann (the Constitution), which prevents the compulsory acquisition of property rights except insofar as the "delimitation" of the exercise of those rights is required by the exigences of the common good. In recent litigation, the Supreme Court avoided answering this question, and so the doubt as to the Constitutionality of the relevant statutory provision remains. (See Roche and Bula Ltd. v. The Minister for Industry and Commerce and the Attorney General. S.Ct. 4 March 1974. Unreported as yet.)

The Petroleum and Other Minerals Development Act, 1960 (No. 7 of 1960) provides separate legislation for petroleum development (which term in the Act includes oil and natural gas). The Act vests in the Minister for Industry and Commerce all petroleum in the State (gold and silver, and certain other mineral rights, were declared to be State minerals by Section 5 of the 1940 Act), and empowers him, by the grant of licences and leases, to secure that any petroleum deposits that may be discovered within the State will be developed efficiently. The Act envisages exploration permissions, prospecting licences and working licences, and provides for compensation to be paid to persons who formerly owned petroleum rights where their land may be damaged in prospecting arrangements and where petroleum is subsequently found and worked. Some of these provisions were already contained in the general legislation relating to minerals (Minerals Development Act, 1940), but it was felt desirable to specifically repeat them in another Act so that all the legislation relating to petroleum would be contained in a single measure.

An indication as to the kind of terms which the State insists on, when deciding whether to grant a mining company a mining lease under the above Acts, can be gleaned from the recent agreement reached between the Minister for Industry and Commerce and Tara Mines in February 1975. According to this agreement, the State will be entitled to a 25% equity stake in Tara Mines free of charge, a 4% flat rate royalty on Tara's profits, and the normal 50% company tax rate. Moreover, Tara is required to hand over to the Minister free of charge the private minerals which it controls in contiguous holdings at Navan. In addition, the Minister has the right to appoint two directors (or 25% of the Board's membership, whichever is the larger) to the Board of Directors of the Tara Company. The lease, which is for a term of 25 years, also requires that the appointment of auditors to Tara will be subject to the Minister's agreement, and, moreover, requires Tara to pay a dead rent of £6,000 per annum after two years, and £35,000 per annum in the event of a stoppage of work at the mines. The lease also provides for minimum annual outputs during the initial years of the mining operation, and a maximum overall rate, and provides for the supply of concentrate to an Irish zinc refinery which "may be established by the Minister". The agreement of the terms of the mining lease terminated proceedings which were pending before the Supreme Court on the matter of the Tara Company's right to such a lease on "reasonable terms".

The Continental Shelf Act, 1968 (No. 14 of 1968) makes provision in relating to the exploration and exploitation of the Continental Shelf. This Act extends the provisions of the 1940 and 1960 Acts above to like operations in the Shelf area, and provides a legal framework for the grant of exploration licences and exploitation facilities to operators. A recent statement of Government intent (November 1974) in relation to off-shore oil and gas exploration indicates that emerging Government policy in this matter contemplates State participation in successful oil and gas licences and the establishment of a State oil company. Furthermore, the statement declared that exploration consortia which include Irish companies can expect no special concessions from the State in these matters.

## 5.7. Regulation of Market Behaviour

### 5.7.1. Prevention of Fraudulent and Imprudent Trading

General contract rules provide an innocent party with civil remedies against a fraudulent party to a contract, but, because of the increasing number of contracts of adhesion, and the ability of parties to contract out of such provisions, these rules are of limited benefit. This is especially true of Sections 12-15 of the Sale of Goods Act, 1893. The Hire-Purchase Acts, 1946 and 1960 (No. 16 of 1946 and No. 15 of 1960), are more realistic in this regard: they regulate the form, the conditions, etc., of such contracts and prevent either party from opting out of the statutory scheme. Generally speaking, however, the appreciation of consumer problems has scarcely affected Irish legislation as yet. The absence, until recently, of an active consumer pressure group in Ireland may be partly responsible for the lack of legislation in this area. Moreover, there may have been a reluctance to insist on higher labelling, etc., standards in Ireland up to now, because to do so might have placed Irish manufacturers at a competitive disadvantage with manufacturers in

Europe where standards as yet were not that high. The particularly difficult period through which Irish industry is passing ought not, it was felt, to be exacerbated by high standards in consumer legislation. For these reasons, therefore, in Ireland there is no equivalent to the British Trade Descriptions Act, 1968 or the Advertisements (Hire-Purchase) Act, 1967. There are, however, signs that this position is changing now.

In recent years, because of developments in the U.S.A. and England, there has been a growing appreciation in Ireland of consumer problems and an increasing acknowledgement that some protective legislation may be required to protect their legitimate interests. The development of sophisticated, almost unscrupulous, advertising methods; the existence of a naïve, and sometimes functionally illiterate, group in the lower income bracket; the emergence of persuasive, high-powered sales techniques, and the ineffectiveness of present legal structures to provide adequate protection to the consumer, have all contributed to the realisation that the consumer needs greater consideration from the State.

In response to these pressures, the Minister for Industry and Commerce appointed, in 1973, a National Consumer Advisory Council to advise him on what legislative reforms were required in this area. The Council's report was published in 1975 (February), and it recommended legislation to deal with the following problems:

1. Legislation dealing with deceptive trade practices and which would control mis-descriptions, provide safeguards against false or misleading advertising, and protect consumers against risks arising from unfair practices in the supply of goods and services.
2. Legislation which would afford the consumer effective protection against damage to his economic interests as a result of defective quality goods or services and, in particular, amendments to the Sale of Goods Act, 1893.
3. Legislation regulating and controlling consumer credit, and, in particular, as well as new legislation, revision of the Hire-Purchase Acts, 1946 (No. 16 of 1946) and 1960 (No. 15 of 1960).
4. The establishment of a consumer protection authority within the Department of Industry and Commerce pending the setting up of a department of consumer affairs. It is envisaged that such an authority would not merely be given a general supervisory task, but would also have general enforcement, initiation and coordination functions as well.

The Minister for Industry and Commerce has, in general, accepted these recommendations, and proposes to introduce a legislative programme for the protection of the consumer which will be contained in three or four separate bills, and which will deal with all the problems listed above. It is envisaged that some of these bills will be enacted by the end of 1976, while all, it is hoped will have been passed by 1977.

Finally, it should be noted that no legislation exists in Ireland on such selling abuses as pyramid selling. etc.

### 5.7.2. Hours of Trading

The Shops (Hours of Trading) Act, 1938 (No. 3 of 1938) provides the statutory basis under which the hours of business can be regulated. The Act defines "public holidays" and makes provision for "the weekly half-holiday". Under the latter provision, the proprietors of businesses must nominate one day of the week when they will close their premises at an hour not later than 1.00 p.m. The notice must be posted in a public part of the premises. Penalties are provided for offences committed under the Act, and the normal enforcement agency is the local policy authority. The Act also enables the Minister for Industry and Commerce to fix by order weekday hours of trading within designated areas, and, in particular, to fix the opening and the closing time of business premises, which closing time is not to be earlier than 6.00 p.m. The Minister may also regulate by order in designated areas Sunday trading. An example of such an order is the Victuallers' Shops (Hours of Trading on Weekdays) (Dublin, Dun Laoghaire and Bray) Order (S.I. No. 175 of 1948), which was recently contested on constitutional grounds in *Quinn's Supermarket and Fergal Quinn v. the Attorney General and Others* [1972] I.R. p.1. The Court held in that case that the Order was not contrary to the constitutional provisions relating to equality before the law (Article 40.1.) and freedom of the practice of religion (Article 44.2.).

The 1938 Act exempts from control fairs and bazaars, etc., and also exempts from other specific regulatory portions certain establishments, including, for example, newspaper shops, shops selling refreshments, etc.

Finally, there are several pieces of legislation in Ireland which are concerned with the health, safety and welfare of employees, and which generally seek to create safe working conditions for employees, and seek to protect certain types of worker (young persons, females and outworkers) from exploitation. The principal rules are contained in the Conditions of Employment Act, 1936 (No. 2 of 1936) and the Shops (Conditions of Employment) Act, 1938 (No. 4 of 1938), and, under these acts, restrictions or powers to restrict exist in relation to the following matters: the employment of young persons, females and outworkers; piece work; working hours (short day, shift work, limitation of working hours, night work and overtime), etc. Minimum holidays are provided for in the Holidays (Employees) Act, 1961 (No. 33 of 1961), and the Minimum Notice and Terms of Employment Act, 1973 (No. 4 of 1973) lays down minimum periods of notice to be given by employers who wish to terminate contracts of employment, and also gives employees the right to have in writing information about their terms of employment. Various Ministerial Orders have been issued to implement the empowering sections of the Conditions of Employment Act, 1936 (No. 2 of 1936) and the Shops (Conditions of Employment) Act, 1938 (No. 4 of 1938). Lastly, the Factories Act, 1955 (No. 10 of 1955), and the Office Premises Act, 1958 (No. 3 of 1958), set down minimum standards in relation to safety, hygiene, etc., that must be observed in factories and offices by employers.

### 5.7.3. Weights and Measures, Merchandise Marks

A system to ensure that traders operate fair weights and measures in their dealing with the public was taken over from previous British legislation with the establishment of the new State in 1922. The principal legislation is the Weights and Measures Act, 1878, and it has been amended by Acts of the

same name in 1904, and by the Irish Parliament in 1928 (No. 3 of 1928) and 1936 (No. 8 of 1936) and, in relation to intoxicating liquor, by the Intoxicating Liquor Act, 1960 (No. 18 of 1960) (Section 30). Under the law, three kinds of standards exist: the working standards, the local standards and the primary standards in the Department of Industry and Commerce. Inspectors using working standards validate and ensure that the weights and measures used by traders conform to the recommended criteria. From time to time, to ensure accuracy, the working standards are verified against the local standards, and the local standards are, in turn, verified against the primary standards in the Department of Industry and Commerce. Traders who are proven to be using inaccurate weights and measures may be prosecuted and fined.

In this connection, the Merchandise Marks Act, 1970 (No. 10 of 1970) should also be noted. This Act, which amends and extends the Merchandise Marks Acts, 1878 to 1931, enables the Minister for Industry and Commerce to make orders in relation to the informative marking of containers in which goods are packed for retail sale, and to regulate the quantities of goods which may be packed in containers for such sale. Specifically, such orders could insist on accurate information relating to the weight, measure and number of goods and the names and addresses of the packers or the importers (where appropriate) of the goods. The Merchandise Marks (Prepacked Goods) (Marking and Quantities) Order, 1973 (S.I. No. 28 of 1973) is a recent example of an order issued under this Act. The order specified that scheduled goods (including tea, coffee, sugar, salt, flour, soap, etc., and milk, oils, detergent liquids, etc.) cannot be imported or sold except in the quantities specified in the order. The permitted weights and measures are expressed in both metric and imperial terms. The order also required that clear notices on the containers of such goods must contain certain other information in relation to the weights and measures of the goods.

#### 5.7.4. Special Rules for Financial Transactions

The small saver, the small investor and the small borrower have always been the subject of State concern, and, although State regulatory efforts in the area of financial transactions do not distinguish between the big and the small business, it is undoubtedly true that State intervention was clearly justified in political terms by visions of the small, vulnerable family man who lost his savings with the collapse of a financial institution.

##### 5.7.4.1. Regulation of Borrowing

Apart from what has already been said about Statutory control of borrowing (5.2.2.2. supra), there are no restrictions on borrowing by individuals or companies in Ireland.

Two matters, however, must be referred to under this heading: building societies and unit trusts.

Building societies at present are relatively free from regulation in the State. These organisations raise money from members and from other sources and lend it to members principally for house purchases. The advance is secured by a mortgage on the property so purchased by the member. Building societies



are, therefore, involved in both borrowing and lending and could be dealt with either here or in the succeeding heading (5.7.4.2.).

The present law relating to building societies is contained in the Building Societies Acts, 1874 to 1974. Generally speaking, building societies are relatively free from control, and, under the present law, any three or more persons may establish a society which, once incorporated, may carry on business without further ado. In recent years, there has been a call for a reform of the law governing building societies, and, at present, a bill is before Parliament which, if passed in its present form, will regulate (or empower a Minister to regulate) the following matters: the establishment of such a society; commencement of business; the maintenance of deposits and liquidity ratios with the Central Bank; the investment of surplus funds; an increase in directors responsibilities (disclosure of interests by directors, annual returns of loans and emoluments to directors); commissions, insurance linked to the making of a loan; procedural matters, etc. Section 87 will empower the Minister for Finance to guarantee monies borrowed by building societies other than by the normal acceptance of deposits. Finally, Section 77 will empower Ministerial regulation ("in the interest of the orderly and proper regulation of building society business and having regard to the demand for loans for house purchase and the financial needs of the national housing programme") of the purposes and amounts of loans by societies and the conditions subject to which such loans may be made.

Unit trust schemes are regulated by the Unit Trusts Act, 1972 (No. 17 of 1972). A unit trust scheme is defined in the Act as "any arrangement made for the purpose, or having the effect, of providing facilities for the participation by the public, as beneficiaries under the trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever." The Act attempts to control and regulate such schemes, in the public interest and in the interest of holders of units of unit trust schemes. Provision is made requiring all such schemes to be registered (Section 3). Registration will be permitted only after the Minister for Industry and Commerce has satisfied himself that the company and the officers are proper and suitable to conduct such a scheme. The Act also prohibits dealings in units of unregistered unit trust schemes (Section 7), certain advertising in relation to unregistered schemes (Section 8) and investment by one such scheme in another scheme (Section 9). The Minister is given wide powers to regulate such schemes in the interests of the beneficiaries (Section 10) and power also to require that a specified minimum of the assets of certain schemes shall be Irish securities or property in the State. Other controls in the Act relate to the audit of account (Section 16) and the provision of information (Section 17). The Minister is given wide powers of investigation by Section 18 of the Act.

#### 5.7.4.2. Regulation of Lending

Controls relating to banks and hire-purchase have already been described above (see 5.2.2.). Apart from these, however, three other institutions involved in extending credit in the State are specifically controlled by Irish legislation: moneylenders (The Moneylenders Act, 1933 (No. 36 of 1933)), pawnbrokers (The Pawnbrokers Act, 1964 (No. 31 of 1964)) and credit unions (The Credit Union Act, 1966 (No. 19 of 1966)). Pawnbrokers are of limited interest in a study of Economic Law, and will not be dealt with here. The

relevant provisions are principally contained in the Pawnbrokers Act of 1964. A further word, however, needs to be mentioned about moneylenders and credit unions.

Moneylenders are regulated by the Moneylenders Acts, 1900 and 1933. Any person who purports to carry on the business of moneylending in the State must hold a licence from the Revenue Commissioners. Such a licence will only issue on the production of a certificate from the District Justice attesting to the good character, the financial stability and the fitness and propriety of the applicant. The 1933 Act places restrictions on the use of documents which imply that the moneylender is a banker, and also places restrictions on money-lending advertisements and the use of canvassers. The form of the moneylending contract is also regulated in that a note or memorandum of the contract (containing all the terms of the contract) must be made, and it must be signed by the borrower. A copy must be sent to the borrower within 7 days of the making thereof. The Act also stipulates that, when the moneylender communicates with the borrower, such a communication must, to ensure confidentiality, be in a sealed envelope and marked "Personal". Furthermore, the moneylender cannot, in general, visit the borrower at his place of employment.

There is a prohibition on compound interest, and the 1900 Moneylenders Act stipulates that interest in all such transactions must not be excessive. Section 17 of the 1933 Act states that, if the interest is in excess of 39% per annum, the Court shall conclusively assume that the interest charged is excessive and that the transaction is harsh and unconscionable. Moreover, the Act prohibits moneylenders from charging for expenses and costs.

Criminal sanctions exist if the moneylender contravenes any of these statutory obligations.

Credit unions are principally regulated by the Industrial and Provident Societies Act, 1893 as amended, and by the Credit Unions Act, 1966 (No. 19 of 1966). (Collectively cited as the Industrial and Provident Societies Acts, 1893-1966). Credit Unions are small local cooperative societies which encourage thrift among members and advance moderate sized loans to members. There has been a noticeable growth in such societies in Ireland in recent years, and the need to regulate their activities was specifically recognised in 1966. Section 2 of the 1966 Act provides that a society which has as its objects (i) the promotion of thrift among its members by the accumulation of savings, (ii) the creation of a source of credit for its members at a fair and reasonable rate of interest, and (iii) the use and control of members' savings for their mutual benefit, and which has a common bond between its members, may be registered under the Industrial and Provident Societies Acts, 1893-1966. The common bond may be - a common bond of association, occupation, residence or employment within a particular locality, employment by a common employer, or membership of a bona fide organisation.

The rules of a credit union must be in a form approved by the Registrar of Friendly Societies. Strict statutory provisions exist with regard to the books of account of the credit unions and the directors are obliged to make annual returns of income and expenditure to the Annual General Meeting, and must produce a balance sheet.

Statutory regulations also exist with regard to receipts and withdrawals of deposits. For example, the total amount held on deposit shall not exceed the

paid up share capital of the credit union at any time (Section 9 of the 1966 Act). Moreover, subject to the rules of the credit union, the credit union may borrow from any source "provided that the amount so borrowed does not exceed in the aggregate 50% of the sum of the shares balance and the deposits balance of the credit union." (Section 10)

A credit union may make loans to a member for a provident or productive purpose, but no loan can be made unless all the directors or members of the credit committee present agree. No loan can be made for a term longer than 5 years, or if in making the loan the borrower would stand indebted to the credit union in a sum exceeding 10% of the total assets of the credit union. Interest on the loan shall not exceed 1% per month on the amount of the loan.

Provisions are also made in the Acts for the organisation meeting, the election of directors, the supervisory committee and auditors, the powers of the directors and the annual general meeting, etc.

Section 23 of the 1966 Act obliges the credit union to establish a reserve by allocating in respect of each financial year not less than 10% of surplus funds of the credit union funds for that purpose.

The Minister for Industry and Commerce is given powers by the 1966 Act to make regulations for many matters relating to credit union affairs. He may indicate the maximum amount of secured and unsecured loans which a credit union may make to borrowers, he may prescribe the security which a credit union shall require in respect of a secured loan to a member, and he may prescribe the investments in which a credit union may invest, etc. Only one order has been made by the Minister under these powers (The Credit Union Regulations, 1973, S.I. No. 201 of 1973), and this merely obliges credit unions to show their investments and to return additional information in their annual return to the registrar, including information on delinquent loans, and information relating to voluntary loan limits operated by credit unions themselves.

#### 5.7.4.3. Regulation of Insurance

Under Section 8 of the Insurance Act, 1936 (No. 45 of 1936), the conduct of assurance business in Ireland is prohibited unless it is licenced by the Minister for Industry and Commerce. "Assurance business" is widely defined in the Act, and it includes Life Assurance, Industrial Assurance, Fire Insurance, Accident Insurance, Bond Investment business, Employers' Liability Insurance, Mechanically Propelled Vehicle Insurance, Public Liability Insurance, Guarantee Insurance, and Burglary Insurance. The main classes not subject to licencing requirements are Marine, Aviation, Transit, Livestock, and Credit. Insurance against the costs of serious illness is in the hands of a non-profit-making State monopoly, the Voluntary Health Insurance Board, established by the Voluntary Health Insurance Act, 1957 (No. 1 of 1957).

The principal object of the licencing system is to protect policy holders by ensuring that insurance companies remain solvent, and, to this end, the Minister for Industry and Commerce demands that every controlled insurance company which operates in Ireland must maintain deposits and must also submit balance sheets, profit and loss accounts, revenue accounts, and other annual returns. These returns are closely examined each year by the supervisory

authority to ensure the stability of the company. Moreover, to ensure that Life Assurance funds are not put at risk, insurers transacting Ordinary Life and/or Industrial Life Assurance cannot transact the other classes of insurance, and vice versa. No controls exist, however, as to how insurers invest their funds. Ministerial powers to regulate and control under the various insurance legislation (the Insurance Acts, 1909-1971) is very extensive, as can be seen from Section 5 of the Insurance Act, 1936, which declares:

"The Minister may by order make regulations in relation to any matter or thing referred to in this Act as prescribed, or to be prescribed, and for the prescription of which no other provision is made by this Act."

Apart from deposit regulations and similar general regulations (Insurance (Deposits) Rules, 1940 (S.I. No. 78 of 1940) and Insurance Regulations, 1940 (S.I. No. 80 of 1940)), not much Ministerial regulation has, in fact, taken place, principally, it would seem, because the conduct of the insurance business in Ireland has not resulted in any notable failures.

Existing provisions restrict insurance licences to companies which are Irish registered and Irish controlled (Section 7 of the Insurance Act, 1964 (No. 18 of 1964)), and all new native companies applying for licences must also provide a minimum capital of £200,000, of which £100,000 must be paid up. The Insurance Act, 1953, did, however, empower the licencing authority to grant licences to foreign companies seeking admission to Ireland where Irish Companies are afforded reciprocal facilities abroad.

Whether such discriminatory legislation survived recent decisions of the Court of Justice of the EEC (Reyners' Case and the van Binsbergen Case) is doubtful. The better interpretation of these decisions would seem to suggest that they automatically repealed all inconsistent national provisions, including the discriminatory parts of Irish Insurance legislation. Any doubts as to the correctness of this interpretation may not be too important as far as the Insurance industry is concerned, as it is understood that, in any event, the Irish authorities are in the process of drafting specific legislative measures which will give clear recognition to the implications of these decisions of the Court of Justice of the European Communities.

Irish law on insurance matters will continue to be sensitive to EEC developments, and, in particular, will have to take cognizance, once passed, of the Draft Community Directives, in this area. The thrust of these Directives is to harmonise the licencing, supervision, and eventually the taxation and investment arrangements for insurance in all Member States.

## 5.8. Public Policy

### 5.8.1. Protection of Health and Safety of Consumer

No general legislation exists which specifically recognises the health and safety of the consumer as an interest which deserves State protection. What protective measures do exist in Ireland, do so under particular legislation

passed to secure health and safety objectives in relation to specific products which are liable to cause serious injury to the public if care is not exercised in putting them up.

#### 5.8.1.1. Specific Legislation

Specific regulation occurs in three areas in particular: In relation to (i) the putting up of foodstuffs, (ii) the manufacture, sale, etc., of dangerous drugs, poisons and medicines, and (iii) the construction of motor vehicles.

##### (i) Food.

Legislation here is principally concerned with the protection of public health by the insistence of exacting hygiene standards. This is especially obvious from the Sale of Food and Drugs Acts, 1875-1936. The 1936 Act (No. 44 of 1936) in this series regulates and controls the import, export, manufacture, etc., of milk and milk products. Also important here are the Food Hygiene Regulations, 1950, (S.I. No. 205 of 1950, issued under the Health Act, 1947 (No. 28 of 1947)) which, together with legislation contained in the Public Health (Ireland) Acts, 1878-1911, provides the Department of Agriculture with the legislative basis by which it exercises general supervision over local authorities in their administration of these enactments for the control of slaughter-houses, butcher shops, and the inspection of meat and meat-products for sale on the home market. The enactments are administered by local authorities through their veterinary inspectors, who are assisted, where appropriate, by health inspectors. Other legislation can also be used, less frequently no doubt, as a vehicle in some cases to promote hygiene, as, for example, is obviously the case in the Factories (Gut and Tripe Preparation) Regulations, 1974 (S.I. No. 145 of 1974), issued under the Factories Act, 1955 (No. 10 of 1955), and which is principally concerned with the conditions of the premises in which various food preparatory activities are carried on. Food safety regulations, however, will, undoubtedly, more commonly be issued in future under the recent Food Standards Act, 1974 (No. 11 of 1974), which gives various Ministers wide powers to regulate for standards in relation to food, and, in particular, will permit the regulation of the names, descriptions, composition, methods of manufacture, additives, contaminants, hygiene, packaging, etc., of foods (Section 2(1)). Regulations may also be issued under this Act to control the importing, transporting, storing and selling of food (Section 2(2)).

##### (ii) Dangerous Drugs, Poisons and Medicines.

Under this heading, safety considerations loom larger than hygienic factors. The manufacturing, import, export, use and sale of therapeutic substances and dangerous drugs are controlled by the Therapeutic Substance Act, 1932 (No. 25 of 1932), and the Dangerous Drugs Act, 1934 (No. 1 of 1934). The Poisons Act, 1961 (No. 12 of 1961), as well as establishing An Comhairle Nimheanna (The Poisons Council), an advisory body to the Minister of Health, was passed to regulate and control the distribution, transport, storage and sale of poisons and to control the manufacture of pharmaceutical preparations containing poisons and the use of poisons for agricultural and veterinary purposes. Under the Health Act, 1947 (No. 28 of 1947), regulations have been made to control the manufacturing, the advertising and sale of medical and toilet preparations (see, for example, S.I. No. 225 of 1974, Medical

Preparations (Licence of Manufacture) Regulations, 1974, and S.I. No. 333 of 1974, Medical Preparations (Wholesale Licences) Regulations, 1974). These regulations prohibit the manufacture and wholesale of medical preparations except under licence, with certain exemptions covering day-to-day activities of medical practitioners, dentists and pharmacists in dispensing for individual patients.

(iii) Motor Vehicles.

Under certain regulations issued under the Road Traffic Act, 1961 (No. 24 of 1961), certain minimum standards are insisted on in the methods of construction, the kind of lighting, and the quality of the equipment used in the construction of motor vehicles. Penalties are provided for manufacturers who fail to achieve the standards set out in these regulations (Road Traffic (Construction, Equipment and Use of Vehicles) Regulations, 1963-1974).

More isolated, and less important, examples of legislation which displays a concern for the health and safety of the consumer occurs in the following legislative enactments: The Oil Burners (Standards) Act, 1960 (No. 24 of 1960), which makes provision for minimum standards of efficiency and safety in respect of oil burning appliances; the Destruction of Insects and Pests (Consolidation) Act, 1958 (No. 11 of 1958), which enables the Minister to make Orders to prevent the introduction or spread of destructive insects and pests or agents for biological control of plant pests; the Industrial Research and Standards (Section 44) (Children's Toys) Amendment Order, 1975 (S.I. No. 33 of 1975), issued under the Industrial Research and Standards Act, 1961 (No. 20 of 1961) prohibits the manufacture, assembly or sale, of children's toys unless they comply with prescribed regulations in regard to toxicity and cellulosic contents; and the Packing of Explosives for Conveyance Rules, 1955 (S.I. No. 37 of 1955).

5.8.1.2. Agricultural Produce

Insofar as the regulations on foodstuffs, mentioned above, relate to agricultural produce, they may spring from not merely a health concern, but also from a realisation that, in modern competitive conditions, high standards of quality and hygiene are essential if successful marketing is expected and if exports are to grow. Accordingly, and from competitive as much as hygiene considerations, regulations exist under the Dairy Produce Acts, 1924-1947, and the Milk and Dairies Acts, 1935 (No. 22 of 1935) and 1956 (No. 42 of 1956), The Agricultural Produce (Fresh Meat) Acts, 1930-1938, and the Slaughter of Cattle and Sheep Acts, 1934-1936. Under some of these Acts, as well as the quality control specified, licences may be required to sell and/or to export these products. These measures have been further augmented, since 1973, by the compulsory adoption of EEC standards in such matters as egg marketing (see the Egg Marketing Regulation No. 122/67) and the EEC Health Directive (Directive No. 71/118 (Poultry Meat)).

### 5.8.1.3. EEC Harmonisation

Finally, the consumers' interest in health and safety is further promoted in Ireland nowadays by the various harmonising measures being taken at present within the EEC's Harmonisation of Laws Programme. Some of these directives are being incorporated into Irish law by way of Ministerial order issued under the statutory authority mentioned in the European Communities Act, 1972, while others are being accommodated under more specific statutory authority, whenever such specific statutory authority exists, and seems more appropriate for the task: e.g., the Food Standards Act, 1974 (No. 11 of 1974), the various Health Acts, or the Industrial Research and Standards Act, 1961 (No. 20 of 1961). In this connection, one may mention the following examples: The European Communities (Proprietary Medicine Products) Regulations, 1974 (S.I. No. 187 of 1974), which declare that new proprietary medical products may not be placed on the market after 1 October 1974 unless they comply with EEC Directive 65/65, including the requirement of an authorisation by the Minister for Health in respect of each such product. (The labelling provisions of this directive did not, however, apply until 1 October 1975.) The Food Standards (Certain Sugar) (European Communities) Regulations, 1975 (S.I. No. 118 of 1975), issued under the Food Standards Act, 1974, gives effect to EEC Council Directive 73/437 of 11 December 1973 on the approximation of the laws of the Member States concerning certain sugars intended for human consumption; The European Communities (Detergents) (No. 2) Regulations, 1975 gives legal effect to Council Directive 73/404, and requires Member States to prohibit the placing on the market, and the use, of detergents where the average level of biodegradability (that is, the ability to be broken down by bacteria) of essential constituents is less than 90%. It also provides that the name of the product and the name or tradename on, and address or trademark of, the party responsible for placing the product on the market appear on the packaging in which the detergents are put up for sale to the consumer on all documents accompanying detergents transferred in bulk; The European Communities (Low Voltage Electrical Equipment) Regulations, 1975 (S.I. No. 62 of 1975) gives effect to EEC Council Directive 73/23 of 19 February 1973 on the harmonising of the laws of Member States relating to electrical equipment designed for use within certain voltage limits.

Once again, however, it should be mentioned that, apart from the specific regulations mentioned above, there is no general legislation promoting the health and safety of the consumer in Ireland. Consequently, there is no equivalent in Ireland to the English Consumer Protection Acts, 1961 and 1971, which give wide general powers of regulation to the Secretary of State in relation to the safety of any goods, and not just foodstuffs.

### 5.8.2. Protection of Industrial, Commercial and Intellectual Property

Patents, trade marks, designs and literary and artistic works are protected by different statutory provisions in Ireland.

### 5.8.2.1. Patents

The law on this topic in Ireland is set out in the Patents Acts, 1964 (No. 12 of 1964) and 1966 (No. 9 of 1966). The general scheme of the Acts is the establishment of a central registration system, operated under the control and direction of the Minister for Industry and Commerce by the Controller of Patents, Designs and Trade Marks in the Patents Office, established by the Industrial and Commercial Property (Protection) Act, 1927 (No. 16 of 1927).

An application for a patent may be made in the prescribed form by the true and first inventor of the invention or his assignee. Every application shall be accompanied by a specification of the invention. Specifications may be provisional or complete. The purpose of provisional specifications (which may be general in their descriptions) is, firstly, to establish a priority date as against competing claimants, and, secondly, to provide the applicant with some time (12 months) to develop fully the invention. When the complete specification has been filed, the Controller will examine the merits of the application. He will also advertise to the public, in the journal specially issued for this purpose, the application and the specification. Any interested person may, within 3 months, oppose the granting of a patent on several grounds, including the following:

- (i) that the applicant is not the inventor or his assignee;
- (ii) that the invention has already been published in the State;
- (iii) that the invention does not really involve any "inventive step";
- (iv) that the complete specification does not completely and fairly describe the invention, etc.

The applicant, if he is to be successful, must show a "new and useful art, process, machine, manufacture or composition of matter" or any "improvement" thereof. If the Controller is satisfied that there is a novelty or an improvement, that there is no conflicting claim to the invention, and that the procedure of the Act is observed, he may grant the patent. The term of every patent is 16 years from the date of the patent, but there is provision whereby the term of the patent may be extended. If a patent has been granted, it entitles the grantee to the exclusive power to use, exercise and vend in the State the invention for which the patent is granted, and also entitles him to the sole right to profits and the right to prohibit other non-licenced persons using the patent. The patent may be revoked on any of the grounds set out in the Act (Section 34), many of which are the same grounds on which the issue may be initially opposed and which have already been mentioned.

A patentee can apply under the Act to have the patent endorsed with the words "Licences of Right", and if this is done it means that any person shall be entitled as of right to a licence under terms to be agreed between him and the patentee, or, in default of such agreement, on such terms as are settled by the Controller. The renewal fees for patents so endorsed are half the normal renewal fees. Moreover, if, after the expiration of 4 years from the date of application, or 3 years from the sealing of the patent, whichever is the later, there has been an abuse of the monopoly rights under the patent, any person may apply for a licence, or for the endorsement of the words "Licences of Right" on that ground. The Act sets forth the main grounds which will be deemed



to be an abuse of monopoly rights and include the fact that the invention is not being commercially worked within the State, that the demand for the patented invention is not being reasonably met within the State, that by reason of conditions imposed by the patentee the development of commercial or industrial activities in the State is unfairly prejudiced, etc. (Section 39). Furthermore, in relation to inventions relating to foods and medicine, the Controller is given power to order the grant of a licence.

A patentee who complains that there has been a breach of his patent right can enforce his right by bringing an action for damages (or an accounting of profits) and he can claim an injunction against future breaches of his rights.

The Act also empowers the Government to extend by order the provisions of the Act. In this way, international conventions to which Ireland is a signatory are made applicable in Ireland.

#### 5.8.2.2. Trade Marks

The protection of trade marks is provided for principally in the Trade Marks Act, 1963 (No. 9 of 1963).

The Act makes provision for the maintenance of a public register of trade marks at the Industrial and Commercial Property Registration Office, wherein all data relevant to the trade mark are to be entered. The register consists of two parts, namely, Part A and Part B. All trade marks, which are to benefit from the protection of the Act, must be registered. Unregistered trade marks are not protected by the Act, but can only be enforced, if at all, by the common law tort action of "passing-off". A trade mark is defined in the Act as "a mark used ... in relation to goods for the purpose of indicating ... a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person ...". Such a mark can only be registered in respect of particular goods or classes of goods. Application for registration must be made in writing to the Controller specifying in which part (i.e., A or B) the applicant is seeking registration. Part B provides for the protection of trade marks of a less distinctive character than those which qualify for registration in Part A. All that is required for registration in Part B is that the trade mark is capable of distinguishing the goods for which it is registered. In order to be registrable in Part A, it must contain at least one of the following:

- (i) the name of a company or individual;
- (ii) the signature of the applicant;
- (iii) an invented word;
- (iv) a word(s) having no direct reference to the character or quality of the goods, and which is not a geographical name or a surname;
- (v) some other distinctive mark.

Registration in either part gives the registered owner certain rights of exclusive use on, or in connection with, the goods, and the Act provides remedies for infringements by unauthorised users. Registration in Part A, however, shall, after a period of 7 years, be conclusive evidence as to the validity of the mark in all legal proceedings relating to the trade mark. This

rule does not apply to Part B trade marks. The Act prohibits the registration of trade marks which are deceptive, contrary to law and morality, or which resemble existing trade marks and which would lead to confusion.

When an application has been accepted and examined by the Controller, he must then advertise these facts in the official Trade Mark Journal, and any interested person may, within a specified time limit, object to the registration of the applicant. Successful application gives protection for a period of 7 years, but this may be renewed from time to time.

A registered trade mark may be assigned and transferred either in connection with the goodwill of a business or not. Assignment is not permitted, however, where, as a result of the assignment, exclusive rights would subsist in more than one person concerned with the use of similar or identical trade marks for the same or similar goods, if in such circumstances the use of the trade mark would be likely to deceive or cause confusion.

Provision is also made in the Act for rectification of the register, for registered users, and for certification trade marks.

Most decisions of the Controller are appealable to the High Court, and actions for infringements may also be commenced in the High Court. Remedies for infringements include actions for injunction, damages, accounts for profits, seizure of articles bearing the trade mark, and recovery of costs.

#### 5.8.2.3. Designs

A design can be registered under the Industrial and Commercial Property (Protection) Act, 1927 (No. 16 of 1927), as subsequently amended, if it is new and original. "Designs" for the purpose of the Act means features of shape, configuration, pattern or ornament applied to an article which appeal to the eye and are judged solely by the eye. The visual criterion is important and methods or principles of construction or features of shape or configuration that are solely dictated by the function which the article having the shape or configuration must perform, are not designs for the purpose of the Act.

Application by the owner for registration is made in the prescribed manner to the Office of Industrial and Commercial Property, and must specify the novel features of the design in question. The Controller of Patents, Designs and Trade Marks, having made the appropriate search, and having satisfied himself as to its novelty, will register the design. He may refuse to register on the grounds that it is contrary to law or morals, but, in this event, he must communicate his decision to the applicant. The successful applicant receives a certificate of registration, which is prima facie evidence of ownership, and, by virtue of registration, gets exclusive rights to manufacture or import goods bearing the registered design. Protection is for 5 years, but may be extended for a further 10 years on payment of fixed fees. Remedies for infractions are similar to those available for the infringement of patents and trade marks: action for damages, an injunction, seizure of goods and awards of costs.

#### 5.8.2.4. Copyright

Copyrights are governed by the Copyright Act, 1963 (No. 10 of 1963), which, in addition to bringing the law on this topic up to date, also gives effect to Ireland's obligations under various international conventions in this field. Copyright automatically subsists in every original literary, dramatic, musical or artistic work, without any requirement of registration. Artistic work includes paintings, sculptures, engravings, photographs and works of architecture. The right normally belongs to the author, save where he has been commissioned to do the work, or where the work has been done in the course of his employment when the copyright normally belongs to the person who commissioned the work or the employer. The term of the copyright is usually the life of the author plus 50 years, but, where there has been no publication during the author's lifetime, the term of the copyright is 50 years from first publication. Copyright gives the author exclusive rights in relation to the work and restricts unauthorised persons from reproducing, publishing, performing, adapting (including translating) and broadcasting the work. Fair dealing with literary, dramatic or musical work for the purposes of research or criticism or review is, however, permitted. The Act also gives effect to the view that broadcasting should be given rights in the nature of copyright, and takes cognizance of the fact that cinematograph films and gramophone records need not necessarily be kinds of dramatic or musical work which is how they were treated in earlier legislation. Part 3 of the Act deals with many of these matters. Infringements of copyright are actionable in the ordinary courts where the owner may get relief by way of damages, accounts of profits or injunctions.

#### 5.8.2.5. Business and Company Names

The Registration of Business Names Act, 1963 (No. 30 of 1963) replaces a 1916 British Statute of the same name. Section 3 of the 1963 Act requires persons and firms who carry on business under a "business name", which in the case of individuals does not consist of their true names, and which in the case of firms does not consist of the true names of all the partners (corporate or not), to register, within one month of the adoption of the "business name", this fact with the Companies Registrar, who has been nominated by Ministerial order to act as the Registrar of Business Names for the purposes of this Act. The Act regulates the manner and the particulars of registration. The application must be signed by the parties registering and when issued, the Certificate of Registration must be prominently exhibited at the principal place of business. The Act is designed to ensure that members of the public should have the opportunity of discovering the true personnel behind a "business name".

Finally, in this connection, Sections 21 and 22 of the Companies Act, 1963 (No. 33 of 1963) should be mentioned. Section 21 prohibits companies from registering under names which, in the opinion of the Minister for Industry and Commerce, are undesirable. Company names which would be likely to confuse or mislead the public would be considered undesirable in this context. Section 22 declares that companies carrying on business under a name other than its corporate name must, like individuals and firms under the Business Names Act, 1963 (No. 30 of 1963), register this fact.

### 5.8.3. Protection of the Environment

#### 5.8.3.1. General, Sources of Law and Miscellaneous Forms of Pollution

Conservation and protection of the environment did not, until recently, command a particularly dominant position in legislative programmes in Ireland. Pollution was not seen as a major problem, partly because of a general lack of ecological awareness, and partly because, until recently, Ireland was primarily an under-developed agricultural community which knew little of the more serious forms of pollution associated with intensive industrialisation and urbanisation. Moreover, what pollution problems did arise were, to some extent, naturally controlled by the high level of rainfall which distinguishes the country's climatic conditions. Consequently, there is no Government Department for the Environment, and there is not even a national authority responsible for pollution control, conservation or zoning, subject to what is said hereafter about the Department of Local Government's present role.

Generally speaking, what controls exist are to be found either in old Acts, which no longer reflect the urgency of the modern problem (in method or in penalty), or are to be found as incidental sections in modern legislation, the main concern of which was not environmental protection. Because of the miscellaneous nature of environmental controls in Ireland, responsibility for these controls is spread between various Government Departments and advisory bodies. For example, the Departments of Local Government, Health, Agriculture and Fisheries, Industry and Commerce, Lands and Transport and Power, may all have conservation functions under various Acts, but there is no Department responsible for overall coordination. Moreover, the division of responsibility is obvious even at local level, where, for example, in water pollution, responsibility is distributed between local authorities, sanitary authorities, harbour authorities, various inspectors under specific legislation, and boards of fishery conservators. Since 1971, an improvement has occurred, in that a new section of the Department of Local Government was established to deal with the problems of air and water pollution, and recent important reports on oil and water pollution hold promise of a new awareness in this whole area. Moreover, in February 1975, the Minister for Local Government set up a Water Pollution Advisory Council whose tasks include the examination of existing pollution control legislation, an examination of existing pollution monitoring arrangements, and a public education campaign on water pollution. In spite of these recent developments, however, the overall picture of environmental control in Ireland remains one in which the controls are "inadequate, ill-coordinated and distinctly out-moded".

An improvement in this legislative position may be expected in the future, both because of the increasing awareness of the pollution problem in recent years, as noted above, and because of the impact of EEC directives (and EEC policy in general) in this area.

#### Sources of Law

Since *Ryan v. the Attorney General* (1965 I.R. 294), the Supreme Court has held that one of the personal rights guaranteed in Article 40.3.2° of the

Constitution includes the right to "bodily integrity". It might be argued that this right includes the right not be polluted and that, as a result, an individual who is now polluted might be able to ground an action against the polluter on this basis. No plaintiff, however, has been brave (or rich) enough to make this argument before the courts of the land as yet.

The common law does, however, give private remedies to the individual in certain well-recognised cases which have relevance to the topic of pollution control. The most important of these private remedies is to be found in the tort of Nuisance. Nuisance may either be Public or Private. A Public Nuisance is the wrongful interference with a public right without lawful justification. A Private Nuisance is the wrongful interference with an individual's lawful enjoyment of his property, or any "act of wrongfully causing or allowing the escape of deleterious things into another person's land - for example, water, smoke, smelly fumes, gas, noise, heat, vibrations, disease germs, animals and vegetation." (Salmond on the Law of Torts, 16th Edition, p.51). A Public Nuisance may be a crime as well as being a private tort, and so the principal remedy is prosecution in criminal law. A particular individual, however, who can show special damage as a result of a Public Nuisance may also be allowed to bring a private suit in respect of damage which he himself has suffered. A Private Nuisance gives the injured party a right to sue for an injunction (that is, a court order prohibiting the objected activity for the future) and/or damages for injuries already suffered. The tort of Nuisance usually contains an element of continuity and repetition and is usually maintainable only in respect of damage to the land or the enjoyment of the land by the occupier of the land. It is, however, an important control on polluters. Moreover, certain of these Nuisances have been specifically recognised by Acts of Parliament and have been elevated to statutory level by the Public Health Acts and by other legislation. The most important examples of such nuisances include:

- (1) Any premises in such a state as to be a nuisance or injurious to health;
- (2) Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ash-pit so foul or in such a state as to be a nuisance or injurious to health;
- (3) Any animal so kept as to be a nuisance or injurious to health;
- (4) Any accumulation or deposit which is a nuisance or injurious to health;
- (5) The drainage system of one or more premises which is so defective, foul or neglected as to be, or to be likely to become, a nuisance or injurious to health;
- (6) Temporary dwellings in such a state as to be a nuisance or injurious to health;
- (7) Pollution of the air by premises other than private premises.

(See Public Health (Ireland) Act, 1878, Section 107, etc. Local Government (Sanitary Services) Act, 1948 (No. 3 of 1948), Sections 18 and 32. Local Government (Sanitary Services) Act, 1962, (No. 26 of 1962) Section 10.) All of the above Nuisances would, therefore, amount to statutory offences for which the offender might be prosecuted.

Apart from the private right to sue in Nuisance, the citizen has also other private rights of suit which, to a lesser extent, may give him a remedy against a polluter, and thereby act as a check on the activities of polluters in general. The most important of these are: Trespass (a right to sue any person

who places any object on the land of another or causes any physical or noxious substance to interfere with another person's land, or the air space, or the sub-soil of that land); Negligence (the breach of a legal duty owed by one person to another which causes that other damage and which may, of course, have application in the area of pollution in appropriate circumstances); Rylands v. Fletcher liability ((1868), L.R. 3 H.L. 330): liability under this heading attaches to any person "who, for his own purposes, brings on his lands and collects and keeps there anything likely to do mischief if it escapes"; liability arises when such an escape occurs and causes damage to another person. These instances of common law liability, if they do apply, may, of course, apply to any form of pollution, whether it be to air space, to land surface or to water rights.

Local authorities are, under various statutory authorities, empowered to make by-laws for the government of their jurisdictions and for the prevention and suppression of Nuisances. Under the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963), certain local authorities are constituted Planning Authorities for the purpose of the Act, and under the Local Government (Sanitary Services) Act, 1962 (No. 26 of 1962), they are constituted as Sanitary Authorities for the purpose of this Act. Their functions under these Acts give them great powers in relation to development of land especially. Permission must be sought for all new structures and for the alteration of existing structures or for a change of use. Furthermore, the Act obliges the planning authorities to create "development plans" for their areas which indicate and specify the principal objectives of development in their area. This latter function may involve the authority in designating certain areas to be residential and other areas to be industrial. In granting permissions for new structures, such an overall development plan would, of course, be highly relevant and would act as a control on undesirable developments in particular areas. In relation to specific permissions for specific buildings, the authorities may, and do, grant permissions subject to conditions which insist on anti-pollution measures, etc. The planning authorities are the principal enforcing agents in respect of the Planning Act, 1963, but the Act also gives the individual the right to intervene in the process by inspecting the development plans, by objecting to permissions, by giving him a right to appeal against the decisions of the planning authorities, etc.

Apart from the above, the main controls in the pollution area are contained in specific statutes which are either directed against specific forms of pollution or are designed to protect specific interests. In this connection, the following are the main headings meriting attention: (a) air pollution, (b) water pollution, (c) land pollution.

Before dealing with these three specific areas, however, some miscellaneous points relating to pollution should be dealt with at this stage.

#### Noise and Vibration.

Very few statutory regulations exist relating to the problem of noise pollution, and, indeed, no independent monitoring service exists in the country, despite the obvious need for such a control. Control over noise, such as it is in Ireland, is exercised primarily by way of conditions attached to the planning permissions necessary before certain buildings are erected, to licences required for certain activities, and to grants which may be made

available by the Industrial Development Authority and other Governmental agencies. Conditions recently attached to the planning permission granted to Tara Mines, for example, did have such noise restrictions. Again, under the Public Health (Amendment) Act, 1890 (Section 51), and the Public Dance Hall Act, 1935 (No. 2 of 1935), certain forms of entertainment can only be carried out under licence: noise conditions are frequently attached to the issuance of such licences. Moreover, under the Public Dance Hall Act, 1935 (No. 2 of 1935), interested individuals may object to the renewal of such licences on the ground of excessive noise. Under the Factories Act, 1955, the Minister for Labour is empowered in certain circumstances, where he feels that there is a danger to workers in factories, to make regulations controlling the matter. In pursuance of this power, the Factory, (Noise) Regulations, 1975 (S.I. No. 235 of 1975) have now been issued, and these regulations impose a general duty on the occupier to ensure that sound pressure levels which are likely to cause harm to employers are to be kept at the lowest practicable level. Where sound pressure level exceeds 90 d BA, certain precautions must be taken, e.g., warning notices, the duration and level must be controlled, ear protection must be provided, etc. Under Section 651 of the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963) as amended in 1976, it is specifically declared to be an offence for persons to persistently and repeatedly make noise in a public place which may cause annoyance to others and, in particular, to operate, to the annoyance of the public, wirelesses, loudspeakers, televisions, etc. The maximum fine for such an offence is £10. Noise by aircraft is specifically exempted from this section. But noise from aircraft is regulated in keeping with the International Civil Aviation organisation standards by the Air Navigation (Noise Certificate and Limitation) Order, 1972 (S.I. No. 280 of 1972) and the Air Navigation (Noise Certificate and Limitation) (Amendment) Order, 1973 (S.I. No. 187 of 1973). Control over the design, construction, maintenance and use of motor-cars exist in the Road Traffic (Construction Equipment and Use of Vehicles) Regulations, 1963 (S.I. No. 190 of 1963), which are issued by virtue of statutory authority under the Road Traffic Acts, 1961 (No. 24 of 1961) and 1968 (No. 25 of 1968).

#### Nuclear Energy.

Controls over radioactive substances can be exercised by the Minister for Health under the Health Act, 1953 (No. 26 of 1953), the Minister for Labour under the Factories Act, 1955 (No. 10 of 1955) and the Dangerous Substances Act, 1972 (No. 10 of 1972), and by the Minister for Transport and Power under the Nuclear Energy Act, 1971 (No. 12 of 1971). Only the Minister for Labour has acted under these powers so far, and two sets of regulations, which he has issued under the Factories Act, 1955, were designed to ensure the safety and welfare of workers exposed to such radioactive substances: the Factories Ionising Radiations (Sealed Sources) Regulations, 1972 (S.I. No. 17 of 1972), and the Factories Ionising Radiations (Unsealed Radioactive Substances) Regulations, 1972 (S.I. No. 249 of 1972). No nuclear stations exist as yet in Ireland, although the Government has sanctioned a proposal from the Electricity Supply Board for the erection of such an installation in the near future. Under the Nuclear Energy Act, 1971 (No. 12 of 1971), a Nuclear Energy Board has been established as an Advisory Body to the Minister in relation to all the attendant problems involved in the use of nuclear energy. At present, it is envisaged that the problem of nuclear waste will be handled by licence and/or Ministerial Order when the problem should arise.

## Products.

Certain products which may have a polluting effect on the environment are mainly controlled by the Departments of Agriculture and Fisheries, and Health. In practice, it seems that control of agricultural products is almost solely by restriction on distribution. This method is effective because most manufacturers of agricultural products consider it essential to have the prior approval of the Department of Agriculture before marketing their products to Irish farmers. This system has caused certain polluting products (such as, Aldrine, Dealdrine, and, to a lesser extent, DDT) to be restricted or withdrawn. Regulation on other products also exist and regulation is particularly common under the Fertilizers, Feeding Stuffs and Mineral Mixtures Act, 1955 (No. 8 of 1955), and the Poisons Act, 1961 (No. 12 of 1961). Section 35 of the Diseases of Animals Act, 1966 (No. 6 of 1966) controls and regulates sheep dips.

### 5.8.3.2. Air Pollution

There is no specific legislation regulating emissions from domestic sources in Ireland. The principal legislation in relation to air pollution is contained in the Alkali, etc., Works Regulation Act, 1906 and the Local Government (Sanitary Services) Act, 1962 (No. 26 of 1962) (Section 10), under which the Control of Atmospheric Pollution Regulations, 1970 (S.I. No. 156 of 1970) has been issued. The 1906 Act requires that every alkali, etc., works must be registered before activities listed in the Act can be carried out. The Act requires that such plants use the "best practicable means" to prevent the discharge of noxious and offensive gases into the atmosphere before it is registered. This is a continuing duty for manufacturer. The Act also prescribes maximum permissible limits for the emissions of certain noxious gases and tries to prevent and control the deposit of discharge of waste and to secure that alkali waste already deposited does not cause a nuisance. Inspectors are established under the Act to implement it and breaches of the Act are liable to criminal prosecution.

Section 10 of the Local Government (Sanitary Services) Act, 1962 empowers the Minister for Local Government to make regulations concerning, inter alia, "the establishment and operation of (1) traders, (2) chemical and other works, and (3) processes (including the disposal of waste) which are potential sources of atmospheric pollution from smoke, dust, grit or noxious or offensive gases; licencing of persons engaged in specified works or processes, being works or processes discharging pollutants into the atmosphere, and prohibiting the engagement in such works or processes of persons other than licenced persons, and licencing of premises from which pollutants are discharged into the atmosphere, and prohibiting discharge of pollutants into the atmosphere from premises other than licenced premises." The Control of Atmospheric Pollution Regulations, 1970 (S.I. No. 156 of 1970) have been issued under the statutory authority just mentioned. These regulations make it an offence for an occupier of premises (other than dwelling houses) to cause to be emitted from such premises smoke, dust, grit, gas or fumes, in quantities which amount to a nuisance. Similar prohibition exists for smoke, etc., emitted from any public place. Further controls relate to the length of time during which dark or black smoke may be emitted from premises other than private dwelling houses.



In relation to motor-cars, the Road Traffic (Construction Equipment and Use of Vehicles) Regulations, 1963 (S.I. No. 190 of 1963) insists that in the construction, design, maintenance and use of motor vehicles, care shall be taken to prevent the emission of smoke, visible vapour, noxious gases and offensive odours, etc. Apart from the generality of the above, a few specific Acts regulating particular activities may be mentioned. These include the Cement Act, 1933 (No. 17 of 1933), the Smelting Act, 1968 (No. 5 of 1968), the Mineral Development Act, 1940 (No. 31 of 1940), the Petroleum and Other Mineral Development Act, 1960 (No. 7 of 1960). The activities mentioned under the titles of these Acts require a licence before being carried on in the State, and it is frequently the practice in issuing such licences that conditions relating to pollution controls (including air emissions) should be adhered to.

### 5.8.3.3. Water Pollution

The conclusion of the Inter-Departmental Committee Report on Water Pollution (Prl. 2939) on this topic was as follows:

Generally speaking, the law relating to water pollution is not satisfactory. Though common law actions can sometimes be effective and the statutory provisions on the subject are numerous and detailed, their combined effect has not sufficed to curb the gradual spread of water pollution or to offer a reasonable hope of controlling the continuance of this trend - ... this failure is due primarily to the rigidity and consequent difficulty in enforcement of the statutes, and also to the cumbersome procedures provided for in the legislation.

(At Paragraph 6-20-1)

Very recently, a bill - Local Government (Water Pollution) Bill, 1976 - has been introduced to Parliament which proposes to give effect to some of the recommendations of the above Committee, but, as it will be some time before this becomes law, what follows is a description of the existing law on this subject. The principal legislation in this area is as follows:

Rivers Pollution Prevention Acts, 1876 and 1893. These Acts prohibit the discharge of solid matter, sewage, trade wastes and mining effluence into rivers, streams, canals, lakes or watercourses and into the sea and into tidal waters to such a point as may be determined by the Minister for Local Government. It will be a defence in such an action to show that the best practicable and reasonably available means were used to render the discharge harmless. The Acts are enforceable by the local authorities, but, because of defective and imprecise definitions to the words used in the Acts, they are administratively complex and difficult to enforce.

Public Health (Ireland) Act, 1878. Under this Act, sanitary authorities are prohibited from discharging sewage or filthy water into any natural stream or watercourse until the discharge has been treated for "all excrementitious or other foul and noxious matter". It is also an offence under the Act for anyone to contaminate any stream or reservoir used as a source of public water supply. The authorities under the Act may also abate nuisances which include "any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ashpit so foul or in such a state as to be a nuisance or to be injurious to health". Controls are also listed in the Act for the effluent emanating from such offensive trades as

blood-boiler, bone-boiler, fellmonger, soap-boiler, tallow-melter, tripe-boiler, gut manufacturer and any other noxious or offensive trade.

The Foreshore Act, 1933 (No. 12 of 1933). Under this Act, it is an offence to leave in the tidal area (that is, below the high water mark), or to throw into the sea adjacent to such area, any article which would cause injury, including any substance, solid or liquid, which could be offensive or injurious. Provision is made for the erection and removal of structures on the foreshore. (Section 10-12)

Electricity Supply (Amendment) Act, 1945 (No. 12 of 1945). Under this Act, it is an offence for any person to discharge into a river used by the Electricity Supply Board for the generation of electricity, any matter which might injure the generating station or any of the connected works.

Harbours Act, 1946 (No. 9 of 1946). Under this Act, it is an offence to dump, without the permission of the Harbour Authorities, any ballast, effluent, ashes, stones or any other substance into the waters of a harbour. Under the Act, the Harbour Authorities are also authorised to make by-laws for the control and regulation of petroleum products in their jurisdiction.

Oil Pollution of the Sea Acts, 1956 (No. 25 of 1956) and 1965 (No. 1 of 1965). Controls over oil discharges from Irish registered ships, from ships in general in Irish territorial waters, and from land into sea, is affected by these Acts. The Minister for Local Government is primarily responsible for clearances of oil spillage, but enforcement action is primarily the responsibility of local authorities. Oil spillages at sea are regulated by the Continental Shelf Act, 1968 (No. 14 of 1968), which empowers the Minister for Industry and Commerce to prosecute an owner or operator for such oil escapes which occur during the exploitation or exploration of the sea-bed. To such an action the operator may reply that the spillage occurred without his permission and in spite of reasonable care on his part.

No special responsibility in relation to clearing up of oil spillages exists in the country. Such a task has been treated as an administrative matter and, in recent years, primary responsibility has now been assumed by the Minister for Local Government. It has been agreed, however, that when local authorities act in such cases the State will meet 50% of the cost incurred by the local authorities in the clearance, subject to a limit on local authority expenditure for this purpose of a sum equal to the produce of 2.5p in the £ on the rates in any one year. All expenditure in excess of this sum will be reimbursed by the State.

Fisheries (Consolidation) Act, 1959 (No. 14 of 1959) and Fisheries (Amendment) Act, 1962 (No. 31 of 1962). These Acts prohibit the discharge into any waters of deleterious matter (i.e. any substance, including explosives liquid or gas, the entry of which into any waters is liable to render the waters poisonous or injurious to fish) without a licence from the Minister for Agriculture and Fisheries. The Act also insists that deleterious matter contained or conveyed in receptacles within thirty yards of any water must be prevented from entering into the water.

The following Acts also contain provisions which are relevant to water pollution: Liffey Reservoir Act, 1936 (No. 54 of 1936), the Shannon Electricity Act, 1925 (No. 26 of 1925), the Foyle Fisheries Act, 1952 (No. 5 of 1952), the

Health Act, 1953 (No. 26 of 1953), the Nuclear Energy (An Bord Fuinnimh Nuicleigh) Act, 1971 (No. 12 of 1971), and the Dangerous Substances Act, 1972 (No. 10 of 1972).

As already noted, however some long needed reform in this area is now proposed in the Local Government (Water Pollution) Bill, 1975.

#### 5.8.3.4. Deposit of Waste on Land

Many of the regulatory statutes mentioned under the previous two headings will also be relevant here as pollution of land may come from the atmosphere or from the water. This is especially true of the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963), and the various Public Health (Ireland) Acts, 1878 to 1907. Under the former Act, the Planning Authorities are obliged to draw up a Development Plan which will normally make provision for waste and refuse. Moreover, under this Act, individual building permissions will usually (especially if they relate to industrial developments) have conditions attached to them regarding waste and refuse. Furthermore, Section 52 of this Act specifically makes "littering" an offence.

Derelict sites are specifically dealt with in the Derelict Sites Act, 1961 (No. 3 of 1961), and abandoned vehicles are also specifically dealt with by Statutory Instrument (Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations (S.I. No. 5 of 1971) issued under the Road Traffic Acts, 1961-1968 (No. 24 of 1961 and No. 25 of 1968)).

The Public Health (Ireland) Act, 1878 empowers Local and Sanitary Authorities (and obliges them if required by the Minister for Local Government) to provide dumps for the deposit of waste, to make arrangement for the collection of domestic refuse (and trade refuse by the Public Health Acts (Amendment) Act, 1907) and the cleaning of streets. Local and Sanitary Authorities are also empowered (under Municipal Corporations (Ireland) Act, 1840, Section 125, and the Local Government (Ireland) Act, 1898, Section 16, and under various Sections of the Public Health (Ireland) Act, 1878) to make by-laws for the good rule and government of their areas and for the prevention and suppression of nuisances. Most such authorities do exercise these powers to control waste, refuse, and pollution, on land generally in their areas.

Mining operations are, as already noted, specifically controlled principally in the Minerals Development Act, 1940 (No. 31 of 1940), the Mines and Quarries Act, 1965 (No. 7 of 1965), and the Petroleum and Other Minerals Development Act, 1960 (No. 7 of 1960). Cement Works and Smelters are also specifically controlled (Cement Act, 1933 (No. 17 of 1933), and the Smelting Act, 1968 (No. 5 of 1968)).

Agricultural waste, because of the scattered nature of Irish farmsteads, is not a great problem, and, insofar as it exists (principally in relation to animal buildings and silos, etc.) is controlled by the grant system operated by the Department of Agriculture and Fisheries. Before a Government grant for such buildings is sanctioned, the Department involved insists that such buildings are designed so as not to contribute to any form of pollution.

With regard to pesticides, etc., legislation mentioned at 5.8.3.3. above is also relevant, especially the Animal Remedies Act, 1956 (No. 41 of 1956), the

Sheep Dipping Order, 1965 (S.I. No. 105 of 1965), the Poisons Act, 1961 (No. 12 of 1961), etc.

#### 5.8.3.5. Enforcement of Pollution Controls

Before detailing the pollution controls in existence in Ireland, it may be opportune at this point to mention some of the characteristics of the enforcement system that operates in Ireland in this area. Firstly, the enforcement system is distinguished by its decentralised and fragmented features. The initiative for enforcement in many of the older statutes rests primarily with various local, planning and sanitary authorities, and, as a result, local politics inhibit energetic enforcement on many occasions. Some legislation does provide inspectorates (e.g. the Alkali, etc., Act, 1906), while other statutes rest the enforcement initiative in fishery conservators (Fisheries Act, 1959 (No. 14 of 1959)) or in such bodies as the Electricity Supply Board under its own establishing legislation. Secondly, much of the legislation in this area is old and represents a piecemeal, fragmented effort to tackle particular aspects of pollution problems rather than an overall, coordinated approach to the problem. Thirdly, not only are the laws old, but they are also inadequate in that the statutory definitions and the criteria for pollution are insufficiently defined in the legislation to permit of proper enforcement. Moreover, these laws display an inaccurate concept of the extent of today's pollution problems, are administratively complex, and are inefficient in the range of controls which they do provide. Proper and vigorous enforcement is further obstructed by the absence (until recent times, at least) of adequate monitoring equipment and techniques. Fourthly, in many of the older statutes the penalties are unrealistic by modern standards and rarely act as a deterrent to serious polluters.

The principal forms of control of pollution in Ireland are as follows:

- (i) Criminal prosecutions under specific statutory authority.
- (ii) Private law actions by individuals in pursuance of their common law rights, e.g., in Nuisance, especially.
- (iii) Under the Planning System, the existence of Development Plans which restricts certain activities to certain areas (land zoning), and the refusal or the conditional permission given by planning authorities for the erection or alteration of existing buildings, as well as the rights given under the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963) to individuals to interfere in the planning process, are all very real controls in practice.
- (iv) The insistence of conditions and standards in the operation of licences, leases and permissions (e.g., Minerals Development Act, 1940 (No. 31 of 1940), Smelting Act, 1968 (No. 5 of 1968), etc.).
- (v) The insistence on conditions and standards in the administration of the Grant Aid System (especially in the case of agricultural buildings).
- (vi) Departmental approval of products before they are marketed or recommended for use.
- (vii) Ministerial circulars to pollution control authorities.

#### 5.8.4. Improvement of the Status of Women

The Government in Ireland, like other Governments in recent years, has adopted, as a public policy objective, the need to improve the underprivileged status of women in society. This section will note, briefly, the developments in Ireland in this area which are of particular interest to a study of Economic Law. The State's concern for the housewife and mother is specifically recognised in Article 41 of Bunreacht na hÉireann (the Constitution), which declares in part as follows:

2.1<sup>o</sup> In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2.2<sup>o</sup> The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Ironically enough, however, the State's activities in endeavouring to raise the status of women in Ireland in recent years, has, in the economic context, been concerned primarily with securing her position at her work place outside the home.

The first Act that should be mentioned in the process of improving the status of women in Ireland is the Married Women's Status Act, 1957 (No. 5 of 1957), which, in a general way, and not particularly in an economic context only, removed certain disabilities that attached to the married women in both the spheres of contract and property ownership. Briefly speaking, the Act attempted to equate the married woman with the femme sole.

In partial answer to continued pressure from Women's Liberation Movements at the start of the present decade, the Commission on the Status of Women was established in 1970, and reported to the Government in 1972 (Prl. 2760). The report highlighted the discriminations that existed in regard to women in Ireland, and suggested reforms, principally in the area of Family Law. Nevertheless, it also gave a push to the movement which sought equality for women in the economic sphere.

More particularly relevant to a discussion on Economic Law was the emergence in recent years of a Government policy relating to women employees in the Public Service. This policy, as it is being implemented at present by the Government in Public Service Employment (and, by this time, also by most State-sponsored bodies and Local Authorities), is a two-pronged affair: firstly, it proposes to eliminate on a phased basis the marriage-differential in pay structures (which mainly operated to the disadvantage of single women employees), and, secondly, it proposes, again on a phased basis, to remove the sex-differential in pay scales. The rule which declared that marriage was a disqualification for women in the Public Service has also been withdrawn. This change of policy was followed by a more concrete legal measure in the "equal pay for equal work" statute of 1974 (the Anti-discrimination (Pay) Act, 1974 (No. 15 of 1974)), which was due to be implemented by Ministerial order as and from 1 January 1976, but which has now been postponed to a later date because

such a step would result, in present economic conditions, in increased unemployment. The Commission of the EEC, however, refused to permit such a postponement, and has insisted that the Irish Government must fulfil forthwith its obligations under the EEC rules on this matter. The Irish Government has now accepted this decision, and, at present, is actively engaged in implementing the Anti-discrimination measure. The Government has also promised recently that it will introduce an anti-discrimination in employment statute in the near future. No draft of such a statute exists as yet, however.

## CHAPTER 6. ECONOMIC SECTORS SUBJECT TO COMPREHENSIVE REGULATION

### 6.1. Agriculture

#### 6.1.1. General

State interference in the Agricultural sector is a common phenomenon in many countries today. This interference may be aimed at directly increasing farm incomes (price supports, input subsidies, direct payments), improving efficiency (grants, loans, advisory services), restructuring agricultural holdings, or assisting regional development through agriculture. Examples of all four types of interference are to be found in Ireland. Insofar as State activities take the form of grants, loans or tax allowances, they are dealt with at 3.2 supra, and, insofar as they relate to quality control, they are more properly dealt with at 5.7 supra, together with other matters relating to consumer protection.

This section will be concerned with access to market and behaviour once in it, and, in particular, will deal with the prices and marketing arrangements. Since 1 January 1973 (accession to the EEC), some of these regulations have been influenced, if not dictated, by Common Agricultural Policy (C.A.P.) developments within the EEC. European regulations, directives, etc., on these matters usually find their way into domestic legislation by virtue of Ministerial regulations authorised by the European Communities' Acts, 1972 (No. 27 of 1972) and 1973 (No. 20 of 1973).

#### 6.1.2. Prices

Stability in prices for agricultural products in Ireland was formerly effected in the following way. A guaranteed price system operated for certain products (butter, skim-milk powder, potatoes, wheat and barley). Where such State guarantees did not exist the price of farm produce was sometimes more informally guaranteed by cooperative buying agencies, such as, the Irish Flour Millers' Association, or Flake Oatmeal Millers' Association, who announced, in advance of the growing season, what they were willing to pay as a fixed price for milling wheat and oats, respectively. In the case of sugar beet, an advance contract with Comhlucht Siuicre Éireann Teo (The Irish Sugar Company) at a mutually acceptable price provided the security required by beet growers. Subsidies, having a close bearing on agricultural prices, and which were designed to increase productivity for sheep flocks, for example, and also (since EEC accession) to aid flax and grass seed production, were also available. Moreover, import controls, which protected the higher-cost home-produced commodities, and export controls, which guaranteed the continuance of minimum quantities also reinforced the market. These import and export controls operated by way of Ministerial order which were generally issued on particular statutory authority. Examples of these can be found in: S.I. No. 304 of 1971, issued under the Dairy Produce Marketing Act, 1961

(No. 1 of 1961), extending existing export controls on chocolate crumb exports to Britain, Northern Ireland and the Isle of Man; S.I. No. 70 of 1972, issued under the Agriculture and Fishery Products (Regulation of Export) Act, 1947 (No. 18 of 1947), extending export control to unsweetened commodities containing milk powder. Import controls which frequently required the import to be licenced could be adopted under the following Acts (which by no means comprise an exhaustive list): Sugar (Control of Imports) Act, 1936 (No. 16 of 1936); Agricultural Produce (Cereals) Act, 1938 (No. 16 of 1938); Agricultural Products (Regulation of Import) Act, 1938 (No. 14 of 1938), under which, to give but one example, the Fruit (Regulation of Import) Order, 1966 (S.I. No. 143 of 1966) was issued. Although the restriction of imports could be justified in some cases as a protection against diseases and pests (from which Ireland is relatively free), and the restriction of exports could be justified in some cases as an insistence on standards and quality, both import and export restrictions did, in many cases, have the more obvious effect of cushioning the home market. Such import and export controls will now, however, be progressively integrated, in accordance with the provisions of the EEC Accession Treaty, to C.A.P. rules on these matters. Lastly, on prices, under the Flour and Wheat Mill Act, 1956 (No. 40 of 1956), and the Milk (Regulation of Supply and Price) Act, 1936 (No. 43 of 1936), the maximum price of the commodities mentioned in the titles of these Acts could be fixed by the Government. These Acts were passed in order to limit the price of essential goods, such as, bread and milk, for the benefit of the lower income group.

#### 6.1.3. Accession to the EEC and Transitional Arrangements

From 1 February 1973, the Community's C.A.P. began to operate in Ireland. Apart from the structural aspects of this policy (3.2.7. supra), the main features of C.A.P. are the removal of trade barriers between Member States in most agricultural products, the operation of a common price policy, together with a market intervention system, a common trading system for non-Member States, which includes a common export support system. Under the terms of the Accession Treaty, Irish agricultural policy will be progressively integrated into a Common Agricultural Policy during a five-year transitional period.

The transitional arrangements applicable to Ireland have been set out in the Minister for Agriculture and Fishery's Report for the year 1971/1972, and I quote the relevant passages here.

"Under the terms of accession, the Irish agricultural sector will be integrated into the Community's common agricultural policy over a five-year transitional period. Prices here will be harmonised with the common price levels of the Community in six steps over this period; the first step will take place at the beginning of the 1973 marketing year for the product in question and the final step for all products on 31 December 1977. As from 1 January 1978, the common price levels will obtain throughout the enlarged Community.

To facilitate trade, the problems arising from the difference in price levels within the enlarged Community during the transitional period will be resolved by means of a system of compensatory amounts. These compensatory amounts - which, broadly, will represent the differences in prices between Member States - may be levied on imports or, as the case may be, refunded on exports so as to equalise national price differences.



They will be phased out gradually during the transitional period according as price levels within the Community are aligned. The cost of refunds on exports to non-member countries and to Member States of the enlarged Community, as well as the cost of intervention support for agricultural products on the domestic market, will be met from the Community's Agricultural Guidance and Guarantee Fund.

Quantitative restrictions will have to be abolished for all products for which there is a common organisation of the market. These include cattle and beef, milk and milk products, pig-meat, poultry and eggs, cereals, sugar, fruit and vegetables. Customs duties in intra-Community trade, where these exist, will be eliminated and the new Member States will align their tariffs against third countries with the Community's Common External Tariff progressively during the transitional period.

The Treaty of Accession provides that the implementation of the transitional measures should not result in any diminution in the degree of freedom of trade already existing between Ireland and the United Kingdom as a result of the Anglo-Irish Free Trade Area Agreement. Irish exports can continue to participate in the British deficiency payments while those payments are being phased out during the transitional period. Also, our exports of beef to the U.K. can be subsidised so long as the British deficiency payments continue to exist.

Important derogations on animal health were secured in the negotiations. These will allow us to maintain existing controls on imports of live animals and fresh meat, and no obstacles will be placed on our trade with the U.K. The animal health position in the entire Community will be examined within five years of accession. As members, we will participate in this examination."

#### 6.1.4. Marketing

The marketing of some agricultural products is organised and supervised by certain State bodies established to ensure better organisation of supply to demand. This supervision is especially noticeable in relation to agricultural exports where the maintenance of high quality has significance for the balance of payments. The most important of these bodies are: An Bord Bainne (established by the Dairy Produce Marketing Act, 1961 (No. 1 of 1961), restructured in accordance with EEC requirements from statutory monopoly status to cooperative status by the Dairy Produce (Miscellaneous Provisions) Act, 1973 (No. 21 of 1973)); The Pigs and Bacon Commission (established by the Pigs and Bacon (Amendment) Act, 1961 (No. 14 of 1961)); An Bord Grain (Grain Board, established by the Agricultural Produce (Cereals) (Amendment) Act, 1958 (No. 24 of 1958)); Irish Potato Marketing Co. Ltd. (established in 1950 by the Minister for Agriculture and Fisheries).

These marketing boards differ in the powers they possess, but the strongest of them possess (as well as marketing duties) regulatory powers and administrative functions which involve the licensing of importers and exporters, administration of the licensee levy system, operation of quality controls, etc. Apart from the supervisory functions of some of these Marketing Boards, the quality of specific exports is also, on occasion, enforced in some instances by specific regulation under the Exports Act. (See, e.g.,

Agriculture and Fisheries Products (Regulation of Export) Act, 1947  
(No. 18 of 1947))

With regard to the legal instruments involved in these arrangements, many of them insofar as they attempt to implement EEC measures, will now be incorporated into Irish law by statutory instruments issued under the statutory authority of the European Communities' Acts, 1972 (No. 27 of 1972) and 1973 (No. 20 of 1973). Occasionally, a statute will be required, as in the Dairy Produce (Miscellaneous Provisions) Act, 1973 (No. 21 of 1973), which restructured An Bórd Baine (The Milk Board) to comply with EEC requirements, but, generally, statutory instruments will suffice to effect the required Community changes. No change in Irish arrangements will be necessitated, of course, where no Common Market policy prevails in relation to a particular product (e.g., potatoes) and, in this event, the present Irish arrangements can stand. Finally, on some matters compliance with EEC requirements may be achieved by administrative decision only. So, for example, the decision to constitute the Department of Agriculture and Fisheries as an intervention agency for the Community did not require legislation but was effected by administrative decision alone.

## 6.2 Fisheries

No general price or marketing restrictions exist in Ireland in relation to fish. Until recently, the wholesaling sector centred in the Dublin market exclusively, but, in recent years, because of the Bórd Iascaigh Mhara (Sea Fisheries Board - BIM) programme to encourage fish auctions at ports of landing, auction centres have developed in Killybegs, Galway and Dunmore East, especially. Fishermen on their own initiative at these centres have now begun to set minimum prices for their products. Minimum guarantee prices, however, are envisaged within the EEC programme in the future for certain types of fish.

Marketing is likewise uncontrolled for the most part, although restrictions do exist in relation to the sale, and export for sale, of salmon and trout (Part X of the Fisheries (Consolidation) Act, 1959 (No. 14 of 1959)) and, indeed, on the purchase of salmon and trout other than for personal consumption or for catering purposes when made from salmon dealers or licenced fishermen (Section 28 of the Fisheries (Amendment) Act, 1962 (No. 31 of 1962)).

Most of the regulations in relation to fisheries are concerned with conservation of stocks, etc., and are provided for in the Fisheries (Consolidation) Act, 1959 (No. 14 of 1959) as amended in 1962 (Fisheries (Amendment) Act, 1962 (No. 31 of 1962)). Matters regulated there include licences for fishing for salmon, trout and eels, regulations as to nets (use, size of, restrictions on use in fresh water, etc.), regulations relating to fixed engines, fishing wares, fishing mill dams and other obstructions to the free passage of fish, restrictions as to times of fishing for salmon, trout, pollen and eels (closed seasons, etc.). Sea fisheries are dealt with in Part XIII of the 1959 Act, and these provisions include restrictions on foreign sea fishing boats entering the exclusive fishery limits of the State (for exclusive jurisdiction see the Maritime Jurisdiction Act, 1959 (No. 22 of 1959)), and provisions intended to protect undersized sea fish. Special provisions (and regulations) are provided for oysters (licences for fishing for, licences of oyster beds, closed seasons, etc.), molluscs (other than oysters)

and crabs.

In addition to these statutory provisions, wide powers are given in the 1959 Act to the Minister for Lands to make regulations in relation to any matter referred to in the Act (Section 4) and by-laws for the government, management, protection and improvement of fisheries including any or all of the following matters:

- "(a) the regulation of the fisheries of the State and the preservation of good order amongst the persons engaged therein,
- (b) the times and seasons at which the taking of several species of fish shall commence and cease,
- (c) the times and places or the manner at and in which any fishing engine to be employed in the said fisheries may be used,
- (d) the description and form of nets to be used in the said fisheries and the size of the meshes thereof,
- (e) the prohibition of the use of nets,
- (f) the prohibition of the use at any time of any fishing engine which is in the opinion of the Minister injurious to the fisheries,
- (g) the prohibition of any practice whatsoever tending in the opinion of the Minister to impede the lawful capture of fish or to be in any manner detrimental to the said fisheries,
- (h) any other matter or thing relating in any manner to the government and protection of the said fisheries."

(See Section 9 of the Fisheries (Consolidation) Act, 1959 as amended by Section 3 of the Fisheries (Amendment) Act, 1962). Many orders exist under these provisions.

Breaches of any of the statutory rules are offences under the Act, and penalties of varying severity are provided. Wide powers are conferred on water-keepers, officers and servants of boards of conservators, and the police to enforce the Act (Part XVIII of the 1959 Act).

Lastly, it should be noted that if, in keeping with commitments under international agreements, the Government is satisfied that it is necessary to maintain the productivity of the living resources of the sea, they may make orders to conserve the living resources of the sea in any area of the high seas adjacent to the exclusive fishery limits. Orders (referred to as "quota orders") are in existence at present in relation to herring fisheries, limiting the total take of such fish in any one year to a fixed tonnage. Monitoring stations have been established to enforce this.

### 6.3 Inland Transport

Under this heading the principal forms of inland transport in Ireland - rail, road, air and water - will be discussed. From 1932 until 1958 (the first

Economic Programme), transport policy in Ireland was mainly concerned with the protection of railway companies, the regulation of road transport to this end, and the development of national transport authority (Coras Iompair Éireann, i.e., CIE), which could reflect and facilitate the implementation of State policy in the matter of transport. In recent years the transport system, however, has been viewed by the Government, not as a separate independent industry, but rather as an essential link between producers and consumers, the well-being of which is vital for the entire economic infra-structure of the State.

#### 6.3.1. Rail Transport. Coras Iompair Éireann (CIE)

Coras Iompair Éireann was first established by the Transport Act, 1944 (No. 21 of 1944), but it did not assume its present form until 1950 (Transport Act, 1950 (No. 12 of 1950)). Although it was established primarily to rationalise the railroad business, it is also given powers to operate transport services by railway, tramway, inland navigation, sea or road. Apart from operating some shipping services and owning two canals (only one of which is open for non-commercial limited navigation), its main transport activities at present relate to passenger and freight services via road and rail. It has a monopoly of railway business. It also operates, through subsidiaries, an air freight company and an hotels company. In form (statutory corporation), it is a fairly typical example of the commercial State-sponsored body that is a familiar feature in the Irish economic scene, combining as it does, the features of a public utility and a private business enterprise. It is a statutory corporation with no shareholders and, although it must ensure a satisfactory service for the public, it is not obliged to make a profit. It is financially supported by the State and, although free from Government interference in its day-to-day operations, may, especially since the Transport Act, 1958 (No. 19 of 1958), be viewed as an instrument of State policy in transport matters. Under the Transport Acts of 1958 and 1964 (No. 30 of 1964), CIE has a duty "to provide reasonable, efficient and economical transport services with due regard to safety of operation, the encouragement of national economic development and the maintenance of reasonable conditions of employment for its employees ..." The 1964 Act placed a duty on CIE to ensure that its operating expenditure (taking into account the annual Government subvention, at present almost £3 million) does not exceed its revenue. These statutory duties, however, are expressed more by way of general guidelines than as specific legal directives. It has been well said that the principal characteristics of CIE as expressed in, or deducible from, its enabling legislation are as follows:

It is an instrument of national policy, an autonomous unit with legal independence, having the legal status of a corporate body. It has fixed responsibilities to the community through the Government represented by the competent Minister. It is not required or enjoined to make a profit. Public service is substituted for the profit motive. Although there is Ministerial control over certain aspects of its financial operations, and an annual grant is made by the Government from Parliamentary money in aid of current expenditure, the finance of CIE is self-contained and forms no part of the national budget. Accounts are subject to public scrutiny.

### 6.3.2. Road Transport

In addition to safety regulations which are applicable to all vehicles on the road, and regulations relating to drivers (licences), additional safety regulations operate, because of the increased risk to the public, in relation to Public Service Vehicles, principally under Part 7 of the Road Traffic Acts, 1961 (No. 24 of 1961) and 1968 (No. 25 of 1968). The principal regulations in this regard were issued in 1963 (see S.I. No. 191 of 1963), and have been amended and extended since by various amending regulations, for example, S.I. No. 200 of 1970 and S.I. No. 252 of 1970. This Section here, however, is primarily concerned with entry into the business of road transport and control once in.

#### 6.3.2.1. Road Passenger Transport

The carriage of passengers for reward (i.e., for separate fares) has been regulated in Ireland since 1932 (Road Transport Act (No. 2 of 1932)). All operators (except CIE) require a licence from the Minister for Transport and Power for the provision of such a service in the State. The Minister may issue annual (continuous or seasonal) or occasional licences. Conditions may be attached to these licences and maximum fares are fixed by the Minister. In considering whether a licence should issue or not, the Minister must take into account whether such a service is required in the public interest, whether the proposed service would be adequate, and whether the applicant has got the equipment and organisation to adequately supply the proposed service. Very few continuous (as opposed to seasonal) licences have been issued in relation to passenger road transport and almost all of this business is now executed by CIE.

#### 6.3.2.2. Road Haulage Transport

Since the Road Transport Act, 1933 (No. 8 of 1933) - an Act passed chiefly to protect railways - road haulage in Ireland has been regulated. The 1933 Act, apart from certain exempted areas (now Dublin, Cork, Limerick, Galway and Waterford), established a rigid licencing system for road haulage for reward. Under the Act, existing carriers were automatically given licences for the areas in which they were then operating, but these operators were limited to the type of goods they were then carrying and were also limited to the total unladen weight of their vehicles. The policy behind this Act sprung from the view that competition in transport was neither necessary for efficiency nor desirable for its own sake, and that, unless the existing competition in its most intensive form could be ended, the continued operation of the railways would be seriously jeopardised. In fairness, however, it should be stated that the Act was not designed merely to save the railways but also to give the country a suitable transport system which could, on a profitable basis, serve the public needs. In keeping with this policy, CIE, of course, was exempt from the licencing requirements of the Act. Under the Act, the Minister for Transport and Power could grant new licences if he was satisfied that existing services were insufficient to the needs of the society. Very few licences have, in fact, been issued in the intervening years and, as a result, a non-realistic regime, which has encouraged a good deal of illegal

transportation (especially in relation to the transport of animals) has come into existence. Recently, the realisation that the licenced haulage industry was unable to meet adequately and flexibly the needs of the livestock trade argued for reforms. The appreciation that the rigid restrictions of the Road Transport Acts, as well as leading to reduced efficiency and the inordinate growth of carriage on own account (estimated at 80% in recent surveys), have not (as initially envisaged) served to protect the railway to any significant extent. Moreover, that Ireland would have to move towards a completely liberalised position for road transport within the European Economic Community suggested some reforms in this area. Progress towards this objective, however, when introduced, in 1971, clearly indicated that liberalisation was to be achieved in gradual stages so that present operators would have a reasonable opportunity of adapting and surviving. In recognition of this position, the Road Transport Act, 1971 (No. 8 of 1971) was passed and was designed primarily to liberalise road haulage. To achieve its aim, the legislation removed area restrictions from the operators and permitted the transportation of a wider range of goods. Moreover, it exempted completely from merchandise licence requirements the transportation of cattle, sheep and pigs. Limitations as to size were also removed, although the number of vehicles of each licensee is still limited to the number which he operated on 1 January 1969.

Own Account Transport, which forms a large part of transport in Ireland, is uncontrolled.

### 6.3.3. Air Transport

Under the Air Navigation and Transport Acts, 1936-1973, internal air transport is regulated and controlled. A licence is generally required, and the Minister for Transport and Power has power to authorise generally by Ministerial order the operation of particular times of air services under such conditions as the Minister thinks appropriate (Section 7 of the Air Navigation and Transport Act, 1965 (No. 6 of 1965)). Moreover, under Section 8 of the same Act, the Minister is empowered to grant specific authorisation to any person entitling him to operate an air service (i.e., passengers, cargo or mail for reward) to, from, within or over the State, again on such conditions as he deemed fit. The Minister has power to control fares and rates on air services as well as the power to require operators to keep proper records and furnish information in respect of air services if required by the Minister to do so. Under this legislation, there are in existence various statutory instruments which set standards for airworthiness of aircraft, operations, personnel licencing, etc. (see, in particular, Air Navigation (Rules of the Air) Order, 1973, S.I. No. 1973, and S.I. No. 18 of 1974). Apart from this, special legislation exists in relation to the State-sponsored air companies (Aer Rianta Teo). Various international conventions, primarily concerned with safety in the international sphere, have also been incorporated into Irish law from time to time by special statutes, the latest being the Air Navigation and Transport Act, 1973 (No. 29 of 1973), which gives effect to the Tokyo Hijacking Convention.

#### 6.3.4. Water Transport

##### 6.3.4.1. Inland Waterways

The Merchant Shipping Acts, 1894-1968, and regulations made thereunder, also cover passenger and cargo vessels on inland waterways. (There are, for all practical purposes, no cargo vessels operating on Irish inland waterways at present.) By-laws are at present being prepared by the Commissioners of Public Works, aimed, inter alia, at promoting safety of navigation on the River Shannon.

The Grand Canal is maintained by Córas Iompair Éireann for amenity purposes. The Board has by-laws in relation to the canal.

##### 6.3.4.2. Coastal Shipping

Government policy favours the full commercial freedom of shipping and the abolition of any discriminatory practices or controls which might hinder that freedom. Accordingly, ship-owners of all nationalities are at liberty to trade to and from the ports of their choice in open competition with Irish interests. It is widely accepted that this policy ensures the provision of adequate services at economic rates and is, therefore, of considerable benefit to Irish importers and exporters.

Legislation involving coastal shipping is embodied in the Merchant Shipping Acts of 1894-1968, and regulations made thereunder, and covers, inter alia, such items as registration of ships, safety of life at sea, qualifications of ships' officers and conditions on board ships, etc.

##### 6.3.4.3. Docks and Harbours

The main body of harbours legislation has been codified in the Harbours Acts, 1946 (No. 9 of 1946) and 1947 (No. 34 of 1947). The principal commercial harbours are subject to the provisions of these Acts. Such harbour authorities are responsible for the operation and maintenance of their harbours, but the Minister exercises certain controlling powers over them, including a measure of control in matters of finance, the qualifications necessary for certain officers, control of harbour rates and charges, and the preparation of super-annuation schemes. Members of harbour authorities are representative of users of the harbours, local authorities and commercial and labour interests, some members being nominated by the Minister.

Among harbours which are not subject to the provisions of the Harbours Acts, 1946 and 1947 are: (1) Dún Laoghaire, which is managed and operated by the Commissioners of Public Works in accordance with the State Harbours Act, 1924 (No. 49 of 1924), and (2) Rosslare Harbour, which is owned by the Fishguard and Rosslare Railways and Harbour Company, and managed and maintained by Córas Iompair Éireann under an agreement scheduled to the Fishguard and Rosslare Railways and Harbours Act, 1899.

Under the Pilotage Act, 1913, pilotage districts have been set up at most of the principal harbours, the harbour authority being the pilotage authority. The pilotage authorities have responsibility for providing pilotage service in their harbours, for the licensing of pilots, the fixing of rates to be charged for pilotage services and ancilliary measures relating to pilotage. They are under the general control of the Minister for Transport and Power.

#### 6.4. Energy

No overall energy policy exists as yet in the State, although the Minister for Industry and Commerce has promised that such a comprehensive all-embracing policy is at present in the process of being formulated. Apart, therefore, from the regulation of prices and the control of supplies in emergencies (see next paragraph), the regulation of various fuels mentioned below is a fragmented uncoordinated business.

The Prices (Amendment) Act, 1972 (No. 20 of 1972) extends to commodities (including fuels) the general price controls operating in the State, even though such commodities may have been previously specifically regulated under special enactments. Fuels, therefore, are subject to general price controls now. Prices apart, legislation passed in 1971 Fuels (Control of Supplies) Act, 1971 (No. 3 of 1971) enables the Government to control the supply and distribution of all fuels when the exigencies of the common good necessitate it (Section 2). This power has been used recently in an attempt to deal with the energy crisis.

Other than these general enactments, various laws exist to control the manufacture and distribution of various forms of fuel. The following is a brief outline of the degree of regulation that exists in relation to the following fuels: electricity, peat, coal, gas, atomic energy and oil.

##### 6.4.1. Electricity

Under the Electricity (Supply) Act, 1927 (No. 27 of 1927) as subsequently amended (the Electricity (Supply) Acts, 1927-1974), the Electricity Supply Board (a State-sponsored body) was established and given a monopoly of the right to generate and market electricity, although it may issue licences if it so desires. Section 35 of the 1927 Act specifically prohibits unlicensed persons from selling electricity. There are at present no permitted undertakers.

##### 6.4.2. Peat

The extraction and manufacture of peat (turf), an important source of energy in Ireland, is not specifically controlled and does not require a licence. Only two points need to be mentioned about the peat industry. Firstly, under the Turf Development Act, 1946 (No. 10 of 1946), a State-sponsored body (Bord na Mona) was established to develop the industry, but it does not possess the extensive powers which the Electricity Supply Board (ESB) possesses in relation to electricity. Secondly, and only of historical interest nowadays, under the



Turf (Use and Development) Act, 1936 (No. 23 of 1936), in an effort to promote more extensive use of home produced turf, purchases of coal (unless exempted) were tied to simultaneous purchases of specified quantities of turf. To administer this scheme (which no longer exists), coal retailers had to be registered, and, under the Act, unregistered persons were prohibited from retailing coal.

#### 6.4.3. Coal

There are no State restrictions on mining for coal. The only regulations which apply to such undertakings, are those (not confined to coal mines) concerned with the safety and well-being of miners, which is the responsibility of the Department of Labour and which are contained in the general provisions of the Mines and Quarries Act, 1965 (No. 7 of 1965), and regulations issued thereunder.

#### 6.4.4. Gas

Gas (other than bottled gas) is usually sold in towns and cities by gas undertakings. The production of gas is subject to compliance with the Gas Regulation Acts, 1928 (No. 24 of 1928) and 1957 (No. 26 of 1957), which allow certain undertakings a monopoly of gas production and distribution within specified areas. They also confer certain functions on the Minister for Transport and Power in relation to the borrowing powers, the number of directors, the preparation of accounts and the acquisition and disposal of land of these undertakings. Provision under the Acts also relate to safety in gas installations and to the pressure at which gas is supplied and its purity and calorific value.

Bottled gas companies are free of restrictions as to entry into the distribution trade, but have to comply with regulations laid down by the Department of Labour with regard to the handling of combustible fuels generally.

#### 6.4.5. Atomic Energy

The Nuclear Energy (An Bord Fuineamh Núcléic) Act, 1971 (No. 12 of 1971), as well as establishing an advisory board to advise the Government on nuclear energy problems generally, also enables the Minister for Transport and Power, after consultation with other interested Ministers, to order, regulate, restrict or prohibit (save under licence issued by him), the custody, use, manufacture, importation, distribution, etc., of fissile fuel, other radioactive substances and irradiating apparatus. No orders have yet been made by the Minister under this Act.

#### 6.4.6. Oil

Regulations relating to the exploration for, and extraction of, oil and natural gas are established in the Mineral Development Act, 1940 (No. 31 of 1940) and the Petroleum and Other Minerals Development Act, 1960 (No. 7 of 1960). These are extended to the Continental Shelf by the Continental Shelf

Act, 1968 (No. 14 of 1968). Generally speaking, a licence is required for all such activities within the State (see 5.6.5. supra). The marketing of oil products is generally uncontrolled except under orders that may now emanate from time to time under the Fuels (Control of Supplies) Act, 1971 (No. 3 of 1971).

The Minister for Industry and Commerce, however, exercises control on the opening of new retail outlets through the legislation dealing with restrictive practices.

EEC Directive 72/425, which came into effect on 1 January 1975, amended an earlier Directive 68/414 by raising the level of minimum oil reserves to be held by Member States from 65 to 90 days consumption. To give effect to the earlier Directive 68/414, the Minister for Transport and Power made regulations on 5 March 1976 entitled European Communities (Minimum Stocks of Petroleum Oils) Regulations, 1976 (S.I. No. 59 of 1976). These regulations require oil importers who import more than 5,000 tonnes per annum to maintain minimum stocks equivalent to 60 days of their sales in the preceding year. There is a similar obligation on large consumers (of 15,000 tonnes or more per annum) to maintain reserves equal to 55 days of their consumption in the previous year. Although these regulations are short of EEC requirements, they are in line with the policy of the International Energy Agency. Furthermore, Irish authorities claim to be entitled to include in their tally 135,000 tonnes of crude oil held in Bantry, Co. Cork by Gulf Oil Company, which gave Ireland, in November 1975, an overall reserve of 82 days. The Ministerial Regulations also provide for the appointment of an inspectorate who will ensure the accuracy of information supplied by importers and consumers in this regard.

The Fuels (Control of Supplies) Act, 1971 (No. 3 of 1971) extends also to oil and provides for the regulation and control of the supply and distribution of all fuels, including oil, in emergency circumstances.

## 6.5. Rents

### 6.5.1. General

The position of agricultural tenants in Ireland was at its worst during the period 1850-1870. Agitation by tenants for fairer rents and more secure tenure was not merely a movement for law reform but was also a political movement which erupted in agrarian disturbances from time to time. The Land Acts of 1870 and 1881 were mainly designed to provide agricultural tenants with security of tenure, fair rents and compensation for improvements. Shortly, however, these reforms were extended by the Land Purchase Acts to enable the tenant to purchase the landlord's interest in many cases. These Acts greatly relieved the tenant's problems in the agricultural area. Simultaneously with the movement for reform in the agricultural sphere, but overshadowed by it, a movement for the amelioration of town tenants also took place. It is with this latter category that we are here concerned.

Apart from agricultural tenancies, therefore, the renting of property in Ireland is regulated and controlled by various statutory provisions, the most

important of which are contained in Deasy's Act, 1860, the Landlord and Tenant Acts, 1931 (No. 55 of 1931) and 1971 (No. 30 of 1971), and the Rent Restrictions Acts, 1960 (No. 42 of 1960) and 1967 (No. 10 of 1967). The general scheme relating to this branch of law in Ireland can only be briefly sketched here.

The basic starting proposition in this area is that the relationship between landlord and tenant depends on the contract between the parties. This rule is established in the Landlord and Tenant (Ireland) Act, 1860 (Deasy's Act), Section 3. This rule must be looked at, in general, as expressing the laissez-faire principles current at the time of the Act, and, in particular, as articulating the fundamental contractual concept that the parties should be free to make their own contracts. In recent times, however, with the growth of the welfare state concept, and the greater willingness on the part of the State to regulate and control certain transactions of private citizens, laws have been passed which interfere with, and control, contracts relating to rented premises. By and large, this interference by the State has manifested itself in the form of statutes which show concern for the position of the tenant and an awareness of the State's obligation to provide housing for certain sections of the community. In particular, legislative intervention has attempted to promote three objectives in this matter, and it is necessary here to limit comment to these aspects of the regulations, adding the cautionary remark that this is by no means an exhaustive listing of the State's regulation in the matter. The three areas selected relate to the tenant's right to enlarge his contractual term or to convert his contractual interest into freehold; compensation for improvements; and rent control.

#### 6.5.2. The Tenant's Right to Enlarge his Contractual Term or to Convert his Contractual Interest into Freehold

Under Part 3 of the Landlord and Tenant Act, 1931 (No. 55 of 1931), the occupying tenant is entitled to a new tenancy, which will be of at least 21 years and, at most, 99 years duration, if he can show:

- (a) that the premises has been used wholly, or partly, as a business premises for 3 years. (If the tenancy is less than a yearly tenancy, he must also show 7 years continuous occupation by himself or his predecessor in title.);
- (b) that the tenancy has been continuously occupied as a dwelling by the tenant or his predecessor in title for a period of 30 years;
- (c) that the tenant has occupied the premises for 15 years, and the immediate reversion in not greater than 3 years; (d) that the tenant has made such improvements to the leasehold property as will account for half the letting value.

The tenant's right to a new lease, however, may be limited where the landlord can show "good and sufficient reason" traceable to the conduct of the tenant, or where the tenancy is terminated for non-payment of rent or, lastly, where the landlord can show (i) that the bona fide intends to pull down and rebuild the tenement, or (ii) that he requires vacant possession for a scheme of development, or (iii) that the grant of a new lease would be inconsistent with good estate management. The Act also provides for the payment of compensation to the tenant in certain circumstances for disturbance in the event of the tenant not getting a renewal under any of the above headings.

Moreover, in the Landlord and Tenant (Reversion Leases) Act, 1958 (No. 2 of

1958) (re-enacting, with amendments, Part 5 of the 1931 Act), provision is made whereby the tenant of a "building lease" or a "proprietary lease" is entitled to a new tenancy by way of reversionary lease. A "building lease" was defined as any lease of land in an urban area on which permanent buildings were erected by the lessee for the time being provided that such buildings were not erected in breach of a covenant in the lease. Because of the rule that buildings erected by the lessee cease to be the lessee's property and pass to the lessor at the end of the term, "the practice grew up whereby the freeholder of land near a town made a lease of it at a low rent for a term of years and the lessee undertook to erect a specified number of houses on the land according to the requirements laid down by the lessor. At the end of the term the building became the lessor's property, the lessee finding his compensation in such profit as he could make by selling his interest in the houses or by subletting them to occupying tenants." Since "building leases" in recent years are generally for a term of not less than 99 years, it was felt that the tenant in such cases should be entitled to get a renewal provided he satisfied the conditions laid down by the Act. A similar right to a new tenancy was also granted to the holders of the "proprietary leases", i.e., leases statutorily defined to describe certain classes of sub-leases under "building leases". The landlord can only refuse to grant a reversionary lease where he can show that the bona fide intends to pull down and rebuild the property, or that he requires vacant possession for a scheme of development, or that the granting of a new lease would be inconsistent with good estate management. In such cases, compensation for disturbance will be paid to the disappointed lessee.

Where a dwelling is a "controlled dwelling" as defined in the Rent Restrictions Acts, 1960 (No. 42 of 1960) and 1967 (No. 10 of 1967), the tenant is given the right to remain in possession beyond his contractual term. Since this right to remain in possession occurs in the Rent Restrictions Acts, it may be appreciated that its primary justification is not to secure tenure for tenants, but rather to prevent landlords recovering possession from tenants who pay only the permitted ("lawful") rent. Were tenants not given this right, landlords would be able to avoid the rent controls by regaining possession.

Lastly, two less important matters. Under the Landlord and Tenant (Ground Rents) Act, 1967 (No. 3 of 1967), certain lessees and tenants are given the right to purchase the fee simple estate in the property (e.g., some building and proprietary lessees, and some lessees and tenants of tenements) while clubs and organisations using property for outdoor recreational purposes are given the right in certain circumstances to a "sporting lease" under the Landlord and Tenant (Amendment) Act, 1971 (No. 30 of 1971).

### 6.5.3. Compensation for Improvements

Under Part 2 of the Landlord and Tenant Act, 1931 (No. 55 of 1931), a tenant is entitled to the expiration of his tenancy and delivery of vacant possession, to be paid compensation for every improvement which adds to the letting value of the "tenement" and is suitable to the character of the "tenement", provided he has served an Improvement Notice on his landlord. The Court has jurisdiction to determine the capitalised value of the addition to the letting value due to the improvements if the parties cannot agree. Furthermore, some recent statutory provisions allow the value of tenant improvements to be considered in computing the rent payable by the tenant. (See, e.g., Rent Restrictions

Act, 1967 (No. 10 of 1967) S.4(1); Landlord and Tenant (Amendment) Act, 1971 (No. 30 of 1971) S.5).

#### 6.5.4. Rent Control

Statutory control of rent occurs in the following statutes:

(a) Rent Restrictions Act, 1960 (No. 42 of 1960).

The rent recoverable from the tenant of a controlled dwelling may not exceed the "lawful" rent, i.e., the basic rent, or, if there are lawful additions, the sum of the basic rent and the additions (Sections 11 and 16). The basic rent and the lawful additions are elaborately provided for and determined in the Act itself. Small controlled dwellings, situated in certain county boroughs and metropolitan districts, are also subjected to rent control by virtue of Section 19 of the Act. Moreover, if the landlord has defaulted in his obligation to keep the premises in good repair, the tenant of a controlled dwelling may apply to the Court and may have the rent reduced by not more than 33% of the lawful rent. The reduction continues until the repairs have been carried out to the satisfaction of the Court (Section 15(4)). Lastly, the Act controls and prohibits the payment of fines, premiums and deposits in certain cases under the Act (see Sections 32, 42 and 46).

(b) Landlord and Tenant Act, 1931 (No. 55 of 1931).

Where the tenant of a "tenement", as defined in this Act, is entitled to a new tenancy (see supra), and where the parties cannot agree to the rent, then the Court may fix the rent under the Act. The standard applied by the Court in determining the rent is the notional value which a willing lessee not in occupation would pay, and a willing lessor would take, on the assumption that there is sufficient supply of tenements to meet demand and that competition is normal, and having regard to local conditions. Furthermore, the Act restricts the payment of fines and increases of rent, merely because the tenant changes the user of the premises during the currency of the tenancy.

(c) Conveyancing and Law of Property Act, 1892.

Section 3 of this Act contains a provision which declares that, where a lease contains a prohibition against assignment, no fine shall be payable by the tenant for the landlord's consent in such circumstances. Moreover, if the premises is a 'tenement' within the Landlord and Tenant Act, 1931, this consent may not be unreasonably withheld, although reasonable expenses incurred by the landlord may be recovered by him (Section 56).

(d) Landlord and Tenant (Reversionary Leases) Act, 1958 (No. 2 of 1958).

In the event of the granting of a reversionary lease under this Act (see supra), and where the parties cannot agree upon the rent, then the Court is vested with the power under the Act of compulsorily affixing the rent for the renewed lease.

(e) Under various Local Government Acts, dating from 1898, various minor restrictions with regard to rent also exist. (See Local Government (Ireland) Act, 1898; Local Government (Rates on Small Dwellings) Act, 1928 (No. 4 of 1928), as amended; Local Government (Dublin) Act, 1930 (No. 27 of 1930).)

(f) Deasy's Act, 1860.

A tenant who wilfully overholds may become liable for double rent under Section 76 of Deasy's Act.

## CHAPTER 7. THE ENFORCEMENT OF ECONOMIC LAW IN IRELAND

Because the economic law in Ireland does not constitute a separate body of rules distinguishable from the general law of the land, its methods of enforcement are equally indistinguishable from the general enforcement methods of the legal system. Sanctions in this area may, therefore, be criminal (7.1.) or civil (7.2.). More peculiar to the sphere of economic law, however, and deserving separate treatment, are the administrative and disciplinary sanctions which apply to many of the regulations mentioned in this area, and which are sometimes not of a general nature, but are specifically provided for in particular statutes (7.3.).

### 7.1. Criminal Sanctions

Many of the statutes studied in this report ensure performance by making statutory infringements criminal offences and by providing for penalties. A fairly typical example of these penalty sections occur in Section 8 of the Prices (Amendment) Act, 1972 (No. 20 of 1972).

The Section declares:

- Every person who commits, or is deemed to have committed, an offence under any section of this Act shall be liable -
- (a) On summary conviction, to a fine not exceeding £100 (together with, in the case of a continuing offence, a fine not exceeding £10 for every day on which the offence is continued, but not exceeding £100 in total) or, at the discretion of the Court, imprisonment for a term not exceeding six months or both such fine and such imprisonment, or
  - (b) On conviction on indictment, to a fine not exceeding £500 (together with, in the case of a continuing offence, a fine not exceeding £50 for every day on which the offence is continued) or, at the discretion of the Court, imprisonment for a term not exceeding two years or both such fine and such imprisonment.

Sometimes legislative provision is also made in these statutes to ensure that companies and their officers are liable for offences under these Acts when, in the absence of such specific provision, doubt might exist as to their liability. (See, for example, Section 22 of the Restrictive Practices Act, 1972 (No. 11 of 1972)). In addition to fines and imprisonment, certain Acts in this area (for example, legislation protecting commercial property (5.8.2. supra) and the environment (5.8.3.) and restrictive practices legislation (5.5.)) recognise that the regimes which they establish can only be adequately protected on a continuing basis by the additional means of injunctions, disregard for which can be punished by imprisonment.

Prosecution for such offences is subject to the ordinary rules of law and procedure and, consequently, the normal prosecuting agency will be the police or other public officer. Individuals, too, in the Irish legal system can, in some circumstances, initiate the prosecution by swearing informations. Some

legislation also specifically empowers the relevant Minister (for example, the Prices Act, 1958 (No. 4 of 1958), the Restrictive Practices Act, 1972 (No. 11 of 1972)), or some other named authority (for example, the Central Bank in the Central Bank Act, 1971 (No. 24 of 1971), or the Revenue Commissioners under the Income Tax Act, 1967 (No. 6 of 1967)), to prosecute offences. Where this is the case, the named authority would normally be the initiating prosecutor. A good deal of discretion is left in these cases to the police, the Minister, etc., in deciding how vigorously the case should be prosecuted, or indeed, whether the prosecution should be initiated at all. Although no specific information is available, 'plea bargaining' is probably fairly common in this area as it is in other areas of criminal enforcement.

To fully police some regulatory legislation, special powers are sometimes given to enforcing officers established under these Acts. Accordingly, powers of entry, inspection, search and seizure, are not uncommon in some statutes in this area. (See, for example, the Prices Acts, 1958-1972, Exchange Control Acts, 1954-1974, the Customs Acts, the Income Tax Act, 1967, the Copyright Act, 1963, Hire Purchase (Amendment) Act, 1960, and the Factories Act, 1955).

Attention has already been drawn to the Regulation of Banks (Remunerations and Conditions of Employment) (Temporary Prohibition of Increases) Act, 1975 (No. 27 of 1975), which attempts to control, on a temporary basis, salaries of bank employees, and, at this juncture, perhaps a word should be said about its enforcement process. Negotiations for wage increases between the banks and the bank employees union ran into difficulty because, although the banks were willing to concede the increases sought, the Government opposed such awards as being out of line with the National Wage Agreements. (It should be noted that the Government was insisting on the sanctity of the National Wage Agreement even though the bank employees' union was not a party to the agreement.) The banks withheld payment on the increases, saying to the employees that, although they were willing to pay the increases, they were prohibited from doing so by the Government. The employees threatened strike action, whereupon the Government introduced legislation to prevent the wage increases. From an enforcement point of view the Act is interesting. Presumably, so as not to confront directly the union in question, the Government in the legislation prohibits the banks from paying the increases, and it imposes penalties if the banks are in breach of the Act. The net result is that the banks, who at all times showed a willingness to pay the increases to the employees, and who on Government prohibition have shown a willingness to obey the law, are nevertheless, in spite of their innocence, made the object of the Act. Instead of prohibiting the union from striking (a course fraught with danger, as could be seen from the experience of the British Government in the Industrial Relations Act, 1971), the Government sought to secure its objective by prohibiting the banks from paying, and by imposing severe penalties in the event of a breach.

## 7.2. Civil Sanctions

Discussion here must refer, firstly, to the right of private individuals to sue in tort for breaches of economic laws, and, secondly, to the effect which such breaches may have on contracts or agreements.



### 7.2.1. Liability in Tort

Because much of economic law is statutory in form, one must principally discuss here, whether an individual has a right to bring a private action for damages suffered as a result of a breach of such a statutory duty. The short answer to this is that it depends on the Legislature's intent. If the Legislature, in the statute in question, expressly provides for such a private action, no problem arises. Such an explicit provision, however, is rare. More commonly, the Act is silent on the matter, and in such cases it is for the Court to determine the Legislature's intent. Generally speaking, the following rules of construction guide the Court in this matter.

- (1) If the statute provides no remedy for the breach, then a civil remedy is presumed.
- (2) If the statute provides that the statutory duty will be enforced by a specific remedy (e.g., a criminal fine), then there is a presumption that this remedy is exhaustive. This, it should be emphasised, however, is merely a prima facie presumption, and may be, and indeed in many cases is, rebutted (e.g., especially in factory safety legislation under the Factories Act, 1955).
- (3) In many cases, to elicit the intention of the Legislature, the Court will look to the general purpose of the Act. For example, the plaintiff's chance of recovery will increase if the Act was designed to protect the plaintiff himself, or a particular class to which the plaintiff belongs and the injury to the plaintiff is the very kind of mischief which the Act was designed to prevent. In such cases, it is somewhat easier for the Courts to conclude that the Legislature intended to give the plaintiff a private right to sue. In spite of these, however, whether an individual can bring a private action for breach of statutory duty depends largely on the type of statute involved, the position of the plaintiff, the kind of injury he has suffered and the attitude of the particular Court. One cannot be more definite than this. (See generally, *Gorris v. Scott* (1874), L.R. 9 Exch. 125; *Groves v. Lord Wimborne*, 1898 2 Q.B. 402)

### 7.2.2. Effect on Contractual Arrangements

Under this heading we are concerned with the following question: What effect will a breach of an obligation, imposed by an economic law, have on contracts or agreements affected by the breach? The general position of the law in this matter is that the Court will not lend its machinery to enforce an agreement which, in its formation or its method of performance, is tainted with illegality. Such an agreement may be illegal because it is contrary to the Constitution, contrary to statute, or contrary to public policy. In relation to public policy, the Court will, under this vague heading, refuse to lend their assistance to enforce, inter alia, contracts to commit crimes, immoral contracts, contracts which prejudice the public safety, etc. More particularly relevant for economic law, however, under this heading, are contracts which are prohibited by statute and contracts in restraint of trade. "Public policy", however, is a rather vague term, and it places in the hands of the judiciary a rather flexible instrument of policy which it can use to permit or to strike

down agreements, depending on the total impact of the facts of the case before it. Moreover, the Court's flexibility here is also evident in relation to the degree of condemnation which they invoke: they do not attach the same dire consequences to all contracts contrary to public policy. For example, where the contract is illegally performed (but is not illegal in its formation), the innocent party will be entitled to recover, and in some cases the Court will be content to sever the illegal portion of the contract and let the lawful part of the contract stand. Because of the fluid nature of the Court's function in this respect, and because the Court's concept of "public policy" may not exactly reflect State economic policy, except in a most general and vague way, some statutes are not content to let the matter to the common law, but specifically provide that certain agreements shall be unenforceable if contrary to the statute in question. (See, for example, Hire Purchase Act, 1946 (No. 16 of 1946), Sections 6 and 7)

### 7.3. Administrative and Other Sanctions

Judicial powers in relation to tort and contract matters (see 7.2.) only imperfectly reflect State ideas in this connection and, because of their very nature, they are very imperfect instruments for promoting State policy. More direct promotional enforcement instruments are what we may call administrative and disciplinary sanctions. These are particularly noticeable (and effective) when permissions, licences or grants are in question. Licencing authorities, for example, (whether the activity involved is a commercial activity or one of the liberal professions) generally have power to attach conditions to the licence and to insist on standards. Breach of such conditions may result in reprimand, imposition of additional conditions, temporary suspension, or, finally, revocation of the licence. In practice, these are very powerful sanctions, and, where the licencing authority is sensitive to economic policy, as, for example, where it is a Minister (import and export legislation (5.4. supra)) or the Central Bank (5.2.2.3. supra), it may be expected to be in close harmony with Government economic policy. Closely analogous to this is the power which appointed authorities (e.g., planning authorities under the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963)) have in some cases to give or withhold permission for certain activities (e.g., building and development) and the powers they have of attaching conditions, refusing permission, revoking permission, getting Court injunctions, etc., to enforce their powers (see 5.8.3. supra). The disciplinary rules of the bodies controlling the professions should also be mentioned, although it must be mentioned that an attempt by the Incorporated Law Society of Ireland to strike a solicitor off the roll has been held (partly because of the serious consequences of such action) to be the usurpation of judicial functions which, under the Constitution, are reserved for the judiciary. (In re Solicitors Act, 1954 1960 I.R. 239)

A couple of instances of miscellaneous sanctions might also be mentioned at this point. Examples of these would occur where non-compliance with Government standards may result in the refusal of a grant (as, for example, in housing and building grants generally (3.3.8. supra) and specifically where a builder fails to produce and obtain the Certificate of Reasonable Value (see 3.3.8. supra) or, in other cases, may result in the refusal to have one's product approved by a Government Department (e.g., Department of Agriculture in relation to agricultural products) or may result in the removal of a

supplier's name from the Government's list of contractors (2.5.2. supra).

Finally, the Land Commission (a Government agency which exists to ensure the beneficial use of the nation's land) may, on an adverse determination against the landowner, visit such a landowner, not merely with a fine or imprisonment, but with a Compulsory Acquisition Order. This order enables the Commission to purchase and redistribute the land in question.

Administrative decisions are subject to judicial control to the extent described hereafter in Chapter 8.

CHAPTER 8. JUDICIAL CONTROL OF ADMINISTRATIVE ACTION  
IN THE SPHERE OF ECONOMIC LAW

8.1. General

Judicial control of administrative action in the sphere of economic law is no different from judicial control of administrative action in any other area of public law. What follows, therefore, is a brief description of the general controls of administrative action, and, although applicable to administrative decisions which relate to matters of economic law, is in no way limited to that sphere.

The system of judicial control of administrative actions in Ireland is an inherited legacy of British rule and is largely within the British tradition. Within this tradition, the orthodox view was that there were two main ways of controlling administrative excesses: political control and judicial control. Political control derives from the theory (largely fictitious nowadays) that the Minister condones, and consequently is responsible for, all the acts of his subordinates, and from the fact that all Ministers of State are ultimately answerable to Parliament. Such political control is principally enforced nowadays by means of Parliamentary question, a technique which is notoriously varied in its effectiveness. In Ireland, this political control is further weakened by the fact that the theory of Ministerial responsibility does not extend to the decisions of the numerous State-sponsored bodies that are a feature of the economy. Moreover, there have been no reforms in Ireland analogous to the establishment in England of the Parliamentary Commissioner for Administration.

Speaking generally of judicial control, one may say that the judicial rules which attempt to contain the administration (increasingly being referred to as administrative law) are not easily distinguishable from the general body of law, have been developed by the ordinary courts of the land, and have been inspired by concepts of fairness and natural justice, and concrete applications derived therefrom.

Constitutional Framework

While it is generally true that the principles of administrative law operating in Irish courts have been derived from the English tradition, some features of Irish Constitutional Law should be noted, because they add an indigenous dimension to judicial control of administrative actions in Ireland. For example, unlike England, Ireland has a written Constitution (Bunreacht na hÉireann) which, as well as describing the functions and powers of the various organs of Government, also establishes an independent judiciary and delineates the fundamental rights of the citizen. This document provides the framework in which the administration's dealings with its citizens can be judged, and, to understand these judicial controls, it is important to appreciate, generally, the constitutional context in which these controls

operate and, in particular, the constitutional provisions relating to the legislative and judicial functions.

With regard to the judicial functions, these are entrusted to the courts by Article 34 of the Constitution, the operative section of which reads as follows:

Article 34.1.:

"Justice shall be administered in courts established by law by Judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law shall be administered in public."

This, then, is the general rule: justice must be administered by the courts of the land, and by the courts alone. Article 37 of the Constitution does contemplate an exception, however, and declares that limited functions (non-criminal) of a judicial nature may be entrusted to a person authorised by law who needs not be a Judge. This exception, however, is confined to "limited" judicial functions. The relevant article reads:

Article 37:

"Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a Judge or a court appointed or established as such under this Constitution."

When such a limited authority is hearing or determining judicial or quasi-judicial matters, it must observe judicial standards of conduct, and these standards will be dealt with more fully later. If, on the other hand, the authority is in no way "judicial", but is merely administrative, or is an authority handling a purely administrative matter, its actions are, generally speaking, uncontrolled. No court will normally interfere with the administrative decisions of such administrative authorities.

With regard to the law-making function, Article 15.2. of the Constitution vests this function in the Oireachtas (i.e., the two Houses of Parliament and the President). Article 15.2.1<sup>o</sup> reads as follows:

"The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas; no other legislative authority has power to make laws for the State."

There are two qualifications to the legislative functions of the Oireachtas, however, both of which are contemplated by the Constitution itself. Article 15.2.2<sup>o</sup> recognises that "subordinate legislation" may be "delegated" by the Oireachtas, and Article 15.4. declares that the competence of the Oireachtas is limited by the Constitution itself. The first principle recognises that, in the modern Welfare State, delegation of some legislative authority is inevitable; the second principle recognises that Parliament is not omnipotent (unlike the theoretical position of the British Parliament), and is limited, in general, by the Constitution and, in particular, by the fundamental rights provisions contained in Articles 40 to 44.

The mechanism provided in the Constitution to ensure that legislation does not exceed its constitutional limits are threefold. Firstly, under Article 26, the President, before signing and promulgating a non-money bill, may, if he is in doubt as to the constitutionality of the measure, refer it to the Supreme Court for its judgment. Secondly, at the request of a majority of the Seanad and not less than one-third of the Dail, the President may refer the bill to the people for its decision as to the desirability of the contemplated measure (Article 27). This latter check has rarely been used, and is of limited interest for the present study. Thirdly, and most important, Article 34.3.2<sup>o</sup> vests in the High and Supreme Court the jurisdiction to test the validity against the Constitution of all legislative acts. This power of the courts to invalidate, on constitutional grounds, any act of any Governmental agency (Judicial Review) is extensively resorted to in recent years, and is the most important control relevant to the present study. Article 34.3.2<sup>o</sup> provides as follows:

"Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court."

Against the above background, therefore, the courts' functions in relation to the control of administrative action, whether it be in the sphere of economic law or not, may be described as follows:

(i) The general interpretative role which the courts have, under the Constitution, gives them the task of acting as final arbitrator on such general questions as the following: What is meant by the "administration of justice", a function which is reserved to the courts by Article 34 of the Constitution; What functions are "limited functions of a judicial nature", which may be handled by non-judicial persons authorised by law (Article 37); In connection with this last point, what is the criterion for distinguishing judicial and quasi-judicial matters (to which judicial standards must be applied) and administrative matters (to which judicial standards need not apply); What is meant by the "law-making" function, which is reserved for the Oireachtas (Article 15.2.); and When is legislation sufficiently "subordinate" to admit of delegation (Article 15.2.2<sup>o</sup>), etc.

(ii) Under Article 26 of the Constitution, the President, before signing a non-money bill, the constitutionality of which he may doubt, has power to refer the matter to the Supreme Court for an advisory opinion. This anticipatory jurisdiction is not terribly important for the present study, but the possibility that it might be used by the President in 1967, in relation to a section of the Income Tax Act of that year, did cause the Government to repeal the sections in question before they came into effect (Income Tax Amendment Act, 1967 (No. 7 of 1967)). In another, and more recent, context, where the Committee on the Price of Building Land (Prl. 3632) (which reported in 1974 - "The Kenny Report") recommended a method of controlling the price of such land, it suggested at the same time, because of the constitutional doubts that existed in relation to some of the suggested proposals, that any bill which would reflect the suggestions of the Committee should, first of all, as a precautionary measure, be referred by the President to the Supreme Court of its opinion.

(iii) If a limited function of a judicial nature is given to a person authorised by law in accordance with Article 37 of the Constitution, then the courts have the supervisory role of ensuring that standards of natural justice ("due process") are applied when the limited authority exercises its judicial function. Apart from defining these procedural requirements, therefore, it becomes very important to distinguish between judicial matters and merely administrative matters, because purely administrative decisions are, generally speaking, not judicially controlled. The courts have, on several occasions, grappled with this problem, and one of the most useful summaries of the legal position in Ireland on this matter is given in "The Kenny Report" (Prl. 3632) at paragraph 96. It declares:

"The tendency, when deciding whether a particular power is or is not an administration of justice, has been to take some features as being so characteristic of it that their presence shows that justice is being administered. These features are: (a) a dispute as to the existence of legal rights or a violation of the law, (b) the determination of the rights of the parties or the imposition of liabilities or the infliction of a penalty, (c) the final determination of legal rights or liabilities or the imposition of penalties, (d) the enforcement of those rights or liabilities or the imposition of a penalty by the executive power of the State which has been called in by the Court to enforce its judgment, (e) the making of an order by the Court which, as a matter of history, is an order characteristic of the Courts of this country (see McDonald v. Bord na gCon [1965] I.R. 217). ... A decision may be an administration of justice though all the features we have mentioned are not present."

(iv) The courts have been entrusted by the Constitution with the task of examining "the question of the validity of any law having regard to the provisions of this Constitution". This power is frequently referred to as the power of judicial review.

## 8.2. Judicial Review

Judicial review has been increasingly exercised in recent years, prompted, no doubt, on the one hand, by a growing desire on the part of the public that the fundamental rights of the citizen should be more explicitly articulated, and, on the other, by a more courageous approach to such matters by both Bar and Bench in Ireland. In relation to economic law, for instance, this power of judicial review has been used to prohibit as unconstitutional (to take two random examples) the following: The statutory right of the Incorporated Law Society of Ireland to strike a solicitor off the roll (In re Solicitors Act, 1954 [1960] I.R. 239), and the statutory power to prohibit, within the particular framework of the Criminal Law (Amendment) Act, 1935 (No. 6 of 1935), the importation of contraceptives (Revenue Commissioners v. McGee, [1974] I.R. 284 and 293. See also Quinn's Supermarket v. Attorney General [1972] I.R. 1). Moreover, in Ryan v. Attorney General ([1965] I.R. 294), the Supreme Court has declared that the list of fundamental rights in the Constitution is not exhaustive, but might be added to by the courts from time to time. The power of the judiciary to review legislation for its constitutionality, when coupled with the fact that the list of fundamental rights in the Constitution is not exhaustive, places great power in the hands

of the courts in Ireland; it may act as an unacknowledged check on the arbitrariness of administrative authorities. The combined effect of these two theories (despite specific judicial denials of a desire to usurp legislative function) thus enables the courts to review Acts of Parliament in the light of, as yet, undefined personal rights. According to Kelly, this "represents a position scarcely at all distinguishable, when boiled down into practical concrete cases, from the position of the courts acting as a 'third house of the legislature' and taking upon themselves, what is in effect, the power of adjudicating on the wisdom or desirability of legislation." If this trend continues, and there is no sign of it abating, it may well mark a very real check on the power of the Oireachtas to legislate.

One important limitation, however, on the courts' power of "judicial review" should be noted in the present context. It occurs in the amendment to the Constitution which was passed to enable Ireland to accede to the European Communities, and which reads as follows:  
Article 29.4.:

"The State may become a Member of the European Coal and Steel Community ..., the European Economic Community ..., and the European Atomic Energy Community ... No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State."

From this, it can be seen that, apart from the enabling provision of the first sentence, the amendment declares that "acts done or measures adopted by the State necessitated by the obligations of membership of the Communities" or "acts done or measures adopted by the Communities or institutions thereof" cannot be challenged in Irish courts on constitutional grounds. Consequently, Government acts "necessitated by" membership of the Communities, and lawful Community acts, are protected by this provision from constitutional challenge.

### 8.3. Judicial Control of Administrative Actions

Apart from this power of judicial review, administrative authorities in Ireland, as in Britain, enjoy a large degree of immunity from legal criteria or judicial surveillance. In particular, when an Irish administrative authority takes a purely administrative decision (as opposed to a judicial or quasi-judicial one) such as a decision to award a grant, etc., its determination is virtually unassailable (*R. (Cairns) v. Local Government Board* [1911] 2 I.R. 331, see also *Leen v. President of the Executive Council and Ors.* [1928] I.R. 408, but, otherwise, if part of monies granted under Appropriation Acts specifically refers to the plaintiff's claim (*Galway County Council v. Minister for Finance and Ors.* [1931] I.R. 215)). In an attempt to curtail administrative authorities, the Courts, however, have evolved some rules, the principal object of which is to ensure a minimum of fairness in the citizen's dealings with the administration. In recent years, as a general comment, one may say that, because of developments in the case law, the list of judicial controls over administrative authorities has increased noticeably. These rules may be summarised as follows:

(a) The courts have always power to intervene and upset the decision of an



administrative authority when the authority exceeds its jurisdiction and acts ultra vires (*Waterford Corporation v. Murphy* 1920 2 I.R. 165). Furthermore, with regard to the vires of the authority, the Supreme Court has, in recent years, declared that even where general, unqualified language is used empowering an authority to do something, such language does not vest the authority with arbitrary discretion in these matters. On the contrary, despite wide empowering language, the discretion of the authority must be exercised, having regard to the objects of the empowering act. Use of such a wide discretionary power to promote objects other than those of the enabling statute would be ultra vires, and would be struck down (*East Donegal Cooperative Livestock Mart Ltd. and Ors. v. A.G.* 104 I.L.T.R. 81). This new power specifically recognised in 1970 by the Supreme Court will, it seems, now enable the courts to investigate administrative action (to ensure that the objects of the parent act are observed) to a much greater extent than has heretofore been the case.

(b) The courts will also ensure that administrative authorities strictly adhere to the procedural requirements stipulated by the enabling statute, as where, for example, in the State (*McCarthy v. O'Donnell and Minister for Defence* 1941 I.R. 126, a decision (denying the prosecutor a pension) was quashed because the Committee did not sit with the referee as required by Section 6(i) of the Military Service Pensions Act, 1934 (No. 43 of 1934), and, because the evidence should have been taken by the referee, or in his presence, according to Section 8(i) of the same act. Many statutes and regulations in this area specify, in differing details, procedural requirements, such as, notification, who is to be notified, length of notice, etc. It is, of course, imperative that all these procedural requirements be fully observed, and the courts will ensure that they are. Moreover, this supervisory power extends equally to purely administrative acts. Accordingly, the Irish courts have intervened under this heading to upset administrative decisions which considered irrelevant facts or which did not ensure, before giving its decision, that facts essential, according to the creating statute, were present. In *Meaney v. Cashel Urban District Council and Minister for Local Government* (1937 I.R. 54), the plaintiff successfully contested a clearance and demolition order made under Section 5 of the Housing (Miscellaneous Provisions) Act, 1931 (No. 50 of 1931) on the grounds that the local authority, who made the order, had not taken evidence to show that the buildings were unfit for habitation or dangerous or injurious to health as the act required. (See also, *Cross v. Minister for Agriculture* 1941 I.R. 55). Moreover, the courts' powers in these matters are not excluded merely because the statute declares the administrative decision to be "final and conclusive". Such an attempt by the legislature to restrict the jurisdiction of the courts have not, in fact, inhibited the judiciary in Ireland from examining the validity of such administrative decisions (*The State (McCarthy) v. O'Donnell and Minister for Defence* 1945 I.R. 123 and *The State (Wood) v. West Cork Board of Health and Another* 1936 I.R. 401).

(c) If the administrative agency exercises limited judicial or quasi-judicial functions, then the ordinary courts of the land insist that procedures must accord to the principles of natural justice. In particular, this means at least, that the administrative authority must not be biased, and must observe the audi alteram partem rule. This latter rule is generally taken to require that each party to a dispute must know the case made against it, and must be afforded adequate opportunity to answer it. Indeed, in some statutes and regulations issued thereunder, this principle is specifically articulated in

the legislation (see, e.g., the Housing Act, 1966 (No. 21 of 1966), and regulations prescribing procedures of appeals under the Local Government (Planning and Development) Act, 1963 (No. 28 of 1963)). Moreover, the courts in Ireland are now prepared to enquire into whether the administrative decision was arrived at bona fide, and are prepared to strike down the exercise of a statutory power which has been exercised in bad faith (*Listowel Urban District Council v. McDonagh* [1968] I.R. 312) and, consequently, to investigate to see whether bad faith was present or not when the decision was being taken.

(d) If an administrative agency has a statutory obligation to act in a positive way, then the courts in Ireland will entertain an action by an interested individual, the object of which is to oblige the authority to fulfil its statutory obligation (*The State (Modern Homes (Ireland) Ltd.) v. Dublin Corporation* [1953] I.R. 202).

(e) Whether the courts in Ireland were prepared to review the decision of administrative tribunals on the ground of reasonableness was in some doubt until recent times. On earlier authorities it seems there was a reluctance for the Court to do so, except, perhaps, in the limited area of by-laws and similar regulations (see *Corporation of Limerick v. Sheridan* 90 I.L.T.R. 59). Recent case law, however, seems to favour the view that the courts may now review administrative actions in the light of unreasonableness. The two cases cited in support of this proposition, *Central Dublin Development Association Ltd. and Others v. A.G.* 109 I.L.T.R. 85, and *Kiely v. Minister for Social Welfare* [1971] I.R. 21, are not, however, decisions of the Supreme Court, and, although they might be eventually overruled by the Supreme Court, they are highly persuasive authority. The combined effect of these cases has been well summarised by Professor John M. Kelly, and his view can be usefully quoted at this point:

"It will be seen, then, taking the Central Dublin case along with Kiely's case, that, in the view of Mr Justice Kenny, unreasonableness in a ground on which an administrative decision can be invalidated via judicial review; but unreasonableness will not simply be equated with the line which the Judge, had he been the administrator, would not himself have taken. The test is thus analogous to the test applied by an Appeal Court asked to upset a jury award or a jury verdict; this will be done, not just on the ground that the Appeal Court itself, had it sat in place of the jury, would have arrived at a different verdict or award; but only if the Appeal Court considers that, on the evidence brought, no reasonable jury ought to have arrived at the verdict or award under appeal."

If, therefore, a court is of the opinion that no reasonable administrator would have taken the decision in question, then it seems it has power to strike it down. In view of the expansive role being played recently by the Supreme Court (see, e.g., *Ryan v. A.G.* [1965] I.R. 294), the likelihood of these decisions being overruled seems remote.

The above statements seem to be a fair assessment of the law as it exists on this problem in Ireland today.

Finally, although there is no equivalent to the British Crown Proceedings Act in Ireland, the State may, since 1971, be sued as an individual. The previous immunity enjoyed by the State in actions in contract and tort has been ended by the Supreme Court in *Byrne v. Ireland* ([1972] I.R. 241); see also *Comyn v. A.G.* [1950] I.R. 142 and *MacAuley v. The Minister for Posts and Telegraphs*

1966 I.R. 345). Moreover, in the course of Walsh J's decision in *Byrne v. Ireland*, it was recognised that, where the State, under the Constitution, undertakes obligations towards the citizens, these matters are justiciable, not only when the State directly infringes these obligations by some act of positive legislation, but even when there has been a failure on the part of the State to discharge the obligations so imposed by the Constitution (1972 I.R. 241, at 279-280). No action has, however, as yet been taken against the State in such circumstances.

#### 8.4. Statutory Appeals

Some statutes provide that an appeal may lie by way of full re-hearing to the courts, while others permit an appeal to the courts on "points of law" only. The former are not very common (Local Government mainly), while the latter are usually to be found where there is a decision of an administrative tribunal and where a Minister has confirmed an order from a subordinate authority. Most Departmental tribunals do not provide for an appeal to the ordinary courts, either on a question of fact or law. Exceptions to this occur in relation to compulsory purchase of land and to Social Welfare and Health claims (on points of law). The former are noted below, and the latter are not the concern of the present study. It should be remembered however, that even where no express appeal is provided for in a statute, or where the statute has, even in emphatic terms, endeavoured to exclude the right of appeal, that judicial control to the extent that it has already been described above in 8.2 and 8.3 will exist.

The following paragraph gives some examples of the tribunals which are relevant to the present study and from which an appeal lies to the ordinary courts (a) on questions of fact and law, and (b) on questions of law only.

##### (a) Tribunals subject to appeal on fact and law.

- (i) An appeal lies from the Special Tax Commissioners assessment on liability to tax. The appeal is by way of re-hearing to the Circuit Court, and either party may require the Commissioner or the Circuit Court to state a case for the opinion of the High Court on a point of law (Income Tax Act, 1967, Section 429). 3.1.7
- (ii) An appeal lies from decisions of the Controller of Industrial and Commercial Property in certain cases, for example, against an order revoking a patent or removing a trade mark or refusing to register a trade mark. 5.8.2.7
- (iii) An appeal lies from the Land Commission decisions (primarily relating to acquisition and reallocation of land) to the Appeal Tribunal, which is comprised of a Judge of the High Court. This appeal extends to questions of fact and law in the majority of cases, but in some cases it is confined to questions of law only. Furthermore, there is an appeal to the Supreme Court from the Appeal Tribunal on questions of law only.
- (iv) Under the Employment Agency Act, 1971 (No. 27 of 1971), Section 5, an appeal on questions of law and fact lies to the Court.

(b) Tribunals subject to appeal on law only.

- (i) Besides the general functions of the Special Tax Commissioners, mentioned above, they also have functions relating to domicile and residence, and an appeal from such determinations to the High Court lies by way of a "case stated" on questions of law.
- (ii) The Tribunal for assessing compensation for land compulsorily acquired by the State, or by a Local Authority, may (and must in some cases) state a case to the High Court on any question of law arising in the course of proceedings.

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