

Office of the Attorney General

Annual Report 2016

Incorporating the

Second Progress Report on Implementation of Statement of Strategy 2015 – 2017.

| Contents | Page |
|--|-------------|
| Mission Statement | 3 |
| Organisation Chart | 4 |
| Foreword by Attorney General | 5 |
| Introduction by Director General | 6 |
| Chapter 1: The Role of the Attorney General's Office | 7 |
| Chapter 2: The Attorney General's Office in 2016 | 10 |
| Chapter 3: Work of the Office of the Parliamentary Counsel to the Government in 2016 | 17 |
| Chapter 4: Progress Achieved in Reaching High Level Goals | 18 |
| Chapter 5: Attorney General's review of the year | 24 |
| | |
| Annexes | |
| A: Government Bills published in 2016 that were drafted by the OPC | 25 |
| | |
| B: Public Bills enacted in 2016 | 27 |
| | |
| C: Outturns for 2016 and Estimates for 2016 and 2017 | 28 |
| | |
| D: Statements and reports in respect of payment practices on the Prompt Payment of Accounts Act | 32 |

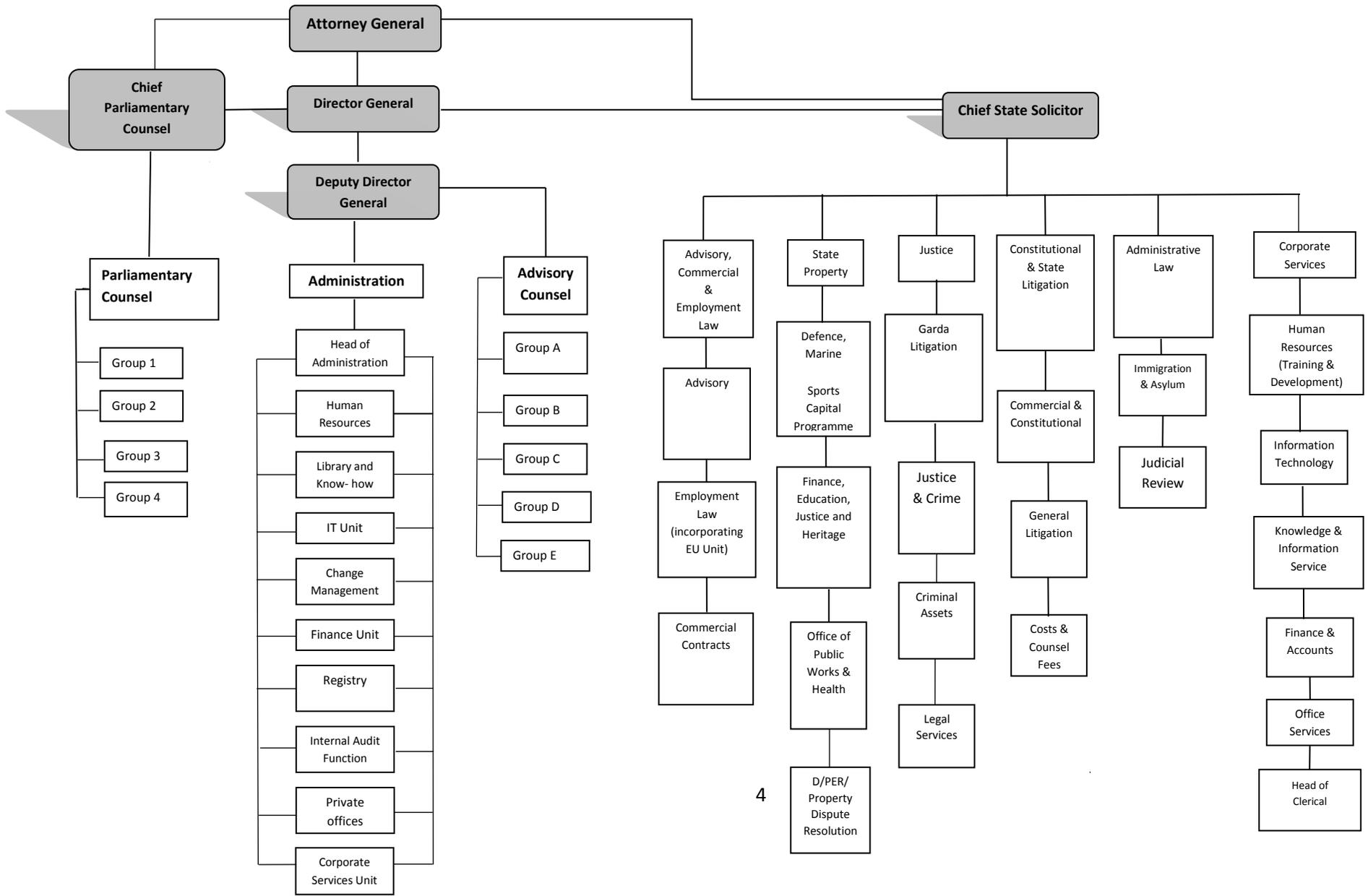
The Mission Statement of the Office of the Attorney General is:

To provide the highest standard of professional legal services to the Government departments and offices as economically and efficiently as possible and to support adherence to the rule of law.

We have four High Level Goals to pursue the above Mission Statement as set out in the Statement of Strategy 2015 – 2017:

- Delivery of the Government Legislative Programme
- Communication and Collaboration with Client departments
- More Effective Service Delivery
- Knowledge Management, Learning and Organisational Capability

Organisation Chart



Foreword from AG

It is a great pleasure for me to present the Annual Report for the Attorney General's Office (which includes the Chief State Solicitor's Office) in respect of 2016. It shows the wide range of work in providing the Government with legal advice, conducting litigation in the courts, and of course the drafting of Government Bills which took place during a time of great change. We all share in the mission of providing Government with the best possible legal advice to pursue public business and public policy in accordance with the rule of law. I look forward to contributing to this mission.

I would like to express my appreciation to my predecessor, the former Attorney General Máire Whelan SC who was recently appointed to the Court of Appeal.

Seamus Woulfe SC

Attorney General

Introduction by the Director General

Attorney General,

I am pleased to present the *Annual Report of the Office of the Attorney General for 2016* incorporating the Second Progress Report on the implementation of the *Statement of Strategy 2015-2017*.

During 2016, the Office continued to provide legal services emphasising high quality and timely delivery to our clients the Government, Departments and Offices. Advisory Counsel continued to deliver legal advice within those areas where a great diversity of queries arose, involving points of EU constitutional, international and domestic law.

Parliamentary Counsel delivered a significant number of drafting assignments during 2016 including:

- 35 Government Bills published
- 22 Government Bills enacted
- 270 Statutory Instruments were drafted and transmitted to Departments (57 of which related to the transposition of European Union measures).

The Chief State Solicitor's Office continued to provide high quality specialist solicitor services, including litigation services, property services, Government contracts and other transactional services.

The range of work which the Office deals is extensive, reflecting the entire scope of governmental activity in a modern democracy, from the details of planning, implementing and defending new rules in technical areas of industry or agriculture, through the arrangements for government services in education, healthcare, or justice, to significant questions of human rights, European Union Law and international relations.

This work was particularly demanding legally by virtue of its importance, volume, complexity, continuously changing factual matrix and the constant level of urgency

In consideration of the many achievements realised throughout the year, I would like to thank the staff in the Merrion Street Office and the Chief State Solicitor's Office for their commitment, excellent hard work and continued support throughout 2016. I would also like to express my appreciation to my predecessor Liam O'Daly who retired and the former Chief State Solicitor Eileen Creedon who was appointed to the High Court in 2017.

Damien Moloney

Director General

Chapter 1

The Role of the Attorney General's Office

The Attorney General is a constitutional office holder under Article 30 of the Constitution. She is the adviser to the Government in matters of law and legal opinion. Her office of lawyers and administrative staff assist her in the provision of advice to Government, Ministers of the Government and Government departments, the drafting of legislation on instructions from Ministers and Government departments and representing Ireland, the Attorney General and Government departments in litigation. The Attorney General's own office is in Government Buildings, Merrion Street, Dublin where her staff of Advisory Counsel and Parliamentary Counsel are located while the solicitors in the Chief State Solicitor's Office (CSSO) are based nearer the courts at Ship Street and Chancery Lane. The administrative head of the Office is the Director General, Damien Moloney. The Chief Parliamentary Counsel is Paul Linehan and the Chief State Solicitor is Eileen Creedon.

The administrative structure of the part of the Office located in Merrion Street and the CSSO is set out in the chart on page 4 of this Report. The CSSO is organised into Divisions and Sections with specific areas of work as described in the chart. During 2016 Advisory Counsel were organised into five separate Groups by reference to different areas of legal specialism, while Parliamentary Counsel within the Office of the Parliamentary Counsel to the Government (OPC) were organised into four Groups, each Group dealing with a number of Government departments.

During 2016 the CSSO underwent a process of organisational restructuring in line with the proposals outlined in the Office's Model for Change 2015 - 2017. The core changes implemented included the realignment of a number of the legal Sections across Divisions to ensure a more appropriate fit; the formation of new legal Sections to handle developing areas of legal work; and changes of Section and Division names to better reflect their function. A dedicated Change Implementation Unit was tasked with executing the changes, which involved the movement of both staff and files, and the putting in place of the necessary technical infrastructure to support the new structure. The go-live for the process took place on a staged basis between 2nd and 10th August 2016.

The Office is the principal law office of the State dealing with public law matters relating to how Ireland is governed and administered. It deals with core issues of constitutional importance, about how the Constitution may be interpreted, applied and occasionally amended. The Office provides advice to

Government departments on how laws are to be interpreted by those who must apply them and how they might be changed to reflect new domestic, European or international legal obligations or other circumstances. When a question exists about the interpretation or application of laws by Ministers or departments the Attorney General's Office advises on their correct interpretation or application, represents the State in any resulting litigation and also advises on, and drafts, any necessary remedial legislation.

The range of work with which the Office deals reflects the entire scope of governmental activity in a modern democracy, from the details of planning, implementing and defending new rules in technical areas of industry or agriculture, through the arrangements for government services in education, healthcare, or justice, to significant questions of human rights, European Union Law and international relations. Government lawyers may be dealing with anything from public procurement issues, transactions in relation to state owned property, intellectual property disputes, compliance with EU Rules, applications in respect of criminal assets to constitutional challenges or criminal law legislation. The Office provides a professional service to its public service clients while at the same time ensuring its legal advice represents an independent assessment of the law on various matters raised. The range of work can be gauged by the fact that in 2016:-

- The Office opened 322 new judicial review files and 522 new files in the area of asylum and immigration law.
- In 2016, the EU Law Unit of the Employment Law Section opened 20 EU General Court and Court of Justice of the European Union (CJEU) cases in which Ireland participated in the written and/or oral procedure.
- Also in 2016 the Office gave advices in the aftermath of the advisory referendum in the UK on EU membership. The Office participated in and advised the Interdepartmental Group on EU/UK relations and provided advices on aspects of the Brexit process.
- Parliamentary Counsel drafted a significant number of Bills for consideration by the Oireachtas (35 Government Bills published in 2016) and Statutory Instruments (270 drafted and transmitted to departments, of which 57 focused on the incorporation of EU obligations).

The work of the Office is extremely dynamic as Irish, European and international law continue to change and the Office takes steps to meet the highest professional standards and public service requirements. The clients of the Office include the Government, Ministers of the Government and Government departments. To help service the legal needs of Government departments there is an increased use of the secondment service developed by the Office with lawyers being seconded to work as legal advisers within departments while some lawyers within the CSSO are specially contracted and funded to deal with specialised work from particular departments.

The Law Reform Commission

The Law Reform Commission is a statutory body established by the *Law Reform Commission Act 1975*. The role of the Commission is to keep the law under independent, objective and expert review, to make consequent recommendations for law reform and to make current law accessible for all.

The Commission's role is carried out primarily under a Programme of Law Reform approved by the Government and placed before both Houses of the Oireachtas. The Commission also works on specific matters referred to it by the Attorney General under the 1975 Act.

The Commission is wholly funded via a Grant from the offices' Vote.

For more details in relation to the role of the Attorney General's Office please visit our website at www.attorneygeneral.ie

Chapter 2 The Attorney General's Office in 2016

Staffing

At the end of 2016 the authorised staff complement in the Merrion Street Office was 137 and was 18 in the Law Reform Commission. The authorised staff complement in the CSSO at the end of 2016 was 243.

At end-2016 the Merrion Street Office exceeded the Government targets in relation to the employment of women. 62% of staff were female at or above Assistant Principal Officer level while 55% of staff at or above Principal Officer level were female. In relation to the CSSO, at the end of 2016 the Office also exceeded the Government targets in relation to employment of women. The proportion of female staff at or above Assistant Principal Officer level was 64%, while the proportion of female staff at or above Principal Officer level was 62%. In relation to the accessibility of staff with disabilities the proportion of staff with disabilities in the Merrion Street Office at the end of 2016 continues to exceed the Government target of 3%. The Office monitored its accessibility during the year including accessibility through its website, and ensured that all renovation or maintenance work took into account the needs of persons with disabilities. In the CSSO the proportion of staff with disabilities employed in the Office at the end of 2016 exceeded the Government target of 3%. The Office continued to support staff with disabilities and is always interested in receiving suggestions from staff.

At the end of 2016 an overview of the gender composition of the Merrion Street Office and the Chief State Solicitor's Office as a whole, showing the numbers¹ in the grade and the percentage of the grade that it represents is as follows:

| | Male | Female |
|----------------------------------|----------|----------|
| - Secretary General ² | 2 (67%) | 1 (33%) |
| - Deputy DG | 1 (100%) | 0 (0%) |
| - Assistant Secretary | 5 (33%) | 10 (67%) |
| - PO | 26 (46%) | 30 (54%) |
| - AP ³ | 50 (35%) | 92 (65%) |
| - HEO | 12 (37%) | 20 (63%) |
| - EO | 18 (35%) | 34 (65%) |
| - CO | 22 (27%) | 61 (73%) |

¹ Excluding the Attorney's Private staff. Also, the overall number of staff can be slightly higher than the official staffing figures which are based on whole-time equivalents.

² Excluding the former DG and CPC who are still serving in the Office.

³ If the 22 staff currently outside the Office on the secondment programme (of which 11 are male and 11 female) were included, the gender breakdown would be 38% male and 62% female.

Cumulative Overview of gender balance at end 2016

For staff at Assistant Secretary and above 58% are female and 42% are male;

Of staff at or above PO, 55% are female and 45% are male;

At and above AP, the ratio is 61% female to 39% male;

Above HEO the ratio is 61% female to 39% male;

For EO and above the composition is 62% female to 38% male;

For CO and above the composition is 65% female and 35% male.

For the Office as a whole, 65% of our staff are female and 35% are male.

Lawyers seconded to Government Departments

Since 2005 the Office has been running a highly successful secondment programme whereby Advisory Counsel are placed as legal advisers within Government departments contributing significantly to effective public service by assisting in the co-ordination of the legal services of the State. Solicitors from the CSSO have also been seconded to a number of departments.

Prior to secondment each secondee receives general training, coupled with specific training tailored to the needs of the particular department to which they will be seconded.

When placed within departments they provide legal advice on a very broad range of matters referred to them by the department and the relevant Minister. They deal with many aspects of the day to day requirements for legal input that a department may have, both in terms of assistance with legislative projects and discrete legal queries that may arise on policy initiatives.

These seconded legal advisers are uniquely placed to have an insight into the legal requirements of a department. They develop a specialist legal knowledge arising from the business of the department in which they are placed and provide effective, focussed and client specific legal advice against a broad background of public law expertise. They develop working relationships with all of the key stakeholders involved and provide an important point of liaison between the departments and the legal offices of the State.

The legal advisers also play an important role in the overall formulation of briefing for the Attorney General's Office and assist departments in identifying matters of potential legal or constitutional significance at an early stage and referring those for advice to the Attorney General.

The Office also assigns an Advisory Counsel as Legal Counsellor to the Permanent Representation of Ireland to the European Union in Brussels. The role of Legal Counsellor has become an essential and intrinsic element of the effective functioning of the Permanent Representation. In addition to the secondment programme to Government departments, the Office also seconded an Advisory Counsel to work as a Seconded National Expert in the Legal Service of the European Commission.

By the end of 2016, a total of 23 legal advisers were seconded across 14 Government departments and offices. Also in 2016 a Sub-Group of the Merrion Street Management Committee undertook a review of the Secondment Programme entailing in-depth interviews with and the completion of a detailed questionnaire by secondees. The responses resulted in a bank of data which has been enormously helpful to the Sub-Group in identifying strengths, weaknesses, challenges and opportunities of the Programme.

In 2016, two solicitors continued to be seconded from the CSSO to Tusla (the Child and Family Agency) and one Solicitor was seconded to the Mother and Babies Homes Commission.

The Office welcomes the success of these programmes and intends to continue to introduce innovations as appropriate in seeking to meet the needs of Government for the provision of legal services into the future.

Knowledge Management

Knowledge Management provides a framework for identifying, capturing, delivering and reusing knowledge and information to enable greater work efficiency and enhance the delivery of legal services. The Office is a knowledge based organisation with a central focus on Knowledge Management (KM). The offices continue to develop knowledge initiatives which are closely aligned with the Statement of Strategy and support the business objectives which flow therefrom. In the area of risk management, KM is of particular importance in managing reputational risk.

The office continues to build on the investment and development of staff to ensure continued professional excellence in order to provide optimum legal services through the development and implementation of KM Strategies. In 2016 the Knowledge Management Committee in the Merrion Street Office drove the implementation of the Office knowledge management strategy which seeks to embed Knowledge Management in the three parts of the Office: Administration, Parliamentary Counsel and Advisory Counsel. 9 out of 18 action points were achieved by year end. Significant achievements include:- ensuring knowledge management maintains a central focus for the entire Office; reiterating the importance that each unit within the Office has regular meaningful staff meetings; greater encouragement and opportunity given to administrative staff to network in the wider civil service; greater interaction between Advisory Counsel Groups and greater interaction between Parliamentary Counsel Groups to ensure the sharing of information

on cross cutting legal issues with an overall emphasis on the importance of continuing to build our Know How database. The remaining action points are being progressed with many at an advanced stage.

In relation to the CSSO the focus during the year was on the implementation of the action points included in the Knowledge Management Strategy 2015 – 2017. These included the publication of a monthly internal Legal Bulletin which contains news and information on CSSO judgments, legislative changes and updates to Rules of Court, as well as information on upcoming Continuous Professional Development (CPD) events, new journal articles and new material in the CSSO Library. In late 2016 the CSSO legal intranet, CSSOLegal was launched in the Office. CSSOLegal is the primary channel for the sharing of legal knowledge and information in the CSSO. Also in late 2016 knowledge plans were developed in Sections in the Office. The use of these plans will enable the consistent generation of explicit knowledge which will be captured in due course on CSSOLegal.

Public Sector Reform

In January 2016 the Office submitted a progress report to the Department of Public Expenditure and Reform (D/PER) in relation to the implementation of the joint 2015 AGO/CSSO/LRC Integrated Reform Delivery Plan to the end of 2015. In July 2016 the Office submitted a progress report in relation to the implementation of the 2016 Plan to end June 2016.

The 2016 Plan includes many changes, developments and initiatives which have already been implemented, many currently in progress and several for the future. The objective of the changes is to enhance efficiency, customer service and reduce costs.

Some of the initiatives set out in the 2016 Plan to enhance the delivery of legal services to clients include reduction in costs – legal fees, recovery of legal costs, internal measures for the reduction in litigation costs, new in-house committees tracking recent EU legal issues and proposals to reduce litigation costs involving external organisations.

Details in relation to the offices' Integrated Reform Delivery Plan are available on the office website at www.attorneygeneral.ie

Corporate Governance Framework

The Civil Service Renewal Plan (CSRP) 2014 set out new arrangements for governance and accountability in the Civil Service. The Renewal Plan includes a key action to enhance governance arrangements in line with international best practice by the introduction of a common governance standard. The Renewal Plan seeks to:

- Formalise the role of the Management Committee/ Management Board in departments/ offices and support greater ministerial and managerial interaction in jointly and regularly reviewing priorities and performance;
- Introduce a single governance standard for all Management Committees/ Management Boards drawing on international best practice in corporate governance; and
- Establish an annual assessment for all Management Committees/ Management Boards to measure delivery and performance.

In 2015, a Corporate Governance Standard for the Civil Service was adopted and all Government departments and offices were required to finalise a Corporate Governance Framework (CGF) by April 2016. In 2016, both Merrion Street and the CSSO introduced a Corporate Governance Framework which provides a clear and comprehensive summary of the principal aspects of corporate governance within the Office. The CGF is intended as a living document to be updated regularly. It also addresses risk management in both offices (see further below).

Regulatory Requirements Compliance

During 2016 the Office kept under review compliance in the AGO and CSSO with the Freedom of Information Acts, Data Protection Acts and Health and Safety legislation in addition to mandatory legal Continuing Professional Development requirements. Arrangements in both offices were satisfactory during the year.

The AGO's National Archives Project for 2016 was completed ahead of schedule and 1,701 files were transferred to the National Archives in Bishop Street, including 98% of all documented files scheduled for transfer. Certificates for the retention of those files not transferred are held by the Office.

In relation to energy usage and compliance with Regulation 12(2) of the European Communities (Energy End-use Efficiency and Energy Savings) Regulations 2009 SI No. 542 of 2009 details of usage during 2016 in both offices are available on the Office website at www.attorneygeneral.ie

Reduction in costs

In 2016 the AGO endeavoured to achieve further savings to reduce expenditure within the Vote. During the previous eight years the Office's annual expenditure has reduced substantially. At the end of 2016 net expenditure was 25% lower than 2008. Net expenditure over that period was:

2008 €18.1 million

2009 €15.6 million (13.8 % reduction on previous year)

2010 €13.5 million (13.4 % reduction on previous year)

2011 €13.3 million (1.5% reduction on previous year)

2012 €13.5 million (1.5% increase on previous year)

2013 €13.3 million (1.5% reduction on previous year)

2014 €12.9 million (3 % reduction on previous year)

2015 €13.1 million (1.5% increase on previous year)

2016 €13.5 million (3 % increase on previous year)

The CSSO has also achieved further savings to reduce expenditure within the Vote. During the past eight years the Office's annual expenditure has reduced substantially. At the end of 2016 net expenditure was 29% lower than 2008. Net expenditure over that period was:

2008 €40.6 million

2009 €33.5 million (17.4 % reduction on previous year)

2010 €31.6 million (5.6 % reduction on previous year)

2011 €30.6 million (3.5% reduction on previous year)

2012 €28.8 million (5.9% reduction on previous year)

2013 €28.3 million (1.7% reduction on previous year)

2014 €25.5 million (9.9% reduction on previous year)

2015 €28.2 million (10.6% increase on previous year)

2016 €28.9 million (2.5% increase on previous year)

In relation to counsels' fees, there has been a reduction in expenditure out of the CSSO Vote of 32% at the end of 2016 when compared to 2008 payments.

The Office's Professional Fees Control Group (PFCG) met on a weekly basis in 2016 to monitor and control expenditure on professional fees. The Office also continued to implement a policy of collection of legal costs in all cases in which costs had been awarded to the State, where such collection was deemed viable.

Freedom of Information Requests

Statistics on requests to the AGO and the CSSO under the Freedom of Information Acts are available on the Office website at www.attorneygeneral.ie.

Participation in Committees and Working Groups

During 2016 legal staff advised and participated in Working Groups on a range of important "cross-cutting" or interdepartmental issues. A list of the key interdepartmental Committees and Working Groups can be found on our website at www.attorneygeneral.ie

Chapter 3

Work of the Office of the Parliamentary Counsel to the Government in 2016

The OPC comprises a team of specialist lawyers trained to a high level in the discipline of drafting legislation.

The goal of the OPC is to provide a high quality professional, specialist and efficient legislative drafting service to Government.

The main work of the OPC is to draft Government Bills for publication and presentation to the Houses of the Oireachtas and to draft secondary legislation, where appropriate, for Government departments and offices, including instruments transposing EU legislation into domestic law under the European Communities Act 1972.

The OPC drafted a significant number of Bills and statutory instruments during 2016:

35 Government Bills published (Annex A)

22 Government Bills enacted (Annex B)

270 Statutory Instruments drafted and transmitted to departments (**57** of which related to the transposition of European Union measures).

Chapter 4

Progress achieved in reaching high level goals

Delivery of legal services

During 2016 staff in the Office provided ongoing and continuous support to the Attorney General in the performance of her constitutional role as legal adviser to the Government.

Legal staff provided observations and advice in relation to Memoranda for Government and discussed matters with the Attorney General in advance of responding to requests for observations and advice on the eCabinet system. They also sought her directions on significant issues of legal interpretation, the application of statutes, legislative or administrative solutions to legal difficulties, etc. Advisory Counsel and the CSSO sought the Attorney General's directions on the conduct of litigation.

In 2016 the Attorney chaired three meetings of the Office's Legal Management Advisory Committee representative of all legal areas of the Office – Advisory Counsel, the OPC and the CSSO to discuss ongoing important and sensitive legal issues within the Office with particular reference to the list of sensitive files which was submitted to Government in March, July and November 2016.

During the year Advisory Counsel Groups reviewed work through its formalised system of eight-week review cycles and prioritised work through regular formal and informal meetings with client departments held throughout the year. In addition to addressing work related matters these meetings also provided an opportunity to gauge feedback from clients on service delivery issues and to highlight new and emerging issues.

During 2016 the OPC was centrally involved in the work of the Government Legislation Committee. The Committee oversees each proposed Government Bill from the time of its inclusion in the Government's Legislation Programme to the completion of its progress through the Houses of the Oireachtas and deals with any problems that arise in relation to the smooth and speedy implementation of the Programme.

The OPC reported regularly to the Government Legislation Committee, detailing progress on the drafting of Bills and European Union statutory instruments. The OPC's ongoing participation in the work of the Committee provided a vital mechanism for mediating between the competing claims of departments for the services of the OPC.

The focus for the CSSO during 2016 was on the continued development, enhancement and refinement of legal services in areas of importance to client departments and offices. The aim of the Office was the delivery of high quality legal services to clients as economically and efficiently as possible. Resources were deployed within the Office in pursuance of that objective. The CSSO held fortnightly meetings with the Attorney General throughout the year to discuss significant work on hand.

Review of Legal Services provided by the Office

During 2016 the Merrion Street Office and CSSO commenced a review of legal services provided to certain State agencies and communication issues, particularly ensuring that appropriate stakeholders were informed of, and were consulted where necessary, in the provision of relevant legal advice. During 2016 there was ongoing engagement at a senior level within the Merrion Street Office and the CSSO with key agencies including An Garda Síochána, Office of Public Works, Office of Government Procurement and the State Claims Agency and similar to address service provision, functional roles and appropriate communication lines. The embedding of the CSSO Model for Change during the year presented opportunities to facilitate a holistic legal relationship review. This resulted in a restructuring of responsibilities in certain areas in the CSSO which resulted in a more cohesive team structure to service client and associated agency needs. Also, ongoing dialogue during the year with certain agency entities resulted in a review of dedicated funding needs with upward revision and specialist recruitment to support service needs.

Statement of Strategy

Following a formal request from the Secretary General to the Government in July 2016 the offices undertook the development of a new Statement of Strategy for the period 2016 to 2019. The draft Strategy Statement was submitted to the Taoiseach in November 2016 for his observations and the finalised Strategy Statement was submitted to Government and approved at the Cabinet meeting held on 20 December 2016.

This new Statement of Strategy, grounded in an analysis of our operating environment, sets out the high level goals and strategic priorities we will employ to meet the needs of our clients as they deliver upon the Programme for Government over the period 2016 to 2019.

Management of Litigation

During 2016 the Office continued the Implementation of the key strategy to manage litigation, particularly mass claims, repeat litigation of issues, and individual fact-intensive cases in an efficient manner. Overall legal strategy was directed by the Merrion Street Office and regular review meetings took place between Advisory Counsel in the Merrion Street Office, legal staff in the CSSO and officials in the relevant

departments to direct the overall legal strategy so as to ensure that these types of litigation were being effectively managed on an ongoing basis. This is an area in which advice of the Office is capable of saving public money in legal costs and in identifying the best use of the time of departmental officials in preparation of cases.

Reducing Litigation costs

During 2016, the Office remained focused on implementing mechanisms to seek ways to reduce the cost to the State of litigation. Continuing to offer advice in respect of avoiding litigation and early resolution of appropriate cases were prime objectives. The Office adhered to developed internal protocols and also protocols for increased co-operation between State Agencies in order to facilitate the efficient and cost effective conduct of litigation. Also, alternative non-litigation resolutions such as mediation were pursued during the year where practical.

A number of initiatives were progressed during the year to reduce legal costs being incurred by the State. Legal staff in the CSSO continued to settle costs in uncontested judicial review and habeas corpus proceedings where it was possible to achieve settlement at reasonable levels. The development and implementation of a Costs Accounting Database provided a library of statistical comparators for use in settlement negotiations, taxation of costs and efficient case management.

The Article 40 Stakeholders Group, comprised of representatives from the AGO, CSSO, Garda Legal Services, Department of Justice and Equality, Irish Prison Service and the Courts Service met several times during 2016 and examined ways to reduce litigation costs arising from Article 40 applications. The Group is also taking a strategic interest in civil proceedings arising out of Article 40 proceedings (false imprisonment tort claims).

Costs savings in asylum cases were achieved in 2016 for cases in the Asylum and Immigration List in the High Court. Savings also continued to be made by the early settlement of appropriate cases. The Office regularly and effectively updated counsel on departmental policies so as to ensure that there were no inconsistencies in the arguments made in judicial reviews and that cases turning on the same issue were managed effectively so as to reduce both the number of judicial review cases and the associated costs of the cases that went to hearing.

Electronic Irish Statute Book (eISB)

The Office contributes significantly to the e-Government agenda and its future potential, specifically in the context of the ongoing production, management and update of the electronic Irish Statute Book (eISB). The Office's eISB Group oversees the process of managing this service.

The eISB is an online repository of legislation that is freely available to the public through the website www.irishstatutebook.ie and includes Acts of the Oireachtas from 1922 to 2016, Statutory Rules and Orders from 1922 to 1947 and Statutory Instruments from 1948 to 2016 and most of the pre 1922 public and general statutes in force in the State following the enactment of the Statute Law Revision Act 2007. In February 2016 the redesign of the website went live to improve user access through all electronic devices. A new search result text highlighting function was also implemented.

A Legislation Directory for Acts is also published for the period 1922 to 2016 which enables users of the Irish Statute Book to identify whether a particular provision of an Act has been amended or otherwise affected since its enactment. A Legislation Directory for statutory instruments is also included, which identifies amendments and revocations to statutory instruments effected between January 1997 and end 2016. The full text of the Constitution with links to amending Acts is also published on the eISB.

Another important development in 2016 was the implementation of the second phase of the European Legislation Identifier (ELI) which requires Member States to use standardised identification of legislation and metadata properties describing each legal resource, so as to enable an effective, user-friendly and faster search and exchange of legal information. In November 2016 an ELI based metadata ontology schema was published. Also, in November 2016 a new hosting site for the eISB server went live.

Risk Management

During 2016 legal staff in both offices contributed to the further embedding of formal risk management policies within the Office. The following risk mitigation measures continued during 2016:

- In the AGO: regular reporting throughout the year by Advisory Counsel to the Attorney General and Legal Management Advisory Committee (MAC), meetings of the Director General, Deputy Director General and Advisory Counsel Groups on areas and matters of significant risk;
- Discussion of risk related matters pertaining to the legislative drafting process and the OPC took place at meetings between the Chief Parliamentary Counsel and Group Managers, at individual Group meetings and Legal MAC meetings.
- In the CSSO: regular reporting throughout the year by legal staff in the CSSO at Division / Section meetings and local and Legal MAC meetings;

- Participation by Advisory Counsel and legal staff in the CSSO in the process of identification of sensitive and constitutional cases for inclusion in reports submitted to Government on such cases in March, July and November 2016.

In early 2016 the Merrion Street Office and the CSSO conducted a series of risk management workshops to assist the offices' managers in revising and updating the risk registers for legal Groups, Divisions and Sections and Administrative Business Units. The process was overseen by the joint AGO/CSSO Risk Management Committee and local Management Committee/Management Board and revised risk registers were submitted to the Audit Committee in September 2016. The risk registers were revised to take account of observations of the Audit Committee and legal Group, Divisional and Section Heads and Administrative Business Unit Heads submitted a signed assurance statement to the secretary to the Main Management Committee before the end of 2016.

Performance Management and Development System (PMDS)

In 2016 staff in both offices participated in the process of further embedding PMDS including Upward Feedback and the use of PMDS ratings for promotion and salary increment purposes. Significant changes to the system were introduced during the year with the introduction of ePMDS. Also for staff below Assistant Secretary level the ratings system was revised and for Assistant Secretaries the entire process was changed in line with the Civil Service Renewal Plan. The offices have always been able to report high compliance rates with the system and all changes to the system were fully implemented by end 2016.

Training and Development

During 2016 nominated Advisory Counsel, Parliamentary Counsel and Administrative staff participated in the work of the Learning and Development Committee and specifically with a view to progressing particular points of action set out in the Learning and Development Strategy for the Merrion Street Office. In the CSSO legal and Administrative staff participated in the work of the Training and Development Committee to progress key priorities included in the CSSO Training and Development Strategy.

Also during 2016, Advisory Counsel, Parliamentary Counsel and Administrative staff in the AGO and solicitors and Administrative staff in the CSSO attended a wide range of training courses to enhance their legal and learning and development needs and maximise their capabilities. Particular emphasis was given to in-house training which had the benefit of being customised and cost effective. New staff received Induction Training and also training in the Performance Management Development System (PMDS).

Also wide range of external training for both legal and administration staff was provided. Staff also availed of Diploma and Degree courses to enhance their career prospects thus ensuring they are equipped to take on more senior roles in the future and to ensure staff and are prepared for mobility within the civil service.

During 2016 a member of the Merrion Street Management Committee and the CSSO Management Board participated in the work of the Interdepartmental Working Group to implement Action 9 of the Civil Service Renewal Plan, to establish a new shared model for delivering learning and development in the Civil Service. The aim of this Action is to enable a high performing workforce by supporting the development of new skills and behaviours, facilitating continuous professional development and ensuring that all staff can access the appropriate mix of training and development opportunities.

Committee on EU Law

Another important development in 2016 was the establishment of a new in-house Committee tracking recent EU legal issues. This new EU Law Committee, representative of staff in the Merrion Street Office and CSSO has responsibility for tracking and providing awareness and education for the Office in relation to evolving significant legal issues and considering Office processes and the manner in which the Office engages with clients on EU law issues. The committee comprises an oversight committee and eight sub-committees reviewing EU legislative developments, interventions by the State before the General Court and Court of Justice, knowledge sharing, training and communication and outreach to departments through secondees.

The oversight committee met six times during the year and the sub-committees made good progress in their work

Corporate and Business Management Services

During 2016 the administration sides in the AGO and the CSSO provided modern and professional corporate and business management services in support of the delivery of the core legal services of the Office. Functional Business Units in the areas of Human Resources, Finance, Library and Know-how, IT, Registry, Private office support, Corporate Services and Change Management provided the necessary support structures, staffing, services and systems to facilitate the achievement of the Office's Mission Statement and High Level Goals.

Chapter 5

Attorney General's review of the year

During 2016 several major legal areas were dealt with by the Office.

In the course of 2016 the number of judicial review proceedings in relation to applications for international protection and immigration issues, e.g. permissions to be in the State, deportations etc., grew by 100%, and there were some 400 asylum/immigration judicial review files opened in 2016 representing some 70% of the total number of judicial review proceedings opened in the Office.

The changes to the Dublin system introduced in 2013 by the Dublin III Regulation, and crystallised in decisions of the Court of Justice of the European Union, whereby an applicant for international protection can be returned to the first Member State in which he or she could have applied for protection, had a significant impact in 2016 and resulted in a significant number of judicial review proceedings.

Dáil reform and minority government issues affecting the 32nd Dáil arose during 2016. The relationship between the minority Government and the Oireachtas reflecting the new political reality has involved important legal and constitutional issues. There is an increasing significance to Government of private members bills on issues as diverse as, for example, the rights of the unborn, neutrality and the judiciary.

There were important judgments handed down in criminal justice areas in 2016. The judgment in *Moore v. DPP and AG* and related cases struck down certain provisions of section 99 of the Criminal Justice Act 2006 regarding the reactivation of suspended sentences. The Office successfully resisted follow-on applications by prisoners for release based on the judgment and corrective legislation was drafted. Another important judgment with regard to the Transfer of Sentenced Persons Act warrants was *Declan John Rafferty and Others v. Governor of Portlaoise Prison* (Supreme Court).

The State participated in 27 new cases before the Court of Justice of the EU and the General Court of the EU during 2016, including in the areas of European Arrest Warrant/Extradition e.g. C-496/16 Aranyosi (No. 2), C-196/16 Pisciotti; Data Protection C-434/16 Nowak, C- 210/16 Wirtschaftsakademie and Tax/State Aid T-776/16 Ireland –v- Commission (Apple).

In relation to matters concerning the Houses of the Oireachtas the Attorney General was a party in *Angela Kerins v. John McGuinness and Others* (Unreported; High Court; 31/1/17), and to *Denis O'Brien v. Houses of the Oireachtas, Ireland and the Attorney General*. Both of these cases relate to important constitutional provisions regarding the Houses of the Oireachtas.

Annex A

Government Bills published in 2016 that were drafted by the OPC

| |
|---|
| Heritage Bill 2016 |
| Road Traffic Bill 2016 |
| Health (Miscellaneous Provisions) Bill 2016 |
| Criminal Justice (Offences Relating to Information Systems) Bill 2016 |
| Energy Bill 2016 |
| Single Resolution Board (Loan Facility Agreement) Bill 2016 |
| Statute Law Revision Bill 2016 |
| National Shared Services Office Bill 2016 |
| Adoption (Amendment) Bill 2016 |
| Paternity Leave and Benefit Bill 2016 |
| Misuse of Drugs (Amendment) Bill 2016 |
| Water Services (Amendment) Bill 2016 |
| Proceeds of Crime (Amendment) Bill 2016 |
| Commission of Investigation (Irish Bank Resolution Corporation) Bill 2016 |
| Education (Admission to Schools) Bill 2016 |
| Electoral (Amendment) (No.2) Bill 2016 |
| Health (Amendment) Bill 2016 |
| Protection of Cultural Property in the event of Armed Conflict (Hague Convention) Bill 2016 |
| Criminal Justice (Suspended Sentences of Imprisonment) Bill 2016 |
| Wildlife (Amendment) Bill 2016 |
| Companies (Accounting) Bill 2016 |
| Finance Bill 2016 |

| |
|---|
| Courts Bill 2016 |
| Knowledge Development Box (Certification of Inventions) Bill 2016 |
| Social Welfare Bill 2016 |
| Health Insurance (Amendment) Bill 2016 |
| Adoption (Information and Tracing) Bill 2016 |
| Appropriation Bill 2016 |
| Bail (Amendment) Bill |
| Criminal Law (Sexual Offences) Bill 2016 |
| Hallmark (Amendment) Bill 2016 |
| Communications Regulation (Postal Services) (Amendment) Bill 2016 |
| Disability (Miscellaneous Provisions) Bill 2016 |
| Courts (No. 2) Bill 2016 |
| Criminal Justice (Victims of Crime) Bill 2016 |

Annex B

Public Bills enacted in 2016

Credit Guarantee (Amendment) Act 2016
Horse Racing Ireland Act 2016
Public Transport Act 2016
Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016
Electoral (Amendment) Act 2016
Health (Amendment) Act 2016
Water Services (Amendment) Act 2016
Proceeds of Crime (Amendment) Act 2016
Misuse of Drugs (Amendment) Act 2016
Commission of Investigation (Irish Bank Resolution Corporation) Act 2016
Paternity Leave and Benefit Act 2016
Energy Act 2016
Finance (Certain European Union and Intergovernmental Obligations) Act 2016
National Tourism Development Authority (Amendment) Act 2016
Social Welfare Act 2016
Appropriation Act 2016
Planning and Development (Housing) and Residential Tenancies Act 2016
Finance Act 2016
Health Insurance (Amendment) Act 2016
Statute Law Revision Act 2016
Road Traffic Act 2016
Courts Act 2016

Annex C

Office of the Attorney General

Vote 3 Merrion Street Office

Provisional Outturn for 2016 and Estimate for 2016 and 2017

Estimate and Provisional Outturn for 2016 and Estimate of the amount required in the year ending 31 December, 2017 for the salaries and expenses of the **Office of the Attorney General**, including a grant.

| | Service | Estimate Provision 2016 €000 | Provisional Outturn 2016 €000 | Estimate Provision 2017 €000 |
|----------|---|---|--|---|
| | ADMINISTRATION | | | |
| A.1. | SALARIES, WAGES AND ALLOWANCES | 11,200 | 10,283 | 11,263 |
| A.2(i) | TRAVEL AND SUBSISTENCE | 130 | 153 | 170 |
| A.2(ii) | TRAINING AND DEVELOPMENT AND INCIDENTAL EXPENSES | 600 | 637 | 610 |
| A.2(iii) | POSTAL AND TELECOMMUNICATIONS SERVICES | 70 | 64 | 70 |
| A.2(iv) | OFFICE EQUIPMENT AND EXTERNAL IT SERVICES | 559 | 653 | 576 |
| A.2(v) | OFFICE PREMISES EXPENSES | 156 | 142 | 160 |
| A.2(vi) | CONSULTANCY SERVICES AND VALUE FOR MONEY AND POLICY REVIEWS | 20 | 41 | 50 |

| | | | | |
|----------|--|---------------|---------------|---------------|
| A.2(vii) | CONTRACT LEGAL EXPERTISE | 401 | 215 | 350 |
| A.2(xi) | EU PRESIDENCY | - | - | - |
| | SUBTOTAL | 13,136 | 12,188 | 13,249 |
| | OTHER SERVICES | | | |
| A.3 | CONTRIBUTIONS TO INTERNATIONAL ORGANISATIONS | 38 | 34 | 38 |
| A.4 | LAW REFORM COMMISSION (GRANT-IN-AID) | 2,119 | 1,878 | 2,239 |
| A.5 | GENERAL LAW EXPENSES | 190 | 121 | 140 |
| | Gross Total | 15,483 | 14,221 | 15,666 |
| | Deduct | | | |
| B. | APPROPRIATIONS-IN-AID | 788 | 743 | 766 |
| | Net Total | 14,695 | 13,477 | 14,900 |

Vote 13 - Office of the Chief State Solicitor

Provisional Outturn for 2016 and Estimate for 2016 and 2017

Estimate and Outturn for 2016 and Estimate of the amount required in the year ending 31 December, 2017
for the salaries and expenses of the Office of the Chief State Solicitor.

| | Service | Estimate Provision 2016 €000 | Provisional Outturn 2016 €000 | Estimate Provision 2017 €000 |
|----------|---|---------------------------------------|--|---------------------------------------|
| | ADMINISTRATION | | | |
| A.1 | SALARIES, WAGES AND ALLOWANCES | 15,100 | 13,978 | 16,760 |
| A.2(ii) | TRAVEL AND SUBSISTENCE | 70 | 82 | 70 |
| A.2(iii) | TRAINING AND DEVELOPMENT AND INCIDENTAL EXPENSES | 813 | 972 | 813 |
| A.2(iv) | POSTAL AND TELECOMMUNICATIONS SERVICES | 350 | 301 | 350 |
| A.2(v) | OFFICE MACHINERY AND OTHER OFFICE SUPPLIES AND RELATED SERVICES | 750 | 1,002 | 750 |
| A.2(vi) | OFFICE PREMISES EXPENSES | 300 | 171 | 275 |
| A.2(vii) | CONSULTANCY SERVICES AND VALUE FOR MONEY AND POLICY REVIEWS | 25 | 44 | 50 |
| | SUBTOTAL | 17,408 | 16,550 | 19,068 |

**OTHER
SERVICES**

| | | | | |
|-----|-------------------------|---------------|---------------|---------------|
| A.3 | EXTERNAL LEGAL SERVICES | 200 | 217 | 200 |
| A.4 | FEES TO COUNSEL | 12,000 | 12,137 | 13,000 |
| A.5 | GENERAL LAW EXPENSES | 1,400 | 1,100 | 1,400 |
| | Gross Total | 31,008 | 30,004 | 33,668 |
| | Deduct | | | |
| B. | APPROPRIATIONS-IN-AID | 1,860 | 1,113 | 1,328 |
| | Net Total | 29,148 | 28,891 | 32,340 |

Annex D

Statement of Compliance with the Prompt Payment of Accounts Act 1997 and with the European Communities (Late Payment in Commercial Transactions) Regulations 2002

Statements of Compliance; Reports on Payment Practices 2016

Office of the Attorney General (Merrion Street Office)

Relevant payments made by this Office comply with the terms of the Prompt Payment of Accounts Act 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

Guidelines put in place to ensure compliance with the Act were circulated to all staff in January 1998 and staff were also notified of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 when it came into operation on 7 August 2002. The aim of these guidelines is to facilitate prompt clearance of invoices and prevent interest, penalties and compensation arising. Furthermore, financial procedures in place in the Office are regularly monitored to ensure compliance with the Legislation.

The key procedures which are in place are as follows:-

- Unless otherwise agreed by written contract, the prompt payment deadline of 30 days applies to all payments. From 15 June 2009 all Government departments are obliged and are to commit to paying all suppliers within 15 days of receipt of a valid invoice although the 30 day limit in respect of payment of prompt payment interest still applies.
- Staff are asked to ensure that invoices are addressed to a named person when placing orders for goods and services thus avoiding delays in tracing the person who placed the order for certification purposes
- All invoices are forwarded to the Finance Unit and date stamped immediately on receipt. This date is the date from which the prescribed payment period is calculated
- Staff in the Finance Unit scan all invoices received onto the Financial Management System once they are received in the Finance Unit
- Once the goods or service to which the invoice refers have been received by the Office the relevant Unit will certify the invoice as being in order for payment by generating a goods received notice (GRN) on the Financial Management System. As soon as the GRN process has taken place staff members in the Finance Unit can proceed with payment of the invoice
- In the event of the relevant Unit not being in a position to GRN the goods due to an incomplete order, non-provision of full service etc. Finance Unit should be notified and the 30 day period will only begin when the goods or service has been fully supplied to the Office
- Staff have been advised of the need to generate the GRN as soon as the goods or service have been received by the Office or to advise the Finance Unit if they are not in a position to generate the GRN in respect of a particular invoice. Arrangements should be made to ensure that the GRN process is not delayed due to staff being on leave etc.
- If an invoice needs to be corrected or is in dispute, the procedures specified in the Act are followed.

These procedures are applied by the Finance Unit and a written record of the procedures applied is recorded

- The staff in the Finance Unit monitor the payment due date and endeavour to ensure that payment is made within the prescribed period. In the event of payment being made outside of the prescribed time interest is calculated by Finance Unit in accordance with the Act and with the Regulations
- The Financial Management System prompts the staff in the Finance Unit of due payment date

Report on Payment Practices for 2016

Office of the Attorney General, Merrion Street

General

- Relevant payments made by this Office complied with the terms of the Prompt Payment of Accounts Act 1997 as amended by the European Communities (Late Payments in Commercial Transactions) Regulations 2002.

Late Payments

- Payments totalling €1,817,632 in 2016 were made from the Vote of the Office of the Attorney General in respect of payments to which the Legislation applies.
- Prompt payment interest payments totalling €0 were incurred during the year.

Chief State Solicitor's Office

Statement of Compliance with the

Prompt Payment of Accounts Act 1997 and with the European Communities (Late Payment in Commercial Transactions) Regulations 2002

Report on Payment Practices 2016

Guidelines put in place to ensure compliance with the Act were circulated to all staff in January 1998 and staff were also notified of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 when it came into operation on 7 August 2002. The aim of these guidelines is to facilitate prompt clearance of invoices and prevent interest penalties arising. Furthermore, financial procedures in place in the Office are regularly monitored.

The key procedures which are in place are as follows:-

- Unless otherwise agreed by written arrangement, the prompt payment deadline of 30 days applies to all payments.
- All invoices received are forwarded directly to Finance Unit where they are date stamped. This date is the date from which the prescribed payment period is calculated.
- Staff in the Finance Unit scan general invoices into the Financial Management System using Invoice Manager and the invoice approval process is carried out electronically. General Law invoices are inputted to the Financial Management System and forwarded to the relevant file handlers for approval.
- Staff have been advised that all invoices should be certified for payment and forwarded to the Finance Unit immediately on receipt. Arrangements should be made to ensure that invoices are not delayed due to staff being on leave etc.
- If an invoice needs to be corrected or is in dispute, the procedures specified in the Act are followed. These procedures are applied by the Finance Unit and a written record of the procedures applied is recorded.
- The staff in the Finance Unit monitor the payment due date and endeavour to ensure that payment is made within the prescribed period. In the event of payment being made outside of the prescribed time interest is calculated automatically by the Financial Management System and manually checked by Finance Unit in accordance with the Act and with the Regulations.

Interest Payments under Prompt Payment of Accounts legislation

Payments totalling €3,824,405 in 2016 were made from the Vote of the Chief State Solicitor's Office in respect of payments to which the Legislation applies. A total amount of €8,386 was incurred in penalty interest during the year under Prompt Payment of Accounts legislation.

Report On Payment Practices For 2016

Chief State Solicitor's Office

The terms of the Prompt Payment of Accounts Act 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2002 applies to payments made by or on behalf of this Office excluding payroll and certain other Office expenses.

The CSSO introduced a new Financial Management System in July 2004. On the introduction of this new system, the Finance Unit of the CSSO assumed responsibility for all payments from the CSSO Vote, apart from Payroll and Salaries (A1 Subhead). The system has been designed specifically to monitor and control compliance with the terms of the Act.

In the small proportion of cases where payments are not made within the statutory period, the appropriate interest payments are made.

Payments to which Prompt Payments applied from January to December 2016:

| | |
|--|---------------|
| Total Value of all Payments: | €3,824,405.38 |
| Total Value of all late payments (under €320 inclusive): | €12,364.92 |
| Total Value of all late payments (over €320): | €155,395.79 |
| Value of late payments as % of total payments: | 4.39% |
| Number of late payments in excess of €320: | 73 |
| Amount of Interest paid: | €8,386.00 |
| Amount of interest as percentage of total payments: | .22 % |
| Broad indication of Length of Delays: | 38 days |